Supreme Court of Judicature Act (1873) Amendment.

[38 & 39 Vict. Ch. 77.]

ARRANGEMENT OF CLAUSES.

Clause. A.D. 1875.

1. Short title, and construction with 36 & 37 Vict. c. 66.
2. Commencement of Act.
3. Explanation of 36 & 37 Vict. c. 66. s. 5. as to number of Judges.
4. Constitution of Court of Appeal.
5. Tenure of office of Judges, and oaths of office. Judges not to sit in the House of Commons.
6. Precedence of Judges.
7. Jurisdiction of Lords Justices in respect of lunatics.
8. Admiralty Judges and registrar.
9. London Court of Bankruptcy not to be transferred to High Court of Justice.
10. Amendment of 36 & 37 Vict. c. 66. s. 25. as to rules of law upon certain points.
11. 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.
12. Sittings of Court of Appeal.
13. Amendment of section 60 of 36 & 37 Vict. c. 66. as to district registrars.
14. Amendment of 36 & 37 Vict. c. 66. s. 87. as to enactments relating to attorneys.
15. Appeal from inferior court of record.
16. Rules in First Schedule in substitution for 36 & 37 Vict. c. 66. s. 69. and Schedule.
17. 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 Schedule.
18. 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.

A.D. 1875.

Clause.

19. Provision as to criminal procedure, subject to future Rules remaining unaltered,—in substitution for 36 & 37 Vict. c. 66. s. 71.
20. Provision as to Act not affecting rules of evidence or juries,—in substitution for 36 & 37 Vict. c. 66. s. 72.
21. Provision for saving of existing procedure of Courts when not inconsistent with this Act or Rules of Court,—in substitution for 36 & 37 Vict. c. 66. s. 73.
22. Nothing in principal Act to prejudice right to have issues submitted, &c.
23. Regulation of circuits.
24. Additional power as to regulation of practice and procedure by Rules of Court.
25. Orders and Rules to be laid before Parliament, and may be annulled on address from either House.
26. Fixing and collection of fees in High Court and Court of Appeal.
27. Provisions as to Lancaster Fee Fund, and salaries, &c. of officers of courts at Lancaster and Durham.
28. Annual account of fees and expenditure.
29. Amendment of law as to payments to senior puisne Judge of Queen's Bench and Queen's coroner.
30. 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.
31. Abolition of secretary to the visitors of lunatics.
32. 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.
33. Repeal.
34. As to vacancies in any office within section seventy-seven of principal Act.
35. Amendment of principal Act, section seventy-nine, as to chamber clerks.

FIRST SCHEDULE.—Rules of Court, with Forms.

SECOND SCHEDULE.—Enactments repealed.

CHAPTER 77.

An Act to amend and extend the Supreme Court of Judicature Act, 1873. [11th August 1875.]

A.D. 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 tenor thereof, be construed as one with the Supreme Court of Judicature Act, 1873, (in this Act referred to as the principal Act,) and together with the principal Act may be cited as the Supreme Court of Judicature Acts, 1873 and 1875, and this Act may be cited separately as the Supreme Court of Judicature Act, 1875.

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.

Sections twenty, twenty-one, and fifty-five of the principal Act shall not commence or come into operation until the first day of November 1876, and until the said sections come into operation an appeal may be brought to the House of Lords from any judgment or order of the Court of Appeal herein-after mentioned in any case in which any appeal or error might now be brought to the House of Lords or to Her Majesty in Council from a similar judgment, decree, or order of any Court or Judge whose jurisdiction is by the principal Act transferred to the High Court of Justice or the Court of Appeal, or in any case in which leave to appeal shall be given by the Court of Appeal.

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

3. Whereas by section five 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

A.D. 1875.

" 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;" 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 should not at present be reduced: Be it enacted, that so much of the said section as is herein-before 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.

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.

The first ordinary Judges of the said Court shall be the present Lords Justices of Appeal in Chancery, and such one other person as Her Majesty may be pleased to appoint by Letters Patent. Such appointment may be made either before or after the commencement of this Act, but if made before shall take effect at the commencement of the Act.

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

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.

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

A.D. 1875.

and estates of idiots, lunatics, and persons of unsound mind, shall be exercised by such Judge or Judges of the High Court of Justice or Court of Appeal as may be intrusted by the sign manual of Her Majesty or Her successors with the care and commitment of the custody of such persons and estates; and all enactments referring to the Lords Justices as so intrusted shall be construed as if such Judge or Judges so intrusted had been named therein instead of such Lords Justices: Provided that each of the persons who may at the commencement of the principal Act be Lords Justices of Appeal in Chancery shall, during such time as he continues to be a Judge of the Court of Appeal, and is intrusted as aforesaid, retain the jurisdiction vested in him in relation to such persons and estates as aforesaid.

Admiralty Judges and registrar.

8. Whereas by section eleven of the principal Act it is provided as follows: "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:"

And whereas the Judge of the High Court of Admiralty is by the principal Act appointed a Judge of the High Court of Justice:

And whereas such Judge is, as to salary and pension, inferior in position to the other puisne Judges of the superior courts of common law, but holds certain ecclesiastical and other offices in addition to the office of Judge of the High Court of Admiralty:

And whereas it is expedient that such Judge, if he be willing to relinquish such other offices, should be placed in the same position as to rank, salary, and pension as the other puisne Judges of the superior courts of common law:

Be it enacted that—

If the existing Judge of the High Court of Admiralty under his hand signifies to the Lord Chancellor in writing, before the com-

mencement of the principal Act, that he is willing to relinquish such other offices as aforesaid, and does before the commencement of the principal Act resign all other offices of emolument held by him except the office of Judge of the High Court of Admiralty, he shall, from and after the commencement of the principal Act, be entitled to the same rank, salary, and pension as if he had been appointed a Judge of the High Court of Justice immediately on the commencement of the principal Act, with this addition, that, in reckoning service for the purposes of his pension, his service as a Judge of the High Court of Admiralty shall be reckoned in the same manner as if the High Court of Justice had been established at the time of his accepting the office of Judge of the High Court of Admiralty, and he had continued from such time to be a Judge of the said High Court of Justice.

The present holder of the office of registrar of Her Majesty in Ecclesiastical and Admiralty causes, shall, as respects any appeals in which he would otherwise be concerned coming within the cognizance of the Court of Appeal, be deemed to be an officer attached to the Supreme Court; and the office, so far as respects the duties in relation to such appeals as aforesaid, shall be deemed to be a separate office within the meaning of section seventy-seven of the principal Act, and may be dealt with accordingly. He shall be entitled, in so far as he sustains any loss of emoluments by or in consequence of the principal Act or this Act, to prefer a claim to the Treasury in the same manner as an officer paid out of fees whose emoluments are affected by the passing of the principal Act is entitled to do under section eighty of the principal Act.

Subject as aforesaid, the person who is at the time of the passing of this Act registrar of Her Majesty in Ecclesiastical and Admiralty causes shall, notwithstanding anything in the principal Act or this Act, have the same rank and hold his office upon the same tenure and upon the same terms and conditions as heretofore; but it shall be lawful for Her Majesty by Order in Council made upon the recommendation of the Lord Chancellor, with the concurrence of the Treasury, to make, notwithstanding anything contained in any Act of Parliament, such arrangements with respect to the duties of the said last-mentioned office, either by abolition thereof or otherwise, as to Her Majesty may seem expedient: Provided that such Order shall not take effect during the continuance in such office of the said person so being registrar at the time of the passing of this Act, without his assent.

A.D. 1875.

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.

London Court of Bankruptcy not to be transferred to High Court of Justice.

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—

(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.

Amendment of 36 & 37 Vict. c. 66. s. 25. as to rules of law upon certain points.

10. Whereas, by section twenty-five of the principal Act, after reciting that it is expedient to amend and declare the law to be thereafter administered in England as to the matters next 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:—

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

A.D. 1875.

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.

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 provisions of the principal Act or this Act, the same ought not to be assigned, the Court, or any Judge of such division, upon being informed thereof, may, on a summary application at any stage of the cause or matter, direct the same to be transferred to the division of the said Court to which, according to such rules or provisions, the same ought to have been assigned, or he may, if he think it expedient so to do, retain the same in the division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner or by any other party in any such cause or matter,

A.D. 1875.

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.

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.

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.

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

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

The registrar of attorneys and solicitors in England shall be called the registrar of solicitors, and the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron, or any two of them, may, from time to time, by regulation adapt any enactments relating to attorneys, and any declaration, certificate, or form required under those enactments, to the solicitors of the Supreme Court under section eighty-seven of the principal Act.

Appeal from inferior court of record.

15. It shall be lawful for Her Majesty from time to time, by Order in Council, to direct that the enactments relating to appeals from county courts shall apply to any other inferior court of record; and those enactments, subject to any exceptions, conditions, and limitations contained in the Order, shall apply accordingly, as from the date mentioned in the Order.

Rules in First Schedule in substitution for 36 & 37 Vict. c. 66. s. 69. and Schedule.

16. The Rules of Court in the First Schedule to this Act shall come into operation at the commencement of this Act, and as to all matters to which they extend shall thenceforth regulate the proceedings in the High Court of Justice and Court of Appeal. But such Rules of Court, and also all such other Rules of Court (if any) as may be made after the passing and before the commencement of this Act under the authority of the next section, may be annulled or altered by the authority by which new Rules of Court may be made after the commencement of this Act.

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.

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

A.D. 1875.

effect, and in particular for all or any of the following matters, so far as they are not provided for by the Rules in the First Schedule to this Act; that is to say,

(1.) For regulating the sittings of the High Court of Justice and the Court of Appeal, and of any Divisional or other Courts thereof respectively, and of the Judges of the said High Court sitting in Chambers; and,

(2.) For regulating the pleading, practice, and procedure in the High Court of Justice and Court of Appeal; and,

(3.) Generally, for regulating any matters relating to the practice and procedure of the said Courts respectively, or to the duties of the officers thereof, or of the Supreme Court, or to the costs of proceedings therein.

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.

Provision as to Rules of Probate, Divorce, and Admiralty Courts, being Rules of the High Court,—in substitution

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. A.D. 1875. for 36 & 37 Vict. c. 66. s. 70.

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.

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

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. Provision as to Act not affecting rules of evidence or juries,—in substitution for 36 & 37 Vict. c. 66. s. 72.

21. Save as by the principal Act or this Act, or by any Rules of Court, may be otherwise provided, all forms and methods of procedure which at the commencement of this Act were in force in any of the Courts whose jurisdiction is by the principal Act or this Act transferred to the said High Court and to the said Court of Appeal respectively, under or by virtue of any law, custom, general order, or rules whatsoever, and which are not inconsistent with the principal Act or this Act or with any Rules of Court, may continue to be used and practised, in the said High Court of Justice and the said Court of Appeal respectively, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in the respective courts of which the Provision for saving of existing procedure of Courts when not inconsistent with this Act or Rules of Court, —in substitution for 36 & 37 Vict. c. 66. s. 73.

A.D. 1875.

jurisdiction is so transferred, if the principal Act and this Act had not passed.

Nothing in principal Act to prejudice right to have issues submitted, &c.

22. Whereas by section forty-six of the principal Act it is enacted that "any Judge of the said High Court sitting in the exercise "of its jurisdiction elsewhere than in a Divisional Court may re-"serve 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, so 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.

A.D. 1875.

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.

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.

A.D. 1875.

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

A.D. 1875.

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 per-centages 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 per-centages shall continue to be taken, applied, and accounted for in the existing manner.

Provisions as to Lancaster Fee Fund, and salaries, &c. of officers of courts at Lancaster and Durham. 32 & 33 Vict. c. 37.

27. Whereas by the Common Pleas at Lancaster Amendment Act, 1869, the fees taken by the prothonotaries and district prothonotaries in pursuance of that Act, are directed to be carried to the credit of "the prothonotaries fee fund account of the county palatine of Lancaster," and certain salaries and expenses connected with the offices of the said prothonotaries and district prothonotaries are directed to be paid out of that account:

And whereas, on the twenty-fourth day of June one thousand eight hundred and seventy-four, there was standing to the credit of that account a sum of ten thousand seven hundred and fifty-five pounds consolidated three pounds per centum Bank annuities and one thousand eight hundred and ten pounds cash, or thereabouts:

And whereas the fees received in the Court of Pleas of Durham are applied in payment of disbursements connected with the office of the prothonotary of that court, and any surplus of such fees is

paid into the receipt of Her Majesty's Exchequer, and any deficiency of the amount of the said fees to pay such disbursements is charged on the Consolidated Fund of the United Kingdom: A.D. 1875.

And whereas after the commencement of the principal Act, the jurisdiction of the Court of Common Pleas at Lancaster and the Court of Pleas at Durham is by that Act transferred to and vested in the High Court of Justice, and it is expedient to make further provision respecting the expenses of those courts and the said stock and cash standing to the credit of the prothonotaries fee fund account of the county palatine of Lancaster:

Be it therefore enacted that,—

After the commencement of the principal Act there shall be paid out of moneys provided by Parliament such sums by way of salary or remuneration to the prothonotaries and district prothonotaries of the Court of Common Pleas at Lancaster and the Court of Common Pleas at Durham and their clerks, and such sums for rent, taxes, and other outgoings at their offices, as the Lord Chancellor, with the concurrence of the Treasury, may from time to time direct.

As soon as each prothonotary and district prothonotary of the Court of Common Pleas at Lancaster has accounted for and paid all fees and moneys which he shall have received by virtue of his said office, the Chancellor of the Duchy of Lancaster shall cause any security given by such officer in pursuance of section seventeen of the Common Pleas at Lancaster Amendment Act, 1869, to be cancelled, and delivered up, or otherwise discharged. 32 & 33 Vict. c. 37.

As soon as may be after the commencement of the principal Act the Treasury and the Chancellor of the duchy and county palatine of Lancaster shall ascertain the amount of stock and cash standing to the credit of the prothonotaries fee fund account of the county palatine of Lancaster, after paying thereout to the receiver general of the revenues of the Duchy of Lancaster the amount of the fees remaining in the prothonotary's hands on the twenty-fourth day of October one thousand eight hundred and sixty-nine, and paid to that account in pursuance of section seventeen of the last-mentioned Act, and all other sums justly due to Her Majesty in right of Her said duchy and county palatine; and the Treasury shall by warrant direct the Governor and Company of the Bank of England to transfer to the Commissioners for the Reduction of the National Debt the amount of stock and cash so ascertained and either to cancel the stock in their books or otherwise dispose of the same as may be directed by the warrant; and the Governor and Company of the Bank of England shall transfer

A.D. 1875.

the stock and cash, and cancel or otherwise dispose of the stock according to the warrant, without any order from the Lord Chancellor or the Chancellor of the said duchy and county palatine or any other person.

The Commissioners for the Reduction of the National Debt shall apply all cash transferred to them in pursuance of this section in the purchase of Bank Annuities which shall be cancelled or otherwise disposed of in like manner as the said stock.

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.

Amendment of law as to payments to senior puisne Judge of Queen's Bench and Queen's coroner.

29. Whereas fines and other moneys paid into the Court of Queen's Bench for Her Majesty's use are received by the Queen's coroner and attorney, and out of such moneys there is paid in pursuance of a writ of privy seal an annual sum of forty pounds, at the rate of ten pounds for every term, to the second judge of the Court of Queen's Bench, and by section seven of the Act of the sixth year of King George the Fourth, chapter eighty-four, it is enacted that the said termly allowance of ten pounds shall continue to be paid to the said second judge in addition to his salary:

And whereas out of the said moneys there is also payable in pursuance of the said writ of privy seal an annual sum of ten pounds to the Queen's coroner and attorney:

And whereas it is expedient to determine such payments:

Be it therefore enacted as follows:

After the passing of this Act the said sums of forty pounds and ten pounds a year shall cease to be payable by the Queen's coroner and attorney out of the above-mentioned moneys.

A.D. 1875.

So long as the person who on the first day of March one thousand eight hundred and seventy-five was the second judge of the Court of Queen's Bench continues to be such second judge, there shall be payable to him out of the Consolidated Fund of the United Kingdom the annual sum of forty pounds in addition to his salary, and that annual sum shall be payable to him by instalments of ten pounds at the like times at which the said termly allowance of ten pounds has heretofore been payable to him, or at such other times as the Treasury, with the consent of the Judge, may direct.

So long as the person who on the first day of March one thousand eight hundred and seventy-five was the Queen's coroner and attorney continues to hold that office, there shall be payable to him out of moneys provided by Parliament the annual sum of ten pounds, and such sum shall be payable to him at the like time at which the said annual sum of ten pounds has heretofore been payable to him, or at such other time as the Treasury, with the consent of such Queen's coroner or attorney, may direct.

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

A.D. 1875.

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.

Abolition of secretary to the visitors of lunatics. 16 & 17 Vict. c. 70.

31. Whereas under the Lunacy Regulation Act, 1853, it is provided that there shall be a secretary to the visitors of lunatics therein mentioned, and it is expedient to abolish that office: Be it therefore enacted as follows:

After the passing of this Act there shall cease to be a secretary to the visitors of lunatics.

The Treasury shall award, out of moneys provided by Parliament, to the person who holds at the passing of this Act the office of secretary to the visitors of lunatics such compensation, by way of annuity or otherwise, as, having regard to the conditions on which he was appointed to his office, the nature, salary, and emoluments of his office, and the duration of his services, they may think just and reasonable, so that the same be granted in accordance with the provisions and subject to the conditions contained in the Superannuation Act, 1859.

22 Vict. c. 26.

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 :" A.D. 1875.

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.

33. From and after the commencement of this Act there shall be repealed— Repeal.

(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. Whereas, by the seventy-seventh section of the principal Act, it is provided that, upon the occurrence of a vacancy in the office of any officer coming within the provisions of the said section, the Lord Chancellor, with the concurrence of the Treasury, may, in the event of such office being considered unnecessary, abolish the same, or may reduce the salary, or alter the designation or duties thereof, notwithstanding that the patronage thereof may be vested in an existing Judge; but that nothing in the said Act contained shall interfere with the office of marshal attending any commissioner of assize : And whereas it is expedient to add to the said section : Be it enacted, that, upon the occurrence of any vacancy As to vacancies in any office within s. 77 of principal Act.

A.D. 1875.

coming within the provisions of the said section, an appointment shall not be made thereto for the period of one month without the assent of the Lord Chancellor, given with the concurrence of the Treasury; and, further, the Lord Chancellor may, with the concurrence of the Treasury, suspend the making any appointment to such office for any period not later than the first day of January one thousand eight hundred and seventy-seven, and may, if it be necessary, make provision in such manner as he thinks fit for the temporary discharge, in the meantime, of the duties of such office.

Amendment of principal Act, s. 79, as to chamber clerks.

35. Be it enacted, that any person who, at the time of the commencement of this Act, shall hold the office of chamber clerk shall be eligible at any time thereafter for appointment to the like office, anything in the principal Act to the contrary notwithstanding; and that, if any such person shall be so appointed after the commencement of this Act, he shall, if the salary assigned to such office by or under the principal Act be less than the salary received by him at the time of the commencement of this Act, be entitled to receive a salary not less than that so formerly received by him, so long as he shall retain such office, but shall not be entitled to receive or claim any pension in respect of his service, unless the Treasury, in its absolute discretion, shall think fit to sanction the same.

FIRST SCHEDULE.

Rules of Court.

[Note.—*Where no other provision is made by the Act or these Rules the present procedure and practice remain in force.*]

ORDER I.

Form and Commencement of Action.

1. All actions which have hitherto been 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 have hitherto been 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.

2. With respect to interpleader, the procedure and practice now used by Courts of Common Law under the Interpleader Acts 1 & 2 Wm. 4. c. 58. and 23 & 24 Vict. c. 126. shall apply to all actions and all the divisions of the High Court of Justice, and the application by a defendant shall be made at any time after being served with a writ of summons and before delivering a defence.

3. 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 Act had not been passed.

ORDER II.

Writ of Summons and Procedure, &c.

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

A.D. 1875.

High Court to which it is intended that the action should be assigned.

2. Any costs occasioned by the use of any more prolix or other forms of writs, and of indorsements thereon, than the forms herein-after prescribed, shall be borne by the party using the same, unless the Court shall otherwise direct.

3. The writ of summons for the commencement of an action shall, except in the cases in which any different form is herein-after provided, be in Form No. 1 in Part I of Appendix (A) hereto, with such variations as circumstances may require.

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 a Court or Judge.

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 Form No. 2 in Part I of Appendix (A) hereto, with such variations as circumstances may require. Such notice shall be in Form No. 3 in the same part, with such variations as circumstances may require.

6. With respect to actions upon a bill of exchange or promissory note, commenced within six months after the same shall have become due and payable, the procedure under the Bills of Exchange Act, 18 & 19 Vict. c. 67., shall continue to be used.

7. The writ of summons in every Admiralty action in rem shall be in Form No. 4 of Part I of Appendix (A) hereto, with such variations as circumstances may require.

8. Every writ of summons and also 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.

ORDER III.

INDORSEMENTS OF CLAIM.

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

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. The plaintiff may by leave of the Court or Judge amend such indorsement so as to extend it to any other cause of action or any additional remedy or relief.

3. The indorsement of claim may be to the effect of such of the Forms in Part II of Appendix (A) hereto 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.

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 the statement in Appendix (A) hereto, Part II, sec. VIII, or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued.

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.

6. In all actions where the plaintiff seeks merely to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising upon a contract, express or implied, as, for instance, on a bill of exchange, promissory note, cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt, or on a guaranty, whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, cheque, or note, or on a trust, the writ of summons may be specially indorsed with the particulars of the amount sought to be recovered, after giving credit for any payment or set-off.

7. Wherever the plaintiff's claim is for a debt or liquidated demand only, the indorsement, beside 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 may be in the form in Appendix (A) hereto, Part II, 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.

8. In all cases of ordinary account, as, for instance, in the case of a partnership or executorship or ordinary trust account, where 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.

ORDER IV.

INDORSEMENT OF ADDRESS.

1. The solicitor of a plaintiff suing by a solicitor shall indorse upon every writ of summons and notice in lieu of service of a writ of summons 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 Temple Bar, another proper place, to be called his address for service, which shall not be more than three miles from Temple Bar, where writs, notices, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him. And where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

2. A plaintiff suing in person shall indorse upon every writ of summons and notice in lieu of service of a writ of summons his place of residence and occupation, and also, if his place of residence shall be more than three miles from Temple Bar, another proper place, to be called his address for service, which shall not be more than three miles from Temple Bar, where writs, notices, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him.

[*The above two Rules are to apply to all cases in which the writ of summons is issued out of the London office, or out of a district registry where the defendant has the option of entering an appearance either in the district registry or the London office.*]

3. In all other cases where a writ of summons is issued out of a district registry it shall be sufficient for the solicitor to give on the writ the address of the plaintiff and his own name or firm and his place of business within the district, or for the plaintiff if he sues in person to give on the writ his place of residence and occupation, and if his place of residence be not within the district, an address for service within the district.

ORDER V.

ISSUE OF WRITS OF SUMMONS.

1. *Place of issue.*

1. In any action other than a Probate action, the plaintiff wherever resident may issue a writ of summons out of the registry of any district.

A.D. 1875.

2. 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 the London office, or a statement to the like effect.

3. In all cases where a defendant resides or carries on business within the district, and a writ of summons is issued out of the district registry, there shall be a statement on the face of the writ of summons that the defendant do cause an appearance to be entered at the district registry, or to the like effect.

2. *Option to choose division in certain cases.*

4. 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 said 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. If so marked for the Chancery Division the same shall be assigned to one of the Judges of such division by marking the same with the name of such of the said Judges as the plaintiff or petitioner (subject to such power of transfer) may think fit.

3. *Generally.*

5. 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 hereby directed in the case of proceedings directed to be printed.

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

7. 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.

A.D. 1875.

8. 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 have heretofore been kept by the Clerks of Records and Writs in the Court of Chancery, 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 last-mentioned Cause Books.

9. Notice to the proper officer of the assignment of an action to any division of the Court under section 11 of the Supreme Court of Judicature Act, 1875, or under Rule 4 of this Order, shall be sufficiently given by leaving with him the copy of the writ of summons.

4. *In particular Actions.*

10. 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.

11. In Admiralty actions in rem no writ of summons shall issue until an affidavit by the plaintiff or his agent has been filed, and the following provisions complied with:

(*a.*) The affidavit shall state the name and description of the party on whose behalf the action is instituted, the nature of the claim, the name and nature of the property to be arrested, and that the claim has not been satisfied.

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

(*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.

(*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.

(*e.*) The Court or Judge may in any case, if he think fit, allow the writ of summons to issue although the affidavit may not contain all the required particulars. In a wages cause he may also waive the service of the notice, and in a cause of bottomry the production of the bond.

12. If, when any property is under arrest in Admiralty, a second or subsequent action is instituted against the same property, the solicitor in such second action may, subject to the preceding Rules, take out a writ of summons in rem and cause a caveat against the release of the property to be entered in the Caveat Release Book herein-after mentioned.

ORDER VI.

CONCURRENT WRITS.

1. The plaintiff in any action may, at the time of or at any time during twelve months after the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear teste of the same day as the original writ, and to be marked with a seal bearing the word "concurrent," and the date of issuing the concurrent writ; and such seal shall be impressed upon the writ by the proper officer: Provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force.

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.

DISCLOSURE BY SOLICITORS AND PLAINTIFFS.

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 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

A.D. 1875.

further proceedings shall be taken thereupon without leave of the Court or a Judge.

2. When a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand in writing by or on behalf of any defendant, declare forthwith the names and places of residence of all the persons constituting the firm. And if the plaintiffs or their solicitor 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.

ORDER VIII.

RENEWAL OF WRIT.

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 a Judge, or the District Registrar, for leave to renew the writ; and the Judge or Registrar, 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, 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. 5 in Appendix (A), Part I; 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.

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. A.D. 1875.

ORDER IX.

SERVICE OF WRIT OF SUMMONS.

1. *Mode of Service.*

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

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 to 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 of notice for service, as may seem just.

2. *On particular Defendants.*

3. When husband and wife are both defendants to the action, service on the husband shall be deemed good service on the wife, but the Court or a Judge may order that the wife shall be served with or without service on the husband.

4. When an infant is a defendant to the action, service on his or her father or guardian, or if none, then upon the person with whom the infant resides or under whose care he or she is, shall, unless the Court or 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.

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

3. *On Partners and other Bodies.*

6. When partners are sued 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 partner-

A.D. 1875.

ship upon any person having at the time of service the control or management of the partnership business there; and, subject to the Rules herein-after contained, such service shall be deemed good service upon the firm.

7. Whenever, by any statute, provision is made for service of any writ of summons, bill, petition, or other process upon any Corporation, or upon any hundred, or the inhabitants of any place, or any society or fellowship, or any body or number of persons, whether corporate or otherwise, every writ of summons may be served in the manner so provided.

4. *In particular Actions.*

8. 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.

9. In Admiralty actions in rem, the writ 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 writ shall, within six days from the service thereof, file the same in the registry from which the writ issued.

10. In Admiralty actions in rem, service of a writ of summons against ship, freight, or cargo on board is to be effected by the Marshal or his officer nailing or affixing the original writ 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.

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

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

Generally.

13. 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. A.D. 1875.

ORDER X.

Substituted Service.

Every application to the Court or a Judge, under Order IX., Rule 2, 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.

ORDER XI.

Service out of the Jurisdiction.

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 the whole or any part of the subject-matter of the action is land or stock, or other property situate within the jurisdiction, or any act, deed, will, or thing affecting such land, stock, or property, and whenever the contract which is sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any such action, or for the breach whereof damages or other relief are or is demanded in such action, was made or entered into within the jurisdiction, and whenever there has been a breach within the jurisdiction of any contract wherever made, and whenever any act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was or is to be done or is situate within the jurisdiction.

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

3. Every application for an order for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by evidence, by affidavit, or otherwise, 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.

4. 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.

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

A.D. 1875.

ORDER XII.

APPEARANCE.

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

2. 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.

3. If any defendant neither resides nor carries on business in the district, he may appear either in the district registry or in London.

4. 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 herein-after provided, the action shall proceed in the district registry.

5. 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.

6. 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 the delivering the same, and containing the name of the defendant's solicitor, or stating that the defendant defends in person. A defendant who appears elsewhere than where the writ is issued shall on the same day give notice to the plaintiff of his appearance either by notice in writing served in the ordinary way or by prepaid letter posted on that day in due course of post.

7. 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 London office, a place, to be called his address for service, which shall not be more than three miles from Temple Bar, 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.

8. A defendant appearing in person shall state in such memorandum his address, and, if the appearance is entered in the London office, a place, to be called his address for service, which shall not be more than three miles from Temple Bar, 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. A.D. 1875.

9. 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.

10. The Memorandum of Appearance shall be in the Form No. 6, Appendix (A), Part I, with such variations as the circumstances of the case may require.

11. Upon receipt of a Memorandum of Appearance, the officer shall forthwith enter the appearance in the cause book.

12. Where partners are sued 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.

13. 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.

14. A solicitor not entering an appearance in pursuance of his written undertaking so to do on behalf of any defendant shall be liable to an attachment.

15. A defendant may appear at any time before judgment. If he appear at any time after the time limited for appearance he shall, on the same day, give notice thereof to the plaintiff's solicitor, or to the plaintiff himself if he sues in person, and he shall not, unless the Court or a Judge otherwise orders, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ.

16. 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.

17. 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.

18. Any person not named as a defendant in a writ of summons for the recovery of land may by leave of the Court or Judge appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or his tenant.

19. 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.

A.D. 1875.

20. Where a person not named as defendant in any writ of summons for the recovery of land has obtained leave of the Court or Judge to appear and defend, he shall enter an appearance according to the foregoing rules, intituled in the action against the party or parties named in the writ as defendant or defendants, 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.

21. 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 cause, and signed by him or his solicitor; such notice to be served within four days after appearance; and an appearance where the defence is not so limited shall be deemed an appearance to defend for the whole.

22. The notice mentioned in the last preceding Rule may be in the Form No. 7 in Part I of Appendix (A) hereto, with such variations as circumstances may require.

ORDER XIII.

DEFAULT OF APPEARANCE.

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 may 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.

A.D. 1875.

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.

3. In case of non-appearance by the defendant where the writ of summons is specially indorsed, under Order III., Rule 6, the plaintiff may sign final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified, if any, to the date of the judgment, and a sum for costs, but it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms as may seem just.

4. Where there are several defendants to a writ specially indorsed for a debt or liquidated demand in money, under Order III., Rule 6, and one or more of them appear to the writ, and another or others of them do not appear, the plaintiff may enter final judgment against such as have not appeared, and may issue execution upon such judgment without prejudice to his right to proceed with his action against such as have appeared.

5. Where the defendant fails to appear to the writ of summons and the writ is not specially indorsed, but the plaintiff's claim is for a debt or liquidated demand only, no statement of claim need be delivered, but the plaintiff may file an affidavit of service or notice in lieu of service, as the case may be, and a statement of the particulars of his claim in respect of the causes of action stated in the indorsement upon the writ, and may, after the expiration of eight days, enter final judgment for the amount shown thereby and costs to be taxed, provided that the amount shall not be more than the sum indorsed upon the writ besides costs.

6. Where the defendant fails to appear to the writ of summons and the plaintiff's claim is not for a debt or liquidated demand only, but for detention of goods and pecuniary damages, or either of them, no statement of claim need be delivered, but interlocutory judgment may be entered 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 in which any question arising in an action may be tried.

A.D. 1875.

7. In case no appearance shall be entered in an action for the recovery of land, within the time limited 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.

8. 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 as to such other claim so indorsed.

9. In actions assigned by the 34th section of the Act to the Chancery Division, and in Probate actions, and in all other actions not by the Rules in this order otherwise specially provided for, in case the party served with the writ does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service the action may proceed as if such party had appeared.

10. In an Admiralty action in rem, in which an appearance has not been entered, the plaintiff may proceed as follows:—

(*a.*) He may, after the expiration of twelve days from the filing of the writ of summons, take out a notice of sale, to be advertised by him in two or more public journals to be from time to time appointed by the judge.

(*b.*) After the expiration of six days from the advertisement of the notice of sale in the said journals, if an appearance has not been entered, the plaintiff shall file in the registry an affidavit to the effect that the said notices have been duly advertised, with copies of the journals annexed, as also such proofs as may be necessary to establish the claim, and a notice of motion to have the property sold.

(*c.*) If, when the motion comes before the Judge, he is satisfied that the claim is well founded he may order the property to be appraised and sold, and the proceeds to be paid into the registry.

(*d.*) If there be two or more actions by default pending against the same property, it shall not be necessary to take out a notice of sale in more than one of the actions; but if the plaintiff in the first action does not, within eighteen days from the filing of the writ in that action, take out and advertise the notice of sale, the plaintiff in the second or any subsequent action may take out and advertise the notice of sale, if he shall have filed in the registry a writ of summons in rem in such second or subsequent action.

(*e.*) Within six days from the time when the proceeds have been paid into the registry, the plaintiff in each action shall, if he has not previously done so, file his proofs in the registry and have the action placed on the list for hearing.

(*f.*) In an action of possession, after the expiration of six days from the filing of the writ, if an appearance has not been entered, the plaintiff may, on filing in the registry a memorandum, take out a notice of proceeding in the action, to be advertised by him in two or more public journals to be from time to time appointed by the Judge.

(*g.*) After the expiration of six days from the advertisement of the notice of proceeding in the said journals, if an appearance has not been entered, the plaintiff shall file in the registry an affidavit to the effect that the notice has been duly advertised with copies of the journals annexed, as also such proofs as may be necessary to establish the action, and shall have the action placed on the list for hearing.

(*h.*) If when the action comes before the Judge he is satisfied that the claim is well founded, he may pronounce for the same, and decree possession of the vessel accordingly.

ORDER XIV

LEAVE TO DEFEND WHERE WRIT SPECIALLY INDORSED.

1. Where the defendant appears on a writ of summons specially indorsed, under Order III., Rule 6, the plaintiff may, on affidavit verifying the cause of action, and swearing that in his belief there is no defence to the action, call on the defendant to show cause before the Court or a Judge why the plaintiff should not be at liberty to sign final judgment for the amount so indorsed, together with interest, if any, and costs; and the Court or Judge may, unless the defendant, by affidavit or otherwise, satisfy the Court or Judge that he has a good defence to the action on the merits, or disclose such facts as the Court or Judge may think sufficient to entitle him to be permitted to defend the action, make an order empowering the plaintiff to sign judgment accordingly.

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 two clear days after service.

3. The defendant may show cause against such application by offering to bring into Court the sum indorsed on the writ, or

A.D. 1875.

by affidavit. In such affidavit he shall state whether the defence he alleges 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 to attend and be examined upon oath; or to produce any books or documents or copies of or extracts therefrom.

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 to be due; the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted to be due, subject to such terms, if any, as to suspending execution, or the payment of the amount levied or any part thereof into Court by the sheriff, the taxation of costs, or otherwise, as the Judge may think fit. And the defendant may be allowed to defend as to the residue of the plaintiff's claim.

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.

6. Leave to defend may be given unconditionally or subject to such terms as to giving security, or otherwise, as the Court or a Judge may think fit.

ORDER XV.

APPLICATION FOR ACCOUNT WHERE WRIT INDORSED UNDER ORDER III., RULE 8.

1. In default of appearance to a summons indorsed under Order III., Rule 8, and after appearance unless the defendant, by affidavit or otherwise, satisfy the Court or a Judge that there is some preliminary question to be tried, an order for the account claimed, with all directions now usual in the Court of Chancery in similar cases, shall be forthwith made.

2. An application for such order as mentioned in the last preceding Rule shall be made by summons, and be supported by an affidavit 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.

A.D. 1875.

ORDER XVI.

PARTIES.

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 or persons who shall not be found entitled to relief, unless the Court in disposing of the costs of the action shall otherwise direct.

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 or plaintiffs, 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 or persons to be substituted or added as plaintiff or plaintiffs upon such terms as may seem just.

3. 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.

4. It shall not be necessary that every defendant to any action shall be interested as to all the relief thereby prayed for, or as to every cause of action included therein; 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 such action in which he may have no interest.

5. 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.

6. Where in any action, whether founded upon contract or otherwise, the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as herein-after mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that in such action the question

A.D. 1875.

as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties to the action.

7. 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 parties beneficially interested in the trust or estate, and shall be considered as representing such parties in the action; but the Court or a Judge may, at any stage of the proceedings, order any of such parties to be made parties to the action, either in addition to or in lieu of the previously existing parties thereto.

8. Married women and infants may respectively sue as plaintiffs by their next friends, in the manner practised in the Court of Chancery before the passing of this Act; and infants may, in like manner, defend any action by their guardians appointed for that purpose. Married women may also, by the leave of the Court or a Judge, sue or defend without their husbands and without a next friend, on giving such security (if any) for costs as the Court or a Judge may require.

9. Where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorised by the Court to defend in such action, on behalf or for the benefit of all parties so interested.

10. Any two or more persons claiming or being liable as co-partners may sue or be sued in the name of their respective firms, if any; 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 are co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the Judge may direct.

11. Subject to the provisions of the Act, and these Rules, the provisions as to parties, contained in section 42 of 15 & 16 Victoria, chapter 86, shall be in force as to actions in the High Court of Justice.

12. Subject as last aforesaid, in all Probate actions the rules as to parties, heretofore in use in the Court of Probate, shall continue to be in force.

13. No action shall be defeated by reason of the mis-joinder of parties, and the Court may in every action 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 name or names of any party or parties,

A.D. 1875.

whether as plaintiffs or as defendants, improperly joined be struck out, and that the name or names of any party or 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 action, 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 thereto. All parties whose names are so added as defendants shall be served with a summons or notice in manner herein-after mentioned, or in such manner as may be prescribed by any special order, and the proceedings as against them shall be deemed to have begun only on the service of such summons or notice.

14. 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.

15. Where a defendant is added, unless otherwise ordered by the Court or Judge, the plaintiff shall 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.

16. If a statement of claim has been delivered previously to such defendant being added, the same shall, unless otherwise ordered by the Court or Judge, be amended in such manner as the making such new defendant a party shall render desirable, and a copy of such amended statement of claim shall be delivered to such new defendant at the time when he is served with the writ of summons or notice or afterwards, within four days after his appearance.

17. Where a defendant is or claims to be entitled to contribution or indemnity, or any other remedy or relief over against any other person, or where from any other cause it appears to the Court or a Judge that a question in the action should be determined not only as between the plaintiff and defendant, but as between the plaintiff, defendant, and any other person, or between any or either of them, the Court or a Judge may on notice being given to such last-mentioned person, make such order as may be proper for having the question so determined.

18. Where a defendant claims to be entitled to contribution, indemnity, or other remedy or relief over against any person not a party to the action, he may, by leave of the Court or a Judge, issue a notice to that effect, stamped with the seal with which writs of

A.D. 1875.

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 statement of defence. Such notice may be in the form or to the effect of the Form No. 1 in Appendix (B) hereto 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.

19. When under Rule 17 of this Order it is made to appear to the Court or a Judge at any time before or at the trial that a question in the action should be determined, not only as between the plaintiff and defendant, but as between the plaintiff and the defendant and any other person, or between any or either of them, the Court or a Judge, before or at the time of making the order for having such question determined, shall direct such notice to be given by the plaintiff at such time and to such person and in such manner as may be thought proper, and if made at the trial the Judge may postpone such trial as he may think fit.

20. If a person not a party to the action, who is served as mentioned in Rule 18, desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, he 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. 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 a Judge shall think fit.

21. If a person not a party to the action served under these Rules appears pursuant to the notice, the party giving the notice may apply to the Court or a Judge for directions as to the mode of having the question in the action determined; and the Court or Judge, upon the hearing of such application, may, if it shall appear desirable so to do, give the person so served liberty to defend the action upon such terms as shall seem just, and may direct such pleadings to be delivered, or such amendments in any pleadings to be made, and generally may direct such proceedings to be taken, and give such directions as to the Court or

a Judge shall appear proper for having the question most conveniently determined, and as to the mode and extent in or to which the person so served shall be bound or made liable by the decision of the question. A.D. 1875.

ORDER XVII.

Joinder of Causes of Action.

1. Subject to the following Rules, the plaintiff may unite in the same action and in the same statement of claim 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.

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 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.

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.

4. Claims by or against husband and wife may be joined with claims by or against either of them separately.

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.

6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

7. The last three preceding Rules shall be subject to Rule 1 of this Order, and to the Rules herein-after contained.

8. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of in one action, 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 in one proceeding.

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

A.D. 1875.

the causes of action are such as cannot all be conveniently disposed of in one action, the Court or a Judge may order any of such causes of action to be excluded, and may direct the statement of claim, or, if no statement of claim has been delivered, the copy of the writ of summons, and the indorsement of claim on the writ of summons, to be amended accordingly, and may make such order as to costs as may be just.

ORDER XVIII.

ACTIONS BY AND AGAINST LUNATICS AND PERSONS OF UNSOUND MIND.

In all cases in which lunatics and persons of unsound mind not so found by inquisition might respectively before the passing of the 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 in manner practised in the Court of Chancery before the passing of the said Act, and may in like manner defend any action by their committees or guardians appointed for that purpose.

ORDER XIX.

PLEADING GENERALLY.

1. The following rules of pleading shall be substituted for those heretofore used in the High Court of Chancery and in the Courts of Common Law, Admiralty, and Probate.

2. Unless the defendant in an action at the time of his appearance shall state that he does not require the delivery of a statement of complaint, the plaintiff shall within such time and in such manner as herein-after prescribed, deliver to the defendant after his appearance a statement of his complaint and of the relief or remedy to which he claims to be entitled. The defendant shall within such time and in such manner as herein-after prescribed deliver to the plaintiff a statement of his defence, set-off, or counter-claim (if any), and the plaintiff shall in like manner deliver a statement of his reply (if any) to such defence, set-off, or counter-claim. Such statements shall be as brief as the nature of the case will admit, and the Court in adjusting the costs of the action shall inquire at the instance of any party into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same.

A.D. 1875.

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 statement of claim in 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.

4. Every pleading shall contain as concisely as may be a statement of the material facts on which the party pleading relies, but not the evidence by which they are to be proved, such statement being divided into paragraphs, numbered consecutively, and each paragraph containing, as nearly as may be, a separate allegation. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of counsel shall not be necessary. Forms similar to those in Appendix (C.) hereto may be used.

5. Every pleading which shall contain less than three folios of 72 words each (every figure being counted as one word) may be either printed or written, or partly printed and partly written, and every other pleading, not being a petition or summons, shall be printed.

6. 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.

7. Every pleading in an action shall be delivered between parties, and shall be marked on the face with the date of the day on which it is delivered, and with the reference to the letter and number of the action, the Division to which and the Judge (if any) to whom the action is assigned, the title of the action, the description of the pleading, and 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.

8. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and may also ask for general relief. And the same rule shall apply to any counter-claim made, or relief claimed by the defendant, in his

A.D. 1875.

statement of defence. If the plaintiff's claim be for discovery only the statement of claim shall show it.

9. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct facts, 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.

10. Where any defendant seeks to rely upon any facts as supporting a right of set-off or counter-claim, he shall, in his statement of defence, state specifically that he does so by way of set-off or counter-claim.

11. 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.

12. 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.

13. No plea or defence shall be pleaded in abatement.

14. No new assignment shall hereafter be necessary or used. But everything which has heretofore been alleged by way of new assignment may hereafter be introduced by amendment of the statement of claim.

15. 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 herein-before mentioned, it shall be sufficient to state by way of defence that he is so in possession. And he may nevertheless rely upon any ground of defence which he can prove, except as herein-before mentioned.

16. 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 without the leave of the Court or a Judge.

17. Every allegation of fact in any pleading in an action, 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.

18. Each party in any pleading, not being a petition or summons, must allege all such facts not appearing in the previous pleadings as he means to rely on, and must raise all such grounds of defence or reply, as the case may be, as if not raised on the pleadings would be likely to take the opposite party by surprise, or would raise new issues of fact not arising out of the pleadings, as for instance, fraud, or that any claim has been barred by the Statute of Limitations or has been released.

19. 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.

20. It shall not be sufficient for a defendant in his defence to deny generally the facts alleged by the statement of claim, or for a plaintiff in his reply to deny generally the facts 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.

21. 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 fact 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.

22. 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 so when a matter of fact is alleged with divers circumstances, it shall not be sufficient to deny it as alleged along with those circumstances, but a fair and substantial answer must be given.

23. When a contract is alleged in any pleading, a bare denial of the contract by the opposite party shall be construed only as a denial of the making of the contract in fact, and not of its legality or its sufficiency in law, whether with reference to the Statute of Frauds or otherwise.

A.D. 1875.

24. 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.

25. 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.

26. 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 be material.

27. Wherever any contract or any relation between any persons does not arise from an express agreement, but 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.

28. 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.]

29. Where an action proceeds in a district registry all pleadings and other documents required to be filed shall be filed in the district registry.

30. In actions for damage by collision between vessels, unless the Court or a Judge shall otherwise order, each solicitor shall, before any pleading is delivered, file with the proper officer a document 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 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.

If both solicitors consent, the Court or a Judge may order the preliminary acts to be opened and the evidence to be taken thereon without its being necessary to deliver any pleadings.

ORDER XX.

PLEADING MATTERS ARISING PENDING THE ACTION.

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 pleaded 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 pleaded by the plaintiff in his reply, either alone or together with any other ground of reply.

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, and 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,

A.D. 1875.

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. 2 in Appendix (B.) hereto, with such variations as circumstances may require, and he 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.

ORDER XXI.

STATEMENT OF CLAIM.

1. Subject to Rules 2 and 3 of this Order, the delivery of statements of claim shall be regulated as follows :—

(*a.*) If the defendant shall not state that he does not require the delivery of a statement of claim, the plaintiff shall, unless otherwise ordered by the Court or a Judge, deliver it within six weeks from the time of the defendant's entering his appearance.

(*b.*) The plaintiff may, if he think fit, at any time after the issue of the writ of summons, deliver a statement of claim, with the writ of summons or notice in lieu of writ of summons, or at any time afterwards, either before or after appearance, and although the defendant may have appeared and stated that he does not require 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.

(*c.*) Where a plaintiff delivers a statement of claim without being required to do so, the Court or a Judge may make such order as to the costs occasioned thereby as shall seem just, if it appears that the delivery of a statement of claim was unnecessary or improper.

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.

A.D. 1875.

4. Where the writ is specially indorsed, and the defendant has not dispensed with a statement of claim, it shall be sufficient for the plaintiff to deliver as his statement of claim a notice to the effect that his claim is that which appears by the indorsement upon the writ, unless the Court or a Judge shall order him to deliver a further statement. Such notice may be either written or printed or partly written and partly printed, and may be in the Form No. 3 in Appendix (B.) hereto, and shall be marked on the face in the same manner as is required in the case of an ordinary statement of claim. And when the plaintiff is ordered to deliver such further statement it shall be delivered within such time as by such order shall be directed, and if no time be so limited then within the time prescribed by Rule 1 of this Order.

ORDER XXII.

Defence.

1. Where a statement of claim is delivered to a defendant he shall deliver his defence within eight 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.

2. A defendant who has appeared in an action and stated that he does not require the delivery of a statement of claim, and to whom a statement of claim is not delivered, may deliver a defence at any time within eight days after his appearance, unless such time is extended by the Court or a Judge.

3. Where leave has been given to a defendant to defend under Order XIV., Rule 1, 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.

4. 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 may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted.

5. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other person or persons, he shall add to the title of his defence a further title similar to the title in a statement of complaint, setting

A.D. 1875.

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 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.

6. 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 herein-before contained with respect to the service of a writ of summons, and every defence so served shall be indorsed in the Form No. 4 in Appendix (B.) hereto, or to the like effect.

7. 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.

8. 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.

9. Where a defendant by his statement of defence 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.

10. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court 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.

11. 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.

ORDER XXIII.

DISCONTINUANCE.

The plaintiff may, at any time before receipt of the defendant's statement of 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 or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay the defendant's costs of the action, or, if the action be not wholly discontinued, the defendant's 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 seem fit, 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.

ORDER XXIV.

REPLY AND SUBSEQUENT PLEADINGS.

1. A plaintiff shall deliver his reply, if any, within three weeks 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.

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 upon such terms as the Court or Judge shall think fit.

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.

A.D. 1875.

ORDER XXV.

CLOSE OF PLEADINGS.

As soon as either party has joined issue upon any pleading of the opposite party simply without adding any further or other pleading thereto, the pleadings as between such parties shall be deemed to be closed.

ORDER XXVI.

ISSUES.

Where in any action it appears to a Judge that the statement of claim or defence or reply does not sufficiently define the issues of fact in dispute between the parties, he may direct the parties to prepare issues, and such issues shall, if the parties differ, be settled by the Judge.

ORDER XXVII.

AMENDMENT OF PLEADINGS.

1. The Court or a Judge may, at any stage of the proceedings, allow either party to alter his statement of claim or defence or reply, or may order to be struck out or amended any matter in such statements respectively which may be scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action, and all such amendments shall be made as may be necessary for the purpose of determining the real questions or question in controversy between the parties.

2. The plaintiff may, without any leave, amend his statement of claim 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.

3. A defendant who has set up in his defence any set-off or counter-claim may, without any leave, amend such set-off or counter-claim at any time before the expiration of the time allowed him for pleading to the reply, and before pleading thereto, or in case there be no reply, then at any time before the expiration of twenty-eight days from the filing of his defence.

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 seem just.

5. Where any party has amended his pleading under Rule 2 or 3 of this Order, the other party may apply to the Court or a Judge for leave to plead or amend his former pleading within such time and upon such terms as may seem just.

6. In all cases not provided for by the preceding Rules of this Order, application for leave to amend any pleading may be made by either party to the Court or a Judge in Chambers, 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 seem just.

7. If a party who has obtained an order for leave to amend a pleading delivered by him does not amend the same 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.

8. A pleading may be amended by written alterations in the pleading 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 pleading difficult or inconvenient to read, in either of which cases the amendment must be made by delivering a print of the pleading as amended.

9. Whenever any pleading is amended, such pleading 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 ."

10. Whenever a pleading is amended, such amended pleading shall be delivered to the opposite party within the time allowed for amending the same.

A.D. 1875.

ORDER XXVIII.

DEMURRER.

1. Any party may demur to any pleading of the opposite party, or to any part of a pleading setting up a distinct cause of action, ground of defence, set-off, counter-claim, reply, or as the case may be, on the ground that the facts alleged therein do not show any cause of action, or ground of defence to a claim or any part thereof, or set-off, or counter-claim, or reply, or as the case may be, to which effect can be given by the Court as against the party demurring.

2. A demurrer shall state specifically whether it is to the whole or to a part, and if so, to what part, of the pleading of the opposite party. It shall state some ground in law for the demurrer, but the party demurring shall not, on the argument of the demurrer, be limited to the ground so stated. A demurrer may be in the Form 28 in Appendix (C.) hereto. If there is no ground, or only a frivolous ground of demurrer stated, the Court or Judge may set aside such demurrer, with costs.

3. A demurrer shall be delivered in the same manner and within the same time as any other pleading in the action.

4. A defendant desiring to demur to part of a statement of claim, and to put in a defence to the other part, shall combine such demurrer and defence in one pleading. And so in every case where a party entitled to put in a further pleading desires to demur to part of the last pleading of the opposite party he shall combine such demurrer and other pleading.

5. If the party demurring desires to be at liberty to plead as well as demur to the matter demurred to, he may, before demurring, apply to the Court or a Judge for an order giving him leave to do so; and the Court or Judge, if satisfied that there is reasonable ground for the demurrer, may make an order accordingly, or may reserve leave to him to plead after the demurrer is overruled, or may make such other order and upon such terms as may be just.

6. When a demurrer either to the whole or part of a pleading is delivered, either party may enter the demurrer for argument immediately, and the party so entering such demurrer shall on the same day give notice thereof to the other party. If the demurrer shall not be entered and notice thereof given within ten days after delivery, and if the party whose pleading is demurred to does not within such time serve an order for leave to amend, the demurrer shall be held sufficient for the same purposes and with the same result as to costs as if it had been allowed on argument.

A.D. 1875.

7. While a demurrer to the whole or any part of a pleading is pending, such pleading shall not be amended, unless by order of the Court or a Judge; and no such order shall be made except on payment of the costs of the demurrer.

8. Where a demurrer to the whole or part of any pleading is allowed upon argument, the party whose pleading is demurred to shall, unless the Court otherwise order, pay to the demurring party the costs of the demurrer.

9. If a demurrer to the whole of a statement of claim be allowed, the plaintiff, subject to the power of the Court to allow the statement of claim to be amended, shall pay to the demurring defendant the costs of the action, unless the Court shall otherwise order.

10. Where a demurrer to any pleading or part of a pleading is allowed in any case not falling within the last preceding Rule, then (subject to the power of the Court to allow an amendment) the matter demurred to shall as between the parties to the demurrer be deemed to be struck out of the pleadings, and the rights of the parties shall be the same as if it had not been pleaded.

11. Where a demurrer is overruled the demurring party shall pay to the opposite party the costs occasioned by the demurrer, unless the Court shall otherwise direct.

12. Where a demurrer is overruled the Court may make such order and upon such terms as to the Court shall seem right for allowing the demurring party to raise by pleading any case he may be desirous to set up in opposition to the matter demurred to.

13. A demurrer shall be entered for argument by delivering to the proper officer a memorandum of entry in the Form No. 29 in Appendix (C.)

ORDER XXIX.

DEFAULT OF PLEADING.

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 have been delivered, order the action to be dismissed accordingly, or may make such other order on such terms as to the Court or Judge shall seem just.

2. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed for

A.D. 1875.

that purpose, deliver a defence or demurrer, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed, with costs.

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.

4. If the plaintiff's claim be for detention of goods and pecuniary damages, or either of them, and the defendant makes default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant, 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 in which any question arising in an action may be tried.

5. When in any such action as in Rule 4 mentioned there are several defendants, if one of them make default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant so making default, and proceed with his action against the others. And in such case, 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.

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 the defendant makes 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 Rule 4.

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.

8. Where the plaintiff has endorsed a claim for mesne profits, arrears of rent, 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 and 5. A.D. 1875.

9. In Probate actions, if any defendant make default in filing and delivering a defence or demurrer, the action may proceed, notwithstanding such default.

10. In all other actions than those in the preceding Rules of this Order mentioned, if the defendant makes default in delivering a defence or demurrer, 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 shall consider the plaintiff to be entitled to.

11. 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 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.

12. If the plaintiff does not deliver a reply or demurrer, or any party does not deliver any subsequent pleading, or a demurrer, within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and the statements of fact in the pleading last delivered shall be deemed to be admitted.

13. 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 may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties.

14. 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.

ORDER XXX.

Payment into Court in Satisfaction.

1. Where any action is brought to recover a debt or damages, any defendant may at any time after service of the writ, and before or at the time of delivering his defence, or by leave of the Court or a Judge at any later time, pay into Court a sum of

A.D. 1875.

money by way of satisfaction or amends. Payment into Court shall be pleaded in the defence, and the claim or cause of action in respect of which such payment shall be made shall be specified therein.

2. Such sum of money shall be paid to the proper officer, who shall give a receipt for the same. If such payment be made before delivering his defence the defendant shall thereupon serve upon the plaintiff a notice that he has paid in such money, and in respect of what claim, in the Form No. 5 in Appendix (B.) hereto.

3. Money paid into Court as aforesaid may, unless otherwise ordered by a Judge, be paid out to the plaintiff, or to his solicitor on the written authority of the plaintiff. No affidavit shall be necessary to verify the plaintiff's signature to such written authority unless specially required by the officer of the Court.

4. The plaintiff, if payment into Court is made before delivering a defence, may within four days after receipt of notice of such payment, or if such payment is first stated in a defence delivered then may before reply, accept the same in satisfaction of the causes of action in respect of which it is paid in; in which case he shall give notice to the defendant in the Form No. 6 in Appendix (B.) hereto, and shall be at liberty, in case the sum paid in is accepted in satisfaction of the entire cause of action, to tax his costs, and, in case of non-payment within forty-eight hours, to sign judgment for his costs so taxed.

ORDER XXXI.

DISCOVERY AND INSPECTION.

1. The plaintiff may, at the time of delivering his statement of claim, or at any subsequent time not later than the close of the pleadings, and a defendant may, at the time of delivering his defence, or at any subsequent time not later than the close of the pleadings, without any order for that purpose, and either party may at any time, by leave of the Court or a Judge, deliver interrogatories in writing for the examination of the opposite party or parties, or any one or more of such parties, with 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.

2. The Court in adjusting the costs of the action shall at the instance of any party inquire or cause inquiry to be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing master or of the Court or Judge that such interro-

gatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault. A.D. 1875.

3. Interrogatories may be in the Form No. 7 in Appendix (B.) hereto, with such variations as circumstances may require.

4. If any party to an action 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 at chambers 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.

5. Any party called upon to answer interrogatories, whether by himself or by any member or officer, may, within four days after service of the interrogatories, apply at chambers to strike out any interrogatory, on the ground that it is scandalous or irrelevant, or is not put bonâ fide for the purposes of the action, or that the matter inquired after is not sufficiently material at that stage of the action, or on any other ground. And the Judge, if satisfied that any interrogatory is objectionable, may order it to be struck out.

6. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as a Judge may allow.

7. An affidavit in answer to interrogatories shall, unless otherwise ordered by a Judge, if exceeding three folios, be printed and may be in the Form No. 8 in Appendix (B.) hereto, with such variations as circumstances may require.

8. Any objection to answering any interrogatory may be taken, and the ground thereof stated in the affidavit.

9. 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.

10. 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 vivâ voce examination, as the Judge may direct.

11. It shall be lawful for the Court or a Judge at any time during the pendency therein of any action or proceeding, 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

A.D. 1875.

question in such action or proceeding, 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.

12. Any party may, without filing any affidavit, apply to a Judge for an order directing any other party to the action to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question in the action.

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 may be in the Form No. 9 in Appendix (B.) hereto, with such variations as circumstances may require.

14. Every party to an action or other proceeding shall be entitled, at any time before or at the hearing thereof, 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 action or proceeding, unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the action, or that he had some other sufficient cause for not complying with such notice.

15. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in the Form No. 10 in Appendix (B.) hereto.

16. 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, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice may be in the Form No. 11 in Appendix (B.) hereto, with such variations as circumstances may require.

A.D. 1875.

17. If the party served with notice under Rule 15 omits to give such notice of a time for inspection, or objects to give inspection, the party desiring it may apply to a Judge for an order for inspection.

18. Every application for an order for inspection of documents shall be to a Judge. 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.

19. 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 action, or that for any other reason it is desirable that any issue or question in dispute in the action should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

20. 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.

21. Service of an order for 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.

22. A solicitor upon whom an order against any party for discovery or inspection is served under the last Rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to attachment.

23. Any party may, at the trial of an action or issue, use in evidence any one or more of the answers of the opposite party to interrogatories without putting in the others: Provided always, that

A.D. 1875. in such case the Judge may look at the whole of the answers, and if he shall be of opinion that any other 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.

ORDER XXXII.

ADMISSIONS.

1. Any party to an action may give notice, by his own statement or otherwise, that he admits the truth of the whole or any part of the case stated or referred to in the statement of claim, defence, or reply of any other party.

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 action may be, unless at the hearing or trial the Court 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 may be in the Form No. 12 in Appendix (B.) hereto.

4. An affidavit of the solicitor or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents, and annexed to the affidavit, shall be sufficient evidence of such admissions.

ORDER XXXIII.

INQUIRIES AND ACCOUNTS.

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.

ORDER XXXIV.

QUESTIONS OF LAW.

1. The parties may, after the writ of summons has been issued, concur in stating the questions of law arising in the action 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.

2. If it appear to the Court or a Judge, either from the statement of claim or defence or reply or otherwise, that there is in any action 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.

3. Every special case shall be printed by the plaintiff, and signed by the several parties or their solicitors, and shall be filed by the plaintiff. Printed copies for the use of the Judges shall be delivered by the plaintiff.

4. No special case in an action to which a married woman, infant, or person of unsound mind 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.

5. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the Form No. 13 in Appendix (B.) hereto, and also if any married woman, infant, or person of unsound mind be a party to the action, producing a copy of the order giving leave to enter the same for argument.

ORDER XXXV.

Proceedings in District Registries.

1. Where an action proceeds in the district registry all proceedings, except where by these Rules it is otherwise provided, or

A.D. 1875.

the Court or a Judge shall otherwise order, shall be taken in the district registry, down to and including the entry for trial of the action or issues therein; or if the plaintiff is entitled to enter final judgment or to obtain an order for an account by reason of the default of the defendant, then down to and including such judgment or order; and such judgment or order as last aforesaid 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 London. Where the writ of summons is issued out of a district registry and the plaintiff is entitled to enter interlocutory judgment under Order XIII., Rule 6, or where the action proceeds in the district registry and the plaintiff is entitled to enter interlocutory judgment under Order XXIX., Rule 4 or 5, 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.

Where an action proceeds in the district registry final judgment shall be entered in the district registry unless the Judge at the trial or the Court or a Judge shall otherwise order.

2. Subject to the foregoing Rules, where an action proceeds in the district registry the judgment and all such orders therein as require to be entered, except orders made by the district registrar under the authority and jurisdiction vested in him under these Rules, shall be entered in London, and an office copy of every judgment and order so entered shall be transmitted to the district registry to be filed with the proceedings in the action.

3. Where an action proceeds in the district registry all writs of execution for enforcing any judgment or order therein 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.

4. Where an action proceeds in a district registry the district registrar may exercise all such authority and jurisdiction in respect of the action as may be exercised by a Judge at chambers, except such as by these Rules a Master of the Queen's Bench, Common Pleas, or Exchequer Divisions is precluded from exercising.

5. 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.

6. 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.

7. Any person affected by any order or decision of a district registrar may appeal to a Judge. Such appeal may be made notwithstanding that the order or decision was in respect of a proceeding or matter as to which the district registrar had jurisdiction only by consent. Such appeal shall be by summons within four days after the decision complained of, or such further time as may be allowed by a Judge or the registrar.

8. An appeal from a district registrar shall be no stay of proceedings unless so ordered by a Judge or the registrar.

9. 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.

10. Every reference to a Judge by or appeal to a Judge from a district registrar in any action in the Chancery Division shall be to the Judge to whom the action is assigned.

11. In any action which would, under the foregoing Rules, proceed in the district registry, any defendant may remove the action from the district registry as of right in the cases, and within the times, following:

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:

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:

Where the writ is not specially indorsed 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.

A.D. 1875.

12. Any defendant desirous to remove an action as of right under the last preceding Rule may do so by serving upon the other parties to the action, and delivering to the district registrar, a notice, signed by himself or his solicitor, to the effect that he desires the action to be removed to London, and the action shall be removed accordingly: Provided, that if the Court or a Judge shall be satisfied that the defendant giving such notice is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such Court or Judge may order that the action may proceed in the district registry notwithstanding such notice.

13. In any case not provided for by the last two preceding Rules, any party to an action proceeding in a district registry may apply to the Court or a Judge, or to the district registrar, for an order to remove the action from the district registry to London, and such 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 seem just.

Any party to an action proceeding in London may apply to the Court or a Judge for an order to remove the action from London to any district registry, and such 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 seem just.

14. Whenever any proceedings are removed from the district registry to London, the district registrar shall transmit to the proper officer of the High Court of Justice all original documents (if any) filed in the district registry, and a copy of all entries in the books of the district registry of the proceedings in the action.

ORDER XXXVI.

TRIAL.

1. There shall be no local venue for the trial of any action, but when the plaintiff proposes to have the action tried elsewhere than in Middlesex, he shall in his statement of claim name the county or place in which he proposes that the action shall be tried, and the action shall, unless a Judge otherwise orders, be tried in the county or place so named. Where no place of trial is named in the statement of claim, the place of trial shall, unless a Judge otherwise orders, be the county of Middlesex. Any order of a Judge, as to such place of trial, may be discharged or varied by a Divisional Court of the High Court.

2. Actions shall be tried and heard either before a Judge or Judges, or before a Judge sitting with assessors, or before a Judge

and Jury, or before an official or special Referee, with or without assessors. A.D. 1875.

3. Subject to the provisions of the following Rules, the plaintiff may, with his reply, or at any time after the close of the pleadings, give notice of trial of the action, and thereby specify one of the modes mentioned in Rule 2; and the defendant may, upon giving notice within four days from the time of the service of the notice of trial, or within such extended time as a Court or Judge may allow, to the effect that he desires to have the issues of fact tried before a Judge and Jury, be entitled to have the same so tried.

4. Subject to the provisions of the following Rules, if the plaintiff does not within six weeks after the close of the pleadings, or within such extended time as a Court or Judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial, and thereby specify one of the modes mentioned in Rule 2; and in such case the plaintiff, on giving notice within the time fixed by Rule 3 that he desires to have the issues of fact tried before a Judge and Jury, be entitled to have the same so tried.

5. In any case in which neither the plaintiff nor defendant has given notice under the preceding Rules that he desires to have the issues of fact tried before a Judge and Jury, or in any case within the 57th section of the Act, if the plaintiff or defendant desires to have the action tried in any other mode than that specified in the notice of trial, he shall apply to the Court or a Judge for an order to that effect, within four days from the time of the service of the notice of trial, or within such extended time as a Court or Judge may allow.

6. Subject to the provisions of the preceding Rules, the Court or a Judge may, in any action 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 place or places for such trial or trials, and in all cases may order that one or more issues of fact be tried before any other or others.

7. Every trial of any question or issue of fact by a jury shall be held before a single Judge, unless such trial be specially ordered to be held before two or more Judges.

8. Notice of trial shall state whether it is for the trial of the action or of issues therein; and in actions in the Queen's Bench, Common Pleas, and Exchequer Divisions, the place and day for

A.D. 1875.

which it is entered for trial. It may be in the Form No. 14 in Appendix (B.), with such variations as circumstances may require.

9. Ten days notice of trial shall be given, unless the party to whom it is given has consented 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.

10. Notice of trial shall be given before entering the action for trial.

11. 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 action may come on for trial in its order upon the list.

12. 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.

13. 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.

14. If the party giving notice of trial for London or Middlesex omits to enter the action for 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 Rule, within four days enter the action for trial.

15. If notice of trial is given for elsewhere than in London or Middlesex, either party may enter the action for trial. If both parties enter the action for trial, it shall be tried in the order of the plaintiff's entry.

16. The list or lists of actions for trial at the sittings in London and Middlesex respectively shall be prepared and the actions shall be allotted for trial without reference to the Division of the High Court to which such actions may be attached.

17. The party entering the action for trial shall deliver to the officer a copy of the whole of the pleadings in the action, for the use of the Judge at the trial. Such copy shall be in print, except as to such parts, if any, of the pleadings as are by these Rules permitted to be written.

18. If, when an action is called on for trial, the plaintiff appears, and the defendant does not appear, then the plaintiff may prove his claim, so far as the burden of proof lies upon him.

19. If, when an action is called on for trial, 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 claim so far as the burden of proof lies upon him.

20. 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.

21. The Judge may, if he think it expedient for the interests of justice, postpone or adjourn the trial for such time, and upon such terms, if any, as he shall think fit.

22. Upon the trial of an action, the Judge may, at or after such trial, direct that judgment be entered for any or either party, as he is by law entitled to upon the findings, and either with or without leave to any party to move to set aside or vary the same, or to enter any other judgment, upon such terms, if any, as he shall think fit to impose; or he may direct judgment not to be entered then, and leave any party to move for judgment. No judgment shall be entered after a trial without the order of a Court or Judge.

23. Upon every trial at the assizes, or at the London and Middlesex sitting of the Queen's Bench, Common Pleas, or Exchequer Division, where the officer present at the trial is not the officer by whom judgments ought to be entered, the associate 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.

24. If the Judge shall direct that any judgment be entered for any party absolutely, the certificate of the associate to that effect shall be a sufficient authority to the proper officer to enter judgment accordingly. The certificate may be in the Form No. 15 in Appendix (B.) hereto.

25. If the Judge shall direct that any judgment be entered for any party subject to leave to move, judgment shall be entered accordingly upon the production of the associate's certificate.

26. The Court or a Judge may, if it shall appear desirable, direct a trial without a jury of any question or issue of fact, or partly of fact and partly of law, arising in any cause or matter which previously to the passing of the Act could, without any consent of parties, be tried without a jury.

A.D. 1875.

27. The Court or a Judge may, if it shall appear either before or at the trial that any issue of fact can be more conveniently tried before a jury, direct that such issue shall be tried by a Judge with a jury.

28. Trials with assessors shall take place in such manner and upon such terms as the Court or a Judge shall direct.

29. In any cause the Court or a Judge of the division to which the cause is assigned may, at any time or from time to time, order the trial and determination of any question or issue of fact, or partly of fact and partly of law, by any commissioner or commissioners appointed in pursuance of the 29th section of the said Act, or at the sittings to be held in Middlesex or London, and such question or issue shall be tried and determined accordingly.

30. 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 by a jury.

31. 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 before a Judge of the High Court, but not so as to make the tribunal of the Referee a public court of justice.

32. Subject to any such order as last aforesaid, the Referee shall have the same authority in the conduct of any reference or trial as a Judge of the High Court when presiding at any trial before him.

33. Nothing in these Rules contained shall authorise any Referee to commit any person to prison or to enforce any order by attachment or otherwise.

34. 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. A.D. 1875.

ORDER XXXVII.

Evidence Generally.

1. In the absence of any agreement between the 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 authorising the evidence of such witness to be given by affidavit.

2. 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.

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.

4. The Court or a Judge may, in cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before any officer of the court, or any other person or persons, and at any place, of any witness or person, and may order any deposition so taken to be filed in the court, 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.

A.D. 1875.

ORDER XXXVIII.

EVIDENCE BY AFFIDAVIT.

1. Within fourteen days after a consent for taking evidence by affidavit as between the plaintiff and the defendant has been given, or within such time as the parties may agree upon, or a Judge in Chambers may allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor a list thereof.

2. The defendant within fourteen days after delivery of such list, or within such time as the parties may agree upon, or a Judge in Chambers may allow, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof.

3. Within seven days after the expiration of the said 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.

4. 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 before the Court 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. 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.

5. 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.

6. When the evidence in any action is under this order taken by affidavit, such evidence shall be printed, and the notice of trial shall be given at the same time or times after the close of the evidence as in other cases is by these Rules provided after the close of the pleadings.

ORDER XXXIX.

Motion for New Trial.

1. A party desirous of obtaining a new trial of any cause tried in the Queen's Bench, Common Pleas, or Exchequer Divisions on which a verdict has been found by a jury, or by a Judge without a jury, must apply for the same to a Divisional Court by motion for an order calling upon the opposite party to show cause at the expiration of eight days from the date of the order, or so soon after as the case can be heard, why a new trial should not be directed. Such motion shall be made within four days after the trial, if the Divisional Court is then sitting, or within the first four days after the commencement of the sitting of the Divisional Court next after the trial, or within such extended time as the Court or a Judge may allow.

2. A copy of such order shall be served on the opposite party within four days from the time of the same being made.

3. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, 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 of the action; and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy, the Court may give final judgment as to part thereof, and direct a new trial as to the other part only.

4. A new trial may be ordered on any question in an action, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question.

5. An order to show cause shall be a stay of proceedings in the action, unless the Court shall order that it shall not be so as to the whole or any part of the action.

ORDER XL.

Motion for Judgment.

1. Except where by the Act 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.

2. Where at the trial of an action the Judge or a Referee has ordered that any judgment be entered subject to leave to move, the party to whom leave has been reserved shall set down the action on motion for judgment, and give notice thereof to the other parties

A.D. 1875.

within the time limited by the Judge in reserving leave, or if no time has been limited, within ten days after the trial. The notice of motion shall state the grounds of the motion, and the relief sought, and that the motion is pursuant to leave reserved.

3. Where at the trial of an action the Judge or Referee abstains from directing any judgment to be entered, the plaintiff may set down the action on motion for judgment. If he does not so set it down and give notice thereof to the other parties within ten days after the trial, any defendant may set down the action on motion for judgment, and give notice thereof to the other parties.

4. Where at the trial of an action before a jury the Judge has directed that any judgment be entered, any party may, without any leave reserved, move to set aside such judgment, and enter any other judgment, on the ground that the judgment directed to be entered is wrong by reason of the Judge having caused the finding to be entered wrongly, with reference to the finding of the jury upon the question or questions submitted to them.

5. Where at the trial of an action the Judge or a Referee has directed that any judgment be entered, any party may, without any leave reserved, 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.

6. On every motion made under either of the last two preceding Rules, the order shall be an order to show cause, and shall be returnable in eight days. The motion shall be made within four days after the trial if the Divisional Court is then sitting, or within the first four days after the commencement of the sitting of the Divisional Court next after the trial, or within such extended time as a Court or Judge may allow.

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 the action on motion for judgment as soon as such issues or questions have been determined. If he does not so set it down, 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 the action on motion for judgment, and give notice thereof to the other parties.

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 the action on 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 questions of fact.

9. No action shall, except by leave of the Court or a Judge, be set down on motion for judgment after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do.

10. Upon a motion for judgment, or for a new trial, the Court may, 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.

11. Any party to an action may at any stage thereof apply to the Court or a Judge for such order as he may, upon any admissions of fact in the pleadings, be entitled to, without waiting for the determination of any other question between the parties. The foregoing Rules of this Order shall not apply to such applications, but any such application may be made by motion, so soon as the right of the party applying to the relief claimed has appeared from the pleadings. The Court or a Judge may, on any such application, give such relief, subject to such terms, if any, as such Court or Judge may think fit.

ORDER XLI.

Entry of Judgment.

1. Every judgment shall be entered by the proper officer in the book to be kept for the purpose. The party entering the judgment shall deliver to the officer a copy of the whole of the pleadings in the action other than any petition or summons; such copy shall be in print, except such parts (if any) of the pleadings as are by these Rules permitted to be written: Provided that no copy need be delivered of any pleading a copy of which has been delivered on entering any previous judgment in such action. The forms in

A.D. 1875. Appendix (D.) hereto may be used, with such variations as circumstances may require.

2. 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, and the judgment shall take effect from that date.

3. 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.

4. Where under the Act or these Rules, or otherwise, it is provided that any judgment may be entered or signed 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.

5. Where by the Act 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.

6. Any judgment of nonsuit, unless the Court or a Judge otherwise directs, shall have the same effect as a judgment upon the merits for the defendant; but in any case of mistake, surprise, or accident, any judgment of nonsuit may be set aside on such terms, as to payment of costs and otherwise, as to the Court or a Judge shall seem just.

ORDER XLII.

EXECUTION.

1. 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 said Act might have been enforced at the time of the passing thereof.

2. A judgment for the payment of money into Court may be enforced by writ of sequestration, or in cases in which attachment is authorised by law, by attachment.

3. A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession.

4. A judgment for the recovery of any property other than land or money may be enforced:

By writ for delivery of the property:

By writ of attachment:

By writ of sequestration.

5. 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.

6. 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.

7. Where a judgment 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, 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.

8. Where a judgment is against partners in the name of the firm, execution may issue in manner following:

(*a.*) Against any property of the partners as such:

(*b.*) Against any person who has admitted on the pleadings that he is, or 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 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.

9. No writ of execution shall be issued without the production to the officer by whom the same should be issued, of the judg-

A.D. 1875.

ment 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 judgment creditor to execution.

10. 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 firms against whose goods, the execution is to be issued; and shall be signed by the solicitor of the party issuing it, or by the party issuing it, if he do so in person. The forms in Appendix (E.) hereto may be used, with such variations as circumstances may require.

11. 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.

12. Every writ of execution shall bear date of the day on which it is issued. The forms in Appendix (F.) hereto may be used, with such variations as circumstances may require.

13. 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.

14. 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, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of 4*l.* per cent. per annum from the time when the judgment was entered up, provided that in cases where there is an agreement between the parties that more than 4*l.* per cent. interest shall be secured by the judgment, then the indorsement may be accordingly to levy the amount of interest so agreed.

A.D. 1875.

15. Every person to whom any sum of money or any costs shall be payable under a judgment, shall immediately after the time when the judgment was duly entered, 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 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 Judge at the time of giving judgment, or the Court or a Judge afterwards, may give leave to issue execution before, or may stay execution until any time after the expiration of the periods herein-before prescribed.

16. 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 attorney, 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.

17. 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.

18. As between the original parties to a judgment, execution may issue at any time within six years from the recovery of the judgment.

19. Where six years have elapsed since the judgment, or any change has taken place by death or otherwise in the parties entitled or liable to execution, 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

A.D. 1875.

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 seem just.

20. Every order of the Court or a Judge, whether in an action, cause, or matter, may be enforced in the same manner as a judgment to the same effect.

21. In cases other than those mentioned in Rule 18 any person not being a party in an action, 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 the action; and any person not being a party in an action, 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 the action.

22. 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.

23. Nothing in any of the Rules of 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.

24. Nothing in this Order shall affect the order in which writs of execution may be issued.

ORDER XLIII.

WRITS OF FIERI FACIAS AND ELEGIT.

1. 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.

2. 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.

ORDER XLIV.

ATTACHMENT.

1. A writ of attachment shall have the same effect as a writ of attachment issued out of the Court of Chancery has heretofore had.

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.

ORDER XLV.

ATTACHMENT OF DEBTS.

1. Where a judgment is for the recovery by or payment to any person of money, the party entitled to enforce it may apply to the Court or a Judge for an order that the judgment debtor be orally examined as to whether any and what debts are owing to him, before an officer of the Court, or such other person as the Court or Judge shall appoint; and the Court or Judge may make an order for the examination of such judgment debtor, and for the production of any books or documents.

2. The Court or a Judge may, upon the ex parte application of such judgment creditor, either before or after such oral examination, and upon affidavit by himself or his solicitor stating that judgment has been recovered, and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, order that all debts owing or accruing from such third person (herein-after called the garnishee) to the judgment debtor shall be attached to answer the judgment debt; 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 the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt.

3. Service of an order that debts due or accruing to the judgment debtor 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.

A.D. 1875.

4. If the garnishee does not forthwith pay into Court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment 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 debt.

5. 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.

6. 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 Judge may order such third person to appear, and state the nature and particulars of his claim upon such debt.

7. After hearing the allegations of such third person under such order, and of any other person whom by the same or any subsequent order the Court or 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.

8. 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 judgment debtor, to the amount paid or levied, although such proceeding may be set aside, or the judgment reversed.

9. 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.

10. 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 of Stock or Shares and Distringas.

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 1 & 2 Vict. c. 110. ss. 14 and 15., and 3 & 4 Vict. c. 82. s. 1.

2. Any person claiming to be interested in any stock transferable at the Bank of England standing in the name of any other person may sue out a writ of distringas pursuant to the statute 5 Vict. c. 8., as heretofore. Such writ to be issued out of any office of the High Court in London, where writs of summons are issued.

ORDER XLVII.

Writ of Sequestration.

Where any person is by any judgment directed to pay money into Court or to do any other act in a limited time, and after due service of such judgment refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment 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 has heretofore had, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration have heretofore been dealt with by the Court of Chancery.

A.D. 1875.

ORDER XLVIII.

WRIT OF POSSESSION.

1. A judgment that a party do recover possession of any land may be enforced by writ of possession in manner heretofore used in actions of ejectment in the Superior Courts of Common Law.

2. Where by any judgment any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting such judgment 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 and that the same has not been obeyed.

ORDER XLIX.

WRIT OF DELIVERY.

A writ for delivery of any property other than land or money may be issued and enforced in the manner heretofore in use in actions of detinue in the Superior Courts of Common Law.

ORDER L.

CHANGE OF PARTIES BY DEATH, &c.

1. An action 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.

2. In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to an action, the Court or a Judge may, if it be deemed necessary for the complete settlement of all the questions involved in the action, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party to the action, or be served with notice thereof in such manner and form as herein-after prescribed, and on such terms as the Court or Judge shall think just, and shall make such order for the disposal of the action as may be just.

3. In case of an assignment, creation, or devolution of any estate or title pendente lite, the action may be continued by or

against the person to or upon whom such estate or title has come or devolved. A.D. 1875.

4. Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of an action, 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 action, it becomes necessary or desirable that any person not already a party to the action should be made a party thereto, or that any person already a party thereto should be made a party thereto in another capacity, an order that the proceedings in the action shall be carried on between the continuing parties to the action, and such new party or parties, may be obtained ex parte on application to the Court or a Judge, upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence.

5. An order so obtained shall, unless the Court or Judge shall otherwise direct, be served upon the continuing party or parties to the action, 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 action 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.

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 action, shall be served with such order, 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.

7. Where any person being under any disability other than coverture, and not having had a guardian ad litem appointed in the action, is served with any such order, 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 or guardians 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.

A.D. 1875.

ORDER LI.

Transfers and Consolidation.

1. Any action or actions 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.

2. Any action 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 action is assigned: Provided that no such transfer shall be made without the consent of the President of the Division to which the action is proposed to be transferred.

3. Any action transferred to the Chancery Division or the Probate Division, shall, by the order directing the transfer, be directed to be assigned to one of the Judges of such Division to be named in the order.

4. Actions in any division or divisions may be consolidated by order of the Court or a Judge in the manner heretofore in use in the Superior Courts of Common Law.

ORDER LII.

Interlocutory Orders as to Mandamus Injunctions or Interim Preservation of Property, &c.

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.

2. It shall be lawful for the Court or a Judge, on the application of any party to any action, 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 to the Court or Judge may seem 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.

A.D. 1875.

3. It shall be lawful for the Court or a Judge, upon the application of any party to an action, and upon such terms as may seem just, to make any order for the detention, preservation, or inspection of any property, being the subject of such action, and for all or any of the purposes aforesaid to authorise any person or persons to enter upon or into any land or building in the possession of any party to such action, and for all or any of the purposes aforesaid to authorise any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

4. An application for an order under section 25, sub-section 8, of the 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 the said 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.

5. An application for an order under Rule 1 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.

6. Where an action is brought to recover, or a defendant in his statement of 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.

A.D. 1875.

ORDER LIII.

MOTIONS AND OTHER APPLICATIONS.

1. Where by these Rules any application is authorised to be made to the Court or a Judge in an action, such application, if made to a Divisional Court or to a Judge in Court, shall be made by motion.

2. No rule or order to show cause shall be granted in any action, except in the cases in which an application for such rule or order is expressly authorised by these Rules.

3. Except where by the practice existing at the time of the passing of the said Act any order or rule has heretofore been made ex parte absolute in the first instance, and except where by these Rules it is otherwise provided, and except where the motion is for a rule to show cause only, no motion shall be made without previous notice to the parties affected thereby. But the Court or 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 Judge may think just; and any party affected by such order may move to set it aside.

4. Unless the Court or 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.

5. If on the hearing of a motion or other application the Court or 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.

6. 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.

7. 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 in the action, has not appeared within the time limited for that purpose.

A.D. 1875.

8. 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.

ORDER LIV.

APPLICATIONS AT CHAMBERS.

1. Every application at chambers authorised by these Rules shall be made in a summary way by summons.

2. In the Queen's Bench, Common Pleas, and Exchequer Divisions 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 Act, or the Schedule thereto, 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,—

All matters relating to criminal proceedings or to the liberty of the subject:

The removal of actions from one division or Judge to another division or Judge:

The settlement of issues, except by consent:

Discovery, whether of documents or otherwise, and inspection, except by consent:

Appeals from district registrars:

Interpleader other than such matters arising in interpleader as relate to practice only, except by consent:

Prohibitions:

Injunctions and other orders under sub-section 8 of section 25 of the Act, or under Order LII., Rules 1, 2, and 3 respectively:

Awarding of costs, other than the costs of any proceeding before such master:

Reviewing taxation of costs:

Charging orders on stock funds, annuities, or share of dividends or annual produce thereof:

Acknowledgments of married women.

3. 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

A.D. 1875.

may either dispose of the matter or refer the same back to the master with such directions as he may think fit.

4. Any person affected by any order or decision of a master may appeal therefrom to a Judge at chambers. Such appeal shall be by summons, within four days after the decision complained of, or such further time as may be allowed by a Judge or master.

5. An appeal from a master's decision shall be no stay of proceeding unless so ordered by a Judge or master.

6. In the Queen's Bench, Common Pleas, and Exchequer 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.

ORDER LV.

COSTS.

Subject to the provisions of the Act, the costs of and incident to all proceedings in the High Court shall be in the discretion of the Court; but nothing herein contained shall deprive a trustee, mortgagee, or other person 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 Courts of Equity: Provided, that where any action or issue is tried by a jury, the costs shall follow the event, unless upon application made at the trial for good cause shown the Judge before whom such action or issue is tried or the Court shall otherwise order.

ORDER LVI.

NOTICES AND PAPER, &c.

1. All notices required by these Rules shall be in writing, unless expressly authorised by a Court or Judge to be given orally.

2. 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.

3. Any affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript.

ORDER LVII.

A.D. 1875.

Time.

1. Where by these Rules, or by any judgment or order given or made after the commencement of the Act, time for doing any act or taking any proceeding is limited by months, not expressed to be lunar months, such time shall be computed by calendar months.

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.

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.

4. No pleadings shall be amended or delivered in the long vacation, unless directed by a Court or a Judge.

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 a Court or a Judge.

6. A 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.

ORDER LVIII.

Appeals.

1. Bills of exceptions and proceedings in error shall be abolished.

2. All appeals to the Court of Appeal shall be by way of rehearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any

A.D. 1875.

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.

3. 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 seem 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 to the Court of Appeal may seem fit.

4. Notice of appeal from any judgment, whether final or interlocutory, shall be a fourteen days notice, and notice of appeal from any interlocutory order shall be a four days notice.

5. The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court of First Instance, 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 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 seem just.

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,

A.D. 1875.

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.

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.

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.

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.

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 Appeal Court may allow.

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.

A.D. 1875.

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.

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.

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 seem just.

15. No appeal from any interlocutory order 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 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.

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 so order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct.

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.

18. Every application to a Judge of the Court of Appeal shall be by motion, and the provisions of Order LIII. shall apply thereto.

ORDER LIX.

Effect of Non-compliance.

Non-compliance with any of these Rules shall not render the proceedings in any action 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.

ORDER LX.

Officers.

1. All officers who at the time of the commencement of the said Act shall be attached to the Court of Chancery shall be attached to the Chancery Division of the said High Court; and all officers who at the time of the commencement of the said Act shall be attached to the Court of Queen's Bench shall be attached to the Queen's Bench Division of the said High Court; and all officers who at the time of the commencement of the said Act shall be attached to the Court of Common Pleas shall be attached to the Common Pleas Division of the said High Court; and all officers who at the time of the commencement of the said Act shall be attached to the Court of Exchequer shall be attached to the Exchequer Division of the said High Court; and all officers who at the time of the commencement of the said Act shall be attached to the Court of Probate, the Court of Divorce, and the Court of Admiralty respectively shall be attached to the Probate, Divorce, and Admiralty Division of the said High Court.

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.

A.D. 1875.

ORDER LXI.

SITTINGS AND VACATIONS.

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 Whitsunday.

The Trinity sittings shall commence on the Tuesday after Whitsun week and terminate on the 8th of August.

2. 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 Whitsunday and shall terminate on the Tuesday after Whitsunday.

3. The days of the commencement and termination of each sitting and vacation shall be included in such sitting and vacation respectively.

4. The several offices of the Supreme Court shall be open on every day of the year, except Sundays, Good Friday, 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.

5. 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 said 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.

6. The vacation Judges may sit either separately or together as a Divisional Court as occasion shall require, and may hear and dispose of all actions, 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 a Judge thereof, or the Judge who made the order. Any other Judge of the High Court may sit in vacation for any vacation Judge.

7. The vacation Judges of the High Court may dispose of all actions, matters, and other business of an urgent nature during any interval between the sittings of any division of the High Court to which such business may be assigned, although such interval may not be called or known as a vacation.

ORDER LXII.

Exceptions from the Rules.

Nothing in these Rules shall affect the practice or procedure in any of the following causes or matters:—

Criminal proceedings:

Proceedings on the Crown side of the Queen's Bench Division:

Proceedings on the Revenue side of the Exchequer Division:

Proceedings for Divorce or other Matrimonial Causes.

A.D. 1875.

ORDER LXIII.

INTERPRETATION OF TERMS.

The provisions of the 100th section of the 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 :—

"Person" shall include a body corporate or politic :

"Probate actions" shall 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" shall, unless and until any rule to the contrary is made, mean an officer to be ascertained as follows :—

(*a.*) Where any duty to be discharged under the Act 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 Act or these Rules to be discharged, the proper officer to discharge the same shall be such officer, having previously discharged analogous duties, 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 :

"The Act" and "the said Act" shall respectively mean the Supreme Court of Judicature Act, 1873, as amended by this Act.

APPENDIX (A.)

A.D. 1875.

PART I.

FORMS OF WRITS OF SUMMONS, &C.

No. 1.

Title in full.

187 [*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 and *E.F.* 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 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.*

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, from the date of such 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 [ ] office at

Indorsements to be made on the writ before issue thereof.

The plaintiff's claim is for, *&c.*

This writ was issued by *E.F.*, of solicitor for the said plaintiff, who resides at , *or*, this writ was issued by the plaintiff in person 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 *X.Y.* on *L.M.* [the defendant *or* one of the defendants], on *Monday*, the day of , 18

(Signed) *X.Y.*

A.D. 1875.

No. 2.

Writ for service out of the jurisdiction, or where notice in lieu of service is to be given out of the jurisdiction.

187 [*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

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, by leave of the Court or a Judge, proceed therein, and judgment may be given in your absence. Witness, *&c.*

Memoranda and Indorsements 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.*

No. 3.

Notice of Writ in lieu of service to be given out of the jurisdiction.

187 [*Here put the letter and number.*]

Between *A.B.* Plaintiff,
and
C.D., *E.F.*, and *G.H.* Defendants.

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, by leave

of the Court or a Judge, proceed therein, and judgment may be given in your absence. A.D. 1875.

You may appear to the said writ by entering an appearance personally or by your solicitor at the [ ] office at

(Signed) *A.B.* of &c.

or

X.Y. of &c.

Solicitor for *A.B.*

In the High Court of Justice.

Division.

No. 4.

Writ in Admiralty action in rem.

187 . [*Here put the letter and number.*]

In the High Court of Justice.

Admiralty Division.

Between *A.B.*, plaintiff,

and

Owners.

VICTORIA, *&c.*

To the owners and parties interested in the ship or vessel [*Mary*] [*or cargo, &c., as the case may be*] of the port of

We hereby authorise officer of Our Supreme Court, and all and singular his substitutes, to arrest the ship or vessel [*Mary*], of the port of and the cargo laden therein [*or cargo, &c., as the case may be*], and to keep the same under safe arrest until he shall receive further orders from Us. And We command you, the owners and other parties interested in the said ship and cargo [*or cargo, &c., as the case may be*] that within eight days after the arrest of the said vessel [*or cargo, &c., as the case may be*] you do cause an appearance to be entered for you in the 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 Our said Court will proceed to hear the said action and to pronounce judgment therein, your absence notwithstanding.

No. 5.

Form of Memorandum for Renewed Writ.

In the High Court of Justice.

Division.

Between *A.B.*, plaintiff,

and

C.D., defendant.

Seal renewed writ of summons in this action indorsed as follows :—

[*Copy original writ and the indorsements.*]

A.D. 1875.

No. 6.

Memorandum of Appearance.

187 . [*Here put the letter and number.*]

High Court of Justice.
[*Chancery*] Division.

A.B. v. *C.D.*, and others.

Enter an appearance for
in this action.

Dated this day of

X.Y.,
Solicitor for the Defendant.

The place of business of *X.Y.* is
His address for service is

or [*C.D.*,
Defendant in person.

The address of *C.D.* is
His address for service is .]

The said defendant [requires, *or*, does not require] a statement of complaint to be filed and delivered.

No. 7.

[*Here put the letter and number.*]

In the High Court of Justice.
Queen's Bench (*or* Chancery, C.P., *or*, *&c.*) Division.

Between *A.B.*, plaintiff,
and
C.D., and
E.F., defendants.

The defendant *C.D.* limits his defence to part only of the property mentioned in the writ in this action, that is to say, to the close called "the Big field."

Yours, &c.
G.H.,
Solicitor for the said defendant *C.D.*

Mr. *X.Y.*, plaintiff's solicitor.

PART II.

SECTION I.

GENERAL INDORSEMENTS.

In Matters assigned by the 34th Section of the Act to the Chancery Division.

1. *Creditor to administer Estate.*

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].

2. *Legatee to administer Estate.*

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].

3. *Partnership.*

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and defendant [under articles of partnership dated the day of], and to have the affairs of the partnership wound up.

4. *By Mortgagee.*

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.

5. *By Mortgagor.*

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.

6. *Raising Portions.*

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.

7. *Execution of Trusts.*

The plaintiff's claim is to have the trusts of an indenture dated and made between , carried into execution.

8. *Cancellation or Rectification.*

The plaintiff's claim is to have a deed dated and made between [*parties*], set aside or rectified.

9. *Specific Performance.*

The plaintiff's claim is for specific performance of an agreement dated the day of , for the sale by the plaintiff to the defendant of certain [*freehold*] hereditaments at .

SECTION II.

Money Claims where no Special Indorsement under Order III., Rule 6.

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.

Rent. The plaintiff's claim is *l.* for arrears of rent.

Salary, &c. The plaintiff's claim is *l.* for arrears of salary as a clerk [*or as the case may be*].

Interest. The plaintiff's claim is *l.* for interest upon money lent.

General average. The plaintiff's claim is *l.* for a general average contribution.

Freight, &c. The plaintiff's claim is *l.* for freight and demurrage.

The plaintiff's claim is *l.* for lighterage.

Tolls. The plaintiff's claim is *l.* for market tolls and stallage.

Penalties. The plaintiff's claim is *l.* for penalties under the Statute. [. . . .].

Bankers balance. The plaintiff's claim is *l.* for money deposited with the defendant as a banker.

Fees, &c. as solicitors. The plaintiff's claim is *l.* for fees for work done [*and* *l.* *money expended*] as a solicitor.

Commission. The plaintiff's claim is *l.* for commission earned as [*state character as auctioneer, cotton broker, &c.*].

Medical attendance, &c. The plaintiff's claim is *l.* for medical attendances.

Return of premium. The plaintiff's claim is *l.* for a return of premiums paid upon policies of insurance.

Warehouse rent. The plaintiff's claim is *l.* for the warehousing of goods.

Carriage of goods. The plaintiff's claim is *l.* for the carriage of goods by railway.

Use and occupation of houses. The plaintiff's claim is *l.* for the use and occupation of a house.

Hire of goods. The plaintiff's claim is *l.* for the hire of [*furniture*].

Work done. The plaintiff's claim is *l.* for work done as a surveyor.

Board and lodging. The plaintiff's claim is *l.* for board and lodging.

The plaintiff's claim is *l.* for the board, lodging, and tuition of *X.Y.* — Schooling.

The plaintiff's claim is *l.* for money received by the defendant as solicitor [*or factor, or collector, or, &c.*] of the plaintiff. — Money received.

The plaintiff's claim is *l.* for fees received by the defendant under colour of the office of . — Fees of office.

The plaintiff's claim is *l.* for a return of money overcharged for the carriage of goods by railway. — Money overpaid.

The plaintiff's claim is *l.* for a return of fees overcharged by the defendant as .

The plaintiff's claim is *l.* for a return of money deposited with the defendant as stakeholder. — Return of money by stakeholder.

The plaintiff's claim is *l.* for money entrusted to the defendant as stakeholder, and become payable to plaintiff. — Money won, from stakeholder.

The plaintiff's claim is *l.* for a return of money entrusted to the defendant as agent of the plaintiff. — Money entrusted to agent.

The plaintiff's claim is *l.* for a return of money obtained from the plaintiff by fraud. — Money obtained by fraud.

The plaintiff's claim is *l.* for a return of money paid to the defendant by mistake. — Money paid by mistake.

The plaintiff's claim is *l.* for a return of money paid to the defendant for [*work to be done, left undone; or, a bill to be taken up; not taken up, or, &c.*]. — Money paid for consideration which has failed.

The plaintiff's claim is *l.* for a return of money paid as a deposit upon shares to be allotted.

The plaintiff's claim is *l.* for money paid for the defendant as his surety. — Money paid by surety for defendant.

The plaintiff's claim is *l.* for money paid for rent due by the defendant. — Rent paid.

The plaintiff's claim is *l.* upon a bill of exchange accepted [*or indorsed*] for the defendant's accommodation. — Money paid on accommodation bill.

The plaintiff's claim is *l.* for a contribution in respect of money paid by the plaintiff as surety. — Contribution by surety.

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. — By co-debtor.

The plaintiff's claim is *l.* for money paid for calls upon shares, against which the defendant was bound to indemnify the plaintiff. — Money paid for calls.

The plaintiff's claim is *l.* for money payable under an award. — Money payable under award.

The plaintiff's claim is *l.* upon a policy of insurance upon the life of *X.Y.*, deceased. — Life policy.

The plaintiff's claim is *l.* upon a bond to secure payment of 1,000*l.*, and interest. — Money bond.

The plaintiff's claim is *l.* upon a judgment of the Court, in the Empire of Russia. — Foreign judgment.

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, &c. [*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 appearance limited by the order*] from the service hereof, further proceedings will be stayed.

SECTION IV.

Damages and other Claims.

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, &c. The plaintiff's claim is for damages for assault [*and false imprisonment, and for malicious prosecution*].

The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff *C.D.* — By husband and wife.

The plaintiff's claim is for damages for assault by the defendant *C.D.* — Against husband and wife.

The plaintiff's claim is for damages for injury by the defendant's negligence as solicitor of the plaintiff. — Solicitor.

The plaintiff's claim is for damages for negligence in the custody of goods [*and for wrongfully detaining the same*]. — Bailment.

The plaintiff's claim is for damages for negligence in the keeping of goods pawned [*and for wrongfully detaining the same*]. — Pledge.

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.*] — Hire.

The plaintiff's claim is for damages for wrongfully neglecting [*or refusing*] to pay the plaintiff's cheque. — Banker.

The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts. — Bill.

The plaintiff's claim is upon a bond conditioned not to carry on the trade of a — Bond.

The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway. — Carrier.

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.

The plaintiff's claim is for damages for breach of charter-party of ship [*Mary*]. — Charter-party.

The plaintiff's claim is for return of household furniture, or, &c., or their value, and for damages for detaining the same. — Claim for return of goods; damages.

The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c. — Damages for depriving of goods.

The plaintiff's claim is for damages for libel. — Defamation.

The plaintiff's claim is for damages for slander.

The plaintiff's claim is in replevin for goods wrongfully distrained. — Distress. Replevin.

The plaintiff's claim is for damages for improperly distraining. — Wrongful distress.

[*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.*]

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 . — Ejectment.

The plaintiff's claim is to establish his title to [*here describe property*], and to recover the rents thereof. — To establish title and recover rents.

[*The two previous Forms may be combined.*]

The plaintiff's claim is for dower. — 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 [*or, if by husband and wife, to the plaintiff, C.D.*] 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.

A.D. 1875.

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 from 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 watercourse. 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.*]

A.D. 1875.

Innkeeper. The plaintiff's claim is for damages for loss of the plaintiff's goods in the defendant's inn.

Add to Indorsement:—

Mandamus. And for a mandamus.

Add to Indorsement:—

Injunction. And for an injunction.

Add to Indorsement where claim is to land, or to establish title, or both.

Mesne profits. And for mesne profits.

Arrears of rent. And for an account of rents or arrears of rent.

Breach of covenant. And for breach of covenant for [*repairs*].

SECTION V.

Probate.

1. *By an executor or legatee propounding a will in solemn form.*

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*].

2. *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.*

The plaintiff claims to be executor of the last will dated the day of of *C.D.*, late of Gentleman, 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*].

3. *By an executor or legatee of a will when letters of administration have been granted as in an intestacy.*

The plaintiff claims to be executor of the last will of *C.D.*, late of Gentleman, 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.

4. *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.*

The plaintiff claims to be the brother and sole next of kin of *C.D.* of Gentleman, 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*].

(*g.*) Section VI.

Admiralty.

1. *Damage to vessel by collision.*

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.

2. *Damage to cargo by collision.*

The plaintiffs as owners of the cargo laden on board the vessel "Mary," of the port of , claim £ 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.]

3. *Damage to cargo otherwise.*

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 £ for damage done to the said goods during such voyage.

4. *In causes of possession.*

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 £ 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," £ , being the amount of his mortgage thereon, and £ 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 £ against the vessel "Mary" and the cargo laden thereon.

10. *By a part owner of a vessel.*

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 £ for the value of the plaintiff's said shares in the said vessel.

A.D. 1875.

11. The plaintiffs as owners of the derelict vessel "Mary," of the port of , claim to be put in possession of the said vessel and her cargo.

12. *By Salvors.*

The plaintiffs as the owners, master, and crew of the vessel "Caroline," of the port of , claim the sum of £ for salvage services performed by them to the vessel "Mary," off the Goodwin Sands, on the day of

13. *Claim for Towage.*

The plaintiffs as owners of the steam-tug "Jane," of the port of , claim £ for towage services performed by the said steam-tug to the vessel "Mary," on the day of

14. *Seamen's Wages.*

The plaintiffs as seamen on board the vessel "Mary," claim £ for wages due to them, as follows (1), the mate 30*l.* for two months' wages from the day of

15. *For Necessaries.*

The plaintiffs claim £ for necessaries supplied to the vessel "Mary," at the port of Newcastle-on-Tyne, delivered on the day of and the day of

SECTION VII.

Special Indorsements under Order III., Rule 6.

1. The plaintiff's claim is for the price of goods sold. The following are the particulars:—

1873—31st December.—

	£	s.	d.
Balance of account for butcher's meat to this date	35	10	0
1874—1st January to 31st March.—			
Butcher's meat supplied	74	5	0
	109	15	0
1874—1st February.—Paid	45	0	0
Balance due	£64	15	0

2. 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 to *A.B.* The following are the particulars:—

1874—2nd February. Guarantee by *C.D.* of the price of woollen goods, to be supplied to *A.B.*

	£	s.	d.
2nd February—To goods	47	15	0
3rd March—To goods	105	14	0
17th March—To goods	14	12	0
5th April—To goods	34	0	0
	202	1	0

A.D. 1875.

3. The plaintiff's claim is against the defendant, as maker of a promissory note. The following are the particulars:—

Promissory note for 250*l.*, dated 1st January 1874, made by defendant, payable four months after date.

	£
Principal - - - - - -	250
Interest - - - - -	

4. 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. The following are the particulars:—

Bill of exchange for 500*l.*, dated 1st January 1874, drawn by defendant *C.D.* upon and accepted by defendant *A.B.*, payable three months after date.

	£
Principal - - - - - -	500
Interest - - - - -	

5. The plaintiff's claim is for principal and interest due upon a bond. The following are the particulars:—

Bond dated 1st January 1873. Condition for payment of 100*l.* on the 26th December 1873.

	£
Principal due - - - - -	50
Interest - - - - -	

6. The plaintiff's claim is for principal and interest due under a covenant. The following are the particulars:—

Deed dated covenant to pay 100*l.* and interest.

	£
Principal due - - - - -	80
Interest - - - - -	

Section VIII.

Indorsements of Character of Parties.

Executors.

The plaintiff's claim is as executor [*or administrator*] of *C.D.*, deceased, for, *&c.*

The plaintiff's claim is against the defendant *A.B.*, as executor [*or, &c.*] of *C.D.*, deceased, for, *&c.*

The plaintiff's claim is against the defendant *A.B.*, as executor of *X.Y.*, deceased, and against the defendant *C.D.*, in his personal capacity, for, *&c.*

A.D. 1875.

By husband and wife, executrix.

The claim of the plaintiff *C.D.* is as executrix of *X.Y.*, deceased, and the claim of the plaintiff *A.B.* as her husband, for

Against husband and wife, executrix.

The claim of the plaintiff is against the defendant *C.D.*, as executrix of the defendant *C.D.*, deceased, and against the defendant *A.B.*, as her husband, for

Trustee in bankruptcy.

The plaintiff's claim is as trustee under the bankruptcy of *A.B.*, for

The plaintiff's claim is against the defendant as trustee under the bankruptcy of *A.B.*, for

Trustees.

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*].

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

A.D. 1875.

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.)

FORM 1.

Notice by Defendant to Third Party.

187 [*Here put the letter and number.*]
Notice filed , 187

In the High Court.
Queen's Bench Division.

Between *A.B.*, plaintiff,
and
C.D., defendant.

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 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.*, you must cause an appearance to be entered for you within eight days after service of this notice.

A.D. 1875.

In default of your so appearing, you will not be entitled in any future proceeding between the defendant *C.D.* and yourself to dispute the validity of the judgment in this action, whether obtained by consent or otherwise.

(Signed) *E.T.*

Or,

X.Y.,
Solicitor for the defendant,
E.T.

Appearance to be entered at

FORM 2.

187 [*Here put the letter and number.*]

In the High Court.
Queen's Bench Division.

Between *A.B.*, plaintiff,
and
C.D., defendant.

The plaintiff confesses the defence stated in the paragraph of the defendant's statement of defence [*or*, of the defendant's further statement of defence].

FORM 3.

187 [*Here put the letter and number.*]

In the High Court of Justice.
Division.

Between *A.B.*, plaintiff,
and
C.D., defendant.

The particulars of the plaintiff's complaint herein, and of the relief and remedy to which he claims to be entitled, appear by the indorsement upon the writ of summons.

FORM 4.

" 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.

" Appearances are to be entered at "

FORM 5.

Notice of Payment into Court.

In the High Court of Justice. 1875. B. No.
Q.B. Division.

A.B. v. *C.D.*

Take notice that the defendant has paid into Court £ , and says that that sum is enough to satisfy the plaintiff's claim [*or the plaintiff's claim for, &c.*]

To Mr. *X.Y.*,
the Plaintiff's Solicitor.

Z.,
Defendant's Solicitor.

FORM 6.

Acceptance of Sum paid into Court.

In the High Court of Justice. 1875. B. No.
Q.B. Division.

A.B. v. *C.D.*

Take notice that the plaintiff accepts the sum of £ paid by you into Court in satisfaction of the claim in respect of which it is paid in.

FORM 7.

Form of Interrogatories.

In the High Court of Justice. 1874. B. No.
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* .]

A.D. 1875.

FORM 8.

Form of Answer to Interrogatories.

In the High Court of Justice. 1874. B. No.
Division.

Between *A.B.*, Plaintiff,
and
C.D., *E.F.*, and *G.H.*, Defendants.

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:—

.....

.....

FORM 9.

Form of Affidavit as to Documents.

In the High Court of Justice. 1874. B. No.
Division.

Between *A.B.*, Plaintiff,
and
C.D., Defendant.

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

A.D. 1875.

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.

FORM 10.

Form of Notice to produce Documents.

In the High Court of Justice.
Q.B. Division.

A.B. v. *C.D.*

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

FORM 11.

Form of Notice to inspect Documents.

In the High Court of Justice.
Q.B. Division.

A.B. v. *C.D.*

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 my office on Thursday next the instant, 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*]:—

A.D. 1875.

FORM 12.

Form of Notice to admit Documents.

In the High Court of Justice.

Division.

A.B. v. *C.D.*

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.

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, *J.S.* v. *J.N*	Trinity Term, 10th Vic.	
Letters Patent of King Charles II. in the Rolls Chapel	January 1, 1680.	

Form 13.

Setting down Special Case.

1875. B. No.

In the High Court of Justice.

Division.

Between *A.B.*, Plaintiff,

and

C.D. and others, Defendants.

Set down for argument the special case filed in this action on the day of , 187

X.Y., Solicitor for

Form 14.

Form of Notice of Trial.

In the High Court of Justice.

Division.

A.B. v. *C.D.*

Take notice of trial of this action [*or of the issues in this action ordered to be tried*] by a Judge and jury [*or as the case may be*] in Middlesex, [*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*].

Form 15.

Form of Certificate of Officer after Trial by a Jury.

30th November 1876. 1876. No.

In the High Court of Justice.

Division.

Between *A.B.*, Plaintiff,

and

C.D., Defendant.

I certify that this action was tried before the Honourable Mr. Justice and 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.]

A.D. 1875.

FORM 16.

Affidavit of Scripts.

In the High Court of Justice.
Probate Division.

Between *A.B.* - - - - Plaintiff,
and
C.D. - - - - Defendant.

I, *A.B.* of , in the county of , party in this cause, make oath and say, that no paper or parchment writing, being or purporting to be or having the form or effect of a will or codicil or other testamentary disposition of *E.F.*, late of , in the county of , deceased, the deceased in this cause, or being or purporting to be instructions for, or the draft of, any will, codicil, or testamentary disposition of the said *E.F.*, has at any time, either before or since his death, come to the hands, possession, or knowledge of me, this deponent, or to the hands, possession, or knowledge of my solicitors in this suit, so far as is known to me, this deponent, save and except the true and original last will and testament of the said deceased now remaining in the principal registry of this Court [*or* hereunto annexed, *or as the case may be*], the said will bearing date the day of 18 [*or as the case may be*], also save and except [*here add the dates and particulars of any other testamentary papers of which the deponent has any knowledge*].

(Signed) *A.B.*

Sworn at on the day of 18

Before me,

[*Person authorised to administer oaths under the Act.*]

APPENDIX (C.)

ACCOUNT STATED.

No. 1.

187 . B. No.

In the High Court of Justice.
Division.

Writ issued 3rd August 1875.

Between *A.B.* - - - - - Plaintiff,
and
E.F. - - - - - Defendant.

Statement of Claim.

Claim. 1. Between the 1st of January and the 28th of February 1875, the plaintiff supplied to the defendant various articles of drapery ; and accounts and

invoices of the goods so supplied, and their prices, were from time to time furnished to the defendant, and payments on account were from time to time made by the defendant. A.D. 1875.

2. On the 28th of February 1875, a balance remained due to the plaintiff of 75*l.* 9*s.*, and an account was on that day sent by the plaintiff to the defendant showing that balance.

3. On the 1st of March following, the plaintiff's collector saw the defendant at his house, and asked for payment of the said balance, and the defendant then paid him by cheque 25*l.* on account of the same. The residue of the said balance, amounting to 50*l.* 9*s.*, has never been paid.

The plaintiff claims £ .

The plaintiff proposes that this action should be tried in the county of Northampton.

No. 2.

[1876. B. No. 233.] Administration of Estate.

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]

Writ issued 22d December 1876.

In the matter of the estate of *A.B.*, deceased.

Between *E.F.* - - - - - Plaintiff,
and
G.H. - - - - Defendant.

Statement of Claim.

1. *A.B.* of *K.*, in the county of *L.*, died on the 1st of July 1875 intestate. The defendant *G.H.* is the administrator of *A.B.* Claim.

2. *A.B.* died entitled to lands in the said county for an estate of fee simple, and also to some other real estate and to personal estate. The defendant has entered possession of the real estate of *A.B.*, and received the rents thereof. The legal estate in such real estate is outstanding in mortgages under mortgages created by the intestate.

3. *A.B.* was never married; he had one brother only, who pre-deceased him without having been married, and two sisters only, both of whom also pre-deceased him, namely *M.N.* and *P.Q.* The plaintiff is the only child of *M.N.*, and the defendant is the only child of *P.Q.*

The plaintiff claims—

1. To have the real and personal estate of *A.B.* administered in this court, and for that purpose to have all proper directions given and accounts taken.

A.D. 1875.

2. To have a receiver appointed of the rents of his real estate.
3. Such further or other relief as the nature of the case may require.

[1876. B. No. 233.]

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]

In the matter of the estate of *A.B.*, deceased.

Between *E.F.* - - - - - Plaintiff,
and
G.H. - - - - Defendant.

Statement of Defence.

Defence.

1. The plaintiff is an illegitimate child of *M.N.* She was never married.

2. The intestate was not entitled to any real estate at his death, except a copyhold estate situate in the county of *R.*, and held of the manor of *S.* According to the custom of that manor, when the copyholder dies without issue, and without leaving a brother, or issue of a deceased brother, the copyhold descends to his elder sister and her issue in preference to his younger sister and her issue. *P.Q.* was older than *M.N.*

3. The personal estate of *A.B.* was not sufficient for the payment of his debts, and has all been applied in payment of his funeral and testamentary expenses, and part of his debts.

[1876. B. No. 233.]

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]

In the matter of the estate of *A.B.*, deceased.

Between *E.F.* - - - - - Plaintiff,
and
G.H. - - - - Defendant

Reply.

Reply.

The plaintiff joins issue with the defendant upon his defence.

No. 3. A.D. 1875.

[1876. B. No. 234.]

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]

Writ issued 22nd December 1876.

In the matter of the estate of *A.B.*, deceased.

Between *E.F.* - - - - Plaintiff,
and
G.H. - - - - Defendant.

Claim.

1. *A.B.* of *K.*, in the county of *L.*, duly made his last will, dated the 1st day of March 1873, whereby he appointed the defendant and *M.N.* (who died in the testator's lifetime) executors thereof, and devised and bequeathed his real and personal estate to and to the use of his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain 21, or a daughter who should attain that age, or marry, upon trust as to his real estate for the person who would be the testator's heir-at-law, and as to his personal estate for the persons who would be the testator's next of kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The testator died on the 1st day of July 1873, and his will was proved by the defendant on the 4th of October 1873. The plaintiff has not been married.

3. The testator was at his death entitled to real and personal estate; the defendant entered into the receipt of the rents of the real estate and got in the personal estate; he has sold some part of the real estate.

The plaintiff claims—

1. To have the real and personal estate of *A.B.* administered in this court, and for that purpose to have all proper directions given and accounts taken.
2. Such further or other relief as the nature of the case may require.

[1876. B. No. 234.]

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]

In the matter of the estate of *A.B.*, deceased.

Between *E.F.* - - - - - Plaintiff,
and
G.H. - - - - - Defendant.

Statement of Defence.

Defence.

1. *A.B.*'s will contained a charge of debts; he died insolvent; he was entitled at his death to some real estate which the defendant sold, and which

A.D. 1875. produced the net sum of 4,300*l.*, and the testator had some personal estate which the defendant got in and which produced the net sum of 1,204*l.* The defendant applied the whole of the said sums and the sum of 84*l.* which the defendant received from rents of the real estate in the payment of the funeral and testamentary expenses and some of the debts of the testator. The defendant made up his accounts and sent a copy thereof to the plaintiff on the 10th of January 1875, and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer. The defendant submits that the plaintiff ought to pay the costs of this action.

[1876. B. No. 234.]

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]
In the matter of the estate of *A.B.*, deceased.
Between *E.F.* - - - - - Plaintiff,
and
G.H. - - - - Defendant.

Reply.

Reply. The plaintiff joins issue with the defendant upon his defence.

No. 4.

[1876. B. No. 235.]

In the High Court of Justice.
Chancery Division.
[*Name of Judge.*]
In the matter of the estate of *W.H.*, deceased.
Writ issued 22nd December 1876.
Between *A.B.* and *C.* his wife - - - Plaintiffs,
and
E.F. and *G.H.* - - - - Defendants.

Statement of Claim.

Claim. 1. W. H., of H., in the county of L., duly made his last will, dated the 19th day of March 1861, whereby he appointed the defendants the executors thereof, and bequeathed to them all his personal estate in trust, to call in, sell, and convert the same into money, and thereout to pay his debts and funeral and testamentary expenses, and to divide the ultimate surplus into three shares, and to pay one of such three shares to each of his two children, T. H., and E., the wife of E. W., and to stand possessed of the remaining third share upon trust for the children of the testator's son J. H. in equal shares, to be divided among them when the youngest of such children should attain the

age of 21 years. And the testator devised his real estates to the defendants upon trust until the youngest child of the said J. H. should attain the age of 21 years, to pay one third part of the rents thereof to the said T. H., and one other third part thereof to the said E. W., and to accumulate the remaining third part by way of compound interest, and so soon as the youngest child of the said J. H. should attain the age of 21 years, to sell the said real estates, and out of the proceeds of such sale to pay the sum of 1,000*l.* to the said T. H., and to invest one moiety of the residue in manner therein mentioned, and stand possessed thereof in trust to pay the income thereof to the said E., the wife of the said E. W., during her life for her separate use, and after her death for her children, the interests of such children being contingent on their attaining the age of 21 years, and to divide the other moiety of such proceeds of sale and the accumulations of the third share of rents therein-before directed to be accumulated among such of the children of the said J. H. as should be then living, and the issue of such of them as should be then dead, in equal shares per stirpes. A.D. 1875.

2. The testator died on the 25th day of April 1873, and his said will was proved by the defendants in the month of June 1873.

3. The testator died possessed of one third share in a leasehold colliery called the Paradise Colliery, and in the engines, machinery, stock in trade, book debts, and effects belonging thereto. He was also entitled to real estate, and other personal estate.

4. The testator left T. H. and E., the wife of E. W., him surviving. J. H had died in the testator's lifetime, leaving four children, and no more. The plaintiff *C.B.* is the youngest of the children of J. H., and attained the age of 21 years on the 1st of June 1871. The other three children of J. H. died without issue in the lifetime of the testator.

5. E. W. has several children, but no child has attained the age of 21 years.

6. T. H. is the testator's heir-at-law.

7. The defendants have not called in, sold, and converted into money the whole of the testator's personal estate, but have allowed a considerable part thereof to remain outstanding; and in particular the defendants have not called in, sold, or converted into money the testator's interest in the said colliery, but have, from the death of the testator to the present time, continued to work the same in partnership with the other persons interested therein. The estate of the testator has sustained considerable loss by reason of such interest not having been called in, sold, or converted into money.

8. The defendants did not upon the death of the testator sell the testator's furniture, plate, linen, and china, but allowed the testator's widow to possess herself of a great part thereof, without accounting for the same, and the same has thereby been lost to the testator's estate.

9. The defendants have not invested the share of the testator's residuary personal estate given by his will to the children of the testator's son J. H., and have not accumulated one third of the rents and profits of his real estate

A.D. 1875.

as directed by the said will, but have mixed the same share and rents with their own moneys, and employed them in business on their own account.

10. The defendants have sold part of the real estates of the testator, but a considerable part thereof remains unsold.

11. A receiver ought to be appointed of the outstanding personal estate of the testator, and the rents and profits of his real estate remaining unsold.

The plaintiffs claim :—

1. That the estate of the said testator may be administered, and the trusts of his will carried into execution under the direction of the court.
2. That it may be declared that the defendants, by carrying on the business of the said colliery instead of realising the same, have committed a breach of trust, and that the parties interested in the testator's estate are entitled to the value of the testator's interest in the said partnership property as it stood at the testator's death, with interest thereon, or at their election to the profits which have been made by the defendants in respect thereof since the testator's death, whichever shall be found most for their benefit.
3. That an account may be taken of the interest of the testator in the said colliery, and in the machinery, book debts, stock, and effects belonging thereto, according to the value thereof at the testator's death, and an account of all sums of money received by or by the order, or for the use of the defendants, or either of them, on account of the testator's interest in the said colliery, and that the defendants may be ordered to make good to the estate of the testator the loss arising from their not having realised the interest of the testator in the said colliery within a reasonable time after his decease.
4. That an account may be taken of all other personal estate of the testator come to the hands of the defendants, or either of them, or to the hands of any other person by their or either of their order, or for their or either of their use, or which, but for their wilful neglect or default, might have been so received ; and an account of the rents and profits of the testator's real estate, and the moneys arising from the sale thereof, possessed or received by or by the order, or for the use of the defendants, or either of them.
5. That the real estate of the testator remaining unsold may be sold under the direction of the court.
6. That the defendants may be decreed, at the election of the parties interested in the testator's estate, either to pay interest at the rate of 5*l.* per cent. per annum upon such moneys belonging to the estate of the testator as they have improperly mixed with their own moneys and employed in business on their own account, and that half-yearly rests may be made in taking such account as respects all moneys which by the said will were directed to be accumulated,

or to account for all profits by the employment in their business of the said trust money. A.D. 1875.

7. That a receiver may be appointed of the outstanding personal estate of the testator, and to receive the rents and profits of his real estate remaining unsold.

8. Such further or other relief as the nature of the case may require.

[1876. B. 235.]

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between *A.B.* and *C.* his wife - - - - Plaintiffs,
and
E.F. and *G.H.* - - - - Defendants.

Statement of Defence of the above-named Defendants.

Defence.

1. Shortly after the decease of the testator, the defendants, as his executors, possessed themselves of and converted into money the testator's personal estate, except his share in the colliery mentioned in the plaintiffs statement of claim. The moneys so arising were applied in payment of part of the testator's debts and funeral and testamentary expenses, but such moneys were not sufficient for the payment thereof in full.

2. The Paradise colliery was, at the testator's decease, worked by him in partnership with J. Y., and W. Y., and T. Y., both since deceased. No written articles of partnership had been entered into, and for many years the testator had not taken any part in the management of the said colliery, but it was managed exclusively by the other partners, and the defendants did not know with certainty to what share therein the testator was entitled.

3. Upon the death of the testator, the defendants endeavoured to ascertain the value of the testator's share in the colliery, but the other partners refused to give them any information. The defendants thereupon had the books of the colliery examined by a competent accountant, but they had been so carelessly kept that it was impossible to obtain from them any accurate information respecting the state of the concern; it was, however, ascertained that a considerable sum was due to the testator's estate.

4. Between the death of the testator and the beginning of the year 1874 the defendants made frequent applications to J. Y., W. Y., and T. Y. for a settlement of the accounts of the colliery. Such applications having proved fruitless, the defendants, in January 1874, filed their bill of complaint in the Court of Chancery against J. Y., W. Y., and T. Y., praying for an account of the partnership dealings between the testator and the defendants thereto, and that the partnership might be wound up under the direction of the Court.

5. The said T. Y. died in the year 1874, and the suit was revived against J. P. and T. S., his executors. The suit is still pending.

A.D. 1875.

6. As to the Paradise Colliery, the defendants have acted to the best of their judgment for the benefit of the testator's estate, and they deny being under any liability in respect of the said colliery not having been realised. They submit to act under the direction of the Court as to the further prosecution of the said suit and generally as to the realisation of the testator's interest in the said colliery.

7. With respect to the statements in the eighth paragraph of the statement of claim, the defendants say, that upon the death of the testator, they sold the whole of his furniture, linen, and china, and also all his plate, except a few silver teaspoons of very small value, which were taken possession of by his widow, and they applied the proceeds of such sale as part of the testator's personal estate, and they deny being under any liability in respect of such furniture, linen, china, and plate.

8. With respect to the statements in paragraph seven of the statement of claim, the defendants say that all moneys received by them, or either of them, on account of the testator's estate, were paid by them to their executorship account at the bank of Messrs. H. and Co., and until the sale of the testator's real estate took place as herein-after mentioned, the balance to their credit was never greater than was necessary for the administration of the trusts of the testator's will, and they therefore were unable to make any such investment or accumulation as directed by the testator's will. No moneys belonging to the testator's estate have ever been mixed with the moneys of the defendants, or either of them, nor has any money of the testator's been employed in business since the testator's decease, except that his share in the said colliery, for the reason herein-before appearing, has not been got in.

9. In 1874, after the plaintiff *C.B.* had attained her age of 21 years the defendants sold the real estate of the testator for sums amounting to 15,080*l.*, and no part thereof remains unsold. They received the purchase moneys in December 1874, and on the day of 1875 they paid such proceeds into Court to the credit of this action with the exception of 500*l.* retained on account of costs incurred and to be incurred by them.

In the High Court of Justice, [1876. B. No. 235.]
Chancery Division.
[*Name of Judge.*]
Between *A.B.* and *C.* his wife - - - Plaintiffs,
and
E.F. and *G.H.* - - - - Defendants.

Reply.

The plaintiff joins issue with the defendants upon their defence.

No. 5. A.D. 1875.

In the High Court of Justice, Division. 187 . B. No. AGENT.

Writ issued 3rd August 1875.

Between *A.B.* and Company - - - Plaintiffs,

and

E.F. and Company - - Defendants.

Statement of Claim.

Claim.

1. The plaintiffs are manufacturers of artificial manures, carrying on business at , in the county of .

2. The defendants are commission agents, carrying on business in London.

3. In the early part of the year , the plaintiffs commenced, and down to the 187 , continued to consign to the defendants, as their agents, large quantities of their manures for sale, and the defendants sold the same, and received the price thereof and accounted to the plaintiffs therefor.

4. No express agreement has ever been entered into between the plaintiffs and the defendants with respect to the terms of the defendants employment as agents. The defendants have always charged the plaintiffs a commission at per cent. on all sales effected by them, which is the rate of commission ordinarily charged by del credere agents in the said trade. And the defendants, in fact, always accounted to the plaintiffs for the price, whether they received the same from the purchasers or not.

5. The plaintiffs contend that the defendants are liable to them as del credere agents, but if not so liable are under the circumstances herein-after mentioned liable as ordinary agents.

6. On the , the plaintiffs consigned to the defendants for sale a large quantity of goods, including tons of

7. On or about the , the defendants sold tons of part of such goods to one *G.H.* for *l.*, at three months credit, and delivered the same to him.

8. *G.H.* was not, at that time, in good credit and was in insolvent circumstances, and the defendants might, by ordinary care and diligence, have ascertained the fact.

9. *G.H.* did not pay for the said goods, but before the expiration of the said three months for which credit had been given was adjudicated a bankrupt, and the plaintiffs have never received the said sum of *l.* or any part thereof.

The plaintiffs claim:—

1. Damages to the amount of *l.*

2. Such further or other relief as the nature of the case may require.

The plaintiffs propose that this action should be tried in the county of

A.D. 1875

[Title as in claim, omitting date of issue of writ.]

Statement of Defence.

Defence. 1. The defendants deny that the said commission of per cent. mentioned in paragraph 4 of the claim is the rate of commission ordinarily harged by del credere agents in the said trade, and say that the same is he ordinary commission for agents other than del credere agents, and they deny that they ever accounted to the plaintiffs for the price of any goods, except after they had received the same from the purchasers.

2. The defendants deny that they were ever liable to the plaintiffs as del credere agents.

3. With respect to the eighth paragraph of the plaintiffs statement of claim, the defendants say that at the time of the said sale to the said *G.H.*, the said *G.H.* was a person in good credit. If it be true that the said *G.H.* was then in insolvent circumstances (which the defendants do not admit), the defendants did not and had no reason to suspect the same, and could not by ordinary care or diligence have ascertained the fact.

[Title as in defence.]

Reply.

Reply. The plaintiffs join issue upon the defendants statement of defence.

No. 6.

187 . B. No.

BILL OF EXCHANGE. In the High Court of Justice,
Division.

Writ issued 3d August 1876.

Between *A.B.* and *C.D.* - - Plaintiffs,

and

E.F. and *G.H.* - - - - Defendants.

Statement of Claim.

Claim. 1. Messrs. *M.N. & Co.* on the day of drew a bill of exchange upon the defendants for *l.* payable to the order of the said Messrs. *M.N. & Co.* three months after date, and the defendants accepted the same.

2. Messrs. *M.N. & Co.* indorsed the bill to the plaintiffs.

3. The bill became due on the , and the defendant has not paid it.

The plaintiffs claim :—

[Title.] A.D. 1875.

Statement of Defence.

Defence.

1. The bill of exchange mentioned in the statement of claim was drawn and accepted under the circumstances herein-after stated, and except as herein-after mentioned there never was any consideration for the acceptance or payment thereof by the defendants.

2. Shortly before the acceptance of the said bill it was agreed between the said Messrs. *M.N. & Co.*, the drawers thereof, and the defendants, that the said Messrs. *M.N. & Co.* should sell and deliver to the defendants free on board ship at the port of 1,200 tons of coals during the month of , and that the defendants should pay for the same by accepting the said Messrs. *M.N. & Co.*'s draft for *l.* at six months.

3. The said Messrs. *M.N. & Co.* accordingly drew upon the defendants, and the defendants accepted the bill of exchange now sued upon.

4. The defendants did all things which were necessary to entitle them to delivery by the said Messrs. *M.N. & Co.* of the said 1,200 tons of coals under their said contract, and the time for delivery has long since elapsed; but the said Messrs. *M.N. & Co.* never delivered the same, or any part thereof, but have always refused to do so, whereby the consideration for the defendants acceptance has wholly failed.

5. The plaintiffs first received the said bill, and it was first indorsed to them after it was overdue.

6. The plaintiffs never gave any value or consideration for the said bill.

7. The plaintiffs took the said bill with notice of the facts stated in the second, third, and fourth paragraphs hereof.

[Title.]

Reply.

Reply.

1. The plaintiff joins issue upon the defendants statement of defence.

2. The plaintiff gave value and consideration for the said bill in manner following, that is to say, on the day of 187 , the said Messrs. *M.N. & Co.* were indebted to the plaintiff in about *l.*, the balance of an account for goods sold from time to time by him to them. On that day they ordered of the plaintiff further goods to the value of about *l.*, which last-mentioned goods have since been delivered by him to them. And at the time of the order for such last-mentioned goods it was agreed between Messrs. *M.N. & Co.* and the plaintiff, and the order was received upon the terms, that they should indorse and hand over to him the bill of exchange sued upon, together with various other securities on account of the said previous balance, and the price of the goods so ordered on that day. The said securities, including the bill sued upon, were thereupon on the same day indorsed and handed over to the plaintiff.

A.D. 1875.

No. 7.

187 . B. No.

BILL OF EXCHANGE AND CONSIDERATION.

In the High Court of Justice,
Division.
Writ issued 3rd August 1876.

Between *A.B.* and *C.D.* - - - - Plaintiffs,
and
E.F. and *G.H.* - - - - Defendants.

Statement of Claim.

Claim.

1. The plaintiffs are merchants, factors, and commission agents, carrying on business in London.

2. The defendants are merchants and commission agents, carrying on business at Hong Kong.

3. For several years prior to the 1875, the plaintiffs had been in the habit of consigning goods to the defendants for sale, as their agents, and the defendants had been in the habit of consigning goods to the plaintiffs for sale, as their agents; and each party always received the price of the goods sold by him for the other; and a balance was from time to time struck between the parties, and paid.

On the of , the moneys so received by the defendants for the plaintiffs, and remaining in their names, largely exceeded the moneys received by the plaintiffs for the defendants, and a balance of *l.* was accordingly due to the plaintiffs from the defendants.

4. On or about the 1875, the plaintiffs sent to the defendants a statement of the accounts between them, showing the said sum as the balance due to the plaintiffs from the defendants; and the defendants agreed to the said statement of accounts as correct, and to the said sum of *l.* as the balance due by them to the plaintiffs, and agreed to pay interest on such balance if time were given to them.

5. The defendants requested the plaintiffs to give them three months time for payment of the said sum of *l.*, and the plaintiffs agreed to do so upon the defendants accepting the bills of exchange herein-after mentioned.

6. The plaintiffs thereupon on the drew two bills of exchange upon the defendants, one for *l.* and the other for *l.*, both payable to the order of the plaintiffs three months after date, and the defendants accepted the bills.

The said bills became due on the 187 , and the defendants have not paid the bills, or either of them, nor the said sum of *l.*

The plaintiffs claim:—

l. and interest to the date of judgment.

The plaintiffs propose that the action should be tried in London.

A.D. 1875.

No. 8.

In the High Court of Justice, 187 . B. No.
Division.
Writ issued [ ].

[THE "IDA."]*

Between *A.B.* and *C.D.* - - - Plaintiffs,
and
E.F. and *G.H.* - - - Defendants.

Statement of Claim.

Claim.

[1. The "Ida" is a vessel of which no owner or part owner was, at the time of the institution of this cause, domiciled in England or Wales.]†

2. In the month of February 1873, Messrs. L. and Company, of Alexandria, caused to be shipped 6,110 ardebs of cotton seed on board the said vessel, then lying in Port Said (Egypt), and the then master of the vessel received the same, to be carried from Port Said to Hull, upon the terms of three bills of lading, signed by the master, and delivered to Messrs. L. and Company.

3. The three bills of lading, being in form exactly similar to one another, were and are, so far as is material to the present case, in the words, letters, and figures following, that is to say :—

"Shipped in good order and well conditioned by L. & Co. Alexandria (Egypt) in and upon the good ship called the 'Ida,' whereof is master for the present voyage Ambrozio Chiapella, and now riding at anchor in the port of Port Said (Egypt) and bound for Hull, six thousand one hundred and ten ardebs cotton seed being marked and numbered as in the margin, and are to be delivered in the like good order and well-conditioned at the aforesaid Port of Hull (the act of God, the Queen's enemies, fire and all and every other dangers and accidents of the seas, rivers, and navigation of whatever nature and kind soever, save risk of boats so far as ships are liable thereto excepted), unto order or to assigns paying freight for the said goods at the rate of (19*s.*) say nineteen shillings sterling in full per ton of 20 cwt. delivered with £10 gratuity. Other conditions as per charter-party, dated London, 4th October 1872, with primage and average accustomed. In witness whereof the master or purser of the said ship hath affirmed to three bills of lading all of this tenor and date, the one of which three bills being accomplished the other two to stand void. Dated in Port Said (Egypt) 6th February 1873. 100 dunnage mats. Fifteen working days remain for discharging."

4. The persons constituting the firm of Messrs. L. and Company are identical with the members of the plaintiffs firm.

* In Admiralty action insert name of ship.

† A statement to this effect may be inserted if the action be under sect. 6 of the Admiralty Act, 1861.

A.D. 1875.

5. The vessel sailed on her voyage to Hull, and duly arrived there on or about the 7th day of May 1873.

6. The cotton seed was delivered to the plaintiffs but not in as good order and condition as it was in when shipped at Port Said; but was delivered to the plaintiffs greatly damaged.

7. The deterioration of the cotton seed was not occasioned by any of the perils or causes in the bills of lading excepted.

8. By reason of the premises the plaintiffs lost a great part of the value of the said cotton seed, and were put to great expense in and about keeping, warehousing, and improving the condition of the said cotton seed, and in and about having the same surveyed.

The plaintiffs claim the following relief:—

1. *l.* for damages, [*and the condemnation of the said vessel and the defendant and his bail in the same]:
2. Such further relief as the nature of the case requires.

[Title.]

Defence.

Defence.

Statement of:—

1. They deny the truth of the allegations contained in the sixth, seventh and eighth articles of the said petition.

2. The deterioration, if any, to the cotton seed was occasioned by the character and quality of the cotton seed when shipped on board the "Ida," and by the inherent qualities of the cotton seed, and by shipping water in a severe storm which occurred on the day of in latitude during the voyage, or by some or one of such causes.

[Title.]

Reply.

Reply.

The plaintiffs join issue upon the statement of defence.

No. 9.

BOTTOMRY.

In the High Court of Justice, Admiralty Division. 187 . B. No.

Writ issued [ ].

THE "ONWARD."

Between *A.B.* and *C.D.* - - - Plaintiffs,

and

E.F. and *G.H.* - - - - Defendants.

Statement of Claim.

Claim.

1. The "Onward," a ship of 933 tons register, or thereabouts, belonging to the United States of America, whilst on a voyage from Moulmein to

* This may be inserted if the action be an Admiralty action in rem.

Queenstown or Falmouth, for orders, and from thence to a port of discharge in the United Kingdom or on the Continent, between Bordeaux and Hamburg, both ports inclusive, laden with a cargo of teak timber, was compelled to put into Port Louis, in the island of Mauritius, in order to repair and refit.

2. The master of the "Onward," being without funds or credit at Port Louis, and being unable to pay the expense of the said repairs, and the necessary disbursements of the said ship at Port Louis, so as to enable the said ship to resume and prosecute her voyage, and after having communicated with his owners and with the owners and consignees of the cargo was compelled to resort to a loan of 24,369 dollars on bottomry of the said ship, her cargo and freight, for the purpose of enabling him to pay the said expenses and disbursements, which sum Messrs. H. and Company, of Port Louis, at the request of the master by public advertisement, advanced to the said master at and after the rate of 128 dollars for every 100 dollars advanced, and accordingly the said master, by a bond of bottomry, dated the 13th of October 1870, by him duly executed in consideration of the sum of 24,369 dollars, Mauritius currency, paid to him by the said Messrs. H. and Company, bound himself and the said ship and her cargo, namely, about 940 tons of teak timber, and her freight, to pay unto Messrs. H. and Company, their assigns, or order or indorsees, the said sum of 24,369 dollars with the aforesaid maritime premium thereon, within twenty days next after the arrival of the "Onward" at her port of discharge, from the said intended voyage, the said payment to be made both in capital and interest in British sterling money, at and after the rate of 4*s.* for every dollar, with a condition, that in case the said ship and cargo should be lost, during her voyage from Port Louis to Queenstown or Falmouth, for orders, and thence to her port of discharge in the United Kingdom or on the Continent between Bordeaux and Hamburg, both ports inclusive, then, that the said sum of 24,369 dollars, and maritime premium thereon, should not be recoverable.

3. The "Onward" subsequently proceeded on her voyage, and on the 7th of February 1871, arrived with her cargo on board at the port of Liverpool, which was her port of discharge.

4. The bond was duly indorsed and assigned to the plaintiffs.

5. The ship has been sold by order of the Court, and the proceeds of the sale thereof have been brought into Court, and the freight has also been paid into Court.

6. The said sum of 24,369 dollars, with the maritime premium thereon, still remain due to the plaintiffs. By a decree made on the 10th of May 1871, the Court pronounced for the validity of the bond, so far as regarded the ship and freight, and condemned the proceeds of the ship and freight in the amount due on the bond. The principal and premium still remain owing to the plaintiffs, and the proceeds of the said ship and her freight available for payment thereof are insufficient for such payment.

The plaintiffs claim :—

1. That the Court pronounce for the validity of the bond so far as regards the cargo :

A.D. 1875.

2. That the Court condemn the defendants and their bail in so much of the amount due to the plaintiffs on the bond, for principal, maritime premium, and for interest from the time when such principal and premium ought to have been paid, as the proceeds of the ship and freight available for payment of the bond shall be insufficient to satisfy, and in costs:

3. Such further relief as the nature of the case requires.

[Title.]

Defence.

Defence.

The defendants say that the—

1. Several averments in the second article of the statement contained are respectively untrue, except the averment that the bottomry bond therein mentioned was given and executed.

3. The "Onward" proceeded on the voyage in the first paragraph of the claim mentioned, under a charter-party made between the defendants and the owners of the vessel, who resided at New York. And the cargo in the said paragraph mentioned belonged to the defendants, and was shipped at Moulmein, by Messieurs T., F., and Company, of Moulmein, consigned to the defendants.

4. When the "Onward" put into Port Louis, the master placed his ship in the hands of Messieurs H. and Company, the persons in the second paragraph of the claim mentioned, and the repairs and disbursements in the said second article mentioned were made, directed, and expended under the orders, management, and on the credit of said Messieurs H. and Company, who at the outset contemplated the necessity of securing themselves by the hypothecation of the ship, freight, and cargo.

5. The master of the "Onward" and Messieurs H. and Company did not communicate to the said shippers of the cargo, or to the defendants who carried on business at Glasgow, as the master knew the intention of hypothecating the ship, freight, and cargo, or the circumstances which might render such hypothecation advisable or necessary, but on the contrary, without reasonable cause or excuse, abstained from so doing, although the comparatively small value of the ship and freight to be earned, rendered it all the more important that such communication should have been made.

6. A reasonable and proper time was not allowed to elapse between the advertisements for the bottomry loan, and the acceptance of Messieurs H. and Company's offer to make such loan.

[Title.]

Reply.

Reply.

1. The plaintiffs say that the defendants, since the 31st day of December 1868, have been the only persons forming the firm of T., F., and Co., of Moulmein, mentioned in the third paragraph of the defence.

A.D. 1875.

2. After the master of the "Onward" put into Port Louis as aforesaid, he employed Messieurs H. and Company, in the claim mentioned, as his agents, and by his directions they by letter communicated to the defendants firms at Moulmein and Glasgow the circumstances of the ship's distress, and the estimated amount of her repairs.

3. The said Messieurs H. and Company shortly after the said ship was put into their hands at Port Louis, offered the said master, in case he should require them to do so, to make the necessary advances for the ship's repairs, and to take his draft at 90 days sight on Messrs. B. Brothers, of London, at the rate of 5 per cent. discount for the amount of the advances, together with a bottomry bond on ship, cargo, and freight as collateral security, the bond to be void should the draft be accepted. The said master, and the said Messieurs H. and Company, by letter, communicated to the owners of the "Onward" the circumstances of the said ship's distress, and the aforesaid offer of the said Messrs. H. and Company, and the said master by his letter requested the said owners to give him their directions on the subject. The said owners shortly after receiving such letters, by letter communicated with the defendants at Glasgow, and forwarded to them copies of the said lastly-mentioned letters of the said master, and of the said Messrs. H. and Co.

4. The defendants houses at Moulmein and Glasgow respectively received the letters referred to in the second paragraph of this reply in time to have communicated with the said master at Port Louis before the giving of the said bottomry bond.

5. The defendants received the said copies of letters referred to in paragraph 4 of this reply, in time for them to have communicated thereon with the said master at Port Louis before the giving of the said bond.

6. The defendants did not at any time answer the said communications of the said Messrs. H. and Company, or in any way communicate or attempt to communicate with the said master, or to direct him not to give, or to prevent him from giving the said bottomry bond on the said cargo.

7. The said bond was duly advertised for sale, and was subsequently, and after a proper interval had elapsed, sold by auction in the usual way. There were several bidders at the sale, and the said Messrs. H. and Company were the lowest bidders in premium, and the said bond was knocked down to them. The said bond was not advertised for until the said ship was ready for sea, and up to that time the master of the said ship had expected to hear from her owners, and had hoped to be put in funds, and had not finally determined to resort to bottomry of the said ship, or her cargo or freight.

8. Save as herein appears the plaintiffs deny the truth of the several allegations contained in the said answer.

[NOTE.—The facts stated in this reply should, in general, be introduced by amendment into the statement of claim.]

A.D. 1875.

[Title.]

Rejoinder.

Rejoinder. The defendants join issue upon the plaintiffs reply.

No. 10.

187 . B. No.

CHARTER-PARTY. In the High Court of Justice,
Division.

Writ issued 3rd August 1876.

Between *A.B.* and *C.D.* - - - Plaintiffs,
and
E.F. and *G.H.* - - - Defendants.

Statement of Claim.

Claim. 1. The plaintiffs were, on the 1st August 1874, the owners of the steamship "British Queen."

2. On the 1st August 1874, the ship being then in Calcutta, a charter-party was there entered into between John Smith, the master, on behalf of himself and the owners of the said ship, of the one part, and the defendants of the other part.

3. By the said charter-party it was agreed, amongst other things, that the defendants should be entitled to the whole carrying power of the said steamship for the period of four months certain, commencing from the said 1st August 1874, upon a voyage or voyages between Calcutta and Mauritius and back; that the defendants should pay for such use of the said steamship to the plaintiffs agents at Calcutta, monthly, the sum of 1,000*l.*; that the charter should terminate at Calcutta; and that if at the expiration of the said period of four months the said steamship should be upon a voyage, then the defendants should pay pro ratâ for the hire of the ship up to her arrival at Calcutta, and the complete discharge of her cargo there.

4. The "British Queen" made several voyages in pursuance of the said charter-party, and the first three monthly sums of 1,000*l.* each were duly paid.

5. The period of four months expired on the 1st December 1874, and at that time the steamship was on a voyage from Mauritius to Calcutta. She arrived at Calcutta on the 13th December, and the discharge of her cargo there was completed on the 16th December 1874.

6. The plaintiffs agents at Calcutta called upon the defendants to pay to them the fourth monthly sum of 1,000*l.*, and a sum of 500*l.* for the hire of the steamship from the 1st to the 16th December 1874, but the defendants have not paid any part of the said sums.

The plaintiffs claim—

The sum of 1,500*l.*, and interest upon 1,000*l.*, part thereof, from the 1st December 1874, until judgment.

The plaintiffs propose that this action should be tried in London.

[Title.]

Statement of Defence.

Defence.

1. By the charter-party sued upon it was expressly provided that if any accident should happen to, or any repairs should become necessary to the engines or boilers of the said steamship, the time occupied in repairs should be deducted from the period of the said charter, and a proportionate reduction in the charter money should be made.

2. On the repairs became necessary to the engines and boilers of the steamship, and ten days were occupied in effecting such repairs.

3. On the an accident happened to the engines of the steamship at Mauritius, and two days were occupied in effecting the repairs necessary in consequence thereof.

4. The defendants are therefore entitled to a reduction in the charter money of 400*l.*

Counter-claim.

By way of set-off and counter-claim the defendants claim as follows:—

5. By the charter-party it was expressly provided that the charterers should furnish funds for the steamship's necessary disbursements, except in the port of Calcutta, without any commission or interest on any sum so advanced.

6. The defendants paid for the necessary disbursements of the ship in the port of Mauritius between the and the 1874, sums amounting in all to 625*l.* 14*s.* 6*d.*

7. The charter-party also contained an express warranty that the steamship was at the date thereof capable of steaming nine knots an hour on a consumption of 30 tons of coal a day, and it was further provided by the charter-party that the charterers should provide coal for the use of the said steamship.

8. The steamship was at the date of the charter-party only capable of steaming less than eight knots to an hour, and that only on a consumption of more than 35 tons of coal a day.

9. In consequence of the matters mentioned in the last paragraph, the steamship finally arrived at Calcutta at least 15 days later, and remained under charter at least 15 days longer than she would otherwise have done. She was also during the whole period of the said charter at sea for a much larger number of days than she would otherwise have been, and consumed a much larger quantity of coal on each of such days than she would otherwise have done, whereby the defendants were obliged to provide for the use of the steamship much larger quantities of coal than they would otherwise have been.

The defendants claim—

l. damages in respect of the matters stated in this set-off and counter-claim.

[Title.]

Reply.

Reply.

1. The plaintiff joins issue upon the second, third, and fourth paragraphs of the defendant's statement of defence,

A.D. 1875.

2. With respect to the alleged set-off stated in paragraph 6 the plaintiff does not admit the correctness of the amount therein stated. And all sums advanced by them for disbursements were paid or allowed to them by the plaintiffs by deducting the amount thereof from the third monthly sum of 1,000*l.* paid (subject to such deduction) to the plaintiffs agents at Calcutta by the defendant on or about the 12th November 1874.

3. With respect to the alleged breach of warranty and the alleged damages therefrom stated in the 7th, 8th, and 9th paragraphs, the plaintiffs say that the steamship was at the date of the charter-party capable of steaming nine knots an hour on a consumption of 30 tons of coal a day. If the steamship did not, during the said charter, steam more than eight knots an hour, and that on a consumption of more than 35 tons a day, as alleged (which the plaintiffs do not admit), it was in consequence of the bad and unfit quality of the coals provided by the defendants for the ship's use.

[Title.]

Joinder of issue.

Rejoinder. The defendants join issue upon the plaintiffs reply to their set-off and counter-claim.

No. 11.

187 . B. No.

COLLISION. In the High Court of Justice,
Admiralty Division.

Writ issued [ ].

THE "AMERICAN."

Between *A.B.* and *C.D.* - - - - Plaintiffs,
and
E.F. and *G.H.* - - - - Defendants.

Statement of Claim.

Claim. 1. Shortly before 8 a.m. on the 9th of December 1874, the brigantine "Katie," of 194 tons register, of which the plaintiffs were owners, manned by a crew of eight hands all told, whilst on a voyage from Dublin to St. John's, Newfoundland, in ballast, was in latitude about 46° N., and longitude 40° 42′ W., by account.

2. The wind at such time was about W. by S., a strong breeze, and the weather was clear, and the "Katie" was under double-reefed mainsail, reefed mainstaysail, middle staysail, lower topsail, reefed fore staysail, and jib, sailing full and by on the port tack, heading about N.W. ½ N., and proceeding at the rate of about five knots and a half per hour.

3. At such time a steamship under steam and sail, which proved to be the screw steamship "American," was seen at the distance of three or four miles from the "Katie," broad on her port bow, and steering about E. or E. by S. The master of the "Katie" not having been able to take observations for several days, and her chronometer having run down, and

A.D. 1875.

the said master wishing to exchange longitudes with the "American," caused an ensign to be hoisted, and marked his longitude by account on a board which he exhibited over the port side. The "Katie" was kept full and by, and the "American" approached rapidly, and attempted to pass ahead of the "Katie," and caused immediate danger of collision, and although thereupon the helm of the "Katie" was put hard a-port and her mainsheet let go, the "American" with her stem struck the "Katie" on her port side, almost amidships, cutting her nearly in two, and the "Katie" sank almost immediately, her crew being saved by the steamer.

4. The "American" improperly neglected to keep clear of the "Katie."

5. The "American" improperly attempted to pass ahead of the "Katie."

6. The "American" improperly neglected to ease her engines, and improperly neglected to stop and reverse her engines in due time.

The plaintiff claims:—

1. That it may be declared that the plaintiffs are entitled to the damage proceeded for:
2. That the bail given by the defendants be condemned in such damage, and in costs:
3. That the accounts and vouchers relating to such damage be referred to the Registrar assisted by merchants to report the amount thereof:
4. Such further and other relief as the nature of the case may require.

[Title.]

Statement of Defence.

Defence.

The defendants say as follows:—

1. The "American" is a screw steamship, of 1,368 tons register, with engines of 200-horse power nominal, belonging to the port of Liverpool, and at the time of the occurrences herein-after mentioned was manned by a crew of 40 hands all told, laden with a cargo of general merchandise, and bound from Port-au-Prince in the West Indies to Liverpool.

2. About 8.5 a.m. on the 28th of November 1874, the "American" was in latitude 46° N., longitude 38° 16′ W., steering E. by S. true magnetic, making under all sail and steam about 12 knots an hour, the wind being about S.W. by S. true magnetic, blowing a strong breeze and the weather hazy, when a vessel, which afterwards proved to be the brigantine "Katie," was observed on the "American's" starboard bow about four miles distant, bearing about S.E. by E. true magnetic, close-hauled to the wind, and steering a course nearly parallel to that of the "American."

3. The "American" kept her course, and when the "Katie" was about three miles distant her ensign was observed by those on board the "American" run up to the main, and she was seen to have altered her course, and to be bearing down towards the "American." The "American's" ensign was afterwards run up, and her master, supposing that the "Katie" wanted to correct her longitude, or to speak the "American," continued on his course

A.D. 1875.

expecting that the "Katie," when she had got sufficiently close to speak or show her black board over her starboard side, would luff to the wind, and pass to windward of the "American."

4. The master of the "American" watched the "Katie" as she continued to approach the "American," and when she had approached as near as he deemed it prudent for her to come, he waved to her to luff, and shortly afterwards, on his observing her to be attempting to cross the bows of the "American," the helm of the latter was immediately put to starboard, and engines stopped and reversed full speed; but notwithstanding, the "American" with her stem came into collision with the port side of the "Katie," a little forward of the main rigging.

5. The "American's" engines were then stopped, and when the crew of the "Katie" had got on board of the "American," the latter's engines were reversed to get her clear of the "Katie," which sunk under the "American's" bows.

6. The "Katie" improperly approached too close to the "American."

7. Those on board the "Katie" improperly neglected to luff, and to pass to windward of the "American."

8. Those on board the "Katie" improperly attempted to cross the bows of the "American."

9. Those on board the "Katie" improperly ported her helm before the said collision.

10. Those on board the "Katie" improperly neglected to starboard her helm before the said collision.

[Title.]

Reply.

Reply. The plaintiffs join issue upon the defendants statement of defence.

No. 12.

187 . B. No.

EQUIPMENT OF SHIP.

In the High Court of Justice,
Admiralty Division.

Writ issued [ ].

THE "TWO ELLENS."

Between *A.B.* and *C.D.* - - - Plaintiffs,
and
E.F. - - - - Defendant.

Statement of Claim.

Claim. 1. The said vessel was and is a British Colonial vessel, belonging to the Port of Digby, in Nova Scotia, of which no owner or part owner was at the time of the commencement of this action or is domiciled in England or Wales.

A.D. 1875

2. At the time of the commencement of this action the said vessel was under arrest of this Court.

3. About the month of February 1868 the said vessel was lying in the Port of London, in need of repairs, and of being equipped and supplied with certain other necessaries.

4. By the order of Messrs. K. L., who were duly authorised, the plaintiffs equipped and repaired the said vessel as she needed, and provided the vessel with necessaries, and there is now due to the plaintiffs for such necessary repairing and equipping, and other necessaries, the sum of 305*l.* 3*s.*, together with interest thereon from the 19th day of February 1868.

The plaintiffs claim:—

1. Judgment for the said sum of 305*l.* 3*s.*, with such interest thereon as aforesaid until judgment:
2. The condemnation of the ship and the defendant and his bail therein and in the costs of this suit:
3. Such further relief as the nature of the case requires.

[Title].

Statement of Defence.

Defence.

1. By an instrument of mortgage, in the form and recorded as prescribed by the Merchant Shipping Act, 1854, bearing date the 9th of March 1867, and executed by C. M., blacksmith, D. F., master mariner, and W. H., farmer, all of Weymouth, in the county of Digby, in Nova Scotia, the registered owners of 64/64ths parts or shares in the vessel, the said C. M., D. F., and W. H. mortgaged 64/64ths parts or shares in the vessel, of which the said D. F. was also master, to G. T., of Nova Scotia, in consideration of the sum of 5,000 dollars advanced by him to the said owners, and for the purpose of securing the repayment by them to him of the said sum with interest thereon.

2. By an instrument of transfer, dated the 16th of July 1868, in the form prescribed by the said Act, and executed by G. T., in consideration of the sum of 5,000 dollars to G. T. paid by the defendant, G. T. transferred to the defendant the mortgage security.

3. The said sum of 5,000 dollars, with interest thereon, still remains due on the said security.

4. The vessel was not under the arrest of this Court at the time of the commencement of this action

5. The vessel did not need to be equipped or repaired as in the fourth paragraph of the plaintiffs claim mentioned, and she did not at the time of the supply of the articles referred to in the said fourth paragraph as "necessaries" stand in need of such articles. On the contrary, the said vessel could have gone to sea and proceeded on and prosecuted her voyage without such equipments, repairs, and articles referred to as aforesaid, and such equipments, repairs, and other articles were done and effected and supplied for the purpose of reclassing the said vessel, and not for any other purpose;

A.D. 1875.

and the claim of the plaintiffs is not a claim for necessaries within the meaning of the Admiralty Court Act, 1861, s. 5.

6. 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.

7. The defendant did not, nor did G. T., in any way order, authorise, or become liable for, and neither of them is in any way liable in respect of the said alleged supplies or any part thereof, and the said vessel was at the time of the commencement of this action and she still is of a less value than the amount which, irrespective of the sums referred to in the next article of this answer, is due to the defendant on the said mortgage security.

8. The defendant, in order to save the vessel from being sold by this Court at the instance of certain of her mariners having liens on the said vessel for their wages, has been compelled to pay the said wages, and he claims, if necessary, to be entitled to stand in the place of such mariners, or to add the amounts so paid by him for wages to the amount secured by the said mortgage, and to have priority in respect thereof over the claim of the plaintiffs.

[Title.]

Reply.

Reply.

1. The plaintiffs admit that 64/64th shares in the said ship the "Two Ellens" were on or about the 9th day of March 1867, mortgaged by the said C. M., D. F., and W. H., all of Weymouth, in the county of Digby, Nova Scotia, to the said G. T.

2. Save as afore-mentioned, all the several averments in the said Answer contained are respectively untrue.

3. If there was or is any such instrument of transfer as is mentioned in the second article of the said Answer, the same has never been registered according to the provisions of the Merchant Shipping Act, 1854.

4. The said G. T. has never been domiciled in or resided in the United Kingdom, and is now resident in Nova Scotia, and the registered owners of the said vessel in the first paragraph of the said Defence mentioned were always and are domiciled in Nova Scotia, and resident out of the United Kingdom.

[Title.]

Rejoinder.

Rejoinder.

The defendant joins issue upon the third and fourth paragraphs of the Reply.

A.D. 1875.

FALSE IMPRISONMENT.

No. 13.

187 . B. No.

In the High Court of Justice,
Division.

Writ issued 3rd August 1876.

Between *A.B.* - - - - Plaintiff,

and

E.F. - - - - - Defendant.

Statement of Claim.

Claim.

1. The plaintiff is a journeyman painter. The defendant is a builder, having his building yard, and carrying on business at and for six months before and up to the 22nd August 187 the plaintiff was in the defendant's employment as a journeyman painter.

2. On the said 22nd August 187 , the plaintiff came to work as usual in the defendant's yard, at about six o'clock in the morning.

3. A few minutes after the plaintiff had so come to work the defendant's foreman *X.Y.*, who was then in the yard, called the plaintiff to him, and accused the plaintiff of having on the previous day stolen a quantity of paint, the property of the defendant, from the yard. The plaintiff denied the charge, but *X.Y.* gave the plaintiff into the custody of a constable, whom he had previously sent for, upon a charge of stealing paint.

4. The defendant was present at the time when the plaintiff was given into custody, and authorised and assented to his being so given into custody; and in any case *X.Y.*, in giving him into custody, was acting within the scope and in the course of his employment as the defendant's foreman, and for the purposes of the defendant's business.

5. The plaintiff upon being so given into custody, was taken by the said constable a considerable distance through various streets, on foot, to the police station, and he was there detained in a cell till late in the same afternoon, when he was taken to the police court, and the charge against him was heard before the magistrate then sitting there, and was dismissed.

6. In consequence of being so given into custody, the plaintiff suffered annoyance and disgrace, and loss of time and wages, and loss of credit and reputation, and was thereby unable to obtain any employment or earn any wages for three months.

The plaintiff claims *l.* damages.

The plaintiff proposes that this action should be tried in Middlesex.

[Title.]

Statement of Defence.

Defence.

1. The defendant denies that he was present at the time when the plaintiff was given into custody, or that he in any way authorised or assented to his being given into custody. And the said *X.Y.*, in giving the

A.D. 1875.

plaintiff into custody, did not act within the scope or in the course of his employment as the defendant's foreman, or for the purposes of the defendant's business.

2. At some time about five or six o'clock on the being the evening before the plaintiff was given into custody, a large quantity of paint had been feloniously stolen by some person or persons from a shed upon the defendant's yard and premises.

3. At about 5.30 o'clock on the evening of the the plaintiff, who had left off work about half an hour previously, was seen coming out of the shed when no one else was in it, although his work lay in a distant part of the yard from and he had no business in or near the shed. He was then seen to go to the back of a stack of timber in another part of the yard. Shortly afterwards the paint was found to have been stolen, and it was found concealed at the back of the stack of timber behind which the plaintiff had been seen to go.

4. On the following morning, before the plaintiff was given into custody, he was asked by *X. Y.* what he had been in the shed and behind the stack of timber for, and he denied having been in either place. *X. Y.* had reasonable and probable cause for suspecting, and did suspect that the plaintiff was the person who had stolen the paint, and thereupon gave him into custody.

[Title.]

Reply.

Reply. The plaintiff joins issue upon the defendant's statement of defence.

No. 14.

1876. W. No. 672.

FORECLOSURE. In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]
Writ issued [ ].

Between R. W. - - - Plaintiff,
and
O. S. and J. B. - - - Defendants.

Statement of Claim.

Claim. 1. By an indenture dated the 25th of March 1867, made between the defendant O. S. of the one part, and the plaintiff of the other part, the defendant O. S., in consideration of the sum of 10,000*l.* paid to him by the plaintiff, conveyed to the plaintiff and his heirs a farm containing 398 acres, situate in the parish of B., in the county of D., with all the coal mines, seams of coal, and other mines and minerals in and under the same, subject to a proviso for redemption of the same premises on payment by the defendant O. S., his heirs, executors, administrators, or assigns, to the plaintiff, his executors, administrators, or assigns, of the sum of 10,000*l.*, with interest for

the same in the meantime at the rate of 4*l.* per cent. per annum, on the 25th day of September then next. A.D. 1875.

2. By an indenture dated the 1st day of April 1867, made between the defendant O. S. of the one part, and the defendant J. B. of the other part, the defendant O. S. conveyed to the defendant J. B. and his heirs the hereditaments comprised in the herein-before stated security of the plaintiff, or some parts thereof, subject to the plaintiff's said security, and subject to a proviso for redemption of the same premises on payment by the defendant O. S., his heirs, executors, administrators, or assigns, to the defendant J. B., his executors, administrators, or assigns, of the sum of 15,000*l.*, with interest for the same in the meantime at the rate of 5*l.* per cent. per annum.

3. The whole of the said sum of 10,000*l.*, with an arrear of interest thereon, remains due to the plaintiff on his said security.

The plaintiff claims as follows:—

1. That an account may be taken of what is due to the plaintiff for principal money and interest on his said security, and that the defendants may be decreed to pay to the plaintiff what shall be found due to him on taking such account, together with his costs of this action, by a day to be appointed by the court, the plaintiff being ready and willing, and hereby offering, upon being paid his principal money, interest, and costs, at such appointed time, to convey the said mortgaged premises as the court shall direct.
2. That in default of such payment the defendants may be foreclosed of the equity of redemption in the mortgaged premises.
3. Such further or other relief as the nature of the case may require.

1876. W. 672.

In the High Court of Justice,
Chancery Division.

[*Name of Judge.*]

Between R. W. - - - - - Plaintiff,

and

O. S. and J. B. - - - - Defendants,

(by original action,)

And between the said O. S. - - - - Plaintiff,

and

The said R. W. and J. B., and J. W. - Defendants,

(by counter-claim.)

The Defence and Counter-claim of the above-named O. S.

1. This defendant does not admit that the contents of the indenture of the 25th day of March 1867, in the plaintiff's statement of complaint mentioned, are correctly stated therein. Defence.

A.D. 1875.

2. The indenture of the 1st day of April 1867, in the statement of claim mentioned, was not a security for the sum of 15,000*l.* and interest at 5*l.* per cent. per annum, but for the sum of 14,000*l.* only, with interest at the rate of 4*l.* 10*s.* per cent. per annum.

3. This defendant submits that under the circumstances in his counter-claim mentioned, the said indentures of the 25th day of March 1867 and the 1st day of April 1867, did not create any effectual security upon the mines and minerals in and under the lands in the same indentures comprised, and that the same mines and minerals ought to be treated as excepted out of th said securities.

Counter-claim.

And by way of counter-claim this defendant states as follows:—

1. At the time of the execution of the indenture next herein-after stated, J. C. A. was seised in fee simple in possession of the lands described in the said indentures, and the mines and minerals in and under the same.

2. By indenture dated the 24th of March 1860, made between the said J. C. A. of the first part, E. his wife, then E. S., spinster, of the second part, and this defendant and the above-named J. W. of the third part, being a settlement made in contemplation of the marriage, shortly after solemnized, between the said J. C. A. and his said wife, the said J. C. A. granted to this defendant and the said J. W., and their heirs, all the coal mines, beds of coal, and other the mines and minerals under the said lands, with such powers and privileges as in the now-stating indenture mentioned, for the purpose of winning, working, and getting the same mines and minerals, to hold the same premises to this defendant and the said J. W. and their heirs to the use of the said J. C. A., his heirs and assigns, till the solemnization of the said marriage, and after the solemnization thereof to the use of this defendant and the said J. W., their executors and administrators, for the term of 500 years, from the day of the date of the now-stating indenture, upon the trusts therein mentioned, being trusts for the benefit of the said J. C. A., and his wife and the children of their marriage, and from and after the expiration or other determination of the said term of 500 years, and in the meantime subject thereto, to the use of the said J. C. A., his heirs and assigns for ever.

3. By indenture dated the 12th of May 1860, made between the said J. C. A. of the one part, and W. N. of the other part, the said J. C. A. granted to the said W. N. and his heirs the said lands, except the coal mines, beds of coal, and other mines and minerals thereunder, to hold the same premises unto and to the use of the said W. N., his heirs and assigns for ever, by way of mortgage, for securing the payment to the said W. N., his executors,

administrators, or assigns, of the sum of 26,000*l.*, with interest as therein mentioned.

4. On the 14th of January 1864, the said J. C. A. was adjudicated a bankrupt, and shortly afterwards J. L. was appointed creditor's assignee of his estate.
5. Some time after the said bankruptcy, the said W. N., under a power of sale in his said mortgage deed, contracted with this defendant for the absolute sale to this defendant of the property comprised in his said security for an estate in fee simple in possession, free from incumbrances, for the sum of 26,000*l.*, and the said J. L., as such assignee as aforesaid, agreed to join in the conveyance to this defendant for the purpose of signifying his assent to such sale.
6. By indenture dated the 1st of September 1866, made between the said W. N. of the first part, the said J. L. of the second part, the said J. C. A. of the third part, and this defendant of the fourth part, reciting the said agreement for sale, and reciting that the said J. L., being satisfied that the said sum of 26,000*l.* was a proper price, had, with the sanction of the Court of Bankruptcy, agreed to confirm the said sale, it was witnessed that in consideration of the sum of 26,000*l.*, with the privity and approbation of the said J. L., paid by this defendant to the said W. N., he the said W. N. granted, and the said J. C. A. ratified and confirmed to this defendant and his heirs, all the hereditaments comprised in the said security of the 12th day of May 1860, with their rights, members, and appurtenances, and all the estate, right, title, and interest of them, the said W. N. and J. C. A. therein, to hold the same premises unto and to the use of this defendant, his heirs and assigns for ever.
7. The sale to this defendant was not intended to include anything not included in the security of the 12th of May 1860, and the said J. L. only concurred therein to signify his approval of the said sale, and did not purport to convey any estate vested in him; and the lastly herein-before stated indenture did not vest in this defendant any estate in the said mines and minerals.
8. The plaintiff and the defendant J. B. respectively had before they advanced to this defendant the moneys lent by them on their securities in the plaintiff's claim mentioned, full notice that the mines and minerals under the said lands did not belong to this defendant. This fact appeared on the abstracts of title delivered to them before the preparation of their said securities. A valuation of the property made by a surveyor was furnished to them respectively on behalf of this defendant before they agreed to advance their money on their said securities; but although the said lands are in a mineral district, the mines and minerals were omitted

A.D. 1875.

from such valuation, and they respectively knew at the time of taking their said securities that the same did not include any interest in the mines and minerals.

9. At the time when the securities of the plaintiff and the defendant J. B. were respectively executed, the plaintiff and the defendant J. B. respectively had notice of the said indenture of settlement of the 24th day of March 1860.

10. At the time when the plaintiff's security was executed, the mines and minerals under the said lands, with such powers and privileges as aforesaid, were vested in this defendant and the said J. W. for the residue of the said term of 500 years, and subject to the said term, the inheritance in the same mines, minerals, powers, and privileges was vested in the said J. L. as such assignee as aforesaid.

11. The said security to the plaintiff was by mistake framed so as to purport to include the mines and minerals under the said lands, and by virtue thereof the legal estate in moiety of the said mines and minerals became and now is vested in the plaintiff for the residue of the said term of 500 years.

The defendant O. S. claims as follows:

1. That it may be declared that neither the plaintiff nor the defendant J. B. has any charge or lien upon that one undivided moiety, which in manner aforesaid became vested in the plaintiff for the residue of the said term of 500 years, of and in the mines and minerals in and under the lands mentioned in the plaintiff's said security.

2. That it may be declared that the said mines and minerals, rights and, privileges, which by the said indenture of settlement were vested in the defendant O. S. and the said J. W. for the said term of 500 years, upon trust as therein mentioned, ought to be so conveyed and assured as that the same may become vested in the defendant O. S. and the said J. W. for all the residue of the said term upon the trusts of the said settlement.

3. That the said R. W. and J. W. may be decreed to execute all such assurances as may be necessary for giving effect to the declaration secondly herein-before prayed.

4. To have such further or other relief as the nature of the case may require.

1876. W. 672. A.D. 1875.

In the High Court of Justice,
Chancery Division.
[*Name of Judge.*]

Between R. W. - - - - - Plaintiff,
and
O. S. and J. B. - - - - Defendants,
(by original action,)
And between the said O. S. - - - - - Plaintiff,
and
The said R. W., and J. B., and J. W. - Defendants,
(by counter-claim.)

The Reply of the Plaintiff R. W.

Reply. 1. The plaintiff joins issue with the defendants upon their several defences, and in reply to the statements alleged by the defendant O. S., by way of counter-claim, the plaintiff says as follows:

1. The plaintiff does not admit the execution of any such indenture as is stated in the said counter-claim to bear date the 24th of March 1860.
2. The plaintiff does not admit that the indenture of the 12th of May 1860 is stated correctly in the statement of claim.
3. When the defendant O. S., in the year 1866, applied to the plaintiff to advance him the sum of 10,000*l.*, he offered to the plaintiff as a security the lands which were afterwards comprised in the indenture of the 25th of March 1867, including the mines and minerals which he now alleges were not to form part of the security, and the plaintiff agreed to lend the said sum upon the security of the said lands, including such mines and minerals. During the negociation for the said loan a valuation of the property to be included in the mortgage was delivered to the plaintiff on behalf of the said defendant. Such valuation included the mines and minerals; and the plaintiff consented to make the loan on the faith of such valuation. The plaintiff did not know when he took his security that it did not include any interest in the said mines and minerals; on the contrary, he believed that the entirety of such mines and minerals was to be included therein.
4. The plaintiff does not admit the contents of the indenture of the 1st of September 1866 to be as alleged, or that it was so framed as not to include the said mines and minerals, or that it was not intended to include anything not included in the security of the 12th of May 1860, or that J. L. in the counter-claim named only concurred therein to signify his approval of the said sale, and did not purport to convey any estate vested in him.

A.D. 1875.

5. Save so far as the plaintiff's solicitor may have had notice by means of the abstract of title that the mines and minerals under the said lands did not belong to the defendant O. S., the plaintiff had not any notice thereof, and he does not admit that it appeared from the abstract of title that such was the case. The mines were not omitted from any valuation delivered to the plaintiff as mentioned in the counter-claim.

6. The plaintiff admits that when he took his security he was aware that there was indorsed on the deed by which the said lands were conveyed by J. C. A. in the counter-claim named a notice of a settlement of 24th March 1860, but he had no further or other notice thereof, and though his solicitor inquired after such settlement none was ever produced.

7. The plaintiff submits that if it shall appear that no further interest in the said mines and minerals was conveyed to him by his said security than one undivided moiety of a term of 500 years therein, as alleged by the said counter-claim, such interest is effectually included in the plaintiff's said security, and that he is entitled to foreclose the same.

No. 15.

187 . B. No.

FRAUD. In the High Court of Justice,
Division.

Writ issued 3rd August 1876.

Between *A.B.* - - - - - Plaintiff,

and

E.F. - - - - - Defendant.

Statement of Claim.

Claim. 1. In or about March 1875 the defendant caused to be inserted in the Daily Telegraph Newspaper an advertisement, in which he offered for sale the lease, fixtures, fittings, goodwill, and stock-in-trade of a baker's shop and business, and described the same as an increasing business, and doing 12 sacks a week. The advertisement directed application for particulars to be made to *X.Y.*

2. The plaintiff having seen the advertisement applied to *X.Y.*, who placed him in communication with the defendant, and negociations ensued between the plaintiff and the defendant for the sale to the plaintiff of the defendant's bakery at with the lease, fixtures, fittings, stock-in-trade, and goodwill.

A.D. 1875.

3. In the course of these negociations the defendant repeatedly stated to the plaintiff that the business was a steadily increasing business, and that it was a business of more than 12 sacks a week.

4. On the 5th of April 1875 the plaintiff, believing the said statements of the defendant to be true, agreed to purchase the said premises from the defendant for 500*l.*, and paid to him a deposit of 200*l.* in respect of the purchase.

5. On the 15th April the purchase was completed, an assignment of the lease executed, and the balance of the purchase money paid. On the same day the plaintiff entered into possession.

6. The plaintiff soon afterwards discovered that at the time of the negociations for the said purchase by him and of the said agreement, and of the completion thereof, the said business was and had long been a declining business; and at each of those times, and for a long time before, it had never been a business of more than 8 sacks a week. And the said premises were not of the value of 500*l.*, or of any saleable value whatever.

7. The defendant made the false representations herein-before mentioned well knowing them to be false, and fraudulently, with the intention of inducing the plaintiff to make the said purchase on the faith of them.

The plaintiff claims *l.* damages.

[Title.]

Statement of Defence.

Defence.

1. The defendant says that at the time when he made the representations mentioned in the third paragraph of the statement of claim and throughout the whole of the transactions between the plaintiff and defendant, and down to the completion of the purchase and the relinquishment by the defendant of the said shop and business to the plaintiff, the said business was an increasing business, and was a business of over 12 sacks a week. And the defendant denies the allegations of the sixth paragraph of the statement of claim.

2. The defendant repeatedly during the negociations told the plaintiff that he must not act upon any statement or representation of his, but must ascertain for himself the extent and value of the said business. And the defendant handed to the plaintiff for this purpose the whole of his books, showing fully and truthfully all the details of the said business, and from which the nature, extent, and value thereof could be fully seen, and those books were examined for that purpose by the plaintiff, and by an accountant on his behalf. And the plaintiff made the purchase in reliance upon his own judgment, and the result of his own inquiries and investigations, and not upon any statement or representation whatever of the defendant.

[Title.]

Reply.

Reply.

The plaintiff joins issue upon the defendant's statement of defence.

A.D. 1875.

No. 16.

187 . B. No.

GUARANTEE. In the High Court of Justice,
Division.

Writ issued 3rd August 1876.

Between *A.B.* and *C.D.* - - - - Plaintiffs,
and
E.F. and *G.H.* - - - - - Defendants.

Statement of Claim.

Claim. 1. The plaintiffs are brewers, carrying on their business at under the firm of *X.Y. & Co.*

2. In the month of March 1872, *M.N.* was desirous of entering into the employment of the plaintiffs as a traveller and collector, and it was agreed between the plaintiffs and the defendants and *M.N.*, that the plaintiffs should employ *M.N.* upon the defendant entering into the guarantee herein-after mentioned.

3. An agreement in writing was accordingly made and entered into, on or about the 30th March 1872, between the plaintiffs and the defendant, whereby in consideration that the plaintiffs would employ *M.N.* as their collector the defendant agreed that he would be answerable for the due accounting by *M.N.* to the plaintiffs for and the due payment over by him to the plaintiffs of all moneys which he should receive on their behalf as their collector.

4. The plaintiffs employed *M.N.* as their collector accordingly, and he entered upon the duties of such employment, and continued therein down to the 31st of December 1873.

5. At various times between the 29th of September and the 25th of December 1873, *M.N.* received on behalf of the plaintiffs and as their collector sums of money from debtors of the plaintiffs amounting in the whole to the sum of 950*l.*; and of this amount *M.N.* neglected to account for or pay over to the plaintiffs sums amounting in the whole to 227*l.*, and appropriated the last-mentioned sums to his own use.

6. The defendant has not paid the last-mentioned sums, or any part thereof to the plaintiffs.

The plaintiffs claim :—

No. 17.

INTEREST SUIT (PROBATE). In the High Court of Justice, 187 . B. No.
Probate Division.

Between *A.B.* - - - - Plaintiff,
and
C.D. - - - - Defendant.

Statement of Claim.

Claim. 1. *M.N.*, late of No. High Street, Putney, in the county of Surrey, grocer, deceased, died on or about the day of , at

No. 1, High Street, Putney, aforesaid, a widower, without child, parent, brother or sister, uncle or aunt, nephew or niece. A.D. 1875.

2. The plaintiff is the cousin-german, and one of the next of kin of the deceased.

The plaintiff claims:—

That the court decree to him a grant of letters of administration of the personal estate and effects of the said deceased as his lawful cousin-german, and one of his next of kin.

[Title.]

Defence.

Defence.

1. The defendant admits that *M.N.* died a widower, without child, parent, brother or sister, uncle or aunt, or niece, but he denies that he died without nephew.

2. The deceased had a brother named *G.B.*, who died in his lifetime.

3. *G.B.* was married to *E.H.* in the parish church of in the county of on the day of and had issue of such marriage, the defendant, who was born in the month of and is the nephew and next of kin of the deceased.

The defendant therefore claims:—

That the Court pronounce that he is the nephew and next of kin of the deceased, and as such entitled to a grant of letters of administration of the personal estate and effects of the deceased.

[Title.]

Reply.

Reply.

1. The plaintiff denies that *G.B.* was married to *E.H.*

2. He also denies that the defendant is the issue of such marriage.

No. 18.

Landlord and Tenant.

In the High Court of Justice, Division. 187 . B. No.

Writ issued 3rd August 1876.

Between *A.B.* - - - - - Plaintiff,

and

C.D. - - - - - Defendant.

Statement of Claim.

Claim.

1. On the day of the plaintiff, by deed, let to the defendant a house and premises, No. 52, Street, in the city of London, for a term of 21 years from the day of at the yearly rent of 120*l.*, payable quarterly.

A.D. 1875.

2. By the said deed the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The said deed also contained a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved whether demanded or not, should be in arrear for 21 days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4. On the 24th June 187 a quarter's rent became due, and on the 29th of September 187 another quarter's rent became due; on the 21st October 187 both had been in arrear for 21 days, and both are still due.

5. On the same 21st October 187 the house and premises were not and are not now in good or tenantable repair, and it would require the expenditure of a large sum of money to reinstate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value.

The plaintiff claims:—

1. Possession of the said house and premises.
2. *l.* for arrears of rent.
3. *l.* damages for the defendant's breach of his covenant to repair.
4. *l.* for the occupation of the house and premises from the 29th of September 187 to the day of recovering possession.

The plaintiff proposes that this action should be tried in London.

No. 19.

187 . B. No.

NECESSARIES FOR SHIP.

In the High Court of Justice,
Admiralty Division.

Writ issued [ ].

THE "ENTERPRISE."

Between *A.B.* and *C.D.* - - - Plaintiffs,

and

E.F. and *G.H.* - - - - Defendants.

Statement of Claim.

Claim.

1. The plaintiffs were at the time herein-after stated and are engineers and ironfounders, carrying on business at Liverpool in the county of Lancaster.

2. In the month of January 1872, whilst the above-named steamship "Enterprise," belonging to the port of London, was in the port of Liverpool, the plaintiffs, having received orders from the master in that behalf, executed certain necessary work to her and supplied her with certain necessary stores and materials, and caused her to be supplied upon their credit with certain

necessary work, labour, materials, and necessaries, and thereby supplied the said ship with necessaries within the meaning of the fifth section of the Admiralty Court Act, 1861. A.D. 1875.

3. There is due to the plaintiffs in respect of such supply of necessaries to the said ship the sum of 577*l.* 2*s.* 6*d.*, and the plaintiffs cannot obtain payment thereof without the assistance of the Court.

The plaintiffs claim :—

1. Judgment pronouncing for the claim of the plaintiffs :
2. The condemnation of the defendants and their bail therein, with costs :
3. A reference, if necessary, of the claim of the plaintiffs to the registrar, assisted by assessors, to report the amount thereof :
4. Such further relief as the nature of the case requires.

[Title.]

Defence.

Defence.

1. The defendants deny the allegations contained in the third paragraph of the statement of claim.

2. The defendants admit that the plaintiffs executed certain work to the said ship, and supplied her with certain materials, but they say, that a portion of the work so executed was executed badly and insufficiently, and of the materials so supplied, some were bad and insufficient, and a portion of the work in the claim mentioned was done in and about altering and endeavouring to make good such bad and insufficient work and materials. The defendant has paid in respect of the work and materials in the claim mentioned the sum of 356*l.* 17*s.* 9*d.*, and the said sum is sufficient to satisfy the claims of the plaintiffs.

3. The defendants deny the allegations contained in the second paragraph of the claim, so far as they relate to any claim beyond the said sum of 356*l.* 17*s.* 9*d.*, and say that if the plaintiffs did execute any work or did supply any materials other than the work and materials mentioned in the second paragraph of this defence, such work was not necessary work, and such materials were not necessary materials, within the meaning of the fifth section of the Admiralty Court Act, 1861, and were not supplied in such circumstances as to render the defendants liable to pay for the same.

[Title.]

Reply.

Reply.

1. The plaintiffs join issue upon the statement of defence.

A.D. 1875.

NEGLIGENCE.

No. 20.

In the High Court of Justice, Division. 187 . B. No.

Writ issued 3rd August 1876.

Between *A.B.* - - - - Plaintiff,

and

E.F. - - - - Defendant.

Statement of Claim.

Claim.

1. The plaintiff is a shoemaker, carrying on business at The defendant is a soap and candle manufacturer, of

2. On the 23rd May 1875, the plaintiff was walking eastward along the south side of Fleet Street, in the city of London, at about three o'clock in the afternoon. He was obliged to cross Street, which is a street running into Fleet Street at right angles on the south side. While he was crossing this street, and just before he could reach the foot pavement on the further side thereof, a two-horse van of the defendant's, under the charge and control of the defendant's servants, was negligently, suddenly, and without any warning, turned at a rapid and dangerous pace out of Fleet Street into Street. The pole of the van struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims *l.* damages.

[Title.]

Statement of Defence.

Defence.

1. The defendant denies that the van was the defendant's van, or that it was under the charge or control of the defendant's servant. The van belonged to Mr. John Smith, of , a carman and contractor employed by the defendant to carry and deliver goods for him; and the persons under whose charge and control the said van was were the servants of the said Mr. John Smith.

2. The defendant does not admit that the van was turned out of Fleet Street, either negligently, suddenly, or without warning, or at a rapid or dangerous pace.

3. The defendant says, that the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the van approaching him, and avoided any collision with it.

4. The defendant does not admit the statements of the third paragraph of the statement of claim.

[Title.] A.D. 1875.

Reply.

The plaintiff joins issue upon the defendant's statement of defence. Reply.

No. 21.

In the High Court of Justice, Admiralty Division. 187 . B. No. POSSESSION OF SHIP.

Writ issued [ ].

THE "LADY OF THE LAKE."

Between *A.B.* - - - - Plaintiff,

and

E.F. - - - - - Defendant.

Statement of Claim.

1. On or about the 15th of July 1868, an agreement was entered into between the plaintiff and J. D., who was then the sole owner of the above-named barque "Lady of the Lake," whereby J. D. agreed to sell, and the plaintiff agreed to purchase, 32-64th parts or shares of the vessel for the sum of 500*l.*; payment 300*l.* in cash, and the remainder by purchaser's acceptances at three and six months date, and it was thereby agreed that the plaintiff was to be commander of the vessel. Claim.

2. The plaintiff accordingly paid to J. D. the sum of 300*l.*, and gave him his (the plaintiff's) acceptances at three and six months date for the residue of the said purchase money, and J. D. by bill of sale transferred 32-64th parts or shares in the vessel to the plaintiff, which bill of sale was duly registered on the 18th of July 1868; the plaintiff has since been and still is the registered owner of such 32-64th shares.

3. The vessel then sailed under the plaintiff's command on a voyage from Sunderland to the Brazils and other ports, and then on a homeward voyage to Liverpool, where she arrived on the 18th of June 1869, and having there discharged her homeward cargo she sailed thence under the plaintiff's command with a cargo to the Tyne, and thence to Sunderland, at which port she arrived on the 9th of August 1869.

4. The plaintiff then made several ineffectual applications to J. D., with a view to obtaining another charter for the said vessel, and after she had been lying idle for a considerable time, the plaintiff on or about the 16th of September 1869, obtained an advantageous charter for her to proceed to Barcelona with a cargo of coals, and with a view to enabling her to execute such charter the plaintiff paid the dock dues, and moved the vessel into a slipway in order that her bottom might be cleaned, but on or about the 17th of September, whilst the vessel was on the shore adjoining the slipway, the defendant, to whom the said J. D. had in the meantime transferred his

A.D. 1875.

32-64th parts, forcibly took the vessel out of the possession of the plaintiff, and refused and still refuses to allow the plaintiff to take the vessel on her said voyage to Barcelona, and by reason thereof heavy loss is being occasioned to the plaintiff.

The plaintiff claims :—

1. Judgment giving possession of the vessel "Lady of the Lake" to the plaintiff:
2. The condemnation of the defendant in costs of suit, and in all losses and damages occasioned by the defendant to the plaintiff:
3. Such further relief as the nature of the case requires.

[Title].

Defence.

Defence.

1. The defendant says that the acceptances in the second paragraph of the claim mentioned were respectively dishonoured by the plaintiff, and have never yet been paid by him.

2. It was agreed between the plaintiff and J. D., that J. D. should act, and he has since always acted, as ship's husband of the "Lady of the Lake."

3. On the 31st of August 1869, J. D. sold to the defendant, for the sum of 400*l.*, and by bill of sale duly executed, transferred to him his 32-64th shares, and the bill of sale was duly registered on the 14th of September following.

4. After the "Lady of the Lake" had arrived at Sunderland, and after the defendant had purchased from J. D. his 32-64th shares of the "Lady of the Lake," the defendant placed the vessel in the custody and possession of a shipkeeper. The plaintiff, however, unlawfully removed her from such possession, and thereupon the defendant had the vessel taken into the South Dock of the harbour at Sunderland, with orders that she should be kept there. What the defendant did, as in this article mentioned, he did with the consent and full approval of J. D.

5. At the time of the sale of the "Lady of the Lake" by J. D. to the defendant as afore-mentioned, there was and there still is due from the plaintiff, as part owner of the "Lady of the Lake," to J. D., as part owner and ship's husband, a sum of money exceeding 300*l.* in respect of the vessel and her voyages over and above the amount of the unpaid acceptances.

6. Save as herein appears, the averments in the fourth paragraph of the claim contained are untrue, and if the charter-party mentioned in that paragraph was obtained by the plaintiff as alleged, which the defendant does not admit, it was obtained by him without the authority, consent, or knowledge of J. D. or the defendant.

7. Before the defendant took possession of the vessel as afore-mentioned, the plaintiff ceased to be master of her, with the consent of J. D. or the defendant.

8. J. D. has instituted an action against the said vessel in
in order to have the accounts taken between him and the plaintiff, and to enforce payment of the money due from the plaintiff to him.

[Title.] A.D. 1875

Reply.

Reply. 1. The plaintiff says in reply to the first paragraph of the defence that the bills therein mentioned were dishonoured by the plaintiff because J. D. was indebted to the plaintiff in a large amount for his wages as master, and for his share of the earnings of the "Lady of the Lake," and refused payment thereof.

2. J. D. did not place the vessel in the exclusive custody or possession of a shipkeeper as in the fifth paragraph of the defence stated or implied. On the contrary, the vessel continued in the custody and possession of the plaintiff, who still holds her register. A man was sent on board the vessel by J. D. to look after J. D.'s share in the said vessel while she was in dock, but he did not dispossess the said plaintiff or take exclusive possession of the vessel, and the plaintiff was not dispossessed of the vessel until on or about the 17th of September last.

3. Except as herein-before appears the plaintiff joins issue upon the defendant's statement of defence.

[Title.]

Rejoinder.

Rejoinder. The defendant joins issue upon the first and second paragraphs of the Reply.

No. 22.

PROMISSORY NOTE.

187 : B. No.

In the High Court of Justice,
Division.

Writ issued 3d August 1876.

Between *A.B.* - - - - - Plaintiff,

and

E.F. - - - - - Defendant.

Statement of Claim.

Claim. 1. The defendant on the day of made his promissory note, whereby he promised to pay to the plaintiff or his order *l.* three months after date.

2. The note became due on the day of 1874, and the defendant has not paid it.

The plaintiff claims:—

The amount of the note and interest thereon to judgment.

The plaintiff proposes that this action should be tried in the county of

A.D. 1875.

[Title.]

Statement of Defence.

Defence.

1. The defendant made the note sued upon under the following circumstances:—The plaintiff and defendant had for some years been in partnership as coal merchants, and it had been agreed between them that they should dissolve partnership, that the plaintiff should retire from the business, that the defendant should take over the whole of the partnership assets and liabilities, and should pay the plaintiff the value of his share in the assets after deducting the liabilities.

2. The plaintiff thereupon undertook to examine the partnership books, and inquire into the state of the partnership assets and liabilities; and he did accordingly examine the books, and make the said inquiries, and he thereupon represented to the defendant that the assets of the firm exceeded 10,000*l.*, and that the liabilities of the firm were under 3,000*l.*, whereas the fact was that the assets of the firm were less than 5,000*l.*, and the liabilities of the firm largely exceeded the assets.

3. The misrepresentations mentioned in the last paragraph induced the defendant to make the note now sued on, and there never was any other consideration for the making of the note.

[Title.]

Reply.

Reply.

The plaintiff joins issue on the defence.

PROBATE OF WILL IN SOLEMN FORM.

No. 23.

In the High Court of Justice, 187 . B. No.
Probate Division.
Writ issued [ ].

Between *A.B.* - - - - - Plaintiff,
and
E.F. - - - - - Defendant.

Statement of Claim.

Claim.

1. C. T., late of Bicester in the county of Oxford, gentleman, deceased, who died on the 20th of January 1875 at Bicester, being of the age of 21 years, made his last will, with one codicil thereto, the said will bearing date the first day of October 1874, and the said codicil the first of January 1875, and in the said will appointed the plaintiff sole executor thereof.

2. The said will and codicil were signed by the deceased [*or*, by *X.Y.*, in the presence and by the directions of the deceased, *or* signed by the deceased, who acknowledged his signature, *or as the case may be*] in the

A.D. 1875.

presence of two witnesses present at the same time, the said will in the presence of H. P. and J. R., and the said codicil in the presence of J. D. and G. E., and who subscribed the same in the presence of the said deceased.

3. The deceased was at the time of the execution of the said will and codicil respectively of sound mind, memory, and understanding.

The plaintiff claims:—

That the Court shall decree probate of the said will and codicil in solemn form of law.

[Title.]

Statement of Defence.

Defence.

The defendant says as follows:—

1. The said will and codicil of the said 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 said 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 in the said will appointed the defendant sole executor thereof. [*Propound this will as in paragraphs* 2 *and* 3 *of claim.*]

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 said will of the said deceased, dated the 1st of January 1873, in solemn form of law.

[Title.]

Reply.

Reply.

1. The plaintiff joins issue upon the statement of defence of the defendant, as contained in the first, second, third, fourth, and fifth paragraphs thereof.

2. The plaintiff says that the said will of the said deceased, dated the 1st of January 1873, was duly revoked by the will of the said 1st of October 1873, propounded by the plaintiff in his statement of claim.

A.D. 1875.

RECOVERY OF LAND. LANDLORD AND TENANT.

No. 24.

In the High Court of Justice, 187 . B. No.
Common Pleas Division.

Writ issued 3rd August 1876.

Between *A.B.* - - - - - Plaintiff,
and
C.D. - - - - - Defendant.

Statement of Claim.

Claim.

1. On the day of the plaintiff let to the defendant a house, No. 52, street, in the city of London, as tenant from year to year, at the yearly rent of 120*l.*, payable quarterly, the tenancy to commence on the day of .

2. The defendant took possession of the house and continued tenant thereof until the day of last, when the tenancy determined by a notice duly given.

3. The defendant has disregarded the notice and still retains possession of the house.

The plaintiff claims:—

1. Possession of the house.
2. *l.* for mesne profits from the day of

The plaintiff proposes that this action should be tried in London.

In the High Court of Justice, 187 . No.
Common Pleas Division.

Between *A.B.* - - - - - - Plaintiff,
and
C.D. - - - - - Defendant,
(by original action,)
And between *C.D.* - - - - - Plaintiff,
and
A.B. - - - - - Defendant.
(by counter-claim.)

The defence and counter-claim of the above-named *C.D.*

Defence.

1. Before the determination of the tenancy mentioned in the statement of claim, the plaintiff *A.B.*, by writing dated the day of , and signed by him, agreed to grant to the defendant *C.D.* a lease of the house mentioned in the statement of claim, at the yearly rent of 150*l.*, for the term of 21 years, commencing from the day of , when the defendant *C.D.*'s tenancy from year to year determined, and the defendant has since that date been and still is in possession of the house under the said agreement.

Counter-claim.

2. By way of counter-claim the defendant claims to have the agreement specifically performed and to have a lease gr ted to him accordingly, and for the purpose aforesaid, to have this acti transferred to the Chancery division.

In the High Court of Justice, 187 . No. A.D. 1875.
Chancery Division.
(Transferred by order dated day of .)
Between *A.B.* - - - - - Plaintiff,
and
C.D. - - - - Defendant,
(by original action,)
And between *C.D.* - - - - - Plaintiff,
and
A.B. - - - - Defendant.
(by counter-claim.)

The reply of the plaintiff *A.B.*

Reply

The plaintiff *A.B.* admits the agreement stated in the defendant *C.D.*'s statement of defence, but he refuses to grant to the defendant a lease, saying that such agreement provided that the lease should contain a covenant by the defendant to keep the house in good repair and a power of re-entry by the plaintiff upon breach of such covenant, and the plaintiff says that the defendant has not kept the house in good repair, and the same is now in a dilapidated condition.

[Title.]

Joinder of Issue.

The defendant *C.D.* joins issue upon the plaintiff *A.B.*'s statement in reply.

No. 25.

RECOVERY OF LAND.

187 . B. No.

In the High Court of Justice,
Common Pleas Division.
Writ issued 3rd August 1876.
Between *A.B.* and *C.D.* - - - Plaintiffs,
and
E.F. - - - - Defendant.

Statement of Claim.

Claim.

1. *K. L.*, late of Sevenoaks in the county of Kent, duly executed his last will, dated the 4th day of April 1870, and thereby devised his lands at or near Sevenoaks, and all other his lands in the county of Kent, unto and to the use of the plaintiffs and their heirs, upon the trusts therein mentioned for the benefit of his daughters Margaret and Martha, and appointed the plaintiffs executors thereof.

2. *K. L.* died on the 3d day of January 1875, and his said will was proved by the plaintiffs in the Court of Probate on or about the 4th day of February 1875.

A.D. 1875.

3. *K. L.* was at the time of his death seised in fee of a house at Sevenoaks, and two farms near there called respectively , the home farm containing 276 acres, and the Longton farm containing 700 acres, both in the county of Kent.

4. The defendant, soon after the death of *K. L.*, entered into possession of the house and two farms, and has refused to give them up to the plaintiff.

The plaintiffs claim:

1. Possession of the house and two farms:
2. *l.* for mesne profits of the premises from the death of *K. L.* till such possession shall be given.

The plaintiff proposes that this action should be tried in the county of Kent.

[Title.]

Statement of Defence.

Defence.

1. The defendant is the eldest son of *I. L.* deceased, who was the eldest son of *K. L.*, in the statement of claim named.

2. By articles bearing date the 31st day of May 1827 and made previous to the marriage of *K. L.* with Martha his intended wife, *K. L.*, in consideration of such intended marriage, agreed to settle the house and two farms in the statement of claim mentioned (and of which he was then seised in fee) to the use of himself for his life, with remainder to the use of his intended wife for her life, and after the survivor's decease, to the use of the heirs of the body of the said *K. L.* on his wife begotten, with other remainders over.

3. The marriage soon after took effect, *K. L.*, by deeds of lease and release, bearing date respectively the 4th and 5th of April 1828, after reciting the articles in alleged performance of them, conveyed the house and two farms to the use of himself for his life, with remainder to the use of his wife for her life, and after the decease of the survivor of them, to the use of the heirs body of *K. L.* on the said Martha to be begotten, with other remainders over.

4. There was issue of the marriage an only son Thomas L and two daughters. After the death of Thomas L , which took place in February 1864, *K. L.*, on the 3d May 1864, executed a disentailing assurance, which was duly enrolled and thereby conveyed the house and two farms to he use of himself in fee.

[Title.]

Reply.

Reply.

The plaintiffs join issue upon the defendant's statement of defence.

A.D. 1875.

SALVAGE.

No. 26.

In the High Court of Justice,
Admiralty Division.

Writ issued [ ].

THE "CAMPANIL."

Between *A.B.* and *C.D.* - - - Plaintiffs,

and

E.F. and *G.H.* - Defendants.

Statement of Claim.

Claim.

1. The "Brazilian" is a screw steamer belonging to the port of Newcastle, of the burthen of 1,359 tons gross registered tonnage, and propelled by engines of 130 horse power, and at the time of the rendering of the salvage services herein-after mentioned she was navigated by her master and a crew of twenty-four hands. She left the Port of Newcastle on the 27th of November 1873, on a voyage to Genoa, and thence by way of Palmaras and Aguilas to the Tyne, and about 10 a.m. on the 26th of December 1873, in the course of her homeward voyage, with a cargo of merchandise, she was off the coast of Portugal, the Island of Ons bearing about S.E. by E., when those on board her sighted a disabled steamer about four points on their starboard bow, in-shore, flying signals of distress. A strong gale was blowing at the time, and there was a very heavy sea running.

2. The "Brazilian" at once made towards the disabled steamer, which proved to be the "Campanil," the vessel proceeded against in this action. She was heavily laden with a cargo of iron ore. The "Brazilian" as she approached the "Campanil" signalled to her, and the "Campanil" answered by signal that her engines had broken down. By this time the "Campanil" was heading in-shore, rolling heavily, and shipping a large quantity of water. The "Brazilian" came under the lee of the "Campanil" and asked if she wanted assistance. Her master replied that he wanted to be towed to Vigo as his vessel had lost her screw. The master of the "Brazilian" then asked those on board the "Campanil" to send him a hawser, and for a long time those on board the "Brazilian" made attempts to get a hawser from the "Campanil," and exposed themselves and their vessel to great danger in doing so. The wind and sea rendering it impossible to get the hawser whilst the "Brazilian" was to leeward of the "Campanil," the "Brazilian" went to windward and attempted to float lines by means of life buoys to the "Campanil." During all this time the "Campanil" was quite unmanageable, and yawed about, and there was very great difficulty in manœuvring the "Brazilian" so as to retain command over her and keep her near the "Campanil." It was necessary to keep constantly altering the engines of the "Brazilian," setting them on ahead and reversing them quickly, and in consequence the engines laboured heavily and were exposed to great danger of being strained.

3. Whilst the "Brazilian" was endeavouring to float lines to the "Campanil," the "Campanil" made a sudden lurch and struck the "Brazilian" on her port

A.D. 1875.

quarter, knocking in her port bulwark and rail, and causing other damage to the vessel. After many unsuccessful efforts by those on board the "Brazilian," and after they had lost two life buoys and a quantity of rope, a hawser from the "Campanil" was at length made fast on board the "Brazilian," and the "Brazilian" with the "Campanil" in tow steamed easy ahead. A second hawser was then got out and made fast with coir springs, and the "Brazilian" then commenced to tow full speed ahead, each hawser having a full scope of 90 fathoms.

4. The "Brazilian" made towards Vigo, which was about 35 miles distant, the vessels made about two knots an hour, the "Brazilian" keeping her engines going at full speed. The "Brazilian" laboured very heavily, and both vessels shipped large quantities of water.

5. About noon one of the tow ropes broke, and both vessels were in danger of being driven ashore, broken water and rocks appearing to leeward, distant about two miles. After great difficulty the broken hawser was made fast again with a heavy spring of a number of parts of rope, and the "Brazilian" towed ahead under the lee of Ons Island.

6. Shortly afterwards the weather moderated and the sea went down a little, and the "Brazilian" was able to make more way, and about 7 p.m. the same day she towed the "Campanil" into Vigo harbour in safety.

7. The "Brazilian" was compelled to remain in harbour the next day to pay port charges and clear at the Custom House.

8. The coast off which the aforesaid services were rendered is rocky and exceedingly dangerous, and strong currents set along it, and but for the services rendered by the "Brazilian" the "Campanil" must have gone ashore and been wholly lost, together with her cargo, and in all probability her master and crew would have been drowned. No other steamer was in sight, and there was not any prospect of any other efficient assistance.

9. In rendering the said services the "Brazilian" and those on board her were exposed to great danger. Owing to the heavy sea, and the necessity of towing with a long scope of hawser, there was great danger of fouling the screw of the "Brazilian," and it required constant vigilance on the part of the master and crew to prevent serious accident. The master and crew of the "Brazilian" underwent much extra fatigue and exertion.

10. The damage sustained by the "Brazilian" in rendering the said services amounts to the sum of 150*l.*, and the value of the extra quantity of coal consumed in consequence of the said services is estimated at 16*l.*, and 4*l.* 1*s.* 5*d.* was paid by the owners of the "Brazilian" for harbour dues and other charges at Vigo.

11. The value of the "Campanil," her cargo and freight, at the time of the salvage services were as follows, that is to say: The "Campanil" was of the value of 13,000*l.*, her cargo was of the value of 300*l.*, and the gross amount of freight payable upon delivery of the cargo laden on board her at Barrow-in-Furness was 675*l.*

12. The value of the "Brazilian," her freight and cargo was about 25,050*l.*

A.D. 1875.

The plaintiffs claim:—

1. Such an amount of salvage as to the Court may seem just:
2. That the defendants and their bail be condemned in costs:
3. Such further or other relief as the nature of the case may require.

[Title.]

Statement of Defence.

Defence.

1. The defendants say that upon the 22d of December 1873, the iron screw steamship "Campanil," of the burden of 660 tons register gross, propelled by engines of 70 horse power, navigated by David Boughton, her master, and a crew of 16 hands, left Porman, bound to Barrow-in-Furness, laden with a cargo of iron ore.

2. At about 8 a.m. of the 26th of December, whilst the "Campanil" was prosecuting her voyage, the shaft of her propeller broke outside the stern tube, and she lost her propeller. The "Campanil" was then brought to the wind, which was south by east, blowing fresh, and she proceeded under sail for Vigo, and continued to do so till about 9.30 a.m., when two steamships which had been for some time in sight, and coming to the northward, approached the "Campanil." The ensign of the "Campanil" was hoisted, union up, as a signal to one of such steamships, which afterwards come to the "Campanil," and proved to be the "Brazilian," whose owners, master, and crew are the plaintiffs.

3. The "Brazilian" then signalled the "Campanil" and inquired what was the matter, and was signalled in reply that the "Campanil" had lost her propeller, and required to be towed to Vigo, upon which the "Brazilian" signalled for the rope of the "Campanil," in order to take her in tow. After this the "Brazilian" steamed round the "Campanil" and up on to her starboard bow, and in so doing the "Brazilian" came with her port quarter into the starboard bow of the "Campanil" and did her considerable damage.

4. The "Brazilian" then threw a heaving line on board the "Campanil," and one of the "Campanil's" hawsers was attached to the line and hauled on board the "Brazilian," which passed one of her hawsers to the "Campanil" by means of life buoys, and when such hawsers had been secured between the two vessels the "Brazilian" commenced to tow the "Campanil" for Vigo, it being at this time about 10.30 a.m. and Ons Island then bearing about south-east by south, and distant about 15 miles.

5. The "Brazilian" proceeded with the "Campanil" in tow, but owing to the two vessels being laden, and to the small power of the "Brazilian," she was only able to make very slow progress with the "Campanil," and it was not until 6.30 p.m. of the said day that the "Brazilian" arrived at Vigo with the "Campanil," which then came to anchor off the town there.

6. The defendants on the day of tendered to the plaintiffs and have paid into court the sum of 350*l.* for the services so as aforesaid rendered to the "Campanil" and her said cargo and freight, and offered to pay the costs, and submit that the same is ample and sufficient.

A.D. 1875.

[Title.]

Reply.

Reply.

1. The plaintiffs admit the first and second articles of the Answer, and they admit that the "Brazilian" came into collision with the "Campanil," and caused slight damage to the "Campanil," but save as aforesaid they join issue upon the statement of defence.

No. 27.

187 . No.

TRESPASS TO LAND.

In the High Court of Justice,
Division.

Writ issued 3rd August 1876.

Between *A.B.* - - - - - Plaintiff,

and

E.F. - - - - - Defendant.

Statement of Claim.

Claim.

1. The plaintiff was on the 5th March 1876 and still is the owner and occupier of a farm called Highfield Farm, in the parish of and county of .

2. A private road, known as Highfield Lane, runs through a portion of the plaintiff's farm. It is bounded upon both sides by fields of the plaintiff's, and is separated therefrom by a hedge and ditch.

3. For a long time prior to the 5th March 1876 the defendant had wrongfully claimed to use the said road for his horses and carriages on the alleged ground that the same was a public highway, and the plaintiff had frequently warned him that the same was not a public highway, but the plaintiff's private road, and that the defendant must not so use it.

4. On the 5th March 1876 the defendant came with a cart and horse, and a large number of servants and workmen, and forcibly used the road, and broke down and removed a gate which the plaintiff had caused to be placed across the same.

5. The defendant and his servants and workmen on the same occasion pulled down and damaged the plaintiff's hedge and ditch upon each side of the road, and went upon the plaintiff's field beyond the hedge and ditch, and injured the crops there growing, and dug up and injured the soil of the road; and in any case the acts mentioned in this paragraph were wholly unnecessary for the assertion of the defendant's alleged right to use, or the user of the said road as a highway.

The plaintiff claims:

1. Damages for the wrongs complained of.
2. An injunction restraining the defendant from any repetition of any of the acts complained of.
3. Such further relief as the nature of the case may require.

A.D. 1875.

[Title.]

Statement of Defence.

Defence.

1. The defendant says that the road was and is a public highway for horses and carriages; and a few days before the 5th March 1876 the plaintiff wrongfully erected the gate across the road for the purpose of obstructing and preventing, and it did obstruct and prevent the use of the road as a highway. And the defendant on the said 5th March 1876 caused the said gate to be removed, in order to enable him lawfully to use the road by his horses and carriages as a highway.

2. The defendant denies the allegations of the fifth paragraph of the statement of claim, and says that neither he nor any of his workmen or servants did any act, or used any violence other than was necessary to enable the plaintiff lawfully to use the highway.

[Title.]

Reply.

Reply.

The plaintiff joins issue upon the defendant's statement of defence.

No. 28.

Form of Demurrer.

In the High Court of Justice,
Division.

A.B. v. *C.D.*

The defendant [plaintiff] demurs to the [plaintiff's statement of complaint *or* defendant's statement of defence, *or* of set-off, *or* of counter-claim], [*or* to so much of the plaintiff's statement of complaint as claims . . . . . *or* as alleges as a breach of contract the matters mentioned in paragraph 17, *or as the case may be*], and says that the same is bad in law on the ground that [*here state a ground of demurrer*] and on other grounds, sufficient in law to sustain this demurrer.

No. 29.

Memorandum of Entry of Demurrer for Argument.

1874. B. No.

In the High Court of Justice,
Division.

A.B. v. *C.D.*

Enter for the argument the demurrer of

to

X.Y.,
Solicitor for the plaintiff [*or, &c.*]

A.D. 1875.

APPENDIX D.

FORMS OF JUDGMENT.

1. *Default of Appearance and Defence in Case of Liquidated Demand.*

1876. B. No.

In the High Court of Justice,
Division.

Between *A.B.* - - - - - Plaintiff,

and

C.D. and *E.F.* - - - - Defendants.

30th November 1876.

The defendants [*or* the defendant *C.D.*] not having appeared to the writ of summons herein [*or not having delivered any statement of defence*], it is this day adjudged that the plaintiff recover against the said defendant *l.*, and costs, to be taxed.

---

2. *Judgment in default of Appearance in Action for Recovery of Land.*

[Title, &c.]

30th November 1876.

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 said writ mentioned.

---

3. *Judgment in default of Appearance and Defence after Assessment of Damages.*

1876. B. No.

In the High Court of Justice,
Division.

Between *A.B.* and *C.D.* - - - - Plaintiffs,

and

E.F. and *G.H.* - - - - Defendants.

30th November 1876.

The defendants not having appeared to the writ of summons herein [*or not having delivered a statement of 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 1876, returned that the said damages have been assessed at *l.*, it is adjudged that the plaintiff recover *l.*, and costs to be taxed.

---

4. *Judgment at Trial by Judge without a Jury.*

[*Year, letter, and number.*]

Division.

day of 18 .

[*If in Chancery Division, name of Judge.*]

Between *A.B.* - - - - - Plaintiff,

and

C.D., *E.F.*, and *G.H.* - - Defendants.

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 plantiff 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.

---

5. *Judgment after Trial by a Jury.*

[Title, &c.]

15th November 1876.

The action having on the 12th and 13th November 1876 been tried before the Honourable Mr. Justice and 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 of suit [*or as the case may be*]: Therefore it is adjudged that the plaintiff recover against the defendant *l.* and *l.* for his costs of suit [*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*].

A.D. 1875.

6. *Judgment after Trial before Referee.*

[Title, &c.]

30th November 1876.

The action having on the 27th November 1876 been tried before *X.Y.* Esq. an official [*or* special] referee; and the said *X.Y.* having found [*state substance of referee's certificate*], it is this day adjudged that

---

7. *Judgment upon Motion for Judgment.*

[Title, &c.]

30th November 1876.

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

---

APPENDIX E.

FORMS OF PRÆCIPE.

1. *Fieri facias.*

1876. B. No.

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 master's certificate, dated day of .]

X.Y., solicitor for [*party on whose behalf writ is to issue.*]

---

2. *Elegit.*

187 . B. No.

In the High Court of Justice,
Division.

Between *A.B.* - - - - Plaintiff,
and
C.D. and others - - - Defendants.

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 master's certificate, dated day of 18 .]

X.Y.,
Solicitor for

---

3. *Venditioni Exponas.*

187 . B. No.

In the High Court of Justice,
Division.

Between *A.B.* - - - - Plaintiff,
and
C.D. and others - - - Defendants.

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. *Fieri Facias de Bonis Ecclesiasticis.*

187 . B. No.

In the High Court of Justice,
Division.

Between *A.B.* - - - - Plaintiff,
and
C.D. - - - - Defendant.

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 master's certificate, dated day of .]

X.Y.,
Solicitor for

A.D. 1875.

5. *Sequestrari Facias de Bonis Ecclesiasticis.*

187 . B. No.

In the High Court of Justice,
Division.
Between *A.B.* - - - - Plaintiff,
and
C.D. and others - - - Defendants.

Seal a writ of sequestrari facias directed to the Lord Bishop of against *C.D.* for not paying to *A.B.* the sum of *l.*

---

6. *Writ of Sequestration.*

187 . B. No.

In the High Court of Justice,
Division.
Between *A.B.* - - - - Plaintiff,
and
C.D. and others - - - Defendants.

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. *Writ of Possession.*

187 . B. No.

In the High Court of Justice,
Division.
Between *A.B.* - - - - Plaintiff,
and
C.D. and others - - - Defendants.

Seal a writ of possession directed to the sheriff of to deliver possession to *A.B.* of
Judgment dated day of

---

8. *Writ of Delivery.*

187 . B. No.

In the High Court of Justice,
Division.
Between *A.B.* - - - - Plaintiff,
and
C.D. and others - - - Defendants.

Seal a writ of delivery directed to the sheriff of to make delivery to *A.B.* of

---

9. *Writ of Attachment.*

187 . B. No.

In the High Court of Justice,
Division.
Between *A.B.* - - - - Plaintiff,
and
C.D. and others - - - Defendants.

Seal in pursuance of order dated day of an attachment directed to the sheriff of against *C.D.* for not delivering to *A.B.*

APPENDIX F.

FORMS OF WRITS.

1. *Writ of Fieri Facias.*

187 . B. No.

In the High Court of Justice,
Division.
Between *A.B.* - - - - Plaintiff,
and
C.D. and others - - - Defendants.

Victoria, by the grace of God of the United Kingdom 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.* and others are defendants [*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 masters of our said Court at the sum of *l.* as appears by the certificate of the said taxing master, 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

* 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.

A.D. 1875.

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. *Writ of Elegit.*

187 . B. No.

In the High Court of Justice,
Division.
Between *A.B.* - - - Plaintiff,
and
C.D. and others - - Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

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.* and others are defendants [*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 masters of our said Court, at the sum of *l.* as appears by the certificate of the said taxing master, 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 any time afterwards, or over which the said *C.D.* on the said day of or at any time afterwards had any disposing power

* The date of the certificate of taxation. The writ *must* be so moulded as to follow the substance of the judgment or order.

† The day on which the judgment or order was made.

A.D. 1875.

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 ourselves at Westminster, &c.

Writ of Venditioni Exponas.

1875. B. No.

In the High Court of Justice,
Division.

Between *A.B.* - - - - Plaintiff,

and

C.D. and others - - - Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

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 on which the decree or order was made.

A.D. 1875.

the day of you returned to us in the Division of our High Court of Justice aforesaid, that by virtue of the said writ to you directed you had taken goods and chattels of the said *C.D.* to the value of the money and interest aforesaid, which said goods and chattels remained in your hands unsold for want of buyers. Therefore we, being desirous that the said *A.B.* should be satisfied his money and interest aforesaid, command you that you expose to sale and sell, or cause to be sold, the goods and chattels of the said *C.D.*, by you in form aforesaid taken, and every part thereof, for the best price that can be gotten for the same, and have the money arising from such sale before us in our said Court of Justice immediately after the execution hereof, to be paid to the said *A.B.* And have there then this writ.

Witness ourself at Westminster, the day of in the year of our reign.

---

4. *Writ of Fieri facias de Bonis Ecclesiasticis.*

1875. B. No.

In the High Court of Justice,
Division.

Between *A.B.* - - - - - Plaintiff,

and

C.D. and others - - - Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: 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 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 you shall have executed this our writ make appear to us in our said Court immediately after the execution hereof, and have you there then this writ. Witness ourself at Westminster, the day of in the year of our Lord A.D. 1875.

---

5. *Writ of Fieri Facias to the Archbishop de bonis Ecclesiasticis during the vacancy of a Bishop's See.*

Victoria [&c. *as in the preceding form*]: 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*].

---

6. *Writ of Sequestrari Facias de bonis Ecclesiasticis.*

1875. B. No.

In the High Court of Justice,
Division.

Between *A.B.* - - - - Plaintiff,
and
C.D. and others - - - Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: 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

A.D. 1875.

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 what you shall do therein make appear to us in our said Court immediately after the execution hereof, and have you there then this writ. Witness ourself at Westminster, the day of in the year of our Lord

---

7. *Writ of Possession.*

187 . B. No.

In the High Court of Justice,
Division.

Between *A.B.* - - - - Plaintiff,
and
C.D. and others - - - Defendants.

Victoria, 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 you have executed this our writ make appear to the Judges of the Division of our High Court of Justice immediately after the execution hereof, and have you there then this writ. Witness, &c.

---

8. *Writ of Delivery.*

187 . B. No.

In the High Court of Justice,
Division.

Between *A.B.* - - - - - Plaintiff,
and
C.D. and others - - - - Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, 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 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 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 you shall have executed this our writ make appear to the Judges of the Division of our High Court of Justice, immediately after the execution hereof, and have you there then this writ. Witness, &c. A.D. 1875.

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 you shall have executed this our writ make appear to the Judges of the Division of our High Court of Justice at Westminster, immediately after the execution hereof, and have you there then this writ. Witness, &c.

---

9. *Writ of Attachment.*

187 . B. No.

In the High Court of Justice,
Division.
Between *A.B.* - - - - - Plaintiff,
and
C.D. and others - - - - Defendants.

Victoria, &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.

A.D. 1875.

10. *Writ of Sequestration.*

187 . B. No.

In the High Court of Justice,
Division.
Between *A.B.* - - - - - Plaintiff,
and
C.D. and others - - - - Defendants.

Victoria, &c.

To [*names of not less than four Commissioners*] greeting.

Whereas lately in the Division of our High Court of Justice in a certain action there depending, wherein *A.B.* is plaintiff and *C.D.* and others are defendants [*or*, in a certain matter then depending, intituled "In the matter of *E.F.*," *as the case may be*] by a judgment [*or* order, *as the case may be*] of our said Court made in the said action [*or* matter], and bearing date the day of 187 , it was ordered that the said *C.D.* should [pay into Court to the credit of the said action the sum of *l.*, *or, as the case may be*]. Know ye, therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give to you, or any three or two of you, full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said *C.D.*, and to collect, receive, and sequester into your hands not only all the rents and profits of his said messuages, lands, tenements, and real estate, but also all his goods, chattels, and personal estates whatsoever; and therefore we command you, any three or two of you, that you do at certain proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements, and real estates of the said *C.D.*, and that you do collect, take, and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said *C.D.* shall [pay into Court to the credit of the said action the sum of *l. or, as the case may be,*] clear his contempt, and our said Court make other order to the contrary. Witness, &c.

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 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.	Section seven.
	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.

LONDON: Printed by GEORGE EDWARD EYRE and WILLIAM SPOTTISWOODE, Printers to the Queen's most Excellent Majesty. 1875.

ISBN 0 10 516084 9