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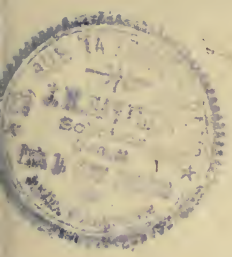

THE SUPREME COURT OF JUDICATURE ACTS,

ETC.

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THE SUPREME COURT OF JUDICATURE ACTS,

AND THE

APPELLATE JURISDICTION ACT, 1876,

WITH

RULES OF COURT AND FORMS ISSUED IN JULY, 1883.

ANNOTATED SO AS TO FORM A

MANUAL OF PRACTICE.

CONTAINING A

COMPREHENSIVE SELECTION OF CASES FROM THE MODERN REPORTS, AND ALL THE MOST RECENT DECISIONS.

TOGETHER WITH

References to the earlier authorities where such seemed advisable.

SECOND EDITION.

BY

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LONDON:

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1883.

PREFACE.

In presenting a second edition of this work to the consideration of the profession, we do so with a considerable sense of the responsibility cast upon us of weighing carefully and thoughtfully the effect of the New Rules upon cases decided under those now repealed. We have, however, been much encouraged, not only by the encomiums of friends, which might proceed from their too great indulgence, but also by the approval of persons high in the profession and personally unknown to us. It was often an extremely delicate matter to decide how far decisions given on a Rule, similar in effect but different in phraseology, were of practical value to the lawyer. Under these circumstances we have rather leaned to retaining a case, at all events in this edition, where the question seemed open to doubt; and this course has at least this advantage, that the practitioner is not liable to have a case sprung upon him the bearing of which upon these Rules he has been unable to consider. In the first edition we adopted the course of omitting those portions of the Acts which were of no importance to the practical lawyer; this plan

has met with so much approval that we have adhered to it in the present edition.

We have noted concisely for the convenience of the reader, at the head of each Order, the important changes therein; it is unnecessary therefore to make any lengthened dissertation in this place. In the margin have been placed references which will show to a great extent the origin of the present Rules, that they have in numerous instances been taken from the Chancery Consolidated Orders or the Common Law Procedure Acts; all such Rules are, however, described as new in this work, to distinguish them from the Rules under the Judicature Acts, from 1875–1880. To be able with any facility to understand the practice cases in the Law Reports from 1875–1883, a table of these latter with their present equivalent, so far as such exists, is necessary, and such has accordingly been prepared. Many important additions have been made to this work by the insertion of various Statutes and regulations, germane to the subject under discussion—*e.g.*, a Table of the Statutory Jurisdiction of the Court of Chancery; Rules as to payment into and out of Court under the Chancery Funds Act, 1872; sections of 13 & 14 Vict. c. 35, relating to Special Case; Regulations of the Common Law Procedure Act as to Special Juries; the sections of the Debtors Act, 1869, concerning imprisonment for debt, &c. &c. An Index of the Forms will be found in the Index under the title "Forms." The Table of Cases has been utilized for giving references in addition to those contained in the text; we have given the pages in

the several contemporary reports, and much care has been expended in verifying the reference.

While this work was passing through the press the Supreme Court of Judicature (Funds) Act, 1883, and the Bankruptcy Act, 1883, received the Royal assent; the former will be found in Appendix P; and as to the latter the few cases which we have referred to, under the Bankruptcy Act of 1869, will probably be found equally applicable to the Bankruptcy Act of 1883.

We desire to convey our thanks to those kind friends, too numerous to mention, who have given us many useful suggestions and much valuable assistance, and amongst whom it would be invidious to make distinctions.

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ADDENDA AND CORRIGENDA.

Page 13, *after* "*Ex parte* Ditton," *add* "The London Court of Bankruptcy has now been consolidated with the Supreme Court Bankruptcy Act, 1883, sec. 93."

Pages 23, 43, *after* "Christ's Hospital *v.* Martin," *add* "See now Order LXIV. r. 14, p. 435."

Page 67, "Act of 1875, sec. 9." This sec. has now been repealed, Schedule to Bankruptcy Act, 1883.

„ 69, Sec. 32 of the Bankruptcy Act, 1869, corresponds with sec. 40 of the Act of 1883.

„ 70, The 42nd sec. of the Bankruptcy Act, 1883, corresponds with the 34th sec. of the Act of 1869.

„ 83, "Act of 1875, sec. 32." This sec. has now been repealed, Schedule to Bankruptcy Act, 1883.

„ 281, "Order XXXV. r. 19, p. 281," *add* in margin "Order XIX. r. 29."

„ 331, *read* "Sansom *v.* Sansom, 4 P. D. 69."

„ 352, R. 5. As to power of Judge when a receiving order has been made to order the transfer of pending actions to himself, *see* Bankruptcy Act, 1883, sec. 102 (4).

„ 399, *read* "Eveleigh *v.* Salsbury, 3 Bing. N. C."

SUPREME COURT OF JUDICATURE ACT, 1873.

36 & 37 Vict. c. 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 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, as follows:

Preliminary.

1. This Act may be cited for all purposes as the "Supreme Court of Judicature Act, 1873." Short title.

2. Repealed by sec. 1 of the Judicature Act, 1874.

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 Union of existing Courts into one Supreme Court.

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.

Repealed by sec. 9, Judicature Act, 1875.

As to appeals under 20 and 21 Vict. c. 85, sec. 55 (Divorce Act) see Judicature Act, 1881, sec. 9.

As to saving of old practice in Divorce Division, see Order LXVIII.

Division of Supreme Court into a Court of original and a Court of appellate jurisdiction.

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.

Constitution of High Court of Justice.

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.

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, *the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron*, 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 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: *Provided always, that if at the commencement of this Act the number of Puisne Justices and Junior Barons who shall become Judges of the said High Court shall exceed twelve in the whole, no new Judge of the said High Court shall be appointed in the place of any such Puisne Justice or Junior Baron who shall die or resign while such whole number shall exceed twelve, it being intended that the permanent number of Judges of the said High Court shall not exceed twenty-one.*

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.

The offices of Lord Chief Justice of the Common Pleas and Lord Chief Baron were abolished by Order in Council dated the 16th day of December, 1880, and all their powers were transferred to the Lord Chief Justice of England (W. N. 1881, Pt. II., p. 55, 44 & 45 Vict. c. 68, sec. 25).

6. The constitution of the Court of Appeal is now regulated by sec. 4 of the Act of 1875. This section is therefore omitted.

Vacancies by resignation of Judges and effect of vacancies generally.

7. The office of any Judge of the said High Court of Justice, or of the said Court of Appeal, may be vacated by resignation in writing, under his hand, addressed to the Lord Chancellor, without any deed of surrender; and the office of any Judge of the said High Court shall be vacated by his being appointed a Judge of the said Court of Appeal. The said Courts respectively shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any Judge of either of such Courts.

Qualifications of Judges. Not required

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

to be Serjeants-at-Law.

Act had not passed would have been qualified by law 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.

9. Repealed by sec. 5 of the Act of 1875.

10. Repealed by sec. 6 of the Act of 1875.

Saving of rights and obligations of existing Judges.

11. Every existing Judge, who is by this Act made a Judge of the High Court of Justice or an ordinary Judge of the Court of Appeal, shall, as to tenure of office, rank, title, salary, pension, patronage, and powers of appointment or dismissal, and all other privileges and disqualifications, remain in the same condition as if this Act had not passed; and, subject to the change effected in their jurisdiction and duties by or in pursuance of the provisions of this Act, each of the said existing Judges shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any Act of Parliament, law, or custom if this Act had not passed. No Judge appointed before the passing of this Act shall be required to act under any Commission of Assize, Nisi Prius, Oyer and Terminer, or Gaol Delivery, unless he was so liable by usage or custom at the commencement of this Act.

Service as a Judge in the High Court of Justice, or in the Court of Appeal, shall in the case of an existing Judge, for the purpose of determining the length of service entitling such Judge to a pension on his retirement, be deemed to be a continuation of his service in the Court of which he is a Judge at the time of the commencement of this Act.

Provisions for extraordinary duties of Judges of the former Courts.

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.

The functions of the Master of the Rolls have now been altered by sec. 2, Judicature Act, 1881. Those of the Chief Justice of the Common Pleas and Chief Baron have been merged in the Chief Justice of England (sec. 5, note, *ante*).

13, 14, 15. These sections deal with the salaries and pensions of Judges.

Part II.

Jurisdiction and Law.

Jurisdiction of High Court of Justice.

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),

(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;
Repealed by sec. 9 of the Jud. Act, 1875.
(8.) *The London Court of Bankruptcy;*
(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:

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.

Hall, V.C., has held that this section gave him jurisdiction to hear a motion to expunge an entry made in the Register of Proprietors of Patents (*Re Myer's Patent*, W.N. 1882, 53-56. A).

Jurisdiction not transferred 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:
(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.

And see Judicature Act, 1881, secs. 2 and 24.

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 :

(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 :

(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.

Rehearing is part of the jurisdiction of the Court of Appeal, and that power is not vested in the High Court or the Judges thereof (*Re The St. Nazaire Company*, 12 Ch. D. 88. A). The Court of Appeal will not rehear its own decisions (*Flower* v.

Lloyd, 6 Ch. D. 297. A). Whether it has any such jurisdiction in Bankruptcy cases was discussed in *Ex parte Banco de Portugal, Re Hooper*, 14 Ch. D. 1. A.

For the extent to which the Court of Appeal is bound by previous appeal decisions see *Re South Durham Iron Company, Smith's Case*, 11 Ch. D. 579. A.

As to jurisdiction of the Chancery Court of the County Palatine of Lancaster see *Re Alison's Trusts*, 8 Ch. D. 1. A.; *Re Longdendale Cotton Co.*, 8 Ch. D. 150; *Lee* v. *Nuttall*, 12 Ch. D. 61. A.

Appeals from High 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, 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.

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.

"Save as hereinafter mentioned."—See secs. 45, 47, 49 and 50, Judicature Act, 1873, 20, Jud. Act, 1876, and 9, 10 and 14, Jud. Act, 1881.

An appeal lies from the decision of the Div. Court, on an application for a prohibition to a County Court. For the scope of sec. 20 of the App. Jur. Act, 1876, *post*, is limited to those cases where the decision is declared final by Act of Parliament (*Barton* v. *Titmarsh*, 49 L.J., 573), also from an order of a Div. Court upon an interlocutory matter arising in an election petition (*Harman* v. *Park*, 6 Q. B. D. 323. A., and see Jud. Act, 1881, s. 14).

An appeal will lie from the opinion of the Court on a special case stated by an arbitrator (*Shubrook* v. *Tuffnell*, 9 Q. B. D. 621 A), and from a decision upon a special case stated by an umpire under the Lands Clauses Act, 1845 (*Bidder* v. *N. Stafford Ry. Co.*, 4 Q. B. D. 412. A.). On the validity of a rate (*Overseers of Walsall* v. *L. N. W. R. Co.*, 4 App. Cas. 30).

The question was raised but not decided whether an appeal would lie from the refusal of a habeas corpus under the Extradition Act, 1870 (*Reg.* v. *Weil*, 9 Q. B. D. 701. A.).

Repealed by s. 24 App. Juris. Act, 1876.

20. See now sec. 3 of the App. Jur. Act, 1876.

21. See now sec. 14 of the App. Jur. Act, 1876.

Repealed by s. 24 App. Juris. Act, 1876.

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 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.

As to how far the rights of the parties, in actions pending when the Act came into operation, may be affected by this section, see some remarks of Lindley, L. J., in *Hurst* v. *Hurst*, 21 Ch. D. 295. A.

Rules as to exercise of jurisdiction.

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; 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.

Law and equity to be concurrently administered.

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:

(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.

(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, 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.

An action against a Corporation aggregate brought in the Equity side of the Mayor's Court was transferred to the Ch. Div. on the grounds that questions affecting the rights of other persons must be determined before the main question, and a Corporation aggregate could not be sued in the Mayor's Court (*Vickers* v. *Stevens*, 29 W. R. 562; *Nothard* v. *Proctor*, 1 Ch. D. 4. A).

"Order XXII. Rule 8 (now XXI. 14) must be construed as being an exposition of this sub-section, and as limiting the right of the third person who has been brought in to defending himself against the counter claim" (Per Lush, J., in *Street* v. *Gover*, 2 Q. B. D. 500. And see Order XVI. 48 to 55).

With regard to this sub-section, Cotton, L. J., remarks in *Britain* v. *Rossiter*, 11 Q. B. D. 131. A.: "The doctrine as to part performance has always been confined to questions relating to land; it has never been applied to contracts of service, and it ought not now to be extended to cases in which the Court of Chancery never interfered.

(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 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.

Though the Com. Law Div. cannot reform or set aside a deed with regard to its effect in the future, it may for the purpose of determining an action treat it as set aside (*Mostyn* v. *W. Mostyn Coal Co.*, 1 C. P. D. 150).

(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.

The Court of Bankruptcy may still restrain an action in another Court (*Ex parte Ditton*, 1 Ch. D. 557. A). As to how this discretion is exercised see *Ex parte Armitage*, 17 Ch. D. 13. A; *Ex parte Price*, 21 Ch. D. 553. A. But one Division of the High Court cannot restrain any proceedings in another (*Wright* v. *Redgrave*, 11 Ch. D. 24. A, discussed in *Aylwin* v. *Evans*, 47 L. T. 563, along with *Hilliard* v. *Hanson*, 21 Ch. D. 69. A).

Staying execution on an award in another Division would be similar in effect to interfering by injunction (*Powell* v. *Jewesbury*, 9 Ch. D. 34. A).

This section does not interfere with the granting of an injunction restraining the institution of proceedings (*Besant* v. *Wood*, 12 Ch. D. 630; *Hart* v. *Hart*, 45 L. T. 15).

An application under sec. 85 of the Companies' Act, 1862, to restrain further proceedings in an action after the presentation of a winding-up petition, must be made in the Division in which the action is brought (*Re The Artistic Colour Co.*, 14 Ch. D. 502). Under Order XLIX. 5, the judge has power to transfer pending actions to himself.

When a collusive action has been instituted for an inequitable purpose, the proper mode of dealing with such action is to stay it (*Escott* v. *Grey*, 47 L. J. 606). So also where the costs of a discontinued action are unpaid (Order XXVI. 4). When an action is shown to be vexatious and an abuse of the process of the Court it will be stayed (*Dawkins* v. *Prince Edward of Saxe-Weimar*, 1 Q. B. D. 499). In *Edmunds* v. *Attorney General*, 47 L. J. Ch. 345, such an order was made on adjourned summons.

A defendant is entitled to have further proceedings in an action stayed where the plaintiff seeks to proceed, notwithstanding his agreement to compromise (*Eden* v. *Naish*, 7 Ch. D. 781).

Sub-section 5 is intended to give power to stay actions which have been improperly brought, or the prosecution of which the Court of Chancery would have restrained by injunction (*Crowle* v. *Russell*, 4 C. P. D. 186. A).

"Every matter of equity on which an injunction might have been obtained," may be relied on by way of defence. The statute does not prevent the Court from ordering a stay of proceedings when it is necessary for a temporary purpose, but it was not intended that while injunction *eo nomine* was abolished the Court might do the same thing in another form (Hannen, P., *Marshall* v. *Marshall*, 5 P. D. 20).

When two actions are proceeding in different Courts between the same parties and for the same matter, in this country or any other part of the Queen's dominions, one of such actions is *prima facie* vexatious, and the Court will generally, as of course, put the plaintiff to his election as to which he will proceed with, and stay the other. But where one of them is in a foreign country, a special case must be made out to induce the Court to interfere (*McHenry* v. *Lewis*, 22 Ch. D. 397. A; *Peruvian Guano Co.* v. *Bockwoldt*, 23 Ch. D. 225. A).

When a foreigner has appeared in an action in an English Court he gives jurisdiction to the English Court to restrain him from proceeding to litigate the same subject matter in the Courts of his own country. The exercise of this power, however, is discretionary (*Dawkins* v. *Simonetti*, 29 W. R. 228. A).

(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 recognize 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 recognized 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.

It would seem that questions as to the competency of a married woman to make a will under a power, and of the valid execution of the power arising in cases in the P. D. will in future be decided by such Division (*Phillips* v. *Jenkins*, 44 L. T. 281).

(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.

An order may be made under this sub-section, staying one of two cross actions between the same parties arising out of the same matter, giving leave to raise by defence, set-off and counterclaim, all questions intended to be raised in the action which is stayed. As a general rule, that party should have the conduct of the proceedings on whom the substantial burden of proof is thrown; and if there be nothing to choose in this regard, then on the party who was first in point of time. The judge must consider what is the fair mode of trying that which is shown to be the substantial matter (*Thomson* v. *S.E. Ry. Co.*, 9 Q. B. D. 320, 328. A).

In an administration suit the absence of a general representative of the estate must be rectified, as the administrator *ad litem* was insufficient for finally determining the cause or matter when the object of the suit was to establish the title of the plaintiff as sole next of kin (*Dowdeswell* v. *Dowdeswell*, 9 Ch. D. 294. A; See Order XVI. 46).

In Gaudet Frères SS. Co., 12 Ch. D. 882, it was held that when an applicant had submitted the determination of his rights to the Court, the Court had jurisdiction under this sub-section to enforce the carrying into effect of the full terms of a compromise arrived at between the parties.

Concealed fraud, and the absence of reasonable means of discovery, may now be pleaded in an action in the Q. B. D. in reply to the defence of the Statutes of Limitation (*Gibbs* v. *Guild*, 51 L. J. 313. A).

As to the power of the Court to stay actions so as to prevent multiplicity of proceedings, see cases cited under Order XLIX. 8, *post*.

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:

(1.) Repealed by sec. 10 Jud. Act. 1875, which is substituted for it.

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.

The question as to what is an express and what is a constructive trust, is the subject of an elaborate inquiry in the judgment of Kay, J., in *Banner* v. *Berridge*, 18 Ch. D. 254:—"I do not think," he says, "that it is an exhaustive definition of an express trust; that it must be a trust expressly declared by a deed, will, or some other written instrument." . . . . A man may be bound by express trust where moneys which in no sense belong to him, and in which he has no kind of interest, or goods, plate, or jewels are placed in his hands by the real owner as depositee of them, and that without any writing or even expression in words that it was to be a trust (pp. 263, 264).

In *Seagram* v. *Tuck*, 18 Ch. D. 296, Kay, J., held that a receiver held under an express trust.

In *Hodgson* v. *Williamson*, 15 Ch. D. 87, Bacon, V.C., held that the debts payable out of funds held in trust for a married woman for her separate estate are not barred by the Statute of Limitations. It is, however, worthy of note that this section, which professes both to "amend and declare the law," was never referred to. It was very pertinently asked in the course of the argument: "Can it be said that her separate estate is a trust fund for the benefit of her creditors?"

Equitable wastes.

(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.

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.

A mortgagor in receipt of the rents and profits may maintain an action on a covenant to restrain a defendant from using a building as a beer-house without joining the mortgagee (*Fairclough* v. *Marshall*, 4 Ex. D. 37. A).

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.

The point was raised whether proceedings might be taken under the latter portion of this sub-section without waiting till action brought (*Re New Hamburgh Ry. Co.*, W. N. 1875, 239, and see Order LVII. 1*a*. 4).

This sub-section only applies to debts of which there has been an absolute assignment in writing. And a banking company not being trustees within the Trustee Relief Act, are not entitled to pay the deposit moneys into Court thereunder (*Re Sutton's Trusts*, 12 Ch. D. 175). It must not purport to be by way of charge only; whether this means an assignment which expresses on the face of it that it is made by way of charge only, or an

assignment which, coupled with all the surrounding circumstances, shows that it is by way of charge only, was a point raised but not decided in the *National Prov. Bank* v. *Harle*, 6 Q. B. D. 630.

As to the assignee of a chose in action joining the assignor as co-plaintiff, see *Turquand* v. *Fearon*, 4 Q. B. D. 280; Order XVI. 2, *post*.

Stipulations not of the essence of contracts.

(7.) Stipulations in contracts, as to time or otherwise, which would not before the passing of this Act 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.

Injunctions and receivers.

(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 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.

This sub-section treats of matters too extensive to be adequately discussed within the scope of this work. The following brief remarks and cases decided for the most part since the passing of the Act may be found useful to the practitioner.

Order L., *post*, treats of interlocutory orders as to Mandamus, Injunctions, &c.

Mandamus.

Meaning of, in this section.

The mandamus spoken of in this sub-section is not the prerogative mandamus, but only a mandamus which must be granted to direct the performance of some act, of something to be done which is the result of an action where an action will lie (Per Brett, L. J., *Glossop* v. *Heston Local Board*, 12 Ch. D. 122. A; and see *Re Paris Rink Co.*, 6 Ch. D. 731).

As to the action of mandamus see Order LIII. 1–4. As to an application for the prerogative writ of mandamus see Order LIII. 5–15. As to penalty for disobedience see Order XLII. 30.

Injunction.

This sub-section has considerably enlarged the powers of the Court, by fusing the extensive powers given by the C. L. P. Act, 1854, secs. 79, 81, 82, with the jurisdiction formerly exercised by a Court of Equity; the principles remain the same, and it is with regard to those settled legal reasons or principles that the Court will decide what terms and conditions are just (*Beddow* v. *Beddow*, 9 Ch. D. 89; *Shaw* v. *E. of Jersey*, 4 C. P. D. 359. A; *Gaskin* v. *Balls*, 13 Ch. D. 324. A; *N. L. Ry.* v. *G. N. Ry.*, 11 Q. B. D. 30. A). It must be "just as well as convenient" (*Day* v. *Brownrigg*, 10 Ch. D. 307. A).

A claim for injunction or receiver should be endorsed on the writ when either is a substantial part of the action (*Colebourne* v. *Colebourne*, 1 Ch. D. 690).

Where the rights of the parties can be determined by either injunction or prohibition, preference will be given to the cheaper and more effectual remedy (*Hedley* v. *Bates*, 13 Ch. D. 498, explained in *Stannard* v. *Vestry of St. Giles*, 20 Ch. D. 197. A).

Where a statute creates a new offence, and imposes a penalty, the auxiliary remedy by injunction may still be claimed (*Cooper* v. *Whittingham*, 15 Ch. D. 501).

A foreign sovereign who submits to be made a defendant in an action, for the purpose of empowering the Court to make an order, does not thereby part with any of his rights (*Vavasseur* v. *Krupp*, 9 Ch. D. 351. A). In the absence of any equity to justify them, the Courts in this country will not restrain by injunction a plaintiff from proceeding in a foreign Court (*Fletcher* v. *Rodgers*, 27 W. R. 97. A). The Court cannot grant an injunction to restrain a foreigner from proceeding in a foreign Court against an administrator, consequently the Court has no jurisdiction to grant an injunction to prevent him from removing his property in this country (*Re Boyse*, 15 Ch. D. 591).

Where the Crown was desirous of obtaining an interim injunction, but was unable to give an undertaking as to damages, Jessel, M. R., refused to grant it (*Sec. of State for War* v. *Chubb*, W.N. 1880, 128).

A notice granting an injunction may be given by telegram. A sheriff's officer who receives such a notice should inquire by telegraph to see if it be *bonâ fide* (*Ex parte Langley*, 13 Ch. D. 110. A, in which case it was held that a London solicitor who obtains an order restraining a sale in the country ought to telegraph to his agent at the place and ask him to give notice to the persons affected; and see also *Re Bryant*, 4 Ch. D. 98).

The Court will restrain the committee of a club from acting improperly in a matter of expelling a member (*Fisher* v. *Keane*, 11 Ch. D. 353; *Labouchere* v. *Earl of Wharncliffe*, 13 Ch. D. 346; *Dawkins* v. *Antrobus*, 17 Ch. D. 615. A).

An injunction will be granted to restrain the publication of matter injurious to the plaintiff's trade, and which is found to be libellous (*Saxby* v. *Easterbrook*, 3 C. P. D. 339; *Hill* v. *Hart-Davies*, 21 Ch. D. 798). The Court has jurisdiction to interfere on

interlocutory application, but such jurisdiction is to be exercised with great caution (*The Quartz Hill Co.* v. *Beall*, 20 Ch. D. 505. A; *Thomas* v. *Williams*, 14 Ch. D. 864; *Thorley's Food Co.* v. *Massam*, *Ibid.* 763. A).

A retiring partner will be restrained from soliciting the old customers of the firm, but not from dealing with them (*Leggott* v. *Barrett*, 15 Ch. D. 306. A).

An injunction will be granted to restrain the exportation of goods under a trade-mark likely to deceive a foreign though not a home purchaser (*Orr Ewing* v. *Johnston*, 7 App. Cas. 219). It has been granted to restrain the holder of a bill of sale of the furniture from continuing a man in possession after the expiration of a tenancy for years (*Smith* v. *Brown*, 48 L. J. Ch. 694). It may issue to restrain a threatened contempt of court, such as the publishing and issuing of a statement of claim with comments upon it (*Kiteat* v. *Sharp*, 31 W. R. 227; *Bowden* v. *Russell*, 46 L. J. Ch. 414).

The Court has jurisdiction at the trial to order the pulling down of any buildings erected after notice has been given to the defendant that the plaintiff objects to the building (*Smith* v. *Day*, 13 Ch. D. 651. A).

Where a plaintiff has established his right to a perpetual injunction, the Court has no power to oblige him to accept damages in lieu of an injunction (*Krehl* v. *Burrell*, 11 Ch. D. 146. A).

The Court has power in a proper case to grant an interim injunction to restrain a defendant from ceasing to pump water out of a mine (*Strelley* v. *Pearson*, 15 Ch. D. 113).

The want of jurisdiction in an arbitrator is no ground for restraining persons from proceeding before him (*Great Western Ry. Co.* v. *Waterford, &c., Ry. Co.*, W. N. 1881, 25). In which case afterwards they moved successfully for a prohibition to the Railway Commissioners (*Ibid.* 17 Ch. D. 493. A).

In an action for nuisance the County Court can grant an injunction where the damages are within the limit of its jurisdiction (*Reg.* v. *Harrington*, 48 L. J. 300).

In *Ex parte McPhail*, 48 L. J. Ch. 415, Jessel, M.R., refused leave to serve a writ out of the jurisdiction, on the ground that the plaintiff could have as effectual a remedy by application to the local Court. As to providing for an injunction where the writ is to be served out of the jurisdiction, see *Young* v. *Brassey*, 1 Ch. D. 277, and Order XI. 1*f*.

As to penalty for disobedience see Order XLII. 30.

As to interlocutory orders for injunction see Order L.

Receivers.

A claim for injunction or receiver should be indorsed upon the writ, when either is a substantial part of the action (*Colebourne* v. *Colebourne*, 1 Ch. D. 690).

Where there is immediate danger of the corpus of the property being destroyed, a receiver may be appointed at any stage of the action, even before the service of the writ (*Re H.'s Estate*, 1 Ch. D. 276).

The Queen's Bench Division has the same power as Chancery Division in appointing a receiver, and such an order may be made after judgment has been given in the action (*Smith* v. *Cowell*, 50 L. J. 38. A). In *Salt* v. *Cooper*, 50 L. J. Ch. 529. A, a receiver was appointed after final judgment, though not asked for on the writ, without issue of a new writ, on the application of the judgment

creditor, the judgment being unsatisfied. In *Cash* v. *Parker*, 12 Ch. D. 293, an interim receiver was appointed notwithstanding the abatement of the action by the death of the sole defendant.

A receiver may be appointed *ex parte* without giving the usual security, on an understanding to deal with the property only under the direction of the Court, and to abide by any order the Court may make (*Taylor* v. *Eckersley*, 2 Ch. D. 302. A). If he be appointed upon the terms of giving security, he is not properly constituted a receiver until that has been done (*Edwards* v. *Edwards*, 2 Ch. D. 291. A). Persons who are deeply interested in the proper management of a concern will not be required to give security (*Boyle* v. *Bettws Coal Co.*, 2 Ch. D. 726; *Hyde* v. *Warden*, 1 Ex. D. 309. A).

A defendant may apply for an injunction and a receiver (*Sargent* v. *Read*, 1 Ch. D. 600), in which case both plaintiff and defendant applied, and the plaintiff was appointed personally, on the ground that he was the most suitable person, as the business required almost professional skill.

The effect of appointing a receiver is to remove the goods out of the operation of the "order and disposition" clause of the Bankruptcy Act, 1869 (*Taylor* v. *Eckersley*, 5 Ch. D. 740).

The appointment of a member of the firm of plaintiff's solicitors as receiver is improper (*Allen* v. *Lloyd*, 12 Ch. D. 447. A).

Where one party is in occupation and the other party applies for a receiver it is not unusual for the Court to direct the appointment of a receiver, unless the party in possession pay into Court an occupation rent (*Real Advance Co.* v. *McCarthy*, 40 L. T. 878; *Porter* v. *Lopes*, 7 Ch. D. 358).

The Court has power under this sub-section to appoint a receiver where the title to the property is disputed (*Berry* v. *Keen*, 51 L. J. Ch. 912. A).

The cases in which the appointment of a receiver may be authorized under this sub-section would seem to be more extensive than under the old practice (*Pease* v. *Fletcher*, 1 Ch. D. 273), where a mortgagee, whose title was partly legal and partly equitable, was granted a receiver of the whole estate: and see some remarks of Cotton, L. J., in *Anglo-Italian Bank* v. *Davies*, 9 Ch. D. 275. A, where the powers given by the Judicature Acts were amply discussed, and a receiver was appointed of the equity of redemption vested in a judgment debtor. The appointment of a receiver is the equivalent in equity of the actual delivery of the land under an elegit (*Ibid.* 85, and authorities there cited; also *Oliver* v. *Lowther*, 42 L. T. 47; *Ex parte Evans Re Watkins*, 13 Ch. D. 252. A).

Where the mortgagor is in possession, the order appointing a receiver at the suit of the mortgagee should direct the defendant to give up possession to the receiver (*Hawkes* v. *Holland*, W. N. 1881, 128. A).

As to appointing a receiver where a widow who had property vested in trustees and neglected to pay costs, see *Bryant* v. *Bull*, 10 Ch. D. 153.

Where a tenant for life neglected to keep leasehold houses in proper repair see *Fowler* v. *Odell*, 16 Ch. D. 723.

For a form of order for the appointment of a receiver and manager of such a business as a hotel, see *Truman* v. *Redgrave*, 18 Ch. D. 547.

A stranger to the action has no jurisdiction to apply to the

Court by motion for the payment of money to him by a receiver appointed in the action (*Brocklebank* v. *E. Lond. Ry. Co.*, 12 Ch. D. 839).

A receiver is a trustee of any money due from him and not accounted for, and as against the persons entitled cannot plead the Statute of Limitations (*Seagram* v. *Tuck*, 18 Ch. D. 296).

The appointment of a receiver is in the discretion of the Court, and the Court of Appeal will not, as a rule, interfere with that discretion (*Nothard* v. *Proctor*, 1 Ch. D. 4. A).

As to interlocutory orders for the appointment of a receiver, see Order L. 6; as to receiver's accounts, &c., *Ibid.*, 16–22.

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.

This sub-section is confined to cases in which a variance existed before the passing of the Act between the rules in force in the Common Law and Admiralty Courts (*Chartered Merc. Bank* v. *Netherlands Nav. Co.*, 9 Q. B. D. 118).

Infants.

(10.) In questions relating to the custody and education of Infants the Rules of Equity shall prevail.

The Common Law Courts have now concurrent jurisdiction with those of equity in the custody of children, and will exercise the same according to equitable rules (*Re Goldsworthy*, 2 Q. B. D. 75).

The law as to the custody of infants has been the subject of very ample discussion in two cases recently decided (*Re Agar-Ellis*, 10 Ch. D. 49. A, and *Re Besant*, 11 Ch. D. 508. A).

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.

In cases where no rule of practice is laid down by the new orders, and there is a variance in the old practice of the Chancery and Common Law Courts, that practice is to prevail which is considered by the Court most convenient (*Newbiggin-by-the-Sea Gas Co.* v. *Armstrong*, 13 Ch. D. 310. A).

The rights of mortgagors and mortgagees, with regard to the Statute of Limitations and the effect of this sub-section upon it, underwent considerable discussion in *Pugh* v. *Heath*, 7 App. Cas. 235.

Concealed fraud and the absence of reasonable means of discovery may now be pleaded in an action in the Queen's Bench Division in reply to the defence of the Statute of Limitations (*Gibbs* v. *Guild*, 51 L. J. 313. A; *Spackman* v. *Foster*, 48 L. T. 670)

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.

Terms survive for the purpose of moving to set aside an award (*Christ's Hospital* v. *Martin*, 3 Q. B. D. 16. A). Terms were regulated by 11 Geo. 4, and 1 Will. 4, c. 70, sec. 6.

Vacations.

27. Her Majesty in Council may from time to time, upon any report or recommendation of the Judges by whose advice Her Majesty is hereinafter authorized to make rules before the commencement of this Act, and after the commencement of this Act upon any report or recommendation of the Council of Judges of the Supreme Court hereinafter mentioned, with the consent of the Lord Chancellor, make, revoke or modify, orders regulating the vacations to be observed by the High Court of Justice and the High Court of Appeal, and in the offices of the said Courts respectively; and any Order in Council made pursuant to this section shall, so long as it continues in force, be of the same effect as if it were contained in this Act; and Rules of Court may be made for carrying the same into effect in the same manner as if such Order

in Council were part of this Act. In the meantime, and subject thereto, the said vacations shall be fixed in the same manner, and by the same authority, as if this Act had not passed. This section shall come into operation immediately upon the passing of this Act.

See Order LXIII. *post.*

Sittings in vacation.

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.

See Order LXIII. *post.*

Jurisdiction of Judges of High Court on circuit.

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.

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.

See Order XXXVI. 44.

Sittings for trial by jury in London and Middlesex.

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 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.

See Order XXXVI.

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),

Now three (Order in Council, December 16, 1880, W. N. 1881, Pt. II. 55).

Here follows an enumeration of the Judges and Divisions of the High Court, which are now sufficiently well known, and are not the same as those given in the Act.

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.

32. This section gives power to alter Divisions by Order in Council.

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.

Assignment of certain business to particular Divisions of High Court, subject to Rules.

34. There shall be assigned (subject as aforesaid) to the Chancery Division of the said Court:

(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 wardships of infants, and the care of infants' estates.

By a notice issued by the Sen. Reg., by the direction of the Lord Chancellor, dated July 11, 1882, it was notified that "The solicitor entering for trial or setting down on motion for judgment any action commenced in the Chancery Division will, from and after this day, be required to certify shortly, on the back of the præcipe, what is the cause of action, using in actions for the purpose mentioned in sec. 3 of sec. 34 of the Act, 1873, the language of that section. The orders of course clerks will mark such last mentioned action 'C,' and all others 'Q. B.'"

N.B.—This regulation does not apply to a motion for judgment set down with a special case (17 L. J. 385).

In consequence of the above notice, only actions coming within the meaning of this section should be assigned to the Chancery Division.

With regard to sec. 2, the following Table of the Statutory jurisdiction of the Court of Chancery is here appended:—

Charities.

52 Geo. 3, c. 101 (Summary remedy for breach of trust).
16 & 17 Vict. c. 137; 18 & 19 Vict. c. 124; 32 & 33 Vict. c. 110 (Charitable Trusts Acts).
29 & 30 Vict. c. 57; 35 & 36 Vict. c. 24, s. 13 (Enrolment of deeds).
5 & 6 Will. 4, c. 76; 16 & 17 Vict. c. 137, s. 65 (Municipal Corporation Acts).
15 & 16 Vict. c. 85, s. 29; 17 & 18 Vict. c. 87; 18 & 19 Vict. c. 128; 20 & 21 Vict. c. 81; 22 Vict. c. 1 (The Burial Acts).
8 & 9 Vict. c. 70, s. 2; 18 & 19 Vict. c. 124 (Church Buildings Amendment Act).
3 & 4 Vict. c. 77 (Grammar School Act).

Companies.

25 & 26 Vict. c. 89; 30 & 31 Vict. c. 131; 40 & 41 Vict. c. 26.
30 & 31 Vict. c. 127 (Railway Company's Acts).

Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41).

Court of Chancery Funds Act (35 & 36 Vict. c. 44).

Ecclesiastical Estates Act (5 & 6 Vict. c. 26; 14 & 15 Vict. c. 104).

Infant.

36 Vict. c. 12 (Custody of Infants Act).
18 & 19 Vict. c. 43 (Settlement Act).

Land.

8 & 9 Vict. c. 18; 23 & 24 Vict. c. 106; 32 & 33 Vict. c. 18 (Lands Clauses Consolidation Acts).
42 Geo. 3, c. 116, sec. 67, amended 16 & 17 Vict. c. 117 (Land Tax Redemption Acts).
11 Geo. 4, and 1 Will. 4. c. 65 (Property Law Amendment Act).
3 & 4 Will. 4, c. 74, s. 33 (Fines and Recoveries Abolition Act).
4 & 5 Will. 4, c. 29 (Investment on Real Securities in Ireland Act).
4 & 5 Vict. c. 35, ss. 73–75; 6 & 7 Vict. c. 23, s. 14; 15 & 16 Vict. c. 51, ss. 22, 39; 21 & 22 Vict. c. 94, ss. 13, 43–45 (Copyhold Acts).

5 & 6 Vict. c. 94, ss. 25–28, and 18 & 19 Vict. c. 117; 22 & 23 Vict. c. 21, s. 8; 23 & 24 Vict. c. 112, ss. 20–24, 29, 45; 27 & 28 Vict. c. 89 (Defence Acts).
27 & 28 Vict. c. 114; 33 & 34 Vict. c. 56 (Improvement of Land Act).
8 & 9 Vict. c. 118, ss. 134, 137–140 (The Inclosure Act).
22 & 23 Vict. c. 35, ss. 13, 30; 23 & 24 Vict. c. 38, s. 9 (Law of Property Amendment and Trustee Relief Acts).
25 & 26 Vict. c. 53; 38 & 39 Vict. c. 87 (Transfer of Land Act).
25 & 26 Vict. c. 67 (Declaration of Title Act).
25 & 26 Vict. c. 108 (Confirmation of Sales Act).
27 & 28 Vict. c. 112, ss. 4–6 (Judgments Act).

Legacy Duty Act (36 Geo. 3, c. 52, s. 32, amended by 35 & 36 Vict. c. 44, s. 26, Sch. 2, Pt. 1).

Married Women's Property Act (33 & 34 Vict. c. 93; 37 & 38 Vict. c. 50; 45 & 46 Vict. c. 75).

Merchant Shipping Acts (17 & 18 Vict. c. 104, ss. 62–65, 514; 18 & 19 Vict. c. 91, s. 10).

Metropolitan Board of Works (*Loans*) *Act* (32 & 33 Vict. c. 102, s. 40)—Appointment of a Receiver.

Mortgage Debenture Acts (28 & 29 Vict. c. 78; 33 & 34 Vict. c. 20).

National Debt Act (33 & 34 Vict. c. 71, ss. 58–60).

Parliamentary Deposits Act (9 & 10 Vict. c. 20, s. 4).

Partition Act (31 & 32 Vict. c. 40; 39 & 40 Vict. c. 17).

Production of Cestui qui vie (6 Anne, c. 18).

Permanent Charges Redemption Act (36 & 37 Vict. c. 57).

Perpetuating Testimony Act (5 & 6 Vict. c. 69).

Settled Estates' Act (40 & 41 Vict. c. 18).

Settled Land Act (45 & 46 Vict. c. 38, s. 46).

Solicitors' Act (6 & 7 Vict. c. 73).

Trustee Acts (13 & 14 Vict. c. 60; 15 & 16 Vict. c. 55).

Trustee Relief Acts (10 & 11 Vict. c. 96, amended by 12 & 13 Vict. c. 74; 22 & 23 Vict. c. 35; 35 & 36 Vict. c. 44, s. 26, Sch. 2, Pt. 2; 36 & 37 Vict. c. 66, s. 25).

Vendor and Purchaser Act (37 & 38 Vict. c. 78, s. 9).

See Order XXXVI. 3.

Matters to be heard by a Chancery Judge in Chambers are dealt with in Order LV.

Allegations in a counterclaim raising matter peculiarly within the jurisdiction of the Chancery Division do not constitute sufficient grounds for the transfer of the action to that Division (*Storey* v. *Waddle*, 4 Q. B. D. 289. A).

The Judges of the Chancery Division have jurisdiction to grant probate of a will, but on the ground of the inconvenience which would arise they will not exercise it (*Pinney* v. *Hunt*, 26 W. R. 69).

Under the Judicature Acts an order for personal payment may be combined with an order for foreclosure (*Greenough* v. *Littler*, 15 Ch. D. 93).

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 Common Law Division, although it has no power to reform a deed, will treat it as reformed for the purposes of the action (*Mostyn* v. *The West Mostyn Coal Co.*, 1 C. P. D. 145).

The Court of Queen's Bench has exclusive jurisdiction in proceedings upon prerogative writs of mandamus and *quo warranto;* it also reviewed the judgments of Inferior Courts of Record by writ of error or writ of certiorari, and was the principal Court of criminal jurisdiction (see Order LIII. 5, LXVIII.).

An appeal lies in all matters assigned to the Queen's Bench Division unless they come within the exceptions in secs. 19, 45, 47 and 49 of this Act, and sec. 20 of App. Jur. Act, 1876 (*Reg.* v. *Collins*, 2 Q. B. D. 30. A; *Reg.* v. *Fletcher*, 2 Q. B. D. 43. A; and the *Overseers of Walsall* v. *L. N. W. Ry. Co.* 4 App. Cas. 30). An application for Justices to state a case under 20 & 21 Vict. c. 43, is within the exclusive jurisdiction of the Queen's Bench Division (*Re Ellershaw*, 1 Q. B. D. 481).

For an application to quash an inquisition before the Sheriff for compensation under the Lands Clauses Act see *Reg.* v. *Sheward*, 9 Q. B. D. 741. A.

When this jurisdiction is to be exercised by a Divisional Court see Order LIX.

In *Aslatt* v. *Corp. of Southampton*, 16 Ch. D. 143, Jessel, M. R., restrained a municipal corporation from declaring the office of an alderman void, and considered that such injunction was not within the exclusive jurisdiction of the Queen's Bench Division.

There shall be assigned (subject as aforesaid) to the *Common Pleas Division* of the said Court:

(1.) All causes and matters pending in the Court of Common Pleas at Westminster, the Court of Common Pleas at Lancaster, and the Court of Pleas at Durham, respectively, at the commencement of this Act:

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Common Pleas at Westminster, if this Act had not passed.

There shall be assigned (subject as aforesaid) to the *Exchequer Division* of the said Court:

(1.) All causes and matters pending in the Court of Exchequer at the commencement of this Act.

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Exchequer, either as a Court of Revenue or as a Common Law Court, if this Act had not passed:

Repealed by sec. 9, Judicature Act, 1875.

(3.) *All matters pending in the London Court of Bankruptcy at the commencement of this Act:*

Repealed by sec. 9, Judicature Act, 1875.

(4.) *All matters to be commenced after the commencement of this Act under any Act of Parliament by which exclusive jurisdiction in respect to such matters has been given to the London Court of Bankruptcy.*

The Court of Common Pleas had exclusive jurisdiction in appeals from a revising barrister, municipal election petitions, in actions of dower and *quare impedit*, and to issue a commission for taking the acknowledgments of married women under the Fines and Recoveries Act, 3 & 4 Will. 4, c. 74, sec. 83. And the Court of Exchequer had exclusive jurisdiction in all Revenue matters which concerned the lands, franchises, &c., of the Queen, unless otherwise provided for by Statute.

The jurisdiction of these Courts is now exercised by the Queen's Bench Division (Order in Council, December 16, 1880, W. N. 1881, Pt. 2, 55.

The right of the Crown to remove causes affecting Crown property into the Exchequer remained unaffected by the Jud. Acts (*Att.-Gen.* v. *Constable*, 4 Ex. D. 172).

There shall be assigned (subject as aforesaid) to the Probate, Divorce, and Admiralty Division of the said High Court:

(1.) All causes and matters pending in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty, at the commencement of this Act:

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Probate, or the Court for Divorce and Matrimonial Causes, or of the High Court of Admiralty, if this Act had not passed.

35. Repealed by sec. 33 and the Schedule of Jud. Act, 1875, sec. 11 of that Act being substituted for it.

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.

See Order XLIX. *post.*

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, 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.

Now Queen's Bench Division (Order in Council, Dec. 16, 1880, W. N. 1881, Pt. II. 55).

See Orders XXXVI., LXIII.

Rota of Judges for election petitions.

38. The Judges to be placed on the rota for the trial of election petitions for England in each year, under the provisions of the "Parliamentary Elections Act, 1868," shall be selected out of the Judges of the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice, in such manner as may be provided by any Rules of Court to be made for that purpose; and in the meantime, and subject thereto, shall be selected out of the Judges of the said Queen's Bench, *Common Pleas, and Exchequer* Divisions of the said High Court, by the Judges of such Divisions respectively, as if such Divisions had been named instead of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively, in such last-mentioned Act: Provided that the Judges who, at the commencement of this Act, shall be upon the rota for the trial of such petitions during the then current year, shall continue upon such rota until the end of such year, in the same manner as if this Act had not passed.

Now from Queen's Bench Division (Jud. Act. 1881, s. 13).

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 hereafter made. In all such cases, any Judge sitting in Court shall be deemed to constitute a Court.

Where a Judge sitting at *nisi prius* makes an order for compulsory reference, he acts as a Court within the meaning of this section, and any appeal from his decision must be to the Court of Appeal (*Hoch* v. *Boor*, 49 L. J. 665. A).

Divisional Courts of the High Court of Justice.

40. Such causes and matters as are not proper to be heard by a single Judge shall be heard by Divisional Courts of the said High Court of Justice, which shall for that purpose exercise all or any part of the jurisdiction of the said High Court. Any number of such Divisional Courts may sit at the same time. A Divisional Court of the said High Court of Justice shall be constituted by two or three, and no more, of the Judges thereof; and, except when through pressure of business or any other cause it may not conveniently be found practicable, shall be composed of three such Judges. Every Judge of the said High Court shall be qualified and empowered to sit in any of such Divisional Courts. The President of every such Divisional Court of the High Court of Justice shall be the senior Judge of those present, according to the order of their precedence under this Act.

Order LIX. treats of Divisional Courts.

This section is controlled by the operation of sec. 17, App. Jur. Act. 1876, *post*.

Divisional Courts for business of Queen's Bench, Common Pleas, and Exchequer Divisions.

41. Subject to any Rules of Court, and in the meantime until such Rules shall be made, all business belonging to the Queen's Bench, Common Pleas, and Exchequer Divisions respectively of the said High Court, which, according to the practice now existing in the Superior Courts of Common Law, would have been proper to be transacted or disposed of by the Court sitting in Banc, if this Act had not passed, may be transacted and disposed of by Divisional Courts,

which shall, as far as may be found practicable and convenient, include one or more Judge or Judges attached to the particular Division of the said Court to which the cause or matter out of which such business arises has been assigned; and it shall be the duty of every Judge of such last-mentioned Division, and also of every other Judge of the High Court who shall not for the time being be occupied in the transaction of any business specially assigned to him, or in the business of any other Divisional Court, to take part, if required, in the sittings of such Divisional Courts as may from time to time be necessary for the transaction of the business assigned to the said Queen's Bench, *Common Pleas, and Exchequer* Divisions respectively; and all such arrangements as may be necessary or proper for that purpose, or for constituting or holding any Divisional Courts of the said High Court of Justice for any other purpose authorized by this Act, and also for the proper transaction of that part of the business of the said Queen's Bench, *Common Pleas, and Exchequer* Divisions respectively, which ought to be transacted by one or more Judges not sitting in a Divisional Court, shall be made from time to time under the direction and superintendence of the Judges of the said High Court; and in case of difference among them, in such manner as a majority of the said Judges, with the concurrence of the Lord Chief Justice of England, shall determine.

This section is controlled by the operation of sec. 17, App. Jur. Act, 1876, *post*. The Common Pleas Division and Exchequer Division are now consolidated with the Queen's Bench Division (Order in Council, December 16, 1880, W. N. 1881, Pt. 2, 55).

Distribution of business among the Judges of the Chancery and Probate, Divorce and Admiralty Divisions of the High Court.

42. Subject to any Rules of Court, and in the meantime until such Rules shall be made, all business arising out of any cause or matter assigned to the Chancery or Probate, Divorce and Admiralty Division of the said High Court shall be transacted and disposed of in the first instance by one Judge only, as has been heretofore accustomed in the Court of Chancery, the Court of Probate and for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively; and every cause or matter which, at the commencement of this Act, may be depending in the Court of Chancery, the Court of Probate and for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively, shall (subject to the power of transfer) be assigned to the

same Judge in or to whose Court the same may have been depending or attached at the commencement of this Act; and every cause or matter which after the commencement of this Act may be commenced in the Chancery Division of the said High Court shall 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: Provided that (subject to any Rules of Court, and to the power of transfer, and to the provisions of this Act as to trial of questions or issues by Commissioners, or in Middlesex or London,) all causes and matters which, if this Act had not passed, would have been within the exclusive cognizance of the High Court of Admiralty, shall be assigned to the present Judge of the said Admiralty Court during his continuance in office as a Judge of the High Court.

This section is controlled by the operation of sec. 17, App. Jur. Act, 1876, *post*. As to marking, &c., see Order V. 5. 9, and sec. 11, Judicature Act, 1875.

Divisional Courts for business of the Chancery Division.

43. Divisional Courts may be held for the transaction of any part of the business assigned to the said Chancery Division, which the Judge, to whom such business is assigned, with the concurrence of the President of the same Division, deems proper to be heard by a Divisional Court.

This section is controlled by the operation of sec. 17, App. Jur. Act, 1876, *post*.

Divisional Courts for business belonging to the Division.

44. Divisional Courts may be held for the transaction of any part of the business assigned to the Probate, Divorce, and Admiralty Division of the said High Court, which the Judges of such Division, with the concurrence of the President of the said High Court, deem proper to be heard by a Divisional Court. Any cause or matter assigned to the said Probate, Divorce, and Admiralty Division may be heard at the request of the President of such Division, with the concurrence of the President of the said High Court, by any other Judge of the said High Court.

This section is controlled by the operation of sec. 17, App. Jur. Act, 1876, *post*.

Appeals from inferior Courts to be determined by Divisional Courts.

45. All Appeals from Petty or Quarter Sessions, from a County Court, or from any other inferior Court, which might before the passing of this Act

have been brought to any Court or Judge whose jurisdiction is by this Act transferred to the High Court of Justice, may be heard and determined by Divisional Courts of the said High Court of Justice, consisting respectively of such of the Judges thereof as may from time to time be assigned for that purpose, pursuant to Rules of Court, or (subject to Rules of Court) as may be so assigned according to arrangements made for the purpose by the Judges of the said High Court. The determination of such Appeals respectively by such Divisional Courts shall be final unless special leave to appeal from the same to the Court of Appeal shall be given by the Divisional Court by which any such appeal from an inferior Court shall have been heard.

The effect of the latter part of this section was to remove the tribunals mentioned in it out of the category to which the 20th sec. App. Jur. Act, 1876, was directed (*Crush* v. *Turner*, 3 Ex. D. 307. A). As at the time the App. Jur. Act came into operation this section had modified those Acts which restricted the right of appeal in the cases here referred to (*Ibid.*).

Proceedings removed by certiorari must go to the Queen's Bench; and an appeal lies to the Court of Appeal without any leave upon a rule to show cause why writs of certiorari should not issue (*Reg.* v. *Pemberton*, 5 Q. B. D. 95. A).

No appeal lies without leave from the decision of the Divisional Court on a case stated by Quarter Sessions under the Public Health Act (*Reg.* v. *Swindon Local Board*, 49 L. J. 522. A; 42 L. T. 614, *sub. nom. Hinton* v. *Swindon Local Board*, where the *Overseers of Walsall* v. *L. N. W. Ry. Co.*, 4 App. Cas. 30 was commented on, and its bearing on this section and section 19 of the Act was explained).

Where the Queen's Bench Division in the exercise of its original Common Law jurisdiction, affirms or quashes an order of Sessions, an appeal lies to the Court of Appeal, although no leave to appeal be given (*Reg.* v. *Savin*, 6 Q. B. D. 309. A).

In an action remitted to the County Court, the decision of the Divisional Court granting a new trial is final (*Bowles* v. *Drake*, 8 Q. B. D. 325. A). It should be observed that *Bowles* v. *Drake* is decided on the special wording of sec. 10 of the C. C. Act, 1867 (*Barbage* v. *Coulburn*, 46 L. T. 515. A).

The decision of a County Court Judge refusing to set aside an award under the County Court Act, 1846, is final (*Mayer* v. *Farmer*, 3 Ex. D. 235).

By sec. 6 of the County Court Act, 1875, the time for appealing is limited to eight days, and this time cannot be extended by leave of the Court or a Judge (*Tennant* v. *Rawlings*, 4 C. P. D. 133). See further cases cited under sec. 6, County Court Act, 1875, Order LIX. 1, *post*.

If a Divisional Court be not sitting, the application for a new trial may be made to a Judge at Chambers; but he has no jurisdiction otherwise (*Brown* v. *Shaw*, 1 Ex. D. 425).

There is no new trial from the decision of a County Court

Judge on a matter of fact in an action remitted to the County Court (*Cousins* v. *Lombard Bank*, 1 Ex. D. 404).

As to requesting the Judge to take a note under County Court Act, 1875, sec. 6, see Order LIX. 1, *post*.

The Lord Mayor's Court is an Inferior Court; no appeal lies from a decision of a Divisional Court on a motion for a nonsuit or verdict for the defendant in the Divisional Court unless special leave has been given (*Appleford* v. *Judkins*, 3 C. P. D. 489. A). If the question, however, be one of law arising upon the record, the appeal goes direct to the Court of Appeal (*Le Blanche* v. *Reuter*, 1 Ex. D. 408; *Pryor* v. *City Offices*, 10 Q. B. D. 504. A).

As to entry of appeals from Inferior Courts see Order LIX. 4.

Cases and points may be reserved for, or directed to be argued before, Divisional Courts.

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.

This section is controlled by the operation of sec. 17, App. Jur. Act, 1876, *post*.

Provision for Crown cases reserved.

47. The jurisdiction and authorities in relation to questions of law arising in criminal trials which are now vested in the Justices of either Bench and the Barons of the Exchequer by the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter seventy-eight, intituled "An Act for the further amendment of the administration of the Criminal Law," or any Act amending the same, shall and may be exercised after the commencement of this Act by the Judges of the High Court of Justice, or five of them at the least, of whom the Lord Chief Justice of England, the *Lord Chief Justice of the Common Pleas*, and the *Lord Chief Baron of the Exchequer*, or one of such chiefs at least, shall be part. The determination of any such question by the Judges of the said High Court in manner aforesaid shall be final and without appeal; and no appeal shall lie from any judgment of the said High Court in any criminal cause or matter, save for some error of law apparent upon the record, as to which no question shall have been reserved for the consideration of the said Judges under the said Act of the eleventh and twelfth years of Her Majesty's reign.

See now Jud. Act, 1881, s. 15.

There is no appeal to the Court of Appeal except for error in the record in a criminal case; such as a certiorari to bring up a summary conviction for the purpose of quashing it (*Reg.* v. *Fletcher*, 2 Q. B. D. 43. A); a conviction under 16 & 17 Vict. c. 119, s. 3, for keeping a common gaming-house (*Blake* v. *Beech*, 2 Ex. D. 335. A); an information for contravening the bye-laws of a school constituted under the Education Acts, 1870 and 1874 (*Mellor* v. *Denham*, 5 Q. B. D. 467. A); an application to be admitted to bail (*Reg.* v. *Foote*, 10 Q. B. D. 378. A); a certiorari to quash an order to abate a nuisance (*Reg.* v. *Whitchurch*, 7 Q. B. D. 534. A); an information for libel under 6 & 7 Vict. c. 96, s. 8 (*Reg.* v. *Steel*, 2 Q. B. D. 37. A). The Master of the Crown Office having accordingly taxed the defendant his costs, according to the usual practice under a side-bar rule, it was held that the costs were the consequence of the judgment, and that the Court of Appeal had no jurisdiction to review the decision of the Queen's Bench Division as to the taxation (*Ibid.*).

A decision of a Divisional Court discharging a rule for a mandamus to Commissioners appointed to inquire into the existence of corrupt practices at elections, to grant a certificate, which certificate if given would be a protection to the witness against criminal proceedings for bribery, does not relate to a "criminal cause" within the meaning of this section (*Reg.* v. *Holl*, 7 Q. B. D. 575. A).

The question was raised but not decided, whether an appeal would lie from the refusal of a habeas corpus under the Extradition Act, 1870 (*Reg.* v. *Weil*, 9 Q. B. D. 701. A).

48. Repealed by sec. 33, Jud. Act, 1875.

49. No order made by the High Court of Justice, or any Judge thereof, by the consent of parties, or as to costs only, which by law are left to the discretion of the Court, shall be subject to any appeal, except by leave of the Court or Judge making such order. What orders shall not be subject to Appeal.

After the Court has gone into the merits of a case and assented to a deliberate compromise, it would be extremely inconvenient to allow a person who had instructed counsel to enter into such compromise to retract such covenant (Fry, J., in *Davis* v. *Davis*, 13 Ch. D. 862; *Holt* v. *Jesse*, 3 Ch. D. 177). But where an order has been made by consent (the Judge not having gone into the merits of the case), the consent may be withdrawn at any time before the order is passed and entered (*Rogers* v. *Horn*, 26 W. R. 432). Where it has been passed and entered, it cannot afterwards be varied on the ground of mistake, except for reasons sufficient to set aside an agreement (*Att. Gen.* v. *Tomline*, 7 Ch. D. 388). There is a distinction in this respect between orders made on interlocutory applications, and those which are final judgments. The Court has a larger discretion over the former; in these the mistake may have been on one side only (*Mullins* v. *Howell*, 11 Ch. D. 763).

In *Foster* v. *Edwards*, 48 L. J. 767, it was held that the enactment in this section, that no order by the High Court or any Judge thereof as to "costs only, which by law are left to the

discretion of the Court, shall be subject to any appeal," does not apply to the order of a Master or District Registrar. When the judgment is not varied in any other point it will not be altered in respect to costs where it was within the jurisdiction of the Judge to make the party pay the costs, if the conduct of the cause had been such as to deserve it (*Harpham* v. *Shacklock*, W. N. 1881, 142. A).

As to costs see Order LXV. 1, *post*.

As to discharging orders made in Chambers.

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; 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.

For Chamber practice in Chancery Division see Order LVIII. 15, note; in Queen's Bench Division, see Order LIV. 21, 23, Order LVII. 11.

In *Davey* v. *Ward*, 26 W. R. 390, Malins, V.C., held that an order made on further consideration in Chambers, may be varied on adjourned summons under this section.

Provision for absence or vacancy in the office of a Judge.

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.

An application of an urgent nature may be heard under this section when any Judge has risen for a few days' vacation (*Chapman* v. *Real Property Co.*, 7 Ch. D. 732).

Further provisions for the temporary absence of a Judge are contained in sec. 12 of the Judicature Act, 1881, *post*.

Power of a single Judge in Court of Appeal.

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.

On the death of an appellant before the hearing it is not necessary to apply to a Judge of the Appeal Court for leave to carry on the appeal (*Ranson* v. *Patten*, 17 Ch. D. 767. A). On the death of an appellant the solicitor must give notice to the proper officer (Order XVII. 9).

53. Repealed by sec. 33, and schedule of the Act of 1875. Sec. 12 of that Act is substituted for it.

54. Repealed by sec. 4 of the Act of 1875.

55. Repealed by sec. 24 of the App. Jur. Act, 1876. Sec. 14 of that Act is substituted for it.

Part IV.

Trial and Procedure.

References and assessors.

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, 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.

A trial before a Judge and Assessors may now be directed by Order XXXVI. 7*a.*; this renders *Sugg* v. *Silber* (1 Q. B. D. 362) obsolete.

On moving to set aside or vary the judgment on the report of a Referee, an affidavit or some evidence of what took place at the trial must be produced (*Stubbs* v. *Boyle*, 2 Q. B. D. 124).

A Referee has power to direct judgment to be entered (Order XXXVI. 50).

If there are no questions of law, it would seem that the Referee might give the general effect of his finding in the form; that, having tried all the issues of fact, he found the result to be in favour of the plaintiff or defendant (*Longman* v. *East*, 3 C. P. D., 142. A).

Though, as a general rule, issues which involve questions of fraud affecting the character and reputation of the parties, ought not to be referred compulsorily, the Judge has jurisdiction to do so if it seem necessary (*Hoch* v. *Boor*, 49 L. J. 665. A; *Russell* v. *Russell*, 14 Ch. D. 471; *Sacker* v. *Ragozini*, 44 L. T. 309; Order XXXVI. 7*a*).

In a case involving critical knowledge of pictures, the Court of Appeal refused to send the case for trial before a special Referee, as the fortune and character of the defendant were involved, and he was entitled to have the matter tried in a public Court (*Leigh* v. *Brooks*, 5 Ch. D. 592. A). As a rule, that Court is disinclined to interfere with the discretion (*Saxby* v. *Gloster Waggon Co.*, W. N. 1880, 28. A).

Order XXXVI., Rules 43–53, deals with the powers of, and procedure before, Referees, Rules 54, 55 with the practice as to varying, adopting, remitting &c., the report, and Order XL. as to motion for judgment.

An action in which an issue has been directed by a Judge of the Chancery Division to be tried in the Queen's Bench Division remains in the Chancery Division (*Jones* v. *Baxter*, 5 Ex. D. 275).

For form of reference see App. K. 32.

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.

The Court will not, in the exercise of its discretion, order a reference of an isolated question when the main points in dispute are incapable of arbitration (*Young* v. *Buckett*, 30 W. R. 511).

In any case in which the Court has jurisdiction to refer compulsorily a question of account to an official Referee, it has also jurisdiction to refer to him any other matters arising in the same action (*Ward* v. *Pilley*, 5 Q. B. D. 427. A). Any question of account which may be referred compulsorily to a Master under sec. 3 of the C. L. P. Act, 1854, may also be referred compulsorily to an official Referee under section 57 of this Act (*Ibid.*). Order XXXVI. 7*a* has extended the power of compulsory reference.

Where at the trial an account is ordered to be taken before the Official Referee, and further consideration adjourned, the report must not simply state the result of the account, but must set it out, stating what items have been allowed and what items disallowed (*Burrard* v. *Calisher*, 51 L. J. Ch. 223).

A Referee may simply find the affirmative or the negative of the issues, and his findings cannot be sent back to him for re-trial or further consideration, because his report does not set out his reasons (*Miller* v. *Pilling*, 9 Q. B. D. 736. A; *Walker* v. *Bunkell*, 31 W. R. 138).

In the Chancery Division, when an inquiry as to damages has been directed, it is usual to take the inquiry before the Chief Clerk, and not before a Referee (*Slack* v. *Mid. Ry. Co.*, 29 W. R. 302).

An appeal from a compulsory order of reference made by a Judge sitting at *nisi prius* or Assizes must be brought direct to the Court of Appeal (*Hoch* v. *Boor*, 49 L. J. 665. A).

An appeal from the award on a question of law lies to the Divisional Court (Order LIX. 3).

A Judge at the trial has jurisdiction to order a compulsory reference to an Official Referee; such order, however, is subject to review by the Court of Appeal (Order XXXVI. 7*a*.; *Ormerod* v. *Todmorden Mill Co.*, 8 Q. B. D. 664. A).

The Court is unwilling to interfere with the discretion of the Judge (*Saxby* v. *Easterbrook*, W. N. 1880, 28).

For form of reference see App. K. 33.

See note to preceding section.

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.

See Order XXXVI. 43-53.

Powers of Court with respect to

59. With respect to all such proceedings before Referees and their Reports, the Court or such Judge

proceedings before Referees.

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 arbitrators and their awards respectively, by the Common Law Procedure Act, 1854.

Before the Judicature Acts there were in existence several modes of reference: A reference to arbitrator by consent of parties. A compulsory reference under the provisions of the C. L. P. Act, 1854. In the Common Law Courts a reference to a Master as to matters of discipline. And in the Court of Chancery the reference into Chambers. All these modes at present exist with all their incidents (*Longman* v. *East*, 3 C. P. D. 152. A; Order XXXVI. 10).

By the Common Law either party was able to revoke his submission at any time before the award was made. The first restriction was by 9 & 10 Will. 3, c. 15, which made the party revoking after the agreement had been made a rule of Court, liable to attachment. And by 3 & 4 Will. 4, c. 42, s. 39, when there was a clause in the agreement that the submission might be made a rule of Court, there was no power of revocation without leave of the Court.

A submission, therefore, which contains no clause as to making it a rule of Court may be revoked at any time before it is made a rule of Court, under sec. 17 of the C. L. P. Act, 1854 (*Randell* v. *Thompson*, 1 Q. B. D. 748. A; *Rouse* v. *Meier*, L. R. 6 C. P. 212). If, however, the party who has revoked seek to bring an action, the Court will stay the proceedings (*Moffatt* v. *Cornelius*, 26 W. R. 914).

Although a particular submission to arbitration may be revoked, a general agreement to refer to arbitration cannot be (*Piercy* v. *Young*, 14 Ch. D. 200 A).

Where a reference to an arbitration has been made under an agreement the submission ought to be made a rule of Court, according to the practice in the Common Law Divisions before the Judicature Acts (*Jones* v. *Jones*, 14 Ch. D. 593. A).

An application to make a submission a rule of Court is made *ex parte* by summons (*Davey* v. *Ry. Passengers Assur. Co.* 49 L. J. Ch. 568. A).

Where an award has been made a rule of Court, and that order has not been appealed from, the award cannot afterwards be disputed (*Jones* v. *Jones*, 14 Ch. D. 593. A).

A notice of motion in the Chancery Division to set aside the award of an arbitrator should specify the grounds of objection (*Mercier* v. *Pepperell*, 19 Ch. D. 58).

In an action in the Chancery Division where the matters in dispute have been referred to an arbitrator who has made his award, an order may be made enforcing the award without requiring it to be made a rule of Court (*Re Forrest, Burrowes* v. *Forrest*, 19 Ch. D. 57, note; *Jones* v. *Wedgwood*, 19 Ch. D. 56).

The question whether the matters in dispute are within the agreement for arbitration is one which the Court will decide, and will not leave to the arbitrator (*Piercy* v. *Young*, 14 Ch. D. 200. A), in which case the Court intimated that they did not require

to hear counsel on the question whether the trustee in liquidation was a party entitled to make the application within the meaning of sec. 11 of the C. L. P. Act, 1854 (*Ibid.* 203).

An application to have proceedings stayed under sec. 11, after defence delivered, was held too late (*W. London Dairy Co.* v. *Abbott*, 29 W. R. 584).

A reference under the Public Health Act, 1875, is a submission by consent within the meaning of the C. L. P. Act, 1854; and, under sec. 8, the Court has discretion to remit the award for reconsideration at any time (*Warburton* v. *Haslingden Board*, 48 L. J. 451). An application under that section should be made within a reasonable time (*Leicester* v. *Grazebrook*, 40 L. T. 883).

When partners have agreed to refer disputes to a foreign tribunal, an action will not be allowed to proceed in respect to the same matters, nor a receiver appointed unless it can be shown that the rights of the parties cannot be sufficiently protected by the foreign tribunal (*Law* v. *Garrett*, 8 Ch. D. 26. A).

A power in a submission of awarding the costs of a reference includes a power of awarding the costs of the award (*Re Walker and Brown's Arbitration*, W. N. 1882, 94).

As to taxing the costs of an award see Order LXV. 15.

A mistake by an arbitrator as to the legal effect of his finding is no ground for remitting the award to him (*Greenwood* v. *Brownhill*, 44 L. T. 47).

In the Chancery Division an order requiring the attendance of a witness before an arbitrator may now be made under 3 & 4 Will. 4, c. 42, sec. 40, and served as an ordinary subpœna (*Clarbrough* v. *Toothill*, 17 Ch. D. 787).

When a verdict has been taken subject to a reference, it would appear that, if the award is final and conclusive on the parties, judgment may be signed, though no direction be given to that effect (*Lloyd* v. *Lewis*, 2 Ex. D. 7 A).

Terms still exist for the purpose of setting aside an award (*Christ's College* v. *Martin*, 3 Q. B. D. 16 A). Must be set aside in the Division of which it is a rule (*Re Lomax*, 28 W. R. 485).

The service of a notice of motion to set aside an award is a complaint within the meaning of 9 & 10 Will. 3, c. 15, sec. 2, and is in time, although the motion will not be heard until after the time limited by the Act (*Re Corp. of Huddersfield & Jacomb*, L. R. 10 Ch. Ap. 92). This is now the practice of the High Court (*Smith* v. *Parkside Mining Co.* 6 Q. B. D. 67).

For form of reference see App. K. 24.

The text of the sections of the C. L. P. Act, 1854, are subjoined:—

17 & 18 *Vict. c.* 125, *ss.* 3—17.

Power to Court or Judge to direct arbitration before trial.

III. If it be made appear, at any time after the issuing of the writ, to the satisfaction of the Court or a Judge, upon the application of either party, that the matter in dispute consists wholly or in part of matters of mere account which cannot conveniently be tried in the ordinary way, it shall be lawful for such Court or Judge, upon such application, if they or he think fit, to decide such matter in a summary manner, or to order that such matter, either wholly or in part, be referred to an arbitrator appointed by the parties, or to an officer of the Court, or, in country causes, to the Judge of any County Court, upon such terms as to costs and otherwise as such Court or Judge shall think reasonable; and the decision or order of such Court or Judge, or the award or certifi-

cate of such referee, shall be enforceable by the same process as the finding of a jury upon the matter referred.

Special case may be stated, and question of fact tried.

IV. If it shall appear to the Court or a Judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law fit to be decided by the Court, or upon a question of fact fit to be decided by a jury, or by a Judge upon the consent of both parties as hereinbefore provided, it shall be lawful for such Court or Judge to direct a case to be stated or an issue or issues to be tried; and the decision of the Court upon such case, and the finding of the jury or judge upon such issue or issues, shall be taken and acted upon by the arbitrator as conclusive.

Arbitrator may state special case.

V. It shall be lawful for the arbitrator upon any compulsory reference under this Act, or upon any reference by consent of parties where the submission is or may be made a rule or order of any of the superior courts of law or equity at Westminster, if he shall think fit, and if it is not provided to the contrary, to state his award, as to the whole or any part thereof, in the form of a special case for the opinion of the Court, and when an action is referred, judgment, if so ordered, may be entered according to the opinion of the Court.

Power to Judge to direct arbitration at time of trial, when issues of fact left to his decision.

VI. If upon the trial of any issue of fact by a Judge under this Act it shall appear to the Judge that the questions arising thereon involve matter of account which cannot conveniently be tried before him, it shall be lawful for him, at his discretion, to order that such matter of account be referred to an arbitrator appointed by the parties, or to an officer of the Court, or, in country causes, to a Judge of any County Court, upon such terms as to costs, and otherwise, as such Judge shall think reasonable; and the award or certificate of such referee shall have the same effect as hereinbefore provided as to the award or certificate of a referee before trial; and it shall be competent for the Judge to proceed to try and dispose of any other matters in question, not referred, in like manner as if no reference had been made.

Proceedings before and power of such arbitrator.

VII. The proceedings upon any such arbitration as aforesaid shall, except otherwise directed hereby or by the submission or document authorizing the reference, be conducted in like manner, and subject to the same rules and enactments, as to the power of the arbitrator and of the Court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, and otherwise, as upon a reference made by consent under a rule of Court or Judge's order.

Power to send back to arbitrator.

VIII. In any case where reference shall be made to arbitration as aforesaid, the Court or a Judge shall have power at any time, and from time to time, to remit the matters referred, or any or either of them, to the reconsideration and redetermination of the said arbitrator, upon such terms, as to costs and otherwise, as to the said Court or Judge may seem proper.

Application to set aside the award.

IX. All applications to set aside any award made on a compulsory reference under this Act shall and may be made within the first seven days of the term next following the publication of the award to the parties, whether made in vacation or term; and if no such application is made, or if no rule is granted thereon, or if any rule granted thereon is afterwards discharged, such award shall be final between the parties.

Enforcing of awards within period for

X. Any award made on a compulsory reference under this Act may, by authority of a Judge, on such terms as to him may seem reasonable, be enforced at any time after seven days from the time

of publication, notwithstanding that the time for moving to set it aside has not elapsed. setting them aside.

XI. Whenever the parties to any deed or instrument in writing to be hereafter made or executed, or any of them, shall agree that any then existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so agreeing, or any person or persons claiming through or under him or them, shall nevertheless commence any action at law or suit in equity against the other party or parties, or any of them, or against any person or persons claiming through or under him or them in respect of the matters so agreed to be referred, or any of them, it shall be lawful for the Court in which action or suit is brought, or a Judge thereof, on application by the defendant or defendants, or any of them, after appearance and before plea or answer, upon being satisfied that no sufficient reason exists why such matters cannot be or ought not to be referred to arbitration according to such agreement as aforesaid, and that the defendant was at the time of the bringing of such action or suit and still is ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, to make a rule or order staying all proceedings in such action or suit, on such terms as to costs and otherwise as to such Court or Judge may seem fit; provided always, that any such rule or order may at any time afterwards be discharged or varied as justice may require. If action commenced by one party after all have agreed to arbitration, Court or Judge may stay proceedings.

XII. If in any case of arbitration the document authorizing the reference provide that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator; or if any appointed arbitrator refuse to act, or become incapable of acting, or die, and the terms of such document do not show that it was intended that such vacancy should not be supplied, and the parties do not concur in appointing a new one; or if, where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, such parties or arbitrators do not appoint an umpire or third arbitrator; or if any appointed umpire or third arbitrator refuse to act, or become incapable of acting, or die, and the terms of the document authorizing the reference do not show that it was intended that such a vacancy should not be supplied, and the parties or arbitrators respectively do not appoint a new one; then in every such instance any party may serve the remaining parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator respectively; and if within seven clear days after such notice shall have been served no arbitrator, umpire, or third arbitrator be appointed, it shall be lawful for any judge of any of the superior Courts of law or equity at Westminster, upon summons to be taken out by the party having served such notice as aforesaid, to appoint an arbitrator, umpire, or third arbitrator, as the case may be, and such arbitrator, umpire, and third arbitrator respectively shall have the like power to act in the reference and make an award as if he had been appointed by consent of all parties. On failure of parties or arbitrators, Judge may appoint single arbitrator or umpire.

XIII. When the reference is or is intended to be to two arbitrators, one appointed by each party, it shall be lawful for either party, in the case of the death, refusal to act, or incapacity of any arbitrator appointed by him, to substitute a new arbitrator, unless the document authorizing the reference show that it was intended that the vacancy should not be supplied; and if on such a refer- When reference is to two arbitrators and one party fail to appoint,

other party may appoint arbitrator to act alone.

ence one party fail to appoint an arbitrator, either originally or by way of substitution as aforesaid; for seven clear days after the other party shall have appointed an arbitrator, and shall have served the party so failing to appoint with notice in writing to make the appointment, the party who has appointed an arbitrator may appoint such arbitrator to act as sole arbitrator in the reference, and an award made by him shall be binding on both parties as if the appointment had been by consent: provided, however, that the Court or a Judge may revoke such appointment, on such terms as shall seem just.

Two arbitrators may appoint umpire.

XIV. When the reference is to two arbitrators, and the terms of the document authorizing it do not show that it was intended that there should not be an umpire, or provide otherwise for the appointment of an umpire, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award, unless they be called upon by notice as aforesaid to make the appointment sooner.

Award to be made in three months, unless parties or Court enlarge time.

XV. The arbitrator acting under any such document or compulsory order of reference as aforesaid, or under any order referring the award back, shall make his award under his hand, and (unless such document or order respectively shall contain a different limit of time) within three months after he shall have been appointed, and shall have entered on the reference, or shall have been called upon to act by a notice in writing from any party, but the parties may by consent in writing enlarge the term for making the award; and it shall be lawful for the Superior Court of which such submission, document, or order is or may be made a rule or order, or for any Judge thereof, for good cause to be stated in the rule or order for enlargement, from time to time to enlarge the term for making the award; and if no period be stated for the enlargement in such consent or order for enlargement, it shall be deemed to be an enlargement for one month; and in any case where an umpire shall have been appointed it shall be lawful for him to enter on the reference in lieu of the arbitrators, if the latter shall have allowed their time or their extended time to expire without making an award, or shall have delivered to any party or to the umpire a notice in writing stating that they cannot agree.

Rule to deliver possession of land pursuant to award to be enforced as a judgment in ejectment.

XVI. When any award made on any submission, document, or order of reference as aforesaid directs that possession of any lands or tenements capable of being the subject of an action of ejectment shall be delivered to any party, either forthwith or at any future time, or that any such party is entitled to the possession of any such lands or tenements, it shall be lawful for the Court of which the document authorizing the reference is or is made a rule or order to order any party to the reference who shall be in possession of any such lands or tenements, or any person in possession of the same claiming under or put in possession by him since the making of the document authorizing the reference, to deliver possession of the same to the party entitled thereto, pursuant to the award, and such rule or order to deliver possession shall have the effect of a judgment in ejectment against every such party or person named in it, and execution may issue, and possession shall be delivered by the sheriff as on a judgment in ejectment.

Agreement or submission in writing may be

XVII. Every agreement or submission to arbitration by consent, whether by deed or instrument in writing not under seal, may be made a rule of any one of the superior Courts of Law or Equity at Westminster, on the application of any party thereto,

unless such agreement or submission contain words purporting that the parties intend that it should not be made a rule of Court; and if in any such agreement or submission it is provided that the same shall or may be made a rule of one in particular of such superior Courts, it may be made a rule of that Court only; and if when there is no such provision a case be stated in the award for the opinion of one of the superior Courts, and such Court be specified in the award, and the document authorizing the reference have not, before the publication of the award to the parties, been made a rule of Court, such document may be made a rule only of the Court specified in the award; and when in any case the document authorizing the reference is or has been made a rule or order of any one of such Superior Courts, no other of such Courts shall have any jurisdiction to entertain any motion respecting the arbitration or award.

made rule of Court, unless a contrary intention appear.

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.

Her Majesty may establish District Registries in the country for the Supreme Court.

See Judicature Acts, 1875, s. 13, and 1881, s. 22.

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 com-

Seals of District Registries.

mencement 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.

See Order XXXV. 6, and sec. 66, *post*.

63. Repealed by sec. 33 and schedule of Judicature Act, 1875.

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.

See Order XXXV. 1–5.

Power for Court to remove proceedings 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 Office 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.

See Order XXXV. 13–18.

Accounts and inquiries may be referred to District Registrars.

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.

30 & 31 Vict. c. 142, ss. 5, 7, 8 and 10 to extend to actions in High Court.

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.

"Any relief which can be given in a County Court." These words limit the application of the fifth section, which, previous to the passing of this Act, was held to apply to actions which could not have been brought in the County Court (Per Lord Blackburn, *Garnett* v. *Bradley*, 3 App. Cas. 971).

The text of the sections of the County Courts Act, 1876, are subjoined:—

Costs not recoverable in Superior Courts where less than £20 on contract or £10 on tort.

V. If in any action commenced after the passing of this Act in any of Her Majesty's Superior Courts of Record the plaintiff shall recover a sum not exceeding twenty pounds if the action is founded on contract, or ten pounds if founded on tort, whether by verdict, judgment by default, or on demurrer, or otherwise, he shall not be entitled to any costs of suit, unless the Judge certify on the record that there was sufficient reason for bringing such action in such Superior Court, or unless the Court or a Judge at Chambers shall by Rule or Order allow such costs.

As to costs see note to Order LXV.

This section applies to an action commenced in an Inferior Court and removed into the Superior by certiorari (*Pellas* v. *Breslauer*, L. R. 6 Q. B. 438). It also applies to an action which has been necessarily brought in the Superior Court on account of the defendant availing himself of the 19 & 20 Vict. c. 108, sec. 39, by giving the required security, and having the action in the County Court stayed (*Flitters* v. *Allfrey*, L. R. 10 C. P. 29). Counsel should apply to the Judge to certify.

Before the Judicature Acts, when an action was brought to try a right, and the right was of sufficient importance to make the action one proper to be brought in a Superior Court, the Court would make an order for costs in favour of the successful plaintiff, although the Judge at the trial had refused to certify. (*Hinde* v. *Sheppard*, L. R. 7 Ex. 21). Martin and Channell, B. B., were of opinion that if the Judge had refused to certify the application to the Court to allow them ought to be founded on new materials (*Barlow* v. *Briggs*, 20 W. R. 866). And in *Strachey* v. *Lord Osborne*, L. R. 10 C. P. 92, it was held that the Judge was justified in declining to certify, if he were reasonably satisfied that the action was not *bonâ fide* brought to try a right, but merely to gratify an angry feeling against the defendant. And further, that his discretion in that respect was open to review.

In certain cases Judge of Superior Courts may order cause to be tried in County Court.

VII. Where in any action of contract brought or commenced in any of Her Majesty's Superior Courts of Common Law the claim endorsed on the writ does not exceed fifty pounds, or where such claim, though it originally exceeded fifty pounds, is reduced by payment, an admitted set-off, or otherwise, to a sum not exceeding fifty pounds, it shall be lawful for the defendant in the action, within eight days from the day upon which the writ shall have been served upon him, if the whole or part of the demand of the plaintiff be contested, to apply to a Judge at Chambers for a summons to the plaintiff to show cause why such action should not be tried in the County Court or one of the County Courts in which the action might have been commenced; and on the hearing of such summons the Judge shall, unless there be good cause to the contrary, order such action to be tried accordingly, and thereupon the plaintiff shall lodge the original writ and the order with the Registrar of the County Court mentioned in the order, who shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise by the Registrar to both parties or their attorneys, and the cause and all proceedings therein shall be heard and taken in such County Court as if the action had been originally commenced in such County Court; and the costs

of the parties in respect of proceedings subsequent to the order of the Judge of the Superior Court shall be allowed according to the scale of costs in use in the County Courts, and the costs of the proceedings previously had in the Superior Court shall be allowed according to the scale in use in such latter Court.

A claim for fifty pounds, and interest until payment or judgment, is a claim exceeding fifty pounds, and the action cannot be remitted to the County Court under the section (*Insley* v. *Jones*, 4 Ex. D. 16).

Where there is a counter-claim, which does exceed fifty pounds; on an application by the plaintiff to have the case remitted the Judge must use his discretion (*Cherry* v. *Andrews*, W. N. 1878, 52).

The Judge has no jurisdiction to order the action to be tried in the County Court where the claim is reduced below fifty pounds by payment after action brought (*Foster* v. *Usherwood*, 3 Ex. D. 1. A).

Until the plaintiff has lodged the writ and order with the Registrar, the action remains in the Superior Court (*Welply* v. *Buhl*, 3 Q. B. D. 253. A). The Registrar is to certify the result of the trial to the Superior Court, and judgment may be signed according to the certificate (*Scutt* v. *Freeman*, 2 Q. B. D. 177).

An action remitted to the County Court for trial belongs to the Superior Court, and the power over costs remains in the Superior Court. An order for such costs can be obtained by application in Chambers or to the Superior Court (*Farmer* v. *May*, 50 L. J. 2)

In *Knight* v. *Abbott*, 10 Q. B. D. 11, a case decided on the 26th sec. of 19 & 20 Vict. c. 128, it was held that there was no power to order an action for unliquidated damages to be tried in a County Court, even where the writ is endorsed with a claim for a specified sum.

Proceedings in Equity may be transferred to County Courts which might have commenced therein.

VIII. Where any suit or proceedings shall be pending in the High Court of Chancery, which suit or proceeding might have been commenced in a County Court, it shall be lawful for any of the parties thereto to apply at Chambers to the Judge to whose Court the said suit or proceeding shall be attached, to have the same transferred to the County Court or one of the County Courts in which the same might have been commenced, and such Judge shall have power upon such application, or without such application, if he shall see fit, to make an order for such transfer, and thereupon such suit or proceeding shall be carried on in the County Court to which the same shall be ordered to be transferred, and the parties thereto shall have the same right of appeal that they would have had had the suit or proceeding been commenced in the County Court.

A County Court has power to grant an injunction, and to enforce obedience by committal (*Martin* v. *Bannister*, 4 Q. B. D. 491. A).

The County Court has no power to stay proceedings in the High Court in respect of claims provable in an administration action (*Cobbold* v. *Pryke*, 4 Ex. D. 315).

Actions for malicious prosecution, &c., brought in Superior Courts may be remitted

X. It shall be lawful for any person against whom an action for malicious prosecution, illegal arrest, illegal distress, assault, false imprisonment, libel, slander, seduction, or any action of tort, may be brought in a Superior Court, to make an affidavit that the plaintiff has no visible means of paying the costs of the defendant should a verdict be not found for the plaintiff, and there-

to County Court by Judge.

upon a Judge of the Court in which the action is brought shall have power to make an Order that unless the plaintiff shall, within a time to be therein mentioned, give full security for the defendant's costs to the satisfaction of one of the Masters of the said Court, or satisfy the Judge that he has a cause of action fit to be prosecuted in the Superior Court, all proceedings in the action shall be stayed, or in the event of the plaintiff being unable or unwilling to give such security, or failing to satisfy the Judge as aforesaid, that the cause be remitted for trial before a County Court to be therein named; and thereupon the plaintiff shall lodge the original writ and the order with the Registrar of such County Court, who shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise by the Registrar to both parties or their attorneys; and the County Court so named shall have all the same powers and jurisdiction with respect to the cause as if both parties had agreed, by a memorandum signed by them, that the said County Court should have power to try the said action, and the same had been commenced by plaint in the said County Court; and the cost of the parties in respect of the proceedings subsequent to the order of the Judge of the Superior Court shall be allowed according to the scale of costs in use in the County Courts, and the costs of the proceedings in the Superior Court shall be allowed according to the scale in use in such latter Court.

Until the plaintiff has lodged the writ with the Registrar of the County Court, the action remains in the Superior Court (*Welply* v. *Buhl*, 3 Q. B. D. 253. A). After that the Superior Court has no jurisdiction to make any order in the action (*Moody* v. *Steward*, L. R. 6 Ex. 35).

The Court is very unwilling to interfere with the discretion of the Judge at Chambers (*Jennings* v. *London General Omnibus Co.*, 30 L. T. 266).

After a cause has been remitted to the County Court under this section, there can be no appeal without leave from the decision of the Divisional Court on appeal from the Court below (*Bowles* v. *Drake*, 8 Q. B. D. 325. A). It should be observed that *Bowles* v. *Drake* is decided upon the special wording of this section (*Barbage* v. *Coulburn*, 46 L. T. 515. A).

An action for trover may be remitted to the County Court, although not particularly specified under this section (*Clapham* v. *Oliver*, 22 W. R. 655).

The County Court Judge should take cognizance of the pleadings as well as the particulars under the County Court Rules (*Johnson* v. *Palmer*, 4 C. P. D. 258).

When an action has been transferred to the County Court, the County Court Judge has jurisdiction to order the proceedings to be stayed until the plaintiff has paid the costs of a previous action involving the same question (*Reg.* v. *Bayley*, 30 W. R. 522).

Sections **68, 69, 70, 71, 72, 73,** and **74,** are all repealed by sec. 33 and schedule to Act of 1875, and Sections **16, 17, 18, 19, 20,** and **21** of that Act are substituted for them.

Councils of Judges to consider procedure and administration of justice.

75. A Council of the Judges of the Supreme Court, of which due notice shall be given to all the said Judges, shall assemble once at least in every year, on such day or days as shall be fixed by the Lord Chancellor, with the concurrence of the Lord

Chief Justice of England, for the purpose of considering the operation of this Act, and of the Rules of Court for the time being in force, and also the working of the several offices and the arrangements relative to the duties of the officers of the said Courts respectively, and of inquiring and examining into any defects which may appear to exist in the system of procedure or the administration of the law in the said High Court of Justice or the said Court of Appeal, or in any other Court from which any appeal lies to the said High Court or any Judge thereof, or to the said Court of Appeal: And they shall report annually to one of Her Majesty's Principal Secretaries of State what (if any) amendments or alterations it would in their judgment be expedient to make in this Act, or otherwise relating to the administration of justice, and what other provisions (if any) which cannot be carried into effect without the authority of Parliament it would be expedient to make for the better administration of justice. Any Extraordinary Council of the said Judges may also at any time be convened by the Lord Chancellor.

Acts of Parliament relating to former Courts to be read as applying to Courts under this Act.

76. All Acts of Parliament relating to the several Courts and Judges, whose jurisdiction is hereby transferred to the said High 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.

As for example, where The Debtor's Act, 1869, sec. 4, speaks of a "Court of Equity." Jessel, M. R., makes the following remarks upon its construction. It is said that this is really a Common Law action, and that the act has reference only to an order made in a matter cognizable in a Court of Equity, but the 76th section of the Judicature Act says that all Acts of Parliament referring to any particular Court shall be construed as if the High Court of Justice had been named therein (*Marris* v. *Ingram*, 13 Ch. D. 345).

Part V.

Part V. relates to the officers and offices of the Supreme Court, and has been omitted here with the exception of sec. 87, which defines the position of solicitors.

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.

In *Ex parte Streeter*, 19 Ch. D. 216. A, where the Registrar refused to hear a managing clerk, as he was not a properly qualified solicitor, it was held that he should have granted an adjournment to allow the client to be heard by some properly qualified person, "entitled to the same privileges," &c. As to the scope of this clause see some observations of Huddleston, B., in *Grant* v. *Holland*, 3 C. P. D. 183.

The admission of solicitors is regulated by 40 & 41 Vict. c. 25; by the 17th sec. solicitors may practise as proctors.

Part VI.

Jurisdiction of Inferior Courts.

Power by Order in Council to confer jurisdiction 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.

Powers of inferior Courts having Equity and Admiralty jurisdiction.

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 counter-claim, 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.

The scope of this section was discussed in *Pryor* v. *City Offices*, 10 Q. B. D. 504. A.

The County Court has power in actions within its jurisdiction to grant an injunction against a nuisance, and to commit for disobedience (*Martin* v. *Bannister*, 4 Q. B. D. 491. A). It has also power to commit for disobedience to an order for production of documents (*Richards* v. *Cullerne*, W. N. 1881, 120. A).

The County Court has no power to stay proceedings in the High Court in respect of claims provable in an administration action pending before the County Court (*Cobbold* v. *Pryke*, 4 Ex. D. 315).

Counter-claims in inferior Courts, and transfers therefrom.

90. Where in any proceeding before any such inferior Court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the Court, such defence or counter-claim 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 counter-claim: 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.

Under this section an inferior Court has jurisdiction to entertain a claim set up by way of counter-claim, although it is in respect of matters which arose beyond its local jurisdiction, but the power to grant relief in respect of such counter-claim is limited to the same amount as the plaintiff has claimed in the action (*Davis* v. *Flagstaff Mining Co.*, 3 C. P. D. 228. A).

When an action is transferred from the County Court it proceeds according to the practice, and after the rules of the High Court (*Davies* v. *Williams*, 13 Ch. D. 550).

In an Anonymous case in W. N. 1876, 12, an *ex parte* application was made to transfer all proceedings from a County Court. The applicant was directed to proceed by summons, and a stay of proceedings in the County Court was in the meantime granted.

Rules of law to apply to inferior Courts.

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.

As to the Liverpool Court of Passage see *King* v. *Hawksworth*, 4 Q. B. D. 374.

Part VII.

Miscellaneous Provisions.

Transfer of books and papers to Supreme Court.

92. All books, documents, papers, and chattels in the possession of any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or to the Court of Appeal, or of any officer or person attached to any such Court, as such officer, or by reason of his being so attached, shall be transferred to the Supreme Court, and shall be dealt with by such officer or person in such manner as the High Court of Justice or the Court of Appeal may by order direct; and any person failing to comply with any order made for the purpose of giving effect to this section shall be guilty of a contempt of the Supreme Court.

Saving as to circuits, &c.

93. This Act, except as herein is expressly directed, shall not, unless or until other commissions are issued in pursuance thereof, affect the circuits of the Judges or the issue of any Commissions of Assize, Nisi Prius, Oyer and Terminer, Gaol Delivery, or other commissions for the discharge of civil or criminal business on circuit or otherwise, or any patronage vested in any Judges going circuit, or the position, salaries, or duties of any officers transferred to the Supreme Court who are now officers of the Superior Courts of Common Law, and who perform duties in relation to either the civil or criminal business transacted on circuit.

Saving as to Lord Chancellor.

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 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.

The decision of the Lord Chancellor when sitting to try causes in the first instance is binding on a Judge of first instance (*Ex parte Vicar of St. Mary*, 29 W. R. 883).

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.

Saving as to Chancellor of the Exchequer and sheriffs.

96. The Chancellor of the Exchequer shall not be a Judge of the High Court of Justice, or of the Court of Appeal, and shall cease to exercise any judicial functions hitherto exercised by him as a Judge of the Court of Exchequer; but save as aforesaid he shall remain in the same position as to duties and salary, and other incidents of his office, as if this Act had not passed. The same order and course with respect to the appointment of sheriffs shall be used and observed in the *Exchequer Division* of the said High Court as has been heretofore used and observed in the Court of Exchequer.

Now Queen's Bench Division (Order in Council Dec. 16, 1880, W. N. 1881, Pt. II. 55).

Saving as to Lord Treasurer and office of the Receipt of Exchequer.

97. Nothing in this Act contained shall affect the office of Lord Treasurer, except that any Lord Treasurer shall not hereafter exercise any judicial functions hitherto exercised by him as a Judge of the Court of Exchequer; and nothing in this Act shall affect the office of the Receipt of the Exchequer.

Provisions as to Great Seal being in commission.

98. When the Great Seal is in commission, the Lords Commissioners shall represent the Lord Chancellor for the purposes of this Act, save that as to the Presidency of the Court of Appeal, and the appointment or approval of officers, or the sanction to any order for the removal of officers, or any other act to which the concurrence or presence of the Lord Chancellor is hereby made necessary, the powers given to the Lord Chancellor by this Act may be exercised by the Senior Lord Commissioner for the time being.

Provisions as to Commissions in Counties Palatine.

99. From and after the commencement of this Act the Counties Palatine of Lancaster and Durham shall respectively cease to be Counties Palatine so far as respects the issue of Commissions of Assize, or other like Commissions, but not further or otherwise; and all such Commissions may be issued for the trial of all causes and matters within such counties respectively in the same manner in all respects as in any other counties of England and Wales.

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.

"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.

Interpleader issue is not an action within this definition (*Hamlyn* v. *Betteley*, 6 Q. B. D. 63. A).

"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.

"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.

"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.

[*Schedule.*]

Repealed by sec. 33 and Schedule of Judicature Act, 1875.

SUPREME COURT OF JUDICATURE (COMMENCEMENT) ACT, 1874.

37 & 38 Vict. c. 83.

An Act for delaying the coming into operation of the Supreme Court of Judicature Act, 1873.

[7th August, 1874.]

WHEREAS it is expedient to extend the time appointed for the commencement of the Supreme Court of Judicature Act, 1873:

Be it 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, as follows:

1. The second section of the Supreme Court of Judicature Act, 1873, is hereby repealed. Repeal of 36 & 37 Vict. c. 66, s. 2.

2. The Supreme Court of Judicature Act, 1873, except any provisions thereof directed to take effect on the passing of the said Act, shall commence and come into operation on the first day of November, one thousand eight hundred and seventy-five, and the said first day of November, one thousand eight hundred and seventy-five shall be taken to be the time appointed for the commencement of the said Act. Commencement of Supreme Court of Judicature Act, 1873.

3. This Act may be cited for all purposes as the "Supreme Court of Judicature (Commencement) Act, 1874." Short title of Act.

SUPREME COURT OF JUDICATURE ACT, 1875.

38 & 39 Vict. c. 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 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, as follows:

Short title and construction with 36 & 37 Vict. c. 66.

1. This Act shall, so far as is consistent with the tenour 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."

Commencement of Act.

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.

The remainder of this section is repealed by sec. 24 of the App. Jur. Act, 1876.

Explanation of 36 & 37 Vict. c. 66, s. 5 as to number of Judges.

3. Whereas by section 5 of the principal Act it is provided as follows: "that if at the commencement of this Act the number of puisne justices and junior barons who shall become Judges of the said High Court shall exceed twelve in the whole, no new Judge

of the said High Court shall be appointed in the place of any such puisné justice or junior baron who shall die or resign while such whole number shall exceed twelve, it being intended that the permanent number of Judges of the said High Court shall not exceed twenty-one;" and whereas, having regard to the state of business in the several courts whose jurisdiction is transferred by the principal Act to the High Court of Justice, it is expedient that the number of Judges thereof shall not at present be reduced: Be it enacted, that so much of the said section as is hereinbefore recited shall be repealed.

The Lord Chancellor shall not be deemed to be a permanent Judge of that Court, and the provisions of the said section relating to the appointment and style of the Judges of the said High Court shall not apply to the Lord Chancellor.

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*, as Her Majesty shall from time to time appoint.

Repealed by s. 15 of App. Jur. Act, 1876.

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.*

Duties and powers of, now vested in Lord Chief Justice of England—Jud. Act, 1881, s. 25.

The first ordinary Judges of the said Court shall be the present Lord 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.

Now styled Lords Justices of Appeal by sec. 4, Act of 1877.

The ordinary Judges of the Court of Appeal shall be styled *Justices of Appeal.*

Now Queen's Bench Division (Order in Council, Dec. 16, 1880, W. N. 1881, Pt. II., 55).

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*, 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: 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.

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.

In *Fisher* v. *The Val de Travers Co.*, 1 C. P. D. 259. A, the Court held that the section must be read as if the words "*and is*" were not in it. (Sec. 11 Judicature Act, 1881, has removed the difficulty felt in this case.)

Tenure of office of Judges, and oaths of office. Judges not to sit in the House of Commons.

5. All the Judges of the High Court of Justice, and of the Court of Appeal respectively, with the exception of the Lord Chancellor, shall hold their offices as such Judges respectively during good behaviour, subject to a power of removal by Her Majesty, on an address presented to Her Majesty by both Houses of Parliament. No Judge of either of the said Courts shall be capable of being elected to or of sitting in the House of Commons. Every person appointed after the passing of this Act to be Judge of either of the said Courts (other than the Lord Chancellor), when he enters on the execution of his office, shall take, in the presence of the Lord Chancellor, the oath of allegiance, and judicial oath as defined by the Promissory Oaths Act, 1868. The oaths to be taken by the Lord Chancellor shall be the same as heretofore.

Precedence of Judges.

6. The Lord Chancellor shall be President of the Court of Appeal; the other ex-officio Judges of the Court of Appeal shall rank in the order of their present respective official precedence. The ordinary

Judges of the Court of Appeal, if not entitled to precedence as Peers or Privy Councillors, shall rank according to the priority of their respective appointments as such Judges.

The Judges of the High Court of Justice who are not also Judges of the Court of Appeal shall rank next after the Judges of the Court of Appeal, and, among themselves (subject to the provisions in the principal Act contained as to existing Judges), according to the priority of their respective appointments.

Jurisdiction of Lords Justices in respect of lunatics.

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 entrusted 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.

The Chancery Division often directs the property of a person of unsound mind to be applied for his maintenance as long as he lives under the care of a particular person who has charge of him, but that is only by way of administering a trust. It has no power to appoint such person his guardian (*Re Bligh*, 12 Ch. D. 364. A). In *Re Brandon's Trusts*, 13 Ch. D. 773, Jessel, M. R., explained that this is what was ordered in *Vane* v. *Vane*, 2 Ch. D. 124.

The jurisdiction of the Court over its infant ward is not taken away by any physical or mental disability to which the infant may be subject, and such directions ought to be given as to his treatment as the Court considers most for his benefit (*Re Edwards*, 10 Ch. D. 605. A).

An order for the appointment of a new trustee in place of a lunatic trustee must be intituled in the Chancery Division as well as in Lunacy (*Re Pearson*, W. N. 1877, 181).

As to intituling an application under the Lands Clauses Consolidation Act, 1845, in the matter of the purchase of land from a lunatic, see *Re Milnes*, 1 Ch. D. 28. A).

* * * * * *

8. Every Judge of the Probate, Divorce, and Admiralty Division of the said High Court of Justice appointed after the passing of this Act shall, so far as the state of business in the said division will admit, share with the Judges mentioned in section thirty-seven of the principal Act the duty of holding sittings for trials by jury in London and Middlesex, and sittings under commissions of assize, oyer and terminer, and gaol delivery.

The first portion of this section has been omitted as it related only to the conditions of transfer of the existing Admiralty Judge and Registrar, to be officers of the High Court.

9. The London Court of Bankruptcy shall not be united or consolidated with the Supreme Court of Judicature, and the jurisdiction of that Court shall not be transferred under the principal Act to the High Court of Justice, but shall continue the same in all respects as if such transfer had not been made by the principal Act, and the principal Act shall be construed as if such union, consolidation, and transfer had not been made: Provided that— London Court of Bankruptcy not to be transferred to High Court of Justice.

(1.) The office of Chief Judge in Bankruptcy shall be filled by such one of the Judges of the High Court of Justice appointed since the passing of the Bankruptcy Act, 1869, or, with his consent, of such one of the Judges appointed prior to the passing of the last-mentioned Act, as may be appointed by the Lord Chancellor to that office; and,

(2.) The appeal from the London Court of Bankruptcy shall lie to the Court of Appeal in accordance with the principal Act.

As to the power of the Court of Appeal to rehear Bankruptcy appeals, see *Ex parte Banco de Portugal*, 14 Ch. D. 1. A, section 18 of Act of 1873, note *ante*.

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 thereinafter 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 costs 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 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.

This section makes a judgment in administration similar to an adjudication in Bankruptcy (*Re Summers*, *Boswell* v. *Gurney*, 13 Ch. D. 136). A creditor whose debt bears interest, is consequently entitled to interest only up to the date of the judgment (*Ibid.*). And where a sum of money is payable on a contingency, and that contingency has happened before certificate, the claimant is entitled to prove for the full amount, less a rebate or discount at 4 per cent. for the period between the date of the judgment and the death of the intestate (*Re Bridges*, *Hill* v. *Bridges*, 17 Ch. D. 342). It does not apply to judgment debts. The priority, therefore, to which a judgment creditor is entitled, in the administration of the assets, is unaffected by it (*Smith* v. *Morgan*, 5 C. P. D. 337; *Re Maggi*, 20 Ch. D. 545, and so is an executor's right to retain a debt due to himself, from the estate of the testator (*Lee* v. *Nuttall*, 12 Ch. D. 61. A).

In an administration action, when it is feared that the assets of the testator may not be sufficient to pay his debts and liabilities in full, Fry, J. has suggested that it may save subsequent trouble if the judgment contain a provision to the effect:—"If it shall appear that the estate of the testator is insufficient for the payment in full of his debts and liabilities, then let the rules in force for the time being under the law of Bankruptcy with respect to

the estates of persons adjudged bankrupt be applied" (*Re Hildick*, 44 L. T. 547.

The extent of the application of this section is limited to the respective rights of secured and unsecured creditors, debts and liabilities provable and the valuation of annuities and future and contingent liabilities. The section does not make applicable to the winding up of companies that clause of the Bankruptcy Act which deprives execution creditors of the fruits of the execution, where the sheriff has notice of an Act of Bankruptcy within fourteen days after the sale (*Re Withernsea Brick Works*, 16 Ch. D. 337. A). "I am of opinion," says James, L. J., "that the section no more imports that law into administration of the assets of a deceased person, or winding up of companies, than it imports the law as to fraudulent preference or as to reputed ownership. The Legislature, finding a well-known difference in the law as to proof by a secured creditor in administration by the Court of Chancery and in Bankruptcy, intended to introduce the bankruptcy rule that a secured creditor could only prove for the balance of his debt after deducting the value of his security." "What is proposed to be done in the present case," says Cotton, L. J., "is not to apply a particular rule to the administration of the assets of the company but to bring into the assets something which, apart from this section, would not be assets because it has been seized by a creditor under such circumstances that he can hold it as a security for his debt." This decision settles a question which had been much discussed in (*Re Taylor*, 8 Ch. D. 183; *Re Printing, &c., Co.*, 8 Ch. D. 533; *Re Richards*, 11 Ch. D. 676).

In *Re Association of Land Financiers*, 16 Ch. D. 373, Malins, V.C. held that a clerk or servant was an unsecured creditor who was entitled to assert his "respective right" as to his salary as he would be under the Bankruptcy rule in that behalf by sec. 32, sub-sec. 2, of the Bankruptcy Act of 1869. This decision was given subsequently to, and with the advantage of, the discussion as to the extent of the application of this section in the *Withernsea Brick Co.* (*supra*), and agrees with the previous decision of the Master of the Rolls in *Re Norton Ironworks Co.*, 26 W. R. 53. The same section of the Bankruptcy Act, sub-sec. 1, contains certain provisions as to the priority of rates; and in the *Albion Wire Co.*, 7 Ch. D. 547, Jessel, M. R., held that sub-section 1 was not within the scope of this section of the Judicature Act. Thus there would appear to be a divergence of opinion as to the applicability of section 32 of the Bankruptcy Act, 1869, in its entirety.

When a claimant has exercised his option under the Bankruptcy rules and valued his security, it is too late to re-open the matter after the Chief Clerk's certificate has been approved by the Judge (*Re Hopkins*, 18 Ch. D. 370. A). Where he had never made any assessment, simply elected to stand on his security, and his being permitted to come in did not disturb the rights of any creditors, he was admitted to prove the balance of his security, on the footing that previous dividends were to be unaffected (*Re Kit Hill Tunnel*, 50 L. J. Ch. 303).

It is not intended to enlarge the assets of an insolvent estate, but only to vary the rights of the persons entitled to the assets, consequently it does not make void an unregistered bill of sale as against the unsecured creditors (*Re d'Epineuil, Tadman* v. *D'Epineuil*, 20 Ch. D. 217).

The question as to "reputed ownership" was the subject of an

express decision of Jessel, M. R., in *Re Crumlin Viaduct Works Co.*, 11 Ch. D. 755.

On the construction of this section it has been remarked that in the winding up of a company persons may make such claims against the assets of the company as are provable under the law of Bankruptcy (*Re West of England Bank, Ex parte Brown*, 12 Ch. D. 825; *Albion Steel and Wire Co.*, 8 Ch. D. 539). Thus the holder of a fire-policy is entitled to prove for the full amount of his loss covered by the policy, through a fire which has occurred during the winding up, even though the time for sending in claims has expired (*Re Northern Counties Insurance Co.*, MacFarlane's Claim, 17 Ch. D. 337). This is an application of the rule in Bankruptcy that "all debts and liabilities, present or future, certain or contingent, to which the bankrupt is subject at the date of the order of adjudication" are to be deemed debts provable in the bankruptcy, and may be proved in the manner there mentioned (*Re Bridges, Hill* v. *Bridges*, 17 Ch. D. 342).

It has been further held, that by virtue of this section, in an action by a liquidator for a debt, the defendant may set off a claim for unliquidated damages (*Mersey Steel Co.* v. *Naylor*, 9 Q. B. D. 648. A).

This section does not import the 34th section of the Bankruptcy Act, 1869, which gives the landlord priority for a year's rent. "To do so would repeal the clear words of sections 85 and 87 of the Companies Act of 1862. Secured and unsecured creditors must mean creditors who occupy those positions at the commencement of the winding up. This enactment means only that the same rules are to be in force as to proving debts, not that a creditor who under the Bankruptcy Act has an additional right beyond proof is to have the same right in a winding up" (*Thomas* v. *Patent Lionite Co.* 17 Ch. D. 259. A'; *Re Bridgewater Engineering Co.*, 12 Ch. D. 181; *Re Coal Consumer's Assoc.*, 4 Ch. D. 625).

In the winding up of a company a contributory cannot set off a judgment debt due from the company to him against calls by the official liquidator. The Judicature Acts have effected no change in the law in this respect (*Gov. Sec. Investment Co.* v. *Dempsey*, 50 L. J. 199; *Gill's case*, 12 Ch. D. 755). Neither has it made any alteration in the law, that the creditor of a banking company in liquidation who is also a shareholder, is entitled to receive a dividend on his debt, if he have paid all the calls made upon him (*Re West of England Bank, Ex parte Brown*, 12 Ch. D. 823).

A garnishee order *nisi* gives no security until it has been served (*Re Stanhope Collieries*, 11 Ch. D. 160. A).

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.

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 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—

(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 provision 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 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

(3.) Subject to Rules of Court, a person commencing any cause or matter shall not assign the same to the Probate, Divorce, and Admiralty Division unless he would have been entitled to commence the same in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty, if this Act had not passed.

An application under sec. 85 of the Companies Act, 1862, to restrain further proceedings in an action after the presentation of a winding-up petition must be made in the Division in which the action is brought (*Re the Artistic Colour Co.*, 14 Ch. D. 502).

"Subject to Rules of Court" (see Order V. 5, 6 & 9, and Judicature Act, 1873, sec. 34, note.)

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.

Subject to the provisions contained in this section the Court of Appeal may sit in two divisions at the same time.

Two Lords Justices sitting together to hear an interlocutory appeal, cannot order final judgment to be entered (*Miller* v. *Pilling*, 9 Q. B. D. 740. A).

Amendment of s. 60 of 36 & 37 Vict. c. 66 as to district registrars.

13. Whereas by section sixty of the principal Act it is provided that for the purpose of facilitating the prosecution in country districts of legal proceedings, 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; and whereas it is expedient to amend the said section, be it therefore enacted that—

Where any such Order has been made, two persons may, if required, be appointed to perform the duties of district registrar in any district named in the Order, and such persons shall be deemed to be joint district registrars, and shall perform the said duties in such manner as may from time to time be directed by the said Order, or any Order in Council amending the same.

Moreover the registrar of any Inferior Court of Record having jurisdiction in any part of any district defined by such Order (other than a County Court) shall, if appointed by Her Majesty, be qualified to be a district registrar for the said district or for any and such part thereof as may be directed by such Order or any Order amending the same.

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.

For further provisions as to the appointment of Registrars see sec. 22, Judicature Act, 1881.

14. Whereas under section eighty-seven of the principal Act, solicitors and attorneys will after the commencement of this Act be called solicitors of the Supreme Court: Be it therefore enacted that—

Amendment of 36 & 37 Vict. c. 66, s. 87, as to enactments relating to attorneys.

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.

See now sec. 24, Judicature Act, 1881.

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.

Appeal from Inferior Court of Record.

16. This section fixed the date for the coming into operation of the now superseded rules.

17. Her Majesty may at any time after the passing and before the commencement of this Act, by Order in Council, made upon the recommendation 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,

Provision as to making, &c., of Rules of Court before or after the commencement of the Act,—in substitution for 36 & 37 Vict. c. 66, ss. 68, 69, 74, and sch.

(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.

In substitution for 36 & 37 Vict. c. 66, s. 74.

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.

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.

So much of this section as is inconsistent with sec. 16 of the App. Jur. Act., 1876, is repealed.

Provision as to Rules of Probate, Divorce, and Admiralty Courts, being Rules of the High Court, in substitution for 36 & 37 Vict. c. 66, s. 70.

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 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.

The present Judge of the Probate Court and of the Court for Divorce and Matrimonial Causes shall retain, and the president for the time being of the Probate and Divorce Division of the High Court of Justice shall have, with regard to non-contentious or common form business in the Probate Court, the powers now conferred on the Judge of the Probate Court by the thirtieth section of the twentieth and twenty-first years of Victoria, chapter seventy-seven, and the said Judge shall retain, and the said president shall have, the powers as to the making of rules and regulations conferred by the fifty-third section of the twentieth and twenty-first years of Victoria, chapter eighty-five.

Sec. 30 of 20 & 21 Vict. c. 77 deals with the power to make and alter rules for procedure in the Probate Court. Sec. 53 of 20 & 21 Vict. c. 85 deals with the power to make and alter rules for procedure in Divorce & Matrimonial Causes.

Provision as to criminal procedure, subject to future Rules remaining unaltered,—in substitution for 36 & 37 Vict. c. 66, s. 71.

19. Subject to the first Schedule hereto and any Rules of Court to be made under this Act, the practice and procedure in all criminal causes and matters whatsoever in the High Court of Justice and in the Court of Appeal respectively, including the practice and procedure with respect to Crown cases reserved, shall be the same as the practice and procedure in similar causes and matters before the commencement of this Act.

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.

See Order XXXVII.

Provision for saving of existing procedure of Courts when not inconsistent

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

with this Act or Rules of Court,—in substitution for 36 & 37 Vict. c. 66, s. 73.

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.

In cases where no rule of practice is laid down by the new Orders, and there is a variance in the old practice of the Chancery and Common Law Courts, that practice is to prevail which is considered by the Court most convenient (*Newbiggin-by-the-Sea Gas Co.* v. *Armstrong*, 13 Ch. D. 310. A; *Thomas* v. *Palin*, 30 W. R. 716. A; and *see Grant* v. *Holland*, 3 C. P. D. 180, Judicature Act 1873, sec. 25, sub-sec. 11).

In *La Grange* v. *McAndrew*, 4 Q. B. D. 210, the Equity practice was adopted that the Judge has a discretion to make an order, though the defendant has not abandoned an order for security for costs.

In *Newbiggin-by-the-Sea Gas Co.* v. *Armstrong* supra, and *Nurse* v. *Durnford*, 13 Ch. D. 764, the Common Law practice was adopted, that where a solicitor has commenced an action in the name of a plaintiff without authority, the proper course is for the plaintiff to serve notice of motion upon the defendant as well as on the solicitor that the action may be dismissed, and that the solicitor may be ordered to pay the costs of the plaintiff as between solicitor and client and the costs of the defendant as between party and party.

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.

Regulation of circuits.

23. Her Majesty may at any time after the passing of this Act, and from time to time, by Order in Council, provide in such manner and subject to such regulations as to Her Majesty may seem meet, for all or any of the following matters:

1. For the discontinuance, either temporarily or permanently, wholly or partially, of any existing circuit, and the formation of any new circuit by the union of any counties or parts of counties, or partly in one way and partly in the other, or by the constitution of any county or part of a county to be a circuit by itself; and in particular for the issue of commissions for the discharge of civil and criminal business in the county of Surrey to the Judges appointed to sit for the trial by jury of causes and issues in Middlesex or London or any of them; and,
2. For the appointment of the place or places at which assizes are to be holden on any circuit; and,
3. For altering by such authority and in such manner as may be specified in the Order, the day appointed for holding the assizes at any place on any circuit in any case, where, by reason of the pressure of business or other unforeseen cause, it is expedient to alter the same; and,
4. For the regulation, as far as may be necessary for carrying into effect any Order under this section, of the venue in all cases, civil and criminal, triable on any circuit or elsewhere.

Her Majesty may from time to time, by Order in Council, alter, add to, or amend any Order in Council made in pursuance of this section; and in making any Order under this section may give any directions which it appears to Her Majesty to be desirable to give for the purpose of giving full effect to such Order.

Provided that every Order in Council made under 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.

Any Order in Council purporting to be made in

pursuance of this section shall have the same effect in all respects as if it were enacted in this Act.

The power hereby given to Her Majesty shall be deemed to be in addition to and not in derogation of any power already vested in Her Majesty in respect of the matters aforesaid; and all enactments in relation to circuits, or the places at which assizes are to be holden, or otherwise in relation to the subject-matter of any Order under this section, shall, so far as such enactments are inconsistent with such Order, be repealed thereby, whether such repeal is thereby expressly made or not; but all enactments relating to the power of Her Majesty to alter the circuits of the Judges, or places at which assizes are to be holden, or the distribution of revising barristers among the circuits, or otherwise enabling or facilitating the carrying the objects of this section into effect, and in force at the time of the passing of the principal Act, shall continue in force, and shall, with the necessary variations, if any, apply, so far as they are applicable, to any alterations in or dealings with circuits, or places at which assizes are to be holden, made or to be made after the passing of this Act, or to any other provisions of any Order made under this section; and if any such Order is made for the issue of commissions for the discharge of civil and criminal business in the county of Surrey as before mentioned in this section, that county shall for the purpose of the application of the said enactments be deemed to be a circuit, and the senior Judge for the time being so commissioned, or such other Judge as may be for the time being designated for that purpose by Order in Council, shall, in the month of July or August in every year, appoint the revising barristers for that county and the cities and boroughs therein.

The expression "assizes" shall in this section be construed to include sessions under any commission of oyer and terminer, or gaol delivery, or any commission in lieu thereof issued under the principal Act.

Additional power as to regulation of practice and procedure by Rules of Court.

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.

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 intituled 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.

Order XXII. deals with payment into and out of Court.

Orders and Rules to be laid before Parliament, and may be annulled on address from either House.

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.

This section shall come into operation immediately on the passing of this Act.

Fixing and collection of fees in High Court and Court of Appeal.

26. The Lord Chancellor, with the advice and consent of the Judges of the Supreme Court, or any three of them, and with the concurrence of the Treasury,

may, either before or after the commencement of this Act, by order, fix the fees and per-centages (including the per-centage on estates of lunatics) to be taken in the High Court of Justice or in the Court of Appeal, or in any Court created by any commission 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, including the masters and other officers in lunacy, and may from time to time by order increase, reduce, or abolish all or any of such fees and per-centages and appoint new fees and per-centages to be taken in the said Courts or offices or any of them, or by any such officer as aforesaid.

Any order made in pursuance of this section shall be binding on all the Courts, offices, and officers to which it refers, in the same manner as if it had been enacted by Parliament.

All such fees and per-centages shall (save as otherwise directed by the order) be paid into the receipt of Her Majesty's Exchequer and be carried to the Consolidated Fund, and with respect thereto the following rules shall be observed:

(1.) The fees and per-centages shall, except so far as the order may otherwise direct, be taken by stamps, and if not taken by stamps shall be taken, applied, accounted for, and paid over in such manner as may be directed by the order.

(2.) Such stamps shall be impressed or adhesive, as the Treasury from time to time direct.

(3.) 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 insuring the proper cancellation of stamps and for keeping accounts of such stamps.

(4.) Any document which ought to bear a stamp in pursuance of this Act, or any rule or order made thereunder, shall not be received,

filed, used, or admitted in evidence unless and until it is properly stamped, within the time prescribed by the rules under this section regulating the use of stamps, but if any such document is through mistake or inadvertence received, filed, or used without being properly stamped, the Lord Chancellor or the Court may, if he or it shall think fit, order that the same be stamped as in such order may be directed.

(5.) The Commissioners of Inland Revenue shall keep such separate accounts of all money received in respect of stamps under this Act as the Treasury may from time to time direct, and, subject to the deduction of any expenses incurred by those Commissioners in the execution of this section, the money so received shall, under the direction of the Treasury, be carried to, and form part of, the Consolidated Fund.

(6.) Any person who forges or counterfeits any such stamp, or uses any such stamp, knowing the same to be forged or counterfeit, or to have been previously cancelled or used, shall be guilty of forgery, and be liable on conviction to penal servitude for a term not exceeding seven years, or to imprisonment with or without hard labour for a term not exceeding two years.

An order under this section may abolish any existing fees and percentages which may be taken in the said Courts or offices, or any of them, or by the said officers or any of them, but, subject to the provisions of any order made in pursuance of this section, the existing fees and percentages shall continue to be taken, applied, and accounted for in the existing manner.

See Orders for taking Fees by Stamps, *post*.

27. Section twenty-seven, which refers to salaries of officers of Courts at Lancaster and Durham, is here omitted.

Annual account of fees and expenditure.

28. The Treasury shall cause to be prepared annually an account for the year ending the thirty-first day of March, showing the receipts and expenditure during the preceding year in respect of the High Court of Justice and the Court of Appeal, and of any Court, office, or officer, the fees taken in

which or by whom can be fixed in pursuance of this Act.

Such account shall be made out in such form and contain such particulars as the Treasury, with the concurrence of the Lord Chancellor, may from time to time direct.

Every officer by whom or in whose office fees are taken which can be fixed in pursuance of this Act, shall make such returns and give such information as the Treasury may from time to time require for the purpose of enabling them to make out the said account.

The said account shall be laid before both Houses of Parliament within one month after the thirty-first day of March in each year, if Parliament is then sitting, or if not, then within one month after the next meeting of Parliament.

29. Section twenty-nine, which refers to certain payments made to the senior puisne Judge of the Queen's Bench, and Queen's Coroner, is omitted.

Amendment of 35 & 36 Vict. c. 44, as to the transfer of Government securities to and from the Paymaster General on behalf of the Court of Chancery and the National Debt Commissioners.

30. Whereas by section sixteen of "The Court of Chancery Funds Act, 1872," it is enacted that an order of the Court of Chancery may direct securities standing to the account of the Paymaster General on behalf of the Court of Chancery to be converted into cash, and that where such order refers to Government securities such securities shall be transferred to the Commissioners for the Reduction of the National Debt in manner therein mentioned:

And whereas the said section contains no provision for the converse cases of the conversion of cash into securities and the transfer of securities from the said Commissioners to the account of the Paymaster General on behalf of the Court of Chancery:

And whereas such conversion and transfer, and the other matters provided by the said section, can be more conveniently provided for by rules made in pursuance of section eighteen of the said Act; and it is expedient to remove doubts with respect to the power to provide by such rules for the investment in securities of money in Court, and the conversion into money of securities in Court:

Be it therefore enacted as follows:

Section sixteen of "The Court of Chancery Funds Act, 1872," is hereby repealed.

Rules may from time to time be made in pursuance

of section eighteen of "The Court of Chancery Funds Act, 1872," with respect to the investment in securities of money in Court, and the conversion into money of securities in Court, and with respect to the transfer to the Commissioners for the Reduction of the National Debt of Government securities ordered by the Court to be sold or converted into cash, and to the transfer by those Commissioners to the Paymaster General for the time being, on behalf of the Court of Chancery, of Government securities ordered by the Court of Chancery to be purchased.

This section shall come into operation on the passing of this Act, and shall be construed together with "The Court of Chancery Funds Act, 1872," and shall be subject to any alteration in that Act made by or in pursuance of the principal Act or this Act.

31. This section, which refers to the abolition of secretary to the visitors of lunatics, is omitted.

Amendment of 32 & 33 Vict. c. 83, s. 19, and 32 & 33 Vict. c. 71, s. 116, as to payment of unclaimed dividends to persons entitled.

32. Whereas by section nineteen of "The Bankruptcy Repeal and Insolvent Court Act, 1869," it is enacted as follows:—"All dividends declared in any Court acting under the Acts relating to bankruptcy or the relief of insolvent debtors which remain unclaimed for five years after the commencement of this Act, if declared before that commencement, and for five years after the declaration of the dividends if declared after the commencement of this Act, and all undivided surpluses of estates administered under the jurisdiction of such Court which remain undivided for five years after the declaration of a final dividend in the case of bankruptcy, or for five years after the close of an insolvency under this Act, shall be deemed vested in the Crown, and shall be disposed of as the Commissioners of Her Majesty's Treasury direct; provided that at any time after such vesting the Lord Chancellor may, if he thinks fit, by reason of the disability or absence beyond seas of the person entitled to the sum so vested, or for any other reason appearing to him sufficient, direct that the sum so vested shall be repaid out of moneys provided by Parliament, and shall be distributed as it would have been if there had been no such vesting;"

And whereas a similar enactment with respect to unclaimed dividends in bankruptcy was made by section one hundred and sixteen of "The Bankruptcy Act, 1869:" 32 & 33 Vict. c. 71.

And whereas it is expedient to give to persons entitled to any such unclaimed dividends or other sums greater facilities for obtaining the same: Be it therefore enacted as follows:

Any Court having jurisdiction in the matter of any bankruptcy or insolvency, upon being satisfied that any person claiming is entitled to any dividend or other payment out of the moneys vested in the Crown in pursuance of section nineteen of "The Bankruptcy Repeal and Insolvent Court Act, 1869," or of section one hundred and sixteen of "The Bankruptcy Act, 1869," may order payment of the same in like manner as it might have done if the same had not by reason of the expiration of five years become vested in the Crown in pursuance of the said sections.

32 & 33 Vict. cc. 83, 71.

This section shall take effect as from the passing of this Act.

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.

34, 35. These sections, which refer to Officers and Salaries, are omitted.

The repealed rules constituted the first Schedule.

SECOND SCHEDULE.

Session and Chapter.	Title.	Extent of Repeal.
	An Act to provide for the augmenting the salaries of the Master of the Rolls and the Vice Chancellor of England, the Chief Baron of the Court of Exchequer, and the Puisne Judges and Barons of the Courts in Westminster Hall, and to enable His	Section seven.

Session and Chapter.	Title.	Extent of Repeal.
	Majesty to grant an annuity to such Vice Chancellor, and additional annuities to such Master of the Rolls, Chief Baron, and Puisne Judges and Barons on their resignation of their respective offices.	
	The Bankruptcy Act, 1869	Section one hundred and sixteen from "provided that at any time," inclusive, to end of the section.
	The Bankruptcy Repeal and Insolvent Court Act, 1869	Section nineteen from "provided that at any time," inclusive, to end of the section.
	Supreme Court of Judicature Act, 1873 . .	So much of sections three and sixteen as relates to the London Court of Bankruptcy, section six, section nine, section ten, so much of section thirteen as relates to additional judges of the Court of Appeal, section thirty-four from "all matters pending in the London Court of Bankruptcy," to "London Court of Bankruptcy," section thirty-five, section forty-eight, section fifty-three, section sixty-three, section sixty-eight, section sixty-nine, section seventy, section seventy-one, section seventy-two, section seventy-three, section seventy-four, and the whole of the schedule.

APPELLATE JURISDICTION ACT, 1876.

39 & 40 Vict. c. 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 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, 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.

Appeal.

Cases in which appeal lies to House of Lords.

3. Subject as in this Act mentioned an Appeal shall lie to the House of Lords, from any order or judgment of any of the Courts following; that is to say,

(1.) Of Her Majesty's Court of Appeal in England; and

(2.) Of any Court in Scotland from which error or an appeal at or immediately before the commencement of this Act lay to the House of Lords by common law or by statute; and

(3.) Of any Court in Ireland from which error or an appeal at or immediately before the commencement of this Act lay to the House of Lords by common law or by statute.

Form of appeal to House of Lords.

4. Every appeal shall be brought by way of petition to the House of Lords, praying that the matter of the order or judgment appealed against may be reviewed before Her Majesty the Queen in her Court of Parliament, in order that the said Court may determine what of right, and according to the law and custom of this realm, ought to be done in the subject-matter of such appeal.

FORM OF APPEAL, METHOD OF PROCEDURE, AND STANDING ORDERS.

Applicable to all Appeals presented in the House of Lords on and after the 1st day of November*, 1876.

Form of Appeal (Standing Order No. 1.)

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled :

The humble petition and appeal of A.

Your Petitioner humbly prays that the matter of the order (or orders, or judgment, or interlocutor) set forth in the schedule hereto† (or, so far as therein stated to be appealed against) may be reviewed before Her Majesty the Queen in her Court of Parliament, and that the said order (or, so far as aforesaid) may be reversed, varied, or altered, or that the petitioner may have such other relief (if specific relief be desired, it can be so stated in the prayer) in the premises as to Her Majesty the Queen, in her Court of Parliament, may seem meet; and that (here name the respondents) may be required to lodge such printed cases as they may be advised, and the circumstances of the cause may require, in answer to this appeal; and that service of such order on the solicitors in the cause of the said respondents may be deemed good service.

Standing Order No. II. (Certificate of Counsel.)

To be signed by two counsel.

(Here insert schedule.)

Form of Schedule.

"From Her Majesty's Court of Appeal (England).

"In a certain cause (or matter) wherein A. was plaintiff and B. was defendant.

"The order appealed from is in the words following—viz. (set forth order complained of), or, the order referred to in the above prayer is in the words following, the portion appealed from being

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* Order of House of Lords may be made order of High Court, *ex parte* (*British Dynamite Co.* v. *Krebs*, 11 Ch. D. 448).

† The schedule must set out the title of the parties to the cause or matter; and the decrees, orders, judgments, or interlocutors appealed against, and where the appeal is not against the whole decree, the part appealed against must be defined.

printed in italics (set forth order, the portion complained of being printed in italics)."

We humbly conceive this to be a proper case to be heard by your lordships by way of appeal.

To be signed by two counsel.

Standing Order No. II. Notice to respondents.

I, , clerk to Messrs. , of , solicitors for the appellants within named, hereby certify that on the day of , I served Messrs. , of , solicitors for , the within-named respondents, with a correct copy of the foregoing appeal, and with a notice that on the day of , or as soon after as conveniently may be, the petition of appeal would be presented to the House of Lords on behalf of the appellant.*

Directions for Agents.

Method of Procedure.

Presentation of the Appeal.—Order of Service,—see Standing Order No. III.

In accordance with the foregoing notice, the appeal, printed on parchment (quarto size), in such form as will enable paper copies thereof to be hereafter bound up with the printed cases, is to be lodged in the Parliament Office for presentation to the House, and (if the House be then sitting, or, if not, on the next ensuing meeting of the House) an order thereon for service on the respondents, or their solicitors, ordering the respondents to lodge cases in answer to the appeal, will be issued to the appellant's agent, such order, together with an affidavit of due service entered thereon, to be returned to the Parliament Office within the period granted to the appellant for lodging his printed case under Standing Order No. 5.

Security for Costs,—see Standing Order No. IV.

Each appellant, where there are more than one, is required to enter into the recognizance. The appellants are required to submit to the Clerk of the Parliaments within one week after the date of the presentation of the appeal (unless the sum of two hundred pounds, as required by the Standing Order, be paid to the Receiver of Fees to the Parliament Office for payment into the fee fund of the House of Lords†) the names of the sureties who propose entering into the bond; and, in the event of a substitute being proposed to enter into the recognizance in lieu of the appellants, the name of such substitute. Two clear days' previous notice of the names so proposed (for bond and recognizance) is to be given to the solicitor or agent of the respondents, and at the time of submitting the said names to the Clerk of the Parliaments a certificate from the solicitor or agent of the appellants is to be lodged in the Parliament Office, certifying his belief in the sufficiency of the sureties and substitutes so proposed. At the termination of one week from the lodgment of such certificate, the bond and recognizance are to be issued to the solicitor or agent of the appellants for execution before a commissioner appointed to administer oaths in the Supreme Court of Judicature in England, or a commissioner appointed to administer oaths in Chancery in Ireland, or before a justice of the peace in Scotland.

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* Not less than two clear days' notice to be given of the intention to present an appeal.

† All drafts and cheques to be made payable to "House of Lords Fee Fund," and to be crossed, "Bank of England, Western Branch."

The bond and the recognizance (whether entered into by the appellants or by a substitute) to be returned to the Parliament Office within one week from the date of the issue thereof to the solicitor or agent of the appellants.

The solicitors of those respondents who purpose lodging printed cases in answer to the appeal should attend at the Parliament Office for the purpose of ascertaining the due execution of the recognizance and bond, and entering their names in the appearance book. (Notice of the meeting of the Appeal Committee is only sent to the solicitors of respondents who have thus signified their appearance in the cause.)

Printed cases and appendix, and "setting down" Cause for Hearing, —see Standing Order No. V.

In English appeals six weeks' time, and in Irish and Scotch appeals eight weeks' time, from the date of the presentation of the appeal, is granted to all parties to lodge printed cases and the appendices thereto.*

In appeals in which the parties are able to agree in their statement of the subject-matter, it is optional to lodge a joint case with reasons *pro* and *con.*, following the practice heretofore in use in common law appeals on a special case.

Appendix.

It is obligatory on the appellant, within the respective periods so limited as above, to lodge his printed cases, or the joint case before mentioned, and a printed appendix consisting of such documents, or parts thereof, used in evidence in the Court below, as may be necessary for reference on the argument of the appeal.

It is the duty of the appellant, with as little delay as possible after the presentation of the appeal, to furnish to the respondent a list of the proposed documents, and in due course a proof copy of the appendix. The proof is to be examined with the original documents by the respective solicitors of the parties. Ten copies of the appendix, as soon as printed, to be delivered to the solicitor of the respondent. The respondent is allowed to print any additional documents, used in evidence in the Court below, which may be necessary for the support of his case on the argument of the appeal, such documents to be paged consecutively with the appendix. (The proof to be examined, as aforesaid, by the respective solicitors, and prints delivered to the solicitor of the appellant.)

The costs incurred in printing the appendix will, in the first instance, be borne by the appellant, and the costs of the additional documents by the respondent, but these costs will ultimately be subject to the decision of the House with regard to the costs of the appeal.

Signature of counsel to case,—see Standing Order No. V.

The case and appendix must be printed quarto size, with seven or eight letters in the margin for facilitating reference, and should be submitted in proof to the clerks in the Judicial office. Forty copies of the case and appendix are required to be lodged in the Parliament office ; and subsequently, on the lodgment of the respondent's case, ten bound copies (see directions in the appendix hereto as to binding printed cases).

Where reference is made to a document printed in the appendix, the case must contain a marginal note of the page of the appendix containing such document.

There is no penalty on respondents who do not lodge their

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* Petitions for extension of time, lodged during the recess, do not prevent the dismissal of an appeal. (For Form of Petition, see Appendix C.)

printed cases within the time limited by Standing Order No. V., but respondents can only appear at the bar on a printed case.

As soon as the printed cases of all parties and the appendix thereto have been lodged, it is optional for either side to set down the cause for hearing, but it is obligatory on the appellant, upon the lodgment of his printed cases and the appendix, to set down the cause for hearing within the time limited by Standing Order No. V. (*ex parte* as to those respondents who have not already lodged printed cases, upon proof, by affidavit, of the due service of the before-mentioned "Order of service" upon the respondents or their solicitors). A respondent who has lodged his printed case is at liberty to set down the cause for hearing on the first sitting day after the expiration of the time limited by the Standing Order for lodging printed cases.

The cause will then be ripe for hearing, and will take its position on the effective cause list.

STANDING ORDERS APPLICABLE TO ALL APPEALS PRESENTED TO THE HOUSE OF LORDS ON OR AFTER THE 1ST DAY OF NOVEMBER, 1876.

STANDING ORDER I.

Time limited for presenting Appeals.

Ordered, that, except where otherwise provided by statute, no petition of appeal be received by this House unless the same be lodged in the Parliament office for presentation to the House within one year from the date of the last decree, order, judgment, or interlocutor appealed from.

Applicable to all Decrees, &c., pronounced on and after the 1st day of November, 1876.

In cases in which the person entitled to appeal be within the age of one-and-twenty years, or covert, *non compos mentis*, imprisoned, or out of Great Britain and Ireland, such person may be at liberty to present his appeal to the House, provided that the same be lodged in the Parliament office within one year next after full age, discoverture, coming of sound mind, enlargement out of prison, or coming into Great Britain or Ireland. But in no case shall any person or persons be allowed a longer time, on account of mere absence, to present an appeal, than five years from the date of the last decree, order, judgment, or interlocutor appealed against.

STANDING ORDER II.

Appeals to be signed and certified by counsel.

Ordered, that all petitions of appeal be signed, and the reasonableness thereof certified, by two counsel who shall have attended as counsel in the Court below, or shall purpose attending as counsel at the hearing in this House.

STANDING ORDER III.

"Order of Service."

Ordered, that the "order of service" issued upon the presentation of an appeal for service on the respondent or his solicitor, be returned to the Parliament office, together with an affidavit of due service entered thereon, within the time limited for the appellant to lodge his printed cases, unless within that period all the respondents shall have lodged their printed cases; in default, the appeal to stand dismissed.

Standing Order IV.

Recognizance.

Ordered, in all appeals that the appellant or appellants do give security to the Clerk of the Parliaments by recognizance to be entered into, in person or by substitute, to the Queen, of the penalty of five hundred pounds, conditioned to pay to the respondent or respondents all such costs as may be ordered to be paid by the House in the matter of the appeal; and further, that the appellant or appellants do procure two sufficient sureties to the satisfaction of the Clerk of the Parliaments, to enter into a joint and several bond to the amount of two hundred pounds, or do pay in to the account of the fee fund of the House of Lords the sum of two hundred pounds; such bond, or such sum of two hundred pounds, to be subject to the order of the House with regard to the costs of the appeal: Ordered, that within one week after the presentation of the appeal the appellant or appellants do pay in to the account of the fee fund of the House of Lords the said sum of two hundred pounds, or submit to the Clerk of the Parliaments the names of the sureties proposed to enter into the said bond; and, in the event of a substitute being proposed to enter into the said recognizance, the name of such substitute; two clear days' previous notice of the names so proposed for bond and recognizance to be given to the solicitor or agent of the respondent: Ordered, that the said bond and the recognizance (whether entered into by the appellants or by a substitute) be returned to the Parliament Office, duly executed, within one week from the date of the issue thereof to the solicitor or agent of the appellant or appellants. On default by the appellant or appellants in complying with the above conditions, the appeal to stand dismissed.

Standing Order V.

Printed cases, time limited for lodging, and for setting down the cause for hearing.

1. Ordered, that in English appeals the printed cases and the appendix thereto be lodged in the Parliament Office within six weeks from the date of the presentation of the appeal to the House; in Scotch and Irish appeals within eight weeks; and the appeal set down for hearing on the first sitting day after the expiration of those respective periods (or as soon before, at the option of either party, as all the printed cases and the appendix shall have been lodged); on default by the appellant the appeal to stand dismissed.

Scotch appeals.

2. Ordered, that in all appeals from Scotland the appellant alone, in his printed case or in the appendix thereto, shall lay before this House a printed copy of the record as authenticated by the Lord Ordinary; together with a supplement containing an account, without argument or statement of other facts, of the further steps which have been taken in the cause since the record was completed, and containing also copies of the interlocutors or parts of interlocutors complained of; and each party shall in their cases lay before the House a copy of the case presented by them respectively to the Court of Session, if any such case was presented there, with a short summary of any additional reasons upon which he means to insist; and if there shall have been no case presented to the Court of Session, then each party shall set forth in his case the reasons upon which he founds his argument, as shortly and succinctly as possible.

Printed cases to be signed by counsel.

3. Ordered, that all printed cases be signed by one or more counsel, who shall have attended as counsel in the Court below, or shall purpose attending as counsel at the hearing in this House.

Standing Order VI.

Ordered, that all cross-appeals be presented to the House within the period allowed by Standing Order No. V. for lodging cases in the original appeal. Cross-appeals.

Standing Order VII.

Ordered, with regard to appeals in which the periods severally dating from the presentation of the appeal under Standing Orders Nos. III., IV., V., and VI., expire during the recess of the House, that such periods be extended to the third sitting day of the next ensuing meeting of the House. Expiry of time during recess.

Standing Order VIII.

Ordered, that where any party or parties to an appeal shall die pending the same, subsequently to the printed cases having been lodged, and the appeal shall be revived against his or her representative or representatives as the person or persons standing in the place of the person or persons so dying as aforesaid, a supplemental case shall be lodged by the party or parties so reviving the same respectively, stating the order or orders respectively made by the House in such case. Supplemental cases to be delivered in where appeals are revived or parties added.

The like rule shall be observed by the appellant and respondent respectively, where any person or persons, party or parties in the Court below, have been omitted to be made a party or parties in the appeal before this House, and shall by leave of the House, upon petition or otherwise, be added as a party or parties to the said appeal after the printed cases in such appeal shall have been lodged.

Standing Order IX.

Ordered, that when any petition of appeal shall be presented to this House from any interlocutory judgment of either division of the Lords of Session in Scotland, the counsel who shall sign the said petition, or two of the counsel for the party or parties in the Court below, shall sign a certificate or declaration, stating either that leave was given by that division of the judges pronouncing such interlocutory judgment to the appellant or appellants to present such petition of appeal, or that there was a difference of opinion amongst the judges of the said division pronouncing such interlocutory judgment. Scotch appeals.—Certificate of leave or difference of opinion to be signed by counsel on appeals.

Standing Order X.

Ordered, that in all cases in which this House shall make any order for payment of costs by any party or parties in any cause without specifying the amount, the Clerk of the Parliaments or Clerk Assistant shall, upon the application of either party, appoint such person as he shall think fit to tax such costs, and the person so appointed may tax and ascertain the amount thereof, and shall report the same to the Clerk of the Parliaments or Clerk Assistant: And it is further ordered, that the same fees shall be demanded from and paid by the party applying for such taxation for and in respect thereof as are now or shall be fixed by any resolution of this House concerning such fees; and the said person so appointed to tax such costs may, if he thinks fit, either add or deduct the whole or a part of such fees at the foot of his report: And the Clerk of the Parliaments or Clerk Assistant may give a certificate of such costs, expressing the amount so reported to him Taxation of costs.

as aforesaid; and the amount in money certified by him in such certificate shall be the sum to be demanded and paid under or by virtue of such order as aforesaid for payment of costs.

APPENDIX A.

(*Certificate of Sufficiency of Sureties, &c.*)

Lodged in the Parliament office on the day of 18 .

In the House of Lords.

"A. and others *v.* B. and others."

In compliance with Standing Order No. IV., I (we) submit the names of (full name) of (address) and (full name) of (address) { as fit and proper sureties or, as / a fit and proper substitute } to enter into the { bond / recognizance } thereby required: and I (we) certify in { my / our } belief, that the said (full name) and the said (full name) { are each / is } worth upwards of { 200*l.* / 500*l.* } over and above { their / his } just debts.

This certificate may be signed by the country solicitor or agent of the appellants.

I (we) certify that a copy of the above certificate and two clear days' notice of the intention to lodge the same in the Parliament office has been served on the solicitors or agents of the respondents.

To be signed by the London solicitor or agent of the appellants.

APPENDIX B.

(*Directions for Binding Printed Cases for the use of the Law Lords.*)

1. Ten copies bound in purple cloth: two of the ten to be interleaved, as regards the cases only.

2. Short title of cause on the back.

3. Label on side, stating short title of cause and contents of the volume, thus:—

"A. and others *v.* B. and others."
Printed copy of the appeal.
Appellant's case.
Respondent B.'s case.
Respondent C.'s case.
Appendix.

4. The volume to be indented, and the names of the parties written on the indentations to their respective cases.

5. References to the reports of the cause in the Courts below, or the words "Not reported," to be written on the fly sheet.

6. The bound copies to be lodged immediately after the respondent's cases are delivered in.

The agents are requested to use their discretion as to the size of the volume, arrangement of the cases, and appendix. In dealing with bulky cases, it may be found advisable to bind the appendix as a separate volume, and also to divide the appellants' and respondents' cases into separate volumes.

It is the duty of the appellants' agent to carry out these directions.

APPENDIX C.

(Petition for Extension of Time to Lodge Cases, &c.)

(To be engrossed on foolscap paper, and (unless assent of respondent's agent be obtained) a copy, and two clear days' notice of intention to present, to be given to respondent's agent.)

In the House of Lords. (Insert short title of cause.)

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled:

The humble petition of the appellant .

Sheweth, That your petitioner presented petition of appeal on the day of complaining of (insert dates of orders or interlocutors complained of).

That the time allowed by Standing Order No. V. ((or) extended by your Lordships' order of (state date)) for the appellant to lodge his printed cases and the appendix, will expire on the (state date).

That your petitioner (set forth cause of delay).

Your petitioner therefore humbly prays that your Lordships will be pleased to grant him (set forth time required) further time to lodge his printed cases, and the appendix, and set down the cause for hearing. And your petitioner will ever pray.

Agents for the appellant.

We consent to the prayer of the above petition.

Agents for the respondent.

Attendance of certain number of Lords of Appeal required at hearing and determination of appeals.

5. An appeal shall not be heard and determined by the House of Lords unless there are present at such hearing and determination not less than three of the following persons, in this Act designated Lords of Appeal; that is to say,

(1.) The Lord Chancellor of Great Britain for the time being; and

(2.) The Lords of Appeal in Ordinary to be appointed as in this Act mentioned; and

(3.) Such Peers of Parliament as are for the time being holding or have held any of the offices in this Act described as high judicial offices.

6, 7. These sections, which relate to the appointment, duties, salary and pension of Lords of Appeal in Ordinary, are omitted.

Hearing and determination of appeals during prorogation of Parliament.

8. For preventing delay in the administration of justice, the House of Lords may sit and act for the purpose of hearing and determining appeals, and also for the purpose of Lords of Appeal in Ordinary taking their seats and the oaths, during any prorogation of

Parliament, at such time and in such a manner as may be appointed by order of the House of Lords made during the preceding session of Parliament; and all orders and proceedings of the said House in relation to appeals and matters connected therewith during such prorogation, shall be as valid as if Parliament had been then sitting, but no business other than the hearing and determination of appeals and the matters connected therewith, and Lords of Appeal in Ordinary taking their seats and the oaths as aforesaid, shall be transacted by such House during such prorogation.

Any order of the House of Lords may for the purposes of this Act be made at any time after the passing of this Act.

Hearing and determination of appeals during dissolution of Parliament.

9. If on the occasion of a dissolution of Parliament Her Majesty is graciously pleased to think that it would be expedient, with a view to prevent delay in the administration of justice, to provide for the hearing and determination of appeals during such dissolution, it shall be lawful for Her Majesty, by writing under her sign manual, to authorize the Lords of Appeal in the name of the House of Lords to hear and determine appeals during the dissolution of Parliament, and for that purpose to sit in the House of Lords at such times as may be thought expedient; and upon such authority as aforesaid being given by Her Majesty, the Lords of Appeal may, during such dissolution, hear and determine appeals and act in all matters in relation thereto in the same manner in all respects as if their sittings were a continuation of the sittings of the House of Lords, and may in the name of the House of Lords exercise the jurisdiction of the House of Lords accordingly.

Saving as to fiat of Attorney-General.

10. An appeal shall not be entertained by the House of Lords without the consent of the Attorney-General or other law officer of the Crown in any case where proceedings in error or on appeal could not hitherto have been had in the House of Lords without the fiat or consent of such officer.

Procedure under Act to supersede all other proceedure.

11. After the commencement of this Act error shall not lie to the House of Lords, and an appeal shall not lie from any of the Courts from which an appeal to the House of Lords is given by this Act, except in manner provided by this Act, and subject to such conditions as to the value of the subject-matter in

dispute, and as to giving security for costs, and as to the time within which the appeal shall be brought, and generally as to all matters of practice and procedure, or otherwise, as may be imposed by orders of the House of Lords.

As to appeals under the Divorce Act, see Judicature Act, 1881, sec. 9, *post*.

Certain cases excluded from appeal.

12. Except in so far as may be authorized by orders of the House of Lords an appeal shall not lie to the House of Lords from any Court in Scotland or Ireland in any case, which according to the law or practice hitherto in use, could not have been reviewed by that House, either in error or on appeal.

Provision as to pending business.

13. Nothing in this Act contained shall affect the jurisdiction of the House of Lords in respect of any error or appeal pending therein at the time of the commencement of this Act, and any such error or appeal may be heard and determined, and all proceedings in relation thereto may be conducted, in the same manner in all respects as if this Act had not passed.

Amendment of Acts.

14. This section, which relates to the constitution of the Judicial Committee of the Privy Council, and to the appointment of assessors in ecclesiastical cases, is omitted.

Amendment of the Supreme Court of Judicature Acts in relation to Her Majesty's Court of Appeal.

15. Whereas it is expedient to amend the constitution of Her Majesty's Court of Appeal in manner hereinafter mentioned: Be it enacted, that there shall be repealed so much of the fourth section of "The Supreme Court of Judicature Act, 1875," as provides that the ordinary Judges of Her Majesty's Court of Appeal (in this Act referred to as "the Court of Appeal") shall not exceed three at any one time.

In addition to the number of ordinary Judges of the Court of Appeal authorized to be appointed by "The Supreme Court of Judicature Act, 1875," Her Majesty may appoint three additional ordinary Judges of that Court.

* * * * *

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 authorized 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.

* * * * *

By section 3 of the Judicature Act, 1881, *post*, the number of the Lords Justices is henceforth to be five. The omitted portions of this section relate to the appointment and salary of the Lords Justices of Appeal.

Orders in relation to conduct of business in Her Majesty's 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.

Regulations as to business of High Court of Justice and Divisional Courts of High Court.

As to provision for death or incapacity of Judge, see Order LIX. 2 *post*.

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 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 decision 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."

See now Jud. Act, 1881, s. 19.

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.

Power in certain events to fill vacancies occasioned in High Court of Justice by removal of Judges to Court of Appeal.

18. Whenever any two of the said paid Judges of the Judicial Committee or the Privy Council have died or resigned, Her Majesty may, upon an address from both Houses of Parliament, representing that the state of business in the High Court of Justice is such as to require the appointment of an additional Judge, fill up one of the vacancies created by the

transfer hereinbefore authorized, by appointing one new Judge of the said High Court in any Division thereof; and on the death or retirement of the remaining two paid Judges of the said Judicial Committee, Her Majesty may, upon the like address, fill up in like manner another of the said vacancies, and from time to time fill up any vacancies occurring in the offices of Judges so appointed.

Attendance of Judges of High Court of Justice on 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, 1873," 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.

Amendment of Judicature Acts as to appeals from High Court of Justice in certain cases.

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.

The scope of this section is limited to those cases where the decision is declared final by Act of Parliament (*Barton* v. *Titmarsh*, 49 L. J. 573. A). Thus an appeal lies from the decision of the Divisional Court on an application for a prohibition to a County Court (*Ibid.*). From an order of a Divisional Court upon an interlocutory matter arising in an election petition (*Harman* v. *Park*. 6. Q. B. D. 323. A, see now sec. 14 Jud. Act, 1881, *post*). Where a Judge at Chambers referred an interpleader summons to a Divisional Court which decided the case without directing an interpleader issue, it was held that no appeal would lie (*Turner* v. *Bridgett*, 9 Q. B. D. 55. A).

This section does not apply to the Inferior Courts mentioned in sec. 45 of the Act of 1873 (*Crush* v. *Turner*, 3 Ex. D. 303. A, sec. 45 of Act of 1873, *ante note*).

21. This section made provision for temporary vacancies prior to Jan. 1, 1877.

Appointment of deputy by district registrars.

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.

23. This section, which relates to the appointment of Vice-Admiral, Judge, and officers of Vice-Admiralty, has been omitted.

Repeal and Definitions.

Repeal of certain sections of the Church Discipline Act, and of the Supreme Court of Judicature Acts.

24. Section sixteen of the Act for better enforcing Church Discipline, passed in the session of the third and fourth years of the reign of Her present Majesty, chapter eighty-six, and sections twenty, twenty-one, and fifty-five of the Supreme Court of Judicature Act, 1873, and section two of the Supreme Court of Judicature Act, 1875, shall be repealed (with the exception of so much of section two as declares the day on which that Act is to commence).

Definitions:

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,

"high judicial office:"

"High judicial office" means any of the following offices; that is to say,

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:"

"Superior Courts of Great Britain and Ireland" means and includes—

As to England, Her Majesty's High Court of Justice and Her 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.

JUDICATURE ACT, 1877.

40 & 41 Vict. c. 9.

This Act authorized Her Majesty to appoint an additional Judge and regulated his position. It also gave a definition of puisne Judge and fixed the titles of the Lords Justices of Appeal and Justices of the High Court, by section 4.

JUDICATURE ACT, 1878.

41 & 42 Vict. c. 35.

Substituted 1st January, 1880, for 1st January, 1877, in sec. 34 of the Act of 1875.

JUDICATURE ACT, 1879.

42 & 43 Vict. c. 78.

This Act is to be construed as one with the Acts of 1873, 1874, and 1877, and may be cited together as Supreme Court of Judicature Acts, 1873 to 1879. It regulates the offices and officers of the Royal Courts of Justice.

SUPREME COURT OF JUDICATURE ACT, 1881.

44 & 45 Vict. c. 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 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, as follows:

1. This Act may be cited as "The Supreme Court of Judicature Act, 1881." Short title.

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 com- Master of the Rolls to be Judge of Appeal only.

mission 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.

36 & 37 Vict. c. 66.

Existing vacancy in Court of Appeal not to be filled up.

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.

President of Probate Division to be an ex-officio Judge of Court of Appeal.

4. The President for the time being of the Probate, Divorce, and Admiralty Division of the High Court of Justice shall henceforth be an ex-officio Judge of Her Majesty's Court of Appeal with the same powers, and in the same manner in all respects as the other ex-officio Judges thereof; he shall not be entitled in the said Court to any precedence over any existing judge to which he would not have been entitled as a judge of the Supreme Court of Judicature if this Act had not passed.

New judge of High Court instead of Master of the Rolls.

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,

36 & 37 Vict. c. 66. 38 & 39 Vict. c. 77.

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.

Judge under 40 & 41 Vict. c. 9.

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.

7. This section provides for the transfer of the staff of the Master of the Rolls.

Title of Justices. 40 & 41 Vict. c. 9.

8. And whereas it is expedient to amend section four of the Supreme Court of Judicature Act, 1877: Be it enacted that the exception of Presidents of Divisions from the enactment that the judges of the High Court of Justice shall be styled justices of the High Court shall not apply to any judge to be hereafter appointed who may be or become President of the Probate, Divorce, and Admiralty Division of the High Court of Justice.

Appeals under Divorce Act.

9. All appeals which, under section fifty-five of the Act of the twentieth and twenty-first years of Her present Majesty, chapter eighty-five, or under any other Act, might be brought to the full court established by the said first-mentioned Act, shall henceforth be brought to Her Majesty's Court of Appeal and not to the said full court.

The decision of the Court of Appeal on any question arising under the Acts relating to divorce and matrimonial causes, or to the declaration of legitimacy, shall be final, except where the decision either is upon the grant or refusal of a decree on a petition for dis-

solution or nullity of marriage, or for a declaration of legitimacy, or is upon a question of law on which the Court of Appeal give leave to appeal; and, save as aforesaid, no appeal shall lie to the House of Lords under the said Acts.

39 & 40 Vict. c. 59.

Subject to any order made by the House of Lords, in accordance with the Appellate Jurisdiction Act, 1876, every appeal to the House of Lords against any such decision shall be brought within one month after the decision appealed against is pronounced by the Court of Appeal if the House of Lords is then sitting, or, if not within fourteen days after the House of Lords next sits.

This section, so far as is consistent with the tenor thereof, shall be construed as one with the said Acts.

As to appeal against decrees nisi for dissolution or nullity of marriage.

10. No appeal from an order absolute for dissolution or nullity of marriage shall henceforth lie in favour of any party who, having had time and opportunity to appeal from the decree nisi on which such order may be founded, shall not have appealed therefrom.

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.

13. This section provides for the selection of judges from the Queen's Bench Division for trial of election petitions.

14. The Jurisdiction of the High Court of Justice to decide questions of law, upon appeal or otherwise, under the Act of the sixth and seventh years of Her Majesty, chapter eighteen, the County Voters Registration Act, 1865, the Parliamentary Elections Act, 1868, the Corrupt Practices (Municipal Elections) Act, 1872, the Parliamentary and Municipal Registration Act, 1878, or any of the said Acts, or any Act amending the same respectively, shall henceforth be final and conclusive, unless in any case it shall seem fit to the said High Court to give special leave to appeal therefrom to Her Majesty's Court of Appeal, whose decision in such case shall be final and conclusive.

Jurisdiction of High Court in registration and election cases. 28 & 29 Vict. c. 36. 31 & 32 Vict. c. 125. 35 & 36 Vict. c. 60. 41 & 42 Vict. c. 26.

15. The jurisdiction and authority in relation to questions of law arising in criminal trials, which, under section forty-seven of the Supreme Court of Judicature Act, 1873, is now vested in the judges of the High Court of Justice, may be exercised by any five or more of such judges, notwithstanding the abolition of the offices of Lord Chief Justice of the Common Pleas and Lord Chief Baron of the Exchequer; Provided that the Lord Chief Justice of England shall always be one of such judges, unless, by writing under his hand or by the certificate in writing of his medical attendant, it shall appear that he is prevented, by illness or otherwise, from being present at any court duly appointed to be held for the purpose aforesaid, in which case the presence of the said Lord Chief Justice at such court shall not be necessary.

Quorum in Court of Criminal Appeal.

16. 17. These sections provide for the nomination of sheriffs, and the presentation, &c., of the Lord Mayor of London.

18. The power of making general orders for fixing the times of holding sessions of the Central Criminal Court established by the Act of the fourth and fifth years of King William the Fourth, chapter thirty-six, which by section fifteen of that Act was given to any eight or more of the judges of the Superior Courts of Westminster, may henceforth be exercised from time to time by any four or more of the judges of Her Majesty's High Court of Justice.

As to fixing sessions of Central Criminal Court.

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

Power to make rules under 39 & 40 Vict. c. 59.

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.

20. This section deals with salaries, &c.

Notice of vacancies in offices of Supreme Court.

21. The word "officer" in this Act shall not include the office of any judge of the Supreme Court of Judicature.

The remainder of this section deals with notice of vacancies in any office of the Supreme Court.

Appointment of district registrars. 42 & 43 Vict. c. 78.

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.

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.

23. This section deals with appointments to keep order, &c. in Royal Courts of Justice.

Powers as to solicitors. 6 & 7 Vict. c. 73. 23 & 24 Vict. c. 127. 40 & 41 Vict. c. 62.

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 section fourteen 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.

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.

Chief Justice of England to have powers of Chief Justice of Common Pleas and Chief Baron of the Exchequer.

25. Where by any statute any power is given to or any act is required or authorized to be done by the Lord Chief Justice of the Common Pleas and the Lord Chief Baron of the Exchequer, or either of them, either solely or jointly with the Lord Chief Justice of the Queen's Bench or the Lord Chief Justice of England, and either with or without the Lord Chancellor or any judge, officer, or person, such power may henceforth be exercised and such act done by the Lord Chief Justice of England; and where by any statute the concurrence of the Lord Chief Justice of the Common Pleas and the Lord Chief Baron of the

Exchequer, or either of them, is required for the exercise of any power, or the performance of any act, it shall be sufficient henceforth that the Lord Chief Justice of England shall concur therein.

Commissioners for acknowledgments 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.

Powers to make rules for practice of County Courts.

27. And whereas it is expedient that the jurisdiction of county courts should be exercised as far as conveniently may be in a manner similar to that of the High Court in the like cases, and doubts have arisen as to the extent of the powers of making rules and orders for regulating the practice of county courts contained in the Act of the nineteenth and twentieth years of Her present Majesty, chapter one hundred and eight, which doubts it is expedient to remove:

Be it enacted, that the power of making rules and orders for regulating the practice of county courts contained in section thirty-two of the said last-mentioned Act shall be deemed to extend to all matters of procedure or practice, or relating to or concerning the effect or operation in law of any procedure or practice, in any cases within the cognizance of county courts, as to which rules of court have been or might lawfully be made by or under the provisions of the Judicature Acts, 1873 and 1875, and the Appellate Jurisdiction Act, 1876, for cases within the cognizance of Her Majesty's High Court of Justice; and any rules heretofore made under the provisions of the said first-mentioned Act, in the manner and with the concurrence thereby required, as to any such matters as aforesaid, shall be deemed to be and to have been to all intents and purposes valid and effectual in law.

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.

[NOTE.—*Where no other provision is made by the Act or these Rules the present procedure and practice remain in force* (*Order LXXII.* 2).]

ORDER I.

FORM AND COMMENCEMENT OF ACTION.

This Order corresponds with Order I. of the previous Rules—the principal alteration is that the subject of interpleader is remitted to Order LVII.

I. 1. Action, what is.

1. All actions which, previously to the commencement of the Principal Act, 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 which, previously to the commencement of the Principal Act, were commenced by bill or information 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.

"Action" is defined in Sec. 100, Jud. Act, 1873, *ante*.
(*a.*) Criminal proceedings.
(*b.*) Proceedings on the Crown side of the Q. B. D.
(*c.*) Proceedings on the Revenue side of the Q. B. D., and
(*d.*) Proceedings for Divorce, and other Matrimonial Causes, are excepted from these rules, save as afterwards appears by Order LXVIII., *post*.

Divorce and Matrimonial Causes are regulated by rules of that Division, 26th Dec. 1865.

I. 3. Other proceedings.

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 had not been passed.

Order LII. 2 has considerably restricted the cases in which it was proper to move for a *rule nisi*.

ORDER II.

Writ of Summons and Procedure, &c.

There is no substantial difference between this and the previous Order II.

II. 1. Action commenced by writ.

1. Every action in the High Court shall be commenced by a writ of summons, which shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, and which shall specify the Division of the High Court to which it is intended that the action should be assigned.

When an action is shown to be vexatious, and an abuse of the process of the Court, it will be stayed (*Dawkins* v. *Prince Edward of Saxe-Weimar*, 1 Q. B. D. 499). In *Edmunds* v. *Attorney-General*, 47 L. J. Ch. 345. A), such an order was made on adjourned summons.)

As to assignment of actions to the Chancery Division see sec. 34, Jud. Act, 1873.

Forms of writ and indorsements will be found in Appendix A., Parts I. and III.

Regulations as to proceedings in the Chancery Division in the name of the Attorney-General, at the instance of Relators.

In the case of any application to Her Majesty's Attorney-General for his authority to commence in his name, at the instance of a Relator, an action in the High Court of Justice, Chancery Division, the following regulations will be required to be observed, and, so far as they are prospective, the authority of

the Attorney-General to use his name for the purpose of the proposed proceeding will be given on the condition that the same shall be observed.

It is required that the Statement of Claim, and all amendments thereof, shall be signed by the Attorney-General.

The copy of the writ left with the Attorney-General for his signature shall be accompanied by the proposed Statement of Claim, which the Attorney-General, if he shall allow the action, will also sign and return to the Relator's solicitor, to be delivered or filed as provided by the Judicature Acts, 1873 and 1875.

There shall also be left with the Attorney-General a second copy of the writ, with a copy of the Statement of Claim appended thereto, on which there shall be written a Certificate of Counsel to the following effect:—"I certify that this Writ and Statement of Claim are proper for the allowance of Her Majesty's Attorney-General; dated, &c." This copy will be retained by the Attorney-General.

The papers shall be accompanied by a certificate of a solicitor presenting the same for allowance, that the proposed Relator is a proper person to be Relator, and that he is competent to answer the costs of the proposed action.

If any amendment of the Statement of Claim shall at any time become necessary, the proposed amended Statement of Claim, and a copy thereof showing the proposed amendment, shall be left with the Attorney-General. On such copy there shall be written a Certificate of Counsel that the proposed amendment is proper for the allowance of the Attorney-General.

If the Attorney-General shall approve the amendment, the amended Statement of Claim will be signed by him, and returned to the Relator's solicitor, to be delivered or filed as may be required. The copy so certified will be retained by the Attorney-General.

It seems further to be the practice that in an information where there is no Relator, the Attorney-General's signature on the writ is not required.

2. Any costs occasioned by the use of any forms 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. *II.* 2. Prolixity.

Prolixity in the use of forms other than those prescribed is dealt with by Order LXV. 27 (20).

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. *II.* 3. Form of.

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. *II.* 4. Service out of jurisdiction.

Such leave is not within the jurisdiction of a Master or a District Registrar (Orders LIV. 12*b*., XXXV. 6).

In the Chancery Division it is not now the practice to apply to the Judge in Court for orders of this kind. The practice up till now has been that applications for leave to issue and leave to serve are made in Chambers, either separately or simultaneously. When they are made separately, a copy of the writ is, in the first instance, brought to the Chief Clerk of the Judge with whose name it is to be marked (the writ is now marked by the proper officer, Order V. 9), and a verbal statement is 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 then the subsequent order, giving leave to serve the writ thus issued, is made upon affidavit, intituled in the action. If the applications are made simultaneously, the application for leave to serve is supported by affidavit intituled in the matter of the intended action (per Hall, V.C., in *Stigand* v. *Stigand*, 19 Ch. D. 460; Order XI. 4). In the case of *Young* v. *Brassey*, 1 Ch. D. 277, Hall, V.C., held that the Order should provide for the service of interrogatories, if necessary, and also for the issuing of an injunction, if it should be applied for *ex parte*.

The plaintiff may proceed, and sign judgment in default of appearance (*Bacon* v. *Turner*, 3 Ch. D. 275). The decision of the Judge, as to whether the service out of the jurisdiction should be allowed, is the subject of an appeal; but the question cannot be raised by statement of defence (*Preston* v. *Lamont*, 1 Ex. D. 361). If the defendant be a foreigner, resident out of the jurisdiction, notice of the writ, and not the writ itself, should be served upon him (*Beddington* v. *Beddington*, 1 P. D. 426; *Padley* v. *Camphausen*, 48 L. J. Ch. 364; Order XI. 6).

II. 5. Form of.

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.

II. 6*a*. Procedure under Bill of Exchange not abolished.

6. No writ shall hereafter be issued under the Summary Procedure on Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67).

II. 7*a*. Admiralty Action.

7. The writ of summons in every Admiralty action *in rem* shall be in one of the Forms Nos. 11 and 12 in Appendix A, Part I., with such variations as circumstances may require.

II. 8. Date and teste.

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.

The Court will take cognizance of the fact that the writ has been issued later in the day than the cause of action accrued. (*Clarke* v. *Bradlaugh*, 8 Q. B. D. 63. A.) A mere clerical error will not be fatal to its validity (*Wesson* v. *Stalker*, 47 L.T. 444).

ORDER III.

Indorsements of Claim.

A few alterations of some importance have been made in this Order. The amendment of the indorsement is relegated to Order XXVIII. 1. It will be noted that "The indorsement of claim shall be, &c.," not "may be," as heretofore. Special indorsements have been more clearly defined, and actions for the recovery of land included therein.

III. 1. Before issue.

1. The indorsement of claim shall be made on every writ of summons before it is issued.

III. 2. Contents of.

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.

Plaintiff may amend the indorsement under Order XXVIII. 1, or he may extend his claim beyond the indorsement under Order XX. 4.

III. 3. Form of.

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.

III. 4. Persons in 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. sec. VII., 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.

III. 5. Probate Actions.

5. In Probate actions the indorsement shall show whether the plaintiff claims as creditor, executor, administrator, residuary legatee, legatee, next of kin, heir-at-law, devisee, or in any and what other character.

III. 6. Special.

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. Such special indorsement shall be to the effect of such of the Forms in Appendix C, sec. IV., as shall be applicable to the case.

The special indorsement operates as a Statement of Claim (Order XX. 1a).

A writ specially indorsed under this Rule will enable the plaintiff to sign final judgment under Order XIII. 3, when the defendant fails to appear, or under Order XIV. 1, where the defendant does appear, but fails to satisfy the Court or a Judge that he has a good defence to the action on the merits; or to disclose facts sufficient to entitle him to defend.

"The defendant is entitled to have sufficient particulars to enable him to satisfy his mind whether he ought to pay or resist" (*Walker* v. *Hicks*, 3 Q. B. D. 8; and see *Smith* v. *Wilson*, 5 C. P. D. 25. A).

If the plaintiff credit the defendant with a certain amount on the indorsement of the writ, he should give particulars of the items (*Godden* v. *Corsten*, 5 C. P. D. 17. A).

A special indorsement should show the dates and amounts of the consignments of goods delivered at intervals under a contract (*Parpaite Frères* v. *Dickinson*, 26 W. R. 479).

III. 7. General.

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. Such statement shall be in the Form in Appendix A, Part III. sec. III. 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.

The question how far tender of payment to a clerk in a solicitor's office was valid, who said he had no instructions to receive the money, was recently discussed in *Finch* v. *Boning*, 4 C. P. D. 143. It would seem to be a good tender if the individual to whom the tender is actually made be one, who is either by the course of practice or by direct authority from his principal, authorised to receive the money tendered, or one whom the person who makes the tender has good reason—given by the principal himself—to believe has authority to receive it.

The money must be paid into Court to obtain taxation of plaintiff's costs. But plaintiff's attorney may waive the four days' limit by accepting payment without any agreement as to costs (*Hoole* v. *Earnshaw*, 39 L. T. 410. A).

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. *III.* 8. Account.

See Order XV. *post.*

ORDER IV.

Indorsement of Address.

The principal alteration in this Order is, that its provisions are applied to proceedings commenced otherwise than by writ of summons.

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 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 *IV.* 1. Of plaintiff and solicitor.

add to his own name or firm and place of business the name of firm and place of business of the principal solicitor.

If a plaintiff sue under Order XVI. 9, on behalf of himself and others, his address is sufficient (*Leathley* v. *M'Andrew*, W. N. 1875, 259).

As to address of defendant appearing in person see Order XII. 11.

IV. 2. Plaintiff suing 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.

IV. 3a. 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.

Where the action is removed from the District Registry the defendant must give a town address (Order XXXV. 18).

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. Proceedings not by writ.

ORDER V.

Issue of Writs of Summons.

Two very important alterations have been made in this Order. The plaintiff in an action in the Chancery Division no longer has the option of selecting the judge with whose name the action is to be marked. This duty now devolves on the officer of the Court. Actions in the Queen's Bench Division are hereafter to be assigned to a particular Master. In Admiralty actions provisions have been introduced for obtaining a warrant of arrest in the matter of a counter-claim. In other respects the Order is substantially the same.

I. *Place of Issue.*

1. In any action other than a Probate action, the plaintiff wherever resident may issue a writ of summons out of any District Registry. *V.* 1. District Registry.

2. Every writ of summons not issued out of a District Registry shall be issued out of the Central Office. *V.* 1a. Central Office.

3. In all cases where a defendant neither resides nor carries on business 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. *V.* 2. Where defendant out of district, place for appearance to be stated.

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 *V.* 3. Defendant within district.

at the District Registry, or a statement to the like effect.

II. *Assignment of Causes, &c.*

V. 4. To a Division.

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, 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.

See section 34, Judicature Act, 1873, and Memorandum of Lord Chancellor appended thereto.

Assignment to Master.

6. Every action in the Queen's Bench Division not proceeding in a District Registry shall be assigned to one of the Masters of the Supreme Court at the time and in manner provided by Order LIV., and all documents and proceedings therein shall thereafter be marked with the name of the Master to whom the action has become so assigned, and every application or proceeding therein which by these Rules is to be heard and dealt with by a Master, including taxation of the costs, shall be heard and dealt with by such Master.

Transfer from.

7. Where actions have become assigned to the Masters under the provisions of the last preceding Rule, it shall be lawful for the Lord Chief Justice of England to transfer all or any number of actions from any one Master to any other Master.

Absence of.

8. During the absence from illness or any other urgent cause, or during a vacancy in the office, of any Master to whom any action may have been assigned, or during any vacation, any other Master may hear and dispose of any application therein on behalf or in the place of such Master.

How marked in Chancery Division.

9. Subject to the power of transfer, and to the special provision contained in sub-section (*c.*) 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:—

Writ of Summons.

(*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);

Originating Summons.

(*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;

Notice of Motion.

(*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;

Petition.

(*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;

Subsequent Writs, &c.

(*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 connection, so certify; such certificate shall be in the Form No. 19, in Appendix A, Part I., with such variations as circumstances may require.

III. *Generally.*

V. 5. Directions as to preparation of.

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.

V. 6. Sealing, and effect of.

11. Every writ of summons shall be sealed by the proper officer, and shall thereupon be deemed to be issued.

V. 7. Copy to be left.

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 by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person.

On an indictment for perjury the existence of the action is sufficiently proved by the production by the officer of the Court of the copy writ filed under this rule and a copy of the pleadings filed under Order XLI. 1 (*Reg.* v. *Scott*, 2 Q. B. D. 415).

V. 8. Copy to be filed and entered in the Cause Book.

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, 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.

Actions and matters in the title of which a limited Company is first are 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, are indexed under "D."

Foreign companies are indexed under the initial letter of the first word in their name—*e.g.*, Banco de Lima under "B.," Société d'Acclimatisation, "S."

Foreign titles are 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."

14. Notice to the proper officer of the assignment of an action to any Division of the Court shall be sufficiently given by leaving with him the copy of the writ of summons. *V.* 9. Notice of assignment, how given.

IV. *In particular Actions.*

15. The issue of a writ of summons in Probate actions shall be preceded by the filing of an affidavit made by the plaintiff or one of the plaintiffs in verification of the indorsement on the writ. *V.* 10. Probate Actions.

16. In Admiralty actions *in rem* a warrant for the arrest of property (which shall be in the Form No. 17 in Appendix A, Part I., with such variations as circumstances may require) may be issued at the instance either of the plaintiff or of the defendant at any time after the writ of summons has issued, but no warrant of arrest shall be issued until an affidavit by the party or his agent has been filed, and the following provisions complied with :— *V.* 11a. Admiralty Actions.

(*a.*) The affidavit shall state the name and description of the party at whose instance the warrant is to be issued, the nature of the claim or counter-claim, the name and nature of the property to be arrested, and that the claim or counter-claim has not been satisfied; Contents of affidavit.

(*b.*) In an action of wages or of possession the affidavit shall state the national character of the vessel proceeded against; and if against a foreign vessel, that notice of the commencement of the action has been given to the Consul of the State to which the vessel belongs, if there be one resident in London, and a copy of the notice shall be annexed to the affidavit; Action for wages.

(*c.*) In an action of bottomry, the bottomry bond, and if in a foreign language also a notarial translation thereof, shall be produced for the inspection and perusal of the Registrar, and a copy of the bond, or of the translation thereof, certified to be correct, shall be annexed to the affidavit; For bottomry.

(*d.*) In an action of distribution of salvage the affidavit shall state the amount of salvage money awarded or agreed to be accepted, and the name, address, and description of the party holding the same. Distribution of salvage.

The Admiralty Division will enforce the judgment of a foreign tribunal of commerce (*The City of Mecca*, 5 P. D. 28). But the Court has no jurisdiction to enforce a judgment in a personal action by proceedings *in rem* (*Ibid.* on appeal, 6 P. D. 106). It is essential that it should appear from the proceedings of the foreign Court that the object of the suit was to enforce a judgment *in rem* and not *in personam*.

An English Court, however, will not enforce an agreement contrary to the policy of English law (*Rousillon* v. *Rousillon*, 14 Ch. D. 351). Nor one obtained by fraud on a foreign Court (*Abouloff* v. *Oppenheimer*, 10 Q. B. D. 295. A).

The immunity from arrest of a foreign ship of war extends to a packet conveying mails and cargo belonging to a foreign sovereign (*The Parlement Belge*, 5 P. D. 197. A).

V. 11a (e). Incomplete Affidavit, when allowed.

17. The Court or a Judge may in any case, if they or he think fit, allow the warrant to issue, although the affidavit in Rule 16 mentioned may not contain all the required particulars, and in an action of wages the Court or Judge may also waive the service of the notice, and in an action of bottomry the production of the bond.

ORDER VI.

Concurrent Writs.

No alteration has been made in this Order.

VI. 1. When issued.

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.

VI. 2. Service within and without the jurisdiction.

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.

A provision has been added to this Order enabling any party to change his solicitor without a special order for that purpose. It has been further specifically directed that the disclosure mentioned is to be in writing.

I. Disclosure by Solicitors and Plaintiffs.

VII. 1. Of authority to issue writ.

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.

VII. 2. Actions by partners.

2. When a writ issued 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.

II. Change of Solicitors.

How made.

3. A party suing or defending by a solicitor shall be at liberty to change his solicitor 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.

ORDER VIII.

Renewal of Writ.

A rule has been added to this Order which enables the loss of a writ to be remedied; this obviates the difficulty felt in *Davies* v. *Garland*, 1 Q. B. D. 250.

VIII. 1. Duration of writ twelve months.

1. No original writ of summons shall be in force for more than twelve months 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.

A writ may be renewed after the expiration of the twelve months, unless the period allowed by the Statute of Limitations has intervened (*Re Jones, Eyre* v. *Cocks*, 46 L. J. Ch. 316; *Doyle* v. *Kaufmann*, 3 Q. B. D. 7. 340. A.).

Prior to the Judicature Acts the period during which a renewed writ continued to be in force included the day of renewal (*Anon.* 32 L. J. Ex. 88).

VIII. 2. Evidence of renewal.

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.

Where writ lost.

3. Where a writ, of which the production is necessary, has been lost, 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.

ORDER IX.

Service of Writ of Summons.

Service by advertisement has been added to rule 2 of this Order. When husband and wife are both defendants to the action they must now both be served unless otherwise ordered. Provisions in the absence of statutory enactment as to service on Corporations, hundreds, and like bodies, have been added; as well as a regulation that in Admiralty Actions *in rem* no service of the writ or warrant shall be required where the solicitor of the defendant agrees to accept service and to put in bail, or to pay money into Court in lieu of bail. The rule as to the indorsement of the date of service on the writ has been extended to substituted service. No other substantial alterations have been made in the Order.

I. *Mode of Service.*

IX. 1. Agreement to accept.

1. No service of writ shall be required when the defendant, by his solicitor, undertakes in writing to accept service and enters an appearance.

A solicitor not entering an appearance in pursuance of a written undertaking is liable to attachment under Order XII. 18.

IX. 2. Personal. 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, 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, the Court or Judge may make such order for substituted or other service, or for the substitution for service of notice, by advertisement or otherwise, as may be just.

The method of effecting personal service is to tender a copy of the writ to the defendant, and produce the original if required.

The method of substituted service depends upon the exigencies of the case and the discretion of the Judge. In *Capes* v. *Brewer*, 24 W. R. 40, the writ was left at the place of business of the defendant, and a copy was posted to him. In *Dymond* v. *Croft*, 45 L. J. 604, the writ was served on the defendant's

solicitors, and a copy was sent by post addressed to the defendant. In the case of an absconding defendant leave has been given to serve the writ at his premises, advertisements being at the same time directed to be inserted in the *Gazette* and the *Times* (*Cook* v. *Dey*, 2 Ch. D. 218; *Crane* v. *Jullion*, 2 Ch. D. 220). But leave will not be given unless there be a probability of the knowledge of such service reaching him (*Furber* v. *King*, 29 W. R. 535; *Wolverhampton Banking Co.* v. *Bond*, 43 L. T. 721, W N. 1881, 6). Where defendant had no place of business, nor residence, and his relations stated by affidavit they had no knowledge where he was, service was allowed on the relations, advertisements being inserted in the *Times* and a local paper (*Ibid.*; *Mullows* v. *Bannister*, W. N. 1882, 183). The principle on which service is allowed on a person other than the defendant, is that the person substituted must either be authorized to receive service, or else be such a person as will certainly communicate the fact of service to the party himself (*Slade* v. *Hulme*, 30 W. R. 28). Substituted service will not be allowed when the defendant is a Colonial Government (*Sloman* v. *The Government of New Zealand*, 1, C. P. D. 563. A), or when the defendant is a foreign sovereign, on his ambassador (*Stewart* v. *Bank of England*, W. N. 1876, 263). Where a foreign sovereign sues in this country he should, so far as the thing can be done, be put in the same position as a body corporate, (per Blackburn, J., in *Rep. of Costa Rica* v. *Erlanger*, 1 Ch. D. 174. A.).

Where the plaintiff had obtained an order for substituted service, and the action proceeded to judgment against all the defendants, the Court, in the exercise of its discretion, allowed a defendant against whom the order for substituted service had been made to come in and defend the action, as he showed that he had no knowledge of the proceedings, and had a defence on the merits, but the leave being discretionary the Court imposed terms (*Watt* v. *Barnett*, 3 Q. B. D. 363. A).

II. *On particular Defendants.*

IX. 3. Husband and wife.

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.

IX. 4. 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, 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.

Notice of a judgment or order is to be served in the same manner (Order XVI. 44).

IX. 5. On lunatic.

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, shall, unless the Court or a Judge otherwise orders, be deemed good service on such defendant.

Notice of a judgment or order is to be served in the same manner (Order XVI. 44).

In the case of a lunatic where no committee had been appointed, the Court directed service on the keeper of the asylum (*Than* v. *Smith*, 27 W. R. 617; *Raine* v. *Wilson*, 16 Eq. 576).

III. *On Partners and other Bodies.*

IX. 6. 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.

Where the partnership has been dissolved before the issue of the writ, see *Ex parte Young, Re Young*, 19 Ch. D. 124. A.; Order XVI. 14. As to appearance by a partner sued in the name of the firm see Order XII. 15.

After a writ has been issued and served against a partnership in the name of the firm, the judgment must follow the writ and be signed against the firm only, and not against any of its members (*Jackson* v. *Litchfield*, 8 Q. B. D. 474. A).

Where the trial had been conducted, and the judgment entered against a single defendant under this rule, an application to amend it so as to include an alleged co-partner was refused (*Munster* v. *Railton*, 52 L. J. 409. A).

IX. 6a On firm carried on by one person.

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; and such service, if sufficient in other respects, shall be deemed good service on the person so sued.

It makes no difference that the person so carrying on business resides out of the jurisdiction (*O'Neil* v. *Clason*, 46 L. J. 191).

In *Fore Street Warehouse Co.* v. *Durrant*, 10 Q. B. D. 471, where after service it appeared that the defendant was of unsound mind, it was held that the plaintiff should have complied with Order XIII. 1; judgment signed in default of appearance was accordingly set aside.

Quære whether under all circumstances persons trading as a firm can be sued in the partnership name (*Ex parte Blain, Re Sawers*, 12 Ch. D. 522. A. Order XVI. 14).

IX. 7. On corporations, hundreds, &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; 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, 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.

The Statutes referred to in this rule are as follows:—

	Means of Service.	
Companies chartered under 7 Will. IV. & 1 Vict. c. 73.	On the clerk of the company, or by leaving it at the head office, or, if the clerk shall not be found or known, then, on any agent or officer of the company, or, by leaving it at the usual place of abode of such agent or officer.	7 Will. IV. & 1 Vict. c. 73, s. 26.
Companies incorporated under the Companies Clauses Consolidation Act, 1845.	By sending it through the post to the principal office of the company, or to one of the principal offices where there is more than one, or by giving it personally to the secretary, or, where there is no secretary, by giving it to any one director of the company.	8 & 9 Vict. c. 16, s. 135.
Companies incorporated under the Lands Clauses Consolidation Act, 1845.	By sending it through the post to the principal office of the promoters, or to one of the principal offices where there is more than one, or by giving it or posting it to the secretary, or the solicitors of the promoters where there is no secretary.	8 & 9 Vict. c. 18, s. 134.
Companies incorporated under the Railway Clauses Consolidation Act, 1845.	By sending it through the post to the principal office of the company, or to one of the principal offices where there is more than one, or by giving it personally to the secretary, or, where there is no secretary, by giving it to any one of the directors of the company.	8 & 9 Vict. c. 20, s. 138.
Companies incorporated under the Companies Act, 1862.	By leaving it or sending it through the post in a prepaid letter addressed to the company at their registered office.	25 & 26 Vict. c. 89, s. 62.

On the mayor or other head officer, or on the town clerk, clerk, treasurer, or secretary.	15 & 16 Vict. c. 76, s. 16.	Under the C. L. P. Act, 1852, against a corporation aggregate.
On the high constable or any one of the high constables.		Against the inhabitants of a hundred or other like district.
On some peace officer thereof.		Against the inhabitants of any county of any city or town, or the inhabitants of any franchise, liberty, city, town, or place not being part of a hundred or other like district.
On the head officer in England.	*Newby* v. *Van Oppen*, L. R. 7 Q. B. 293.	On the English branch of a foreign corporation (when the cause of action has arisen in England).

The booking-clerk of a Scotch railway has been held not to be a head officer within the above meaning, although he was the only official at the place of business in England (*Mackereth* v. *Glasgow and S. W. Ry. Co.*, L. R. 8 Ex. 149). But following the ruling of the Privy Council in *R. M. S. Packet Co.* v. *Braham*, 2 App. Cas. 381, it would appear that a duly appointed superintendent would be a proper person on whom to effect service.

IV. *In particular Actions.*

IX. 8. Recovery of land.

9. Service of a writ of summons in an action to recover land may, in case of vacant possession, 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.

Admiralty Action, no service when.

10. In Admiralty actions *in rem* no service of writ or warrant shall be required where the solicitor of the defendant agrees to accept service and to put in bail, or to pay money into court in lieu of bail.

A solicitor failing to comply with his undertaking is liable to attachment (Order XII. 18).

IX. 9. Warrant of arrest.

11. In Admiralty actions *in rem* the warrant of arrest shall be served by the Marshal or his substitutes, whether the property to be arrested be situate within the port of London or elsewhere within the jurisdiction of the Court, and the solicitor issuing the

warrant shall, within six days from the service thereof, file the same in the Admiralty Registry.

IX. 10. Admiralty Actions; service of writ.

12. In Admiralty actions *in rem*, service of a writ of summons or warrant against ship, freight, or cargo on board, is to be effected by nailing or affixing the original writ or warrant for a short time on the main-mast, or on the single mast of the vessel, and on taking off the process leaving a true copy of it nailed or fixed in its place.

IX. 11. When cargo landed.

13. If the cargo has been landed or transhipped, service of the writ of summons or warrant to arrest the cargo and freight shall be effected by placing the writ or warrant for a short time on the cargo, and on taking off the process by leaving a true copy upon it.

IX. 12. Where access denied.

14. If the cargo be in the custody of a person who will not permit access to it, service of the writ or warrant may be made upon the custodian.

V. *Generally.*

IX. 13. Indorsement of service.

15. The person serving a writ of summons shall, within three days at most after such service, 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.

When the indorsement has been omitted through inadvertence the Court can extend the time (*Sproat* v. *Peckett*, 48 L. T., 755). Thus, where the writ was served out of the jurisdiction, and the consul had omitted to indorse it as required, the time was extended for a month, and the consul was required to make a new affidavit of service (*Hastings* v. *Hurley*, 16 Ch. D. 735).

In Admiralty actions *in rem*, an amended writ must be served in the same way as an original writ: if the defendants do not appear, and the ship has in the meantime been sold, and the proceeds paid into Court, the amended writ must be delivered to the registrar with notice that service was intended, and be filed in the registry. In such a case the amended writ must be indorsed with the date of service under this rule (*The Cassiopeia*, 4 P. D. 188. A).

ORDER X.

Substituted Service.

X. Affidavit for.

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.

The application for the order is made by an *ex parte* motion (or summons), and must be supported by an affidavit, showing what efforts have been made to serve the defendant, that all practicable means of doing so have been exhausted, and how the substituted service is proposed to be effected ("Daniell's Chancery Practice," 4th ed., vol. i. p. 404).

An affidavit of service should be filed and produced to the proper officer in order to sign judgment (Order XIII. 2).

ORDER XI.

Service out of the Jurisdiction.

The conditions under which service out of the jurisdiction may be allowed have been amended and more clearly defined. The affidavit also in support of the application must state a belief that the "plaintiff has a good cause of action," in addition to what was previously required. Rule 6 now provides for the case where the defendant is neither a British subject nor in British dominions.

XI. 1. When allowed.

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 land or hereditaments situate within the jurisdiction, is sought to be construed, rectified, set aside, or enforced in the action; or

(*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; or

(*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; or

(*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.

If the plaintiff's case do not come within any of these instances the old practice cannot be resorted to in support of the application (*Re Eager*, 31 W. R. 33. A).

This order cannot be made by a Master or District Registrar (Orders LIV. 12*b*, XXXV. 6).

A contract entered into in this country in breach of a contract made abroad will give the English Court jurisdiction, and when the balance of convenience is in favour of such a course the action will be tried in this country. No one defendant is entitled to demand that his case should be looked at singly and separately as if he were the sole defendant. If the respective rights and interests are in fact mixed up together, then it is proper to bring all parties before the same court (*Harris* v. *Fleming*, 13 Ch. D. 210).

As to the indorsement of the date of the service see *Hastings* v. *Hurley*, 16 Ch. D. 735; Order IX. 15.

This rule applies to the service of notices on third parties under Order XVI. Rule 48 (*Swansea Shipping Company* v. *Duncan*, 1 Q. B. D. 644. A.).

"Within the jurisdiction" means within the territorial jurisdiction; this limit has been defined as "low water mark" (*Harris* v. *Francomia*, 2 C. P. D. 173; *The Vivar*, 2 P. D. 29. A.; *Re Smith*, 1 P. D. 300).

A slander of title, made out of the jurisdiction, concerning property within, is not an act within the meaning of this rule, and service in such case was disallowed (*Casey* v. *Arnott*, 2 C. P. D. 24).

The objection to such a writ after it has been issued is taken in the manner provided by Order XII. 30.

In a case in the Admiralty Division, *The Helenslea*, 7 P. D. 57, Sir R. Phillimore refused to set aside a writ issued for service within the jurisdiction, although the defendant was erroneously described as resident within the jurisdiction.

Affidavits are admissible for the purpose of deciding the question of forum (*Fowler* v. *Barstow*, 20 Ch. D. 240. A.).

XI. 1a. Discretion of Judge.

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.

XI. 2. In Probate Actions.

3. In Probate actions service of a writ of summons or notice of a writ of summons may by leave of the Court or a Judge be allowed out of the jurisdiction.

XI. 3. Affidavit in support.

4. Every application for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by affidavit, 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, and the grounds upon which the application is made; and no such leave shall be granted unless it shall be 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.

Where the affidavit did not disclose all the facts necessary to enable the Judge to estimate the comparative cost and convenience of proceeding in either country, and the writ was set aside on facts disclosed by the defendant, the plaintiff had to pay all the costs of issuing the writ (*Tottenham* v. *Barry*, 12 Ch. D. 797). The Judge should have information before him as to the comparative convenience of a trial in the one place rather than in the other (*Woods* v. *MacInnes*, 4 C. P. D. 67).

In the Chancery Division the practice now is to make such an application in Chambers (*Stigand* v. *Stigand*, 19 Ch. D. 461; Order II. 4, *ante*).

Affidavits are admissible for the purpose of deciding the question of forum (*Fowler* v. *Barstow*, 20 Ch. D. 240. A).

XI. 4. Time for appearance.

5. Any order giving leave to effect such service or give such notice shall limit a time 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 the writ is to be served or the notice given.

This rule applies to third parties brought in under Order XVI. Rule 48 (*Swansea Shipping Co.* v. *Duncan*, 1 Q. B. D. 644. A).

The provisions as to the indorsement on the writ of the date of

service (Order IX. 15) is extended to writs for service out of the jurisdiction by its last clause.

Foreigner.

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.

This rule will apply to foreign corporations (*Westman* v. *Aktiebolaget Co.*, 1 Ex. D. 237; *Scott* v. *R. Candle Co.*, 1 Q. B. D. 404; *Bacon* v. *Turner*, 3 Ch. D. 275).

XI. 5. Notice in lieu of service.

7. Notice in lieu of service shall be given in the manner in which writs of summons are served.

The form of affidavit of service, formerly used at common law, may now be generally adopted (*Bustros* v. *Bustros*, 14 Ch. D. 849).

Writs of summons are served in the manner specified in the note to Rule 2, Order IX., *ante*. The person therefore effecting service of notice under this rule should take the writ with him, so as to be able to show it if required.

ORDER XII.

Appearance.

Where a solicitor entering appearance is only agent of another, he is to add his own name or firm and place of business to the name or firm and place of business of the principal solicitor. New provisions have been made as to giving bail in Admiralty actions. Defendant is now to be at liberty without an order to enter conditional appearance to serve notice of motion to set aside the service.

XII. 1. In London, when.

1. Except in the cases otherwise provided for by these Rules a defendant shall enter his appearance in London.

The cases otherwise provided for are those mentioned in Order V. Rule 1, *ante*.

XII. 1a. In Central Office.

2. Appearances entered in London shall be entered in the Central Office.

XII. 1a. Probate and Admiralty Actions.

3. In Probate and Admiralty actions notice of appearances entered shall forthwith be given by the Central Office to the Probate and Admiralty Registries respectively.

XII. 2. In District Registry, when.

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.

XII. 3. Optional, when.

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.

XII. 4. Action proceeds in District Registry, when.

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.

XII. 5. Action proceeds in London, when.

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.

XII. 6b. Entry of appearance.

8. A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum in writing 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.

Where a defendant appears in person he may deliver the memorandum of appearance to the officer by a person duly authorized, who is not a solicitor (*Oake* v. *Moorcroft*, L. R. 5 Q. B. 76).

XII. 6b. Notice of appearance.

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.

XII. 7. Address for service.

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 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.

The various districts are specified under Order XXXV. Rule 1, and are co-extensive with the County Court districts for the time being of those places.

XII. 8. Where defendant appears in person.

11. A defendant appearing in person shall state in such memorandum his address, 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.

XII. 9. Fictitious address.

12. If the memorandum does not contain such address it shall not be received; and if any such address shall be illusory or fictitious, the appearance may be set aside by the Court or a Judge, on the application of the plaintiff.

XII. 10. Form of memorandum.

13. The memorandum of appearance shall be in the Form No. 1 in Appendix A, Part II., with such variations as circumstances may require.

XII. 11. Entry of.

14. Upon receipt of a memorandum of appearance, the officer shall forthwith enter the appearance in the Cause Book.

XII. 12. Appearance by partners.

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.

For service of the writ of summons see Order IX. 6.

Where one partner has appeared in his own name he is entitled to put in a defence in the name of the firm (*Taylor* v. *Collier*, 51 L. J. Ch. 853).

As to the effect of the dissolution of the firm see *Ex parte Young, Re Young*, 19 Ch. D. 124 A; Order XVI. 14, *post*.

Judgment cannot be signed against a partner separately for want of appearance, the judgment must follow the writ, and be signed against the firm only (*Jackson* v. *Litchfield*, 8 Q. B. D. 474. A).

Since the Judicature Acts there is no reason why a cost-book mining company may not sue and be sued like any other partnership in the partnership name (*Escott* v. *Grey*, 47 L. J. 607, per Lindley, J.).

XII. 12a. Where one person carries on 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.

For service of the writ of summons see Order IX. 7.

XII. 13. By several defendants.

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.

XII. 14. Failure to appear or put in bail after undertaking.

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.

Bail, when taken.

19. In Admiralty actions *in rem* bail may be taken before the Admiralty Registrar, or before any District Registrar or Commissioner to administer oaths in the Supreme Court, and in every case the sureties shall justify.

Bail bond, filing.

20. A bail bond shall not, unless by consent, be filed until after the expiration of twenty-four hours from the time when a notice, containing the names and addresses of the sureties and of the Commissioner before whom the bail was taken, shall have been served upon the adverse solicitor, and a copy of the notice verified by affidavit shall be filed with the bail bond.

Bail, from whom not to be taken.

21. No Commissioner shall take bail on behalf of any person for whom he or any person in partnership with him is acting as solicitor or agent.

XII. 15. Appearance, time for.

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.

The time limited for appearance to an ordinary writ is eight days (Order II. 3, App. Pt. I., Forms 1–4).

XII. 16. In Probate actions.

23. In Probate actions any person not named in the writ may intervene and appear in the action as heretofore, on filing an affidavit showing how he is interested in the estate of the deceased.

XII. 17. In Admiralty actions.

24. In an Admiralty action *in rem* any person not named in the writ may intervene and appear as heretofore, on filing an affidavit showing that he is interested in the *res* under arrest, or in the fund in the Registry.

XII. 18. Recovery of land.

25. Any person not named as a defendant in a writ of summons for the recovery of land 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.

The equitable tenant for life who is in possession of the rents under an order of Court was held entitled by right to defend an action of ejectment, and to use the name of the trustee for that purpose (*Longbourne* v. *Fisher*, 47 L. J. Ch. 379).

XII. 19. As landlord.

26. Any person appearing to defend an action for the recovery of land 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.

XII. 20. Recovery of land, notice by person not defendant.

27. Where a person not named as defendant in any writ of summons for the recovery of land 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.

XII. 21. Defence as to part of land.

28. Any person appearing to a writ of summons for the recovery of land 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.

XII. 22. Form of notice.

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.

Conditional appearance, without order.

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 authorizing such service.

ORDER XIII.

Default of Appearance.

The obtaining the appointment of a guardian *ad litem* is now obligatory. The cases in which final judgment can be obtained have been considerably increased. Procedure in default of appearance has been facilitated by Rule 12 in actions in Chancery, Probate, and Admiralty Divisions, by requiring no Statement of Claim where the writ has been specially indorsed. There have been added special provisions adapted to the Admiralty Division, also to a claim on a bond within 8 and 9 Will. III. c. 11.

XIII. 1. By infant or person of unsound mind.

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.

As to the appointment of a guardian *ad litem* of a lunatic or person of unsound mind see Order XVI. 17; of an infant, *Ibid.* 16.

As to default of appearance by third parties see Order XVI. 49–51.

In the computation of the six days, Sundays are not included (Order LXIV. 2).

XIII. 2. Proceedings on.

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 Order XV., Rule 1, he shall, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service, as the case may be.

It is necessary to make an affidavit of a good defence on the merits to have a judgment which has been regularly signed set aside. Before the Judicature Acts a plea of infancy, bankruptcy, or the Statute of Limitations was considered a good defence on the merits (*Delafield* v. *Tanner*, 5 Taunt. 855; *Evans* v. *Gill*, 1 B. & P. 52; *Maddocks* v. *Holmes*, 1 B. & P. 228).

It would appear that the affidavit must show not only that defendant has a good defence, but what the nature of that defence is (*Whiley* v. *Whiley*, 4 C. B. N. S. 653).

In *Briscoe* v. *Williams*, 29 W. R. 713, Hall, V.C., allowed a person to defend on the ground that he had never made the agreement sued upon, and that the judgment was the earliest notice he had received of the action. The terms were that he should pay all costs subsequent to delivery of statement of claim, including the costs of the motion.

XIII. 3. By several defendants.

3. Where the writ of summons is indorsed for a liquidated demand, whether specially or otherwise, and the defendant fails, or all the defendants, if more than one, fail to appear thereto, the plaintiff may enter final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified (if any), or (if no rate be specified) at the rate of five per cent. per annum, to the date of the judgment, and costs.

As to specially indorsed writs see note to Order III. 6.

XIII. 4. By some of several defendants.

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.

For detention of goods.

5. Where the writ is indorsed with a claim for detention of goods 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.

Detention of goods. Failure of one or more defendants.

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.

Detention of goods and 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.

XIII. 7. Recovery of land.

8. In case no appearance shall be entered in an action for the recovery of land, 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.

XIII. 8. Mesne profits.

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, 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.

In actions for the recovery of land, no causes of action will usually be allowed to be joined except such as are intimately connected with the subject-matter of the dispute (Order XVIII. Rule 2).

XIII. 3. Setting aside judgment.

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.

When no 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).

XIII. 5a. District Registry.

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.

In actions otherwise unprovided for.

12. In all actions not by the Rules of this Order otherwise specially provided for, 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 Order III., Rule 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 Order XV.

13. In Admiralty actions *in rem*, upon default of appearance, if, when the action comes before him, the Judge is satisfied that the plaintiff's claim is well founded, he may pronounce for the claim with or without a reference to the Admiralty Registrar or to the Admiralty Registrar assisted by Merchants, and may at the same time order the property to be appraised and sold, with or without previous notice, and the proceeds to be paid into Court, or may make such order as he shall think just. Actions *in rem*.

14. Where the writ is indorsed with a claim on a bond within 8 & 9 Will. III. c. 11., 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. On a bond. 8 & 9 Will. III. c. 11.

The bonds here mentioned are in the nature of a penalty for the non-performance of the covenants or agreements in any indenture, deed, or writing contained. Section 8 of 8 & 9 Will. III. c. 11, provides for the assessment of damages, see Order XXII. 1. And by 3 & 4 Will. IV. c. 42. s. 16, the writs of inquiry under the preceding statute are to be executed before the Sheriff unless otherwise ordered. As to payment into Court in these cases see Order XXII. 1.

ORDER XIV.

Leave to sign Judgment and Defend where Writ specially Indorsed.

The affidavit in support of a summons under Order XIV. 1, must be made by some person who can "swear positively to the facts verifying the cause of action and the amount claimed." Actions for recovery of land are included. The summons is returnable in four days.

1. Where the defendant appears to a writ of summons specially indorsed under Order III., Rule 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, *XIV.* 1. Summons for Judgment.

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.

The provisions of this rule ought not to be exercised save where the case is quite free from doubt. If he can satisfy the Court that he has a good defence on the merits, the defendant is entitled to be let in to defend without having any terms imposed on him. If he only discloses facts which may entitle him to defend, then such terms may be imposed as may be thought fit, under Rule 6 of this Order (*Ray* v. *Barker*, 4 Ex. D. 279. A.; *Lloyd's Banking Company* v. *Ogle*, 1 Ex. D. 262; *Runnacles* v. *Mesquita*, 1 Q. B. D. 416). If the defendant can on hearsay evidence suggest a defence, or show some probability of either proving it himself, or getting it from the plaintiff by interrogatories, he ought to be allowed to defend (*Harrison* v. *Bottenheim*, 26 W. R. 362. A). Where a defendant alleges that a bill of exchange was drawn in fraud of him, he is entitled to unconditional leave to defend, for the onus of proof that he is a *bonâ fide* holder for value is cast upon the plaintiff (*Fuller* v. *Alexander*, 47 L. T. 443).

When the defendant desired to cross-examine the plaintiff's clerk as to whether he had duly posted the letter by which the defendant was sought to be bound, he was allowed to defend for that purpose on paying the money into Court (*Carta Para Co.* v. *Fastnedge*, 30 W. R. 880. A).

If the defendant have paid money into Court as a condition for obtaining leave to defend, he is entitled to have his money returned on obtaining judgment in the Divisional Court, notwithstanding that notice of appeal has been given (*Yorkshire Banking Company* v. *Beatson*, 4 C. P. D. 213. A).

Payment into Court of the amount indorsed upon the writ will not entitle a defendant to defend as a matter of right (*Crump* v. *Cavendish*, 5 Ex. D. 211. A). Nor will a counter-claim which is not sufficiently connected with the cause of action (*Ang. Italian Bank* v. *Davies*, 38 L. T. 197). The beneficial provisions of Order XIV. 1. ought not to be frittered away. In this case the Court considered the counter-claim of an unsubstantial character.

An order to sign judgment under this Rule is an interlocutory order (*Standard Discount Company* v. *Lagrange*, 3 C. P. D. 67. A).

When leave to defend is given, statement of defence must be delivered within eight days (Order XXI. Rule 8).

Where leave to defend has been given the Court of Appeal are reluctant to interfere (*Papayanni* v. *Coutpas*, W. N. 1880, 109. A).

This rule has no application to the case of a widow who has given bills during her coverture (*Ortner* v. *Fitzgibbon*, 50 L. J. Ch. 17).

Should the affidavit in defence admit part of the claim, the Master has no power to make the leave to defend conditional upon payment within a limited time of the sum admitted (*Dennis* v.

Seymour, 4 Ex. D. 80). The proper order is that plaintiff have judgment for the amount admitted, defendant to be at liberty to defend as to the residue (*Dennis* v. *Seymour*, 4 Ex. D. 80). An order refusing leave to defend, except on payment or security for a stated amount within a given period, should not be made when defendant denies the accuracy of the account upon which the special indorsement is founded (*Wallingford* v. *Mutual Society*, 5 App. Cas. 685).

Proceedings against a solvent debtor, where it is expected that there is no defence to the action, should be taken under this rule, and not by Debtor's Summons. It was not intended to make the Court of Bankruptcy a tribunal to decide ordinary actions of debt. Such summonses are always more or less vexatious when the man who is summoned is solvent (*Ex parte Sewell*, 13 Ch. D. 266. A; *Ex parte Jacobson*, 22 Ch. D. 314. A). This rule is intended to apply to those cases which are clearly undefended; where any doubt exists leave to sign judgment ought not to be given (*Thompson* v. *Marshall*, 28 W. R. 220. A).

In *Durrant* v. *Ricketts*, 8 Q. B. D. 177, the Court refused to allow final judgment to be signed against a married woman under this rule, in an action for the price of goods supplied to her during her coverture, inasmuch as there could be no judgment against a married woman personally in respect of such a claim. See note to Order XVI. 16.

XIV. 2. Application for leave.

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.

XIV. 3. Defendant may show cause.

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. 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: or to produce any leases, deeds, books, or documents, or copies of or extracts therefrom.

Upon an application by the plaintiff for leave to sign judgment under this order, the Judge may in his discretion allow the plaintiff to file an affidavit in reply to the defendant's affidavit (*Davis* v. *Spence*, 1 C. P. D. 719; *Girvin* v. *Grepe*, 13 Ch. D. 174; *Rotherham* v. *Priest*, 49 L. J. 104).

XIV. 4. Defence as to part.

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 sus-

pending 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.

Where a portion of a claim is admitted to be due, the Master has no power to make an order that the defendant's leave to defend should be conditional on his payment of the amount admitted. The plaintiff should have judgment for the amount admitted to be due, the defendant leave to defend as to the residue (*Dennis* v. *Seymour*, 4 Ex. D. 80; *Hanmer* v. *Flight*, 24 W. R. 346; 35 L. T. 127).

XIV. 5. Defence good as to one of several defendants.

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 execution upon such judgment without prejudice to his right to proceed with his action against the former.

XIV. 6. Leave to defend; terms.

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.

See note to Rule 1, *ante*.

ORDER XV.

Application for an Account.

It may be observed that a slight but not unimportant alteration has been made in the wording of the first Rule. The plaintiff is to be entitled to an order for "proper" accounts, not as in the previous Rule the "account claimed."

XV. 1. Summary order, when.

1. Where a writ of summons has been indorsed for an account, under Order III., Rule 8, 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, shall be forthwith made.

As to inquiries and accounts see Order XXXIII., *post*.

An order for accounts under this Rule after issuing the writ in a foreclosure action and appearance entered by the defendant, should not prejudice the trial of any issues which might be raised by subsequent pleadings. The words "and the Judge not requiring any trial of this action other than this application," given in the common form in "Seton, 4th ed., p. 8," should not be used indiscriminately (*Gatti* v. *Webster*, 12 Ch. D. 771).

Under this rule any matter required on further consideration as to costs may be proved by affidavit (*Beaney* v. *Elliot*, W. N. 1880, 99).

A claim against an executor for an account on the footing of wilful default is not an ordinary account, and therefore it does not come within Rule 8 of Order III., and consequently a summary order cannot be made under this rule (*Re Bowen, Bennett* v. *Bowen*, 20 Ch. D. 538). By virtue of Rules 1 and 6 of Order XXXV., a District Registrar has power to make an order for an account, and if the order so direct (but not otherwise) the account can be taken in the District Registry (*Ibid.*). In making a report to the Court under sec. 66 of the Judicature Act, 1873, of the result of an account in an administration action, the Registrar ought to follow the form of a Chief Clerk's certificate, and to state in the report the persons who were present before him, and the materials on which he proceeded (*Ibid.*).

The rule that a person desiring to cross-examine upon an account must specify the particular items of the account upon which he wishes to cross-examine, applies as well to a plaintiff who has brought in an account as to an ordinary accounting party (*Bates* v. *Eley*, 1 Ch. D. 473).

XV. 2. How and when obtained.

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.

As to the proper affidavit to file on default of appearance see Order XIII. 2.

As to service of notice of order on persons interested see Order XVI. 40.

ORDER XVI.

Parties.

This Order is much more comprehensive than its predecessor. It is divided into six parts. The first part deals with parties generally. It has been settled how a counter-claim is to be dealt with where a plaintiff has been improperly joined (r 3). It will be observed that in the last clause of Rule 11 the words used are "writ of summons or notice," instead of "summons or notice." The second part, which treats of partners, has been amended to meet the case of the members of the firm not being the same as at the time the cause of action accrued (r 14). Parts 3 and 4 consolidate the manner of procedure in the case of persons under

disability, and also of paupers. In Part 5, which relates to the administration and execution of trusts, a rule (45) has been inserted as to making the heir-at-law a party, and another (46) as to when to proceed in the absence of any person representing the estate. The provisions as to parties contained in 15 and 16 Vict. c. 86, s. 42, have been set out almost without alteration, instead of being incorporated as heretofore. Part 6 refers to third party procedure, which has been entirely remodelled.

I. *Generally.*

XVI. 1. Who may be joined as plaintiffs.

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. 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.

Under this Rule, persons who have separate causes of action arising out of the same state of facts, may be joined as plaintiffs in the same action (*Booth* v. *Briscoe*, 2 Q. B. D. 496. A; *Appleton* v. *The Chapel Town Paper Co.*, 45 L. J. Ch. 276). Such joinder would generally be for the benefit of the defendant, but in case it were calculated to embarrass him in his defence, the Court will have power to deal with the matter under Rules 2 or 15, *post*. The practice of the Court of Chancery, before the Judicature Act, was that a plaintiff could not claim inconsistent alternative relief. This practice is now altered (*Child* v. *Stenning*, 5 Ch. D. 695. A; *Honduras Railway Co.* v. *Tucker*, 2 Ex. D. 301. A).

Any objection to the joinder of parties should be taken at the earliest opportunity (*Sheehan* v. *G. E. Ry. Co.*, 16 Ch. D. 59).

The joinder of plaintiffs, when the case of one depends upon, and only arises on the failure of the other, is open to serious objection (per Hall, V.C., in *Att.-Gen.* v. *Durham*, 46 L. T. 20).

XVI. 2. Proper plaintiff may be substituted.

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, 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.

The application must not be made *ex parte* (*Tildesley* v. *Harper*, 3 Ch. D. 277. A). Where the plaintiff was equitable assignee of a chose in action, an application to add the name of the assignor as co-plaintiff will only be granted upon proof of his consent, or

that he has been communicated with, and all terms necessary for his protection offered to him (*Turquand* v. *Fearon*, 4 Q. B. D. 280; but see *The Val de Travers Co.* v. *The London Tramways Co.*, 40 L. T. 133). A shareholder of a company was allowed to add the company as plaintiffs, without the production by him of any authority to use their name (*Duckett* v. *Gover*, 6 Ch. D. 82, explained in *Mason* v. *Harris*, 11 Ch. D. 106. A); but where it is shown that this is contrary to the wish of the majority of the shareholders, the Court will direct the company to be struck out as plaintiffs, and may add them as defendants (*Silber Light Co.* v. *Silber*, 12 Ch. D. 717). A *bonâ fide* mistake includes a mistake of law as well as of fact (*Duckett* v. *Gover*, *suprà*); but it must be a mistake, not an erroneous view of the law, which the parties have elected to argue (*Clowes* v. *Hilliard*, 4 Ch. D. 413).

Where an order is made giving leave to bring an action in the name of a company on giving an indemnity, the giving the indemnity is a condition precedent (*Cape Breton Co.* v. *Fenn*, 50 L. J. Ch. 321. A).

Parties have been added in an action for specific performance of an agreement for a lease, plaintiff having no power to lease without their concurrence (*Long* v. *Crossley*, 13 Ch. D. 388).

An order giving leave to strike out the name of one party, and general liberty to amend, does not authorize the striking out of the name of another party also (*Wymer* v. *Dodds*, 11 Ch. D. 438).

Misjoinder. counter-claim.

3. Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a counter-claim or set-off, he may obtain the benefit thereof by establishing his set-off or counter-claim as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon.

XVI. 3. Who may be joined as defendants.

4. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. 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.

This is a large extension of the jurisdiction of the Chancery Division (see *Child* v. *Stenning*, 5 Ch. D. 695. A; XVIII. 1).

Before joining defendants in the alternative, it is well to remember that in the event of being successful against one, plaintiff may nevertheless be obliged to pay the costs of the other (*Child* v. *Stenning*, 7 Ch. D. 413; but he may be allowed to include these costs in the general costs of the action (*Ibid.* 11 Ch. D. 87. A).

Separate causes of action against different defendants, even though inconsistent with each other, may be joined. Cockburn, C. J., seemed to think it doubtful whether the plaintiff would be entitled to do this if the redress claimed against them differed in

substance (*Honduras Railway Co.* v. *Tucker*, 2 Ex. D. 301. A). In *Howell* v. *West*, W. N. 1879, 90. A, a plaintiff was allowed to join a cause of action against a schoolmaster for breach of contract, in not keeping a boy exclusively under his own management, with one against the medical attendant for negligence in the exercise of his profession.

The Courts of the present day are not disposed to encourage the practice of making persons defendants for the purpose of rendering them liable to costs in case the principal defendant may be unable to pay them (*Mathias* v. *Yetts*, 46 L. T. 502. A; *Att.-Gen.* v. *Vestry of Bermondsey*, 23 Ch. D. 67. A).

Leave will not be given to a person to appeal from an order made in an action to which he is not a party, unless his interest is such that he might have been made a party by service (*Crawcour* v. *Salter*, 30 W. R. 329. A).

XVI. 4. Defendant interested as to part.

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.

This was not the practice of the Court of Chancery previous to the Judicature Acts (*Cox* v. *Barker*, 3 Ch. D. 359. A).

As to severing different causes of action see Order XVIII. 8.

XVI. 5. Joint and several liability.

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.

XVI. 6. Joinder in doubtful cases.

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.

See Note to Rule 4, *ante*.

XVI. 7. Trustees, &c., to represent estate.

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.

This rule applies to actions under the Partition Acts ; and the trustees may be treated as sufficiently representing the beneficiaries (*Simpson* v. *Denny*, 10 Ch. D. 28 ; *Stace* v. *Gage*, 8 Ch. D. 451) ; and to the trustees of an equity of redemption in a redemption action (*Mills* v. *Jennings*, 13 Ch. D. 639. A, affirmed in H. L. 6 App. Cas. 698, *sub. nom. Jennings* app. *Jordan* resp.). But not to the trustees of an equity of redemption in a foreclosure action, unless they have money in their hands available for redemption (*Ibid.* 13 Ch. D. 649. A ; *Goldsmid* v. *Stonehewer*, 9 Hare App. xxxviii.).

An action will not lie by a *cestui que* trust against the solicitor of his trustees for taxation of his bill of costs paid by the trustees, the proper remedy being under sec. 39 of the Solicitors' Act, 1843 (*Spencer* v. *Hart*, 45 L. T. 645. A).

Where the beneficiaries were unnecessarily made parties to the action their costs were disallowed (*Cooper* v. *Vesey*, 20 Ch. D. 635. A).

A residuary legatee to whom the residuary estate has been paid over may be sued by a creditor without joining the executor (*Hunter* v. *Young*, 4 Ex. D. 256. A).

XVI. 9. Parties having the same interest.

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 authorized by the Court or a Judge to defend in such cause or matter, on behalf or for the benefit of all persons so interested.

A plaintiff suing under this Rule must indorse his writ, on behalf of himself and all others, for whose benefit he is suing (*Worraker* v. *Pryer*, 2 Ch. D. 109 ; *Fryer* v. *Royle*, 5 Ch. D. 540 ; *Eyre* v. *Cox*, 24 W. R. 317 ; *Re Vincent*, 26 W. R. 94).

Where the plaintiff sued on behalf of himself and the other owners of a ship, it was held that the defendant was not entitled to have the other owners joined as parties, in order to have the security of their liability for costs (*De Hart* v. *Stevenson*, 1 Q. B. D. 313).

In a creditor's action for the administration of the personal estate of a deceased person, the plaintiff need not, since the 15 & 16 Vict. c. 86, s. 45, sue on behalf of all the creditors in order to obtain a general account of debt (*Re Blount*, *Naylor* v. *Blount*, 27 W. R. 865).

Where a general right is fairly contested and established against a representative class, the class is bound by representation so far as the general right is tried and established (*Commissioners of Sewers* v. *Gellatly*, 3 Ch. D. 615 ; 45 L. J. Ch. 788).

Where a dissentient bondholder had been made a defendant, but not in a representative capacity, another who shared his views and was desirous of representing a class was added as defendant for that purpose (*Frazer* v. *Cooper Hall*, 21 Ch. D. 718).

XVI. 12. Probate Actions.

10. Subject to the provisions of the Acts and these Rules, in all Probate actions the rules as to parties, in use in the Court of Probate previously to the commencement of the Principal Act, shall continue to be in force.

The practice as to citations to see proceedings remains unaltered (*Kennaway* v. *Kennaway*, 1 P. D. 148).

XVI. 13. Misjoinder of.

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.

In *De Hart* v. *Stevenson*, 1 Q. B. D. 313, the Court refused to allow persons to be added as plaintiffs merely that the defendant might have the security of their liability for costs. And as to defendants the Courts of the present day are not disposed to encourage the practice of making persons parties for the purpose of rendering them liable to costs in case the principal defendant may be unable to pay them (*Mathias* v. *Yetts*, 46 L. T., 502. A; *Attorney-General* v. *Vestry of Bermondsey*, 23 Ch. D. 67. A).

A plaintiff of whom it has been decided that he has no interest in the matter will not be allowed by amendment to introduce new plaintiffs and make an entirely new case (*New Westminster Brewery* v. *Hannah*, W. N. 1877, 35. A), and the rule will not enable a plaintiff who has brought an action for a private nuisance as an injury to his own property, to substitute for their mutual convenience a new plaintiff whose property may be similarly injuriously affected (*Dalton* v. *St. Mary Abbotts*, 47 L. T. 349). New parties cannot be added after final judgment (*Attorney-General* v. *C. of Birmingham*, 15 Ch. D. 423. A), unless by their own consent (*Re Mason*, W. N. 1883, 147).

A party improperly joined should apply to be struck out under this rule at the first possible moment (*Vallance* v. *The Birmingham Land Corp.*, 2 Ch. D. 372; *Sheeham* v. *G. E. R.*, 16 Ch. D. 59).

In *Lovesy* v. *Smith*, 15 Ch. D. 655, Denman, J., gave judgment against the parties who were represented, and delayed the drawing up of the judgment for fourteen days for notice to be served on others. An order giving leave to strike out the name of one party, and general liberty to amend, does not authorize the striking out of the name of another party also (*Wymer* v. *Dodds*, 11 Ch. D. 438). As to adding parties where there has been a devolution of interest *pendente lite*, see *Kino* v. *Rudkin*, 6 Ch. D. 160; Order XVII. 3, note, *post*.

The consent required under this rule need not be given in writing (*Cox* v. *James*, 19 Ch. D. 55).

In an action for libel against the publisher of a newspaper, the proprietor was allowed to be added as a defendant, on the terms that when joined he should have the same rights as he would have had if the action were then commenced (*Edward* v. *Lowther*, 45 L. J. 417).

The Court should be able to see that the presence of a party is necessary to adjudicate upon and settle all the questions involved in the action; this portion of the rule will be construed strictly, to prevent plaintiffs being harassed, by defendant forcing them to include in their actions persons against whom they do not seek to proceed; and to mix up their rights as against one person with questions of a highly complicated nature, arising between themselves and others (*Norris* v. *Beazley*, 2 C. P. D. 80; *Harry* v. *Havey*, 2 Ch. D. 721).

The vendor of goods and the endorsee of a bill given for the price, ought not to be joined in actions to recover the price, and also upon the dishonoured bill (*Smith* v. *Richardson*, 4 C. P. D. 112).

If a defendant, who might have had a proper case for being discharged under this rule, does not take advantage of it, but identifies his defence with that of his co-defendant and incurs expense in so doing, he will not necessarily be exonerated from liability to costs, should the action be compromised by the principals (*Twinbarrow v. Braid*, W. N. 1878, 169).

Although the original action did not survive against the personal representative, the administrator was allowed to be joined on allegation that the estate of the intestate had been benefitted (*Ashley* v. *Taylor*, 10 Ch. D. 768).

One of several mortgagees may maintain a foreclosure action making the others co-defendants, if they be unwilling to be joined as co-plaintiffs, or have done some act to preclude them (*Luke* v. *S. Kensington Hotel*, 11 Ch. D. 121. A).

Parties have been added in an action for specific performance of an agreement of a lease, plaintiff having no power to lease without their concurrence (*Long* v. *Crossley*, 13 Ch. D. 388).

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. *XVI.* 14. Amendment.

An alteration in the parties to an action will not be made on an *ex parte* application (*Tildesley* v. *Harper*, 3 Ch. D. 277. A).

In the *Nobel's Co.* v. *Jones*, 49 L. J. Ch. 727, Bacon, V.C., refused to allow a party to be added as co-plaintiff, as there was

no mistake or misunderstanding to justify the application and the point had been raised on the pleadings.

Such an application should be made at the earliest possible moment (*Sheehan* v. *G. E. Ry. Co.* 16 Ch. D. 59, Rule 11, note, *ante*); when, however, both parties were in error, the application was granted at the hearing (*Ruston* v. *Tobin*, 49 L. J. Ch. 262).

XVI. 15. Service on new defendant.

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.

This rule does not meet the case of consolidated actions (Jessel, M. R., in *Culley* v. *Wortley*, 4 Ch. D. 181), where, however, the Court made an order suitable to the circumstances.

Where a sole plaintiff died, and his executors obtained an order of revivor, and also obtained leave to add a new defendant, they were directed to serve on such new defendant a copy of the original writ, and the order to revive, and the order adding a new defendant (*Austin* v. *Bird*, W. N. 1881, 129. A).

II. *Partners.*

XVI. 10. Firm, members of.

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 co-partnership which has been dissolved, to the knowledge of the plaintiff, before the commencement of the action, the writ of summons shall be served upon every person sought to be made liable.

Since the Judicature Acts a Cost Book Mining Co. may sue and be sued by its partnership name (*Escott* v. *Grey*, 47 L. J. 606).

This rule obviates the difficulty experienced in *Ex parte* Young, 19 Ch. D. 124. A; *Davis* v. *Morris*, 10 Q. B. D. 436; *Ex parte* Blain, 12 Ch. D. 522. A.

XVI. 10a.

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.

As to a partner residing out of the Jurisdiction see Order IX. 7.

III. *Persons under Disability.*

16. Infants may sue as plaintiffs by their next friends, in the manner heretofore practised in the Chancery Division, and may, in like manner, defend by their guardians appointed for that purpose. Married women may sue and be sued as provided by the Married Women's Property Act, 1882. *XVI.* 8. Infants. Married women.

Infant.

Plaintiff.

In *Cox* v. *Wright*, 9 Jur. N. S. 982, Kindersley, V. C., said: "I am of opinion that there should be a next friend in every case, except where the matter is of such urgency that the interest of the infant requires that the application should be made without."

The object of appointing a next friend is to give security for costs to the defendant; but, says James, L. J., in *Ex parte Brocklebank*, 6 Ch. D. 360. A: if the suit has been commenced without the intervention of a next friend, and the defendant chose to appear, I know of no reason why it should not be prosecuted without a next friend.

A next friend cannot sue in *formâ pauperis*, but ought not to be discharged for poverty (*Anon.* 1 Ves. 409; *Squirrel* v. *Squirrel*, 2 Dick. 765; *Davenport* v. *Davenport*, 1 S. & S. 101; *Hind* v. *Whitmore*, 2 K. & J. 458; confer *Lindsey* v. *Tyrrell*, 2 De G. & J. 10. A.

An inquiry may be directed as to whether the action is for the benefit of the infant, and as to the fitness of the next friend (*Nalder* v. *Hawkins*, 2 My. & Keen, 243. A). When a Judge directs an inquiry whether a suit instituted by a next friend on behalf of an infant is for the benefit of the infant, the Court of Appeal will not interfere with the judicial discretion of the Judge (*Pensoti* v. *Pensoti*, 30 L. T. 348. A). The application may be by motion, notice being given to the next friend (*Thomas* v. *Elsom*, W. N. 1877, 177). The appointment of a guardian *ad litem* obtained by fraud or collusion will be set aside (*Percival* v. *Cross*, 52 L. J. P. D. 16.).

The retiring next friend may be required to give security to the defendant for costs already incurred (*Davenport* v. *Davenport*, 1 S. & S. 101). The application to substitute a new next friend in lieu of one retiring is made by summons on notice to the defendants (Dan. "Ch. Pr." 6th. ed. vol. i. 112). As to the manner of appointing a new next friend in consequence of the death, incapacity, or removal of the next friend (*Ibid.* 113).

The Court will change the next friend—(1) if he will not proceed with the action, provided it is satisfied that it is a proper case to go on with (*Ward* v. *Ward*, 3 Mer. 706); (2) if he will not appeal when the infant desires it (*Du Puy* v. *Welsford*, 28 W. R. 762); (3) where he has an interest adverse to the infant (*Peyton* v. *Bond*, 1 Sim. 390; (4) if he does not do his duty (*Russell* v. *Sharpe*, 1 J. & W. 482).

The name of an infant plaintiff may be struck out, that he may be made a defendant, if such proceeding will be for his benefit (*Tappen* v. *Norman*, 11 Ves. 563). This order may be obtained upon summons on notice (Dan. "Ch. Pr." 6th Ed. vol. i. 110).

As to proceedings to be taken by the infant plaintiff on coming of age (*Ibid.* 114).

As to service of writ on infant defendant see Order IX. 4. Defendant.

An infant married woman cannot defend, either separately or jointly with her husband without a guardian *ad litem* (*Colman* v. *Northcote*, 2 Hare, 147).

The Court prefers to appoint some adult and competent person, already a party in the cause, not having an adverse interest, rather than a solicitor or other stranger (*Anon.* 9 Hare, App. xxvii.). The guardian *ad litem* should not be out of the jurisdiction (*Anon.* 18 Jur. 770).

On default of appearance the plaintiff shall apply to the Court for the appointment of a guardian *ad litem* to the infant defendant. The application may be made by motion on notice as prescribed by Order XIII. 1. Where the infant was taken out of the jurisdiction to avoid service of notice, substituted service on the persons who seemed to act for the parents of the infant was allowed (*Lane* v. *Hardwicke*, 5 Beav. 223). Where the father was dead, and the infants living with their mother and her second husband, service of notice at the house of the mother and stepfather was held sufficient (*Hitch* v. *Wells*, 8 Beav. 576). Service on an infant undergraduate and on the head of his college was held sufficient where plaintiff stated in his affidavit that he was unable to discover the parents of the infant or their residence, and the family solicitor declined to give any information (*Christie* v. *Cameron*, 2 Jur. N. S. 635).

By Order XVI. 44 notice of a judgment or order on an infant shall be served in the same manner as a writ of summons in an action. For service of writ see Order IX. 4.

Allegations not denied, contained in pleadings against infants, not to be deemed admitted (Order XIX. 13).

As to setting down a special case where infant party see Order XXXIV. 4.

As to applications to vary an order to add parties on devolution of interest see Order XVII. 6, 7.

As to the time allowed for appeal to the House of Lords see Appeals to House of Lords, Standing Order I. (App. Jur. Act, 1876, s. 4.)

Generally. A compromise on behalf of infants is to be obtained on petition supported by an affidavit of a solicitor that counsel's opinion has been given that the compromise is for the benefit of the infant (*Gray* v. *Paull*, 46 L. J. Ch. 818). The Court cannot compel a compromise not assented to by the guardian of an infant (*Re Birchall*, 16 Ch. D. 41. A). In the Probate Division the Court refused to sanction a compromise on behalf of a married woman and some infant children on the ground that as no writ had been issued no action existed (*Norman* v. *Staines*, 29 W. R. 744).

In *Lempriere* v. *Lange*, 12 Ch. D. 675, where an infant had obtained a lease of a furnished house by representing that he was of full age, an injunction was granted to restrain him from parting with the furniture, an appearance was entered in his behalf, and the official solicitor was appointed guardian.

In a partition action the request for sale on the part of an infant under section 6 of the Partition Act, 1876, may be made by his next friend or guardian *ad litem*, as being the person authorized to act on his behalf in the action, the word guardian in the section meaning *guardian ad litem* (*Rimington* v. *Hartley*, 14 Ch. D. 630).

Married Women.

Married Women. Before the Married Women's Property Act, 1882, a married woman suing for her separate estate had to sue by her next friend, making her husband a co-defendant (*Roberts* v. *Evans*, 7 Ch. D.

830). Now, by the Married Women's Property Act, 1882, sec. 1. § 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 or being sued, either in contract or 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.

The Married Women's Property Act, 1882, enables a married woman to bring an action in her own name without giving security for costs, and although the cause of action arose before the Act came into operation (*Severance* v. *C. S. S. A.* 48 L. T. 485; *Threlfall* v. *Wilson*, 8 P. D. 18; *James* v. *Barraud*, 31 W. R. 786). A married woman, therefore, who is of age, will no longer require the leave of the judge to sue or defend without her husband and without a next friend. It is optional for the plaintiff to make the husband a co-defendant, but he will do so probably at the risk of having to pay the costs of the husband if wrongly or unnecessarily joined.

It will be observed that there are now several classes of married women, whose rights and liabilities may vary with respect to their separate estate, according to the date of their marriage or the acquisition of property, having regard to the several Married Women's Property Acts of 1870, 1874 and 1882.

As to the wife's contracts entered into after marriage, according to the provisions of the Married Women's Property Act, 1882:—

By section 1, sub-section 3 of this Act, "every contract entered into by a married women 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." It would seem then that, until the contrary be shown, or unless the contract be such as to raise the presumption that the wife was only acting as agent of the husband, she should be sued alone, without joining the husband. When necessary the husband may be made a party at any time, under Order XVI. 11. As to the wife's authority to pledge the husband's credit see *Debenham* v. *Mellon*, 6 App. Cas. 24; *Drew* v. *Nunn*, 4 Q. B. D. 661. A; Smith's "Law of Contracts," 7th ed., 468; *Hancocks* v. *Lablache*, 3 C. P. D. 197. A.

The contracts of a married woman will 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 (M. W. P. Act, 1882, c. 75, s. 1, § 4). This will not affect property over which there is a restraint on anticipation (*Ibid.* s. 19; *Pike* v. *Fitzgibbon*, 17 Ch. D. 454. A). It would still seem proper to insert in the judgment an inquiry as to the separate property of the married woman, and a declaration that the plaintiff is entitled to be paid the sum found to be due, and costs out of the separate property of which she is possessed, or to which she may be entitled, or which she might afterwards acquire, with regard to which there is no restraint on anticipation. As to Orders before the Act see *Pike* v. *Fitzgibbon*, 17 Ch. D. 454. A; *Barber* v. *Gregson*, 49 L. J. 731; *Durrant* v. *Ricketts*, 8 Q. B. D. 177; *McQueen* v. *Turner*, 30 W. R. 80.

By section 19, "no restriction against anticipation contained in a 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 woman than a like

settlement or agreement for a settlement made or entered into by a man would have against his creditors."

In *Robinson* v. *Pickering*, 16 Ch. D. 662. A, it was held that a creditor who had got no judgment against the separate property of the married woman could not interfere to prevent her from dealing with her property, pending the trial of the action. By sec. 1, § 5, of M. W. P. Act, 1882, "a 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*." In such a case a creditor could have the same remedies in bankruptcy as regards dealings with the debtor's property as he would have against a man.

The tendency of the Courts at the present time is to avoid sending a married woman to prison for debt (*Davis* v. *Ballenden*, 46 L. T. 797. A).

As to the torts of the wife committed after marriage:—

The wife can sue in tort in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant under sec. 1, § 2, with this exception, that by sec. 12 she can only sue the husband in tort where her separate estate is affected.

None of the provisions of the Married Women's Property Act, 1882, seem to affect the old common law liability of the husband for the torts of his wife. (As to his liability see Add. on Torts, 5th ed., pp. 107, 108.) The plaintiff, therefore, may either sue the husband and wife jointly, or (if her separate property be considered sufficient to satisfy the damages claimed) the wife alone.

As to the wife's antenuptial debts, contracts and torts:—

By section 13 of the same Act the wife continues liable for all such debts, contracts and torts to the extent of her separate property.

By section 14 the husband is liable for the debts of his wife contracted, and for all contracts entered into, and for all wrongs committed by her before marriage, to the extent of all property acquired by him, or to which he became entitled through his wife. By section 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, if the plaintiff in the action 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, 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.

A married woman who is an executrix, administratrix, or trustee alone, or jointly with any other person or persons, may sue or be sued without her husband, as if she were a *feme sole* (M. W. P. Act, 1882, sec. 18).

When husband and wife are sued jointly they must both be served (Order IX. 3).

As to setting down a special case where married woman a party (Order XXXIV. 4).

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. *XVIII.* Lunatics, &c.

Plaintiff. A lunatic sues by his committee, unless his interest be adverse, in which case he would sue by a next friend—the committee being made a defendant. A person of unsound mind sues by a next friend.

If an action on behalf of a lunatic be brought by his committee, the latter sues in his own name as plaintiff, the lunatic being joined as co-plaintiff, but if brought by a next friend it is instituted in the name of the person of unsound mind as plaintiff suing by his next friend (Dan. "Ch. Pr." 6th ed. 117). In *Re Gordon*, L. R. 10 Ch. App. 192, where the settlor became lunatic two years after making a settlement of his property, a son who took no benefit under the settlement was allowed to bring an action at his own risk, as next friend of the lunatic, to impeach the settlement—but he was not required to give security for costs. The committee of the lunatic was made a formal defendant.

A person who constitutes himself next friend for the purpose of bringing an action to protect the property of a lunatic not so found, does so at his own risk, and must be prepared to vindicate the propriety of his proceedings. Thus, a next friend who had brought an action on behalf of a person of unsound mind, was ordered to pay the costs of all proceedings subsequent to the time when the person of unsound mind was found lunatic (*Beall* v. *Smith*, L. R. 9 Ch. App. 85).

A person who has become permanently insane, but has not been found so by inquisition, may maintain a suit by his next friend for the protection of property in which he is interested as partner (*Jones* v. *Lloyd*, 18 Eq. 265), though he may not be able to get a decree for final dissolution of the partnership without the appointment of a committee (*Ibid.*).

Persons of weak minds may sue by their next friend (*Light* v. *Light*, 25 Beav. 248).

An action may be dismissed if commenced in the name of a plaintiff who is in a state of mental incapacity. Semble: A suit being properly instituted, the proceedings ought not to be stayed on the ground of the plaintiff subsequently becoming imbecile (*Wartnaby* v. *Wartnaby*, Jac. 377).

After an action is commenced, if the plaintiff become lunatic an application should be made, under Order XVII. 4, to carry on the proceedings by his committee. If the committee die or be changed application to substitute the new committee should be made under the same rule (*Green* v. *Pratt*, 48 L. J. Ch. 681). A

committee before being released should be required to give security for the costs already incurred (*Harland* v. *Garbutt*, W. N. 1881, 81).

A person who, without any authority, commences an action as next friend of plaintiff, whom he alleges to be of unsound mind, but who is in reality sane, will be ordered to pay the costs of all parties, and the action will be dismissed (*Palmer* v. *Halesby*, L. R. 3 Ch. App. 732).

An action cannot be brought by a next friend on behalf of a person of unsound mind not so found for dealing with his real estate (*Halfhide* v. *Robinson*, L. R. 9 Ch. App. 375; *Re Clough*, 15 Eq. 284).

The insanity of a husband or wife is not a bar to a suit by the committee for the dissolution of the lunatic's marriage (*Baker* v. *Baker*, 5 P. D. 152).

The affidavit of a lunatic requires to be supported by evidence showing his capacity to make one (*Spittle* v. *Walton*, 11 Eq. 420).

Defendants. A person of unsound mind defends by a guardian *ad litem*—*e.g.*, in *Bonfield* v. *Grant*, 11 W. R. 275; the brother, who was a co-defendant, but had no adverse interest, was appointed at the instance of the plaintiff. Upon making out a strong case a guardian *ad litem* may be appointed of a person incapable through age and infirmity (*Newman* v. *Sharpe*, 11 W. R. 764; *Steel* v. *Cobb*, 11 W. R. 298).

The guardian *ad litem* must be a fit and proper person; a relation, connection, or friend of the family will be preferred to a mere volunteer (*Foster* v. *Cautley*, 10 Hare App. xxiv.). The Court will not appoint a person resident abroad to be guardian *ad litem* (*Hartland* v. *Atcherley*, 7 Beav. 53).

On default of appearance by a defendant of unsound mind the plaintiff must apply under Order XIII. 1 for the appointment of a guardian *ad litem*.

A lunatic defends by his committee; a guardian *ad litem* may be appointed to defend the suit where the interest of the committee is adverse—*e.g.*, where he is plaintiff and the lunatic defendant (*Snell* v. *Hyatt*, Dick, 287).

If a committee be appointed during the action he should be made a party under Order XVII. 4 (*Green* v. *Pratt*, 48 L. J. Ch. 681).

As to service of a writ on a lunatic or person of unsound mind see Order IX. 5, *ante*, *Than* v. *Smith* (*Ibid.*).

As to service of a notice of a Judgment or Order on a person of unsound mind see Order XVI. 44.

Allegations not denied contained in pleadings against lunatics and persons of unsound mind not deemed to be admitted (Order XIX. 13).

As to setting down a special case where party of unsound mind see Order XXXIV. 4.

As to applications to vary an order to add parties on devolution of interest see Order XVII. 6, 7.

As to the time allowed for appeal to the House of Lords see Appeals to House of Lords, Standing Order I. (App. Jur. Act, 1876, s. 4.)

As to how the costs of the guardian *ad litem* are to be provided for when he is one of the solicitors to the Court see Order LXV. 13.

Appearance by infant.

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., with such variations as circumstances may require.

On petition or summons.

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.

Authority to be filed.

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.

A person who signs such authority for the use of his name as next friend renders himself *primâ facie* liable for costs (*Re Flower*, 19 W. R. 578). An order against a next friend for payment of costs is final, unless there be some reservation in the order (*Caley* v. *Caley*, 25 W. R. 528). Nothing short of a dishonest intention will be sufficient to prevent the next friend from being reimbursed out of the infant's estate. No degree of mistake or misapprehension will be sufficient (*Whittaker* v. *Marlar*, 1 Cox, 285; *Anderton* v. *Yates*, 5 De G. & S. 208; *Clayton* v. *Clarke*, 3 De G. F. & J. 687. A).

As to how the costs of the guardian *ad litem* are to be provided for when he is one of the solicitors to the Court see Order LXV. 13.

Evidence by consent.

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 disability 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.

IV. *Proceedings by or against Paupers.*

This part is adapted from the old Chancery procedure.

Who may sue as.

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, his wearing apparel and the subject-matter of the cause or matter only excepted.

Case for 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.

Affidavit thereon.

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.

Fees.

25. A person admitted to sue or defend as a pauper shall not be liable to any court fee.

Counsel and 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.

Not to take fees.

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.

Dispaupered, when.

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.

Motions to be signed.

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. Solicitor's responsibility.

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. Taxation of costs.

V. *Administration and Execution of Trusts.*

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. *XVI.* 9a. Class, how represented.

In an administration action, certain persons were appointed as representatives of various classes, and inquiries were directed; it turned out afterwards that some of these inquiries were unnecessary: the Court thereupon directed a summons to be taken out to stay inquiries and adjourn the matter into Court (*Beale* v. *Ruston*, W. N. 1878, p. 179).

This rule applies to petitions under the Trustee Relief Act.

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. Parties to be served. Residuary legatee.

This and the following eight rules are taken from 15 & 16 Vict. c. 86. s. 42.

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 Legatee.

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.

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.

Actions of waste.

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.

Executors, &c.

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.

Conduct of proceedings.

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.

Persons bound in certain cases.

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—

(*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, within one month after such service, apply to the Court or Judge to discharge, vary, or add to the judgment or order. Varying order.

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. Liberty to attend proceedings.

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. Memorandum of service under Rule 40.

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. Notice of judgment or order.

44. Notice of a judgment or order or 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. Notice on infant, &c.

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. Heir-at-law, when dispensed with.

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 Personal representative, when dispensed with.

in every respect as if a duly constituted legal personal representative of the deceased had been a party to the cause, matter, or proceeding.

This rule is taken from the 44th sec. of 15 & 16 Vict. c. 86.

In *Webster* v. *Brit. Emp. Assur.*, 15 Ch. D. 169, Jessel, M.R., dispensed with the legal personal representative of an insolvent intestate in an action by an equitable mortgagee of a life policy for payment of the policy moneys against an Insurance Company. The Court of Appeal thought this procedure convenient as far as the Insurance Company was concerned, but doubted its propriety; explained in *Curtius* v. *Caledonian Ins. Co.*, 19 Ch. D. 534. A.

On the construction of the 44th section, it was decided that it did not apply to the case where the estate to which it is desired to appoint a representative is the estate being administered by the Court (*Silver* v. *Stein*, 1 Drew, 295; *Groves* v. *Levi*, 9 Hare, App. xlvii.

XVI. 12b. Attendance in Chambers.

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. 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.

VI. *Third Party Procedure.*

XVI. 18. Notice to third party.

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 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.

The object of this rule appears to be, that when the same question exists between several persons, that question shall be tried once for all (*Schneider* v. *Batt*, 8 Q. B. D. 705. A). When the Court determines that the questions between the parties cannot conveniently be tried once for all, the reasons for bringing in the third party come to an end, and he ought then to be dismissed from the action (*Ibid.*). See further, *Benecke* v. *Frost*, 1 Q. B. D. 419; *Swansea Shipping Co.* v. *Duncan*, Ibid. 644. A; *Bower* v. *Hartley*, Ibid. 652; *Treleaven* v. *Bray*, 1 Ch. D. 176. Where the vendor to a company was sued on the ground that the promoters had conspired to increase the purchase money by 2000*l.*, and that he had agreed to give them that sum as commission, Malins, V. C., refused to allow the plaintiff company to be embarrassed by any questions as between the defendant and the promoters. He therefore refused an application to serve them with a notice (*The Associated Home Co.* v. *Whichcord*, 8 Ch. D. 457). See further, the reasoning in *Norris* v *Beazley*, Rule 11, *ante*, note.

A third party, who desires to have the whole dispute settled in one action, should take care to have proper issues settled between him and the defendant for that purpose (*The Cartsburn*, 5 P. D. 59. A; *Piller* v. *Roberts*, 46 L. T. 527).

A trustee in bankruptcy may be brought in under this rule where he is a necessary party to determining all the points in dispute (*Ex parte Smith, Re Collie*, 2 Ch. D. 51. A).

A residuary legatee who is sued by a creditor may apply to have the executor of the will made a party, if he think fit. And this is the proper method of objection to his non-joinder (*Hunter* v. *Young*, 4 Ex. D. 256. A).

In *Wye Valley Ry.* v. *Hawes*, 16 Ch. D. 489, Hall, V. C., intimated that he preferred having these applications made on notice to the plaintiff; and in *Corrie* v. *Allen*, 48 L. T. 467, Pearson, J., adopted the same view, though, as Baggallay, L. J., has pointed out, it is not absolutely necessary (*Ibid.*).

In *Fowler* v. *Knoop*, 36 L. T. 219, an order was made giving a third party liberty to defend the action; he was then allowed to bring in a fourth party, from whom he in his turn claimed indemnity. In *Witham* v. *Vane*, 49 L. J. Ch. 242, also, a fourth party was brought in. But the practice has not been unanimously approved of (*Walker* v. *Balfour*, 25 W. R. 511; *Yorkshire Waggon Co.* v. *Newport Coal Co.*, 5 Q. B. D. 268).

The provisions as to service out of the jurisdiction apply to this rule (*The Swansea Shipping Co.* v. *Duncan*, 1 Q. B. D. 644. A).

XVI. 20. Time for appearance.

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

Effect of default.

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.

Default of third party.

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.

Proceedings under this rule may be taken in the District Registry (Order XXXV. 5).

Default of third party.

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.

Proceedings under this rule may be taken in the District Registry (Order XXXV. 5).

XVI. 21. Proceedings on appearance.

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.

In *Witham* v. *Vane*, 28 W. R. 276, a third party was given leave to put in a defence to the statement of claim, and serve notice on other persons. The statement of defence was, under the circumstances, limited to any points not raised in the defence of the defendants.

When third parties have appeared for the purpose of litigating with the plaintiff, he has a right to discovery of documents by them (*MacAlister* v. *The Bishop of Rochester*, 5 C. P. D. 210).

On the application for directions the third parties may be dismissed from the proceedings on the ground that their retention is calculated to embarrass the plaintiff, and the defendant ordered to pay the costs (*The Bianca*, 8 P. D. 91; *Corrie* v. *Allen*, W. N. 1883, 65. A).

XVI. 21. Liberty to defend.

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 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.

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.

Formerly the power of dealing with the costs was more limited (*Yorkshire Wagon Co.* v. *Newport Coal Co.*, 5 Q. B. D. 270). Where third parties had appeared and succeeded in reducing the damages to a sum paid into Court by the defendants, the third party or parties were not allowed their costs from the plaintiff, the Court pointing out that they were not brought in by him (*Williams* v. *The South-Eastern Ry. Co.*, 26 W. R. 352).

Claim against co-defendant.

55. Where a defendant claims to be entitled to contribution or indemnity against any other defendant to the action, 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.

This form of practice was established in *Furness* v. *Booth*, 4 Ch. D. 586; *Harris* v. *Gamble*, 6 Ch. D. 751; *Bagot* v. *Easton*, 11 Ch. D. 392.

For form of order for this purpose see *Marner* v. *Bright*, 11 Ch. D. 394, note. If, however, the plaintiff object, the order will not be made. For it is not the intention of the Act or Rules, that the plaintiff be embarrassed in his conduct of the action by trying issues between co-defendants with which he has nothing to do (*Ibid.*; and see the observations of Mellish, L. J., in *Treleaven* v. *Bray*, 45 L. J. Ch. 114. A). It is not always necessary to have an order for this purpose; see *Butler* v. *Butler*, 14 Ch. D. 329, an action against trustees for breach of trust where one trustee claimed contribution from the other.

ORDER XVII.

Change of Parties by Death, &c.

By the last clause of the first rule there is to be no abatement, whether the cause of action survive or not, by the death of a party between the verdict and the judgment. The defendant may call upon the person entitled to proceed to do so, or may obtain judgment in default thereof (r. 8). Where no step has been taken in an action which has been certified to be abated, after the lapse of one year it will be struck out of the cause book (rr. 9, 10).

These rules are taken from Cons. Order XXI. 7, 8.

R. 1. Abatement.

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, 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.

If the cause of action survive to the trustee in Bankruptcy, a notice of motion to dismiss for want of prosecution must be served on him (*Wright* v. *Swindon Ry. Co.*, 4 Ch. D. 164). Where the trustee has been removed after appeal but before the hearing, see *Ex parte Sheeard*, 16 Ch. D. 11.

When the action came on for trial and there was no evidence that any notice of it had been served on the trustee in his absence, it was ordered to be struck out of the list (*Eldridge* v. *Burgess*, 7 Ch. D. 411).

If one of two trustees be willing to continue the action at his own risk, he may have an order as of course, and make his co-trustee a defendant (*Jackson* v. *N. E. Ry. Co.*, 5 Ch. D. 844. A).

Five defendants were jointly and severally liable, two of whom became bankrupt. Fry, J., offered to allow the trial to stand, that the other three might serve notice on the trustees of the bankrupts if they wished to do so; as they declined, the trial was ordered to proceed (*Lloyd* v. *Dimmack*, 7 Ch. D. 398).

A petitioner having died after an order directing inquiries, it was ordered that the petition should be carried on by the executors (*Re Atkin's Estate*, 1 Ch. D. 82).

When the injury has been to the estate of the deceased the action survives to his personal representative (*Twycross* v. *Grant*, 4 C. P. D. 40. A).

As to the terms of appointment of an interim receiver on death of sole defendant in an administration action see *Cash* v. *Parker*, 12 Ch. D. 293.

L. 2. Substitution of representative.

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.

This order stands in lieu of the old order or writ of revivor, and is so spoken of in *Chorlton* v. *Dickie*, 13 Ch. D. 160.

It is in the discretion of the Court whether it will allow an action which has become defective by the death of a party or otherwise to be revived (*Curtis* v. *Sheffield*, 20 Ch. D. 398).

If a plaintiff have obtained an order to carry on the proceedings against the defendant's executors, the executors are entitled to a similar order to carry on the counter-claim against the plaintiff (*Andrew* v. *Aitken*, 46 L. T. 689).

An order allowing an executor to continue the proceedings in an action instituted by his testator, which order has been obtained by him after judgment in favour of his testator, and with notice of an appeal, is equivalent to the old order of revivor, and subjects him to the same liabilities; he becomes in effect a party to the suit, and is personally liable for costs (*Boynton* v. *Boynton*, 4 App. Cas. 733).

This rule would not seem to apply to the bankruptcy of a sole defendant (Cotton, L. J., in *Barter* v. *Dubœux*, 7 Q. B. D. 417. A). It is very wide in its application, and will obviate the difficulty felt in *Bennett* v. *Gamgee*, 46 L. J. 204, 2 Ex. D. 11, where the

trustee, having elected to discontinue an action, subsequently brought an action in his representative capacity.

A bankrupt may maintain an action for work done by him after his bankruptcy, but before his discharge, if his trustee do not interfere (*Jameson* v. *Brick Co.*, 4 Q. B. D. 208. A).

Where the plaintiff had been adjudicated a bankrupt after the commencement of the action, and the trustee had elected not to proceed with the action, proceedings were stayed on an application at Chambers (*Warder* v. *Saunders*, 10 Q. B. D. 114).

After an interpleader issue has been settled, if the execution debtor file a petition for liquidation, and his trustee claim the goods, he will be added as a claimant in the trial of the issue (*Bird* v. *Mathews*, 46 L. T. 512. A).

A judgment creditor who has obtained a garnishee order absolute was added as a co-plaintiff in the action of the judgment debtor against the garnishee (*Wallis* v. *Smith*, 51 L. J. Ch. 577).

L. 3. Devolution of interest.

3. In case of an assignment, 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.

The assignee of a trustee in bankruptcy may obtain an order to carry on an action in like manner as the same might have been carried on by the original plaintiff (*Seear* v. *Lawson*, 15 Ch. D. 426. A), and must amend the title of the action so as to show that he is the real plaintiff (*Ibid.* 16 Ch. D. 121. A). Where the defendant assigns premises pending an action for injunction respecting them, semble that the assignee would be bound by the judgment, although not made a party to the action (*Kino* v. *Rudkin*, 6 Ch. D. 162). Semble, also, that it is reasonable that he should be added (*Ibid.*). On the death of a lunatic the committee should not be allowed to get himself dismissed from the action without making provision for the costs incurred up to the date of the death, if it be desirable to have his personal liability (*Harland* v. *Garbutt*, W. N. 1881, 8).

A defaulting trustee or executor who is defendant in an action for the execution of certain trusts is entitled to costs incurred by him subsequently to the bankruptcy, if retained by the parties beneficially interested who require his assistance (*Re Basham*, 23 Ch. D. 203; *Lewis* v. *Trask*, 21 Ch. D. 862; *Clare* v. *Clare*, 21 Ch. D. 865).

In *Re Paris Rink Co.*, 5 Ch. D. 959. A, it was held that a shareholder of a company would not be allowed to purchase the right to proceed with a winding-up petition.

L. 4. Regulations as to adding parties.

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, 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 the allegation of such change, or transmission of interest or liability, or of such person interested having come into existence.

When, upon the death of a sole plaintiff, whose cause of action does not survive (*e.g.*, in an administration) an order is made giving liberty to another person to prosecute the action as plaintiff, it is still the practice that in the subsequent proceeding the title of the new or revived action shall be added to the title of the original action (*Miller* v. *Huddlestone*, W. N. 1881, 171).

As to the survival of a cause of action against executors for a wrong done by their testator under 3 & 4 Will. 4, c. 42, s. 2, see *Kirk* v. *Todd*, 21 Ch. D. 484. A.

Where the sole plaintiff in an administration action has died, an order to revive the proceedings can be made on the application of a person who has been served with notice of the judgment, and has obtained liberty to attend the proceedings under it (*Burstall* v. *Fearon*, W. N. 1883, 99). When judgment had been given for the plaintiff subject to the assessment of damages, on the death of the defendant his executrix was substituted (*Chapman* v. *Day*, 31 W. R. 767).

A decree for foreclosure may always be re-opened upon proper cause within a reasonable time. New parties, therefore, may be added after decree absolute for foreclosure has been made (*Campbell* v. *Holyland*, 26 W. R. 109).

L. 5. Service of order to add parties.

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.

If the party served does not appear, judgment will be given against him (*Chorlton* v. *Dickie*, 13 Ch. D. 160; Order XIX. 10).

L. 6. Application to vary 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.

L. 7. By 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.

Summons 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 Order XLII. Rule 23.

Solicitor to certify.

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.

Cause struck out.

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.

ORDER XVIII.

Joinder of Causes of Action.

There have been a few verbal alterations in this Order. In actions for the recovery of land, claims for "double value in respect of the premises," or for "wrong or injury" to them, may be added (r. 2.)

XVII. 1. What causes may be joined.

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.

Before the Judicature Act, inconsistent and alternative relief would not have been allowed to have been claimed in a bill in Chancery, but by this rule a plaintiff is enabled to do so subject to the question of convenience at trial (*Bagot* v. *Easton*, 7 Ch. D. 1; *Child* v. *Stenning*, 5 Ch. D. 695. A). See further, Order XVI. Rule 4, note, *ante*.

XVII. 2. Recovery of land.

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.

The application for leave to join must be made prior to the issue of the writ (*Pilcher* v. *Hinds*, 11 Ch. D. 905. A), unless very special circumstances are alleged (*Musgrave* v. *Stevens*, W. N. 1881, 163. A). It is made in Chambers. The better opinion seems to be that an action to establish a title to land, not claiming possession, is not an action for the recovery of land within this rule (*Gledhill* v. *Hunter*, 14 Ch. D. 495; *Whetstone* v. *Dewis*, 1 Ch. D. 99).

An action for foreclosure is not an action for recovery of land within the meaning of this rule (*Tawell* v. *The Slate Co.*, 3 Ch. D. 629), nor within the meaning of Order XLII. 5 (*Wood* v. *Wheater*, 22 Ch. D. 281).

Leave will also be given to join an action for delivery up of a deed relating to the land, and for the recovery of personal estate comprised in it (*Cook* v. *Enchmarch*, 2 Ch. D. 111).

A claim for a receiver may be joined (*Allen* v. *Kennet*, 24 W. R. 845; *Gledhill* v. *Hunter*, *supra*). For administration of the

estate part of which was sought to be recovered (*Kitching* v. *Kitching*, 24 W. R. 901). For a re-conveyance of the property (*Manisty* v. *Kenealy*, 24 W. R. 918).

Leave has been given to join a claim for trespass and assault committed in effecting an entry, along with an action for the recovery of a house (*Dennis* v. *Crompton*, W. N. 1882, 121).

Where there was a claim by writ to obtain quiet possession of land, and an injunction to restrain the defendant from interfering with the plaintiff's quiet enjoyment, it was held that this was not joining a separate cause of action with an action to recover land (*Kendrick* v. *Roberts*, reported (*sic*) in W. N. 1882, 23, 46 L. T. 59).

This rule applies equally to a counter-claim (*Compton* v. *Preston*, 21 Ch. D. 138).

XVII. 3. Trustee of bankrupt.

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.

XVII. 4. Husband and wife.

4. Claims by or against husband and wife may be joined with claims by or against either of them separately.

XVII. 5. Executor.

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.

When the plaintiff sued in her own right, the defendant was not allowed to set up by way of counter-claim, a claim against her as executrix. The rule does not apply to defendants (*Macdonald* v. *Carrington*, 4 C. P. D. 28. A).

It would appear that the joinder of a claim by an executor with a claim by him personally, should be in a case where the plaintiff's personal claim is in respect of the assets of the testator (*Johnson* v. *Burges*, 47 L. J. Ch. 552).

XVII. 6. 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.

As to plaintiffs claiming relief jointly, severally, or in the alternative, see Order XVI. Rule 1, *ante*, and note thereto.

7. The last three preceding Rules shall be subject to Rules 1, 8, and 9 of this Order.

XVII. 8. Defendant may apply to sever.

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.

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. *XVII.* 9. Judge may grant order on terms.

An application under the last two rules in the Chancery Division is sometimes by summons, and sometimes by motion, when the case is considered sufficiently important. In the Queen's Bench Division it is always by summons.

ORDER XIX.

Pleading Generally.

This Order has been considerably altered, with a view to restrain prolixity. "Every pleading shall contain, and contain only" a statement in a summary form. And if settled by counsel must be signed by him, and if not settled by counsel by the solicitor, or by the party himself if he sues or defends in person (r. 4). The forms where applicable are obligatory (r. 5). Precise directions are given as to the particulars in the case of fraud, breach of trust, and similar actions (rr. 6–8); as well as how issues are to be raised between the parties (rr. 14, 15). No technical objection is to be raised to any pleading on the ground of any alleged want of form (r. 26). The rule as to striking out or amending pleadings as being scandalous, &c., has been imported into this Order, and a clause has been added to it that the Judge may order the costs of the application to be paid as between solicitor and client (r. 27). Lastly, in actions of collision the Judge may now order the Preliminary Act to be opened without the consent of the solicitors.

1. The following rules of pleading shall be used in the High Court of Justice. *XIX.* 1.

By the interpretation clause of the Act of 1873, sec. 100, "Pleading" includes any "petition or summons."

2. The plaintiff shall, subject to the provisions of Order XX., and at such time and in such manner as Delivery of.

therein prescribed, deliver to the defendant a statement of his claim, and of the relief and remedy to which he claims to be entitled. The defendant shall, subject to the provisions of Order XXI., and at such time and in such manner as therein prescribed, deliver to the plaintiff his defence, set-off, or counter-claim (if any), and the plaintiff shall, subject to the provisions of Order XXIII., and at such time and in such manner as therein prescribed, deliver his reply (if any) to such defence, set-off, or counter-claim. Such statement 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.

XIX. 2. Prolixity.

Plaintiff is entitled to reply by traverse or confession and avoidance, or both combined (*Hall* v. *Eve*, 4 Ch. D. 341. A).

Undue prolixity was a ground for having the pleading struck out (*Davy* v. *Garrett*, 7 Ch. D. 473. A).

As to costs see Order LXV. 27 (20).

As to variance in the reply see *Breslauer* v. *Barwick*, 24 W. R. 901, in note to Rule 16, *post*.

XIX. 3. Counter-claim.

3. A defendant in an action may set-off, or set-up by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim 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 counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof.

Where the Judge has refused permission the Court will not interfere, except in a very strong case (*Huggons* v. *Tweed*, 10 Ch. D. 359. A).

In the Chancery Division this application used to be made on motion (*Naylor* v. *Farrer*, 29 W. R. 809). Now the Judge has power to direct all matters relating to the conduct of a cause to be heard in Chambers, if he thinks fit (Order LV. 2 (18).

The counter-claim must be as specific as the statement of claim in a cross action (*Holloway* v. *York*, 25 W. R. 627). In my opinion this Rule was not intended to give rights against

third persons which did not exist before; but it is a rule of procedure designed to prevent the necessity of bringing a cross action in all cases where the counter-claim may conveniently be tried in the original action (per Kay, J., in *Re Milan Tramways Co.*, 22 Ch. D. 126).

A counter-claim founded on facts which have arisen since the action was brought must be pleaded as so arising, so that the plaintiff may be able to confess the plea (*Ellis* v. *Munson*, 35 L. T. 585. A; *The Orig. Hartlepool Co.* v. *Gibb*, 5 Ch. D. 713; *Fritz* v. *Hobson*, 14 Ch. D. 542; *Beddall* v. *Maitland*, 17 Ch. D. 174).

A reply to a counter-claim may state causes of action arising out of the same transaction as the counter-claim, though after the issue of the writ, in order that as far as possible all matters in controversy between the parties may be completely and finally determined (*Toke* v. *Andrews*, 8 Q. B. D. 428).

When there is a claim and counter-claim, the effect is similar to where there were cross actions, which the parties had agreed should be tried together (*Mostyn* v. *West Mostyn Coal Co.*, 1 C. P. D. 150).

It does not enable a defendant under Order XXXVI. 8, to take the conduct of the case away from the plaintiff (*Piercy* v. *Young*, 15 Ch. D. 477).

There is apparently no obligation on a defendant to bring his claim against a plaintiff by this method (Lush, J., *Hindley* v. *Haslam*, 3 Q. B. D. 484. A).

A counter-claim can only be put in where an action could be brought. Where a judgment is not to be enforced without leave such leave is not the subject of an action, and therefore not of a counter-claim (*The Birmingham Estates Co.* v. *Smith*, 13 Ch. D. 509).

In *Green* v. *Sevin*, 13 Ch. D. 595, Fry, J., commented on the inconvenience of "pitch-forking all the statements contained in the defence into the counter-claim." When two plaintiffs sue for a joint claim, the defendant may set up separate counter-claims against each, sounding in damages (*Manchester Railway Co.* v. *Brooks*, 2 Ex D. 243).

Relief may be claimed against a co-defendant under Order XVI. 55, but not by counter-claim (*Warner* v. *Twining*, 24 W. R. 536; and generally a counter-claim cannot be made against a plaintiff as executor, who claims in his own right (*Macdonald* v. *Carrington*, 4 C. P. D. 28). Lindley, J., suggests that a very exceptional state of circumstances might arise, where such a counter-claim might be admissible (*Ibid.* 37).

Where the cause of action in a counter-claim was not sufficiently connected with that of the plaintiff's claim, the Court refused to allow their being tried together (*Rotherham* v. *Priest*, 49 L. J. 104; and see *Naylor* v. *Farrer*, 26 W. R. 809), where Jessel, M. R., refused to allow the defendant to avail himself of a counter-claim, on the ground that it was quite unconnected with the action, and could not be conveniently disposed of in it; see also *Barber* v. *Bleiberg*, 19 Ch. D. 473.

In case the issues raised by a counter-claim are distinct from those raised by the claim, if the defendant call the plaintiff's witnesses, he must examine them in chief as his own (*Re Woodfine*, 47 L. J. Ch. 832).

A counter-claim is subject to the provision as to joinder of claims

for recovery of land in Rule 2 of Order XVIII. *ante* (*Compton* v. *Preston*, W. N. 1882, 58).

In certain cases it is contrary to public policy to allow a counter-claim to be set up by way of defence to a statutory liability (*Gathercole* v. *Smith*, 7 Q. B. D. 626. A).

A defendant cannot set off his share of a debt which plaintiff owes to him jointly with another or others (per Matthew, J., in *Bowyear* v. *Pawson*, 50 L. J. 495).

A defendant may set up a counter-claim for unliquidated damages arising out of the contract against a trustee in Bankruptcy who has elected to continue the action (*Peat* v. *Jones*, 8 Q. B. D. 147. A; *Jack* v. *Kipping*, 46 L. T. 169). In an action by a liquidator for a debt, the defendant may set off a claim for unliquidated damages, and may raise that defence by counter-claim, without the leave of the Court in which the winding-up is pending (*Mersey Steel Co.* v. *Naylor*, 9 Q. B. D. 648. A).

Where a plaintiff sues as an assignee of a chose in action, the defendant may set up by way of counter-claim any set-off, whether sounding in damages or not, which he would have been able to set off against the assignor, provided it is such a claim as would be entitled in equity to priority over the right of the assignee. He should plead that the plaintiff is only entitled to the balance (if any), after deducting all that ought to be deducted in respect of the same (*Young* v. *Kitchin*, 3 Ex. D. 127).

A debt contracted during infancy cannot be set off (*Rawley* v. *Rawley*, 1 Q. B. D. 460. A).

In *Newell* v. *The Provincial Bank of England*, 1 C. P. D. 496, defendant was not allowed to set up a counter-claim on a promissory note which matured after the intestate's death, the estate being in the course of administration in the Chancery Division.

The costs of an unsuccessful petition for an adjudication of bankruptcy, founded on a debt for which judgment had been obtained in the Queen's Bench Division, cannot be set off against the costs of an unsuccessful application in the Queen's Bench Division, to set aside this judgment. The Court of Chancery never allowed such a set-off, and the Bankruptcy Court follows the practice (*Ex parte Griffin, Re Adams*, W. N. 1880, 42. A).

A County Court judgment may be set off against the judgment of a superior Court (*Sandys* v. *Louis*, W. N. 1875, 249).

To a claim by the assignee of a policy of marine insurance, the insurers are not entitled to set off a debt incurred after the date of the assignment, as it is not a defence within the meaning of the 31 & 32 Vict. c. 86, s. 1 (*Pellas* v. *The Neptune Insurance Co.*, 5 C. P. D. 34. A).

XIX. 4. To contain what.

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.

In *Scott* v. *Sampson*, 8 Q. B. D. 491, it was held that, assuming evidence which had been tendered at the trial to be material, it was rightly rejected, as the particular facts and circumstances were not stated or referred to in the pleadings, as required by this rule.

The plaintiff should make a distinct and articulate statement of the ground of action, instead of concealing it under general and figurative expressions (per Lord Watson in *Shepherd* v. *Henderson*, 7 App. Cas. 77); and the present rule is intended to compel greater precision.

A pleading should contain a statement of material facts, but not the conclusions of law to be drawn from those facts (*Watson* v. *Rodwell*, 3 Ch. D. 380. A; *Williamson* v. *L. & N. W. Railway Co.*, 12 Ch. D. 787).

A pleading should state whether an agreement relied on is in writing, or by parol, or the result of a series of documents (*Turquand & Counties B.* v. *Fearon*, 48 L. J. 703. A, and see Rule 24).

"Alternative pleadings must be taken most strongly against the pleader" (per Jessel, M. R., in *The Sir Chas. Napier*, 5 P. D. 76. A).

In an action for breach of promise, the plea of seduction was held a "material fact" (*Millington* v. *Loring*, 6 Q. B. D. 190. A).

In libel the defamatory words should be set out (*Harris* v. *Warre*, 4 C. P. D. 125); and the facts upon which defendant relies either to show justification or privilege (*Belt* v. *Lawes*, 51 L. J. 359). And as to particulars of justification the defendant should give particulars and specific facts upon which he means to rely at the trial. It is essential to state the facts with clearness, before the parties proceed to trial, so that the plaintiff may have some information as to the case which he is called upon to meet (*Steinbank* v. *Beckett*, W. N. 1879, 203. A).

The rule against pleading evidence applies equally to admissions (*Davy* v. *Garrett*, 7 Ch. D. 473, 485).

In an action for the recovery of land, in the possession of which the plaintiff has never been, the statement of claim must set out particularly all the material facts and the nature of the deeds on which he relies to prove his title (*Phillips* v. *Phillips*, 4 Q. B. D. 127. A; *Dawkins* v. *Lord Penrhyn*, 4 App. Cases, 59). In claiming a right of way the plaintiff should state whether he claims by grant, or user, or otherwise (*Harris* v. *Jenkins*, 31 W. R. 137); and if he relies upon an equitable title, the various assurances through which he claims to be entitled (*Sutcliffe* v. *James*, 27 W. R. 750).

A petition by trustees for the advice of the Court under 23 & 24 Vict. c. 38, s. 9, must still be signed by counsel (*Re Boulton's Trusts*, 51 L. J. Ch. 493).

XIX. 4. Forms. Costs of prolixity.

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.

Particulars in certain actions.

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; 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.

In *Augustinus* v. *Nerinckx*, 16 Ch. D. 13 A. as the particulars asked for were not required to enable the defendant to put in a defence, and were for an amount to be ascertained by an account they were refused.

Further and better particulars.

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.

Time for pleading.

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.

XIX. 5. Printed, when.

9. Every pleading which shall contain less than ten folios (every figure being counted as one word) may be either printed or written, or partly written and partly printed, and every other pleading, not being a petition or summons, shall be printed.

As to printing see Order LXVI. 7.

XIX. 6. How delivered.

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.

A notice of motion for judgment is a document which may be delivered by filing it with the proper officer, as against a defendant who has not appeared in the action (*Morton* v. *Miller*, 3 Ch. D. 516; *Parsons* v. *Harris*, 6 Ch. D. 694). When a party does not appear the action shall proceed as if he had (Order XIII. 12).

A defendant having become bankrupt after service of notice of trial, an order of revivor was made against his trustee and served on him. The trustee did not enter an appearance. Notice was served on him that the action was restored to the paper for trial, but he did not appear at the trial. Held that the plaintiff need not file the pleadings, or a notice of motion for judgment under this rule (*Chorlton* v. *Dickie*, 13 Ch. D. 160).

An appointment of a new trustee in place of one residing permanently out of the jurisdiction will be made without service of the petition on the trustee so residing (*Re Martin Pye's Trusts*, 42 L. T. 247).

As to hours for effecting service see Order LXIV. 11.

XIX. 7. How 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.

XIX 16. Not guilty by statute.

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.

As to pleading not guilty by statute see Order XXI. 19.

By various statutes defendants have been granted the privilege, in cases coming within their operation, to plead the general issue of not guilty, and under that pleading set up special defences which would otherwise require to have been pleaded. A collection of these statutes is subjoined:—

Constables.—Borough, 5 & 6 Wm. 4, c. 76, s. 136; County, 2 & 3 Vict. c. 93, s. 8; Metropolitan, 10 Geo. 4, c. 44, s. 4; Parish, 5 & 6 Vict. c. 109, s. 15; Special, 1 & 2 Wm. 4, c. 41, s. 5.

County Courts.—Persons acting under, 15 & 16 Vict. c. 54, s. 6.

Coining.—24 & 25 Vict. c. 99, s. 33.

Highways.—5 & 6 Wm. 4, c. 50, s. 109.

Landlords.—Persons acting under, 11 Geo. 2, c. 19, s. 21.

Larceny Act.—24 & 25 Vict. c 96, s. 113.

Local and Personal Acts, benefit where given by, repealed.—5 & 6 Vict. c. 97, s. 3.
Malicious Injuries.—24 & 25 Vict. c. 97, s. 71.
Metropolis.—Building Act, 18 & 19 Vict, c. 122, s. 108; Management, 25 & 26 Vict. c. 102, s. 106; Police Magistracy, 2 & 3 Vict. c. 71, s. 55.
Penal Statute, persons sued on.—21 Jac. I. c. 4, s. 4.
Prisons.—28 & 29 Vict. c. 126, s. 49.
Public Offices.—42 Geo. 3, c. 85, s. 6.

Where the section of any of the statutes mentioned above incorporates the provisions of a previous Act both should be mentioned in the plea. In addition to the above, there are some other statutes containing a similar provision, but not of the same importance.

A *bonâ fide* belief that a person is acting under a statute may protect him if there be any reasonable foundation for such belief (*Agnew* v. *Jobson*, 47 L. J. M. C. 67).

Under some of these statutes defendant is also entitled to notice of action.

XIX. 17. Allegations not denied are deemed to be admitted, when.

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.

See note to Rule 17, *post*.

No allegations can be taken to be admitted as against an infant who has not appeared. In the *Nat. Prov. Bank* v. *Evans*, 51 L. J. Ch. 97, where none of the defendants had appeared, notice of motion for judgment was served on all who were *sui juris*, and notice of motion for the trial of the action on the defendant, who was an infant.

This rule must be read in conjunction with Order XXVII. 13.

XIX. 18. Issues, how raised.

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.

XIX. 18. Issues, how raised.

15. The defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counter-claim 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, pay-

ment, performance, facts showing illegality either by statute or common law, or Statute of Frauds.

A claim against a person acting in a fiduciary capacity on the footing of having made wilful default, may be entertained either at the hearing or the trial of the action, or at any subsequent stage, provided that it has been alleged and a case made for it on the pleadings (*Barber* v. *Mackrell*, 12 Ch. D. 538. A ; *Job* v. *Job*, 6 Ch. D. 562 ; *Mayer* v. *Murray*, 8 Ch. D. 424 ; *Re Symons*, 21 Ch. D. 757).

In actions for the recovery of land the plaintiff has to state his title—the title upon which he means to rely ; therefore, if on the face of the pleadings the plaintiff states that the period allowed by the statute has expired within which he must make his claim, he states in law that his title is extinguished, unless he can bring himself within some of the exceptions, and the statement of claim will be bad (*Dawkins* v. *Lord Penrhyn*, 4 App. Cases, 59). And there is no analogy in this case to pleading the Statute of Frauds or the Statute of Limitations in personal actions (*Ibid.*).

When the defendant simply stated that he "put the plaintiffs to the proof of the several allegations in their statement of claim," it was held insufficient, and that they were entitled to judgment without adducing any evidence in support of their case (*Harris* v. *Gamble*, 7 Ch. D. 877 ; and see *Rutter* v. *Tregent*, 12 Ch. D. 758.

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. *XIX.* 19. Departure in pleading.

Where a statement of claim alleged a contract between A. and B., and the reply set forth that, although on the face of it it appeared a contract between A. and C., yet in reality it was a contract between A. and B., as the name of C. was placed in the body of the contract for that of B. by mutual mistake, held no departure. A second pleading must add some fact to those contained in the first, in support of, and not in contradiction to it (*Breslauer* v. *Barwick*, 24 W. R. 901). It must not set up fresh claims for damages (*Williamson* v. *L. & N. W. Ry.*, 12 Ch. D. 787).

To a defence of coverture it is no departure to reply that plaintiff is unaware of the coverture, that defendant had obtained credit by representing herself as entitled to an annuity, and that in point of fact she has an annuity under a separation deed (*Collette* v. *Dickinson*, 26 W. R. 403).

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. *XIX.* 20.

It is irregular for the plaintiffs to reply to the allegations of the defendant's counter-claim by a simple joinder of issue. The alle-

gations in the counter-claim should be specifically dealt with (*Benbow* v. *Low*, 13 Ch. D. 553). *Rolfe* v. *Maclaren*, 3 Ch. D. 106, has been quoted as affirming the contrary: but on consideration of the judgment it seems to have gone on the special circumstances of the case. The whole object of pleadings is to bring the parties to an issue, and the meaning of the Rules of Order XIX. was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial what the real point to be discussed and decided was (Jessel, M. R., in *Thorp* v. *Holdsworth*, 3 Ch. D. 639). Where at the trial of an action the Judge who tries the case is of opinion that any issue is not sufficiently or specifically raised by the pleadings, it is a matter entirely in his discretion whether a proper case for amendment has been made out. "The Court," says James, L. J., "ought to be very chary in interfering" (*Byrd* v. *Nunn*, 7 Ch. D. 284. A).

A denial of each of the allegations of the counter-claim is not a specific denial within the meaning of this rule. The object of the rule is to ascertain the point of the denial (*Green* v. *Sevin*, 13 Ch. D. 595).

XIX. 21. Joinder of issue.

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.

See Order XXVII. 13.

XIX. 22. Denial must not be evasive.

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.

If the answer be not considered substantial, the party shall have leave to amend, unless he has been guilty of *mala fides*, or that the other side cannot be restored to his former or an equally good position (*Tildesley* v. *Harper*, 10 Ch. D. 393. A).

A defence which might have been evasive if put in by the testator, need not necessarily be so if put in by his executors (*Smith* v. *Gamlen*, W. N. 1881, 110).

XIX. 23. Illegality to be pleaded.

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.

A defendant must not only plead the statute, but must set out facts which will bring his case within it (*Pullen* v. *Snelus*, 48 L. J. 394; *Clarke* v. *Callow*, 46 L. J. 53. A; *Wakelee* v. *Davis*, 25 W. R. 60). And see the observations of Cairns, L.C., in *Dawkins* v. *Lord Penrhyn*, in 4 App. Cases 59, note to Rule 15, *ante*.

XIX. 24. The effect of documents to be stated.

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.

In libel it is material to set out the defamatory words (*Harris* v. *Warre*, 4 C. P. D. 125. Rule 4, *ante*).

XIX. 25. Malice and fraud.

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.

Although it may not be necessary to allege the circumstances from which a fraudulent state of mind is to be inferred, the pleader must state the facts which are alleged amount to a fraud, so that the other party may know what case he has to meet If there be only a vague general allegation of fraud, evidence of the acts of fraud is not admissible. And this is true as well of a winding-up petition as of an action (*Re The Rica Gold Washing Co.* 11 Ch. D. 36. A; *McCreight* v. *Stevens*, 31 L. J. 455; *Herring* v. *Bischoffsheim*, W. N. 1876. 77; *Weir* v. *Barnett*, W. N. 1875, 259).

XIX. 26. Notice, how alleged.

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.

XIX. 27. Contract implied from letters, &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.

A pleading should state whether an agreement relied on is

in writing or by parol, or the result of a series of documents (*Turquand and Counties B.* v. *Fearon*, 48 L. J. 703. A).

XIX. 28. Pleading presumption.

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).

Technical objections.

26. No technical objection shall be raised to any pleading on the ground of any alleged want of form.

XXVII. 1. Striking out 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; 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.

"At any stage of the proceedings," that is, any stage before final judgment (*Att.-Gen.* v. *Corp. of Birmingham*, 15 Ch. D. 425. A).

If a pleading be very prolix, and calculated to embarrass the opposite party, it will be ordered to be struck out, with liberty to put in a new one (*Davy* v. *Garrett*, 7 Ch. D. 473. A; *Williamson* v. *L. N. W. R.*, 48 L. J., Ch. 560); or irrelevant or scandalous (*Cashin* v. *Craddock*, 3 Ch. D. 376. A; *Blake* v. *The Albion Life Assurance Co.*, 24 W. R. 677.) As to striking out where frivolous or vexatious see Order XXV. 4. An order to strike out should state what parts are to be struck out (*Williamson* v. *L. N. W. R.*, 48 L. J. Ch. 560).

The Court will not, as a rule, interfere with the discretion of the Judge (*Golding* v. *The Wharton Saltworks Co.*, 1 Q. B. D. 374. A; explained in *Laird* v. *Briggs*, 19 Ch. D. 28. A); *Watson* v. *Rodwell*, 3 Ch. D. 380. A).

Applications under this rule should be made by summons, and not by motion (*Marriott* v. *Marriott*, 26 W. R. 416). Order LV. 2 (17).

A plea of seduction in an action for breach of promise will be allowed (*Millington* v. *Loring*, 6 Q. B. D. 190).

If admissions are pleaded they will be struck out (*Davy* v. *Garrett*, 7 Ch. D. 473. A; *Askew* v. *The North-Eastern Railway Co.*, W. N. 1875, 238).

XIX. 30. Preliminary Act in Admiralty Actions.

28. In actions in any Division for damage by collision between vessels, unless the Court or a Judge shall otherwise order, the solicitor for the plaintiff shall, within seven days after the commencement of the action, and the solicitor for the defendant shall within seven days after appearance, and before any pleading is delivered, file with the Registrar, Master, or other proper officer, as the case may be, a docu-

ment to be called a Preliminary Act, which shall be sealed up and shall not be opened until ordered by the Court or a Judge, and which shall contain a statement of the following particulars:

(*a.*) The names of the vessels which came into collision and the names of their masters;

(*b.*) The time of the collision;

(*c.*) The place of the collision;

(*d.*) The direction and force of the wind;

(*e.*) The state of the weather;

(*f.*) The state and force of the tide;

(*g.*) The course and speed of the vessel when the other was first seen;

(*h.*) The lights, if any, carried by her;

(*i.*) The distance and bearing of the other vessel when first seen;

(*k.*) The lights, if any, of the other vessel which were first seen;

(*l.*) Whether any lights of the other vessel, other than those first seen, came into view before the collision;

(*m.*) What measures were taken, and when, to avoid the collision;

(*n.*) The parts of each vessel which first came into contact.

The Court or a Judge may order the Preliminary Act to be opened and the evidence to be taken thereon without its being necessary to deliver any pleadings; but in such case, if either party intends to rely on the defence of compulsory pilotage, he may do so, and shall give notice thereof in writing to the other party, within two days from the opening of the Preliminary Act.

The Court will not usually allow any amendments to be made in the Preliminary Act (*The Miranda*, 51 L. J. P. D. 56).

In actions against the shipowner, by the owner of the cargo, this rule does not apply (*The John Boyne*, 25 W. R. 756). As to the practice in Vice-Admiralty Courts, see *The Norma*, 35 L. T. 418.

ORDER XX.

Statement of Claim.

The regulations as to delivery of statement of claim have been considerably modified (r. 1). When a statement of claim is delivered the plaintiff may modify or extend his claim without any amendment of the indorsement on the writ (r. 4). It will not now be necessary to ask for general or other relief. There is a new rule as to pleading in matters of account stated (r. 8).

1. The delivery of statements of claim shall be regulated as follows :—

Writ specially indorsed.

(*a.*) Where the writ is specially indorsed under Order III., Rule 6, no further statement of claim shall be delivered, but the indorsement on the writ shall be deemed to be the statement of claim :

When required.

(*b.*) Subject to the provisions of Order XIII., Rule 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 :

Time for delivery.

(*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 :

When optional.

(*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 :

Limit of time.

Costs when unnecessary.

(*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.

As to enlargement of time by consent see Order LXIV. 8.

As to delivery of pleadings in the Long Vacation see Order LXIV. 4.

If the plaintiff do not deliver his statement of claim within the time allowed, the defendant may move under Order XXVII. 1, to have the action dismissed for want of prosecution.

XXI. 2. Probate Actions.

2. In Probate actions the plaintiff shall, unless otherwise ordered by the Court or a Judge, deliver his statement of claim within six weeks from the entry of appearance by the defendant, or from the time limited for his appearance, in case he has made default ; but

where the defendant has appeared the plaintiff shall not be compelled to deliver it until the expiration of eight days after the defendant has filed his affidavit as to scripts.

3. In Admiralty actions *in rem* the plaintiff shall, within twelve days from the appearance of the defendant, deliver his statement of claim. *XXI.* 3. Admiralty Actions.

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. Extension of claim.

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. Place of trial.

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. And the same rule shall apply to any counter-claim made, or relief claimed by the defendant, in his defence. *XIX.* 8. Specific statement of relief claimed.

If the statement of facts show that a document ought to be rectified, the Court will treat it as rectified, although this has not been claimed in the prayer (*Breslauer* v. *Barwick*, 24 W. R. 901).

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 counter-claim founded upon separate and distinct facts. *XIX.* 9. Separation of distinct claims.

In an action for libel the defendant may plead together, justification, payment into Court, and the insertion of an apology (*Hawkesley* v. *Bradshaw*, 5 Q. B. D. 302. A).

As to payment into Court generally by defendant in respect to several distinct claims see *Paraire* v. *Loibl*, 49 L. J. 481 ; Order XXII. 2).

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. Account stated.

XIX. 12. Probate Actions.

9. In Probate actions where the plaintiff disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest.

ORDER XXI.

Defence and Counter-claim.

The first four Rules of this Order are new, and relate to what matters must be denied and the effect thereof. The time for delivery, which was formerly eight days, is now extended to ten days (rr. 6, 7). It is now settled that if the plaintiff's action be terminated, the counter-claim still survives (r. 16). In pleading "not guilty by statute," the words "by statute" and the special Act relied on must be stated in the margin of the pleading (r. 19). This is taken from R. G. T. T. 1853. 21.

Liquidated demand.

1. In actions for a debt or liquidated demand in money comprised in Order III. Rule 6, a mere denial of the debt shall be inadmissible.

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, indorsing, accepting, presenting, or notice of dishonour of the bill or note.

What must be denied.

3. In actions comprised in Order III. Rule 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.

Denial as to damages.

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.

XIX. 11. Representative capacity.

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.

Partnership.

XXII. 1. Time for delivery.

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.

As to enlargement of time by consent see Order LXIV. 8.

Where there were several defendants, of whom one had obtained an extension by consent without the knowledge of his co-defendants, Jessel, M.R., refused to consider the pleadings closed, and allow them to have the action dismissed for want of prosecution (*Ambroise* v. *Evelyn*, 11 Ch. D. 759).

For defences arising during the pendency of the action see Order XXIV.

XXII. 2. When claim not required.

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.

Under the old practice the delivery of a plea after the time for pleading had expired prevented the plaintiff signing judgment for want of a plea (*Connolly* v. *Bremner*, L. R. 1 C. P. 558). It would seem, therefore, that the defence may be delivered after the ten days have expired, provided that judgment has not been signed (*Graves* v. *Terry*, 9 Q. B. D. 170).

XXII. 3. Leave to defend under Order XIV. 1.

8. Where leave has been given to a defendant to defend under Order 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 after the order.

Where a Master has indorsed the summons "No order," it is equivalent to giving leave to defend (*Margate Pier Co.* v. *Perry*, W. N. 1876, 52).

XXII. 4. Improper failure to admit.

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.

XIX. 10. Counter-claim, how set up.

10. Where any defendant seeks to rely upon any ground as supporting a right of counter-claim, he shall, in his statement of defence, state specifically that he does so by way of counter-claim.

A counter-claim must be as specific as a statement of claim in a cross-action (*Holloway* v. *York*, W. N. 1877, 112). It need

not set out in full matters previously pleaded, but may refer to them (*Birmingham Estates Co.* v. *Smith*, 13 Ch. D. 506). The forms given in Appendix D make a marked distinction between the portion of the pleadings, which properly belongs to the defence, and that which properly belongs to the counter-claim.

XXII. 5. Party brought in by counter-claim.

11. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other persons, he shall add to the title of his defence a further title similar to the title in a statement of claim setting forth the names of all the persons who, if such counter-claim 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.

A counter-claim must claim relief against the plaintiff, and he must be a party to it (*Harris* v. *Gamble*, 6 Ch. D. 748).

The defendant must not bring a third party before the Court, unless the relief claimed against him is connected with the subject-matter of the action (*Padwick* v. *Scott*, 2 Ch. D. 736).

It is not necessary that the "questions" should arise out of the same cause of action. If the questions raised in the counter-claim would have formed a good cause of action in a cross-action, brought by the actual defendant against the actual plaintiff and some other person, that person may be made party to the existing suit by counter-claim (*Turner* v. *Hednesford Gas Co.*, 3 Ex. D. 145. A; *Dear* v. *Sworder*, 4 Ch. D. 476).

A person named in a defence as a party to a counter-claim thereby made, cannot counter-claim against the defendant (*Street* v. *Gover*, 2 Q. B. D. 498).

If the claim against the third party be an alternative and not a joint claim the third party procedure is the proper one to revert to (*Central African Co.* v. *Grove*, 48 L. J. 510. A).

XXII. 6. Third party, how summoned.

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.

In *Potter* v. *Miller*, 31 W. R. 858, the Court refused leave to serve a counter-claim upon a third party out of the jurisdiction.

XXII. 7. Appearance by third party.

13. Any person not a defendant to the action, who is served with a defence and counter-claim as aforesaid, must appear thereto as if he had been served with a writ of summons to appear in an action.

He ought not to appear until he has been served (*Frazer* v. *Cooper Hall*, 21 Ch. D. 718).

14. Any person named in a defence as a party to a counter-claim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim. *XXII.* 8. Reply by third party.

A third party cannot set up a counter-claim, he only has a right of reply (*Street* v. *Gover*, 2 Q. B. D. 498; *Gray* v. *Webb*, 21 Ch. D. 802).

15. Where a defendant sets up a counter-claim, if the plaintiff or any other person named in manner aforesaid as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he may at any time before reply apply to the Court or a Judge for an order that such counter-claim may be excluded, and the Court or a Judge may, on the hearing of such application, make such order as shall be just. *XXII.* 9. Counter-claim may be excluded.

This is a matter chiefly in the discretion of the Judge (*Huggons* v. *Tweed*, 10 Ch. D. 359. A). The Court will, however, review such decision where it seems to be erroneous in principle (*Macdonald* v. *Carrington*, 4 C. P. D. 37).

In *Nicholson* v. *Jackson*, W. N. 1876, 38, a counter-claim was ordered to be struck out on the ground that it would be difficult to keep the jury from mixing up the two claims. It was without prejudice to any action the defendant might bring, and on the terms that the plaintiff should not issue execution on any judgment he might obtain without leave of a Court or Judge.

16. If, in any case in which the defendant sets up a counter-claim, the action of the plaintiff is stayed, discontinued, or dismissed, the counter-claim may nevertheless be proceeded with. Survival of counter-claim.

17. Where in any action a set-off or counter-claim 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. *XXII.* 10. Defendant may have judgment for balance.

The "balance" here mentioned means the balance found to be due upon the hearing of the action (*Rolfe* v. *Maclaren*, 3 Ch. D. 106).

In *Baines* v. *Bromley*, 6 Q. B. D. 695. A, Brett, L.J. says: "I have a firm opinion that where there is a claim with issues taken on it, and a counter-claim, not a set-off, but in the nature of a cross-action with issues on it, and when the plaintiff succeeds on the claim and the defendant on the counter-claim, the proper principle of taxation is to take the claim as if it and its issues were an action, and then to take the counter-claim and its issues

as if it were an action, and then to give the allocatur for costs for the balance in favour of the litigant in whose favour the balance turns. In such a case, where items are common to both actions, the Master would divide them. Where the so-called counter-claim is a set-off there is but one action."

XXII. 11. Probate Actions.

18. In Probate actions the party opposing a will may, with his defence, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall be subject to the same liabilities in respect of costs as he would have been under similar circumstances, according to the practice of the Court of Probate, before the Principal Act came into operation.

Plea by statute.

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.

XIX. 13. Plea in abatement.

20. No plea or defence shall be pleaded in abatement.

XIX. 15. Recovery of land, plea of possession.

21. No defendant in an action for the recovery of land 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.

In an action for recovery of land plea of possession only by defendant without any denial of the allegations in the statement of claim, was held sufficient denial of the plaintiff's title to require him to prove it (*Danford* v. *McNulty*, 8 App. Cas. 456).

ORDER XXII.

Payment into and out of Court and Tender.

The rules as to payment into and payment out of Court have been much amplified and extended in this Order. Rules 5 and 6 have been framed for the purpose of carrying out the principle of *Berdan* v. *Greenwood*, 3 Ex. D. 251. A, and *Hawkesley* v. *Bradshaw*, 5 Q. B. D. 302. A, that a defendant who was desirous of terminating litigation by a payment of money may do so without admitting any liability. Rules have been added to meet the case of consolidated actions and counter-claims (rr. 8 and 9). Money paid in under the certificate of a Master or associate is dealt with under Rules 10 and 11. Money paid into or out of court in Chancery Division is subject to the Rules under the Chancery Funds Act, 1872 (r. 12). Then follow some special regulations for the Queen's Bench and Admiralty Divisions. Appendix M. contains the Bank regulations.

XXX. 1. Time for.

1. Where any action is brought to recover a debt or damages, 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. 3, c. 11, payment into Court shall be admissible to particular breaches only, and not to the whole action.

Saving as to certain actions.

Before the Judicature Acts, a plea of payment into Court could not be joined with other defences denying the cause of action without leave (*Berdan* v. *Greenwood*, 3 Ex. D. 251. A; *Hawkesley* v. *Bradshaw*, 5 Q. B. D. 302. A). The modern practice is given in this Order. There are cases, however, in which payment into Court concurrently with other defences may be embarrassing, such as an action in respect of property to try a right which is denied, or to establish character which has been assailed, or where the defence charges plaintiff with fraud (*Spurr* v. *Hall*, 2 Q. B. D. 615).

In Actions on Bonds, &c., Plaintiff may assign as many Breaches as he pleases.

By 8 & 9 Will. 3, c. 11, s. 8.—And be it further enacted, That in all actions which from and after the said 25th day of March, 1697, shall be commenced or prosecuted in any of His Majesty's Courts of Record, upon any bond or bonds, or on any penal sum, for non-performance of any covenants or agreements in any indenture, deed or writing contained, the plaintiff or plaintiffs may assign as many breaches as he or they shall think fit, and the jury upon trial of such action or actions, shall and may assess, not only such damages and costs of suit as have heretofore been usually done in such cases, but also damages for such of the said breaches so to be

Jury may assess damages.

assigned, as the plaintiff upon the trial of the issues shall prove to have been broken, and that the like judgment shall be entered on such verdict as heretofore hath been usually done in such like actions; and if judgment shall be given for the plaintiff on a demurrer, or by a confession, or *nihil dicit*, the plaintiff upon the roll may suggest as many breaches of the covenants and agreements as he shall think fit, upon which shall issue a writ to the sheriff of that county where the action shall be brought, to summon a jury to appear before the Justices or Justice of assize or *nisi prius*, of that county, to enquire of the truth of every one of those breaches, and to assess the damages that the Plaintiff shall have sustained thereby; in which writ it shall be commanded to the said Justices or Justice of Assize, or *nisi prius*, that he or they shall make a return thereof to the Court from

Where execution may be stayed.

whence the same shall issue, at the time in such writ mentioned; and in case the defendant or defendants, after such judgment entered, and before any execution executed, shall pay into the Court where the action shall be brought, to the use of the plaintiff or plaintiffs, or his or their executors or administrators, such damages so to be assessed by reason of all or any of the breaches of such covenants, together with the costs of suit, a stay of execution of the said judgment shall be entered upon record; or if by reason of any execution executed, the plaintiff or plaintiffs, or his or their executors or administrators, shall be fully paid or satisfied all such damages so to be assessed, together

Or discharged.

with his or their costs of suit, and all reasonable charges and expenses for executing the said execution, the body, lands, or goods of the defendant, shall be thereupon forthwith discharged from the said execution, which shall likewise be entered upon

But judgment to remain, to answer any further Breach.

record; but notwithstanding, in each case such judgment shall remain, continue and be, as a further security to answer to the plaintiff or plaintiffs, and his or their executors or administrators, such damages as shall or may be sustained for further breach of any covenant or covenants in the same indenture, deed or writing contained, upon which the plaintiff or plaintiffs

Scire facias.

may have a *scire facias* upon the said judgment against the defendant or against his heir terre-tenants, or his executors or administrators, suggesting other breaches of the said covenants or agreements, and to summon him or them respectively to shew cause why execution shall not be had or awarded upon the said judgment, upon which there shall be the like proceeding as was in the action of debt upon the said bond or obligation, for assessing of damages upon trial of issues joined upon such breaches, or inquiry thereof upon a writ to be awarded in manner as aforesaid and that upon payment or satisfaction in manner as aforesaid, of such future damages, costs and charges as aforesaid all further proceedings on the said judgment are again to be stayed, and so *toties quoties*, and the defendant, his body, lands or goods, shall be discharged out of execution as aforesaid.

The language of this rule appears perfectly general, but as the Court may be guided by the previous state of the law, in considering what pleas were embarrassing, some of the statutes likely to be most useful, relating to payment into Court previous to the Judicature Act, are subjoined.

By 6 & 7 Vict. c. 96, s. 2.—In an action for a libel contained in any public newspaper or other periodical publication it shall be competent to the defendant to plead that such libel was inserted in such newspaper or other periodical publication without actual

malice and without gross negligence; and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper or other periodical publication a full apology for the said libel; or, if the newspaper or periodical publication in which the said libel appeared should be ordinarily published at intervals exceeding one week, had offered to publish the said apology in any newspaper or periodical publication to be selected by the plaintiff in such action; and that every such defendant shall upon filing such plea be at liberty to pay into Court a sum of money by way of amends for the injury sustained by the publication of such libel, and such payment into Court shall be of the same effect, and be available in the same manner and to the same extent, and be subject to the same rules and regulations as to payment of costs; and the form of pleading, except as far as regards the pleading of the additional facts hereinbefore required to be pleaded by such defendant, as if actions for libel had not been excepted from the personal actions in which it is lawful to pay money into Court under an Act passed in the session of Parliament held in the fourth year of his late Majesty, intituled "An Act for the further Amendment of the Law and the better advancement of Justice," and that to such plea to such action it shall be competent to the plaintiff to reply generally, denying the whole of such plea.

By 15 & 16 Vict. c. 76, s. 70.—It shall be lawful for the defendant in all actions (except actions for assault and battery, false imprisonment, libel, slander, malicious arrest, or prosecution, criminal conversation, or debauching of the plaintiff's daughter or servant), and by leave of the Court or a Judge, upon such terms as they or he may think fit, for one or more of several defendants to pay into Court a sum of money by way of compensation or amends: Provided, that nothing herein contained shall be taken to affect the provisions of a certain Act of Parliament passed in the session of Parliament holden in the sixth and seventh years of the reign of her present Majesty, intituled "An Act to amend the Law respecting defamatory Words and Libel."

By 23 & 24 Vict. c. 126, s. 23.—The plaintiff in replevin may in answer to an avowry pay money into Court in satisfaction, in like manner and subject to the same proceedings as to costs and otherwise as upon a payment into Court by a defendant in other actions.

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. *xxx.* 1. To be pleaded.

Where the claim is for several distinct pieces of work, and defendant pays money into Court generally, he may do so without specifying the items in respect of which he pays it in (*Paraire* v. *Loibl*, 49 L. J. 481. A).

3. With a defence setting up a tender before action, the sum of money alleged to have been tendered must be brought into Court. Money must be paid in.

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 *xxx.* 2. Notice.

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.

XXX. 3. Payment out, when.

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.

As to the form of the entry see App. M. 2*a*.

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, the following rules shall apply :—

Taken in complete satisfaction.

(*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 :

To be on written authority.

(*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 :

Where not accepted in complete satisfaction.

(*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 paid 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.

As to the form of the entry see App. M. 2*b*.

XXX. 4. Notice of acceptance.

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.

If a plaintiff neglect to give the notice in the Form No. 4, Appendix B, he may lose the right to his costs, under this rule (*Langridge* v. *Campbell*, 2 Ex. D. 281).

In *Broadhurst* v. *Willey*, W. N. 1876, 21, defendant sent a cheque for 33*l*., which plaintiff refused to accept, demanding 43*l*., for which he issued his writ. He afterwards took the 33*l*. paid into Court. Lindley, J., disallowed the costs.

This rule is restricted to cases falling under Rule 1, that is, actions "brought to recover a debt or damages" per Fry, J., in *Nichols* v. *Evens*, 22 Ch. D. 611.

The money must be paid into Court to bring the case within this rule (*Hoole* v. *Earnshaw*, 39 L. T. 410. A).

Consolidated Actions.

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.

To a counter-claim.

9. A plaintiff may, in answer to a counter-claim, pay money into Court in satisfaction thereof, subject to the like conditions as to costs and otherwise as upon payment into Court by a defendant.

Certificate of Master.

10. Where money is paid into Court in the Queen's Bench Division under the certificate of a Master or Associate, such payment must be expressly authorized in such certificate.

Money only paid out on order, when.

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 Order 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 therefore 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.

In the 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.

The rules at present in force are subjoined, and are extracted from those issued in December, 1874.

CHANCERY CONSOLIDATED RULES, 1874.

Framing and Printing Orders, and Particulars to be Stated.—Duplicates, and Office Copies.

Mode of intituling Orders and exact titles of accounts to be stated.

7. Every Order directing money or securities in Court to be dealt with shall, except in the case of Orders made in the matter of the suitors of the Court, be intituled in the cause or matter (but not in any separate account therein), to the credit of which such money or securities shall be placed in the books at the Chancery Pay Office; and every such Order shall state, in the body of such Order, and not merely by reference to the title of it, the exact title of the cause or matter and separate account (if any) to the credit of which the money or securities dealt with shall be standing; and every Order directing money or securities to be brought into Court shall state in the body of such Order the title of the cause or matter, and the separate account (if any) to the credit of which such money or securities are to be placed.

8. Every Order directing money or securities in Court to be dealt with shall express the exact amount of money or securities to be dealt with, whenever it can be ascertained, and the amount of money or securities standing in the books at the Chancery Pay Office, at the date of such Order, to the credit of the cause or matter to which the money or securities to be dealt with may be placed, and not merely by reference to another Order (except where the name of one person is ordered to be substituted for the name of another person to whom a payment, transfer, or delivery of money or securities, has been directed by a former Order); and if the money or securities, or the dividends on securities, to be so dealt with under any such Order, shall not be in Court at the date thereof, the source from which such money, securities, or dividends will be derived shall be stated. Exact amount of funds dealt with, or sources whence derived, to be stated.

And in every case the exact amount of money or securities in Court to be dealt with by the Chancery Paymaster shall be expressed in an Order, or in a Chief Clerk's certificate, or in a certificate of a Taxing Master, or in a certificate of a Master in Lunacy; unless such money be payable for legacy or succession duty, or be described as dividends to accrue on securities in Court, or to be brought into Court, or as interest to be credited in respect of money on deposit, or as money to arise by the realization of securities, or as the residue of such dividends, interest, money, or securities respectively, after deducting an amount expressed in an Order or in such a certificate, or an amount of securities directed to be realized unascertained at the date of the Order directing the realization thereof, or as an aliquot or proportionate part of such dividends, interest, money, securities, or residue, respectively; and in the case of residues, and aliquot or proportionate parts, of money, securities, dividends, or interest, the amount of which cannot be ascertained at the date of the Order, the amounts may be ascertained in manner provided by Rules 10 and 86.

Money, dividends, or interest directed by an Order to be paid into Court, the amount of which cannot be ascertained at the date of the Order, may be ascertained in like manner.

9. Directions in Orders to be acted upon by the Chancery Paymaster shall, so far as practicable, be expressed in or by reference to a schedule or tabular statement subjoined to the Order; and where the actual amounts to be dealt with cannot be ascertained at the date of the Order, the aliquot or proportionate parts to be dealt with may be stated in such schedule or tabular statement in words at length, but the total amount of the securities or money, or where the Order does not dispose of the whole, then the number of the aliquot or proportionate parts dealt with in any such schedule shall be stated in words at length in the mandatory part of the Order. Directions, when practicable, to be expressed in or by reference to a Schedule or tabular statement.

10. When interest is payable in respect of any money in Court directed by an Order to be dealt with by the Chancery Paymaster the Order shall state 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 computed, and the amount of such interest. Amount of interest payable to be stated if practicable, and if not stated, how the amount is to be ascertained.

If the day to which interest is to be computed 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 from the foot of the certificate of a Chief Clerk, or a Master in Lunacy) be stated in the Order, 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 Master.

When interest is certified by a Chief Clerk, or a Master in Lunacy, or a Taxing Master, such interest 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 Master, may, if he thinks fit, require a statement in writing of such computation, authenticated by the signature of the solicitor of the person having the carriage of the Order, to be produced before preparing the certificate, but no affidavit verifying such computation shall be required.

When the day for payment cannot be fixed by the Order, and the interest is not directed to be certified in manner aforesaid, the Order may direct the interest to the day for payment to be ascertained by an affidavit, or by a statutory declaration under 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, and which day shall not be more than ten days after the day of swearing such affidavit, or making such declaration; and such affidavit or declaration shall be a sufficient authority to the Chancery Paymaster to pay or apply the amount of interest so ascertained in the manner directed by such Order.

And 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 it shall be stated in every such affidavit or declaration as aforesaid that income-tax, if any, has been deducted.

Documents on which any dealings by the Chancery Paymaster are made contingent to be described.

11. Whenever the dealing by the Chancery Paymaster with money or securities in Court, is, by an Order, made contingent upon the execution of some document, the document shall be described, and the parties thereto by whom it is to be executed shall be named in an Order, 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.

Persons by or to whom payments and transfers are to be made to be named.

12. Persons who are directed by an Order to pay or transfer into, or deposit in, Court any money or securities, and persons to whom money or securities are directed to be paid, transferred, or delivered, and persons for or during whose lives or other less period, payments are directed to be made, shall be described in the Order, or in a certificate of a Chief Clerk, or a Master in Lunacy, or a Taxing Master, by name, and not merely as plaintiffs or petitioners, or the like; unless such payments, transfers, or deliveries are to be made to trustees or other persons in succession, or to representatives when no probate or letters of administration shall have been taken out at the date of such Order or certificate. Bodies corporate, companies, or societies shall be described by their proper titles or designations, and the christian names and surnames, or titles of honour, of all other such persons shall be expressed in words at length and without abbreviations in such Orders or certificates, the christian names preceding the surnames.

13. Every Order directing the payment of dividends, annuities, or other periodical payments to be made by the Chancery Paymaster shall (except in the case of dividends directed to be paid as they accrue due) specify the time when the first of such payments, and when all subsequent periodical payments, whether quarterly, half-yearly, yearly, or otherwise shall be made. Time for making periodical payments to be stated.

14. Every Order directing the payment of money, or the transfer or delivery of securities in Court, in respect of which duty shall be payable to the revenue under the Acts relating to legacy or succession duty, shall, unless such Order expressly provides for the payment of the duty, also direct the Chancery Paymaster to have regard to the circumstance that such duty is payable; and when by an Order money or securities, 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 legacy duty," or "subject to succession duty," as the case may be, shall be added in the Order to the title of the account thereby directed to be raised. Every Order providing for payment, out of money or the proceeds of securities in Court, of any duty payable under the Acts relating to legacy or succession duty shall direct that the amount of such duty shall, upon the requisition of the Commissioners of Inland Revenue, be transferred to the account of the Receiver-General of Inland Revenue at the Bank. Orders dealing with funds to provide for legacy or succession duty or indicate their liability.

15. Every Order made after the commencement of these Rules, which is to be acted upon by the Chancery Paymaster (except reports of the Masters in Lunacy, confirmed by fiat, and Orders drawn up by the Registrar in Lunacy), shall be drawn up by and entered with the Registrars of the Court; and every Order to be acted upon by the Chancery Paymaster (except the said reports) shall be either wholly printed, or in cases in which printed forms can be used, may be partly printed and partly written; provided that the Registrars may issue any such Orders in writing, if of an urgent nature. Orders to be acted on by Chancery Paymaster to be printed.

The printing of Orders shall be under the control of the Registrars, and the Orders shall be printed on cream wove, machine-made, foolscap folio paper, 18lbs. 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, except as to the schedule or tabular statement in any such Order contained or referred to, which may be printed in such smaller type as the Registrars shall direct.

Sums occurring in the body of every such Order shall be expressed in words; dates occurring therein, and any sums in such schedule or tabular statement as mentioned in Rule 9, shall be expressed in figures instead of words; and each separate direction in such Orders shall (as far as may be) be contained in a distinct paragraph; and in all other respects such Orders shall be printed in such form and manner as the Registrars shall deem expedient.

16. Clerical mistakes or errors arising from any accidental slip or omission in such printed Orders may be amended in writing; but 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 payment, or transfer into, or deposit in, Court of money or securities; and every such amendment shall be stamped by the Clerks of Entries, or by the Record and Writ Clerks, with their official seal, as evidence that the duplicate or record has been also amended. Amendment of accidental errors in printed Orders.

Registrars' official stamp for authenticating documents.

17. The Registrars of the Court shall be provided with official stamps or seals for the authentication of Orders and other documents, and of amendments therein.

A duplicate to be made of printed Orders.

18. The Registrars shall cause a duplicate of every printed or partly printed Order to be made at the same time with the original; and the original Order shall be passed by a Registrar in the usual way, and stamped with his official seal on every leaf thereof, and be 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 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 of the party having the carriage of the Order.

Additional and office copies of printed Orders.

19. The Registrars may cause to be printed additional copies of printed Orders, or printed portions of Orders, according to the requirements of the parties or their solicitors, and such additional copies shall be transmitted to the Report Office; and when such printed or partly printed Orders have been passed and entered, such additional copies upon being duly completed and signed or certified by one of the Clerks of Records and Writs, and authenticated in the same manner as written office copies of Orders, or copies certified pursuant to the Act of the 14 & 15 Vict. c. 99, s. 14, are now signed or certified and authenticated, may be issued as office or certified copies.

Rules as to printing to apply to Orders in Lunacy.

20. Rules 15 and 16 shall, so far as applicable, extend to and include Orders in Lunacy to be acted upon by the Chancery Paymaster, drawn up by the Registrar in Lunacy, but the printing thereof shall be exclusively under the direction and control of the Registrar in Lunacy; and such Orders shall be entered by him in the manner prescribed by section 100 of the Lunacy Regulation Act, 1853 (16 & 17 Vict. c. 70).

Bringing Funds into Court.

Bringing funds into Court on request.

25. Money and securities may be paid or transferred into, or deposited in, Court, and be placed in the books at the Chancery Pay Office to the credit of a cause or matter, on a direction to be obtained from the Chancery Paymaster, upon the written request of the person desirous of so paying, transferring, or depositing, or of his solicitor, without an Order; but no such payment, transfer, or deposit shall be so made to a separate account in a cause (except to a security for costs account), unless such separate account has been directed to be opened by an Order, and such request shall be filed in the Report Office. This Rule shall not apply to money, or securities, directed by an Order to be paid or transferred into, or deposited in, Court, nor shall it apply to money or securities payable or transferable into Court, in pursuance of an Act of Parliament, or a General Order of the Court, by which some particular authority is required to enable the payment, transfer, or deposit to be made.

Request to contain reference to record.

26. Every request for a direction for payment or transfer into, or deposit in, Court, of money or securities to be placed to the credit of a cause commenced since the 1st of November, 1852, shall contain the title of the cause and the reference to the record as cited in Rule 2, and the correctness of such reference shall be authenti-

cated by the official seal of the Clerks of Records and Writs being impressed on such request.

Persons may bring funds into Court though time limited by Order has expired.

27. A person directed by any Order to make a payment or transfer into, or deposit 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 payment, transfer, or deposit 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 pay into Court such further sum upon a request as provided by Rule 25; provided that any such subsequent payment, transfer, or deposit 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. The time for making any such payment, transfer, or deposit may be also, if necessary, extended by a supplemental Order, referring to the former Order, but without repeating the directions for such payment, transfer, or deposit. Such supplemental Order may be made on an application to the Judge at Chambers.

Proceedings on payment in of money, or deposit of securities.

28. When money or securities are to be paid into, or deposited in, Court, such payment or deposit shall be made with the privity of the Chancery Paymaster, and the Chancery Paymaster shall issue a direction to the Bank to receive and place the same to the credit of the Chancery Pay Office Account; and such direction shall specify the title of the cause or matter to which such money or securities are to be placed in the books at the Chancery Pay Office; and upon such money or securities being so paid or deposited, the Bank shall cause a receipt to be given for the same, and shall send such direction to the Chancery Pay Office, with a certificate thereon, that the money or securities therein specified have been received, and placed to the credit of the Chancery Pay Office Account.

Proceedings on transfer of securities into Court.

29. When securities are to be transferred into Court, such transfer shall be made with the privity of the Chancery Paymaster, and the Chancery Paymaster shall issue a direction for the transfer to be made to the account of the Paymaster-General for the time being on behalf of the Court of Chancery; and such direction shall specify the title of the cause or matter to which such securities are to be placed in the books at the Chancery Pay Office; and upon such securities being so transferred, the Bank, or body corporate, or company, in whose books the transfer of such securities is made or registered, shall send such direction to the Chancery Pay Office, with a certificate thereon, that the securities therein specified have been transferred to the said account.

Receipt and certificate of payment, deposit, or transfer.

30. When any such direction as is mentioned in the last two preceding Rules, with a certificate thereon that the amount of money or securities therein mentioned has been so paid, transferred, or deposited, shall be received at the Chancery Pay Office, the Chancery Paymaster shall file a certificate of such payment, transfer, or deposit, and shall therein state the title of the cause or matter to which such amount of money or securities has been placed in the books at the Chancery Pay Office; and an office copy of such certificate of the Chancery Paymaster shall be received as evidence of the payment or transfer into, or deposit in, Court therein mentioned having been made.

Conditional

31. When it is desired to bring money into Court without waiting

lodgment of money at the Bank in urgent cases.

the time necessary to obtain a direction for the Bank to receive such money, it may be lodged at the Bank to the credit of a Chancery Suspense Account (subject to being dealt with as hereinafter mentioned, and not otherwise), upon a written 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 cause or matter in Chancery in respect of 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 a Chancery Suspense Account; and in every case the person making such lodgment, or his solicitor, shall forthwith bespeak the direction for the Bank to receive the money in the manner provided by Rule 28, and produce such direction and certificate at the Bank, for the purpose of having the money so previously lodged transferred to the Chancery Pay Office Account, and placed in the books at the Chancery Pay Office to the credit of the cause or matter mentioned in such direction, and the receipt mentioned in the said Rule 28 shall thereupon be given for such money.

When money paid in under Lands Clauses Act, 1845 (8 Vict. c. 18, s. 69), disability to be stated.

32. Money hereafter paid into Court 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 Chancery Pay Office to the credit of Ex parte the promoters of the undertaking, in the matter of the special Act (citing it), as directed by the said Lands Clauses Consolidation Act, 1845, and some words shall be added to 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, as stated in the request for the direction to receive the money.

Money paid in under the Copyhold Acts to be placed to a separate account.

33. Money hereafter paid into Court, pursuant to the Copyhold Acts, shall be placed in the books at the Chancery Pay Office to the credit of "Ex parte the Copyhold Commissioners," as directed by the said Acts, and in addition thereto, to the account 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.

Persons bringing funds into Court under Trustee Relief Act (10 & 11 Vict. c. 96) to file affidavit.

34. A trustee or other person desiring to pay money or transfer securities into, or to deposit securities in, Court, under the Act 10 & 11 Vict. c. 96, shall file an affidavit, intituled in the matter of the same Act, and in the matter of the trust, and setting forth—

(1.) His own name and address.

(2.) The place where he is to be served with any petition, summons, or order, or with notice of any proceeding relating to such money or securities.

(3.) The amount of money and description and amount of securities which he proposes to pay or transfer into, or deposit in, Court, and the credit to which he wishes it to be placed: and if such money or securities are chargeable with legacy or succession duty, a statement whether such duty or any part thereof has or has not been paid.

(4.) A short description of the trust, and of the instrument creating it.

(5.) The names of the persons interested in or entitled to the money or securities, and their places of residence, to the best of his knowledge and belief.

(6.) His submission to answer all such inquiries relating to the

application of the money or securities paid or transferred into, or deposited in, Court, under the same Act, as the Court or Judge may make or direct.

(7.) A statement whether the money so to be paid into Court, or the dividends on the securities so to be transferred into, or deposited in, Court, and all accumulations of dividends thereon, are desired to be invested in Consolidated 3*l.* per centum annuities, or Reduced 3*l.* per centum annuities, or New 3*l.* per centum annuities, or whether it is deemed unnecessary so to invest the same or to place the same on deposit.

The Chancery Paymaster, on production of an office copy of any such affidavit, shall give the necessary directions for such payment, transfer, or deposit to the account of the particular trust mentioned in the affidavit.

The Regulations contained in the General Order of the Court of the 16th day of May, 1862, for the printing of affidavits to be used on the hearing of a cause, shall be applicable to affidavits filed under this Rule, and the Chancery Paymaster shall not act upon an office copy of any such affidavit, filed after the commencement of these Rules, which is not so printed.

Credit to which money and dividends received by the Bank are to be placed.

35. Any principal money or dividends received by the Bank in respect of securities standing to the Chancery Pay Office Account shall be placed in the books at the Chancery Pay Office, in the case of the principal money, to the 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 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.

PAYMENT OF MONEY, AND SALE, TRANSFER, OR DELIVERY OF SECURITIES OUT OF COURT.—CONVERSION OF GOVERNMENT SECURITIES.—APPLICATION OF DIVIDENDS AND INTEREST.

Funds in Court to be dealt with only in pursuance of an Order.

36. Subject to Rules 46, 47, 48, 49, 62, 65, and 66, securities in Court shall not be sold, transferred, or delivered out, and money in Court shall not be paid out or invested in securities, and money or securities in Court shall not be carried over, and a certificate shall not be issued for the sale, transfer, or delivery of securities in Court, unless in pursuance of an Order, or in the case of an investment of money or application of dividends, of a direction contained in a certificate of a Master in Lunacy as authorized by the Lunacy Regulation Act, 1853, or by any General Orders made thereunder.

Chancery Paymaster may defer acting on Orders until he receives a request.

37. When an Order or a certificate of a Master in Lunacy directs the carrying over of money or securities in Court, or the investment, or placing on deposit (subject to Rule 71), or payment out, of money in Court, or of dividends to accrue on securities in Court, the Chancery Paymaster may defer giving effect to such direction until a request in writing to give effect thereto has been left at the Chancery Pay Office, but it shall be the duty of the solicitor for the person having the carriage of such Order or certificate to leave it and such request at the Chancery Pay Office without unnecessary delay.

Mode of payment of

38. When money in Court is to be paid out (except in the cases provided for by Rules 41, 57, and 58, and by the 4th and

money out of Court.

5th of the General Orders in Lunacy of the 10th day of January, 1870), the Chancery Paymaster shall cause a cheque or other sufficient authority or direction for the payment of the same to be issued. Such cheque or authority or direction for payment, shall state the title of the cause or matter in the books at the Chancery Pay Office to which the money paid is to be debited, the date of the Order or other authority in pursuance of which, and the name of the person to whom, the payment is to be made, or so much of the particulars of such payment as the Chancery Paymaster may deem necessary; and such cheque or authority or direction, duly indorsed by the payee named therein or his lawful attorney, or acknowledgment of receipt signed by such payee or his attorney, shall be a good discharge to the Chancery Paymaster for the amount therein mentioned.

Continuation of certain periodical payments.

39. Money in Court periodically payable at the commencement of the Chancery Funds Rules, 1872, shall continue to be payable by the Chancery Paymaster in pursuance and on the authority of the entries of the cheques for periodical payments in the receipt books in the Accountant-General's Office, or of such other documents as the Accountant-General had been accustomed to use in the preparation of such cheques, without the production of the Orders and other documents in pursuance whereof such payments are made, being necessary.

Renewal of unpaid cheques of the Accountant-General.

40. Cheques which before the commencement of the Chancery Funds Rules, 1872, had been signed by the late Accountant-General or by any of his predecessors, but have not been paid at the commencement of these Rules, shall be a sufficient authority to the Chancery Paymaster to cause payments to be made to the same persons and of the same amounts as are named in such cheques, without the production of the Orders or other documents in pursuance whereof such cheques were so signed, being necessary.

Payments to official persons to be made by transfer.

41. When money in Court is payable to the Receiver-General of Inland Revenue (in any case not provided for by Rule 57), the National Debt Commissioners, the Ecclesiastical Commissioners for England, the Official Trustees of Charitable Funds, the Official Liquidator of any Company, or any other official persons for whom an account is kept at the Bank, the Order shall direct the amount so payable to be transferred, upon the requisition of the official persons to whom it is due, to the proper account (citing it), at the Bank, of such official persons. And the Chancery Paymaster shall, upon receiving such requisition, direct the Bank to write off from the Chancery Pay Office Account the amount so payable, and to place it to the account at the Bank mentioned in such Order, and shall debit therewith the proper account in the books at the Chancery Pay Office.

Particulars to be expressed in certificates for sale, transfer, or delivery of securities.

42. Every certificate for the sale, transfer, or delivery of securities in Court shall express the exact amount of money to be raised by sale, or the exact amount and description of securities to be sold, transferred, or delivered out; and no such certificate shall be issued by a Master in Lunacy, except on the production of an office copy of the report of a Master in Lunacy confirmed by fiat; nor by the Registrar in Lunacy, except on the production of an office copy of the Order in Lunacy; nor by a Registrar of the Court, except on the production of the original Order, or an office copy thereof, if the absence of the original Order shall be accounted for to the satisfaction of such Registrar.

Sale of securities.

43. When securities in Court are to be sold, and a Registrar of

the Court, or a Master or Registrar in Lunacy, has issued a certificate authorizing the sale, the Chancery Paymaster shall issue a direction to the Bank to receive the proceeds of such sale, and to place them to the Chancery Pay Office Account, and shall specify in such direction the title of the cause or matter to the credit of which such proceeds are to be placed in the books at the Chancery Pay Office, and such title shall be the title of the cause or matter to the credit of which the securities were standing at the time of such sale, and the Bank, or body corporate, or company, in whose books, or with whom, the securities to be sold are standing or deposited, shall, upon the production of the receipt from the Bank for the proceeds of the sale, and of the certificate of a Registrar of the Court, or a Master or Registrar in Lunacy, authorizing such sale, countersigned by the Chancery Paymaster, cause the transfer or delivery of the securities necessary to complete the sale to be made by their proper officer.

Conversion (in lieu of sale) of certain Government securities to be directed.

44. When a specific amount of Government securities in Court consisting of either Consolidated 3*l.* per centum annuities, or Reduced 3*l.* per centum annuities, or New 3*l.* per centum annuities, of not less than 1000*l.* is required to be realized, the Order, instead of directing a sale of such securities, shall direct the same to be converted into cash, unless the Court on pronouncing such Order otherwise directs; and a Registrar of the Court or a Master or Registrar in Lunacy shall issue a certificate for the transfer of such securities to the account of the National Debt Commissioners on behalf of the Court of Chancery, as provided in Rule 84.

Transfer of securities out of Court.

45. When securities in Court are to be transferred or delivered out, and a Registrar of the Court, or a Master or Registrar in Lunacy, has issued a certificate authorizing such transfer or delivery, the Chancery Paymaster shall issue a direction for such transfer or delivery, and specify in such direction the title of the cause or matter to the credit of which such securities are standing in the books at the Chancery Pay Office, and the amount and description of the securities to be transferred or delivered, and the name of the person to whom the transfer or delivery is to be made; and upon the receipt of such direction, and of the certificate of a Registrar of the Court, or a Master or Registrar in Lunacy, authorizing such transfer or delivery, countersigned by the Chancery Paymaster, the Bank, or body corporate, or company, in whose books, or with whom, such securities shall be standing or deposited, shall cause such transfer or delivery to be made by their proper officer, and shall send such direction to the Chancery Pay Office, with a certificate thereon that the transfer or delivery therein mentioned has been made to the person named therein.

Application of dividends accruing on securities transferred.

46. When securities in Court are directed to be transferred or delivered out, dividends accruing thereon subsequently to the date of the Order directing the transfer or delivery (when the amount of the securities to be transferred or delivered 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 the securities are to be transferred or delivered, unless such Order otherwise directs. When securities in Court are directed to be realized, and the whole of the proceeds paid out or carried over in one sum, or in aliquot or proportionate parts (except when the realization is to raise a specific sum of money), any dividends accruing on such securities subsequent to the date of the Order directing the realization (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.

When such dividends have been invested.

47. When under an Order directing the transfer or delivery of securities, dividends accruing thereon would be payable to the persons to whom such securities are directed to be transferred or delivered, and pursuant to a general or other previous Order such dividends have been invested, the securities purchased with such dividends shall, unless otherwise directed, be transferred or delivered, and any dividends accrued in respect thereof shall be paid to such persons.

When dividends otherwise applicable have been invested.

48. In every case (other than that provided for by the last preceding Rule) when by an Order 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 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 dividends so invested would have been applied under such Order, if they had not been so invested.

Certificates for transfer, sale, or delivery under the last two preceding Rules.

49. In the cases provided for by the last two preceding Rules, the Registrars of the Court, and the Masters and Registrar in Lunacy, may, upon production to them of a certificate of such investment as therein mentioned, issue certificates for transfer, delivery, or sale, according to the provisions of the said Rules.

Application of money or dividends placed on deposit after date of Order dealing therewith.

50. When subsequently to the date of an Order dealing with money in Court such money shall have been placed on deposit, 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 credited 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.

Application of interest on money placed on deposit after date of Order directing its investment.

51. 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.

Funds ordered to be paid or transferred to women who afterwards marry.

52. When money in Court is directed to be paid or securities in Court are directed to be transferred or delivered to a woman who is not married at the date of the Order, and such woman shall marry before payment of such money, or transfer or delivery of such securities, such money, if it does not in the whole exceed 200*l.* of principal money, or 10*l.* in annual payments, or such securities if they, or the aggregate of such securities and money, do not exceed in value 200*l.* sterling, may be paid, transferred, or delivered to such woman and her husband upon proof of the marriage, and 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, 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 money or securities are not, nor is any part thereof, subject to the trusts of such settlement or agreement for settlement, or in any manner comprised therein or affected thereby; and upon proof of the marriage and production of such affidavits, the Registrar may issue a certificate authorizing the transfer or delivery of such securities to such woman and her husband.

Payment, transfer, or delivery to representatives of deceased persons or co-partners.

53. When a person to whom payment of money in Court or transfer or delivery of securities in Court is directed shall appear to be 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 Order or in the certificate of a Chief Clerk, or of a Taxing Master, or of a Master in Lunacy.

And when money in Court is payable, or securities in Court are transferable or deliverable to any person named or described in an Order, or in a certificate of a Chief Clerk, or of a Taxing Master, or of a Master in Lunacy (except to a person therein expressed to be entitled to such money or securities 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 money or securities, 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 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.

And when money in Court is by an Order directed to be paid to any persons described in an Order or a certificate of a Chief Clerk, or of a Taxing Master, or of a Master in Lunacy, as co-partners, such money may be paid to any one or more of such co-partners.

Payments, transfer, or delivery to surviving co-partners or representatives.

54. When money in Court is payable to any persons as co-partners, or when money in Court is payable, or securities in Court are transferable or deliverable to any persons as legal personal representatives, such money or securities, or any portion thereof for the time being remaining unpaid, untransferred, or undelivered, may, upon proof of the death of any of such co-partners or 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.

Registrars' certificates for transfer or delivery under last two preceding rules.

55. In the case of securities transferable or deliverable under either of the last two preceding Rules, the Registrar may (upon proof of the death of any of such representatives) issue a certificate authorizing the transfer or delivery of such securities to such representatives, or to the survivors or survivor of them.

Within what time probate or letters of administration must have been granted.

56. No money or securities shall, under Rules 53 and 54, 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 money consists of interest or dividends from the date of the last receipt of such interest or dividends under such Order.

Payment of

57. The Chancery Paymaster, before acting upon an Order for

legacy or succession duty.

the payment, transfer, or delivery of money or securities in respect of which legacy or succession duty is (under Rule 14) 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. And for better security against the payment or transfer by the Chancery Paymaster of any money or securities chargeable with any such duty without the duty being first paid, the Chancery Paymaster, on receiving notice from the proper officer that the duty is payable, shall cause a memorandum to be made in his books in conformity with such notice. And when an Order shall have been left at the Chancery Pay Office, for the purpose of giving effect to any direction for the transfer of such duty to the account of the Receiver-General of Inland Revenue at the Bank, together with the requisition of the Commissioners of Inland Revenue for such transfer, and such other evidence as may be necessary for verifying the amount of such duty, the Chancery Paymaster shall direct the Bank to transfer the amount of such duty to the said account, and shall debit such amount to the proper account in the books at the Chancery Pay Office.

Carrying over fees of taxation.

58. When 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 the fees of taxation payable in respect of such costs, unless he shall certify that such fees are included in the costs as taxed. The Chancery Paymaster shall carry over the amount so certified to be payable from the account to which such money or proceeds are placed to a separate account in the books at the Chancery Pay Office for fees of 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.

Deduction of income-tax on payments of or out of dividends.

59. In acting on Orders directing any annuity or maintenance to be paid, or any other periodical payments to be made, out of the dividends which have accrued since the 5th day of April, 1871, or which may hereafter accrue on securities in Court, or hereafter to be in Court, and in respect of which dividends income-tax shall have been deducted, the Chancery 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.

Investment of Money.

Proceedings on investing money in securities.

60. When money in Court is, in pursuance of an Order, to be invested in specified securities, the Chancery Paymaster shall direct the money to be paid to the broker conditionally upon his causing such securities to be transferred or deposited to the account of the Paymaster-General for the time being on behalf of the Court of Chancery, and the cheque or authority or direction for payment of such money shall specify the title of the cause or matter to the credit of which the securities purchased are to be placed in the books at the Chancery Pay Office.

The Bank, or body corporate, or company, in whose books or with whom the transfer or deposit of such securities shall be made or registered, shall cause a certificate of such transfer or deposit to be issued; and such a certificate purporting to be issued by the Bank, or body corporate, or company aforesaid, shall be sufficient evidence for all purposes that such transfer

or deposit as therein mentioned has been actually made; and the securities so transferred or deposited shall be placed in the books at the Chancery Pay Office to the same credit as that to which the said money was standing at the time of such investment, unless the Order authorizing such investment otherwise directs.

Investment of accruing dividends under an Order.

61. When an Order directing the investment from time to time 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 paid into Court, is left at the Chancery Pay Office, together with a request for the purpose of having such direction for investment of dividends carried into effect, the Chancery Paymaster shall, without any further request, from time to time, until he shall receive a request or notice of an Order to the contrary, invest such dividends, if amounting to or exceeding 40*l.* 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.

Purchase of exchequer bills or bonds.

62. When money in Court is by an Order directed to be invested in exchequer bills or exchequer bonds, and when exchequer bills or exchequer bonds are, in pursuance of an Order, deposited in Court to the credit of any cause or matter, any principal money or interest which may thereafter be received and paid into the Bank in respect of such bills or bonds, or of any such bills or bonds to be purchased with principal money or interest in pursuance of this Rule, 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 Chancery Paymaster, without any further request, unless such Order otherwise directs, or until he receives a request or notice of a further Order to the contrary, in exchequer bills or exchequer bonds which shall be placed to the same credit.

Bank to renew exchequer bills, and to receive principal and interest of securities when paid off.

63. When and so often as any exchequer bills or other securities now or hereafter to be deposited at the Bank to the credit of the Chancery Pay Office Account shall be in course of payment, the Bank shall, without any direction from the Chancery 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 interest due thereon, and 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 Chancery Pay Office Account.

And the Bank is forthwith after every such exchange or receipt of principal or interest to certify to the Chancery Paymaster, without any direction from him for that purpose, the numbers, dates, and amounts of the exchequer bills so exchanged or paid off, and also the 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, and upon receiving such certificate the Chancery Paymaster shall place such new bills and such principal money and interest to the credit in the books at the Chancery Pay Office of the cause or matter to which the bills so exchanged or paid off were placed.

Limit of amount to be invested.

64. A sum of money in Court less than 40*l.* shall not be invested in securities, except in the cases provided for by Rules 65 and 66.

This Rule shall extend to the investment of dividends accruing on securities in Court which have been or may be directed or requested to be invested; and such dividends when amounting to less than 40*l.* half-yearly are (subject to Rules 37, 65, 66, and 73) to be placed on deposit.

Money paid in under 36 Geo. 3, c. 52, may be invested on request.

65. The dividends accruing on securities purchased, as mentioned in the 11th Rule of the 1st of the Consolidated Orders of the Court (abrogated by Rule 3 of these Rules), previously 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 as the same would have been invested if the said 11th Rule had not been abrogated.

A sum of money amounting to or exceeding 40*l.* paid into Court after the commencement of these Rules, in pursuance of the Act of 36 Geo. 3, c. 52, s. 32, shall, upon a written request of the person paying it in, or of his solicitor, or upon a written request made by or on behalf of a person claiming to be entitled thereto or interested therein, be invested (without an Order) in Consolidated 3*l.* per centum annuities; 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 annuities, if so requested, either in the original request or in a subsequent request. And if such money shall have been placed on deposit before such request shall be left at the Chancery 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.

Investment of money paid in under the Trustee Relief Act.

66. Notwithstanding the abrogation of the 3rd Rule of the 41st of the Consolidated Orders of the Court (by Rule 3 of these Rules) all dividends subject at the commencement of these Rules to be invested in pursuance of the said 3rd Rule of the said Order, may, when or so soon as they amount to or exceed 10*l.*, be invested as if the said 3rd Rule had not been abrogated.

When the affidavit referred to in Rule 34 contains a statement that it is desired that the money intended to be paid into Court in pursuance of the Act of 10 & 11 Vict. c. 96, or the dividends accruing on the securities intended to be transferred or deposited in pursuance of the said Act, and the accumulations thereon, shall be invested in Consolidated 3*l.* per centum annuities, or Reduced 3*l.* per centum annuities, or New 3*l.* per centum annuities, the Chancery Paymaster shall (if or so soon as such money shall amount to or exceed 40*l.*, or such dividends shall amount to or exceed 10*l.*) invest the same respectively in Consolidated 3*l.* per centum annuities, or Reduced 3*l.* per centum annuities, or New 3*l.* per centum annuities, without any Order or further request for that purpose. But if such money does not amount to 40*l.*, the Chancery Paymaster shall, subject to Rule 73, as soon as conveniently may be, place such money on deposit without a request for that purpose, unless such affidavit contains a statement that it is deemed unnecessary to place such money on deposit, or unless notice in writing be left at his office of an Order having been made, or of an intended application to the Court, affecting such money, securities, or dividends.

Investing or placing

67. In all cases, upon a request in writing by a solicitor acting on behalf of any person claiming to be entitled to or interested in

money or securities in Court, that such money or the dividends or interest accruing on any specified securities, or on any specified sum of money on deposit, may not be placed on deposit or invested, being at any time left at the Chancery Pay Office, the Chancery Paymaster shall not place such money on deposit, or shall be at liberty to cease to place on deposit or invest any more dividends or interest accruing on such securities or sum of money on deposit, until he has had notice that the Court has made some Order in that behalf. On deposit stayed or discontinued on request.

MONEY ON DEPOSIT AND INTEREST THEREON.

68. Subject to any exceptions in these Rules, money in Court paid in before the commencement of the Court of Chancery (Funds) Act, 1872, and not already placed on deposit (other than money paid in pursuant to the Copyhold Acts or to the 69th section of the Lands Clauses Consolidation Act, 1845), and money arising by the sale, conversion, or payment off of securities in Court, or dividends accruing on securities in Court, or money brought over from the credit of some other cause or matter, or otherwise placed, either before or after such commencement, to the credit of a cause or matter in the books at the Chancery Pay Office, shall be placed on deposit on a request signed by any person claiming to be interested in such money, or by his solicitor; and, subject as aforesaid, all money hereafter to be paid into Court shall be placed on deposit without a request for that purpose. In what cases money will be placed on deposit.

69. If a direction in an Order dealing with money in Court otherwise than by directing it to be placed on deposit, whether such money has been paid in before or since the commencement of the Court of Chancery (Funds) Act, 1872, is brought under the notice of the Chancery Paymaster, or if a request in writing by a solicitor acting on behalf of a person claiming to be entitled to or interested in money in Court, paid in after the commencement of the same Act, that such money may not be placed on deposit, is left at the Chancery Pay Office, such money respectively shall not be placed on deposit, but the person making such request may at any time withdraw the same, and by a like request in writing require the money to be placed on deposit. Money not to be placed on deposit in certain cases.

70. The placing on deposit of money paid into Court after the commencement of these Rules shall not be deferred beyond the 15th or the last day of the month in which it shall be paid into Court, whichever day shall first happen after such payment, or in the case of money paid into 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 left at the Chancery Pay Office, the money shall (except in the case provided for in Rule 71) be so placed on the day succeeding the day on which such request shall be so left (which last-named day shall be the date inserted in such request). Time for placing money on deposit.

71. When an Order directs the conversion into cash of any of the Government securities mentioned in Rule 44, and the whole of the money arising thereby to be placed on deposit, such money shall be deemed to have been placed on deposit (without a request for that purpose) on the day on which such conversion shall be effected. As to placing on deposit cash arising from conversion of Government securities.

72. Money in Court paid in pursuant to the Act 9 & 10 Vict. c. 20, intituled "An Act to amend an Act of the second year of Her present Majesty, providing for the custody of certain Exclusion of money paid in under 9 & 10 Vict. c. 20

or to the Appeal Deposit Account.

moneys 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," or of any Act amending the same, or money in Court paid into the Appeal Deposit Account, shall not be placed on deposit.

No sum less than 10*l.* to be on deposit.

73. A less sum of money than 10*l.* shall not remain or be placed on deposit: and if the amount of money on deposit to the credit of a cause or matter at the commencement of these Rules is less than 10*l.* it shall be withdrawn from deposit at or as soon as conveniently may be after such commencement, without a request for that purpose.

Withdrawal of money on deposit.

74. When an Order containing directions dealing with money on deposit, or with money which after the date of the Order has been placed and still remains on deposit, is brought to the Chancery Pay Office to have such direction acted on, such money, or so much thereof as may be sufficient to meet the requirements of the Order, may, on a request in writing signed by a person claiming to be entitled thereto or interested therein, or by a solicitor acting on his behalf, be withdrawn from deposit and applied as directed by the Order, subject, as to the investment of money, to Rule 64.

Limit of time for withdrawal from deposit after request.

75. When money on deposit is by an Order directed to be dealt with, such money shall be withdrawn from deposit as soon as may be after a request in writing for such withdrawal has been left at the Chancery Pay Office, and such withdrawal shall not be deferred beyond a week after the leaving of such request.

No interest computed on a fraction of 1*l.*

76. Interest upon money on deposit shall not be computed on a fraction of one pound.

For what periods interest is to be computed.

77. 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*l.* shall be hereafter placed on deposit, pursuant to a request in writing by or on behalf of a person claiming to be interested therein, and shall remain on deposit undealt with until the 1st day of April or the 1st day 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.

When interest is to be credited.

78. 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 credited by the Chancery Paymaster to the cause or matter to the credit of 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 fifteen 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 credited to the cause or matter to the credit of which the money is then standing.

Mode of cal-

79. When money on deposit to the credit of a cause or matter

consists of sums which have been placed on deposit at different times, and an Order is made dealing with the money to the credit of such cause or matter, 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.

Calculating interest in certain cases on parts of money withdrawn.

80. Until a direction in an Order dealing with interest on money no deposit, credited to a cause or matter as having become due on either of the half-yearly days mentioned in Rule 78, has been brought under the Chancery Paymaster's notice, such interest 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.

Placing of interest on deposit.

Miscellaneous.

Chancery Paymaster may act on affidavits or statutory declarations in certain cases.

86. When evidence is required by the Chancery Paymaster for the purpose of ascertaining the amounts of any residue or aliquot or proportionate part of money or securities dealt with by an Order, or for otherwise carrying into effect the directions of an Order, he may, without any direction in such Order for that purpose, receive and act upon an affidavit, or upon a statutory declaration under the Act of 5 & 6 Wm. 4, c. 62, instead of an affidavit, and every such statutory declaration shall be filed in the Report Office when the Chancery Paymaster shall consider it necessary.

Chancery Paymaster may furnish particulars of Funds in Court.

87. The Chancery Paymaster, upon a request in writing made by or on behalf of a person claiming to be interested in money or securities standing in the books at the Chancery Pay Office to the credit of a cause or matter stated in such request, may, in his discretion, issue, for the information of a Judge or an Officer of the Court, a certificate of the amount and description of such money or securities, and such certificate shall have reference to the morning of the day of the date thereof, and not include the transactions of that day, and the Chancery Paymaster shall notify on such certificate the dates of any Orders restraining the transfer, sale, delivery out, or payment, or other dealing with the securities or money in Court to the credit of the cause or matter mentioned in such certificate, and any charging Orders, affecting such securities or money, of which respectively he has had notice, and with respect to any restraining or charging Orders hereafter to be made, the names of the persons to whom notice is to be given, or in whose favour such restraining or charging Orders have been made,

And when a cause or matter has been inserted in the list referred to in Rule 91, the fact shall be notified on the certificate relating thereto.

Chancery Paymaster may issue transcripts of his accounts.

88. Upon a request in writing made by or on behalf of a person claiming to be interested in money or securities standing in the books at the Chancery Pay Office to the credit of a cause or matter stated in such request, the Chancery Paymaster may, in his discretion, issue a transcript of the account in the said books in respect of such cause or matter; and if so required by the person to whom it is issued, such transcript shall be authenticated at the Chancery Audit Office.

Chancery Paymaster may certify as to pur-

89. When securities have been purchased, sold, transferred, or delivered out, or money or securities have been carried over, or

chases, sales, or other dealings with securities.

otherwise dealt with in the books at the Chancery Pay Office, the Chancery Paymaster may in his discretion issue a certificate thereof, upon a request in writing made by or on behalf of any person claiming to be interested in such money or securities.

Chancery Paymaster may give other information as to transactions.

90. The Chancery Paymaster may, in his discretion, on a request in writing, supply such information with respect to any transactions in the Chancery Pay Office as may from time to time be required in any particular case.

List of funds undealt with to be published triennially.

91. As soon as conveniently may be after the 1st day of September, 1875, and after the same day in every succeeding third year, a list shall be prepared by the Chancery Paymaster, and filed in the Report Office, and a copy thereof shall be inserted in the *London Gazette*, and exhibited in the several Offices of the Court, of the titles of the causes and matters in the books at the Chancery Pay Office (other than the causes or matters referred to in Rule 92), to the credit of which any securities, or any money amounting to or exceeding £50, may be standing, which money or the dividends on which securities have not been dealt with by the Accountant-General or by the Chancery Paymaster (otherwise than by the continuous investment or placing on deposit of dividends) during the fifteen years immediately preceding such 1st day of September, and no information shall be given by the Chancery Paymaster respecting any money or securities to the credit of a cause or matter contained in any such list until he has been furnished with a statement in writing by a solicitor requiring such information, of the name of the person on whose behalf he applies, and that, in such solicitor's opinion, the applicant is beneficially interested in such money or securities.

Transfer of small balances to a separate account.

92. As soon as conveniently may be after the 1st of September, 1875, and the same day in each succeeding year, the Chancery Paymaster shall carry over to a separate account in his books, for causes and matters on which the balances do not exceed £5, the balances of money and securities standing in such books to the credit of the causes or matters on which such balances of money and securities do not together amount to £5, and on which the money or securities shall not have been dealt with during the preceding five years. When an Order dealing with money or securities carried over under this Rule is brought to the Chancery Pay Office to be acted upon, the Chancery Paymaster shall carry back such money or securities and any dividends accrued thereon to the credit of the cause or matter from which they were so carried over, and shall deal therewith as directed by such Order.

Solicitors to insert their names and addresses on documents left in the Chancery Pay Office.

93. Every Order or request that may be left at the Chancery Pay Office, and every statutory declaration or other document required to be retained there for the purpose of carrying into effect an Order, may be printed or written, and shall have printed or written thereon the name and address of a solicitor.

Titles of accounts not to exceed thirty-six words.

94. The length of the title of any account hereafter directed by an Order, or requested pursuant to an Act of Parliament or otherwise, to be raised in the books at the Chancery Pay Office 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 raised: Provided that if a sufficient reason be assigned to the satisfaction of the Registrar for extending beyond thirty-six words the title of an account directed by an Order to be raised, such title may be so extended; and the

Registrar shall in such case add to the direction to raise such account the words "notwithstanding Rule 94"; and provided that if a sufficient reason be assigned, to the satisfaction of the Chancery Paymaster, for so extending the title of an account requested to be raised, such title may be so extended; and the Chancery Paymaster shall in such case add the said words to the direction under the authority of which such account is to be raised: In such title four figures shall be reckoned as one word.

This Rule shall not apply to any account which has been directed to be raised by an Order dated before the 7th day of January, 1873; and any account directed to be raised by an Order dated since the 7th day of January, 1873, but before the commencement of these Rules, shall be deemed to have been properly entitled notwithstanding the length of the title of such account may exceed thirty-six words.

Index of documents filed at the Report Office.

An index shall be made and kept in the Report Office of the Court of all documents by these Rules directed to be filed there.

CHANCERY FUNDS (AMENDED) ORDERS, 1874.

Notice of payment, transfer, or deposit on request.

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, 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.

A person making a transfer, payment, or deposit upon request to the credit of a cause or matter, as provided by Rule 25 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.

Notice of payment or transfer under Trustee Relief Act (10 & 11 Vict. c. 96) to be given.

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.

Application by petition or summons.

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* cash or £300* 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.

* Now £1,000 (Order LV. 2 (5)).

A person bringing funds into Court to be served with notice.

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 a Judge in Chambers, respecting such money or securities, or the dividends thereof, by any person interested therein or entitled thereto.

Persons interested to be served with notice.

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.

Place of service to be named.

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.

Petitions and summonses to be entitled in the matter of the 10 & 11 Vict. c. 96.

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.

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.

Restriction on issuing certificates during vacations.

12. The Registrars of the Court shall not, without a special direction of a Judge, be required to issue certificates for the sale, transfer, or delivery of securities in Court during any vacation in their office.

Application at Chambers.

13. Applications under the Court of Chancery (Funds) Act, 1872, for the conversion into cash of Government securities in Court of any of the three descriptions mentioned in Rule 44 of the Chancery Funds Consolidated Rules, 1874, and for placing such cash on deposit as provided by Rule 71 of the said Rules, or for dealing with interest on money on deposit, may be made to the *Master of the Rolls* and the *Vice-Chancellors* respectively, while sitting at Chambers.

Petitions respecting money or securities on list of undealt with funds.

14. When a cause or matter has been inserted in the list mentioned in Rule 91 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, 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.

Applications under Copyhold Acts to be made at Chambers.

15. Applications under the Copyhold Acts respecting any securities or money in Court, shall be made by summons at the Chambers either of the *Master of the Rolls* or of one of the *Vice-Chancellors;* but notice of any such application is not to be given to the Copyhold Commissioners, except when the Judge may so direct; and this Order shall be deemed an additional article to the 35th of the Consolidated Orders, Rule 1 (Order LV. 2 (11).

Certain articles and securities not to be received by Clerks of Records and Writs.

16. The Clerks of Records and Writs 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.

Proceedings and documents 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 first of the Consolidated Orders, Rule 48, or be inscribed with a note indicating that the cause was commenced prior to the 2nd of 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.

Original Orders to be deposited with Clerks of Entries.

18. The duplicate orders or records to be deposited with the Clerks of Entries pursuant to Rule 18 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.

Solicitors' Fees.

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.

In the Queen's Bench Division.

13. In the Queen's Bench Division, unless the cause or matter is proceeding in a District Registry, and unless and until any other provision shall be made by Parliament in that behalf, money paid into Court shall be paid into the Bank of England (Law Courts Branch), and 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 Regulations contained in Appendix M, which the Masters of the Supreme Court, or any four of them, with the consent of the Governor and Company of the Bank of England, may from time to time modify by way of addition or substitution; 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.

Money already in Queen's Bench Division.

14. All money standing in Court in the Queen's Bench Division on the day on which these Rules come into operation shall thereupon be subject in all respects to the provisions of this Order.

Awarded to an infant or person of

15. In any cause or matter in the Queen's Bench Division in which a sum of money has been awarded

unsound mind.

to or recovered by an infant, or person of unsound mind not so found by inquisition, the Court or a Judge may at or after the trial order that the whole or any part of such sum shall be paid into Court to the credit of an account intituled in the cause or matter; and any sum so paid into Court, and any dividends or interest thereon, shall be subject to such orders as may from time to time be made by the Court or a Judge concerning the same, and may either be invested, or be paid out of Court, or transferred to such persons, to be held and applied upon and for such trusts and in such manner, as the Court or Judge shall direct.

Dividends thereon.

16. Money paid into Court or securities purchased under the provisions of the last preceding Rule, and the dividends or interest thereon, shall be sold, transferred, or paid out to the party entitled thereto, pursuant to the order of the Court or a Judge.

Investments.

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.

Conversion of.

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.

Admiralty Registrar.

19. Subject to any provision which may hereafter be made for that purpose by Parliament, or under any Rules to be made by the authority of Parliament, all money paid into Court in Admiralty actions not proceeding in a District Registry shall be paid to the account of "the Admiralty Registrar" at the Bank of England (Law Courts Branch), upon receivable orders to be obtained in the Admiralty Registry.

In Admiralty Action.

20. Money paid into Court in an Admiralty action shall not be paid out of Court except in pursuance of an order of the Court or a Judge.

Caveat Payment Book.

21. A solicitor desiring to prevent the payment of money out of Court in an Admiralty action shall

file a notice, and thereupon a caveat shall be entered in a book to be kept in the Admiralty Registry, called the "Caveat Payment Book."

ORDER XXIII.

Reply and Subsequent Pleadings.

In Admiralty actions the plaintiff shall deliver his reply within six days (r. 1). Where a counter-claim is pleaded a reply thereto shall be subject to the Rules applicable to statements of defence (r. 4). Matters formerly alleged by way of new assignment may now be pleaded either by amendment of the statement of claim or by reply.

XXIV. 1. Time for delivery.

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.

Plaintiff is entitled to reply by traverse or confession and avoidance, or both combined (*Hall* v. *Eve*, 4 Ch. D. 341. A). It should not set up a fresh claim for damages (*Williamson* v. *L. & N. W. Ry. Co.*, 12 Ch. D. 787). And see Order XIX. 16.

Where a plaintiff is out of time, and a motion is made for judgment on admissions, or to dismiss for want of prosecution, the usual course is to give the plaintiff time to take the next step on payment of costs (*Eaton* v. *Storer*, 22 Ch. D. 91. A).

XXIV. 2. Pleadings after reply

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.

XXIV. 3. Time for delivery.

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.

XXII. 8. Reply to counter-claim.

4. Where a counter-claim is pleaded, a reply thereto shall be subject to the Rules applicable to statements of defence.

A reply to a counter claim may contain a claim for damages arising out of the same transaction as the counter-claim, though after the issue of the writ (*Toke* v. *Andrews*, 8 Q. B. D. 428).

XXV. 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 Order XXVII. Rule 13, the pleadings as between such parties shall be deemed to be closed.

XIX. 14. New assignment.

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.

The defendant may plead any ground of defence which has arisen after the delivery of his statement of defence, if he do so within eight days after it has arisen, or at any subsequent time by leave. A similar provision has been made for a plaintiff where a defence to a set-off or counter-claim has arisen after reply.

XX. 1. Before pleading delivered.

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. And if, after a statement of defence has been delivered, any ground of defence arises to any set-off or counter-claim 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.

A counter-claim arising after action brought should be so stated in the pleadings (*Ellis* v. *Munson*, 35 L. T. 585. A).

A reply to a counter-claim may contain a claim for damages arising out of the same transaction as the counter-claim, though after the issue of the writ (*Toke* v. *Andrews*, 8 Q. B. D. 423).

XX. 2. After pleading delivered.

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 counter-claim 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.

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. XXV. 3. Confession of plea.

In an action for rent and damages for breach of covenant in not building a wall, and an injunction, the defendant paid money into Court as to the rent, pleaded performance of the covenant by building the wall after action brought, and paid one pound into Court in respect of the breach before action. The plaintiff took the money out of Court, confessed the defence as to the wall, and claimed his costs under this rule; held that he was not entitled to such costs, for that the statement did not amount to a defence within the meaning of the rule, but that he was entitled to the costs of the action under Order LXV. (*Callander* v. *Hawkins*, 2 C. P. D. 592).

Where a defendant is adjudicated bankrupt after action brought upon an act of bankruptcy which occurred before action brought, the plaintiff may confess that the property claimed was in the order and disposition of the bankrupt at the date of the act of bankruptcy, and sign judgment for his costs under this rule (*Champion* v. *Formby*, 7 Ch. D. 373). In *Foster* v. *Gamgee*, 1 Q. B. D. 666, the defendant pleaded the bankruptcy of the plaintiff; it was held that the plaintiff was entitled to his costs under this rule up to the plea.

Pleading matter after action brought must be so stated (*Ellis* v. *Munson*, 35 L. T. 585. A).

There is no appeal without leave to a Divisional Court from the refusal of a Judge at Chambers to deprive the plaintiff of his costs under the above rule (*Perkins* v. *Beresford*, 47 L. T. 515).

ORDER XXV.

Proceedings in lieu of Demurrer.

This Order is entirely new. Rule 5 is adopted from Ch. Proc. Act. 1852, 50.

1. No demurrer shall be allowed.

2. Any party shall be entitled to raise by his pleading any point of law, 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 Points of law, how disposed of.

of either party, the same may be set down for hearing and disposed of at any time before the trial.

Action decided by.

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, counter-claim, or reply therein, the Court or Judge may thereupon dismiss the action or make such other order therein as may be just.

Frivolous pleadings.

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.

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.

ORDER XXVI.

Discontinuance.

The first Rule has been slightly altered, to meet the case of two or more defendants. A plaintiff who discontinues his action may avoid judgment being entered against him for the costs, by payment of them within four days after taxation (r. 3). The Court may order the stay of a subsequent action until the costs of the discontinued action have been paid (r. 4).

XXIII. 1. By notice before defence.

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, 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. 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. 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 counter-claim 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.

By leave after.

Defence may be withdrawn on terms.

A letter from plaintiffs' solicitors to defendants' solicitors, announcing that they are instructed to proceed no further, is sufficient notice of discontinuance (*The Pomerania*, 39 L. T. 642). Where the finding of an arbitrator substantially amounts to a verdict in favour of the defendant, he is entitled to judgment, and the plaintiff is not entitled to discontinue the action (*Stahlschmidt* v. *Walford*, 4 Q. B. D. 217. A). Nor is a plaintiff who has obtained an interim injunction upon the usual undertaking as to damages, allowed to discontinue without paying the damages to which he has rendered himself liable (*Newcomen* v. *Coulson*, 7 Ch. D. 764). And it would seem from the practice in patent cases, that where defendant is allowed to amend and raise a new case the plaintiff should be placed in the same condition as to discontinuance as he would have been had the matters been pleaded at the proper time (*Edison Telephone Co.* v. *India Rubber Co.*, 17 Ch. D. 137). And where the plaintiffs abandoned their statement of claim, except with regard to two issues, it was held that the defendants were entitled to an actual, and not to a future and contingent discontinuance of the action, as to all matters not covered by those issues (*The Emma Silver Mining Co.* v. *Grant*, 11 Ch. D. 930).

This Rule does not entitle the plaintiff to discontinue the action after entry for trial although no statement of defence has been delivered (*Mathews* v. *Antrobus*, 49 L. J. Ch. 80).

Following the practice of the C. L. P. Act, 1852, sec. 205, Fry, J., has decided that if one of several defendants in ejectment give notice confessing the plaintiff's title, the plaintiff is entitled to sign judgment for the costs occasioned by that defendant's defence only (*Real & Pers. Advance Co.* v. *McCarthy*, 14 Ch. D. 191). On appeal on the construction of this order the Court had considerable doubts as to its propriety under the circumstances (*Ibid.* 18 Ch. D. 362).

A defendant is not bound by a defence put in by his solicitor fraudulently and without authority, and on discovering the fraud he may be allowed to withdraw it (*Williams* v. *Preston*, 51 L. J. Ch. 927. A).

XXIII. 2. Withdrawal by consent.

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.

XXIII. 2a. Costs.

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.

Stay of subsequent Action.

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.

ORDER XXVII.

Default of Pleading.

A claim for double value in respect of the premises has been included in the indorsements to which Rule 8 applies. The ninth Rule provides for the entry of judgment where part of a claim is unanswered, saving that execution may be stayed where there is a counter-claim to be tried. Rule 13 makes a most important alteration; where a reply or subsequent pleading is not delivered within the proper time the pleadings are deemed to be closed, and the material facts in the last pleading delivered to be denied and put in issue.

XXIX. 1. When Statement of Claim required.

1. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, 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.

On the hearing of such motion the Court will usually grant extension of time on payment of the costs (*Higginbottom* v. *Aynsley*, 3 Ch. D. 288).

When the plaintiff has become bankrupt, notice of the motion should be served upon the trustee (*Wright* v. *The Swindon, &c., Ry. Co.*, 4 Ch. D. 164).

Where an action has been dismissed for want of prosecution it is no bar to a fresh action in the same matter (*Orrell Colliery Co.*, 12 Ch. D. 681).

XXIX. 2. By defendant in action for debt.

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.

If in an action on a replevin bond the plaintiff, instead of claiming damages, claims the amount for which the bond is given, and becomes entitled to judgment by default, his proper course is to enter final judgment under this rule, and not interlocutory judgment under Rule 4 (*Dix* v. *Groom*, 5 Ex. D. 91).

The practice in Admiralty is not governed by this rule (*The Sfactoria*, 2 P. D. 3).

XXIX. 3. Default by one of several defendants.

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.

XXIX. 4. Unliquidated claim.

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.

XXIX. 5. Default by one of several defendants.

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.

XXIX. 6. Claim for debt and damages.

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 & 5.

XXIX. 7. Recovery of land.

7. In an action for the recovery of land, if the defendant makes default as mentioned in Rule 2, the plaintiff may enter a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land, with his costs.

XXIX. 8. Recovery of land and mesne profits, &c.

8. Where the plaintiff has indorsed 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 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 & 5.

Judgment for part admitted.

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 counter-claim, 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.

Execution stayed where counter-claim.

XXIX. 9. Probate Actions.

10. In Probate actions, if any defendant make default in filing and delivering a defence, the action may proceed, notwithstanding such default.

XXIX. 10. In other Actions. Motion for judgment.

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.

Where the mortgagor, defendant in a foreclosure action, had not appeared, the usual order for foreclosure was made against him (*Patey* v. *Flint*, 48 L. J. Ch. 696).

Costs of an affidavit in support where defendant had put in no defence were disallowed (*Perpetual Building Soc.* v. *Gillespie*, W. N. 1882, 4).

As to delivery of pleadings to a defendant who has not appeared see Order XIX. 10, *ante*.

XXIX. 11. Default by 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.

XXIX. 12. 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.

The pleadings may also be closed by joinder of issue (Order XXIII. 5).

XXIX. 13. Default by third party.

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.

XXIX. 14. Setting aside judgment by default.

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.

A winding-up order may be discharged on payment of plaintiff's debt, if no other creditor appear (*Re Aston Hall Co.*, 45 L. T. 677).

ORDER XXVIII.

AMENDMENT.

Rule 1 allows a party to amend his indorsement or pleading by leave. The power to strike out scandalous and embarrassing matter has been separated from it, and now forms Rule 27 of Order XIX. Rule 5 enables a party to plead to an amended pleading without any order for the purpose. Order XLI*a*. as to amending clerical mistakes in judgments, &c., has been incorporated in this Order (r. 11), as well as Order LIX. 2, which allows the Court to amend at any time any defect in any proceedings (r. 12). Costs of amendment under Rules 2 & 3 shall be borne by the party making the same unless the judge otherwise order (r. 13).

Indorsement or pleadings.

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.

The order for amendment need not be drawn up unless directed (Order LII. 14).

In *Collette* v. *Goode*, 7 Ch. D. 842, Fry, J., refused to allow an amendment upon a state of facts first appearing at the trial, for the mere purpose of enabling the defendant to raise a purely technical objection to the plaintiff's title to sue.

As to setting up a new case see *Cargill* v. *Bower*, 4 Ch. D. 78; *Ibid.* (No. 2) 10 Ch. D. 502; *Budding* v. *Murdock*, 1 Ch. D. 42, on which see some observations of Jessel, M. R., in *St. Nazaire Co.*, 12 Ch. D. 92. A, *King* v. *Corke*, 1 Ch. D. 57.

An amendment will not be allowed for the sole purpose of determining how the costs of the action should be awarded (*Webber* v. *Wedgewood*, W. N. 1883, 8); and the effect of which would be to change the whole nature of the action (*Blenkhorn* v. *Penrose*, 29 W. R. 238; *Newby* v. *Sharp*, 8 Ch. D. 39. A; *Clarke* v. *Yorke*, 31 W. R. 62; *Laird* v. *Briggs*, 16 Ch. D. 440, 664). On the hearing of the appeal in this latter case the Court of Appeal differed from Fry, J., as to one of the desired amendments being such as to alter the nature of the case or prejudice the plaintiff (19 Ch. D. 22).

Refusal of an application for leave to amend should not be included in the judgment (*Laird* v. *Briggs*, 16 Ch. D. 664. A). On an appeal from the judgment the Court of Appeal has power if it thinks fit to give leave to amend (*Ibid*).

XXVII. 2. Without leave by plaintiff.

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 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.

XXVII. 3. By defendant, when.

3. A defendant who has set up any counter-claim or set-off may, without any leave, amend such counter-claim or set-off at any time before the expiration of the time allowed him for answering the reply, and before such answer, or in case there be no reply, then at any time before the expiration of twenty-eight days from defence.

XXVII. 4. Disallowed, when.

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.

By opposite party, without leave.

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.

XXVII. 6. Application for leave in other cases.

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.

Leave will be given to amend unless it will work some injustice to the other side (*Tildesley* v. *Harper*, 10 Ch. D. 393. A).

XXVII. 7 Failure to amend within time.

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.

XXVII. 8. How to be made.

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.

XXVII. 9. To be marked on the pleading.

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 ."

XXVII. 10. Delivery of amended pleading.

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.

*XLI*a. Clerical errors in judgments, &c.

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.

An omission to ask for the costs of an adjourned motion was rectified by Fry, J., under this rule (*Fritz* v. *Hobson*, 14 Ch. D. 543). In *Re Savage*, 15 Ch. D. 557, a vesting order was amended where the parties were joined as co-petitioners without their authority, by striking out the names of such co-petitioners; where by mistake it was alleged that a trustee had died intestate (*Re Clinton*, W. N. 1882, 176); where an order is made subject to an affidavit of service it ought to bear date on the day the affidavit is filed (*Ashley* v. *Taylor*, 10 Ch. D. 773).

LIX. 2. Of defects in any proceedings.

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.

In *Winkley* v. *Winkley*, 29 W. R. 628, an action for partition and sale, after the order for sale had been made by consent of all parties, it was allowed to amend the statement of claim so as to include property omitted by mistake from it, and to alter the date of the order so as to refer to the amended statement of claim.

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. Costs.

ORDER XXIX.

Releases in Admiralty Actions.

1. Property arrested by warrant shall only be released under the authority of an instrument issued from the Registry, to be called a release. Property, how released.

2. A solicitor, at whose instance any property has been arrested, may, before an appearance has been entered, obtain the release thereof by filing a notice that he withdraws the warrant. Withdrawal of warrant.

3. A solicitor may obtain the release of any property by paying into the Registry the sum in respect of which the action has been commenced. By payment of amount.

4. Cargo, arrested for freight only, may be released by filing an affidavit as to the value of the freight, and by paying the amount of the freight into the Registry, or by satisfying the Judge that it has already been paid. Cargo arrested for freight.

5. In an action of salvage, the value of the property under arrest shall be agreed, or an affidavit of value filed, before the property is released, unless the Court or a Judge shall otherwise order. In action of salvage.

6. A solicitor, who shall have filed a bail bond in the sum in respect of which the action has been commenced, or paid such sum into the Registry, and, if the action be one of salvage, shall have also filed an affidavit as to the value of the property arrested, shall be entitled to a release for the same, unless there be a caveat against the release thereof outstanding in the "Caveat Release Book." Where caveat entered.

7. The release, when obtained, shall be left with a notice in the Registry by the solicitor taking out the same, who shall also at the same time pay all costs, charges, and expenses attending the care and custody of the property whilst under arrest; and the property shall thereupon be released. To be left in Registry.

8. A solicitor in an action, desiring to prevent the release of any property under arrest, shall file in the Caveat, how entered.

Registry a notice, and thereupon a caveat against the release of the property shall be entered in a book to be kept in the Principal Registry, called the "Caveat Release Book."

In District Registry.

9. Where an action is proceeding in a District Registry, the District Registrar shall, before authorizing a release, ascertain by telegraph, or otherwise, from the Principal Registry whether or not any caveat has been entered there.

Improper entry of a caveat.

10. A party, delaying the release of any property by the entry of a caveat, shall be liable to be condemned in costs and damages, unless he shall show to the satisfaction of the Court or a Judge good and sufficient reason for having so done.

Caveat against arrest.

11. A party, desiring to prevent the arrest of any property, may cause a caveat against the issue of a warrant for the arrest thereof to be entered in the Principal Registry.

Undertaking to appear.

12. For the purpose in the last preceding Rule mentioned, the party shall cause to be filed in the Registry a notice, signed by himself or his solicitor, undertaking to enter an appearance in any action that may be commenced against the said property, and to give bail in such action in a sum not exceeding an amount to be stated in the notice, or pay such sum into the Registry; and a caveat against the issue of a warrant for the arrest of the property shall thereupon be entered in a book to be kept in the Registry, called the "Caveat Warrant Book."

In District Registry.

13. Where an action is proceeding in a District Registry, the District Registrar (unless required to act under Rule 18 of this Order) shall, before issuing a warrant for the arrest of the property, ascertain by telegraph, or otherwise, from the Principal Registry, whether or not any caveat has been entered against the issue of a warrant for the arrest thereof.

Copy writ to be served.

14. A solicitor, commencing an action against any property in respect of which a caveat has been entered in the "Caveat Warrant Book," shall forthwith serve a copy of the writ upon the party on whose behalf the caveat has been entered, or upon his solicitor.

Bail to be given.

15. Within three days from the service of the writ or copy thereof, the party on whose behalf the caveat

has been entered shall, if the sum in respect of which the action is commenced does not exceed the amount for which he has undertaken, give bail in such sum, or pay the same into the Registry.

Procedure in default of bail.

16. After the expiration of twelve days from the filing of the notice in Rule 12 mentioned, if the party on whose behalf the caveat has been entered shall not have given bail in such sum, or paid the same into the Registry, the plaintiff's solicitor may proceed with the action by default, and on filing his proofs in the Registry may have the action placed on the list for hearing.

Judgment how enforced.

17. If, when the action comes before the Judge, he is satisfied that the claim is well founded, he may pronounce for the amount which appears to him to be due, and may enforce the payment thereof by attachment against the party on whose behalf the caveat has been entered, and by the arrest of the property, if it then be or thereafter come within the jurisdiction of the Court.

Liability for entry of caveat.

18. Nothing in this Order shall prevent a solicitor from taking out a warrant for the arrest of any property, notwithstanding the entry of a caveat in the "Caveat Warrant Book;" but the party, at whose instance any property in respect of which a caveat is entered shall be arrested, shall be liable to have the warrant discharged and to be condemned in costs and damages, unless he shall show, to the satisfaction of the Judge, good and sufficient reason for having so done.

ORDER XXX.

Summons for Directions.

In what matters.

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.

Returnable in four days.

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.

To be comprehensive.

Directions given though not applied for.

Costs of subsequent applications.

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.

ORDER XXXI.

Discovery and Inspection.

Except in actions for fraud or breach of trust, interrogatories can now only be administered by leave. They must be strictly relevant to the matters in question in the cause (r. 1). The Court is to take into consideration any offer which has been made to volunteer the required information (r. 2). The Taxing Officer or Court may direct the costs unreasonably incurred to be paid by the party in fault without any application being made (r. 3). An application to have interrogatories struck out as prolix or vexatious, &c., may be made within seven days, not four days as heretofore (r. 7). On the hearing of an application for discovery the Court has wider powers as to refusing or adjourning the same, as not necessary, or not necessary at that stage of the proceedings (r. 12). Inspection of bankers' books and books of account may be offered at their usual place of custody (r. 17) subject to the discretion of the Judge (r. 18). Rule 19 allows limited inspection

of the rolls of a manor. Rules 25–27 prescribe a new practice by which security for the costs of the required discovery is to be given in the first instance by the party seeking it, 28 as to discovery in actions against a sheriff. It will be observed that in the use of the forms the words "shall be" are now substituted for "may be."

This Order is applied to interpleader issues by Order LVII. 13. Applications for discovery are made in Chambers, Order LV.2 (17).

XXXI. 1. Interrogatories. Fraud or breach of trust. In other cases by leave.

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 any time after delivering his statement of claim, 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 interrogatories in writing for the examination of the opposite parties, 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: 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. Irrelevant.

Parties may be made defendants for the purpose of discovery (*Orr* v. *Diaper*, 4 Ch. D. 92). This cannot be done with a person whose proper character is that of a mere witness (per Jessel, M. R., in *Berry* v. *King*, S. J. 1882, 312). If in the opinion of the Court they be joined unnecessarily, they may be struck out, or, if retained till the hearing, they will be entitled to their costs (*Bull* v. *London School Board*, 34 L. T. 674; *Wilson* v. *Church*, 9 Ch. D. 552).

As to interrogatories in an Admiralty action see *The Biola*, 24 W. R. 524; *The Radnorshire*, 5 P. D. 172.

As a general rule a defendant will not be allowed to deliver interrogatories before statement of defence (*Disney* v. *Longbourne*, 2 Ch. D. 704; *Hawley* v. *Reade*, W. N. 1876, 64). When interrogatories are delivered before the statement of defence, it must be shown that they are material at that stage of the action (*Mercier* v. *Cotton*, 1 Q. B. D. 442. A, discussed in *Quilter* v. *Heatley*, 23 Ch. D. 50. A). In an action in the Chancery Division the materiality often sufficiently appears from the interrogatories themselves (*Harbord* v. *Monk*, 9 Ch. D. 616).

If the interrogatories be not delivered till some time after the close of the pleadings, the delay must be satisfactorily accounted for (*London Prov. Co.* v. *Davies*, 5 Ch. D. 775; *Ellis* v. *Ambler*, 25 W. R. 557).

As the principles of Equity are to prevail, the rules previously existing respecting discovery in the Court of Chancery are to be

binding in all Divisions (per Mellish, L.J., in *Anderson* v. *Bank of Columbia*, 2 Ch. D. 658. A).

The discovery must be from the opposite party; there is none directly from agents (*Hall* v. *L. N. W. Ry. Co.*, 35 L. T. 848). Nor was there from co-defendants (*Molloy* v. *Kilby*, 15 Ch. D. 162; but see now Order XVI. 55).

A person may be interrogated as to acts done by his agent or servant, if he have the means of getting the information from them (*Bolckow* v. *Fisher*, 10 Q. B. D. 161. A; *Rasbotham* v. *Shropshire Union*, W. N. 1883, 134; *Pavitt* v. *N. Metrop. Tramways*, 48 L. T. 730).

A guardian *ad litem* of an infant cannot be compelled to answer interrogatories in an action brought against a defendant of whom he is appointed guardian (*Ingram* v. *Little*, 11 Q. B. D. 251).

Where an interrogatory was not considered to be for the ordinary purposes of discovery, but was directed to the details of the plaintiff's evidence, it was held to be rightly disallowed (*Benbow* v. *Low*, 16 Ch. D. 93. A).

The proceedings in a winding-up are in the nature of an action, and the official liquidator may be permitted to deliver interrogatories to claimants (*Re Alexandra Palace Co.*, 16 Ch. D. 58).

In a voluntary winding-up, if the liquidator have brought an action and administered interrogatories to defendant he will not usually be allowed to proceed under the powers of the Companies' Acts (*Heiron's Case*, 15 Ch. D. 139. A).

The plaintiff in an action to recover statutory penalties cannot administer interrogatories to the defendant, for in such an action the Court of Equity would not before the Judicature Acts have granted any incidental discovery, and the effect of the Judicature Acts has been not to alter the law but only the practice (*Hunnings* v. *Williamson*, 10 Q. B. D. 459).

Judge to consider offers to admit.

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.

XXXI. 2. Improper interrogatories. Costs.

3. In adjusting the costs of the cause or matter, inquiry shall at the instance of the 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.

XXXI. 3. Form of.

4. Interrogatories shall be in the Form No. 6 in Appendix B, with such variations as circumstances may require.

XXXI. 4. Corporations.

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.

This rule supersedes the old practice of the Court of Chancery of making an officer of a corporation a defendant for the purpose of discovery only (*Wilson* v. *Church*, 9 Ch. D. 552).

The town clerk to a corporation cannot object that his information is derived as solicitor in the action, the corporation having elected to answer through him (*Mayor of Swansea* v. *Quirk*, 5 C. P. D. 106).

In order to interrogate a member of a company, it must be shown that he has the required information, and that there is no officer competent to make the required discovery (*Berkeley* v. *Standard Co.*, 13 Ch. D. 97. A). A company will not be ordered to answer interrogatories by a member against whom a reasonable objection can be shown (*Manchester Paving Co.* v. *Slagg*, W. N. 1882, 127).

Leave to interrogate a corporation is necessary. The information may extend to knowledge in the possession of agents. It would seem to be a good ground for objection that the inquiry would involve an unreasonable amount of expense (*Hall* v. *London and North Western Ry.*, 35 L. T. 848).

When the plaintiff is a foreign government, the proceedings may be stayed till a proper person is named for the purpose of giving discovery (*Rep. of Costa Rica* v. *Erlanger*, 1 Ch. D. 174. A).

XXXI. 5. Objections to answer, how taken

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.

A party may refuse to answer an interrogatory on the ground that it would tend to criminate himself; but he is not thereby entitled to have it struck out (*Allhusen* v. *Labouchere*, 3 Q. B. D. 654. A; *Gay* v. *Labouchere*, 4 Q. B. D. 206).

The form, "I decline to answer all the said interrogatories upon the ground that my answer to them might tend to criminate me," was held sufficient (*Lamb* v. *Munster*, 10 Q. B. D. 110). The Court must be satisfied from the circumstances of the case and the nature of the evidence which the witness is called upon to give, that he has reasonable ground to apprehend danger from his being compelled to answer. If it once be made to appear that such is the case, great latitude should be allowed to him in judging for himself of the effect of any particular question (*Ex parte Reynolds*, 20 Ch. D. 294. A).

A person answering is obliged to answer fully, unless he can make out an exceptional case—viz., that the discovery is sought vexatiously or oppressively, or is a discovery which it will be burdensome or injurious to the defendant to give, and which probably may never be used at all (per James, L. J., in *Saull* v. *Browne*, L. R. 9 Ch. 367). The Court in such a case may be trusted to exercise a proper control over any attempt to press for any such minuteness of discovery as would be either vexatious or unreasonable (*Elmer* v. *Creasy*, Ibid 73; *G. W. Colliery Co.* v. *Tucker*, Ibid. 378; *Parker* v. *Wells*, 18 Ch. D. 477. A).

Interrogatories have been admitted as to what newspapers and circulars contained the false statements whereby the plaintiff was induced to take shares in a company (*Ashley* v. *Taylor*, 38 L. T. 44. A).

A plaintiff is entitled to a discovery of the facts upon which the defendant relies, but not of the evidence which it is proposed to adduce; hence he was allowed to interrogate as to what conversation took place, but not in whose presence it took place (*Eade* v. *Jacobs*, 3 Ex. D. 335, commented on in *Johns* v. *James*, 13 Ch. D. 375). If a party to an action rest his claim or defence upon an alleged conversation, he is bound to answer an interrogatory by the other party as to what his version of the conversation is (*Att.-Gen.* v. *Gaskill*, 46 L. T. 180. A).

It is not within the province of an interrogatory to ask whether a certain allegation in the statement of claim is not a falsehood (*Johns* v. *James*, *supra*). A defendant, however, who had denied that a certain passage was a public highway, was obliged to answer an interrogatory as to whether there was not and had not been of right for upwards of forty years a public highway over the close in question (*Att.-Gen.* v. *Gaskill*, 46 L. T. 180. A).

An executor defendant in an administration action cannot refuse to answer interrogatories delivered before close of the pleadings as to particulars of real and personal estate of testator (*Re Sutcliffe*, 29 W. R. 732). If an account has been already rendered it seems it would be sufficient to verify such account (*Ibid.*).

As to disobedience to an order to answer interrogatories see Rules 21 and 22, note, *post*.

In an action for the recovery of land the plaintiff is entitled to interrogate the defendant as to all matters relevant to his own, and not to the defendant's case (*Lyell* v. *Kennedy*, 8 App. Cas. 217).

The ordinary rules of discovery apply to patent actions (*Birch* v. *Mather*, 22 Ch. D. 629).

As to particulars of misconduct see *Saunders* v. *Jones*, 7 Ch. D. 435.

In an action by trustees for specific performance of a contract entered into with them, it is irrelevant to put interrogatories tending to show that the proposed investment was a breach of their trust (*Mansfield* v. *Childerhouse*, 4 Ch. D. 82).

Under the Newspaper Libel and Registration Act, 1881, a register of the proprietors of newspapers has been established. In an action against a newspaper for libel, a defendant may be asked if he is the printer or publisher or both (*Ramsden* v. *Brearley*, W. N. 1875, 199); and as to what further interrogatories will be allowed see *Carter* v. *Leeds News Co.*, W. N. 1876, 11; *Wilson* v. *Brignell*, W. N. 1875, 239. As to interrogatories disallowed as being too remote from the matter in issue, and opening too wide a field for inquiry, in fact obliging the plaintiffs to

detail the whole manner of conducting their business, see *Steward* v. *Lord Lonsdale*, 5 C. P. D. 47.

In an action by a second against a first mortgagee, the defendant may be asked not only what is due upon his security but what security he holds (*West of England Bank* v. *Nicholls*, 6 Ch. D. 613).

XXXI. 5. Striking out.

7. Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, 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.

A party may refuse to answer an interrogatory on the ground that it would tend to criminate himself, but he is not thereby entitled to have it struck out. On applying to have interrogatories struck out, he must specify those to which he objects, unless they are so utterly irrelevant as to be an abuse of the process of the Court (*Allhusen* v. *Labouchere*, 3 Q. B. D. 654. A; *Gay* v. *Labouchere*, 4 Q. B. D. 206). Objection to answer particular interrogatories on the ground that they are irrelevant, or that they seek discovery of the other party's evidence, must be taken in the affidavit in answer, and do not afford ground for setting aside the interrogatories (*Ibid.*). Interrogatories should only be struck out when they are objectionable or oppressive. The mere fact that they are open to criticism is not a reason for striking them out (*Winter* v. *Dobbs*, W. N. 1876, 21).

In an action for breach of promise of marriage, Lindley, J., struck out interrogatories as to mere expectations of means by defendant, as to the means of his relations, and as to any settlement made by them on his wife. Such objections would probably be taken now in the affidavit in answer (*Anon.* W. N. 1876, 22).

XXXI. 6. Affidavit in answer.

8. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as a Judge may allow.

When a member of a company is interrogated the Court will not make an order as to the payment of his costs separately from the costs of the company, and he cannot refuse to file his affidavit until he has been paid the taxed costs of making it (*Berkeley* v. *Standard Discount Co.*, 13 Ch. D. 97. A).

The objection to answer interrogatories on the ground that they are irrelevant, or that they seek discovery of the other party's evidence, must be taken in the affidavit in answer (*Gay* v. *Labouchere*, 4 Q. B. D. 206).

Where defendant was asked if she had written a letter containing certain statements or statement to the same purport and effect, it was considered a sufficient answer to say that she did write a letter, but that she had no copy of it, and was unable to state with exactness what the statements made therein were (*Dalrymple* v. *Leslie*, 8 Q. B. D. 5).

XXXI. 7. Printing of.

9. An affidavit in answer to interrogatories shall, unless otherwise ordered by a Judge, if exceeding ten folios, be printed, and shall be in the Form No. 7 in

Appendix B, with such variations as circumstances may require.

In *Webb* v. *Bornford*, 46 L. J. Ch. 288, Hall, V. C., declined to allow a written schedule to a printed answer, but under the circumstances dispensed with the printing altogether.

XXXI. 9. Sufficiency of answer.

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.

XXXI. 10. Further answer.

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 *viva voce* examination, as the Judge may direct.

An objection to answer an interrogatory must be specific (*Church* v. *Perry*, 36 L. T. 513).

The old rule still survives that every one who answers must answer fully (*Furber* v. *King*, 29 W. R. 536; *Burrett* v. *Burrett*, W. N. 1880, 193).

A summons under this Rule should state to what part or parts of the interrogatories a further answer is required (*Anstey* v. *Woolwich Co.*, 11 Ch. D. 439). It may be in general terms where all the answers to interrogatories are properly objected to (*Furber* v. *King*, 50 L. J. Ch. 496).

The Master may direct which party is to pay the costs of the examination, though it would seem more judicious that those costs should be reserved (*Vicary* v. *G. N. R.*, 9 Q. B. D. 168).

XXXI. 12. Discovery of documents.

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.

It is doubtful whether a plaintiff cannot obtain an order for production of documents before he has delivered his statement of claim (*The Republic of Costa Rica* v. *Strousberg*, 11 Ch. D. 323. A). He can in some instances before delivery of the statement of defence, though it ought not to be a matter of course (*Union Bank of London* v. *Manby*, 13 Ch. D. 241. A).

The Court must feel assured that the affidavit of documents is incorrect to warrant an order for further discovery (*Appleby* v. *Waring*, L. J. N. C. 1880, 125).

An official liquidator being an officer of the Court is not in the position of an ordinary litigant, and will not in the absence of special circumstances be required to make an affidavit as to documents in his possession, though he is bound to produce to the adverse litigant the documents which the latter requires to see (*Re Mutual Soc.* 22 Ch. D. 714. A).

This rule does not apply to an action for penalties (*Hunnings* v. *Williamson*, 10 Q. B. D. 459).

See note to Rule 13.

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. *XXXI.* 13. Affidavit in answer.

The Rules previously existing respecting discovery in the Court of Chancery are now binding upon all the Courts (*Anderson* v. *B. of Columbia*, 2 Ch. D. 644. A).

Privilege.

The Court will not grant discovery or production of documents where it would be injurious to the public interest. Thus, documents were considered protected from production which were described as consisting exclusively of political communications kept in the fulfilment of a public political duty, and for the purpose of performing that duty (*Wadeer* v. *East India Co.*, 8 De G. M. & G. 186).

In an action against officers in H.M.S. for damages resulting from a collision caused by one of Her Majesty's ships, reports were held privileged which were designed solely for the information of the Admiralty, and concerning which the Secretary of the Admiralty stated that it would be prejudicial to the public service to allow such reports to become liable for inspection (*The Bellerophon*, 44 L. J. Ad. 5). Further, as to the grounds of privilege of reports of officers in the public service in the discharge of their duty, see *Dawkins* v. *Lord Paulet*, L. R. 5 Q. B. 94; *Dawkins* v. *Lord Rokeby*, L. R. 8 Q. B. 255; L. R. 7 H. L. 744.

In a petition of right the suppliant is not entitled to obtain discovery from the Crown (*Thomas* v. *Reg.*, L. R. 10 Q. B. 44). But the Crown is entitled to obtain discovery from the suppliant (*Tomline* v. *Reg.*, 4 Ex. D. 252. A).

The affidavit in support of the objection to discovery, on the ground that the production would be contrary to public policy, must state sufficient to enable the Court to see whether that objection can be sustained (*Kain* v. *Farrer*, W. N. 1877, 266); semble, the mind of a responsible person must have been brought to bear on the question.

A person who objects to the production of documents, on the ground that they may tend to criminate himself, must make the objection on oath (*Webb* v. *East*, 5 Ex. D. 23; *Hill* v. *Campbell*, L. R. 10 C. P. 222). It does not follow that under all circumstances a party can resist the production of a document known to be in his custody, on the ground that the production of it might render him liable to penal consequences. Thus, it is no

answer to a motion for production of documents in the custody of a defendant that they tend to support an indictment pending against him for perjury committed in the cause (*Rice* v. *Gordon*, 13 Sim. 580).

In *Bunn* v. *Bunn*, 4 De G. J. & S. 316, it was objected on the part of the defendants that they were not bound to give discovery of a deed which might subject them to penalties under 13 Eliz. c. 5 and 27 Eliz. c. 4; they were nevertheless ordered to make the common affidavit of documents. If, says Turner, L. J., you defend the deed honestly and justly you are exposed to no penalty.

In *Waters* v. *E. of Shaftesbury*, 14 W. R. 259, it was held that as the accounts sought were not material to the defendant for resisting the relief sought at the hearing, and as the Court had reason to suspect they might be used as evidence against the plaintiff in criminal proceedings then pending, the defendant was not entitled to their production before the hearing.

One party is entitled to the production of documents in the possession of the other, relating to the matter in question, unless they be privileged; the Judge has no discretion (*Bustros* v. *White*, 1 Q. B. D. 423. A).

An affidavit that a document is privileged is insufficient. It ought to state and verify the facts constituting the privilege (*Gardner* v. *Irvin*, 4 Ex. D. 49. A). The documents may be described as "letters and correspondence which have passed between my legal advisers and myself, numbered from to inclusive, and tied up in a bundle marked with the letter A, and initialed by me" (*Taylor* v. *Batten*, 4 Q. B. D. 85. A).

Documents prepared with a *bonâ fide* intention of being laid before a solicitor, in relation to an intended action, are privileged (*Southwark Co.* v. *Quick*, 3 Q. B. D. 315. A; *M'Corquodale* v. *Bell*, 1 C. P. D. 471). A report, for instance, procured by the solicitor and furnished by a medical man, as to the injuries sustained by the plaintiff in a railway accident (*Friend* v. *Chatham and Dover Ry.*, 2 Ex. D. 437. A); reports of surveyors as to the condition of a cargo (*Theodor Korner*, 3 P. D. 162).

In my opinion, says Cotton, L. J., in *Wheeler* v. *Le Marchant*, 17 Ch. D. 685. A, the plaintiff is entitled to have an order for production of the documents as to which the contest has arisen, except such, if any, as the defendant shall state by affidavit to have been prepared confidentially after dispute had arisen between the plaintiff and defendant, and for the purpose of obtaining information, evidence, or legal advice with reference to litigation existing or contemplated between the parties to this action.

In an action by *cestuis que trust* against their trustees to make good the loss resulting from an alleged breach of trust, the defendants must produce correspondence between themselves and their solicitors *ante litem motam* (*Mason* v. *Cattley*, 22 Ch. D. 609).

A letter which cannot be said to be a confidential communication between the defendant and any one in the nature of a legal adviser is not privileged (*English* v. *Tottie*, 1 Q. B. D. 141; *Anderson* v. *Bank of Columbia*, 2 Ch. D. 644. A). In *Storey* v. *Lennox*, 1 M. & C. 525, where the plaintiff collected materials for himself, with a view to anticipated litigation, they were held not protected.

The reports of an accountant employed by defendant's solicitor

to investigate books are privileged from production. So also are drafts of pleadings and observations made upon briefs, though the briefs are not when they consist of matter *publici juris* (*Walsham* v. *Stainton*, 2 H. & M. 1; *Wilson* v. *Northampton Ry. Co.*, 14 Eq. 477; *Re Brown, Tyas* v. *Brown*, 42 L. T. 501). The indorsement on the brief is not privileged (*Nicholl* v. *Jones*, 13 W. R. 451); nor are the shorthand writer's notes, and the indorsement on counsel's brief, in proceedings in Lunacy (*Re Brown*, 28 W. R. 575).

A pursuivant of the Heralds' College is not the legal adviser of a person who employs him to oppose the enrolment of a pedigree in the College, and so communications between them are not privileged (*Slade* v. *Tucker*, 14 Ch. D. 824).

A trustee is not bound to produce to his *cestui que trust* a case laid before counsel *ante litem motam* where, although not personally interested in the matter, the case is laid before counsel with a view to resisting the claim (*Thomas* v. *Sec. State for India*, 18 W. R. 312).

Answers to inquiries addressed by defendants to their agent by direction of their solicitor, for the purpose of procuring evidence in support of defendant's case, are within the rule as to protection (*Lafone* v. *Falkland Islands Co.*, 4 K. & J. 34).

The mere fact that letters might afford materials for the cross-examination of the opponent's witnesses is no ground for inspection (*Richards* v. *Gellatly*, L. R. 7 C. P. 127).

A plaintiff has obtained inspection of an agreement of compromise by defendant in a former action (*Hutchinson* v. *Glover*, 1 Q. B. D. 138); but if it had been a document privileged in the former action it would have retained its privilege (*Bullock* v. *Corry*, 3 Q. B. D. 356); *Nordon* v. *Defries*, 8 Q. B. D. 508. A).

Agent, &c.

Discovery must be from the opposite party, there is none directly from agents (*Hall* v. *L. & N. W. Ry. Co.*, 35 L. T. 848). In an action for an account of profits made as agents, when the agency was denied, that question was directed to be tried before production of invoices was granted (*Verminck* v. *Edwards*, 29 W. R. 189). The secretary of a tramway company was directed to inquire of the tram driver, or otherwise obtain information on the subject-matter, and could not justify a refusal to do so on the ground that evidence had been obtained by the solicitor for the purposes of the action (*Pavitte* v. *N. Metrop. Tramways*, 48 L. T. 730). In *Colyer* v. *Colyer*, 30 L. J. Ch. 408, it was held that the plaintiff could not have inspection of the private books kept by the defendant's agent. Discovery may be had of third parties who have been served with notice under Order XVI. 48 (*Mac Alister* v. *B. of Rochester*, 5 C. P. D. 194); there was none from co-defendants (*Molloy* v. *Kilby*, 15 Ch. D. 162. A); but see now Order XVI. 55.

As to obliging third parties to produce documents at the hearing in the Court of Appeal see *Benyon* v. *Godden*, W. N. 1877, 257.

As to underwriters suing in the name of the assured and unable to make the required discovery see *Wilson* v. *Raffalovitch*, 7 Q. B. D. 553. A).

A defendant is entitled to an affidavit of documents from the next friend of a plaintiff of unsound mind (*Higginson* v. *Hall*, 10 Ch. D. 235).

When it is sought to remove a person from being next friend of an infant in an action he cannot be compelled to give discovery

for this purpose (*Re Corsellis, Lawton* v. *Elwes*, 52 L. J. Ch. 399, approved in *Ingram* v. *Little*, 11 Q. B. D. 251).

Materiality. It was a rule of the Court of Chancery that the discovery ought to be material to the relief sought (*Kettlewell* v. *Barstow*, L. R. 7 Ch. 693; *Moore* v. *Craven*, Ibid. 94). Where the production sought is material only on the quantum of the amount payable it may properly be postponed to the hearing to determine if any account should be directed (*Turner* v. *Bailey*, 4 De G. J. & S. 332).

When the materiality is sufficiently apparent the Court will order the required discovery, unless the documents be privileged. There is a reluctance to make this order before delivery of statement of claim (*Cashin* v. *Craddock*, 2 Ch. D. 140; *Rep. of Costa Rica* v. *Strousberg*, 11 Ch. D. 323. A). Indeed, it seems obvious that it would not be desirable to make it a general practice to issue a writ merely to find what documents are in the adversary's possession. There is less objection, though it is not a matter of course, to make this order before delivery of statement of defence (*Hancock* v. *Guerin*, 4 Ex. D. 3; *Union Bank* v. *Manby*, 13 Ch. D. 241. A). When, however, documents have been referred to in the pleadings they come within the operation of Rule 15, *post*.

Where discovery will not help the plaintiff at the trial, the Court has a discretion as to obliging the defendant to answer, and will not do so where compelling the answer would be oppressive. When the plaintiff in the Court below insisted on an answer, and not the qualified answer he was entitled to, it was held that the order for a further answer must be simply discharged (*Parker* v. *Wells*, 18 Ch. D. 485. A).

Generally speaking, the Court does not weigh with great nicety the materiality or immateriality of the discovery, except where the discovery would be such as the plaintiff, though failing at the hearing, might afterwards use in a way prejudicial to the defendant (per Hatherley, L. C., cited in *Carver* v. *Pinto Leite*, L. R. 7 Ch. 97, and to the same effect see *Heugh* v. *Garrett*, 44 L. J. Ch. 305).

To protect a defendant from production of a document on which he relies as evidence of his title it must contain no matter supporting the plaintiff's case or impeaching the defence. The character ascribed to it by the defendant must be averred with a reasonable distinctness and positiveness (*Coombe* v. *Corp. of London*, 1 Y. & C. 631). When a party swears that documents are immaterial it has been held to be sufficient, unless there be something which qualifies the statement, or shows substantial insufficiency on the face of the affidavit (*Minet* v. *Morgan*, L. R. 8 Ch. 366, approving *Peile* v. *Stoddert*, 1 M. & G. 192, where belief upon advice and no more was considered adequate).

As to instances of where discovery has been refused, as not being sought for the purposes of the action, but in aid of some other proceedings, see *Temperley* v. *Willett*, 6 E. & B. 380; *Metropolitan Saloon Co.* v. *Hawkins*, 4 H. & N. 146.

Documents cannot be withheld where they are incorporated by reference in the pleadings (*Hardman* v. *Ellames*, 2 M. & K. 745; see note to Rule 15). It must be shown that there is such a connection between plaintiff and defendant as entitles the plaintiff to see the documents. A bill could not be filed against a mere stranger for the production of documents (per Lord Cottenham, in *Adams* v. *Fisher*, 3 M. & C. 541).

Affidavit.

The test of the sufficiency of the affidavit is, Can a definite issue of perjury be put to the jury, assuming the answer to be false (*Walker* v. *Daniell*, 22 W. R. 595).

An affidavit that a document is privileged is insufficient. It ought to state and verify the facts constituting the privilege (*Gardner* v. *Irvin*, 4 Ex. D. 49. A).

An affidavit setting out a very large number of letters instead of referring to them in bundles properly identified was ordered to be taken off the file (*Walker* v. *Poole*, 21 Ch. D. 835).

The documents may be described as "letters and correspondence which have passed between my legal advisers and myself, numbered from to inclusive, and tied up in a bundle marked with the letter A, and initialed by me" (*Taylor* v. *Batten*, 4 Q. B. D. 85. A).

In *Bewicke* v. *Graham*, 7 Q. B. D. 400. A, an affidavit that "certain documents related solely to the case of defendants, and not to case of plaintiffs, and did not tend to support it, and to the best of their knowledge, information and belief contained nothing to impeach the case of defendants," was held sufficient objection. Similarly for a plaintiff (*Minet* v. *Morgan*, L. R. 8 Ch. 361). For other forms of affidavits see *Kettlewell* v. *Barstow*, L. R. 7 Ch. 693, and *Moore* v. *Craven*, cited in *Carver* v. *Pinto Leite*, Ibid. 91.

When the documents are privileged the Court will not order the names of the parties to be set out (*Taylor* v. *Oliver*, 45 L. J. Ch. 774).

An affidavit of documents is conclusive, unless it can be shown, either from the affidavit itself, or from the documents referred to, or from an admission in the pleadings, that other documents exist (*Jones* v. *Monte Video Gas Co.*, W. N. 1880, 87; *Welsh Coal Co.* v. *Gaskell*, 36 L. T. 352; *Saull* v. *Browne*, 17 Eq. 404; *Cie. Financière* v. *Peruvian Guano Co.*, 52 L. J. 181). It is not sufficient to make an affidavit denying that the documents in question assist the applicant, when the Court is reasonably certain from the nature of the documents themselves that the plaintiff is under a misconception as to their effect (*Att.-General* v. *Emerson*, 10 Q. B. D. 191. A; *Ponsonby* v. *Hartley*, W. N. 1883, 44. A).

On an application for discovery the nature of the case must be such as to suggest to the Judge that documents are or have been in the possession or power of the party against whom the order is sought (*Johnson* v. *Smith*, 25 W. R. 539).

Title.

In an action for the recovery of land, the defendant is obliged to make an affidavit of his documents of title, but he may object to produce them (*The New Investment Co.* v. *Peed*, 3 C. P. D. 196; *Egremont Burial Board* v. *Egremont Iron Co.*, 28 W. R. 594). The plaintiff must show that his claim rests on some reasonable foundation (*Phillips* v. *Phillips*, 27 W. R. 939; *Town* v. *Cox*, L. R. 9 Ex. 45).

It would be very dangerous to allow a plaintiff to enter upon a roving inquiry, which might result in his finding flaws in the title of the defendant for the benefit of somebody else (per James, L. J., in *Kettlewell* v. *Barstow*, L. R. 7 Ch. 694). A plaintiff will not be compelled to produce muniments of title which he swears do not, to the best of his knowledge, information and belief, contain anything impeaching his case, or supporting or material to the case of the defendant (*Minet* v. *Morgan*, L. R. 8 Ch. 361; *Bewicke* v. *Graham*, 7 Q. B. D. 400. A).

In an action for the recovery of land, a 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).

An application will not be granted that one man should be compelled to produce another man's title deeds because he has joint possession of them. But an allegation that other parties, who are not before the Court, have an interest, will not be sufficient (*Kearsley* v. *Philips & Ducane*, 10 Q. B. D. 465. A; *Kettlewell* v. *Barstow* L. R. 7 Ch. 693; *Hadley* v. *McDougall*, Ibid. 312). The objection ought to state the nature of the joint ownership (*Bovill* v. *Cowen*, L. R. 7 Ch. 495).

In an action against the committee of a lunatic, the defendant successfully resisted an order for inspection, on the ground that the documents were not in his possession or control, but in that of the Court of Chancery (*Vivian* v. *Little*, W. N. 1883, 112).

A lessee holding over will not be allowed to interrogate his landlord with the object of showing that his title has expired (*Wallen* v. *Forrest*, L. R. 7 Q. B. 239).

A lessor is entitled to have the boundaries kept distinguished, and where this has been neglected discovery has been granted to restore the successor to the lessor to the position he would have occupied but for the omission (*Brown* v. *Wales*, 15 Eq. 142).

A mortgagee can only be compelled to produce deeds (1), where fraud is charged (*Kennedy* v. *Green*, 6 Sim. 6; (2) where the deed is referred to in the defence so as to make it part of it (*Latimer* v. *Neate*, 4 Cl. & F. 570; (3) where a mortgagor has become bankrupt, under the Bankruptcy Act (Bankruptcy Rules, 1870, 81).

A mortgagee in a redemption action brought by a remainderman cannot be ordered to produce the deed of settlement under which the mortgage was made (*Chichester* v. *Marquis of Donegal*, L. R. 5 Ch. 497). But he may be obliged to disclose the amount due on the security, and what security he holds for his debt (*West of England Bank* v. *Nicholls*, 6 Ch. D. 613).

Discovery will not be granted in aid of an action for recovery of land in India (*Reiner* v. *M. of Salisbury*, 2 Ch. D. 378).

Miscellaneous.

The peculiarity of insurance business has given rise to a practice of granting discovery to a larger extent than in ordinary business. The underwriters are entitled to discovery of ships' papers, without an affidavit, and from all persons interested in the proceedings (*China S.S. Co.* v. *Commercial Assur.*, 8 Q. B. D. 142. A).

In an action on a policy of insurance the defendants obtained an order that the action should be stayed until the plaintiffs satisfied the Court that they had done all in their power to obtain production of the ship's papers (*West of England Bank* v. *Canton Co.*, 2 Ex. D. 472; but the plaintiff should show that he has tried to obtain the required information (*Mertens* v. *Haig*, 3 De G. J. & S. 538).

In an action on a policy of marine insurance the order for the discovery of the ship's papers may be—"That the plaintiffs and all persons interested in these proceedings, and in the insurance the subject of this action, do produce and show to the defendants all ship's papers" (describing them as in Form K, 19), "which are now in the custody of the plaintiffs and the other persons aforesaid, their or any of their brokers, &c., and in the meantime all proceedings be stayed (*China Steamship Co.* v. *Commercial Insurance Co.*, 8 Q. B. D. 142. A). For form of order for production (Underwriters) see App. K, Form 19, *post*.

If the person in whose control the documents are is not within the jurisdiction of the Court, and it is difficult if not impossible to obtain the discovery, the Court will not stay the action under those circumstances (*Frazer* v. *Burrows*, 2 Q. B. D. 624).

If the Court be not satisfied that its order has been complied with the action may be dismissed (*Rep. of Liberia* v. *Raye*, 1 App. Cas. 139).

Where defendant was clerk to a local board, and the production would have prejudiced his lien, the Court would not make the order before the trial, unless a sufficient sum were paid into Court, upon which he was to have the same lien as upon the papers (*Newington Board* v. *Eldridge*, 12 Ch. D. 349. A).

A solicitor cannot set up a lien acquired in a cause as against the right of parties to the action to have production of the documents (*Vale* v. *Oppert*, L. R. 10 Ch. 340); nor can he resist production of a settlement when summoned under a *subpœna duces tecum*, on the ground that he has not been paid the costs of preparing it (*Fowler* v. *Fowler*, 50 L. J. Ch. 686). He is not entitled to refuse to produce documents for examination by the trustee on which he claims a lien in respect of professional services done for a bankrupt before the bankruptcy (*Re Toleman*, 13 Ch. D. 885. A).

The words, "and never have had," are material (*Wagstaffe* v. *Anderson*, 39 L. T. 332). Where the documents by the consent of parties are submitted to the Judge his decision is final (*Bustros* v. *White*, 1 Q. B. D. 422. A).

Where the issue is whether certain accounts have been settled, the plaintiffs who were alleged to be parties to those accounts have been held entitled to their production (*Dickson* v. *Harrison*, 47 L. J. Ch. 686). On appeal defendants were ordered to file an affidavit that they had no documents showing or tending to show that the accounts alleged to be settled were not settled (W. N. 1878, 145).

An order for discovery may be made in proceedings under the Companies Act, 1862, though no action is proceeding (*Re National Funds Co.* 24 W. R. 774). In an Admiralty action an order for discovery may be made against the owners of a foreign ship (*The Emma*, 24 W. R. 587).

XXXI. 11. 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.

When a Judge directs documents to be produced at a particular place he is exercising a discretion with which the Court of Appeal will not interfere (*Bustros* v. *Bustros*, 30 W. R. 374. A).

An order for inspection of documents relating to the estate of a lunatic deceased was made on production of an affidavit showing a *primâ facie* title to the lunatic's property (*Re Smyth*, 16 Ch. D. 673. A); the solicitor of the Treasury to whom administration of the estate of an intestate had been granted was held

not bound to make an affidavit of documents until a *primâ facie* case had been made by the plaintiff alleged next of kin (*Lane* v. *Grey*, 16 Eq. 552).

Fresh orders as to the production of documents may be made from time to time according to the circumstances brought to the knowledge of the Court (*Prestney* v. *M. of Colchester*, 31 W. R. 757. A).

A party who has a right to have documents produced for his inspection has also a right to take copies of them (*Pratt* v. *Pratt*, 30 W. R. 837).

As to the power of the Court to allow original documents to be taken out of the jurisdiction see *Lafone* v. *Falkland Islands Co.*, 4 K. & J. 39).

XXXI. 14. Referred to in pleadings.

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 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.

In *Hardman* v. *Ellames*, 2 M. & K. 745, where defendant had incorporated some documents by reference in his pleadings, he was held bound to produce them, although he positively stated that they in no way assisted the title of the plaintiff.

There is a material distinction between ordinary discovery and the discovery of documents referred to in pleadings and affidavits. Under Rule 12 the general rule is not to allow general discovery until the issues between parties are defined, but this does not apply here (*Quilter* v. *Heatley*, 23 Ch. D. 51. A, where *Webster* v. *Whewall*, 15 Ch. D. 121, is considered).

When the production of writings for the purpose of comparison is desired, as they can be compared only with writings proved to the satisfaction of the Judge to be genuine, this can only be done at the hearing (*Wilson* v. *Thornbury*, 17 Eq. 517).

As to costs under this Rule see Order LXV. 27 (17).

XXXI. 15. 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.

XXXI. 16. Time 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. Such notice shall be in the Form No. 10 in Appendix B, with such variations as circumstances may require.

Books of account.

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.

XXXI. 17, 18. Order for inspection.

Documents not referred to.

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.

R. G. H. T. 1853, 31. Court Rolls.

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 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

XXXI. 19. Questions may be reserved.

inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

In *Re Leigh*, 6 Ch. D. 256. A, where an executrix disputed a horsedealer's account, and the dispute was whether or not certain horses were sold on commission, the Court refused to order the horsedealer to disclose the prices, as being immaterial, until it had been decided that the horses were sold on commission.

In an action for an account of profits made as agents, where the agency was denied, that question was directed to be tried before production of invoices was granted (*Verminck* v. *Edwards*, 29 W. R. 189).

XXXI. 20. Failure to comply with order.

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.

In *Danvillier* v. *Myers*, W. N. 1883, 58, the action was dismissed, although this had the effect of defeating the plaintiff's claim, even to those parts of his demand to which the discovery sought did not relate.

In *Mellor* v. *Thompson*, W. N. 1883, 128, Kay, J., granted the issue of the attachment, but delayed the drawing-up of the order pending an appeal from the order to file the affidavit.

Where a Master has made an order under this rule, that an action be dismissed unless certain interrogatories be answered by a certain day, the action does not come to an end so as to prevent an extension of time after that day, under Order LXIV. 7 (*Burke* v. *Rooney*, 4 C. P. D. 226).

It will only be in extreme cases that the Court will consent to strike out the defence (W. N. 1875, 202).

This rule does not apply to orders made under Order XVI. 14 (*Pike* v. *Keene*, 35 L. T. 341).

XXXI. 21. Service of the order.

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. 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.

This order does not require an indorsement that the party will be attached for disobedience (*Thomas* v. *Palin*, 21 Ch. D. 360. A; see also Order XLIV. 2, note).

XXXI. 22. Solicitor to

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. give notice 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. *XXXI.* 23. Answers, how put in evidence.

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. Security for costs to be given in first instance.

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," to abide further order, the sum of £5, and, if the number of folios exceed 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, 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 into Court, and the time for answering or making discovery shall in all cases commence from the date of such service. 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. Amount of security. Copy receipt to be served.

27. Unless the Court or a Judge shall at or before Payment out of security.

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.

In actions against a 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.

A party may now call on his opponent to admit, for the purpose of the cause, any specific facts which he may think expedient, and the party refusing will have to bear the cost of proof, unless the Judge certify that such refusal was reasonable. He will require leave to withdraw such admission (r. 4). Rule 6 is similar in purpose to the previous Order XL. 11, to obtain judgment on the pleadings. A rule (9) is added, that if a notice to admit or produce comprise documents which are not necessary, the costs are to be borne by the party giving the notice.

XXXII. 1. How made.

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.

XXXII. 2. Notice to admit documents.

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.

3. A notice to admit documents shall be in the Form No. 11 in Appendix B, with such variations as circumstances may require. *XXXII.* 3. Form of.

4. Any party may, by notice in writing, at any time not later than 9 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 6 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. Notice to admit facts. For particular issue only. Withdrawal.

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. Form of.

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 may upon such application make such order, or give such judgment as the Court or Judge may think just. *XL.* 11. Judgment on admissions.

In the Chancery Division the motion need not be set down (see *Hetherington* v. *Longrigg*, 10 Ch. D. 162).

Motion for judgment on admissions in the pleadings may be

made at any stage of the proceedings; it makes no difference that plaintiff has joined issue on the defence and given notice of trial (*Brown* v. *Pearson*, 21 Ch. D. 716).

The exercise of the power given by the Rule is discretionary (*Mellor* v. *Sidebottom*, 5 Ch. D. 342. A).

Under this rule, in a partition action, an inquiry was directed as to the persons interested (*Gilbert* v. *Smith*, 2 Ch. D. 686. A; and in *Burnell* v. *Burnell*, 11 Ch. D. 213, an order for sale was made). An order was made for taking the accounts of partnership dealings (*Turquand* v. *Wilson*, 1 Ch. D. 85). For a dissolution of partnership see *Thorp* v. *Holdsworth*, 3 Ch. D. 637.

In *Rumsey* v. *Reade*, 1 Ch. D. 643, the agent of the trustees of a will was ordered to deliver up all securities relating to the testator's estate, and to account for all sums received on behalf of the estate.

On a motion to compel a defendant executor to pay money into Court, his non-appearance, coupled with the affidavits, was deemed a sufficient admission of money in his hands (*Freeman* v. *Cox*, 8 Ch. D. 148).

XXXII. 4. 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.

Notice 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.

Unnecessary notice.

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.

ORDER XXXIII.

Issues, Inquiries, and Accounts.

The first rule of this Order is similar to the previous Order XXVI., and the second to Order XXXIII. 1. The rest of the Order is new, and is taken from the Consolidated Orders.

XXVI. Settlement of issues.

1. Where in any cause or matter it appears to the Court or a Judge that the issues of fact in the 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.

XXXIII. 1. Accounts, when directed.

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.

In *Barber* v. *Mackrell*, 12 Ch. D. 534. A, additional accounts were ordered to those directed to be taken by the decree, on the ground of fraud or misappropriation, notwithstanding the lapse of time.

As to service of a judgment or order on persons interested see Order XVI. 40.

Where an inquiry is directed at the trial, and the costs of the action given to the successful party, it is proper to reserve the costs of the inquiry (*Slack* v. *Mid. Ry. Co.*, 16 Ch. D. 81).

It is against the ordinary course of the Court to stay accounts or inquiries pending an appeal (*Hyam* v. *Terry*, 29 W. R. 32).

After a decree to take accounts, the Court, upon being satisfied that there is a probability amounting to reasonable certainty that not less than a certain amount will be found due from the defendants, may in its discretion direct the amount to be brought into Court (*Lond. Syndicate* v. *Lord*, 8 Ch. D. 89. A).

Judge to direct mode.

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 may be advised.

C. O. XXXV. 33. Accounting party to verify.

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.

An accounting party who has brought his account into Chambers, and verified it by affidavit, may be cross-examined on his affidavit before the account is vouched (*Meacham* v. *Cooper*, 16 Eq. 102).

Where an accounting party is served with notice of cross-examination on his accounts, the notice must specify the points

upon which the cross-examination is to proceed (*M'Arthur* v. *Dudgeon*, 15 Eq. 102).

C. O. XXXV. 34. Surcharge.

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.

C. O. XXIII. 14. Outstanding personal estate.

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.

C. O. XXIII. 15. Accounts designated by a number.

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. O. XXIII. 16. Allowances to be made.

8. In taking any account directed by any judgment or order, all just allowances shall be made without any direction for that purpose.

Undue delay.

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 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

Intervention of official solicitor.

costs be not otherwise paid, the same shall be paid out of such moneys (if any) as may be provided by Parliament.

ORDER XXXIV.

I. Special Case.

This Order is to apply to every special case stated in a cause or matter, or in any proceeding incidental thereto (r. 7). A special case may now, by Rule 8, be stated under 13 & 14 Vict. c. 35. The sections applicable are subjoined. Where parties are agreed as to what the issues of fact are, they may concur in having them decided under a special procedure given in Rules 9–12, which is taken from the C. L. P. Act, 1852.

This Order is applicable to interpleader issues by Order LVII. 9.

XXXIV. 1. By consent.

1. The parties to any cause or matter 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 proved at a trial.

Only such questions of law can be properly raised as must necessarily arise in the action (*The Republic of Bolivia* v. *The National Bolivian Navigation Co.*, 24 W. R. 361). The Court is not bound to decide upon a fictitious issue stated for the express purpose of obtaining a decision affecting the interests of persons not *in esse* (*Bright* v. *Tyndall*, 4 Ch. D. 189; *Duntze* v. *Duntze*, 6 C. B. 100).

Where the answers to a special case stated under this rule fully dispose of the action, they may be taken as a judgment, being followed by the words, "and the Court doth declare accordingly." If necessary the action may be set down *pro formâ* for trial on motion for judgment (*Harrison* v. *Cornwall M. Ry. Co.*, 16 Ch. D. 80).

XXXIV. 2. By order of the Court.

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.

Under this rule, after writ and appearance, and before statement of claim, the plaintiff filed an affidavit uncontradicted by the defendant, that there were no facts in dispute, and that the question was one of law. He obtained an order, and the Court of Appeal would not interfere with the discretion of the Judge below, and will not interfere except in an extreme case (*The Metropolitan Board of Works* v. *The New River Co.*, 2 Q. B. D. 67. A).

By analogy to this rule the Court will, at the trial of an action which involves questions both of law and fact, first decide the question of law, if such decision may render it unnecessary to try the questions of fact (*Pooley* v. *Driver*, 5 Ch. D. 458).

XXXIV. 3. To be printed.

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.

As to printing, &c., of special cases see Order LXVI. 7.

Special cases may be argued before a Divisional Court by the consent of parties (Order LIX. 1*h*).

XXXIV. 4. Persons under disability.

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, the application for which must be supported by sufficient evidence that the statements 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.

In *Savage* v. *Snell*, 11 Eq. 264, upon the birth of an infant, tenant in tail, after a special case had been set down for hearing, it was held that the proper course was to discharge the order for the hearing, amend the case by adding the infant as a party, and apply for leave to set it down afresh.

XXXIV. 5. 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.

XXXIV. 6. 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.

XXXIV. 7. Application of order.

7. This Order shall apply to every special case stated in a cause or matter, or in any proceeding incidental thereto.

Stating case under 13 & 14 Vict. c. 35.

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, and the same shall be deemed to be a special case stated in a matter within the meaning of this Order.

The sections applicable to special cases are subjoined:—

13 & 14 *Vict. c.* 35, *ss.* 1–18.

Power to persons interested in questions cognizable in Court of Chancery to state special cases for the opinion of the Court.

I. It shall be lawful for persons interested or claiming to be interested in any question cognizable in the said Court 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 restriction hereinafter contained, to concur in stating such question 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.

How lunatic may concur.

II. And be it enacted, That 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.

How married women may concur.

III. And be it enacted, That a husband interested or claiming to be interested in 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 that 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.

How infant may concur.

IV. And be it enacted, That 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 interest in such question adverse to the interest of the infant therein.

How special guardian to be appointed for a lunatic not found such by Commission, and for infant.

V. And be it enacted, That it shall be lawful for the said Court, by order to be made in the matter of any lunatic not found such by inquisition, or, in the matter of any infant, upon the application of any person on the behalf of such lunatic, or upon the application of such infant, by motion or petition, to 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 such application to be given to such person, if any, as the Court shall think fit.

Order to appoint special guardian of an infant may be discharged by Court if made without notice.

VI. And be it enacted, That 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, it shall be lawful for the said Court, if it shall think fit so to do, to discharge such order, upon the application of such guardian, by motion or petition; and the said Court, if it shall think fit, may thereupon 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.

How such special cases to be entitled.

VII. And be it enacted, That every such special case shall 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 women is named as a plaintiff and her husband as a defendant thereto, a next friend of such married women shall be named in the title to such case.

Form of special case.

VIII. And be it enacted, That every such special case shall concisely state such facts and documents as may be necessary to enable the Court to decide the question raised thereby; and that upon the hearing 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 which the Court might have drawn therefrom if proved in a cause.

Special case to state how guardian constituted, and the con-

IX. And be it enacted, That 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 that where any married women 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. currence of married women.

X. And be it enacted, That every such special case shall be signed by counsel for all parties, and shall be filed in the same manner as bills are filed, and that the defendants may appear thereto in the same manner as defendants appear to bills; and that no defendant shall be required to take an office copy of a special case, but an office copy thereof shall be taken by the plaintiff. Special cases to be signed by Counsel, and filed, and appearances to be entered by defendants.

XI. And be it enacted, that after a special case shall have been filed, and the defendants shall have appeared thereto, all the parties to such special case shall be subject to the jurisdiction of the Court in the same manner as if the plaintiff in the special case had filed a bill against the parties named as defendants thereto, and such defendants had appeared to such bill; and upon the special case being filed, and appearances entered thereto as aforesaid, all parties to such special case, other than married women, infants, and lunatics, shall, for the purposes of such special case, be bound by the statements therein; and that married women, infants, and lunatics made parties to a special case shall, for the purposes of such special case, be bound by the statements therein, when, and not before, leave shall have been given by the Court to set down such special case in manner hereinafter provided. After a special case filed, parties to be bound by statements after defendants have appeared, except married women, infants, and lunatics, who are not to be bound till leave given by Court to set it down.

XII. And be it enacted, That so soon as all the defendants shall have appeared to the special case the same may, subject to the provisions hereinafter contained, be set down for hearing, and subpœnas to hear judgment issued and served according to the practice of the said Court. How case to be set down for hearing.

XIII. And be it enacted, That when any married woman, infant, or lunatic is party to a special case, application may be made to the Court by motion for leave to set down the same, of which motion notice shall be given to every party to such case in whom, as executor, administrator, or trustee, any property in question therein is or is alleged to be vested in trust for or for the benefit of such married woman, infant, or lunatic, and also, if such application be not made by or on behalf of such married woman, infant, or lunatic, to such married woman and her husband, or to such infant, or to such lunatic and his committee, if any, as the case may be; and that upon the hearing of such motion the said Court may give leave to set down such case, if it shall be of opinion that it is proper that the question raised therein shall be determined thereon, and shall be satisfied by affidavit or other sufficient evidence that the statements contained therein, so far as the same affect the interest of such married woman, infant, or lunatic, are true, but otherwise may refuse such application: Provided always, that in case the said Court, upon the hearing of such application, shall be of opinion that it is proper that the question raised in such case shall be determined thereon, but shall not be satisfied that the statements contained therein, so far as they affect the interest of such married woman, infant, or lunatic, are true, it shall be lawful for the said Court to refer it to one of the Masters thereof to make such inquiries as to the Court shall seem proper, and upon further application being made, by motion as aforesaid, upon the said Master's report, to give or refuse leave to set down such case as to the said Court shall seem fit. When a married woman, infant, or lunatic is a party, application to be made to the Court for leave to set the case down.

Upon hearing, Court to determine question, and make declaration.

XIV. And be it enacted, That it shall be lawful for the said 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, 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.

Proviso that Court may refuse to decide.

Protection to be afforded to Trustees by declaration.

XV. And be it enacted, That every executor, administrator, trustee, or other person making any payment or doing any act in conformity with the declaration contained in any decree made upon a special case, shall in all respects 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 said Court made in a suit between the same parties instituted by bill, save only as to any rights or claims of any person in respect of matters not determined by such declaration.

The Court may suspend the acting upon declaration.

XVI. And be it enacted, That where any person shall be desirous to have a special case re-heard, or to appeal from the decision thereon, it shall be lawful for the said Court, 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, to order that the declaration contained in such decree shall not be acted upon for such time as the said Court shall think just.

Special case to be a *lis pendens*, and may be registered.

2 & 3 Vict. c. 11.

XVII. And be it enacted, That 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 the provisions of an act made and passed in the second year of the reign of her present Majesty, intituled *An Act for the better protection of purchasers against judgments, crown debts, lis pendens, and fiats in bankruptcy*, in like manner as any other *lis pendens* in a Court of Equity may now be so registered, and, unless and until so registered, shall not bind a purchaser or mortgagee without express notice thereof.

Mode of identifying documents, and Court may order production.

XVIII. And be it enacted, That 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; and that it shall be lawful for the said Court, at any time after the filing of the special case, and the entering of appearances thereto by the persons named as defendants therein, to 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.

II. Issues of Fact without Pleadings.

How stated for trial.

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.

Judgment thereon.

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.

Execution thereon.

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.

Judgment to be of record.

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.

Summonses under the Debtors Act have been added to Rule 4. By Rule 5a leave to enter judgment on default of a third party, under Order XVI. rr. 50 and 51, may be obtained in a District Registry. A new procedure is given for appeal from the Registrar to the Judge by indorsement on the summons at the request of the party, or by notice in writing to attend before the Judge without a fresh summons (r. 9). Except in Admiralty actions,

the notice of removal is to be accompanied by a certificate as to the delivery of defence (r. 15). The defendant is to give an address for service in London on removal (r. 18). Rules 19, 21 and 22 deal with pleadings and documents.

XXXV. 1a. What proceedings in.

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.

In an action in a District Registry, where the receiver has been ordered to pay money into Court to the credit of the action, it is no compliance with the order to pay money into a bank to the credit of the district registrar (*Finlay* v. *Davis*, 12 Ch. D. 735).

Where Hall, V.C., had directed that a sale should take place in his Chambers, the Court of Appeal held that it was a matter entirely within the discretion of the Judge, and refused to interfere with his exercise of it, although they thought that the sale might have more conveniently taken place in the district registry (*Macdonald* v. *Foster*, 6 Ch. D. 193. A).

A claim against an executor for an account on the footing of wilful default is not an ordinary account, and therefore it does not come within Rule 8 of Order III., and consequently a summary order cannot be made under Order XV. 1 (*Re Bowen*, *Bennett* v. *Bowen*, 20 Ch. D. 538). By virtue of Rules 1 and 6 of this Order, a district registrar has power to make an order for an account, and the order may direct that the account be taken in the district registry (*Ibid.*). In making a report to the Court under sec. 66 of the Judicature Act, 1873, of the result of an account in an administration action, the registrar ought to follow the form of a chief clerk's certificate, and to state in the report the persons who were present before him, and the materials on which he proceeded (*Ibid.*).

An Order in Council regulating district registrars, dated the 12th August, 1875 (published in W. N. 1875, Pt. II. 396), is subjoined :—

"That there shall be district registrars in the places of Liverpool, Manchester, and Preston, and the district registrar at Liverpool of the High Court of Admiralty, and the district prothonotary at Liverpool of the Court of Common Pleas at Lancaster, shall be and are hereby appointed the district registrars in Liverpool; and the district prothonotary at Manchester of the said Court of Common Pleas shall be and is hereby appointed the district registrar in Manchester; and the district prothonotary at Preston of the said Court of Common Pleas shall be and is hereby appointed the district registrar at Preston; and that the District for each such place shall be the district now assigned to each such

District Prothonotary under the provisions and authority of 'The Common Pleas at Lancaster Amendment Act, 1869.'"

By an Order in Council dated the 26th of August, 1881, it is ordered, "That on and after the 1st day of November next the district registrars in Liverpool shall perform all the duties of a district registrar in respect of all actions, causes, or matters commenced or proceeded with, or which may be commenced or proceeded with, in the district registry in Liverpool, in such manner as they may arrange for the division and performance of such duties."

"That there shall be a district registrar in Durham, and that the District Prothonotary of the Court of Pleas at Durham shall be and is hereby appointed the district registrar in Durham; and that the district shall be the district, for the time being, of the County Court holden at Durham.

"That, in the places mentioned in the Schedule annexed, there shall be district registrars, and that the registrar of the County Court held in any such place shall be and is hereby appointed the district registrar in such place, and that the district for each such place shall be the district for the time being of the County Court holden at such place.

Bangor.
Barnsley.
Barnstaple.
Bedford.
Birkenhead.
Birmingham.
Boston.
Bradford.
Bridgewater.
Brighton.
Bristol.
Bury St. Edmunds.
Cambridge.
Cardiff.
Carlisle.
Carmarthen.
Cheltenham.
Chester.
Colchester.
Derby.
Dewsbury.
Dover.
Dorchester.
Dudley.
East Stonehouse.
Exeter.
Gloucester.
Great Grimsby.
Great Yarmouth.
Halifax.
Hanley.
Hartlepool.
Hereford.
Huddersfield.
Ipswich.
Kingston-on-Hull.
King's Lynn.
Leeds.
Leicester.
Lincoln.
Lowestoft.
Maidstone.
Newcastle-upon-Tyne.
Newport, Monmouth.
Newport, Isle of Wight
Newtown.
Northampton.
Norwich.
Nottingham.
Oxford.
Pembroke Docks.
Peterborough.
Poole.
Portsmouth.
Ramsgate.
Rochester.
Sheffield.
Shrewsbury.
Southampton.
Stockton-on-Tees.
Sunderland.
Swansea.
Truro.
Totnes.
Wakefield.
Walsall.
Whitehaven.
Wolverhampton.
Worcester.
York.

XXXV. 1a. Interlocutory judgment.

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.

XXXV. 2. Judgment entered in London.

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.

XXXV. 3. Execution from district registry.

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.

As to the powers of the registrar in summons under the Debtors Act, 1869, see Order LIV. 19.

XXXV. 3a. Proceedings necessary or incidental to judgment.

5. Where a cause or matter is proceeding in a district registry, all proceedings relating to the following matters, namely—

(*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.

XXXV. 4. Jurisdiction of registrar.

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.

The provision in section 49 of the Judicature Act, 1873, "that no order of the High Court or any Judge thereof as to costs only which by law are left to the discretion of the Court shall be subject to any appeal," does not apply to a district registrar (*Foster* v. *Edwards*, 48 L. J. 767).

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 a registrar (Judicature Act, 1881, 22).

As to powers of Masters see Order LIV. 12, 19 22.

XXXV. 5. Applications to registrar.

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.

XXXV. 6. Reference to Judge by.

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.

XXXV. 7. Appeal from.

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 mater 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, or by notice in writing 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.

XXXV. 8. Appeal no stay except by order.

10. An appeal from a district registrar shall be no stay of proceedings unless so ordered by a Judge or the registrar.

XXXV. 9. Registrar under control of Court.

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.

XXXV. 10. In the Chancery Division.

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.

XXXV. 11. Removal of action.

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, 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.

(4.) In an Admiralty action *in rem*, any person who may have duly intervened and appeared may remove an action from a district registry as of right.

XXXV. 12. Notice of removal.

14. Any party or person desiring 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.

Certificate in Admiralty actions.

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.

XXXV. 13. Removal by order.

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.

XXXV. 13. Application to remove.

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.

New address for service.

18. Where, under the preceding Rules of this Order, a cause or matter is removed from a district registry, the defendant shall, upon 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 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.

XXXV. 14. 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 in the Chancery Division.

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 records.

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 *subpœna* for the production of any such document shall be issued.

XXXV. 15. Registrar 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.

XXXV. 16c. 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.

This order is divided into nine parts. Part 2 deals with the mode of trial, in which the alterations are too extensive to be summarized; Parts 3 and 4 treat of notice and entry for trial. Notice of trial 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 (r. 11). A rule (21) has been added as to setting down for further consideration in the Chancery Division. Part 7 relates to the proceedings at trial which have been considerably affected by Rules 35–38, and 40. Part 8 refers to assessors and referees. By Rule 50 the authority of the referee with respect to discovery and production of documents is extended and regulated. The mode of having the report varied or adopted is pre-

scribed in Rules 53–55. Part 9 ("Writ of Inquiry and Reference as to Damages") is new. This order applies to interpleader proceedings (Order LVII. 13).

I. *Place.*

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 Middlesex. *XXXVI.* 1 Place of trial.

As to the effect which the abolition of local venue has had upon actions for rent issuing out of lands situate abroad, see *Whitaker* v. *Forbes*, 1 C. P. D. 51. A).

The Court will not change the place of trial without good cause shown (*Ridge* v. *Ridge*, 35 L. T. 428). This was a case in the Probate Division.

II. *Mode of Trial.*

2. In actions of slander, libel, false imprisonment, malicious prosecution, seduction, or breach of promise of marriage, the plaintiff may, in his notice of trial to be given as hereinafter provided, and the defendant may, upon giving notice within four days from the time of the service of notice of trial, or within such extended time as the Court or a Judge may allow, or in the notice of trial to be given by him as hereinafter provided, signify his desire to have the issues of fact tried by a Judge with a jury, and thereupon the same shall be so tried. Party may have jury, when.

In *Thomas* v. *Williams*, 14 Ch. D., 864, the defendants contended unsuccessfully that they had a right to have the question tried by a jury under Fox's Act, as the circular complained of was libellous.

3. Causes or matters assigned by the Principal Act to the Chancery Division shall be tried by a Judge without a jury, unless the Court or a Judge shall otherwise order. In Chancery Division.

See Jud. Act, 1873, s. 34, and note thereto.

4. The Court or a Judge may, if it shall appear desirable, direct a trial without a jury of any question Powers of the Court.

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.

Either party may at any time have an order to try any issue of fact before a jury, if he can make it appear to a Court or Judge that it will be more convenient. In the exercise of this discretion the Court is mostly governed by considerations as to whether the questions of law and fact are intricate, or are involved the one with the other (*Bordier* v. *Burrell*, 5 Ch. D. 514).

"It is essentially a matter of discretion, and the Court of Appeal will be slow to interfere" (*Swindell* v. *The Birmingham Syndicate*, 3 Ch. D. 133. A; *Ruston* v. *Tobin*, 10 Ch. D. 565. A; *Re Martin*, *Hunt* v. *Chambers*, 20 Ch. D. 365. A). As to instances of how this discretion has been exercised see also *Spratt's Patent* v. *Ward*, 11 Ch. D. 240; *The Singer Co.* v. *Loog*, 11 Ch. D. 656, and the cases cited in *Ruston* v. *Tobin*, *suprà*, and *Wedderburn* v. *Pickering*, 13 Ch. D. 769.

The fact that a man's character will be seriously affected by the trial will be a paramount reason for having the action tried in open Court, and will be strong grounds for insisting on a jury (*Leigh* v. *Brooks*, 5 Ch. D. 592. A).

If the case be considered suitable for trial by a Judge and jury, the issues, if the parties cannot agree, should be settled in Chambers (*Powell* v. *Williams*, 12 Ch. D. 234).

Under Jud. Act, 1873.

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.

See Judicature Act, 1873, s. 57.

By jury on application.

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.

Previous to these Rules, where the parties had agreed that evidence should be taken by affidavit, it was held equivalent to an agreement that the action should be tried without a jury, even in a case peculiarly adapted for a trial before a jury (*Brooke* v. *Wigg*, 8 Ch. D. 510. A).

Trial in general without a jury.

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:

Actions sent from the Chancery Division must be set down in the general list to be tried by one of the Judges of the Queen's Bench Division; if no place be mentioned they will be tried in Middlesex (*Warner* v. *Murdock*, 4 Ch. D. 750. A).

An appeal from a compulsory order of reference made by a Judge sitting at Nisi Prius or Assizes must be brought direct to the Court of Appeal (*Hoch* v. *Boor*, 49 L. J. 665. A).

(*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: Special jury, by plaintiff.

(*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: By defendant.

(*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. By order at any time.

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. *XXXVI.* 6

In granting an application under this rule the Court will sometimes impose terms (*The Emma Silver Mining Company* v. *Grant*, 11 Ch. D. 918. A). It should be limited to extraordinary and exceptional circumstances (*Piercy* v. *Young*, 15 Ch. D. 480).

In *The Tasmanian Railway Company* v. *Clark* (W. N. 1879, 106. A), the Court of Common Pleas refused leave to try the liability of a surety before that of the principal, and the Court of Appeal declined to interfere with their discretion.

Where a reference would be ordered by the Judge as to a question of accounts, it seems proper that the question of liability should be tried separately from the question of damages (*Liverpool Nav. Co.* v. *London & St. Catherine, &c., Co.*, W. N. 1875. 203).

XXXVI. 7. Usually before single Judge.

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.

Saving as to arbitration.

10. Nothing in this Order shall affect any proceedings under any of the provisions of the Common Law Procedure Acts relating to arbitration.

III. *Notice and Entry of Trial.*

With rep'y.

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.

XXXVI. 4, 4a. By defendant.

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.

If the plaintiff desire to avoid the cost of the hearing he should tender the costs of the notice to the defendant, and give the usual undertaking to go on (*Evelyn* v. *Evelyn*, 13 Ch. D. 138; *Freason* v. *Loe*, 26 W. R. 138).

XXXVI. 8. Notice to contain what.

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.

XXXVI. 9. Long and short notice.

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.

XXXVI. 10. Notice before entry.

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.

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. *XXXVI. 10a. Lapse of.*

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. *XXXVI. 11. In London or Middlesex.*

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. *XXXVI. 12. For the Assizes.*

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. *XXXVI. 13. Countermand of.*

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. *XXXVI. 14. Omission to enter for trial.*

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 consideration, 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, indorsed 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 *C. O. XXI. 10. Setting down on further consideration.*

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.

IV. *Entry in District Registry.*

XXXVI. 15a. How made.

22. After notice of trial has been given of any action or issue to be tried elsewhere than in London or Middlesex, either party may at any time before the day next before the Commission day enter the trial at the next assizes in the district registry (if any) of the city or town where the trial is to be had, or with the Associate at the assize town as heretofore.

XXXVI. 15a. In certain places.

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, Mon.
Stafford ...	,,	,,	Hanley.
Wells ...	,,	,,	Bridgwater.
Warwick ...	,,	,,	Birmingham.
Winchester ...	,,	,,	Southampton.

XXXVI. 15a. Jury and non-jury lists.

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.

XXXVI. 15a. Notice of postponement.

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.

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. *XXXVI. 15a.* Closure of lists.

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. *XXXVI. 15a.* Entry by Associate.

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. *XXXVI. 15a.* By both parties.

V. *Lists for London and Middlesex.*

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. *XXXVI. 16.*

VI. *Papers for Judge.*

30. The party entering the trial shall deliver to the proper officer 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. *XXXVI. 17.*

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. *XXXVI. 18.* Default of appearance by defendant.

It is not necessary now in the Chancery Division, when the defendant does not appear, to prove service of notice of trial; but when the defendant has become bankrupt pending the proceedings, it should be shewn that his trustee has been served with a notice under Order XVII. 5 (*Chorlton* v. *Dickie*, 13 Ch. D. 160).

XXXVI. 19. By plaintiff.

32. If, when a trial is called on, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment dismissing the action, but if he has a counter-claim, then he may prove such counter-claim so far as the burden of proof lies upon him.

It is not necessary for defendant to prove that he has been served with notice of trial, and he is entitled to judgment with costs (*James* v. *Crow*, 7 Ch. D. 410).

But when the action had abated, it was merely ordered to be struck out of the list, for Order XVII. 1, applies only to where the cause of action survives, or continues to some person who is before the Court: and it should be shewn that such person has had notice (*Eldridge* v. *Burgess*, 7 Ch. D. 411).

It is not intended that a jury should be sworn (*Lane* v. *Eve*, W. N. 1876, 86).

XXXVI. 20. Setting aside judgment by default.

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.

If judgment have been obtained through an oversight on the part of the solicitor, it will be set aside on payment of the costs (*Burgoine* v. *Taylor*, 9 Ch. D. 1. A). Where the solicitor had reasonable ground to expect a compromise, and had deferred delivering briefs to counsel, the action was restored on the same terms as to costs (*Wright* v. *Clifford*, 47 L. J. Ch. 543). Similarly, where one counsel had been unavoidably detained by a railway accident, and the other prevented by indisposition from conducting the case, see the remarks of Fry, J., on *Cockle* v. *Joyce*, in *Burgoine* v. *Taylor*, 9 Ch. D. 3. When the defendant had personally been guilty of no negligence, and made an application within six days of his having heard that the trial had taken place, the Court granted an extension of time, to enable him to make application to set aside the judgment (*Michell* v. *Wilson*, 25 W. R. 380). Delay may be fatal though wholly the fault of the defendant's solicitor (*Williams* v. *Bedford*, 35 L. T. 622). Where an action came on for trial unexpectedly, and the plaintiff was not ready, his application for a postponement being refused, he allowed judgment to go by default. The Divisional Court refused to set aside the judgment, but the Court of Appeal set it aside, upon hearing a satisfactory explanation of plaintiff's unreadiness and on payment of all costs thrown away, including the costs of the applications before the Divisional Court and the Court of Appeal (*King* v. *Sandeman*, 26 W. R. 569. A).

XXXVI. 21. Adjournment.

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.

In *Lydall* v. *Martinson*, 5 Ch. D. 780, the terms imposed were that the plaintiffs should pay all the costs that were incurred by the action standing for hearing for those days on which it was placed in the paper.

C. O. XXX. 3. Persons summoned by habeas corpus.

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.

C. L. P. Act, 1854, 18. 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.

Particulars in slander.

37. In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the Judge, unless seven days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

Questions disallowed.

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.

XXXVI. 22a. 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.

This rule does not apply to actions remitted to the County Court. The registrar certifies the result of the trial to the Superior Court, and judgment is signed accordingly (*Scutt* v. *Freeman*, 2 Q. B. D. 177).

Duration of trial to be noted.

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.

XXXVI. 23. Entry of findings by Associate.

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.

XXXVI. 24. Entry of judgment.

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.

This certificate corresponds with the old "postea."

VIII. *Assessors, Commissioners, and Referees.*

XXXVI. 28. Trial with assessors.

43. Trials with assessors shall take place in such manner and upon such terms as the Court or a Judge shall direct.

XXXVI. 29. Discretion as to place.

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.

XXXVI. 29aa. Rotation of referees.

45. The business to be referred to the official referees appointed under the Principal Act, 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.

XXXVI. 29b. Name of referee to be indorsed.

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.

XXXVI. 29c. Order may specify particular referee.

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 Order LI. Rule 10, and a note to that effect be indorsed 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.

XXXVI. 30. 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.

The words as to sitting *de die in diem* are directory and not imperative, and a neglect to do so, acquiesced in by either party, will prevent them taking advantage of the misconduct of the referee (*Robinson* v. *Robinson*, 24 W. R. 675).

See section 56 Judicature Act, 1873.

XXXVI. 31. Procedure before referee.

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, and every such trial shall be conducted in the same manner, as nearly as circumstances will admit, as trials are conducted before a Judge.

XXXVI. 32. Authority of referee.

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.

XXXVI. 33. No power to commit.

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.

XXXVI. 34. General powers.

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.

Notice when report made.

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.

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. Varying or setting aside report. Further consideration adjourned.

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. Where further consideration not adjourned.

This motion may be made any time before judgment (*Dyke* v. *Cannell*, 11 Q. B. D. 180).

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.

57. In every action or proceeding in the Queen's Bench Division in which it shall appear to the Court or a Judge that the amount of damages sought to be recovered is substantially a matter of calculation, it shall not be necessary to issue a writ of inquiry, but the Court or a Judge may direct that the amount for which final judgment is to be entered shall be ascertained by an officer of the Court, and the attendance of witnesses and the production of documents before such officer may be compelled by subpœna, and such officer may adjourn the inquiry from time to time, and shall indorse upon the order for referring the amount of damages to him the amount found by him, and shall deliver the order with such indorsement to Calculation of damages.

the person entitled to the damages, and such and the like proceedings may thereupon be had as to taxation of costs, entering judgment, and otherwise, as upon the finding of a jury upon a writ of inquiry.

Damages down to assessment.

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.

By Appendix O. 16, the R. G. H. T. 1853, are repealed, except the rules as to juries. The unrepealed rules are here appended along with the sections of Common Law Procedure Act, 1852, c. 76.

Precept by judges of assize to common jurors for civil as well as criminal trials.

105. The precept issued by the judges of assize to the sheriff to summon jurors for the assizes shall direct that the jurors be summoned for the trial of all issues, whether civil or criminal, which may come on for trial at the assizes; and the jurors shall thereupon be summoned in like manner as at present.

A printed panel to be prepared and annexed to the record.

106. A printed panel of the jurors summoned shall, seven days before the commission day, be made by the sheriff, and kept in the office for inspection; and a printed copy of such panel shall be delivered by the sheriff to any party requiring the same, on payment of one shilling; and such copy shall be annexed to the nisi prius record.

Sheriffs of London and Middlesex to summon common jurors and prepare a panel to be annexed to the record.

107. The sheriffs of London and Middlesex respectively shall, pursuant to a precept under the hand of a Judge of any of the said Superior Courts, and without any other authority, summon a sufficient number of common jurors for the trial of all issues in the Superior Courts of Common Law, in like manner as before this Act; and seven days before the first day of each sitting a printed panel of the jurors so summoned for the trial of causes at such sittings shall be made by such sheriffs, and kept in their offices for public inspection; and a printed copy of such panel shall be delivered by the said sheriffs to any party requiring the same on payment of one shilling; and such copy shall be annexed to the nisi prius record; the said precept shall and may be in like form as the precept issued by the Judges of assize, and one thereof shall suffice for each term and for all the Superior Courts; and it shall be the duty of the sheriffs respectively to apply for and procure such precept to be issued in sufficient time before each term to enable them to summon the jurors in manner aforesaid; and it shall be lawful for the several Courts, or any Judge thereof, at any time to issue such precept or precepts to summon jurors for disposing of the business pending in such Courts, and to direct the time and place for which such jurors shall be summoned, and all such other matters as to such Judge shall seem requisite.

Special jurors, not exceeding forty-eight in number, to be summoned to try all special jury cases at assizes.

108. The precept issued by the Judges of assize as aforesaid shall direct the sheriff to summon a sufficient number of special jurymen, to be mentioned therein, not exceeding forty-eight in all, to try the special jury causes at the assizes; and the persons summoned in pursuance of such precept shall be the jury for trying the special jury causes at the assizes, subject to such right of challenge as the parties are now by law entitled to; and a printed panel of the special jurors so summoned shall be made, kept, delivered and annexed to the nisi prius record, in like time and manner, and upon the same terms as hereinbefore provided with reference to

the panel of common jurors; and upon the trial the special jury shall be balloted for, and called in the order in which they shall be drawn from the box, in the same manner as common jurors; provided that a Court or a Judge, in such case as they or he may think fit, may order that a special jury be struck according to the present practice, and such order shall be a sufficient warrant for striking such special jury, and making a panel thereof for the trial of the particular cause.

Mode of obtaining a special jury in country causes.

109. In any county, except London and Middlesex, the plaintiff in any action, except replevin, shall be entitled to have the cause tried by a special jury, upon giving notice in writing to the defendant, at such time as would be necessary for a notice of trial, of his intention that the cause shall be so tried; and the defendant or plaintiff in replevin, shall be so entitled, on giving the like notice within the time now limited for obtaining a rule for a special jury; provided that the Court or a Judge may at any time order that a cause shall be tried by a special jury, upon such terms as they or he shall think fit.

Special juries in London and Middlesex, how struck.

110. In London and Middlesex special jurors shall be nominated and reduced by and before the under-sheriff and secondary respectively, in like manner as by the Master before this Act, upon the application of either party entitled to a special jury, and his obtaining a rule for such purpose; and the names of the jurors so struck shall be placed upon a panel, which shall be delivered and annexed to the nisi prius record, in like manner and upon the same terms as hereinbefore provided with reference to the panel of common jurors; and upon the trial the special jury shall be balloted for, and called in the order in which they shall be drawn from the box, in the same manner as common jurors.

Remedy for delay by notice of trial by special jury.

111. Where the defendant in any case, or plaintiff in replevin, gives notice of his intention to try the cause by a special jury, and the venue is in London or Middlesex, the Court or a Judge, if satisfied that such notice is given for the purpose of delay, may order that the cause be tried by a common jury, or make such other order as to the trial of the cause as such Court or Judge shall think fit.

Notice to sheriff of trial by special jury.

112. Where notice has been given to try by special jury, either party may, six days before the first day of the sittings in London or Middlesex, or adjournment day in London, or commission day of the assizes, give notice to the sheriff that such cause is to be tried by a special jury; and in case no such notice be given, no special jury need be summoned or attend, and the cause may be tried by a common jury, unless otherwise ordered by the Court or a Judge.

If special jury not summoned, cause to be tried by a common jury.

113. In all cases where notice is not given to the sheriff that the cause is to be tried by a special jury, and by reason thereof a special jury is not summoned or does not attend, the cause may be tried by a common jury, to be taken from the panel of common jurors, in like manner as if no proceedings had been had to try the cause by a special jury.

View to be by rule without writ.

114. A writ of view shall not be necessary or used, but, whether the view is to be had by a common or special jury, it shall be sufficient to obtain a rule of the Court or Judge's order, directing a view to be had; and the proceedings upon the rule for a view shall be the same as the proceedings heretofore had under a writ of view, and the sheriff, upon request, shall deliver to either party the names of the viewers, and shall also return their names to the Associate for the purpose of their being called as jurymen upon the trial.

Proceedings before jurors so returned same as before this Act.

115. The jurors contained in such panels as aforesaid shall be the jurors to try the causes at the assizes, and sittings for which they shall be summoned respectively; and all such proceedings may be had and taken before such juries in like manner, and with the like consequences in all respects, as before any jury summoned in pursuance of any writ or writs of *venire facias juratores*, *distringas juratores*, or *habeas corpora juratorum*, before this Act.

R. G. H. T. 1853.

44. No rule for a special jury shall be granted on behalf of any defendant (or plaintiff in replevin), except on an affidavit, either stating that no notice of trial has been given, or if it has been given, then stating the day for which such notice has been given; and in the latter case, no such rule is to be granted unless such application is made for it more than six days before that day; provided that a Judge may, on summons, order a rule for a special jury to be drawn up at any time.

45. No cause shall be tried by a special jury in Middlesex or London, unless the rule for such special jury be served, and the cause marked in the Associate's book as a special jury cause, on or before the day preceding the day appointed in Middlesex and London respectively, for the trial of special juries.

46. There shall be no rule for the sheriff to return a good jury upon a writ of inquiry, but an order shall be made by a Judge upon summons for that purpose.

47. Sheriffs other than the sheriffs of London and Middlesex, shall, seven days before the commission day, make and keep at their offices, for inspection, a printed copy of the panel of the special jurymen to try the special jury causes at the assizes, as directed by the Common Law Procedure Act, 1852; but such special jury need not be summoned except notice be given as provided for by the 112th section of the said Act.

48. The rule for a view may in all cases be drawn up by the officer of the Court, on the application of the party, without a motion for that purpose.

49. Upon any application for a view there shall be an affidavit stating the place at which the view is to be made, and the distance thereof from the office of the under-sheriff, and the sum to be deposited in the hand of the under-sheriff shall be £10 in case of a common jury, and £16 in case of a special jury, if such distance do not exceed five miles, and £15 in case of a common jury, and £21 in case of a special jury, if it be above five miles, And if such sum shall be more than sufficient to pay the expenses of the view, the surplus shall forthwith be returned to the attorney of the party who obtained the view; and if such sum shall not be sufficient to pay such expenses the deficiency shall forthwith be paid by such attorney to the under-sheriff; and the under-sheriff shall pay and account for the money so deposited according to the scale following—that is to say:

For travelling expenses to the under-sheriff, showers and jurymen, expenses actually paid, if reasonable.

	£	s.	d.
Fee to the under-sheriff when the distance does not exceed five miles from his office	1	1	0
Where such distance exceeds five miles . . .	2	2	0
And in case he shall be necessarily absent more than one day, then for each day after the first a further fee of	1	1	0

Fee to each of the showers the same as the under-sheriff, calculating the distance from their respective places of abode.

	£	s.	d.
Fee to each common juryman, per diem . . .	0	5	0
Fee to each special juryman, per diem . . .	1	1	0
Allowance for refreshment to the under-sheriff, showers, and juryman, whether common or special, each per diem	0	5	0
To the bailiff for summoning each juryman whose residence is not more than five miles distance from the office of the under-sheriff	0	2	6
And to each whose residence does exceed five miles of such distance	0	5	0

ORDER XXXVII.

With the exception of rules 1 and 5 this Order is new.

I. Evidence Generally.

XXXVII. 1. *Vivâ voce* or by affidavit.

1. In the absence of any agreement in writing 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 *vivâ 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, 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 *bonâ fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

The consent to take evidence by affidavit must be a formal written consent, and not one to be gathered from a correspondence between the parties (*New Westminster Brewery Co.* v. *Hannah*, 1 Ch. D. 278); and may be given by the guardian *ad litem* (*Knatchbull* v. *Fowle*, 1 Ch. D. 604, Order XVI. 21).

Where an agreement to take evidence by affidavit is entered into, and either party finds he cannot get his witnesses to make affidavits, he may take out a summons for leave to be relieved from the agreement, and in a proper case the Court will either permit him to examine these witnesses *vivâ voce*, or set aside the agreement and direct all evidence to be *vivâ voce* (*Warner* v. *Mosses*, 16 Ch. D. 100. A).

Where the parties make an agreement to take the evidence

by affidavit, if their agreement do not specify that the evidence should be taken upon affidavit alone, a witness present in Court who had made an affidavit before will be allowed to supplement that evidence *vivâ voce* (*Glossop* v. *Heston Local Board*, 47 L. J. Ch. 536).

When the production of a witness for cross-examination is insisted upon, the Court has no power to order an affidavit to be read at the trial, which has been used on a previous occasion (*The Blackburn Union* v. *Brooks*, 7 Ch. D. 68). This was allowed to be done where the witness had since died, the Court taking the affidavit with considerable reserve, as although he might have been cross-examined upon the affidavit, he had not in point of fact been so (*Elias* v. *Griffith*, 46 L. J. Ch. 806).

On a motion for judgment in default of pleading the Court has no power under this rule to order evidence to be taken by affidavit (*Ellis* v. *Robbins*, 50 L. J. Ch. 512).

In every case of contested or disputed fact coming on to be tried the evidence should not be directed to be taken by affidavit, unless some good reason be shown (per Jessel, M.R., in *Att.-Gen.* v. *Metrop. Ry. Co.*, 5 Ex. D. 224. A).

Actions *in rem*.

2. In default actions *in rem*, and in references in Admiralty actions, evidence may be given by affidavit.

Evidence taken in another matter.

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.

Affidavits sworn in one action may be read as evidence in another, against such of the defendants as are parties to both (*Brown* v. *White*, 24 W. R. 456); or are privies in estate (*Llanover* v. *Homfrey*, 19 Ch. D. 224. A); and see *Vane* v. *Vane*, 45 L. J. Ch. 589. A.

Office copies.

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.

II. Examination of Witnesses.

Depositions.

5. The Court or a Judge may, in any cause or matter 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, 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.

This rule is copied from 1 Will. 4, c. 22, and like that statute can only be made use of where the person to be examined cannot be examined at the trial (*Warner* v. *Mosses*, 16 Ch. D. 100. A). It is meant to be an extension of and not as a restriction upon the former practice of the Courts. Where, therefore, a party had power to issue a subpœna for the examination of a witness without leave of the Court, prior to the Judicature Acts, such practice is not interfered with (*Raymond* v. *Tapson*, 22 Ch. D. 430. A).

The Court has a wide discretion in such matters, and its decisions may be reviewed in the Court of Appeal (*Berdan* v. *Greenwood*, 46 L. T. 524. A).

It may be a ground for refusing a commission to a foreign tribunal to take the evidence of a witness, where such tribunal does not permit his cross-examination (*Re Boyce, Crofton* v. *Crofton*, 20 Ch. D. 760).

In *The Moxham*, 1 P. D. 107, a commission to take evidence in Spain as to the law of Spain was refused, as it was not shown that competent Spanish advocates could not attend here without difficulty.

Form of commission.

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.

Subpœna to produce.

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.

Disobedience to.

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.

Expenses of attendance.

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.

Copy pleadings for examiner.

10. Where any witness or person is ordered to be examined before any officer of the Court, or before any person appointed for the purpose, 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.

Who may be present.

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.

The examiner's office is not a public Court which any person may enter (*Re West Canada Oil Co.*, 25 W. R. 787).

Depositions, how taken.

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.

Objections, how taken.

Failure to comply with subpœna.

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.

Objections, 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.

Costs of.

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.

Filing depositions.

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.

C. L. P. Act, 1854, 56. Special report by examiner.

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.

Depositions, how put in evidence.

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.

Power to administer oath.

19. Any officer of the Court, or other person directed to take the examination of any witness or person, may administer oaths.

Subpœna to attend before officer.

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.

Evidence subsequent 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.

Rules of practice.

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.

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.

Notice to use affidavit.

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.

In subsequent proceedings.

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.

III. Subpœna.

This part is taken from Consol. Order XXVIII.

Form 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.

Subpœna.

27. A writ of subpœna shall be in one of the Forms 1 to 7 in Appendix J, with such variations as circumstances may require.

How issued.

28. Where a subpœna is required for the attendance of a witness for the purpose of proceedings in Chambers, such subpœna shall issue from the Central Office upon a note from the Judge.

Contents of.

29. Every subpœna other than a *subpœna duces tecum* shall contain three names where necessary or required, but may contain any larger number of names.

Subpœna duces tecum.

30. No more than three persons shall be included in one *subpœna duces tecum*, and the party suing out the same shall be at liberty to sue out a subpœna for each person if it shall be deemed necessary or desirable.

Correction of errors.

31. In the interval between the suing out and service of any subpœna 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 subpœna marked with the words "altered and re-sealed," and signed with the name and address of the solicitor suing out the same.

Service.

32. The service of a subpœna shall be effected by delivering a copy of the writ, and of the indorsement thereon, and at the same time producing the original writ.

Affidavit of.

33. Affidavits filed for the purpose of proving the service of a subpœna upon any defendant must state when, where, and how, and by whom, such service was effected.

Time for.

34. The service of any subpœna shall be of no validity if not made within twelve weeks after the *teste* of the writ.

IV. Perpetuating Testimony.

Perpetuating testimony was regulated by 5 & 6 Vict. c. 69, ss. 1–2.

To titles, &c.

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.

Where Crown interested.

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.

C. O. IX. 6.

37. Witnesses shall not be examined to perpetuate testimony unless an action has been commenced for the purpose.

C. O. IX. 7.

38. No action to perpetuate the testimony of witnesses shall be set down for trial.

ORDER XXXVIII.

The greater part of this Order is new, as will be observed by the paucity of the marginal references to the previous rules. We note a few of the principal changes. Scandalous matter in an affidavit may be struck out (r. 11). Irregular affidavits may be read by leave (r. 14). Affidavits may not be sworn before the solicitor himself, or his agent, or partner, or clerk (rr. 16, 17). Affidavits in support of *ex parte* applications must be filed at the time of making the motion (r. 19). Part 2 treats of affidavits and evidence in Chambers. Part 3 as to trial on affidavit is almost the same as before with the exception of the last part of rule 30.

I. Affidavits and Depositions.

XXXVII. 2. On motions, &c.

1. Upon any motion, 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.

In *Fenton* v. *Cumberlege*, W. N. 1883, 116, Pearson, J. was of opinion that the plaintiff would have been justified in refusing to make the affidavit, and refused to allow a cross-examination, which he considered would be an abuse of the practice of the Court.

Upon interlocutory motions counsel are entitled to use any affidavits in existence when called upon to address the Court *Munro* v. *Wivenhoe Railway Co.*, 4 De G. J. & S. 723. A).

Affidavits made by a third person on behalf of one party upon an interlocutory application are admissible against him at the trial (*Campbell* v. *Rothwell*, 38 L. T. 33).

Affidavits, how intituled.

2. Every affidavit shall be intituled in the cause or matter in which it is sworn; 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.

XXXVII. 3. Affidavit of belief.

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. 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.

In proceedings which finally decide the rights of parties, evidence on "information and belief" is not admissible, though their form be interlocutory (*Gilbert* v. *Endean*, 9 Ch. D. 260. A).

This rule does not apply to the usual affidavit which is required in the winding-up of companies, verifying the petition (*Re New Callao*, 30 W. R. 647. A).

As to where a petition for a dissolution of marriage was allowed to be verified by the affidavit of the petitioner's solicitor alone, see *Bruce* v. *Bruce and Laing*, 29 W. R. 474).

Before whom sworn.

4. Affidavits sworn in England shall be sworn before a Judge, District Registrar, Commissioner to administer oaths, or officer empowered under these Rules to administer oaths.

Time and place to be expressed.

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.

15 & 16 Vict c. 86, s. 22. Affidavits out of jurisdiction.

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 authorized 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.

XXXVII. 3a. Form of.

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.

In an affidavit made on payment of money into Court under the Trustee Relief Act, the sum paid in must be expressed in words (*Re Watts*, 24 W. R. 701).

The affidavit of a lunatic requires to be supported by the evidence of his capacity to make one (*Spittle* v. *Walton*, 11 Eq. 420).

XXXVII. 3b. Description of deponent.

8. Every affidavit shall state the description and true place of abode of the deponent.

XXXVII. 3c. Affidavits by two or more.

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.

Where 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. 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.

Scandalous matter.

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.

XXXVII. 3e. Alterations in affidavits.

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.

XXXVII. 3f. By illiterate or blind persons.

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 satisfy 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.

Irregular affidavits may be read by leave.

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 memorandum to be made on the document that it has been so received.

XXXVII. 3g. Stamping and use of office copies.

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.

Affidavits erroneously intituled have been allowed to be taken off the file, and resworn in their proper title without a fresh stamp (*Pearson* v. *Wilcox*, 10 Hare, App. xxxv.; *Underdown* v. *Stannard*, W. N. 1871, 171).

See Order LXV. 27 (53).

Not to be sworn before the solicitor,

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.

his partner or clerk.

17. Any affidavit which would be insufficient if sworn before the solicitor himself shall be insufficient if sworn before his clerk, or partner.

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.

On *ex parte* applications, filing.

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.

II. Affidavits and Evidence in Chambers.

C. O. XXXV. 27. Notice in Chancery Division.

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.

C. O. XXXV. 28. Used in Court.

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.

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 alteration shall not be made by erasure.

Rules, 1857, 10. Alterations in account.

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.

Rules, 1857, 11. Accounts, &c., made exhibits.

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.

Rules, 1857, 12. Marking exhibits.

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.

XXXVIII. 1. Time for filing by plaintiff.

See note to Order XXXVII. Rule 1.

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.

XXXVIII. 2. By defendant.

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, and shall deliver to the defendant or his solicitor a list thereof.

XXXVIII. 3. Time for affidavits in reply.

Affidavits in reply may bring forward additional evidence in support of the original case, and are not restricted by this rule to the points raised by the defendant's evidence (*Peacock* v. *Harper*, 7 Ch. D. 648). In *Gilbert* v. *Comedy Opera Co.*, 29 W. R. 169, Bacon, V.C., declined to order affidavits filed by plaintiff to be removed from the file which were alleged to be not confined to matters strictly in reply and to be irrelevant. The Court may at the trial allow defendant to answer plaintiff's affidavits in reply.

Where a party has been taken by surprise, the Judge may at any stage allow him to produce rebutting evidence (*Bigsby* v. *Dickinson*, 4 Ch. D. 24. A). The Judge may at any time allow further evidence to be called by either party, though such

party might not be entitled to ask for it (*Budd* v. *Davidson*, 29 W. R. 192).

Every document which is intended to be used in evidence ought to be formally put in and marked by the Registrar—the mere fact that they were admitted in the admissions does not make them evidence, per James, L.J., in *Watson* v. *Rodwell*, 11 Ch. D. 153. A.

XXXVIII. 4. Notice to cross-examine on affidavits.

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.

After a party has given notice to read an affidavit he cannot withdraw it in order to avoid cross-examination (*Re Quartz Hill Co., Ex parte Young*, 21 Ch. D. 642. A). The practice would seem to be otherwise in the Bankruptcy Court (*Ex parte Child, Re Ottaway*, 20 Ch. D. 126. A).

In *Meyrick* v. *James*, 46 L. J. Ch. 579, Jessel, M.R., refused an application to strike off the file the affidavit of a witness, who has failed to appear, and be cross-examined before an examiner, because his affidavit could not be used except by the special leave of the Court under this rule.

XXXVIII. 5. Attendance, how enforced.

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.

XXXVIII. 6. Printing affidavits.

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: 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.

This rule as regards time does not apply when the evidence filed after notice of trial is taken under a Judge's order (*Waring* v. *Lacey*, 24 W. R. 318).

The President of the Probate Division has declined to allow the execution of a will to be proved by affidavit, when the action was to prove the will in solemn form, although the value of the property was extremely small (*Cook* v. *Tomlinson*, 24 W. R. 851).

ORDER XXXIX.

Motion for New Trial.

Rules *nisi* are no longer granted, and the whole procedure with regard to the motion for a new trial has been altered.

In what Division.

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.

Where the Court of Appeal granted a new trial and ordered the costs of the application to be paid by the plaintiff, it was held that such an order did not render the payment of the costs by the plaintiff a condition precedent to his going to trial a second time (*Morton* v. *Palmer*, 9 Q. B. D. 89. A). Where a new trial is granted on the ground of the unsatisfactory nature of the verdict, a condition should not be imposed that the party applying for the new trial should pay the costs of the previous trial (*Metrop. Asylum* v. *Hill*, 47 L. T. 29 H.L.).

Where a defendant had been acquitted on a charge of obstructing the highway, a new trial was refused, as the practice of the Court is not to grant a new trial where the case was one of a criminal kind, in which the defendant had been in danger of imprisonment and had been acquitted (*Reg.* v. *Duncan*, 7 Q. B. D. 198).

Affidavits in support of a motion for a new trial on the ground of surprise, ought clearly to state what the grounds of surprise are (*Dow* v. *Dickinson*, W. N. 1881, 52. A).

If the Judge have directed the jury to find for the plaintiff, the motion should be to the Divisional Court for a new trial, on the ground of misdirection (*Yetts* v. *Foster*, 3 C. P. D. 437. A), or

where the plaintiff was non-suit (*Etty* v. *Wilson*, 3 Ex. D. 359. A). Where the Judge refuses to nonsuit, a motion to set aside the judgment should be to the Divisional Court, and not to the Court of Appeal (*Clarke* v. *M. Ry. Co.* 44 L. T. 131. A). Where the jury was discharged after the opening of the plaintiff's case, and the Judge afterwards held that the claim was barred by Statute of Limitations, it was held that as the case had been in fact tried without a jury, the proper mode of disputing the decision was by appeal and not by motion for a new trial (*The Metrop. Bank* v. *Heiron*, W. N. 1880, 132. A).

On a motion to set aside a verdict, the Divisional Court, instead of ordering a new trial, may give judgment for the defendant where such Court is satisfied that there is really no evidence to support the verdict, and that it has before it all the materials necessary for finally determining the questions in dispute (*Daun* v. *Simmins*, 28 W. R. 129. A; *Hamilton* v. *Johnson*, 5 Q. B. D. 263. A).

The Privy Council have laid it down that the verdict must be not merely unsatisfactory, but that the evidence so strongly preponderates in favour of one party, as to lead to the conclusion that the jury in finding for the other party have either wilfully disregarded the evidence or failed to understand or appreciate it (*Connecticut Life Assur. Co.* v. *Moore*, 6 App. Cas. 656). And the Court of Appeal have considered that before exposing parties to the expense of a new trial, the Court must be able to say that the verdict was manifestly wrong, and that there has been a gross miscarriage of justice (*Jenkins* v. *Morris*, 42 L. T. 817. A). That the Judge was dissatisfied with the result is not a sufficient ground for interfering with the verdict of the jury (*Solomon* v. *Bitton*, 8 Q. B. D. 176).

The judge who tried not to sit.

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.

It is competent for a Judge to explain the meaning of his own finding (*Chatterton* v. *Cave*, 3 App. Cas. 483).

By notice of motion.

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.

Eight days' notice.

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.

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. Amendment of notice.

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. *XXXIX.* 3. On substantial grounds only.

If the damages found by the jury be so small as to show that they must have omitted to consider some of the elements of damage, the Court will grant a new trial (*Phillips* v. *L. & S. W. Railway Co.*, 5 Q. B. D. 78. A). It is the custom, though not altogether invariable, that the Court will not grant a new trial on the ground that the verdict is against the weight of evidence, where the damages do not exceed £20, except under peculiar circumstances, such as trial of a right, or where a person's character might be injured (*Joyce* v. *Metrop. B. of Works*, 44 L. T. 813).

Where a new trial is moved for on the ground of misdirection, the onus of showing that the misdirection did not cause a miscarriage of justice lies upon the party showing cause (*Anthony* v. *Halstead*, 37 L. T. 433). In *Hall* v. *Jupe*, 49 L. J. 721, Grove, J., thought that the misdirection mentioned in this rule could not include a case where the Judge directed a verdict of nonsuit. As to the extent to which it is the duty of the Judge to direct the jury upon points of law, see some observations of Lord Blackburn in *The Prudential Assur. Co.* v. *Edmonds*, 2 App. Cas. 507) : " I take it that where there is an issue tried by a Judge sitting with a jury and there arises any question of law mixed up with the facts, the duty of the Judge is to give a direction upon the law to the jury so far as is necessary to make them understand the law as bearing upon the facts."

Upon a motion for a new trial, the Court may if satisfied that it has the necessary materials before it, give judgment accordingly under Order XL. 10. And this applies to interpleader proceedings (*Williams* v. *Mercier*, 9 Q. B. D. 337. A).

7. A new trial may be ordered on any question, whatever be the grounds for a new trial, without interfering with the finding or decision upon any other question. *XXXIX.* 4. On one question only.

The Judge may accept the verdict of the jury upon those issues on which they are agreed, and discharge them upon the others, leaving the parties to have a new trial if they think fit on those undecided (*Marsh* v. *Isaacs*, 45 L. J. 505).

Insufficient stamp.

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.

This Order is substantially the same as the previous one, with the exception that Order XL. 11 (motion for judgment on admissions) will in future be known as Order XXXII. 6.

XL. 1. Judgment, how obtained.

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.

Notice of motion for judgment in default of pleading should not be served on infants. Where several defendants to an action, one of whom was an infant, failed to put in any statements of defence, the Court ordered that the action should be set down on notice for trial as against the infant defendant, and on notice of motion for judgment on the statement of claim as against the adult defendants (*The National Prov. Bank* v. *Evans*, 51 L. J. Ch. 97). In simple cases judgment may be obtained under this rule against an infant whose guardian *ad litem* does not consider it necessary to put in any defence, the facts being fully verified by affidavit (per Chitty, J., in *Re Fitzwater*, 52 L. J. Ch. 83, where *Ellis* v. *Robbins*, 50 L. J. Ch. 512, was considered and explained.

Setting down.

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.

In *Davenport* v. *Ward*, 47 L. T. 348, it was held that the Judge could not be said to have "abstained from giving judgment" unless he had specifically been asked to do so.

XL. 4. Findings wrongly entered.

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.

On a motion for a new trial by force of Rule 10 *post*, the Divisional Court has power, when the materials are before it, to enter another judgment on the ground that upon the findings the judgment entered is wrong (*Hamilton* v. *Johnson*, 5 Q. B. D. 263. A; *Jones* v. *Hough*, 5 Ex. D. 115. A). A Judge is not at liberty to disregard the finding of a jury, which is relevant to the matter in dispute, and enter judgment in opposition to it (*Perkins* v. *Dangerfield*, W. N. 1879, 172. A).

XL. 4. Judgment wrong on findings.

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.

XL. 4. Application, where made.

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.

Where a Judge has directed judgment to be entered on an interpleader issue, an appeal lies to the Court of Appeal under this rule (*Witt* v. *Parker*, 25 W. R. 518. A).

XL. 5. Judgment by Referee.

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.

XL. 7. Where issues determined.

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 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.

XL. 8. Where some only determined.

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. 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.

XL. 9. Limitation of time for moving.

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.

XL. 10. Powers of the Court.

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.

This rule applies to interpleader proceedings as well as to ordinary actions (*Williams* v. *Mercier*, 9 Q. B. D. 337. A).

ORDER XLI.

Entry of Judgment.

A provision has been made in Rule 3 for ante-dating or post-dating judgments by order. Rules 5, 8, 9, and 10 are new.

XLI. 1. How effected.

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.

On an indictment for perjury the existence of the action is sufficiently proved by the production by the officer of the Court of the copy writ filed and copy pleadings (*Reg.* v. *Scott*, 2 Q. B. D. 415).

XLI. 1a. 2. All judgments in the Queen's Bench Division, shall, if entered in London, be entered in the Central Office.

XLI. 2. Date of entry. Judgment in Court. 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: Provided that by special leave of the Court or a Judge a judgment may be ante-dated or post-dated.

XLI. 3. Other cases. 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.

C. O. XXIII. 10. Mandatory judgment. 5. Every judgment or order made in any cause or matter requiring any person to do an act 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 following, viz. :—

"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]."

XLI. 4. Regulations for entry. 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.

XLI. 5. Entry on certificate.

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.

Reference to a Master.

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.

Consent by solicitor.

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.

Consent by defendant in person.

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.

Rules 1, 2, 19, 25, 30 and 31 are new. Rule 23 is partially the same as the previous 19, but has been much extended. Of last three rules (Part 2) the first is taken from the former Order XLV. 1, the two remaining are new. With these exceptions the Order remains almost unchanged.

C. O. XXIX. 1. Service of order.

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 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.

C. O. XXIII. 22. Conditional judgment.

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.

XLII. 1. Judgment debt.

3. A judgment 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 might have been enforced at the time of the passing thereof.

As to enforcing judgments of a foreign Court see *Rousillon* v. *Rousillon*, 14 Ch. D. 351; *City of Mecca*, 6 P. D. 106. A; Order V. 16.

The appointment of a receiver is the equivalent in Equity of the actual delivery of the land under an elegit (*Anglo-Italian Bank* v. *Davies*, 9 Ch. D. 285. A; *Oliver* v. *Lowther*, 42 L. T. 47; *Ex parte Evans, Re Watkins*, 13 Ch. D. 252. A).

Where the solicitor hands the writ to the sheriff, but does not instruct him to employ any particular officer, he is not liable, at the suit of that officer, for fees and possession money (*Royle* v. *Busby*, 6 Q. B. D. 171. A).

Where parties resident abroad were served with notice of a decree it was held unnecessary to serve them with notice of any further steps (*Lee* v. *Sturrock*, W. N. 1876, 226).

XLII. 2. For payment into Court.

4. A judgment for the payment of money into Court may be enforced by writ of sequestration, or in cases in which attachment is authorized by law, by attachment.

As to issue of a writ of sequestration see Order XLIII. 1.

In *Ex parte Nelson, Re Hoare* (14 Ch. D. 41. A), their Lordships expressed great doubt whether a sequestration could be properly issued to enforce a simple judgment for a debt. The mere issuing of a writ of sequestration against a defendant without taking any further steps to make it effectual is not sufficient to make the plaintiff a secured creditor.

XLII. 3. For the recovery of land.

5. A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession.

A foreclosure order absolute, is not a judgment for the recovery of the possession of land within this rule and cannot be enforced by writ of possession (*Wood* v. *Wheater*, 22 Ch. D. 281).

XLII. 4. For other property.

6. A judgment for the recovery of any property other than land or money may be enforced:

(*a.*) By writ for delivery of the property;
(*b.*) By writ of attachment;
(*c.*) By writ of sequestration.

XLII. 5. Attachment for contempt.

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.

An order for commitment will not be made upon a notice of motion for an attachment (*Buist* v. *Bridge*, 29 W. R. 117).

As to the costs of motions to commit see *Plating Co.* v. *Farquharson*, 17 Ch. D. 56. A.

Where service of the order is ineffectual, the order to attach must be discharged as irregular (*Re Holt*, 11 Ch. D. 168).

As to parties resident abroad see *Lee* v. *Sturrock*, Rule 3, *ante*.

XLII. 6. Writ of execution. Definition.

8. In these Rules the term "writ of execution" shall include writs of *fieri 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.

XLII. 7. Contingent judgment.

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 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.

XLII. 8. Partners.

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 Order XII. Rule 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.

Where judgment has been recovered against a partnership firm in the name of the firm, the plaintiff may bring an action on the judgment against the individual members and is not confined to the remedy given by this rule (*Clark* v. *Cullen*, 9 Q. B. D. 355).

Where the partnership has been dissolved before the issue of the writ, leave to issue execution should not be given until the question of liability has been determined (per Selborne, L.C., in *Ex parte Young, Re Young*, 19 Ch. D. 124. A).

Judgment cannot be signed against a person alleged to be a partner in default of appearance (*Jackson* v. *Litchfield*, 8 Q. B. D. 474. A).

XLII. 9. Writ, how issued.

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.

XLII. 10. Præcipe.

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.

It is the duty of the solicitor to indorse the writ of *fi. fa.* properly, but it is no part of his duty to interfere with the performance of the duty of the sheriff. It is the sheriff's duty to seize the goods of the debtor, and if the solicitor interfere and instruct the sheriff to seize the goods of the wrong person, he will be personally responsible (*Smith* v. *Keal*, 9 Q. B. D. 340. A).

XLII. 11 Indorsement of address of solicitor.

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.

XLII. 12 Must bear date.

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.

XLII. 13. Poundage and expenses.

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.

XLII. 14. Indorsement of principal and interest.

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 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 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.

As to interest in the Admiralty Division in a salvage case see *Re Jones Bros.*, 46 L. J. Ad. 75.

XLII. 15. *Fieri facias* and *elegit.*

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 *fieri facias* or one or more writ or writs of *elegit* to enforce payment thereof, subject nevertheless as follows:

(*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.

The recovery of costs, payable under an order, will not be stayed by the Court of Appeal, pending an appeal to the House of Lords, if the solicitors, to whom they are payable, give their personal undertaking to refund, in case of the order being reversed (*Grant* v. *Banco Franco-Egyptienne*, 3 C. P. D. 202. A; *Morgan* v. *Elford*, 4 Ch. D. 353. A; *The Khedive*, 5 P. D. 1. A). The Court of Appeal is the proper Court to which to apply to suspend any order which that Court has made; consequently the application should be to it, to stay proceedings under its own order, pending an appeal to the House of Lords (*Ibid.*).

The appointment of a receiver is the equivalent in equity to the actual delivery of the land under an *elegit* (*Ang.-Italian Bank* v. *Davies*, 9 Ch. D. 275. A, and authorities there cited). A judgment creditor who has sued out an *elegit* against a judgment debtor, whose only property is an equity of redemption, may apply to a Judge at Chambers for the appointment of a receiver (*Smith* v. *Cowell*, 6 Q. B. D. 75. A).

Section 87 of the repealed Bankruptcy Act, 1869, did not apply to a seizure of goods under an *elegit* (*Ex parte Abbott, Re Gourlay*, 15 Ch. D. 447. A; *Ex parte Sulger*, 17 Ch. D. 839. A).

As to the time for taking out a summons for an order to tax the costs of proceedings under an *elegit*, and to include them in the security, see *Mahon* v. *Miles*, 30 W. R. 123.

XLII. 15a. Execution on judgment in Chancery Division.

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.

Not for money or recovery of land.

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.

XLII. 16. Duration and renewal of writ.

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.

XLII. 17. Evidence of renewal.

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.

XLII. 18. Judgment runs for six years.

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.

Leave to issue.

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;

(*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.

An executor may obtain leave to issue execution on an *ex parte* application (*Mercer* v. *Lawrence*, 26 W. R. 506).

XLII. 20. Order enforced as judgment.

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.

As to enforcement of an order of the Jud. Committee of the Privy Council see *Pitts* v. *La Fontaine*, 6 App. Cas. 482. A).

Debtors Act. Commitment.

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.

XLII. 21. Persons not parties.

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.

XLII. 22. *Audita querela.*

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.

XLII. 23. Saving clause.

28. Nothing in this Order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner, or against any person or property whatsoever.

XLII 24. Order of issue.

29. Nothing in this Order shall affect the order in which writs of execution may be issued.

Penalty for disobedience

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 proceeding 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.

Against a 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.

XLV. 1. Examination of the debtor.

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.

These proceedings may be taken in the District Registry (Order XXXV. 5*c*).

Before a judgment debtor can be attached, it must be shown that he has been tendered conduct money, that there is good reason for not examining him where he resides, and that there is no other means of ascertaining what debts are owing to him (*The Protector Co.* v. *Whitlam*, 36 L. T. 467).

Under a similar section in the C. L. P. Act, 1854, service on the wife was held insufficient to ground an order for attachment (*Mason* v. *Muggeridge*, 18 C. B. 642). It would appear that service on the solicitor of the party will be sufficient (*Browning* v. *Sabin*, 5 Ch. D. 511), or against a solicitor at his residence (*Re a Solicitor*, 14 Ch. D. 152).

Defendant is bound to answer questions pertinent and relative to the subject-matter of the examination, and may be subjected to a severe cross-examination (*Rep. of Costa Rica* v. *Strousberg*, 16 Ch. D. 8. A).

A creditor may pursue the concurrent remedies of obtaining an order for payment of the debt by instalments and examining the debtor as to the debts owing to him, with a view to attaching them (*Hayter* v. *Beall*, 44 L. T. 131. A). "If the Court below

had put their decision on the ground that the creditor had the right, but had used it oppressively, I would not overrule their discretion" (per Bramwell, L.J., *Ibid.*).

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. Where difficulties arise.

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. Costs.

ORDER XLIII.

Order XLVII. of the previous Rules has been incorporated in this place, as well as Consol. Order XXIX. rr. 9, 11 and 13.

I. Writs of Fieri Facias, Elegit, and Sequestration.

. Writs of *fieri 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. *XLIII.* 1. Form of procedure unaffected.

By 27 & 28 Vict. c. 112, sec. 1, no judgment is to affect land until it has been actually delivered in execution. As to what amounts to delivery in execution of mortgage property see *Backhouse* v. *Siddle*, 38 L. T. 487.

The delivery to the execution creditor of goods seized by the sheriff under an *elegit* at the value appraised by the jury on the inquisition, was a protected transaction within the meaning of the repealed Bankruptcy Act, 1869, s. 95, § 3, if the creditor had not at the time of the delivery notice of any act of bankruptcy committed by the debtor prior to the seizure and available against him for adjudication. Notice of an act of bankruptcy committed between the seizure and the delivery did not deprive the creditor of the protection (*Ex parte Vale, Re Bannister*, 18 Ch. D. 137. A).

2. Where it appears, upon the return of any writ of *fieri 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, *Venditioni exponas.*

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.*

De bonis ecclesiasticis.

3. Where it appears, upon the return of any writ of *fieri 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 *fieri facias de bonis ecclesiasticis*, or one or more writs of sequestration.

Delivery to Bishop.

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.

XLIII. 2. Writs in aid.

5. Writs of *venditioni exponas, distringas nuper vice comitem, fieri facias de bonis ecclesiasticis, sequestrari facias de bonis ecclesiasticis*, and all other writs in aid of a writ of *fieri facias* or of *elegit*, may be issued and executed in the same cases and in the same manner as heretofore.

XLVII. 1. 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.

Sequestrators are entitled to money in the hands of the bankers of the person against whom the sequestration has issued (*Miller* v. *Huddlestone*, 22 Ch. D. 233).

In an administration action on application by sequestrators who were not parties to the action, it was held that they were entitled to the annuity claimed, and that it was unnecessary for them to commence fresh proceedings (*Re Slade*, 18 Ch. D. 653).

As to the priority of a sequestration in the case of a bankrupt beneficed clergyman, see *Ex parte Chick*, *Re Meredith*, 11 Ch. D. 731. A.

It is unnecessary to obtain an order for leave to issue a writ of sequestration, for non-compliance with an order of Court (*Sprunt* v. *Pugh*, 7 Ch. D. 567).

Sequestrators were appointed and empowered to receive the pension of a County Court Judge. An order was made restraining the debtor from receiving by himself, or through his bankers, the moneys payable in respect to the same (*Willcock* v. *Terrell*, 3 Ex. D. 323. A).

Leave was given to issue a writ of sequestration in the case of an officer living on a pension for non-payment of costs (*Snow* v. *Bolton*, 17 Ch. D. 433).

For costs and alimony see *Sansom* v. *Sansom*, 4 P. D. 25.

As to enforcing a simple judgment for a debt see Order XLII. Rule 4, note.

7. No subpœna for the payment of costs and, unless by leave of the Court or a Judge, no sequestration to enforce such payment, shall be issued. *XLVII.* 2. Subpœna for costs.

Where the action is one transferred for hearing only to a Judge who does not sit in Chambers, application for leave should be to him in Court, otherwise it will be made in Chambers (*Snow* v. *Bolton*, 17 Ch. D. 433).

ORDER XLIV.

Attachment.

This Order remains unchanged.

1. A writ of attachment shall have the same effect as a writ of attachment issued out of the Chancery Division has heretofore had. *XLIV.* 1. Effect of writ.

An order requiring a person to do a certain act need not be indorsed with a statement that he will be liable to attachment for disobedience (*Thomas* v. *Palin*, 21 Ch. D. 360. A).

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. *XLIV.* 2. Not without leave.

Where the issuing of the attachment is a matter in the discretion of the Judge, the Court of Appeal will not interfere (*Ashworth* v. *Outram* (2), 5 Ch. D. 943. A); where there is a question of law and principle the Court of Appeal will hear and determine the matter (*Russell* v. *East Ang. Ry. Co.*, 3 M. & G. 104. A). Sir R. Peel's case, L. R. 3 Ch. 543, adopted in *Jarman* v. *Chatterton*, 20 Ch. D. 493 A.

According to the old practice, a rule for an attachment against a sheriff for not entering a writ of *fi. fa.* was absolute in the first instance; but the practice has now been superseded (*Jupp* v. *Cooper*, 5 C. P. D. 26; *Eynde* v. *Gould*, 9 Q. B. D. 335; Order LII., 2 *b*).

The costs of an application for attachment are in the discretion of the Court (*Abud* v. *Riches*, 2 Ch. D. 528).

The notice may be served on the solicitor of the party, or against a solicitor at his residence (*Browning* v. *Sabin*, 5 Ch. D. 511; *Joy* v. *Hadley*, 22 Ch. D. 571; *Re a Solicitor*, 14 Ch. D. 152; *Re Ryan*, 28 W. R. 529). Bacon, V.C., has considered it necessary to show that the defendant cannot be served personally (*Perry* v. *Mann*, 50 L. J. Ch. 251). An order made against a solicitor personally was allowed to be served at his place of business when his residence could not be ascertained (*Tilney* v. *Stansfeld*, W. N. 1880, 77).

If solicitors give their personal undertaking to be liable for costs in order to obtain the release of their client from custody, they may be directed to pay such costs in a summary manner (*Re Woodfine and Wray*, W. N. 1882, 36).

The provisions as to substituted service do not apply to an application for an attachment (W. N. 1876, 105).

If plaintiff have obtained leave for an attachment he is not entitled to an order to commit without service of a fresh notice of motion (*Buist* v. *Bridge*, 29 W. R. 117).

Where service of the order is ineffectual, the order to attach must be discharged as irregular (*Re Holt*, 11 Ch. D. 168).

Where the writ has been improperly issued the party should move to have it discharged before proceeding to ask for damages (*Lees* v. *Patterson*, 7 Ch. D. 866).

A member of Parliament is privileged from arrest for forty days before the meeting of Parliament, and forty days after the prorogation or dissolution, and this holds good even if he be not re-elected to the new Parliament (*Re Ang.-French Co-Op. Soc.*, 14 Ch. D. 533, see now Bankruptcy Act, 1883, s. 124).

A person brought over to this country under the Extradition Treaty may, after the trial on the charge for which he was surrendered, be attached for contempt committed before extradition (*Marris* v. *Ingram*, 13 Ch. D. 338). If the extradition were not obtained *bonâ fide*, but with the purpose of bringing him within the jurisdiction he will be discharged (*Pooley* v. *Whetham*, 15 Ch. D. 435. A).

"Costs as between solicitor and client are sometimes given to the party moving, but I do not remember any case where they have been given to the respondent" (per Jessel, M.R., in *The Plating Co.* v. *Farquharson*, 17 Ch. D. 57. A).

Every notice of motion for an attachment is to state in general terms the grounds of the application, and a copy of any affidavit intended to be used is to be served with the notice of motion (Order LII. 4).

A defendant who has cleared his contempt will not be detained

in prison for the non-payment of the costs (*Jackson* v. *Mawby*, 1 Ch. D. 86).

An attachment will only be issued to enforce the payment of a sum of money in cases within the exceptions to the Debtors Act, 1869, sec. 4 (*The Earl of Lewes* v. *Barnett*, 6 Ch. D. 252; *The Phosphate Sewage Co.* v. *Hartmont*, 25 W. R. 743). Previous to the Debtors Act, 1878, *post*, cases within the following exceptions were entirely taken out of the operation of this Act, and the old law and practice were applicable (*Evans* v. *Bear*, L. R. 10 Ch. 78). This has now been altered by the Act of 1878, as regards exceptions 3 and 4, and the Judge has a discretion in any case coming within them (41 & 42 Vict. c. 54, s. 1).

32 & 33 *Vict. c.* 62, *ss.* 4, 5, 6.

As to summonses under this Act before Masters and District Registrars see Order LIV. 19.

Debtors Act, 1869, s. 4. Abolition of imprisonment for debt.

IV. With the exceptions hereinafter mentioned, no person shall, after the commencement of this Act, be arrested or imprisoned for making default in payment of a sum of money.

There shall be excepted from the operation of the above enactment:—

Exceptions.

(1.) Default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract.

Penalty.

As the Crown is not expressly mentioned, it is not bound by this section; consequently where an appellant has entered into a recognizance for the payment of costs, if unsuccessful, on default of payment, the recognizance may be estreated, and he may be arrested (*Re A. H. Smith*, 2 Ex. D. 47).

(2.) Default in payment of any sum recoverable summarily before a justice or justices of the peace.

Sum recoverable before a Justice.

Costs which have been awarded by Quarter Sessions, and in default of distress, may be enforced by warrant of commitment, are within the above exception, and the defaulter is, therefore, not protected from imprisonment (*Reg.* v. *Pratt*, L. R. 5 Q. B. 176).

(3.) Default by a trustee or person acting in a fiduciary capacity, and ordered to pay by a Court of Equity any sum in his possession or under his control.

Fiduciary capacity.

A trustee who has been ordered to pay money which he has neglected to recover, is not within this exception (*Ferguson* v. *Ferguson*, L. R. 10 Ch. 661). It must be shown that he has at some time had the money in his possession (*Ex parte Cuddeford, Re Hincks*, 45 L. J. Bankruptcy, 127). Has it once been in his possession, a Court of Equity must regard it as still being in his possession, until he have properly discharged himself of it. It is no answer to say that he had spent it at the time of the order, and is no longer in a condition to pay (*Middleton* v. *Chichester*, L. R. 6 Ch. 156); or that his co-trustee had spent it when it had once been in their joint possession (*Evans* v. *Bear*, L. R. 10 Ch. 76). No attachment can be issued against a trustee on an order directing the payment of a sum composed of principal and interest not distinguished from one another, when the principal alone can be shown to have been in his possession or under his control (*Middleton* v. *Chichester*, *supra*).

Where there had been no actual fraud or embezzlement by a defaulting trustee, but merely an erroneous application of the trust fund, the Court, upon his undertaking to execute a charge upon all the property to which he was or might become entitled, declined to attach him (*Holroyde* v. *Garnett*, 20 Ch. D. 532). The policy of the Debtors Acts in leaving a defaulting trustee liable to the penalty of imprisonment, is not vindictive, the object of the penalty is simply to produce payment of the money. When it is shown that imprisonment will not produce this result, the Court will refuse an application for a writ of attachment (*Barrett* v. *Hammond*, 10 Ch. D. 285; *Re Mackenzie*, 44 L. T. 618). A trustee who had been ordered to pay into Court an amount due from him, and which had been mixed with his own moneys, it was held that he was protected by the Bankruptcy Act, 1869, 12, pending the bankruptcy proceedings (*Cobham* v. *Dalton*, L. R. 10 Ch. 655). Where there has been a good attachment before the bankruptcy, the debtor does not come within the protection of the 12th section of the Bankruptcy Act, 1869 (*Earl of Lewes* v. *Barnett*, 6 Ch. D. 252. A). Sec. 12 has now been replaced by sec. 9 of the Bankruptcy Act, 1883.

An agent who receives bills in order that he may discount them and hand the proceeds to his principal, is a person acting in a fiduciary character within the meaning of this sub-section (*Hutchinson* v. *Hartmont*, W. N. 1877, 29). A creditor who has received money from a bankrupt by way of fraudulent preference, and has been ordered to repay it to the trustee of the bankrupt's estate, is not a person holding money in a fiduciary character (*Ex parte Hodson, Re Chapman*, L. R. 8 Ch. 231). Nor is a promoter of a company (*Phosphate Sewage Co.* v. *Hartmont*, 25 W. R. 743). Nor is a director who has received fully paid-up shares from the promoter (*Re Diamond Fuel Co.*, 13 Ch. D. 815).

An attachment will not be granted on an order to pay into Court the proceeds of an estate which had been realized, the amount to be verified by affidavit. The Act must be strictly construed; and until the amount be verified by affidavit no definite sum is fixed (*Re Spicer*, W. N. 1881, 85).

Solicitor for misconduct.

(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:

The liability of a solicitor to be attached under this sub-section is in his character of an officer of the Court, and not as an unsuccessful litigant (*Re Hope*, L. R. 7 Ch. 523); he may be attached for default in payment of a balance found due from him to his client upon taxation of his bill of costs under the common order for that purpose (*Re White*, 23 L. T. 387; *Re Rush*, 9 Eq. 147); or of the defendant's costs of an action which has been brought without any authority from the plaintiff (*Jenkins* v. *Feraday*, L. R. 7 C. P. 358); and he cannot be relieved from such a liability by proceedings under the Bankruptcy Act, 1869 (*Ibid.*).

Of a portion of a salary.

(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:

(6.) Default in payment of sums in respect of the payment of which orders are in this Act authorized to be made : Sums payable under 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; 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.

An order to deliver to a receiver bills and cheques or pay moneys received in respect of them, is not an order merely for the payment of a sum of money within this section, and consequently the issuing of an attachment is not controlled by it (*Harvey* v. *Hall*, 11 Eq. 31).

Where the debtor was kept in custody for more than a year the gaoler was held protected by the exigency of the writ (*Greaves* v. *Keene*, 4 Ex. D. 73). It is the usual practice to append to a writ of attachment issued in cases falling under this section, a note to the effect that, "This writ does not authorize an imprisonment for any longer period than one year;" where this has been done an order for the discharge of the prisoner is unnecessary (*Re Edwards*, *Brock* v. *Edwards*, 21 Ch. D. 230); otherwise it is necessary to move for the discharge of the debtor (*Nalty* v. *Aylett*, 43 L. J. Ch. 721).

V. Subject to the provisions hereinafter mentioned, and to the prescribed rules, any Court may commit to prison for a term not exceeding six weeks or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent Court. Debtor's Act, 1869, s. 5. Saving of power of committal for small debts.

Provided (1) that the jurisdiction by this section given of committing a person to prison shall in the case of any Court other than the Superior Courts of law and equity be exercised only subject to the following restrictions, that is to say :

(*a.*) Be exercised only by a Judge or his deputy, and by an order made in open Court and showing on its face the ground on which it is issued;

(*b.*) Be exercised only as respects a judgment of a Superior Court of law or equity when such judgment does not exceed £50, exclusive of costs; Repealed by Bankruptcy Act, 1883.

(*c.*) Be exercised only as respects a judgment of a County Court by a County Court Judge or his deputy.

(2.) That such jurisdiction shall only be exercised where it is proved to the satisfaction of the Court that the person making default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default and has refused or neglected, or refuses or neglects to pay the same.

Proof of the means of the person making default may be given in such manner as the Court thinks just; and for the purposes of such proof the debtor and any witnesses may be summoned and examined on oath according to the prescribed rules.

Any jurisdiction by this section given to the Superior Courts may be exercised by a Judge sitting in Chambers or otherwise in the prescribed manner.

For the purposes of this section any Court may direct any debt due from any person in pursuance of any order or judgment of that or any other competent Court, to be paid by instalments, and

may from time to time rescind or vary such order. Persons committed under this section by a Superior Court may be committed to the prison in which they would have been confined if arrested on a writ of *capias ad satisfaciendum*, and every order of committal by any Superior Court shall, subject to the prescribed rules, be issued, obeyed, and executed in the like manner as such writ.

This section, so far as it relates to any County Court, shall be deemed to be substituted for sections 98 and 99 of the County Court Act, 1846, and that Act, and the Acts amending the same, shall be construed accordingly, and shall extend to orders made by the County Court with respect to sums due in pursuance of any order or judgment of any Court other than a County Court.

No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt, or demand, or cause of action, or deprive any person of any right to take out execution against the lands, goods, or chattels of the person imprisoned, in the same manner as if such imprisonment had not taken place.

Any person imprisoned under this section shall be discharged out of custody upon a certificate signed in the prescribed manner, to the effect that he has satisfied the debt or instalment of a debt in respect of which he was imprisoned, together with the prescribed costs (if any).

In *Dillon* v. *Cunningham*, L. R. 8 Ex. 23, Kelly, C.B., considered that an order for payment by instalments might be made without any proof of means. Such an order may be made upon a married woman (*Ibid.*); but see *Atwood* v. *Chichester*, 3 Q. B. D. 722. A. Though such an order may be made, the Court will rarely do so.

An order of commitment, under special circumstances, has been made against the husband, although his only means were whatever he received by way of donation out of his wife's separate estate (*Harper* v. *Scrimgeour*, 5 C. P. D. 366). But in general the Court will not send a man to prison in order to oblige his wife to pay his debts (*Chard* v. *Jervis*, 9 Q. B. D. 178. A).

If the Judge have satisfied himself that the debtor has the means of payment the Court of Appeal will not interfere (*Esdaile* v. *Visser*, 13 Ch. D. 421. A).

The order if made by a Superior Court remains in force as long as the judgment which it is issued to enforce (*Hermitage* v. *Kilpin*, L. R. 9 Ex. 205).

Where a debtor has once been committed upon a judgment summons for non-payment of a debt, a second warrant of commitment cannot issue against him in respect of the same debt. If the judgment make the debt payable by instalments, the debtor may be committed for the full period of six weeks for default in payment of each instalment (*Evans* v. *Wills*, 1 C. P. D. 229; *Horsnail* v. *Bruce*, L. R. 8 C. P. 378).

An order for the payment of costs constitutes a debt within the meaning of this section (*Hewitson* v. *Sherwin*, 10 Eq. 53).

The power of committal by the Inferior Courts in respect of judgments of the Superior, does not extend beyond their local jurisdiction, but is auxiliary to the latter (*Washer* v. *Elliot*, 1 C. P. D. 169).

Debtors Act, 1869, s. 6. Power under certain circum-

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 £50 or upwards, and 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.

Circumstances to arrest defendant about to quit England.

A defendant who has been arrested on the ground that his absence from England will prejudice the plaintiff in the prosecution of his action, cannot be kept in prison after final judgment has been signed (*Hume* v. *Druyff*, L. R. 8 Ex. 214).

Under the present practice the writ of *ne exeat regno* is not to be issued except in cases which come within the provisions of this section (*Drover* v. *Beyer*, 13 Ch. D. 242. A ; *Hands* v. *Hands*, 43 L. T. 746. A). The affidavit in support must state the circumstances on which the belief that the defendant is about to leave the country is founded (*Perry* v. *Dorset*, 19 W. R. 1048).

A writ of *ne exeat* may be obtained against a defendant who has been ordered to pay money into Court on or before a certain day, although that day has not arrived (*Sobey* v. *Sobey*, 15 Eq. 200).

As to the regulations for the arrest of a defendant under this section, see Order LXIX.

ORDER XLV.

Attachment of Debts.

The oral examination of the debtor, which formed the subject of th efirst rule of the previous Order, will now be found at Order XLIII. 32, as "Discovery in Aid of Execution." In other respects the Order remains unaltered.

XLV. 2. Garnishee order.

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 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.

The question as to what are debts "owing or accruing," is sometimes one of considerable nicety. Thus, the unearned salary of a medical officer of health was held unattachable (*Hall* v. *Prichett*, 3 Q. B. D. 215). Similarly, a superannuation allowance (*Innes* v. *East India Co.*, 17 C. B. 351). Neither was there held to be a debt "owing or accruing" where there was merely a notice to treat under the Lands Clauses Act, 1845. It might turn out that the party to whom the notice had been given had no interest whatever in the premises with respect to which he would be entitled to compensation (*Richardson* v. *Elmit*, 2 C. P. D. 9). Nor is the assessed price of land to be purchased by a railway company under their notice to treat, previous to the execution of the conveyance (*Howell* v. *Metrop. Ry. Co.*, 19 Ch. D. 508). But where it has been agreed to pay a debt by instalments, the order for attachment may include the instalments as and when they become due (*Tapp* v. *Jones*, L. R. 10 Q. B. 791). If, however, the judgment creditor have afterwards sued in a County Court on the same judgment, and have obtained an order in that Court for the payment of the debt by instalments, it does not appear that the Superior Court will aid the process of the inferior (*Jones* v. *Jenner*, 25 L. J. Ex. 319). Rent is the subject of an attachment (*Mitchell* v. *Lee*, L. R. 2 Q. B. 259). In which case, the garnishee was tenant to the mortgagor, the claimants were mortgagees. So is a debt which has been secured by a bond payable at a future time (*Sparks* v. *Younge*, 8 Ir. C. L. Rep. 261 Q. B.). But not a bond, conditioned in a penal sum, as a security for unliquidated damages, payable on a contingency (*Johnson* v. *Diamond*, 11 Ex. 73). A verdict cannot be attached till judgment has been signed (*Dresser* v. *Johns*, 28 L. J. C. P. 281): or money paid into Court (*Jones* v. *Brown*, 29 L. T. (O.S.) 79); nor an annuity in the hands of trustees where nothing was due (*Webb* v. *Stenton*, 48 L. T. 268). Where a garnishee order was made after the giving and before the presentation of a cheque, it was held that upon the refusal of the bankers to cash the cheque, the garnishee order became effectual to bind the debt in the hands of the garnishee (*Cohen* v. *Hale*, 3 Q. B. D. 371).

Money in the hands of an officer who acts under the directions of the Court, may not be attached, as, for instance, its receiver (*Russell* v. *East Anglian Ry. Co.*, 3 M. & G. 104; *Ames* v.

Birkenhead Docks, 20 Beav. 332; *Ex parte Hunter, Re Greensill*, L. R., 8 C. P. 24; as to the order suitable in such a case see *Rapier* v. *Wright*, 14 Ch. D. 638; an official liquidator (*Dawson* v. *Malley*, Ir. Rep., 1 C. L. 207); an assignee in bankruptcy (*Boyse* v. *Simpson*, 8 Ir. C. L. Rep. (N.S.) 523; *Re Greensill* L. R. 8 C. P. 24); official manager of a company (*Ex parte Marshall Turner*, 2 D. F. & J. 354; *Ex parte Hawkins*, L. R. 3 Ch. 787). Money paid into Court in the hands of Registrar (*Dolphin* v. *Layton*, 4 C. P. D. 130; and see *Jones* v. *Brown*, 29 L. T. (O.S.) 79). Surplus on *fi. fa.* in hands of sheriff (*O'Neill* v. *Cunningham*, 6 Ir. R. C. L. 503).

An annuity in the hands of trustees payable to a widow for the maintenance of herself and her son is attachable, subject to an inquiry as to the proportion applicable for the maintenance of the son (*Nash* v. *Pease*, 47 L. J. 766. A).

In order to get a garnishee order against a partnership firm for debts alleged to be due by the firm, the names of the partners must be set out (*Walker* v. *Rooke*, 6 Q. B. D. 631).

After a suit for administration has been instituted in the Chancery Division, and the personal estate of the testator has been taken possession of by the Court, the executors have been discharged from all liabilities to pay the testator's debts, no garnishee order can be obtained to bind the funds in the hands of the Court (*Stevens* v. *Phelips*, L. R. 10 Ch. 417).

A creditor who has obtained a judgment against an executor, before the date of a decree for administration, will be allowed to attach a debt due to the estate in the hands of a third person (*Fowler* v. *Roberts*, 2 Giff. 226; *Burton* v. *Roberts*, 6 H. & N. 93).

If a garnishee order can be obtained against executors in respect of a debt due from their testator, it should show on its face that it is directed to them as executors (*Stevens* v. *Phelips*, L. R. 10 Ch. 417).

The half-pay of a military or naval officer is protected, on grounds of public policy, but not a pension received solely in respect of past services (*Dent* v. *Dent*, L. R. 1 P. & D. 366; and see also on this subject *Willcock* v. *Terrell*, 3 Ex. D. 323. A; *Sansom* v. *Sansom*, 4 P. D. 69). A debt will not be allowed to be attached, where the effect would be to give to one creditor priority to the rest, contrary to an agreement (sanctioned by an Act of Parliament) that all the creditors should be paid *pari passu* (*Kennett* v. *The Westminster Commissioners*, 11 Ex. 349).

Money due to a railway company, for the purpose of distribution among its stock-holders, by an agreement sanctioned by an Act of Parliament, may be attached by a judgment creditor of the company (*Bouch* v. *The Sevenoaks Ry. Co.*, 4 Ex. D. 133).

Before the Judicature Acts there was no procedure in the Chancery Courts analogous to an attachment under the C. L. P. Act (*Horsley* v. *Cox*, L. R. 4 Ch. 92; *Re Price*, L. R. 4 C. P. 155; *Rapier* v. *Wright*, 14 Ch. D. 638).

Where a debt has been *bonâ fide* assigned, there is nothing for the attachment to operate on (*Hirsch* v. *Coates*, 18 C. B. 757; *Wise* v. *Birkenshaw*, 29 L. J. 241). To entitle a garnishee to dispute his liability, he must show some grounds for being allowed to do so (*Newman* v. *Rooke*, 4 C. B. (N.S.) 434).

The lien of a solicitor for his costs of recovering a sum of money takes priority of a garnishee order *nisi* (*Shippey* v. *Grey*, 49 L. J. 524. A); *Sympson* v. *Prothero*, 26 L. J. Ch. 671; *Birchall* v.

Pugin, L. R. 10 C. P. 397; and if the judgment creditor have notice he may be obliged to refund (*Eisdell* v. *Coningham*, 28 L. J. Ex. 213); but his general lien has no such precedence (*Hough* v. *Edwards*, 26 L. J. Ex. 54).

A foreign attachment will not affect any moneys in the hands of the garnishee, unless the debtor could have maintained an action to recover them at the time of the attachment, or at any time between the issuing of the attachment, and the time when the pleas were entered by the garnishee (*Webster* v. *Webster*, 31 L. J. 655), and creates no priority in administration (*Redhead* v. *Wilton*, 30 L. J. Ch. 577). The existence of an attachment does not prevent the operation of a garnishee order out of the Superior Court (*Richter* v. *Laxton*, 48 L. J. 184). Foreign attachment cannot issue against a corporation aggregate as garnishees (*Mayor of London* v. *London J. S. Bank*, 6 App. Cas. 393).

A creditor who has served a writ of attachment out of the Mayor's Court is not a secured creditor within sec. 12 of the Bankruptcy Act (*Levy* v. *Lovell*, 14 Ch. D. 234. A); similarly out of the Tolzey Court of Bristol (*Ex parte Sear, Re Price*, 17 Ch. D. 74. A).

By sec. 1 of 33 & 34 Vict. c. 30, the wages of any servant, labourer, or workman shall not be liable to attachment. This does not include the salary of the secretary of a company (*Gordon* v. *Jennings*, 9 Q. B. D. 45).

By sec. 233 of 17 & 18 Vict. c. 104, no wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any Court.

XLV. 3. Debts bound from the service of the order.

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.

The service of the order "binds the debt in the hands of the garnishee," it does not operate as a transfer of the debt. It has not the effect of transferring the security, nor does it give the person who obtained the garnishee order any right to the security in any claim against the land comprised in it (*Chatterton* v. *Watney*, 17 Ch. D. 259. A).

Where a garnishee order has been served, but notwithstanding the garnishee is compelled to pay the debt by process of law, he is thereby discharged (*Turnbull* v. *Robertson*, 47 L. J. 294).

As to how far a garnishee order attaching a debt due to a bankrupt, is not a dealing with the bankrupt within Bankruptcy Act, 1869, s. 94, § 3, see *Ex parte Pillars, Re Curtoys*, 17 Ch. D. 653. A. A judgment creditor, who has obtained and served a garnishee order *nisi*, before the filing of a liquidation or winding-up petition, is a secured creditor within the meaning of sec. 12 of the Bankruptcy Act, 1869, even though the debt does not become actually payable until after the commencement of the liquidation (*Ex parte Jocelyne, Re Watt*, 8 Ch. D. 327. A; *In re Stanhope Colliery Co.*, 11 Ch. D. 160. A).

XLV. 4. Execution against the garnishee.

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.

Under a corresponding section of the C. L. P. Act, 1854, sec. 63, it was held that a garnishee had no right to set off a debt due to him by the judgment creditor (*Sampson* v. *Seaton Beer Railway Co.*, L. R. 10 Q. B. 28). "There is no place," says Lush, J., in his judgment, "for the discussion of cross-claims." But it is to be observed, that the dealing with claims in which third parties were involved was at that time foreign to the practice of the Courts; and it would appear that Rule 4, *post*, contains sufficiently ample provisions to obviate the difficulty felt in the above-mentioned case.

XLV. 5 Liability disputed.

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.

A garnishee, in order to be allowed to dispute his liability, must show some grounds (*Newman* v. *Rooke*, 4 C. B. (N.S.) 434).

XLV. 6. Charge of third person.

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.

Although there is no provision in these Rules for a suggestion, by a *cestui que trust*, that the money sought to be attached is trust money, still it is for the Master or Judge to listen to such suggestion, or if there be some colour for it, then to decline to make the garnishee order absolute, and to order the money to be brought into Court, to abide the event of an issue, as to whether it be such or not (*Roberts* v. *Death*, 8 Q. B. D. 319. A).

XLV. 7. Third person claim may be barred.

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.

If the parties agree to the Judge deciding the matter in a summary way, his decision is final (*Eade* v. *Winser*, 47 L. J. 584. A).

XLV. 8. Discharge of garnishee.

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 paid or levied, although such proceeding may be set aside, or the judgment or order reversed.

In *Lockwood* v. *Nash*, 18 C. B. 536, a judgment creditor obtained an order *nisi*, which he afterwards abandoned. The judgment debtor then sued for the original debt, and the matter underwent considerable discussion; but was finally decided on a technical point.

In order to protect the garnishee, there should be an order for payment (*Turner* v. *Jones*, 1 H. & N. 878).

XLV. 9. Attachment 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.

XLV. 10. 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.

A person claiming to be interested in any stock may make an affidavit by himself or by his solicitor (r. 4). The portion of the previous rule (7) which limited the period during which the order was to remain in force without renewal for five years has been omitted (r. 5). The last Rules are taken from Cons. Order XXVI. 1, 2.

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. *XLVI.* 1. Order, how obtained.

A stop order may be obtained in the Chancery Division on a fund standing to the credit of a cause in that Division, by a person who has obtained judgment in another Division (*Hopewell* v. *Barnes*, 1 Ch. D. 630). It may be granted upon a fund of a specified amount to be paid in to the credit of an action under an order of the Court (*Shaw* v *Hudson*, 48 L. J. Ch. 689). Upon a judgment decreeing payment in three months, plaintiff is entitled at once to a charging order (*Bagnall* v. *Carlton*, 6 Ch. D. 130). It cannot be given for an unascertained sum (*Widgery* v. *Tepper*, 6 Ch. D. 364. A), nor will it be made upon a pension granted by the East India Company (*Morris* v. *Manisty*, 7 Q. B. 674).

As to stock standing in the names of executors in the Bank of England, upon which a charging order has been obtained, see *Fowler* v. *Churchill*, 11 M. & W. 323.

If the order *nisi* has been made after the judgment debtor's death, it cannot be made absolute (*Finney* v. *Hind.* 4 Q. B. D. 102).

The date from which a charging order operates when made absolute is from the making of the order *nisi* (*Haly* v. *Barry*, L. R. 3 Ch. 452).

An application that it should be discharged cannot be entertained after the order has been made absolute (*Jeffryes* v. *Reynolds*, 52 L. J. 55).

In *Taylor* v. *Turnbull*, 4 H. & N. 495, the judgment debtor was executor and residuary legatee, the property consisted of arrears of an annuity for the life of the testatrix, and an annuity for the life of the judgment debtor. The Court refused to make a charging order. "There are not," says Bramwell, B., "any arrears of an annuity standing in defendant's name in his own right, or in the name of any person in trust for him." "The effect would be to enable the creditor to take the property of the deceased to pay the executor's debt," per Martin, B.

In an administration action, a sum of stock had been carried to a separate account in the cause, to pay an annuity, a charging order was obtained, and a claim was served on the judgment debtor, who was out of the jurisdiction. It was held that a petition in the cause was necessary to give effect to the order (*Reece* v. *Taylor*, 21 L. J. Ch. 463; 5 De G. & Sm. 480).

1 & 2 *Vict. c.* 110, *ss.* 14 *and* 15.

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 Stock and shares in public funds and public companies belonging to the debtor, and standing in his own name, to be charged by order of a Judge.

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.

In an action against a company for permitting the transfer of shares after notice of a charging order *nisi*, and before making it absolute it is a good answer to show that the judgment debtor had no beneficial interest in them (*Gill* v. *Continental Gas Co.*, L. R. 7 Ex. 332).

Where a defendant has no interest in the stock and shares themselves, but only an interest in the residue of the produce of their sale after performance of prior trusts, they cannot be charged (*Dixon* v. *Wrench*, L. R. 4 Ex. 154).

A contingent life interest in stock, which has been assigned by the debtor on certain trusts with an ultimate trust in his own favour, is chargeable (*Cragg* v. *Taylor*, L. R. 2 Ex. 131).

A charging order will not be made where the effect of it would be to evade a restraint upon anticipation (*Stanley* v. *Stanley*, 7 Ch. D. 589).

Such an order has no greater effect than an instrument of charge executed by the judgment debtor would have had (*Re The Blakeley Ordnance Co.*, *Coates' Case*, 46 L. J. Ch. 367; *Re Onslow's Trusts*, 20 Eq. 677: *Watts* v. *Porter*, 3 E. & B. 758).

A creditor who has obtained a charging order can prevent the debtor from receiving the dividends during the six months (*Watts v. Jefferyes*, 3 M. & G. 372. A).

If there have been a suppression of a fact having a material bearing on the order sought, the order will be discharged (*McDonogh* v. *Davies*, Ir. Rep. 9 C. L. 300).

The application may be intituled in the matter of the Act 1 & 2 Vict. c. 110, and of the Act 3 & 4 Vict. c. 82 (*Hastings* v. *Beavan*, 10 W. R. 206).

The fact that stock stands in the name of trustees in trust for another besides the judgment debtor, does not prevent its being "stock standing in the name of any person in trust for him" (*S. W. Loan Co.* v. *Robertson*, 8 Q. B. D. 17. A). When the Judge's order is made absolute, the trustees or executors are chargeable with the proper distribution of the fund (*Ibid.*, *Churchill* v. *B. of England*, 11 M. & W. 323).

The subject as to what are unincorporated companies within the meaning of this section was elaborately discussed by Lord Cranworth, in *MacIntyre* v. *Connell*, 20 L. J. Ch. 284. Byles, J., in *Nicholls* v. *Rosewarne*, 28 L. J. C. P. 273, seemed to think that a company was a public company within this section when shares in it were transferable without the consent of the rest of the proprietors.

An interest, which is determinable on alienation, is determined by allowing a charging order to be made upon it (*S. W. Loan Co.* v. *Robertson*, *supra*); as, however, in this case there was an ultimate remainder, unaffected by the alienation, the Court allowed such interest to be charged.

As to solicitors lien for costs, see note at end of Order LXV.

Order of Judge to be made in the first instance ex parte, and

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 authorized 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 authorized 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.

on notice to the bank or company to operate as a distringas.

3 & 4 *Vict. c.* 82, *s.* 1.

Whereas by an Act passed in the second year of the reign of Her Majesty, intituled, "An Act for abolishing arrest on Mense 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," it was amongst other things enacted, that if any person against whom any judgment should have been entered up in any of Her Majesty's Superior Courts at Westminster should 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 should 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 should think fit, should stand charged with the payment of the amount for which judgment should have been so recovered, and interest thereon, and such order should 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 should be taken to have the benefit of such charge

1 & 2 Vict. c. 110

until after the expiration of six calendar months from the date of such order: And whereas doubts have been entertained whether the said provisions extend to the cases hereinafter mentioned: Now, therefore, be it declared and 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 the aforesaid provisions of the said Act 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 as 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.

Provisions of recited Act as to property of judgment debtors defined and extended.

XLVI. 2a. 2. No writ of distringas shall hereafter be issued under the Act 5 Vict. c. 5, s. 5.

XLVI. 3. Definitions 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.

XLVI. 4. Filing and service of affidavit and notice as to stock. 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 circum-

stances 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.

In *Re Blakesley*, 23 Ch. D. 549, Pearson, J., granted an interim injunction, to restrain the Bank of England from permitting a transfer of stock after notice served on the Bank.

XLVI. 5. Affidavit of address.

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.

XLVI. 5. Posting notices.

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.

XLVI. 6. 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.

XLVI. 7. Effect of service.

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.

XLVI. 9. Withdrawal of notice.

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.

XLVI. 10. Effect of request for transfer of stock or payment of dividend.

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.

XLVI. 11. Amendment of description of stock.

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.

Costs incurred by stop order.

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.

Service of petition.

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.

ORDER XLVII.

Writ of Possession.

A party may include his costs in the writ, or have a separate writ for that purpose (r. 3). The words used throughout are "judgment or order," instead of "judgment" merely as heretofore.

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. *XLVIII.* 1. How enforced.

The writ of possession has now superseded the writ of assistance, formerly in use in the Court of Chancery (*Hall* v. *Hall*, 47 L. J. Ch. 680).

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. *XLVIII.* 2. How obtained.

For Form of Writ see Appendix H., No. 8.

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. Separate writ for costs.

ORDER XLVIII.

Writ of Delivery.

This Order practically sets out sec. 78 of C. L. P. Act, 1854, as to the specific delivery of chattels, instead of incorporating it by reference, as was done by Order XLIX. of the rescinded Rules.

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. Specific delivery of chattels.

Costs.

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.

ORDER XLIX.

Transfers and Consolidation.

This Order corresponds with the previous Order LI. Rules 4 and 6 are new. Rule 8 refers only to causes or matters pending in the "same Division;" the words in the previous rule were "Division or Divisions."

LI. 1. By the Lord Chancellor.

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.

The Lord Chancellor has exclusive jurisdiction to make this order (*Re Hutley*, 1 Ch. D. 11; *Re Boyd's Trusts*, *Ibid.* 12). In a memorandum issued Nov. 10, 1875 (1 Ch. D. 41), James, L.J., stated, that the Lord Chancellor would direct the transfer of any action on a written application to his secretary, accompanied by the written consent of all parties; but where all parties did not consent the application must be made to the Lord Chancellor in Court. The latter application is made by motion on notice, a copy of which should be left with the secretary of the Lord Chancellor, and an appointment obtained for the hearing of the motion (Dan. Ch. Pr. 6th ed. vol. i. 29, note (*k*).

LI. 1a. For the purpose of trial or hearing 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.

Under this rule when an interlocutory application relates to the merits of the case, the Judge to whom the action has been transferred is the proper person to deal with the application (*Robinson* v. *Chadwick*, 26 W. R. 421; *Lloyd* v. *Jones*, 7 Ch. D. 390).

An application for a charging order is such a further proceeding as will be ordered before the Judge who tried the case (*Porter* v. *West*, 50 L. J. Ch. 231). So is one for the Court to exercise its jurisdiction over a solicitor, on account of conduct disclosed in an action (*Cave* v. *Cave*, 49 L. J. Ch. 656), and a question upon the proper construction of a portion of the wording of an order (*Shaw* v. *Brown*, 50 L. J. Ch. 252); also on the question as to taxation of costs (*Smith* v. *Day*, W. N. 1881, 27). In *Fritz* v. *Hobson*, 14 Ch. D. 561, Fry, J. (at that time sitting in the Auxiliary Court of the Chancery Division), held that an application to vary the judgment, by giving the costs of an adjourned motion, was a suitable proceeding to be heard before him.

LI. 2. By the Court.

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.

By sec. 12 of the Judicature Act, 1881, *ante*, in cases of urgency during the absence, from illness or otherwise, of a Judge, any other Judge of the same Court may officiate for him.

Motions for transfer under this rule should be on notice (*Humphreys* v. *Edwards*, 45 L. J. Ch. 112). The transfer is not effectual until the consent of the President of the Division to which it is made is obtained (*Ibid.*). In *Storey* v. *Waddle*, 4 Q. B. D. 289. A, James, L.J., said, "I doubt very much if we have power to make the transfer without the consent of the Presidents of both Divisions from and to which the transfer is proposed to be made," and he declined to interfere with the discretion of the Q. B. D. refusing a transfer, Bramwell and Brett, L.JJ., concurring.

This rule relates only to the transfer of an action from one Division to another, and does not authorize a transfer from a Judge of one Division to another Judge of the same Division (*Chapman* v. *Real Prop. Trust Co.*, 7 Ch. D. 732).

Where the action is one which can be more conveniently disposed of in the Chancery Division, or for which that Division only has the requisite machinery, it ought to be transferred (*Hillman* v. *Mayhew*, 1 Ex. D. 132; *Holloway* v. *York*, 2 Ex. D. 333. A). Where defendant by his counter-claim asked for the rectification of a deed and specific performance of an agreement, the transfer was refused (*Storey* v. *Waddle*, 4 Q. B. D. 289. A). And in the *Standard Discount Co.* v. *Barton*, 37 L. T. 581, where the Court thought that the proceedings in the Chancery Division had been instituted for the purpose of delaying the action in the Q. B. D., by making a claim not necessarily a part of the original dispute, which the Chancery Division alone had jurisdiction to deal with, they refused to make the transfer.

When actions are pending in the Chancery Division and the Q. B. D., arising out of the same circumstances, they may be transferred for the purpose of consolidation (*Holmes* v. *Hervey*, 25 W. R. 80).

Though the Q. B. D. cannot reform or set aside a deed with regard to its effect in the future, it will, for the purpose of determining an action, treat it as set aside (*Mostyn* v. *West Mostyn Coal Co.*, 1 C. P. D. 150; *Walsh* v. *Lonsdale*, 52 L. J. Ch. 4).

Shipping cases will be transferred to the Admiralty Division if they be of such nature as that Division is peculiarly fitted to deal with (*Humphreys* v. *Edwards*, 45 L. J. Ch. 112; *The Steam Nav. Co.* v. *Edinburgh Ship. Co.*, W. N. 1876, 56; *Hawkins* v. v. *Morgan*, 49 L. J. 618).

Particular application may be heard by any Judge.

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.

LI. 2a. Transfers in winding up, or administration.

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.

This order may be obtained *ex parte* (*Re Landore Siemens Steel Co.*, 10 Ch. D. 489; *Re United Kingdom Electric Telegraph Co.*, 29 W. R. 333; *Field* v. *Field*, W. N. 1877, 98).

In administration the action must be against the executor *qua* executor (*Chapman* v. *Mason*, 40 L. T. 678). Under this rule such an action against an executor will be transferred, although it is against him personally for a devastavit (*Re Timms*, 26 W. R. 691).

When on the hearing of a petition for winding-up a company it appears that a prior petition (of which the subsequent applicant had no notice) is pending in another branch of the Court, and also a motion before the Lord Chancellor for the transfer of the subsequent petition to be heard with it, the Judge is not bound to order the petition to stand over until after the hearing of the motion for transfer (*Re Wynaad Lead Co.*, 31 W. R. 226), Jessel, M.R., intimated that an application might be made in Chambers by the first petitioner for the conduct of the liquidation (*Ibid.* in note).

In *Re Madras Irrig. Co.*, 16 Ch. D. 702, Jessel, M.R., held that the words "any other Division" must be construed strictly, and consequently will not extend to an action pending in the same Division, but in another Court. The Lord Chancellor only

can then order a transfer. This was done in *Davis* v. *Davis*, 48 L. J. Ch. 40, see also note, Rule 1, *ante*.

In *West* v. *Downman*, 27 W. R. 355, an award had been published and made a rule of Court in the Q. B. D. and the costs taxed. Bacon, V.C., considered that the award was a matter pending in that Division, and that he had jurisdiction to transfer it.

In *Re Thames Steam Ferry Co.*, 27 W. R. 503, Fry, J., refused to order the transfer of an action against the liquidator of a company for injuries sustained through negligence on the plaintiff undertaking to apply for leave to amend his writ, by suing the liquidator personally, and not as liquidator.

Proceedings by originating summons.

6. When any summons under Order LV. Rules 3 and 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.

Rules 3 and 4 of Order LV. are for the purpose of determining in Chambers certain questions in administration, &c.

To Chancery Division.

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.

Consolidation of actions.

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.

Under this rule, adopting the old practice at Common Law, the Court can only consolidate actions at the instance of defendants and not on the application of a number of different plaintiffs against the same defendant (*Smith* v. *Chadwick*, 4 Ch. D. 869).

In case the plaintiffs will not agree to allow one action to be tried as a test action, the Court will stay proceedings in all actions but one, and see what becomes of that one. In the absence of agreement, the plaintiff in an action thus constituted a test action has no right to be indemnified against costs by the other plaintiffs. If the trial of the original test action has failed to be a real trial of the issue between the plaintiffs and the defendants, without any fault of the other plaintiffs, the Court has power to substitute another in its place (*Amos* v. *Chadwick*, 9 Ch. D. 459. A; *Bennett* v. *Lord Bury*, 5 C. P. D. 339).

Where an action is commenced that covers the same ground as one already existing, together with some further relief, it will be stayed as to the first part (*Morton* v. *Quick*, 26 W. R. 441).

One of two cross actions between the same parties may be stayed, giving leave to raise by defence, set-off, and counterclaim all questions intended to be raised in the action which is stayed. As a general rule that party should have the conduct of the proceedings on whom the substantial burden of proof

is thrown—and if there be nothing to choose in this regard—then on the party who was first in point of time. The Judge must consider what is the fair mode of trying that which is shown to be the substantial matter (*Thomson* v. *S. E. Ry. Co.*, 9 Q. B. D. 320, 328. A). Generally this will only be done when the issues are the same (*Adamson* v. *Tuff*, 44 L. T. 420).

ORDER L.

Rule 3 of this Order is made somewhat wider in its application. Rules 4 and 5 are new. Rule 9 is taken from the Chancery Procedure Act, 1852, sect. 57. A provision is introduced for the prevention of the repetition or continuance of a wrongful act (r. 12). Rules 13–15 are adopted from the R. G. H. T., 1853, 118–120. The second part relates to receivers. Rule 21 is taken from Consol. Order XXXV. 23; the remainder is more or less adapted from Consol. Order XXIV. Rule 23 directs that the accounts of liquidators are to be passed and verified in the same manner as receiver's accounts.

I. Interlocutory Orders as to Mandamus Injunctions or Interim Preservation of Property, &c.

LII. 1. Interim order.

1. When by any contract a *primâ 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.

Where an interlocutory order has been made for payment into Court under this rule, it can be enforced by attachment, if the person against whom the order is made is within any of the exceptions of sec. 4 of the Debtors Act, 1869 (*Hutchinson* v. *Hartmont*, W. N. 1877, 29).

LII. 2. 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.

On the affidavit of the plaintiff stating that the property was rapidly being damaged, the Court of Appeal appointed him receiver and manager though no application for this purpose had been made either to the Divisional Court or a Judge (*Hyde* v. *Warden*, 1 Ex. D. 309. A).

In *Bartholomew* v. *Freeman*, 3 C. P. D. 316, the Court ordered a horse to be sold, on the ground that it was consuming its value in food, and there was no reason why it should not be sold.

LII. 3. General powers.

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.

On the affidavit of plaintiff, stating that the property was rapidly being damaged, the Court of Appeal appointed him receiver and manager, though no application for this purpose had been made, either to the Divisional Court or a Judge (*Hyde* v. *Warden*, 1 Ex. D. 309. A).

Under this rule the Judge of the Probate Division has made an order prohibiting the dealing with the shares in a ship, part of the estate of an intestate, under 17 & 18 Vict. c. 104, s. 65 (*Nicholas* v. *Dracachis*, 1 P. D. 72).

In *Velati* v. *Braham*, 46 L. J. 415, jewellery was ordered to be placed in the custody of an officer of the Court to abide the result of an action.

An order was made in Chambers for the inspection of the defendant's property, the costs of the inspection to be paid by the plaintiff. Held that the plaintiff could not appeal from so much of the order as referred to the costs of the inspection (*Mitchell* v. *Darley Colliery*, 10 Q. B. D. 457).

Persons who have an order made against them for inspection of their property under this rule are entitled to have it limited to what is necessary for the purposes of the action (*Cooper* v. *Ince Hall Co.*, W. N., 1876, 24). An order was there made to inspect the mine and workings of the defendants under and near the plaintiff's mines as delineated or described, and to measure the coal taken away from under the plaintiff's lands. Two days notice of inspection to be given. Inspection to be made through the pits of defendants, unless other access provided. No notice to inspect for a week.

In *Strelley* v. *Pearson*, 15 Ch. D. 113, an injunction was granted to restrain the lessee of a mine from ceasing pumping so as to preserve it pending action.

Inspection by Judge.

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 jury.

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.

LII. 4. Application, how made.

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.

When the object of the motion would be otherwise defeated the Court may grant an *ex parte* application (*Meluish* v. *Milton*, 24 W. R. 697). Where defendant has had notice of motion, it is improper to grant an injunction against him *ex parte*, though the pressure of business has prevented it coming on in due course (*Graham* v. *Campbell*, 8 Ch. D. 490. A). Where the plaintiffs had filed affidavits that the defendants had in their possession old cases for brandy which had been used by the plaintiffs, and had their brand upon them, and which the defendants were now filling with their own brandy, and selling as the plaintiffs', Malins, V.C., granted an order for taking samples on *ex parte* motion (*Hennessy* v. *Bohmann*, W. N. 1877, 14).

When it was alleged that trustees were on the eve of bankruptcy, a receiver was appointed on an *ex parte* application before the service of the writ (*Re H. s Estate*, 1 Ch. D. 276).

A defendant may apply for the appointment of a receiver, although the plaintiff has already served notice of motion for the same purpose (*Sargant* v. *Read*, 1 Ch. D. 600); and in a proper case he may do so *ex parte* (*Hick* v. *Lockwood*, W. N. 1883, 48 Jud. Act, 1873, s. 25, § 8).

In *Bolton* v. *London School Board*, 7 Ch. D. 766, there was a motion to continue an interim injunction which was on the point of expiring. A cross notice to have the injunction dissolved was considered unnecessary, and was dismissed with costs, although defendant was successful in getting the interim order dissolved.

LII. 5. Time for interim order.

7. An application for an order under Rule 1 of this Order may be 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.

LII. 6. Property subject to lien.

8. Where an action is brought to recover, or a defendant in his defence seeks by way of counter-claim 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.

Income of funds in Court.

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.

LII. 6a. Conduct of sale.

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.

Where one of the trustees was also tenant for life, the conduct of the sale was given to the others who were defendants (*Re Gardner, Gardner* v. *Beaumont*, 48 L. J. Ch. 644).

LII. 8. Writ of injunction abolished.

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.

Injunction from repetition of injury.

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.

Penal action, leave to compound.

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.

Order to compound.

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.

Crown share.

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.

II. Receivers.

Security to be given.

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 authorized 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 security shall be by recognizance in the Form No. 21 in Appendix L, unless the Court or a Judge shall otherwise order.

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. Adjournment into Chambers for.

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 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. Passing receiver's accounts.

19. Receivers' accounts shall be in the Form No. 14 in Appendix L, with such variations as circumstances may require. Form of.

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. Affidavit, verifying.

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 Failure to pass account.

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.

Books deposited.

22. When a receivership has been completed, the book containing the accounts shall be deposited in the Central Office.

III. Liquidators.

Accounts of.

23. The accounts of liquidators shall be passed and verified in the same manner as is by this Order directed as to receivers' accounts.

ORDER LI.

Sales by the Court.

Rules 1 and 2 are taken from the Chanc. Proc. Act, 1852, ss. 55 and 56; Rule 3 from the Consol. Order XXXV. 13; Rules 4–6 from the Rules of 1857, 13–15. The part as to conveyancing counsel is derived from the Masters' Abolition Act, 1852, s. 40, and Consol. Order II. 1–5. Part 3 is taken from the existing practice of the Admiralty Division.

I. In the Chancery Division.

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.

In *Tulloch* v. *Tulloch*, 3 Eq. 574, Malins, V.C., considered that it was expedient that a freehold house remaining unoccupied and unproductive should be converted into money as early as possible. In *Bell* v. *Turner*, 2 Ch. D. 409, the Court ordered some real estate of a deceased defaulting trustee to be sold before the Chief Clerk's certificate, on its appearing that the personal estate would be insufficient to meet the claim. These two cases were decided on sec. 55 of C.P. Act, 1852.

Abstract of title.

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.

To best purchaser.

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.

Reserve biddings.

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.

Conditions of sale.

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.

For Form of ordinary Conditions of Sale, see Appendix L. 15.

Affidavit of result.

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.

For Form of Affidavit, see Appendix L. 16.

II. Conveyancing Counsel.

Reference to.

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 a Judge may think fit to refer, and may receive and act upon the opinion given in the matter referred.

Objection to opinion.

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.

Distribution of business by rotation.

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.

Rota to be secret.

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.

Memorandum of reference.

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 Registrars' 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.

Illness, &c., of counsel.

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.

Discretion of the Judge.

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.

III. In Admiralty Actions.

Appraisement by Marshal.

14. Every commission for the appraisement or sale of property under the order of the Court shall, unless the Court or a Judge shall otherwise order, be executed by the Marshal or his substitutes.

Account of sale.

15. The Marshal shall pay into Court the gross proceeds of sale of any property which shall have been sold by him, and shall at the same time bring into the Registry the account of sale, with vouchers in support thereof, for taxation by the Admiralty Registrar.

Objection to taxation.

16. Any person interested in the proceeds may be heard before the Admiralty Registrar on the taxation of the Marshal's account of expenses, and an objection to the taxation shall be heard in the same manner as an objection to the taxation of a solicitor's bill of costs.

ORDER LII.

Motions and other Applications.

The instances in which it is proper now to move for a rule *nisi* are very limited (rr. 1, 2). Rule 4 is new, as well as the latter portion of Rule 5; so is the rest of the Order from Rules 10–23. Rules 16–18 are taken from Consol. Order XXXIV.; Rules 19–22 from Chancery Rules, 1860, 1–4.

LIII. 1. Applications to Court to be by motion.

1. Where by these Rules any application is authorized 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.

A motion to discharge a prisoner from custody may take precedence of all other motions, per Jessel, M.R., in *Ashton* v. *Shorrock*, W. N. 1880, 184.

The following memorandum by the Master of the Rolls appears in the W. N. 1876, 296:—That on a motion to vary the minutes, the only question which he could allow to be argued was, what was the actual order made, and that he could not on such motion allow the case to be re-argued. The only exceptions were, when both parties consented to something being added to the minutes, or, as sometimes happened, when it could not be ascertained what order had been made, then his Lordship would allow the case to be put in the paper and argued again. The practice in the Court of Appeal is similar to that in the Court below (*The Gen. Share Co.* v. *Wetley Potteries*, 20 Ch. D. 130). In the case of an ordinary motion for foreclosure absolute, it is sufficient for counsel to hand in a brief, duly indorsed, to the Registrar of the day, unless there are special circumstances in the evidence requiring the case to be mentioned to the Judge, per Chitty, J., W. N. 1883, 40.

The moving party should produce in Court a copy of the minute which the Registrar has entered in his book (*Robinson* v. *Barton L. Bd.*, 21 Ch. D. 621. A).

LIII. 2. Order to show cause.

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.

LIII. 3. Notice of motion.

3. Except where according to the practice existing at the time of the passing of the Principal Act 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.

Interim order.

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* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or a Judge may think just; and any party affected by such order may move to set it aside.

Where the party, who has given notice of motion to rescind an order, does not appear, he will be directed to pay the costs (*Berry* v. *Exchange Co.*, 1 Q. B. D. 77).

Where a party appeared to oppose a motion, and the notice of motion was bad on the face of it, held that he was not bound to appear, and was not entitled to his costs (*Daubeny* v. *Shuttleworth*, 1 Ex. D. 53). Similarly, where he has no interest in the subject-matter (*Campbell* v. *Holyland*, 7 Ch. D. 166).

Leave to commence an action against a company in liquidation cannot be obtained *ex parte* (*Western and Brazil Tel. Co.* v. *Bibby*, 42 L. T. 821).

As to when costs will be given, where the Court decides that it has no jurisdiction, see *Brown* v. *Shaw*, 1 Ex. D. 425. A, and *Great Northern Co.* v. *Inett*, 2 Q. B. D. 284.

As to where a defendant does not appear, see Order XIX. 10.

Procedure in specified cases.

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.

LIII. 4. Length of notice.

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 motion and the day named in the notice for hearing the motion: 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.

When an application is made to serve short notice of motion, it should be so stated to the Court, and the fact should appear on the face of the notice served on the other party (*Dawson* v. *Beeson*, 22 Ch. D. 504. A).

Appearing by counsel to object to a notice of motion on the ground of want of personal service, is a waiver of the objection (*Harvey* v. *Hall*, 23 L. T. 391).

Filing with the proper officer is dealt with under Order XIX. 10. Default by one of several defendants under Order XXVII. 12.

LIII. 5. Failure to give notice.

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.

LIII. 6. Adjournment of hearing.

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.

LIII. 7. When defendant 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.

LIII. 8. Before appearance.

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.

Leave to serve short notice in vacation can be granted by the Vacation Judge only, not by the Chief Clerk (*Conacher* v. *Conacher*, 29 W. R. 230).

Notice of motion. Admiralty.

10. In Admiralty actions, notice of motion together with the affidavits (if any) in support thereof, shall be filed in the Admiralty Registry three days at least before the hearing of the motion unless leave shall be

given to the contrary; and a copy of the notice of motion and of the affidavits (if any) shall be served on the adverse solicitor before the originals are filed.

Return to a writ of attachment.

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.

Retiring sheriff.

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.

Orders to be dated when made.

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.

Orders need not be drawn up in certain cases.

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.

Judgment *nunc pro tunc*.

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.

Statements at foot of petition.

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.

Two days' notice.

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.

Affidavits on claims to funds in Court.

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.

Petition. Lord St. Leonard's Act.

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 intituled 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.

By 22 & 23 Vict. c. 35, s. 30, 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.

Petitions are signed by counsel. Affidavits are not filed, as if the truth be not told there is no indemnity to the trustee. There is no appeal from the Judge, as it was not intended to decide nice questions of law, but merely questions arising on the management of the trust. "Lewin on Trusts," 7th ed. 534, and authorities cited therein, where also see a discussion as to service on parties interested.

Statement of case to be filed.

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.

Notice, seven days.

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.

Opinion of Judge to be of record.

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.

Agreements in Admiralty actions.

23. Any agreement in writing between the solicitors in Admiralty actions, dated and signed by the solicitors of both parties, may, if the Admiralty Registrar think it reasonable and such as the Judge would under the circumstances allow, be filed, and shall thereupon become an order of Court, and have the same effect as if such order had been made by the Judge in person.

ORDER LIII.

I. Action of Mandamus.

This Order is new; the previous practice has been consolidated and amended.

Claim to be indorsed.

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 summons.

The judgment may direct that the act required to be done, may be done so far as practicable by the party who has obtained the order (Order XLII. 30).

The duty of which it is sought to compel the performance must be one of a public nature, and under sec. 68 of the C. L. P. Act, 1854, must have been one in fulfilment of which the plaintiff was personally interested (*Benson* v. *Paul*, 6 E. & B. 273).

The Court will not issue a mandamus against a public body when the performance of the duty sought to be enforced is impossible by reason of the want of funds (*Re Bristol & Somerset Ry.*, 3 Q. B. D. 10).

A mandamus will lie against a chartered company to compel the company to place a plaintiff on the register (*Norris* v. *Irish Land Co.*, 8 E. & B. 512). A summary remedy is given by sec. 35 of the Companies Act, 1862 (25 & 26 Vict. c. 89), to a person who is aggrieved by his name being, without sufficient cause, inserted in or omitted from the register; and the Companies Act, 1867 (30 & 31 Vict. c. 131, 26), gives power to the transferor of shares to make an application to have the name of the transferee placed on the register (see *Ward and Henry's* case, L. R. 2 Ch. 431).

A mandamus will be granted to levy a rate to pay a debt, and the Statute of Limitations does not bar an application for such a writ (*Ward* v. *Lowndes*, 1 E. & E. 940).

Form of.

2. The indorsement shall be in the form given in Section IV. of Appendix A, Part III.

Judgment in.

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.

Not by writ.

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.

II. Prerogative Mandamus.

To Queen's Bench Division.

5. Application for a prerogative writ of mandamus shall be made in the Queen's Bench Division, according to the practice heretofore in use.

A writ of mandamus is a prerogative writ, and not a writ of right, and it is in this sense in the discretion of the Court whether it shall be granted or not; but where the judges grant a peremptory mandamus, such a decision is subject to review (*Reg.* v. *Churchwardens of All Saints*, 1 App. Cas. 611).

As to an appeal from the decision of a Divisional Court discharging a rule for a mandamus to Commissioners under the Corrupt Practices Act, see *Reg.* v. *Holl*, 7 Q. B. D. 575. A.

Peremptory in the first instance.

6. The Court or a Judge may, if they or he think fit, order that any writ of mandamus shall be peremptory in the first instance.

Teste and form.

7. Every writ of mandamus shall bear date on the day when it is issued, and shall be tested in the name of the Lord Chief Justice of England. The writ may be made returnable forthwith, or time may be allowed to return it, either with or without terms, as the Court thinks fit. A writ of mandamus shall be in the Form No. 12 in Appendix J, with such variations as circumstances may require.

Return to writ.

8. Any person by law compellable to make any return to a writ of mandamus shall make his return to the first writ.

Pleadings in.

9. When any return is made to a writ of mandamus, other than an unconditional compliance therewith, the applicant may plead to the return within such time and in like manner as if the return were a statement of defence delivered in an action; and, subject to these Rules, this pleading and all subsequent proceedings, including pleadings, trial, judgment, and execution, shall proceed and may be had and taken as if in an action.

Point of law.

10. Where a point of law is raised in answer to a return or any other pleading in mandamus, and there is no issue of fact to be decided, the Court shall, on the argument of the point of law give judgment for the successful party, without any motion for judgment being made or required.

Issue of peremptory writ.

11. Where, under Rules 9 and 10, the applicant obtains judgment, he shall be entitled forthwith to a peremptory writ of mandamus to enforce the command

contained in the original writ, and the judgment shall direct that a peremptory writ do issue.

Persons protected by writ.

12. No action or proceeding shall be commenced or prosecuted against any person in respect of anything done in obedience to a writ of mandamus issued by the Supreme Court or any Judge thereof.

Proceedings by persons really interested.

13. When it appears to the Court that the respondent claims no right or interest in the subject-matter of the application, or that his functions are merely ministerial, the return to the writ, and all subsequent proceedings down to judgment, shall still be made and proceed in the name of the person to whom the writ is directed, but if the Court thinks fit so to order, may be expressed to be made on behalf of the persons really interested therein. In that case the persons interested shall be permitted to frame the return and conduct the subsequent proceedings at their own expense; and if judgment is given for or against the applicant it shall likewise be given for or against the persons on whose behalf the return is expressed to be made; and if judgment is given for them, they shall have the same remedies for enforcing it as the person to whom the writ is directed would have in other cases.

Abatement.

14. Where, under the last preceding Rule, the return to a writ of mandamus is expressed to be made on behalf of some persons other than the person to whom the writ is directed, the proceedings on the writ shall not abate by reason of the death, resignation, or removal from office of that person, but they may be continued and carried on in his name; and if a peremptory writ is awarded, it shall be directed to the successor in office or right of that person.

Orders to apply to.

15. The provisions of Order XLII. Rule 24, and of the Orders mentioned in Order LXVIII. Rule 2, shall apply to mandamus, and in any case of mandamus in which a proceeding by way of interpleader may be proper, the provisions of Order LVII. shall be applicable, so far as the nature of the case will admit.

ORDER LIV.

APPLICATIONS AND PROCEEDINGS AT CHAMBERS.

This Order has introduced considerable modifications in the previous practice and is much more extensive than its predecessor. Rule 3 is apparently derived from Chancery Rules, 1857, 1. Rules 4—6 are taken from Consolidated Order XXXV. Of the remainder, those which are old will be recognized by the marginal references. Masters will have no jurisdiction to make orders absolute for charging stock (r. 12*l*). The manner of appealing from a Master has been changed (r. 21).

I. *General.*

LIV. 1. By summons.

1. Every application at Chambers not made *ex parte* shall be made by summons.

A Judge at Chambers has power to refer a summons to be heard by another Judge who he thinks can more appropriately dispose of it (*Hartmont* v. *Foster*, 8 Q. B. D. 82. A).

Ex parte by summons, when.

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.

Alteration.

3. Summonses shall not be altered after they are sealed, except upon application at Chambers.

Time of service.

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.

Failure to attend.

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.

Reconsideration, where no negligence.

6. Where the Judge has proceeded *ex parte*, such proceedings 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 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.

Non-attendance. Costs of adjournment.

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.

Further consideration.

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.

May include several matters.

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.

Form.

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.

II. *Queen's Bench and Probate Divorce and Admiralty Divisions.*

How prepared.

11. In all cases of applications originating in Chambers, a summons shall be prepared by the applicant or his solicitor, and shall be sealed in the Central Office, and in Admiralty actions in the Admiralty Registry, and when so sealed shall be deemed to be issued. The person obtaining a summons shall

leave at the Central Office or Admiralty Registry, as the case may be, a copy thereof, which shall be filed, and stamped in the manner required by law.

Jurisdiction of Masters and Admiralty Registrar.

12. In the Queen's Bench Division a Master, and in the Probate Divorce and Admiralty Division a Registrar, may transact all such business and exercise all such authority and jurisdiction in respect of the same, as under the Acts or these Rules may be transacted or exercised by a Judge at Chambers, except in respect of the following proceedings and matters; that is to say:—

(*a.*) All matters relating to criminal proceedings or to the liberty of the subject:

(*b.*) Granting leave for service out of the jurisdiction of a writ, or notice of a writ, or summons:

(*c.*) The removal of actions from one Division or Judge to another Division or Judge:

(*d.*) The settlement of issues, except by consent:

(*e.*) Inspection and other orders under Order L. Rules 1 to 5:

(*f.*) Appeals from District Registrars:

(*g.*) Prohibitions:

(*h.*) Injunctions and other orders under sub-section 8 of section 25 of the Principal Act:

(*i.*) Awarding of costs, other than the costs of or relating to any proceeding before a Master, or Registrar, and other than any costs which by these Rules, or by the Order of the Court or a Judge, he is authorized to award:

(*k.*) Reviewing taxation of costs:

(*l.*) Orders absolute for charging stocks, funds, annuities, or share of dividends, or annual proceeds thereof:

(*m.*) Acknowledgments of married women.

The jurisdiction of the Master is not necessarily confined to the proceedings immediately before him—*e.g.*, a Master made an order for examination of the plaintiff under Order XXXI. 10, and that the costs occasioned thereby should be defendant's in any event. Held a good order, though it might have been better to have reserved them (*Vicary* v. *G. N. Ry.*, 9 Q. B. D. 168. A).

A married woman residing in a colony may acknowledge a deed before a Commissioner there authorized to administer oaths (*Alice Eliza Smith*, 29 W. R. 264; 43 L. T. 438, sub. nom. *Elizabeth Smith*).

Rota of Masters.

13. Six of the Masters shall be selected (according to a rota to be fixed, and submitted to the approval

of the Lord Chief Justice of England, before the commencement of the Christmas vacation in each year), to attend as Masters at Chambers in the Queen's Bench Division during each of the four sittings of the offices in the year.

Arrangement of sittings.

14. The six Masters, to whom, according to such rota, the attendance during any particular sittings has been allotted, shall, before the first day of such sittings, by arrangement amongst themselves, select three of their number to sit, one in each of the three rooms appropriated for that purpose in the Royal Courts of Justice, every Monday, Wednesday, and Friday throughout such sittings, the remaining three to sit on Tuesdays, Thursdays, and Saturdays throughout the same sittings.

Where to sit.

15. Each of the Masters so selected shall, when so sitting at Chambers, occupy the same room, and take all applications (under such alphabetical division of actions as the Masters may from time to time arrange) proper to be made to a Master at Chambers, except applications in such actions as may have been under the provisions of Order V. assigned to any other Master.

Arrangements to be published.

16. The arrangements made under the three last preceding Rules shall be publicly announced in such manner as the Lord Chief Justice of England shall from time to time direct.

Master to mark application.

17. Every application to a Master at Chambers shall, at the time of hearing (unless any other Master's name shall already have been marked thereon), be marked by such Master with his name, and the cause or matter in which such application has been so marked shall thereupon become assigned to such Master.

Subsequent application.

18. Every subsequent application, which under the provisions of Order V. must be made to the same Master, shall, if during any sittings, from urgency or other cause, it cannot conveniently be heard on the days when, under the above-mentioned arrangements, such Master would be sitting in the proper room as Master at Chambers, or if it is made at any time after the sittings of such Master have under the same arrangements ceased, be taken by such Master in his own room, at such time as he may, either by special

appointment in any particular case or by general rule to be published in the ante-room of Masters' Chambers and other convenient places, direct.

Under the Debtors' Act, 1869.

19. All summonses under the Debtors Act, 1869, shall be heard in the first instance, if issuing out of the Central Office, before a Master, and if issuing out of a District Registry before the District Registrar, who shall respectively have power to make any order as to payment by instalments; but if it appears to him to be a case for committal, he shall adjourn the summons to be heard before a Judge.

LIV. 3. Reference to a Judge.

20. If any matter appears to the Master proper for the decision of a Judge, the Master may refer the same to a Judge, and the Judge, may either dispose of the matter or refer the same back to the Master with such directions as he may think fit.

LIV. 4. Appeal from the Master.

21. Any person affected by any order or decision of a Master may appeal therefrom to a Judge at Chambers. Such appeal shall be by way of indorsement on the summons by the Master at the request of any party, or by notice in writing to attend before the Judge without a fresh summons, within four days after the decision complained of, or such further time as may be allowed by a Judge or Master.

Fresh affidavits may be used on the appeal under this rule, as every appeal is now a rehearing.

The time may be enlarged under Order LXIV. 7.

LIV. 5. No stay unless ordered.

22. An appeal from a Master's decision shall be no stay of proceeding unless so ordered by a Judge or Master.

LVIIa. 1. Appeal from Judge at Chambers.

23. In the Queen's Bench Division the appeal from a decision of a Judge at Chambers shall be to a Divisional Court.

LIV. 6. Appeal to the Court, time for.

24. In the Queen's Bench Division, every appeal to the Court from any decision at Chambers shall be by motion, and shall be made within eight days after the decision appealed against, or, if no Court to which such appeal can be made shall sit within such eight days, then on the first day on which any such Court may be sitting after the expiration of such eight days.

In *Stirling* v. *Du Barry*, 5 Q. B. D. 65. A, an order was made in Chambers on the 20th, the defendant on the 24th gave notice of appeal to a Divisional Court for Saturday the 28th;

the Court sat on the 26th to hear motions, and was sitting on the 28th, but not for the purpose of hearing motions. The defendant brought forward his motion on the 30th, being Monday, and the next day on which the Court sat to hear motions. Held that the appeal was out of time, since a Court to which an application to enlarge the time could be made had been sitting within the eight days.

When the last of the eight days allowed terminates on a Sunday, the motion may be made on Monday, under the provisions of Order LXIV. 3 (*Taylor* v. *Jones*, 45 L. J. 110).

The Court of Appeal has no jurisdiction to review a judgment of the Divisional Court dismissing an appeal from the Judge at Chambers, because no counsel appeared to support the appeal (*Walker* v. *Budden*, 5 Q. B. D. 267. A). But it is otherwise where he appears, though he decline to proceed with his argument (*Barton* v. *Titmarsh*, 49 L. J. 573. A).

Wallingford v. *Mutual Society*, 5 App. Cas. 685, although decided upon a rule which has been annulled, may still be cited as a precedent for extra indulgence as to extension of time being accorded during the vacation.

LIV. 7. *XXXV.* 16*b*. Application of Rules 26–29.

25. The following Rules numbered 26 to 29, both inclusive, shall apply to all applications at Chambers in the Queen's Bench Division: but shall not apply to proceedings in District Registries.

LIV. 10. Hours of returns.

26. Unless a Judge otherwise specially directs, summonses for time only shall be returnable at 10.30 in the forenoon, and be heard by the Masters in priority to other business. Other summonses shall, unless a Judge otherwise specially directs, be returnable at successive hours, commencing at 11 in the forenoon. In settling the number of summonses returnable at each hour regard shall be had to the nature of the several applications.

LIV. 11. List of summonses.

27. Each summons, not being a summons for time only, shall, when issued, be entered by the proper officer in a list. The lists of summonses shall distinguish those which a Master has jurisdiction to hear from those which a Master has not jurisdiction to hear, and those which are to be attended by counsel from those which are not to be so attended.

LIV. 12. Hearing of summonses.

28. The summonses in each list for hearing by a Judge or Master shall be called on in their order. If when a summons is called on neither party appears, the summons shall be passed over until the list for the hour has been gone through. The summonses passed over shall then be called on a second time in their order. If neither party appears to a summons so called on it shall be struck out.

The rule now superseded had a clause as to proceeding *ex parte* on default of appearance; this is now treated of in Rule 5, *ante*.

Form. Marking.

29. An order shall be in the Form No. 2 in Appendix K, with such variations as circumstances require. It shall be sealed, and shall be marked with the name of the Judge or Master by whom it is made.

ORDER LV.

Chambers in the Chancery Division.

This Order is entirely new. By it the Chancery Chamber practice is codified. Its sources are indicated in the margin, and it is chiefly derived from the Chancery Consolidated Orders and Rules, by Appendix O. repealed. As it has been the evident intention to frame an improved procedure for the Chambers in the Chancery Division, it is doubtful whether any of the previous decisions (and they are for the most part limited in number) would carry more than passing weight.

I. *General.*

15 & 16 Vict. c. 80, s. 12.

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.

C. O. XXXV. 1. Business to be disposed of.

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:

(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, or where the title depends only upon proof of the identity or the birth, marriage, or death of any person:

(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, or the securities do not exceed £1,000 nominal value:

(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 :

(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, or £1,000 nominal value :

(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, or £1,000 nominal value :

(6.) Applications under 9 & 10 Vict. c. 20 (the Parliamentary Deposits Act), for investment, payment of dividends, and payment out of Court :

(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 :

(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 :

(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 :

(10.) Applications under 18 & 19 Vict. c. 43, for the settlement of any property of an infant on marriage :

(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 :

(12.) Applications as to the guardianship and maintenance or advancement of infants :

(13.) Applications connected with the management of property :

(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:

(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:

(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:

(17.) Applications for time to plead, for leave to amend pleadings, for discovery and production of documents, and generally all applications relating to the conduct of any cause or matter:

(18.) Such other matters as the Judge may think fit to dispose of at Chambers.

II. *Administrations and Trusts.*

Matters to be determined by originating summons.

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 circumstance 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:

(*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.

See Rules 11 & 12.

As to transfer of summons improperly marked see Order XLIX. 6; as to taxation of costs see Order LXV. 18.

Administration order by originating summons.

4. Any of the persons named in the last preceding Rule may in 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:

(*c.*) The administration of the trust.

As to transfer of summons improperly marked see Order XLIX. 6; as to taxation of costs see Order LXV. 18.

This order cannot be made by a Chief Clerk (Rule 15, *post*).

Parties to be served.

5. The persons to be served with the summons under the last two preceeding Rules in the first instance shall be the following (that is to say)—

Summons by executor or trustee.

A. Where the summons is taken out by an executor or administrator or trustee,—

(*a.*) For the determination of any question, under subsections (*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 subsection (*b.*) of Rule 3, any member or alleged member of the class:

(*c.*) For the determination of any question under subsection (*c.*) of Rule 3, any person interested in taking such accounts:

(*d.*) For the determination of any question, under subsection (*d.*) of Rule 3, any person interested in such money:

(*e.*) For relief under subsection (*a.*) of Rule 4, the residuary legatees, or next of kin, or some of them:

(*f.*) For relief under subsection (*b.*) of Rule 4, the residuary devisees, or heirs, or some of them:

(*g.*) For relief under subsection (*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:

By other person.

B. Where the summons is taken out by any person other than the executors, administrators, or trustees, the said executors, administrators, or trustees.

Discretion as to service.

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 and directions thereon.

7. The application shall be supported by such evidence 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.

Judgment thereon.

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.

Special directions as to.

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.

Discretion as to order.

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.

Marking subsequent summons under Rules 3 and 4.

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. Transfer.

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. Saving as to powers of executors, &c.

13. Any application to a Judge in Chambers under "The Charitable Trusts Act, 1853," section 28, shall be made by summons. *C. O. XLI.* 10. Charitable Trusts Act, 1853.

As to the fees payable see Order LXV. 24.

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, 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. *C. O. XLI.* 13. Appeal.

III. *Powers and Duties of 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. 15 & 16 Vict. c. 80, s. 29. Regulated by the Judge.

Saving as to general administration.

15 & 16 Vict. c. 80, s. 30. Special powers.

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 acknowledgments 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.

15 & 16 Vict. c. 80, s. 31. Process of contempt.

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 authorized to administer oaths, to take affidavits, and to receive affirmations.

C. O. XXXV. 45. Certificate for Paymaster General.

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.

IV. *Assistance of Experts.*

15 & 16 Vict. c. 80, s. 42.

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.

V. *Summonses in Chambers.*

Preparation of.

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.

Day and hour for attendance.

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.

C. O. XXXV. 8. When party not properly served.

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.

C. O. XXXV. 9. Appearance.

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.

Summons to witnesses.

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.

VI. *Proceedings relating to Infants.*

Chancery Rules, 1857, 19. Evidence upon applications for guardians, &c.

25. Upon applications for the appointment of guardians of infants and allowance for maintenance the evidence shall show—

(*a.*) The ages of the infants;

(*b.*) The nature and amount of the infants' fortunes and incomes;

(*c.*) What relations the infants have.

Chancery Rules, 1857, 20.

26. Upon applications to obtain the sanction of the Court to infants making settlements on marriage

Evidence on applications for marriage settlement.

under 18 & 19 Vict. c. 43, evidence shall be produced to show—

(*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.

Discretion as to appointment of guardian *ad litem.*

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 of unsound mind not so found by inquisition, who has been served with notice of such judgment or order.

VII. *Documents to be left at Chambers.*

C. O. XXXV. 15. Copy judgment.

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.

Chancery Rules, 1857, 3. Cause of Adjournment to be noted by Registrar.

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.

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.

Chancery Rules, 1857, 6. Memorandum of solicitors of each party.

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.

Chancery Rules, 1857, 8. Certificate of service and appearance.

VIII. *Summonses to Proceed.*

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.

On Judgment for accounts and 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.

C. O. XXXV. 16. Directions as to mode of taking accounts.

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

C. O. XXXV. 17. Where deed directed to be settled by 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.

C. O. XXXV. 18. Substituted service.

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.

Necessary parties not served.

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.

C. O. XXXV. 26. Course of proceedings as in Court.

37. The course of proceeding in Chambers shall ordinarily be the same as the course of proceeding in Court upon motions. Copies, abstracts, or extracts of or from accounts, deeds, or other documents 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.

IX. *Summons Book.*

C. O. XXXV. 24. Entries in.

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.

C. O. XXXV. 25. Summons lists.

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.

X. *Attendances.*

C. O. XXXV. 20. Solicitor to represent 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 authorize 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.

Party may employ his own solicitor.

C. O. XXXV. 21. Judge may require distinct solicitor.

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.

Parties may attend at their own expense.

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.

Order stating parties.

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.

XI. *Advertisements for Creditors and Claimants.*

C. O. XXV. 12. Parties not coming in.

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. O. XXXV. 35. When repeated.

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.

C. O. XXV. 36. By whom prepared.

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.

C. O. XXV. 37. Time for proving claim.

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 advertise-

ment a time shall be fixed for adjudicating on the claims.

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.

C. O. XXXV. 39. Affidavits office copies.

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.

Chancery Rules, 1865, 2. Creditor, when to attend.

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.

Chancery Rules, 1865, 3. Production of security.

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.

Chancery Rules, 1865, 4. Non-compliance.

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

Chancery Rules, 1865, 5. Examination of claims.

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.

Chancery Rules, 1865, 6. Postponement of affidavit.

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.

C. O. XXXV. 40. Claims undisposed of.

54. Where on the day appointed for hearing the claims any of them remain undisposed of, an adjournment day for hearing such claims 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.

Chancery Rules, 1865, 7. Discretion as to proof.

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.

Chancery Rules, 1865, 8. Notice of allowance and disallowance.

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.

C. O. XXXV. 43. Subsequent claims by leave.

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.

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. *C. O. XL. 24.* Costs of proof.

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. *C. O. XXXV. 44.* List of claims allowed.

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. Order for payment by Paymaster-General.

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. Notices by post.

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. *C. O. XLII. 9.* Where not expressed, four per cent.

C. O. XLII. 10. Debts carrying interest.

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 after satisfying the costs of the cause or matter, the debts established, and the interest of such debts as by law carry interest.

C. O. XLII. 11. 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.

XIII. *Certificates of the Chief Clerk.*

No particular form.

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.

C. O. XXXV. 47. What to be set out.

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.

C. O. XXXV. 48. Signing.

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 any adjournment to be made for the purpose.

C. O. XXXV. 46. When account directed.

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.

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. O. XXXV.* 49, 50. Opinion of Judge, how taken.

As to the costs where this right has been exercised unreasonably see *Upton* v. *Brown*, 20 Ch. D. 395.

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. Accounts and certificates to be filed.

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. How discharged or varied.

XIV. *Further Consideration.*

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 Chancery Rules, 1857, 18. Form of summons.

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 consideration whereof shall, at the original or any subsequent hearing, have been adjourned into Court.

XV. *Registering and Drawing up of Orders in Chambers.*

C. O, XXXV. 57. Notes to be made.

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.

Orders, when drawn up.

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.

Forms of.

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.

ORDER LVI.

References in Admiralty Actions.

This Order is imported from the practice in the Admiralty Division.

Application of order.

1. This Order shall apply to references by the Court or a Judge to the Admiralty Registrar, whether the reference be to the Registrar alone or to the Registrar assisted by one or by two Merchants.

Time for filing claims and affidavits.

2. Within twelve days from the day when the order for the reference is made, the solicitor for the claimant

shall file the claim and affidavits; and within twelve days from the day when the claim and affidavits are filed, the adverse solicitor shall file his counter affidavits.

Further affidavits.

3. From the filing of the counter affidavits six days only shall be allowed for filing any further affidavits by either solicitor, save by order of the Court or a Judge, or by permission of the Registrar.

Setting down for hearing.

4. Within three days from the expiration of the time allowed for filing the last affidavits, the solicitor for the claimant shall file in the Registry a notice, with the stamps for the reference affixed thereto, praying to have the reference placed on the list for hearing; and if he shall not do so, the adverse solicitor may apply to the Court or a Judge to have the claim dismissed with costs.

Adjournment.

5. At the time appointed for the reference, if either solicitor be present, the reference may be proceeded with; but the Registrar may adjourn the reference from time to time, as he may deem proper.

Shorthand notes, expense of.

6. Witnesses may be produced before the Registrar for examination, and the evidence shall, on the application of either solicitor, but at the expense in the first instance of the party on whose behalf the application is made, be taken down by a shorthand writer or reporter appointed by the Court, who shall be sworn faithfully to report the evidence; and a transcript of the shorthand writer's or reporter's notes, certified by him to be correct, shall be admitted to prove the oral evidence of the witnesses on an objection to the Registrar's report.

Expense of counsel.

7. Counsel may attend the hearing of any reference, but the expenses attending the employment of counsel shall not be allowed on taxation, unless the Registrar shall be of opinion that the attendance of counsel was necessary.

Costs.

8. The Registrar may, if he think fit, report whether any and what part of the costs of the reference should be allowed, and to whom.

Time for taking up report.

9. The solicitor for the claimant shall, within six days from the time when he has received a notice from the Registry that the report is ready, take up and file the same in the Registry.

Steps on default.

10. If the solicitor for the claimant shall not take the steps prescribed in the last preceding Rule, the adverse solicitor may take up and file the report, or may apply to the Court or a Judge to have the claim dismissed with costs.

Time for objections.

11. A solicitor intending to object to the Registrar's report, shall, within six days from the filing of the report, file in the Registry a notice, a copy of which shall have been previously served on the adverse solicitor; and within a further period of twelve days he shall file his petition in objection to the report.

Rules, how far applicable.

12. All the Rules respecting the pleadings and proofs in an action and the printing thereof, shall, so far as they are applicable, apply to the pleadings, proofs, and printing in an objection to a report of the Registrar.

ORDER LVII.

Interpleader.

This Order embodies the substance of the statutes as to Interpleader, and arranges their various provisions in a more convenient manner. Rule 11 regulates the right to appeal. Rule 14 enables one order to be made where several matters are pending.

Any person.

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:

1 & 2 Will. IV. c. 58, s. 6. To sheriff or other officer.

(*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.

Interpleader is within the jurisdiction of a Master and district registrar: Order LIV. 12, and XXXV. 6.

An interpleader issue is not an action, being only a proceeding in an action (*Hamlyn* v. *Betteley*, 6 Q. B. D. 63. A). An interpleader order may be made although one of the claimants claim something in addition to the common claim both make against the applicant (*Attenborough* v. *St. Katherine Dock Co*, 3 C. P. D. 450. A).

As to how far this Order is applicable to mandamus, see Order LIII. 15.

It is premature to commence an action before the sheriff has time to interplead, *Hilliard* v. *Hanson*, 21 Ch. D. 69. A; *Aylwin* v. *Evans*, 47 L. T. 568). Since the Judicature Acts the Chancery Division has no power to restrain the sheriff from proceeding under an execution of *fi. fa.* The proper Court to which to apply is that in which the proceedings are pending (*Wright* v. *Redgrave*, 11 Ch. D. 24. A).

It is the sheriff's duty to seize the goods of the debtor, and if the solicitor interfere and instruct the sheriff to seize the goods of the wrong person, he will be personally liable (*Smith* v. *Keal*, 9 Q. B. D. 340. A).

The execution creditor does not adopt the act of the sheriff, by becoming a party to the issue, so as to become liable in trespass for the seizure (*Woollen* v. *Wright*, 1 H. & C. 554), nor is he liable for any damage, caused by a sale, under the Judge's order (*Walker* v. *Oldring*, Ibid. 621). The order does not protect the sheriff if he have been guilty of any excess (*Winter* v. *Bartholomew*, 11 Ex. 764).

Pending an interpleader issue, the execution creditor has no right to the immediate return of the writ, even though the sheriff may have acted improperly (*Angell* v. *Baddeley*, 3 Ex. D. 49. A).

If the claimant do not appear on the hearing of the summons, his claim will be barred, but without costs, as the sheriff takes the proceedings purely for his own benefit (*Jones* v. *Lewis*, 8 M. & W. 264; *Glazebrook* v. *Pickford*, 10 M. & W. 279; *Cox* v. *Fenn*, 7 Dowl. 50; *Ford* v. *Dilly*, 5 B. & Ad. 885). If the sheriff's application be unnecessary, he will be made to pay the costs (*Sheriff of Oxford*, 6 Dowl. 136). Where neither party appeared, the sheriff was ordered to sell so much as would pay his expenses, and abandon the rest (*Eveleigh* v. *Salsbury*, 31 Bing. N. C. 298).

If the plaintiff suffer an interpleader order to be discharged for want of prosecution, he will be obliged to pay the costs (*Wicks* v. *Wood*, 26 W. R. 680). Where a plaintiff had failed to comply with an order to specify the goods he claimed, he was held liable to the costs of the trial when he only succeeded as to some (*Plummer* v. *Price*, 26 W. R. 682).

The Court has made an order that the sheriff should remain in possession pending the report of the Master, and that the unsuccessful party should pay his costs (*Clarke* v. *Chetwode*, 4 Dowl. 635).

If the Court order a sale, the sheriff will be allowed to deduct the expenses, though the seizure was wrongful (*Bland* v. *Delano*, 6 Dowl. 293). Where, after the order was made, the plaintiff consented to a sale, and finally withdrew his claim, he was ordered to pay the expenses of the sale and possession money from the date of the order till the sale (*Davis* v. *Humphreys*, 1 Bing. N. C. 411).

The sheriff should be in possession of the matter in dispute, so as to be able to obey any order the Court may make (*Holton* v.

Guntrip, 3 M. & W. 145; *Ireland* v. *Bushell*, 5 Dowl. 147). He may be disentitled to interplead in some cases, as if he himself be the execution creditor or his partner (*Ostler* v. *Bower*, 4 Dowl. 605); or where he has been guilty of unreasonable delay (*Mutton* v. *Young*, 4 C. B. 371; *Brackenbury* v. *Laurie*, 3 Dowl. 181); or has already exercised a discretion (*Crump* v. *Day*, 4 C. B. 761); or where, being also attorney for the other side, he defeated execution by giving them notice of it (*Cox* v. *Balne*, 2 D. & L. 718).

1 & 2 Will. IV., c. 58, s. 1. Evidence in support.

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.

23 & 24 Vict. c. 126, s. 12. Adverse titles.

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.

I. 2. After service of writ.

4. Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons.

1 & 2 Will. IV., c. 58, s. 1. Summons to claimants.

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.

1 & 2 Will. IV., c. 58, s. 1. Staying 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.

As to staying proceedings when the dispute is the subject-matter of an interpleader summons in the County Court, see *Hills* v. *Renny*, 5 Ex. D. 315. A.

1 & 2 Will. IV., c. 58. s. 1. Proceedings on appearance.

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.

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. 23 & 24 Vict. c. 126, s. 14. Disposal in a summary manner.

See Rule 11, *post*.

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, Order XXXIV. shall, as far as applicable, apply thereto. 23 & 24 Vict. c. 126, s. 15. Questions of law only.

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. 1 & 2 Will. IV., c. 58, s. 3. Claims may be barred.

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. 23 & 24 Vict. c. 126, s. 17. Judgment final, when.

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. 23 & 24 Vic c. 126, s. 13. Discretion as to sale.

13. Orders XXXI. and XXXVI. shall, with the necessary modifications, apply to an interpleader Proceedings with regard to trial.

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.

One order in several causes.

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.

Costs.

15. The Court or a Judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just and reasonable.

ORDER LVIII.

Appeals to the Court of Appeal.

No appeal from any order in any matter not being an action shall, except by special leave, be brought after the expiration of twenty-one days. The date from which the twenty-one days is to be calculated in the case of an appeal from an order in Chambers is the time from which such order was pronounced, or when the appellant first had notice thereof (r. 15). Interest may be allowed for the time during which execution has been delayed by the appeal (r. 19).

LVIII. 2. Appeal a re-hearing.

1. All appeals to the Court of Appeal shall be by way of re-hearing, 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 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.

From whole or part.

Although every appeal is by way of re-hearing, it is not competent for an appellant to raise a case totally inconsistent with and contradictory to the original one (*Ex parte Reddish*, 5 Ch. D. 882. A).

Under the system of procedure established by the Judicature Acts no Judge of the High Court has any jurisdiction to re-hear an order whether made by himself or any other Judge,

the power to re-hear being part of the appellate jurisdiction which is transferred by the Acts to the Court of Appeal (*Re St. Nazaire Co.*, 12 Ch. D. 88. A).

The Court of Appeal has no power to re-hear appeals. A new action in the High Court to have the judgment set aside must be commenced, where facts discovered since the trial would, under the old system, have justified a bill of review (*Flower* v. *Lloyd*, 6 Ch. D. 297. A). Neither has it any original jurisdiction, save that which is incidental to the exercise of its appellate jurisdiction (*Ibid.*; *Allen* v. *U. K. Telegraph Co.*, 24 W. R. 898. A; *Re Dunraven Coal Co.*, 24 W. R. 37. A).

It would appear from *Ex parte Banco di Portugal, Re Hooper*, 14 Ch. D. 1. A, which was a case on appeal from the Bankruptcy Court, that if by an accidental slip, evidence which was before the Court, on the hearing of the appeal had been omitted from the order, the Court can rectify the order notwithstanding the pendency of an appeal to the House of Lords.

A person, affected by the decision, may obtain leave by *ex parte* application to appeal, though not a party to the action (*Markham* v. *Markham*, 16 Ch. D. 1. A). Leave will not be given unless his interest be such that he might have been made a party by service (*Crawcour* v. *Salter*, 30 W. R. 329. A).

A defendant against whom an injunction was granted, and who had in the meantime become bankrupt, was held entitled to appeal against the decision as it imposed upon him a personal disability (*Dence* v. *Mason*, 41 L. T. 573. A).

On an appeal on the facts, the Court of Appeal will give great weight to the consideration that the Judge below was able to observe the demeanour of the witnesses (*Bigsby* v. *Dickinson*, 4 Ch. D. 24. A).

An appeal from the Lord Mayor's Court, upon a question of law arising upon the record, lies to the Court of Appeal (*Le Blanch* v. *Reuter Telegraph Co.*, 1 Ex. D. 408). But where there has been a motion for a new trial in a Divisional Court, under sec. 10 of the Mayor's Court Act, 20 & 21 Vict. c. 157, no appeal will lie without special leave being given (*Appleford* v. *Judkins*, 3 C. P. D. 489. A).

An appeal lies from a decision of the Divisional Court on an application for a prohibition to a County Court (*Barton* v. *Titmarsh*, 49 L. J. 573. A).

As to appeal in interpleader proceedings see Order LVII. 11.

The Court will not hear an appeal where no counsel has appeared on the argument in the Court below, whether this applies to a special case *quære* (*Allum* v. *Dickinson*, 9 Q. B. D. 632. A).

A claim under a winding-up having been refused the counsel for the liquidator asked the counsel for the claimant, whether he intended to carry the case further, and on being informed that he did not, said that he should not ask for costs, an order was drawn up dismissing the claim without costs, and not containing any undertaking not to appeal. Held, that as no undertaking not to appeal was embodied in the order, an appeal would lie (*Re Hull and County Bank*, Trotter's claim, 13 Ch. D. 261. A).

LVIII. 3. Parties to be served.

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; 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.

Where the proceedings are irregular, the service of the notice may be withdrawn, and a fresh notice served on payment of the costs (*Norton* v. *L. N. W. Railway*, 11 Ch. D. 118. A). The mere communication by an unsuccessful party to his opponent of his intention to appeal is not a sufficient notice of appeal, nor in the absence of other circumstances is it ground for an extension of time (*Re Blyth & Young*, 13 Ch. D. 416. A; *Collins* v. *Vestry of Paddington*, 5 Q. B. D. 374 A; *New Callao Co.*, 22 Ch. D. 484. A). Where, however, the form used was "Take notice that it is the intention of J. L. to prosecute an appeal," &c., the Court held that it was intended to be a formal notice, and they declined to make the appellant suffer for its irregularity (*Re West Jewel Mining Co.*, 8 Ch. D. 806. A). And in *Kettlewell* v. *Watson*, W. N. 1883, 102. A, that, though the notice of appeal was inaccurate in the description of the appellant's solicitor, it was an effectual notice, and the appeal was properly set down.

The last clause of this rule contains the widest powers of amendment (*Re Stockton Iron Co.*, 10 Ch. D. 349. A), where the Court gave leave to amend the notice as to dates, but said that the respondent was entitled to insist that the appeal should not be heard until the expiration of the proper notice.

The Court will not allow a proposal to withdraw an appeal which the respondent has accepted, to be afterwards revoked by the appellant (*Watson* v. *Cave*, 17 Ch. D. 23. A; and see *Conybeare* v. *Lewis*, 13 Ch. D. 469. A).

Where one of two plaintiffs desire to appeal, and his co-plaintiff refuses to join, he can still appeal, making the co-plaintiff a respondent (*Beckett* v. *Attwood*, 18 Ch. D. 54. A). But such respondent may apply that the appellant be directed to give security for costs (*Ibid.*).

In a representative suit an order was made in favour of the persons represented, it was held that one of such persons could not appeal against this order (*Watson* v. *Cave*, 17 Ch. D. 19. A). Semble, the person dissatisfied should apply to the Court below (*Ibid.*, p. 21).

On a motion of appeal against the whole of an order, or for variation of it, an unspecified particular in the order may be varied (*Re Duchess of Westminster Silver Lead Ore Co.*, 10 Ch. D. 307. A).

When the appellant does not appear, the respondent is entitled to have the appeal dismissed with costs, without giving any proof that he has been served with notice of appeal (*Ex parte Lows, Re Lows*, 7 Ch. D. 160. A).

If all the parties affected by the appeal are not served, the Court will direct the hearing to stand over for that purpose (*Hunter* v. *Hunter*, 24 W. R. 504 and 527. A; *Purnell* v. *Great Western Railway*, 1 Q. B. D. 636).

LVIII. 4. Length of notice.

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.

As to interlocutory orders, see note to Rule 15, *post.*

Notice of discontinuance of the action covers the abandonment of the appeal (*Conybeare* v. *Lewis*, 13 Ch. D. 469. A).

LVIII. 5. Powers of Court of Appeal. Fresh evidence.

4. The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the High Court, 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. 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.

Costs of appeal.

As all appeals are by way of re-hearing, this Court has power to grant relief according to the law as it stands at the date of the hearing of the appeal, though the decision of the Court below may have been correct at the time when it was given (*Quilter* v. *Mapleson*, 9 Q. B. D. 672. A).

The Court of Appeal has power under this rule, coupled with Order XXVIII. 12, to amend the record (*Clark* v. *Wood*, 9 Q.B.D. 276. A). It does not entertain an appeal where no counsel has appeared in the Court below. If there have been any inadvertence, application should be made to the Court of first instance to re-hear the case (*Allum* v. *Dickinson*, 9 Q. B. D. 632. A).

Where witnesses are subpœnaed on the appeal, to establish facts not discovered at the time the action was tried, there

must be a motion for leave to examine them, previous to the hearing of the appeal (*Dicks* v. *Brooks*, 13 Ch. D. 652. A); but if the fresh evidence be only documentary, the party may give notice to the other side of his intention to apply at the hearing for leave to produce such evidence (*Hastie* v. *Hastie*, 1 Ch. D. 562. A; see also *Jones* v. *Chennell*, 8 Ch. D. 505. A). Where at the trial of an action, witnesses have been examined *vivâ voce* further evidence by affidavit, of the same witnesses, will not in general be admitted on appeal (*Taylor* v. *Grange*, 15 Ch. D. 165. A). In *Weston's Case*, 10 Ch. D. 582. A, the Court of Appeal refused to allow fresh oral evidence under the circumstances. "It would be too dangerous," said Jessel, M.R., "after we have indicated what the point of the case is to allow the only living man who can give evidence, to testify in his own favour." And in *Sanders* v. *Sanders*, 51 L. J. Ch. 279. A, "nothing could be more dangerous than that after trial, when all the points have been discussed, a party should be at liberty to bring fresh evidence."

In *Re Tayleur*, W. N. 1881, 137. A, a point was taken on the appeal which had not been considered in the Court below, and which required further evidence as to the facts. The order appealed from was discharged without prejudice, and the case remitted to Chambers for further inquiry.

A plaintiff cannot without leave on appeal make a case, neither made in his pleadings nor in the Court below, per Bramwell, L.J., in *New Zealand Land Co.* v. *Watson*, 29 W. R. 694. A.

LVIII. 5a. New trial.

5. If upon [the] 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.

LVIII. 6. Cross appeal.

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.

The notice given by the respondent need not be within the time limited by Order LVIII. 15 (*Ex parte Bishop, Re Fox*, 15 Ch. D. 400. A).

It is not the proper course to proceed under this rule when the proposed variation does not affect the appellant who has presented the notice of appeal (*Re Cavander's Trusts*, 16 Ch. D 270. A; *Ralph* v. *Carrick*, 11 Ch. D. 873. A).

Where there were two respondents to an appeal, one of whom gave notice of cross appeal affecting his co-respondent, the Court apportioned the costs (*Harrison* v. *Cornwall Min. Ry.*, 18 Ch. D. 334. A; and see also *Robinson* v. *Drakes*, 23 Ch. D. 98. A).

It will be observed that if a respondent intend to contend, that the decision of the Court below should be varied, he is to give notice to any parties who may be affected by such contention. For a discussion of the scope of this clause see *Ex parte Payne*, *Re Cross*, 11 Ch. D. 550. A.

Where the respondents have given notice of their intention to apply to have the judgment varied, and both appeals are dismissed, the appellants will have to pay the costs except such as were occasioned by the notice (*The Lauretta*, 4 P. D. 25. A). The Court will not under the power contained in this rule entertain a cross appeal merely on a question of costs (*Harris* v. *Aaron*, 4 Ch. D. 749. A).

LVIII. 7. Notice by respondent.

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.

LVIII. 8. Entry of the appeal.

8. The party appealing from a judgment or order shall produce to the proper officer 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.

Where an order is refused, the first part of this rule has no application (*Smith* v. *Grindley*, 3 Ch. D. 80. A). Where defendants had given notice of appeal in due time, but had not entered it owing to the plaintiffs not having had the order drawn up, it was held that the plaintiffs could not take advantage of their own delay (*Re Harker*, 10 Ch. D. 613. A).

When the rule is not complied with, the respondent should make a substantive motion for his costs (*Webb* v. *Mansell*, 2 Q. B. D. 117. A).

The appeal must be entered before the day for which notice is given, or it will be treated as abandoned; unless that day happen to be in a vacation, when the office is closed; in which case it should be entered before the next day of the sitting of the Court (*National Funds Co.*, 4 Ch. D. 305. A.; *Shœtensack* v. *Price*, W. N. 1880, 69. A; *Re Mansel*, *Rhodes* v. *Jenkins*, 7 Ch. D. 711. A). A mistake of the solicitor is not of itself a reason for granting extension of time (*Ibid*).

Where the respondent objected that notice of appeal had been given too late, but filed new affidavits, the objection was allowed, but he was refused the costs of the new affidavits (*Ex parte*

Fardon's Vinegar Co.; *Re Jones*, 14 Ch. D. 285. A; *Mitchell* v. *Condy*, W. N. 1881, 83. A).

Where the proceedings are irregular, the service of the notice may be withdrawn and a fresh notice served on payment of the costs (*Norton* v. *L. N. W. R. Co.*, 11 Ch. D. 118. A).

LVIII. 9. Winding up.

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.

Bankruptcy.

The rule applies, not only to any order given in the matter of the winding-up of the company, but to the winding-up order itself (*Re National Funds Co.*, 4 Ch. D. 305. A). It applies to an order made under the Vendors and Purchasers Act, 1874 (*Re Blyth & Young*, 13 Ch. D. 416. A). In that case the respondent was deprived of his costs, having given the appellant reason to believe that he did not mean to insist upon the objection that the appeal was out of time. To an order under the Trustee Relief Act (*Re Baillie's Trusts*, 4 Ch. D. 785. A). It does not apply to the Railways Act of 1868 (*The New River Co.*, v. *M. Ry. Co.*, 36 L. T. 539. A).

In Bankruptcy matters this rule only affects the time for appealing to the Court of Appeal (*Ex parte Garrard, Re Lewer*, 5 Ch. D. 61. A).

As to the extension of time for appealing by a person aggrieved by an adjudication in bankruptcy, see *Ex parte Tucker*, 12 Ch.D. 308. A). Where the applicant alleged that his interests had been insufficiently represented by the official liquidator (*Re Madras Irrig. Co.*, 23 Ch. D. 252. A). A notice of appeal from the refusal to annul an adjudication of bankruptcy must be served in proper time, as well on the trustee as on the petitioning creditor (*Ex parte Ward, Re Ward*, 15 Ch. D. 292. A).

Leave to appeal to the House of Lords in bankruptcy matters will not be given when the Court is convinced of the soundness of its decision (*Ex parte Jackson*, 14 Ch. D. 747. A).

Where an order on petition is final in its nature, the Court will on proper grounds extend the time for appealing (*Re Leonard Jacques*, 18 Ch. D. 392. A).

LVIII. 10. Application *ex parte*.

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.

LVIII. 11. Evidence in Court of 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, or such other materials as the Court may deem expedient.

Affidavits, which are to be used on appeal, should be filed with the officer of the Division from which the appeal comes (*Watts* v. *Watts*, 45 L. J. Ch. 658. A). Documents to be in evidence should have been formally put in (*Watson* v. *Rodwell*, 11 Ch. D. 153. A).

Where the affidavits were very voluminous, the Court ordered the Clerks of the Rules to attend with them, and dispensed with the office copies to save expense (*Sickles* v. *Norris*, 45 L. J. 148. A; *Crawford* v. *Hornsey Brick Co.*, 24 W. R. 422. A).

In *Laming* v. *Gee*, 28 W. R. 217, it was contended that the Judge's notes alone could be referred to, and that the shorthand writer's notes could not be read; after some discussion, however, they were ultimately allowed to be read.

As to costs of shorthand-writer's notes, see Order LXV. 27 (29).

LVIII. 12. Printing evidence.

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. 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.

LVIII. 13. Other materials.

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.

LVIII. 14. Effect of interlocutory order.

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.

This rule was only intended to prevent the right of appeal from being interfered with, by the existence of an interlocutory order, which incidentally involves a decision of the point (Jessel, M.R., in *White* v. *Witt*, 5 Ch. D. 590. A).

LVIII. 15. Time for appeal. Interlocutory order.

15. No appeal to the Court of Appeal from any interlocutory order, 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. 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.

Final appeal.

Special leave will not be given on an *ex parte* application (*Evennett* v. *Lawrence*, 4 Ch. D. 139. A).

It is not necessarily a reason for enlarging the time for appealing, that the Court of Appeal has come to a different opinion on a doubtful point of law (*Craig* v. *Phillips*, 7 Ch. D. 249. A). The Court will only under very special circumstances extend the time for appealing, after the time limited by the rules has elapsed (*Ibid.*). "I give no opinion," says Thesiger, L.J., "whether, if there were a clear decision of a Court of Appeal overruling previous decisions, this discretion ought not, in some cases, to be exercised; but it is not enough that doubts have been thrown on the law as previously expressed." To have the time extended there must be no laches and a *bonâ fide* mistake (*Highton* v. *Treherne*, 27 W. R. 245. A; *Ex parte Howe*, W. N. 1879, 6. A). A mere misunderstanding of the rules is not sufficient (*International Society* v. *City of Moscow Gas Co.*, 7 Ch. D. 241. A), unless there be something peculiar in the circumstances, as where a valid notice had been given and withdrawn by mistake (*Re Ambrose Tin Co.*, Taylor's Case, 8 Ch. D. 643. A).

An order under the Vendor and Purchaser Act, 1874, is one in which the appeal must be brought within the twenty-one days (*Re Blyth & Young*, 13 Ch. D. 416), and the Court refused to extend the time on the ground stated in *McAndrew* v. *Barker*, 7 Ch. D. 701. A, that they had no discretionary power to deprive a litigant of any advantage given him by the General Orders, unless there has been on his part some conduct raising an equity against him. James, L.J., explained that the Court did not intend in *McAndrew* v. *Barker* to lay down a positive rule in every case; it was not intended, for instance, to apply to the case of inevitable accident. As the respondent had continued to correspond with the appellant on the subject of an appeal after the expiration of the twenty-one days, they gave no costs. In *Collins* v. *The Vestry of Paddington*, 5 Q. B. D. 368. A, Baggallay and Thesiger, L.JJ. (Bramwell, L.J., dissenting) expressed their opinion that applications for extension of time after

judgment should be allowed with great caution, but might be freely granted before judgment. As to extension of time as regards orders made in the Long Vacation, see the remarks of Selborne, L.J., in *Wallingford* v. *Mutual Society*, 5 App. Cas. 691.

When the order to be appealed from was really a final order on the construction of a will and the proposed appellants were resident in America, an extension of time was granted to give an opportunity of consulting them. As the application was considered an indulgence, they were directed to pay the costs of it (*Re Leonard Jacques*, 18 Ch. D. 392. A).

Since the Judicature Acts this rule has been laid down that in general the Court will not allow an appeal after the expiration of the time allowed, unless the respondent have done something to give a sort of equity to the appellant to go beyond the period (per Jessel, M.R., in *Curtis* v. *Sheffield*, 21 Ch. D. 5. A).

Where the fund in dispute was still within the control of the Court, the time for appeal was extended (*Re Normanton Iron Co.*, 50 L. J. Ch. 223. A).

An appellant ought to serve notice of appeal on all parties who would be affected by the order of the Court of Appeal, and if a party who would be so affected be not served, he may appear without service and obtain his costs. And this rule applies although the appeal fail through irregularity, and never comes on to be heard (*Re New Callao Co.*, 22 Ch. D. 484. A).

Final or interlocutory.

In determining whether a judgment is final or interlocutory, the attention must be directed to the form of the proceeding, not the nature of the contest (*White* v. *Witt*, 5 Ch. D. 589. A; *Cummins* v. *Herron*, 4 Ch. D. 787. A; *Pheysey* v. *Pheysey*, 12 Ch. D. 305. A). Where the step in the cause is not obviously interlocutory, the Court will be guided by what will be the effect of the judgment (*Shubrook* v. *Tufnell*, 9 Q. B. D. 623. A). Where a party applies for final judgment under Order XXXII. 6, he is estopped from contending that the order was interlocutory (*Att.-Gen.* v. *G. E. R.*, 48 L. J. Ch. 429. A). An order to sign judgment upon a specially indorsed writ is not a final proceeding, as it requires to be perfected by the further step of signing the judgment (*Standard Co.* v. *La Grange*, 3 C. P. D. 67. A). An order for a new trial is an interlocutory order (*Highton* v. *Treherne*, 48 L. J. 167. A). So is a decision of the High Court upon a special case stated by an arbitrator, if it do not necessitate the entering of final judgment for either party (*Collins* v. *Vestry of Paddington*, 5 Q. B. D. 368. A; *Shubrook* v. *Tufnell*, 9 Q. B. D. 623. A).

At the trial of an action after the verdict, the Judge ordered each side to pay their own costs, held that an application to vary such an order was to alter the final judgment, and that the appeal was not one on an interlocutory matter (*Marsden* v. *Lancashire Ry. Co.*, 29 W. R. 580. A). An appeal from a judgment of a Judge of the Chancery Division, on a question of fact, may be equivalent to an interlocutory order (*Krehl* v. *Burrell*, 10 Ch. D. 420. A; *Lowe* v. *Lowe*, Ibid., 432. A; discussed in *Potter* v. *Cotton*, 5 Ex. D. 137. A).

When time runs.

The dismissal of an action is a "refusal of an application" within the meaning of this rule; and the appeal must be brought within one year, from the date of such dismissal, and not from the date of the entering of the order (*International Financial Society* v. *City of Moscow Gas Company*, 7 Ch. D. 241. A).

Where part of a motion is refused, the time for appealing runs from the date of the refusal (*Traill* v. *Jackson*, 4 Ch. D. 7. A; *Berdan* v. *Birmingham Small Arms Co.*, 7 Ch. D. 24. A; *Swindell* v. *Birmingham Syndicate*, 3 Ch. D. 127. A). Whenever an order, dismissing an application, contains a declaration as such or as an expression of opinion of the Judge, so as to bind the rights of the parties, it is not a simple refusal of the application so as to compel the appeal to be brought within twenty-one days from the date of refusal (*Re Clay & Tetley*, 16 Ch. D. 8. A; *Re Michell's Trusts*, 9 Ch. D. 5. A). An order by a Judge in an administration action dismissing the claim of a creditor who has come in under the usual decree is the refusal of an application under this rule (*Re Claggett*, 20 Ch. 134. A). As to where the appellant has been unable to enter the appeal, in consequence of the order not having been drawn up, see *Re Harker*, 10 Ch. D. 613, *ante*, Rule 8.

On a petition under the Infants Custody Act, where the form of the order as drawn up, is "Until further order," it is open to a party to move to vary that order (*Re Holt*, W. N. 1880, 181. A).

Security for costs.

It is not necessary to apply for leave to serve notice of motion that the appellant be directed to give security (*Grills* v. *Dillon*, 2 Ch. D. 325. A). The insolvency of the appellant is *primâ facie* a sufficient reason for ordering him to give security (*Hankin* v. *Turner*, 10 Ch. D. 372. A; *Wilson* v. *Smith*, 2 Ch. D. 67. A; *Harlock* v. *Ashberry*, 19 Ch. D. 84. A; *Spencer* v. *Hart*, 45 L. T. 396. A) or an appellant company, (*Re Photo. Artists Co.*, 31 W. R. 509 A); and it will be an additional reason if he be vexatiously and unreasonably prosecuting the appeal (*Usill* v. *Brearley*, 3 C. P. D. 206. A).; or unnecessarily (*Waddell* v. *Blockey*, 10 Ch. D. 416); or make unreasonable delay in prosecuting the action (*Smith* v. *White*, W. N. 1879, 203. A; *Hutchins* v. *Romer*, W. N. 1879, 99. A). Where there was apparently a very doubtful point of law, the Court thought the plaintiff ought not to be required to give security (*Rourke* v. *White Moss Co.*, 1 C. P. D. 556. A).

The applicant must be prompt in making the application, and as a general rule it is too late when the appeal motion is in the paper and all the costs have been incurred (especially where the ground is that of poverty) (*Re Indian Kingston, &c. Gold Co.*, 22 Ch. D. 83. A; *Grant* v. *Banque Franco-Egyptienne*, 1 C. P. D. 143.

An appellant who is clearly liable to give security for costs ought to offer security when asked without an application to the Court (*The Constantine*, 4 P. D. 156. A).

The probable cost of the appeal is considered, rather than the value of the property, in estimating the amount of security required (*Morecroft* v. *Evans*, W. N. 1882, 189. A). Security may be on bond with sureties (*Phosphate Sewage Co.* v. *Hartmont*, 2 Ch. D. 811; and see Order LXV. Rule 7).

Where one plaintiff appeals, making his co-plaintiff who refuses to join in the appeal a respondent, on the application of such respondent he may be directed to give security for costs (*Beckett* v. *Attwood*, 18 Ch. D. 54. A).

It makes no difference which side appeals (*Dence* v. *Mason*, W. N. 1879, 31. A).

Where the appellant was a foreigner residing abroad and had no property in this country, he was ordered to give security under this rule (*Grant* v. *Banque Franco-Egyptienne*, 2 C. P. D. 430. A).

It is not the practice of the Court of Appeal to fix the time within which the appellant must give security. If it be not given within a reasonable time, the respondent may move to dismiss for want of prosecution (*Polini* v. *Gray*, 11 Ch. D. 741. A). If on the hearing of such motion the Court grant a further period by way of grace, and the required security be not given within this period, the right of appeal is entirely lost (*Harris* v. *Fleming*, 30 W. R. 555. A). If he have only given the security the day before the hearing, he may be ordered to pay the costs of such motion (*Ex parte Isaacs*, 10 Ch. D. 1. A).

Where a company appeals from a winding-up order, without joining a person responsible for costs, the Court of Appeal will entertain an application for security (*Re Diamond Fuel Co.*, 49 L. J. Ch. 301. A).

All summonses which finally settle the rights of parties, are heard by a full Court of Appeal of three Judges (Memorandum, 1 Ch. D. 41; *Pheysey* v. *Pheysey*, 12 Ch. D. 307. A).

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. *LVIII.* 16. No stay unless ordered.

An application under this rule cannot be *ex parte* (*Rep.* of *Peru* v. *Weguelin*, 24 W. R. 297. A; *Emma Co.* v. *Lewis*, 48 L. J. 504. A). Though an action be dismissed, the Court below can, pending an appeal, stay the doing anything under the order of dismissal, and an application for that purpose must be made to the Court below in the first instance. Where, however, from the nature of the order it is incompetent for the Judge of first instance to stay the proceedings, the Court of Appeal will make a suitable order to prevent the appeal, if successful, from being rendered nugatory (*Wilson* v. *Church*, 11 Ch. D. 576. A; *Wilson* v. *Church*, 12 Ch. D. 458. A; *Otto* v. *Lindford*, 18 Ch. D. 394. A).

An application should be made to the Divisional Court for a stay of proceedings pending an appeal from it to the Court of Appeal (*Att.-General* v. *Swansea Co.*, 9 Ch. D. 46. A); and see *Goddard* v. *Thompson*, 26 W. R. 362. A). And to the Court of Appeal pending an appeal to the House of Lords (*The Khedive*, 5 P. D. 1. A; *Wilson* v. *Church*, 12 Ch. D. 458. A).

It is against the ordinary course of the Court to stay accounts or inquiries pending an appeal, unless irreparable injury will otherwise result (*Hyam* v. *Terry*, 29 W. R. 32). Where a question of law has been decided on a preliminary objection, and an appeal has been brought, the Court will not in general stay the trial of the issue of fact pending an appeal (*Re Palmer's Trade Mark*, 22 Ch. D. 88. A).

Stay of execution will not be granted by the Court of Appeal merely to give time to a party to consider whether or not he will appeal to the House of Lords (*Webber* v. *L. B. & S. Ry.*, 51 L. J. 154. A).

Proceedings were stayed pending an appeal, where defendant paid into Court the sum due under the judgment, the plaintiff giving security for repayment if the judgment were upset on

appeal (*Eames* v. *Hacon*, W. N. 1881, 4. A); and generally it would seem to be the practice to make it a condition of staying proceedings on an appeal that the appellant should undertake, if unsuccessful, to make good any pecuniary difference caused by the delay (*Brewer* v. *Yorke*, 20 Ch. D. 669. A).

Where the appellant, if successful, would have been irreparably damaged, the Court stayed the execution, and advanced the appeal (*Adair* v. *Young*, 11 Ch. D. 136. A).

In *Cooper* v. *Cooper*, 2 Ch. D. 492. A, the appellants were ordered to pay into Court the costs of the Court below, and to pay the respondents the costs of the application.

LVIII. 17. Appellate jurisdiction.

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.

For example, an application by a person, to be made a defendant in an action, whose interests were represented by the plaintiff, but who is desirous of appealing against an order obtained by such plaintiff (*Watson* v. *Cave*, 17 Ch. D. 21. A)

In *Miller* v. *Pilling*, 9 Q. B. D. 736. A, the Court of Appeal pronounced the judgment which they considered ought to have been delivered in the Q. B. D.

See note to preceding Rule.

LVIII. 18. Application to a Judge.

18. Every application to a Judge of the Court of Appeal shall be by motion, and the provisions of Order LII. shall apply thereto.

Stay of execution. Interest.

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.

See *Brewer* v. *Yorke*, Rule 16 *supra*.

ORDER LIX.

Divisional Courts.

Rule 3 regulates the appeal to a Divisional Court on a compulsory reference to arbitration. Rule 4 is taken from the repealed Order LVIII. 19, with a slight variation as to Probate and Admiralty matters. Rules 5 and 6 are framed for the purpose of carrying out this alteration so far as concerns awards of Justices in salvage matters.

*LVII*a. 1. Proceedings before a Divisional Court.

1. The following proceedings and matters shall continue to be heard and determined before Divisional Courts; but nothing herein contained shall be construed so as to take away or limit the power

of a single Judge to hear and determine any such proceedings or matters in any case in which he has heretofore had power to do so, or so as to require any interlocutory proceeding therein heretofore taken before a single Judge to be taken before a Divisional Court:—

(*a.*) Proceedings on the Crown side of the Queen's Bench Division;

(*b.*) Appeals from revising barristers, and proceedings relating to election petitions, parliamentary and municipal;

(*c.*) Appeals under Section 6 of the County Courts Act, 1875;

(*d.*) Proceedings on the revenue side of the Queen's Bench Division;

(*e.*) Proceedings directed by any Act of Parliament to be taken before the Court, and in which the decision of the Court is final;

(*f.*) Cases stated by the Railway Commissioners under the Act 36 & 37 Vict. c. 48;

(*g.*) Cases of *habeas corpus*, in which a Judge directs that an order *nisi* for the writ, or the writ be made returnable before a Divisional Court;

(*h.*) Special cases where all parties agree that the same be heard before a Divisional Court;

(*i.*) Appeals from Chambers in the Queen's Bench Division;

(*j.*) Applications for new trials where there has been a trial with a jury.

This Order is framed to carry into effect sec. 17 of the App. Jur. Act, 1876.

As to special case, see Order XXXIV. Rules 6, 7.

Sec. 6 of the County Court Act, 1875 (38 & 39 Vict. c. 50), is subjoined. County Court Act, 1875, s. 6.

In any cause, suit, or proceeding, other than a proceeding in bankruptcy, tried or heard in any County Court, and in which any person aggrieved has a right of appeal, it shall be lawful for any person aggrieved by the ruling, order, direction, or decision of the Judge, at any time within eight days after the same shall have been made or given; to appeal against such ruling, order, direction, or decision by motion to the Court to which such appeal lies, instead of by special case, such motion to be *ex parte* in the first instance, and to be granted on such terms as to costs, security, or stay of proceedings as to the Court to which such motion shall be made, shall seem fit. And if the Court to which such appeal lies, be not then sitting, such motion may be made before any Judge of a Superior Court sitting in Chambers. And at the trial or hearing of any such cause, suit, or proceeding, the Judge, at the request of either party, shall make a note of any question of law raised at such trial or hearing, and of the facts in

evidence in relation thereto, and of his decision thereon, and of his decision of the cause, suit, or proceeding, and he shall at the expense of any person or persons being party or parties in any such cause, suit, or proceeding requiring the same for the purpose of appeal, furnish a copy of such note or allow a copy to be taken of the same, by or on behalf of such person or persons, and he shall sign such copy, and the copy so signed shall be used and received on such motion, and at the hearing of such appeal.

If there be a Divisional Court sitting to which the application can be made, it should not be made to the Judge at Chambers (*Brown* v. *Shaw*, 1 Ex. D. 425). The Judge in Chambers, before whom such a motion is made, cannot adjourn the further hearing of it to the next sitting of the Court to which the appeal lies, but must himself hear and determine it (*Button* v. *Woolwich Building Society*, 5 Q. B. D. 88).

The request to the Judge to take a note must be made during or immediately at the end of the trial (*Pierpoint* v. *Cartwright*, 5 C. P. D. 139. A). The attention of the Judge should be drawn specifically to the question of law intended to be raised, and the evidence in relation to it. Where the Judge has actually taken a note but furnished it under protest, the right of appeal exists (*Seymour* v. *Coulson*, 5 Q. B. D. 359; *Rhodes* v. *Liverpool Investment Co.*, 4 C. P. D. 425). A general request at the commencement of the trial before any specific question of law has been raised is not sufficient, and is not a note which the Court will order the Judge to sign (*Morgan* v. *Rees*, 6 Q. B. D. 508). No motion is to be made by way of appeal from any County Court unless a copy of the Judge's notes, signed by the Judge shall have been handed to the proper officer in Court, unless otherwise ordered. "I do not think the production of the notes an absolute condition to the parties' right to appeal, it precludes him from moving without a copy of the notes unless otherwise ordered," per Grove, J., in *Morgan* v. *Davies*, 3 C. P. D. 262.

Where the County Court Judge has taken a note of the evidence, and given leave to move on the only point raised at the trial, on the appeal, the argument must be confined to that point (*Clarkson* v. *Musgrave*, 31 W. R. 47).

Whether the right to appeal may not exist in the absence of any note, see *Morgan* v. *Rees*, *obiter dicta*, of Bramwell, L.J., 6 Q. B. D. 513. A.

Where the motion has been refused a rule calling upon the Judge to state a case, will not be granted (*Rhodes* v. *Liverpool Investment Co.*, *supra*).

The judgment of the County Court Judge may be upheld on grounds other than those on which he proceeded, if such appear from the notes (*Chapman* v. *Knight*, 5 C. P. D. 309).

It will be observed that this section only applies to proceedings other than proceedings in bankruptcy, in which cases more latitude is allowed as to the evidence that may be adduced on appeal (*Ex parte Firth*, *Re Cowburn*, 19 Ch. D. 419. A). From which case, it would appear that if the Judge's notes were lost, the appellant might apply by way of indulgence to have the evidence taken over again.

This section applies to cases where there is an appeal only by leave (*Turner* v. *G. W. R. Co.*, 2 Q. B. D. 125. A). It does not apply to a garnishee order made under the County Court Rules, 1875 (*Mason* v. *Wirrall Board*, 4 Q. B. D. 459).

It would appear that the time for moving under this section

cannot be extended (*Tennant* v. *Rawlings*, 4 C. P. D. 133). The Queen's Bench Division, though divided in opinion, heard a case after the eight days had elapsed where the appellants had used all possible diligence (*Mason* v. *Wirrall Board*, 4 Q. B. D. 459). The County Court Judge cannot extend the time by allowing his judgment to be post-dated (*Wilberforce* v. *Sowton*, 48 L. J. 28).

In the Common Law jurisdiction of the County Courts there is no appeal from the decision of the Judge on a question of fact (*Cousins* v. *Lombard Bank*, 1 Ex. D. 404).

The Divisional Court has power to order judgment to be entered (*Whiteman* v. *Hawkins*, 4 C. P. D. 13).

*LVII*a. 2. Provision for death or incapacity of Judge.

2. Where, by section 17 of the Appellate Jurisdiction Act, 1876, or by these Rules, any application ought to be made to, or any jurisdiction exercised by the Judge by whom a cause or matter has been tried, if such Judge shall die or cease to be a Judge of the High Court, or if such Judge shall be a Judge of the Court of Appeal, or if for any other reason it shall be impossible or inconvenient that such Judge should act in the matter, the President of the Division to which the cause or matter belongs may either by a special order in any cause or matter, or by a general order applicable to any class of causes or matters, nominate some other Judge to whom such application may be made, and by whom such jurisdiction may be exercised.

Compulsory reference.

3. Where a compulsory reference to arbitration has been ordered, any party to such reference may appeal from the award or certificate of the arbitrator or referee upon any question of law; and on the application of any party the Court may set aside the award on any ground on which the Court might set aside the verdict of a jury. Such appeal shall be to a Divisional Court, who shall have power to set aside the award or certificate, or to remit all or any part of the matter in dispute to the arbitrator or referee, or to make any order with respect to the award or certificate or all or any of the matters in dispute that may be just.

LVIII. 19. Appeals from inferior Courts.

4. Every Judge of the High Court of Justice for the time being shall be a Judge to hear and determine appeals from inferior Courts, under section 45 of the Principal Act. All such appeals (except Probate and Admiralty Appeals from inferior Courts, and from justices, which shall be to a Divisional Court of the Probate, Divorce, and Admiralty Division), shall be entered in one list by the officers

of the Crown Office Department of the Central Office, and shall be heard by such Divisional Court of the Queen's Bench Division as the Lord Chief Justice of England shall from time to time direct.

An appeal from an inferior Court must be entered within the time given on the notice of appeal for the hearing, otherwise it will be taken to have been abandoned (*Donovan* v. *Brown*, 4 Ex. D. 148, and see sec. 45 of the Jud. Act, 1873.)

The granting or refusing a rule calling upon a Judge of a County Court to settle and sign a case on appeal, is discretionary, and the Court is justified in refusing the rule, where it plainly appears that no question of law can arise (*Sharrock* v. *L. N. W. R.* 1 C. P. D. 70).

Parties entering a special case under this rule are to deliver two copies of the case, for the use of the Judges, four clear days before the day appointed for the argument.

Appeal on salvage award.

5. On an appeal from an award of justices or their umpire on a dispute with respect to salvage, the appellant shall within ten days after the date of the award, give notice in writing to the justices to whom the matter was referred of his intention to appeal, and shall within twenty days from the date of the award give to the opposite party notice in writing of motion to appeal, and shall file an affidavit of the service of the said notice of appeal and of the said notice of motion, together with copies of the said notices, and no other proceeding shall be necessary for the institution of the said appeal.

Salvage appeal, how conducted.

6. In such appeal as in the last preceding Rule mentioned, if the same is to be heard without any pleadings and without any evidence other than that which was adduced before the Court appealed from, the appellant shall, within ten days from the filing of the proceedings and award, leave in the Admiralty Registry printed copies thereof; and if he shall not do so, the Court may on the application of the respondent dismiss the appeal with costs.

ORDER LX.

Officers.

Rule 4, which relates to recognizances in the Chancery Division, has been added to this Order.

LX. 1. Attached to various Divisions.

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.

LX. 2. To follow appeals.

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 re-hearings 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.

LX. 3. Office of Master.

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.

Recognizances in Chancery Division.

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.

ORDER LXI.

Central Office.

The new portion of this Order has been taken for the most par from the Consolidated Orders.

*LX*a. Departments.

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.

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 Order XVI. Rule 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.

Name of Department.	Business.
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.

*LX*a. 2. Master in charge.

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.

*LX*a. 3. Taxation of costs.

3. A sufficient number of Masters, not being less than three, shall, except in vacation, attend each day at the Central Office to tax costs. In vacation one Master shall attend daily for that purpose. The Taxing Masters shall be selected according to a rota to be fixed by the Masters.

Publication of arrangements.

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.

*LX*a. 4. Authority to take oaths.

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.

*LX*a. 5. Seals.

6. The official seals to be used in the Central Office shall be such as the Lord Chancellor from time to time directs.

*LX*a. 5. Authentication of copies, &c.

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.

Enrolment of judgments.

8. It shall not be necessary to enrol any judgment or order, whether dated before or since the commencement of the Principal Act.

*LX*a. 6. Enrolment of deeds

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.

LXIV. 2. Enrolment of railway scheme.

10. A scheme under the Railway Companies Act, 1867, shall be enrolled in the Enrolment Department of the Central Office.

LXIV. 3. Conditions of enrolment of scheme.

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.

C. O. I. 40. Acknowledgments.

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.

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. *C. O. I.* 41. Records of deeds, &c.

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. *C. O. XLII.* 12. Enrolling recognizances.

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. *C. O. XXIII.* 23. What originals to be filed.

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. *C. O. I.* 45. Date of filing.

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. *C. O. I.* 46. Indexes.

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 at 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. *C. O. I.* 47. Entry of documents.

C. O. I. 48. Documents, how marked.

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.

C. O. I. 49. Entries 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.

C. O. I. 50. Reference to Registrar's book.

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.

*LX*a. 7. No registration after 2 P. M.

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.

*LX*a. 8a. Searches.

23. The Clerk of Enrolments and each of the following Registrars, namely—

(*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.

C. O. I. 53. Information as to state of proceedings.

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.

*LX*a. 9. Bills of Sale.

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.

*LX*a. 10. Memorandum of satisfaction.

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.

*LX*a. 10. Proof of satisfaction.

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 a memorandum of satisfaction to be written upon a registered copy thereof.

*LX*a. 11. Prohibition of removal.

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.

C. O. I. 43: Attendance with records.

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.

C. O. XLII. 3. Documents deposited in.

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.

C. O. I. 44. Documents to be filed.

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 trans-

mitted to and left at the Central Office, to be there
Office copies. 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.

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.

Additional forms. 33. The Masters may from time prescribe the use in or for the purpose of the Central Office of such modified or additional forms as may be deemed expedient.

ORDER LXII.

Registrars of the Chancery Division.

This Order is mainly taken from Consolidated Order I.

C. O. I. 17. Attendance in rotation. 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.

C. O. I. 18. Entries of orders. 2. All judgments and orders drawn up by 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.

C. O. I. 19. Indexes of 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.

C. O. I. 20. Bespeaking 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.

C. O. I. 21. Time for.

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.

C. O. I. 22. Failure to bespeak,

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.

C. O. I. 23. Appointment for settling.

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.

C. O. I. 24. Notice of appointment.

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.

C. O. I. 25. Service of notice.

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.

C. O. I. 26. Evidence of service.

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.

C. O. I. 27. Passing the order.

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.

C. O. I. 28. Failure to attend.

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 counsels' 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.

C. O. I. 31. Adjournment of appointment.

13. The Registrar may adjourn any appointment for settling the draft of or passing any judgment or order to such time as he may think fit, and the parties who attended the appointment shall be bound to attend such adjournment without further notice.

C. O. I. 32. Order passed without 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.

Allowance of special costs.

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.

Orders for payment or transfer of money.

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.

For the present Rules see p. 208.

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. *C. O. VI.* 8. Judges' lists

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. Petitions, how answered.

ORDER LXIII.

Sittings and Vacations.

This Order remains much the same as the previous Order LXI. Rules 2 and 3 are new, as also are 13 and 14, which are taken from Consol. Order XXXV. 58, 59.

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. *LXI.* 1. Dates.

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 officers.

LXI. 2. Vacations.

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.

LXI. 3. Computation of days.

5. The days of the commencement and termination of each sitting and vacation shall be included in such sitting and vacation respectively.

LXI. 4. Holidays at offices.

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.

LXI. 4a. District Registry.

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.

LXI. 4aa. Saturdays.

8. The offices of the Supreme Court (including the Judge's Chambers) shall, save as hereinafter mentioned, close on Saturdays at two o'clock.

LXI. 4c. Office hours.

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 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.

LXI. 4d Manchester Registry.

10. The office of the District Registry at Man-

chester shall not be open in any year on the five days next following Whit Monday.

LXI. 5 Vacation Judges.

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.

LXI. 6. Sittings in vacation.

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.

C. O. XXXV. 58. Chamber summonses for other Judge.

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.

C. O. XXXV. 59. Interval between sittings.

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 prosecu-

tion may be continued at the Chambers of the same Judge if and so far as he shall think fit.

LXI. 7. Interval between 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.

LXI. 8. Official Referees.

16. The Official Referees shall sit at least from ten A.M. to four 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 ten A.M. to one P.M.; but nothing in this Rule shall prevent their sitting on any other days.

ORDER LXIV.

Time.

The new Rules in this Order are 6, 10, 12–15. Rule 8 is an extension of the power to enlarge time by consent.

LVII. 1. Calendar months.

1. Where by these Rules, or by any judgment or order given or made after the commencement of the Principal Act, 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.

LVII. 2. Sunday, Christmas Day, Good Friday.

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.

When the time allowed for appealing exceeds six days, Sundays are not to be excluded from the computation (*Ex parte Viney, Re Gilbert*, 4 Ch. D. 794. A). Unless the last day fall on a Sunday (*Taylor* v. *Jones*, 45 L. J., 110; see note to next rule.)

LVII. 3. Expiration of time. Offices closed.

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.

This rule has no application to the case of when the period allowed by the Statute of Limitations expires on the Sunday, per A. Wills, Q.C., Commissioner in *Morris* v. *Richards*, 45 L. T. 210.

Where eight days were allowed for appeal, and the last expired on a Sunday, the appeal was allowed to be heard on Monday (*Taylor* v. *Jones*, 45 L. J. 110).

LVII. 4. Pleadings in Long vacation.

4. No pleadings shall be amended or delivered in the Long vacation, unless directed by a Court or a Judge.

For definition of pleadings, see p. 59.

LVII. 5. 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. O. XXXVII. 14. Security for costs. Computation.

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.

LVII. 6. Enlargement.

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.

Special leave to appeal after the expiration of the time will not be granted *ex parte* (*Evennett* v. *Lawrence*, 4 Ch. D. 139. A).

The Court will renew a writ of summons, notwithstanding that twelve months have elapsed since the date of the original writ (*Re Jones*, 46 L. J. Ch. 316), unless the claim would be otherwise barred by the Statute of Limitations (*Doyle* v. *Kaufmann*, 3 Q. B. D. 7. 340. A).

The time for making an indorsement of service under Order IX. 15, on a writ served out of the jurisdiction was extended in *Hastings* v. *Hurley*, 16 Ch. D. 735. The Judge has jurisdiction to enlarge the time for appealing against an order dismissing the action, even though the action has thereby become dismissed. His discretion is not limited by any fixed or arbitrary rules (*Carter* v. *Stubbs*, 6 Q. B. D. 116. A; *Burke* v. *Rooney*, 4 C. P. D. 226; *Whistler* v. *Hancock*, 3 Q. B. D. 83. A).

Wallingford v. *Mutual Society*, 5 App. Cas. 685, may be cited

as a precedent for extra indulgence as to extension of time being accorded during the vacation.

Where judgment was signed through the negligence of the solicitor, the Court granted an extension of time to enable defendant to apply to set aside the judgment (*Michell* v. *Wilson*, 25 W. R. 380). But the Court does not always think it necessary to reinstate a party in the position which he has lost by his own carelessness or intentional disobedience to the rules merely by payment of costs (*Gilder* v. *Morrison*, 30 W. R. 815).

When no Judge sits at Chambers, within the four days allowed for an appeal from a Master, under Order LIV. 21, the notice should be given for the first day that the Judge sits; he may then enlarge the time, and hear the appeal without any summons being taken out for that purpose (*Gibbons* v. *The Lond. Fin. Assoc.*, 4 C. P. D. 263).

As to costs of an application for extension of time under this rule, see Order LXV. 27 (24).

The power of the Court only applies to the specified periods of time, and not to the order in which the proceedings are to be taken (*Pilcher* v. *Hinds*, 11 Ch. D. 907. A).

The Court of Appeal will rarely enlarge the time for bringing an appeal after it has expired (see *Craig* v. *Phillips*, Order LVIII. 15, note).

This section does not apply to the County Courts Act, 1875, sec. 6, which limits the time for appealing against a County Court decision to eight days (*Tennant* v. *Rawlings*, 4 C. P. D. 133; s.c. *Mason* v. *Wirrall Board*, 4 C. P. D. 459).

LVII. 6a. 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.

As to the costs of an extension of time, see Order LXV. 27 (24).

LVII. 7. Admiralty actions.

9. In Admiralty actions the Court or a Judge shall have power at any stage of the proceedings in any such action, upon a motion or summons by either party, for the trial to take place on an early day to be appointed by the Court or a Judge, to appoint that such trial shall take place on any day or within any time which the Court or Judge shall think fit; and for such purpose the Court or Judge shall have power upon such motion or summons to dispense with the giving of notice of trial, or to abridge the time or times appointed by these Rules for giving such notice, for the delivery of pleadings, or for doing any other act or taking any other proceeding in the action, upon such terms (if any) as the nature of the case may require.

Delays in taking bail.

10. The delays required by these Rules with respect to the taking of bail in Admiralty actions, may be

dispensed with by consent of the solicitors in the action.

LVII. 8. Hours for 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 week-day 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.

Clear days.

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.

Where no proceedings taken for one year.

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. 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.

To set aside an award.

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.

Caveat in force six months.

15. In Admiralty actions a caveat whether against the issue of a warrant, the release of property, or the payment of money out of the Admiralty Registry, shall not remain in force for more than six months from the date thereof.

ORDER LXV.

Costs.

The following rules of this Order are new, 2–5, 8–26, and of the Special Allowances—8, 11, 24, 26, 31–36, 44–58; a considerable portion of these has been derived from the Consol. Orders. Any real alteration in a rule has been noted thereunder.

Section 28 of the Solicitors' Act as to Charging Orders on costs is appended to this Order.

LV. 1. Generally.

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.

This rule differs from the former one in these respects. The former rule was only subject to the provisions of "the Act," this one of "the Act and these Rules." The term "Supreme Court" is substituted for High Court, and the phrase "including the administration of estates and trusts" has been added. The right of a person acting in a fiduciary character to his costs has been somewhat restricted by the introduction of the words "who has not unreasonably instituted or carried on or resisted any proceedings." Lastly, it may be observed that in the proviso as to the trial of an issue by a jury the phrase used in the former rule was the judge "upon application at the trial," for "good cause shown."

The effect of this Order is to repeal the previous statutes as to costs; with the exception of such of the provisions of the County Court Act, 1867, as are expressly preserved by sec. 67 of the Judicature Act, 1873 (*Parsons* v. *Tirling*, 2 C. P. D. 119; *Garnett* v. *Bradley*, 3 App. Cases, 944). Where, therefore, a plaintiff recovered a farthing damages in an action of slander, the event was held to be in his favour.

This rule extends to a petition, under an Act which provides for the costs of such petition (*Ex parte Mercers' Co.*, 10 Ch. D. 481). Where a public or private Act contains no provisions as to costs the Court has power under this rule to direct payment of costs (*Ibid.*, *Ex parte Hosp. of St. Katharine*, 17 Ch. D. 378)

As sec. 9 of the C. C. Ad. Jurisdiction Act, 1868, is not mentioned in sec. 67 of the Judicature Act, 1873, it is repealed by this rule (*Tennant* v. *Ellis*, 50 L. J. 143).

It was held under the former rule that the words for good cause "shown," implied that counsel should have an opportunity of being heard (*Collins* v. *Welch*, 5 C. P. D. 33. A).

The Judge has power to order a plaintiff who recovers a nominal sum to pay the defendant's costs (*Harris* v. *Petherick*, 4 Q. B. D. 611. A); in exercising his discretion to deprive a successful party of his costs, he must consider the whole circumstances of the case, not merely the conduct of the party in the course of the litigation but previous to and conducing to the action. He

must, however, assume the truth of the facts found by the jury (*Harnett* v. *Vise*, 5 Ex. D. 307. A).

The Divisional Court has an original jurisdiction to make an order to deprive a successful party of the costs (*Myers* v. *Defries*, 5 Ex. D. 180. A; *Siddons* v. *Lawrence*, 4 Q. B. D. 459. A). Such application should be made within a reasonable time after the trial (*Bowey* v. *Bell*, 4 Q. B. D. 95); a successful applicant may be made to pay the costs of the other side, if his application be deemed unnecessary (*Fane* v. *Fane*, 13 Ch. D. 228).

Where an action is brought to enforce a legal right, and there has been no misconduct, no omission or neglect, the Court has no discretion and cannot take away the plaintiff's right to costs (*Cooper* v. *Whittingham*, 15 Ch. D. 504).

An appeal from an order at the trial depriving a successful party of costs must be to the Court of Appeal (*Marsden* v. *Lancashire, &c., Ry. Co.*, 50 L. J. 320. A).

A Judge has no power to order any party to pay a sum by way of penalty beyond the costs of the claim and counter-claim (*Wilmott* v. *Barber*, 17 Ch. D. 773. A); where the order was in substance within the discretion of the Judge but was irregular in form, the Court of Appeal amended the order so as to carry out the intention of the Court below (Ibid.). It is not according to law to give to a party by way of damages the costs as between solicitor and client of the litigation in which the damages are recovered (*Cockburn* v. *Edwards*, 18 Ch. D. 459. A).

The principle on which the taxation of costs is to proceed would seem to be the subject of appeal (*Marcus* v. *Gen. Navigation Co.*, 35 L. T. 353).

In Court of Appeal.

The costs of an appeal as a rule follow the event (*Memo*, 1 Ch. D. 41, *Ex parte Masters*, Ibid. 113). In *Chard* v. *Jervis*, 9 Q. B. D. 178. A, the Court refused to allow the costs of the appellant (1) Because they could in that way mark their sense of disapproval of his conduct; (2) Because the appeal had succeeded on new evidence.

A bill was dismissed by a Vice-Chancellor without costs, the plaintiff appealed against the whole decree and his appeal was dismissed, it was held that the Court had no power to vary the order of the Vice-Chancellor by directing that the bill should be dismissed with costs as he had exercised his discretion (*Harris* v. *Aaron*, 4 Ch. D. 749. A); where the appellant succeeded in the Court of Appeal on a point that had not been raised in the Court below, he was allowed the costs in the Court below but not the costs of the appeal (*Hussey* v. *Horne-Payne*, 8 Ch. D. 679. A). In *re Hull* v. *County Bank*, Trotter's Claim, 13 Ch. D. 261. A, the order of the Court below was varied on the subject of the costs, the Judge there having exercised no judicial discretion in the matter; where an appellant is successful on a point not adjudicated on in the Court below, he will not in general be allowed his costs (*Goddard* v. *Jeffreys*, 46 L. T. 904. A).

A Court has power to give costs, although without jurisdiction for any other purpose (*Mackintosh* v. *Lord Advocate*, 2 App. Cas. 78; *Reg.* v. *Steel*, 2 Q. B. D. 42. A; *G. N. R. Co.* v. *Inett*, 2 Q. B. D. 284. A); therefore *Brown* v. *Shaw*, 1 Ex. D. 425. A, can only be taken as an authority that in that case the Court considered the attendance of counsel to object to the jurisdiction, unnecessary.

When the Court of Appeal directs the payment of costs, the successful party is entitled to have them taxed and paid forthwith, unless there be a special direction to the contrary (*Phillips*

v. *Phillips*, 5 Q. B. D. 60. A; *Chamberlain* v. *Barnewell*, W. N. 1880, 110. A).

As to the practice in the Chancery Division of proceeding to trial for the purpose of getting costs, where after action brought the defendant has conceded to the plaintiff the principal relief sought, see some observations of Jessel, M.R., upon *Burgess* v. *Hills*, 26 Beav. 244; in *Storr* v. *Corp. of Maidstone*, W. N. 1878, 219. There the Court refused to decide the question of costs at the trial. The parties had compromised the action, so that the question of costs alone remained.

Appeal for costs.

Section 49 of the Act of 1873 provides that "no order made by the High Court of Justice, or any Judge thereof, as to costs only which by law are left to the discretion of the Court, should be subject to any appeal, except by leave of the Court or Judge making such order."

Though a decision relate to costs, if it involve a question of law and principle, it is subject to appeal (*Re Rio Grande Co.*, 5 Ch. D. 382. A).

The Act says, per James, L.J., in *Witt* v. *Corcoran*, 2 Ch. D. 69. A, "that there shall be no appeal for costs where they are in the discretion of the Court, but there is no discretion as to whether a man has or has not been guilty of something alleged against him." On an application, therefore, to commit for contempt, an order declaring that the defendant had committed a breach of an injunction, but giving no directions except that defendant pay the costs, is subject to appeal (*Ibid.*, *Re Clements*, 46 L. J. Ch. 375. A). But if the motion be refused with costs, it is within the section (*Ashworth* v. *Outram*, 5 Ch. D. 943. A); explained in *Jarman* v. *Chatterton*, 20 Ch. D. 493. A.

An appeal will lie without leave from an order directing payment of costs, charges, and expenses (*Jones* v. *Chennell*, 8 Ch. D. 503. A), not being an order as to costs only under sect. 49 of the Act, 1873.

In the exercise of his discretion the Judge should take into consideration the facts in the case, and the conduct of the parties in the litigation, not the mode in which counsel have argued it (*Moet* v. *Pickering*, 8 Ch. D. 374. A).

A defendant cannot be made to pay the costs of a plaintiff who has failed to make out any title, except costs in respect of his own misconduct in the course of the action. A plaintiff may succeed in getting a decree and still have to pay all the costs of the action, but the defendant is dragged into Court and cannot be made liable to pay the whole costs of the action, if the plaintiff had no title to bring him there (*Dicks* v. *Yates*, 18 Ch. D. 84. A).

A defendant to an action which has been dismissed without costs, if he wish to obtain leave from the Court to appeal on the question of costs, should apply at the time when the action is so dismissed, and such leave will not be given on an application by the defendant for that purpose after plaintiff has given notice of, and set down, an appeal from the dismissal of the action (*May* v. *Thompson*, W. N., 1882, 53). The dismissal of a bill without costs was pre-eminently the case to which the rule of not hearing appeals for costs applied (*Graham* v. *Campbell*, 7 Ch. D. 494. A; *Llanover* v. *Homfrey*, 19 Ch. D. 232. A).

There is no appeal without leave to a Divisional Court, from the refusal of a Judge at Chambers, to deprive the plaintiff of his costs when he signs judgment for them under Order XXIV. 3 (confession of plea *puis darrein continuance*) (*Perkins* v. *Beresford*, 47 L. T. 515).

An order of a Master affirmed by the Judge that a solicitor do personally pay the costs of an application held not the subject of an appeal (*Re Milton Bradford*, W. N., 1883, 112).

A Judge has jurisdiction to order a third party to pay to an unsuccessful defendant the costs payable by him to the plaintiff (Order XVI. 54), and his discretion is not the subject of an appeal (*Hornby* v. *Cardwell*, 8 Q. B. D. 329. A).

As to varying the order of the Court below as to costs when an appeal on the merits fails, see the observations of Jessel, M.R., in *Harpham* v. *Shacklock*, 19 Ch. D. 215. A :—"If we were to vary the order of the Court below as to costs, when an appeal on the merits fails, we should practically be allowing an appeal for costs only, and appeals would be brought nominally on the merits but really only for the purpose of varying the order as to costs."

A condition imposing upon one party or another, as the price of an order, which is to be made, or permitted to stand, in his favour, some election to be made by him as to the payment of costs, does not come within the rule applying to an appeal for costs only (*Metrop. Asylum* v. *Hill*, 5 App. Cas. 585).

The enactment in sect. 49 does not apply to the order of a Master or District Registrar (*Foster* v. *Edwards*, 48 L. J. 767).

Persons acting in a fiduciary character.

With regard to the exception saving the rights of trustees, &c., a trustee or mortgagee has a right to appeal on a question of costs only, where he is entitled to them *ex debito justitiæ*. As to when he is so entitled, see *Re Hoskins Trusts*, 6 Ch. D. 281. A ; *Cotterell* v. *Stratton*, L. R. 8 Ch. 295; *Turner* v. *Hancock*, 20 Ch. D. 303. A ; *Cooper* v. *Vesey*, W. N. 1882, 55. A ; *Re Watts, Smith* v. *Watts*, 22 Ch. D. 5. A).

An official liquidator, though in some sense a trustee, is a paid agent, bound to discharge his duties with reasonable care and skill, and may be deprived of costs for a mistake which would not disentitle an ordinary gratuitous trustee (*Re Silver Valley Mines*, 21 Ch. D. 381).

A defaulting executor or trustee cannot get any of his costs out of the estate until he has made good his default, unless after his bankruptcy he be retained by the parties beneficially interested and who require his assistance (*Re Basham*, 23 Ch. D. 203 ; *Lewis* v. *Trask*, 21 Ch. D. 862 ; *Clare* v. *Clare*, 21 Ch. D. 865).

Taxation of costs as between solicitor and client are directed where a fiduciary relation exists between the parties or scandalous charges are made, or where a trustee acts in the proper discharge of his duties (*Turner* v. *Collins*, 12 Eq. 438 ; *Cockburn* v. *Edwards*, 18 Ch. D. 449. A).

House of Lords.

On appeal to the House of Lords, if the solicitors give their personal undertaking to refund, an order for the recovery of costs will not be stayed pending the appeal (*Grant* v. *Banque Franco-Egyptienne*, 3 C. P. D. 202. A).

An action will lie on an order of the House of Lords, directing an unsuccessful appellant to pay the respondent's costs (*Marbella Iron Co.* v. *Allen*, 38 L. T. 815).

Abandonment.

Unless a respondent have made a previous demand for the payment of the costs of an abandoned notice of appeal he will not be allowed the costs of an application to obtain them (*Griffin* v. *Allen*, 11 Ch. D. 913. A).

In *Waddell* v. *Blockey*, 10 Ch. D. 416. A, the appellant unnecessarily gave two notices of appeal, the respondent was held entitled to the costs of one as an abandoned motion.

As to the costs of an abandoned petition for winding-up a company, see *Re Ang. Virginian Land Co.*, W. N. 1880, 155.

New trial. Where a new trial has been granted, the successful party on the second trial is, in the absence of any order to the contrary, entitled to the costs of the first (*Field* v. *G. N. R. Co.*, 3 Ex. D. 261. A; *Creen* v. *Wright*, 2 C. P. D. 354. A). The costs of the first trial and of the rule for a new trial follow the event. When the Court of Appeal grant a new trial, they will give a successful appellant the costs of the appeal in any event (*Anderson* v. *Pellier*, W. N. 1878, 129).

If the plaintiff on a second trial recover a mere nominal sum, the Judge may order him to pay the costs of both trials (*Harris* v. *Petherick*, 4 Q. B. D. 611. A).

Miscellaneous. As to payment into Court, see Order XXII. 7, note. As to what amounts to confessing a defence under Order XXIV. 3, see *Callander* v. *Hawkins*, 2 C. P. D. 592; *Champion* v. *Formby*, 7 Ch. D. 373. Order XXIV. 3, note.

As to the costs on discontinuance, see Order XXVI. 1.

Where two parties unnecessarily increased the cost by severing their defences, they were only allowed one set of costs between them (*Bull* v. *London School Board*, 34 L. T. 674; *The Longford*, 50 L. J. P. D. 30). The Court has full power to make a suitable order as to the apportionment of costs between co-defendants (*Bagot* v. *Easton*, 11 Ch. D. 396; *Wilson* v. *Thomson*, 20 Eq. 459; Order XVI. 54, 55; see also some observations of Jessel, M.R., in *Rudow* v. *G. Brit. Life Assur.* 17 Ch. D. 607. A).

As to when a party may be entitled to deduct his costs out of funds in his hands belonging to his co-defendant, see *Porter* v. *West*, 29 W. R. 236.

Where there were two respondents to an appeal, one of whom gave cross notice of appeal affecting his co-respondent, the Court made an apportionment of the costs of the appeal (*Harrison* v. *Cornwall Ry. Co.*, 18 Ch. D. 385. A; see also *Robinson* v. *Drakes*, 23 Ch. D. 98. A).

In actions of ejectment it was decided, in *Johnson* v. *Mills*, L. R. 3 C. P. 22, that each defendant is liable for the whole costs of the action, and if there be cases in which this rule would operate with hardship it is competent to the Court to deal with such case and to apportion the costs in any manner which may seem just. This decision was relied on in *Real and Pers. Adv. Co.* v. *McCarthy*, 14 Ch. D. 191, 18 Ch. D. 362. A; and in an action of a somewhat similar nature, *Dearsley* v. *Middleweek*, 18 Ch. D. 236), Fry, J. refused to allow one co-defendant to proceed against another for contribution in respect of the costs of such an action.

As to salvage, see *City of Berlin*, 25 W. R. 793. A.

As to the costs of a representative case on a contributory summons in a winding-up, see *Re Mutual Soc.* 18 Ch. D. 530.

The powers of the Court have been so much extended in regard to third parties by Order XVI. 54, that the *ratio decidendi* of most of the previous decisions has disappeared. The following cases may be found of some use:

When a third party is brought, or comes in for his own benefit, to reduce the damages the plaintiff will not be obliged to pay two sets of costs (*Williams* v. *S. E. R. Co.*, 26 W. R. 352). In *Witham* v. *Vane*, 44 L. T. 718. A, the Court of Appeal held that under the circumstances of that case neither the third nor fourth parties were entitled to their costs, as their interests would have

been adequately represented by defendant's counsel. The defendant is entitled to the costs of the issues upon which the plaintiff has been non-suit. If the judgment as drawn up be erroneous in this respect, he should apply to the Judge who tried the action to direct an alteration in the form of the judgment (*Abbott* v. *Andrews*, 8 Q. B. D. 648).

On further consideration an affidavit on the question of costs was held admissible (*Palmer* v. *Perry*, W. N. 1870, 58).

Where a plaintiff got the general costs of the action, but accidentally omitted to ask for the costs of an adjourned motion, Fry, J., on a subsequent motion, corrected the judgment under Order XXVIII. 11, and directed the costs of the adjourned motion to be taxed and paid by the defendant (*Fritz* v. *Hobson*, 14 Ch. D. 562).

Where at the trial it was agreed that judgment should be entered for the plaintiff subject to a reference under the C. L. P. Act, 1854, and there was no provision that judgment might be entered for the defendants if the amount paid into Court were sufficient, the Court refused to give the defendant his costs under these circumstances (*Wimshurst* v. *Barrow Ship. Co.*, 2 Q. B. D. 335).

As to costs of a reference as to damage in the Admiralty Division, see *The Consett*, 5 P. D. 77; *The Savernake*, Ibid,. 166; *The Mary*, 31 W. R. 248).

In an administration action by next of kin or legatee, where the estate is insufficient for payment of debts, the plaintiff is not entitled to solicitor and client costs, but when the plaintiff does not go on with the action, and a creditor then takes the conduct of it for the benefit of all the creditors and succeeds in recovering the fund, he is entitled to his costs as between solicitor and client (per Jessel, M.R., in *Richardson* v. *Richardson*, 14 Ch. D. 613).

As a general rule in partition actions the costs should be borne by the parties in proportion to their interests, as declared by the judgment; they can be taxed as between solicitor and client only by consent of the parties (*Ball* v. *Kemp-Welch*, 14 Ch. D. 512).

The duties of an administrator and receiver, pending a probate action, commence from the date of the order of appointment, and if the decree in the action be appealed from, do not cease until the appeal has been disposed of (*Taylor* v. *Taylor*, 6 P. D. 29).

Where testamentary expenses were to be paid out of a particular fund, the costs of an administration action were held included (*Penny* v. *Penny*, 11 Ch. D. 440).

A trustee in bankruptcy may be made personally liable for costs of an action to which he is a party; he may, however, be recouped out of the bankrupt's estate if he have acted *bonâ fide* and there are funds (*Pitts* v. *La Fontaine*, 6 App. Cas. 486).

Where an official liquidator has failed on a summons to recover money for the company, and has been ordered to pay the costs of the summons out of the assets of the company, these costs will be paid out of the assets, in priority to the costs in the winding-up (*Re Home Invest. Socy.*, 14 Ch. D. 167).

As to the costs of a partnership action, see *Potter* v. *Jackson*, 13 Ch. D. 845.

An order against a next friend for payment of costs is final, unless there be some reservation in the order (*Caley* v. *Caley* 25 W. R. 528).

The costs of a petition by an infant married woman for payment of a fund in Court to her husband, which was refused, were directed to be paid out of the income of the fund (*Shipway* v. *Ball*, 44 L. T. 49).

The costs of proceedings before the Registrar of Trademarks and previous to the case coming into the High Court, are not within this rule (*Re Brandreth's Trademark*, 9 Ch. D. 618).

When an injunction is granted and an inquiry as to damages directed in Chambers, the costs of the inquiry will be reserved (*Slack* v. *Midland Ry.*, 16 Ch. D. 81).

Costs of proceedings incurred by a party after the date of the order taking the conduct of the action from him, although it has not been drawn up, will not be allowed to him (*Re Minter*, W. N. 1881, 31).

As to the costs of proceedings for the purpose of getting the Attorney-General's fiat for the filing of an information, see *Att.-Gen.* v. *Corp. of Halifax*, 12 Eq. 262.

Taxation of issues of law and fact.

2. When issues in fact and law are raised upon a claim or counter-claim, the costs of the several issues respectively, both in law and fact, shall, unless otherwise ordered, follow the event.

Sect. 5 of the County Court Act, 1875, does not apply to a counter-claim (*Blake* v. *Appleyard*, 3 Ex. D. 195; *Davidson* v. *Grey*, 40 L. T. 192). When the claim and counter-claim are both dismissed with costs, the defendant has only to pay the sum by which the costs have been augmented by the counter-claim (*Saner* v. *Bilton*, 11 Ch. D. 416; *Mason* v. *Brentini*, 15 Ch. D. 287. A).

The *event* is complex, and the word must be read distributively, as regards distinct causes of action. The general costs of the cause follow the judgment, but the costs of the particular issues must be respectively taxed, in favour of the party who has succeeded on them (*Myers* v. *Defries*, 5 Ex. D. 180. A; quoted and approved in *Stooke* v. *Taylor*, 5 Q. B. D. 577; *Ellis* v. *De Silva*, 6 Q. B. D. 521. A; and see also *Cole* v. *Firth*, 4 Ex. D. 301; *Chatfield* v. *Sedgwick*, 4 C. P. D. 459. A; explained in the judgment of Cockburn, C.J., in *Stooke* v. *Taylor*, 5 Q. B. D. 579; and the judgment of Brett, L.J., in *Baines* v. *Bromley*, 6 Q. B. D. 695. A; *Sparrow* v. *Hill*, 8 Q. B. D. 479. A).

Removal from inferior Court.

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.

Action remitted under 19 & 20 Vict. c. 108, s. 26.

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.

In *Knight* v. *Abbott*, 10 Q. B. D. 11, it was held that there was no power to order an action for unliquidated damages to be tried in a County Court, even where the writ is indorsed with a claim for a specified sum.

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.

C. O. XXI. 12. Delay by neglect of solicitor.

6. In any cause or matter in which security for costs is required, the security shall be of such amount, and be given at such times, and in such manner and form, as the Court or a Judge shall direct.

LV. 2. Security for costs.

The Court may order security for costs to be given, for such an amount, and at such time or times, as may seem best (*Rep. of Costa Rica* v. *Erlanger*, 3 Ch. D. 69. A; *Lydney Iron Co.* v. *Bird*, 23 Ch. D. 358).

The Married Women's Property Act, 1882, enables a married woman to bring an action in her own name without giving security for costs, and although the cause of action arose before the Act came into operation (*Severance* v. *C.S.S.A.*, 48 L. T. 485; *Threlfall* v. *Wilson*, 8 P. D. 18; *James* v. *Barraud*, 31 W. R. 786).

A plaintiff who had gone into liquidation was ordered to give security for past and future costs, where there was no unnecessary delay in making the application (*Brocklebank* v. *King's Lynn Co.*, 3 C. P. D. 365. A). In the *Carta Para Mining Co.*, 19 Ch. D. 457, an insolvent petitioner in a winding-up was ordered to give security for costs.

When a company in liquidation amended their statement of claim in an action, by which they raised a fresh case, involving much additional evidence, they were directed to give security for costs (*Northampton Waggon Co.* v. *Midland Waggon Co.*, 7 Ch. D. 500. A).

A plaintiff who goes out of the jurisdiction may be required to give security for costs, past as well as future (*Massey* v. *Allen*, 12 Ch. D. 807). If he be a foreigner, an order for him to give security for costs will not be granted, unless it be shown that he is actually abroad at the time of the application (*Redondo* v. *Chaytor*, 4 Q. B. D. 453. A). If he fail to give the required security, the action may be dismissed for want of prosecution, without getting the order for giving security discharged (*La Grange* v. *McAndrew*, 4 Q. B. D. 210). In the Probate Division the mate of a foreign vessel, though not domiciled in England, was allowed to proceed with an action for wages without giving security (*The Don Ricardo*, 5 P. D. 121). A plaintiff who is out of the jurisdiction will not as a rule be obliged to give security for the costs of a counter-claim, which is in the nature of a new action (*Winterfield* v. *Bradnum*, 3 Q. B. D. 324. A).

If an Englishman and a foreigner join as plaintiffs in an action alleging a right to exist in both, or, in the alternative, in either of them severally, the foreigner is not required to give security for costs. If he have been improperly joined, his co-plaintiff is

liable for the costs thereby incurred (*D'Hormusgee & Co.* v. *Grey*, 10 Q. B. D. 13).

In an action for the dissolution of a partnership, carried on in England, where the property was in England, Bacon, V.C., thought it unnecessary to require the foreign plaintiff to give security for costs (*Hamburger* v. *Poeting*, 47 L. T. 249).

Where the Judge has exercised his discretion as to the amount of security, the Court of Appeal will not interfere (*Sturla* v. *Freccia*, W. N. 1877, 188. A).

A defendant has a right to take any proceeding to defend himself, without being called upon to give security for costs (*Re Percy Iron Co.*, 2 Ch. D. 531). Thus, Malins, V.C., in *Spiller* v. *Paris Skating Rink Co.*, 27 W. R. 224, refused to order the defendant company to give security for the costs of a commission to take evidence abroad. In this case there was not even a suggestion that defendants were in insolvent circumstances. Even where he is nominally plaintiff, though really defendant (*Belmonte* v. *Aynard*, 4 C. P. D. 352. A). He may also set up a counter-claim which is less than the original claim (*Mapleson* v. *Massini*, 5 Q. B. D. 144). The contrary has apparently been held in an Admiralty action *in rem* (*The Julia Fisher*, 2 P. D. 115).

As to security by the owners of the cargo in an action in the Admiralty Division, see *The Carnarvon Castle*, 26 W. R. 876. A.

When a County Court Judge was made a respondent, the Court thought it an additional reason for ordering security to be given (*Clarke* v. *Roche*, 46 L. J. Ch. 372. A).

Time for taking steps in a cause ceases to run till the order is complied with (Order LXIV. 6).

LV. 3. Security for costs when 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.

Lower scale.

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.

Higher scale.

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; 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 between solicitor and client.

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.

Costs occasioned by misconduct of solicitor.

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 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 authorize 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.

Where a solicitor has commenced an action in the name of a plaintiff without authority, the proper course is for the plaintiff to serve notice of motion on the defendant as well as on the solicitor that the action may be dismissed and that the solicitor may pay the costs of the plaintiff as between solicitor and client and the costs of the defendant as between party and party (*Newbiggin-by-the-Sea Gas Co.* v. *Armstrong*, 13 Ch. D. 310; *Nurse* v. *Durnford*, 13 Ch. D. 764).

An order upon a solicitor personally to pay the costs of an application is not the subject of appeal except by leave (*Re Bradford*, 31 W. R. 919).

In *Clark* v. *Girdwood*, 7 Ch. D. 9 (a case decided prior to the above rule), it was held that in the absence of fraud the Court had no jurisdiction to order a solicitor who had made a mistake in the preparation of a document, to pay the costs of an action for its rectification.

Actions of contract under £50.

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.

This rule must be considered in conjunction with sec. 5 of the County Court Act, 1867, extended to actions in the High Court by sec. 67 of the Judicature Act, 1873, which says: "In any action in the Superior Court, if the plaintiff recover a sum, not exceeding 20*l.*, if the action is founded on contract, or 10*l.* if founded on tort, he shall not be entitled to any costs of suit, unless the Judge certify on the record that there was sufficient reason for bringing such action in such Superior Court, or unless the Court or a Judge at Chambers shall by rule or order allow such costs." Under this section it was held that if the plaintiff succeed in proving a claim of over 50*l.*, though the ultimate sum he recover is under 20*l.*, owing to a counter-claim, he is entitled to his costs of proving it, and the general costs of the action (*Potter* v. *Chambers*, 4 C. P. D. 457; *Neale* v. *Clarke*, 4 Ex. D. 286). In *Lowe* v. *Holme*, 10 Q. B. D. 286, the claim being for price of work done, the Court held that the inferiority of the workmanship, though in form pleaded as a counter-claim, really amounted to a defence to the action.

The issues would be taxed under Rule 2, *ante*. See also the observations of Brett, L.J., in *Baines* v. *Bromley*, Order XXI. 17, note; *Stooke* v. *Taylor*, 5 Q. B. D. 569; *Bowker* v. *Kesteven*, 47 L. T. 545).

In detinue a fancy price placed on an article to insure its return, is not a criterion on the question of costs (*Halliman* v. *Price*, 27 W. R. 490). Detinue is an action founded on tort (*Bryant* v. *Herbert*, 3 C. P. D. 389).

An action for compensation for damage to goods, through the negligence of common carriers, is an action founded on contract, within the meaning of the County Court Act, 1867; and if the plaintiff recover less than 20*l.* he is not entitled to his costs (*Fleming* v. *Manchester Ry. Co.*, 4 Q. B. D. 81); where, however, the plaintiff as unpaid vendor had exercised his right of stoppage *in transitu*, and gave the railway company notice, they were held properly liable in tort for the neglect of it (*Pontifex* v. *Midland Ry. Co.*, 3 Q. B. D. 23).

Where matters in difference are referred by consent, the costs of the action, reference, and award to abide the event, and the arbitrator finds for the plaintiff for less than 20*l.* he is deprived of his costs by the operation of the 5th sec. of the County Court Act, 1867 (*Ferguson* v. *Davison*, 8 Q. B. D. 470. A).

Where a cause has been referred to a Master with all the powers of certifying and amending of a Judge at *Nisi Prius*, a certificate that the action was suitable to be brought in the Supreme Court, must be given in the award itself (*Bedwell* v. *Wood*, 2 Q. B. D., 626; *Gelatti* v. *Wakefield*, 4 Ex. D. 249).

As to briefing more than one counsel where this rule applies, see Rule 27 (46), *post*.

C. O. XL. 4. Solicitor of Court appointed guardian *ad litem*.

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.

Solicitor's lien—set-off.

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.

A set-off for costs is allowed under Rule 27 (21), *post*. The provision with regard to the solicitor's lien only applies in the particular cause or matter, see *Wilde* v. *Walford*, 31 W. R. 518. As between the town agent and the client the lien extends only to the costs of the particular action in which he is engaged (*Lawrence* v. *Fletcher*, 12 Ch. D. 858).

Costs of award.

15. Costs may be taxed on an award, notwithstanding the time for setting aside the award has not elapsed.

Notice to tax.

16. One day's notice of taxing costs, together with a copy of the bill of costs and affidavit of increase (if any), 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 not required.

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.

Chancery Division, reference by rotation.

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.

Taxing masters to work in conjunction.

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.

C. O. XL. 26. Books and documents for taxing master.

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 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 trans-

mitted to his office, if then remaining there, to be returned to the Chambers of the Judge.

C. O. XL. 27. Transmission of documents, memorandum of.

21. When a 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.

C. O. XL. 30. Expense of drafts settled by private counsel.

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.

C. O. XL. 37. Upon interlocutory applications.

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.

C. O. XLI. 11. Charitable Trusts Act.

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. O. XLI. 12. Adjourned summons under above.

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.

Lord St. Leonard's Act.

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.

Special Allowances and General Regulations.

Extent of application.

27. The following special allowances and general regulations shall apply to all proceedings and all taxations in the Supreme Court of Judicature.

Sp. All. 1. Special matter, preparation of.

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 Order XXXII. Rule 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.

The words "when the higher scale is applicable" are omitted from this rule.

Sp. All. 2. Copy included.

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.

Sp. All. 3. Instructions.

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.

This rule has been made much more general.

Sp. All. 4. Affidavits, preparation of.

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.

Sp. All. 5. Attendances to settle.

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.

Sp. All. 6. Same solicitor for both parties.

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.

Sp. All. 7. Perusals, same solicitor.

7. As to perusals the fees are not to apply where the same solicitor is for both parties.

C. O. XL. 12. Several defendants separate pleadings.

8. Where the same solicitor is employed for two or more defendants, and separate pleadings are delivered or other proceedings had by or 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.

Sp. All. 8. 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.

The fees of surveyors for making surveys necessary for the proper conduct of the case are proper to be allowed on taxation (*Mackley* v. *Chillingworth*, 2 C. P. D. 273).

Sp. All. 9. Agency correspondence.

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.

Settling and passing orders.

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.

Sp. All. 10. Attendance at Judges' 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 1*s.* provided, not exceeding £2 2*s.*, or where the higher scale is applicable £3 3*s.*, or in proceedings to wind up a company £5 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 2*s.*, £3 3*s.*, and £5 5*s.*

Sp. All. 11. Useless attendances.

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.

Sp. All. 12. Words in folio.

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.

Sp. All. 13. Advice of counsel.

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.

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. Sp. All. 14. Counsel at Chambers.

This rule applies to the taxation of costs between solicitor and client as well as between party and party (*Re Chapman*, 10 Q. B. D. 54. A).

17. As to inspection of documents under Order XXXI. Rule 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. Sp. All. 15. Inspection of documents.

The successful party can be allowed no costs of producing documents at the office of his own solicitor or of inspecting his opponent's documents (*Brown* v. *Sewell*, 16 Ch. D. 517. A).

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. Sp. All. 16. Copies of documents in possession of another.

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 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. Sp. All. 17. Costs to be tendered on service of petition.

Where mortgagees were served with a petition, but were not

tendered their costs, and they appeared on the petition and only asked for their costs, Kay, J., merely allowed each of them the sum of two guineas out of the petitioner's share (*Somes* v. *Martin*, W. N. 1882, 113). Trustees who were respondents to a petition under the Trustee Relief Act, and had accepted two guineas for their costs, were not allowed their costs of appearance on petition (*Re Sutton*, W. N. 1882, 68). Under the former rule two guineas was the sum allowed.

Sp. All. 18. Unnecessary proceedings.

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.

This rule has been made considerably more extensive in its operation.

On taxation the Master must inquire into the propriety of proceedings in an action, though not specially directed to do so. He cannot refuse to make the inquiry where an order is made to stay proceedings on payment of costs (*Baines* v. *Wormsley*, 47 L. J. Ch. 844).

Sp. All. 19. Set-off.

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.

See Order LXV. 14.

Whenever a party entitled to receive costs is liable to pay costs to the other party, the Taxing Master may adjust the costs by way of deduction or set-off only in respect of the costs of the same action, and not in respect of any separate proceeding between the same parties (*Barker* v. *Hemming*, 5 Q. B. D. 609. A).

Sp. All. 20. Note by Chief Clerk.

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.

Sp. All. 21. Unnecessary appearance.

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.

Sp. All. 22a. Extension of 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 Order 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.

All but the first clause of this rule is new.

Sp. All. 23. Powers of taxing officers.

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 allocaturs, 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.

C. O. XL. 25. Account consisting partly of bill of costs.

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.

Sp. All. 24. Parties to attend.

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 con-

sider 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.

Sp. All. 25. Refusal or neglect to bring in costs.

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 party, 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.

Sp. All. 26. Extraordinary allowances.

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.

Costs of copies of shorthand writers' notes of the evidence will not be allowed on taxation between party and party unless the Judge at the trial so direct (*Kirkwood* v. *Webster*, 9 Ch. D. 239; *Gandy* v. *Beddaway*, W. N. 1883, 89; or it is so ordered by the Divisional Court, *Watson* v. *G. W. Ry. Co.*, 6 Q. B. D. 163).

Special directions from the Court of Appeal with regard to shorthand notes used in the appeal should be applied for (*Ashworth* v. *Outram*, 9 Ch. D. 483. A). Where such notes of evidence and proceedings in the Court below are used on appeal, an application to be allowed on taxation the costs of the notes as costs of the appeal must be made before the judgment of the Court of Appeal is entered (*Hill* v. *Metrop. Asylum*, 49 L. J. 668. A). Such a direction will only be inserted in exceptional cases, the Judge's notes, supplemented by those of counsel, being in general considered a sufficient record of the evidence (*Earl De La Warr* v. *Miles*, 19 Ch. D. 80. A; *Kelly* v. *Byles*, 13 Ch. D. 693. A; *Vernon* v. *Vestry of Paddington*, 44 L. T. 229. A).

When the shorthand notes are essential to the proper hearing of the case the costs will be allowed (*Lee Cons. Board* v. *Button*, 12 Ch. D. 383. A; *Duchess of Westminster Ore Co.*, 10 Ch. D. 307. A).

A solicitor should be careful to obtain the authority of his client before directing shorthand notes to be taken, or other unusual expense to be incurred, and to point out to the client that he may be liable to pay the costs in any event (*Re Blyth & Fanshawe*, 10 Q. B. D. 207. A).

Costs of brief copies of notes in a reference for the use of counsel will not be allowed unless by agreement (*Wells* v. *Mitcham Gas Co.*, 4 Ex. D. 1). The cost of copies of pleadings for the use of counsel and Judges on an interlocutory application, will be allowed where such copies were necessary to enable the case to be properly argued (*Warner* v. *Mosses*, 19 Ch. D. 72. A).

When the *vivâ voce* evidence is voluminous, and the parties cannot properly argue the appeal without referring to all parts of it, the Court will allow the costs of printing (*Bigsby* v. *Dickinson*, 4 Ch. D. 24. A).

The Court never interferes with the Master's discretion in matters which are peculiarly within his province, unless it be satisfied that he has been clearly wrong or unless some principle of taxation be involved (per Brett, J., in *Wakefield* v. *Brown*, L. R. 9 C. P. 411. As for instance obtaining the advice of counsel on behalf of a trustee (*Re Braund*, 39 L. J. Ch. 384).

Sp. All. 27. Further provisions.

30. As to any work and labour properly performed 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.

C. O. XL. 7. Amendment of plaintiff's pleadings.

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.

C. O. XL. 8. Defendant's necessary amendments.

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 thereof deducted from the costs to be paid by the defendant to the plaintiff.

C. O. XL. 38. Taxation without order.

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.

C. O. XL. 39. Costs to be taxed in case 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.

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.

C. O. XL. 40. To be paid out of fund in Court.

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.

15 & 16 Vict. c. 80, s. 43. Counsel and experts.

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.

Sp. All. 28. Old practice retained.

Brett, L.J., has pointed out, in *Sparrow* v. *Hill*, 8 Q. B. D. 480. A, that it is not always possible to apply the same rules of taxation to an action in the Q. B. D. as an action in the Ch. D., because the subject-matters are different.

In *Knight* v. *Purssell*, 49 L. J. Ch. 120, the plaintiff claimed an injunction in respect of three separate subjects of complaint, succeeded as to one and failed as to the others. The order for taxation directed that the defendant was to have the costs of so much of the action as had been dismissed, and the plaintiff of the

rest of the action. The Taxing Master taxed the plaintiff's and defendant's costs of the whole action and allowed one-third to the plaintiff, and two-thirds to the defendant: Held, that he had proceeded on the usual principle.

Sp. All. 29. Discretion of Master.

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.

The last clause of this rule is new.

The Taxing Master may require an affidavit of increase to prove the number of days witnesses were absent from home, &c., or not, at his discretion (*Smith* v. *Day*, 16 Ch. D. 726).

As to an order directing the costs of special documents and exhibits to be taxed, see *Re De Rozas*, W. N. 1883, 159.

It would appear that the costs and expenses of witnesses are in the discretion of the Master (*Thomas* v. *Parry*, W. N. 1880, 184).

Sp. All. 30. Objections to taxation.

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.

This rule only applies where particular items are objected to, not where the general principle of taxation is disputed (*Sparrow* v. *Hill*, 7 Q. B. D. 368). On appeal, 8 Q. B. D. 479, this point was not touched upon.

A person who is not a party to the making of an order for taxation of costs, and who desires to have reviewed the taxation made under it, ought to apply to have the order for taxation set aside (*Charlton* v. *Charlton*, 31 W. R. 237).

Sp. All. 31. Review of taxation.

40. Upon such application the taxing officer shall reconsider and review his taxation upon such objec-

tions, 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.

Sp. All. 32. Judge's order for review.

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.

The clause as to the fourteen days' limit is new.

Where accounts are being taken before the Chief Clerk, either party may bring an item before the Judge without any summons (Order LV. 69), but if the solicitor insist upon this right in an unreasonable manner, the Court may make him pay the costs personally (*Upton* v. *Brown*, 20 Ch. D. 731).

Sp. All. 33. Evidence before the Judge.

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.

Sp. All. 34. District Registry.

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.

Retaining fee to counsel.

44. No retaining fee to counsel shall be allowed on taxation as between party and party.

As to counsel's fees in general the Court will not interfere with the Master's discretion as to the amount allowed for counsel's fees

unless it have been exercised in an unreasonable manner (*Hargreaves* v. *Scott*, 4 C. P. D. 21), or unless a gross mistake has been made (*Brown* v. *Sewell*, 16 Ch. D. 517. A).

Conferences.

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.

Two counsel. Sum under £50.

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.

Two juniors.

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.

The mere fact that one junior has been called within the bar does not of itself justify a third being retained (*Re Lafitte*, 20 Eq. 650; *France* v. *Carver*, W. N. 1875, 171). Where a junior counsel who had prepared the pleading, was called within the bar, before the hearing and after a leader had been retained, the costs of three counsel were allowed because it was considered that the case was of such a description as to make the retaining a leader at that stage of the cause, proper (*Cousens* v. *Co sens*, L. R. 7 Ch. 48, commented on in *Betts* v. *Cleaver*, *Ibid.*, 516).

On taxation between party and party, costs of three counsel will be allowed only where the Court considers it a case in which a prudent man would have employed three (*Kirkwood* v. *Webster*, 9 Ch. D. 239).

Refreshers.

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, 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	gs.
To the second, if three counsel .	„ 3 to 7	„
To the third, if three counsel or the second, if only two .	„ 3 to 5	„

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.

Briefs prematurely prepared.

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.

C. O. XL. 21. Cause struck out on plaintiff's default.

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.

Clerks' fees.

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

Signature of counsel.

52. No fee to counsel shall be allowed on taxation unless vouched by his signature.

Affidavits, office copy.

53. In cases in which an original affidavit can be used, and to which Order XXXVIII. Rule 15 applies, it shall not be necessary to take an office copy.

Affidavit of discovery.

54. It shall not be necessary to take an office copy of any affidavit of discovery of documents, and the copy delivered by the party filing it may be used as against such party.

Improper expense on taxation.

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.

Costs to be paid out of fund in Court. Notice to client.

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.

Extension of time.

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.

Indorsement on bill left for taxation.

58. Every bill of costs which shall be left for taxation shall be indorsed 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.

As to the signature by a new firm to a bill of costs for work done by the old firm, see *Penley* v. *Anstruther*, 48 L. T. 664; a case decided on the Attorneys and Solicitors Act, which requires a signed bill of costs to be delivered to the party.

A solicitor cannot avoid the taxation of a bill delivered to the person chargeable, by withdrawing it and delivering an amended bill, even though he offer to strike out overcharges objected to upon the same day as the delivery of the original bill (*Re Holroyde*, 29 W. R. 599).

23 & 24 *Vict. c.* 127, *s.* 28.

XXVIII. In every case in which an attorney or solicitor shall be employed to prosecute or defend any suit, matter, or proceeding in any Court of Justice, it shall be lawful for the Court or Judge 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 upon the property recovered or preserved, 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 *bonâ fide* purchaser for value without notice be absolutely void and of no effect as against such charge or right. 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. Charging order for costs.

An application by a solicitor for an order charging his costs upon the interest of a party to an action in a fund in Court is properly made by a petition in the action; the other parties to the action ought not to be served with the petition (*Brown* v. *Trotman*, 12 Ch. D. 880). But it need not necessarily be made on petition, in a suitable case it may be obtained on summons, and need not be intituled either in the matter of the Act or of the solicitor (*Hamer* v. *Giles*, 11 Ch. D. 942).

In a summons for this purpose substituted service may be allowed (*Hunt* v. *Austin*, *Ex parte J. N. Mason*, 9 Q. B. D. 598 and see now Order LXVII. 6).

An application for a charging order is such a further proceeding under Order XLIX. 2, as will be ordered to be heard before the Judge who tried the case (*Porter* v. *West*, W. N. 1880, 195).

In an action intituled in the Chancery Division, and tried at the Assizes before a Judge, he is the proper person to hear such an application (*Owen* v. *Henshaw*, 7 Ch. D. 385).

A petition has been presented by the personal representative of a solicitor (*Baile* v. *Baile*, 13 Eq. 497), in which case the solicitor had been retained by the next friend of an infant, and the object of the suit was to obtain an allowance for his maintenance.

In *Catlow* v. *Catlow*, 2 C. P. D. 362, the cause was tried in the Court of Common Pleas at Lancaster, and the application for a charging order was made in the Common Pleas Division at Westminster, where the matter was heard and determined upon the authority of *Wilson* v. *Hood*, 2 H. & C. 148, 33 L. J. Ex. 204. In *Higgs* v. *Schroeder*, 3 C. P. D. 252, however, the Court set aside a charging order made by a Judge at Chambers, on the ground that the Judge who tried the case was the proper person to make the order, being the only person who could exercise a discretion upon the merits.

When an action is pending in the Queen's Bench Division, a

Judge at Chambers has jurisdiction to make this order. Money paid into Court in the action is property recovered or preserved within the meaning of the section (*Clover* v. *Adams*. 6 Q. B. D. 622). If he have discharged himself from the position of plaintiff's solicitor, but has not done so wrongly or improperly, the solicitor is still entitled to a charge on the property recovered (*Ibid.*). He is not debarred of his right because by an order of the Court made prior to the order to charge the solicitor his costs were to be paid out of a specified fund (*Pilcher* v. *Arden*, 7 Ch. D. 318. A).

Where there was a technical difficulty felt in giving the solicitors a charge upon the entire fund in a partition action, Fry, J., granted an injunction to prevent the plaintiffs from receiving any money in the action, or by way of compromise, without notice to the solicitors (*Lloyd* v. *Jones*, 27 W. R. 655).

There must be an actual "recovery or preservation" of the property, and it must take place through the instrumentality of the solicitor. Hence it is not possible to make a charge upon an easement—*e.g.*, the right to light and air (*Foxon* v. *Gascoigne*, L. R. 9 Ch. 654). The real question in such cases must be whether proof has been given to the satisfaction of the Court of the actual recovery or preservation of property by means of the suit, which is always a question of fact (per Selborne, L.C., in *Pinkerton* v. *Easton*, 16 Eq. 493 ; *Charlton* v. *Charlton*, W. N. 1883, 141).

A trustee is a person whose duty it is to preserve the property; he is the owner of the property for this purpose, and he represents the *cestui que trust;* as he represents the *cestui que trust*, his solicitor is entitled to a charge upon the whole of the trust property recovered through his exertions (*Bulley* v. *Bulley*, 8 Ch. D. 479. A).

In *Re Fiddey, Jones* v. *Frost*, L. R. 7 Ch. 773, it was urged that the solicitor was not entitled to an order, as the suit had been practically useless, but the Court decided that the suit had not been practically useless, as a cloud or doubt which affected the title had been removed, and that as the plaintiff knew that there was a pending suit, and that costs must have been incurred in it, he ought to have inquired whether the solicitor had been paid.

Plaintiffs in an action having mortgaged their interest in an estate, it was held that the mortgagees, having notice of the action, they were presumed to have known the rights of the solicitor to the plaintiff, and that his charge ought not to be postponed to the mortgagee, he not having been guilty of any misrepresentation or concealment (*Faithful* v. *Ewen*, 7 Ch. D. 495. A).

In *Twynam* v. *Porter*, 11 Eq. 181, it was attempted to deprive a solicitor of his rights by the principals entering into a compromise without his knowledge.

As to charging an annuity given to a married woman for her separate use without power of anticipation see *Re Keane*, 12 Eq. 115.

Where a trustee in bankruptcy intervenes and adopts the action he takes the fruits of it, subject to the solicitor's lien for costs up to that date (*Emden* v. *Carte*, 19 Ch. D. 311. A).

The lien of a solicitor for his costs of recovering a sum of money takes priority of a garnishee order *nisi* (*Shippey* v. *Grey*, 49 L. J. 524. A; *Sympson* v. *Prothero*, 26 L. J. Ch. 671 ; *Birchall* v. *Pugin*, L. R. 10 C. P. 397. The lien upon the interest of his

client in a fund paid into Court through his exertions would seem to be paramount to the claim of an assignee for value without notice (*Haymes* v. *Cooper*, 33 L. J. Ch. 488).

As a general rule, the Statute of Limitations does not begin to run until the termination of the action or the death of the client (*Whitehead* v. *Lord*, 7 Ex. 691).

ORDER LXVI.

Notices, Printing, Paper, Copies, Office Copies, Minutes, &c.

Rules 2, 8 and 9 are new. The remainder of the Order is taken from R. S. C. (Costs).

1. All notices required by these Rules shall be in writing, unless expressly authorized by the Court or a Judge to be given orally. *LVI.* 1. Notices how given.

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. Accounts written on foolscap.

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. *LVI* 2. Printing.

4. Any affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript. *LVI.* 3. Affidavits.

5. Where any written deposition of a witness has been filed, such deposition shall be printed, unless otherwise ordered. Costs. O. I. Depositions.

The words "for use on trial" have been omitted.

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. Costs. O. II. Depositions and affidavits previously used.

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: Costs. O. V.

(*a.*) The party on whose behalf the deposition or affidavit is taken and filed is to print the Party to print.

same in the manner provided by Rule 3 of this Order:

Copy to be furnished.

(*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:

Payment for.

(*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 ½*d.* per folio for every other copy:

Amount credited.

(*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:

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 Order LV. Rule 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:

Proviso at the beginning of this Rule is new.

Production.

(*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 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:

How obtained.

(*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 fur-

nished, 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 :

Injunction or *ne exeat regno*.

(*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 :

Affidavit to state on whose behalf filed.

(*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 :

Name and address.

(*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 :

Numbering.

(*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 copy shall be written in a neat and legible manner on the same paper as in the case of printed copies :

Refusal to furnish.

(*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 :

Costs of printing.

(*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.

Filing in Admiralty Division.

8. On filing any instrument or document in Admiralty actions, the solicitor shall state, in writing, on a printed form called a minute, to be obtained in the Admiralty Registry, the nature of the instrument or document filed, and the date of the filing thereof.

Admiralty Minute Book.

9. In Admiralty actions a record of all such minutes as in the last preceding Rule mentioned, and of all actions commenced and appearances entered, and of all orders of the Court, shall be entered in a book to be kept in the Admiralty Registry, called the "Minute Book."

ORDER LXVII.

I. Service of Orders, &c.

There is no corresponding Order to this.

Original, 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.

Manner of service.

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 Orders IV. and XII., with any person resident at or belonging to such place.

Official notices by post.

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.

Filing with proper officer.

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 Orders IV. and XII., all writs, notices, pleadings, orders, summons, 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 summons.

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.

Subsequent appearance by 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.

Where party interested appears.

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.

Affidavits of service.

9. Affidavits of service shall state when, where, and how, and by whom, such service was effected.

II. Admiralty Actions.

Instrument, how issued.

10. Every instrument, under the seal of the Court, and prepared in the Admiralty Registry, shall be issued on a notice filed by the solicitor applying for the same, and shall bear date on the day on which it is issued.

To be served within twelve months.

11. Every instrument shall be served within twelve months from the day on which it bears date, otherwise the service thereof shall not be valid.

Sundays, &c.

12. No instrument except a warrant shall be served on a Sunday, Good Friday, or Christmas Day.

Service by Marshal.

13. Every warrant or other instrument required to be served by the Marshal shall be left by the solicitor taking out the same with a notice in the Admiralty Registry.

Verified by certificate.

14. The service of any instrument by the Marshal shall be verified by his certificate. The service of any instrument by a solicitor, his clerk, or agent, shall be verified by an affidavit.

ORDER LXVIII.

Application of Rules in Crown Revenue and Matrimonial Cases.

The application of these Rules has been somewhat extended.

LXII. 1. Proceedings excepted from the rules.

1. Subject to the provisions of this Order, nothing in these Rules, save as expressly provided, shall affect the procedure or practice in any of the following causes or matters :—

(*a.*) Criminal proceedings ;

(*b.*) Proceedings on the Crown side of the Queen's Bench Division ;

(*c.*) Proceedings on the Revenue side of the Queen's Bench Division ;

(*d.*) Proceedings for Divorce or other Matrimonial Causes.

In the *Att.-Gen.* v. *Metrop. Dist. Ry.*, 5 Ex. D. 218. A, the Company applied to have the evidence taken orally. It was held that though the practice in Revenue cases had not been abolished, it must be worked with reference to the principle established by the Judicature Act that oral evidence is to be had where there is no special reason to the contrary.

2. The following Orders shall, as far as they are applicable, apply to all civil proceedings on the Crown side of the Queen's Bench Division, including mandamus and prohibition, and also to *quo warranto*, and to all proceedings on the Revenue side of the said Division; namely:— *LXII.* 2. Application of certain Orders to excepted proceedings.

(*a.*) Order XXVIII. (Amendment);
(*b.*) Order XXXIV. (Special case);
(*c.*) Order XXXVIII. (Affidavits);
(*d.*) Order LII. (Motions);
(*e.*) Order LVIII. (Appeals);
(*f.*) Order LXIV. (Time);
(*g.*) Order LXV. (Costs);
(*h.*) Order LXVI. (Notices, &c.);
(*i.*) Order LXX. (Non-compliance);

Provided, that Order LVIII. shall not apply to *quo warranto*.

A case stated by a Sessions on appeal against a poor rate is a civil proceeding on the Crown side of the Queen's Bench Division (*Clark* v. *Overseers of Fisherton Angar*, 6 Q. B. D. 139). So is a *certiorari* to quash an order of Justices under the Public Health Act, 1875, s. 158; *Reg.* v. *Morris*, 31 W. R. 609). A special case upon appeal against a summary conviction by Justices under the Weights and Measures Act would appear not to be so (*Reg.* v. *Baxendale*, 6 Q. B. D. 144, note).

3. Where pleadings in prohibition are ordered, the pleadings and subsequent proceedings, including judgment and assessment of damages, if any, shall be, as nearly as may be, the same as in an ordinary action for damages. Pleadings in prohibition.

4. Affidavits used in applications on the Crown side of the Queen's Bench Division shall be intituled in the Queen's Bench Division. Affidavits on Crown side.

ORDER LXIX.

Arrest of Defendant under s. 6 of the Debtors Act, 1869.

This Order is taken from R. G. M. T., 1869, rr. 6–11.

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 *R. G. M. T.* 6. Order, how made

and discharged.

or vary the order, or to be discharged from custody, or for such other relief as may be just.

Matters relating to the liberty of the subject are not within the jurisdiction of a Master (Order LIV. 12*a*).

R. G. M. T. 6. Order, how indorsed.

2. An order to arrest shall before delivery to the sheriff be indorsed with the plaintiff's address for service, as required by Order IV. Rules 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.

R. G. M. T. 7. Security, how given.

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.

R. G. M. T. 8. Control of the Court.

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.

R. G. M. T. 9. Costs.

5. Unless otherwise ordered, the costs of and incidental to an order of arrest shall be costs in the cause.

R. G. M. T. 10. Discharge upon payment.

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.

R. G. M. T. 11. Indorsement of date of arrest.

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.

Rule 1 of this Order has been extended to "any Rule of practice for the time being in force." Rule 2 of the former Order is now Order XXVIII. 12. The rest of the Order is new.

LIX. 1. Proceedings not rendered void.

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.

Irregularity Laches.

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 to be set out.

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.

LXIII. 1.

1. The provisions of the 100th section of the Principal Act shall apply to these Rules.

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:—

"Originating Summons" means a summons by which proceedings are commenced without writ:

"Person" includes a body corporate or politic:

"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:

"Proper officer" means an officer to be ascertained as follows:—

(*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:

"Receiver" includes consignee or manager appointed by or under an order of the Court:

"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:

"The Principal Act" means the Supreme Court of Judicature Act, 1873:

"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:

"Central Office" means the Central Office of the Supreme Court of Judicature.

Singular imports the plural.

2. In these Rules, unless repugnant to the context, the singular number shall include the plural, and the plural number shall include the singular.

ORDER LXXII.

General Rules.

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.

FORMS.

APPENDIX (A).

PART I.

Forms of Writs of Summons, &c.

General Form of Writ of Summons.

No. 1.

18 . [*Here put the letter and number.*]

In the High Court of Justice. Between A. B. Plaintiff,
Division. 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 of , 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

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.

(*Manchester*) *District Registry.*

Between

Plaintiff,

and

Defendant.

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.

* Insert address of office.

The plaintiff's claim is

This writ, &c.

(*N.B.—The address for service must be within the district.*)

This writ was served, &c.

No. 4.

Specially Indorsed Writ for issue from District Registry.

18 . [*Here put the letter and number.*]
In the High Court of Justice.
Division.

(*Manchester*) *District Registry.*

Between

Plaintiff,

and

Defendant.

VICTORIA, by the grace of God, *&c.* to
in the

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 h 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 dominions, notice of the writ, and not the writ itself, is to be served upon him.

No. 6.

Specially Indorsed Writ for service out of the Jurisdiction.

[*Heading as in Form* 1.]

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.

* Insert No. of days directed by Court or Judge.
† If notice of the writ is to be served, insert here "of notice."

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 is paid to the plaintiff or h solicitor or agent within* days from service† hereof, further proceedings will be stayed.

This writ was issued, &c.

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.

* Insert No. of days limited for appearance.
† If notice to be served, insert here "of notice."

No. 7.

Writ from District Registry for Service out of the Jurisdiction.

[*Heading as in Form* 3.]

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 of 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,"

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.

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.

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 this 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

* Insert No. of days directed by Court or Judge.

† If notice of writ is to be served, insert here, "notice 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 £ [*or* such sum as may be allowed on taxation] for costs. If the amount claimed be paid to the plaintiff or h

solicitor or agent within* days from service† hereof, further proceedings will be stayed.

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.

* Insert No. of days limited for appearance.

† If notice of writ is to be served, insert here "notice of."

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.
or
X. Y. of &c.
Solicitor for A. B.

In the High Court of Justice.
Division.

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. 11.

Writ of Summons in Admiralty Action in rem.

18 . [*Here put the letter and number*].

In the High Court of Justice,
Probate, Divorce, and Admiralty Division.
Between A.B., plaintiff,
and
The owners of the

VICTORIA, by the grace of God, *&c.*

To the owners and parties interested in the ship or vessel of the port of [*or* cargo, *as the case may be*].

We command you, that within eight days after the service of this writ, inclusive of the day of such service, you do cause an appearance to be entered for you in the Probate, Divorce, and Admiralty 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.

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, &c.

Indorsement to be made on the Writ after Service thereof.

This writ was served by X. Y. [*here state the mode in which the service was effected, whether on the ship, cargo, or freight, according to Order IX., Rules* 11, 12, 13, *and* 14, *as the case may be*] on the day of 18 .

(Signed)

X. Y.

No. 12.

Writ in Admiralty Actions for Issue from District Registry.

18 . [*Here put letter and number.*]

In the High Court of Justice.
Division.
(*Manchester*) *District Registry.*

Between

Plaintiff,

and

The owners of the

Defendants.

Victoria, by the grace of God, *&c.* to the owners and parties interested in the ship or vessel of the port of and

We command you, that within eight days after the service of this writ, 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.

* Insert address of office.

The plaintiff's claim is for

This was issued by, &c.

(N.B.—*The address for service must be within the district.*)

This writ was served by me* on the day of 18 .

* State mode of service.

Indorsed the day of 18 .

(Signed)
(Address)

No. 13.

Affidavit to lead Warrant in a Cause of Restraint.

[*Heading as in Form* 11.]

I, A. B. make oath and say as follow :—

1. I am the lawful owner of [*state number*] sixty-fourth shares of the or vessel belonging to the port of ; and the value of my said shares amounts to the sum of pounds or thereabouts.

2. The said vessel is now lying at , and is in the possession or under the control of , the owner of [*state number*] sixty-fourth shares thereof, and is about to be

despatched by him on a voyage to against my consent.

3. I am desirous that the said vessel be restrained from proceeding to sea, until security be given to the extent of my interest therein for her safe return to the said port of [*the port to which the vessel belongs*], and the aid and process of the High Court of Justice are necessary in that behalf.

Sworn, &c.

No. 14.

Affidavit to lead Warrant in a Cause of Possession.

[*Heading as in Form* 11.]

I, A.B., make oath and say as follows :—

1. I am the lawful owner of [*state number*] sixty-fourth shares of the or vessel , belonging to the port of .

2. The said vessel is now lying at , and is in the possession or under the control of [*state name, address, and description of the person retaining possession, and state whether he is the master or part owner, and if owner, of how many shares*]; and the said refuses to deliver up the same to me; [and the certificate of registry of the said vessel is also unlawfully withheld from me by the said , who is in possession thereof].

3. The aid and process of the High Court of Justice are necessary to enable me to obtain possession of the said vessel [and of the certificate of registry].

Sworn, &c.,
Before me,
C. D., &c.

No. 15.

Præcipe for Warrant.

[*Heading as in Form* 11.]

I, A. B., solicitor for the plaintiff, pray a warrant to arrest [*state name and nature of property*].

Dated the day of 18 .

[*To be signed by the solicitor, or by his clerk for him.*]

No. 16.

Præcipe for Service by the Marshal of any instrument in rem other than a Warrant.

[*Heading as in Form* 11.]

I, A. B., solicitor for the [*state whether plaintiff or defendant*], pray that the [*state nature of instrument*] left herewith be duly executed.

Dated the day of 18 .

[*To be signed by the solicitor, or by his clerk for him.*]

No. 17.

Warrant of Arrest in Admiralty Action in rem.

[*Heading as in Form* 11.]

Victoria, by the grace of God, &c.

To the Marshal of the Probate, Divorce, and Admiralty Division of our High Court of Justice, and to all and singular his substitutes [*or* To the Collector or Collectors of Customs at the Port of]. We hereby command you to arrest the ship or vessel of the port of [*and the cargo and freight, &c., as the case may be*], and to keep the same under safe arrest, until you shall receive further orders from Us.

Witness, &c.

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, and of Bail and Releases in Admiralty Actions.

No. 1.

Memorandum of Appearance in General.

In the High Court of Justice.

Division. 18 No.

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 requires 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.

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, Order XVI., Rule 49.
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. 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.
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. 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.
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. 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.*]

No. 9.

Præcipe for Notice of Bail.

18 . [*Here put the letter and number.*]

In the High Court of Justice,
Probate, Divorce, and Admiralty Division.
Between A. B., plaintiff,
and
the Owners of the

I, A. B., solicitor for the [*state whether plaintiff or defendant*], tender the under-mentioned persons as bail on behalf of [*state the name, address, and description of the party for whom bail is to be given*], in the sum of £ to answer judgment in this action (*if for costs add*, so far as regards costs).

Names, addresses, and descriptions of

Sureties.	Referees.
1. _____	_____
2. _____	_____

Dated the day of 18 .

[*To be signed by the solicitor or by his clerk for him.*]

[*The names of bankers should if possible be given as referees.*]

No. 10.

Notice of Bail.

[*Heading as in Form* 9.]

Take notice that A. B., solicitor for the [*state whether plaintiff or defendant*], tenders the under-mentioned persons as bail on behalf of [*state name, address, and description of the party for*

whom bail is to be given], in the sum of £ to answer judgment in this action (*if for costs add*, so far as regards costs).

Names, addresses, and descriptions of Sureties.	Referees.
1.	
2.	

Dated the day of 18 .

G. H.,
Marshal.

No. 11.

Marshal's Report as to the Sufficiency of Proposed Bail.

[*Heading as in Form* 9.]

I hereby report that I have made diligent inquiry and certified myself that [*state names, addresses, and descriptions of the two sureties*], the proposed bail on behalf of [*state name, address, and description of the party for whom bail is to be given*] to answer judgment in this action (*if for costs add*, so far as regards costs) are respectively sufficient sureties for the sum of [*state the sums in letters*] pounds.

Dated the day of 18 .

G. H.,
Marshal.

No. 12.

Præcipe for Bail Bond.

[*Heading as in Form* 9.]

I, A. B., solicitor for the [*state whether plaintiff or defendant*], pray a bail bond for a signature of the sureties named in the annexed notice of bail and report of the Marshal.

Dated the day of 18 .

[*To be signed by the solicitor, or by his clerk for him.*]

No. 13.

Bail Bond.

[*Heading as in Form* 9.]

Whereas an action of has been commenced in the High Court of Justice on behalf of against [and against intervening]. Now, therefore, we and hereby jointly and severally submit ourselves to the jurisdiction of the said Court, and consent that, if he the said shall not pay what may be adjudged against him in the said action with costs, execution may

issue forth against us, our heirs, executors, and administrators, goods and chattels, for a sum not exceeding £

(*Signatures of sureties.*)

This bail bond was signed by the said and the sureties, the day of 18 .

Before me,

[*To be signed before the Registrar, or one of the clerks in the Registry, or before a Commissioner for Oaths.*]

No. 14.

Affidavit of Justification.

[*Heading as in Form* 9.]

I [*state name, address, and description*], one of the proposed sureties for [*state name, address, and description of the person for whom bail is to be given*], make oath and say, that I am worth more than the sum of [*state the sum in letters in which bail is to be given*] pounds after the payment of all my debts.

Sworn, &c.

No. 15.

Præcipe for Release.

[*Heading as in Form* 9.]

I, A. B., solicitor for the [*state whether plaintiff or defendant*] in an action [*state nature of action*], commenced on behalf of against the [*state name and nature of property*], now under arrest by virtue of a warrant issued from the Registry of this Division, pray a release to the said [bail having been given, *or* the action having been withdrawn by me before an appearance was entered therein, &c. *as the case may be*], and there being no caveat against the release thereof outstanding.

Dated the day of 18 .

[*To be signed by the solicitor, or by his clerk for him.*]

No. 16.

Release.

In the High Court of Justice.

Probate, Divorce, and Admiralty Division.

Victoria, by the grace of God, *&c.* To the Marshal of the Probate, Divorce, and Admiralty Division of Our High Court of Justice and to all and singular his substitutes, greeting. Whereas in an action of commenced in our said High Court on behalf of against , we did command you to arrest the said and to keep the same under safe arrest until you should receive further orders from us. Now we do hereby

command you to release the said from the arrest effected by virtue of our warrant in the said action, upon payment being made to you of all costs, charges, and expenses attending the care and custody of the property whilst under arrest in that action.

Witness, &c.

(Seal.)

Release
Taken out by

No. 17.

Præcipe for Caveat Release.

[*Heading as in Form* 9.]

I, A. B., solicitor for the plaintiff in an action [*state nature of cause*] commenced on behalf of [*state name, address, and description of plaintiff*] against [*state name and nature of property*], pray a caveat against the release of the said [*state name and nature of property*].

Dated the day 18 .

[*To be signed by the solicitor, or by his clerk for him.*]

No. 18.

Præcipe for Caveat Warrant.

[*Heading as in Form* 9.]

I [*state name, address, and description*] hereby undertake to enter an appearance in any action that may be commenced in the High Court of Justice against [*state name and nature of the property*], and within three days after I shall have been served with a notice of the commencement of any such action to give bail therein in a sum not exceeding [*state amount for which the undertaking is given*] pounds, or to pay such sum into the Admiralty Registry. And I consent that all instruments and other documents in such action may be left for me at

Dated the day of 18 .

[*To be signed by the party, or by his solicitor.*]

No. 19.

Præcipe to withdraw Caveat.

[*Heading as in Form* 9.]

I, A.B., solicitor for the [*state whether plaintiff or defendant*], pray that the caveat against [*state tenor of caveat*], entered by me on the day of 18 on behalf of [*state name*] may be withdrawn.

Dated the day of 18 .

[*To be signed by the person by whom the præcipe for the entry of the caveat was signed.*]

PART III.

General Indorsements on Writs of Summons.

Section I.

In Matters assigned by the 34th Section of the Act to the Chancery Division.

Creditor to administer estate.

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].

Legatee 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].

Partnership.

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], and to have the affairs of the partnership wound up.

By mortgagee.

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 mortgagor.

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.

Raising portions.

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.

Execution of trusts.

7. The plaintiff's claim is to have the trusts of an indenture dated and made between , carried into execution.

Cancellation or rectification.

8. The plaintiff's claim is to have a deed dated and made between [*parties*], set aside or rectified.

Specific performance.

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

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Section II.

Money Claims where no Special Indorsement under Order III., Rule 6.

Goods sold.

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.*]

Money lent.

The plaintiff's claim is *l.* for money lent [*and* interest.]

Several demands.

The plaintiff's claim is *l.*, whereof *l.* is for the price of goods sold, and *l.* for money lent, and *l.* for interest.

The plaintiff's claim is	*l.* for arrears of rent.	Rent.
The plaintiff's claim is [*or as the case may be*].	*l.* for arrears of salary as a clerk	Salary, &c.
The plaintiff's claim is	*l.* for interest upon money lent.	Interest.
The plaintiff's claim is tion.	*l.* for a general average contribu-	General average.
The plaintiff's claim is	*l.* for freight and demurrage.	Freight, &c.
The plaintiff's claim is	*l.* for lighterage.	
The plaintiff's claim is	*l.* for market tolls and stallage.	Tolls.
The plaintiff's claim is [. . . .]	*l.* for penalties under the Statute.	Penalties.
The plaintiff's claim is defendant as a banker.	*l.* for money deposited with the	Banker's balance.
The plaintiff's claim is money expended] as a solicitor.	*l.* for fees for work done [*and*	*l.* Fees, &c. as solicitors.
The plaintiff's claim is *character as auctioneer, cotton broker, &c.*]	*l.* for commission earned as [*state*	Commission.
The plaintiff's claim is	*l.* for medical attendances.	Medical attendance, &c.
The plaintiff's claim is upon policies of insurance.	*l.* for a return of premiums paid	Return of premium.
The plaintiff's claim is	*l.* for the warehousing of goods.	Warehouse rent.
The plaintiff's claim is railway.	*l.* for the carriage of goods by	Carriage of goods.
The plaintiff's claim is house.	*l.* for the use and occupation of a	Use and occupation of houses.
The plaintiff's claim is	*l.* for the hire of [furniture].	Hire of goods.
The plaintiff's claim is	*l.* for work done as a surveyor.	Work done.
The plaintiff's claim is	*l.* for board and lodging.	Board and lodging.
The plaintiff's claim is tuition of X. Y.	*l.* for the board, lodging, and	Schooling.
The plaintiff's claim is defendant as solicitor [*or* factor, *or* collector, *or*, &c.] of the plaintiff.	*l.* for money received by the de-	Money received.
The plaintiff's claim is dant under colour of the office of	*l.* for fees received by the defen-	Fees of office.
The plaintiff's claim is charged for the carriage of goods by railway.	*l.* for a return of money over-	Money overpaid.
The plaintiff's claim is charged by the defendant as	*l.* for a return of fees over-	Return of money by stakeholder.
The plaintiff's claim is with the defendant as stakeholder.	*l.* for a return of money deposited	
The plaintiff's claim is fendant as stakeholder, and payable to plaintiff.	*l.* for money entrusted to the de-	Money won from stakeholder.
The plaintiff's claim is to the defendant as agent of the plaintiff.	*l.* for a return of money entrusted	Money entrusted to agent.
The plaintiff's claim is from the plaintiff by fraud.	*l.* for a return of money obtained	Money obtained by fraud.
The plaintiff's claim is the defendant by mistake.	*l.* for a return of money paid to	Money paid by mistake.
The plaintiff's claim is the defendant for [work to be taken up; not taken up, *or*, &c.].	*l.* for a return of money paid to done, left undone; *or*, a bill to be	Money paid for consideration which has failed.
The plaintiff's claim is deposit upon shares to be allotted.	*l.* for a return of money paid as a	Shares.

Money paid by surety for defendant.	The plaintiff's claim is *l.* for money paid for the defendant as his surety.
Rent paid.	The plaintiff's claim is *l.* for money paid for rent due by the defendant.
Money paid on accommodation bill.	The plaintiff's claim is *l.* upon a bill of exchange accepted [*or* indorsed] for the defendant's accommodation.
Contribution by surety.	The plaintiff's claim is *l.* for a contribution in respect of money paid by the plaintiff as surety.
By co-debtor.	The plaintiff's claim is *l.* for a contribution in respect of a joint debt of the plaintiff and the defendant paid by the plaintiff.
Money paid for calls.	The plaintiff's claim is *l.* for money paid for calls upon shares, against which the defendant was bound to indemnify the plaintiff.
Money payable under award.	The plaintiff's claim is *l.* for money payable under an award.
Life policy.	The plaintiff's claim is *l.* upon a policy of insurance upon the life of X. Y., deceased.
Money bond.	The plaintiff's claim is *l.* upon a bond to secure a payment of 1,000*l.*, and interest.
Foreign judgment.	The plaintiff's claim is *l.* upon a judgment of the Court, in the Empire of Russia.
	The plaintiff's claim is *l.* upon a cheque drawn by the defendant.
Bills of exchange,&c.	The plaintiff's claim is *l.* upon a bill of exchange accepted [*or* drawn *or* indorsed] by the defendant.
	The plaintiff's claim is *l.* upon a promissory note made [*or* indorsed] by the defendant.
	The plaintiff's claim is *l.* against the defendant A. B. as acceptor, and against the defendant C. D. as drawer [*or* indorser] of a bill of exchange.
Surety.	The plaintiff's claim is *l.* against the defendant as surety for the price of goods sold.
	The plaintiff's claim is *l.* against the defendant A. B. as principal, and against the defendant C. D. as surety, for the price of goods sold [*or* arrears of rent, *or* for money lent, *or* for money received by the defendant A. B. as traveller for the plaintiffs, *or*, &c.].
Del credere agent.	The plaintiff's claim is *l.* against the defendant as a *del credere* agent for the price of goods sold [*or* as losses under a policy].
Calls.	The plaintiff's claim is *l.* for calls upon shares.
Waygoing crops, &c.	The plaintiff's claim is *l.* for crops, tillage, manure [*or as the case may be*], left by the defendant as outgoing tenant of a farm.

Section III.

Indorsement 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 plaintiff's claim is 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.

The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [and *l.* for arrears of wages].

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor [*or*, &c.] of the plaintiff [and *l.* for money received as factor &c.].

Apprentices. The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of X. Y. to the defendant [*or* plaintiff].

Arbitration. The plaintiff's claim is for damages for non-compliance with the award of X. Y.

Assault. The plaintiff's claim is for damages for assault and false imprisonment [and for malicious prosecution].

By husband and wife. The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff C. D.

Solicitor. The plaintiff's claim is for damages for injury by the defendant's negligence as solicitor of the plaintiff.

Bailment. The plaintiff's claim is for damages for negligence in the custody of goods [and for wrongfully detaining the same].

Pledge. The plaintiff's claim is for damages for negligence in the keeping of goods pawned [and for wrongfully detaining the same].

Hire. The plaintiff's claim is for damages for negligence in the custody of furniture lent on hire [*or* a carriage lent], [and for wrongfully, &c.].

Banker. The plaintiff's claim is for damages for wrongfully neglecting [*or refusing*] to pay the plaintiff's cheque.

Bill. The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts.

Bond. The plaintiff's claim is upon a bond conditioned not to carry on the trade of a .

Carrier. The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway.

The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.

Charter-party. The plaintiff's claim is for damages for breach of charterpart of ship ["Mary"].

Claim for return of goods and damages. The plaintiff's claim is for return of household furniture, or, &c., or their value, and for damages for detaining the same.

Damages for depriving of goods. The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c.

Defamation. The plaintiff's claim is for damages for libel.

The plaintiff's claim is for damages for slander.

Distress replevin. The plaintiff's claim is in replevin for goods wrongfully distrained.

Wrongful distress. The plaintiff's claim is for damages for improperly distraining.

[*This form shall be sufficient whether the distress complained*

of be wrongful or excessive, or irregular, and whether the claim be for damages only, or for double value.]

Ejectment. The plaintiff's claim is to recover possession of a house, No. in street [*or of a farm called Blackacre*], situate in the parish of in the county of .

To establish title and recover rents. The plaintiff's claim is to establish his title to [*here describe property*], and to recover the rents thereof.

[*The two previous Forms may be combined.*]

Dower. The plaintiff's claim is for dower.

Fishery. The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing.

Fraud. The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [*or* a business, *or* shares, *or*, &c.].

The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of A. B.

Guarantee. The plaintiff's claim is for damages for breach of a contract of guarantee for A. B.

The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.

Insurance. The plaintiff's claim is for a loss under a policy upon the ship "Royal Charter," and freight or cargo [*or* for return of premiums].

[*This Form shall be sufficient whether the loss claimed be total or partial.*]

Fire insurance. The plaintiff's claim is for a loss under a policy of fire insurance upon house and furniture.

The plaintiff's claim is for damages for breach of a contract to insure a house.

Landlord and tenant. The plaintiff's claim is for damages for breach of contract to keep a house in repair.

The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.

Medical man. The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.

Mischievous animal. The plaintiff's claim is for damages for injury by the defendant's dog.

Negligence. The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants.

The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants.

The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway station, from the defective condition of the station.

Lord Campbell's Act. The plaintiff's claim is as executor of A. B. deceased, for damages for the death of the said A. B. from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.

Promise of marriage. The plaintiff's claim is for damages for breach of promise of marriage.

Quare impedit. The plaintiff's claim is in *quare impedit* for .

Seduction. The plaintiff's claim is for damages for the seduction of the plaintiff's daughter.

Sale of goods. The plaintiff's claim is for damages for breach of contract to accept and pay for goods.

The plaintiff's claim is for damages for non-delivery [*or* short delivery, *or* defective quality, *or other breach of contract of sale*] of cotton [*or*, &c.].

The plaintiff's claim is for damages for breach of warranty of a horse.

The plaintiff's claim is for damages for breach of a contract to sell [*or* purchase] land. — Sale of land.

The plaintiff's claim is for damages for breach of a contract to let [*or* take] a house.

The plaintiff's claim is for damages for breach of a contract to sell [*or* purchase] the lease, with goodwill, fixtures, and stock in trade of a public-house.

The plaintiff's claim is for damages for breach of covenant for title [*or* for quiet enjoyment, *or*, &c.] in a conveyance of land.

The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [*or* cutting his grass, *or* pulling down his timber, *or* pulling down his fences, *or* removing his gate, *or* using his road *or* path, *or* crossing his field, *or* depositing sand there, *or* carrying away gravel thence, *or* carrying away stones from his river]. — Trespass to land.

The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [*or* house *or* mine]. — Support.

The plaintiff's claim is for damages for wrongfully obstructing a way [*public highway or a private way*]. — Way.

The plaintiff's claim is for damages for wrongfully diverting [*or* obstructing, *or* polluting, *or* diverting water from] a water-course. — Watercourse, &c.

The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [*or* into the plaintiff's mine].

The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.

The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture. — Pasture.

[*This Form shall be sufficient whatever the nature of the right to pasture be.*]

The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house. — Light.

The plaintiff's claim is for damages for the infringement of the plaintiff's right of sporting. — Sporting.

The plaintiff's claim is for damages for the infringement of the plaintiff's patent. — Patent.

The plaintiff's claim is for damages for the infringement of the plaintiff's copyright. — Copyright.

The plaintiff's claim is for damages for wrongfully using [*or* imitating] the plaintiff's trade mark. — Trade mark.

The plaintiff's claim is for damages for breach of a contract to build a ship [*or* to repair a house, &c.] — Work.

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.

The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory [*or*, &c.]. — Nuisance.

The plaintiff's claim is for damages from nuisance by noise from the defendant's works [*or* stables, *or*, &c.].

The plaintiff's claim is for damages for loss of the plaintiff's goods in the defendant's inn. — Innkeeper.

Add to Indorsement:—

And for a mandamus commanding the defendant to — Mandamus.

Add to Indorsement:—

And for an injunction to restrain the defendant from — Injunction.

Add to Indorsement where claim is to land, or to establish title, or both.

And for mesne profits. — Mesne profits.

And for an account of rents or arrears of rent. — Arrears of rent.

And for breach of covenant for [*repairs*]. — Breach of covenant.

Section V.

Probate.

By an executor or legatee propounding a will in solemn form.

1. The plaintiff claims to be executor of the last will dated the day of of C. W., late of , gentleman, deceased, who died on the day of , and to have the said will established. This writ is issued against you as one of the next of kin of the said deceased [*or as the case may be*].

By an executor or legatee of a former will, or a next of kin, &c., of the deceased seeking to obtain the revocation of a Probate granted in common form.

2. The plaintiff claims to be executor of the last will dated the day of of C. D., late of deceased, who died on the day of , and to have the probate of a pretended will of the said deceased, dated the day of revoked. This writ is issued against you as the executor of the said pretended will [*or as the case may be*].

By an executor or legatee of a will when letters of administration have been granted as in an intestacy.

3. The plaintiff claims to be executor of the last will of C. D., late of , deceased, who died on the day of dated the day of .

The plaintiff claims that the grant of letters of administration of the personal estate of the said deceased obtained by you should be revoked, and probate of the said will granted to him.

By a person claiming a grant of administration as a next of kin of the deceased, but whose interest as next of kin is disputed.

4. The plaintiff claims to be the brother and sole next of kin of C. D. of , deceased, who died on the day of intestate, and to have as such a grant of administration to the personal estate of the said intestate. This writ is issued against you because you have entered a caveat, and have alleged that you are the sole next of kin of the deceased [*or as the case may be*].

Section VI.

Admiralty.

Damage to vessel by collision.

1. The plaintiffs as owners of the vessel "Mary," of the port of claim 1,000*l.* against the brig or vessel "Jane" for damage occasioned by a collision, which took place in the North Sea in the month of May last.

Damage to cargo by collision.

2. The plaintiffs as owners of the cargo laden on board the vessel "Mary," of the port of , claim *l.* against the vessel "Jane" for damage done to the said cargo in a collision in the North Sea in the month of May last.

[*The two previous Forms may be combined.*]

Damage to cargo otherwise.

3. The plaintiff as owner of goods laden on board the vessel "Mary," on a voyage from Lisbon to England, claims from the owner of the said vessel *l.* for damage done to the said goods during such voyage.

In causes of possession.

4. The plaintiff as sole owner of the vessel "Mary," of the port of claims to have possession decreed to him of the said vessel.

5. The plaintiff claims possession of the vessel "Mary," of the port of as owner of 48–64th shares of the said vessel against C. D., owner of 16–64th shares of the said vessel.

6. The plaintiff as part owner of the vessel "Mary," claims against C. D., part owner, and his shares in the said vessel *l.* as part of the earnings of the said vessel due to plaintiff.

7. The plaintiff as owner of 48–64th shares of the vessel "Mary," of the port of , claims possession of the said brig as against C. D. the master thereof.

8. The plaintiff under a mortgage, dated the day of claims against the vessel "Mary," *l.*, being the amount of his mortgage thereon, and *l.* for interest.

9. The plaintiff as assignee of a bottomry bond, dated the day of , and granted by C. D. as master of the vessel "Mary," of the port of , to A. B., at St. Thomas's, in the West Indies, claims *l.* against the vessel "Mary" and the cargo laden thereon.

10. The plaintiff as owner of 24–64th shares of the vessel "Mary," being dissatisfied with the management of the said vessel by his co-owners, claims that his co-owners shall give him a bond in *l.* for the value of the plaintiff's said shares in the said vessel. By a part owner of a vessel.

11. The plaintiffs as owners of derelict vessel "Mary," of the port of , claim to be put in possession of the said vessel and her cargo.

12. The plaintiffs as the owners, master, and crew of the vessel "Caroline," of the port of , claim the sum of *l.* for salvage services performed by them to the vessel "Mary," off the Goodwin Sands, on the day of By salvors.

13. The plaintiffs as owners of the steam-tug "Jane," of the port of claim *l.* for towage services performed by the said steam-tug to the vessel "Mary," on the day of . Claim for towage.

14. The plaintiffs as seamen on board the vessel "Mary," claim *l.* for wages due to them, as follows (1), the mate 30*l.* for two months' wages from the day of . Seamen's wages.

15. The plaintiffs claim *l.* for necessaries supplied to the vessel "Mary," at the port of Newcastle-on-Tyne, delivered on the day of and the day of For necessaries.

Section VII.

Indorsements of Character of Parties.

The plaintiff's claim is as executor [*or* administrator] of C. D., deceased, for, &c. Executors.

The plaintiff's claim is against the defendant A. B., as executor [*or*, &c.] of C. D., deceased, for, &c.

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.

The plaintiff's claim is as trustee under the bankruptcy of A. B., for Trustee in bankruptcy.

The plaintiff's claim is as [*or* the plaintiff's claim is against the defendant as] trustee under the will of A. B. [*or* under the settlement upon the marriage of A. B. and X. Y., his wife]. Trustee.

Public officer.

The plaintiff's claim is as public officer of the Bank, for

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

Heir and devisee.

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.

Qui tam action.

The plaintiff's claim is as well for the Queen as for himself, for

APPENDIX (B).

Notices, &c.

No. 1.

Third Party Notice.

18 . [*Here put the letter and number.*]

In the High Court of Justice.

Division.

Between A. B., Plaintiff,

and

C. D., Defendant.

Notice filed , 18 .

To Mr. X. Y.

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 as 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 at

No. 2.

Notice of Counter-claim.

[*Heading as in Form* 1.]

"To the within-named X. Y.

"Take notice that if you do not appear to the within counter-claim of the within-named C.D. within eight days from the service of this defence and counter-claim upon you, you will be liable to have judgment given against you in your absence.

"Appearance to be entered at ."

No. 3.

Notice of Payment into Court.

[*Heading as in Form* 1.]

Take notice that the defendant has paid into Court *l.* 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 *l.* 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.

18 . [*Here put the letter and number.*]
In the High Court of Justice.
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*]:—

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*l.*, 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.
Register of baptism of A. B. in the parish of X. -	January 1, 1848.	
Letter—plaintiff to defendant - - - - -	February 1, 1848	Sent by General Post, February 2, 1848.
Notice to produce papers -	March 1, 1848 -	Served March 2, 1848, on defendant's attorney by E. F., of——
Record of a Judgment of the Court of Queen's Bench in an action F. S. *v.* F. N. - - - -	Trinity Term, 10th Vict.	
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 any one 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 and documents in your custody, possession, or power, containing an entry, memorandum, or minute relating to the matters in question in this , and particularly

Dated the day of 18 .

To the above-named

Solicitor or Agent

(Signed)
of
Agent for
Solicitor for the above-named

No. 15.

Issue.

[*Heading as in Form* 1.]

Whereas A. B. affirms, and C. D. denies [*here state the question or questions of fact to be tried*], and it has been ordered by the Hon. Mr. Justice that the said question shall be tried [*here state mode of trial, whether with or without a jury*], therefore let the same be tried accordingly.

No. 16.

Notice of Trial.

[*Heading as in Form* 1.]

Take notice of trial of this [*or* of the issues in this ordered to be tried] [*or as the case may be*] in [*or as the case may be*] for the day of next.

X.Y., Plaintiff's Solicitor [*or as the case may be*].

Dated

To Z., Defendant's Solicitor [*or as the case may be*].

No. 17.

Certificate of Officer after Trial with a Jury.

[*Heading as in Form* 1].

I certify that this was tried before the Honourable Mr. Justice with a special jury of the county of , on the 12th and 13th days of November, 1876.

The jury found [*state findings*].

The Judge directed that judgment should be entered for the plaintiff for *l.*, with costs of summons [*or as the case may be*].

A. B.,
[Title of Officer.]

The day of 18 .

No. 18.

Notice of Motion.

[*Heading as in Form* 1.]

Take notice, that the Court will be moved on day the day of 18 at o'clock in the forenoon, or so soon thereafter as counsel can be heard, by that

Dated the day of 18 .

(Signed)
of
Agent for
Solicitor for the

To

No. 19.

Notice of Discontinuance.

[*Heading as in Form* 1.]

Take notice that the plaintiff hereby* †

Dated the day of 18 .

(Signed)
of
Agent for
Solicitor for the plaintiff.

To

* "Wholly discontinues this action," or "withdraws so much of his claim in this action as relates to," &c.

† If not against all the defendants add "as against the defendant," &c.

No. 20

Notice of Cross-examination of Deponents at Trial.

[*Heading as in Form* 1.]

Take notice, that the intend at the trial of this action to cross-examine the several deponents named and described in the schedule hereto on their affidavits therein specified.

And also take notice that you are hereby required to produce the said deponents for such cross-examination before the Court aforesaid.

Dated the day of 18 .

(Signed)
Agent for
of
Solicitor for the

To

The Schedule above referred to.

Name of Deponent.	Address and Description.	Date when Affidavit Filed.

No. 21.

Notice of Renewal of Writ of Execution.

[*Heading as in Form* 1.]

Take notice, that the writ of
issued in this action directed to the sheriff of
and bearing date the day of 18 , has been
renewed for one year from the day of 18
Dated the day of 18

(Signed)
of
Agent for
Solicitor for the

To the sheriff of

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. 18 No.

Between

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 *l.*, and costs to be taxed, and the said costs were by a Master's certificate dated the day of 18 , allowed at *l.*

2. The said still remains unsatisfied to the extent of and interest amounting to *l.*

3.* is indebted to the judgment debtor in the sum of *l.* or thereabouts.

4. The said is within the jurisdiction of this Court.

Sworn, &c.

* Name, address, and description of garnishee.

No. 26.

Affidavit of 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.*]

APPENDIX (C).

Forms of Statements of Claim to be used pursuant to Order XIX., Rule 5.

Section I.

General.

18 [*Here put letter and number*].

In the High Court of Justice,
Division.

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*].
Place of Trial

(Signed)

Delivered the of 18

Section II.

Actions specially assigned to the Chancery Division by s. 34.—Sub-s. 3 of the Principal Act.

No. 1.

Administration.

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	£2000	0	0
Interest from the of at 5 per cent.	250	0	0
	£2250	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 3, 1882, having made his will dated March 2, 1882, and appointed the defendants his executors, who proved his will April 6, 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.

Dissolution of partnership.

1. The plaintiff on December 20, 1875, entered into partnership articles with the defendant for 10 years.

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.

For raising portions or other charges on land.

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.
2. A. B died February 15, 1870.
3. C. B. died June 10, 1875.
4. There were 5 children only of the marriage of A. B. and C. B., all of whom are now living and have attained 21. 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 3, 1872, on the marriage of the plaintiff's 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 plaintiff's father died.

4. On January 1, 1880, the plaintiff's 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 21, 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.

For rectification, &c. of instruments.

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.

The plaintiff claims:—

Rectification of the settlement.

(Signed)

Delivered

No. 12.

Specific performance.

1. By an agreement (*or* letters) dated (*or* made verbally at interviews on or about) the day of , the plaintiff agreed to sell to the defendant the Home Farm, Kent, for *l.* 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.

Partition or sale of real estates.

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 10 children of D. living at his decease, some of whom have since died.
[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.

Wardship of infants and care of infants' estates.

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 12 years old.

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

Section III.

Actions within the exclusive cognizance of the Probate, Divorce, and Admiralty Division.—Section 34 *of the Principal Act.*

No. 1.

Interest suit (Probate).

The plaintiff is cousin-german and one of the next of kin of M. N., late of No. 1, High Street, Putney, in the county of Surrey, grocer, who died on or about the 1st of March, 1883, a widower without child, parent, brother or sister, uncle or aunt, nephew or niece.

The plaintiff claims :—

A grant to him of letters of administration of the personal estate and effects of the said deceased.

(Signed)
Delivered.

No. 2.

Probate of will in solemn form.

The plaintiff is the executor appointed under the will of C. T., late of Bicester, in the county of Oxford, gentleman, who died on the 20th of January 1883, the said will bearing date the 1st of January 1875, and a codicil thereto, the 1st of October 1875.

The plaintiff claims :—

That the Court shall decree probate of the said will and codicil in solemn form of law.

(Signed)
Delivered

No. 3.

Bottomry.

1. A bond, dated the 13th of October, 1883, was executed by the master of the ship "Onward" at Mauritius, binding the said ship and her cargo—viz., 940 tons of teak timber, and her freight, for payment unto Messrs. H. and Co., their assigns, order, or indorsees, of 24,000 dollars, Mauritius currency, with maritime premium at the rate 128 dollars for every 100 dollars, within twenty days next after the arrival of the said ship at her port of discharge: payment to be made both of capital and interest in British sterling money at the rate of four shillings for every dollar.

2. The plaintiffs are assignees of the said bond from the said Messrs. H. & Co.

The plaintiffs claim :—

(1.) That the Court pronounce for the validity of the bond.

(2.) Condemnation of the defendants and their bail in the sum of *l.*

(Signed)
Delivered

No. 4.

Equipment and necessaries.

The plaintiff supplied necessaries and equipment, and did repairs to the vessel "The Ellen" in the months of February and March, 1883, at the port of London, on the order of Messrs. K. L., who were duly authorized in that behalf: the said vessel being a British Colonial vessel, belonging to the port of Digby in Nova Scotia, and having no owner or part owner who was at the time of the commencement of this action, or is domiciled in England or Wales.

The plaintiff claims :—

(1.) 305*l.* 3s., with interest thereon at 5 per cent. per annum from the 19th of February, 1883, until judgment.

(2.) The condemnation of the defendant and his bail in the said sum.

(Signed)
Delivered

No. 5.

Possession.

The plaintiff is owner of 32–64th parts or shares, and master, of the vessel "Lady of the Lake," and the defendant, who is owner of the remaing 32–64th parts, withheld possession of the said vessel from the plaintiff.

The plaintiff claims :—

(1.) Possession of the said vessel.

(2.) The condemnation of the defendant in all losses and damages occasioned by the defendant's withholding possession of the vessel from the plaintiff.

(Signed)

Delivered

No. 6.

Salvage.

The plaintiffs are the owners, master, and crew of the steam-ship "Brazilian," of the port of Newcastle, of the burthen of 1,300 tons gross registered tonnage, and rendered salvage services to the steam-ship "Campanil" off the coast of Portugal, on or about the 26th and 27th of December, 1882.

Particulars :—

	£
1. Value of "Campanil" at the time of the services	13,000
Value of cargo	300
Freight	675
2. Value of "Brazilian," her freight and cargo	2,050
3. Damage sustained by "Brazilian"	150
Extra coal consumed	16
Paid for harbour dues, &c., at Vigo	4

The plaintiffs claim :—

Such amount of salvage as may be just.

(Signed)

Delivered

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
Balance due	£64	15	0

Place of Trial, London.

(Signed)

Delivered

No. 2.

Money had and received.

The plaintiff's claim is for money received by the defendant for the use of the plaintiff.

Particulars :—

1882.—1st January :—

	£	s.	d.
To amount of rents of No. 5, Smith Street, collected by the defendant .	72	10	0
To deposit on intended sale of Eva Villa	100	0	0
Amount due . .	£172	10	0

Place of Trial, London.

(Signed)
Delivered

No. 3.

Payee against maker of a promissory note.

The plaintiff's claim is against the defendant, as maker of a promissory note for 250*l.*, dated 1st January, 1882, payable four months after date.

Particulars :—

	£
Principal	250
Interest	10
Amount due . .	£260

Place of Trial, Lancashire, West Derby Division.

(Signed)
Delivered

No. 4.

Indorsee against acceptor of a bill of exchange.

The plaintiff's claim is against the defendant, as acceptor of a bill of exchange for 400*l.*, dated 1st January, 1882, drawn by A. B., payable three months after date to the order of E. F., and indorsed to the plaintiff.

Particulars :—

	£
Principal due	400
Interest	16
Amount due . . .	£416

(Signed)
Delivered

No. 5.

Indorsee against acceptor and drawer of a bill of exchange severally.

The plaintiff's claim is against the defendant A.B. as acceptor, and against the defendant C. D. as drawer, of a bill of exchange for 500*l.*, dated 1st January, 1882, payable three months after date, and indorsed by the defendant C. D. to the plaintiff, of the dishonour of which on presentation the defendant C. D. had notice.

Particulars:—

	£
Principal	500
Interest	20
Amount due . .	£520

Place of Trial, city of Bristol.

(Signed)
Delivered

No. 6.

Payee against drawer of a bill of exchange excusing notice of dishonour.

The plaintiff's claim is against the defendant as drawer of a bill of exchange for 600*l.* dated 1st March, 1882, drawn upon A. B., payable to plaintiff three months after date, which was duly presented for payment and dishonoured, but A. B. had no effects of the defendant nor was there any consideration for the payment of the said bill by the said A. B.

Particulars (as in Form 4).

Place of Trial

(Signed)
Delivered

No. 7.

Obligee against obligor of a money bond.

The plaintiff's claim is for principal and interest due upon the defendant's bond to the plaintiff, dated 1st January, 1873, conditioned for payment of 100*l.* on the 26th December, 1873.

Particulars:—

	£
Principal	50
Interest	2
Amount due . .	£52

Place of Trial, Surrey.

(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
Principal due	80
Interest	3
Amount due . .	£83

Place of Trial, London.

(Signed)
Delivered

No. 9.

Against shareholder for allotment money and calls by 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 *l.* 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 *l.* per share . £
18 —(1st) call at *l.* per share . £
(2nd) call at *l.* per share . £

Amount due . . . £

Place of Trial,

(Signed)
Delivered

No. 10.

On a guarantee for the price of goods setting out the guarantee

The plaintiff's claim is for the price of goods sold and delivered by the plaintiff to E. F. under the following guarantee:—

SIR, 2nd February, 1882.

In consideration of your supplying goods to E. F., I undertake to see you paid.

Yours, &c.
C. D. (defendant).

To Mr. A. B. (plaintiff).

Particulars:—

1882.

25th March, 55 tons of coal at 20*s.* .	£55	0	0
Amount due . . .	£55	0	0

Place of Trial,

(Signed)
Delivered

No. 11.

Creditor against principal debtor and surety severally on a guarantee for goods sold.

The plaintiff's claim is against the defendant A. B. as principal and against the defendant C. D. as surety, for the price of goods sold and delivered by the plaintiff to A. B. on the guarantee by C. D., dated the 2nd of February, 1882.

Particulars:—

	£	*s.*	*d.*
2nd February—Goods . . .	47	15	0
3rd March—Goods . . .	105	14	0
17th March—Goods . . .	14	12	0
5th April—Goods . . .	34	0	0
Amount due . . .	202	1	0

Place of Trial Surrey.

(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 1, 1870, whereby 10,000*l.* 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 25, half a year's income	200

No. 13.

(*See* Sect. VII. Form No. 1.)

Landlord against tenant whose term has expired or has been determined by notice to quit.

Section V.

Actions for Damages for Breach of Contract or Duty arising out of Contract.

No. 1.

Buyer against seller of goods for not delivering.

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.

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. 2.

Buyer against seller of goods for delivering them inferior to contract.

1. The plaintiff has suffered damage by breach of a contract between the plaintiff and the defendant for sale and delivery of 100 sacks of flour known as seconds at 35*s.* per sack.

2. 80 sacks delivered were inferior to seconds, and 20 sacks were not delivered.

Particulars of damage:—

	£
80 sacks at 4*s.*	16
20 sacks at 5*s.*	5
	£21

The plaintiff claims 21*l.*

Place of Trial, Surrey.

(Signed)
Delivered

No. 3.

Shipowner against charterer for detention beyond the demurrage days.

1. The plaintiff has suffered damage by breach of a charter-party dated the 10th of March, 1882, between the plaintiff and the defendant of the ship "Mary."

2. The ship was detained at the port of loading.

Particulars of damage :—

		£
1882. Jan. 1. to Jan. 10.	10 days' detention beyond the demurrage days at 25*l.* per day	250

The plaintiff claims £250.

Place of Trial, London.

(Signed)
Delivered

No. 4.

Shipper against master on a bill of lading for damage to goods.

1. The plaintiff has suffered damage by breach of contract by bill of lading of goods shipped by the plaintiff on board the "Jane" signed by defendant, dated the 1st of January, 1882.

2. 50 bales of cotton were delivered in a damaged condition.

Particulars of damage :—

	£
50 bales at 2*l.*	100

The plaintiff claims 100*l.*

Place of Trial, city of Bristol.

(Signed)
Delivered

No. 5.

Shipper against shipowner on a bill of lading for damage and short delivery.

1. The plaintiff has suffered damage by breach of contract by bill of lading of goods shipped by the plaintiff signed by the master of the ship "Mary" as the defendant's agent, dated the 1st of January, 1882.

2. 50 quarters of wheat were delivered in a damaged condition, and 100 quarters were not delivered.

Particulars of damage :—

	£
100 quarters at 40*s.* . . .	200
50 quarters at 4*s.* . . .	10
	£210

The plaintiff claims 210*l.*

Place of Trial, Lancashire, West Derby Division.

(Signed)
Delivered

No. 6.

On a marine policy against underwriter.

The plaintiff was interested to the amount of *l.* under a marine policy of insurance for that amount, dated the of 18 , on the ship "Hero," subscribed by the defendant for *l.*

Particulars :—

1. Valued or open :—Valued at 20,000*l.*

2. Voyage:—At and from Cardiff to Valparaiso.
3. (*Or*, Time:—From noon of 1st January, 1882, to noon of 1st January, 1883.)
4. Premium to defendant:— *l.* per cent.
5. Perils insured against causing loss:—Of the seas.
6. Loss:—Total (*or* exceeding 3 per cent.).

The plaintiff claims *l.*
Place of Trial, Bristol.

(Signed)
Delivered.

No. 7.

Passenger against railway company for negligence.

The plaintiff has suffered damage from the defendants' negligence in carrying the plaintiff as a passenger by railway from London to Brighton, causing personal injuries to the plaintiff, in a collision near Hayward's Heath on the 15th January, 1882.

Particulars of expenses, &c.:—

	£	s.	d.
Loss of 15 weeks' salary as clerk at 2*l.* per week	30	0	0
Dr. Smith	10	10	0
Nurse for 6 weeks	3	0	0
	£43	10	0

The plaintiff claims 500*l.*
Place of Trial, Sussex.

(Signed)
Delivered.

No. 8.

Client against solicitor for negligence.

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.
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 *l.*

The plaintiff claims *l.*
Place of Trial,

(Signed)
Delivered

No. 9.

Landlord against tenant for breach of covenant to repair.

1. By a repairing covenant contained in a lease under sea 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.
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 *l.*

Place of Trial,

(Signed)
Delivered

No. 10.

Breach of promise of marriage.

1. The plaintiff has suffered damage by breach of promise by the defendant to marry her on the of [*or*, within a reasonable time, which elapsed before action] [*or*, on the death of A. B., which happened before action].

2. The defendant refused to marry the plaintiff on the of [*or*, within a reasonable time] [*or*, on the death of A. B.]

Particulars of special damage.
[*As the case may be, if any.*]

The plaintiff claims *l.*

Place of Trial,

(Signed)
Delivered

Section VI.

Action claiming Injunctions, Damages, or Declarations of Right founded on Wrongs.

No. 1.

Conversion of goods.

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 them overboard out of a boat in the London Docks, &c.).

[*If any special damage is claimed, add*]—

Particulars [*fill them in*].

The plaintiff claims 100*l.*

Place of Trial, London.

(Signed)
Delivered

No. 2.

Detinue

The defendant detained from the plaintiff the plaintiff's goods and chattels, that is to say, a horse, harness, and gig.

The plaintiff claims a return of the said goods and chattels or their value, and 10*l.* for their detention.

Place of Trial, Lincolnshire.

(Signed)
Delivered

No. 3.

Negligent driving.

The plaintiff has suffered damage from personal injuries to the plaintiff and damages to his carriage, caused by the defendant or his servant on the 15th of January, 1882, negligently driving a cart and horse in Fleet Street.

Particulars of expenses, &c.:—

	£	*s.*	*d.*
Charges of Mr. Smith, surgeon . .	10	10	0
Charges of Mr. Jones, coachmaker .	14	5	6
	£24	15	6

The plaintiff claims 150*l.*

Place of Trial, London.

(Signed)
Delivered

No. 4.

Lord Campbell's Act.

The plaintiff, as executor of C. D., deceased, brings this action for the benefit of Eva the widow, and William and Margaret and Dorothea, the children of C. D. [*as the case may be*], who have suffered damage from the defendant's negligence, in carrying the said C. D. by omnibus, whereby the said C. D. was killed in Cornhill on the 15th of January, 1882.

Particulars pursuant to Statute are delivered herewith.

The plaintiff claims 500*l.*

Place of Trial, London.

(Signed)
Delivered

No. 5.

Collision of ships.

The plaintiff has suffered damage from injuries to his ship, "Betsy," and the cargo on board thereof, by a collision with the ship, the "Jane," caused by the negligent navigation thereof by the defendant or his servants on the river Thames, on the 1st of February, 1883.

Particulars of loss and expenses:—

1. Charges of Jones & Co., shipwrights, 450*l.* 2*s.*
2. Loss of use of ship from 1st of February, 1883, to 1st of March, 1883, 280*l.*

Particulars of damage to cargo:—

(*Insert them.*)

The plaintiff claims *l.*

Place of Trial, London.

(Signed)
Delivered

No. 6.

Injunction, &c., for infringement of patent.

The defendant has infringed the plaintiff's patent, No. 14,084, granted for the term of fourteen 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
	£100

The plaintiff claims 100*l.*

Place of Trial, Surrey.

(Signed)
Delivered

No. 8.

Injunction, &c. for infringement 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. 9.

Seduction.

The plaintiff has suffered damage from the seduction and carnally knowing by the defendant of G. H. the [daughter and] servant of the plaintiff.

Particulars of special damage are as follows:—

	£	*s.*	*d.*
Loss of service from the 1st of March to the 30th of November, 1882 . .	100	0	0
Nursing and medical attendance .	10	10	0
	£110	10	0

The plaintiff claims 500*l.*
Place of Trial, Berkshire.

(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.

Nuisance by smells.

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.

The plaintiff claims:—

(1.) 50*l.*
(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.

Nuisance by pollution of water.

1. The plaintiff is the owner (*or* lessee) and occupier of a farm known as , through which there runs a river known as .

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.

Fraudulent prospectus.

1. On 31st January, 1883, the defendant issued a prospectus to the public relating to the A. B. Company, Limited.

2. On 1st February, 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*l.*

The plaintiff claims:—

(1.) Repayment of 1,000*l.* and interest.

(2.) Indemnity.

(Signed)
Delivered

No. 14.

Fraudulent sale of a lease.

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*l.* a week, whereas in fact they were much less, to the defendant's knowledge.

Particulars of special damage:—

(*Fill them in.*)

The plaintiff claims *l.*

(Signed)
Delivered

No. 15.

Malicious prosecution.

The defendant maliciously and without reasonable and probable cause preferred a charge of larceny against the plaintiff before a

justice of the peace, causing the plaintiff to be sent for trial on the charge and imprisoned thereon, and prosecuted the plaintiff thereon at the Middlesex Quarter Sessions, where the plaintiff was acquitted.

Particulars of special damage:—

Messrs. L. & L.'s bill of costs, 65*l.*

Loss in business from January 1, 1883, to February 18, 1883, 100*l.*

The plaintiff claims 500*l.*

Place of Trial,

(Signed)
Delivered

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 18 A. B. was seised in fee and in possession of the premises.

3. On the of 18 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.

18 No.

In the High Court of Justice,
Division.

Between

Plaintiff,

and

Defendant.

Defence.

The defendant says that:—

1.
2.
3. } (*To be filled up in the manner exemplified in the following Forms.*)

(Signed)
Delivered

Counter-claim.

The defendant says that:—

1.
2. } (*To be filled up in the manner exemplified in the following Forms.*)

The defendant counter-claims.

(Signed)
Delivered

Defence and Counter-claim.
Defence.

The defendant says that:—

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.

To actions for administration.

1. The defendants do not admit the plaintiff's claim.

[*or*]

The defendant A. B. admits the plaintiff's claim, but not assets.

[*or*]

The defendant C. D. admits assets, but not the plaintiff's claim.

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.

To actions for foreclosure by mortgagee.

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*).

3. The debt is barred by the Statute of Limitations.

4. Payments have been made, viz.:—
10th July, 1874, 1,000*l.*
18th October, 1875, 500*l.*

5. The plaintiff took possession on the of and has received the rents ever since.

6. The plaintiff released the debt by deed, dated 1st June, 1882.

7. The defendant conveyed all his interest to A. B. by deed, dated 25th 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.
5.
6.
} (*As in preceding Form.*)

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 performance.

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 III.

Forms to be used in Actions within the exclusive cognizance of the Probate, Divorce, and Admiralty Division. Appendix C., Section III.

No. 1.

Interest suit.

The defendant is nephew and next of kin of the deceased, being son of G. B., the brother of the deceased, who died in his lifetime.

The defendant claims:—

That the Court pronounce that the defendant is the nephew and next of kin of the deceased, and entitled to a grant of letters of administration of the personal estate and effects of the deceased.

(Signed)
Delivered

No. 2.

Probate of will in solemn form.

1. The said will and codicil of the deceased were not duly executed according to the provisions of the statute 1 Vict. c. 26.

2. The deceased at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory, and understanding.

3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him, whose names are at present unknown to the defendant].

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud, so far as is within the defendant's present knowledge being [*state the nature of the fraud*].

5. The deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof, [*or*] of the contents of the residuary clause in the said will [*as the case may be*].

6. The deceased made his true last will, dated the 1st day of January, 1873, and thereby appointed the defendant sole executor thereof.

The defendant claims:—

(1.) That the Court will pronounce against the said will and codicil propounded by the plaintiff.

(2.) That the Court will decree probate of the will of the deceased, dated the 1st of January, 1873, in solemn form of law.

(Signed)
Delivered

No. 3.

Bottomry. That there was no necessity to make the said bond, nor were reasonable steps taken to give notice of the intended hypothecation to the owners of the "Onward," or the owners of the cargo.

(Signed)
Delivered

No. 4.

Equipment and necessaries. 1. The equipment and repairs supplied and done were not necessaries, and the claim is not a claim for necessaries within section 5 of the Admiralty Court Act, 1861.

2. The alleged necessaries were not supplied on the credit of the said vessel, but upon the personal credit of J. B., who was the broker for the vessel, and upon the agreement that the plaintiffs were not to have recourse to the vessel.

(Signed)
Delivered

No. 5.

Possession. 1. The defendant did not withhold possession.

2. The defendant withheld possession on the following grounds:—

[*State them.*]

(Signed)
Delivered

No. 6.

Salvage. 1. The alleged services did not amount to salvage.

2. The defendant made tender of and has paid into Court 350*l.*

(Signed)
Delivered

Section IV.

To Actions included in Order III., Rule 6, Classes A, B, C, D, E, and F.

To actions on bills of exchange, promissory notes or cheques. 1. The defendant did not accept the bill.
2. The defendant did not make the note.
3. The defendant did not draw the cheque.
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).

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*, cheque) 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.

To actions for any simple contract debts other than bills, notes, or cheques.

1. The defendant did not order the goods.
2. The goods were not delivered to the defendant.
3. The price was not *l.*

[*or*]

4. } Except as to *l.*, *same as* } 1.
5. } 2.
6. } 3.

7. The defendant (*or*, A. B., the defendant's agent) satisfied the claim by payment before action to the plaintiff (*or*, to C. D., the plaintiff's agent) on the of 18 .

8. The defendant satisfied the claim by payment after action to the plaintiff on the of 18

(Signed)
Delivered

To actions on bonds or contracts under seal for the payment of a liquidated amount in money.

1. The bond (*or*, deed) is not the defendant's bond (*or*, deed).
2. The defendant made payment to the plaintiff on the day according to the condition of the bond.
3. The defendant made payment to the plaintiff, after the day named and before action, of the principal and interest mentioned in the bond.

(Signed)
Delivered

In actions on guaranties, whether under seal or not where the claim against the principal in respect of a debt or liquidated demand only. Order III., Rule 6, Class (E.).

1. The principal satisfied the claim by payment before action.
2. The defendant was released by the plaintiff giving time to the principal debtor, in pursuance of a binding agreement.

(Signed)
Delivered

To any action of debt.

1. As to 50*l.* parcel of the money claimed, the defendant is entitled to set-off for goods sold and delivered by the defendant to the plaintiff. Particulars are as follows:—

	£	*s.*	*d.*
1882, Jan. 25. To 20 tons of Silkstone coal at 1*l.* .	20	0	0
„ Feb. 1. To 30 tons of Silkstone coal at 1*l.* .	30	0	0
Total	£50	0	0

2. As to the whole (*or*, as to *l.*, parcel of the money claimed), the defendant made tender before action (*or*, on the day on which it fell due) of *l.*, and has paid the same into Court.

(Signed)
Delivered

General Defences.

Accord and satisfaction.

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).

Bankruptcy, &c.

2. The defendant became bankrupt.

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.

Coverture.

6. The defendant was covert at the time of making the alleged contract (*or*, contracting the alleged debt).

Infancy.

7. The defendant was an infant at the time of making the alleged contract (*or*, contracting the alleged debt).

Payment into Court.

8. The defendant as to the whole action (*or*, as to of *l.*, 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 *l.*, and says that sum is enough to satisfy the plaintiff's claim (*or*, the plaintiff's claim herein pleaded to).

Release.

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.

Rescission before breach.

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).

Statute of Limitations.

11. The debt was barred by the Statute of Limitations [*state which*].

Statute of Fraud.

12. (17th) section of the Statute of Frauds has not been complied with.

(Signed)
Delivered

Section V.

To Actions for Damages for Breach of Contract or Duty. Appendix C., Sect. V.

1. The defendant did not contract (*or*, promise, *or*, agree) as alleged. Denials.
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.
4. The defendant did not [*insert breaches denied*].
5. The defendant was not ready and willing to accept and pay for the goods (*or*, to deliver the goods, *or*, *as the case may be*).
6. There was contributory negligence on part of the plaintiff. Contributory negligence.
7. The plaintiff did not pay or tender the money for the carriage. Carriers.
8. The damage or loss occurred from the inherent vice (*or*, bad condition when received) of the goods (*or*, horse, *or*, *as the case may be*).
9. The loss occurred by reason of the excepted perils mentioned in the charter-party (*or*, bill of lading), that is to say, the perils of the seas (*or*, fire, *or*, *as the case may be*).
10. The goods were above the value of 10*l.*, and consisted of articles mentioned in the first section of the Land Carriers Act (11 Geo. IV. and 1 Will. IV., ch. 68), that is to say, silks (*or*, *as the case may be*), and their value and nature was not declared or any increased charge paid, &c.
11. The charter-party was cancelled pursuant to cancelling clause therein, the ships not having arrived at port of loading on or before 1st May, 1882. Charter-parties.
12. The alleged liability of the defendant had ceased by reason of cesser clause in the charter-party, the cargo shipped having been worth more at the port of discharge than the freight or demurrage.
13. The loss was not by the perils insured against.
14. The plaintiff was not interested in the subject-matter of the insurance. Insurance.
15. The ship was not seaworthy at commencement of risk (*or*, voyage).
16. The plaintiff was not ready and willing to marry the defendant. Breach of promise.

(Signed)
Delivered

Section VI.

To Actions claiming Injunctions, Damages, or Declarations of Right, founded upon Wrongs. Appendix C., Sect. VI.

1. Denial of the several acts (*or*, matters) complained of. To all actions for wrongs.

(Signed)
Delivered

To actions for detention or conversion of chattels.

1. The goods (*or*, chattels, *or*, *as the case may be*) were not the plaintiff's.

2. The goods were detained for a lien to which the defendant was entitled. Particulars are as follows:—

1882, May 3. To carriage of the goods claimed from London to Birmingham:—

	£	s.
45 tons at 2*s*.	4	10

(Signed)
Delivered

To actions for personal bodily injuries or injuries to carriages, goods, or animals by trespass or negligence.

1. The defendant did the acts complained of in necessary self-defence.

2. There was contributory negligence on the part of the plaintiff (*or*, the plaintiff's servant).

(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 uot 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.

Nuisance.

3. The defendant denies that he or his servants pollute the water [*or* do what is complained of].

[*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.*]

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

To actions for seduction.

1. The said A. B. was not the servant of the plaintiff.
2. The defendant did not seduce and carnally know the said A. B.

(Signed)
Delivered

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.

Counter-claims.

The defendant lent 500*l.* to the plaintiff on 1st of May, 1882.
The defendant counter-claims 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*s.* 6*d.* per ton on 2,000 tons	250	0	0

The defendant counter-claims 250*l.*

(Signed)
Delivered

APPENDIX (E).

Forms of Reply, &c., to be used pursuant to Order XIX., Rule 5.

Section I.

General Form.

18 . [*Here put the letter and number.*]
In the High Court of Justice.
Division.
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.

To actions on a guarantee to which defence raised of time given to the principal and counter-claim for non-delivery of goods.

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

Section II.

Example of a Statement of Claim, Defence, and Reply.

18 . [*Here put the letter and number.*]
In the High Court of Justice,
Queen's Bench Division.
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:—

	£	*s.*	*d.*
1882. January 1 to 31 May. To rebuilding house at Wigan as per contract dated the 24th December, 1881	3400	0	0
To extras as per account delivered . .	243	0	0
	3643	0	0
Paid on account	3000	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.

Defence.

The defendant says that—

1. Except as to 200*l.*, parcel of the money claimed, the architect did not grant his certificate pursuant to the contract.

2. As to 200*l.*, parcel of the money claimed, the defendant brings (*or* has brought) into Court 200*l.*, 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 1*l.* 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 61*l.*

(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 *l.* in satisfaction.

The plaintiff as to the counter-claim 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.

To action on a guarantee for the price of goods.

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.

(Signed)
Delivered

No. 2.

[*Heading.*]

Defence.

To action for verbal slander actionable only by reason of special damage.

The defendant says that—

1. The defendant did not speak or publish the words.
2. The words did not refer to the plaintiff.
3. The defendant will object that the special damage stated is not sufficient in point of law to sustain the action.

(Signed)
Delivered.

No. 3.

[*Heading.*]

Defence.

To action on a marine policy stated to contain clauses that the policy was to be proof of interest and without benefit of salvage.

The defendant says that—

1. The defendant did not make the policy.
2. The loss was not by the perils insured against.
3. The defendant will object that the policy was avoided by 19 Geo. II. c. 37, s. 1.

(Signed)
Delivered

APPENDIX (F).

Forms of Judgment.

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 *l.* and costs, to be taxed.

---

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.

---

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 .

---

4. *Judgment in default of Appearance and defence after Assessment in 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 *l.*, it is adjudged that the plaintiff recover *l.*, and costs to be taxed.

---

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 *l.* [*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 *l.* as appears by a Taxing Officer's Certificate dated the day of 18 .

---

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.

---

7. *Judgment after Trial with a Jury.*

[*Heading as in Form* 1.]

15th November 18 .

The action having on the 12th and 12th 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 *l.* and costs [*or as the case may be*]: Therefore it is adjudged that the plaintiff recover against the defendant *l.* and *l.* for his costs [*or* that the plaintiff recover nothing against the defendant, and that the defendant recover against the plaintiff *l.* for his costs of defence, *or as the case may be*].

---

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

---

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 *l.* and directed that the do pay the costs of the reference:

It is this day adjudged that the recover against the said *l.*, and costs to be taxed.

The above costs have been taxed and allowed at *l.*, as appears by a Taxing Officer's Certificate dated the day of 18 .

---

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

---

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 *l.*:

It is this day adjudged that the recover from the *l.* and costs to be taxed.

The above costs have been taxed and allowed at *l.*, as appears by a Taxing Officer's Certificate dated the day of 18 .

Judgment entered the day of 18 .

---

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 *l.* and costs to be taxed.

The above costs have been taxed and allowed at *l.* as appears by a Taxing Officer's Certificate dated the day of 18 .

---

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 *l.* and costs to be taxed.

The above costs have been taxed and allowed at *l.*, as appears by a (Taxing Officer's) Certificate dated the day of 18 .

---

14. *Judgment for Defendant's Costs on Discontinuance.*

[*Heading as in Form* 1.]

The day of 18 .

The plaintiff having by 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 s this day adjudged that the defendant recover against the plaintiff costs to be taxed.

The above costs have been taxed and allowed at *l.* as appears by a Taxing Officer's Certificate dated the day of 18

---

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 *l.* as appears by a Taxing Officer's Certificate dated the day of 18 .

---

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 *l.* in satisfaction of the plaintiff's claim, and the plaintiff having by his notice 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 *l.*, as appears by a Taxing Officer's Certificate dated the day of 18 .

---

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 *l.* and costs to be taxed.

The above costs have been taxed and allowed at *l.*, as appears by a Master's Certificate dated the day of 18 .

Judgment entered the day of 18 .

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 *l.* and costs to be taxed.

The above costs have been taxed and allowed at *l.*, 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.

1. *Of Fieri Facias.*

18 . [*Here put the letter and number.*]
In the High Court of Justice,
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 *l.* and interest thereon at the rate of *l.*
per centum per annum from the day of
[and *l.* costs] to .
Judgment [*or* order] dated day of .
[Taxing Officer's Certificate, dated day of .]
X. Y., Solicitor for [*party on whose behalf writ is to issue.*]

---

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 *l.* together with interest thereon, from the
day of [and the sum of *l.* 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

---

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

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

---

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.*

---

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

---

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

---

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

---

9. *Of Commission of Appraisement and Sale.*

18 . [*Here put the letter and number.*]

In the High Court of Justice,
Probate, Divorce, and Admiralty Division.
Between A. B., plaintiff,
and
the Owners of the

I, A. B., solicitor for the [*state whether plaintiff or defendant*], pray a commission for the appraisement and sale of the [*state name and nature of property*] which was decreed by the Court on the day of 18 .

Dated the day of 18 .

[*To be signed by the solicitor, or by his clerk for him.*]

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.

---

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 *fieri facias* in this action tested the day of 18 .

Dated the day of 18 .

(Signed)
(Address)
Solicitor for the

---

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

---

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

---

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

---

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

---

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

---

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

---

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

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

---

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

---

21. *Of Subpœna.*

[*Heading as in Form* 1.]

Seal writ of subpœna on behalf of the directed to returnable

Dated the day of 18 .

(Signed)
(Address)
Solicitor for the

---

22. *Entry of Action for Trial.*

[*Heading as in Form* 1.]

Enter this action for trial.

Dated the day of 18 .

(Signed)
(Address)

---

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 .

(Signed)
(Address)

24. *Entry for Argument generally.*

[*Heading as in Form* 1.]

Set down for argument the
Dated the day of 18 .
(Signed)
(Address)

---

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)

---

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)

---

27. *Search.*

[*Heading as in Form* 1.]

Search for Dated the
day of 18
(Signed)
(Address)
Agent for
Solicitor or

---

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.

1. *Writ of Fieri Facias.*

18 . [*Here put 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.*, of Great Britain and Ireland, Queen, Defender of the Faith.

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 *l.* And also interest thereon at the rate of *l.* 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 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 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 *l.* [costs] together with interest thereon at the rate of 4*l.* 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, *as the case may be*]. And in what manner you shall have executed this Our writ make appear to us in Our said Court immediately after the execution thereof. And have there then this writ.

Witness, &c.

---

2. *Fieri Facias on order for Costs.*

[*Heading as in Form* 1.]

Victoria, by the grace of God, *&c.*, to the sheriff of greeting:

We command you, that of the goods and chattels of

* 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.

in your bailiwick you cause to be made the sum of
for certain costs which by an order of Our High Court of Justice, dated the day of 18 were ordered to be paid by the said to and which have been taxed and allowed at the said sum, and interest on the said sum at the rate of 4*l.* per centum per annum from the day of 18 , and that you have the said sum and interest before us in Our said Court, immediately after the execution hereof, to be rendered to the said . And in what manner, &c. And have there then this writ.

Witness, &c.

Levy *l.* and *l.* for costs of execution, &c., and also interest on *l.* at 4*l.* per centum per annum from the day of 18 , until payment; besides sheriff's poundage, officer's fees, costs of levying, and all other legal incidental expenses.

This writ was issued by, &c., of
agent for of
solicitor for the
The is a and resides at
in your bailiwick.

---

3. *Writ of Elegit.*

[*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 in a certain action [*or*, certain actions, *as the case may be*] there depending, wherein A. B. is plaintiff and C. D. 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 made in the said action [*or* matter, *as the case may be*], and bearing date the day of , it was adjudged [*or* ordered, *as the case may be*] that C. D. should pay unto A. B. the sum of *l.*, together with interest thereon after the rate of *l.* per centum per annum from the day of , together also with certain costs as 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 afterwards the said A. B. came into Our said Court, and according to the statute in such case made and provided, chose to be delivered to him 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, 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 one in trust for him, was seised or possessed of on the day of in the year of our Lord * or at

---

* The day on which the judgment or order was made.

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 to him the said goods and chattels as his proper goods and chattels, and 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 *l.* and *l.* together with interest upon the said sum of *l.* at the rate of *l.* per centum per annum from the said day of and on the said sum of *l.* [costs] at the rate of 4*l.* 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 *l.* and *l.* 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 appraisement. And have there then this writ.

Witness, &c.

---

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 fieri 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

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* The date of the certificate of taxation. The writ *must* be so moulded as to follow the substance of the judgment or order.

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.

---

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 *l.* 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 *l.* at the rate of *l.* per centum per annum, 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.

---

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*].

---

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, rentcharges 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.

---

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.

---

9. *Writ of Possession in Admiralty Action.*

18 . [*Here put the letter and number.*]

In the High Court of Justice,

Probate, Divorce, and Admiralty Division.

Between A. B., Plaintiff,

and

The Owners of the

Victoria, by the grace of God, *&c.* To the Marshal of the Probate, Divorce, and Admiralty Division of the High Court of Justice, and to all and singular his substitutes, greeting: Whereas in an action of possession commenced in Our said High Court on behalf of against the or vessel called the , her tackle, apparel, and furniture,

[and against intervening,] the Judge has ordered possession of the said or vessel to be delivered up to the said or to his lawful attorney for his use. We therefore hereby command you to release the said vessel, her tackle, apparel, and furniture, from the arrest made by virtue of Our warrant in that behalf, and to deliver possession thereof to the said or to his lawful attorney for his use.

Witness, &c.

Writ of possession.

Taken out by (Seal)

---

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.

---

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 be made *l.* [*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 *l.* [*damages.*] And also interest thereon at the rate of 4*l.* 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 *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 *l.* [costs], together with interest thereon at the rate of 4*l.* 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.

---

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.

---

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 18 , 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 estate 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 estate 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.

---

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 a† of Our said Court bearing date the day of , was‡ to be paid by the said to the said and of the sum of *l.*, the amount at 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 4*l.* 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.

* "the amount of," or "part of."

† "judgment" or "order."

‡ "adjudged" or "ordered."

Witness, &c.

This writ was issued by, &c.

The defendant is a and resides at in your bailiwick.

---

15. *Fieri Facias on Judgment removed from Lord Mayor's Court.*

[*Heading as in Form* 1.]

Victoria, by the grace of God, &c., to the sheriff of greeting:

Whereas by the judgment of the Mayor's Court, London, it has been adjudged that the said recover against the said the sum of *l.* [*debt and costs*]:

And whereas this judgment has been removed into Our High

Court of Justice, and has become of the same effect as a judgment recovered in that Court:

And whereas the costs attendant on the removal of the said judgment were on the [*day of removal*] day of 18 , taxed and allowed at *l.* [*costs of removal*]:

Therefore we command you, that of the goods and chattels of the said in your bailiwick, you cause to be made the said sums of *l.* and *l.* with interest thereon at the rate of 4*l.* per centum per annum from the said day of 18 , and that you have that money and interest before Us in Our said Court immediately after the execution hereof, to be rendered to the said . And in what manner, &c. And have then there this writ.

Witness, &c.

Levy *l.*, and *l.* for costs of execution, and also interest on *l.* at 4*l.* per centum per annum, from the day of 18 , until payment; besides sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses.

This writ was issued by, &c.

The defendant is a and resides at in your bailiwick.

---

16. *Commission of Appraisement and Sale.*

[*Heading as in Form* 9.]

Victoria, by the grace of God, *&c.* To the Marshal of the Probate, Divorce, and Admiralty Division of Our said High Court, and to all and singular his substitutes, greeting: Whereas in an action of , commenced in Our said High Court on behalf of against [and against intervening], the Judge has ordered the said to be appraised and sold: We therefore hereby authorize and command you to reduce into writing an inventory of the said , and having chosen one or more experienced person or persons, to swear him or them to appraise the same according to the true value thereof, and upon a certificate of such value having been reduced into writing to cause the said to be sold by public auction for the highest price, not under the appraised value thereof that can be obtained for the same. And we further command you, immediately upon the sale being completed, to pay the proceeds arising therefrom into the registry of the said Division, and to file the certificate of appraisement signed by you and the appraiser or appraisers, and an account of the sale signed by you, together with this commission.

Witness, &c.

(Seal.)

Commission of Appraisement and Sale.
Taken out by

APPENDIX (J).

Forms of Subpœna, &c.

1. *Subpœna ad Testificandum* (*General Form*).

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 [*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.

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.

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.

---

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.

---

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.

---

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.

---

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.

---

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 resides at in your bailiwick.

---

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 levied 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.

---

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.

---

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.

---

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.

---

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 *vivâ voce* as hereinafter 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 *vivâ 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 *vivâ voce*, the party producing any witness for examination being at liberty to re-examine him *vivâ voce;* and all such additional *vivâ 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 *vivâ 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.

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 of 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.

Interpreters' 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.

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14. *Commission to examine Witnesses.*

18 . [*Here put the letter and number.*]
In the High Court of Justice.
Probate, Divorce, and Admiralty Division.
Between A. B., Plaintiff,
and
the Owners of the

VICTORIA, by the grace of God, *&c.*, to [*state name and address of examiner or commissioner appointed*], greeting:
Whereas in an action of commenced in Our said High Court of Justice on behalf of against , [and against intervening], the Judge has ordered a commission to be issued for the examination of witnesses concerning the truth of the matters at issue in the said cause: We therefore hereby authorize you, upon the day of 18 at , in the presence of the solicitors in the said action, or in the presence of their or either of their lawfully appointed substitutes, or otherwise notwithstanding the absence of either of them, to swear the witnesses who shall be produced before you for examination in the said cause, and cause them to be examined, and their depositions to be reduced into writing: We further authorize you to adjourn (if necessary) the said examinations from time to time and from place to place, as you may find expedient: And We command you, upon the examinations being completed, to transmit the depositions and the whole proceedings had and done before you, together with this commission, to the Registry of the said Division of Our said Court.
Witness, &c.

E. F.,
Registrar.

Commission to examine
Witnesses.
Taken out by

APPENDIX (K).

Summonses and Orders.

1. *Summons (General Form).*

18 . [*Here put the letter and number.*]
In the High Court of Justice.
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

---

2. *Order (General Form).*

[*Heading as in Form* 1].

* Insert name of Judge or Master.

*Judge [*or* Master] in Chambers.

Between

Upon hearing , and upon reading the affidavit of filed the day of 18 and

It is ordered and that the costs of this application be

Dated the day of 18 .

---

3. *Summons for Directions pursuant to Order XXX.*

[*Heading as in Form* 1.]

Fill in a date not less than 4 days from service of summons.

Let all the parties concerned attend 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 for directions for

[*Here state all matters or proceedings previous to trial on which directions are required*].

Dated the day of 18 .

This summons was taken out by solicitor for

To

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 interrogatories in writing, and that the said parties do respectively answer the said interrogatories as prescribed by Order XXXI., Rules 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 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 the day of 18 .

---

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 .

---

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 .

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 .

---

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 *l.*, 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 .

---

9. *Order under Order XIV., No. 4.*

[*Heading as in Form* 1.]

Upon hearing
and upon reading the affidavit of
filed the day 18 , and

It is ordered that if the defendant pay into Court within a week from the date of this order the sum of *l.* 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 .

---

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 .

---

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, Order XVI., Rule 14, and that the costs of this application be

Dated the day of 18 .

---

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 .

---

13. *Order for Particulars* (*Accident Case*).

[*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 injuries mentioned in the statement of claim, together with the time and place of the accident, and the particular acts of negligence complained of, and that unless such particulars be delivered within
days from the date of this order all further proceedings in this action will be stayed until the delivery thereof, and that the costs of this application be

Dated the day of 18 .

---

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 .

---

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 .

---

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 Supreme Court, and that the costs of this application be
Dated the day of 18 .

---

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 .

---

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 seasonable 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 .

---

19. *Order for Production* (*Underwriters*).

[*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 produce and show to the upon oath all insurance slips, policies, letters of instruction, or other orders for effecting such slips or policies, or relating to the insurance or the subject-matter of the insurance on the ship or the cargo on board thereof, or the freight thereby, and also all documents relating to the sailing or alleged loss of the said ship the cargo on board thereof and the freight thereby, and all letters and correspondence with any person or persons in any manner relating to the effecting the insurance on the said ship, the cargo on board thereof, or the freight thereby, or any other insurance whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the voyage insured by, or relating to the policy sued upon in this action, or any other policy whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the same voyage. Also all correspondence between the captain or agent of the vessel and any other person, with the owner or any person or persons previous to the commencement of or during the voyage upon which the alleged loss happened. Also all protests, surveys, log-books, charter-parties, tradesmen's bills for repairs, average statements, letters, invoices, bills of parcels, bills of lading, manifests, accounts, accounts-current, accounts-sales, bills of exchange, receipts, vouchers, books, documents, correspondence papers, and writings (whether originals, duplicates, or copies respectively), which now are in the custody, possession, or power of the his brokers, solicitors, or agents, in any way relating or referring to the matters in question in this action, with liberty for the to inspect and take copies of or extracts from the same or any of them, and that in the meantime all further proceedings be stayed, and that the costs of this application be

Dated the day of 18

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 .

---

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 pre-paid post letter, addressed to the defendant
at , shall be good and sufficient service of the writ.
Dated the day of 18 .

---

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 .

---

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 .

---

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 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 .

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 .

---

26. *Order for Examination of Witnesses and Production of Documents.*

[*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.
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 .

---

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 .

---

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 .

---

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

---

30. *Order to remove Judgment from County Court.*

18 . [*Here put the letter and number.*]

In the High Court of Justice.

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 , 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 .

---

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 *l.*, or give to the plaintiff a bond executed by him and two sufficient sureties in the penalty of *l.*, 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 .

---

32. *Order of Reference under sec.* 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 sec. 56 of the Supreme Court of Judicature Act, 1873, and that the costs of this application be

Dated the day of 18 .

---

33. *Order of Reference under sec.* 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 .

---

34. *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 .

---

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 .

---

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 .

---

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 commissioners named by and on behalf of the and to of and commissioners named by and on behalf of the for the examination upon interrogatories and *vivâ 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 *vivâ 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 *vivâ voce* the party producing the witness for examination being at liberty to re-examine him *vivâ voce;* and all such additional *vivâ 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' depositions.

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 *viva 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 question 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 thereform, 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 .

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.

Upon hearing
and upon reading the affidavit of , filed the day 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 .

---

39. *Garnishee Order* (*Attaching Debt*).

18 . [*Here put the letter and number.*]
In the High Court of Justice.
Division.
in Chambers.
Between
Judgment Creditor,
and
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 *l.* 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 .

---

40. *Garnishee Order (Absolute).*

18 . [*Here put the letter and number.*]
In the High Court of Justice.
Division.
in Chambers.
Between
Judgment Creditor,
and
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 *l.*, on which judgment the said sum of *l.* 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 .

---

41. *Order on Client's Application to tax Solicitor's 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:

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 anything, 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 .

---

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 overpaid.

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 .

---

* The solicitor for the parties to an administration action will not, on a change of solicitor, be allowed to assert his lien for costs, on papers in his possession, in such a way as to embarrass the proceedings in the action (*Re Boughton*, 23 Ch. D. 169). In a case of pressing necessity, and upon payment of a sufficient sum into Court, the clients are entitled to have the documents handed over to them (*Re The S. Essex Adv. Co.*, 46 L. T. 280). Letters addressed to a solicitor by his client, and copies in his letter-book of his own letters to the client, are his own property, and he is entitled to retain them as such (*Re Wheatcraft*, 6 Ch. D. 97). Where further costs have been incurred with the client's knowledge after the delivery of the bill the solicitor has a lien on the papers for the further costs (*Ex parte Jarman*, 4 Ch. D. 835). An application to vary the order for taxation, on the ground of an alleged mistake appearing on the face of it, ought to be made directly the mistake is discovered (*Re Tibbitts*, 30 W. R. 177).

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.

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 .

---

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 .

---

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 defendant'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

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 .

---

47. *Order for Payment of Judgment Debt by Instalments.*

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 judgment debtor do pay to the above-named judgment creditor the sum of *l.*, together with interest thereon at the rate of 4*l.* per centum per annum from the day of 18 , the date of the judgment, and also *l.* 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 .

---

48. *Order for Committal of Judgment Debtor.*

18 . [*Here put the letter and number.*]
In the High Court of Justice.
Division.
Judge 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 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 *l.*, 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 4*l.* per cent. per annum from the aforesaid date, and 1*l.* 6*s.* 8*d.* 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 .

---

49. *Order for Committal of Judgment Debtor on Non-payment of Instalment.*

18 . [*Here put the letter and number.*]

In the High Court of Justice.

Division.

Judge 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 judgment debtor be for default in payment of *l.*, being the amount of the [*first*] instalment of the judgment debt of *l.* 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 13*s.* 4*d.* 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 .

---

50. *Interpleader Order, No.* 1.

18 . [*Here put the letter and number.*]

In the High Court of Justice.

Division.

in Chambers.

Between

Plaintiff,

and

Defendant,

and between

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 .

---

51. *Interpleader Order, No.* 2.

18 . [*Here put the letter and number.*]
In the High Court of Justice.
Division.
in Chambers.
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 .

---

52. *Interpleader Order, No.* 3.

18 . [*Here put the letter and number.*]
In the High Court of Justice.
Division.
in Chambers.
Between
Plaintiff,
and
Defendant.
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 .

---

53. *Interpleader Order, No.* 4.

[*Heading as in Form* 52.]

Upon hearing, &c.

It is ordered that upon payment of the sum of *l.* 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 .

---

54. *Interpleader Order, No.* 5.

[*Heading as in Form* 52.]

Upon hearing, &c.

It is ordered that upon payment of the sum of *l.* 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* issued 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 .

---

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 18 , and
It is ordered that
And that the costs of this application be
Dated the day of 18 .

---

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 .

---

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 .

---

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.

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

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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.

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.

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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.

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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 part 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.

---

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 18 .

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.

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 *l.*, with interest thereon at *l.* per cent. per annum, from the day of 18 , and *l.* 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.

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.

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.

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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 *l.*, and they have paid or are entitled to be allowed on account thereof, sums to the amount of *l.*, having a balance due from [*or* to] them of *l.* 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 *l.*

3. The funeral expenses of the testator amount to the sum of *l.*, 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 *l.*

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-moneys, amounting altogether to *l.*, 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.

---

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.

The words in *italics* to be inserted only where the direction is to take an account of personal estate not specifically bequeathed.

3. The said testator's funeral expenses have been paid. The same consist of the items of disbursemeut 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

This should accord with the order directing the account.

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 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 seised of or entitled to at the date of his death.

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 seised 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 or 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*l.* cash in the house.
2. 100*l.* cash at the testator's bankers, Messrs. A. and B.

3. 1,000*l.* Consolidated 3*l.* per cent. annuities, standing in the testator's name.

4. 10*l.* due from John James, for half-year's rent of house at to Michaelmas, 1882.

5. 32*l.* 6*s.* 8*d.*, balance remaining due from John Thomas on account of half-year's rent of farm at , to Michaelmas, 1882.

6. 300*l.*, 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 *l.* a year, underlet to James Evans for a term which will expire on , at a rent of 50*l.* a year.

8. 25*l.*, 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.]

---

12. *Account of Personal Estate, being Account A. referred to in Form No.* 11.

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 & Co. -	Balance at bankers.	
3		.....	Half-year's dividend on 2,000*l.* 3*l.* per cent. annuities due.	
4		John James -	Bond debt of 300*l.* and interest from to	
5		Samuel Jones	Bond debt of 300*l.* 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*l.* and 25*l.* for interest thereon from to	

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.
	18 .			£ *s. d.*
1		John James -	Half-year's rent for farm in parish of , due	
2		Thos. 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.
	18 .			£ *s. d.*
1		Sun Insurance Office	One year's insurance against fire, due	
2		Thomas Carpenter	Repairs at John James' farm.	
3		James Francis	Income Tax, half-year, due October 10.	

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.	Tenants' Names.	Description of Premises.	Annual Rent. £	Annual Rent. *s.*	Annual Rent. *d.*	Arrears due at . £	Arrears due at . *s.*	Arrears due at . *d.*	Amount due at . £	Amount due at . *s.*	Amount due at . *d.*	Amount received. £	Amount received. *s.*	Amount received. *d.*	Arrears remaining due. £	Arrears remaining due. *s.*	Arrears remaining due. *d.*	Observations.
1		John Jones -	Home Farm in the parish of Norton, in the county of Oxford.																
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. £	Amount. *s.*	Amount. *d.*
1		Sun Fire Office - -	One year's insurance of, due			
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 - £			

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.

	£ s. d.	£ s. d.
Amount of balance due from receiver on account of real estate on last account - - - -	,, ,,	
Amount of receipts on the above account of real estate - - - - - - - -	,, ,,	
Balance of last account paid into Court - - - - - - - - - -	,, ,,	
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 - - - £		
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 - - - - - - - - - -	,, ,,	
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 - - £		

15. *Ordinary Conditions of Sale.*

Conditions of Sale.

1. No person is to advance less than *l.* 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 *l.* 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 1*s.* 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 condtion, 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 *l.* 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 misstatement shall appear to have been made in the above particulars, such error or misstatement 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.

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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-moneys, leaving due in respect of the said purchase-moneys 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.

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	Jas. Allen	Boston, in the county of Lincoln, surgeon -	100	0	0			
		Interest - - -	4	0	0			
		Costs - - - -	2	2	0			
						106	2	0
1	Chas. Cohen	98, Piccadilly, in the county of Middlesex, gentleman, executor of John Thomas	67	0	0			
		Interest from October 5, 1850, at 5*l.* per cent. -	4	2	0			
		Costs - - - -	2	2	0			
						73	4	0
5	Jn. Dennis and Owen Thomas	16, Fleet Street, London, grocers, and co-partners -	100	0	0			
		Interest from October 16, 1852, at 5*l.* per cent. -	5	0	0			
		Another debt - -	62	0	0			
		Interest - - -	2	10	0			
		Costs - - - -	2	4	6			
						171	14	6
						£		

18. *List of Legacies remaining unpaid.*

James *v.* Jones.

List of Legacies.

Names 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	
	Interest - - - -	7 5 6	
			107 5 6
Mary Russell -	Of 20, Cheapside, London, widow -	50 0 0	
	Interest from January 1, 1850, the death of testator -	4 8 0	
			54 8 0
Jane, the wife of John Williams	Of Lincoln, Esq. -	250 0 0	
	Paid in part - -	50 0 0	
		200 0 0	
	Interest - - - -	14 11 0	
			214 11 0
		Total -	£

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.
		£ *s.* *d.*	£ *s.* *d.*
Mary Jones -	Spinster, daughter of testator, during her life - - - -	50 0 0	25 0 0
Maria Williams	Widow of testator, during her life and widowhood - -	200 0 0	
	Arrears due from August 7, 1882, down to which it has been paid - -	—	300 0 0
	Totals - - -	£	£

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.
		£ s. d.	£ s. d.	£ s. d.
John Jones -	20, Cheapside, London, woollen draper	200 0 0		
	Subsequent interest -	17 10 0	217 10 0	57 4 8
Thos. 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 -	£

21. *Receiver's Recognizance.*

, of , 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

v.

Mr. Justice , the Judge to whose Court this cause is attached, has approved of and allowed this recognizance.
Chief Clerk.

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 underwritten 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.

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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 contained from page to page , both inclusive, in each of the two several books marked with the several letters A and B 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.

This is to accord with the order appointing the receiver.

The day to which the account is made up.

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.

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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

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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.

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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.

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26. *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.

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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

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28. *Forms 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 seised 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.

APPENDIX (M).

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 filling 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 6 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 indorsed 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 *l.* 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 *l.* 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.

Writs, Summonses, and Warrants.

	Higher Scale. £	*s.*	*d.*	Lower Scale. £	*s.*	*d.*
Writs 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 *subpœna 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 *subpœna 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 statute 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

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
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 summons for proceedings in Chambers in the Chancery Division at Taxing Officer's discretion, not exceeding	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 Order LV., Rule 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 solicitor or party .	0	2	6	0	2	6
Or if authorized to be served by post .	0	1	6	0	1	6
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.						

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
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 Order VII., Rules 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

	Higher Scale. £ s. d.	Lower Scale. £ s. d.
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*l.*

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
For indorsement of writ of summons when no further statement of claim .	1 1 0	0 13 4
For originating summons 6*s.* 8*d.*, 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

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
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 peti-						

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
tion or summons) and amendments of any pleading	0	10	0	0	5	0
Or per folio	0	1	0	0	1	0
Particulars, 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 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

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
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.

	Higher Scale. £ s. d.	Lower Scale. £ s. d.
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
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 Order XVI., Rule 49, and of defendant's defence and counter-claim served on a person not a party under Order XXI., Rule 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 Order XXXII., Rule 4, per folio . .	0 1 0	0 1 0

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
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 *ad litem*	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 Order XXXI., Rule 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

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
If five guineas and under 20 guineas	0	13	4	0	6	8
If 20 guineas	1	1	0	0	13	4
If 40 guineas or more . . .	2	2	0		—	
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

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
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 *ex parte* 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

	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
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
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.) The 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 6, 1860.
March 20, 1860.
February 1, 1861.
February 5, 1861.
July 13, 1861.
January 1, 1862.
May 16, 1862.
May 27, 1865.
May 7, 1866.
November 22, 1866.
April 17, 1867.
(21.) The Chancery Regulations dated August 8, 1857, and March 15, 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.)

APPENDIX (P).

Supreme Court of Judicature (Funds, &c.) Act, 1883. (46 & 47 Vict. c. 29).

An Act to consolidate the Accounting Departments of the Supreme Court of Judicature, and for other purposes.
[20*th 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 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, 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, and all securities and money at any time after the commencement of this Act transferred or paid into or deposited in 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. Funds in Chancery Division. 35 & 36 Vict. c. 44. s. 10.

3. (*a.*) The Lord Chancellor, with the concurrence of the Treasury, may at any time after the passing of this Act direct that all moneys in court, or to be hereafter paid into Court, in any other division of the High Court of Justice, and all securities in Court placed or to be placed to the credit of any cause, matter, or account, in any such division, shall be transferred, or paid, or placed (as the case may be) to the account or credit of the Paymaster-General for and on behalf of the Supreme Court of Judicature. Funds in other divisions.

(*b.*) All moneys and securities transferred, paid, or placed to the said account or credit of the Paymaster-General under this section shall be held by the Paymaster-General for the time being in trust to attend the orders of the Court in regard thereto, and subject to rules to be made under this Act.

(*c.*) The Consolidated Fund shall be liable to make good to the suitors of the Court the moneys and securities so trans-

ferred, paid, or placed to the account or credit of the Paymaster-General.

Power to make rules.

4. (1.) The Lord Chancellor, with the concurrence of the Treasury, may from time to time make rules for giving effect to the provisions of the last preceding section, and for regulating the manner in which, subject to the orders of the Court, the said moneys and securities shall be dealt with by the Paymaster-General, and may at any time revoke or alter any such rules.

(2.) The Treasury shall cause to be kept by the Paymaster-General such books and accounts, and in such form and manner, as they may from time to time direct, for the purpose of duly recording the transactions under the last preceding section; and the accounts kept by the Paymaster-General in respect of such transactions shall be audited by the Comptroller and Auditor-General in the manner and subject to the conditions prescribed in section twenty of the Chancery Funds Act, 1872.

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 authorize 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 section ten 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.

TIME TABLE.

ORDER LXIV. deals with time generally; and of the enlargement or abridgment of the period allowed for taking any proceeding. The time for delivering or amending any pleading may be enlarged by consent in writing without any application to the Court by r. 8. And wide powers are given to the Court under r. 7. The times and hours during which the offices are open are regulated by Order LXIII. pp. 429–432.

The hours at which summonses are returnable are regulated by Order LIV. p. 377; and the service of Orders by Order LXVII. p. 470.

ACCOUNT,		
Application for.	After time for appearance has expired.	O. xv. r. 2, p. 153.
Accounts and inquiries, certificate to be binding on all parties, unless varied.	By summons before the expiration of 8 clear days after filing certificate.	O. lv. r. 70, p. 395.
Provided that in the case of a certificate to be acted on by Paymaster-General without further order, or on passing receiver's accounts.	The application is to be made 2 clear days after the filing.	O. lv. r. 70, p. 395.
Order to be brought into Chambers by party entitled.	Within 10 days after the same has been passed and entered, and in default the opposite party may.	O. lv. 32, p. 387.
Order for administration, execution of trusts, partition or sale, under O. xv., O. xxxiii. Affecting persons not parties.	Person bound by the order may apply to vary, within 1 month after service of the order.	O. xvi. r. 40, p. 170.
ADMINISTRATION.		
Affidavit of executor, verifying list of claims.	To be filed 7 clear days before time appointed for adjudication.	O. lv. r. 52, p. 391.
Subject to postponement by order.	Till after day appointed for adjudication.	O. lv. r. 53, p. 392.
Notice to creditor, whose claim has been disallowed, to attend and prove the same.	7 days at least	O. lv. r. 56, p. 392.

ADMIRALTY BAIL.		
Commencing action against property in respect of which a caveat has been entered.	Solicitor to serve copy writ forthwith on party who has entered caveat.	O. xxix. r. 14, p. 244.
Party on whose behalf caveat entered, if sum does not exceed amount for which he has undertaken.	To give bail or pay same into Registry within **3** days from service of copy writ.	O. xxix. r. 15, p. 244.
Where bail not given or paid into Registry.	**12** days from the filing of the notice undertaking to appear plaintiff's solicitor may proceed in default.	O. xxix. r. 16, p. 245.
Bail bond not to be filed, unless by consent.	Till **24** hours after notice of names and addresses of sureties has been served.	O. xii. r. 20, p. 143.
ADMIRALTY REFERENCES.		
Time for filing claims and affidavits.	Within **12** days from the day when order of reference made.	O. lvi. r. 2, p. 396.
Counter-affidavits . .	Within **12** days from the day when claim and affidavits filed.	O. lvi. r. 2, p. 397.
Further affidavits . .	Within **6** days from filing counter-affidavits.	O. lvi. r. 3, p. 397.
Setting down for hearing.	Within **3** days from the filing the further affidavits.	O. lvi. r. 4, p. 397.
Taking up report . .	Within **6** days of receipt of notice that the report is ready.	O. lvi. r. 9, p. 397.
Time for objections .	**6** days from filing report, notice to be filed in Registry, copy whereof has been served on opposite solicitor	O. lvi. r. 11, p. 398.
Petition in objection .	**12** days from filing notice in Registry.	O. lvi. r. 11, p. 398.
AFFIDAVIT,		
Filing, where evidence taken by consent.	By plaintiff within **14** days after consent; list of, to be delivered.	O. xxxviii. r. 25, p. 311.
	By defendant within **14** days after delivery of above list. Or such other time as parties may agree upon or Judge at Chambers allow.	O. xxxviii. r. 26, p. 311.
	By plaintiff in reply within **7** days after the expiration of the said **14** days, or such other time as aforesaid.	O. xxxviii. r. 27, p. 311.

AFFIDAVIT—*cont.*		
Notice to cross-examine on.	Within **14** days after time for filing affidavits in reply, or a Court or Judge may specially appoint.	O. xxxviii. r. 28, p. 312.
In Probate actions .	In verification of indorsement on writ before issue.	O. v. r. 15, p. 127.
In Admiralty actions.	Before issue of warrant of arrest.	O. v. r. 16, p. 127.
Ne exeat regno, in support of.	Copies to be furnished on request, or such time as may be specified or directed.	O. lxvi. r. 7, p. 469.
Copies not printed to be ready for delivery.	At the expiration of **24** hours after the receipt of the request for the same.	O. lxvi. r. **7** p. 469.
In answer to interrogatories.	To be filed within **10** days, or such other time as a Judge may allow.	O. xxxi. r. 8, p. 251.
Filed before issue joined.	Not to be read at the trial without special leave unless within **1** month after issue joined, notice has been given of an intention to use the same.	O. xxxvii. r. 24, p. 304.
AMENDMENT.		
Of pleadings.	By leave or order at any time.	O. xxviii. r. 1, p. 240.
Of statement of claim.	Once without leave before time for reply; or if no defence delivered, **4** weeks from appearance of defendant who shall have last appeared.	O. xxviii. r. 2, p. 240.
Of counter-claim . .	Without leave before time for pleading to reply, and before pleading to reply; or if no reply, **28** days from defence.	O. xxviii. r. 3, p. 241.
Where opposite party has amended without leave.	Within the time remaining to plead or within **8** days from the delivery of the amendment, whichever shall last expire.	O. xxviii. r. 5, p. 241.
In cases not otherwise provided for.	At any time by leave . .	O. xxviii. r. 6, p. 241.
Avoidance of order giving leave.	**14** days from date of order, if no other time be specified.	O. xxviii. r. 7, p. 241.
Disallowance, application for.	Within **8** days after the delivery of the amended pleading.	O. xxviii. r. 4, p. 241.
Delivery of amended pleading.	Within time allowed for amendment.	O. xxviii. r. 10, p. 242.
Of clerical mistakes in orders.	At any time on motion or summons.	O. xxviii. r. 11, p. 242.
Of defects in any proceedings.	At any time on such terms as may seem just.	O. xxviii. r. 12, p. 242.

AMENDMENT OF NOTICE OF APPEAL.	At any time as the Court may think fit.	O. lviii. r. 2, p. 404.
APPEAL,		
From County Court .	Within 8 days from the decision appealed against.	Sec. 6, County Court Act, 1875, p. 415.
From Judge at Chambers in Q. B. Division.	Within 8 days from the decision appealed against.	O. liv. r. 24, p. 376.
From Master . . .	Within 4 days from the decision appealed against, or by indorsement on the summons.	O. liv. r. 21, p. 376.
From District Registrar.	Within 6 days from notice of decision appealed against, or by indorsement on the summons.	O. xxxv. r. 9, p. 279.
To House of Lords .	Standing orders referring to.	Pp. 88–95.
By persons under disability.	Within 1 year from the termination of the disability.	Standing O. i., p. 91.
In dissolution or nullity of marriage.	No appeal where time and opportunity wasted.	Act 1881, s. 10, p. 108.
APPEAL TO COURT OF APPEAL.		
From interlocutory order.	Within 21 days from order.	O. lviii. r. 15, p. 410.
From final judgment.	Within 1 year	O. lviii. r. 15, p. 410.
Length of notice, from final or interlocutory judgment or final order.	14 days	O. lviii. r. 3, p. 405.
Length of notice, from interlocutory order.	4 days	O. lviii. r. 3, p. 405.
Winding-up, bankruptcy or matters other than actions.	Same as from interlocutory order.	O. lviii. r. 9, p. 408.
Notice of appeal may be amended.	At any time as the Court may think fit.	O. lviii. r. 2, p. 404.
Notice by respondent of cross appeal.	8 days on final judgment . 2 days from interlocutory order.	O. lviii. r. 7, p. 407.
From Judge at Chambers in Chancery Division.	21 days from the time that appellant first had notice of the order.	O. lviii. r. 15, p. 410.
Where an *ex parte* application has been refused by the Court below.	Within 4 days from the date of such refusal unless enlarged.	O. lviii. r. 10, p. 408.
APPEARANCE,		
By defendant within the jurisdiction.	8 days from service of the writ is the time thereby limited.	O. ii. r. 3, p. 117.

APPEARANCE—*cont.*		
	But he may appear subsequently at any time before judgment.	O. xii. r. 22, p. 143.
Without the jurisdiction.	The time is limited by the order giving leave for service.	O. xi. r. 5, p. 139.
By third party . .	Within 8 days from the service of the notice upon him.	O. xvi. r. 49, p. 173.
By party added on change of interest.	In the same manner as to a writ of summons.	O. xvii. r. 5, p. 179.
Application by party added to vary above order.	12 days from service of order, or, if necessary, to have a guardian *ad litem* appointed, then 12 days from his appointment.	O. xvii. rr. 6, 7, p. 180.
By party brought in by counter-claim.	Same regulations as to party summoned by writ of summons.	O. xxi. r. 13, p. 200.
In recovery of land by person not defendant.	Notice to be given forthwith on obtaining leave.	O. xii. r. 27, p. 144.
Where defence limited to part.	Notice thereof to be given within 4 days after appearance.	O. xii. r. 28, p. 145.
ATTACHMENT.		
Præcipe	To be entered by the entering clerk within 1 clear day after being left for entry.	O. lxii. r. 2, p. 426.
(*See* also SOLICITOR.)		
AWARD,		
Application to set aside.	Before the last day of the sittings next after publication.	O. lxiv. r. 14, p. 435.
Enforcing on compulsory reference under C. L. P. Act, 1854.	By authority of Judge at any time after 7 days from publication.	C. L. P. Act, 1854, s. 10, p. 44.
For delivery of land .	Execution by sheriff as judgment of ejectment.	C. L P. Act, 1854, s. 16, p. 46.
Time—for making .	3 months unless enlarged.	C. L. P. Act, 1854,
of enlargement.	1 month unless otherwise stated.	s. 15, p. 46.
COUNTER-CLAIM.		
Application to exclude	Any time before reply . .	O. xxi. r. 15, p. 201.
Appearance by party brought in by.	Same as party served with writ of summons.	O. xxi. r. 13, p. 200.
Delivery of defence to.	Same as to plaintiff. . . .	O. xxi. r. 11, p. 200.
DEBTORS ACT.		
Order for commitment.	In force for 1 year, but may be renewed.	O. xlii. r. 25 327.

DEBTORS ACT—*cont.*		
Objections to sureties where writ of *ne exeat regno* issued.	By plaintiff within 4 days after receiving particulars.	O. lxix. r. 3, p. 474.
An appointment to determine sufficiency must be obtained.	Within 4 days after giving notice of objection, otherwise security deemed sufficient.	O. lxix. r. 3, p. 474.
Indorsement of date of arrest.	2 days after arrest . . .	O. lxix. r. 7, p. 474.
DEED,		
Directed to be settled in Chambers in case parties differ.	Objections to be delivered within 8 days after delivery copy draft deed.	O. lv. r. 34, p. 388.
DEFENCE, STATEMENT OF,		
Where statement of claim delivered.	Within 10 days from the delivery of the statement of claim or from the time limited for appearance, whichever be last, unless extended.	O. xxi. r. 6, p. 199.
Where statement of claim not required.	10 days from appearance, unless time extended.	O. xxi. r. 7, p. 199.
Where leave given to defend under Order xiv. r. 1.	Within time limited by order, or if no time limited, then 8 days from order.	O. xxi. r. 8, p. 199.
To a counter-claim arising after reply or after time for reply.	Within 8 days after such ground of defence has arisen, or at any subsequent time by leave.	O. xxiv. r. 2, p. 232.
Arising after defence delivered or time limited expired.	Within 8 days after such ground of defence has arisen, or subsequently by leave.	O. xxiv. r. 2, p. 232.
After action brought but before defence delivered, and before time limited expired.	Either alone or together, with other grounds of defence.	O. xxiv. r. 1, p. 232.
To set-off or counter-claim, arising after defence delivered and before reply.	In reply, either alone or together, with other grounds of defence.	O. xxiv. r. 1, p. 232.
DISTRICT REGISTRY,		
Removal of action from, where no special indorsement.	Any time after appearance and before defence, and before expiration of time for its delivery.	O. xxxv r. 13 (3), p. 280.

DISTRICT REG.—*cont.*		
Where writ specially indorsed.	If plaintiff, within **4** days, give no notice of an application under O. xiv., then before defence and before expiration of time for its delivery.	O. xxxv. r. 13 (1), p. 280.
	If plaintiff do make the above, then any time after leave to defend, before defence, and before expiration of time for its delivery.	O. xxxv. r. 13 (2), p. 280.
EVIDENCE.		
See Affidavit.		
Taken in another matter may be read.	On *ex parte* application by leave, and in other cases, by giving **2** days' notice.	O. xxxvii. r. 3, p. 300.
EXECUTION.		
See Writ of Execution.		
FURTHER CONSIDERATION.		
Cause adjourned in Ch. D. setting down for, by party having conduct of proceedings.	After **8** and within **14** days from the filing of the Chief Clerk's certificate, not to be in the paper for **10** days ; **6** days' notice required.	O. xxxvi. r. 21, p. 287.
Where matter has originated in Chambers.	By **6**-day summons after **8**, and within **14** days from filing certificate.	O. lv. r. 72. p. 396.
By any other party on failure of above.	By summons **6** clear days before return.	O. lv. r. 72, p. 396.
GUARDIAN AD LITEM.		
Notice of application for appointment.	After expiration of time limited for appearance and **6** clear days before the hearing.	O. xiii. r. 1, p. 145.
Application to vary order as to parties under disability, added under O. xvii. r. 4.	**12** days from appointment of guardian.	O. xvii. r. 7, p. 180.
INSPECTION OF DOCUMENTS.		
If all the documents referred to in the notice have been set forth in his affidavit of documents.	Within **2** days, and if any have not been set forth, then within **4** days from service of notice the party served shall appoint a time within **3** days in which the documents may be inspected.	O. xxxi. r. 17, p. 260.

INTERPLEADER . .	Where applicant is defendant any time after delivery of writ of summons.	O. lvii. r. 4, 400.
INTERROGATORIES,		
Delivery of . . .	. . . . .	O. xxxi. r. 1, p. 247.
Application to set aside or strike out.	Within 7 days after service.	O. xxxi. r. 7, p. 251.
Affidavit in answer, *See* Affidavit.		
JOINDER OF ISSUE.	If not delivered with reply, within 4 days after the delivery of the previous pleading.	O. xxiii. r. 3, p. 231. O. xix. r. 21, p. 192.
JUDGMENT.		
Application for leave to enter final judgment, under O. xiv. r 1.	By summons returnable not less than 4 clear days after service.	O. xiv. r. 2, p. 151.
Application to set aside when obtained by default of appearance at trial.	Within 6 days after the trial, either at the assizes or in Middlesex.	O. xxxvi. r. 33, p. 290.
Order	To be enforced as . . .	O. xlii. r. 24, p. 327.
Drawn up by Registrar or Chief Clerk.	To be entered within 1 clear day after the same is left.	O. lxii. r. 2, p. 426.
To be bespoken, and briefs and other documents left.	Within 7 days after order pronounced or finally disposed of, or Registrar may decline to draw up without leave.	O. lxii. r. 5, p. 427.
Notice of appointment for settling order requiring to be settled in presence of parties.	To be served at least 1 clear day before time fixed.	O. lxii. r. 8, p. 427.
Appointment for passing judgment or order.	Notice to be served 1 clear day before time fixed.	O. lxii. rr. 8, 11, p. 427.
Between original parties.	Execution may issue at any time within 6 years from the recovery of the judgment or the date of the order.	O. xlii. r. 22, p. 326.
Leave to isssue .	Required in certain cases .	O. xlii. r. 23, p. 326.
For costs on discontinuance.	If not paid within 4 days after taxation, judgment may be entered.	O. xxvi. r. 3, p. 236.
Other than for costs, money, or land.	Execution in 14 days unless otherwise ordered.	O. xlii. r. 19, p. 325.

JUDGMENT, MOTION FOR.		
When Judge or referee abstains from directing.	If plaintiff do not set down and given notice within **10** days, defendant may set down and give notice.	O. xl. r. 2, p. 316.
When issues ordered to be tried have been determined.	If plaintiff do not set down within **10** days after his right to do so has arisen, then defendant may, and give notice to other parties.	O. xl. r. 7, p. 317.
When some issues only have been determined.	By leave, without waiting for determination of others.	O. xl. r. 8, p. 317.
Limitation of time for moving.	**1** year from time party first entitled, unless by leave.	O. xl. r. 9, p. 318.
On admissions in the pleadings.	As soon as the right to the relief appears.	O. xxxii. r. 6, p. 265.
Adjournment . . .	General powers of adjournment, &c.	O. xl. r. 10, p. 318.
JURY. *See* Notice of Trial.		
Of special jury—		
By plaintiff. . . .	With the notice of trial .	O. xxxvi. r. 7*b*, p. 285.
By defendant . . .	On giving notice, after close of pleadings and before notice of trial or not less than **6** clear days before the day for which notice of trial is given.	O. xxxvi. r. 7*c*, p. 285.
By order	At any time	O. xxxvi. r. 7*d*, p. 285.
Notice	To Sheriff	p. 297.
NEW TRIAL,		
If trial at London or Middlesex, by notice of motion.	Within **8** days after trial .	O. xxxix. r. 4. p. 314.
If trial elsewhere .	Within **7** days after last sitting on circuits.	
NOTICE,		
To admit facts.	Not less than **9** days before the day for which notice of trial is given.	O. xxxii. r. 4, p. 265.
Time within which to admit.	**6** days after service of notice or such further time as allowed.	O. xxxii. r. 4, p. 265.
Requiring production at trial to cross-examine on affidavits.	To be served before the expiration of **14** days next after the end of the time allowed for filing affidavits in reply, or otherwise specially appointed.	O. xxxviii. r. 28, p. 312.

NOTICE OF MOTION.		
Unless by leave.	2 clear days at least . . .	O. lii. r. 5, p. 364.
To strike a solicitor off the Rolls or to answer matters in an affidavit.	10 clear days	O. lii. r. 5, p. 365.
When defendant has not appeared.	He may be served any time after time limited for appearance, without leave, or by leave along with the writ or any time after.	O. lii. rr. 8, 9, p. 365.
In Admiralty action *in rem*.	To be filed in Registry at least 3 days before hearing. Copies to be served before originals filed.	O. lii. r. 10, p. 365.
NOTICE OF TRIAL,		
By plaintiff	With reply, or at any time after the issues of fact are ready for trial.	O. xxxvi. r. 11, p. 286.
Notice by party entitled to jury, that he requires one.	By plaintiff with notice of trial or by defendant within 4 days from the service of the notice.	O. xxxvi. r. 2, p. 283.
By defendant . . .	If plaintiff do not give notice of trial within 6 weeks after the close of the pleadings, defendant may.	O. xxxvi. r. 12, p. 286.
Long and short notice.	10 days' notice, unless the party be obliged to take 4 days' notice. Notice to be given before entering the trial.	O. xxxvi. rr. 14, 15, p. 286.
In London and Middlesex.	Unless entered within 6 days after notice given to be no longer in force.	O. xxxvi. r. 16, p. 287.
If the party giving notice for London or Middlesex omit to enter on the day or the day after.	Opposite party may unless notice countermanded, enter for trial within 4 days.	O. xxxvi. r. 20, p. 287.
Entry at assizes.	The day next before commission day.	O. xxxvi. r. 22, p. 288.
PARTICULARS,		
In libel and slander where defendant does not assert the truth of the statement.	Evidence not to be given in chief in mitigation of damages as to the circumstances unless particulars given 7 days before the trial.	O. xxxvi. r. 37, p. 291.
Time for pleading after delivery of particulars.	The same length of time as party had at the return of the summons.	O. xix. r. 8, p. 188.

PARTITION.		
Application by party interested to vary order.	Within 1 month after service of the order upon him.	O. xvi. r. 40, p. 171.
PAYMENT INTO COURT,	Any time before defence and after by leave, if before defence notice to be given.	O. xxii. rr. 1, 4, pp. 203, 205.
Notice of acceptance .	Within 4 days from receipt of such notice, or if first stated in defence then before reply, plaintiff may accept and give notice thereof.	O. xxii. r. 7, p. 207.
If the sum be accepted in satisfaction of the whole cause of action, plaintiff may tax his costs.	After the expiration of 4 days from the service of the notice, and sign judgment for them if not paid within 48 hours after taxation.	O. xxii. r. 7, p. 207.
PETITION,		
Between service and hearing.	Unless leave given to the contrary, 2 clear days.	O. lii. r. 17, p. 367.
For advice of the Court.	To be served 7 clear days before the hearing unless a shorter time taken by consent.	O. lii. r. 21, p. 368.
PRELIMINARY ACT,		
In actions of collision of ships. To be filed before any pleading delivered, unless otherwise ordered.	By plaintiff with 7 days after the commencement of the action and by defendant within 7 days after appearance.	O. xix. r. 28, p. 194.
Notice of defence of compulsory pilotage.	Within 2 days from the opening of Preliminary Act.	O. xix. r. 28, p. 195.
RECOVERY OF LAND. *See* Appearance.		
REFEREE.		
Report	Notice to be given to all parties by post same day.	O. xxxvi. r. 53, p. 294.
Where further consideration has been adjourned.	Any party may move to adopt the report on the hearing of the further consideration.	O. xxxvi. r. 54, p. 295.
To vary or remit the report where further consideration adjourned.	4 days' notice of motion to come on with the further consideration.	O. xxxvi. r. 54, p. 295.

REFEREE—*cont.*		
Where the further consideration has not been adjourned.	Motion to adopt or vary or remit, 8 days' notice.	O. xxxvi. r. 55, p. 295.
REJOINDER . . .	Only by leave, and then in the absence of any directions within 4 days from the last pleading.	O. xxiii. r. 1, p. 231.
REPLY,	Within 21 days of defence, or the last of the defences.	O. xxiii. r. 1, p. 231.
To a counter-claim .	Subject to the rules applicable to statements of defence.	O. xxiii. r. 4, p. 231.
By third party . . .	Same as defence	O. xxi. r 14, p. 201.
In Admiralty actions.	Within 6 days after defence or the last of defences delivered unless extended.	O. xxiii. r. 1, p. 231.
Pleadings subsequent to reply, only by leave.	Within 4 days after delivery of previous pleading.	O. xxiii. rr. 2, 3, p. 231.
SALVAGE,		
Appeal from award of Justices.	Notice to be given to the Justices of intention to appeal within 10 days after date of award, notice of motion to opposite party within 20 days.	O. lix. r. 5, p. 418.
SOLICITOR,		
Notice of motion to strike off the Rolls or to answer matters in an affidavit.	10 clear days	O. lii. r. 5, p. 365.
STATEMENT OF CLAIM,		
Delivery to be demanded.	Within 8 days after entering appearance.	O. xx. r. 1*b*, p. 196.
When required to be delivered, unless otherwise ordered.	Within 5 weeks from plaintiff's receiving notice requiring same.	O. xx. r. 1*c*, p. 196.
When delivery optional.	No statement of claim shall be delivered more than 6 weeks after appearance, unless otherwise ordered.	O. xx. r. 1*d*, p. 196.
In Probate actions.	Within 6 weeks from appearance or time limited for appearance; provided that when a defendant has appeared, plaintiff need not deliver till 8 days after affidavit of scripts filed.	O. xx. r. 2, p. 196.
In Admiralty actions.	Within 12 days from appearance.	O. xx. r. 3, p. 197.

SUBPŒNA. Service of no validity.	Unless made within **12** weeks after the *teste* of the writ.	O. xxxvii. r. 34, p. 305.
SUMMONS, For directions . . .	Returnable in not less than **4** days, and served upon all parties who may be affected.	O. xxx. r. 2, p. 246.
Other summons . .	**2** clear days unless ordered.	O. liv. r. 4, p. 372.
Originating	To be served **7** clear days before the return.	O. liv. r. 4, p. 372.
Where originating not served within time.	Indorsement to be made and a new time appointed.	O. lv. r. 22, p. 385.
To proceed by party having conduct.	Within **10** days after order directing accounts and inquiries has been passed and entered.	O. lv. r. 32, p. 387.
TAXATION, Of costs	**1** day's notice to be given .	O. lxv. r. 16, p. 447.
TRIAL. *See* Notice of Trial.		
TRUSTS, EXECUTION OF, Variation of order by party interested.	Within **1** month after service of the order upon him.	O. xvi. r. 40, p. 171.
WARRANT OF ARREST.	To be filed within **6** days from service.	O. ix. r. 11, p. 135.
WINDING-UP, Appeal from winding-up order.	**21** days from date at which the order is passed and entered.	O. lviii. rr. 9, 15, pp. 408, 410.
WRIT OF EXECUTION, If unexecuted . . .	Remains in force for **1** year unless renewed.	O. xlii. r. 20, p. 325.
On judgment other than payment of money or costs or recovery of land.	May issue in **14** days unless otherwise ordered.	O. xlii. r. 19, p. 325.
Separate writs for recovery of money and recovery of the costs.	The second writ shall be only for costs, and issued not less than **8** days after the first writ.	O. xlii. r. 18, p. 325.
WRIT OF SUMMONS.	In force for **12** months, but may be renewed during such period for **6** months.	O. viii. r. 1, p. 130.
Concurrent writ may be issued.	Any time during currency of the original writ.	O. vi. r. 1. p. 128.
Date of service . . .	To be indorsed within **3** days by the person serving.	O. ix. r. 15, p. 136.

COMPARATIVE TABLE OF THE OLD AND NEW RULES.

Old.	New.	Old.	New.	Old.	New.
i. 1	i. 1	vii. 1	vii. 1	xii. 14	xii. 18
,, 2	—	,, 2	,, 2	,, 15	,, 22
,, 3	,, 2	viii. 1	viii. 1	,, 16	,, 23
ii. 1	ii. 1	,, 2	,, 2	,, 17	,, 24
,, 2	,, 2	ix. 1	ix. 1	,, 18	,, 25
,, 3	,, 3	,, 2	,, 2	,, 19	,, 26
,, 3*a*	—	,, 3	—	,, 20	,, 27
,, 4	,, 4	,, 4	,, 4	,, 21	,, 28
,, 5	,, 5	,, 5	,, 5	,, 22	,, 29
,, 6*a*	,, 6	,, 6	,, 6	xiii. 1	xiii. 1
,, 7*a*	,, 7	,, 6*a*	,, 7	,, 2	,, 2
,, 8	,, 8	,, 7	,, 8	,, 3	,, 3
iii. 1	iii. 1	,, 8	,, 9	,, 4	,, 4
,, 2	,, 2	,, 9	,, 11	,, 5	—
,, 3	,, 3	,, 10	,, 12	,, 5*a*	,, 11
,, 4	,, 4	,, 11	,, 13	,, 6	—
,, 5	,, 5	,, 12	,, 14	,, 7	,, 8
,, 6	—	,, 13	,, 15	,, 8	,, 9
,, 7	,, 7	x.	—	,, 9	,, 12
,, 8	,, 8	xi. 1	xi. 1	,, 10	—
iv. 1	iv. 1	,, 1*a*	—	xiv. 1	xiv. 1
,, 2	,, 2	,, 2	,, 3	,, 2	,, 2
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