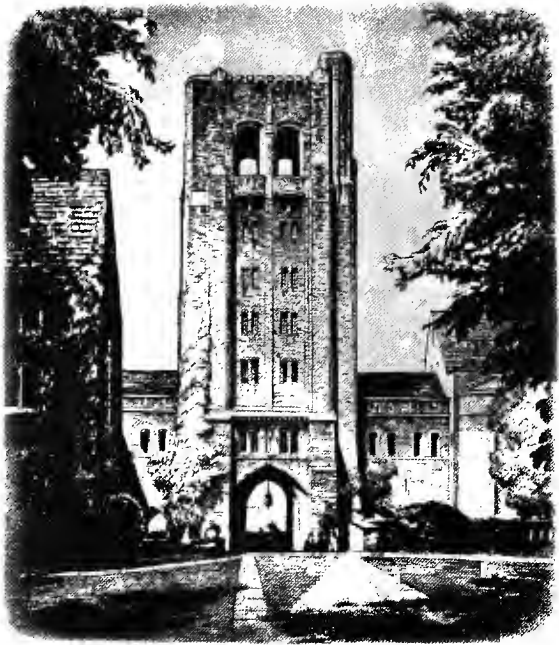


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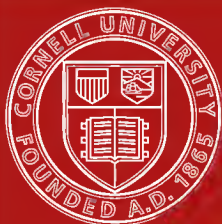
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EQUITY PRECEDENTS;

SUPPLEMENTARY

TO

MR. JUSTICE STORY'S

TREATISE ON EQUITY PLEADINGS.

BY

GEORGE TICKNOR CURTIS,

COUNSELLOR AT LAW.

FOURTH EDITION.

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LITTLE, BROWN, AND COMPANY.
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P R E F A C E .

THE extensive use of Mr. Justice's Story's Treatise on Equity Pleadings, in this country, has seemed to call for the preparation of a collection of Precedents, to be used by the student and practitioner, in connection with that work. Such a collection, of course, must be drawn from the best English collections of Equity Pleadings, in a great measure. I have, in general, adapted the English Precedents to the practice in this country, and have appended to them such references to Mr. Justice Story's Treatise, as will enable the pleader or the student to resort at once to the principles applicable to the case in hand.

Many of the Precedents in this collection have been taken from Van Heythusen's Equity Draftsman, by Hughes (2 vols. 8vo. London, 1828), and from Willis's Equity Pleadings (8vo. London, 1820), with such alterations as seemed to be required. In some instances, no alteration has been made, because the just understanding of the system of pleading, in those instances, requires that the English form should be studied, in connection with the discussions in Judge Story's Treatise, or other elementary works.

Some of the Precedents of Bills and Answers in this volume, particularly in Patent and Copyright cases, have been drawn by me, in my own practice, or have been furnished to me by professional friends.

In the Department of Decrees and Orders, I have selected from Seton on Decrees (London, 1830), making the proper

alterations, to adapt the forms to American practice, except in those instances where the peculiar relief given by the Decree, or the object to be accomplished, could only be exhibited by preserving the English form in all its peculiarities.

A portion of the Decrees and Decretal Orders has been taken from the Equity Draftsman.

NEW YORK, April 2, 1869.

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EQUITY PRECEDENTS.

PART I.

PLEADINGS.

EQUITY PRECEDENTS.

CHAPTER I.

FORMS OF THE VARIOUS PARTS OF AN ORIGINAL BILL.

I. THE DIRECTION OR ADDRESS. (a)

In a State Court.

1. To the Honorable A. B., Chancellor of the State of New York. CH. I.

2. To the Honorable the Justices of the Supreme Judicial Court next to be holden [or now sitting] at Boston, within and for the County of Suffolk and Commonwealth of Massachusetts, sitting in Equity.

In the Circuit Court of the United States.

3. To the Honorable the Judges of the Circuit Court of the United States, within and for the District of South Carolina, sitting in Equity.

II. THE INTRODUCTION. (b)

In a State Court.

4. Humbly complaining sheweth unto your honor [or honors, as the case may be] your orator A. B. of ———, in the County of ———, and State [or Commonwealth] of ———, Merchant [or, Esquire, or Yeoman]. In suits by persons of full age, not married woman, idiots, or lunatics.

5. Humbly complaining sheweth unto your honors your oratrix

(a) Story's Equity Pleadings, § 26.

(b) Story's Eq. Pl. § 26.

CH. I. C. D. of ———, in the County of ——— and State of ———,
Widow (or Single woman).

By wife,
where the
husband is
defendant,
as in re-
spect of her
separate
property.
(a)

6. Humbly complaining sheweth unto your honors your oratrix
A. B. of ———, in the County of ———, wife of C. B. of the same
place, Yeoman, by G. H. her father (or brother) and next friend.

By wife
where her
husband is
co-plaintiff.
(b)

7. Humbly complaining shew unto your honors your orator and
oratrix A. B. of ———, Yeoman, and C. D., his wife.

By wife
whose hus-
band is ban-
ished or is
an alien en-
emy. (c)

8. Humbly complaining sheweth unto your honors your oratrix
A. B. of ———, the wife of C. B., late of the same place, Yeoman,
who hath by due course of law been banished from this State, or
these United States (or is an alien enemy).

By an infant.
(d)

9. Humbly complaining sheweth unto your honors your orator,
A. B. of ———, an infant under the age of twenty-one years, to wit,
of the age of six years, or thereabouts, and son of E. B. of the same
place, Gentleman, by the said E. B., his father and next friend (or
son of E. B., late of ——— aforesaid, Gentleman, deceased, by C. D.,
his next friend).

By an idiot
or lunatic,
by his com-
mittee. (e)

10. Humbly complaining shew unto your honors your orators
A. B. of ———, and C. D. of ———, against whom a commission
of luncy has been lately awarded and issued, and is now in force,
and under which commission the said C. D. was duly found and
declared to be a lunatic, and your orator A. B. appointed Committee
of his estates.

By an idiot
or lunatic
by his guar-
dian. (f)

11. Humbly complaining shew unto your honors A. B. of ———,
and C. D. of ———, who was lately adjudged an idiot (or lunatic,
or incapable of taking care of himself, as the case may be) by the
——— Court of ———, and your orator A. B. appointed guardian
of his person and estate (or of his estate, as the case may be).

By a person
incapable
of acting
for himself,
but not
strictly an
idiot or lu-
natic. (g)

12. Humbly complaining sheweth unto your honors your orator
A. B. of ———, Yeoman, being deaf and dumb, by C. D. of ———,
Yeoman, his next friend.

(a) Eq. Pl. § 62, 63.

(c) Eq. Pl. § 61.

(e) Eq. Pl. § 64, 65, 66. As to making the idiot a party with his committee, § 64,
note 2.

(f) Story's Eq. Pl. § 64, 65.

(b) Eq. Pl. § 63.

(d) Eq. Pl. § 57, 58, 59.

(g) Eq. Pl. § 66.

13. Humbly complaining shew unto your honors your orators the President, Directors, and Company of the Bank of ———, a Corporation duly established by law of the State (or Commonwealth) of ———.

CH. I.

By a corporation.

14. Informing, sheweth unto your honors A. B. of ———, Esquire, Attorney-General of the State (or Commonwealth) of ———, on behalf of the said State (or Commonwealth).

By the government.^(a)By those who partake of the prerogative or are under the protection of the government.^(b)

15. Informing, sheweth unto your honors A. B. of ———, Esquire, Attorney-General of the State of ———, on behalf of the said State and the Trustees of ——— College.

16. Informing, sheweth unto your honors A. B. of ———, Esquire, Attorney-General of the State of ———, at and by the relation of C. D. and E. F. of ———, Deacons of the First Congregational Church and Society in ———, for and on behalf of themselves and the rest of the members of the said Church and Society.

Where the suit does not concern the rights of the government or of those who partake of its prerogative, at the relation of some person not particularly interested.^(c)

17. Informing, sheweth unto your honors A. B. of ———, Esquire, Attorney-General of the State of ———, at and by the relation of C. D. and E. F. of ———, Deacons of the First Congregational Church and Society in ———, and humbly complaining shew unto your Honors the said C. D. and E. F., Deacons of the First Congregational Church and Society in ———.

The same where the relator is interested.^(d)

In the Circuit Court of the United States.

18. To the Judges of the Circuit Court of the United States for the District of ———, A. B. of ———, and a citizen of the State of ———, brings this his bill against C. D. of ———, and a citizen of the State of ———; And thereupon your orator complains and says, &c.

By a citizen of one State against a citizen of another.^(e)

Note. In like manner, varying all the above forms, the proper averments of citizenship of the parties must be inserted, where the suit is brought in the Circuit Courts of the United States.

(a) Eq. Pl. § 8.

(b) Eq. Pl. § 8.

(c) Eq. Pl. § 8. As to whether a relator is necessary. Ibid.

(d) Eq. Pl. § 8. The relator need not be the person principally interested. *Attorney-General v. Bucknall*, 2 Atk. 528; *Mad. Ch. II. p. 148.*

(e) Rule XX. of the Rules of Equity Practice in the Courts of the United States.

CH. I.

III. THE STATING PART. (a)

Conclusion
of the stat-
ing part.

19. *Conclusion of the stating part (after narrating the facts of the plaintiff's title, or ground of his complaint).*

And your orator well hoped that no disputes would have arisen, touching the said, &c., &c. (stating the subject-matter), but that the said defendant would have complied with the reasonable request of your orator, as in conscience and equity he ought to have done.

IV. THE CONFEDERATING PART. (b)

Charge of
special and
general
confeder-
acy.

20. But now so it is, may it please your honors, that the said A. B. combining and confederating with divers persons (*or if there are several defendants, then thus*: combining and confederating with C. D. and E. F. and with divers other persons, *or*, the said R. H., L. M., and N. M. combining and confederating together and with divers persons) at present unknown to your orator, whose names when discovered your orator prays he may be at liberty to insert herein with apt words to charge them as parties defendants hereto, and contriving how to wrong and injure your orator in the premises, he the said A. B. absolutely refuses to comply with such request, and he at times pretends that (*here follows the statement of the defendant's supposed ground, on which he avoids the plaintiff's claim, and this should be matter disproved or traversed in the charging part of the bill*).

V. THE CHARGING PART. (c)

Pretences
of defend-
ant, and de-
nials there-
of.

21. That the said defendant sometimes alleges and pretends (*stat-*

(a) The office of the stating part is described in Eq. Pl. § 27. In the Circuit Courts of the United States, this part may include, by way of statement and counter-statement, what is supposed to be the defendant's case, and the case of the plaintiff to meet it. See Eq. Rules of Circuit Courts, Rule XX.

(b) As to the office of this part, and whether it is necessary, see Eq. Pl. § 29, 30. In the Circuit Courts of the United States the common charge of confederacy may be omitted, at the option of the plaintiff. Rule XXI. of Eq. Rules for U. S. Courts. In the Supreme Judicial Court of Massachusetts it is directed to be omitted, except where it is intended to charge fraud and combination specifically. Rule IV. of the Rules for the Regulation of Eq. Practice in Massachusetts.

(c) As to the office of this part, see Eq. Pl. § 31. As to the omission of this in the Circuit Courts of the United States and the substitution, see Rule XX., XXI., Eq. Rules of the U. S. Courts.

ing the supposed ground of the defendant) and at other times he alleges and pretends, &c., whereas your orator charges the contrary thereof to be the truth, and that (*stating the special matter with which the plaintiff meets the defendant's supposed case*). CH. I.

VI. THE JURISDICTION CLAUSE. (a)

22. All which actings, doings, and pretences of the said defendant (*or defendants*) are contrary to equity and good conscience and tend to the manifest wrong, injury, and oppression of your orator in the premises. In consideration whereof, and forasmuch as your orator is entirely remediless in the premises according to the strict rules of the Common Law, and can only have relief in a Court of Equity where matters of this nature are properly cognizable and relievable: To the end therefore, &c.

That the acts of defendant are contrary to equity, and that plaintiff is remediless at law.

VII. THE INTERROGATING PART. (b)

1. *In General.*

23. To the end, therefore, that the said A. B. and the rest of the confederates when discovered, may, upon their several and respective corporal oaths, full, true, direct, and perfect answer make, to all and singular the matters herein before stated and charged (*or, to all and singular the premises, or, to all and singular the charges and matters aforesaid*) as fully and particularly as if the same were hereinafter repeated, and they thereunto distinctly interrogated (*or, as fully in every respect as if the same were here again repeated, and they thereunto particularly interrogated*): and that not only as to the best of their respective knowledge and remembrance, but also as to the best of their several and respective information, hearsay, and belief (*or, according to the best of their respective knowledge, information, and belief*); and more especially, that they may answer and set forth whether, &c. (*here follow the interrogatories to be answered by the defendant*).

General interrogation of defendant.

Special interrogation of defendant.

(a) This clause may be omitted in Bills in the Circuit Courts of the United States. See Rule XX., XXI., Eq. Rules of U. S. Courts.

(b) Eq. Pl. § 35, 36, 37, 38.

CH. I.

2. *In the Circuit Courts of the United States. (a)*

Special
interroga-
tion in the
Circuit
Courts of
the U.
States.

24. To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer, that is to say —

1. Whether, &c.
2. Whether, &c.

VIII. THE PRAYER FOR RELIEF. (b)

Special
relief.

25. (*After the interrogating part*) and that the said defendant may come to a fair and just account, &c. (*stating the particular relief asked*), and that your orator may have such further and other relief in the premises, as the nature of his case shall require, and to your honors shall seem meet (*or, that your orator may be further and otherwise relieved in the premises according to equity and good conscience*).

General
relief.

IX. THE PRAYER FOR PROCESS. (c)

When the Bill is for Discovery and Relief.

Prayer for
subpœna.

26. May it please your honors to grant unto your orator the most gracious writ of subpœna* of the State of ——— (or of the United States of America), to be directed to the said A. B. and the rest of the confederates when discovered, (d) thereby commanding them and every of them at a certain day and under a certain pain therein to be specified (*or, therein to be inserted*), personally to be and appear before your honors in this Honorable Court and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein, as to your honors shall seem meet (*or, shall seem agreeable to equity and good conscience*), and your orator shall ever pray.

(a) Rule XL. of the Eq. Rules for U. S. Courts.

(b) Eq. Pl. § 40, 43.

(d) See XXIII. of the Eq. Rules for U. S. Courts.

(c) Eq. Pl. § 44, 45.

27. *When the Bill is for discovery only, same as the above, but terminating with the clause "to answer all and singular the premises."* CH. I.

Where the Attorney-General or other Officer of the Government is Defendant, as such. (a)

28. May it please your honors that the Hon. A. B., the Attorney-General of the State of ———, being attended with a copy of this bill, may appear and put in his answer thereto, and may stand to and abide such order, direction, and decree in the premises as to your honors may seem meet, and your orator shall ever pray.

Service on the Attorney-General.

Where an Injunction is prayed for to restrain Proceedings at Law. (b)

29. May it please your honors to grant to your orator not only the most gracious writ or writs of injunction of the State of ———, issuing out of and under the seal of this Honorable Court, to be directed to the said A. B.* to restrain him from proceeding at law against your orator touching any of the matters in question, but also the most gracious writ or writs of subpoena of the said State of ——— (or, of the United States of America), to be directed to the said A. B. (*as in the precedent, No. 26, p. 6*).

Prayer for injunction to restrain proceedings at law.

Where an Injunction is prayed for to stay Waste.

30. (*As in the last precedent to the asterisk*) to restrain him, his servants, workmen, and agents from committing waste, spoil, or destruction, in the mansion or other houses upon the estates in question: and from cutting down timber or other trees, growing upon the said estates, which are planted or growing there for the protection of the several mansion-houses belonging to the said estates, or for the ornament of the said houses: or which grow in lanes, walks, or vistas, or otherwise, for the ornament of the said houses, or of the gardens, parks, or pleasure-grounds thereunto belonging; and also to restrain him, his servants, workmen, and agents from cutting down any timber

(a) Eq. Pl. § 44, note 2.

(b) Eq. Pl. § 41, 42.

CH. I. or other trees, except at seasonable times, and in a husband-like manner; and likewise from cutting saplings and young trees, not fit to be cut, as and for the purposes of timber, except in the spring woods, and from cutting anything in the spring woods except in a husband-like manner, until hearing or further order; but also the most gracious writ or writs of subpœna of the State of _____ (or, of the United States of America), to be directed to the said A. B. (*as in the precedent, No. 26, p. 6*).

Where a Writ of Ne exeat Regno is prayed for. (a)

Prayer for a writ of *ne exeat regno*. 31. May it please your honors, the premises considered, to grant unto your orator, not only the most gracious writ of *ne exeat regno* of the State of _____, issuing out of, and under the seal of this Honorable Court, to restrain the said defendant C. D. from departing out of the jurisdiction of this court: but also the most gracious writ of subpœna (*as in the precedent ante, No. 26, p. 6, from the asterisk*).

Where a Writ of Certiorari is prayed for.

Prayer for a writ of *certiorari*. 32. May it please your honors, therefore, to grant unto your orator a writ of *certiorari*, to be directed to the Justices of the said Court of _____, thereby commanding them upon the receipt of the said writ, to certify and remove the said bill and all proceedings thereon into this Honorable Court; and to stand to and abide such order and direction as to your honors shall seem meet, and the circumstances of the case require, and your orator shall ever pray; &c.

(a) Eq. Pl. § 41, 43.

CHAPTER II.

ORIGINAL BILLS PRAYING RELIEF.

I.

Bills for Specific Performance of Agreements. (a)

- I. Bill by a vendor against a purchaser, for the specific performance of a written agreement for the purchase of an estate, the title only being in dispute. CH. II.

To, &c. (See forms Nos. 1, 2, 3, p. 1.)

Humbly complaining sheweth unto your honors your orator, J. C. of, &c. Esq., That your orator being seised or well entitled in fee simple of or to a certain messuage or dwelling-house with the appurtenances situate at ———, and hereinafter described, and being desirous of selling such premises, and D. E. of ———, being minded to purchase the same, your orator and the said D. E., on or about the ——— day of ———, entered into and signed a memorandum or agreement respecting the said sale and purchase in the words following, that is to say [*stating the agreement verbatim*]. As by the said memorandum of agreement, to which your orator craves leave to refer, when produced will appear. And your orator further sheweth that the said D. E. paid to your orator the sum of \$1,500, part of the said purchase-money at the time of signing the said agreement, and your orator delivered an abstract of his title to the said premises to the said D. E.; and your orator hath always been ready and willing to perform his part of the said agreement, and being paid the remainder of his said purchase-money with interest, to convey the said messuage to the use of the said D. E. and his heirs, and to let him into possession and receipt of the rents and profits thereof from the time in the said agreement in that behalf mentioned; and your orator hoped that the said D. E. would have performed the said agreement on his part as in justice and equity he ought to have done. But now so it is, may it please your honors, that the said D. E. alleges that he is and always hath been ready and willing to perform the said agree-

The agree-
ment for
purchase.

Delivery
of abstract.

CH. II. ment on his part in case your orator could have made or can make
 Defendant him a good and marketable title to the said messuage and premises.
 alleges that But that your orator is not able to make a good title thereto : whereas
 a good title cannot be made. your orator charges that he can make a good title to the said messuage
 and premises. To the end, therefore, that the said D. E. may upon
 his oath true answer make to the matters aforesaid, and more particu-
 larly that he may answer and set forth in manner aforesaid, whether,
 &c. [*Interrogating to the stating and charging parts.*]

Prayer for specific performance, and for payment of the remainder of the purchase-money with interest. And that the said D. E. may be compelled by the decree of this
 Honorable Court specifically to perform the said agreement with your
 orator, and to pay to your orator the remainder of the said purchase-
 money with interest for the same from the time the said purchase-
 money ought to have been paid, your orator being willing and hereby
 offering specifically to perform the said agreement on his part, and
 on being paid the said remaining purchase-money and interest to
 execute a proper conveyance of the said messuage and premises to
 the said D. E. and to let him into possession of the rents and profits
 thereof from the said ——— day of ———. And that your orator
 may have such further or other relief in the premises as to your hon-
 ors shall seem meet and this case may require. May it please, &c.
 (*Prayer for a subpoena as in form No. 26, p. 6.*)

II. Bill by a vendor for the specific performance of a written agreement for
 purchase of an estate, entered into with his agent.

To, &c. (See forms Nos. 1, 2, 3, p. 1).

Statement of seisin. Humbly complaining sheweth unto your honors your orator R. O.
 of, &c., Esq., That your orator now is, and for some time before the
 year ———, was seised or entitled in fee simple of or to the freehold
 messuages or tenements with the lands and other appurtenances
 thereto belonging, situate in, &c. hereinafter described, and your
 orator being so seised or entitled and being desirous to sell the same,
 did some time before the ——— day of ———, in the year ———,
 employ and empower J. K. of, &c., gentleman, to agree on behalf of
 your orator with any person or persons at and for such price or prices
 as he should think fit, and accordingly the said J. K. treated with
 J. M. of S. in the said county of S. gentleman (the defendant here-
 inafter named), for the sale of such messuages, tenements, and heredit-
 agreements unto him the said J. M., and at length they came to an agree-
 ment for said purchase, and thereupon articles of agreement in writing
 bearing date the ——— day of ———, and made between the said
 J. K., on behalf of your orator of the one part and the said J. M. of

Agreement for purchase entered into with plaintiff's agent.

the other part, were duly executed by the said J. K. and J. M., whereby the said J. K., in consideration of the sum of \$ ———, to be paid as therein and hereinafter mentioned, agreed that your orator or his heirs should or would on or before the ——— day of ——— then next, to the satisfaction of the said J. M. or of his heirs, and of his or their counsel, make out a good title to the premises hereinafter mentioned, and by good and sufficient conveyances, surrenders, and assurances in the law, with reasonable covenants, such as the counsel of the said J. M. should advise, convey, and assure, or cause to be conveyed and assured unto the said J. M. and his heirs, as he or they should appoint, free from all incumbrances (except, &c.), and particularly a good estate of inheritance of in and to all that messuage, &c. (describing the premises), and in consideration thereof the said J. M. did thereby covenant and agree with the said J. K. that he the said J. M. would pay or cause to be paid to your orator, his heirs, executors, or administrators, the said sum of \$ ———, immediately upon the executing such conveyance as aforesaid; and it was thereby mutually agreed that your orator or his heirs should be at the expense of making a good title to the said premises, and that the said J. M. should be at the expense of the conveyances and assurances to be made thereof to him as aforesaid, and that the said J. M. should have the rents and profits of the said premises from the said ——— of ———, provided the purchase of the said premises should be completed on or before that day, but not otherwise. As in and by the said articles of agreement, to which your orator craves leave to refer, when produced reference being thereto had will more fully appear. And your orator further sheweth unto your honors, that in consequence of the said articles of agreement, and in order to the performance thereof on the part of your orator, who hath been ever since willing to perform the same, an abstract of the title to the said estate was on your orator's behalf shortly after the date of the said articles of agreement sent unto the attorney concerned for the said J. M. for his perusal, together with all and most of the deeds mentioned in such abstract, for the inspection of such attorney or of the counsel of the said J. M., and several objections having been from time to time made to your orator's title to the said estate by the counsel or conveyancer before whom such abstract was laid, by or on behalf of the said J. M., all such objections were long since answered or cleared up to the satisfaction of such counsel or conveyancer, who long since by writing under his hand or otherwise approved of your said orator's title to the said messuages and premises, wherefore the said J. M. ought long since to have paid to your orator the sum of \$ ——— on having a proper conveyance of the said messuages and premises according to the said articles of agreement and upon having posses-

CH. II.

Delivery
of abstract.The title
approved of
by defend-
ant's coun-
sel.

CH. II. sion of the said messuages and premises delivered unto him. And your orator hath at several times since your orator's title to the said messuages and premises was so approved in and by letters and by your orator's agent in a friendly manner, applied unto the said J. M. and informed him of your orator's readiness to make and execute a proper conveyance of the said messuages and premises on payment of the said sum of \$——, and therefore requested the said J. M. to pay unto your orator the said sum of \$——, and your orator well hoped that such his request would have been complied with.

Applica-
tions.

Pretence
that de-
fendant did
not execute
the articles
of agree-
ment, or
that plain-
tiff cannot
make out a
good title.
Charge the
contrary.

But now so it is, may it please your honors, that the said J. M. combining and confederating with divers persons, &c. (*See form No. 20, p. 4.*) And the said J. M. sometimes pretends that he did not execute any such or the like articles of agreement as aforesaid, or that your orator cannot make out a good title to the messuages or tenements, lands and hereditaments, or not to all the parts thereof, or that your orator hath not made out such title to the satisfaction of him or his counsel or conveyancer. Whereas your orator charges the contrary of all such pretences to be true, but nevertheless under such and the like pretences as aforesaid or some other equally unjust the said J. M. refuses to perform the said articles of agreement on his part. All which actings, &c. (*see form No. 22, p. 5, interrogating to the stating and charging parts.*) And that the said articles of agreement dated the—— day of—— may be specifically performed and carried into execution by the said J. M. your orator hereby offering to perform the same on his part, and that the said J. M. may pay unto your orator the said sum of \$——, your orator offering thereon to convey the said messuages, tenements, lands, and hereditaments unto the said J. M. And that your orator may have such further or other relief in the premises as to your honors shall seem just and proper. May it please, &c. (*see form No. 26, p. 6.*)

Pray subpœna against J. M.

III. Bill by a purchaser against vendor for a specific performance of a contract for sale of an estate — charging that the purchase-money has remained unproductive in the plaintiff's hands. The estate had been previously put up to sale by public auction and bought in, and the description in the agreement referred to the particulars of sale. (The Interrogatories are inserted.)

To, &c.

Statement
that the de-
fendant
was seised
in fee.

Humbly complaining sheweth unto your honors your orator H. A. of, &c. Esq., That S. B. &c. Esq. being or pretending to be seised

and possessed of or otherwise well entitled unto a certain parcel of land and the appurtenances thereunto adjoining or belonging, situate at, &c. and hereinafter mentioned and the inheritance in fee simple thereof, did on or about the _____ day of _____ cause all the said premises to be put up to sale by public auction by M. W. auctioneer, at _____ in three lots pursuant to printed particulars and conditions of sale previously advertised and published. And your orator further sheweth that the said premises were bought in by the said S. B. at the time of the said sale, and that in or about the month of April then next ensuing your orator entered into a treaty with the said S. B. for the absolute purchase of the same estate and premises together with the timber and other trees, fixtures, and other effects in or about the same, discharged from all incumbrances at or for the price or sum of \$2,900. And your orator further sheweth unto your honors that the said S. B. agreed to accept the said sum of \$2,900 as the consideration for the said estate and premises, and thereupon an agreement in writing was entered into and signed by your orator and the said S. B. respecting such sale and purchase in the words and figures or to the purport and effect following, that is to say (*stating the agreement verbatim*). As by the said agreement, to which your orator craves leave to refer, when the same shall be produced will appear. And your orator further sheweth, that previously to the signing of the said agreement your orator paid unto the said S. B. the sum of \$500 as a deposit and in part of his said purchase-money or sum of \$2,900; and the said S. B. hath since delivered up possession of the said purchased premises to your orator. And your orator further sheweth unto your honors, that he hath always been ready and willing to perform his part of the said agreement, and on having a good and marketable title shown to the said estate and premises and a conveyance of the fee simple thereof discharged of all incumbrances made to him, to pay the residue of the said purchase-money or sum of \$2,900 to the said S. B. And your orator hoped that the said S. B. would have specifically performed his part of said agreement as in justice and equity he ought. But now so it is, &c. (*see form No. 20, p. 4*), the said S. B. refuses to perform his part of the said agreement, and to color such refusal he gives out and pretends that he is unable to make out a good and marketable title to the said estate and premises, and that he is willing to cancel the said contract or agreement and to repay the said deposit or sum of \$500 to your orator. Whereas your orator charges that the said S. B. is able to make out a good and marketable title to the said estate and premises if he thinks proper so to do, but that the said S. B. refuses and declines to make out a good and marketable title to the said estate and premises, notwithstanding your orator hath required him so to do and

CH. II.

That the estate was put up to sale.

That the estate was bought in.

Treaty for purchase by private contract.

Agreement entered into.

Payment of deposit.

Possession delivered to plaintiff.

Pretence that vendor is unable to make out a marketable title.

Charge the contrary.

CH. II. offered to pay him the residue of the purchase-money upon having the title made out and a proper conveyance of the said premises executed to your orator his heirs and assigns by the said S. B. And your orator charges, that the whole of the residue of his purchase-money of the premises hath been ready and unproductive in his hands for completing the said purchase from the time it ought to have been completed by the terms of the said agreement. All which actings, refusals, and pretences, &c. &c. (*see form No. 22, p. 5*), and more especially, that the said S. B. may in manner aforesaid answer and set forth.

And that the residue of the purchase-money has remained unproductive.

Interrogatories.

Whether he was not seised and possessed of or otherwise well entitled unto the said estate with the appurtenances thereto adjoining or belonging and the inheritance in fee simple thereof: And whether, being so seised and entitled as aforesaid, he did not at the time hereinbefore in that behalf mentioned, or at some other, and what time, cause all the said estate and hereditaments to be put up to sale by public auction, by the said Mr. W. at ———, in three lots, pursuant to printed particulars and conditions of sale previously advertised and published thereof: And whether the said premises were not bought in by him the said defendant at the time of the said sale, or how otherwise; And whether your orator did not in or about the said month of April, or when else, enter into a treaty with the said defendant for the absolute purchase of the same estate and premises together with the timber and other trees, fixtures, and other effects in and about the same, discharged from all incumbrances, at or for the price or sum of \$ 2,900, or at some other and what price; And whether the said defendant did not agree to accept the said sum of \$ 2,900 as the consideration for the said estate and premises; And whether thereupon such agreement in writing of such date, or of or to such purport and effect as hereinbefore in that behalf mentioned, was not duly entered into and signed by the respective solicitors for your orator and the said defendant in the name and on the behalf of your orator and the said defendant, or how otherwise; And whether your orator did not previously to the signing of the said agreement pay the said defendant the sum of \$ 500 as a deposit and in part of his said purchase-money or sum of \$ 2,900; And whether the said defendant hath not since delivered up possession of the said purchased premises to your orator; And whether your orator hath not always been ready and willing to perform his part of the said agreement, and on having a good and marketable title shown to the said estate and premises and a conveyance of the fee simple thereof discharged of all incumbrances made to him, to pay the residue of the said purchase-money or sum of \$ 2,900 to the said defendant; And whether the said defendant doth not, and why, refuse to perform his part of the said agreement;

And whether the defendant is not able to make a good and marketable title to the said estate and premises, and if not, why not; And whether he doth not, and why, decline or refuse to make a good and marketable title to the said premises; And whether your orator hath not required him so to do, and made such offer to him as in that behalf aforesaid, or to that, or the like, or some, and what, other purport or effect; And whether the whole of the residue of the purchase-money of the said premises hath not been ready and unproductive in the hands of your orator for completing the said purchase from the time the same ought to have been completed by the terms of the said agreement, or from some, and what, other time; And that the said defendant may be decreed specifically to perform the said agreement entered into with your orator as aforesaid, and to make a good and marketable title to the said premises, your orator being ready and willing, and hereby offering specifically to perform the said agreement on his part, and upon the said defendant's making out a good and marketable title to the aforesaid estate and premises and executing a proper conveyance thereof to your orator pursuant to the terms of the said agreement, to pay to the said defendant the residue of the said purchase-money or sum of \$2,900. And that your orator may have such further and other relief in the premises as to your honors shall seem meet and the nature of this case may require. May it please, &c. (See form No. 31, p. 8.) *Pray subpoena against S. B.*

IV. Bill by first vendee against vendor and a subsequent purchaser from him, for the specific performance of an agreement entered into by the vendor with the plaintiff for the sale of an estate, charging the subsequent purchaser with notice, and praying that he may surrender the estate to the plaintiff, or (in the alternative), if he had no notice, then that the vendor may account for the difference in price. Praying also for an injunction to restrain the defendants from bringing an ejectment.

To, &c.

Humbly complaining sheweth unto your honors your orator A. B. of, &c., That J. D. of, &c., one of the defendants hereinafter named, was in and before the month of ———, seised to him and his heirs of a messuage, &c. And your orator further sheweth, that the said J. D. being desirous to dispose of the said estate entered into an agreement with your orator for the sale thereof to him, and which agreement was reduced into writing and signed by the said defendant J. D. and your orator, and is in the words and figures or to the purport and effect following, that is to say (*stating the agreement verbatim*). As by the said memorandum of agreement when produced

The agreement for sale.

CH. II. will appear. And your orator further sheweth unto your honors, that Plaintiff offered to pay the purchase-money. in the said month of ———, and before the day fixed for completing the said agreement, your orator called upon the said J. D. and offered to pay to him the said purchase-money for the said house and premises. And your orator further sheweth, that he hath repeatedly applied to the said J. D. and hath requested him specifically to perform his aforesaid contract. And your orator well hoped that the said defendant J. D. would have complied with such your orator's reasonable requests as in justice and equity he ought to have done. But now so it is, may it please your honors, that the said J. D. combining and confederating to and with T. R. C. of, &c. (*see form No. 20, p. 4*), absolutely refuses so to do, and the said J. D. hath since actually sold the said messuage and premises to the said defendant T. R. C. at an advanced price, and hath surrendered the same to the use of the said T. R. C. his heirs and assigns, and the said T. R. C. hath been admitted upon such surrender. And the said defendant J. D. sometimes pretends, &c. Whereas your orator expressly charges the contrary thereof to be the truth. And your orator further charges, that before the said surrender was made by the said J. D. to the use of the said T. R. C. as aforesaid, and before the said T. R. C. paid his purchase-money for the same, if he has in fact paid such purchase-money, the said T. R. C. had some notice or intimation, or some reason to suspect or believe, that he the said J. D. had entered into an agreement with your orator for the sale of the said premises to your orator; and in particular your orator charges that the said T. R. C. carries on the business of a brewer, in copartnership with W. & H. and that the said W & H. were both informed by your orator of his said agreement, and your orator actually delivered the said agreement to the said H. previously to the said surrender to the said T. R. C. or to the payment of his purchase-money, and the said W. & H. or one of them acted as the agent or agents of the said T. R. C. in the treaty with the said J. D., or were in some manner employed or took some part therein on the behalf of the said T. R. C. And the said W. & H., or one of them, gave some information or intimation to the said T. R. C. respecting the agreement made by your orator with the said J. D. And the said W. & H. as the partners of the said T. R. C. have some right or interest in the said premises, although the surrender thereof was made as aforesaid to the said T. R. C. alone. And your orator further charges, that the said J. D. hath in some manner indemnified or undertaken to indemnify the said T. R. C. against the claims of your orator in respect of his said agreement, or there is some undertaking between the said J. D. and the said T. R. C. that the said T. R. C. is to be indemnified against such claim. All which actings (*see form No. 22,*

Applica-
tions to
vendor for
specific
perform-
ance.

Pretence
by vendor.

Charge of
notice to
the subse-
quent pur-
chaser.

Evidence
in support
of such
charge.

Charge
that the
subsequent
purchaser
is in some
way indem-
nified.

p. 5, *interrogating to the stating and charging part.*) And that the said defendants may answer the premises: and that the said agreement so made between your orator and the said J. D. as aforesaid, may be specifically performed, and that the said T. R. C. may be decreed to surrender the said messuage and premises to your orator and his heirs, your orator being ready and willing and hereby offering specifically to perform the said agreement in all things on his part and behalf. (Or if it should appear that the said T. R. C. is a purchaser without notice of the said agreement between your orator and the said J. D., then that the said J. D. may account for and pay to your orator the difference between the price stipulated in the said agreement and the sum at which he sold the same to the said T. R. C.) And that the said defendants may in the mean time be restrained from bringing any action of ejectment against your orator in order to turn him out of possession of the said premises. (And for further relief, see form No. 25, p. 6.) May it please, &c. (*Pray subpoena and injunction against J. D. and T. R. C. See forms Nos. 26, 29, p. 6, 7.*)

CH. II.

Prayer.

Amendment upon the coming in of the answer.

V. Bill by lessee against lessor for specific performance of a written agreement for the lease of a house.

To, &c.

Humbly complaining sheweth unto your honors your orator A. B. of, &c. That C. D. of, &c. (the defendant hereinafter named) being or pretending to be seised or possessed of a messuage or tenement situate, &c. and being willing and desirous to let the same, he in the month of ——— proposed and agreed to grant unto your orator a lease of the aforesaid premises with the appurtenances, and thereupon your orator and the said C. D. duly executed or subscribed a certain memorandum or agreement bearing date, &c. (*stating the agreement*). As in and by, &c. And your orator further sheweth that in expectation and confidence that a lease would have been made and executed to him of the said messuage or tenement and premises, pursuant to the terms of the said agreement, your orator hath laid out sundry sums in repair of the said premises to a considerable amount. And your orator further sheweth, that your orator hath been always ready to perform his part of the said agreement and to accept a lease of the said premises pursuant to the terms thereof. And your orator for that purpose caused a draft of a lease to be drawn pursuant to the terms of the aforesaid agreement, and tendered the same to the said defendant for his perusal and approbation, but he refused to accept or peruse the same. And your orator further sheweth, that he hath

Agreement for lease.

Plaintiff laid out sums of money in repairs.

Refusal by defendant to perform the agreement.

CH. II. frequently by himself and his agents applied to the said C. D. and in a friendly manner requested him to make and execute unto your orator a lease of the said message or tenement and premises conformably to the said agreement. And your orator well hoped, &c. But now so it is, &c. (*see form No. 20, p. 4.*) Defendant pretends that no such agreement as aforesaid was ever made or entered into by or between the said defendant and your orator, or any agreement, or that he consented to grant a lease to your orator of the aforesaid message or tenement and premises. Whereas your orator charges the contrary of such pretences to be the truth. And so the said confederate will at other times admit, but then he pretends that he hath always been ready and willing to make and execute a lease of the said message or tenement and premises pursuant to the terms of the said agreement, and in all respects to perform the same on his part.

Applica-
tions.

Pretence
that de-
fendant
never
agreed to
grant a
lease.

Charge the
contrary.

Pretence
that he is
willing to
execute a
lease pur-
suant to the
terms of the
agreement.

Whereas your orator charges the contrary thereof to be the truth. But nevertheless, the said defendant refuses to comply with your orator's aforesaid requests, or to perform or fulfil the aforesaid agreement. All which actings, &c. (*see form No. 22, p. 5, interrogating to the stating and charging parts*). And that the said agreement may be especially performed and carried into execution, and that the said defendant may be decreed to execute a lease of the aforesaid message or tenement and premises to your orator according to the terms of the aforesaid agreement. Your orator hereby offering to execute a counterpart thereof and in all other respects to perform his part of the said agreement. (*And for further relief see form No. 25, p. 6.*) May it please, &c. (*Pray subpoena against C. D. See form No. 26, p. 6.*)

VI. Prayer of a bill by a surety to compel a specific performance of an agreement to execute a mortgage to indemnify the plaintiff from all liability: praying also for a writ of *Ne exeat Regno*.

And that the said A. R. may be decreed specifically to perform the said agreement and to make a mortgage to your orator of the said estate and premises, to indemnify him against the obligation he has entered into in the Admiralty Court as hereinbefore mentioned. And that it may be referred to a Master to settle such conveyance if the parties should differ about the same. And that the said A. R. may be restrained from going out of the jurisdiction of this Honorable Court into parts beyond the seas or out of the jurisdiction of this Honorable Court, and that for that purpose a writ *Ne exeat Regno* under the seal of this Honorable Court may be issued to restrain the said A. R. from going into parts beyond the seas or out of the jurisdiction of this Honorable Court. (*And for general relief.*)

II.

Bills to cancel Agreements, Bills of Exchange, Bonds, and other Instruments. CH. II.

VII. Bill by the acceptor against the drawers, indorser, and holder, to restrain proceedings at law upon an accommodation bill of exchange, and to have the same delivered up to be cancelled.

To the Justices, &c.

Humbly complaining sheweth unto your honors your orator H. B. of, &c. merchant, That your orator previously to the month of ——— had frequently accepted bills of exchange for the accommodation of Messrs. D. W. and J. H. W. then of, &c. And that some time in or about the said month of ——— they applied to your orator to assist them with a loan of his acceptance for a sum of money, and they severally assured your orator that if he would accept or indorse a certain bill of exchange for them, the said D. W. and J. H. W., they could procure the same to be discounted, and that they or one of them would punctually provide your orator with the money to take up the same. And your orator relying upon such promise agreed to accept such bill of exchange to be drawn upon him by the said D. W., and J. H. W. accordingly drew upon your orator a certain bill of exchange for the sum of \$ 280, dated the ——— day of ———, and payable three months after date, which your orator thereupon accepted. And your orator further sheweth unto your honors, that the said bill of exchange having been delivered by your orator to the said D. W. and J. H. W. without any consideration whatsoever had or received by your orator for the same, the said D. W. and J. H. W. ought either to have provided your orator with the money to take up the same when due as they had promised, or else have redelivered the same to your orator to be cancelled: and your orator hoped that the said defendants would have provided your orator with the money to take up the said bill of exchange when the same became due, or else would have redelivered the same or caused the same to have been redelivered to your orator to be cancelled, and that no proceedings would have been had against your orator to recover the amount thereof as in justice and equity ought to have been the case. But now so it is, may it please your honors, that the said D. W. and J. H. W. combining and confederating to and with J. J. of, &c. and T. O. of, &c. and with divers other persons, &c. (*see form No. 20, p. 4*), they the said confederates absolutely refuse to deliver or cause to be delivered up to your orator the said bill of ex-

Application to the plaintiff for the loan of his acceptance.

Plaintiff accepts a bill at three months for \$ 280.

Defendants refuse to deliver up the bill

CH. II. change to be cancelled, and instead thereof the said T. O. hath got into his possession the said bill and hath lately commenced an action at law against your orator to recover the amount thereof, the said confederates or some of them at times giving out and pretending that the said bill of exchange was made and given by your orator to the said D. W. and J. H. W. for a full valuable consideration or considerations in money. Whereas your orator expressly charges the contrary thereof to be the truth, and that your orator never had or received any good or valuable consideration or considerations for the said bill of exchange, and that the same was delivered by him to the said D. W. and J. H. W. for their accommodation, without receiving any consideration or considerations for the same, and upon the firm reliance that they or one of them would supply your orator with the money to take the said bill up when the same became due and payable; And so the said confederates will sometimes admit, but then the said confederate J. J. pretends that he discounted the said bill of exchange for full valuable considerations in money or otherwise at the time when the said bill was indorsed to him, and that when he paid or gave the full valuable consideration or considerations for the same he had not notice that the said bill had been given by your orator in the manner and upon the express stipulations hereinbefore mentioned, or without a full valuable or any consideration received by your orator for the same, and that therefore your orator ought to pay the amount thereof. And the said J. J. further pretends that he indorsed the said bill of exchange to the said T. O. for good and valuable considerations before he the said J. J. received any notice from your orator, and before your orator had requested him to deliver up the same. Whereas your orator charges the contrary of all such pretences to be true, and particularly that the said J. J. did not ever give, pay or allow to the said D. W. and J. H. W., or either of them, the full value or any consideration whatever, for the said bill of exchange; and that the said J. J. had full notice, or had some reason to know, believe, or suspect that the said bill had been given by your orator to the said D. W. and J. H. W. in the manner and upon the express stipulation hereinbefore mentioned, and without any valuable or other consideration having been received by your orator for the same. And your orator further charges, that the said J. J. received the said bill from the said D. W. and J. H. W. to get the same discounted for them, and with an express undertaking on his part to deliver over the money he obtained upon such bill to them the said D. W. and J. H. W., but that he never did procure such bill to be discounted, or if he did he applied the moneys he obtained upon the same to his own use and never paid or delivered over any part thereof to the said D. W. and J. H. W. or either of them. And your orator further

to be cancelled, and defendant T. O. has commenced an action against the plaintiff to recover the amount.

Pretence that the bill was given by the plaintiff for a valuable consideration.

Charge the contrary to be true, and that the same was delivered to the defendants for their accommodation.

Pretence by defendant, J. J., that he discounted the same for a full valuable consideration without notice of the circumstances attending the making of it, and that he indorsed it to the defendant T. O. without notice.

Charge the contrary to be true.

charges that the said J. J. hath received notice from your orator and the said D. W. and J. H. W. of the terms upon which the said bill had been obtained by the said D. W. and J. H. W. and had been required by your orator to deliver up the same to him before he the said J. J. had indorsed the said bill of exchange to the said T. O., and as evidence thereof your orator expressly charges that the said J. J. had the said bill of exchange in his custody, possession, or power on the _____ day of _____, last past; and that the said J. J. did on the _____ day of _____, last offer the said bill of exchange for sale together with other bills to various persons. And your orator further charges that at the time of the said bill of exchange being indorsed or delivered to the said T. O. and of his paying or giving such consideration or considerations (if any were or was paid by him) he knew or had been informed, or had some reason to know, believe, or suspect that your orator and the said D. W. and J. H. W. had never received the full or any consideration for the said bill of exchange, and he well knew or had been informed that your orator had accepted the said bill of exchange for the accommodation of the said D. W. and J. H. W. without having received any consideration for the same. And your orator further charges, that the said T. O. is a trustee for the said bill of exchange for the said confederate J. J., or for some other person or persons whose names he refuses to discover, and that he holds the same for the said confederate J. J., or for such person or persons without having given any consideration or considerations for the same, and that if he receives the amount of the said bill of exchange or any part thereof, he is to deliver over or pay the same to the said J. J. or such other person or persons, and that he is indemnified by the said J. J. or such other person or persons, from all the costs attending the attempt to recover upon the said bill of exchange on which he has brought his said action at law. And notwithstanding the said T. O. got the said bill of exchange into his possession without giving any consideration for the same, yet he threatens and intends to proceed in his action at law, and in case he should recover judgment, to take out execution against your orator for the amount thereof. And your orator further charges that the said several defendants, or some, or one of them, now have or hath or lately had in their or one of their custody, possession, or power, some book or books of account, letters, documents, or writings, from which the truth of the several matters and things aforesaid would appear. And so it would appear if the said defendants would set forth a full, true, and particular account of all such books of account, letters, documents, and writings. All which actings, &c. (*See form No. 22, p. 5, interrogating to the stating and charging parts.*) And that the said defendant T. O. may be decreed to deliver up, and the said

CH. II.

Charge that defendant J. J. had received notice from the plaintiff and the bankrupts.

Evidence in support thereof.

Charge that defendant T. O. had notice that the plaintiff and the bankrupts had not received any consideration.

Charge that defendant T. O. is a trustee.

Charge that defendant T. O. intends to proceed in his action.

Charge as to books, &c.

Prayer.

CH. II. D. W. and J. H. W. and J. J. be decreed to procure, the said bill of exchange to be delivered up to your orator to be cancelled, as having been given by your orator and received by the said D. W. and J. H. W. and the said several defendants without any consideration. And that the said defendants respectively may be restrained by the injunction of this Honorable Court from proceeding in any action at law already commenced against your orator upon the said bill of exchange, and from commencing any other proceedings at law against your orator upon the said bill of exchange to any person or persons. And that your orator may have such further and other relief in the premises as to your honors shall seem meet and the nature of this case may require. May it please, &c. (*See forms Nos. 26, 29, and p. 6, 7.*)
Pray subpœna and injunction against all the defendants.

VIII. Bill by lessee to have an agreement delivered up to be cancelled, by which he gave up the remainder of his lease contrary to his intention, he not being able to read or write: praying also to have the original lease confirmed: also for an account and repayment of the land tax paid by the plaintiff, and for an injunction to restrain the defendant from proceeding in an action of ejectment commenced by him.

To, &c.

Indenture of lease. Humbly complaining sheweth unto your honors your orator W. A. of, &c., That on or about——, a certain indenture of lease was made and duly executed between E. L., then of, &c., and your orator, whereby the said E. L. did, &c. (*stating the lease to the plaintiff*). As in and by the said indenture, to which your orator craves leave to refer, when produced to this Honorable Court will appear. And your orator further sheweth unto your honors, that your orator entered upon and possessed the said farm and lands under and by virtue of the said lease; and that the said E. L. departed this life in or about, &c., and that after his death J. H. of, &c. the defendant hereinafter named, became by purchase or otherwise seised of and entitled to the reversion of the said farm and lands subject to the said lease. And your orator further sheweth, that no notice was ever given to your orator to determine or make void the said lease at the end of—— years from the commencement of the said term of—— thereby demised, pursuant to the proviso therein contained or otherwise, but upon the expiration of such—— years the said J. H. proposed to your orator to enter into a new agreement as to the said farm and lands, giving your orator to understand that the interest of your orator therein was determined. And the said J. H. upon that occasion, as he had frequently done before, expressed great friendship for your

Death of lessor and title of defendant.

Proposal to the plaintiff to enter into a new agreement.

orator, and declared that it was his wish and intention that your orator should continue in possession of his said farm as long as he lived. And your orator further sheweth, that your orator can neither write nor read, and that your orator, fully believing that his interest in the said lease was determined, and that the said defendant, who is a man of fortune, was dealing fairly by your orator, and was not intending to take any advantage of him, your orator consented to enter into the new agreement proposed by the said J. H., and thereupon the said defendant caused such agreement to be reduced into writing by one M. B., and your orator set his mark thereto, but the same was not read over or in any manner explained to him, and such agreement was in the words and figures or to the purport and effect following, that is to say (*To remain one year and pay the land tax which he was not to pay by his lease*). As in and by, &c. And your orator further sheweth unto your honors, that confiding in the said J. H.'s professions of friendship for your orator and in his aforesaid declarations that it was his wish that your orator should continue in his said farm as long as your orator lived, your orator proceeded to expend considerable sums of money in erecting new buildings upon the said farm and lands and in other improvements thereof. And your orator further sheweth that in or about, &c. the said J. H. informed your orator that he must either pay an advanced rent of \$ ——— or deliver up possession of the said premises. And your orator having refused to comply with such unexpected and unjust demand, the said J. H. on or about, &c. caused your orator to be served with a notice to quit the said farm on the ——— day of ———. And your orator further sheweth unto your honors, that after he had received the said notice your orator having complained to one of his relations of the great hardship of being obliged to quit his farm after he had expended so much money in improving it, in consequence of the said defendant's assurances that your orator should continue in it during his life, and having in the course of such conversation mentioned his lease from the said E. L. his said relation desired to see that lease, and upon perusing the same read to your orator the promise therein contained, whereby it appeared that the said lease was not to determine at the end of the first ——— years without ——— months' previous notice. And your orator further sheweth, that he hath since by himself and his agents repeatedly applied to the said J. H. and requested him to deliver up the said agreement of the ——— day of ——— to be cancelled, and to confirm the said indenture of lease of the ——— day of ———, and to return to your orator the land tax which he hath paid in respect of the said farm since the making of the said agreement, and which he was thereby bound to pay, although he was not liable to pay it by the said indenture of

CH. II.

Plaintiff unable to read or write, believing that the lease was determined, and confiding in the defendant, consented to and executed the agreement, which was not read over to him.

Plaintiff expended large sums in repairs.

Defendant demanded an increased rent, with which plaintiff refused to comply, and was served with a notice to quit.

Plaintiff discovered the proviso in the lease whereby the lease was not to determine without previous notice.

Applications to defendant to cancel the agreement, to confirm the lease, and repay the land tax paid by plaintiff.

CH. II. lease ; with which just and reasonable requests your orator well hoped that the said J. H. would have complied as in justice and equity he ought to have done. But now so it is (*see form No. 20, p. 4*).
 Defendant commenced an action in ejectment. And the said J. H. hath commenced an action of ejectment in order to obtain possession of the said premises. And the said defendant sometimes pretends that previously to the making of the said agreement of the ——— day of ——— the said defendant had fully explained to your orator that your orator was entitled to hold the said premises under the said indenture of lease until the end of the term of ——— years therein mentioned, and that your orator was desirous to surrender and determine the said lease. Whereas your orator expressly charges the contrary thereof to be the truth, and that the said defendant never did in any manner explain to your orator or give him to understand that he was entitled to hold the said farm until the end of the said term of ——— years. And the said defendant well knew at the time of making the said agreement of the ——— day of ——— that your orator would not have entered into the same if he had been aware of his rights under the said indenture of lease, and the said defendant for that reason concealed from your orator that he had such rights. And your orator charges that at the time of making the said agreement your orator had not the advice or assistance of any person whatsoever, but acted therein according to the suggestions of the said defendant, supposing he meant to be kind towards him and would deal fairly by him. All which actings, &c. (*see form No. 22, p. 5, interrogating to the stating and charging parts*).

Charge the contrary. Charge that defendant had no notice.

Prayer. And that the said defendant may answer the premises : and that the said agreement bearing date the ——— day of ——— may be decreed to be delivered up to your orator to be cancelled ; and that the said defendant may confirm the said indenture of lease of the ——— day of ———. And that an account may be taken of what your orator has paid for land tax of the said farm since the making of the said agreement, and that the said defendant may be decreed to repay the same to your orator ; and that in the mean time the said defendant may be restrained by the order and injunction of this Honorable Court from proceeding in the said action of ejectment, and from commencing or prosecuting any other proceedings at law against your orator for recovering possession of the said premises. (*And for further relief, see form No. 25, p. 6.*) May it please, &c. (*See form No. 26, and p. 6.*)

III.

Bills to restrain the Infringement of Patents and Copyrights. CH. II.

IX. Bill by the patentee to restrain the infringement of a patent, after verdict in an action at law against the same defendant.

To the Judges of the Circuit Court of the United States for the District of Massachusetts.

A. B. of ———, in the district of ———, machinist, brings this bill of complaint against C. D. of ———, in the district of ———, carpenter. Parties.

And thereupon your orator complains and says, that your orator, a citizen of the United States, being the true and original inventor of a new and useful machine, not known or used before his application for letters patent, did apply to the Commissioner of Patents of the United States for letters patent for such invention; and having fully and in all respects complied with all the requisitions of law in that behalf, and especially having made oath that he verily believed himself to be the true inventor and discoverer of such machine; and having also paid into the treasury of the United States the sum of thirty dollars, and having presented to the said Commissioner a petition setting forth his desire to obtain an exclusive property in the said machine, and praying that letters patent might for that purpose be granted to him; and having also delivered and filed in the Patent Office a written description of his said invention and discovery, and of the manner of using the same, and accompanied the same with drawings thereof and written references, in such full, clear, and exact terms, as to distinguish the same from all other things before known, and so as to enable any person skilled in the art with which the said invention is most nearly connected, to make and use the same, which said description was duly signed by your orator, and attested by two witnesses; and thereupon letters patent for the said invention in due form of law, under the seal of the Patent Office of the United States, signed and countersigned by the proper officers of the United States, and bearing date on the ——— day of ———, A. D. 18 , were granted, issued, and delivered to your orator, whereby was granted and secured to him, his heirs, executors, administrators, and assigns, for the term of fourteen years from the date thereof, the full and exclusive right and liberty of making, constructing, and vending to others to be used, the said machine, which is entitled, in the said letters patent (*here state the description of the invention in the words of the patent*); all of which will more fully appear Application for letters patent.

Grant of the letters patent.

CH. II. in and by the said letters patent, to which, for greater certainty, your orator craves leave to refer. And your orator further shows unto your honors, that heretofore, viz., at the term of this Honorable Court, begun and holden at ———, within and for the District of ———, on the ——— day of ———, in the year ———, your orator impleaded the said defendant in an action at law, for a violation of the exclusive privilege secured to your orator, by the letters patent aforesaid, by using a machine substantially the same in its construction and mode of operation as the said machine of your orator described in the said letters patent, and thereupon, the said defendant having pleaded that he was not guilty in manner and form as your orator had declared against him, and issue being joined thereon, the cause was committed to a jury, who returned their verdict therein upon oath, and found that the said defendant was guilty in manner and form as your orator had declared against him, and assessed damages in the sum of fifty dollars. And afterwards at the same term of the said Court, judgment was rendered on the said verdict in favor of your orator for the aforesaid damages and costs. And your orator has requested the said defendant to desist and refrain from further using the said machine, and to account with and pay to your orator the damages sustained by your orator by reason of the unlawful use of the said machine by the said defendant, or the profits made by such use.

Verdict
against the
defendant.

Judgment.

Request to
desist, &c.

But now so it is, may it please your honors, that the said defendant has used, and still continues to use the said machine, without the license of your orator, and in violation of the right secured by the said letters patent, and refuses to account with and pay over to your orator the profits made by such use; all which is contrary to equity and good conscience.

Persist-
ency of de-
fendant.

To the end, therefore, that the said defendant may, if he can, shew cause why your orator should not have the relief hereby prayed, and may, upon his oath, and according to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the several interrogatories hereinafter numbered and set forth, namely, —

Interroga-
tories.

1. Whether the said letters patent were granted and issued as above stated?
2. Whether the said action was commenced and prosecuted, and the said verdict recovered, as is above stated?
3. Whether he, the said defendant, has made, used, or sold any of the said machines at any time, and when, either before or since the said trial at law, and if so, how many, and with what profit?

And that the said defendant may answer the premises, and that he may be decreed to account for, and pay over to your orator all such

gains and profits as have accrued to him from using, making, or vending the said machine, and that he may be restrained by an injunction issuing out of this Honorable Court, or issued by one of your honors, according to the form of the statute in such case made and provided, from using, making, or vending any one or more of the said machines, substantially the same in its construction and mode of operation as your orator's machine, described in the said letters patent; and that the machine or machines now in possession of the said defendants, or under their control, may be destroyed or delivered up to your orators; and for such further or other relief as the nature of this case may require, and to your honors may seem meet.

CH. II.
Prayer for
injunction
and other
relief.

May it please your honors to grant unto your orator not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpœna, &c. (*As in form No. 26, ante, p. 6.*)

Prayer for
subpœna.

X. Bill by the owner and assignees to restrain the infringement of a patent, where the original patent had been extended by the administrator of the inventor, and after verdict in an action at law against another defendant.

To the Judges of the Circuit Court of the United States for the District of Massachusetts.

William W. Woodworth, of Hyde Park, in the Northern District of New York, Esquire, as he is the administrator of William Woodworth, late of the City of New York, in the Southern District of New York, Gentleman, deceased, and as he is the grantee of certain exclusive privileges, under and pursuant to an act of Congress, as is hereinafter fully set forth, and James G. Wilson, of the said City of New York, Gentleman, and William Washburn and Charles W. Brown, of the City of Boston, in the said District of Massachusetts, carpenters, bring this bill of complaint against

Parties.

And thereupon your orators complain and say, that William Woodworth, above named, a citizen of the United States, being the true and original inventor of a new and useful machine, not known or used before his application for letters patent, did apply to the Secretary of State of the United States for letters patent for such invention; and having fully and in all respects complied with all the requisitions of the law in that behalf, and especially having made oath that he verily believed himself to be the true inventor and discoverer of said machine; and having also paid into the treasury

Applica-
tion for let-
ters patent.

CH. II. of the United States the sum of thirty dollars, and received a receipt for the same, and presented to the Secretary of State of the United States a petition, setting forth his desire to obtain an exclusive property in the said machine, and praying that letters patent might for that purpose be granted to him; and having also delivered and filed in the office of the said Secretary of State a written description of his invention and discovery, and of the manner of using the same, and accompanied the same with drawings thereof, and written references, in such full, clear, and exact terms as to distinguish the same from all other things before known, and so as to enable any other person, skilled in the art with which the said invention is most nearly connected, to make and use the same, which said description was duly signed by the said W. W. and attested by two witnesses; and the said Secretary of State did thereupon cause letters patent to be made out in the name of the United States of America, in due form of law in all respects, bearing date on the twenty-seventh day of December, in the year of our Lord one thousand eight hundred and twenty-eight, whereby was granted to the said W. W., his heirs, administrators, or assigns for the term of fourteen years from the date thereof, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said machine, which is entitled, in the said letters patent, "a new and useful improvement in the method of planing, tonguing, grooving, and cutting into mouldings, or either, plank, boards, or any other material, and for reducing the same to an equal width and thickness, and also for facing and dressing brick, and cutting mouldings on, or facing metallic, mineral, or other substance"; and the said letters patent having been duly approved by the Attorney-General, and signed by John Quincy Adams, the President, and countersigned by Henry Clay, the Secretary of State of the United States, and the said Secretary of State having caused the seal of the United States to be thereto affixed, and the same having been duly recorded, were issued and delivered unto the said William Woodworth, all which will more fully appear in and by the said letters patent, or a copy thereof duly certified by the Commissioner of Patents, to which, for greater certainty, your orators crave leave to refer.

Grant of the letters patent.
Date.
Title.

Death of W. W., and appointment of administrator.

And your orators further shew unto your honors, that afterwards, on or about the ninth day of February, in the year of our Lord eighteen hundred and thirty-nine, the said W. W. departed this life at the city of New York aforesaid, where he was then resident; and thereupon, afterwards, on or about the fourteenth day of February, in the year of our Lord eighteen hundred and thirty-nine, administration of the goods and estate which were

of the said W. W. at the time of his decease, was duly granted by the Surrogate of the County of New York, having jurisdiction in the premises, unto your orator, W. W. W. son, and one of the heirs of the said W. W. deceased, and your orator, W. W. W. thereupon took upon himself that trust. CH. II.

And afterwards, on or about the twentieth day of July, in the year of our Lord eighteen hundred and forty-two, your orator, W. W. W. in his said capacity, made application in writing to the Commissioner of Patents of the United States, setting forth that he desired an extension of the said letters patent and the grounds thereof; and having paid the sum of forty dollars to the credit of the treasury of the United States, and the said Commissioner having caused public notice of such application to be given according to law, and the Secretary of State, and the Commissioner of Patents, and the Solicitor of the treasury of the United States having met, as the board designated by law, for such purpose, on the first day of September, in the year last aforesaid, at the Patent Office in Washington, being the time and place appointed for such meeting in the said public notice, did then and there proceed to hear and consider the said application, and on divers days and times to which such hearing and consideration were duly continued by adjournment, did hear and consider the same, and such proceedings were there and then had, that afterwards, on or about the sixteenth day of November, in the year last aforesaid, the said board did adjudge and certify in writing, that, upon the hearing of the said matter, it appeared to their full and entire satisfaction, having due regard to the public interest therein, that it is just and proper that the term of the said letters patent should be extended, by reason that the patentee, without neglect on his part, had failed to obtain, from the use and sale of his invention, a reasonable remuneration for the time, ingenuity, and expense bestowed upon the same, and the introduction thereof into use, — which said certificate having been duly signed by all the members of the said board, the Commissioner of Patents did thereupon, according to law, renew and extend the said patent, by making a certificate of such extension thereon, for the term of seven years from and after the expiration of the said term of fourteen years, for which the said patent was originally granted; which last-mentioned certificate, together with the said certificate of the said board, having been duly entered of record, your orators crave leave to refer to duly certified copies thereof. Extension
of the term.

Nov. 16,
1842, board
certified,
&c.

And your orators further shew unto your honors, that on or about the second day of January, in the year of our Lord one thousand eight hundred and forty-three, your orator, W. W. W. being satisfied of the truth of the facts stated and set forth in the

CH. II. disclaimer next hereinafter mentioned, did make disclaimer of all that part of the claim which is contained in the said letters-patent which relates to the use of circular saws, for reducing floor plank, and other materials to a width, and the same having been duly filed and recorded in the Patent Office, your orators crave leave to refer to a duly certified copy thereof.

And your orators further shew unto your honors, that on or about the tenth day of January last mentioned, your orator W. W. W. in his said capacity, by a deed bearing date on the said second day of January, but not delivered until after the making and filing of the disclaimer aforesaid, which said deed your orators will here in court produce, and for greater certainty crave leave to refer thereto, conveyed to your orators, Washburn and Brown, the exclusive right to make, use, and vend the said patentee's machines in the counties of Suffolk and Norfolk, and in the towns of Charlestown, Cambridge, Watertown, West Cambridge, Malden, and Rock Bottom, in the County of Middlesex, all in the said District of Massachusetts, limiting, however, the number of machines, to be by them used, sold, and constructed, to fifty, and reserving to your orator, W. W. W. license to construct the said machines, in the territory last mentioned, to be used elsewhere, and the said grant has been duly recorded in the Patent Office at Washington, as is required by law.

And your orators further shew unto your honors, that afterwards, on or about the eleventh day of January, in the year of our Lord one thousand eight hundred and forty-four, your orator, W. W. W. by a deed of that date, which has been duly recorded in the Patent Office at Washington, did grant, assign, and convey to your orator, J. G. W. all the right, title, and interest which your orator W. in his said capacity then had in and to the said exclusive privileges, saving and excepting only the right to make, use, and vend the said patented machines in the State of Vermont.

And your orators further shew unto your honors, that

is now using

Piracy.

of the said machines, substantially the same in construction and mode of operation, as the planing machine in the said letters patent mentioned, the exclusive right to make, use, and vend, which is by law vested in your orators, and that the said defendant used the same for some time past, but how long in particular your orators are not informed and cannot set forth, but pray that the said defendant may discover and set forth the same, and thereby the said defendant and still

infringe upon the exclusive privileges intended to be secured to your orators by the said letters patent. And your orators further shew unto your honors, that heretofore, viz., at the term of this Honor-

Grant to
W., one of
the plain-
tiffs.

CH. II.

able Court, begun and holden at Boston, within and for the District of Massachusetts, on the fifteenth day of October, in the year of our Lord one thousand eight hundred and forty-three, your orators, Washburn and Brown, impleaded one James Gould in an action at law, wherein they declared against him in a plea of trespass on the case, for a violation of the exclusive privileges of your orators, Washburn and Brown, secured to them by the letters patent and grant aforesaid, by using a machine, substantially the same in its construction and mode of operation, as the said planing machine invented by the said William Woodworth; and thereupon the said suit at law having been duly continued from said term, to the term begun and holden at Boston, within and for the said District of Massachusetts, on the fifteenth day of May, in the year of our Lord one thousand eight hundred and forty-four, the said Gould having pleaded that he was not guilty in manner and form as the said plaintiffs have declared against him, and issue being joined thereon, the cause was committed to a jury, who returned their verdict therein upon oath, and found that the said Gould was guilty in manner and form as the said plaintiffs had declared against him, and assessed damages in the sum of fifty dollars. And afterwards, at the same term of the said Court, a motion for a new trial of the said action having been made by the said Gould, and overruled by the Court, judgment was rendered on the said verdict in favor of the said plaintiffs for their aforesaid damages and costs. And your orators have requested the said

Action at
law against
another
party.

to desist and refrain from further Request to desist.

using the said machine, and to account with and pay to your orators the damages sustained by your orators by reason of the unlawful use of the said machine by the said defendant, or the profits made by
by such use.

But now, so it is, may it please your honors, that the said
have actually combined and confederated
with the said James Gould and
or some of them, to resist, embarrass, and destroy the exclusive privileges secured to your orators as aforesaid, and to use the said patented machines without the license of your orators, and in violation of their rights; and the said confederates or some of them, including the said defendants, have held meetings, and entered into agreements, and contributed or promised to contribute, money, for the purposes last aforesaid, hoping so to embarrass and oppress your orators, by protracted and expensive litigation, as to prevent your orators from enjoying their just rights aforesaid, and obtain the use of the said machines without paying any compensation therefor. All which is contrary to equity and good conscience, and in contravention of your orators' just rights in the premises.

Actual
combination.

CH. II.

To the end, therefore, that the said defendants may, if they can, show cause why your orators should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written, they are respectively required to answer ; that is to say : —

Interrogatories.

1. Whether the said letters patent were granted and issued as above stated ?

2. Whether the said letters patent were renewed and extended, as is above stated ?

3. Whether the disclaimer aforesaid was filed, as is above stated ? |

4. Whether the grant by the said William W. Woodworth to the said Washburn and Brown, was made, as is above stated ?

5. Whether the grant by the said William W. Woodworth to the said Wilson, was made, as is above stated ?

6. Whether the said action at law was commenced and prosecuted, and the said verdict and judgment recovered, as is above stated ?

7. Whether the said defendants have at any time, and when, and during what period of time, either severally and each by himself, or jointly with any and what other person or persons, used any planing machine, and where ; and whether or no the same was not substantially the same, in its construction and mode of operation, as the said planing machine of the said William Woodworth, and how the same differed therefrom, if at all ?

8. Whether or no such planing machine was used to plane boards for the use of the said defendants or either of them, or for customers and the public generally, and, if the former, whether or no any, and if any, how much, cost and expense was saved by means of said machine : and, if the latter, how much profit has been realized therefrom, and what quantities of boards or other materials have been so planed, and at or after what rates or prices, and what expenses were incurred, in the operation of planing ?

9. Whether or no the said defendants, or either of them, has entered into any agreement, or has or had any agreement with the said Gould, or any and what other person or persons, to contribute any and what sum of money, or other thing of value, for the purpose of opposing the rights of your orators under the said letters patent, or paying the expenses of lawsuits, or any and what other expenses incurred, or to be incurred, in resisting the said rights under the said letters patent, and whether any and how many meetings have been held, or consultations had, and by and between whom, and when, and where, and whether any writing has been signed, and by whom, and what were its contents, and in whose possession is the original paper ?

And that the said defendants may answer the premises, and that they may be decreed to account for and pay over to your orators all such gains and profits as have accrued to them from using the said machines, since the expiration of the said original letters patent, and that they may be restrained by an injunction issuing out of this Honorable Court, or issued by one of your honors, according to the form of the statute in such case made and provided, from using or vending any one or more of the said machines, substantially the same in its construction and mode of operation as the said patentee's planing machine; and that the machine or machines now in the possession of the said defendants, or under their control, may be destroyed, or delivered up to your orators; and for such further or other relief, as the nature of this case may require, and to your honors may seem meet.

CH. II.
Prayer.

May it please your honors, to grant unto your orators, not only a writ of injunction conformable to the prayer of this bill, but, also a writ of subpœna, directed to

and commanding them, and each of them, to appear and answer unto this bill of complaint, and to do and receive what to your honors shall seem meet.

XI. Bill by the assignee of a patent, after a verdict in an action at law against the same party.

To the Judges of the Circuit Court of the United States for the District of Massachusetts:—

William V. Many, of Albany, in the Northern District of New York, Esquire, as he is the grantee of certain exclusive privileges under and pursuant to an act of Congress as is hereafter fully set forth, brings this bill of complaint against George W. Sizer and Henry Sizer, both of Springfield, in the State of Massachusetts, machinists and iron founders.

And thereupon your orator complains and says, that Samuel Truscott, George Wolf, and James Dougherty, of Columbia, Pennsylvania, citizens of the United States, being the true and original inventors of a new and useful improvement in the mode of making cast-iron wheels, to be used on railroads, and for other purposes, not known or used before their application for letters patent, did apply to the Secretary of State, of the United States, for letters patent for such improvement: and having fully and in all respects complied with all

Truscott,
Wolf, and
Dougherty,
inventors,
&c.

CH. II. the requisitions of the law in that behalf, and especially having made oath that they verily believed themselves to be the true inventors and discoverers of such improvement; and having, also, paid into the treasury of the United States the sum of thirty dollars, and delivered a receipt for the same, and presented to the Secretary of the United States a petition setting forth their desire to obtain an exclusive property in the said improvement, and praying that letters patent might for that purpose be granted to them; and having, also, delivered and filed in the said office of the Secretary of State a written description of their said improvement, and of the manner of using the same, and accompanied the same with drawings thereof and written references in such full, clear, and exact terms, as to distinguish the same from all other things before known, and so as to enable any other person skilled in the art with which the said improvement is most nearly connected, to make and use the same, which said description was duly signed by the said Truscott, Wolf, and Dougherty, and attested by two witnesses; the said Secretary of State did thereupon cause letters patent to be made out in the name of the United States of America in due form of law in all respects, bearing date on the seventeenth day of March, eighteen hundred and sixty-eight, whereby was granted to the said Samuel Truscott, George Wolf, and James Dougherty, their heirs, administrators, and assigns, for the term of fourteen years from the date thereof, the full and exclusive right and liberty of using and vending to others to be used, the said improvement, which is entitled in the said letters patent "a new and useful improvement in the mode of making cast-iron wheels, to be used on railroads, and applicable to other purposes," and the said letters patent having been signed by John Forsyth, Secretary of State, and countersigned by Henry L. Ellsworth, Commissioner of Patent, and the said Secretary of State having caused the seal of the Patent Office to be thereto affixed, and the same having been duly recorded, were issued and delivered to the said Truscott, Wolf, and Dougherty, all which will more fully appear in and by the said letters patent, or a copy thereof, duly certified by the Commissioner of Patents, to which for greater certainty your orator craves leave to refer.

Letters
patent
granted to
Truscott *et*
al. 17
March,
1838.

Truscott &
Dougherty
assign to
Wolf and
Baugher, 3
Aug. 1839.

And your orator further shews unto your honors, that on or about the third of August, in the year eighteen hundred and thirty-nine, the said Samuel Truscott and James Dougherty did, by their deed of that date, assign to the said George Wolf, and one Frederic Baugher, of said borough of Columbia, in the State of Pennsylvania, all the right, title, and interest which they had in the said letters patent, and the invention as secured to them by said letters patent, and for, to, and in the United States of America, for and during the full term for

which said letters patent are or may be granted, reserving, nevertheless, one manufacturing right thereof, in one establishment, to each of them (the Samuel Truscott and James Dougherty), not to be used, erected, or carried on within one hundred miles of the said borough of Columbia, in the county of Lancaster, and State of Pennsylvania. CH. II.

And the said Frederic Baugher did, by his deed, dated the twenty-eighth day of April, eighteen hundred and forty-seven, assign all his right, title, and interest to the letters patent and invention, to the said George Wolf. Baugher to Wolf, 28 Apr. 1847. And the said Samuel Truscott did, by his deed, dated the twenty-sixth day of May, eighteen hundred and forty-seven, assign to the said George Wolf, all his right, title, and interest, in the said reserved right to use the said invention, as set forth in the deed from the said Truscott and Dougherty, to the said Wolf and Baugher, dated the third day of August, eighteen hundred and thirty-nine. Truscott to Wolf, 26 May, 1847.

And afterwards, to wit, on the eleventh day of June, in the year eighteen hundred and forty-seven, by an agreement of two parts, made by and between the said George Wolf and your orator, duly executed and dated on the day and year last aforesaid, the said George Wolf did transfer, assign, grant, sell, release, convey, and confirm to your orator, the said invention, the said discovery, the said improvement, the said letters patent, and the rights, franchises, privileges, and benefits therein and thereby granted, fully, absolutely, and to all and every extent, possible intent, and purpose whatsoever, the said one right to manufacture wheels according to the said patent, reserved by said James Dougherty excepted. Wolf to Many, 11 June, 1847.

And afterwards, to wit, on the eighteenth day of February, eighteen hundred and forty-eight, the said James Dougherty did by his deed of that date (through Samuel Truscott, his attorney, in that behalf duly appointed), transfer, assign, and set over to the said George Wolf, his, the said Dougherty's one manufacturing right, reserved to himself, in and by the said deed from Truscott and Dougherty to the said Wolf and Baugher, dated the third day of August, eighteen hundred and thirty-nine, as aforesaid. Dougherty to Wolf, 18 Feb. 1848.

And the said George Wolf did, by his deed, dated on the eighteenth day of February, eighteen hundred and forty-eight, transfer, assign, and set over to your orator, the said one reserved manufacturing right, last above mentioned, as fully and completely as the same was on the eighteenth day of February, vested in him, the said George Wolf; all which, said letters patent, deeds, and other instruments of assignment, hereinbefore mentioned, have been, and are duly recorded in the Patent Office of the United States at Washington, whereby your orator became possessed of and entitled to the said letters patent, and to all the property, right, and interest in the said invention, under and Wolf to Many, 18 Feb. 1848.

CH. II. by virtue of said letters patent, and the subsequent deeds and other instruments of assignment to your orator, as aforesaid.

Defendants are infringing on the rights, &c. And your orator further shews unto your honors, that said George W. Sizer and Henry Sizer of Springfield, State of Massachusetts, aforesaid, are now manufacturing and selling great numbers of railroad wheels, constructed according to the mode set forth in the said letters patent, the exclusive right to which mode of constructing said wheels is, by law, vested in your orator, and that the said defendants have been manufacturing and selling the same for some time past, but how long, in particular, your orator is not informed, and cannot set forth, but prays that the said defendants may discover and set forth the same; and thereby the said defendants have and still do infringe upon the exclusive privileges intended to be secured to your orator in the said letters patent.

Action by plaintiff v. defendant, Oct. term, 1848, U. S. C. Court, Boston. And your orator further shews unto your honors, that heretofore, viz., at the term of this Honorable Court, begun and holden at Boston, within and for the District of Massachusetts, on the fifteenth day of October, in the year of our Lord eighteen hundred and forty-eight, your orator, William V. Many, impleaded George W. Sizer and Henry Sizer in an action at law, wherein he declared against them in a plea of the case for a violation of the exclusive privileges of your orator, William V. Many, secured to him by the letters patent, and grants, and assignments, aforesaid, by manufacturing and selling railroad wheels substantially the same in their construction as the said railroad wheels manufactured by your orator, pursuant to the description or specification contained in said letters patent. And the said George W. and Henry Sizer having pleaded that they were not guilty in manner and form as the said plaintiff had declared against them, and issue being joined thereon, the cause was committed to a jury, who returned their verdict therein, upon oath, and found that the said George W. and Henry Sizer were guilty in manner and form as the said plaintiff had declared against them, and assessed damages in the sum of seventeen hundred dollars and upwards.

Verdict for plaintiff.

Plaintiff has requested defendants to desist, &c.

And your orator has requested the said George W. Sizer and Henry Sizer to desist and refrain from further manufacturing or selling said railroad wheels, and to account with and pay to your orator the damages sustained by your orator, by reason of the unlawful manufacture of the said railroad wheels, by the said defendants, or the profits made by them, by such manufacture and sale.

But now, so it is, may it please your honors, that the said defendants have confederated to use the said improvement in the manufacture of railroad wheels, without the license of your orator, and in violation of his rights, do without his license, continue to use the same, all which is contrary to equity and good conscience.

To the end, therefore, that the said defendants may, if they can, shew cause why your orator should not have the relief hereby prayed, and may upon their several and corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written, they are respectively required to answer, that is to say : —

1. Whether the said letters patent were granted and issued as above stated ?

2. Whether the several grants, or assignments, to the several persons hereinbefore mentioned, were made as is above stated ?

3. Whether the said action at law was commenced and prosecuted, and the said verdict was recovered, as is above stated ?

4. Whether the said defendants have, at any time, and when, and during what period of time, either severally, and each by himself, or jointly, with any, and what other person or persons, manufactured or sold any of said railroad wheels, and when, and whether or no the same were not manufactured of substantially the same form, and in substantially the same manner, as the said railroad wheels manufactured by the said plaintiff (your orator), and how the same differed therefrom, if at all ?

5. Whether or not such railroad wheels were manufactured or sold for the use of the public generally, and if so, how much profit has been realized therefrom, and how many, and what quantity of such wheels have been manufactured or sold by the defendants, or either of the defendants, and at what prices ?

And your orator further prays, that each of the said defendants may be required to well and truly make answer separately to each and several of the above-noted interrogatories.

And that the said defendants may answer the premises, and that they may be decreed to account for and pay over to your orator all such gains and profits as have accrued to them from using the said improvement, since the issuing of the said letters patent ; and that they may be restrained by an injunction issuing out of this Honorable Court, or issued by one of your honors, according to the form of the statute in such case made and provided, from manufacturing or selling any more of the said railroad wheels, substantially the same in their construction, as the said railroad wheels, manufactured by your orator, according to the said letters patent ; and for such further or other relief as the nature of the case may require and to your honors may seem meet.

May it please your honors to grant unto your orator, not only a writ of injunction conformable to the prayer of this bill, but also a

CH. II. writ of subpœna, directed to George W. Sizer and Henry Sizer, and commanding them, and each of them, to appear and answer unto this bill of complaint, and to do and receive what to your honors shall seem meet.

XII. Bill by the assignee of a copyright to restrain an infringement.

To the Honorable, the Justices of the Circuit Court of the United States for the District of Massachusetts :—

Parties. C. C. Little, of Cambridge, in the said District, and J. Brown, of Watertown, in the said District, both booksellers and publishers, trading in Boston, in the said District, as copartners, under the style and firm of L. and B., bring their Bill against B. B. Muzzey, of Boston, aforesaid, bookseller and publisher.

Title of the
plaintiffs to
the book
infringed.

And thereupon your orators complain and shew unto your honors, that in the year one thousand eight hundred and thirty, Octavius Pickering, then of Boston, aforesaid, counsellor at law, composed, and printed, and published a certain book, entitled, "Reports of Cases argued and determined in the Supreme Judicial Court of Massachusetts. By Octavius Pickering, Counsellor at law. Volume VIII.": being the eighth volume of a certain series of books, commonly known and called as Pickering's Reports: the title of which said book was duly entered for the securing of the copyright thereof, by the said Octavius Pickering, according to the act of Congress, on the twenty-first day of June, in the year one thousand eight hundred and thirty, in the Clerk's office of the District Court of the United States, for Massachusetts District, as by the record of such entry remaining in the said Clerk's office fully appears: and your orators aver, that thereupon the said Octavius Pickering did all other acts and things required by law for the securing of his said copyright in the book aforesaid, and continued, by his agents, duly authorized, to publish and sell the same exclusively of all other persons, under the protection of the copyright thus secured to him, until his assignment thereof, hereinafter mentioned.

And your orators further shew, that in the year one thousand eight hundred and forty-one, the said Octavius Pickering, then of Boston, counsellor at law, composed, and printed, and published, a certain other book, entitled, "Reports of Cases argued and determined in the Supreme Judicial Court of Massachusetts. By Octavius Pickering, Counsellor at Law. Volume XIX.": being the nineteenth volume of the same series of books commonly known and called as Pickering's Reports, the title of which said book was duly entered, for the securing of the copyright thereof, by the said Octavius Pickering, accord-

ing to the act of Congress, on the second day of August, in the year one thousand eight hundred and forty-one, in the Clerk's office of the District Court of the United States for the District of Massachusetts, as by the record of such entry remaining in the said Clerk's office fully appears : and your orators aver, that thereupon, the said Octavius Pickering did all acts and things required by law for the securing of his said copyright in the book last mentioned, and continued, by his agents duly authorized, to publish and sell the same, exclusively of all other persons, under the protection of the copyright thus secured to him, until the assignment thereof hereinafter mentioned.

And your orators further shew, that afterwards, to wit, on the sixth day of December, in the year one thousand eight hundred and forty-four, the said Octavius Pickering, by his deed duly acknowledged and recorded, sold, assigned, and conveyed unto your orators all his right, title, and interest in and to his said copyrights of both the books aforesaid, as by the record of the said deed remaining in the said Clerk's office fully appears : and thereupon your orators, as proprietors of the said copyrights, have continued to publish and sell the said books, exclusively of all other persons, until the committing of the grievances hereinafter complained of.

And your orators further shew, that in the year eighteen hundred and forty-four, Theron Metcalf, of Boston, aforesaid, counsellor at law, composed a certain other book, entitled " Reports of Cases argued and determined in the Supreme Judicial Court of Massachusetts. By Theron Metcalf. Volume V. " : and while the same still remained in manuscript, to wit, on the nineteenth day of January, in the year last aforesaid, the said Theron Metcalf, by his deed duly executed, sold, assigned, and transferred to your orators, the manuscript of the said book, with a right to take out a copyright in their own names. And afterwards, to wit, on the eleventh day of March, in the year last aforesaid, your orators having caused the said book to be printed, and being about to publish the same, duly entered the title thereof, for the securing of the copyright thereof, in their own names, as proprietors, according to the act of Congress, in the Clerk's office of the District Court of the United States for Massachusetts District, as by the record of such entry remaining in the said Clerk's office, fully appears : and your orators aver that thereupon they did all other acts and things required by law, for the securing of their said copyright in the book last aforesaid, and have continued to publish and sell the same, exclusively of all other persons, under the protection of the copyright thus secured to them, until the committing of the grievances hereinafter complained of.

And your orators further shew, that the exclusive right to print,

CH. II.

publish, and sell the several books aforesaid, and the whole and every part of the contents of each of them, was and is vested in your orators; that your orators have expended large sums of money in preparing and printing editions of the said books, and have always had, and still have, a sufficient number of copies of the same on hand for sale to the public at a reasonable price, and have always received, and still ought to receive, the profits thereof:

Infringe-
ment.

Nevertheless, the said B. B. M., contriving and intending to injure your orators, without the license or consent of your orators, on the twenty-third day of December, in the year eighteen hundred and forty-seven, at his shop in the city of Boston, published and exposed to sale, and sold, and still continues to expose to sale, divers, to wit, fifty copies of a book entitled (*here insert the title of the book complained of, verbatim*); knowing the same had been printed without the consent of your orators: which said book, so exposed to sale, and sold by the said M., is a violation and infringement of the said several copyrights of your orators, in that it contains from the three hundred and twenty-ninth page thereof, to the three hundred and thirty-sixth page thereof, inclusive, matter adopted, copied, and taken verbatim, from the aforesaid book of your orators, called the fifth volume of Metcalf's Reports, commencing with the words, "Shaw, C. J. This is a suit in Equity," and ending with the words, "distributed according to law"; and, also, in that it contains, from the four hundred and seventeenth page thereof, to the four hundred and nineteenth page thereof, inclusive, other matter adopted, copied, and taken verbatim from the aforesaid book of your orators, called the nineteenth volume of Pickering's Reports, commencing with the words, "Morton, J. When this case was before the Court," and ended with the words, "judgment according to the Auditor's report"; and, also, in that it contains from the four hundred and twenty-fourth page thereof, to the four hundred and twenty-fifth page thereof, inclusive, other matter adopted, copied, and taken verbatim from the aforesaid book of your orators, called the eighth volume of Pickering's Reports, commencing with the words, "Parker, C. J., delivered the opinion of the Court," and ending with the words, "Judgment according to verdict"; and, also, in that it contains from the five hundred and fiftieth page thereof, to the five hundred and fifty-third page thereof, inclusive, other matter, adopted, copied, and taken verbatim from the aforesaid book of your orators, called the fifth volume of Metcalf's Reports, commencing with the words, "To the Honorable the House of Representatives," and ending with the words, "Right to vote in any Town"; all which said matter, so adopted, copied, and taken in the book, sold, and exposed to sale, by the said M., was first published in the several books,

the copyrights of which are now vested in your orators, as aforesaid; and the exclusive right to publish and sell the same, and to take the profits thereof, belongs to your orators by virtue of such copyrights.

And your orators further shew, that they are informed and believe, that the said B. B. M. did not print the said book hereinbefore complained of, but that the same was printed and published by certain booksellers in Philadelphia, trading under the style and firm of T. & J. W. J.: that, as soon as your orators were aware that the said book was a violation and infringement of the said several copyrights of your orators, your orators wrote to the said T. & J. W. J. the letter hereto annexed and marked A, to which your orators crave leave to refer as part of this bill, informing them thereof, and that after your orators had thus complained to the said T. & J. W. J. of this infringement, and informed them of your orators' intention to pursue their legal remedy in the premises, the said T. & J. W. J. consigned to the said M. for sale, or sold to the said M., the copies of the said book so published, exposed to sale, or sold by the said M., at his shop, as aforesaid. And your orators pray that the said M. may discover and set forth, whether he received the said copies from the said T. & J. W. J., and any letter or letters which he may have received from the said T. & J. W. J. concerning them or the sale thereof.

And your orators further shew, that in consequence of the said M. having so exposed to sale and sold, and of his continuing to expose to sale and to sell the book hereinbefore complained of, the sales of your orators' said books have been hindered and rendered less in number than they would otherwise have been; and that your orators will suffer a still greater diminution of their sales, and a still greater loss of their lawful and rightful profits on their said books, if the said book hereinbefore complained of, shall continue to be sold, or exposed to sale, by the said M., or any other person.

All which acts and doings of the said M. are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators in the premises. In consideration whereof, and forasmuch as your orators are without adequate remedy, save in a Court of Equity, your orators pray this Honorable Court to issue a writ of subpoena in due form of law, and according to the course of this Honorable Court, directed to the said B. B. M., commanding him at a certain day, and under a certain penalty to be therein specified, to appear before this Honorable Court, to answer upon oath all and singular the matters and things hereinbefore set forth and complained of, and especially to answer and set forth,

1. Whether he has sold any and how many copies of the said book

CH. II. hereinbefore complained of, and at what prices, and how many copies thereof he has now on hand?

Interrogatories. 2. Whether the said book does not contain matter adopted, copied, and taken verbatim from the said eighth and nineteenth volumes of Pickering's Reports, and the said fifth volume of Metcalf's Reports, as hereinbefore specified and described?

3. Whether your orators are not the proprietors of the several copyrights of the said eighth and nineteenth volumes of Pickering's Reports, and the said fifth volume of Metcalf's Reports.

Prayer. And that the said M. may be restrained by injunction from selling or exposing to sale, or causing, or being in any way concerned in the selling, or exposing to sale, or otherwise disposing of any other copy or copies of the book hereinbefore complained of; and that he be ordered to render an account of the copies of the same that have been sold, and to pay over the profits of such sales to your orators; and that he be ordered to surrender and deliver up to your orators, all the copies of the said book that he has on hand, and be decreed to pay to your orators their costs in this suit; and that the exclusive right and privilege of your orators to print, publish, and sell their said books, and the matters hereinbefore charged to have been piratically taken from them as aforesaid, may be established, and that your orators may have such other and further relief in the premises as to this Honorable Court may seem meet, and as the nature and circumstances of the case may require.

XIII. Bill by the author and proprietor of a copyright, to restrain an infringement.

To the Honorable the Judges of the Circuit Court of the United States, for the District of Massachusetts.

Parties. F. E., of Boston, in the State of Massachusetts, Esquire, a citizen of the said State, brings this, his bill against C. D., of New York, in the State of New York, Gentleman, and a citizen of the said State of New York, and A. S. B. of Philadelphia, in the State of Pennsylvania, bookseller, and a citizen of said State of Pennsylvania, the said D. and B. being partners in trade, jointly negotiating in the business of booksellers, under the firm of A. S. B. and Company, of Philadelphia aforesaid.

And thereupon your orator complains and says, that he is a citizen of the United States, and is the author and proprietor of a certain book, entitled "Emerson's First Part, The North American Arith-

metic, Part First, containing Elementary Lessons, by Frederic Em-
 erson," and that on the twenty-eighth day of August, in the year of
 our Lord one thousand eight hundred and twenty-nine, certain per-
 sons doing business under the firm of Lincoln & Edmands, to wit,
 Ensign Lincoln and Thomas Edmands, both citizens of the said
 United States, and resident in said District of Massachusetts, pub-
 lished the above-mentioned book, composed by your orator, who, at
 the same time, for a good and valuable consideration to him paid by
 said Lincoln and Edmands, did by his agreement in writing, agree
 with them, that they should, as hereinafter mentioned, be the exclu-
 sive proprietors and publishers of said work, and take out a copyright
 in their names for the same, a printed copy of the title of which
 book the said Lincoln and Edmands, on the twenty-eighth day of
 August, A. D. eighteen hundred and twenty-nine, they being then
 and there such exclusive proprietors of said book, and solely entitled
 to a copyright of the same, deposited in the office of the Clerk of
 the District Court of the United States for the said District of Massa-
 chusetts, before the said book had been published, which title was
 on that day recorded in the said office of the Clerk of said District
 Court, and the said Lincoln and Edmands caused to be published
 and inserted in the page immediately following the title-page of
 said book, a copy of the record of the certificate of the Clerk of the
 said District Court of the United States, that the title of said book
 had been deposited in the office of said Clerk on the day last afore-
 said; and within two months from the date of said certificate, said
 Lincoln and Edmands caused a copy thereof to be published in a
 newspaper printed in Boston, in said District, for the space of four
 weeks, and within six months from the publication of said book,
 caused a copy of the same to be delivered to the Secretary of State
 of the United States, to be preserved in the office of said Secretary,
 and took all the measures and steps required by law for securing said
 copyright; and by, and in virtue of the Statutes of the United
 States, they, the said Lincoln and Edmands, and their assigns, have
 had the lawful and exclusive right of publishing said book, from the
 time of the date of said certificate, until and at the filing of this
 Bill.

And your orator further shews, that on the 17th day of February,
 in the year of our Lord 1835, by a certain assignment, in writing,
 of that date, for a good and valuable consideration, the said Thomas
 Edmands and one Charles D. Gould, administrator of the said Ensign
 Lincoln, then deceased, conveyed and assigned to your orator, all
 their, the said Lincoln and Edmands' right, interest, and property in
 the said book, and the copyright thereof, and your orator thereby
 became the sole legal proprietor of said copyright, and ever since the

CH. II.

 Plaintiff's
 title as
 author of
 the book in-
 fringed.

CH. II. date last aforesaid, has been, and now is, such sole proprietor, having the sole and exclusive right of printing, publishing, and exposing to sale, and selling copies of the said work as aforesaid.

And your orator further says, that afterwards, to wit, in the year of our Lord eighteen hundred and thirty-eight, he revised and amended his said book, and in the same year took out a copyright thereof in his own name, he being then and there the author and exclusive proprietor of the said book, and of the said revisions and amendments thereof; which said revised and amended book was entitled "Emerson's First Part, The North American Arithmetic, Part First, For Young Learners. By Frederic Emerson."

And your orator further says, that before the publication of the said revised and amended book, he deposited a printed copy of the said title thereof, in the Clerk's Office of the District Court of the said District of Massachusetts, and did, within three months from the publication thereof, cause to be delivered a copy of the same book to the said Clerk, and did also give information of the copyright thereof being secured by causing to be inserted in the several copies of the same, on the page immediately following the title-page thereof, the following words, to wit: "Entered according to Act of Congress, in the year 1838, by Frederic Emerson, in the Clerk's Office of the District Court of the District of Massachusetts."

And your orator further says, that the purpose of both the said editions of his said book, is to teach children the elements of Arithmetic, and that the plan of the lessons therein contained, is his own invention; and that in the execution of his said plan, he has arranged a certain set of tables, in the form of lessons, and the said D. and B., in the construction of a book, hereinafter mentioned, purporting to be composed by said D., have adopted the same arrangement, and of the same tables, and have published the same in their said work, hereinafter mentioned.

Infringe-
ment.

And your orator, in his said book, has also arranged a gradation of examples to precede each table, in such manner as to form with the table, a peculiar and symmetrical appearance of each page, and the said D. and B., in their said book, have adopted the same arrangement, giving the Lessons of the said D.'s book a similar appearance, page for page, to those of the said E.'s book; and farther, that your orator, in his said book, illustrated his Lessons by attaching to each example *Unit Marks*, representing the numbers embraced in the example, which said method of illustration is his own invention; and the said D. and B. have also, in the said book of said D., adopted this method of illustration, in divers lessons contained in said work.

All which will appear by a reference to, and comparison of certain

pages of your orator's book aforesaid, and the said several editions thereof, with certain pages in the said book of said D., to wit: And your orator further shews, that he, being the lawful proprietor of said book, called "Emerson's First Part," and the said copyright thereof, and in possession of the same, and having divers copies of said books on hand, and offered for sale, at a reasonable price, and always having had on hand and offered for sale, at a reasonable price, a sufficient number of copies of said book, and being in the enjoyment of the profits of the same, the said C. D. and A. S. B., on the 20th day of February, in the year of our Lord, 1843, without the consent and allowance of your orator, exposed to sale, and sold fifty copies of the said work, purporting to have been composed by said D., and have at divers times before and since that day, exposed to sale and sold, divers, to wit, 1000 copies of the same work, and still have on hand, and offer for sale, copies of the same, the said work being entitled "First Lessons in Arithmetic, designed for Beginners. By C. D.," which said last-mentioned work, in divers parts thereof, as hereinafter specified, is adopted from the book first above mentioned, composed by your orator, and the printing and selling thereof, and the exposing of the same to sale, are infringements of the said copyright of your orator.

And the said D. and B., at the time of making such sales, and of exposing to sale the said copies of said work of said D., knew that your orator was the author and proprietor of said "Emerson's First Part," and that he had the copyright aforesaid, and they knew the said copies by them so sold, and exposed to sale, to have been copied from the said work of your orator; and knew that the printing, exposing to sale, and selling the same, without the consent of your orator, was an infringement of such copyright; and knew the said copies by them so sold and so exposed to sale, to have been printed and published without the consent of your orator.

And your orator further shews that the said work of said D. is copied and pirated from that of your orator, and is an infringement of your orator's copyright in the particulars hereinbefore set forth and specified.

And your orator further shews, that in consequence of the said D. and B. having so exposed to sale, and sold the said work of said D., the sales of your orator's book have been hindered and rendered less in number than they would have been had not the said D. and B. so exposed to sale and sold said pirated work. (*Pray subpoena and injunction, as in the precedent, ante, p. 42.*)

IV.

CH. II.

Bills by Creditors for Payment of Debts.

XIV. Bill by simple contract creditors against the executors of the deceased debtor, for payment of his debts.

Humbly complaining shew unto your honors your orator, W. B. of, &c. and C. D. of, &c. creditors by simple contract of J. F. late of, &c. deceased, on behalf of themselves and all other the creditors of the said J. F. who shall come in and seek relief by and contribute to the expense of this suit, that the said J. F. at the time of his death was justly and truly indebted unto your orator W. B. in the sum of \$ ——— and upwards, for goods sold and delivered, and moneys paid, laid out, and expended to and for his use, and that the said J. F. was also justly and truly indebted to your orator, C. D. in the sum of \$ ——— and upwards, for, &c. And your orators further shew unto your honors, that the said J. F. in his lifetime, and at the time of his death, was possessed of, or well entitled unto a considerable personal estate, and being so possessed, departed this life on or about ——— having first duly made his last will, bearing date, &c. and thereby appointed J. M. and C. S. (the defendants hereinafter named) the executors thereof, as in and by the said will, or the probate thereof, to which your orators crave leave to refer when produced to this Honorable Court will appear. And your orators further shew unto your honors that the said J. M. and J. S. duly proved the said will in the proper Court, and undertook the executorship thereof, and possessed themselves of the personal estate and effects of the said testator to a very considerable amount, and more than sufficient to satisfy his just debts and funeral expenses. And your orators further shew unto your honors that the said J. M. and C. S. having possessed themselves of the said testator's personal estate and effects as aforesaid, your orators have made and caused to be made several applications to them the said J. M. and C. S. and requested them to pay and satisfy unto your orators their respective demands, with which just and reasonable requests your orators well hoped that the said J. M. and C. S. would have complied as in justice and equity they ought to have done. But now so it is, &c. (*see form No. 20, p. 4*). And the said defendants pretend that the said testator's personal estate was small and inconsiderable, and hath already been exhausted in the payment of his funeral expenses and just debts. Whereas your orators charge that the said testator's personal estates and effects were more than sufficient to discharge all his just debts and funeral expenses, and so it would appear if the said defendants would set forth a full, true, and particular account of all and

Statement of the debts due to the plaintiffs.

Death of the testator. His will.

Probate by the executors.

Applications to the defendants.

Pretence that the personal estate is exhausted.

Charge that it was more than sufficient to discharge all the debts, &c.

every the personal estate and effects of the said testator come to their or either of their hands or use, and also a full, true, and particular account of the manner in which they have disposed of or applied the same, but which they refuse to do. All which actings, &c. (*see form No. 22, p. 5, interrogating to the stating and charging parts*). And that an account may be taken of the moneys due to your orators in respect of their said several demands, and of other the debts owing by the said J. F. at the time of his death; and that if the said defendants shall not admit assets of the said testator, then that an account may also be taken of the personal estate and effects of the said testator possessed or received by or by the order or for the use of the said defendants, or either of them, and that such personal estate may be applied in a due course of administration. And that your orators and the said other unsatisfied creditors by simple contract of the said testator may have such further or other relief in the premises as to your honors shall seem meet, and the circumstances of this case may require. May it please, &c. (*see form No. 26, p. 6*).

CH. II.

Prayer.

Pray subpoena against J. M. and C. S.

XV. Bill by simple contract creditors against the executor, &c., for payment of debts, and marshalling assets.

Humbly complaining shew unto your honors your orators A. B. and C. D. of, &c. (creditors of S. M., late of, &c. deceased), on behalf of themselves, and all other unsatisfied creditors by simple contract of the said S. M., who shall come in and contribute to the expense of this suit. That the said S. M. was in his lifetime, and at his death, indebted to your orators, as copartners, in the sum of \$ ———, for business done by your orators for him, as his agents. And the said S. M. was also, at his death, indebted to several other persons by simple contract or otherwise, in several other sums of money. And your orators further shew unto your honors, that the said S. M. was, in his lifetime, and at the time of his decease, seised in fee simple of divers real estates, situate at ——— (subject, as it is alleged, to an annuity of \$ ——— payable to E. the wife of I. C. of, &c. who, together with her said husband, are two of the defendants hereinafter named); and was also possessed of considerable personal estate, and being so seised and possessed, duly made and published his last will and testament in writing, bearing date the ——— day of ——— (executed by him the said S. M., and attested in such manner as by law is required for devising real estates), whereby he devised all his said real estates to the said E. C. then E. F., for her life, with remainder to R. B. of, &c. (another defendant hereinafter named) then, and now an infant under the age of

Debts due from the testator at the time of his death.

Will of the debtor, devising and bequeathing real and personal estate as therein mentioned, charged with the payment of debts.

CH. II. twenty-one years, his heirs and assigns forever ; and the said testator thereby gave all his personal estate, after payment of his funeral and testamentary expenses and debts, with which he charged all his said personal and real estates, to the said I. C., who he thereby appointed sole executor of his said will, as by the said will and the probate copy thereof respectively, reference being thereunto had, will more fully appear. And your orators further shew unto your honors, that

Death of testator. the said testator departed this life on or about ———, without altering or revoking his said will, leaving I. M. of, &c. another defendant hereinafter named, his uncle and heir-at-law, and also leaving the said E. C., then E. F., and I. C. him surviving; and the said I. C. soon after the decease of the said testator, duly proved the said will in the proper Court, and took upon himself the execution thereof, and under and by virtue of such probate, possessed himself of all, or most of the personal estate of the said testator. And your orators further shew unto your honors, that the said E. C. upon, or soon after the death of the said testator, entered upon, and took possession of all his said real estates, and continued in possession thereof, until her marriage with the said I. C. (which happened some time ago), and, ever since that time, the said I. C. in right of the said E. C. hath been, and now is, in the possession or receipt of the rents and profits of all the said estates devised to the said E. C. for her life. And your orators further shew unto your honors, that the whole of your orators' said debts remain due and owing to them respectively, and they have therefore frequently requested the said I. C. to account with your orators, and such other unsatisfied creditors as aforesaid, for the personal estate of the said testator, and to apply the same in payment of their respective demands; and your orators hoped that the said personal estate would have been duly applied towards payment of the said debts, so far as the same would extend, and that any deficiency therein would have been supplied out of the said real estate: But now so it is, may it please your honors, the said I. C. combining with the said E. his wife, R. B., and I. M. (*charge confederacy as in form No. 20, p. 4*), has absolutely refused to pay any part of the said debts due to your orators as aforesaid, or the demand of such other unsatisfied creditors as aforesaid, pretending that all the said testator's personal estate received by him was not sufficient to satisfy the bond, and other specialty debts owing by the said testator, at the time of his death; and that he hath applied the same in discharge of such debts. Whereas your orators charge, that the said testator's personal estate was more than sufficient to satisfy all his funeral and testamentary expenses and debts, as well those by specialty as by simple contract, and that it would so appear, if the said I. C. would set forth such account

Proof of his will. Possession of the testator's personal estate, and entry upon his real estate. Marriage of the devisee of the real estate and the executor. The testator's debts still unpaid. Applications. Pretence of the insufficiency of the testator's personal estate for payment of his specialty debts. Charge of the sufficiency thereof;

thereof as hereinafter required, but which he refuses to do; and your orators further charge, that if the said personal estate be insufficient for the payment of the specialty and simple contract debts of the said testator, then that the said specialty debts ought to be paid out of the said testator's real estates; and if the said personal estate, or any part thereof, has been applied in payment of any such specialty debts, then that your orators, and the other creditors by simple contract of the said testator, are entitled in equity to stand in the place of such specialty creditors against the said real estates, and to have a satisfaction thereout, for so much of the personal as has been, or shall be exhausted by payment of such specialty debts, and to have the said real estates, or a sufficient part thereof sold for that purpose, and also for the purpose of supplying any deficiency in the said personal estate, for the payment of any of the debts so charged by the said testator on his said real and personal estate as aforesaid: But the said I. C. and E., his wife, not only refuse to join in any such sale, but the said I. C. in right of the said E., his wife, claims to be interested in the said real estates, under the said devise thereof, unto the said E. C. for her life, and also on account of the said annuity of \$ ——— payable to the said E. C. as aforesaid, and oppose a sale of any part thereof, for the purposes aforesaid. And the said R. B. alleges that he is an infant, and therefore cannot join in any such sale as aforesaid; and the said I. M. as heir-at-law of the said testator, disputes the validity of the said will, and refuses his concurrence, if necessary, in any such sale as aforesaid. (*Interrogate to the material parts of the statement and charges of this bill.*) And that the said defendants I. C. and E., his wife, may set forth in manner aforesaid, a particular rental or account, of all and singular the real estates of which the said S. M. was seised of or entitled to at the time of his death; and where the same and every part thereof are, or is situate, and to whom let, and at what yearly, or other rent or rents; and also a particular account of the rents and profits of the said estates, received by or for the use of them, or either of them, since the death of the said testator. And that the said defendant I. C. may also set forth an account of the said testator's personal estate, and the amount and particulars thereof possessed by him, and what part thereof is now in his hands, and how much thereof has been disposed of by him in payment of the said testator's funeral and testamentary expenses and debts; and what debts, and to what amount, still remain unsatisfied; and whether they are debts by simple contract or specialty. And that an account may be taken, by and under the decree of this Honorable Court, of the said debt so due to your orators as such copartners as aforesaid, and of all other debts which were owing by the said testator at the

CH. II.

but if not,
that the as-
sets should
be mar-
shalled.

Discovery.

Prayer.

CH. II. time of his death, and which still remain unpaid. And that an account may also be taken of the said testator's personal estate and effects received by, or for the use of the said I. C. as such executor as aforesaid; and that the personal estate and effects of the said testator may be applied in payment of his said debts in a due course of administration: And that so much thereof as shall remain, after payment of the said testator's debts by specialty, may be applied in or towards the payment of the said debt so due to your orators as aforesaid, and the debts, of all other unsatisfied creditors of the said testator, by simple contract, who shall come in and contribute to the expense of this suit, in proportion to their respective demands; and in case it shall appear, that the whole, or any part of the said testator's personal estate, has been exhausted, or applied in or towards the payment of his specialty debts, and that the residue thereof is not sufficient to answer the debts of your orators, and the said testator's other debts on simple contract; then that it may be declared that your orators and the other creditors by simple contract of the said testator, ought to stand in the place of the said testator's creditors by specialty, who have had, or shall have a satisfaction for their debts out of the said personal estate, and may have satisfaction out of the said real estate for so much of their respective debts as his personal estate shall be deficient to answer, by reason of the same having been exhausted or applied, in or towards the payment of his debts by specialty; and that the same may be decreed accordingly; and that the said real estates may be sold or mortgaged for that purpose; and that all proper parties may be decreed to join in such sale or mortgage, and that the money to arise from such sale or mortgage may be paid to your orators and the said other creditors by simple contract accordingly. And that your orators and the said other unsatisfied creditors by simple contract of the said testator, may have such further and other relief in the premises as to your honors may seem meet, and the circumstances of this case require. May it please, &c. (*End by praying process of subpœna, as in form No. 26, p. 6, against I. C. and E. his wife, R. B. and I. M.*)

XVI. Bill by the holders of certain bills of exchange, in behalf of themselves and other creditors, to enforce a trust against certain assignees of the drawers.

To the Honorable the Justices of the Supreme Judicial Court:—

Parties.

J. B., W. S., J. B., Jr., and S. H., all of Boston, in the County of Suffolk, merchants and copartners in business under the firm of B. S.

CH. II.

and Company, as well in behalf of themselves as all others, the holders and just owners of the several drafts, notes and bills of exchange mentioned in the schedule annexed to a certain agreement under seal hereinafter described, humbly complaining shew unto your honors, that C. R. and J. S. R., both of New Bedford, in the County of Bristol, merchants and copartners in business, under the firm of C. R. and Son, on the ninth day of September, in the year of our Lord one thousand eight hundred and thirty-three, drew their draft or bill of exchange, the date whereof was the day and year aforesaid, and directed the same to certain persons doing business in Boston at that time, under the name and style of R. T. and Company, and therein and thereby commanded the said R. T. and Company, six months after the date aforesaid, for value received to pay to the order of B. M., the sum of three thousand dollars, and the said persons upon whom the said bill of exchange was drawn, as aforesaid, on the ninth day of November, in the year aforesaid, duly accepted the same, according to the tenor thereof; and the said B. M. afterwards, on the day last aforesaid, by his indorsement on the said bill of exchange, ordered the contents thereof, for value received, to be paid to your orators, whereof the said C. R. and J. S. R. thereafterwards had notice; and your orators further shew that at Boston aforesaid, on the twelfth day of March, in the year of our Lord one thousand eight hundred and thirty-four, when and where the said bill of exchange was due and payable, they presented the same to the said R. T. and Company, and then and there demanded the payment thereof, which the said R. T. and Company, then and there refused, and of their said refusal your orators on the same day last aforesaid, gave notice to the said C. R., the surviving partner of said firm, who were the drawers of the said bill at New Bedford aforesaid, the said J. S. R. having before then deceased, who thereby then and there became liable to pay the contents of the said bill to your orators, but hath never paid the same, and the same continues still due and unpaid.

Origin of
plaintiff's
debt.

And your orators further shew that the said C. R. and J. S. R. at said Boston, on the ninth day of September, in the year eighteen hundred and thirty-three, drew their other draft, or bill of exchange, the date whereof is the day and year aforesaid, and directed the same to the said R. T. and Company, and therein and thereby commanded them, *seven* months after the date thereof, for value received, to pay to the order of B. M., the sum of three thousand dollars, and the said R. T. and Company, afterwards, on the ninth day of November, in the year last aforesaid, duly accepted the said bill of exchange, according to the tenor thereof; and the said M. afterwards, on the day last aforesaid, by his indorsement on the said bill, for value

CH. II. received, ordered the contents thereof to be paid to your orators, whereof the said C. and J. S. R. thereafterwards had notice; and your orators further shew that on the twelfth day of April, in the year eighteen hundred and thirty-four, at Boston aforesaid, when and where the said bill was due and payable, they presented the same to the said R. T. and Company, and then and there demanded payment thereof, which the said R. T. and Company, then and there refused; and of their said refusal, your orators on the same day last aforesaid, gave notice to the said C. R., surviving partner of the said firm, at New Bedford aforesaid, who thereby then and there became liable to pay the contents of the same bill to your orators, but hath never paid the same, and the same still continues due and unpaid.

Assign-
ment by the
debtors to
certain of
the defend-
ants.

And your orators further shew unto your honors, that the said C. R. and J. S. R. on or about the twenty-sixth or twenty-seventh day of December, in the year eighteen hundred and thirty-three, granted and conveyed to J. R., J. A. P., J. G., and W. R. R., all of New Bedford aforesaid, merchants, jointly or severally, sundry parcels of land, and sundry ships and other vessels, and divers merchandises, all of great value, namely, of the value of one hundred and twenty-eight thousand dollars and upwards; in consideration whereof, the said R., P., G., and R., gave to the said C. and J. S. R. their joint promissory notes, in manner following, namely, one promissory note dated the twenty-eighth day of December aforesaid, for the sum of thirty-eight thousand eight hundred and fifty-one dollars and eighty-six cents, payable at the Bedford Commercial Bank, a corporation duly established, and doing business in New Bedford, in six months from the said date; another promissory note, dated the said twenty-eighth day of December, for the sum of thirty-eight thousand eight hundred and fifty-one dollars and eighty-six cents, payable at the Merchants' Bank, a corporation duly established, and doing business in New Bedford, in six months from the said date; another promissory note, dated the said twenty-eighth day of December, for the sum of twenty-nine thousand one hundred and thirty-eight dollars and ninety cents, payable at the Marine Bank, a corporation duly established, and doing business at New Bedford, in six months from the said date; and one other promissory note, dated the said twenty-eighth day of December, for the sum of nineteen thousand four hundred and twenty-five dollars and ninety-four cents, payable at the Mechanics' Bank, a corporation duly established, and doing business at New Bedford, in six months from the said date: it being provided, however, in each of said notes, that if it should thereafterwards appear that any incumbrance was then existing upon any portion of the real or personal estate conveyed to the said R., P., G., and R., by the said C. and J. S. R., or either of them, by deeds or bills of sale bearing date the twenty-

sixth or twenty-seventh day of December, then current, a certain specified proportion of the amount of such incumbrance should be indorsed on each of said notes, as will more fully appear, by reference to the said notes, which your orators pray may be produced by the defendants, or some of them, and exhibited to your honors in Court.

And your orators further shew unto your honors, that the said C. and J. S. R. were indebted unto the said R. T. and Company, in the sum of ten thousand dollars, and were also indebted to divers other persons (among whom were and still are your orators, for the amount of the aforesaid two several drafts or bills of exchange), upon divers notes, drafts, and acceptances, all which they, the said C. and J. S. R. were desirous to provide for and discharge, and for this purpose and end, the said C. and J. S. R. did, on or about the twenty-eighth day of December aforesaid, indorse the said four promissory notes, and did deposit one of them in each of the said Banks, whereat by the terms and tenor thereof, it was made payable as aforesaid; and did duly authorize and empower the said corporations, respectively, to collect and receive the amount of said note so indorsed and delivered over to them; and the President, Directors, and Company of the Merchants' Bank, and the President, Directors, and Company of the Marine Bank, and the President, Directors, and Company of the Mechanics' Bank, by an instrument in writing, bearing date the said twenty-eighth day of December, and sealed with their respective seals, which your orators pray may be produced by the defendants, or some of them, and exhibited to your honors in Court, did covenant and agree to and with the said C. R. and J. S. R. and their assigns, that they would pay to the said R. T. and Company, the said sum of ten thousand dollars, and that they would pay, take up, and discharge all the notes, drafts, and acceptances, upon and for which, the said C. R. and J. S. R. were holden or liable, which were mentioned in a schedule annexed to the said instrument, at the time they should respectively become payable, provided that no indorsement should be made on the said notes of the said R., P., G., and R., by reason or on account of any existing incumbrance upon the property before referred to, — and if such indorsement should be made, then the said corporations agreed that they would pay, take up, and discharge the said notes, drafts, and acceptances, excepting such an amount of them as shall equal the amount of such indorsement; and as it was possible that the said Banks, or some of them, might then hold one or more drafts or notes upon which the said C. and J. S. R., or one of them is, or are promisors or acceptors, and which might have been unintentionally omitted in the said schedule, it was further provided in the said instrument,

Trust created by the debtors.

CH. II. that the said Bank or Banks, holding such draft or notes, should in the first instance receive the amount due upon the said notes or drafts, and that the amount of such drafts or notes should be deducted from the sum to be paid upon the notes, drafts, and acceptances in the said schedule, mentioned by the said banking companies; and your orators further shew, that by means of the said acts and doings by the said defendants, or some of them, *a trust has arisen and been created in favor of your orators*, and all others, the holders and just owners of the several drafts, notes, and bills of exchange in the said schedule mentioned, whereby your orators should have and receive from the said banking companies, the amount justly due to them by reason and on account of the said two drafts or bills of exchange held by them, drawn by the said C. R. and Son, upon the said R. T. and Company, for the sum of three thousand dollars each as aforesaid, which two drafts were intended to be and are contained in the said schedule of notes, drafts, and acceptances, though by accident and mistake, the same are not accurately described as to the dates and term of credit thereof; and which two drafts were intended by the said C. and J. S. R., and by the said banking companies, to be secured and provided for by the transfer and deposit of the notes of the said R., P., G., and R., subject nevertheless to the deductions aforesaid, proportionably to be made; and your orators further shew, that both of the said drafts are due and payable, and payment thereof has been demanded by your orators of the said banking companies, who have refused to pay the same.

Confederacy.

But now, so it is, may it please your honors, that the said President, Directors, and Company of the Bedford Commercial Bank, the President, Directors, and Company of the said Merchants' Bank, the President, Directors, and Company of the said Mechanics' Bank, the President, Directors, and Company of the said Marine Bank, combining and confederating with the said C. R., and with the said J. R., J. A. P., J. G., and W. R. R., and with divers other persons at present unknown to your orators, whose names, when discovered, your orators pray that they may be at liberty to insert herein with apt words to charge them as parties defendants hereto, and contriving how to wrong your orators in the premises, absolutely refuse to perform the said trust towards your orators, and absolutely refuse to pay the two drafts aforesaid, or either of them, or any part thereof, or to account with your orators for any part of the moneys received by them from the said R., P., G., and R., sometimes pretending that your orators' two drafts aforesaid are not mentioned and contained in the said schedule, and were not intended to be secured and provided for by the transfer and deposit of the notes of the said R., P., G., and R., and sometimes they pretend that, by reason of indorsements made on

Pretences.

the said notes, on account of incumbrances which have been discovered since the execution thereof to exist on the said real and personal estate, or on some of it, the whole, and at other times they pretend a large part, of the amount of the said notes, of the said R., P., G., and R., has been cancelled and discharged, and hath not been received by them, the said Banks ; and at some times they pretend that the whole, and at other times a large part of the amount then admitted to have been received by them from the said R., P., G., and R., has been applied by them, the said banking companies, to the liquidation and payment of sundry notes and drafts, of which the said C. and J. S. R., or one of them, are the promisors or acceptors, which are held by them, the said Banks, or by some or one of them, and were unintentionally omitted to be mentioned in the said schedule ; and sometimes they pretend that they have already paid out all the moneys ever received by them from the said R., P., G., and R., to the holders of the draft notes, and acceptances, or some of them, which are contained in the said schedule, and again at other times, they pretend that all the notes, drafts, and acceptances mentioned in the said schedule, are just debts due from the said C. and J. S. R., or one of them, and are all other than and different from the two drafts held by your orators ; and that the said drafts, notes, and acceptances are sufficient to take up and absorb all the moneys, they, the said banking companies, have ever received, or ever shall receive from the notes of the said R., P., G., and R. ; the contrary of all which several allegations and pretences, your orators charge to be true ; and that the said banking companies have respectively received from the said R., P., G., and R., the whole amount of their said notes of hand, given to the said C., and J. S. R., and by them indorsed and delivered over to, and deposited with the said banking companies respectively, and that the said banking companies are not, nor is either of them, the holders of any notes or acceptances, in which the said C. and J. S. R., are the promisors and acceptors, other than such as are contained in the schedule aforesaid, and that the two drafts of which your orators are the holders as aforesaid, are contained in the said schedule, and were intended to be and are secured and provided for in and by the instrument and agreement aforesaid, and to be paid in full or in proportion with others, out of the moneys to be received by the said Banks, from the said R., P., G., and R. ; and that all the notes, drafts, and acceptances mentioned in the said schedule, are not other than and different from the two drafts hereinbefore mentioned and described, and held by your orators, but that these last are two of the same drafts which are mentioned or intended in said schedule ; and that no incumbrances on the said real or personal property have been discovered to exist, which have entitled or will entitle the said R., P., G., and R., law-

CH. II. fully to make any such indorsement on the said notes, as is provided for in and by the instrument aforesaid, — and no such indorsement has been made on the said notes, whereby the whole or any part of the contents thereof, has been lawfully cancelled or discharged; and that the said banking companies have not paid out the whole of the moneys received by them from the said R., P., G., and R., to the holders of other notes, drafts, or acceptances mentioned in said schedule, — and that if they have so paid out the whole of the said moneys, they have done it without lawful authority, and in their own wrong.

Juri-dic-tion. All which acts, doings, and pretences are contrary to equity and good conscience, and manifestly tend to the wrong and injury of your orators in the premises; in consideration whereof, and because your orators can only have adequate relief in the premises, in a Court of Equity, where matters of this nature are properly reliev-able and cognizable. To the end therefore that the said President, Directors, and Company of the said Bedford Commercial Bank, and the President, Directors, and Company of the said Merchants' Bank, and the President, Directors, and Company of the Marine Bank, and the President, Directors, and Company of the Mechanics' Bank, and the said C. R., and the said R., P., G., and R., and their confederates when discovered may, the said corporations upon the several corporal oaths of their proper officers, and the said R., P., G., and R., upon their several corporal oaths, to the best and utmost of their several and respective knowledge, rémembrance, information, and belief, full, true, direct, and perfect answer make to *all and singular the matters aforesaid*, and that as fully and particularly as if the same were repeated, and they and every of them were distinctly interrogated thereto, and more especially that the said confederates may in manner aforesaid, answer and set forth specifically all the parcels of real and personal estate, which were conveyed and transferred to them, the said R., P., G., and R., by the said C. and J. S. R., and whether they have sold the same, or any and what portions thereof, and if sold, for what sums and prices; and whether any incumbrance has been discovered, which was existing on the said real or personal estate, at the time of the conveyance thereof by the said C. and J. S. R., to the said R., P., G., and R., and if yea, upon what part of the said estate the said incumbrance has been discovered, and what is the nature and description of said incumbrance; and what are the dates of all the drafts in which the said C. and J. S. R. were parties, and which were outstanding and unpaid on the said twenty-eighth day of December, and for what sum each of said drafts was given; and what are the dates of all the drafts in which the said C. and J. S. R. were parties, and which were outstanding and unpaid on the

Interrog-atories.

said twenty-eighth day of December, which have been claimed and presented to the said banking companies or either of them for payment, and for what sums respectively the said drafts were drawn; and whether any drafts of the following dates and for the sums following have been presented to the said Banks, or to either and which of them for payment, or otherwise claimed, and if so, by whom; namely, a draft for the sum of three thousand dollars, dated the fifth day of the eleventh month, or November, in the year first aforesaid; a draft for three thousand dollars, dated the ninth day of the said eleventh month in the year aforesaid; a draft for three thousand dollars, dated the second day of the twelfth month, or December, in the year aforesaid; another draft for three thousand dollars, dated the same second day of the twelfth month; a draft for three thousand dollars, dated the ninth day of the twelfth month aforesaid.

And your orators further pray, that the said banking companies may be compelled by the decree of this Court, to pay to each and all of the holders and just owners of the several notes, drafts, and bills of exchange mentioned in the said schedule, and which are due and unpaid, the amounts that may be found justly due to them and each of them respectively, by virtue of the said agreement of the said banking companies, and to pay to your orators the amount of the said two drafts first above described, or such part thereof as shall be found due in proportion, with all the other creditors of the said C. R. and Son, whose demands were provided for in and by the trust instrument between the said C. R., and J. S. R., and the said banking companies above set forth and described; and that your orators may have such other relief in the premises, as to your honors may seem meet, and this case shall require.

Prayer.

May it please your honors to grant unto your orators a writ of subpoena, to be directed to the said C. R., J. R., J. A. P., J. G., and W. R. R., and the President, Directors, and Company of the Bedford Commercial Bank, the President, Directors, and Company of the Marine Bank, the President, Directors, and Company of the Merchants' Bank, and the President, Directors, and Company of the Mechanics' Bank aforesaid, thereby commanding them to be and appear before your honors in the Supreme Judicial Court, to be holden in and for the County of Suffolk, on the second Tuesday of November next, and then and there, full, true, and direct and perfect answers to make to all and singular the premises, and further to stand to perform, and abide such further order, direction, and decree therein, as to your honors shall seem meet.

V.

Bill for Dower.

CH. II.

XVII. Bill by a widow against the heir for dower.

Seisin of the plaintiff's husband and death.

Plaintiff's title to dower.

Entry and possession of the real estate by the defendant, the heir-at-law of the plaintiff's husband.

Applications.

Refusals.

Charge of the marriage.

Prayer.

Humbly complaining sheweth unto your honors your oratrix L. C. of, &c. That P. C. the late husband of your oratrix, was in his lifetime, and during the time he was married to your oratrix, seised in fee simple, or fee tail of divers freehold estates, and being so seised, the said P. C. departed this life on or about the _____ day of _____, leaving your oratrix his widow, and F. C. his nephew and heir-at-law (the defendant hereinafter named), him surviving; whereby your oratrix became by law entitled to her dower in the said freehold estates; but upon, or soon after the decease of the said P. C., the said F. C. as his heir-at-law, or otherwise, entered and took possession thereof, and of all the title deeds, evidences, and writings relative thereto: and your oratrix has frequently, by herself and otherwise, applied to the said F. C. and requested him to discover the said freehold estates, of which the said P. C. died seised, and his title thereto, and to account for and pay to your oratrix one third part of the rent and profits of such freehold, which your oratrix is entitled to, in respect of her dower, since the death of the said P. C., and to assign to and let your oratrix into the absolute possession and enjoyment of one third part of such freehold, which your oratrix hoped he would have done. But now so it is, the said F. C. refuses to comply therewith, pretending that your oratrix was never accoupled to the said P. C. in lawful matrimony. Whereas your oratrix charges, that on, &c. at _____, in the county of _____, at the parish of _____, was duly married to your oratrix, and that she is therefore entitled to her dower, as aforesaid; but the said F. C. refuses to discover the said freehold premises, which are subject thereto, or to produce the title deeds, evidences, and writings, or any of them, relative to the said freehold estates, wherefore your oratrix is unable to proceed at law to establish her said demand. (*For these parts of the bill, see form No. 22, p. 5, and interrogate to the material parts of the statement and charges in the manner there pointed out.*) And that the said F. C. may discover and set forth in manner aforesaid, a full and true description of such freehold estates as aforesaid, with all the circumstances and particulars thereof, or relative thereto. And that an account may be taken, by and under the decree and direction of this Honorable Court, of the rents and profits of the said freehold estates, wherein your oratrix is dowable, which have accrued since the death of the said P. C., and have, or might have been received

by the said F. C. ; and that one third part thereof, arising from the said freehold estates, may be paid to her ; and that one third part of such freehold estates may be assigned and set out to her for her dower, and your oratrix let into the full and immediate possession and enjoyment thereof, and decreed to hold the same for her life. And that the said F. C. may be decreed to produce all title deeds, evidences, and writings, relative to the said freehold estates, in order to effectuate the purposes aforesaid. (*And for general relief, as in form No. 25, p. 6.*) May it please, &c. (*End by praying process of subpoena against the said F. C. as in form No. 26, p. 6.*)

CH. II.

VI.

Bills of Foreclosure.

XVIII. By a mortgagee of a freehold estate against the mortgagor.

Humbly complaining sheweth unto your honors your orator A. B. of, &c. That E. C. of, &c. (the defendant hereinafter named) on or about the _____ day of _____, applied to your orator to lend him the sum of \$ _____ on security of the premises hereinafter described, which your orator consented to do, and accordingly advanced the said sum of \$ _____ to the said E. C. and paid the same to him. Whereupon, and in order to secure the repayment thereof to your orator with legal interest, by deed, bearing date on, &c. and made and executed by the said E. C., did grant, bargain, sell, and convey unto your orator, a certain parcel of ground, messuage, or tenement, with the appurtenances, together with the policy of insurance therein mentioned, bounded and described as follows: To hold unto your orator, his heirs and assigns, in fee simple forever, subject nevertheless to a proviso for redemption of the said premises, on payment by the said E. C., his executors, administrators, or assigns to your orator, his executors, administrators, or assigns, of the said sum of \$ _____ with lawful interest for the same, upon the _____ day of _____ then next. As by the said deed, reference being thereunto had, will more fully appear. And your orator further sheweth unto your honors, that the said principal sum of \$ _____ was not, nor was any part thereof, paid to your orator, or any person for his use, at the time mentioned in the said proviso, or afterwards, but now is, together with the interest thereof, due to your orator. And your orator hath frequently of late, by himself and otherwise, applied to the said E. C. and requested him to pay your orator the said sum of \$ _____ and the interest due thereon, or to release his right and equity of redemption in the said premises to your orator; and

Possession of the leasehold estate by the defendant, and her application to the plaintiff to lend money on mortgage.

Advancement of the money.

The mortgage deed.

Mortgage money and interest still due.

Applications.

CH. II. your orator hoped that the said requests would have been complied with : But now so it is, may it please your honors, the said E. C.

Refusal. has refused either to pay your orator the said principal money and interest, or to release to him his right and equity of redemption of,

Pretence of prior incumbrance. in, and to the said premises ; pretending that there is some incumbrance upon, or affecting the said premises, prior to your orator's said security, but what is the particular nature thereof, or in whom the same is vested, he refuses to discover. Whereas your orator charges the contrary thereof to be true, but nevertheless the said E. C. persists in such refusal as aforesaid. (*For these parts of the bill, see form No. 23, p. 5, and interrogate to the material parts of the bill in the manner there pointed out.*) And that the said E. C.

Discovery. may discover, and in manner aforesaid set forth, whether there is, or are any other, and what incumbrance or incumbrances, upon or affecting the said mortgaged premises, and if so, in whom the same is or are vested ; and whether the same is or are not subsequent to your orator's said security, or how otherwise. And that an account

Prayer. may be taken, by and under the decree and direction of this Honorable Court, of what is due and owing to your orator, for principal and interest on his said mortgage, and that the said E. C. may be decreed to pay to your orator what may be found due to him on taking such account as aforesaid, together with his costs of this suit, by a short day to be appointed by this Honorable Court for that purpose : or in default thereof, that the said defendant E. C. and all persons claiming under him, may be absolutely debarred and foreclosed of and from all right and equity of redemption, in or to the said mortgaged premises, and every part thereof, and may deliver up to your orator all deeds, papers, or writings, in his custody or power, relating to, or concerning the said mortgaged premises, or any part thereof. (*And for general relief, as in form No. 25, p. 6.*) May it please, &c. (*End by praying process of subpoena against E. C. as in form No. 26, p. 6.*)

XIX. Bill by a mortgagee for a foreclosure, against the surviving mortgagor, entitled as surviving devisee to the equity of redemption, as to one moiety for his own benefit, and as to the other in trust for himself and another individual (also a defendant) as devisees under another will.

To, &c.

Humbly complaining sheweth unto your honors your orator A. H. of, &c., Esq. That J. S. C. now deceased, S. M. C. of, &c. (one of the defendants hereto) and the Rev. P. K. now deceased, being or

alleging themselves to be seised of and entitled to the premises hereinafter particularly described, in trust for the benefit of the said J. S. C. and S. M. C., and having occasion to borrow the sum of \$ 5,500, applied to and requested your orator to lend them the sum of \$ 3,000, part of such sum of \$ 5,500, on the security hereinafter mentioned, and that your orator complied with such request, and did accordingly lend and advance the sum of \$ 3,000 to the said J. S. C., S. M. C., and P. K. And that thereupon and in order to secure the repayment thereof with interest, the said J. S. C., S. M. C., and P. K. duly executed a certain indenture mortgage bearing date ———, and made, or expressed to be made between the said J. S. C., S. M. C., and P. K. of the one part, and your orator of the other part. And that thereby after reciting as therein mentioned, it was witnessed that for and in consideration of the said sum of \$ 3,000 to the said J. S. C., S. M. C., and P. K. paid by your orator, the receipt whereof they did thereby acknowledge, they the said J. S. C., S. M. C., and P. K. and each of them did grant, bargain, sell, and demise unto your orator, his executors, administrators, and assigns, all that capital messuage, &c., together with all and every the appurtenances, &c., to hold the said messuages or dwelling-houses, lands, hereditaments, and premises, with their appurtenances unto your orator, his executors, administrators, and assigns in fee simple forever, but subject to a proviso for redemption upon payment by the said J. S. C., S. M. C., and P. K., their heirs, executors, or administrators, unto your orator, his executors, administrators, or assigns in the sum of \$ 3,000 with interest, after the rate of \$ 5 per cent. per annum, at or upon the ——— day of ——— then next ensuing. As in and by the said indenture, reference being thereunto had will more fully appear. And your orator further sheweth unto your honors, that the said sum of \$ 3,000 was not paid to your orator at the time for that purpose limited by the said indenture for the payment of the same; and that thereby the estate of your orator in the said mortgaged premises became absolute at law. And your orator further sheweth unto your honors, that in or about the year ———, the said J. S. C. died, having first made his will bearing date ———, whereby he devised all his estates, including his interest in the said mortgaged premises, to the said S. M. C. and P. K. and to G. R. of ———, and their heirs. And your orator further sheweth unto your honors, that the said P. K. had no beneficial interest in the said mortgaged premises; and that he died some time since, leaving the said S. M. C. him surviving. And that the said S. M. C. alone is now entitled to the equity of redemption of the said mortgaged premises in trust as to one moiety thereof for his own use and benefit, and in trust as to the other moiety for the use and benefit of himself and the said G. R. as devisees of the said

CH. II.

Application for a loan of \$ 3,000, which sum plaintiff advanced.

Indenture of mortgage by demise for securing the same.

Mortgage money not paid at the time limited.

Death of one of the mortgagors. His will.

Death of another of the mortgagors who had no beneficial interest.

CH. II. J. S. C. And your orator further sheweth that the said sum of \$3,000, together with a considerable arrear of interest accrued due thereon, is now due to your orator on the security of the said premises. And that your orator hath frequently and in a friendly manner applied to the said S. M. C. and requested him to pay the same or to release his equity of redemption of and in the said mortgaged premises. And your orator well hoped that such his just and reasonable requests would have been complied with as in justice and equity they ought to have been. But now so it is, may it please your honors, that the said S. M. C. combining with the said G. R. and contriving how to injure your orator in the premises, refuses so to do, although your orator charges that your orator did as aforesaid well and truly advance and pay the said sum of \$3,000 to the said J. S. C., S. M. C., and P. K., and that for securing the repayment thereof with interest, the said J. S. C., S. M. C., and P. K. duly made and executed to your orator such indenture as is hereinbefore mentioned; and that the whole of the said sum of \$3,000, together with a large arrear of interest accrued due thereon, is now justly due and owing to your orator on the security aforesaid. And your orator charges that the mortgaged premises are a very scanty security for the repayment of what is due and owing to your orator on the security thereof. And your orator charges that the said G. R. is and claims to be interested in the said mortgaged premises or some part thereof, and to be entitled to redeem the same, but he and also the said S. M. C. refuses so to do. And your orator charges that the said defendants ought either to pay what is due to your orator as aforesaid, or otherwise to release their equity of redemption in the said premises, but they refuse so to do. All which actings, &c. (*see form No. 22, p. 5, interrogating to the statements and the latter part of the charging part.*)

Prayer. And that the said defendant may answer the premises. And that an account may be taken by and under the direction and decree of this Honorable Court of what is due and owing to your orator, for principal money and interest on the security of the said mortgaged premises. And that the said defendants may be decreed to pay unto your orator what shall appear to be justly due and owing to him on the taking of the aforesaid account, together with his costs of this suit, by a short day to be appointed by this Court for that purpose, your orator being ready and willing and hereby offering on being paid his said principal money and interest and costs at such appointed time, to reconvey the said mortgaged premises unto the said defendants, or unto either of them as this Honorable Court shall direct. And in default of such payment, that the said defendants and all persons claiming under them, may be absolutely barred and foreclosed

Mortgage money and interest still due.

Applications to defendant.

Refusal.

Charge that plaintiff paid the money.

That the mortgage security was duly executed. That the mortgage money and interest are still due.

That the estate is a scanty security.

That the other defendant G. R. claims an interest in the property.

of and from all right and equity of redemption in and to the said mortgaged premises and every part thereof forever. And may deliver up to your orator all and every the deeds, evidences, and writings in their or either of their possession, custody, or power, relating to the said mortgaged premises and every part thereof. (*And for further relief, see form No. 25, p. 6.*) May it please, &c. (*See form No. 26, p. 6.*)

CH. II.

Pray subpoena against S. M. C. and G. R.

VII.

Bills of Interpleader. (a)

XX. Bill by a lessee against different persons, claiming the rents by different titles, to have them interplead. (*b*)

Humbly complaining sheweth unto your lordship your orator A. B. of, &c., that the mayor, citizens, and commonalty of the city of C., being seised as of fee, of and in the perpetual curacy of D., by indenture, &c., (*state the demise from the corporation to the Reverend E. D., &c., clerk, a defendant hereinafter named, for life; and state the demise of the tithes from the said E. D. to the complainant; and also state a subsequent grant of an annuity out of the profits of the said perpetual curacy by the said E. D. to F. G., another defendant hereinafter named.*) And your orator further sheweth unto your lordship, that the said E. D. at the time of making the said last-mentioned indenture or grant of annuity to the said F. G., and on or about the ——— day of ———, in the year ———, was actually a prisoner in his Majesty's King's Bench prison for debt, at the suit of one L. M., and others his creditors; and that on the ——— day of ———, in the year ———, at a sessions then held at Horsemonger Lane, in the parish of St. Mary's, Newington, in and for the county of Surrey, the said E. D. applied to be discharged and exonerated under and by virtue of a certain act of parliament made and passed in the fifty-first year of the reign of his late Majesty, entituled "An act for the relief of certain insolvent 'debtors'; and the justices of the peace present at such sessions adjudged the said E. D. to be set at liberty, and he was discharged accordingly; and by virtue of the said act of parliament, all the real and personal estate of the said E. D. was immediately after such adjudication, thereby, and now is, vested in N. O., of, Esq., the clerk of the peace

Rights of
the plaintiff
and claims
of the de-
fendants.

(a) See Eq. Pl. § 291-297.

(b) This form is taken, without alteration, from Willis's Eq. Pl. (303), because it presents a short and neat outline of Interpleader.

CH. II. of the said county of Surrey (another defendant hereinafter named), upon the trust, and for the purposes in the said act mentioned; but the said N. O. has not hitherto made any conveyance or assignment thereof. And your orator further sheweth unto your lordship, that your orator, in pursuance of the said indenture of demise so made by the said E. D. as aforesaid, duly paid the said rent of —*l.*, thereby reserved for the said tithes, up to the ——— day of ——— last; and your orator has always been ready and desirous to pay the rent for the said tithes, which has become due since that period, to the person or persons duly entitled to receive the same; and your orator hoped he should have been able so to have paid the said rent, and that no dispute could have arisen concerning the same, or at least that no suit would have been commenced against your orator in respect to the said rent; and that the said E. D., F. G., and N. O. would have settled between themselves their differences respecting the right to receive the said rent. But now so it is, may it please your lordship, the said E. D., F. G., and N. O. respectively claim to be entitled to the said rent; and the said E. D. has lately commenced an action in his Majesty's Court of Common Pleas at Westminster, for the recovery of the sum of —*l.*, on account of the said rent, due from your orator since ——— aforesaid. And the said E. D. pretends that he is discharged from the said annuity so granted by him as aforesaid, in consequence of his having taken the benefit of the said insolvent act, and that the interest of him the said E. D. does not vest in the said N. O. as such clerk of the peace as aforesaid, by the operation of that act; and the said F. G. insists that he ought to be paid his said annuity out of the said rent now due from your orator, and that the said E. D. is not discharged from such annuity, under or by virtue of such insolvent act, but that the said annual rent, payable by your orator, still remains liable to the payment of such annuity, and he threatens and intends to proceed at law against your orator, unless the said annuity be paid by him out of such rent. And the said N. O. pretends and insists that all the said estate, right, and interest in the said tithes vested in him the said N. O. as such clerk of the peace as aforesaid, by the operation of the said insolvent act, and that he is therefore entitled to receive the said rent of —*l.* payable by your orator, which he insists is no longer liable to the payment of the said annuity. And your orator, under the circumstances aforesaid, is in danger of being greatly harassed on account of the said rent, and cannot safely pay the same without the aid of this Honorable Court. (*For this part of the bill, see form No. 22, p. 5, and interrogate to the material parts of the above statement and allegations.*) And that the said E. D. and F. G. and N. O. respectively, may set forth to whom the said

Pretence by the several defendants of their respective claims being valid, and their intention to proceed at law against the complainant.

Prayer.

rent is due and payable, and may be decreed to interplead, and adjust the said several claims and demands between themselves, your orator hereby offering to account for, and pay the arrears of the said rent now due from him to such of them the said E. D., F. G., and N. O., as the same shall appear of right to belong and be payable, on being indemnified by this Honorable Court in so doing, or to pay the same into the hands of the accountant-general of this Honorable Court, to be disposed of as this Honorable Court shall direct. And that the said E. D. may be restrained by the order and injunction of this Honorable Court from further prosecution of the said action so commenced by him against your orator as aforesaid, and that he, and the said F. G. and N. O. respectively, may in like manner be restrained from all other proceedings at law whatsoever, touching the matters in question in this suit or any of them. (*And for general relief, as in form No. 25, p. 6.*) May it please, &c. (*End with praying an injunction in the terms of the prayer, and also a subpoena against the said E. D., F. G., and N. O., as in form No. 26, p. 6.*)

VIII.

Prayer of a Bill of Interpleader and Affidavit.

XXI. Prayer of a Bill of Interpleader, — that plaintiff may be at liberty to pay the arrears of rent into Court, first deducting thereout certain sums for repairs and land-tax, — that possession may be delivered to the party entitled, and an allowance made to the plaintiff for certain articles, — and for an injunction to restrain proceedings in ejectment and distresses being made upon the premises.

And that the said several defendants may be decreed to interplead touching their said several claims, and that *plaintiff* may be at liberty to pay the several sums now justly and fairly due from him for the rent of the said messuage or tenement and premises into the bank, in the name and with the privity of the accountant-general of this Honorable Court, in trust for the benefit of the persons or person entitled thereto, subject to the further order of this Court, after deducting thereout in the first place the aforesaid sum of £ 36, to be allowed unto *plaintiff* for repairs pursuant to the said agreement, together with all sums of money expended and advanced by *plaintiff* for land-tax and other necessary outgoings in respect of the said premises. And that *plaintiff* may be at liberty to quit the possession of the said premises, and that possession thereof may be delivered up to such person or persons as this Honorable Court shall direct or appoint. And that *plaintiff* may have a satisfaction or allowance made unto

CH. II. him out of the rent of the said premises for the several articles hereinbefore and in the said first agreement particularly mentioned, which have been provided by *plaintiff* at his own expense for the said premises. And that in the mean time the said defendants S. O. and T. C. may be restrained by the order or injunction of this Honorable Court from all further proceedings in the aforesaid action of ejectment brought against *plaintiff*, and that they and all the said other defendants may be in like manner restrained from making any distresses or distress upon the said messuage or tenement and premises, and from commencing or prosecuting any action or actions at law against *plaintiff* to recover the rent of the said premises or to turn *plaintiff* out of possession thereof, or otherwise from proceeding at law against *plaintiff* touching any one of the matters aforesaid. And that all proper and necessary directions may be given for the purposes aforesaid. (*And for further relief.*)

Form of an Affidavit to be annexed to a Bill of Interpleader. (a)

In Chancery. { Between J. C. ---- Plaintiff,
and
----- Defendants.

Form of
an affidavit
to be an-
nexed to the
bill.

The said J. C. maketh oath and saith, that he has exhibited his bill of interpleader against the defendants in this cause without any fraud or collusion between him and the said defendants or any or either of them; and that he the said J. C. hath not exhibited his said bill at the request of the said defendants or of any or of either of them, and that he is not indemnified by the said defendants, or by any or either of them, and saith that he has exhibited his said bill with no other intent but to avoid being sued or molested by the said defendants, who are proceeding or threaten to proceed at law against him for the recovery of the rent of the said tithes in the said bill mentioned.

Or thus :

A. B. the above-named plaintiff maketh oath and saith, that he doth not in any respect collude with either of the above-named defendants touching the matters in question in this cause, nor is he in any manner indemnified by the said defendants or either of them, nor hath he exhibited his said bill of interpleader at the request of them or either of them, but merely of his own free will, and to avoid being sued or molested touching the matters contained in his said bill.

Sworn, &c.

A. B.

(a) See Eq. Pl. § 297.

IX.

Bills for the Payment of Legacies, and to carry the Trust of Wills into Execution.

XXII. Bill by husband of legatee against executor.

To, &c.

Humbly complaining sheweth unto your honors your orator A. B. of, &c. That W. S. late of, &c., duly made and published his last will and testament in writing, bearing date on or about ———, and thereby amongst other bequests gave to his nephews and nieces, the children of his late sister M. A. the sum of \$——— each, to be paid to them as they should respectively attain the age of twenty-one years, and appointed E. T. F. of, &c., the defendant hereinafter named, the sole executor of his said will, as in and by the said will or the probate thereof when produced will appear. And your orator further sheweth unto your honors that the said E. T. F. soon after the death of the said testator duly proved the said will in the proper Court, and hath since possessed himself of the personal estate and effects of the said testator to an amount much more than sufficient for the payment of his just debts, funeral, and testamentary expenses and legacies. And your orator further sheweth that after the death of the said testator your orator intermarried with A. A. who was the niece of the said testator, and one of the children of the said M. A. in the said will named, and by virtue of such intermarriage your orator in right of his said wife became entitled to demand and receive the aforesaid bequest of \$———. And your orator further sheweth that your orator's said wife lived to attain her age of twenty-one years, and that she hath lately departed this life, and that neither your orator nor his said wife received any part of the said legacy. And your orator further sheweth that having obtained letters of administration to his said wife, he hath repeatedly applied to the said E. T. F. for payment of the said legacy and interest thereon from the time of his said late wife attaining her age of twenty-one years, and your orator hoped that such his reasonable requests would have been complied with, as in justice and equity they ought to have been. But now so it is, may it please your honors, that the said T. E. F. combining, &c., (*see form No. 20, p. 4.*) To the end, therefore, that, &c., (*see form No. 23, p. 5, interrogating to the stating and charging part.*)

Marriage of the plaintiff.

Death of plaintiff's wife, and letters of administration granted to plaintiff.

Application.

And that an account may be taken of what is due and owing to your orator for the principal and interest of the said legacy, and that the said defendant may be decreed to pay the same to your orator ;

Prayer.

CH. II. And if the said defendant shall not admit assets of the said testator sufficient to answer the same, then that an account may be taken of the estate and effects of the said testator which have been possessed or received by the said defendant, or by any other person by his order or to his use, and that the same may be applied in a due course of administration. (*And for further relief, see form No. 25, p. 6.*) May it please your honors, &c., (*see form No. 26, p. 6.*) J. L.

XXIII. Bill by husband and wife for payment of a legacy bequeathed to her, — claiming also a share in the testatrix's residuary estate under the bequest thereof in trust for her relations.

To, &c.

Humbly complaining shew unto your honors your orator and oratrix P. S. of, &c. and M. his wife, late M. H., spinster, That J. W. late of, &c. widow, deceased, being possessed of very considerable personal estate, did on or about ——— duly make and publish her last will and testament in writing, and thereby after giving divers other pecuniary legacies gave unto your oratrix by her then name and description of ———, the sum of \$ 500 to be paid to her at her age of twenty-one years or day of marriage which should first happen. And as to her shop stock in trade and utensils thereunto belonging, goods, plate, and furniture, which should be in or about her house at the time of her death, together with her wearing apparel of all sorts, and all and every sum and sums of money, debts by specialty, or otherwise, and all moneys invested in any of the public funds or government securities, and all other the residue of her personal estate whereof she should be possessed, interested, or entitled to, the said testatrix gave and bequeathed the same to her brother J. L. in trust to pay, apply, and dispose thereof unto and among every of her relations at such times and in such manner and proportions as he in his discretion should judge most proper, without having any regard to the legacies by her thereinbefore specifically given, and the said testatrix nominated and appointed the said J. L. sole executor of her said will. As by the said will or the probate thereof, whereunto your orator and oratrix for their greater certainty crave leave to refer, when the same shall be produced to this Honorable Court will appear. And your orator and oratrix further shew unto your honors, that on or about ——— the said testatrix departed this life without altering or revoking her said will, whereupon the said J. L. duly proved the same in the proper Court, and took upon himself the execution

The will
of the testa-
trix.

Death of
testatrix.

thereof, and by virtue thereof possessed himself of all the personal estate and effects of the said testatrix to a very considerable amount, and much more than sufficient to answer and satisfy all her just debts, funeral and testamentary expenses and legacies. And your orator and oratrix further shew unto your honors, that some time after the decease of the said testatrix (that is to say) : on or about _____ they your orator and oratrix intermarried together, whereby your orator in right of your oratrix became well entitled to the said legacy of \$500. And your orator and oratrix further shew that your oratrix is the niece of the said testatrix, and your orator in right of your oratrix as such relation, also became entitled to some part, share, and proportion of the residue of the said testatrix's personal estate so bequeathed to the said J. L. upon trust as aforesaid. And your orator and oratrix are advised that such only of the relations of the said testatrix are entitled to shares in such residue as are capable of taking under the statutes of distributions of intestate's effects. And your orator and oratrix further shew unto your honors that they have frequently and in a friendly manner applied unto the said J. L. and requested him to pay and satisfy unto your orator the said legacy of \$500, together with lawful interest for the same from the time of your orator and oratrix's said marriage, and also to come to a fair and just account for and in respect of the personal estate and effects of the said testatrix which have been received by him the said J. L. or by any other person or persons by his order and for his use, and to pay and apply such personal estate in a course of administration, and to dispose of the clear residue or surplus thereof agreeably to the intention of the said testatrix in and by her said will expressed and declared. And your orator and oratrix well hoped that such their reasonable requests would have been complied with as in justice and equity they ought to have been. But now so it is, &c. (*see form No. 20, p. 4*), the said J. L. absolutely refuses to comply with such your orator and oratrix's just and reasonable requests aforesaid, sometimes pretending that the said testatrix never made and executed her last will and testament of such date, purport, and effect as is hereinbefore mentioned and set forth, and that therefore he the said defendant as the only next of kin of the said testatrix is entitled to the whole of her personal estate and effects. Whereas your orator and oratrix expressly charge the contrary of such pretences to be true, and that the said testatrix in her lifetime did duly make and execute her last will and testament in writing of such date, purport, and effect as is hereinbefore mentioned and set forth, and that by virtue thereof your orator is now become well entitled in right of your oratrix to the said legacy of \$500, and also to some part, share, or proportion of the residue of the said personal estate of the said

CH. II.

Probate
by defend-
ant.Marriage
of the plain-
tiffs.Plaintiff
P. S. in
right of his
wife enti-
tled to leg-
acy of \$500
and also to
a share of
the residu-
ary estate.Applica-
tions.Pretence
that testa-
trix never
made a
will, and
that defend-
ant is enti-
tled as her
next of kin.Charge the
contrary.

CH. II. testatrix after payment and satisfaction of her just debts, funeral and testamentary expenses and legacies, and so the said defendant at other times admits the truth to be. But then he pretends that the personal estate and effects of the said testatrix which have come to his hands, custody, or power, were very small and inconsiderable, and not more than sufficient to answer and satisfy her just debts and funeral and testamentary expenses. Whereas your oratrix and orator expressly charge that the personal estate and effects of the said testatrix which have come to the hands, custody, or power of the said defendant are of very considerable value, and not only sufficient to answer and satisfy all the just debts, legacies, and funeral and testamentary expenses of the said testatrix, but also to afford a considerable residue to be applied and disposed of amongst her relations, and so it would appear if the said defendant would set forth a full, true, and particular account of the said personal estate and of every part thereof, and how, and in what manner, to whom, and for what, the same, and every part thereof has been applied or disposed of, but which he refuses to do, or to make to your orator and oratrix any satisfaction whatsoever, for or in respect of their just demands. All which actings, doings, and pretences, &c. (*See form No. 22, p. 5, interrogating to the stating and charging parts.*)

And that the said defendant may set forth and discover a full, true, and particular account of all and every the personal estate and effects of or belonging to the said testatrix at the time of her death, together with the natures, kinds, quantities, qualities, true and utmost value thereof, and every part thereof, and how much, and what parts of the said personal estate and effects have been received by, or come to the hands, possession, or power of the said defendant, or of any other person or persons, and whom by name, by his order, or for his use, and how the same and every part thereof hath been paid, applied, or disposed of, and administered, and to whom, and for and upon what account, cause, or consideration, and whether any, and what part thereof is now remaining to be got in and administered, and where, and in whose hands, possession, or power, and why the same has not been got in and received, and what is the amount thereof.

And that the said defendant may be decreed by this Honorable Court to come to a fair and just account with your orator and oratrix for and in respect of all and singular the personal estate and effects of the said testatrix which have been received by him or by any other person or persons by his order or for his use, or which without his wilful default might have been received, and that the same may be applied in a due course of administration, and that your orator may be fully paid and satisfied the aforesaid legacy of \$ 500 together with lawful interest for the same from the solemnization of your ora-

Pretence that the personal estate is insufficient.

Charge the contrary.

Interrogatories for account and application of deceased's personal estate.

Prayer.

tor and oratrix's said marriage, and that the clear residue of the said testatrix's personal estate may be ascertained, and that it may be declared by this Honorable Court that such relations only of the said testatrix are entitled to take any shares under the said will in the residue of the said testatrix's personal estate as are capable of taking under the statute of distributions. And that it may be referred to one of the masters of this Honorable Court to inquire and state what relations the said testatrix left of such description; and that the said defendant may also be decreed to pay and satisfy unto your orator in right of your oratrix such part, share, and proportion of such clear residue or surplus to which your oratrix shall appear to be justly entitled under and by virtue of the said testatrix's will. (*And for further relief, see form No. 25, p. 6.*) May it please, &c. (*See form No. 26, p. 6.*)

XXIV. Bill against an executor by legatees and the administrator of a deceased legatee, for payment of their legacies and shares of the residuary personal estate.

To, &c.

Humbly complaining shew unto your honors your orators and oratrix, H. K. the elder of, &c. administrator of the goods and chattels, rights and credits of F. K. late of, &c. deceased, H. K. the younger of, &c. and S. K., an infant under the age of twenty-one years, to wit, about the age of twenty years, by the said H. K. the elder, her father and next friend, that J. R. late of, &c. being possessed of, or well entitled unto a considerable personal estate, duly made and published his last will and testament in writing, and a codicil thereunto annexed, the said will bearing date on or about the _____ day of _____, and by his said will amongst other things gave and bequeathed unto your oratrix S. K. the sum of \$ _____ to be paid to her at the age of twenty-one years, or day of marriage, which should first happen. And the said testator also gave and bequeathed unto your orator H. K. the younger, the sum of \$ _____ to be paid to him on his attaining his age of twenty-one years. And the said testator, after giving divers other legacies, gave and bequeathed unto R. B. (the defendant hereinafter named) and W. R. H. of, &c. and who departed this life in the lifetime of the said testator, the rest and residue of his estate and effects in trust to be equally divided between such children of his the said testator's niece M. K. as should be living at the time of his decease, and thereby appointed the said R. B. executor thereof. As in and by the said will or the probate

Testator's
will and a
codicil
thereto.

CH. II. thereof, when produced to this Honorable Court will appear. And your orators and oratrix further shew unto your honors, that the said
 His death. J. R. departed this life on or about ——— without revoking or altering his said will, save by the said codicil, and without revoking or altering the said codicil or any part thereof; whereupon the said
 Probate by the executor. R. B. the executor in the said will named, duly proved the same in the proper Court, and undertook the executorship thereof, and possessed himself of the personal estate and effects of the said testator
 Title of plaintiffs. to a very considerable amount, and more than sufficient to discharge his just debts, funeral expenses, and legacies. And your orators and oratrix further shew unto your honors that the said F. K. in the said testator's will named, and your orator and oratrix H. K. the younger and S. K. were the only children of the said M. K. in the said will named who were living at the time of the death of the said testator, and your orator H. K. the younger became entitled to have and receive his said legacy of \$ ——— so bequeathed to him as aforesaid, and also his third part or share of the residue of the personal estate and effects of the said testator after payment of all his just debts, legacies, and funeral expenses; and your oratrix S. K. is entitled to have her said legacy of \$ ———, and also her third part or share of the said residue secured for her benefit until she shall attain her age of twenty-one years or day of marriage; and your orator H. K. the elder is entitled as such administrator of the said F. K. as aforesaid, to have and receive the remaining third part or share of the said residue. And your orators and oratrix further shew unto your honors that the said F. K. departed this life on or about ———, intestate, and that since his death your orator, the said H. K. the elder, has obtained letters of administration of the personal estate and effects of the said F. K. to be granted to him by the proper Court. And your orators and oratrix further shew unto your honors that your orator H. K. the younger attained the age of twenty-one years on or about ———, and your orators and oratrix being so entitled as aforesaid, your orators have made frequent applications to the said R. B. to pay the said legacy of \$ ———, and the said two third shares of the said residue; and your oratrix hath also applied to him
 Applications to defendant. the said R. B. to lay out and invest her said legacy of \$ ———, and her third share of the said residue, upon some proper security, for her benefit, until she shall attain her age of twenty-one years or day of marriage, with which just and reasonable requests your orators and oratrix well hoped that the said defendant would have complied, as in justice and equity he ought to have done. But now so it is, &c. (*see form No. 20, p. 4.*) he absolutely refuses so to do, sometimes
 Pretence that testator never pretending that the said testator never made any such will as is hereinbefore stated. Whereas your orators and oratrix charge the con-

trary thereof to be true, and so the said defendant will at other times admit. But then again he pretends that the said testator's personal estate was very small and inconsiderable, and not nearly sufficient to pay and satisfy his just debts and funeral expenses. Whereas your orators and oratrix expressly charge that the personal estate and effects of the said testator were much more than sufficient to discharge the said testator's just debts, and funeral expenses, and legacies; and so it would appear if the said defendant would set forth a full, true, and particular account of all and every the personal estate and effects of the said testator come to his hands or use, and also a full, true, and particular account of the manner in which he hath disposed of or applied the same, but which the said defendant refuses to do. All which actings, &c. (*see form No. 22, p. 5, interrogating to the stating and charging parts.*)

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made a will,
and that his
personal es-
tate was in-
sufficient.
Charge the
contrary.

And that the said defendant may answer the premises; and that an account may be taken of the personal estate and effects of the said testator come to the hands of the said defendant or of any person or persons by his order or for his use, and also of the said testator's funeral expenses, debts, and legacies; and that the same may be applied in a due course of administration; and that the said defendant may be decreed to pay to your said orator H. K. the younger his said legacy of \$——; and that the clear residue of the said testator's personal estate and effects may be ascertained, and that such share thereof as shall appear to belong and be due to your orators respectively may be paid to them respectively, and that your oratrix's said legacy of \$——, and also such share of the said residue as she shall appear to be entitled to, may be secured for her benefit; and that for those purposes all proper directions may be given. (*And for further relief, see form No. 25, p. 6.*) May it please, &c. (*See form No. 26, p. 6.*)

Prayer.

XXV. Bill by an executor, &c., to carry trusts into execution.

To, &c.

Humbly complaining sheweth unto your honors your orator, C. R. of, &c. executor of the will and codicils of M. S., late of, &c. deceased, and also a trustee, devisee, and legatee named in the said will and codicils, that the said M. S. at the several times of making her will and codicils hereinafter mentioned, and at the time of her death, was seised or entitled in fee simple of or to divers messuages, lands, tenements, and hereditaments, of considerable yearly value, in the several counties of C. and D., and being so seised or entitled, and

Testatrix
seised of
large free-
hold and
personal es-
tate.

CH. II. also possessed of considerable personal estate, the said M. S. on or
 Will of the testatrix. about ——— made her last will and testament in writing, and which was duly signed and published by her and attested in such manner as by law is required for devising real estates, and thereby, after giving divers pecuniary and specific legacies and divers annuities, the said testatrix gave and devised unto your orator all, &c. (*stating the substance of the will.*) And the said testatrix afterwards on or about ——— made a codicil to her said will which was duly signed and
 Codicils. published by her and attested as by law is required for devising real estates, and thereby gave, &c., and in all other respects she thereby confirmed her said will and all other codicils by her theretofore made. As by the said will and the said several codicils thereto, or the probate thereof, to which your orator craves leave to refer, when produced will appear. And your orator further sheweth unto your honors that the said testatrix M. S. departed this life on or about ——— without having revoked or altered her said will and codicils, save as such will is revoked or altered by the said codicils, and as some of the said codicils have been revoked or altered by some or one of such subsequent codicils; and the said testatrix at her death left the said E. G. formerly E. S. and the said B. S. her cousins and co-heiresses at law. And your orator being by the said codicil of the ——— day of ——— appointed sole executor of the said will and codicils, hath since her death duly proved the said will and codicils in the proper Court, and taken upon himself the execution thereof. And your orator further sheweth unto your honors that the said testatrix at the time of her death was possessed of, interested in, and entitled unto considerable personal estate and effects, and (amongst other things) she was entitled to an eighth share and interest in a certain copartnership trade or business of a tin-blower and tin-melter, which was carried on by the said testatrix and certain other persons at ——— under the firm of S. F. and Company, in which the said testatrix had some share of the capital, and which was a profitable business, and by the articles of copartnership under which the said business was carried on, your orator, as the said testatrix's personal representative, is now entitled to be concerned in such share of the said business for the benefit of the said testatrix's estate; and she was also possessed of or entitled to certain leasehold estates held by her for the remainder of certain long terms of years determinable on lives. And your orator further sheweth that he hath possessed himself of some parts of the said testatrix's personal estate, and hath discharged her funeral expenses and some of her debts and legacies, and your orator hath also, so far as he hath been able, entered into possession of the said testatrix's estates which she was seised of or entitled to, at the times when she made her said will and codicils, and which con-

Death of testatrix, leaving E. G. and B. S. her co-heiresses.

Probate by plaintiff.

Testatrix possessed of a large personal estate, and of her share in a partnership trade.

And also of leaseholds held on lives.

sisted of, &c. being altogether of the yearly value of \$ ———, or thereabouts, besides the said mansion-house, and besides the premises which by the said codicil, dated the ——— day of ——— are devised to your orator for his own use and benefit; and your orator is desirous of applying the said testatrix's personal estate and effects (not specifically bequeathed) in payment of the said testatrix's debts, and of her legacies now remaining unpaid, and of the annuities bequeathed by the said will and codicils, so far as the same will extend, and of paying the remainder thereof out of the rents and profits of the said real estates, and of applying the whole of the said rents and profits according to the directions of the said will and codicils, as in justice and equity ought to be the case. But now so it is, may it please your honors, that the said J. G., and E. his wife, B. S., and J. S. G., in concert with each other, make various objections to your orator's applying the said personal estate and the rents and profits of the said real estate, according to the directions of the said will and codicils; And the said J. G., and E. his wife, and B. S. sometimes allege that neither the said will, nor any of the said codicils was or were duly executed and attested so as to pass real estates, and that the said testatrix was not of sound and disposing mind, memory, and understanding, at the several and respective times when she executed the said will and codicils. Whereas your orator charges the contrary of such pretences to be true, and that the said testatrix's real estates were well devised by the said will and codicils in manner hereinbefore stated; And the said defendants, J. G., and E., his wife, sometimes pretend that by virtue of the said testatrix's will, they are entitled to the residue of the said testatrix's personal estate not specifically bequeathed, including all her leasehold estates after payment of all her funeral expenses and debts, and that the said personal estate is not subject to the payment of the several legacies and annuities given by the said testatrix's said will and codicils, but is exempt therefrom, and that all the said legacies and annuities ought to be paid out of the rents and profits of the said testatrix's real estates. Whereas your orator charges the contrary of such pretences to be true, and that the said personal estate is applicable to the payment of all the said testatrix's legacies and annuities, after satisfying all her funeral expenses and debts; And the said J. G., and E., his wife, are desirous that your orator, as the personal representative of the said testatrix, should, by means of the said testatrix's share of the capital employed in the said trade or business, carry on the said trade or business for the benefit of them and of the said testatrix's estate, but which your orator cannot safely do without the direction and indemnity of this Court; And the said J. G. alleges that he is not of ability to maintain and educate his said son J. S. G. who is tenant in tail of the

CH. II.

Plaintiff desirous of applying the personal estate, and the rents of the real estate according to the directions of the will.

Defendants object thereto, and allege that the will and codicils were not duly executed.

Charge the contrary.

Defendants J. G. and E. his wife claim the residuary personal estate not specifically bequeathed exempt from the payment of the legacies and annuities.

Charge the contrary.

The above-named two defendants desirous that plaintiff should carry on the testatrix's trade for the benefit of her estate.

CH. II.

Defendant J. G. alleges that he is unable to maintain his infant son, and claims an allowance for his maintenance. Defendants desirous of having a receiver appointed.

said devised estates, subject to the said term of 100 years, and is an infant of the age of ten years or thereabouts, and he therefore claims to have some part of the rents and profits of the said premises paid to him, for the maintenance and education of the said J. S. G.; And your orator, under the circumstances aforesaid, is unable to administer the said personal estate, and to execute the trusts of the said real estates, without the directions of this Honorable Court, and the defendants are desirous of having a person appointed by this Court, to receive the rents and profits of the said real estates devised as aforesaid, by the said fifth codicil, to which your orator has no objection. In consideration whereof, and forasmuch as your orator can only have adequate relief in the premises in a court of equity, where matters of this nature are properly cognizable and relievable. To the end, therefore, that, &c. (*see form No. 24, p. 6, and interrogate to the stating and charging parts.*)

Prayer.

And that the said will and codicils may be established, and that the trusts thereof may be performed and carried into execution by and under the direction of this Court; And that an account may be taken of the said testatrix's personal estate and effects not specifically bequeathed, and of her funeral expenses and debts, and of the legacies and annuities bequeathed by the said will and codicils, your orator being ready, and hereby offering to account for all such parts of the said personal estate as have been possessed by him, and that the said personal estate may be applied in payment of the said funeral expenses, debts, legacies, and annuities, in a due course of administration, and that the clear residue (if any) of the said personal estate may be ascertained, and paid to the said defendants, J. G. and E., his wife, in her right; And in case it shall appear that the said personal estate not specifically bequeathed is not sufficient for payment of all the said funeral expenses, debts, legacies, and annuities, or that any parts thereof are not payable out of such personal estate, then that proper directions may be given for payment of such deficiency or of such parts thereof as are not payable out of the said personal estate according to the trusts of the said term of 100 years, vested in your orator as aforesaid, and that an account may be taken of the rents and profits of the said real estates comprised in the said term, received by, or come to the hands of your orator, and that the same may be applied according to the trusts of the said term; And that proper directions may be given touching the effects specifically bequeathed by the said will and codicils as heir-looms, and that proper inventories may be made thereof; and that all necessary directions may be given touching the application of a sufficient part of the rents and profits of the said real estates, to the maintenance and education of the said J. S. G., in case this Court shall be of

opinion that any allowance ought to be made for that purpose ; and that a proper person may be appointed by this Honorable Court to receive the rents and profits of the said real estates devised as aforesaid by the said fifth codicil. (*And for further relief, &c. see form No. 25, p. 6.*) May it please, &c. (*see form No. 26, p. 6.*)

R. S.

Pray subpoena against J. G., and E. his wife, B. S., and J. S. G.

XXVI. Prayer of a bill to carry the trusts of a will into execution, and to have the rights of all parties in the testator's real and personal estates ascertained — an account taken of the personal estates, debts, &c. and to have the clear residue ascertained and invested — an account taken of the real estate — and to have the rents secured during plaintiff's minority. Also that certain defendants may elect, and that if they should elect to confirm the will, that they may do all necessary acts for that purpose, and if they should claim against the will, then that the benefits given to them by the will, may be secured for the plaintiff, or that he may be compensated thereout for what he may lose by such election ; and that a receiver may be appointed of the rents of the real estates.

And that the said will and codicil of the said testator may be established, and the trusts thereof performed and carried into execution, and that the rights and interests of your orator and of all parties under the same, in the real and personal estate of the said testator may be ascertained and declared by the decree of this Honorable Court ; and that an account may be taken by and under the direction of this Honorable Court, of all the personal estate and effects of the said testator, and of the rents and profits of his real estates come to the hands of the said defendants, or any of them, or by their or either of their order, or for their, or either of their use, and also of the funeral expenses and debts of the said testator ; and that the clear residue of the said testator's personal estate and effects may be ascertained, and that the same may be invested and secured for the benefit of your orator ; and that an account may be taken of the real estates to which your orator is entitled under the said will, and that the rents and profits thereof may be secured for your orator's benefit during his minority ; and if the said defendants M. W., W. C., W. R. E., and A. his wife, or any of them, shall appear to have any right to, or interest in any of the estates which the said testator has disposed of, or assumed to dispose of, by his said will in favor of your orator, that it may be declared that they are bound to elect conformably to the will, or to renounce in favor of your orator the benefits given to them respectively by such will ; and if they shall elect to confirm the will, that they may be decreed to do all such acts as may be necessary for

CH. II. confirming your orator's title to the estates so devised; and if they shall claim against the said will, that the benefits given to them respectively by the said will, may be secured for your orator, or otherwise that he may be compensated thereout for what he may lose by the election of the said defendants to claim against the said will; and that if necessary, a proper person may be appointed receiver of the rents and profits of the said testator's real estates, with all usual directions. (*And for further relief.*)

XXVII. Bill by one of deceased's children against his brother (to whom letters of administration had been granted) for an account of intestate's estate and payment of plaintiff's share; plaintiff disputing the application by the administrator of his share towards his maintenance and education during his minority, and specially charging that under the will of an aunt, defendants were bound to maintain him.

Statement of the property to which the intestate was entitled.

Humbly complaining sheweth unto your honors your orator, L. P. of, &c. That W. P. heretofore of, &c. your orator's late father, deceased, was in his lifetime, and at the time of his death, possessed of, interested in, and well entitled unto, a considerable personal estate, consisting of household goods, plate, linen, china, and wearing apparel, stock on his farm, stacks of hay and corn, and divers articles, implements, and utensils of husbandry, ready money, moneys out at interest upon bonds, mortgages, and other securities, and divers other goods and effects to a large amount and value, and much more than sufficient to satisfy and pay all his just debts and funeral expenses; and being so possessed, interested, and entitled as aforesaid, he the said W. P. did, in or about ———, depart this life intestate and a widower, leaving T. P., W. P., E. P., M. P., and S. P., the defendants hereinafter named, and your orator, his six children, and only next of kin, him surviving. And your orator further sheweth, that Grant of letters of administration to his son W. P. obtained letters of administration of his goods and chattels, rights and credits, to be granted to him, by and out of the proper Court, and did by virtue thereof, possess himself of the personal estate and effects, which were of the said intestate at the time of his death, to a large amount in value, and more than sufficient to satisfy and pay all his just debts and funeral expenses, with a large surplus or residue, which residue became distributable in equal shares and proportions between and amongst your orator, and the said other children of the said intestate, according to the statute made respecting the distribution of intestate's personal estate, and your orator as one of such children became entitled to one sixth part or share of the said intestate's

Death of intestate, leaving six children, his only next of kin. Grant of letters of administration to his son W. P.

Plaintiff's title.

personal estate and effects. And your orator further sheweth, that being so entitled as aforesaid your orator hath frequently, by himself and his agents, applied to his said brother W. P., and requested him to come to an account with your orator for the personal estate and effects of their said father, deceased, and to pay to your orator his sixth part or share of the clear residue thereof. And your orator hoped that the said W. P. would have complied with such request, as in justice and equity he ought. But now so it is, &c. (*see form No. 20, p. 4.*) And the said defendant W. P. pretends that the personal estate and effects of the said W. P., deceased, were very small and inconsiderable, and not more than sufficient to pay and satisfy his debts and funeral expenses. Whereas your orator charges the contrary thereof to be the truth, and that the said intestate's personal estate and effects were more than sufficient to satisfy and pay all his funeral expenses and just debts with a large overplus, and which the said defendant W. P. will at times admit, but then he pretends that your orator having lived with him for many years after the death of the said intestate, he the said defendant hath expended considerable sums of money on the maintenance and education of your orator, and which he insists he ought to be allowed to set off against your orator's said claim, and to retain out of your orator's said distributive share of the said intestate's personal estate. Whereas your orator charges that by reason of the will hereinafter mentioned, of his late aunt, M. P., the said defendant W. P. is not entitled to have any sum or sums expended on the maintenance and education of your orator allowed to him, out of your orator's said distributive share of the said intestate's personal estate. And your orator further charges that M. P., late of, &c. spinster, deceased, by her last will and testament in writing, bearing date, &c. (amongst other things) gave and bequeathed, &c. (*all her effects to the said W. P. and S. P. to be equally divided between them and her other nephews and nieces, defendants, and they were to maintain plaintiff until twenty-one, or otherwise to forfeit their shares.*) And your orator further charges, that soon after making and publishing her said will, the said testatrix departed this life possessed of a considerable personal estate, and particularly of such goods and effects as in her will mentioned, and leaving your orator and the said defendants her nephews and nieces her surviving; and the said defendant S. P. hath duly proved the said will in the proper Court, and hath by virtue thereof possessed herself of the said testatrix's personal estate and effects, and together with the other defendants hath taken possession of the several goods and effects so bequeathed to them by the said will, and have retained and applied the same to their own use amongst themselves as hereinbefore is stated, and that your orator is advised, and hereby insists

CH. II.

Applica-
tions.Pretence
that the
personal es-
tate was in-
sufficient.Charge the
contrary.Pretence
of moneys
expended
by W. P. in
plaintiff's
education,
and of def-
endant's
right to set
off thej
same.Charge
that he is
not entitled
to be al-
lowed any
sums for
mainte-
nance, for
that under
the will of
plaintiff's
aunt, he
and the
other def-
endants
are bound
to maintain
plaintiff.Charge
that testa-
trix died
possessed of
a large
personal
estate.
That def-
endant S.
P. proved
her will,
and that she
and the
other def-
endants
possessed
themselves

CH. II.

of and divided all the personal estate. That W. P. ought not to be allowed any charge for plaintiff's maintenance.

Pretence of other claims by him.

That the other defendants refuse to join in the suit.

Prayer.

that by reason of the said condition contained in the said will the said W. P. ought not to be allowed any charge against your orator for his maintenance and education, inasmuch as the said W. P. hath already received a full satisfaction for the same in manner aforesaid, and which he will at times admit; but then the said defendant W. P. pretends and sets up some other claims against your orator, and refuses to discover the particulars thereof; and the said defendants T. P., &c. severally refuse to join with your orator in this suit, under a pretence that they, or some of them, have been fully paid and satisfied their shares of the said intestate's estate and effects, but how and in what manner they have been paid and satisfied the same, they severally refuse to discover. All which actings, &c. (*see form No. 22, p. 5, interrogating to the stating and charging parts.*)

And that an account may be taken under the direction of this Honorable Court, of the personal estate and effects of the said intestate, W. P., the father, possessed by, or come to the hands of the said defendant, W. P., or any other person or persons, by his order or for his use; and that an account may be also taken of the debts and funeral expenses of the said intestate, W. P.; and that the personal estate of the said intestate may be applied in a due course of administration; and that the clear residue thereof may be ascertained, and that one sixth part or share of such clear residue may be paid by the said defendant, W. P., to your orator. (*And for further relief, see form No. 25, p. 6.*) May it please, &c. (*see form No. 26, p. 6.*)

X.

Bills for Partition.

XXVIII. Bill by one tenant in common against another, for partition.

Humbly complaining sheweth unto your honors your orator, C. A. of, &c. That your orator is seised to him and his heirs, of a capital messuage or mansion-house, called S., and of several stables, out-buildings, gardens, and closes of land, in the county of B., all which premises are now in the occupation of your orator; and your orator is also seised of two equal undivided third parts of and in an estate called S., consisting of a farm-house, stable, and out-houses, and about ——— acres of land, which said farm is let to H. N., at the yearly rent of \$ ———. And your orator further sheweth unto your honors, that E. B., of, &c. (the defendant hereinafter named) is seised of or entitled to the other undivided third part of the said

Titles of plaintiff and defendant.

farm, by virtue of, and under some conveyance made to him by E. his wife (late E. A. your orator's sister), before her intermarriage with the said E. B. And your orator further sheweth unto your honors, that all the said premises were formerly the estate of H. A., your orator's late father, deceased, who built the said capital messuage or dwelling-house, and set apart, and converted part thereof into a farm-house. And your orator further sheweth unto your honors, that your orator has no separate yard, but makes use of the yard belonging to the said farm-house, in common with the tenant; and that your orator's stable, and several of his out-houses are intermixed in the same yard with those of the said tenant. And your orator further sheweth unto your honors, that the enjoyment of the said farm and premises in common, is liable to difficulties and controversies, and is attended with great inconvenience, especially to your orator, whose separate property adjoins thereto, and is intermixed therewith. And your orator has therefore applied to the said E. B. to consent to a partition of the said farm and premises, and hoped he would have complied with such request. But now so it is, the said E. B. refuses to consent thereto, unless compelled by a judgment at common law, or by the decree of this Honorable Court. To the end, therefore, &c. (*Interrogate to the material parts of the statement, as in form No. 24, p. 6.*) And that a commission may issue out of this Honorable Court, to divide, separate, and allot one third part of the said farm and premises, from the other parts thereof, to be held and enjoyed by the said E. B. and his heirs in severalty: and that your orator, his heirs and assigns, may be decreed to enjoy the other two third parts in severalty from the said E. B.; and that proper conveyances may be executed accordingly, or that your honors will make such other order and decree in the matters aforesaid, as to your honors may seem meet, and the circumstances of this case require. May it please, &c. (*End by praying process of subpoena against the said E. B. as in form No. 26, p. 6.*)

CH. II.

Inconvenience of the premises being held in common.

Application.

Refusal.

Prayer.

XXIX. Bill by co-heiresses and their husbands for a partition of freehold estates.

In Chancery.

To, &c.

Humbly complaining shew unto your honors your orators and oratrixes, T. K., of, &c. and C. his wife, L. G., of ———, and M. his wife, and J. V., of, &c. widow, That W. S., of, &c. deceased,

CH. II. the late father of your oratrixes, C. K., M. G., and J. V., and also of E. F., wife of R. F. of, &c. (the defendants hereinafter named) was in his lifetime, and at the time of his death, seised in fee simple or of some other good estate of inheritance, to him and his heirs, of and in all that messuage or dwelling-house, &c. and also of and in all that other messuage, &c. All which said messuages, lands, and premises, are situate, lying and being in, &c. and being so seised, he the said W. S. did many years since depart this life intestate, leaving M. S., his wife, and your oratrixes and their said sister E. F., his four daughters, and only children and co-heiresses, him surviving; and upon his death, the said messuages, land, hereditaments, and premises, descended upon, and came to your oratrixes and the said E. F. as such co-heiresses, subject only to the dower of their said mother, M. S. And your orators and oratrixes further shew unto your honors, that the said M. S., the widow and relict of the said W. S. departed this life some time in or about the month of ———, whereupon your orators and oratrixes, T. K., and C. his wife, and L. G., and M. his wife, in right of your oratrixes, C. and M., and also your oratrix, J. V., and the said R. F. and E., his wife, in right of the said E., have ever since been, and now are severally seised in fee of and in the said messuages, lands, hereditaments, and premises, in four equal, undivided parts or shares, as tenants in coparcenary. And your orators and oratrixes further shew unto your honors, that they have frequently applied unto, and requested the said R. F., and E., his wife, to join and concur with your orators and oratrixes, in making a fair, just, and equal partition of the said premises between them, in order that their respective shares and proportions thereof might be allotted, held, and enjoyed in severalty. And your orators and oratrixes well hoped that the said R. F., and E., his wife, would have complied with such their reasonable requests, as in justice and equity it ought to have been. But now so it is, may it please your honors, that the said R. F., and E., his wife, combining and confederating to and with divers persons, &c. (*see form No. 20, p. 4*), they the said defendants absolutely refuse to comply with such your orators and oratrixes reasonable requests as aforesaid, pretending that your orators and oratrixes, and the said defendants have ever since the death of the said W. S. and M. S. respectively, their said late father and mother, deceased, constantly and regularly divided the yearly rents and profits of all the said messuages, lands, hereditaments and premises equally between them, and that it will not be to the benefit or advantage of either of them to make an actual partition thereof. Whereas your orators and oratrixes charge, and so the truth is, that a fair, just, and equal partition of the said hereditaments and premises will tend greatly to the benefit and advantage of

That the father of the female plaintiffs was seised in fee of certain estates.

His death intestate, leaving the female plaintiffs and defendant R. F. his co-heirs at law, to whom the estates descended, subject to the dower of his widow.

Her death.

Statement of the rights of plaintiffs and defendants.

Applications to the defendants.

Refusals by them.

Pretending that a partition will not be advantageous.

Charge the contrary.

your orators and oratrixes, and the said defendants, but they the said defendants under divers frivolous pretences absolutely refuse to join or concur with your orators and oratrixes therein. All which actings, &c. (see form No. 22, p. 5, interrogating to the stating and charging parts).

CH. II.

And that a commission of partition may be issued out of and under the seal of this Honorable Court, and directed to certain commissioners therein named, to divide and allot the said messuages, lands, hereditaments and premises in equal fourth parts or shares; and that one full and equal fourth part or share may be allotted and conveyed unto your orator and oratrix, T. K., and C., his wife, and the heirs and assigns of your oratrix C. K.; that one other full and equal fourth part or share may be allotted and conveyed unto your orator and oratrix, L. G., and M., his wife, and the heirs and assigns of your oratrix, M. G.; and that one other full and equal fourth part or share may be allotted and conveyed unto your oratrix, J. V., her heirs and assigns; And that your orators and oratrixes, T. K., and C. his wife, L. G., and M. his wife, and J. V., may severally hold and enjoy their respective allotments of the said hereditaments and premises, according to the natures thereof in severalty; and that all proper and necessary conveyances and assurances may be executed for carrying such partition into effect. (And for further relief, see form No. 25, p. 6.) May it please, &c. (see form No. 26, p. 6).

Prayer.

XXX. Bill for a dissolution of a partnership, and for an injunction to restrain one of the defendants from collecting debts.

To, &c.

Humbly complaining sheweth unto your honors your orator, P. C. of, &c. That in or about the month of ——— your orator entered into an agreement with C. B., of, &c. and C. F., of, &c. the defendants hereinafter named, to form a partnership with them, in the business of auctioneers, which agreement was reduced into writing, and signed by your orator and the said defendants, and was in the words and figures, or to the purport and effect following (that is to say): [*stating the same.*] As in and by the said agreement, reference being thereunto had, will appear. And your orator further sheweth that the said copartnership business was entered upon and hath ever since continued to be carried on by your orator and the said defendants, in pursuance of and under the aforesaid agreement, no articles or other instrument having ever been prepared and executed between them. And your orator further sheweth unto your

Agreement for copartnership reduced into writing.

No articles or other instrument ever executed.

CH. II. honors, that having much reason to be dissatisfied with the conduct

Plaintiff, of the said C. B., and being desirous therefore to dissolve the said partnership, your orator, on or about ———, caused a notice in writing, signed by your orator, to be delivered to the said C. B. and C. F., in the words and figures of the purport and effect following (that is to say): "In conformity," &c. &c. As in and by such written notice now in the custody or power of the said defendants or one of them, when produced, will appear. And your orator further sheweth that the said C. B. hath from time to time since the commencement of the said partnership, applied to his own use, from the receipts and profits of the said business, very large sums of money, greatly exceeding the proportion thereof to which he was entitled, and in order to conceal the same, the said C. B., who has always had the management of the said copartnership books, hath never once balanced the said books. And your orator further sheweth that

That defendant C. B. has applied large sums to his own use, and concealed the same, and has never balanced the books.

Plaintiff requested him to pay the moneys received into the bankers, which he refused to do, and has retained the same.

and hath also taken to his own use, moneys received by the clerks, and hath by such means greatly increased his debt to the partnership, without affording to your orator and the said C. F. any adequate means of ascertaining the true state of his accounts. And your orator further sheweth, that he hath by himself and his agents, from

Application to the defendant C. B.

time to time applied to the said C. B., and hath requested him to come to a full and fair account in respect of the said copartnership transactions, with which just and reasonable requests your orator well hoped that the said defendant would have complied, as in justice and equity he ought to have done. But now so it is, &c. (*see form No. 20, p. 4*), the said defendant C. B. absolutely refuses so to do, and he at times pretends that he hath not received and applied to his own use more than his due proportion of the partnership profits.

Pretence that defendant C. B. has not received more than his due proportion of the profits.

Whereas your orator charges the contrary thereof to be the truth, and so it would appear if the said defendant would set forth a full and true account of all and every his receipts and payments, in respect of the said partnership transactions, and of the gains and

Charge the contrary; and that he has re-

profits which have been made in each year since the commencement of the said partnership. And your orator charges that the said C. B. hath in fact received the sum of \$ ——— and upwards, beyond his

due proportion of the partnership profits, and that he is nevertheless proceeding to collect in the partnership debts and moneys, whereby the balance due from him will be increased, to the great loss and injury of your orator and the said C. F. And your orator charges that the said C. B. ought therefore to be restrained by the order and injunction of this Honorable Court from collecting and receiving any of the said partnership debts and moneys. And your orator charges that the said C. F. refuses to join your orator in this suit. All which actings, &c. (see form No. 22, p. 5, *interrogating to the stating and charging parts*).

And that the said defendants may answer the premises; and that the said copartnership may be declared void, and that an account may be taken of all and every the said copartnership dealings and transactions from the time of the commencement thereof; and also an account of the moneys received and paid by your orator and the said defendants respectively in regard thereto. And that the said defendants may be decreed to pay to your orator what, if anything, shall, upon the taking of the said accounts appear to be due to him, your orator being ready and willing, and hereby offering to pay to the said defendants, or either of them, what, if anything, shall upon the taking of the said accounts, appear to be due to them, or either of them, from your orator. And that in the mean time, the said defendant C. B. may be restrained by the order and injunction of this Honorable Court, from collecting or receiving the partnership debts or other moneys. (*And for further relief, see form No. 25, p. 6.*) May it please, &c. (see forms No. 26, p. 6, and No. 29, p. 7). J. L.

Pray subpoena against C. F. and subpoena and injunction against C. B.

CH. II.
 ceived
 \$ ———
 and up-
 wards, and
 is proceed-
 ing to collect
 in the
 debts, and
 that he
 ought to be
 restrained
 therefrom.
 That the
 other de-
 fendant re-
 fuses to join
 in the suit.
 Prayer.

XXXI. Bill for an account of partnership dealings after a dissolution, and for a receiver, and also for an injunction to restrain the defendant from receiving any of the partnership debts.

To, &c.

Humbly complaining sheweth unto your honors your orator, A. B., Plaintiff of ———, That on or about ——— your orator and P. H. W. of, and defend- &c. the defendant hereinafter named, entered into copartnership to- into part- gether as attorneys and solicitors, your orator engaging to bring into nership as the business the sum of \$ ———, and being to receive one third part solicitors. or share of the profits; and the said P. H. W. engaging to bring into the business the sum of \$ ———, and being to receive two third parts or shares of the said profits. And your orator further sheweth unto

CH. II. your honors that your orator accordingly brought into the business the said sum of \$ ———, and that the said copartnership was carried on and continued until the ——— day of ———, when the same was dissolved by mutual consent, and the usual advertisement of such dissolution was inserted in the ——— Gazette. And your orator further sheweth that the said copartnership business was carried on in a house in ———, which at the time of the dissolution of the said co-

Partnership dissolved by mutual consent.

Defendant took the lease of the premises where the business was carried on. partnership was held by the said defendant and your orator under an agreement for a lease for ——— years from ———, and it was verbally agreed between the said defendant and your orator that the said defendant should take to himself the benefit of the said agreement, accounting to your orator for his proportion of the value thereof, and in pursuance of such agreement the said defendant hath ever since continued and now is in possession of the said house. And your orator further sheweth unto your honors, that no settlement of the said copartnership accounts hath ever been made between your orator and the said defendant, and that since the said dissolution your orator hath repeatedly applied to the said defendant to come to a final settlement with respect thereto. And your orator well hoped that the said defendant would have complied with such your orator's reasonable requests as in justice and equity he ought to have done.

That no settlement of accounts has taken place.

Applications to the defendant.

Charge that he has got possession of the books, and refuses to permit plaintiff to inspect the same, or to account.

Charge that plaintiff has paid part of the debts.

That a large balance is due from the defendant.

That he is proceeding to collect in the debts, and ought to be restrained therefrom.

But now so it is, &c. (*see form No. 20, p. 4*), the said defendant absolutely refuses so to do. And your orator charges that the said defendant hath possessed himself of the said copartnership books and hath refused to permit your orator to inspect the same, and hath also refused to render to your orator any account of the copartnership moneys received by him. And your orator charges that he has since the said dissolution paid the sum of \$ ——— in respect of the copartnership debts. And your orator further charges that upon a true and just settlement of said accounts it would appear that a considerable balance is due from the said defendant to your orator in respect of their said copartnership dealings; but nevertheless the said defendant is proceeding to collect in the said copartnership debts and to apply the same to his own use, which the said defendant is enabled to do by means of his possession of the books of account as aforesaid. And your orator charges that the said defendant ought to be restrained by the injunction of this Honorable Court from collecting in the said debts, and that some proper person ought to be appointed by this Honorable Court for that purpose. All which actings, &c. (*see form No. 22, p. 5, interrogating to the stating and charging parts*).

Prayer.

And that an account may be taken of all and every the said late copartnership dealings and transactions until the time of the expiration thereof, and that the said P. H. W. may be directed to pay to

your orator what, if anything, shall upon such account appear to be due from him, your orator being ready and willing and hereby offering to pay to the said P. H. W. what, if anything, shall appear to be due to him from the said joint concern. And that some proper person may be appointed to receive and collect all moneys which may be coming to the credit of the said late copartnership. And that the said P. H. W. may in the mean time be restrained by the order and injunction of this Honorable Court from collecting or receiving any of the debts due and owing thereto. (*And for further relief see form No. 25, p. 6.*) May it please, &c. (*see forms No. 26, p. 6, and No. 29, p. 7.*)

XII.

Bills for Redemption.

XXXII. Bill by the heir-at-law of the mortgagor for redemption of freehold lands.

To, &c.

Humbly complaining sheweth unto your honors your orator, J. G., of, &c. That J. G. the elder, late of, &c. but now deceased, was seised in fee simple of or otherwise well entitled to a certain piece or parcel of real estate, &c. And your orator further sheweth that the said J. G., the elder, in or about the year ———, made some conveyance and assignment of the said premises unto W. B. of, &c. the defendant hereinafter named by way of mortgage for securing the repayment of a certain sum of money with interest then advanced to the said J. G. by W. B. or by J. B., then of, &c. on the part of and as the agent of the said W. B. And your orator further sheweth unto your honors that the said W. B. upon or soon after the making of the said security, entered into the possession of the said mortgaged premises, or into the receipt of the rents and profits thereof, and hath ever since continued in such possession and receipt. And your orator further sheweth that the said J. G., the elder, departed this life in or about the year ———, leaving your orator his sole heir-at-law, who thereupon became entitled to the equity of redemption of the said mortgaged premises. And your orator hath frequently applied to the said W. B. and requested him to come to an account for the rents and profits of the said premises so received by him, and to pay over to your orator what he should appear to have so received beyond the amount of the principal and interest due to him, and to deliver up the possession of the said mortgaged premises; and your orator well hoped that the said defendant would have complied with such requests as in justice and equity he ought to have done, but that the said W. B.

That plaintiff's deceased father was seised in fee, and executed a mortgage to the defendant.

That defendant took possession of the premises.

Death of plaintiff's parents, and that plaintiff became entitled as heir-at-law to his mother.

That defendant made small payments to the plaintiff's father.

Applications to the defendant.

CH. II. acting in concert with divers persons unknown to your orator, refuses to comply therewith. To the end therefore that, &c. (*see form No. 23, p. 6*).

And that the said defendant may answer the premises; and that an account may be taken of what, if anything, is due to the said defendant for principal and interest on the said mortgage, and that an account may also be taken of the rents and profits of the said mortgaged premises which have been possessed or received by the said defendant, or by any other person or persons by his order or for his use, or which without his wilful default or neglect might have been received; and that if it shall appear that the said rents and profits have been more than sufficient to satisfy the principal and interest of the said mortgage, then that the residue may be paid over to your orator; and that your orator may be permitted to redeem the said premises, your orator being ready and willing and hereby offering to pay what, if anything, shall appear to remain due in respect to the principal and interest on the said mortgage; and that the said defendant may be decreed to deliver up possession of the said mortgaged premises to your orator, or to such person as he shall direct, free from all incumbrances made by him or any person claiming under him, and may deliver over to your orator all deeds and writings in his custody or power relating to the said mortgaged premises. (*And for further relief, see form No. 25, p. 6.*) May it please, &c. (*see form No. 26, p. 6*).

J. L.

Pray subpoena against W. B.

XXXIII. Bill to have goods redelivered which have been deposited as a security for money lent.

Humbly complaining sheweth unto your honors your orator, A. S., of, &c., that your orator having occasion for a sum of money for the purposes of his business, made application to P. S. of, &c. the defendant hereinafter named, to lend him the same, and thereupon the said P. S. on or about ——— advanced and lent to your orator the sum of \$ ———, and in order to secure the repayment thereof with interest, your orator deposited with the said defendant [*here insert a description of the goods*] which were of the value of \$ ——— and upwards, and at the same time executed and delivered to the said defendant a bill of sale of the said goods so deposited with him, but it was not meant and intended thereby either by your orator or the said defendant that the said transaction should amount to an absolute sale of the said goods to the said defendant, but it was expressly agreed between your orator and the said defendant, that your orator

Application for a loan and advancement of money on the security of goods.

A bill of sale delivered to defendant.

Agreement that plaintiff should

should nevertheless be at liberty to redeem the same. And your orator further sheweth that being desirous to redeem the said goods, he hath repeatedly applied to the said P. S. and hath offered him the said sum of \$—— with lawful interest thereon, on having the said goods redelivered to him, with which just and reasonable requests your orator well hoped that the said P. S. would have complied, as in justice and equity he ought to have done. But now so it is, &c. (see form No. 20, p. 4). To the end, &c. (see form No. 23, p. 5, interrogating to the statements).

CH. II.
be at liberty to redeem the goods.
Applications to the defendant.

And that the defendant may answer the premises; and that an account may be taken of what is due to the said defendant for principal and interest in respect of the said loan of \$——, and that upon payment thereof by your orator the said defendant may be decreed to deliver over to your orator the said goods so deposited with him as aforesaid. (And for further relief, see form No. 25, p. 6.) May it please, &c. (see form No. 26, p. 6).

Prayer.

J. L.

XXXIV. Bill to set aside a decree of foreclosure fraudulently obtained, and for a redemption.

Humbly complaining sheweth unto your honors your orator, A. B., of, &c. That T. B., late of, &c. Esq., deceased, your orator's late father, during his life, and on or about the —— day of ——, was seised in his demesne as of fee, of and in the hereditaments hereinafter particularly mentioned; and by indenture of that date, made between the said T. B. of the one part, and C. D. of, &c. (the defendant hereinafter named), of the other part; the said T. B., in consideration of \$——, granted, bargained, sold, and demised unto the said C. D., his executors, administrators, and assigns, for the term of one thousand years, all, &c. (describe the premises), subject to redemption on payment of the said principal money and lawful interest, at the time therein mentioned, and long since past, as by the said indenture, reference being thereunto had, will more fully appear. And your orator further sheweth unto your honors that the said T. B. departed this life on or about ——, leaving your orator his heir-at-law, and only child, then an infant under the age of twenty-one years (that is to say, of the age of seven years, or thereabouts), him surviving. And your orator further sheweth unto your honors, that during your orator's minority, and on or about ——, the said C. D. filed his bill of complaint in this Honorable Court against your orator for a foreclosure of your orator's right and equity of redemption in the said mortgaged premises; but your orator was not represented in such bill to be then an infant,

The mortgage.

Death of the original mortgagor, leaving the plaintiff, then an infant, his heir-at-law.
Bill filed, and a decree of foreclosure fraudulently obtained against the plaintiff.

CH. II. and the said C. D. caused and procured one L. M., since deceased, who acted in the management of the affairs of your orator's said father, to put in an answer in the name of your orator, and without ever acquainting your orator, or any of his friends or relations, therewith; in which said answer a much greater sum was stated to be due from your orator, on the said mortgage security, to the said C. D., than in fact was really owing to him, and for which it was also untruly stated that the said mortgaged premises were an insufficient security; and in consequence of such answer being put in, the said C. D. afterwards, in conjunction with the said L. M., on or about ———, obtained an absolute decree of foreclosure against your orator, which your orator has only lately discovered, and of which your orator had no notice; and in which said decree no day is given to your orator, who was an infant when the same was pronounced, to shew cause against it when he came of age; as by the said proceedings now remaining as of record in this Honorable Court, reference being thereunto had, will more fully appear. And your orator further sheweth unto your honors, that your orator, on the ——— day of ——— last, attained the age of twenty-one years, and shortly afterwards, having discovered that such transactions had taken place during his minority as aforesaid, by himself and his agents represented the same to the said C. D., and requested him to deliver up possession of the said mortgaged premises to your orator, on being paid the principal money and interest, if any, actually and fairly due thereon, which your orator offered, and has at all times been ready to pay, and which would have been paid by the personal representatives of the said T. B. out of his personal assets, during your orator's minority, had any application been made for that purpose. And your orator hoped the said C. D. would not have insisted on the said decree of foreclosure, so fraudulently obtained as aforesaid, but would have permitted your orator to redeem the said mortgaged premises, as he ought to have done: But now so it is, may it please your honors, the said C. D. combining, &c. (*Charge confederacy as in form No. 20, p. 4.*) Pretends that the said decree of foreclosure was fairly and properly obtained, and that a day was therein given to your orator when of age, to shew cause against the same, and that your orator has neglected to do so; and that your orator is neither entitled to redeem, or to travel into the said accounts. Whereas your orator charges the contrary thereof to be true, and that your orator only obtained the age of twenty-one years on the said ——— day of ———, and that he has since discovered the several matters aforesaid by searching in the proper offices of this Honorable Court; and your orator expressly charges, that under the circumstances aforesaid, the said decree, so fraudulently obtained as

Such decree, in which no day is given to shew cause, only lately discovered by the plaintiff.

Plaintiff became of age, discovery of the fraud, and applications to the defendant.

Pretence of the validity of the decree.

Charge, that six months have not elapsed since the plaintiff attained twenty-one years, and that he has

hereinbefore mentioned, ought to be set aside, and your orator ought not to be precluded thereby, or in any other manner, from redeeming the said mortgaged premises, of which the said C. D. has possessed himself by such means as aforesaid. (For these parts of the bill, see form No. 23, p. 5, and interrogate to the material parts of this bill.) And that the said decree of foreclosure may, for the reasons, and under the circumstances aforesaid, be set aside by this Honorable Court, and declared to be fraudulent and void; and that an account may be taken of what, if anything, is now due to the said C. D. for principal and interest on the said mortgage; and that an account may also be taken of the rents and profits of the said mortgaged premises which have, or might have been received by, or on the behalf of the said C. D.; and if the same shall appear to have been more than the principal and interest due on the said mortgage, then that the residue thereof may be paid over to your orator; and that your orator may be at liberty to redeem the said mortgaged premises, on payment of the principal and interest, if any, remaining due on the said security; and that the said C. D. may be decreed, on being paid such principal money and interest, to deliver up possession of the said mortgaged premises, free from all incumbrances, to your orator, or as he shall appoint, and to deliver up all title deeds and writings relative thereto. And for general relief, as in form No. 25, p. 6.) May it please, &c. (End by praying process of subpoena against the said C. D., as in form No. 26, p. 6.)

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since made
such dis-
covery as
aforesaid.
Prayer.

XIII.

Bills relating to the Execution of Trusts.

XXXV. Bill to remove trustees, one refusing to act, and the other a prisoner for debt having applied part of the trust moneys to his own use. Prayer for an account, and for an injunction to restrain them from any further interference;—also for a reference to a Master to appoint new trustees, and for a receiver.

To, &c.

Humbly complaining shew unto your honors your orator and oratrixes, J. E., of, &c. and S., his wife, and S. E., the younger, spinster, the daughter and only child of your orator and oratrix, J. E., and S., his wife, That by indenture bearing date ———, and made between your orator and oratrix, J. E., and S., his wife, of the one part, and N. B., of, &c. and R. P., late of, &c. but now a prisoner in the jail of ——— (the defendants hereinafter named) of the other part, after reciting that, &c. (*stating the indenture*). As

Deed of
assignment
of moneys
and effects
to the de-
fendants as
trustees.

CH. II.

That R. P. hath principally acted and applied the moneys to his own use.

Applications to the defendants.

Pretence that the property was inconsiderable, and has been duly applied.

Charge the contrary.

Charge that the defendants ought to be removed, and new trustees appointed, and in the mean time a receiver appointed.

Prayer.

by the said indenture, to which your orator and oratrixes crave leave to refer, when produced will appear. And your orator and oratrixes further shew unto your honors, that the said R. P. hath principally acted in the trusts of the said indenture, and hath by virtue thereof, from time to time, received considerable sums of money and other effects, but the said R. P. hath applied only a small part thereof upon the trusts of the said indenture, and hath applied and converted the residue thereof to his own use, and in particular the said R. P. hath within a few months past, received a considerable sum from the estate and effects of the said C. E., the whole of which he applied to his own use. And your orator and oratrixes further shew that they have by themselves and their agents, repeatedly applied to the said R. P. and N. B. for an account of the said trust property received and possessed by them, and of their application thereof. And your orator and oratrixes well hoped that the said defendants would have complied with such their reasonable request, as in justice and equity they ought to have done. But now so it is, &c. (*see form No. 20, p. 4*). And the said defendants pretend that the trust property and effects possessed and received by them were to an inconsiderable amount, and that they have duly applied the same upon the trusts of the aforesaid indenture. Whereas your orator and oratrixes charge the contrary of such pretences to be the truth, and that so it would appear if the said defendants would set forth, as they ought to do, a full and true account of all and every the said trust property and effects which they have respectively possessed and received, and of their application thereof. And your orator and oratrixes charge that the said R. P. threatens and intends to use other parts of the said trust property, and to apply the same to his own use, unless he is restrained therefrom by the injunction of this Honorable Court. And your orator and oratrixes further charge that he, as well as the said N. B., ought to be removed from being trustees under the said indenture, and that some other persons ought to be appointed by this Honorable Court, as such trustees in their place and stead, and that in the mean time some proper person ought to be appointed to receive and collect the said trust property. All which actings, &c. (*see form No. 22, p. 5, interrogating to the stating and charging parts*).

And that the said defendants may answer the premises; and that an account may be taken of all and every the said trust property and effects which have, or but for the wilful default or neglect of the said defendants, might have been received by them or either of them, or by any other person or persons, by their, or either of their order, or to their or either of their use; and also an account of their application thereof; and that the said defendants may respectively be decreed to pay what shall appear to be due from them upon such

account; and that the said defendants may be removed from being trustees under the said indenture, and that it may be referred to one of the Masters of this Honorable Court to appoint two other persons to be the trustees under the said indenture in their place and stead; and that in the mean time some proper person may be appointed to receive and collect the said trust estate and effects, and that the said defendants may be restrained by the order and injunction of this Honorable Court, from any further interference therein. (*And for further relief, see form No. 25, p. 6.*) May it please, &c. (*see form No. 26, p. 6.*)

XXXVI. Bill for the appointment of a new trustee under a marriage settlement in the room of one desirous to be discharged, there being no such power therein contained.

Humbly complaining shew unto your honors your orators and oratrixes, I. M. P., of, &c. and E., his wife, and A. P. and C. P. infants under the age of twenty-one years, by the said I. M. P., their father, and next friend, and S. N. M., of, &c. (*the other trustees under the settlement*), That by certain indentures of three parts, and made or expressed to be made between, &c. (*stating the indenture of settlement*). But the said indenture contained no power or authority to appoint a new trustee in the place or stead of either of the said trustees therein named, who should decline to act in the said trusts, or be desirous to be removed therefrom. As in and by the said indentures, &c. And your orators and oratrixes further shew unto your honors that the said intended marriage was soon afterwards had and solemnized between your orator I. M. P. and your oratrix E. P.; and that your orator and oratrix, A. P. and C. P. are the only children of the said marriage. And your orators and oratrixes further shew that the said defendant I. P. L. declines to act in the trusts of the said indenture, and is desirous to be discharged therefrom, but by reason that no power is reserved in the said indenture, for the appointment of a new trustee, your orators and oratrixes are advised that he cannot be discharged from such trusts, nor any new trustee appointed without the aid of this Honorable Court. To the end, therefore, that the said defendant I. P. L. may, upon his corporal oath, &c. (*Proceed as in form No. 23, p. 5, and interrogate to the statements.*)

Indentures of settlement.

The marriage duly solemnized.

Defendant desires to be discharged.

And that the said defendant may answer the premises; and that it may be referred to one of the Masters of this Honorable Court to appoint a new trustee under the said marriage settlement, in the place and stead of the said defendant; and that the said defendant may be directed to join in such instrument or instruments as may be necessary for conveying or releasing the said trust premises to your

Prayer.

CH. II. orator, S. N. M., and such new trustee upon the trust of the said settlement; and that thereupon the said defendant may be discharged from the trusts of the said indenture. (*And for further relief, see form No. 25, p. 6.*) May it please, &c. (*see form No. 26, p. 6.*)

XXXVII. Bill by trustees who are desirous of acting under the direction and protection of a Court of Equity. (*a*)

Humbly complaining sheweth unto your lordship your orators G. B. and R. W. both of, &c., and J. B. of, &c. That R. B. late of, &c., deceased, was, in his lifetime, and at the time of his death, entitled to a copyhold, or customary estate, held by copy of court roll, of the manor of S.; and which said copyhold estate was vested in W. P. and his heirs, in trust, that he or his heirs should convey the same to such uses, and for such purposes, as should be appointed by the said R. B. by his will: and the said R. B. was also possessed of, or entitled to, a considerable personal estate, but had not any freehold estate whatsoever; and the said R. B. being so entitled, and possessed as aforesaid, duly made and published his last will and testament in writing, dated the _____ day of _____, in the year _____, and thereby, after devising his said copyhold estate to your orators, and directing the same to be sold, and making such provision, and giving such direction for the payment of his debts and legacies as therein mentioned, he gave as follows (that is to say), "I give all such stocks, annuities, and moneys in the public funds, as I shall be possessed of, or entitled to, at the time of my decease, in my own right, to the said G. B., R. W., and J. B.; and I declare and direct that they shall stand and be possessed of the three per cent. annuities, which may be purchased in pursuance of the directions hereinbefore given, upon the trusts hereinafter declared, that is to say, in trust by and out of the dividends and yearly income thereof, to pay the said M. S. the yearly sum of £50 during her life, at the times and in the manner hereinbefore appointed for that purpose; and to the said R. F. £14 yearly during her life; and in trust by and out of the dividends and yearly income of the said stocks and annuities, and moneys in the public funds, but subject and without prejudice to raising the said yearly sums of £50 and £14 to raise and levy so much money as will make good any deficiency in the provision hereinbefore made for the payment of my debts and legacies, and to apply the money to be raised for supplying and making good such deficiency; and upon trust in

The will of the testator, whereby he bequeathed his personal estate to the plaintiffs;

upon trust to pay M. S. 50l. per annum for life,

and 14l. per annum to R. F. for life,

then upon trust to raise a sufficient sum in aid of the

(*a*) This form is taken without alteration from Van Huythusen's (Hughes's) Equity Draftsman, it being one which presents a comprehensive illustration of the jurisdiction of Courts of Equity over Trusts.

the same manner to raise and levy so much money, as the said provision shall not extend to satisfy, for payment of all such pecuniary legacies, as I by any codicil or codicils, under my hand, shall give or appoint, whether the same shall be attested by any witness or not; and to apply the money so to be raised for the answering that purpose accordingly: and upon further trust, by and out of the dividends and yearly income of the said stocks, annuities, and moneys in the public funds, and out of the stock and annuities to be purchased as herein-after mentioned, but subject and without prejudice to the trusts aforesaid, to raise and apply the yearly sum of £ 500 for a term of twenty years, to commence and be computed from the end of three years next after my decease, and from that period of twenty years the yearly sum of £ 4,000, until the 5th day of January, which will be in the year of our Lord 1860, to and for the purposes hereinafter expressed; and in trust to invest from time to time the residue of the said dividends or yearly income of the said stocks, annuities, and moneys, to be from time to time purchased under the direction, or in pursuance of this my will, in the purchase of stocks, or annuities of the same nature; and I direct, that as well the said two yearly sums of £ 500 and \$ 1,000, during the continuance thereof respectively, as the interest and yearly dividends to arise from and after the 5th day of July, 1860, as well from the said stocks and annuities, to be purchased or accumulated under the directions, and in pursuance of this my will, as from such stocks, annuities, and moneys in the public funds, as I shall be possessed of in my own right at the time of my decease, shall, subject and without prejudice to the trusts aforesaid, be from time to time forever applied in the purchasing of such books, as, by a proper disposition of them, under the following directions, may have a tendency to promote the interests of virtue and religion, and the happiness of mankind; the same to be disposed of in Great Britain, or in any other part of the British dominions: this charitable design to be executed by and under the direction or superintendency of such persons, and under such rules and regulations, as by any decree, or order of the High Court of Chancery, shall from time to time be directed in that behalf," as by the said will, and the probate copy thereof respectively, relation being thereunto had, when the same shall be produced to this Honorable Court, will more fully appear. And your orators further shew unto your lordship, that the said testator departed this life on or about ———, without altering or revoking his said will, leaving I. Y. and T. H. his heirs, according to the custom of the said manor, and also leaving M. the wife of I. S., the said I. Y., and S. Y., his nephews and nieces, and next of kin. And your orators further shew unto your lordship, that your orators have duly proved the said will, and taken

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provision for the payment of his debts and legacies;

and upon further trust to raise such sums of money yearly,

from and to such periods respectively as therein mentioned:

and upon trust from time to time to invest the residue of the dividends and

interest of his personal estate, on securities of the same nature.

Upon trust that such accumulated funds may, at such period as therein mentioned, be applied in the purchase of books, which, by a proper disposition, may promote the interest of religion, and happiness of mankind.

Such charitable bequest to be executed under the direction and decree of the Court of Chancery.

CH. II.

Death of the testator, leaving the defendants, I. Y. and T. H. his heirs, according to the custom of the said manor, and the several other persons therein named, his next of kin.

Proof of the will by the plaintiffs, who are desirous to carry the same into execution.

Preterence that the devise of the copyhold estate is not effectual, and that all the trusts of the said will cannot be performed. That the heir-at-law of the trustee of the copyhold estate is an infant and cannot surrender the same to a purchaser without the direction of a court of equity, under the statute of 7th of Anne.

Preterence by the next of kin, that the trusts of the will cannot be carried into execution.

Attorney-General insists that the charitable pur-

upon themselves the execution thereof, and are desirous of carrying the trusts of the same into full and complete execution. But now so it is, may it please your lordship, the said I. Y. and T. H. pretend that the copyhold estate was not well devised by the said testator's will, or that all the trusts relating to the said will cannot be performed; and I. P., who is the heir-at-law of the said W. P. the surviving trustee of the said copyhold estate, for the purposes of the said testator's will, is an infant under the age of twenty-one years; and therefore cannot surrender the said copyhold estate to a purchaser, without the direction of a Court of Equity, according to the statute made in the seventh year of the reign of her late Majesty Queen Anne; and the said copyhold estate consists principally of an unfurnished house, which your orators cannot let in its present state: and the said I. S., and M. his wife, I. Y., and S. Y., the next of kin of the said testator, pretend that all or most of the trusts of the said testator's will, respecting the charitable gifts and donations therein contained, cannot be carried into execution. And Sir A. B. his Majesty's Attorney-General, insists, that the charitable purposes of the said testator's will, ought to be carried into execution; and that the money to arise by sale of the said copyhold estate, and the money due to him on mortgage, as in the said will mentioned, ought to be applied in payment of the legacies given thereout, according to the said testator's will, and in payment of the debts of the said testator in discharge of his general personal estate; and that so much only of his debts as shall not be so paid, and his funeral expenses, ought to be paid out of his general personal estate in a due course of administration, and that after such payments, his general personal estate ought to be applied to fulfil the purposes of the said testator's will; but your orators have been obliged to pay several of the testator's debts out of his general personal estate, to answer the demands of the said testator's creditors, who were desirous of being immediately paid their demands. And His Majesty's Attorney-General insists, that for the purpose of carrying into execution the charitable intentions of the said testator, the personal estate of the said testator which has been applied in payment of the said testator's debts, ought to be repaid out of the money which shall arise by the sale of the said copyhold estate, and out of such mortgages as aforesaid. And the said I. P. is an infant within the meaning of the statute of the seventh year of the reign of her late Majesty Queen Anne, and ought to surrender the said copyhold estate, of which the legal estate is vested in him as heir-at-law of the surviving trustee of the said estate as aforesaid; but the said I. Y. and T. H., as customary heirs of the said testator, opposed the same; and the said I. S. and M. his wife, I. Y. and S. Y., as next of kin of the said testator, insist that as part

of the personal estate of the said testator consists of mortgage and other securities upon, or interests arising out of the lands, the disposition thereof to charitable purposes is void by the statute made in the ninth year of his late Majesty King George the Second, intituled "An act to restrain the disposition of lands, whereby the same became unalienable." And they claim so much of his personal estate as is not effectually disposed of by the said testator's will. In consideration whereof, and forasmuch as your orators are unable to carry the trusts of the said will into execution without the direction of a Court of Equity. (*For this part of the bill, see form No. 22, p. 5, and interrogate to the material parts of the above statement in the manner there pointed out.*) And that the said T. H. and I. Y., and also the said I. S. and M. his wife, and S. Y., and the said I. P., and also His Majesty's Attorney-General, may also severally set forth in manner aforesaid, what right or interest they have, or claim to have, in the said testator's estate or effects, under the said will or otherwise, and how they make out and support their claims. And that the trusts of the said testator's will may be performed, and the said copyhold estates sold, under the direction of this Honorable Court; and that all proper parties may be decreed to join in such sale, and particularly that the said I. P. may be decreed to surrender the copyhold estate to the purchaser thereof; and that the money to arise by sale of such copyhold estate may be applied in payment of the said testator's debts and the legacies given by his said will, according to the terms thereof; and that the mortgages mentioned in the said testator's will may also be applied in like manner: and that an account may be taken of the said testator's debts and funeral expenses, and the legacies given by his said will; and if the money arising from the sale of the said copyhold estate, and such mortgages as aforesaid, shall not be sufficient for payment of all such debts, and funeral expenses, and legacies, then that the deficiency may be made good out of the general personal estate of the said testator; and that an account may be taken of the personal estate of the said testator not specifically bequeathed by his said will; and that the same may be applied in payment of the said testator's debts not otherwise provided for by his said will, and the legacies payable out of the said testator's general personal estate, and that the surplus may be applied according to the said will; and if any part of such surplus shall appear to consist of mortgages or real securities, that proper directions may be given touching the same, and particularly touching the rights of the next of kin of the said testator therein; and that the charity intended by the said testator may be established, and directions given for carrying on the same according to the said testator's will; and that all proper accounts may be taken, and all necessary directions given for

CH. II.

poses in the testator's will ought to be carried into execution.

Prayer.

CH. II. carrying the said testator's intentions into execution. (*And for general relief, as in form No. 25, p. 6.*) May it please, &c. (*End by praying process of subpoena against I. Y., T. H., I. S., and M. his wife, S. Y., and W. P., as in form No. 26, p. 6, by praying that His Majesty's Attorney-General being attended with a copy, may attend and answer as in form No. 28, p. 7.*)

XIV.

Bills by Underwriters for Frauds practised upon them in the Insurance of Ships.

XXXVIII. Bill by underwriters for a fraud practised upon them in the representation of the voyage. Prayer for an injunction to restrain the defendants from proceeding at law, and for a commission to examine witnesses abroad.

Humbly complaining sheweth unto your honors, &c., that W. W. of, &c., alone or jointly with some other persons, was, or were, or pretended to be, before and at the time of making the insurance after mentioned, owner or owners of a certain merchant ship or vessel called ———, and they or one of them particularly the said W. W., or I. B. and T. G. of the city of ———, insurance brokers and co-partners, as agents for and on the behalf of the owners or owner of the said ship, on or about ——— caused a policy of insurance to be opened at the city of ———, on the said ship ——— and her cargo, against the danger of the sea and capture of any foreign enemy on a voyage to be performed by the said ship from the port of ——— to ———, and which voyage it was upon such occasion pretended that the said ship was immediately to make, and such insurance was accordingly effected at the city of ——— on or about, &c. and amongst other persons who underwrote or subscribed the said policy your orators respectively underwrote the same for the sum of \$ ——— each, at or after the premium of ——— upon the said ship, which was valued in the said policy at \$ ———, and the rest of your orators the like sum of \$ ——— each upon the cargo on board the said ship. As in and by, &c.

The real destination of the ship not as described in the policy.

And notwithstanding the representation made to your orators at the time of making the aforesaid insurance, with regard to the port of the said ship's destination, the voyage really intended to be made by her was not from the port of ——— as mentioned and expressed in the said policy, but from the port of ——— to ——— or some other port in ——— or to some other different port or place than ———. And your orators having been deceived and imposed upon by such un-

true representations of the said ship's intended voyage, the said insurance was fraudulent, and therefore the said policy was null and void. CH. II.

And the said ship afterwards sailed from the port of _____ with some other ships which were to proceed under convoy for _____, but the said ship _____ soon after quitted the said fleet and convoy and deviated from her regular course or track of such a voyage and proceeded to some other port or place not specified or mentioned in the said policy of insurance, particularly to the port of _____ or some other port or place in _____, where the said ship and her cargo were sold for a large sum of money in the whole, and which was afterwards received by the said W. W. and the other joint owners of the ship or some or one of them.

Ship sailed under convoy, and afterwards deviated from the regulated course, and was subsequently sold by the owners.

And your orators well hoped under the circumstances aforesaid they should not have been called upon for payment of any sums of money whatsoever on account of their having subscribed or underwrote the aforesaid policy of insurance.

But the said defendants pretend that the insurance was not made fraudulently or unfairly, and that your orators were not in any manner imposed upon therein, and that the voyage actually intended to be made by the said ship _____ was the voyage particularly mentioned and specified in the said policy, namely, from the port of _____ to _____, and that she never made any deviation therefrom. And they also sometimes pretend that the said ship was lost or foundered at sea in the regular course or track of the said voyage. And at other times they give out that the said ship was in the course of her voyage captured by the enemy and afterwards condemned as lawful prize, and that for some or one of such reasons your orators and the several other underwriters on said policy became liable to pay the several sums insured or underwrote by them respectively on the aforesaid policy.

Pretence that the insurance was not made fraudulently, and that the voyage was actually made, and the ship afterwards lost at sea or captured.

Whereas your orators charge the contrary, and that your orators were deceived and imposed upon in manner aforesaid respecting the place or port of the said ship's destination, for that the said ship was at the time and upon the occasions aforesaid destined or intended for a voyage to _____ or some other port in _____ or some other port or place in _____. And your orators charge that the said ship in the course of the said pretended voyage separated from the rest of the ships or fleet, and made a deviation and proceeded or sailed for the port of _____ or some other port or place in _____, or to some other port or place different from the port or destination mentioned in the said policy, where the captain or some other persons or person on board sold and disposed of the said ship and cargo as hereinbefore is mentioned, and that divers remittances were afterwards made to _____ on account of such sales or the produce thereof to the said confederates, the owners, or some or one of them, such fraudulent insurance as afore-

Charge the contrary; and that plaintiffs were imposed upon.

That the ship deviated from her course.

That the captain sold the ship and cargo in pursuance of a scheme

CH. II. said having been previously made thereon pursuant to and in consequence of some plan or scheme concerted or contrived between the said confederates or some or one of them and the said ——— the captain, or to which they some or one of them were or was privy, and that it was never meant, intended or understood by and between the said confederates or any of them that said ship should perform the voyage specified or mentioned in the aforesaid policy of insurance or proceed to ———. And your orators moreover charge that the said ship was not lost, captured, or taken by the enemy, or however not in the regular course or track of a voyage from ——— to ——— as mentioned in the said policy of insurance. And as evidence thereof your orators charge that the said captain or any other person never made any protest of the loss or capture of the said ship as is usual or customary in such cases, and which would have been made if the said ship had actually been lost or captured, nor was the said ship ever condemned or any sentence of condemnation passed upon her as a lawful prize. And as a further evidence of the aforesaid deception and imposition your orators charge that the said confederates [*the insurance brokers*] or some persons by their orders or directions or with their privity or consent, some time in or about the month of ——— wrote and sent a letter to their agent or correspondent at ———, employed by them to effect the aforesaid insurance, directing him to apply to your orators or some other of the underwriters on the said policy and to offer to cancel the said policy upon the repayment of the premiums; and such a proposition and offer was also made by the direction or with the knowledge of the said confederates [*the owners*] and in consequence of their knowledge, conviction, and belief that the said insurance was fraudulently and unfairly made on the part of the said confederates [*the owners*], and that the underwriters on the said policy were deceived or imposed upon respecting the port of her destination, and that the said ship was not actually lost or captured, and that for such or some other reasons the said policy was null and void, and that the said confederates [*the owners*] have no just claim or demand upon the underwriters in respect of the sums insured or underwrote thereon. And your orators also charge that divers letters or notes have been written by and sent to or received by or passed between the said confederates, or some or one of them and their correspondents or agents at ———, or the persons or person employed by them the said confederates or some or one of them in or about the making of the aforesaid insurance and the said ——— the captain of the said ship, or some or one of them, relating to or in some manner concerning the several matters and things hereinbefore mentioned and inquired after, particularly the making of the aforesaid insurance and the fraud or deception practised or intended to be practised upon your orators and the un-

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concerted
between the
defendants.

That the
ship was
not lost or
captured.

No protest
ever made
as usual in
such cases.

Charge as
to a letter
sent by the
brokers to
their agent
directing
him to ap-
ply to
plaintiffs to
cancel the
policy upon
repayment
of the pre-
mium.

Charge as
to letters,
&c. from
which the
truth of the
matters
charged
would ap-
pear;

ORIGINAL BILLS PRAYING RELIEF.

derwriters of said policy, and which said letters or notes or some copies, abstracts, or extracts thereof, or of some or one of them, together with divers other papers, memorandums, or other writings relating to the matters aforesaid, are now or lately were in the custody, possession, or power of them the said confederates or some or one of them. And your orators also charge that the truth of the several matters and things hereinbefore charged and set forth, and particularly that your orators were deceived or imposed upon in the making of the aforesaid insurance, and that the said ship was not lost or captured, and that the said confederates [*the owners*] of the said ship have no just or fair demand upon your orators by virtue of or under the aforesaid policy, would appear in and by the said letters and papers in case the said confederates would produce the same, but which they refuse to do, although they have been frequently applied unto for that purpose; and under such or the like pretences as aforesaid, or some others equally unjust or unreasonable, the said confederates insist on the contrary; and the said confederate W. W. hath also lately commenced separate actions at law against your orators in his Majesty's Court of King's Bench at W. to recover the sums respectively underwrote by them on the said policy, and he threatens to proceed to judgment and execution thereon, well knowing that your orators are not able to make a good defence at law in the said actions without a full disclosure and discovery of the several matters aforesaid, and without the benefit of the testimony of their witnesses who reside at ——— and ——— and other parts of ———, and also in other parts and places abroad, and who could prove the truth of the several matters and things hereinbefore charged and inquired after. And the said confederates refuse to discover to plaintiffs the names or places of abode of the other persons whom they sometimes allege to be joint owners with them of the said ship. All which actings, &c. (*proceed as in form No. 22, p. 5, as far as the words "matters aforesaid" and then proceed thus*): and that as fully and particularly as if the same were here repeated and they thereunto distinctly interrogated. To the end thereof, &c. (*interrogating to the stating and charging parts*).

but that the defendants refuse to produce the same.

That defendant W. W. has commenced actions against plaintiffs on the policy.

That defendants refuse to discover the names of the other owners.

And that your orators may have a full disclosure and discovery of the several matters and things aforesaid. And that the said defendant W. W. may be restrained by the injunction of this Honorable Court from proceeding in the said actions already commenced by him, and that he and all the said other defendants may in like manner be restrained from commencing or prosecuting any other actions or action or in any other manner proceeding at law against plaintiffs or any of them touching the several matters and things aforesaid. And that your orators may have one or more commission or commissions

Prayer.

CH. II. issuing out of and under the seal of this Honorable Court for the examination of their witnesses at ——— and ——— and other parts of ——— or any other parts or places abroad as there may be occasion. (*And for further relief, see form No. 25, p. 6.*) May it please, &c. (*see form No. 26, p. 6.*)

XV.

Bills to restrain Waste.

XXXIX. Bill by a landlord against a lessee for years to prevent waste.

Seisin of plaintiff.

Lease to defendant.

Covenant to keep the premises in good repair and condition, and to cultivate the land in a husband-like manner.

Humbly complaining sheweth unto your honors your orator A. B. of, &c. That your orator before and at the time of making the indenture hereinafter mentioned, was seised in his demesne as of fee, of and in certain tenements, with the appurtenances, situate at L. in the County of N. hereinafter particularly described; and being so seised by a certain indenture, bearing date the ——— day of ———, in the year ———, and made between your orator of the one part, and C. D. of, &c. (the defendant hereinafter named) of the other part, your orator did demise, lease, set, and to farm let, unto the said C. D. his executors, administrators, and assigns, all, &c. [*Here describe from the lease the subject of the demise.*] To hold the same, with the appurtenances, unto the said C. D., his executors, administrators, and assigns, from the ——— day of ———, then last past, for the term of ——— years thence next ensuing, at the yearly rent of —l.; and the said C. D. did thereby for himself, his executors, administrators, and assigns, covenant, promise, and agree, with your orator, his heirs, and assigns, that he the said C. D., his executors, administrators, or assigns, would, during the said term, keep the said premises in good repair, and manage and cultivate the said farm and lands in a proper, husband-like manner, according to the custom of the country, as by the said indenture of lease, reference being thereunto had, will more fully appear. And your orator further sheweth unto your honors, that the said C. D. under and by virtue of the said indenture, entered upon the said demised premises, with the appurtenances, and became, and was possessed thereof for the said term, so to him granted thereof by your orator as aforesaid. And your orator further sheweth unto your honors, that at the time the said C. D. entered upon the said premises, the same were in good repair and condition, and your orator hoped the said C. D. would so have kept the same, and have cultivated the said lands in a proper and husband-like manner, according to the custom of the country, and that such part of the said premises as consisted

of ancient meadow or pasture ground, would have remained so, and not have been ploughed up, and converted into tillage; and that no waste would have been committed on the said premises. But now so it is, may it please your honors, the said C. D. combining, &c. (Charge confederacy as in form No. 20, p. 4.) Pretends, that the said premises now are in as good repair as when he entered in or to the same, and that he has cultivated the said farm and lands in a proper and husband-like manner, and that no waste has been committed by him thereon. Whereas your orator charges, that the said premises, and the buildings, outhouses, gates, stiles, rails, and fences, were in a good and perfect state and condition, when the said C. D. entered upon the said premises, but now are very ruinous and bad, and the land very much deteriorated, from the wilful mismanagement and improper cultivation thereof, by the said C. D. who has ploughed up certain fields called ———, containing respectively ——— acres, and has otherwise committed great spoil, waste, and destruction in, upon, and about the said premises; and your orator further charges, that the said C. D. ought to put the said premises into the same condition they were in when he entered thereon, and to make your orator a reasonable compensation for the waste and damage done or occurred thereto; and that the said C. D. ought to be restrained by the order and injunction of this Honorable Court, from ploughing up the remaining pasture fields, part of the said demised premises, and particularly the fields called ——— and ———, and containing respectively ——— acres, which he threatens to do, and also restrained from committing any further or other waste, spoil, or destruction, in and about, or to the said estate and premises, or any part thereof. All which, &c. (*For these parts of the bill see form No. 22, p. 5, and interrogate to the material parts of the statement and charges of this bill, in the manner there pointed out.*) And that the said C. D. may be compelled by the decree of this Honorable Court to put the said premises into such repair and condition, in every respect, as far as circumstances will permit, as the same were in when he entered upon the same, under and by virtue of such demise as aforesaid; and may also be decreed to make a reasonable compensation to your orator for all waste done, committed, or suffered by him on the said premises, and all damage occasioned thereto by his mismanagement or neglect (your orator hereby waiving all pains and penalties incurred by the said C. D. on account of committing waste on the said premises), and that he may be decreed to keep the said premises in good and sufficient repair and condition, during the remainder of his interest therein, and to manage and cultivate the said farm and lands in a proper and husband-like manner, according to the custom of the country, and that he may be

CH. II.

Pretence of the premises being in good repair and of proper cultivation, &c.

Charge that the premises were in good repair when the defendant entered, but are now in bad condition, and that the defendant ought to repair them, and make compensation to the plaintiff, and be restrained from committing further waste.

Prayer.

CH. II. likewise restrained by the order and injunction of this Honorable Court, from ploughing up the said remaining pasture fields, forming part of the said demised premises, and particularly the said fields called ——— and ———, and from committing or permitting any further waste or spoil, in, on, or to the said demised premises, or any part thereof. (*And for general relief as in form No. 25, p. 6.*) May it please, &c. (*End by praying an injunction in the terms of the prayer, and by praying process of subpoena, as in form No. 26, p. 6, against the said C. D.*)

XL. Bill by a landlord against his lessee for years, who had ploughed up lands contrary to the terms of his lease, and had suffered the farm to continue out of repair. The bill prays that he may be compelled to reinstate the premises, and to keep them in good repair and condition, and to make satisfaction for the waste done (plaintiff waiving all penalties incurred thereby); also for an injunction to restrain the defendant from ploughing up other lands and from committing waste.

To, &c.

Lessee granted to the defendant.

Humbly complaining sheweth unto your honors your orator, A. B., of ———, That your orator being seised in fee simple of or otherwise well entitled unto the premises hereinafter described, did by a certain indenture bearing date ———, and made between your orator of the one part, and C. D. of ——— (the defendant hereinafter named) of the other part, demised lease set, and to farm let unto the said C. D., his executors, administrators, and assigns, all that messuage, &c. [*describing the premises as in the lease*]. To hold the same with their appurtenances unto the said C. D., his executors, administrators, and assigns, from the ——— day of ——— then last past, for the term of ——— years thence next ensuing, at the yearly rent of \$ ———, payable quarterly as therein mentioned, and under, and subject to the covenants, stipulations, and agreements therein contained on the part of the said C. D., his executors, administrators, and assigns, to be observed and performed. In which said indenture is contained a covenant on the part of the said C. D. for himself, his heirs, executors, administrators, and assigns, that he the said C. D., his executors, administrators, and assigns, should and would, &c. [*stating shortly the covenant to keep the buildings and premises in repair, and also to manage and cultivate the lands*]. As by the said indenture to which your orator craves leave to refer, when produced, will more fully appear. And your orator further sheweth that the said C. D. took possession of all the said demised premises, and that the same were then in good repair and condition, but have

Defendant took possession of the prem-

since become very ruinous and bad, and the said lands very much deteriorated from the wilful mismanagement, and improper cultivation thereof, by or on the part of the said C. D., and that he has ploughed up certain fields called _____ containing _____ acres, contrary to the terms of the said lease, and has otherwise committed great spoil, waste, and destruction, in, upon, and about the said demised messuage, &c. and premises. And your orator further sheweth that he hath frequently, by himself and his agents, applied to the said C. D. and requested him to put the said messuage, &c. and all the buildings, fences, gates, stiles, and rails, into good repair, and to keep the same in good and sufficient repair, during the remainder of the said term, and to make satisfaction to your orator, for all the damage done to the said estate, by his mismanagement or neglect in the management thereof according to the terms of the said lease and course of husbandry practised in the neighboring country: and your orator hath also in like manner requested him not to plough up any other of the said lands demised to him as aforesaid, which he is not at liberty to plough, according to the terms of the said lease. And your orator hoped that the said C. D. would have complied with such applications and requests, as in justice and equity he ought to have done. But now so it is, &c. (*see form No. 20, p. 4*), the said C. D. absolutely refuses so to do; and he at times pretends that the said messuage or tenement, and all the outhouses and out-buildings thereunto belonging, and all the buildings, fences, gates, and stiles, on the said lands, have been constantly, during his possession thereof, and now are, in good repair and condition, and that he hath never ploughed up any part of the said demised lands which he was not at liberty to plough by the terms of the said lease, and the course of husbandry used and approved in the neighborhood thereof, and that he hath never in any manner neglected the manuring or taking care of any part thereof, but that he hath constantly used and employed, cultivated and manured all such lands in a proper, regular, and careful manner, according to the terms of the said lease, and a good course of husbandry used and practised in the neighboring country, and that all the said demised premises are in as good plight and condition in all respects as the same were when he entered thereon. Whereas your orator charges the contrary of all such pretences to be the truth. And your orator further charges that the said farm and premises are now from the neglect and gross mismanagement of the said defendant worth to be sold the sum of \$ _____ less than the same were worth to be sold when the said C. D. first took possession thereof, and that it would cost the sum of \$ _____ and upwards, to put the same into as good plight and condition as the same were in at the time of the date of the said inden-

CH. II.

ises which were then in good repair, but have since become ruinous and deteriorated in consequence of mismanagement, and has ploughed up certain fields and committed great waste.

Applications to the defendant.

Pretence that the premises have been kept and are in good repair, that he has not ploughed up any land contrary to the terms of his lease, nor neglected the manuring, and that the premises are in as good condition as when he entered thereon.

Charge the contrary.

That the premises are worth \$ _____ less than when he entered.

That it would cost \$ _____ to reinstate them.

CH. II. ture of lease. And your orator further charges that the said C. D.

That the defendant ought to repair them, and make compensation for the waste done.

That he intends to plough up other lands, and ought to be restrained therefrom, and from committing further waste.

Prayer.

ought to put the said demised messuage, &c. and premises into good repair and condition, and to make a reasonable compensation to your orator, for the waste and damage done or arisen thereto. And your orator charges that the said defendant threatens and intends to plough up the other or remaining pasture fields called ———, part of the said demised premises, and that he ought to be restrained therefrom, and from committing any further or other waste, spoil, or destruction, in, upon, or to the said farm, lands, and premises, or any part thereof. All which actings, &c. (*see form No. 22, p. 5, and interrogate to the stating and charging parts*).

And that the said defendant may be compelled by the decree of this Honorable Court to put the said messuage, &c. and premises into good and sufficient repair, and to make satisfaction to your orator for all waste done, committed, permitted, or suffered by him, on the said farm, lands, and premises, and all damage done by him, or occasioned thereto, by his mismanagement or neglect (your orator hereby waiving all forfeitures and penalties incurred by the said defendant on account, or in respect of the waste done or committed by him on the said demised premises). And that the said defendant may be decreed to keep the said farm, lands, and premises in good and sufficient repair and condition during the continuance of his interest therein, and to manage and cultivate the said farm and lands in a proper and husband-like manner, according to the terms of the said lease, and the custom of the country. And that he may be restrained by the injunction of this Honorable Court, from ploughing up the said remaining fields forming part of the said demised premises, and particularly the said fields called ———, and from committing or permitting any further or other waste or spoil on or to the said demised premises, or any part thereof, and that all proper directions may be given for effectuating the purposes aforesaid. (*And for further relief, see form No. 25, p. 6.*) May it please, &c. (*see form No. 26, p. 6.*)

CHAPTER III.

ORIGINAL BILLS NOT PRAYING RELIEF. (a)

I.

Bills to perpetuate Testimony. (b)

XLI. Bill by a devisee in fee in possession, to perpetuate the testimony of the witnesses to a will. CH. III.

To, &c.

Humbly complaining sheweth unto your honors your orator, T. H., of, &c., brother of the half blood and devisee named in the last will and testament of T. R., of, &c. deceased, That the said T. R. was in his lifetime, and at the time of his death, seised or entitled to him and his heirs, of or to divers freehold estates, situate in the several places hereinafter mentioned, and divers other places, of considerable yearly value in the whole, and being seised or entitled, and being of sound and disposing mind, memory, and understanding, he made his last will and testament in writing, bearing date, &c. which was duly executed by him, in the presence of, and attested by three credible persons, whose names are, [*here insert the names of the subscribing witnesses*] (c) and which will, with the attestation thereof, is in the words following (that is to say); [*stating the will verbatim.*] And your orator further sheweth that the said T. R. afterwards, and on or about ——— departed this life without revoking or altering his said will, or any part thereof, whereupon your orator by virtue of the said will, became entitled in fee simple to all his said freehold estates, subject as to such part thereof as aforesaid, to the payment of so much of the funeral expenses, debts, and legacies of the said T. R. as his personal estate may fall short to pay; and your orator accordingly, soon after the death of the said T. R. entered upon and took possession of all the said estates, and is now in possession and receipt of the rents and profits thereof and in the possession and enjoyment thereof. And your orator well hoped that he and his heirs and

Testator
seised of
freehold
and copy-
hold es-
tates.

Will of the
testator.

His death
without re-
voking the
same.

Plaintiff
became en-
titled as
devisee in
fee, and
took posses-
sion of the
estates.

(a) Eq. Plead. Chap. VII. (b) Eq. Plead. § 300-306. (c) Eq. Plead. § 300.

CH. III. assigns would have been permitted to enjoy the same quietly without any interruption from any person whomsoever. But now so it is, may it please your honors, that T. H., of, &c., who claims to be cousin and heir-at-law of the said T. R., alleging that he is the only or eldest son of T. H., and M., his wife, both deceased (which said M. H. as is also alleged, was the only child of S. R. who, as is likewise alleged, was the only brother of the father of the said T. R. that left any issue) combining and confederating with divers persons unknown to your orator, pretends that the said T. R. did not make such last will and testament in writing as aforesaid, or that he was not of sound and disposing mind and memory at the making thereof, or that the same was not executed in such manner as by law is required for devising real estates; and therefore he insists that your orator hath not any right or title to the real estates late of the said T. R. or any part thereof, but that on his death the same descended unto him the said T. H., as his heir-at-law. Whereas your orator charges the contrary of such pretences to be true. But nevertheless the said T. H. refuses to contest the validity of the said will during the lifetime of the subscribing witnesses thereto, and he threatens that he will hereafter dispute the validity of the said will when all the subscribing witnesses thereto are dead, whereby your orator and his heirs and assigns will be deprived of the benefit of their testimony. All which pretences of the said confederate are contrary to equity and good conscience, and tend to injure and oppress your orator in the premises, In consideration whereof and forasmuch as your orator cannot perpetuate the testimony of the subscribing witnesses to the said will, without the assistance of a Court of Equity. To the end, therefore, that the said T. H. may show, if he can, why your orator should not have the testimony of the said witnesses perpetuated.

Prayer. And that your orator may be at liberty to examine his witnesses with respect to the execution and attestation of the said will, and sanity of mind of the said T. R. at the making the same, so that their testimony may be perpetuated and preserved. May it please, &c. (see form No. 26, p. 6). [*This bill should not pray for relief.*] (a.)

Pray subpœna against T. H.

II.

Bills to take Testimony De bene esse.

XLII. Bill to take the testimony of witnesses *de bene esse*, for various causes. (a) CH. III.

To the honorable the Judges, &c.

Humbly complaining sheweth unto your honors A. B. of ———, that an action at law is now pending (b) in the Court of ———, wherein your orator is plaintiff, and C. D. of ———, is defendant, [or the reverse,] touching and concerning [here describe the cause of action] which has not yet been committed to a jury; (c) and your orator further shews that one E. F. of ———, of the age of seventy years, or upwards, [or, without stating the age, a person of infirm health, or laboring under a certain disease, or who is about to depart out of the jurisdiction of the said Court, or who is the sole witness to the fact of ———,] so that his testimony is in danger of being lost to your orator at the said trial, by reason of death [or absence] is a material and important witness for your orator, inasmuch as the said E. F. is acquainted with the fact (here state the witness's expected evidence) [or, inasmuch as the said E. F. is the sole person who has knowledge of the fact of ———] which fact it is material and necessary for your orator to prove on the trial of the said action at law.

In consideration whereof, and forasmuch as your orator cannot be secure of having the testimony of the said witness, at the trial of the said action, without the aid of a Court of Equity, in causing the same to be taken *de bene esse*, and that your orator may be at liberty to have the same so taken, under a commission, or commissions issuing out of this Honorable Court. MAY IT PLEASE YOUR HONORS to grant unto your orator a writ of subpoena to be directed to the said C. D., thereby commanding him, at a certain day, and under pain to be therein limited, personally to be and appear before your honors in this Honorable Court, and then and there full, true, direct, and perfect answer make, to all and singular the premises, and to shew cause, if he can, why your orator should not have the testimony of the said witness taken *de bene esse*. (d)

N. B. The prayer of this Bill should never be for relief. Eq. Pl. § 306, 310. should be accompanied by an affidavit of the circumstances under which the evidence is in danger of being lost. Ibid. § 309.

(a) Eq. Pl. § 307 - 310.

(b) Ibid. § 307.

(c) Ibid. § 308.

(d) For the structure of this bill, and the distinction between it and a bill to perpetuate testimony, see Eq. Pl. § 307 - 310.

III.

Bills for Discovery. (a)

CH. III. XLIII. Bill for discovery of title in aid of defence to an action of ejectment.

Statement of the plaintiff's title. Humbly complaining sheweth unto your honors your orator, A. B., of, &c. That your orator now is, and for several years last past has been, seised in his demesne as of fee, of, or otherwise well entitled to all those three pieces or parcels of land, &c., &c., and which were, in the year ———, purchased by your orator from C. D., then of, &c., but since deceased, who, by certain indentures of lease and release, bearing date the ——— day of ——— respectively, and made between the said C. D. of the one part, and your orator of the other part, for the considerations therein mentioned, duly conveyed the same to your orator, his heirs, and assigns forever; as by the said indenture, reference being thereunto had, will appear; and under and by virtue of such conveyance, your orator entered into and upon the said premises, of which he has ever since been, and now is, in the actual possession; and your orator hoped to have continued in the uninterrupted enjoyment thereof. But now so it is, may it please your honors, E. D., of, &c. (the defendant hereinafter named) combining, &c. (*Charge confederacy, as in form No. 20, p. 4.*) Upon the decease of the said C. D., obtained possession of, and now has in his custody or power, all the title deeds, evidences, and writings of the said C. D., which not only relate to the said premises so purchased by your orator as aforesaid, but also to other estates formerly belonging to the said C. D., and which, upon his death, descended to, and became vested in the said E. D., as his heir-at-law. And the said E. D. pretends that he is also entitled to the said premises so purchased by your orator as aforesaid, and that the said C. D. had no power to dispose thereof; and he has lately brought an action of ejectment against your orator in the Court of ———, in order to enforce such claim: whereas your orator charges that the said E. D. has no right or title whatever to the said premises so purchased by your orator from the said C. D. as aforesaid, but that the said C. D. had good right to sell and dispose thereof, and that his conveyance of the said premises to your orator was and is valid and effectual; and so it would appear if the said E. D. would discover and set forth the said title deeds, evidences, and writings relative thereto, so possessed by him as aforesaid. And your orator charges, that there is

Action of ejectment brought by the defendant.

Charge of the validity of the plaintiff's title, and that it would appear if the defendant

or are some outstanding term or terms of years prior to your orator's said conveyance, which will defeat your orator's title to the said premises at law, but the said E. D. refuses to discover the particulars thereof, and to set forth the said title deeds, evidences, and writings, relative to the said premises so purchased by your orator as aforesaid, and threatens and intends to proceed in the said action, without making such discovery as aforesaid, unless he shall be restrained therefrom by the order and injunction of this Honorable Court, as your orator charges he ought to be until he shall have so done. In consideration whereof, and forasmuch as your orator is remediless in the premises at common law, and cannot have a complete discovery of the said title deeds, evidences, and writings, and of the several matters aforesaid, without the aid of a Court of Equity, where matters of this sort are properly cognizable. To the end, &c. (*As in form No. 23, p. 5.*) And particularly, that the said E. D. may discover and set forth in manner aforesaid, whether your orator is not now, and has not been for several, and how many, years last past, and from what time in particular, seised in his demesne as of fee, or otherwise, and how, well entitled of, in, or to the said premises hereinbefore particularly mentioned and described, or some, and what part thereof, or how otherwise? And whether the same were not purchased by your orator in the year ———, and when in particular, of and from the said C. D.? And whether the said premises were not duly conveyed to your orator by the said C. D., by such indentures of lease and release, of such date respectively as aforesaid, or by some, and what other means in particular? And whether your orator did not, under and by virtue of such conveyance to him by the said C. D., enter into and upon, and has not ever since been in the actual possession and enjoyment of the said premises, or how otherwise? And whether the said C. D. has not since departed this life, and when? And whether the said E. D. did not, upon the decease of the said C. D., and by what means, obtain possession of, and has not now in his custody, possession, or power, all, or most, or some, and which of the title deeds, evidences, and writings of the said C. D., relating to the premises so purchased by your orator as aforesaid? And whether the same do not also relate to some, and what other estates, or how otherwise? And that the said E. D. may set forth a list or schedule of all title deeds, evidences, and writings, relating to the said premises so purchased by your orator as aforesaid, and may leave the same in the hands of the clerk of this Honorable Court, for the inspection of your orator, with liberty for your orator, his solicitor, or agents, to take copies thereof, or extracts therefrom, as he may be advised. And whether the said E. D. has not brought such action of ejectment against your orator, and for such purpose as hereinbefore

CH. III.

would make the discovery sought for by the bill. Charge of outstanding terms.

Interrogation.

CH. III. mentioned, and does not threaten and intend to proceed therein, without making any discovery of the several matters aforesaid, unless he shall be restrained therefrom as aforesaid, or how otherwise. And that the said E. D. may also discover and set forth, in manner aforesaid, whether there is or are any, and what, outstanding term or terms of years, or other, and what, subsisting estate in the said premises, prior to your orator's said estate and interest therein, which will defeat the title of your orator, and prevent a good defence at law to the said action, and in whom the same is or are vested; and that he may also discover and set forth how he makes out and derives his pretended title and claim to the said premises so purchased by your orator as aforesaid, and the nature and particulars thereof. And that

Prayer. the said E. D. may make a full and true disclosure and discovery of the several matters aforesaid, to the end that your orator may be the better enabled to defend the said ejectment; and that in the mean time, and until the said E. D. shall have made such discovery as aforesaid, that he may be restrained, by the order and injunction of this Honorable Court, from further proceedings in the said ejectment, and all further and other proceedings at law whatsoever, against your orator touching the several matters aforesaid, or any of them. May it please, &c. (*Pray injunction in the form of the prayer and subpoena against the said C. D., as in form No. 29, p. 7, omitting the word "decree," in the general words.*) (a)

(a) This bill should never pray for "relief." But as to the prayer of the bill, and how to adapt it to the particular objects to be sought, see Eq. Plead. § 312 - 316.

CHAPTER IV.

BILLS NOT ORIGINAL. (a)

I.

*Supplemental Bills.*XLIV. Supplemental bill against the assignee of a bankrupt defendant. CH. IV.

Humbly complaining sheweth unto your honors your orators, A. B. and C. D. of ———, That your orators did in or as of ——— Term ——— exhibit their original bill of complaint in this Honorable Court against B. L. of ———, praying that an account might be taken of the personal estate, effects, &c. And your orators further shew that the said defendant having been served with process to appear, appeared accordingly and put in his answer to the said bill, and your orators replied to the said answer, but before any further proceedings were had in the said cause, and on or about the ——— day of ——— the said B. L. hath been duly found and declared bankrupt; And E. D. of ———, the defendant hereinafter named, having been since duly chosen assignee of the estate and effects of the said bankrupt, there have been duly conveyed and assigned all the estate and effects late of the said bankrupt to the said E. D.; And therefore your orator is advised that he is entitled to the same relief against the said E. D., as he would have been entitled to against the said B. L. if he had not become bankrupt. To the end, therefore, &c. (*See form No. 24, p. 6, and interrogate to the statements.*)

Original bill exhibited.
The defendant appeared and put in his answer.
A replication filed.
Supplementary matters — commission of bankrupt issued against the defendant E. D. chosen as assignee, and the usual conveyance and assignment since executed to him.

And that your orators may have the full benefit of the said suit and proceedings therein against the said E. D., and may have the same relief against him as your orators might or could have had against the said B. L. in case he had not become bankrupt; Or that your orators may have such further or other relief in the premises as to your honors shall seem meet. May it please, &c. (*See form No. 26, p. 6.*)

Prayer.

(a) Eq. Plead. Chap. VIII.

CH. IV. XLV. Supplemental bill to an original and amended bill filed by a lessee for the specific performance of an agreement to grant a further lease, stating that the defendant has brought an ejectment against the plaintiff, and praying an injunction to restrain his proceeding at law.

Original bill exhibited against the same defendant, and afterwards amended praying the specific performance of an agreement to grant a lease of a farm.

Answer put in.

Supplemental matter — That the defendant has brought an action of ejectment against plaintiff.

Applications made to the defendant to desist.

Refusals to comply.

Prayer.

Humbly complaining sheweth unto your honors your orator, J. K., of, &c., That in or as of ——— Term ——— your orator exhibited his original bill of complaint in this Honorable Court against H. B. S., and which said bill hath been amended by order of this Honorable Court, thereby praying that the said defendant might be decreed specifically to perform his agreement with your orator touching the lease of the farm and premises in the said bill mentioned, and to grant your orator a lease thereof for ——— years commencing from the expiration of his former lease, at the yearly rent of \$ ———, your orator being willing and ready to do and perform everything on his part required to be done and performed in pursuance of the said agreement. And your orator further sheweth that the said defendant appeared and put in his answer to the said original bill. As by the said bill and answer now remaining as of record in this Honorable Court, reference being thereunto had, will appear. And your orator further sheweth by way of supplement, that since the filing of the said original bill the said defendant hath caused an action of ejectment to be commenced in the Court of ——— for the purpose of turning your orator out of possession of the said farm and premises, and the said action is still depending in the said Court. And your orator being advised that the said defendant cannot support such action, and that your orator is entitled to a specific performance of the said agreement as prayed by his said amended bill, he has by himself and his agents several times applied to, and requested the said defendant to desist from proceeding in the said action, and he was in hopes that he would have complied with such fair and reasonable requests, as in justice and equity he ought to have done. But now so it is, may it please your honors, that the said H. B. S. refuses to comply with your orator's said requests, and insists upon proceeding in his said action, and to turn your orator out of possession of the said farm and lands, to the manifest wrong and injury of your orator in the premises. To the end, therefore, that, &c. (*See form No. 24, p. 6, and interrogate to the statements.*)

And that the said defendant may be restrained by the injunction of this Honorable Court from proceeding in the said action, and from commencing any other action or proceeding at law for the purpose of turning your orator out of possession of the said farm and lands.

(*And for further relief, see form No. 25, p. 6.*) May it please, &c. CH. IV.
 (*See form No. 29, p. 7.*)

A. C.

Pray subpoena and injunction against H. B. S.

III.

A Bill of Revivor. (a)

XLVI. Bill of revivor (before decree) by the administrator of the plaintiff in the original suit.

Humbly complaining sheweth unto your honors your orator, C. D., of, &c., That J. A., late of, &c. but now deceased, on or about ———, exhibited his original bill of complaint in this Honorable Court against G. T. W. as the defendant thereto, thereby stating such several matters and things as are therein for that purpose more particularly mentioned and set forth, and praying, &c. (b) And your orator further sheweth that process duly issued against the said defendant, and he appeared and put in his answer to the said bill. And your orator further sheweth that some proceedings have been had before the Master, to whom this cause stands referred, but no general report hath yet been made in the said cause; and that the said J. A., lately and on or about ———, departed this life intestate, and that your orator hath obtained letters of administration of the goods, chattels, rights, and credits of the said J. A., deceased, to be granted to him by and out of the proper Court, and hath thereby become, and now is, his legal personal representative. And your orator further sheweth that the said suit and proceedings have become abated by the death of the said J. A., and your orator is, as he is advised, as the personal representative of the said J. A., entitled to have the said suit and proceedings revived against the said defendant G. T. W., and to have the said cause put in the same state and condition as the same was in previously to the death of the said J. A.

Original bill exhibited by J. A.

The defendant appeared and answered.

Proceedings had before the Master, but his general report not yet made.

Death of the plaintiff intestate, and administration granted to the new plaintiff; his title to revive, &c.

To the end, therefore, that the said defendant may answer the premises; and that the said suit and proceedings which so became abated as aforesaid may stand revived, and be in the same plight and condition as the same were in at the time of the death of the said J. A., or that the said defendant may shew good cause to the contrary.

Prayer.

(a) Eq. Plead. § 354 - 376.

(b) As to setting forth the proceedings in the original suit, see Eq. Plead. § 374, note, and also Rule 47 of Eq. Rules of the Supreme Court of the United States.

CH. IV. May it please your honors to grant unto your orator the most gracious writ of subpoena to revive [*and answer*] issuing out of, and under the seal of this Honorable Court, to be directed to the said G. T. W., thereby commanding him at a certain day, and under a certain pain to be therein limited, personally to appear before your honors in this Honorable Court, and then and there [*to answer the premises and*] to shew cause if he can, why the said suit and proceedings therein had should not stand and be revived against him, and be in the same plight and condition as the same were at the time of the abatement thereof, and further to stand to and abide such order and decree in the premises as to your honors shall seem meet. And your orator shall ever pray, &c.

[*Where it is only necessary to pray a subpoena to revive, the words within brackets should be omitted.*]

XLVII. Bill of revivor upon the marriage of the female plaintiff.

Original bill exhibited.

Humbly complaining shew unto your honors your orator and oratrix, A. B., of ———, and E., his wife, .That on or about ———, your oratrix, by her then name of E. M., exhibited her original bill of complaint in this Honorable Court against ——— and W. M., as defendants thereto, thereby stating such several matters and things as are therein for that purpose more particularly mentioned and set forth, and praying, &c. (a) And your orator and oratrix further shew that the said several defendants being duly served with process of subpoena severally appeared and put in their answers to the said original bill. As in and by, &c. And your orator and oratrix further shew that your oratrix took several exceptions to the answer put in by the said defendant W. M. to the said original bill, and which said exceptions were upon argument allowed by the Master to whom the same were referred. And your orator and oratrix further shew that your oratrix afterwards obtained an order of this Honorable Court to amend her said original bill, and that the said defendant W. M. might answer the said amendments at the same time that he answered the said exceptions. And your orator and oratrix further shew that before the said W. M. had put in his answer to the said exceptions or any further proceedings were had in the said suit, and on or about the ——— day of ———, your oratrix intermarried with your orator A. B., whereby the said suit and proceedings became abated. And your orator and oratrix are advised that they are

Defendants appeared and answered.

Exceptions taken to the answer of one of the defendants, which were allowed by the Master.

Order obtained to amend the bill and that the defendant might answer the amendments and exceptions at the same time.

Marriage of the plain-

(a) *Ante*, note b, p. 115.

entitled to have the same revived, and to be put in the same plight and condition as the same were in at the time of the abatement thereof. To the end, therefore, that the said suit and proceedings which so became abated as aforesaid, may stand revived, and be in the same plight and condition as the same were in at the time of such abatement, or that the said defendants may shew good cause to the contrary. May it please, &c.

CH. IV.
tiffs, and
title to re-
vive.
Prayer.

Pray subpoena to revive against all the defendants as in the last precedent.

XLVIII. Bill of revivor (after a decree) against the surviving executor of one of the defendants since deceased.

States that some time in or about ——— Term ———, L. P., now deceased, exhibited her original bill of complaint in this Honorable Court against S. N. and E. his wife, &c., &c., stating as therein is stated, and praying that, &c.

Original
bill exhib-
ited.

That the said S. N. and E. his wife, being duly served with process, appeared and put in their answers to the said bill, but before any further or other proceedings were had in the said cause, the said L. P. departed this life intestate, leaving R. P. her son and heir-at-law, who after her decease duly administered to her, and thereby became her legal personal representative.

Two of the
defendants
answered.

Death of
the plain-
tiff.

Adminis-
tration
taken out
by her heir-
at-law.

That the said suit and proceedings having become abated by the death of the said L. P., *plaintiff* exhibited his bill of revivor in this Honorable Court against ———, praying that the said suit and proceedings might be revived against the said R. P., and by an order of the Court the same were accordingly revived.

Bill of
revivor ex-
hibited.

All the de-
fendants
having an-
swered, the
cause was
heard and a
decree pro-
nounced.

That all the said defendants having put in their answers to the said bill, the same came on to be heard before his honor on or about, &c., when his honor did order and decree, &c.

That before any further or other proceedings were had in the said cause, the said S. N. departed this life, having first duly made and published his last will and testament in writing, dated ———, and thereof appointed his said wife E. N. and the defendant T. R. executrix and executor thereof, who duly proved the said will in the proper Court, and took upon themselves the burthen of the execution thereof, and the said E. N. hath since also departed this life leaving the said defendant T. R. her surviving, and who is now the sole personal representative of the said S. N. deceased, and as such entitled to the principal sum of \$ ——— and interest due from the said G. H. to the said S. N. and secured by way of mortgage upon his the said G. H.'s share of the said estate and premises in the pleadings mentioned, for a term of ——— years; and the said suit and proceedings having become

Death of
one of them
defendants.

His will.
The same
proved by
the execu-
tors.

Death of
one of them
who is be-
come en-
titled to the
principal
and interest
secured
upon mort-
gage of the
share of G.
H.

CH. IV. abated by the death of the said S. N., plaintiff is advised that he is entitled to have the same revived against the said T. R. as his surviving executor.

Title of the plaintiff to revive.

Prayer.

To the end, therefore, that the said suit and proceedings, which became so abated by the death of the said S. N., may stand and be revived against the said T. R., and be in the same plight, state, and condition as the same were in at the time of the abatement thereof; and that plaintiff may have the benefit thereof, or that the said defendant T. R. may shew cause why the said suit and proceedings should not be so revived, and that the same may be revived accordingly. May it please, &c.

Pray subpoena to revive against T. R., as in precedent ante, No. XLVI.

IV.

An original Bill in the Nature of a Bill of Revivor. (a)

XLIX. Prayer of an original bill in the nature of a bill of revivor, where a bill to foreclose a mortgage was brought, and the defendant died, after a decree referring it to a Master, &c., leaving a will, under which the equity of redemption was supposed to be devised, and the present bill was brought against the heirs and the devisees.

Prayer.

And that in case it shall appear, that the equity of redemption of the said mortgaged premises descended upon the death of the said T. H., to the said W. H., then that the said suit and proceedings therein may stand, and be revived against the said W. H., and be in the same plight and condition, as the same were in at the time of the abatement thereof. But in case it shall appear, that the said equity of redemption was devised to the said R. L. and B. J., then that the said decree, made on the hearing of this cause, may be prosecuted and carried into full effect against them, the said R. L., and B. J., in the same manner, as the same might have been prosecuted against the said late defendant T. H.; and that all necessary directions may be given for effectuating the several matters aforesaid. May it please, &c.

(a) Eq. Plead. § 386.

L. Bill of revivor and supplement by the executors of the deceased plaintiff in the original bill, against the administratrix and heiress at law of the deceased defendant, against whom the original had been exhibited for a foreclosure of a mortgage of freehold and leasehold property. CH. IV.

In Chancery.

To, &c.

Humbly complaining shew unto your honors your orators, R. W., of, &c., and N. W., of, &c., executors named and appointed in and by the last will and testament of H. W., late of, &c., gent., deceased, That on or about the ——— day of July, ———, the said H. W. exhibited his bill of complaint in this Honorable Court against T. W. late of, &c., gent., deceased, thereby praying that the said T. W. might be decreed by this Honorable Court to come to a just and fair account with the said H. W. for the principal and interest then due and owing to him on the mortgage security in the said bill mentioned, and might pay the same to the said H. W. by a short day to be appointed by this Honorable Court, together with his costs; and in default thereof, that the said T. W. might stand absolutely barred and foreclosed of and from all manner of benefit and advantage of redemption or claim in or to the residue of the respective mortgaged premises in the said bill mentioned and every part thereof. And the said defendant, T. W., having been duly served with process, appeared thereto, and departed this life on or about the 23d day of January, ———, without having put in his answer to the said bill. And your orators shew unto your honors by way of supplement to the said original bill, that the said defendant, T. W., departed this life intestate, leaving his wife E. W., a defendant hereinafter named *enciante* with a child since born and named A. W., and the said A. W. is now the sole heiress at law of the said T. W., deceased, and as such entitled to the equity of redemption of the said mortgaged premises. And your orators further shew unto your honors, that on or about the 12th day of August, ———, letters of administration of the goods, chattels, and effects of the said T. W., deceased, were duly granted by the Court of ———, unto his widow, the said E. W., who is thereby become his sole personal representative. And your orators further shew unto your honors that the said complainant H. W. departed this life on or about the first day of February, ———, having previously duly made and published his last will and testament in writing, bearing date on or about the 13th day of May, ———, and thereof appointed your orators joint executors; and on or about the 5th day of July, ———, your orators duly proved the said will in

Original bill exhibited against T. W. for a foreclosure.

The defendant appeared and died without having put in his answer.

Supplemental matter — Death of the defendant leaving a widow *enciante*, the child since born and become entitled as heiress at law to the freehold part of the mortgaged premises.

Letters of administration granted to the widow.

Death of H. W. the plaintiff in the original

CH. IV. the said Court of ———, and took upon themselves the burthen of the execution thereof. And your orators further shew that upon the death of the said H. W. the said mortgaged premises became, and the same are now vested absolutely at law in your orators, as his legal personal representatives, subject nevertheless to redemption, on payment of the principal money and interest thereby secured.

And your orators further shew unto your honors that the said suit having become abated by the death of the said T. W., your orators are advised that they, as the personal representatives of the said H. W., deceased, are entitled to have the same revived and restored as against the said E. W. and A. W. to the same plight and condition in which it was at the time of the death of the said T. W., and to have the same relief against the said E. W. and A. W. To the end, therefore, that the said E. W. and A. W. may upon their respective corporal oaths, &c. [*Interrogate to the statements.*]

bill having appointed plaintiffs his executors, who have since proved the will:
 And that upon his death the mortgage terms became vested in the plaintiffs, subject to redemption.
 Title to revive.

Prayer.

And that the said E. W. and A. W. may answer the said original bill, and that they may be decreed by this Honorable Court to come to a just and fair account with your orators for the principal and interest now due and owing to your orators on the said mortgage securities, and may pay the same to your orators by a short day to be appointed by this Honorable Court, together with your orators' costs, and in default thereof, that the said defendants may stand and may be absolutely barred and foreclosed of and from all manner of benefit or advantage of redemption or claim in or to the said mortgaged premises and every part thereof; and that the said suit may stand and be revived against the said defendants, and be in the same plight and condition in which the same was at the time of the decease of the said defendant T. W., or that the said E. W. and A. W. respectively may shew good cause to the contrary. May it please, &c. (*See ante, p. 116, for the prayer and the note there given.*)

Pray subpoena to revive and answer the original bill and supplemental bill against E. W. and A. W., as in precedent No. XLVI. p. 115, 116.

VI.

*A Cross Bill. (a)*LI. Cross bill by an administrator *de bonis non*, &c.

CH. IV.

Humbly complaining sheweth unto your honors your orator, I. H., of, &c. (administrator of all and singular the goods, chattels, and credits, which were of R. H., late of, &c. deceased, at the time of his death, left unadministered by M. H., late of, &c., in her lifetime, now deceased, and which said M. H. in her lifetime, and at the time of her death, was administratrix of the goods, chattels, rights, and credits, which were of the said R. H. deceased, at the time of his death.) That I. M., late of, &c., Esq., deceased, when of sound mind, duly made his last will and testament in writing, and thereby, after bequeathing several pecuniary legacies, gave the residue of his personal estate and effects (subject to the payment of his debts) to his daughter H., then an infant under the age of twenty-one years, but now the wife of I. C. of, &c. (and which said I. C. and H. his wife, are two of the defendants hereinafter named), and thereby appointed R. P. of, &c. (another defendant hereinafter named), and the said R. H. executors of his said will, as by the probate copy of such will, reference being thereunto had, will more fully appear. And your orator further sheweth unto your honors, that the said testator died on or about the ——— day of ———, without altering or revoking his said will, leaving his said daughter H. him surviving; and upon or soon after his decease, the said R. P. and R. H., as such executors as aforesaid, duly proved the said will in the proper Court, and the said R. P. who principally acted in the execution of the said will (the said R. H. having only interfered for the sake of conformity), under and by virtue of such probate, possessed himself of a considerable part of the said testator's personal estate and effects. And your orator further sheweth unto your honors, that the said R. H. departed this life on or about ———, and shortly after his decease, letters of administration were duly granted to the said M. H. his wife, who died on or about ———; and after her decease, such letters of administration of the unadministered personal estate of the said R. H. deceased as aforesaid, were duly granted to your orator by the proper Court; as by such letters of administration, reference being thereunto had, will

Will of the original testator.

His death.

Proof of his will by his executors.

Death of one of the executors of the testator.

Death of the administratrix of such executor.

CH. IV. appear. And your orator further sheweth unto your honors, that the said R. H., previously to his death, accounted for, and paid to the said R. P., as such co-executor as aforesaid, all such part of the personal estate of the said testator as had been received by him the said R. H., as such executor as aforesaid, and no part of such personal estate remained in the hands of the said R. H. at the time of his decease, previously whereto the said R. H. resided in the country, where his house was robbed, and all papers (relative to his acts as such executor as aforesaid, and for which he had so accounted as hereinbefore mentioned) were stolen, and have never hitherto been recovered. And your orator further sheweth unto your honors, that the said I. C. and H. his wife duly intermarried, previously to the said H. attaining the said age of twenty-one years, which she has since done, and after that period the said R. P. duly accounted for the residue of the said testator's personal estate with the said I. C. (who, in right of the said H. his wife, became entitled to receive the same), and thereupon obtained a general release from the said I. C. and H. his wife, of all demands in respect thereof; as by the said release, reference being thereunto had, will appear. And your orator hoped, under the circumstances aforesaid, he would not have been called upon for any account of the administration of the said testator's personal estate: But now so it is, &c. The said I. C. and H. his wife combining, &c. (*charge confederacy with the said R. P. as in form No. 20, p. 4*), have lately filed their bill in this Honorable Court against your orator, as such representative of the said R. H. deceased as aforesaid, for an account of the personal estate of the said testator I. M., received by the said R. H. deceased, in his lifetime, as such executor as aforesaid, thereby praying that your orator may be decreed to pay the said I. C., in right of the said H. his wife, what, upon such account, shall appear to be due to the said I. C., in right of the said H. his wife, out of the assets of the said R. H., and to which said bill they have made the said R. P. a defendant, without praying any account, or relief against him. And they pretend that there are various receipts and accounts [*particularizing those charged in the original bill*] of the said R. H. deceased, as such executor as aforesaid, as to the personal estate of the said testator, which remained unaccounted for by the said R. H. at his decease, and which ought to be paid by your orator. Whereas your orator charges the contrary thereof to be true [*negating specifically the pretended receipts and accounts*], and that an account was stated, and a settlement of accounts took place between the said R. H., previously to his death, and the said R. P., and that an account has likewise been stated and settled by and between the said R. P., as such surviving executor as aforesaid, and the said I. C., in right of the said H. his wife, since she attained

Adminis-
tration *de*
bonis non,
of such ex-
ecutor's es-
tate and ef-
fects gra-
nted to the
plaintiff.

That the
deceased
executor of
the said
testator,
during his
life, ac-
counted for
his receipts
as executor
with his co-
executor,
and that no
part of the
testator's
personal es-
tate re-
mained in
the hands
of such de-
ceased ex-
ecutor at
the time of
his death.

Papers
stolen.

Marriage
of the tes-
tator's
daughter.

That the
surviving
executor
duly ac-
counted
and ob-
tained a
general re-
lease of all
demands.

Bill filed
against the
plaintiff.

Pretence
of various
matters be-
ing unac-
counted for
by the de-
ceased ex-
ecutor.

Charge a
stated ac-
count be-
tween the
deceased
executor
previously
to his

the age of twenty-one years as aforesaid; and that no demand was ever made on the personal estate of the said R. H., in respect of his accounts, until lately, when the loss of such papers, as aforesaid, was discovered, and of which your orator charges an undue advantage is intended and attempted to be taken; and your orator also charges, that the said R. P. abets the said I. C. and H. his wife in their proceedings, and refuses to indemnify the personal estate of the said R. H., in respect of his accounts in the execution of the will of the said testator I. M., so accounted for by him, and settled with the said R. P. as aforesaid; and the said R. P. also refuses to inform your orator what he knows of the matters aforesaid, or any of them, and also denies such statements as have been made by him relative thereto. (*For these parts of the bill see form No. 22, p. 5, and interrogate to the material part of the statement and charges in the manner there pointed out.*) And that the said I. C. and H. his wife may be decreed to execute to your orator, as such administrator of the goods, chattels, and credits of the said R. H. deceased, left unadministered by the said M. H. also deceased, at the time of her death, a general release of all claims and demands upon such administered estate and effects of the said R. H. deceased as aforesaid, in respect of all the accounts of the said R. H. in the execution of the will of the said testator I. M.; or that an account may be taken of the said personal estate of the said testator I. M., received by the said R. H. and of his application thereof; your orator being willing and hereby offering to pay what, if anything, shall appear to be due on the balance of such account; and that the said R. P. may be decreed to indemnify the estate of the said R. H., and your orator, as such administrator thereof as aforesaid, in respect of such part thereof as the said R. H. paid to, or by the order, or for the use of the said R. P.; or otherwise to account for and pay the same to your orator. And that the said I. C. and H. his wife may be decreed to pay to your orator his costs of this suit. (*And for general relief as in form No. 25, p. 8.*) May it please, &c. (*Conclude by praying process of subpoena against the said I. C. and H. his wife, and the said R. P., as in form No. 26, p. 6.*)

CH. IV.

death, and the surviving executor of the testator, and a stated account between the surviving executors and the party interested.

Charge of an attempt, to take an undue advantage of the loss of papers.

Charge that the surviving executor refuses to indemnify the estate of his deceased co-executor, who has duly accounted and settled with him; and that the said surviving executor refuses to give any information in respect thereof.

Prayer.

VII.

A Bill of Review. (a)

CH. IV. LII. Bill of review to examine and reverse a decree signed and enrolled.

Former
proceed-
ings.

Humbly complaining sheweth unto your honors your orator, A. B., of C. in the county of D., Esq., that in ——— term, in the year ———, W. S. of, &c. (the defendant hereinafter named), exhibited his bill of complaint in this Honorable Court against your orator, and thereby set forth, that, &c. [*Here insert the original bill.*] And your orator being served with a *subpœna* for that purpose, appeared and put in his answer to the said bill, to the effect following: [*Here recite the substance of the answer.*] And the said W. S. replied to the said answer, and issue having been joined, and witnesses examined, and publication duly passed, the said cause was set down to be heard, and was heard before your honors, the ——— day of ———

Decree
pro-
nounced,
passed, en-
tered, and
enrolled.

last, when a decree was pronounced, which was afterwards passed and entered, in which it was set forth and recited, that it was at the hearing, on your orator's behalf, insisted, that your orator had, by his answer, set forth that, &c. [*Here insert the rental and decree.*] And the said decree has since, and on or about ———, been duly signed and enrolled, and which said decree your orator humbly insists is erroneous, and ought to be reviewed, reversed, and set aside for many apparent errors and imperfections, inasmuch as it appears by your orator's answer, set forth in the body of the said decree.

Errors.

[*Here insert the apparent errors.*] And no proof being made thereof, no decree ought to have been made or grounded thereon, but the said bill ought to have been dismissed for the reasons aforesaid. In consideration whereof, and inasmuch as such errors and imperfections appear in the body of the said decree, and there is no proof on which to ground any decree to set aside the said rent-charge, your orator hopes that the said decree will be reversed and set aside, and no further proceedings had thereon. To the end, therefore, that the said W. S., &c. (*For this part of the bill see form No. 24, p. 6, and interrogate to any fact comprised in the statement that may be necessary, in the manner there pointed out.*) And that for the reasons, and under the circumstances aforesaid, the said decree may be reviewed, reversed, and set aside, and no further proceedings taken thereon, and your orator permitted to remain in the undisturbed possession and enjoyment of the said rent-charge. May it please, &c.

Prayer.

(*End with praying process of subpoena against the said W. S., as in form No. 26, p. 6.*) CH. IV.

LIII. Bill of review on discovery of new matter.

Whereby your honors decreed, that your orator's title to the said premises was valid and effectual, after which the said C. D. petitioned your honors for a rehearing, and the said cause was accordingly reheard, and a decree of reversal made by your honors, on the ground of the said C. D. being the heir-at-law of the said E. F. deceased; and which said decree of reversal [was afterwards duly signed and enrolled], as by the said decree and other proceedings now remaining filed as of record, in this Honorable Court, reference being thereunto had, will appear. And your orator sheweth unto your honors, by leave of this Honorable Court first had and obtained for that purpose, by way of supplement, that since the signing of the said decree of reversal, your orator has discovered, as the fact is, that the said E. F. was, in his lifetime, seised in his demesne as of fee, of and in the hereditaments and premises in question in the said cause, and that the said E. F., when so seised, and when of sound mind, duly made and published his last will and testament in writing, bearing date on or about ———, which was executed by him, and attested in such manner as by law is required for passing real estates by devise, and thereby gave and devised unto the said I. W., his heirs and assigns forever, to and for his and their own absolute use and benefit, the said hereditaments and premises in question in the said cause (which your orator claims to be entitled to as purchaser thereof, from the said I. W.). And your orator further sheweth unto your honors, that since the said decree of reversal was so made, signed and enrolled as aforesaid, and on or about ———, the said C. D. departed this life intestate, leaving G. H. of, &c. Esq. (the defendant hereinafter named) his heir-at-law, who, as such, claims to be entitled to the said hereditaments and premises, in exclusion of your orator. And your orator is advised and insists, under the circumstances aforesaid, that the said last-mentioned decree, in consequence of the discovery of such new matter as aforesaid, ought to be reviewed and reversed; and that the first decree, declaring your orator entitled to the said hereditaments and premises, should stand, and be established and confirmed, and for effectuating the same, the said several proceedings, which became abated by the death of the said C. D., should stand and be revived against the said G. H. as his heir-at-law. (*For this part of the bill see form No. 22, p. 5, and interrogate to the preceding statement, and particularly as to the will, in the*

Petition of rehearing, and decree of reversal.

The decree of reversal signed and enrolled.

New matter introduced by leave of the Court, by way of supplement.

The will which has been discovered.

Death of the person in whose favor the decree of reversal was made, since the signing and enrolment thereof.

Claim of his heir-at-law.

CH. IV. *manner there pointed out.*) And that the said suit may be revived against the said G. H., or that he may shew good cause to the contrary; and that the said last decree, and all proceedings thereon, may be revived and reversed, and the said first-mentioned decree may stand, and be established and confirmed, and added to, by the said will being declared a good and effectual devise of such hereditaments and premises as aforesaid; and that the said G. H. may be decreed to put your orator into possession of the said hereditaments and premises, and in the same situation in every respect, as far as circumstances will now permit, as your orator would have been, in case such last decree had never been pronounced and executed. (*And for general relief, as in form No. 25, p. 6.*) May it please, &c. (*Pray subpoena to revive and answer against the said G. H., as in form No. XLVI. p. 115.*)

VIII.

A Bill to impeach a Decree for Fraud. (a)

LIV. Bill to set aside a decree of foreclosure fraudulently obtained and for a redemption.

Humbly complaining sheweth unto your honors your orator, A. B., of, &c. That T. B., late of, &c. Esq., deceased, your orator's late father, during his life, and on or about the ——— day of ———, was seised in his demesne as of fee, of and in the hereditaments hereinafter particularly mentioned; and by indenture of that date, made between the said T. B. of the one part, and C. D., of, &c. (the defendant hereinafter named) of the other part; the said T. B., in consideration of \$ ———, granted, bargained, sold, and demised unto the said C. D., his executors, administrators, and assigns, for the term of one thousand years, all, &c. [*describe the premises*], subject to redemption on payment of the said principal money and lawful interest at the time therein mentioned, and long since past, as by the said indenture, reference being thereunto had, will more fully appear. And your orator further sheweth unto your honors, that the said T. B. departed this life on or about ———, leaving your orator, his heir-at-law, and only child, then an infant under the age of twenty-one years (that is to say, of the age of seven years or thereabouts), him surviving. And your orator further sheweth unto your honors, that during your orator's minority, and on or about ———, the said C. D. filed his bill of complaint in this Honorable

The mort-
gage.

Death of
the original
mortgagor,
leaving the
plaintiff,
then an in-
fant, his
heir-at-law.

Bill filed,
and a de-
cree of fore-
closure.

(a) Eq. Plead. § 426-428.

Court against your orator for a foreclosure of your orator's right and equity of redemption in the said mortgaged premises ; but your orator was not represented in such bill to be then an infant ; and the said C. D. caused and procured one L. M., since deceased, who acted in the management of the affairs of your orator's said father, to put in an answer in the name of your orator, and without ever acquainting your orator, or any of his friends or relations therewith ; in which said answer a much greater sum was stated to be due from your orator, on the said mortgage security, to the said C. D. than in fact was really owing to him, and for which it was also untruly stated that the said mortgaged premises were an insufficient security ; and in consequence of such answer being put in, the said C. D. afterwards, in conjunction with the said L. M., on or about ———, obtained an absolute decree of foreclosure against your orator, which your orator has only lately discovered, and of which your orator had no notice ; and in which said decree no day is given to your orator, who was an infant when the same was pronounced, to shew cause against it when he came of age ; as by the said proceedings now remaining as of record in this Honorable Court, reference being thereunto had, will more fully appear. And your orator further sheweth unto your honors, that your orator on the ——— day of ——— last, attained the age of twenty-one years, and shortly afterwards, having discovered that such transactions had taken place during his minority as aforesaid, by himself and his agents, represented the same to the said C. D., and requested him to deliver up possession of the said mortgaged premises to your orator, on being paid the principal money and interest, if any, actually and fairly due thereon, which your orator offered, and has at all times been ready to pay, and which would have been paid by the personal representatives of the said T. B. out of his personal assets, during your orator's minority, had any application been made for that purpose. And your orator hoped the said C. D. would not have insisted on the said decree of foreclosure, so fraudulently obtained as aforesaid, but would have permitted your orator to redeem the said mortgaged premises, as he ought to have done : But now so it is, may it please your honors, the said C. D. combining, &c. (*charge confederacy as in form No. 20, p. 4*) pretends that the said decree of foreclosure was fairly and properly obtained, and that a day was therein given to your orator when of age, to shew cause against the same, and that your orator has neglected to do so ; and that your orator is neither entitled to redeem, or to travel into the said accounts. Whereas your orator charges the contrary thereof to be true, and that your orator only obtained the age of twenty-one years on the said ——— day of ———, and that he has since discovered the

CH. IV.

fraudulently obtained against the plaintiff during his minority.

Such decree, in which no day is given to shew cause, only lately discovered by the plaintiff.

Plaintiff became of age, discovery of the fraud, and applications to the defendant.

Pretence of the validity of the decree.

Charge that six months have not

CH. IV. several matters aforesaid by searching in the proper offices of this
 elapsed since the plaintiff attained twenty-one years, and that he has since made such discovery as aforesaid. Honorable Court; and your orator expressly charges, that under the
 circumstances aforesaid, the said decree so fraudulently obtained as
 hereinbefore mentioned, ought to be set aside, and your orator ought
 not to be precluded thereby, or in any other manner, from redeem-
 ing the said mortgaged premises, of which the said C. D. has pos-
 sessed himself by such means as aforesaid. (*For these parts of the
 bill, see form No. 23, p. 5, and interrogate to the material parts of
 this bill in the manner there pointed out.*) And that the said decree
 of foreclosure may, for the reasons and under the circumstances
 aforesaid, be set aside by this Honorable Court, and declared to be
 fraudulent and void; and that an account may be taken of what, if
 anything, is now due to the said C. D. for principal and interest on
 the said mortgage; and that an account may also be taken of the
 rents and profits of the said mortgaged premises which have, or might
 have been received by, or on the behalf of the said C. D.; and if
 the same shall appear to have been more than the principal and inter-
 est due on the said mortgage, then that the residue thereof may be
 paid over to your orator; and that your orator may be at liberty to
 redeem the said mortgaged premises, on payment of the principal
 and interest, if any, remaining due on the said security; and that
 the said C. D. may be decreed, on being paid such principal money
 and interest, to deliver up possession of the said mortgaged premises,
 free from all incumbrances, to your orator, or as he shall appoint,
 and to deliver up all title deeds and writings relative thereto. (*And
 for general relief, as in form No. 25, p. 6.*) May it please, &c.
 (*End by praying process of subpoena against the said C. D., as in
 form No. 26, p. 6.*)

Prayer.

IX.

A Bill to suspend the Operation of a Decree. (a)

LV. Bill to enlarge the time of performance of a decree, on the ground
 of inevitable necessity, which prevented a party from complying with the
 strict terms of it.

Former
 proceed-
 ings.

Humbly complaining sheweth unto your honors your orator, A. B.,
 of, &c. That your orator, in the year ———, borrowed the sum of
 \$ ——— from C. D. of, &c. (the defendant hereinafter named),
 and in order to secure to the said C. D. the repayment thereof, with

Mortgage. legal interest, your orator, by an indenture bearing date the ———

(a) Eq. Plead. § 428 a.

day of ———, in the year ———, granted, bargained, sold, and demised unto the said C. D., his executors, administrators, and assigns, all that the manor of K., &c., with the appurtenances, for the term of one thousand years, subject to redemption on payment by your orator of the said sum of \$——— and interest, as therein mentioned, as by the said indenture, reference being thereunto had, will more fully appear. And your orator further sheweth unto your honors, that the said C. D., on or about ———, exhibited his bill of complaint in this Honorable Court against your orator, for payment of what was then due to him for principal and interest on the said security, by a short day to be appointed for that purpose, or that your orator might be absolutely debarred and foreclosed from all right and equity of redemption in the said mortgaged premises; and your orator having put in his answer thereto, and submitted to pay what should appear to be due from him, the said cause came on to be heard before your honors on or about ———, when it was referred to R. V., one of the Masters of this Honorable Court, to take an account of what was so due from your orator to the said C. D. as aforesaid, and your orator was ordered to pay the same on the ——— day of ———, or to be absolutely foreclosed of all right and equity of redemption in the said mortgaged premises; as by the said proceedings now remaining as of record in this Honorable Court, reference being thereunto had, will appear. And your orator further sheweth unto your honors, that your orator was duly prepared to pay what should be reported to be due from him; but before the said Master made his report, your orator was sent in great haste, by the commands of his Majesty, Ambassador to the Court of Paris on special and weighty affairs of state, which admitted of no delay; and your orator was therefore unable to make any provision for the payment of what should be so found due from him as aforesaid. And your orator further sheweth unto your honors, that the said Master, during your orator's absence, made his report, whereby he found that the sum of \$——— was due to the said C. D. for principal and interest from your orator, but no further proceedings have since been taken in the said cause. And your orator being ready and willing to pay the said sum of \$——— to the said C. D., and all subsequent interest thereon, is advised, that on payment thereof, he is entitled under the circumstances aforesaid, to have so much of the said decree as relates to the foreclosure of your orator's right and equity of redemption in the said mortgaged premises, suspended, and on payment thereof, to have a reconveyance of the said mortgaged premises from the said C. D. for the remainder of the term so granted to him as aforesaid. To the end therefore, &c. (*interrogate to the foregoing statement, and particularly the cause alleged for suspension of the decree, as in form No. 24, p. 6*). And that the sub-

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Bill for payment of the principal and interest due the said mortgage, or foreclosure.

Answer submitting to pay what was due.

Reference to the Master to take an account of what was due.

Plaintiff ordered to pay the same, or to be foreclosed.

Before the report was made, the plaintiff sent from this country on public service, and prevented from providing for the payment of what was due from him.

Master's report.

Offer to pay principal and interest.

Prayer.

CH. IV. sequent interest on the said sum of \$ ——— so reported to be due from your orator as aforesaid to the present time, may be computed by the direction of this Honorable Court, and that on payment of the said sum of \$ ——— and such interest as aforesaid, the said decree of foreclosure may be suspended, and the said C. D. directed, at the expense of your orator, to reconvey the said mortgaged premises to your orator, or as he shall appoint, freed and absolutely discharged from the said mortgage. (*And for general relief, as in form No. 25, p. 6.*) May it please, &c. (*End by praying subpœna against C. D., as in form No. 26, p. 6.*)

X.

A Bill to carry a Decree into Execution. (a)

LVI. Bill to carry a decree into execution, where a decree of partition had been obtained and not executed.

Former proceedings.

Humbly complaining sheweth unto your honors your orator, C. A., of, &c. That your orator, on or about ———, filed his bill of complaint, &c. (*statement and prayer of the bill of partition, which set out verbatim*), and the said E. B. having put in his answer thereto, and the said cause being duly at issue, the same came on to be heard before your honors on or about ———, when your honors were pleased to order and decree that a commission should issue to certain commissioners to be therein named, to make partition of the estate in question, who were to take the depositions of witnesses to be examined by them, in writing, and return the same, with the said commission; and the said estate was to be divided and separated, and one third part thereof set out in severalty, and declared to belong to the said E. B. and his heirs; and the remaining two-third parts thereof, declared to belong absolutely to your orator, to be held in severalty by him; and the respective parties were decreed to convey their several shares to each other, to hold in severalty according to their respective undivided shares thereof: and that it should be referred to A. B., one of the Masters of this Honorable Court, to settle the conveyances in case the parties differed about the same; as by the said proceedings and decree now remaining as of record in this Honorable Court, reference being thereunto had, will more fully appear. And your orator further sheweth unto your honors that the commission awarded to issue by the said decree never issued on account of the said E. B. going

Decree.

The reason why the decree has not been carried into execution.

abroad, and being, till lately, out of the jurisdiction of this Honorable Court; but the said E. B. having since returned, and the inconvenience mentioned in your orator's former bill still subsisting, your orator is desirous of having the said decree forthwith carried into execution, but from the great length of time that has elapsed, and the refusal of the said E. B. to concur therein, your orator is advised the same cannot be done without the assistance of this Honorable Court. To the end, therefore, &c. (*see this part of the bill, and interrogate to the foregoing statement, as in form No. 24, p. 6*). And that the said decree may be directed to be forthwith carried specifically into execution; and the said E. B. ordered to do and concur in all necessary acts for that purpose. May it please, &c. (*end by praying subpœna against E. B., as in conclusions, form No. 26, p. 6*).

CH. IV.

Prayer.

CHAPTER V.

INFORMATIONS. (a)

I.

CH. V. *When they concern only the Rights of the Crown or Government.* (b)

LVII. Information to set aside a patent of lands granted by the crown, which had been unduly obtained.

That our sovereign lord the now King, on, &c. was, and now is seised in his demesne as of fee, in right of his duchy of Lancaster, of and in the manors, lands, and hereditaments hereinafter particularly described, that is to say, all that, &c. [*here describe the premises*], all which are parcel of the said duchy of Lancaster, and are of the average annual value of £——, or thereabouts, which his Majesty ought to enjoy without interruption, and is also entitled to have the benefit and profit of all the timber and wood on the said premises, which is of considerable value; and no waste or other injury to the prejudice of his Majesty ought to be, or has been done: But now so it is, the said A. B. of, &c. (the defendant hereinafter named) combining, &c. (*charge confederacy as in form No. 20, p. 4*), in order to prejudice his Majesty's right in the said premises, and commit waste thereon, has lately, and for these last —— years entered on the said premises, and by his servants and agents, cut down timber and other trees, and underwood, formerly growing thereon, of considerable value, which the said A. B. has converted and applied to his own use, and for which he refuses to account, in exclusion of his Majesty's just right thereto; and the said A. B. threatens to continue in possession of the said premises, and to cut down, and convert to his own use, all, or most of the remaining timber and other trees, wood and underwood, unless he shall be restrained therefrom by the order and injunction of this Honorable

Seisin in his Majesty, in right of his duchy of Lancaster, of and in the lands in question.

Entry by the defendant on the premises, who has cut down timber, for which he refuses to account.

(a) Eq. Plead. § 8. These precedents of Informations are taken, without alteration, from Willis's Equity Pleadings.

(b) Eq. Plead. § 8.

Court; and to countenance such proceedings, he pretends some title by grant, or conveyance of the said premises, by some ancestor of his Majesty, or some grant or lease from the crown thereof by his present Majesty. Whereas the said attorney-general charges, that if the said A. B. has any such grant, the same was obtained by unusual means, and by surprise, and ought not to be binding on his Majesty, he not being duly apprised thereof. And the said attorney-general expressly charges, that in the month of ———, in the year ———, the said A. B. made a proposal to pay the sum of \$ ———, which was far short of the then value of the said premises, in a clandestine manner, in order to deceive his Majesty, but which last-mentioned sum was never paid; but the said A. B., notwithstanding, in the month of ——— following, petitioned his Majesty for the said grant, and on reference to the then chancellor of the said duchy of Lancaster, from whom the said A. B. hastily obtained a report, in the said month, and on or about the ——— day of ——— following, a warrant was signed for passing a grant of the said premises, which, about two days afterwards, was obtained under the duchy seal, although all endeavors were made to stop the said grant by his Majesty's treasury, and particularly, application was made to the chancellor of the said duchy Court of Lancaster, but in vain, he denying that he knew of any such grant, nor could it be known until a particular thereof was afterwards accidentally found. And the said attorney-general further charges, that such proceedings were contrary to the regular course of passing grants of inheritance, under the seal of the said duchy Court, inasmuch as there ought first to have been a warrant to the auditor, to make a true particular to the surveyor, who is thereupon to return an estimate, when, and not before, his Majesty grants his warrant; in pursuance whereof, a grant is drawn up by the clerk, for the perusal of the King's attorney-general of the said duchy, who, on approval thereof, signs a bill with a docket, which afterwards being signed by his Majesty, passes the seal of office. Whereas the said A. B.'s alleged grant, is not yet registered with the clerk, nor enrolled with the auditor, nor is there any trace thereof to be found in the said office. And the said attorney-general also charges, that although diligent search has been made in the proper office, no lease or demise appears to have been made of the said premises to the said A. B., according to the statute in such case made and provided, as it would have done, had any such lease been duly made; and such lease, if any, in pursuance of the said statute, must have made the said A. B. punishable for waste, and liable to pay the usual annual rent, or one third of the clear annual value of the said premises, which he refuses to do. And the said attorney-general further charges, that the said A. B. ought,

CH. V.

Pretence of title derived from the King's ancestor, or by lease from his present Majesty.
Charge that the grant was fraudulently obtained.

Charge of there being no lease, which, if any had been made, must have been pursuant to the statute.

CH. V. under the circumstances aforesaid, to be restrained from committing further waste, spoil, or destruction, in and upon the said premises, and be decreed to deliver up such alleged grant, and such pretended lease as aforesaid, and to account and make satisfaction to his Majesty, for the waste already committed by him the said A. B., and for one third of the clear yearly value of the said premises, from the time of his entry thereon, within the last six years, and to deliver up the said premises to his Majesty, in as good a state and condition as circumstances will now permit; but nevertheless he refuses so to do, whereby his Majesty is deceived, not only to his disinherison, but to the apparent prejudice to the crown. (*For these parts, see form No. 26, p. 6, and interrogate to the material parts of the statement and charges as there pointed out.*) And that the said A. B. may set forth a full, true, and particular account, of the timber and other trees, wood, and underwood, which since his entry, and within the last six years, was or were growing upon the said premises, and has or have been felled or cut down by his order, or for his use, and of the value thereof; and also a like account of what is due from him, for or by way of rent, during such period, within the last six years, as the said premises have been occupied by him, or for his use, calculating such rent at one third of the clear yearly annual value of the said premises. And that his Majesty may have such discovery as aforesaid, the said attorney-general hereby, on behalf of his Majesty, waives all forfeiture and penalties incurred by the said A. B., by reason of such waste, or any other matter or thing stated or charged in this information. And that an account may be taken, by and under the decree and direction of this Honorable Court, of the value of such timber and other trees, wood, and underwood, which has been so felled and cut down, by, or by the order, or for the use of the said A. B., and also of what is so due and owing from him, for such rent of the said premises as aforesaid, and that the said A. B. may be decreed to make satisfaction to his Majesty for what shall appear to be due to his Majesty, after making all just allowances, on taking such accounts as aforesaid. And that the said A. B. may be decreed to deliver up the said alleged grant and pretended lease of the said premises, if any such really exist, to be cancelled, and also to deliver up possession of the said premises, and to leave the same in as good a state and condition as circumstances will now permit; and that in the mean time, the said A. B., and his workmen and agents, may be restrained, by the order and injunction of this Honorable Court, from cutting down or felling, or causing to be cut down or felled any more timber or other trees, wood, or underwood, or committing any further or other waste, spoil, or destruction, in or upon the said premises, or any part thereof. And that your lordship would be pleased to grant

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Charge that the defendant should be restrained from committing waste; and should deliver up the grant or lease of the premises, and account for the waste already committed, and also for the rent, and give up possession.

Discovery:

Prayer.

your informant on behalf of his Majesty, such further and other relief, as to your lordship may seem meet, and the circumstances of this case require. May it please, &c. (*End by praying an injunction in the terms of the prayer, and also process of subpoena against the said A. B., as in form No. 26, p. 6.*)

CH. V.

II.

When they concern those whose Rights the Crown or Government takes under its particular Protection. (a)

LVIII. Information to establish charitable bequests in favor of a parish.

That by a private act of parliament, made and passed in the thirty-second year of the reign of his late Majesty, King Henry the Eighth, it was enacted (among other things) “that the several parishes of L. and M., in the county of H., should be from thenceforth united, and remain forever an entire body, and the parishioners be of one parish, and that the church of the then late dissolved monastery of St. N., in the town of G., in the county of H., aforesaid, should from thenceforth be a parish church, and named and called the parish church of G., and so at all times thereafter should be called; and that certain persons dwelling within the precincts of the said parish, to be elected as therein mentioned, should be a perpetual and able body in the law, and have a common seal, and should have and enjoy to them and their successors, as well all messuages, lands, and tenements, rents, reversions, services, and other hereditaments: as also all revenues, advantages, and profits whatsoever, which at any time should be in the possession of the said wardens of L. and M. jointly or severally, by virtue of their late incorporation, as therein mentioned; and that the said wardens of the said parish, by the names of the wardens of the parish church of G., in the said county of H. should and might implead, sue, and defend, and be impleaded, as by the said act of parliament will more fully appear.” And the said attorney-general, at the relation aforesaid, further informeth. And your orators further shew unto your lordship, that R. S., of the parish of G. aforesaid, Esq., deceased (the testator hereinafter named), being possessed of, or well entitled to the sum of £ 1000 navy five per cent. annuities, and other personal estate and effects of considerable value, on or about the ——— day of ———, duly made and pub-

Act of parliament for the union of the parishes and incorporating and giving the church-wardens certain powers therein mentioned.

(a) Eq. Plead. § 8.

CH. V. lished his last will and testament in writing, and thereby, after expressing an intencion to dispose of all his effects in manner therein mentioned, (among other things) devised and gave as follows: "I give my freehold house in G. aforesaid, and the interest and dividends of the sum of £1000 navy five per cent. annuities, standing in my name, to I. B., of, &c. gentleman, for life, and after his decease, I give the same, and the interest and dividends of the said sum of £1000 navy five per cent. annuities, to the church-wardens of the parish church of G. aforesaid, for the education in the protestant faith, as by law established, of six poor children; and I give all the residue of my personal estate, after the death of the said I. B., to the poor of the parish of G. aforesaid; and I appoint R. S. and T. W. of, &c. (defendants hereinafter named), executors of this my will," as by the probate copy thereof, reference being thereunto had, will appear. And the said attorney-general at the relation aforesaid, further informeth, and your orators further shew unto your lordship, that the said R. S. departed this life on or about ———, without revoking or altering his said will, as to the devises and bequests therein and hereinbefore particularly mentioned, without issue, leaving the said I. B. in the said testator's said will named, his cousin and heir-at-law, and sole next of kin; and the said R. S. and T. W., upon or soon after the death of the said testator, duly proved the said will in the proper Court, and took upon themselves the execution thereof; and under and by virtue of such probate, posscsed themselves of all or most of the personal estate of the said testator, not specifically bequeathed, and much more than sufficient to satisfy the funeral and testamentary expenses and debts, and the said legacy of £1000 navy five per cent. annuities, given by the said testator's will, for such charitable purpose as aforesaid; and they duly paid and discharged the said testator's funeral and testamentary expenses and debts, but the said legacy, for such charitable purpose as aforesaid, hitherto remains unpaid. And the said attorney-general, at the relation aforesaid, further informeth, and your orators further shew unto your lordship, that the said R. S. and T. W., from time to time, after the death of the said testator, received the interest and dividends of the said legacy of £1000 navy five per cent. annuities, as and when the same became due, and paid the same to the said I. B., or for his use, up to the time of his death; and they have received the dividends which have accrued due thereon since the decease of the said I. B., who departed this life, on or about ———, having first duly made and published his last will and testament in writing, bearing date ———, by which (among other things) he gave all the residue of his personal estate to the said R. S. and T. W., to be equally divided between them, and appointed them

The will.

The testator's death.

Proof of his will.

Possession of the testator's personal estate by the executors.

Payment of the testator's funeral and testamentary expenses and debts, but not the legacy to the charity.

Receipt of the interest and dividends of such legacy by the executors, who paid the same to the person entitled thereto for life, until his death.

CH. V.

executors of his said will; and they, upon or soon after his death, duly proved the same in the proper Court, and took upon themselves the execution thereof, as by the probate copy of the said will (now in their custody or power), and to which the said attorney-general and your orator respectively refer, when produced, will more fully appear. And the said attorney-general, at the relation aforesaid, further informeth, and your orators further shew, that in consequence of such bequest of the interest and dividends of the said sum of £ 1000 navy five per cent. annuities in favor of such poor children of the said parish of G. as aforesaid, your orators have frequently applied to the said R. S. and T. W. and requested them to pay the said dividends thereof, which have accrued since the death of the said I. B., and also the future dividends thereof to your orators and their successors, as such church-wardens as aforesaid, or otherwise to transfer the said stock to your orators; and also to account with and pay to your orators, as such church-wardens as aforesaid, the clear residue of the said testator's personal estate, not specifically bequeathed, for the benefit of the poor of the said parish of G. But now so it is, the said R. S. and T. W. combining, &c. (*charge confederacy as in form No. 20, p. 4*), refuse to comply therewith, pretending that the said bequest of the interest and dividends of the said £ 1000 navy five per cent. annuities, to such charitable purposes as aforesaid, is void by the statute of mortmain, as being attached to the bequest to the said freehold house mentioned in the said testator's will; and that the gift of the residue of the said testator's personal estate, by his said will, for the benefit of the poor of the said parish of G., is too general and uncertain, and that the said I. B. became entitled thereto as the next of kin of the said testator, and that the same now belongs to them, the said R. S. and T. W., as the residuary legatees of the said I. B. Whereas the said attorney-general and your orators charge and submit, that the said bequest of the interest and dividends of the said navy five per cent. annuities to such charitable purposes as aforesaid, is a good and subsisting bequest for the education of such number of poor children born and resident in the said parish of G. as aforesaid, and that the residue of the said testator's personal estate, given by his said will, for the benefit of the poor of the said parish, is a proper and effectual bequest. And that your orators, as such church-wardens as aforesaid, are entitled to receive the said dividends, or to have the said stock transferred to them for the charitable purposes aforesaid; nevertheless the said R. S. and T. W. persist in such pretences and refusals as aforesaid. (*For these parts, see form No. 22, p. 5, and interrogate to the material parts of the statement and charges, in the manner there pointed out.*) And that it may be declared by this Honorable Court, that the

Applications.

Pretence that the charitable bequests are void.

Charge of the validity thereof.

Prayer.

CH. V. gift and bequest of the said sum of £1000 navy five per cent. annuities, and the interest and dividends thereof, for such charitable purposes aforesaid, is a good and subsisting bequest for the education of such number of poor children born and resident within the said parish of G. as aforesaid, or for some other charitable purpose, for the benefit of the said parish; and that it may be also declared that the residue of the said testator's personal estate given and bequeathed by his said will, for the benefit of the poor of the said parish, is a proper and effectual bequest, and that the said defendants R. S. and T. W. may be decreed by this Honorable Court to account with and pay to your orators as such church-wardens as aforesaid, the interest and dividends of the said stock become due since the death of the said I. B., and to transfer the said principal stock to your orators as such church-wardens as aforesaid; and in the mean time to pay the future dividends to your orators and their successors, when and as the same become due. And that the said R. S. and T. W. respectively may also be decreed to account for, and pay over to your orators, as such church-wardens as aforesaid, the clear residue of the said testator's personal estate, not specifically bequeathed, for the benefit of the poor of the said parish; and that such further and other relief may be had in the premises, as to your lordship shall seem meet, and the circumstances of this case require. May it please, &c. (*End by praying process of subpoena against the said R. S. and T. W., as in form No. 26, p. 6.*)

CHAPTER VI.

DEMURRERS. (a)

The Title.

LIX. The title of a defence by demurrer to a bill in equity.

CH. VI.

The demurrer of A. B., Attorney (or Solicitor) General, or of C. D. Esquire, Attorney (or Solicitor) General of the State of ———, or of the Mayor and Aldermen of the City of E.; or of F. G. an infant under the age of twenty-one years, by H. I. his guardian, or of J. K. an idiot or lunatic by L. his guardian, or of M. N. and O. his wife; or of P. the wife of R. S., who has duly obtained an order of this Honorable Court, for liberty to defend separately from her said husband, or of T., the wife of V. Y., defendants to the bill of complaint of Z. X., complainant.

LX. Introduction to a demurrer to the whole of the bill. (b)

This defendant (*or these defendants respectively*) by protestation, not confessing or acknowledging all, or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged,* *doth (or do as the case may be)* demur thereto, and for cause of demurrer, *sheweth (or shew)*, That, &c.

LXI. Where the demurrer is to part of the bill, or to the relief. (c)

(*As in form LX. to the asterisk*) as to so much and such part of the said bill as seeks that this defendant (*or these defendants*) may answer and set forth whether, &c.; and whether, &c.; and prays, &c. (*if relief be prayed*); *doth (or do)* demur, and for cause of demurrer sheweth (*or shew*).

(a) Eq. Plead. § 441, 646.

(c) Eq. Plead. § 456, 459.

(b) Eq. Plead. § 312, 441, 751, note.

*The Conclusion.*CH. VI. LXII. General words of conclusion to a demurrer to the whole of the bill. (a)

Wherefore this defendant (*or these defendants respectively*), demands * (*or demand*) the judgment of this Honorable Court, whether *he* shall be compelled to make any further, or other answer to the said bill, or any of the matters and things therein contained, and prays (*or pray*) to be hence dismissed, with his (*her, or their*) reasonable costs in this behalf sustained.

Or thus:

Wherefore, and for divers other errors and imperfections, this defendant humbly demands, &c. (*As in the preceding form from the asterisk.*)

LXIII. Where the demurrer is to part only, or to the relief. (b)

Wherefore, and for divers other errors and imperfections appearing in the said bill, this defendant (*or these defendants*) humbly prays (*or pray*) the judgment † of this Honorable Court, whether *he* (*she, or they*) shall be compelled to make any answer to such part of the said bill as is so demurred unto as aforesaid, &c.

Or thus:

And therefore, and for other good causes of demurrer in the said bill contained, as to so much of the said complainant's bill as is demurred unto as aforesaid, this defendant (*or these defendants*) doth (*or do*) demand the judgment, &c. (*As in the last form from †.*)

 FORMS OF DEMURRERS.

Demurrers to Bills praying Relief, where the Court has no Jurisdiction. (c)

LXIV. Demurrer to a bill for relief on a lost bond, for want of an affidavit of such loss being annexed, and filed with the bill. (d)

That the said complainant by his said bill, as this defendant is advised, endeavors to entitle himself to a sum of money due upon the bond, therein stated to have been entered into by this defendant to

(a) Eq. Plead. § 312, 441, 446, 751, note.

(b) Eq. Plead. § 466 - 493.

(c) Eq. Plead. § 454 - 459.

(d) Eq. Plead. § 528 - 642.

the said complainant, and suggests, for equity, that the said bond hath been burnt, lost, or destroyed; and the said complainant hath not by affidavit annexed to, and filed with the said bill, made oath that the said bond is burnt, lost, or destroyed; wherefore, &c. (*as in forms No. LXII, LXIII. p. 140.*)

LXV. Demurrer for want of a suggestion that the evidence of the plaintiff's demand is not in his power. (*a*)

As to so much and such part of the said complainant's bill as prays relief, in respect of the bond bearing date ——— for the sum of \$ 20,000 in the said bill, stated to have been made and entered into, for the payment of \$ 10,000 and interest on the ——— day of ——— last by this defendant, or the money alleged, by the said bill, to be now due to the said complainant from this defendant thereon, this defendant doth demur, and for cause of demurrer sheweth, that the said bond appears by the said bill, to have been taken by the said complainant, in his own name, and to be now in the possession, custody, or power of the said complainant, who therefore has a remedy for his demand at law. Wherefore, &c. (*as in forms No. LXII, LXIII. p. 140.*)

LXVI. Demurrer to a bill for relief filed by a person beneficially entitled, where a right of action at law was in a trustee, *suggesting* a refusal by the trustee to suffer an action to be brought in his name. (*b*)

As to so much and such part of the said bill, as seeks to compel these defendants to pay the sum of \$ 5000 or to make the said complainants satisfaction for any loss that has happened to the said ship, these defendants respectively demur; and for cause of demurrer shew, that if the policy of insurance in the said bill mentioned was forfeited, a proper action at law did and would lie to recover the money due thereon, and if the said complainants be entitled to any such relief as aforesaid, as prayed in and by their said bill, they might have a complete and adequate remedy by an action at law, where they ought and would be put to prove their interest in, and the loss of the said ship. Wherefore, &c. (*As in forms No. LXII, LXIII. p. 140.*)

LXVII. Demurrer to a bill for a new trial.

That the said complainant's said bill states, that the said complainant could not produce his witnesses at the trial at law, in the

(*a*) Eq. Plead. § 642-647.

(*b*) Ibid. § 552, 560.

CH. VI. said bill particularly mentioned, and that they and his the said complainant's counsel were then absent, whereby, the said complainant was surprised. Nevertheless, this defendant is advised, that the said complainant may and ought to make application to the Court of King's Bench, where the said action was brought, as in the said bill mentioned, for a new trial, or such other direction, or rule therein, as they who are the proper judges thereof, may think fit. Wherefore, &c. (*As in forms No. LXII., LXIII. p. 140.*)

LXVIII. Demurrer to a bill brought to obtain the benefit of a security given for a transaction against public policy. (a)

That the mortgage security, in the said bill particularly mentioned and set forth, for securing the payment by this defendant to the said complainant of the sum of £ 1000 and interest, on the day and in manner therein mentioned, was given by this defendant to the said complainant, as appears in and by the said bill, not for any money actually advanced by the said complainant to this defendant; but in consideration that the said complainant should within three months next ensuing the date of the said indenture resign, and procure for this defendant, the office of undersheriff of the county of Y.; which said agreement and transaction, as it appears on the face of the said bill, was and is, as this defendant is advised, contrary to public policy and also contrary to the statute, in that case made and provided, and therefore void; and the said complainant is not therefore entitled to any such relief as prayed by his said bill in respect of the said security, or any other relief whatsoever touching the same. Wherefore, &c. (*As in forms No. LXII., LXIII. p. 140.*)

LXIX. Demurrer to a bill for relief against a *mandamus*.

As to so much and such part of the said complainant's bill as prays an injunction, or order in the nature of an injunction, to stay proceedings on the writ of *mandamus*, issued to compel the said complainants to hold a Court, and admit these defendants respectively as tenants thereto, these defendants severally demur, and for cause of demurrer shew, that it is against the course and practice, and not within the jurisdiction of this Court, to interfere or afford relief against the said writ of *mandamus*, or any other proceeding of a criminal or mandatory nature. Wherefore, &c. (*As in forms No. LXII., LXIII. p. 140.*)

(a) Eq. Plead. § 556 - 558.

LXX. Demurrer to a bill of interpleader, because it does not shew any claim of right in the defendant. (a) CH. VI.

For that the said complainant has not in and by his said bill of interpleader, shewn any claim, or right, title, or interest whatsoever, in this defendant in or to the said estate called A., in the said bill particularly mentioned and described, in respect whereof this defendant ought to be compelled to interplead with C. D. in the said bill named, and the other defendant thereto. Wherefore, &c. (*As in forms No. LXII, LXIII. p. 140.*)

LXXI. Demurrer to a bill of interpleader, because the plaintiff shews no right to compel the defendants (whatsoever rights they may claim) to interplead. (b)

That the said complainant has not, in and by his said bill, shewn any right and title whatsoever to compel this defendant, and A. B., the other said defendant to the said bill, to interplead. Wherefore, &c. (*As in forms No. LXII, LXIII. p. 140.*)

LXXII. Demurrer to a bill of interpleader, for want of the necessary affidavit. (c)

That although the said complainant's said bill is on the face thereof a bill of interpleader, and prays that this defendant and the other defendants thereto may interplead together concerning the matters therein mentioned, and may be restrained, by the order and injunction of this Honorable Court, from proceeding at law against the said complainant, touching such matters, yet the said complainant has not annexed an affidavit to his said bill, that he does not collude concerning such matters or any of them with this defendant and the other defendants thereto, or any or either of them, which affidavit ought, as this defendant is advised, according to the rules of this Honorable Court, to have been made by the said plaintiff, and annexed to the said bill. Wherefore, &c. (*As in forms No. LXII, LXIII. p. 140.*)

LXXIII. Demurrer to a bill to restrain a private nuisance, the plaintiff not having established his right at law.

That the complainant has not by his said bill shewn such a case as entitles him to any such relief as is thereby prayed, inasmuch as it

(a) Eq. Plead. § 549 - 569.

(b) Ibid.

(c) Ibid. § 642 - 647.

CH. VI. does not thereby appear, that there was any impediment to an action at law being brought by the said complainant to ascertain his right and that of this defendant, relative to the wall in the said bill particularly mentioned, or that in any trial or action, verdict or judgment has been hitherto obtained by the said complainant for that purpose, or that there was previously to, or at the time the said bill was filed, or now is, any authentic record of such right. Wherefore, &c. (*As in forms No. LXII, LXIII. p. 140.*)

LXXIV. Demurrer to a bill for the examination of witnesses *de bene esse*, where the matters can be immediately investigated in a court of law, and the witnesses are resident in England, and there is no affidavit annexed to the bill of the circumstances by means of which the testimony may probably be lost.

That the said complainant in and by his said bill, claims to be entitled to the lands, tenements, and hereditaments, therein particularly mentioned and described, and thereby stated to be now in the possession of this defendant; and the said complainant by the said bill prays, that he may be at liberty to examine, perpetuate, and preserve, the testimony of certain persons therein named as to his title thereto; yet the said complainant has not stated, nor does it appear in and by his said bill, that any action at law has hitherto been brought to establish his right, or that there was or is any impediment to any such action being brought by the said complainant, or that the said several persons sought to be examined as witnesses, or any or either of them, are or is resident abroad, or now absent or about to go from England; nor hath the said complainant by affidavit annexed to the said bill made oath, that the said several persons sought to be examined, or any or either of them, are or is sick, old, or infirm, or any other circumstance which renders such testimony in danger of being lost. Wherefore, &c. (*As in forms No. LXII, LXIII. p. 140.*)

Where some other Court of Equity has the proper Jurisdiction.

LXXV. Demurrer to a bill of appeal and review from the County Palatine of Lancaster, because it appeared on the face of the bill, that the Court of Chancery had no jurisdiction.

That the said complainant's bill, filed in this Honorable Court, appears to be a bill of appeal to this Honorable Court, to review the decree therein particularly mentioned and set forth, and thereby

stated to have been made by, and in the Court of the Chancellor of the Duchy and County Palatine of Lancaster, which by the said bill appears to have been a court of competent and exclusive jurisdiction for that purpose; and this defendant is advised that no appeal lies therefrom to this Honorable Court, and that this Court has not, as appears by the said bill, any jurisdiction to enable it to entertain the said bill of appeal and review. Wherefore, &c. (*As in forms No. LXII, LXIII. p. 140.*)

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LXXVI. Demurrer to a bill exhibited by an infant, where no next friend is named.

That the said complainant, who appears by the said bill to be an infant under the age of twenty-one years, hath exhibited his said bill without any person being therein named as his next friend. Wherefore, &c. (*As in forms No. LXII, LXIII. p. 140.*)

Where the Plaintiff has no Interest in the Subject, or no Title to institute a Suit concerning it. (a)

LXXVII. Demurrer to a bill where the plaintiff claimed under a will, and it was apparent on the face of the bill, that he had no title.

That the said complainant hath not, as appears by his said bill, made out any title to the relief thereby prayed. Wherefore, &c. (*As in forms No. LXII, LXIII. p. 140.*)

LXXVIII. Demurrer to a bill against the presumptive heir-at-law, to perpetuate the testimony of witnesses to a paper, pretended to be a lunatic's will, made before his lunacy.

That the said bill seeks to have the aid of this Honorable Court for the examination of certain persons, therein named, as witnesses to a paper in the said bill set forth, and alleged to be the last will and testament of J. S., bearing date the ——— day of ———, in the year ———. Whereby the several manors and lands therein, and in the said bill particularly described, are pretended to be devised to the said plaintiff in fee. But the said J. S., since making the said

(a) Eq. Plead. § 493 - 498, 549.

CH. VI. pretended will, as appears by the said bill, has become and now is lunatic, and has been duly so found, and is still living, and may therefore recover, and revoke the said pretended writing, which this defendant is advised cannot be a perfect will until his death, nor will this Honorable Court, as this defendant is advised, in a case of this nature, lend its aid to the examination of any persons as witnesses to such alleged paper or writing in the lifetime of the said lunatic. Wherefore, &c. (*As in forms No. LXII, LXIII. p. 140.*)

LXXIX. Demurrer to a bill to have a sum of money bequeathed to procure a peerage, applied for that purpose.

That the said complainant has not by his said bill, shewn such a case as entitles him to any such relief as is thereby prayed, or any other relief whatsoever, touching the several matters therein complained of, or any of them; inasmuch as this defendant is advised, that it is against law that the honors of Peerage, which are properly the rewards of virtue and merit, should be purchased for money; and that no agreement or disposition of any money to any such purpose, ought to be aided and assisted by a court of equity; particularly, as a peer of this realm hath, and doth, rightfully hold and exercise a judicial power in judging and determining upon the rights and properties of the people of England; and it is, therefore, as this defendant is advised, against the positive and established law of the land, that any judicial power should be bought or sold for money, or attained by such means. Wherefore, &c. (*As in forms No. LXII, LXIII. p. 140.*)

Where the Plaintiff has no Right to call on the Defendant, concerning the Subject of the Suit. (a)

LXXX. Demurrer for want of privity to a bill by an unsatisfied legatee against a creditor of his testator.

That it appears by the said complainant's said bill, that there is no privity between the said complainant and this defendant, to enable the said complainant to call on this defendant for payment of any debt due to the estate of the said testator from this defendant. Wherefore, &c. (*As in forms No. LXII, LXIII. p. 140.*)

Where the Defendant has not that Interest in the Subject which can make him liable to the Claims of the Plaintiff. (a) CH. VI.

LXXXI. Demurrer by an arbitrator made a party to a bill to impeach his award.

For that the said complainant hath not, by his said bill, which seeks to set aside the award therein set forth; and to which this defendant is made a party in his character of an arbitrator, shewn that he can have any decree against this defendant, whose answer could not be read as evidence against the other defendants to the said bill, or any of them; and the said complainant for anything that appears in the said bill to the contrary, might examine this defendant as a witness in this suit. Wherefore, &c. (*As in forms No. LXII, LXIII. p. 140.*)

LXXXII. Demurrer by the heir of the obligor to a bill brought by the obligee in a bond, because the bill does not shew that the defendant's interest in the subject makes him liable to the plaintiff's demand.

That the said complainant, by his said bill, seeks to charge this defendant with the payment of the sum of \$ ——— as the heir of A. B. deceased, in the said bill named, by whom the same was secured by bond to the said complainant, but it does not appear by the said bill, that this defendant as such heir, is bound in and by the bond, in the said bill set forth as the foundation of the said complainant's debt. Wherefore, &c. (*As in forms No. LXII, LXIII. p. 140.*)

Where, for some Reasons founded on the Substance of the Case, the Plaintiff is not entitled to Relief. (b)

LXXXIII. General demurrer for want of equity.

That the said complainant hath not, in and by his said bill, made or stated such a case as doth, or ought to entitle him, to any such discovery or relief as is thereby sought and prayed for, from or against this defendant. Wherefore, &c. (*As in forms No. LXII, LXIII. p. 140.*)

(a) Eq. Plead. § 549, 569.

(b) Ibid. § 505.

CH. VI. *Where the Bill is deficient to answer the Purposes of Justice. (a)*

LXXXIV. Demurrer for want of parties.

That it appears by the said complainant's said bill, that A. B., therein named, is a necessary party to the said bill, inasmuch as it is therein stated, that C. D., the testator in the said bill named, did in his lifetime, by certain conveyances made to the said A. B. in consideration of \$——— convey to him, by way of mortgage, certain estates in the said bill particularly mentioned and described, for the purpose of paying the said testator's debts and legacies; but the said complainant has not made the said A. B. a party to the said bill. Wherefore, &c. (*As in forms No. LXII., LXIII. p. 140.*)

Where distinct Objects are confounded in the same Bill.

LXXXV. Demurrer for multifariousness. (b)

That it appears by the said bill, that the same is exhibited by the said complainant against this defendant, and A. B., C. D., E. F., and G. H., as defendants thereto, for several distinct matters and causes, in many whereof, as appears by the said bill, this defendant is in no way interested; and, by reason of such distinct matters, the said bill is drawn out to a considerable length, and this defendant is compelled to take a copy of the whole thereof; and by joining distinct matters together, which do not depend on each other, the proceedings in the progress of the said suit will be intricate and prolix, and this defendant put to unnecessary charges and expenses, in matters which in no way relate to, or concern him. Wherefore, &c. (*As in forms No. LXII., LXIII. p. 140.*)

LXXXVI. Demurrer to a bill brought for part of a matter only.

That the said complainant by his said bill, in order to split the cause, and create a multiplicity of suits, seeks only to recover a part of an entire debt, thereby stated to be due to him from this defendant; and in respect of other parts of the said debt, has, as appears by his said bill, filed two several other bills of complaint in this Honorable Court against this defendant. Wherefore, &c. (*As in forms No. LXII., LXIII. p. 140.*)

(a) Eq. Plead. § 527 - 545.

(b) Ibid. § 530 - 541, 609, 610.

DEMURRERS TO DISCOVERY. (a)

CH. VI.

Where the Case made by the Bill is not such wherein a Court of Equity assumes jurisdiction to compel a Discovery. (b)

LXXXVII. Demurrer to a bill filed for a discovery in aid of the jurisdiction of the Court, which had of itself power to compel the discovery required.

That the said complainants have not, in and by their said bill, shewn such a case as calls for the interference of this Honorable Court, inasmuch as a discovery of the several matters in the said bill contained, could, if necessary, have been obtained in the Court, in the said bill mentioned, in aid whereof the discovery prayed by the said bill is sought to be enforced by this Honorable Court, from this defendant. Wherefore, &c. (*As in forms No. LXII, LXIII. p. 140.*)

Where the Plaintiff has no Interest in the Subject, or no Interest which entitles him to call upon the Defendant for a Discovery. (c)

LXXXVIII. Demurrer to a bill brought against the defendant by a judgment creditor who had not sued out execution, for a discovery of the goods of the debtor, alleged to have been fraudulently possessed by the defendant.

That the said complainant has not alleged, nor does it appear by his said bill, that he has sued out execution, and actually taken out a *feri facias* on his said judgment, and that until he has so done, the goods of A. B., in the said bill named, are not bound by the said judgment, nor the said complainant entitled to a discovery thereof. Wherefore, &c. (*As in forms No. LXII, LXIII. p. 140.*)

Where the Defendant has no Interest in the Subject, to entitle the Plaintiff to institute a Suit against him, even for the Purpose of Discovery. (d)

LXXXIX. Demurrer to a bill for discovery, where the defendant could be examined as a witness.

That the said complainant has not, in and by his said bill stated, charged, or shewn, that this defendant has, or pretends to have, any

(a) Eq. Plead. § 545 - 611. (b) *Ibid.* § 551. (c) *Ibid.* § 549. (d) *Ibid.* § 570.

CH. VI. right, title, or interest in the matters and things complained of by the said bill, or any of them, or any right to call upon this defendant in a Court of Equity, for a discovery of the said matters and things, or any of them. And that for anything that appears to the contrary by the said bill, this defendant may be examined as a witness in this suit. Wherefore, &c. (*As in forms No. LXII, LXIII. p. 140.*)

Where there is no Privity of Title between the Plaintiff and Defendant that can give the Plaintiff a Right to the Discovery. (a)

XC. Demurrer to a bill filed by an owner of lands asserted to be tithe free, for discovery of the title of the lay impropriator to the tithes of the parish within which such lands are situated.

That the said complainant hath not by his said bill, shewn such privity of title between him and this defendant, or shewn any such right or title as entitles him, in a Court of Equity, to the discovery from this defendant thereby sought. Wherefore, &c. (*As in forms No. LXII, LXIII. p. 140.*)

Where the Discovery if obtained cannot be material (b).

XCI. Demurrer to a bill seeking a discovery of proceedings in the Court, relative to a grant of administration, in aid of an action at law for the recovery of real estate.

That the said complainant, in and by his said bill, seeks a discovery of the several proceedings therein mentioned to have taken place in the Prerogative Court of the Archbishop of Canterbury, relative to a grant of administration of the personal estate of A. B. deceased, which he states by his said bill to be material to enable him, the said complainant, as eldest son and heir-at-law of the said A. B. deceased, to recover possession, by an action at law, of the real estates in the said bill particularly described, as in the possession of this defendant; but this defendant is advised, that as all such proceedings in the Court, relate only to the personal estate of the said testator, they cannot, nor can any of them, be material to the said complainant's case, or affect the title to the said real estates. Wherefore, &c. (*As in forms No. LXII, LXIII. p. 140.*)

(a) Eq. Plead. § 571.

(b) Ibid. § 546, 564 - 570.

Where the Situation of the Defendant renders it improper for a Court of Equity to compel a Discovery. (a) CH. VI.

XCII. Demurrer where a discovery would subject the defendant to pains and penalties and forfeitures.

That the said information seeks to discover how this defendant came by the possession of the several goods therein particularly mentioned, whether it was not by fraud, violence, contrivance, or other means, and whether they were not the property of the Indians from whom, in the said bill, such goods are alleged to have been taken by this defendant and others; but this defendant is advised that any discovery of the manner in which such goods came into this defendant's possession, as an officer of the honorable united company of merchants trading to the East Indies, would, or might subject this defendant to fine, or corporal punishment, and the penalties contained in the several acts of parliament for the establishment of the said company, and also to a forfeiture of his rank and office in the service of the said company, and likewise of the said goods. Wherefore, &c. (*As in forms No. LXII, LXIII. p. 140.*)

(a) Eq. Plead. § 575 - 598.

CHAPTER VII.

PLEAS. (a)

CH. VII.*Forms of Commencements, and Conclusions of Pleas.*

 THE TITLE.

XCIII. The title of a defence by plea to a bill in equity.

The plea of ———, defendant (*or defendants*), to the bill of complaint of ———, complainant.

 COMMENCEMENT OF PLEAS.

XCIV. Commencement of a plea to the whole or part of a bill. (b)

This defendant (*or these defendants respectively*) by protestation, not confessing or acknowledging all, or any of the matters and things in the said complainant's bill of complaint, mentioned and contained to be true, in such sort, manner, and form, as the same are therein set forth and alleged,* for plea to the *whole of the said bill*, or to *so much and such part of the said bill as prays, &c.*, or *seeks a discovery from this defendant* (*or these defendants. Whether, &c.*).

 CONCLUSION OF PLEAS.

XCV. Conclusion.

Therefore this defendant (*or these defendants*) doth (*or do aver, and*) plead the said (*Act of Parliament, or release, &c. as the case may be*) [*in bar*] to the said complainant's bill [*or (if the plea extend to part only) to so much of the said bill as hereinbefore is particularly mentioned*], and prays (*or pray*) the judgment of this Honorable

(a) Eq. Plead. Chap. XIII.

(b) Ibid. § 647.

Court, whether he (*she* or *they*) should be compelled to make any CH. VII. further answer to the said bill (*or to so much of the said bill as is hereinbefore pleaded to*), and prays (*or pray*) to be hence dismissed with his (*her* or *their*) reasonable costs and charges in that behalf most wrongfully sustained.

FORMS OF PLEAS.

XCVI. Where the suit is for lands within a county Palatine.

(*For the title and commencement, see forms No. XCIII, XCIV. p. 152, to the asterisk.*) [Except that the lands, tenements, hereditaments, with their appurtenances mentioned in the said bill, concerning the title whereof the said bill is brought in this Honorable Court, are situate at ———, in the county Palatine of Chester ;] for plea to the whole of the said bill, saith, That the said county of Chester is, and from time whereof the memory of man is not to the contrary, hath been, a *county Palatine* ; and that the said lands, tenements, and hereditaments, with their appurtenances, and all other lands, tenements, and hereditaments within the said county Palatine, or belonging thereunto, have, or ought to have been, during all such time impleaded, and yet are impleadable, in the Courts of the said county Palatine, before the judge for the time within the said county Palatine, and not elsewhere ; therefore this defendant doth *aver* and plead the same, and humbly demands judgment of this Honorable Court, whether it will hold plea thereupon and enforce this defendant to answer the said bill for the cause aforesaid ; and prays to be hence dismissed, with his reasonable costs and charges in that behalf most wrongfully sustained.

XCVII. Plea of the privileges of the University of Oxford, to the jurisdiction of the Court of Chancery.

(*For the title and commencement, see forms No. XCIII, XCIV. p. 152.*) That the University of Oxford is an ancient university, and from time whereof the memory of man is not to the contrary, hath been, and now is incorporated by the name of “ The Chancellor, Masters, and Scholars of the University of Oxford ” ; and that the said chancellor, masters, and scholars, of the said university for the time being, during all the time aforesaid, have had, and used, and now have and use a Court holden before the said chancellor of the said university, or his vice-chancellor, commissary, official, or deputy, in whatsoever place within the precincts and limits of the said university he

CH. VII. appoints ; and the said chancellor, masters, and scholars have, from time beyond the memory of man, had, used, and exercised, and now have, use, and exercise cognizance of all manner of suits, pleas, and actions whatsoever, both at law and in equity (except assizes and pleas of freehold), wherein any scholar or privileged person of the said university is one party, to be heard and determined before the chancellor, or his vice-chancellor, commissary, official, or deputy for the time being, in the said Court, and for and during all the time aforesaid, all actions, suits, complaints, debates, and controversies whatsoever, wherein any scholar or privileged person of the said university is one party (except assizes and pleas of freehold), by the customs and privileges of the said university have been, and have been used to have been heard, examined, and determined in the said Court, by the said chancellor, or vice-chancellor, commissary, official, or deputy for the time being, according to law, equity, and justice, and not elsewhere, or in any other Court, or before any other judge ; and the said Court is, and from time beyond the memory of man, hath been, a Court as well of equity as of law ; and the judges for the time being do, and during all the time aforesaid have used to determine all complaints, suits, matters, and things, therein depending, according to the rules, as well of equity, as of law ; and the said chancellor, masters, and scholars have, and beyond the memory of man have had, and used to have, ministers and officers of their own, to execute such judgments and sentences as shall be there given, and to execute by virtue thereof such process, as upon execution or otherwise, shall issue out of the said Court within the realm of England ; and no other Court of law or equity, upon reasonable and proper notice, tendered in due form, according to the practice of such Courts respectively, that any person there sued is a person that, by the customs of the said university, ought to enjoy the privileges thereof, ought to proceed in any of the matters aforesaid ; and that time beyond the memory of man, all graduates and scholars of the said university, and their servants, and all stationers and bookbinders, inhabitants of the said university, and all servants and officers of the said university, have had, and have used, and now ought to have and enjoy, the liberties and privileges of the said university, and there, in the said Court of the said chancellor, masters, and scholars, to sue and be sued and impleaded, for all matters, suits, and complaints whatsoever (except assizes and pleas of freehold) ; and not elsewhere, or before any other judge whatsoever ; all which said rights and privileges, liberties, and franchises (amongst other things) were ratified, established, and confirmed to the said chancellor, masters, and scholars of the said university, and their successors forever, by the lord Henry the Eighth, late king of England, by his letters patent

in due form of law made, and under the great seal of England, and enrolled in this Honorable Court, bearing date the first day of April, in the fourteenth year of his reign; and by a certain act in the parliament of the lady Elizabeth, late queen of England, begun and holden at Westminster, in the county of Middlesex, on the second day of April, in the thirteenth year of her reign; and which said rights, privileges, and franchises, have at several times been allowed and acknowledged in this Honorable Court. And this defendant saith, that he is rector, or principal of Exeter College, and resident there, and by that means privileged, and therefore ought to be sued in the said Court of the said chancellor, masters, and scholars of the said University of Oxford, holden before the said chancellor, or his vice-chancellor, commissary, official, or deputy, which said Court is a Court of competent jurisdiction to determine the matters in question in this suit, in which no matter in anywise relating to freehold is at all concerned. Therefore, &c. (*Conclude as in form No. XCV. p. 152.*)

PLEAS TO THE PERSON. (*a*)

XCVIII. Plea of outlawry. (*b*)

(*For the title and commencement, see forms No. XCIII, XCIV. p. 152.*) That one A. B., before the said complainant C. D. exhibited his said bill, that is to say, in ——— term, in the ——— year of the reign of our lord the king that now is, impleaded the said complainant, C. D., in his Majesty's Court of Common Pleas at Westminster, in a plea of debt; and the said complainant, C. D., inasmuch as he did not come into his said Majesty's Court of Common Pleas to answer the said A. B., according to the laws and customs of this kingdom, was put in *exigent*, to be outlawed in the county of ———, and was afterwards on, &c., duly outlawed in the said county of ———, at the suit of the said A. B. As by the writ of *capias utlagatum*, which issued out of his said Majesty's Court of Common Pleas, sealed with the seal of our lord the king, for sealing writs in the said Court, hereunto annexed, and by the record of the said outlawry more fully appears; and which said outlawry, this defendant avers, now remains in full force and effect, and not reversed or annulled: and this defendant also avers, that the said complainant C. D. and the said C. D., so outlawed as aforesaid, is one and the same, and are not different persons. Therefore this defendant humbly prays the judgment of this Honorable Court, whether he shall be

(*a*) Eq. Plead. § 722-735.

(*b*) Ibid. § 722.

CH. VII. compelled to make any further or other answer to the said bill of complaint, until the said complainant shall become capable of exhibiting any such bill against this defendant; and in the mean time this defendant humbly prays to be dismissed, with his reasonable costs and charges in this behalf sustained.

XCIX. Plea that the plaintiff is excommunicated. (a)

(*For the title and commencement, see forms No. XCIII., XCIV. p. 152.*) That the said complainant, A. B., was, at and previously to the time of filing his said bill, that is to say, on, &c. and still is, excommunicated, as the letters patent of C. D., the venerable Archdeacon of E., Doctor in Divinity, hereunto annexed, testify in these words: "C. D., Doctor in Divinity, Archdeacon of E., to all rectors, vicars, curates, clerks, &c. (*recite the whole of the letters of excommunication, VERBATIM*) given under the Archidiaconal seal, on the ——— day of ———, in the year ———. And this defendant avers that the said complainant A. B., and the said A. B. so excommunicated as aforesaid, is one and the same person, and are not different persons. (*Conclude as in the last form.*)

C. Plea that the plaintiff is a popish recusant convict. (b)

(*For the title and commencement see forms No. XCIII., XCIV. p. 152.*) That the said complainant, A. B., before and at the time of filing his said bill of complaint, and ever since, hath been, and still is a popish recusant; and before the said bill of complaint was filed, and on the ——— day of ———, was duly convicted of popish recusancy, at the General Quarter Sessions of the Peace of our Lord the now King, holden at ——— in and for the county of ———, before C. D., E. F., and G. H., Esquires, and others their fellows, justices of our said Lord the King, assigned to keep the peace within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said county, which said conviction was duly estreated and certified from the said Court of Sessions, into his Majesty's Court of King's Bench at Westminster; where the same now remains recorded, and in full force and effect, and not reversed or annulled; as by the said record (a true copy whereof is now in this defendant's possession, and ready to be produced to this Honorable Court), to which this defendant craves leave to refer, will more fully appear. And this defendant avers, that the said A. B., so convicted as aforesaid, and the said complainant, is

(a) Eq. Plead. § 722.

(b) Ibid.

one and the same person, and are not different or other persons. CH. VII.
Therefore, &c. (*Conclude as in form No. XCIV. p. 152.*)

CI. Plea that the plaintiff is attainted.

(*For the title and commencement, see forms No. XCIII., XCIV. p. 152.*) That the said complainant, before and at the time the said bill was filed, and on or about the ——— day of ———, at the delivery of the jail of our lord the King, of ———, holden for the county of ———, before, &c. and others their fellows, justices of our said lord the King, assigned to deliver the said jail of ———, of the prisoners therein being, by the name and addition of A. B., late of the parish of ———, in the county of ———, laborer, according to due course of law in that behalf taken, was tried and duly convicted upon an indictment, for that, &c.; (*state the indictment*) and judgment of death was afterwards in due course of law passed upon him, but which said sentence was afterwards commuted by the extension of the royal mercy of our said lord the King, to the said A. B., for transportation to parts beyond the seas for fourteen years, which commutation of his said sentence the said A. B. duly accepted and consented to; and which said judgment and sentence was pronounced by a Court of competent jurisdiction, and lawfully empowered to try the said offence, as by the record of the said proceedings (a true copy of which record is now in this defendant's possession, and ready to be produced to this Honorable Court), to which this defendant craves leave to refer, will more fully appear: and which said sentence (subject to such commutation as aforesaid) still remains in full force and effect, and not reversed or annulled; nor has the said term of fourteen years (for transportation, during which term the sentence of death passed on the said complainant A. B. was commuted as aforesaid) hitherto expired. And the said complainant A. B., and the said A. B., so convicted and attainted as aforesaid, is one and the same, and are not different or other persons. Therefore, &c. (*Conclude as in form No. XCVIII. p. 155, from ¶.*)

CII. Plea that the plaintiff is an alien enemy.

(*For the title and commencement, see forms No. XCIII., XCIV. p. 152.*) That the said complainant A. B. is alien, born of foreign parents, and in foreign parts, that is to say, at Calais, in the kingdom of France, and out of the allegiance of our lord the King, and under the allegiance of the said King of France, who is an enemy to our

CH. VII. said lord the King, and to whom the parents of the said complainant adhere ; and the said complainant also before, and at the time of filing his said bill was, and now is, an enemy to our said lord the King, and entered into these dominions without the safe-conduct of our said lord the King, and has not been made a subject of our said lord the King by naturalization, denization, or otherwise. Therefore, &c. (*Conclude as in form No. XCV. p. 152.*)

CIII. Plea of infancy to a bill exhibited without a *prochen amy*.

(*For the title and commencement, see forms No. XCIII, XCIV. p. 152.*) That the said complainant, before and at the time of filing his said bill, in which he appears as the sole complainant, was, and now is, an infant under the age of twenty-one years : that is to say, of the age of ———, or thereabouts. Therefore, &c. (*Conclude as in form No. XCV. p. 152.*)

CIV. Plea of coverture of the plaintiff.

(*For the title and commencement, see forms No. XCIII, XCIV. p. 152.*) That the said complainant A. B., before and at the time of exhibiting her said bill, was, and now is, under coverture of one C. D., her husband, who is still living, and in every respect capable, if necessary, of instituting any suit at law, or in equity, in this kingdom, on her behalf. Therefore, &c. (*Conclude as in the preceding form.*)

CV. Plea of lunacy.

(*For the title and commencement, see forms No. XCIII, XCIV. p. 152.*) That the said complainant, who by himself alone attempts to sustain an injunction in this suit, before and at the time of filing his said bill, was duly found and declared to be a lunatic under and by virtue of a commission of lunacy, duly awarded and issued against him, as by the inquisition thereon (a true copy whereof is now in this defendant's possession, and ready to be produced to this Honorable Court), and to which the defendant craves leave to refer, will more fully appear ; and which said commission has not hitherto been superseded, and still remains in full force and effect ; and the said A. B., therein named, and the said complainant, A. B. is, as this defendant avers, one and the same person, and are not other and different persons. Therefore, &c. (*Conclude as in last form.*)

PLEA TO THE PERSON. (a)

CH. VII.

That the Plaintiff is not the Person he pretends to be, or does not sustain the Character he assumes.

CVI. Plea, that the supposed intestate is living, to a bill where the plaintiff entitled himself as administrator.

(*For the title and commencement, see forms No. XCIII., XCIV. p. 152.*) That A. S., in the said bill named (to whom the said complainant alleges that he has obtained letters of administration, and by virtue of which letters of administration, and also under the pretence of his being the heir-at-law of the said A. S., the said complainant has commenced and prosecuted this suit), was at the time the said complainant filed his said bill, and still is, alive at Paris, in the kingdom of France. Therefore this defendant demands the judgment of this Honorable Court, whether he shall be compelled to answer the said complainant's bill; and humbly prays to be dismissed with his reasonable costs in this behalf sustained.

 PLEA IN BAR.

That the Plaintiff has no Interest in the Subject, or no Right to institute a Suit concerning it. (b)

CVII. Plea of bankruptcy of the plaintiff.

(*For the title and commencement, see forms No. XCIII., XCIV. p. 152.*) That by the death of A. B., the intestate named in the said bill, the said complainant became entitled, as one of the next of kin of the said intestate, to one fourth part of the clear residue of the said intestate's personal estate, as in the said bill mentioned; but previously to the said complainant's said bill being filed by him against this defendant as administrator of the said intestate's personal estate and effects, as therein mentioned, and on or about the 1st day of June, 18— (the day of the date and issuing of the commission of bankrupt hereinafter mentioned), the said complainant being a subject of this kingdom, (on, &c.) and for several years previously to the said 1st day of June, was a merchant, and used and exercised

(a) Eq. Plead. § 722 - 735.

(b) Ibid. § 512 - 518, 731.

CH. VII. the trade of merchandise, by way of bargaining, exchanging, bartering, and chevisance, and sought his trade and living by buying and selling, in the course of which he became and was indebted to L. M., a subject of this kingdom, in the sum of £100 and upwards, of lawful money of Great Britain, for a true and just debt, due and owing from the said complainant to the said L. M.; and the said complainant was also indebted to divers other persons in several other large sums of money; and the said complainant being so indebted as aforesaid, and so using and exercising the trade of merchandise; and seeking his trade and living, and being so entitled to the said one fourth part of the clear residue of the personal estate and effects of the said intestate, and being so indebted to the said L. M., and divers other persons as aforesaid, he, the said complainant, became a bankrupt within the true intent and meaning of the several statutes made concerning bankrupts; and the said complainant, so being and continuing a bankrupt as aforesaid, and the said L. M. and several of his creditors remaining unpaid and unsatisfied, on the said 1st day of June, 18—, on the petition of the said L. M., as well for himself as for all other the creditors of the said complainant, made and exhibited in writing according to the form of the statute in such ease made and provided, to the Right Hon. John Lord Eldon, Baron Eldon of Eldon in the County of Durham, then and still being Lord High Chancellor of Great Britain, a certain commission of our lord the now King, sealed with the seal of Great Britain, in due manner issued out of this Honorable Court against the said complainant, directed to S. T., &c., &c., &c.; by which said commission our lord the King did name, assign, and appoint, constitute and ordain them, the said S. T., &c., &c., &c., his special commissioners, giving full power and authority to the said commissioners, any four or three of them, to proceed according to the statutes in the said commission specified, and all other statutes in force concerning bankrupts, not only concerning the said bankrupt, his body, lands, tenements, freehold and customary, goods, chattels, debts, rights, and interests, and other things whatsoever, but also concerning all other persons who by concealment, claim, or otherwise, did or should offend touching the premises in the said commission specified, or any part thereof, contrary to the true intent and meaning of the same statutes; and to do and execute all and every thing and things whatsoever, as well towards satisfaction and payment of the said creditors of the said complainant, as towards and for all such intents and purposes, according to the ordinances and provisos of the said statutes; our said lord the King, by the said commissioners, commanding the said S. T., &c., &c., &c., any four or three of them, to proceed to the execution and accomplishment of the said commission, according to

the true intent and meaning of the said statutes, with all diligence and effect as by the said commission, reference being thereunto had, will more fully appear, and which said commission is still in full force and effect; by virtue of which said commission, and by force of the said several statutes, the said S. T., &c., &c., &c., three of the said commissioners named in the said commission, afterwards, on the ——— day ———, which was previously to the filing of the said bill, adjudged and declared that the said complainant, before the date and suing forth of the said commission against him, became and was a bankrupt within the true intent and meaning of the several statutes then in force concerning bankrupts, some or one of them, and adjudged and declared him a bankrupt accordingly; and that afterwards, and before the said complainant filed his said bill of complaint in this Honorable Court, the said complainant remaining and continuing a bankrupt, the said S. T., &c., &c., three of the commissioners named in the said commission, by certain indentures made between S. T., &c., &c., of the one part, N. O. of, &c., and P. Q., of, &c., of the other part, creditors of the said plaintiff of the other part, sealed with the seals of the said S. T., &c., &c., bargained, sold, assigned, and transferred (among other things) to the said N. O. and P. Q., all the part, share, and interest of the personal estate and effects of the said intestate A. B., deceased, to which the said complainant was so entitled as one of such next of kin as aforesaid; upon trust, nevertheless, and to and for the use and benefit of the said N. O. and P. Q. and all other the creditors of the said complainant who had then demanded, or who should afterwards in due time, come in and demand relief under the said commission, and should contribute to the expense thereof; by reason of which said premises, and by force of the statutes in that case made and provided, the said N. O. and P. Q. became, and were and still are, in exclusion of the said complainant, entitled to the said one fourth part or share of the clear residue of the personal estate and effects of the said intestate, for the payment whereof to him personally and individually, the said complainant has filed his said bill. Wherefore this defendant doth aver and plead the several matters aforesaid in bar to the said complainant's said bill, and prays the judgment of this Honorable Court, whether he should be compelled to make any further answer to the said bill; and prays to be hence dismissed, with his reasonable costs and charges in that behalf most wrongfully sustained.

CH. VII. *That the Defendant has not an Interest in the Subject that can make him liable to Demands of the Plaintiff. (a)*

CVIII. Plea that the defendant has no interest in the subject of the suit.

(*For the title and commencement, see forms No. XCIII, XCIV. p. 152.*) As to so much of and such parts of the said complainant's bill, as charges that this defendant is interested in the personal estate of A. B., the testator in the said bill named, and seeks an account of the said testator's personal estate; this defendant pleads thereto, and for plea saith, that he is merely a subscribing witness to said testator's will, and in no wise interested therein; and this defendant avers that he has not, nor ever had, or pretended to have, nor does he, or did he ever claim any right, title, or interest whatsoever in the personal estate of the said testator, or any part thereof, and that the said complainant has no right to institute this, or any other suit against him in respect thereof. All which said matters and things, this defendant doth aver and plead in bar to so much of the said complainant's bill as hereinbefore particularly mentioned and pleaded to. And this defendant, not waiving his said plea, but relying thereon, and for better supporting the same, for answer to so much of the said bill as aforesaid, saith he denies that he now is, or ever was interested in the personal estate of the said testator, or any part thereof.

PLEA TO THE PERSON.

That the Defendant is not the Person he is alleged to be, or does not sustain the Character he is alleged to bear.

CIX. Plea, that the defendant never was administrator.

(*For the title and commencement, see forms No. XCIII, XCIV. p. 152.*) That he is not, nor ever has been, administrator of the goods or chattels, rights or credits, which were of the said E. F., deceased, in the said bill named, as the said complainant in his said bill has untruly alleged. Wherefore, &c. (*As in form No. XCV. p. 152.*)

(a) Eq. Plead. § 734.

PLEAS IN BAR.

That for some Reason founded on the Substance of the Case, the Plaintiff is not entitled to Relief. CH. VII.

1. *Matters of Record, or as of Record in a Court of Equity. (a)*

CX. Plea of a decree.

(*For the title and commencement, see forms No. XCIII, XCIV. p. 152.*) As to so much and such part of the said complainant's bill as seeks to compel this defendant either to admit assets of his late father, Sir I. M., Bart., deceased, come to his hands, sufficient to answer and satisfy the said complainant's demand in the said bill mentioned; or to set forth a full and perfect inventory and account of all the personal estate of his, this defendant's said father, come to the hands of this defendant, or to the hands of any other person or persons for his use, with the nature, kind, and value thereof, and of every part thereof, and of all sums of money come to the hands of this defendant, or any other person or persons for his use, for or on account of the real estates of this defendant's said late father, or the rents or profits thereof (charged with the several legacies in the said testator's will, and in the said bill also mentioned to be given and bequeathed to and for the younger children of the said testator, in the said will, and in the said bill also respectively named); and also to set forth the annual value of such real estates; or that this defendant may thereout pay to the said complainant the sum of \$800 in the said complainant's bill mentioned, with interest for the same, from the time of the said testator's death: this defendant doth plead thereto, and for plea, saith, that in Trinity term, in the year ———, M. M., since deceased, together with P. M., deceased, and late the wife of the said complainant, and S. M. and H. M. respectively, infants, by the said M. M., their sister and next friend (and which said M. M., P. M. the said complainant's late wife, S. M. and H. M. were the daughters and younger son of the said testator, Sir I. M., all since deceased), exhibited their bill of complaint in this Honorable Court, against E. P. and R. T. Esqs. (both since dead), and this defendant, as the eldest son and heir-at-law of the said testator, Sir I. M., thereby stating, &c., &c., and praying that the legacies given and bequeathed by the said testator in and by his said will, to the said complainant M. M., as one of the younger children, might be paid, and the legacies or shares of the rest of such younger children, all of whom

(a) Eq. Plead. § 778-794.

CH. VII. were infants, might be properly secured for their benefit, and a suitable allowance made thereout for their maintenance and education during their respective minorities; to which said bill this defendant, who was then an infant, put in his answer by A. B. his guardian, and the said other defendants respectively also put in their answers thereto, and submitted to this Honorable Court, what right and interest the said complainant M. M. was entitled to under her said father's will; and the said cause afterwards, and on or about ——— day of ———, came on to be heard, and a decree was then pronounced therein, whereby it was referred to C. D. Esq., then one of the Masters of this Honorable Court, to take an account of certain stock which the said testator by his said will had given and bequeathed among and to his children, and the usual accounts of personal estate, funeral and testamentary expenses, and debts of the said testator, and an account of the rents and profits of the said testator's real estates, were thereby directed; and which said decree was afterwards, and on or about ———, duly signed and enrolled; and the said Master afterwards, in pursuance of the said decree, took the said accounts, and by his report bearing date the ——— day of ———, which was afterwards duly confirmed, stated, &c. (*all that was done by the Master*); and the said share so reported due to the said P. M., since deceased, was afterwards, in pursuance of an order of this Honorable Court, since her marriage with the said complainant in the present suit, on or about the ——— day of ———, duly assigned and transferred to, and accepted by him, in full satisfaction and discharge of all the right and interest which his said wife, or the said complainant in this suit in her right, or either of them, had, or could have, in or to the personal estate of the said testator, or any part thereof; all which matters and things this defendant doth aver and plead in bar to so much of the said complainant's bill as hereinbefore particularly mentioned; and prays the judgment of this Honorable Court, whether he should make any further answer to so much of the said bill as is hereinbefore pleaded to.

CXI. Plea of a former suit depending. (a)

(*For the title and commencement, see forms No. XCIII, XCIV, p. 152.*) That in Trinity term, which was in the year ———, the said present complainant exhibited his bill of complaint in this Honorable Court against this defendant, and one L. Y., for an account of the moneys raised by the sale of the plantations and other estates in the

said complainant's present bill mentioned, and claiming such shares and proportions thereof, and such rights and interests therein, as he now claims by his present bill; and praying relief against this defendant in the same manner, and for the same matters, and to the same effect, as the said complainant now prays by his said present bill; and this defendant and the said L. Y. appeared and put in their answer to the said former bill, and the said complainant replied thereto, and witnesses were examined on both sides, and their depositions duly published, and the said former bill and the several proceedings in the said former cause, as this defendant avers, now remain depending, and as of record in this Honorable Court, the said cause being yet undetermined and undismissed; all which said several matters and things this defendant doth aver, and pleads the said former bill, answer, and the several proceedings in the said former suit, in bar to the said complainant's present bill; and humbly demands the judgment of this Honorable Court, whether he shall be put to make any further or other answer thereto; and prays to be hence dismissed with his costs and charges in this behalf sustained.

2. *Matters of Record, or as of Record, in some Court, not a Court of Equity. (a)*

CXII. Plea of a fine and non-claim.

(For the title and commencement, see forms No. XCIII, XCIV. p. 152.) As to so much of the said bill as seeks to compel these defendants respectively to set forth an account of the rents and profits of the messuages, farms, lands, tenements, and hereditaments, in the said bill mentioned, or of any part thereof, late the estate of A. B., the intestate in the said bill named, and of which the said C. B. in the said bill also named, obtained the actual possession, as hereinafter mentioned; and as to so much of the said bill as prays that possession of such farms, messuages, lands, tenements, and hereditaments may be delivered to the said complainant; or that any title-deeds or writings relating thereto, may be delivered to the said complainant; or that any account may be taken of any of the rents or profits of the said messuages, farms, lands, tenements, and hereditaments; or that the said defendant may pay to the said complainant any sum of money on account of such rents and profits; or that the said complainant may have any other relief, touching such farms, lands, tenements, and hereditaments; and as to so much of the said bill as

(a) Eq. Plead. § 741.

CH. VII. seeks to discover in what manner, and by what pedigree the said C. B. was the heir-at-law of the said A. B.; this defendant pleads in bar, and for plea says, that after the death of the said A. B., which happened on the ——— day of ———, the said C. B. entered upon the said messuages, farms, lands, tenements, and hereditaments, hereinafter particularly mentioned, as heir-at-law of the said A. B., and was in the actual possession thereof, and receipt of the rents and profits thereof; and the said C. B. in right of the said complainant, then his wife, but now his widow, was seised, and in the actual possession of all and singular the said messuages, lands, tenements, and hereditaments, and being so seised, afterwards in Michaelmas term in the ——— year of the reign of our sovereign lord the now King, a certain fine *sur consuance*, &c. was duly had and levied in his Majesty's Court of Common Bench at Westminster, before ———, then his Majesty's justices of the Bench aforesaid, and other faithful subjects of our said lord the King then and there present, between L. M. Esq. plaintiff, and the said C. B., and the said complainant, then his wife, deforciant of all the said messuages, farms, lands, tenements, and hereditaments, by the description of, &c., upon which fine, proclamations were duly made according to the form of the statute in that case made and provided; and the last proclamation was thereupon duly made, in, &c., as by such fine and the proclamations thereupon made, remaining of record in the said Court of Common Bench, will more fully appear; and this defendant avers that the said estates hereinbefore particularly mentioned, and of which such fine was levied by the said C. B., and the said complainant, and such proclamation thereupon made as aforesaid, are messuages, farms, tenements, and hereditaments, of which the said C. B. died seised in fee simple, and of which this defendant is now seised in fee simple, as the heir-at-law of the said C. B.; and this defendant also avers that the said C. B., in right of the said complainant, his said wife, before levying such fine, and afterwards in his own right, until, and at the time of his death, was, and ever since the death of the said C. B., this defendant, as his heir-at-law, has been, and now is, in the peaceable possession of the said messuages and premises, and every part thereof, without any lawful entry thereon, or on any part thereof, by the said complainant, or any person whomsoever, and without any suit in law or equity touching or concerning the same messuages and premises, or any of them, or any part thereof, prosecuted by the said complainant, or any other person, within five years after the proclamation so last made as aforesaid, or at any time since, until the filing of the said complainant's bill. And this defendant likewise avers that the said complainant's right to the said messuages and premises, existed previously to the time such fine was

levied, and that on the levying thereof the said complainant was duly examined, separately and apart from the said C. B., her late husband, and freely and voluntarily consented thereto; and that upwards of five years have elapsed since the death of the said C. B., which took place on the —— day of ——; and that since the death of the said C. B. the said complainant has not been under any legal disability whatsoever; * all which said several matters and things this defendant pleads in bar to so much of the said complainant's bill as aforesaid, and prays judgment, &c. (*As in form No. XCV. p. 152.*)

CXIII. Plea of a recovery.

(*For the title and commencement, see forms No. XCIII, XCIV. p. 152.*) That A. B. in the said bill named, under and by virtue of the indentures of lease and release, and settlement, bearing date respectively the —— and —— days of ——, in the said bill in part stated and set forth, upon the death of C. B. in the said bill also named, at the time therein mentioned, became and was seised or entitled as tenant in tail male, or in tail general in possession, of or to the manors, &c. comprised in the said settlement, and in and previously to the month of —— in the year ——, was in the possession, and in receipt of the rents and profits thereof; and being so seised and possessed of the said manors, &c. he the said A. B., by a certain indenture of bargain and sale, bearing date the —— of ——, and made between the said A. B. of the first part, C. D. of the second part, E. F. of the third part, which last-mentioned indenture was duly executed by the said A. B., on the day of the date thereof, and was within six months then next following (that is to say, on the —— day of —— in due manner enrolled in this Honorable Court, according to the form of the statute in that case made and provided), for the considerations therein mentioned, and particularly for barring his estate tail of, in, and to the said manors, &c., did grant, bargain, sell, and confirm unto the said C. D. and his heirs, all that, &c. (*setting forth the property particularly*), to hold the same unto and to the use of the said C. D., his heirs and assigns forever, to the intent and purpose that the said C. D. might become perfect tenant of the freehold of the said manors, &c. with the appurtenances; and it was thereby agreed, that the said E. F. should before the end of that present —— term, or of some subsequent term, sue forth a writ of entry against the said C. D. (in order to have a recovery suffered of the said manors, &c.), *sur disseisin en le post*; and that the said recovery when suffered, should be and enure to the use of the said A. B. and his assigns, for and during the term of his

CH. VII. natural life, and the remainder thereof to the use of the defendant, his heirs and assigns forever; and that afterwards, in or about ——— term then next ensuing, a writ of entry *sur disseisin en le post* was sued out, and a common recovery in due form of law suffered of the said manors, &c. with the appurtenances, in pursuance of the said last-mentioned indenture; in which said recovery the said E. F. was demandant, against the said C. D., the tenant, and the said C. D. vouched to warranty the said A. B., who appeared and vouched to warranty ———, the common vouchee, and a writ of seisin was thereupon awarded to the said E. F., and the sheriff of the said county of ———, wherein the said manors, &c. are situate as aforesaid, returned the same writ executed, as by the record and proceedings thereof now remaining in his Majesty's Court of Common Pleas at Westminster, more fully appears; and by virtue of the said last-mentioned indenture, and the said recovery so suffered in pursuance thereof as aforesaid, the said estate tail of the said A. B. of and in the said manors, &c. and all remainders expectant thereon, became absolutely barred and destroyed, and the said A. B. became and was seised of and entitled to the said manors, &c. during his life; and after his death, which took place on the ——— day of ———, the same became and now are absolutely vested in this defendant, according to the uses thereof declared in and by the said hereinbefore last in part stated indenture; and this defendant now is, and ever since the death of the said A. B. has been, in the possession and enjoyment and receipt of the rents and profits thereof. (*Conclude as in the last form, from the asterisk.*)

CXIV. Plea of verdict and judgment. (a)

(*For the title and commencement, see forms No. XCIII., XCIV. p. 152.*) That by a statute made in the parliament holden at Westminster, the morrow after the feast of St. Michael, in the fourth year of the reign of his late majesty King Henry IV., it is ordained and established, that after judgment given in the Courts of our sovereign lord the King, as well in pleas real as in pleas personal, the parties and their heirs shall be thereof in peace until the judgment be undone by attaint or error; and this defendant saith, that before the said complainant exhibited his said bill of complaint in this Honorable Court against this defendant, to be relieved against the action at law therein mentioned to have been brought by this defendant against the said complainant, for fees due to this defendant for managing several law

(a) Eq. Plead. § 780-784.

suits for the said complainant, and for moneys laid out and expended by this defendant in the same, and to bring this defendant to an account, that is to say, in ——— term in the year ———, he, this defendant, duly brought an action in his Majesty's Court of King's Bench at Westminster, for the recovery of his said fees and money expended by and due to him from the said complainant as aforesaid, and obtained a verdict for the sum of \$———, the amount thereof, and hath judgment on such verdict, and which said judgment, this defendant avers, was obtained before the said complainant's bill was filed, and was for the same fees due to this defendant, and money expended by him as therein mentioned and complained of, and which said judgment still remains in full force, and is not undone by attainor or error. Therefore, &c. (*Conclude as in the last form.*)

3. *Pleas in bar of Matter in Pais.* (a)

CXV. Plea of a stated account. (b)

(*For the title and commencement, see forms No. XCIII., XCIV. p. 152.*) As to so much and such part of the said complainant's bill as seeks an account of and concerning the dealings and transactions therein alleged to have taken place between the said complainant and this defendant, at any time before the ——— day of ——— in the year ———, this defendant for plea thereto saith, that on the said ——— day of ———, which was previously to the said bill of complainant being filed, the said complainant and this defendant did make up, state, and settle an account in *writing*, a counterpart whereof was then delivered to the said complainant, of all sums of money which this defendant had before that time, by the order and direction, and for the use of the said complainant received, and of all matters and things thereunto relating, or at any time before the said ——— day of ———, being or depending between the said complainant and this defendant (and in respect whereof the said complainant's bill of complaint has been since filed); and the said complainant, after a strict examination of the said account, and every item and particular thereof, which this defendant avers according to the best of his knowledge and belief to be true and just, did approve and allow the same, and actually received from this defendant the sum of \$———, the balance of the said account, which by the said account appeared to be justly due to him from this defendant; and the said complainant thereupon, and on

(a) Eq. Plead. § 794 - 816.

(b) Ibid. § 798 - 802.

CH. VII. the —— day of ——, gave to this defendant a receipt, or acquittance for the same, under his hand, in full of all demands, and which said receipt or acquittance is in the words and figures following (that is to say), [*here state the receipt verbatim,*] as by the said receipt or acquittance, now in the possession of this defendant, and ready to be produced to this Honorable Court, will appear. Therefore, &c. (*Conclude as in form No. XCIV. p. 152.*)

CXVI. Plea of an award. (a)

(*For the title and commencement, see forms No. XCIII, XCIV. p. 152.*) That divers disputes, controversies, and differences having arisen, and being depending, between the said complainant and this defendant concerning an agreement for the purchase by this defendant, from the said complainant, of the lease, goodwill, and fixtures of a certain house and premises, used as a baker's shop, in Gray's Inn Lane, in the County of Middlesex; for the settling and adjusting such variances and controversies, the said complainant and this defendant, by two several bonds or writings obligatory, bearing date respectively the —— day of ——, became reciprocally bound to each other in the penal sum of \$——, to be paid to each other, with conditions to the said writings obligatory annexed to make void the same, if the said complainant and this defendant, their respective executors, administrators, and assigns, should obey and perform the award, arbitrament, judgment, final end and determination of I. S., an arbitrator indifferently chosen between the said parties, concerning the said disputes, controversies and differences, in respect of the said agreement for the purchase of the lease, goodwill, and fixtures, of the premises aforesaid, so as the said award, under the hand of the said arbitrator, should be made and set down in writing under his hand, ready to be delivered to the parties in difference on or before the —— day of —— then next, but now long since past; and the said I. S. having taken upon himself the burden of the said award, and having deliberately and at large heard, read, and duly and maturely weighed and considered all and singular the allegations, vouchers, proofs, and evidences, brought and produced before him, by and on the part and behalf of the said complainant and this defendant, touching the said matters in dispute and difference between them, and referred to him as aforesaid, did, within the time limited for that purpose by the said bonds, (that is to say) on the —— day of ——, duly make his award in writing under his hand and seal, of and concerning the matters aforesaid,

(one part whereof was delivered to this defendant,) and did thereby award and find that the aforesaid agreement between the defendant and the said complainant, relative to the aforesaid lease, goodwill, and fixtures, was not binding upon them, and the said arbitrator, did therefore declare the same void accordingly; and the said arbitrator did thereby award and declare, that the said complainant had no claim or demand whatsoever against this defendant, in respect or on account of the said agreement, as by the said award, reference being thereunto had, will more fully appear; and this defendant avers, that the said award hath hitherto remained and still is unimpeached, and in full force and effect; and that the same was made previously to the said complainant's bill being filed in this Honorable Court, for the specific performance of the said agreement so declared void by the said award as aforesaid. Therefore, &c. (*Conclude as in the last form.*)

¶CXVII. Plea of a release. (a)

(*For the title and commencement see forms No. XCIII, XCIV. p. 152.*) As to so much and such part of the said complainant's bill as seeks an account of the several dealings and transactions between the said complainant and this defendant, previously and up to the _____ day of _____, and prays that the balance, if any, which shall be found due, upon taking such account, from this defendant, may be paid by him to the said complainant; this defendant doth plead thereto, and for plea saith, that previously to the said complainant's bill being filed, that is to say, on the said _____ day of _____, the said complainant, in consideration of the sum of \$ _____, then paid to him by this defendant, by a certain writing of release under his hand, and sealed with his seal, ready to be produced to this Honorable Court, did for himself, his executors, and administrators, remise, release, and forever quitclaim unto this defendant, his heirs, executors, and administrators (among other things) the several matters and things in the said complainant's bill mentioned and complained of (an account whereof is thereby sought against this defendant as aforesaid), and all suits and demands whatsoever, both at law and in equity, which the said complainant then had, or might thereafter have in respect of the several dealings and transactions, matters and things, in the said bill mentioned, or any of them; and this defendant avers, that the said release was freely, fairly, and voluntarily given and executed by the said complainant, on the day the same bears date; and

(a) Eq. Plead. § 794-798.

CH. VII. that the said complainant well knew the nature and effect thereof previously to giving and executing the same; and that the sum of \$——, so paid by this defendant to the said complainant as aforesaid, was a full and fair equivalent for any demand which the said complainant could or might have against this defendant in respect of the several matters therein, and in the said bill also mentioned, or any of them. Therefore this defendant pleads the said release in bar to so much of the said complainant's bill as is hereinbefore particularly mentioned, and humbly prays the judgment of this Honorable Court, whether he ought to be compelled to make any further answer to so much of the said bill as is before pleaded unto; and this defendant not waiving his said plea, but insisting thereon for answer to the residue of the said bill, and in support of his said plea saith, he denies that the said release was unduly obtained by this defendant from the said complainant, or that the said complainant was ignorant of the nature and effect of such release, or that the consideration paid by this defendant to induce the said complainant to execute the same, was at all inadequate to the just claims and demands of the said complainant against this defendant, in respect of the several dealings and transactions in the said bill mentioned, or any of them; and this defendant, denies, &c.

CXVIII. Plea of a will.

(*For the title and commencement, see forms No. XCIII, XCIV. p. 152.*) As to so much and such part of the said complainant's bill as seeks [*that a receiver may be forthwith appointed to receive the rents and profits of the real estates, late of James Thompson, deceased, in the said bill named, and now in the possession of this defendant,*] and that this defendant may account with the said complainant for the rents and profits thereof, and that this defendant may be restrained by the order and injunction of this Honorable Court from felling, &c. timber, &c. growing thereon, or which seeks to set aside the will of the said J. Thompson, or which seeks any relief relative thereto; this defendant doth plead thereto, and for plea saith, that the said James Thompson being before and at the time of making his will, seised to him and his heirs, of and in divers manors, &c. in the several counties of, &c., of the yearly value of \$1,100 or thereabouts, and being of sound mind, memory, and understanding, duly made and published his last will and testament in writing, bearing date the 10th of February, 1742, which was executed by him in the presence of, and attested by, John Overstow, John Hailes, and Richard Stacy, and thereby gave, &c. (*setting forth the will under which the defendant had an estate for life, in the testator's real estate,*

with remainder to the defendant's sons in tail male, and that the testator appointed the defendant executor of his said will) ; and the said James Thompson being so seised or entitled as aforesaid, died on the 28th of May last, without having altered or revoked his said will ; and this defendant, soon after the death of the said testator, entered on the said real estates devised to him in manner aforesaid, and has ever since been in the enjoyment or receipt of the rents and profits thereof. Therefore, &c. (*Conclude as in form No. XCV. p. 152.*)

CXIX. Circumstances bringing a case within the protection of a statute, namely, the statute of limitation. (a)

(*For the title and commencement, see forms No. XCIII, XCIV. p. 152.*) As to so much of the said bill as seeks an account and discovery of the estate and effects of H. C. Esq., deceased, this defendant's testator, or that seeks a satisfaction for, or in respect of any money received by the said H. C., for or on account of I. G., in the said bill named, or for or on account of the said complainant ; or that seeks a discovery of how many hogsheads of tobacco or rice, or any other commodities pretended to have been consigned to the said H. C., or that seeks a satisfaction for the same ; or that seeks a discovery or satisfaction for any of the money, goods, or effects, of the said I. G., come to the hands of this defendant, since the decease of the said H. C. ; this defendant pleads thereto, and for plea saith, that the said I. G., under whom this defendant claims, departed this life in or about the year ———, and that the said H. C., this defendant's testator, afterwards also departed this life, in the month of ——— in the year ———, and that the matters and effects pretended to have been received by the said H. C., or by this defendant, and the goods and commodities pretended to have been consigned (if any sums of money, goods, or effects, were received by the said H. C., or by this defendant, which this defendant doth not admit), were received by the said H. C., or by this defendant, above six years before this defendant was served with any process of this Honorable Court, to answer the said bill, or any process whatsoever was sued against this defendant to account for the same ; and that if the said complainant had any cause of action or suit against this defendant, or against the said H. C., for or concerning any of the said matters, which this defendant doth not admit, that such cause of action or suit did not accrue or arise within six years before the said bill was filed, or this defendant served with process ; nor did this defendant, or his said testator, at

(a) Eq. Plead. § 749 - 759 a.

CH. VII. any time within six years before the said bill was exhibited, or process sued out against this defendant, promise or agree to come to any account, or to make satisfaction, or to pay any sum or sums of money, for or by reason of any of the said matters; and that by a certain Act of Parliament, made in the twenty-first year of the reign of King James I., for the limitations of actions and suits at law, it was enacted, &c. (*state the act*); and this defendant pleads the several matters aforesaid in bar to so much of the complainant's said demand, as aforesaid, and prays the judgment of this Honorable Court thereon: and this defendant for answer, &c.

That supposing the Plaintiff entitled to the Assistance of the Court to assert a Right, the Defendant is equally entitled to the Protection of the Court to defend his Possession.

CXX. Plea of purchase for a valuable consideration, without notice. (a)

(*For the title and commencement, see forms No. XCIII., XCIV. p. 152.*) As to so much of the said bill as seeks an account of what is due and owing to the said complainant, in respect of the annuity of \$50 therein mentioned, and stated to be charged upon, and issuing out of the hereditaments and premises therein and hereinafter mentioned, this defendant doth plead thereto, and for plea saith, that A. B. previously to and on the —— day of ——, was, or pretended to be seised in fee simple, and was in, or pretended to be in the actual possession, of all those manors, in the said bill particularly mentioned and described, free from all incumbrances whatsoever; and this defendant, believing that the said A. B. was so seised and entitled, and that the said hereditaments and premises were in fact free from all incumbrances, on the —— day of ——, agreed with the said A. B. for the absolute purchase of the fee simple and inheritance thereof; whereupon certain indentures of lease and release bearing date respectively on, &c., between the said A. B. of the one part, and this defendant of the other part, were duly made and executed; and by the said indenture of release, the said A. B., in consideration of the sum of \$——, paid to him by this defendant, granted, bargained, sold, released, and confirmed unto this defendant, all, &c. (*set out the parcels verbatim from the deed*), to hold unto, and to the use of this defendant, his heirs and assigns, forever; and in the said indenture of release is contained a covenant from the said A. B. with this defendant, that he the said A. B. was

(a) Eq. Plead. § 804-812.

absolutely seised of the said hereditaments and premises, and that the same and each of them and every part thereof were and was free from all incumbrances; as by the said indentures of lease and release respectively, reference being thereunto had, will more fully appear; and this defendant doth aver, that the said sum of \$——, the consideration money in the said indenture of release mentioned, was actually paid by this defendant to the said A. B., at the time the said indenture of release bears date; and this defendant doth also aver, that at or before the respective times of the execution of the said indentures of lease and release, by the said A. B. and this defendant, and of the payment of the said purchase-money, he, this defendant, had no notice whatsoever of the said annuity of \$50, now claimed by the said complainant, or of any other incumbrance whatsoever, that in any wise affected the said hereditaments and premises, so purchased by this defendant as aforesaid, or any of them or any part thereof; and this defendant insists that he is a *bonâ fide* purchaser of the said hereditaments and premises for a good and valuable consideration, and without any notice of the said annuity claimed by the complainant; all which matters and things this defendant doth aver and plead in bar to so much of the said complainant's bill as is hereinbefore particularly mentioned; and prays the judgment of this Honorable Court, whether he should make any further answer to so much of the said bill as is hereinbefore pleaded to; and this defendant, not waiving his said plea, but relying thereon, and for better supporting the same, for answer saith, that he had not at any time before, or at the time of purchasing the said hereditaments and premises, or since, until the said complainant's bill was filed, any notice whatsoever, either expressed or implied, of the said annuity of \$50, claimed by the said complainant, or that the same or any other incumbrance whatsoever was charged upon or in any wise affected the said hereditaments and premises so purchased as aforesaid, or any of them, or any part thereof; and this defendant denies, &c.

That the Bill is deficient to answer the Purposes of complete Justice.

CXXI. Plea of want of proper parties. (a)

(For the title and commencement, see forms No. XCIII, XCIV. p. 152.) As to so much of the said complainant's bill as seeks an account from this defendant, as executor and heir-at-law of H. E. Esq., deceased, in the said bill named, this defendant's late brother,

(a) Eq. Plead. § 745.

CH. VII. for what remains due and owing upon the bond in the said bill mentioned, bearing date the _____ day of _____, in the year _____, and payment by this defendant as such executor and heir-at-law of the said H. E., deceased as aforesaid, of what shall be found due on taking such account; this defendant doth plead thereto, and for plea saith, that no part of the sum of \$ 2,000, for securing the repayment whereof the said bond was executed, was paid to, or received by the said H. E., but that the whole was paid unto A. W., in the said bond and in the said bill also named, and received by him for his sole use, and that the said H. E. was only a surety for the said A. W., and that the said complainant afterwards accepted a composition for what he alleged to be due on the said bond, from the said A. W., without the privity of the said H. E. in his lifetime, or this defendant since the death of the said H. E., which took place on or about the _____ day of _____, as in the said bill mentioned, since which no demand has been made on this defendant, for any money alleged to be due on the said bond; and that the said A. W. died several years ago, seised of considerable real estates, and also possessed of a large personal estate; and that his heir-at-law, or the devisee of his real estate, and also the representative of his personal estate, ought to be, but are not, made parties to the said bill. Therefore, &c. (*Conclude as in form No. XCV. p. 152.*)

PLEAS TO DISCOVERY ONLY.

That the Plaintiff's Case is not such as entitles a Court of Equity to assume Jurisdiction to compel a Discovery in his favor. (a)

CXXII. Plea to the jurisdiction, where a discovery is sought in aid of another Court of competent jurisdiction.

(*For the title and commencement, see forms No. XCIII, XCIV. p. 152.*) As to so much and such part of the said complainant's bill, filed by him as rector of A., in the county of Y., as seeks a discovery from this defendant as rector of B., in the same county, of all tithes both great and small which have arisen and been received by this defendant during the last six years, from the open field called D. in the hamlet of F., within the said parish of B., in the said bill particularly mentioned and described; this defendant doth plead thereto, and for plea saith, that long before the said complainant's said bill was filed in this Honorable Court, and on or about the _____ day of _____, the said

complainant commenced a suit, in the Exchequer Court of the Arch-CH. VII.
 bishop of York, against this defendant, in respect of the said tithes,
 and that such suit is still depending in the said Court, which, as this
 defendant avers, is a Court of competent jurisdiction to afford the
 discovery which the said complainant seeks by his said bill. There-
 fore this defendant avers, and pleads the same to the said complain-
 ant's bill, and prays the judgment of this Honorable Court, whether it
 will hold plea upon, and enforce this defendant to answer the said
 complainant's said bill for the cause aforesaid.

*That the Plaintiff has no interest in the Subject, or no such in-
 terest as entitles him to call on the Defendant for a Discovery.*

*That the Defendant has no interest in the Subject to entitle the
 Plaintiff to institute a Suit against him, even for the Purpose
 of Discovery only.*

*That the Situation of the Defendant renders it improper for a
 Court of Equity to compel a Discovery.*

CXXIII. Plea that the discovery will subject the defendant to pains and
 penalties. (a)

(For the title and commencement, see forms No. XCIII., XCIV. p.
 152.) As to so much and such part of the said complainant's said
 bill, as charges that F. B., the testator in the said bill named, was for
 a year and upwards before the birth of I. B. (in the said bill also
 named, and therein mentioned to have been the said complainant's
 late husband), lawfully married to this defendant A. E., and had
 issue by her, the said I. B. &c., in the said bill named; and as
 charges, or alleges the said I. B. to have been the son of this defend-
 ant A. E.; and as seeks to compel this defendant to set forth and
 discover whether she was ever, and when, lawfully married to the
 said testator F. B., and on what day in particular, and in what month
 and year, and where, and in whose presence such supposed marriage
 was had and solemnized; and whether this defendant had not issue
 by the said testator F. B.; this defendant doth plead thereto, and for
 plea saith, that many years ago, and long before the time when the
 said complainant's bill supposes the said F. B. the testator to have
 been married to this defendant, and before he had been ever married
 to any woman whomsoever, other than M. E. hereinafter named, that
 is to say, in or about the month of Oct. 1708, the said testator F. B.,
 did lawfully marry and take to wife M. E., spinster, who was, whilst

(a) Eq. Plead. § 824.

CH. VII. living, this defendant's lawful sister of the whole blood ; and that the said F. B., and the said M. E., were lawfully married according to the rites and ceremonies of the Church of England ; and that the said F. B. and the said M. E. lived, and cohabited together as man and wife, and were so esteemed from their said time of intermarriage, until the said M.'s death, which happened in or about the month of March, 1711 ; and the said testator F. B. had issue by the said M. his wife, two sons and one daughter, all born in lawful wedlock, who all died in the lifetime of the said M., their mother, this defendant's said sister ; and therefore this defendant is advised and insists, that supposing the said F. B. had a long time after the death of the said M., his wife, intermarried with this defendant, such marriage (if any such had ever been had), was, and would have been incestuous, and such an offence in this defendant, as might at any time after the said marriage have subjected, and might now subject her, this defendant, to ecclesiastical censure, and to corporal pains and penalties, to be inflicted by and in the Spiritual Court, and to do a public penance for such crime ; and that this defendant's answer to the said complainant's bill, in case she should thereby admit herself to have been married to the said F. B. after the death of the said M. his wife, this defendant's said sister, might be received and read in evidence against her, this defendant in the Ecclesiastical Court, in any suit or prosecution to be there commenced against her, this defendant, for such offence and incestuous marriage. Wherefore* this defendant doth plead the several matters aforesaid, in bar to such discovery as aforesaid as is sought by the said bill, and humbly prays the judgment of this Honorable Court, whether she is bound to make any further or other answer thereto.

CXXIV. Plea that the discovery sought by the bill would betray the confidence reposed in the defendant as an attorney. (a)

(For the title and commencement, see forms No. XCIII, XCIV. p. 152.) As to so much and such part of the said bill as seeks a discovery from this defendant of the title of W. W. Esq., another defendant in the said bill named, to all or any of the manors, messuages, lands, tenements, or hereditaments, late of C. W. Esq. his late grandfather, deceased, in the said bill also named ; this defendant doth plead thereto, and for plea saith, that he this defendant is duly admitted and sworn an attorney of the Court of Great Sessions for the several counties of Denbigh, Flint, and Montgomery, in Wales, and also a solicitor of this Honorable Court, and has for several years past practised, and now practises, as such ; and this defendant was employed by C.

(a) Eq. Plead. § 825.

W. Esq., deceased, the late father of the said other defendant, W. W., CH. VII.
 in the lifetime of the said C. W., and since his decease hath also been
 employed in that capacity by the said other defendant, J. W., the
 mother and guardian of the said W. W., during his minority; and by
 the said W. W., since he attained his age of twenty-one years; and
 in that capacity only, or by means of such employment only, hath
 had the inspection and perusal of any of the title deeds of and belong-
 ing to the said estate, or any part or parts thereof, for the use and
 service of his said clients, and therefore ought not, as this defendant
 is advised, to be compelled to discover the same. Wherefore, &c.
 (*As in the last form from the asterisk.*)

PLEAS TO BILLS NOT ORIGINAL. (a)

CXXV. Plea to a bill of revivor. (b)

(*For the title and commencement, see forms No. XCIII, XCIV. p. 152.*) That the said complainant is not, as stated in the said bill of revivor, the personal representative of A. B. deceased, the testator therein named, and as such entitled to revive the said suit in the said bill of revivor mentioned, against this defendant; but the said complainant is the administrator only of C. D., late of, &c. deceased, who died intestate on the _____ day of _____ last, and was the sole executor of the said A. B.; and that letters of administration of the personal estate and effects of the said A. B., unadministered by the said C. D. in his lifetime, have, since the death of the said C. D., been duly granted by the prerogative Court of the Archbishop of Canterbury, to E. F. of, &c., who thereby became, and now is, the legal personal representative of the said A. B. Wherefore, &c. (*Conclude as in form No. XCV. p. 152.*)

CXXVI. Plea to a supplemental bill. (c)

(*For the title and commencement, see forms No. XCIII, XCIV. p. 152.*) That the several matters and things in the said complainant's present bill stated and set forth by way of supplement, arose, and were well known to the said complainant, before and at the time the said complainant filed his original bill in this cause; and that such said several matters and things can now be introduced, and ought so to be, if necessary, by amending the said original bill. Wherefore, &c. (*As in form No. XCV. p. 152.*)

(a) Eq. Plead. § 826 - 836.

(b) Ibid. § 829.

(c) Ibid. § 827.

CHAPTER VIII.

DISCLAIMERS. (a)

A Disclaimer. (b)

CH. VIII. CXXVII. The disclaimer of A. B., the defendant, to the bill of complaint of C. D., complainant.

This defendant, saving, &c. [*here follow the words of course which precede an answer*] saith, that he doth not know, that he, this defendant, to his knowledge and belief, ever had, nor did he claim, or pretend to have, nor doth he now claim, any right, title, or interest of, in, or to the estates and premises situate, &c. in the said complainant's bill mentioned, and every part thereof. [*Here follow the words of course which conclude an answer.*]

THE ANSWER AND DISCLAIMER OF, &c.

CXXVIII. Answer and disclaimer.

(*For the title and commencement, see form CXXVII. p. 180.*) Saith that he, this defendant, on behalf of E. F., one of the other defendants, in the said bill named, did, about fifteen years ago, contract and agree with G. H., for the purchase of the messuage or tenement, &c. now in question, and in possession of L. M., in the said bill also named, and another defendant thereto, which said messuage, &c. at that time was, and for above ——— years before, had been in the possession of the said G. H. and I. K. in the said bill also named, or one of them, and for the purchase whereof this defendant, on behalf of the said defendant E. F., agreed to give and accordingly did give pay to the said G. H. the sum of \$ ———, which was the full and real value thereof; and in consideration thereof, the said G. H. and N. his wife, by deed indented, and by fine with proclamations by them levied, in his said Majesty's Court of Common Pleas at Westminster, in ——— term, which was in the ——— year of the

(a) Eq. Plead. Chap. XVII.

(b) *Ibid.*: § 844.

reign of, &c. duly conveyed the said messuage, &c. to the said E. F., CH. VIII.
who thereupon, and under and by virtue of such conveyance, as this
defendant has heard and believes, entered on, and became seised of
the said messuage, &c., and continued so seised thereof, without any
entry or claim made by the said complainant, or any other person or
persons, until ——— in the year ———, when the said E. F. as this
defendant hath heard and believes, by good and sufficient convey-
ances in the law, and in consideration of the sum of £——, *bonâ fide*
paid, sold, and conveyed the said messuage, &c., to the said defend-
ant L. M. and his heirs, who thereupon entered thereon, and was
and yet is seised and possessed of the same: and this defendant
further answering saith, he does not know nor can he set forth as to
his helief or otherwise, whether R. S. in the said bill named, was ever
seised of the said premises, or any part thereof: and this defendant
further answering saith, he has been advised and believes that the said
G. H. and N. his wife, had good right and title to sell and convey the
said premises so purchased by this defendant, on behalf of the said E. F.
as aforesaid: and this defendant further answering saith, he denies
that he ever had any notice of any right or title, the said complainant
or any other person, save as aforesaid, had or might or could claim, of,
in, or to the said messuage, &c. or any part thereof: and this defend-
ant saith, that he never had or claimed, or pretended to have, nor has
he now, nor does he claim, or pretend to have, any right, title, or
interest, of, in, or to the said premises, or any part thereof; and this
defendant disclaims all right and title, of, in, or to the same, and every
part thereof. (*Conclude as before.*)

CHAPTER IX.

ANSWERS. (a)

CH. IX. *Forms of the Commencements and Conclusions of Answers.*

CXXXIX. The title of a defence by answer to a bill in equity.

The answer of ——— the defendant, [*or one of the defendants,*] *or,* the joint and several answers of ———, the defendants, [*or two of the defendants,*] to the bill of complaint of ———, complainants.

CXXX. Where there is only one defendant to an original bill in chancery.

The answer of A. B. defendant to the bill of complaint of C. D. complainant.

CXXXI. Where the attorney-general is a defendant.

The answer of J. S. C., attorney-general of the State of ———, one of the defendants to the bill of complaint of E. C. and R. his wife (late R. A., spinster) complainants.

CXXXII. Where a defendant is an infant.

The answer of A. R. an infant under the age of twenty-one years by ——— her guardian, one of the defendants to the bill of complaint of J. C. and T. R., J. F. and J. L. complainants.

CXXXIII. Where one of several defendants puts in her answer to an original and amended bill.

The answer of S. B. widow, one of the defendants to the [original and] amended bill of complaint of N. P. complainant.

(a) Eq. Plead. Chap. XVIII.

CXXXIV. Where two of several defendants put in their answer to an original bill. CH. IX.

The joint and several answer of J. L. and T. R. two of the defendants to the bill of complaint of A. B. and C. D. complainants.

CXXXV. Where several defendants join, and the christian names of some of them are misstated in the bill.

The joint and several answer of L. M., R. P. in the bill called E. P., J. K., in the bill called R. R., and R. T. defendants to the bill of complaint of R. M. complainant.

CXXXVI. Where exceptions have been taken to a former answer and the bill has also been amended.

The further answer of S. J., one of the defendants to the original bill, and her answer to the amended bill of complaint of S. T. and R. D. complainants.

CXXXVII. Where the plaintiff has died before some of the defendants have answered, and the bill has been subsequently amended.

The joint and several answer of A. B., C. D., and E. F., three of the defendants to the original and amended bill of complaint of N. P. deceased, and also their answer to the bill of revivor and amended bill of A. P. complainant.

CXXXVIII. Where adult and infant defendants join in answering.

The joint and several answer of J. B. and M. his wife, H. F., E. F., W. F., J. P., and T. P., and of W. P. and J. P. infants under the age of twenty-one years by ——— their guardian, nine of the defendants to the bill of complaint of T. G. complainant.

CXXXIX. Where a supplemental answer is requisite.

The supplemental answer of W. P. T., J. S., and R. U., three of the defendants to the bill of complaint of the Rev. F. W. B. and C. E. complainants.

CH. IX.

THE COMMENCEMENT.

CXL. Introduction of words of course preceding an answer by one defendant.

This defendant now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering saith, &c. [*The defendant must answer according to his knowledge, remembrance, information, and belief.*]

Another Form of Commencement.

This defendant reserving to himself all right of exception to the said bill of complaint, for answer thereto saith, &c.

CXLI. Introduction or words of course preceding the joint and several answer of several defendants.

These defendants now and at all times hereafter saving and reserving to themselves and each of them all benefit, &c. [*proceed as in form No. CXL., supra, as far as the word "as" and proceed thus:*] as these defendants are advised is or are material or necessary for them or any of them to make answer unto, they these defendants severally answering say, &c.

Or thus :

These defendants reserving to themselves all right of exception to the said bill of complaint, for answer thereto say, &c.

COMMON FORMS USED IN FRAMING ANSWERS.

CXLII. Where a defendant admits a statement.

And this defendant further answering, saith he hath been informed and believes it to be true, that, &c. Or, this defendant admits that, &c.

CXLIII. Where a defendant admits a statement of a written instrument. CH. IX.

And this defendant further saith he hath been informed and believes it to be true that, &c. ; but this defendant for greater certainty therein craves leave to refer to the said ——— when the same shall be produced.

CXLIV. Where a defendant believes a statement may be true, but qualifies his admission of it, not knowing the same of his own knowledge.

And this defendant further answering, saith he believes it to be true that at the time of his said testator's making his said will, and at the time of his death, the said testator's sister Jane, the wife of ——— in the said will named, had such children as therein in that behalf named, but this defendant does not know the same of his own knowledge, nor can this defendant state as to his belief or otherwise whether she had or not any other children or child at such times, or either of them.

Or thus :

And this defendant further saith he has never heard or been informed save by the said complainant's said bill, whether, &c. ; but this defendant believes that, &c. as in the said bill is alleged.

CXLV. Where a defendant sets forth a deed, and alleges the payment by him of a sum of money.

And this defendant saith that by a certain deed-poll, or instrument in writing under the hands and seals of, &c. and bearing date, &c. the said ——— did in consideration of the sum of \$ ——— to them paid by this defendant, the receipt, &c., and which said sum was in fact so paid, remise, release, &c. As by such deed or instrument, to which this defendant craves leave to refer when the same shall be produced, will appear.

CXLVI. Where a defendant is entirely ignorant with regard to the statement in the bill.

And this defendant further answering, saith he knows not, and has not been informed save by the said complainant's said bill, and cannot set forth, as to his belief or otherwise, whether the said complainant has or not applied for or procured letters of administration of

CH. IX. the goods, chattels, rights, and credits of the said A. B. to be granted to her by and out of the proper or any or what Court, nor whether, &c.

Or thus :

And this defendant further answering, saith it may be true for anything this defendant knows to the contrary, that, &c. but this defendant is an utter stranger to all and every such matters, and cannot form any belief concerning the same.

CXLVII. Where one of two defendants of his own knowledge knows the statement in the bill to be true, and the other defendant does not know the same, but believes the answer of his co-defendant.

And this defendant M. M. further severally answering saith, and this defendant E. R. believes it to be true, that the said testator was not, &c.

CXLVIII. Where two defendants admit the happening of an event, but cannot state when it happened.

And these defendants severally admit, &c. but when in particular these defendants or either of them to the knowledge or belief of the other of them do not know, and cannot set forth as to their information and belief or otherwise.

CXLIX. Where several defendants join, and are all ignorant of the allegations in the bill.

And these defendants further severally say that they or any or either of them to the knowledge or belief of the others or other of them do not know, and have never been informed save by the said complainant's bill, and cannot set forth as to their belief or otherwise whether, &c.

CL. Where one of two defendants denies the allegation in the bill, and the other defendant believes such denial to be true.

And this defendant M. M. further severally answering, saith she denies, and this defendant E. R. believes such denial to be true, that the said J. S. M. was then incapable of understanding the said codicil, but saith that he fully knew, &c.

CLI. Where two defendants join in denying the allegations in the bill. CH. IX.

And these defendants further severally say that they these defendants did not nor did either of them to the knowledge or belief of the other of them, nor did the said J. and H. or several or any or either of the members of the said firm to the knowledge or belief of these defendants, a short time or at any time before, &c.

CLII. Where a schedule of deeds is required to be set forth.

And this defendant further saith he hath in the schedule to this his answer annexed or under-written, and which he prays may be taken as part thereof, set forth according to the best and utmost of his knowledge, remembrance, information, and belief, a full, true, and particular list or schedule of all deeds, &c., and this defendant is ready and willing to produce and leave the same in the hands of his clerk in Court for the usual purposes.

CLIII. Where an account of rents, or moneys received, or paid, is required to be set forth by several defendants.

And these defendants further severally answering say, they have in the [first] schedule to this their answer annexed or under-written, and which they pray may be taken as part thereof, set forth according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, a full, true, and particular account of all and every sum and sums of money, &c. [*Or, if an account required as to real estates, thus: a full, true, and just rental and particular of all and singular the real estates, &c.*]

THE CONCLUSION.

CLIV. Concluding words of an answer.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defend-

CH. IX. ant ; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

FORMS OF ANSWERS.

CLV. Usual answer of an attorney-general.

(*For the title, see form No. CXXIX. p. 182.*) This defendant answering, saith that he is a stranger to the several matters and things in the said complainant's said bill of complaint contained ; And this defendant further saith that he claims such rights and interests under, &c. [*the will of R. S. deceased, in the said bill stated*] for and on behalf of the State of ———, as this Honorable Court shall be of opinion that the said State is justly entitled to.

CLVI. Answer of the attorney-general, where the plaintiff was alleged to be illegitimate.

(*For the title, see form No. CXXIX. p. 182.*) This defendant saving and reserving to himself on behalf of the State of ———, now and at all times, &c., answering, saith that he is a stranger to all and singular the matters and things in the said complainant's bill of complaint contained, and therefore leaves the said complainant to make such proof thereof as he shall be able ; And this defendant further answering, saith that he insists on behalf of the State on all such right, title, and interest in the premises in the said bill of complaint mentioned as the said State shall appear to have therein, and this defendant humbly submits the same to the judgment, order, and direction of this Honorable Court, and also humbly prays that this Honorable Court will take care of the State's right and interest in the premises. And this defendant denies, &c. Without that, &c.

J. M.

CLVII. The answer of the attorney-general where a testator died without leaving an heir-at-law.

(*For the title, see form No. CXXIX. p. 182.*) This defendant now, &c. answering, saith it may be true for anything this defendant knows to the contrary, that I. T. A. in the complainant's bill named, was seised in fee simple of such real estates as therein mentioned,

and that he died at or about the time in the said bill in that behalf mentioned without leaving an heir-at-law, but whether the said I. T. A. duly made and published such or any other last will and testament as in the said bill mentioned, or whether if he so did, he the said I. T. A. was of sound mind, memory, and understanding at the time of making and publishing the same, or whether the same was duly executed and attested, &c., or whether the said complainant is so, or otherwise entitled to the said estates as in the said bill in that behalf mentioned, this defendant being an entire stranger to the several matters aforesaid cannot set forth, but leaves the said complainant to such proof thereof as he shall be advised to produce; And this defendant on behalf of the State insists that if the said I. T. A. died without leaving any heir-at-law and without duly executing his will and testament in writing in such manner as by law is required for devising real estates, in that case the State has become entitled by escheat to all the estates of which the said I. T. A. died seised.

W. A.

CLVIII. Answer of the attorney-general insisting on a title by escheat in the State, in case a testator died without leaving an heir-at-law, and without having made a will valid to pass real estate.

(*For the title, see form No. CXXIX. p. 182.*) This defendant saving, &c. answereth and saith that he is a stranger to all and singular the matters and things in the complainant's said bill of complaint contained, and submitteth the same to the judgment of this Honorable Court; but insists on the State's behalf that in case it shall appear that D. D., late of, &c. deceased, in the complainant's bill named, died without leaving any person or persons a subject or subjects of the State of ———, his heir or heirs at law, and without having duly made and published his will and testament in the presence of three credible witnesses, and with all the solemnities of law requisite to devise or pass real estate at the time of his being of sound and disposing mind, memory, and understanding, that then and in such case the State is well entitled by escheat to all and singular the freehold messuages, lands, tenements, and hereditaments, of which the said D. D. died seised or entitled in fee simple; And therefore this defendant prays that this Court will take care of such right and interest, if any, as shall appear to be in the State. Without that, &c.

CH. IX.

CLIX. Answer to a bill, brought against an obligor in a bond, which alleged that he obtained that instrument by fraud, and that it thereby became lost to the obligee.

(*For the title and commencement, see forms CXXIX., CXL. pp. 182, 184.*) He admits that the said complainant was at the time in the said bill in that behalf mentioned, a single woman, and that she then, by the means and under the circumstances, and in the manner hereinafter mentioned, became acquainted with this defendant; and this defendant saith, that the said complainant was at the time he became acquainted with her, and previously thereto, as this defendant has been informed and believes, a woman of very bad fame and character, and had been and was an orange girl in the —— theatre, where this defendant first met her, at the time in the said bill in that behalf mentioned, and then became acquainted with the said complainant by making such addresses to her as may be supposed to be, or are usually made, to women of ill fame, character, and reputation; and as such a woman, and not otherwise, this defendant visited, associated, and corresponded with the said complainant; and as this defendant further answering, admits, he pretended, and professed, and in various instances, and particularly on or about ——, when at her lodgings in —— Court, by his attention to her during the malady with which she was then afflicted, shewed great regard for the said complainant as a woman of such character and reputation as aforesaid, but not otherwise; and this defendant saith, that he never intended, and he believes the said complainant never imagined, that this defendant purposed to marry her; and this defendant further answering saith, he denies, for the reasons and under the circumstances aforesaid, that he gained the affections of the said complainant, otherwise than as the affections of women of ill fame and character are usually gained; or that he ever proposed to marry her; or that the said complainant therefore could ever in answer to any proposal from this defendant, in any manner, at any time, at any place, in the presence of any person or persons whatsoever, and under any circumstances, give, or this defendant obtain such consent to marriage, as stated in the said bill: and this defendant further answering saith, he admits that after he first became acquainted with the said complainant, in manner and under the circumstances aforesaid, but not after any such consent to marriage as alleged in the said bill was, or for the reasons aforesaid could have been obtained, this defendant continued from time to time to visit and correspond with the said complainant; but this defendant denies that such intended marriage, as is mentioned in the said bill, was ever in contemplation, or that therefore the solemnization thereof

was, or could be from time to time, and from and to any times in particular, on any account, or under any pretences, postponed by this defendant, although he admits, that he constantly professed the greatest love for the said complainant, as a woman of such character and reputation as aforesaid, but not otherwise; and this defendant saith, that during his acquaintance with the said complainant, she talked of some bond which she was desirous this defendant should give her; and this defendant further answering saith, he denies that he did, in order to evince his undiminished affection for the said complainant, and generosity towards her, otherwise than as aforesaid, and as hereinafter mentioned, or for any other reason, or without any intent, save as hereinafter mentioned, freely and voluntarily duly execute and give to the said complainant such bond, of such date, and together with the condition thereof, to such purport or effect as in the said bill in that behalf mentioned, or any other bond of such, or the like date, purport, or effect; and this defendant saith, that at or about the time in the said bill in that behalf mentioned, this defendant did, as he admits, execute a bond to the said complainant; and which said bond was brought to this defendant ready drawn and prepared, and this defendant does not now remember, and is unable to set forth as to his belief or otherwise, whether the same was or not to the purport and effect in the said bill mentioned and set forth, save that this defendant believes that it was or might have been a bond in the penalty of \$ 500, or some such sum, with a condition to be void on a marriage between this defendant and the said complainant within twelve months, or to that effect; but this defendant, when he executed the said bond, apprehended and believed that the same was not, nor would be of any force or validity against him; and this defendant further answering saith, he does not know, and cannot set forth as to his belief or otherwise, whether the said complainant for any time rested satisfied with the alleged assurances of this defendant of his continued affection towards her: but this defendant admits, that at or about the time in the said bill in that behalf mentioned, being two months after the execution of the said bond, under the circumstances aforesaid, by this defendant, this defendant was in company with the said complainant, but this defendant denies that he did then, or at any other time, request the said complainant to bring and give him the said bond for his perusal, or for any other purpose whatsoever, or that the said complainant did accordingly deliver the said bond to this defendant, in order that he might read it, and return the same immediately afterwards to the said complainant; but the said bond was then given to this defendant by the said complainant, with the view, intent, and design, hereinafter mentioned and not otherwise; and this defendant saith, that a dispute having

CH. IX. arisen between him and the said complainant on such occasion as last hereinbefore mentioned, the said complainant voluntarily, and of her own accord, and with some marks of resentment, gave up and delivered the said bond to this defendant, telling him at the same time, that she had a gentleman that would do better for her, or to that effect; and this defendant further answering saith, he admits that when he had in manner hereinbefore mentioned, but not as stated in the said bill, obtained possession of the said bond, he retained, kept, and carried away the same; but he denies, for the reasons and under the circumstances aforesaid, that he did so, or can be considered to have done so, against the express desire and consent of the said complainant, as is untruly alleged in the said bill; and this defendant saith that he afterwards and before any inquiry was made by or on the behalf of the said complainant for the said bond, and on or about ———, burned and destroyed the same, apprehending and believing, for the reasons and under the circumstances aforesaid, he might justly do so: and this defendant further answering saith, he denies that he visited or saw the said complainant on the following day, or that she then, or at any time afterwards, remonstrated with the said defendant, or complained of his conduct and behavior in respect of the said bond, or that the said complainant until she filed her said bill, which was a year afterwards or thereabouts, or in any other manner than by her said bill, insisted on this defendant returning the said bond to her, or made any complaint or demand to this defendant respecting the said bond, or that anything passed between the said complainant and this defendant relative to such transaction as aforesaid, save as hereinbefore mentioned: and this defendant further answering saith, he denies that he ever promised or agreed to return the said bond to the said complainant, or that he afterwards alleged, although he admits such to be the fact, that he had destroyed it; and this defendant also denies that he ever directed the said complainant to get a new bond prepared, and appointed the time and place for the execution thereof, or that any other offer was made, or directions given by this defendant to the said complainant on account of this defendant's detention of the said bond: and this defendant further answering saith, he does not know, and cannot set forth as to his belief or otherwise, whether the said complainant applied to the person who drew the former bond, or to any other person, to prepare a new one; but if any such application were made by the said complainant, this defendant denies that it was in consequence of any direction or request of this defendant, or under any other circumstances than as hereinbefore particularly mentioned; and this defendant further answering saith, he is unable to set forth as to his belief or otherwise, whether the person to whom the said complainant in

her said bill alleges that she made such application, and for such purpose as therein mentioned, did or not accidentally find the very draft or copy of the former bond and condition, or whether he caused, or whether in fact a like deed or instrument of the same tenor and effect was or not duly prepared therefrom: and this defendant further answering, saith, he denies that he frequently or ever promised to redeliver to the said complainant, the said bond so executed by him as hereinbefore mentioned, or to give and legally execute to the said complainant a bond of the like tenor and effect as the former bond so destroyed as aforesaid, or that he, this defendant, made any such or the like promises to the said complainant, to such or the like effect as in the said bill mentioned; and this defendant further answering saith, he denies that the said first-mentioned bond was duly prepared by his direction; and when and by whom, and from what instructions the same was so prepared, this defendant, save as aforesaid, is unable to set forth as to his belief or otherwise: and this defendant further answering saith, he admits that the said first-mentioned bond was duly executed by him in the presence of G. H., in the said bill named; but this defendant denies that the said bond, with the condition thereof, previously to its execution, was read over and explained to this defendant by the said G. H., or any other person whatsoever, or that he, this defendant, was before, and at the time of executing the same, perfectly, or save as aforesaid, in any manner acquainted therewith, and aware of the nature and effect thereof; and this defendant saith, that the said first-mentioned bond, so destroyed as aforesaid, was voluntarily delivered up to him by the said complainant, at the time and under the circumstances hereinbefore particularly mentioned; and he therefore insists, that he ought not to be compelled to give, or execute any other bond to the said complainant. (*Conclude as in form No. CLIV. p. 187.*)

CLX. Answer of trustees and executors to a bill for an account of the testator's real and personal estate.

(*For the title and commencement, see forms No. CXXIX., CXL. pp. 182, 184.*) Severally answering say, they admit that A. B., late of ———, deceased, the testator in the said bill named, duly made and published his last will and testament, in writing, bearing date on or about the ——— day of ———, of the purport and effect in the said bill set forth; but these defendants, as to the date and contents of such will, severally refer thereto, and to the probate copy thereof respectively, when produced; and these defendants also admit, that the said testator was, at the time of making his said will, of sound mind, memory, and understanding, and that such will was executed

Admission
of the will
of the testa-
tor,

CH. IX.

and his death.

Admission that the testator at the time of making his will, and at the time of his death, was seised of real estates, and was also at the time of his death possessed of considerable personal estate, which was more than sufficient for payment of his debts and legacies.

Proof of the will and possession by the defendants, as executors, of the testator's personal estate.

Possession of the testator's real estates, and title deeds, by the defendants, as devisees in trust.

Reference to the 1st schedule annexed to the answer, for the rental of the testator's real estates.

and attested in the manner by law required for devising real estates ; and these defendants also admit that the said ———, testator, departed this life on or about ———, as is mentioned in the said bill, without having revoked, or in any wise altered his said will ; and these defendants also admit, that the said testator was at the time of making his said will, and also at the time of his death, seised or entitled in fee simple of or to the several freehold and copyhold estates mentioned in the said bill, and of and to other real estates of considerable yearly value in the whole, and that the said testator duly surrendered such of his real estates as were copyhold, to the uses of his will ; and that he was also at the time of his death, possessed of, or entitled to, personal estates and effects of such kinds as are mentioned in the said bill, to a considerable amount or value in the whole, and much more than sufficient to satisfy all his debts, legacies, and funeral expenses ; and these defendants respectively answering say, they admit that since the death of the said testator, these defendants respectively, as executors of the said testator's said will, have duly proved the same in the proper Ecclesiastical Court, and taken upon themselves the execution thereof, and under and by virtue of such probate, possessed so much of the personal estate of the said ———, testator, and of the produce thereof, as they have respectively been able ; and they have also, as the trustees named in the said will of the said testator, by which the residue of his freehold and copyhold estates were devised to them, as therein and in the said bill in that behalf particularly mentioned, entered into possession of such of the real estates, late of the said testator, as were not specifically devised by his said will, and have been in the receipt of the rents and profits thereof, ever since the said testator's death ; and these defendants, as such trustees as aforesaid, have also possessed such of the title deeds and writings, relating to the said real estates, as they have been able, and the same are now in their custody or power, and ready to be produced as this Honorable Court shall direct : and these defendants further severally answering say, they believe that C. D., in the said bill named, and another defendant thereto, is heir-at-law of the said testator ; and these defendants also believe, that the said complainants respectively are the only children of E. F. in the said will and the said bill also named, who were living at the death of the said testator, and that the said complainants are all infants under the age of twenty-one years : and these defendants further severally answering say, they have in the first schedule to this their answer annexed (which, together with the said several other schedules thereto, these defendants humbly pray may be taken as part of this their answer), set forth a full, true, and just rental and particular, to the best of their respective knowledge, information, and belief, of all the real estates, as well freehold as copy-

hold, whereof or whereto the said testator was seised, or interested in at the respective times of making his said will, and of his death, which are not specifically devised by his said will; and these defendants have in such account or rental distinguished, to the best of their respective knowledge, information, and belief, such of the said estates as are freehold, from such of the said estates as are copyhold, and where the same, and every part thereof, are and is situated, and the yearly value thereof, and of each particular part thereof, and in whose tenure and occupation the same, and every part thereof, now are or is, and from time to time, since the death of the said testator have, and hath been, and under what yearly and other rents, or rent: and these defendants further severally answering, say, they have in the second schedule hereto annexed, set forth a full, true, and particular account, according to the best and utmost of their respective knowledge, remembrance, and belief, of all and every sums and sum of money, which have been received by these defendants, or either of them, or any other person or persons, by their, or either of their order, or for their, or either of their use, for and in respect of the rents and profits of the said testator's real estates, not specifically devised, and every part thereof, which have become due since the death of the said testator, and when, and by whom, and for whose use, and from whom, and for what rents or rent, and of what parts or part of the said real estates, and when, all and every such sums and sum have and hath been respectively received: and these defendants further severally answering say, they have in the third schedule to this their answer annexed, set forth a full, true, and particular inventory and account, according to the best of their respective knowledge, remembrance, and belief, of all and singular the personal estate and effects, goods, chattels, and credits of the said testator, at the time of his death; and these defendants have in such schedule distinguished, to the best of their knowledge, information, and belief, all such particulars of the said testator's personal estate and effects, as have been possessed or received by these defendants respectively, or by any other persons or person by their, or either of their order, or for their or either of their use, and the quantities, qualities, and values of such particulars, and which of such particulars have been sold and disposed of, and when, and where, and by and to whom, and for how much, and in what manner the same have been so sold: and these defendants further severally answering, say, that to the best of the knowledge, remembrance, and belief of these defendants respectively, no part of the said personal estate and effects of or belonging to the said testator at the time of his death, hath at any time been possessed, got in, or received by, or come to the hands of these defendants, or either of them, or any other persons or person, by their or either of their

CH. IX.

Reference
to the 2d
schedule,
for an ac-
count of the
rents.

Reference
to the 3d
schedule,
for an ac-
count of the
testator's
personal
estate.

CH. IX. order, or for their or either of their use, other than such particulars as are in the said third schedule mentioned to have been possessed or received by these defendants respectively; nor can these defendants, or any or either of them, as to their knowledge, remembrance, information, and belief respectively, set forth any further, or more particular account, than is contained in the said third schedule hereto, of or concerning all or any of the personal estate and effects belonging to the said testator at the time of his death: and these defendants further severally answering say, they have, in the fourth schedule hereto annexed, set forth, according to the best of their knowledge, remembrance, and belief respectively, a full, true, and particular account of all and every sum and sums of money, which have or hath become due since the death of the said testator, for and in respect of the interest, dividends, and yearly produce of the personal estate and effects belonging to him, the said testator, at the time of his death, or of the produce thereof, and when, and from whom, and for what principal sums and securities, the same respectively became due: and these defendants have in such fourth schedule, distinguished all and every such sums of money, as have been received by, or by the order, or for the use of these defendants, or any or either of them, for or in respect of the interest and dividends of such personal estate, or of the produce thereof, or of any part thereof, and from whom, and for the interest and dividends of what principal sum, and on what security and when due, all and each of such sums have been respectively received: and these defendants further severally answering say, they have in the fifth schedule to this their answer annexed, set forth a full and particular account of the debts which were due and owing from the said testator at the time of his death, and to whom, and for what, and of the securities on which the same were respectively due, so far as the same have come to the knowledge of these defendants respectively; and also an account of the legacies which were given by the will of the said testator, and to whom the same were bequeathed; and these defendants have in the said fifth schedule, distinguished such of the debts due from the said testator at the time of his death, and such of the legacies given by his said will, as have been paid and discharged by these defendants, or any or either of them: and have set forth all and every the sum and sums of money which have been paid for, or on account of, or in, or towards the discharge of such debts and legacies, and to whom, and when, and for what, and by whom, the same have been respectively so paid: and these defendants have also in the said fifth schedule, set forth an account of all the sums of money which have been paid by these defendants, or any or either of them, for or in respect of the funeral expenses of the said testator, and the charges of proving his said will, and of carrying the

Reference to the 4th schedule, for an account of interest received since the testator's death.

Reference to the 5th schedule, for an account of the testator's debts, legacies, and funeral, and testatory expenses.

same into execution, and when, and to whom, and for what all and every such sum and sums of money have, and hath been so paid; and these defendants further severally answering say, they admit that such applications have been made to them on behalf of the said complainants, as mentioned in the said bill; but these defendants are advised, that they could not by reason of the minority of the said complainants safely comply with such requests, without the direction and indemnity of this Honorable Court; and these defendants severally say, they now are and always have been, ready and willing to account for all the personal estate and effects of the said testator, and the produce, and interest thereof, and for the rents and profits of his real estates not specifically devised, which have been possessed or received by them respectively, or any person or persons by their, or any or either of their order, or for their, or any or either of their use, these defendants having all just allowances made to them in taking such accounts; and the said testator having thought proper, by his said will, to give unto each of these defendants a legacy of \$ 50, these defendants humbly hope, that in taking such accounts, they respectively shall be allowed to retain such their legacies: and these defendants further severally say, they are willing to pay, assign, transfer, and dispose of the clear surplus or residue of the said testator's personal estate, and the rents and profits of his said real estates, not specifically devised, which have been received by them, or any or either of them, since the death of the said testator, under the sanction and indemnity of this Honorable Court, in such manner as it may direct. (*Conclude as in form No. CLIV. p. 187.*)

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Admission, applications, and submission to act under the direction and indemnity of the Court.

CLXI. An answer insisting on the same benefit of the statute of frauds, as if it had been pleaded by the defendant. (*a*)

(*For the title and commencement, see forms No. CXXIX., CXL. pp. 182, 184.*) That by a certain act of parliament, made and passed in the twenty-ninth year of the reign of his late Majesty King Charles the Second, for the prevention of frauds and perjuries, and commonly called the Statute of Frauds, all contracts and agreements in relation to lands, except as therein is excepted, are required to be reduced into writing, and signed by the party or parties to be bound thereby; and that the said agreement in the said bill mentioned, and therein alleged to have been made and entered into by this defendant and the said complainant, was not reduced into writing and executed pursuant to the said statute, and therefore this defendant insists, that the same

(*a*) Eq. Plead. § 761 - 768.

CH. IX. is void as against this defendant; and that he cannot be affected thereby; and this defendant claims the same benefit, as if he had pleaded the same statute in this cause; and this defendant, for the reasons, and under the circumstances aforesaid, is advised and insists, that the said complainant is not entitled to any relief against this defendant, touching the matters complained of in the said bill. (*Conclude as in form No. CLIV. p. 187.*)

Saith that he and his co-defendants, being duly constituted trustees for sale, a treaty was entered into and an agreement concluded for sale of certain estates to the plaintiff;

And that the same was reduced into writing and signed, and was to the effect stated in the bill.

Saith that such agreement was sent to him for his signature, and which he accordingly signed.

Saith that he did not personally act in the treaty.

Saith that he is unable to state whether the plaintiff was anxious to purchase a residence, or whether he relied on the statements alleged in the bill.

CLXII. Answer of one of three trustees for sale, defendants to a bill by a purchaser seeking to set aside the contract, the defendant insisting that although the incumbrances on the estate are numerous, and that a recovery which had been previously suffered was in dispute in another suit, yet that the defendants are able to procure a good conveyance to be executed to the plaintiff, and that he ought to be compelled to complete his contract.

(*Answer of defendant C. V. — For the form of title and commencement, see CXXIX., CXL. pp. 182, 184.*) Saith that defendant, together with M. A. T. and S. T. S. the two other defendants to the said bill, having been, as they were advised, duly constituted and appointed trustees for the sale of the hereditaments and premises in the said bill mentioned, and believing that they had a good right and authority to sell the same, and that they could execute or procure to be executed, a good and sufficient conveyance thereof in fee simple to a purchaser, and being desirous therefore of executing their said trust, a treaty was accordingly in or about the month of July, 1821, entered into between defendant's said co-trustees, or one of them, and the said plaintiff, and an agreement was afterwards concluded between them for the sale of the said hereditaments and premises to the said plaintiff at or for the price or sum in the said bill mentioned; and the said agreement was thereupon reduced into writing, and, defendant admits, signed by the said M. A. T., S. T. S., and the said plaintiff, and was, as defendant believes, in the words and figures or to the purport and effect in the said bill mentioned, as far as the same is therein set forth; nevertheless, defendant, for his greater certainty craves leave to refer to the same, when produced to this Court;

Saith that the said agreement so signed was sent to defendant for his approbation and signature, and defendant did accordingly approve of and sign the same, subject only to a few marginal notes thereon, by way of qualification, on certain collateral points, as to costs, and the extent of the covenants to be entered into on the part of defendant and his co-trustees, as by the said agreement when produced, and to which defendant for his greater certainty refers, when produced, will more fully appear;

Saith that except as aforesaid, he did not personally act in such CH. IX.
 treaty of sale of the said premises to said plaintiff, such treaty hav-
 ing been carried on in the county of Y. by his co-trustees there, and Denies hav-
 defendant residing in London, and not having interfered in the con- ing made
 tract any further than by some previous correspondence with his co- any such
 trustees, and by testifying his approbation of and subsequently signing statements.
 the contract, neither did defendant pretend or allege himself to be Believes
 in the said month of July or at any other time seised of, or otherwise that two
 well entitled for an estate of inheritance, in fee simple to the manor parts of the
 and other hereditaments in the said bill mentioned, or that he and the agreement
 said other defendants could shew and make out a good, clear, market- were pre-
 able title to the said premises, or that they had good right and author- pared, and
 ity to sell the same, and could execute, or procure to be executed, a that one
 good and sufficient conveyance of said hereditaments free from all in- was taken
 cumbrances, except as in the said bill mentioned, or otherwise except by the de-
 as aforesaid ; defendants,
 but is un-
 able to state
 whether
 the other
 was taken
 by the
 plaintiff.

Saith that except as he is informed by the said bill, he is wholly
 unable to set forth, whether or not the said plaintiff was at the time in
 the said bill mentioned, anxious to purchase a residence and estate in
 that part of the country where the said manor and other hereditaments
 were situate, or whether or not he relied upon such alleged statements
 as are in the said bill mentioned to have been made by this defendant's
 said co-trustees ;

Denies that he ever made any such statements to the said plaintiff ;

Saith that he believes it to be true that two parts of the said agree-
 ment hereinbefore mentioned were prepared, and that one of such parts
 was taken and kept by defendant and his said co-trustees, and is now
 in their power, but whether or not defendant signed both parts of the
 said agreement, he does not recollect, and except as he is informed by
 the said bill, is wholly unable to set forth as to his belief or otherwise,
 whether the other part of said agreement was taken and kept by said
 plaintiff or is now in his possession ;

Saith he does not know but has been informed and believes that a
 full, true, and correct abstract of the title of defendant and his co-trus-
 tees to the said manor and hereditaments was delivered to plaintiff or
 his solicitor, within one month or thereabouts from the date of the said
 contract, and that such title has in fact been approved of by or on the
 part of the said plaintiff ;

Saith that except as aforesaid, and except that he has been informed
 and believes that in the first instance an abstract of the title to said
 estate as deduced unto F. M. T. the owner, was sent from L. to the
 solicitors at Y. employed by the said defendants M. A. T. and S. T. S.
 on the 7th day of July, 1821, and that a second abstract containing an
 account of the incumbrances on that estate was sent from L. to the
 valid.

Has been
 informed
 and be-
 lieves that
 a full ab-
 stract was
 sent to the
 plaintiff,
 and that he
 has ap-
 proved of
 the title.
 Saith that
 except as
 he has been
 informed as
 to three ab-
 stracts be-
 ing sent, he
 knows not
 whether a
 partial ab-
 stract only
 was deliv-
 ered as
 stated in
 the bill.

Does not
 believe that
 any mate-
 rial deeds
 were omit-
 ted.
 Believes
 that F. M.
 T. has in
 another suit
 endeavored
 to impugn
 the validity
 of a recov-
 ery suffered
 of the es-
 tates sold,
 but believes
 that such
 recovery is
 valid.

- CH. IX. same solicitors on the 11th day of the same month of July in the same year, and that a third abstract of the title to the S. estate being part of the trust hereditaments, was delivered to the said solicitors at Y., and was delivered by them to the said plaintiff or his solicitor, he is unable to set forth as to his belief or otherwise whether or not on the 12th day of July last, or at any other time, a partial abstract only of the title deeds relating to parts of the said hereditaments comprised in the said agreement was delivered to the solicitors of the said plaintiff, or how otherwise, or whether it was not on the 19th of the same month and not before that an abstract of other deeds relating to the same part of the said hereditaments or any other parts was delivered to the solicitor of the said plaintiff, except as aforesaid;
- Does not believe that there are any valid objections to the title, but believes that the title has been approved of on the part of the plaintiff, and that the defendants are entitled to an equitable estate in fee simple.
- Saith* that he does not believe that any of the deeds material to the title to the said premises are omitted to be set forth in the same;
- Cannot state whether plaintiff was or not aware of the former suit, or of the validity of the recovery being disputed, but insists that if he was not informed thereof, yet that it ought not to prevent the contract from being completed.
- Saith* he has been informed and believes that said F. M. T. in his answer in the suit in the said bill mentioned, has endeavored to impugn the validity of a recovery suffered by him and his late father, of the said hereditaments and premises, but defendant saith he verily believes that such recovery was duly and properly suffered, and that except as aforesaid, the validity of the same or of any other recovery, or of the deed leading the uses thereof, is not disputed in the said suit;
- Saith* he does not believe that there are any good or tenable objections to the title to the said manor and other hereditaments comprised in the said agreement, but on the contrary defendant believes that such title has been approved of by or on the part of the said plaintiff, and that defendant and his said co-trustees were in fact at the time of entering into the said agreement and are now seised or well entitled in equity for an estate of inheritance in fee simple of or to the manor and other hereditaments aforesaid.
- Saith* he is wholly unable to set forth as to his belief or otherwise; except as he is informed by the said bill, whether or not at the time of entering into the said agreement hereinbefore mentioned, plaintiff was aware or had been informed that such suit (as in the said bill is mentioned) was depending, or that the validity of such recovery as aforesaid was disputed in the manner hereinbefore mentioned, but defendant saith there being as defendant believes, no well founded objection to the said recovery, he submits and insists that if the said plaintiff was not informed thereof at such time as aforesaid (but which defendant does not admit), yet that same ought not now to prevent the said contract from being completed;
- Admits* that the incumbrances upon the said hereditaments and premises are numerous and great, but defendant hath been informed by his co-trustee M. A. T. that the plaintiff was at the time of enter-
- Admits* that the incumbrances were numerous, but has been informed that plaintiff was aware that the property was sold to pay off the same, but does not believe that at the date of the trust conveyance, they amounted to as much as the purchase-money.

ing into the said agreement fully apprised and aware of this circumstance, and of the embarrassed state of the trust property, and that it was sold for the benefit of the numerous incumbrancers thereon, but the amount thereof prior to the date of the conveyance to the trustees defendants upon trust to sell was not so great, as defendant believes, as to exceed the amount of the purchase-money agreed to be given by the said plaintiff;

Saith he hath been informed and believes that such of the said incumbrancers upon the said hereditaments and premises as are necessary parties to make a perfect conveyance thereof to the said plaintiff, are willing to join therein;

Submits and insists that he and his co-trustees are able to procure a good and sufficient conveyance of the said premises to be executed to the said plaintiff, and that under such circumstances, and the said plaintiff having (as defendant believes) long since approved of the title to the said estates, he ought not to be released from his said contract, but ought to be compelled by the decree of this Court to complete the same on his part;

Saith that the said plaintiff did not according to the best of defendant's recollection and belief make any applications or requests to defendant as in the said bill mentioned;

Denies that he has threatened to commence or prosecute any action at law against the said plaintiff for breach of the said agreement or otherwise; but defendant nevertheless submits that the said plaintiff is bound to perform the same;

Denies combination, &c.

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Believes that such of the incumbrancers as are necessary parties are willing to join.

Submits that defendants are able to procure a good conveyance to be executed, and that the plaintiff ought not to be released from the contract.

Denies any applications being made, or that he has threatened to commence any action at law.

CLXIII. Answer of a trustee under a nuncupative will who had taken out letters of administration to the testator with his will annexed, submitting to account and claiming allowances for sums expended in educating and apprenticing the plaintiff.

(*For the form of title, see form No. CXXIX. p. 182.*) This defendant saving and reserving, &c. [*see form No. CXL. p. 184*] answereth and saith he believes it to be true that W. W. the testator in the said bill named did on or about the ——— day of ——— duly make and publish his last will and testament, being a nuncupative will, in manner in the said bill in that behalf mentioned, and that the said will with the signatures in the said bill mentioned is in such words and figures or to such effect as in the said bill in that behalf set forth, but for certainty as to the date and contents of the said will, this defendant craves leave to refer to the probate thereof when produced, &c.; And this defendant saith he believes and admits it to be true, that the said testator departed this life on or about the ——— day of the same month of ———, and that he at his death, left the

Admits that the testator made a nuncupative will as stated in the bill.

Admits his death, leaving two sons, the plaintiff and another since dead,

CH. IX. said complainant, and W. W. the younger, in the said bill named, his two natural sons him surviving as mentioned in the said bill; And this defendant admits it to be true, that soon after the said testator's death, the said will was in due form proved in the Prerogative Court of the province of C., and that letters of administration of the goods and chattels, rights and credits of the said testator with his said will annexed, were duly granted by the said Court to this defendant; and that this defendant possessed and received all such parts of the said testator's personal estate and effects as he was able, and that he hath thereout paid all the said testator's funeral expenses and debts so far as the same have come to his knowledge, and the said legacy of \$ ——— to the said W. W., and that there remained a considerable balance of the said personal estate in his hands; And this defendant saith that he hath laid out all the surplus of the said testator's personal estate which hath come to this defendant's hands, and also the dividends and interest thereof from time to time (except some part thereof which hath been applied to the maintenance of the said complainant as hereinafter mentioned) in the purchase of three per cent. consolidated bank annuities, in the joint names of this defendant and the said complainant, and in consequence thereof, the sum of \$ ——— of the said stock is now standing in their joint names in the books of the Governor and Company of the Bank of England; And this defendant saith that he hath from time to time laid out and expended certain sums in the maintenance and education of the said complainant, and hath lately entered into an engagement with Messrs. G. W. and P., calico-printers at D., to put the said complainant apprentice to them, and to pay them the sum of ——— as an apprentice-fee for the said complainant, and in consequence of such engagement, the said complainant is now with the said Messrs. G. W. and P. as an apprentice; And this defendant submits that he ought to have an allowance made to him out of the dividends and interest which have arisen from the surplus of the said testator's estate, for all sums expended by him for maintenance of the said complainant as aforesaid, and also for the said apprentice-fee; And this defendant further saith he believes it to be true that the said W. W. the son hath departed this life intestate, unmarried, and without issue; And this defendant submits to account for the said personal estate possessed by him, and to transfer the said stock into the name of the Accountant-general of this Court, as this Court shall direct, but craves to have all just allowances made to him in such accounts, as well in respect of the said maintenance and apprentice-fee as otherwise. Without, that, &c.

[See form No. CLIV. p. 187.]

and that letters of administration with the will annexed were granted to the defendant, who has possessed the personal estate, and paid debts, &c.;

and invested the surplus, and laid out the dividends to accumulate (except a part applied to plaintiff's maintenance) in the names of plaintiff and defendant.

Saith that he has laid out certain sums in educating the plaintiff and apprenticing him,

and submits that he ought to have the same allowed him.

Believes that the other son died intestate and without issue, and submits to account.

CLXIV. Answer of an executor and trustee under a will to a bill for an account filed by a legatee; the executor being also heir-at-law to the testator, and claiming as such to be entitled to freehold estates, purchased by the testator after making his will and codicil, and denying any republication thereof. The defendant having misapplied part of the produce of the real and personal estate, submits to account for the value of the government securities in which the same might have been invested (referring to schedules annexed). CH. IX.

(For the form of title, see No. CXXIX. p. 182.) This defendant, &c. [as in form No. CXL. p. 184] answering saith he admits that the testator S. M. in the said complainant's bill named, was at the time of making his will and codicil, and at the time of his death seised or entitled in fee simple of and to certain real estates, the names whereof this defendant hath set forth in the first schedule to this his answer annexed, and which he prays may be taken as part thereof; And this defendant further answering saith that the said testator after making and publishing his said will and codicil, purchased certain other real estates which this defendant hath also specified in the said schedule; And this defendant has never heard, nor does he believe that the said testator ever republished his said will and codicil, or either of them, after making such last-mentioned purchases, and therefore he submits such after-purchased lands descended upon him, this defendant as the heir-at-law of the said testator; And this defendant further answering saith he admits that the said testator was at the time of his death possessed of and entitled to a personal estate, consisting of such particulars as in the said complainant's bill mentioned, and more particularly set forth in the second schedule to this defendant's answer annexed, and which he prays may also be taken as part thereof; And this defendant further saith he believes that the said testator when he was of sound and disposing mind, memory, and understanding, duly made and published his last will and testament in writing, bearing date on or about ——— in such words and to such purport and effect as in the said complainant's bill mentioned, so far as the same is therein set forth; And this defendant further saith he believes that the said testator duly made a codicil to his said will bearing date ——— to such purport and effect as in the said complainant's bill mentioned, and that such will and codicil were duly executed so as to pass lands of inheritance; And this defendant further saith that the said complainant has in his said bill very shortly stated the said will which this defendant apprehends admits of some doubt as to the true construction thereof, and which said will and codicil are in the following words, (that is to say,) &c., &c.; And this defendant further saith that the codicil to the said will was

Admits that the testator was seised of real estates, the description thereof set forth in the first schedule.

That after making his will and codicil, he purchased other estates, and submits that the same descended to the defendant as his heir-at-law.

Admits that the testator was possessed of personal estate.

Admits also his will and codicil,

setting forth the same more fully, the true construction being doubtful;

CH. IX. in the words and figures following, (that is to say,) &c. &c.; And

Believes that he died without revoking the will and codicil. this defendant further answering saith he believes that the said testator S. M. departed this life on or about ———, without revoking or altering the said will and codicil, save as the said will is altered by the said codicil; And this defendant further answering saith he

Admits that the defendant is heir-at-law, that he alone proved the will and possessed the personal estate, and entered upon and received the rents of the real estates as set forth in the second schedule. admits that the said testator left this defendant his heir-at-law, and the said complainant, and the other natural children named in the said will and codicil him surviving; And this defendant further answering saith he admits that he this defendant alone proved the said will and codicil in the Prerogative Court of the Archbishop of C., and possessed all the personal estate of the said testator to the amount mentioned and set forth in the second schedule to this defendant's answer annexed; And this defendant further answering saith he admits that he hath entered upon the said testator's real estates of which the said testator was possessed at the time of making his said will and codicil, and received the rents and profits thereof, for such length of time, and to such amount as is mentioned and set forth in the second schedule to this defendant's answer annexed;

Saith that he has disposed of the real estates which the testator had at the time of making his will and codicil, and that he employed part of the produce in fulfilling the contracts entered into by the testator, and employed other part in trade. And this defendant further answering saith that since the death of the said testator he hath sold and disposed of the said real estates of which the said testator was possessed at the time of making his said will and codicil, the particulars of which, and the amount thereof this defendant hath set forth in the said second schedule to this his answer annexed; and this defendant further answering saith that he did employ part of the money arising from the real and personal estate of the said testator in fulfilling such contracts as the said testator was engaged in at the time of his death, and which is accounted for in the said second schedule to this defendant's answer annexed, whereby it will appear what interest, profit, or advantage hath been made by such moneys so employed; and this defendant also employed part of such moneys in his trade; And this defendant further answering saith that he hath in the said second schedule to this his answer annexed, calculated the amount of government securities which the said testator's estate come to the hands of this defendant would have purchased if the same had been by this defendant from time to time laid out in government securities, and for which this defendant submits to account as part of the personal estate of the said testator, subject to the demands to which such personal estate is liable; And this defendant further saith that he hath in the first schedule to this his answer annexed set forth a full, true, just, and particular account of all and every the real estates which the said testator was seised of or entitled to in fee simple at the time of making his said will and codicil, and of which he continued to be seised at the time of his death, with the name or names thereof, and of each and every part

Reference to the second schedule, in which is calculated the amount of government securities which the estate possessed by the defendant would have purchased.

Reference to the first schedule as containing

thereof, and where the same and each and every part thereof is situated; and in the said second schedule the yearly value thereof and of each and every part thereof, and in whose tenure or occupation the same and each and every part thereof now is, and from time to time since the death of the said testator hath been, and under what yearly or other rent or rents, and what part of the time since the death of the said testator this defendant hath been in possession or receipt of the rents and profits thereof and of what parts thereof, and who hath been and for how long time in possession and receipt of the rents and profits thereof and of each and every part thereof; And this defendant further answering saith he hath in the said second schedule to this his answer annexed, set forth a full, true, perfect, and particular account of all and every sum and sums which have or hath at any time and when been received by this defendant, or by any other person or persons by his order or for his use, for or on account of the rents and profits of the said estates or any part thereof become due since the death of the said testator, or from or on account of the sale of the said estates, or any part or parts thereof; And this defendant further answering saith he hath in the said second schedule to this his answer annexed, set forth a full, true, and particular inventory of all and singular the goods, chattels, and personal estate and effects whatsoever which the said testator was possessed of, entitled to, or interested in at the time of his death, and all the particulars whereof the same consisted, and the natures, kinds, quantities, full, true, and real values thereof, and of every part thereof, together with such particulars as have been possessed or received by or come to the hands of this defendant or of any other person or persons by his order or for his use, and how and in what manner, and when, and where, and by whom, and to whom, and for how much the same and every part thereof hath been sold or disposed of; And this defendant saith he believes that the said complainant attained his age of twenty-one years some time since; And this defendant further answering saith he admits that the said complainant hath made such applications and requests to this defendant, as in the said complainant's bill mentioned; And this defendant further answering saith he hath not refused to comply therewith, but as there are some doubts as to the true construction of the said will, and several parties entitled, to all of whom this defendant is to account, he this defendant is desirous to act in the premises as executor of the said S. M. deceased, under the directions and indemnity of this Honorable Court.

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an account of the real estate of which the testator was seized. Reference to the second schedule for the particulars of the rental thereof; and of the rents received by or for the use of the defendant, and of the moneys produced by sale of the estates, and also of the testator's personal estate and the application thereof.

Believes that the plaintiff has attained twenty-one.

Admits the applications made, but the true construction of the will being doubtful, defendant is desirous to act under the indemnity of the Court.

CH. IX. CLXV. Answer of an executrix submitting to act under the indemnity of the Court.

Admits that the testator was possessed of considerable personal estate; and also his will, and a codicil thereto.

(For the form of title, see No. CXXIX. p. 182.) This defendant, &c. (see form No. CXL. p. 184), answering saith she admits that S. W. the testator in the said bill named, was at the time of his death, possessed of a considerable personal estate, and particularly of the several sums in the public stocks or funds in the said bill of complaint mentioned; and that the said testator duly made and published his last will and a codicil thereto, of such respective dates, and to such purport, or effect, as in the said bill in that behalf stated; but nevertheless, &c.

Believes that he died without altering his will and codicil.

Believes that the said testator did soon after making said will and codicil, depart this life, without altering or revoking the said will, save by the said codicil, or without altering or revoking the said codicil, leaving this defendant, his widow, and such other persons as in the said bill in that behalf named, him surviving;

Admits that she has proved the same, and possessed the personal estate, but denies having threatened to sell any part.

Admits that she hath duly proved the said will and codicil in the proper Ecclesiastical Court, and hath taken upon herself the execution thereof, and hath by virtue thereof possessed herself of as much of the said testator's personal estate and effects as she has been able to do; And this defendant denies that she ever threatened to sell or dispose of the said stocks, funds, and annuities in the said will and bill mentioned, without any regard to the interest of the said complainants in remainder therein, or hath made any transfer of the same;

Submits to this Honorable Court what interest the said complainants are entitled to in the personal estate of the said S. W. by virtue of his said will;

Reference to the first schedule for an account of the personal estate.

Saith she hath in a schedule, &c. set forth a true and particular account of all the personal estate to which the said testator was entitled at his death, distinguishing what part thereof hath come to her hands, or to the hands of any other person or persons for her use, except such sums are mentioned in the schedule hereinafter referred to;

And to the second schedule for an account of the application thereof.

Saith she hath in the second schedule, &c. set forth an account current between her and the estate of the said S. W., and this defendant, and hath therein set forth to the best of her knowledge, &c., a full and true account of all sums of money, part of the personal estate of the said testator come to her hands, or to the hands of any person or persons to her use, and of the application thereof;

Submits to account, and to act under the indemnity of the Court.

Saith she is ready and willing to account as this Honorable Court shall direct, for all such parts of the personal estate of the said testator as have been possessed or received by this defendant, having all just and reasonable allowances made, which she is entitled to as such

executrix ; And in all other respects this defendant submits to act as the Court shall direct, upon being indemnified and paid her costs of this suit ; And denies combination, &c. (*See form No. CLIV. p. 187.*)

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CLXVI. Answer of an executor and of the husband of the plaintiff to a bill for payment of a legacy — the executor admitting assets, and the husband claiming to be entitled to receive the legacy.

(*For the form of title, see form No. CXXIX. p. 182.*) These defendants W. M. and F. H., &c. (*see form No. CXL. p. 184.*) severally answering say they admit it to be true that M. M. deceased, in the said bill named, was possessed of considerable personal estate, and that she made such will of such date, purport, and effect, as in the said bill set forth, so far as the same is therein set forth, and thereby gave to the said complainant the legacy or sum of \$ ——— in manner in the said bill mentioned, and nominated this defendant W. M. sole executor of her said will ; but for greater certainty these defendants refer, &c. ; And these defendants further severally answering, say they admit it to be true that the said testatrix departed this life at or about the time in the said bill in that behalf mentioned, and without altering or revoking her said will ; And this defendant W. M. further answering, saith he admits, and this defendant F. H. saith that he believes it to be true that this defendant W. M. did duly prove the said will in the proper Ecclesiastical Court, and did undertake the execution thereof ; And this defendant W. M. admits that under and by virtue of the said will he hath possessed himself of the said testatrix's personal estate to an amount more than sufficient to pay and discharge her funeral expenses, just debts, and legacies, and particularly the said legacy of \$ ———, and that the said complainant hath applied to this defendant to be paid the said legacy or sum of \$ ——— so given to her by the said will, as in the said bill mentioned, and that this defendant W. M. did refuse to pay the same to her without the consent and concurrence of this other defendant her husband, and without which this defendant is advised and humbly submits he could not safely pay the said legacy ; And this defendant W. M. further saith he doth admit assets of the said testatrix come to his hands sufficient to answer the purposes aforesaid, and is ready and willing, and hereby submits to pay the said legacy to such person or persons and in such manner as this Honorable Court shall be pleased to direct ; And this defendant F. H. saith he claims to be and humbly insists that he is in right of the said complainant, his wife, entitled to receive and be paid the said legacy or sum of \$ ——— so given to her by the said will as afore-

Admit that the deceased was possessed of personal estate: also her will, and the bequest of the legacy.

Her death.

And probate of her will by defendant W. M., who admits assets sufficient to pay the legacy ; also admits the plaintiff's applications, and his refusal to pay the legacy without the consent of the other defendant.

That he is willing to pay the same as the Court directs.

Claim by F. H. to receive the legacy.

CH. IX. said, and humbly hopes the same will be ordered to be paid to him accordingly; And these defendants deny, &c. (*see form No. CLIV. p. 187.*)

E. K.

CLXVII. Answer of the executors of a deceased acting executor, to a bill of revivor; the defendants not admitting assets, not knowing what was due from their testator to the original testator, but submitting to account.

Admit the original bill filed,

the supplemental bill,

and the subsequent proceedings.

Admit the death of G. R. a defendant.

That he had principally acted as executor, and that the defendants have since proved his will, and possessed his personal estate.

Believe that the same is sufficient to answer

(*For the form of title, see form No. CXXIX. p. 182.*) These defendants, &c. (*see form No. CXL. p. 184.*), severally answering say they believe it to be true that at or about the time in the said bill stated, R. W., in the said bill of revivor named, exhibited his original bill of complaint in this Honorable Court against such parties as defendants thereto as in the said bill mentioned, thereby stating and praying to the effect in the said bill of revivor set forth, so far as the same is therein set forth, and that in consequence of the death of the said R. W., the said complainant T. W., at or about the time in the said bill of revivor mentioned, exhibited his supplemental bill in this Honorable Court against such parties defendants thereto as therein mentioned, stating and praying to the effect in the said bill of revivor set forth, so far as the same is therein set forth; And that the said several defendants in the said supplemental bill named, afterwards appeared and put in their answers thereto, and that such proceedings have since been had in the said cause as in the said bill of revivor mentioned; but for their greater certainty nevertheless these defendants crave leave to refer to the said original and supplemental bills, answers, and other proceedings now remaining filed as of record in this Honorable Court; And these defendants further severally answering, say they admit it to be true that before any further proceedings were had in the said cause, and at or about the time in the said bill of revivor in that behalf stated, G. R. one of the defendants to the said original and supplemental bills, and one of the executors and trustees under the will of the testator T. W. in the said bill of revivor named, and who hath principally acted in the trusts thereof, departed this life having first duly made and published his last will and testament in writing of such date as in the said bill of revivor mentioned, and thereof appointed these defendants executors; And these defendants admit that since his death they have duly proved his said will in the proper Ecclesiastical Court, and undertaken the executorship thereof, and are thereby become his legal personal representatives, and that they possessed the said G. R.'s personal estate and effects so far as they have been conveniently able, and these defendants believe (although they do not admit the same) that such personal estate and effects are sufficient to answer whatever

might be due from the said G. R. at the time of his death, to the estate of the said testator T. W. if anything were so due; but these defendants not knowing the amount thereof are advised that they cannot with safety or propriety admit assets of their said testator to be in their hands sufficient to answer the same, and these defendants say they are ready to account for the said G. R.'s personal estate possessed by them or for their use, in such manner as the Court shall be pleased to direct, if the same should become necessary; And these defendants further severally answering, say they submit that the said suit and proceedings which became abated on the death of the said G. R. may stand and be revived against them as such executors as aforesaid, and be restored to the same plight and condition in which they were at the time of the death of the said G. R.; Without that, &c. (see form No. CLIV. p. 187).

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what might be due to the estate of T. W.; do not admit the same, but submit to account;

And submit that the suit and proceedings may stand revived.

CLXVIII. Answer of an executor of a deceased executor to a bill of revivor and supplement; the defendant admitting assets.

(For the form of title, see form No. CXXIX. p. 182.) This defendant, &c. (see form No. CXL. p. 184), answering, saith he believes it to be true that at or about the time in the said bill stated the several persons therein in that behalf named exhibited their original bill of complaint in this Honorable Court against such parties as defendants thereto as in the said bill are mentioned, thereby stating and praying to the effect in the said bill set forth, so far as the same is therein set forth; and that such decree, decretal, order, bill of revivor, and other proceedings were had therein as in the said bill set forth; but for his greater certainty, nevertheless, this defendant craves leave to refer to the said original bill, decree, and other proceedings now remaining as of record in this Honorable Court; And this defendant further answering saith that A. W. in the said bill named, hath lately departed this life, and that the said A. W. duly made and published his last will and testament in writing, and thereby appointed Dame A. B., R. T., and this defendant, executrix and executors thereof, and that this defendant hath since the death of the said A. W. alone duly proved his said will in the Prerogative Court of the Archbishop of C. and is thereby become his legal personal representative, but this defendant doth not know nor can he set forth as to his belief or otherwise, who is the heir-at-law of the said A. W.; And this defendant further saith he doth not know nor can form any belief whether the said A. W. did or not, after making of the report in the said bill mentioned, receive any sum or sums of money arising from the real and personal estate of D. G. the elder, the testator in the pleadings

Admits the filing of the original bill,

the decree and the subsequent proceedings;

The death of A. W., a defendant; His will; And that the defendant alone proved the same, but cannot state who is the heir-at-law, nor whether A. W., after the making of the report, possessed any part of the estate of D. G., but that

CH. IX. of this cause named, which ought to have been accounted for by him ; he admits but this defendant saith he admits that he hath received assets of the assets, if any such were possessed by A. W. and not accounted for. said A. W. sufficient to answer any such sum or sums of money if it shall appear that any such were received and not accounted for by the said A. W. in his lifetime ; And this defendant saith that he is a stranger to the several other matters and things in the said bill inquired after ; But submits that the said suit and the proceedings had therein should stand and be revived against him this defendant as such personal representative as aforesaid ; And this defendant denies, &c. (see *form No. CLIV. p. 187*).

CLXIX. Answer of an infant heiress to a bill by simple-contract creditors against the executors and trustees under the will of her father, who had died greatly indebted, possessed of real and personal estate.

(*For the title see form CXXIX. p. 182.*) This defendant answering saith she does not know and cannot set forth as to her belief or otherwise whether Z. R. the testator in the said bill named was or not in his lifetime indebted to the said complainant J. C. in the sum of \$ 315 or any other and what sum of money for moneys lent and advanced, paid, laid out, and expended to or for the use of the said Z. R., nor whether for securing the repayment thereof with lawful interest for the same he the said Z. R. did or not make and sign such promissory note of such date and in the words and figures or to the purport or effect as in the said bill stated and set forth, or to any other purport or effect, nor whether the said Z. R. did or not on the 28th day of April, 1821, or at any other time pay off and discharge the sum of \$ 100 or any other sum of money, part of the said \$ 315 secured by the said promissory note together with all or what arrears of interest, nor whether the sum of \$ 315, or any other sum of money, together with interest thereon from the first day of January last, or from any other time, doth or not now remain due and owing to the said complainant J. C., nor whether the said Z. R. was or not at the time of his death indebted to the said complainant J. C. and T. R. or either of them in the sum of \$ 55, or any other sum of money, for business done and transacted and moneys paid, laid out, and expended for him or for his use in their business or profession of attorneys and solicitors, nor whether the said Z. R. was or not also at the time of his death indebted to the said complainant J. R. in the sum of \$ 35 for money lent and advanced or in any other sum of money, nor whether the said testator did or not make and sign such bills of exchange or promissory notes of such date respectively, and in the words and figures or to the purport and effect as in the said bill

Does not know whether the testator was or not indebted to the plaintiff J. C.,

nor whether he signed a promissory note,

nor whether he paid off part of the amount secured by the promissory note, with all arrears of interest, nor what amount is due, nor whether the testator was or not indebted to the plaintiffs J. C. and T. R. as solicitors, or to J. R. for money lent,

stated, to bear date the 17th day of June 1824 and the 25th day of August 1824, or to any other purport and effect, nor whether the said testator was or not also at the time of his death indebted to the said complainant J. L. in the sum of \$ 65 for money lent and advanced, work and labor done and performed, and the goods sold and delivered, or in any other sum of money, nor whether the said testator did or not make and sign such bill of exchange of such date and in the words and figures or to the purport and effect as in the said complainant's bill stated to bear date the 3d day of July 1824, or to any other purport and effect; but this defendant further saith she hath been informed and believes that the said testator was indebted to various persons on specialty and simple contract at the time of his death; And this defendant further answering saith she admits that the said Z. R. departed this life on the 16th day of April last, seised and possessed of or otherwise well entitled unto very considerable real and personal estate, and that he made and published his last will and testament in writing of such date, purport, and effect as in the said bill mentioned and set forth, so far as the same is therein set forth; And this defendant further saith she admits that the said testator departed this life as aforesaid leaving his wife S. R. the mother of this defendant and also a defendant in the said bill named, and this defendant his only child and heiress at law; And this defendant further answering saith she has been informed and believes that the said S. R. together with M. C. D., A. K. and R. D. three other defendants in the said bill named and also trustees and executors named in the said will did on ——— duly prove the same in the Prerogative Court of the Archbishop of Canterbury, and take upon themselves the burthen of the execution thereof; And this defendant further saith she does not know and cannot set forth as to her belief or otherwise whether the said Z. R., M. C. D., A. K., and R. D. or any or either of them have or hath or not also, as such trustees and executors named therein, entered into possession of the said testator's freehold, copyhold, and leasehold estates, and receipt of the rents and profits thereof, nor whether they or any or either of them have or hath not also possessed themselves, himself, or herself of all or any part of the said testator's personal estate, moneys, securities for money, goods, chattels, and effects or any of them, nor whether they or any or either of them have or hath not thereout paid and discharged the said testator's funeral and testamentary expenses, but this defendant hath been informed and believes that all the debts due and owing by the said testator at the time of his death still remain unsatisfied; And this defendant further saith she does not know and cannot set forth as to her belief or otherwise whether the said complainants have or not frequently by themselves and their agents made such applications and requests to the

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nor whether he did or not sign the bills of exchange stated in the bill,
nor whether he was or not indebted to the plaintiff J. L. for money lent,
nor whether he did or not sign such other bill of exchange as stated in the bill, but believes that he died indebted to various persons;
admits his death;
and his will;
leaving S. R. his widow and this defendant his heiress-at-law;
Believes that S. R. and the three other defendants proved the will;
but cannot state whether they entered into possession of the testator's estates;
or possessed his personal estate;
or paid his funeral and testamentary expenses; but believes that all his debts are unpaid;

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cannot state as to any applications having been made; does not admit the will being duly executed, or that the testator was of sound mind, and puts the plaintiffs upon proof thereof.

Saith that she is an infant, and submits her rights to the protection of the court.

Admits the will, and the bequest to the defendant; also a codicil made by the testator;

his death;

and that the plaintiffs have proved the will and codicil;

claims the benefits intended the defendant

said other defendants as in the said bill in that behalf stated and set forth, or any other or what applications; And this defendant further answering saith she doth not admit that the said testator's will was duly executed and attested as by law is required to pass real estates by devise, or that the said testator was of sound and disposing mind, memory, and understanding at the time of making and executing his said will, and humbly insists that the said complainants ought to be put to due proof thereof: And this defendant further saith that she is an infant under the age of twenty-one years, (that is to say) of the age of three years and ——— months, or thereabouts, and humbly submits her rights and interests to the protection of this Honorable Court.

CLXX. Answer of a widow electing to take the bequests made to her by a will, and to release all interest in the devised estates.

(For the form of title, see form No. CXXXIX. p. 182.) This defendant, &c. (see form No. CXL. p. 184), answereth and saith she believes it to be true that C. B. deceased, the testator in the said bill of complaint named, being possessed of a large personal estate did, at or about the time in the said bill of complaint mentioned, duly make and publish his last will and testament in writing of such purport and effect, and containing such bequest to this defendant as in the said bill of complaint in that behalf set forth, and that the said testator appointed such persons as in the said bill of complaint named executors and executrix of his said will: And this defendant further answering saith, she believes it to be true that the said testator afterwards and at or about the time in the said bill of complaint mentioned, duly made and published a codicil to his said will in such words and to such purport and effect as in the said bill of complaint also set forth; but for her greater certainty nevertheless as to the said will and codicil and the respective dates, purports, and contents thereof this defendant craves leave to refer thereto when produced; And this defendant further answering saith, she admits that the said testator departed this life at or about the time in the said bill of complaint in that behalf mentioned, without having in any manner altered or revoked his said will, save by the said codicil, and without having altered or revoked his said codicil; and that the said complainants have since duly proved the said will and codicil in the Prerogative Court of the Archbishop of Canterbury, and taken upon themselves the executorship thereof; And this defendant further saith, she claims to be entitled to the benefits intended her by the said testator's will, and is ready upon the same being secured to her according to the directions

in the said will contained, to release to J. P. in the said will named, CH. IX.
 all her right and interest in and to the premises in the said will men- by the will,
 tioned, and for that purpose to execute all necessary instruments or and offers
 deeds ; And this defendant denies, &c. (*see form No. CLIV. p. 187*). all interest
 in the de-
 vised es-
 tate.

CLXXI. Form of answer by adult and infant defendants claiming as next of kin to the deceased wife of the plaintiff, who by his bill sought to set aside a secret settlement made by his late wife before her marriage.

(*For the title, see form No. CXXIX. p. 182.*) These defendants J. B. and M. his wife, H. H., E. H., W. H., J. P., and T. P. [*the adults*] now and at all times hereafter saving and reserving, &c. (*as in form No. CXL. p. 184, as far as the words "make answer unto" and proceed thus*) : they these defendants J. B. and M. his wife, H. H., E. H., W. H., J. P., and T. P. severally answering, say they believe it to be true that the said complainant was for several years previous to the year 1812 on terms of intimacy and friendship with M. P. spinster in the said bill named, afterwards M. G. the wife of the said complainant, and that a treaty of marriage was for some space of time pending between the said complainant and the said M. P., which was at length in the said year 1812 concluded and agreed upon between them ; and that on or about the 6th day of July, 1813, the marriage between the said complainant and the said M. P. was duly had and solemnized, but for what space of time such treaty of marriage was pending, or when in particular the same was concluded and agreed upon, these defendants do not know and cannot set forth as to their information or belief or otherwise ; And these defendants J. B. and M. his wife, H. H., E. H., W. H., J. P., and T. P. further severally answering say, &c., &c. [*Inserting the names of the adults at the beginning of the answer to each interrogatory.*] And these defendants J. B. and M. his wife, H. H., E. H., W. H., J. P., and T. P. claim to be entitled to the said principal moneys and interest jointly with the said infant defendants W. P. and J. P. as the next of kin to the said complainant's said late wife, to the total exclusion of the said complainant's rights as in the said complainant's said bill alleged ; and in case this Honorable Court shall be of opinion that they are entitled to the said principal moneys and interest as such next of kin, this defendant M. B. humbly hopes that this Honorable Court will order and direct her part or share of and in the same moneys and interest to be settled upon and for her separate use and benefit ; And these defendants W. P. and J. P. severally say that they are infants under the age of twenty-one years, and that they severally claim such interest in the premises as they are respectively entitled to, and submit their several interests to the protection of this Honora-

Believe that the plaintiff was for years acquainted with his wife before their marriage ; that a treaty was for some time pending ; and that in 1813 the marriage was solemnized.

Claim by the adults to be entitled jointly with the infants as the next of kin of the deceased's wife to the moneys settled by her.

Claim by one defendant to have her share settled to her separate use. Two of the defendants infants, and submit

CH. IX. ble Court; and these defendants J. B. and M. his wife, H. H., E. H.,
 their interest to the protection of the Court. W. H., J. P., and T. P. severally deny, &c. (*see form No. CLIV. p. 187.*)

CLXXII. Part of an answer of the widow and executrix of a deceased surviving executor; the plaintiff claiming either as administratrix or in her own right to be entitled to the share of a residuary legatee who was supposed to have attained twenty-one, and to have died abroad intestate, — the answer stating a release executed by the plaintiff and her late husband to the defendant's late husband as surviving trustee and executor, and claiming the same benefit therefrom as if pleaded.

Statement of the release.

And this defendant saith that by a certain deed poll or instrument in writing under the hands and seals of N. P. and the said complainant, then the wife of the said N. P., bearing date on or about the 24th day of February, 1800, the said N. P. and the said complainant did in consideration of the sum of \$ 181 to them paid by the said J. B. the receipt whereof they the said N. P. and the said complainant did thereby acknowledge, and which sum was in fact so paid, remise, release, and forever quitclaim unto the said J. B. the late husband, of his defendant, his heirs, executors, and administrators, all and all manner of action and actions, &c. and demands whatsoever both at law and in equity or otherwise howsoever which against the said J. B. as such surviving trustee and executor of the said T. S. they the said N. P. and the said complainant or either of them ever had, and which they, their heirs, executors, or administrators should or might thereafter have, claim, challenge or demand for or by reason or means of any matter, cause, or thing whatsoever; As by such deed poll or instrument in writing, to which this defendant craves leave to refer, when the same shall be produced will appear.

Submits whether the plaintiff is or not entitled as surviving grandchild.

And this defendant submits to this Honorable Court whether or not if the said N. B. died under the age of twenty-one years the said complainant as the only surviving grandchild of the said testator T. S. as the said complainant alleges in her said bill, became entitled in her own right to the said share of the said N. B. under or by virtue of the said testator's will; And this defendant further answering saith, she admits that applications have been made to her by or on the behalf of the said complainant, and also by one W. B. who stated himself to be the brother of the said N. B. for the purposes in the said complainant's original and amended bill of complaint mentioned, and this defendant positively denies that she ever refused to comply with such application otherwise than as this defendant alleges, that she always distinctly stated in answer to such applications that whenever satisfactory proof of the death of the said N. B. was adduced, the

Admits applications have been made;

Denies having refused to comply therewith.

executors of the said J. B. were ready to account for the said share of the said N. B. to the persons or person who should be legally entitled to the same; and this defendant saith, that she hath always been and now is perfectly willing to account for and pay over the share of the said N. B. of and in the said testator's estate to the person or persons who is or are by law entitled to receive the same; and this defendant submits to the judgment of this Honorable Court, whether or not the said complainant is exclusively entitled either in her own right or as the legal personal representative of the said N. B. to the said share of the said N. B., either in the whole or in part, even though it should satisfactorily appear that the death of the said N. B. took place at the period in the said complainant's original and amended bill of complaint stated; and this defendant submits to this Honorable Court that by virtue of the said general release of the 24th day of February, 1800, from her and her said husband to the said J. B., she the said complainant is wholly barred from making any claims on the said J. B. or his estate, in respect of the estate of the said testator T. S., and this defendant craves leave to have the same benefit from the said release as if she had pleaded the same; and this defendant submits to act in the premises as such executrix as aforesaid under the direction and indemnity of this Honorable Court, and humbly hopes to have her reasonable costs and charges allowed her in this behalf; And this defendant denies, &c.

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Submits whether the plaintiff is or not exclusively entitled either in her own right or as administratrix.

Submits that she is barred by the release,

and submits to act under the direction of the Court.

CLXXIII. Statement in an answer to the statute of frauds, and claiming the same benefit therefrom as if pleaded.

And this defendant saith that by an act of parliament made in the 29th year of the reign of King Charles the Second, intituled "An act for the prevention of frauds and perjuries," it is amongst other things enacted, that from and after the 24th day of June, 1677, no action should be brought whereby to charge any person upon any contract of any lands, tenements, and hereditaments, or any interest in or concerning them, unless the agreement upon which such action should be brought, or some memorandum or note in writing should be signed by the said party to be charged therewith, or some other person by him lawfully authorized; And this defendant insists upon the said statute, and claims the same benefit as if he had pleaded the same.

CH. IX. CLXXIV. Answer of the lord of a manor who had seised certain copyhold premises for want of a tenant after the death of a former tenant.

Admits that he is lord of the manor,

that I. H. was seised of certain premises,

that I. H. and wife surrendered their estates to S. G., by way of mortgage,

that at a Court baron, S. C., as claiming under a bargain and sale, was admitted to the same estates.

Satisfaction of the mortgage entered on the Court-rolls.

Believes that at another Court the death of S. C. was presented, and first proclamation made for the heir to claim; second proclamation; and third proclamation; no person claiming, a precept issued to the bailiff to seise the premises; and at another Court

(For the form of title, see No. CXXIX. p. 182.) This defendant, &c. (see form CXL. p. 184), saith he admits it to be true, that he this defendant is lord of the manor of H., in the county of N., and that I. H. in the said bill of complaint named, was in and before the month of ——— seised to him and his heirs according to the custom of the said manor of and in, &c.; And that on or about ——— the said I. H. and M. A. H. his wife in the said bill of complaint also named, conditionally surrendered all their and either of their messuages, lands, tenements, and hereditaments, holden of and situate within the said manor, To the use of S. G. in the said bill of complaint mentioned, her heirs and assigns, by way of security, for the sum of ——— and lawful interest thereon; And this defendant saith that at a general Court baron holden for the said manor, on or about the ——— day of ———, and not ——— as in the said bill of complaint in that behalf alleged, S. C. in the said bill of complaint also mentioned, was under and by virtue of such bargain and sale as in the said bill of complaint in that behalf set forth, admitted to all the said copyhold premises so surrendered by the said I. H. and M. A. H., To hold to her and her heirs according to the custom of the said manor; and at the same Court an acquittance or satisfaction under the hand of the said S. C. as executrix of the said S. G., on the said surrender of the ——— day of ———, was presented and duly entered on the Court-rolls of the said manor; And this defendant further answering saith he believes that at a general Court baron holden for the said manor, on or about the ——— day of ———, the death of the said S. C. was presented by the homage, and that who was the next heir to the said premises was not known, and thereupon proclamation was duly made for any person or persons having right to the said premises, to claim the same and be admitted thereto; and at a general Court baron holden on the ——— day of ———, a second proclamation was duly made to the same effect; and at a general Court baron holden for the said manor, on the ——— day of ———, a third proclamation was made in like manner, and by reason that no person came in to claim the said premises, or to be admitted thereto, a precept was issued at such last general Court to the bailiff of the said manor, whereby he was commanded to seise in the presence of two or more copyhold tenants of the said manor, all the said premises into the hands of the lord, for want of a tenant; and at a general Court baron holden for the said manor, on or about the ——— day of ———, S. T. the bailiff of

the said manor certified that on the ——— day of ———, then last past, he the said S. T. had in the presence of I. C. and T. D., two copyhold tenants of the said manor, entered upon and seised all the aforesaid premises into the hands of the lord, for want of a tenant thereto; But for his greater certainty, nevertheless, as to the several surrenders and other proceedings, this defendant craves leave to refer to the Court-rolls of the said manor, or to the copies thereof when produced. * [And this defendant saith he is ready and willing to cause a Court to be holden for the said manor, and to admit as tenant to the said premises, such person as this Honorable Court shall be pleased to direct, being indemnified in that behalf, and paid his customary fine on such admission.] And this defendant saith that he is a stranger to all other the matters in the said bill of complaint contained; and this defendant denies, &c. (*See form No. CXLIV. p. 187.*)

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the bailiff certified that he had seised the premises.

Offers to hold a Court, and to admit the rightful tenant, on being paid the customary fine.

Observations. — The seisure appears to have been absolute, and not conditional, and if such a seisure be warranted by the custom of the manor, there seems no reason why the lord should not insist upon his title under it. In that case the end of the answer in the place of that part which is between crochets,* would run thus:

“And this defendant further answering saith that according to the custom of the said manor of H., this defendant as lord of the said manor is become absolutely entitled to the said several premises, by virtue of the notices and proceedings aforesaid; And this defendant humbly submits that he ought not to be compelled to admit any tenant thereto, or to be restrained from proceeding to recover the same by ejectment.”

Or thus:
Claims to be absolutely entitled, and submits that he ought not to be restrained from proceeding at law.

If the custom to entitle the lord be not clear, then the answer must stand as drawn; otherwise the defendant may be made to pay costs.

CLXXV. Answer of the mortgagor to a bill of foreclosure.

(*For the form of title, see No. CXXIX. p. 182.*) This defendant, &c. (*see form No. CXL. p. 184*), answereth and saith he admits it to be true that this defendant did, at or about the time in the said bill of complaint in that behalf mentioned, borrow the sum of \$——— from A. W. the elder in the said bill of complaint named, and that thereupon such indenture of bargain and sale, and such bond as in the said bill of complaint are set forth, were duly made and executed by and between this defendant, and the said A. W. the elder, and were of such date, and of such purport and effect, as in the said bill of complaint in that behalf stated; but for his greater certainty, nevertheless,

Admits the loan,

the execution of the mortgaged securities,

CH. IX. as to the said indenture and bond, and the respective dates, purport, and effect thereof, this defendant craves leave to refer thereto when produced; And this defendant further answering saith he admits it to be true that the said A. W. the elder departed this life, before payment of the said principal-money, or any part thereof; And this defendant further saith it may be true for anything this defendant knows to the contrary, that the said A. W. the elder left A. W. the younger in the said bill of complaint also named his eldest son and heir-at-law him surviving, and that he had first duly made and published his last will and testament in writing, and thereby appointed the said complainant T. W., and the said A. W. the younger, and L. W. since deceased, executors thereof, and that the said executors duly proved the said will in the proper Court, and that the said will did not in any manner affect the said mortgaged premises, and that the legal estate and interest therein, descended on and vested in the said A. W. the younger, and that such indenture as in the said bill of complaint is stated to bear date, &c. was duly made and executed by and between such parties, and to such purport as in the said bill of complaint set forth; and that the said A. W. the younger, departed this life at or about the time in the said bill of complaint in that behalf mentioned, leaving the said complainant G. W. an infant, his eldest son and heir-at-law him surviving, and that he had first duly made and published his last will and testament in writing, of such date, as in the said bill of complaint mentioned, and thereby appointed the said complainants, T. W. &c., executors thereof, and that the said complainants duly proved the said will in the proper Court, and that the said will did not in any manner affect the said premises, and that the legal estate and interest therein, descended upon and is now vested in the said complainant G. W., and that the said T. W. departed this life soon after the death of the last-mentioned testator, and that thereupon the said complainant T. W. became also the surviving executor of the said A. W. the elder, but this defendant knows nothing of the several matters aforesaid, save as he is informed by the said bill of complaint, and therefore craves leave to refer the said complainants to such proof thereof as they shall be able to make; And this defendant admits that the said principal sum of \$——, or any part thereof, hath not yet been paid, and that the same now remains due and owing from this defendant on the security of the said mortgaged premises, together with an arrear of interest thereon from ——, but this defendant denies that the said mortgaged premises are a scanty security for the same, and on the contrary thereof, this defendant saith that the said mortgaged premises are the value of \$—— and upwards; and this defendant saith that there is no other charge or

the death of the mortgagee, but is ignorant whether he left A. W. his heir-at-law, or made a will appointing the plaintiff T. W. and A. W. and L. W. executors, or whether they proved the same, or whether the legal estate descended to A. W. or as to the execution of a certain deed, or whether A. W. died leaving the plaintiff G. W. his heir-at-law, or whether A. W. had made a will appointing the plaintiffs T. W., &c. executors, or whether they proved the will, or whether the legal estate descended to G. W., or whether T. W. became the surviving executor of the mortgagee; admits that the mortgage money has not been paid, and is still due with interest, denies that the security is scanty,

incumbrance affecting the said mortgaged premises; and this defendant trusts this Honorable Court will allow him a reasonable time for the redemption of the said premises; And this defendant denies, &c. (See form No. CXLIV. p. 187.)

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or that
there is
any other
incum-
brance.

CLXXVI. Answer of the executors of the first mortgagee to a bill of foreclosure, filed by the assignee of the second mortgagee (who had obtained possession of the title deeds and claimed a priority over the first mortgagee) against the infant heir of the mortgagor, and also against a subsequent mortgagee.

(For the form of title, see form No. CXXIX. p. 182.) These defendants, &c. (see form No. CXL. p. 184), severally answering, say they have been informed and believe it to be true that such indenture of demise or mortgage of such date between such parties and of such purport or effect as in the said complainant's original and amended bill of complaint mentioned to bear date the 10th day of May, 1814, so far as the same is therein set forth was duly made and executed, but these defendants, for greater certainty crave leave to refer to the said indenture when the same shall be produced; And these defendants further say they believe it to be true that all the title deeds and writings relating to the premises comprised in the said indenture of demise or mortgage were delivered over by the testator T. E. in the said complainant's original and amended bill of complaint named to W. P., therein also named, at the time of the execution of such indenture of demise, but these defendants do not know the same of their or either of their own knowledge; And these defendants further say that they or either of them to the knowledge or belief of the other of them do not know, have never been informed save by the said complainant's bill, and therefore cannot set forth as to their or either of their belief, or otherwise, whether the messuage or tenement in the said complainant's original and amended bill of complaint mentioned to be situate in, &c. was or not sold and disposed of by the said T. E., nor whether he did or not pay the sum of £ 600, part of the mortgage-money in the said complainant's original and amended bill mentioned to be due to the said W. P., out of the purchase-money of such messuage, nor whether it did or not reduce such mortgage-money to the sum of £ 400, but these defendants believe that the same mortgage-money was reduced to the sum of £ 400, and that it was agreed that the same sum of £ 400 should remain as a mortgage on the estate called Little C. in the said complainant's original and amended bill mentioned as therein is alleged; And these defendants further say they

Admit the execution of the mortgage of the 10th May, 1814;

and that the deeds were delivered over to W. P. by the testator T. E.;

do not know whether T. E. sold certain part of the premises, nor whether he paid part of the purchase-money to W. P. in reduction of his mortgage, but believe that the same was reduced to £400, and that it was agreed that the same sum should remain on mortgage of a particular estate.

CH. IX. have been informed, and believe it to be true, that such indenture of assignment as in the complainant's bill mentioned, to bear date the 17th March, 1821, between such parties, and of such date, purport, and effect as in the said complainant's original and amended bill mentioned and set forth, so far as the same is therein set forth, was duly made and executed, and that the several title deeds and writings relating to the said estate were together with the said indenture of demise or mortgage delivered over to the said complainant by the said W. P. at the time of the execution of the said indenture of assignment as in the said complainant's original and amended bill of complaint is alleged, but whether the same title deeds and writings are not now in the custody or power of the said complainant, or what is become thereof, these defendants do not know and cannot set forth as to their or either of their belief or otherwise; And these defendants further severally answering, say they have been informed, and believe it to be true, that the said testator, T. E., departed this life at the time in the said complainant's original and amended bill stated, having first duly made and published his last will and testament in writing, of such date, purport, and effect, as therein in that behalf mentioned and set forth, so far as the same is therein set forth, but these defendants, for greater certainty, crave leave to refer to the said will, or the probate copy thereof, when the same, or either of them shall be produced; And these defendants further say they believe it to be true that the said testator left T. E. jun. another defendant to the said complainant's original and amended bill of complaint, his eldest son and heir-at-law, and that F. B. and R. U., therein also named, have renounced the devise made to them by the said testator's will, and have duly executed a deed, renouncing and disclaiming the same, and that the said testator's real estates have descended upon, and are now vested in the said defendant, T. E., as his eldest son and heir-at-law, as in the said complainant's original and amended bill is alleged; And these defendants further say they have been informed and believe it to be true, that the said sum of £ 400 was not paid to the said W. P., or to the said complainant at the time in the said complainant's original and amended bill mentioned, and that the same, or some part thereof, together with some arrear of interest thereon is now due and owing to the said complainant, but what principal-money and interest in particular, these defendants do not know, and cannot set forth, as to their or either of their belief or otherwise; And these defendants admit that by the means in the said complainant's original and amended bill stated, the said mortgaged premises became absolute in law in the said complainant, and these defendants submit to the judgment of this Honorable Court, whether the said defendant, T. E., ought not to pay to

Admit the execution of a deed of assignment to the plaintiff, and that the deeds were delivered over to the plaintiff by W. P.,

but cannot state what is become of them.

Admit the death of T. E.,

and his will,

and that he left T. E. his heir-at-law, that F. B. and R. U. have renounced the devise to them and disclaimed, and that the real estates have descended upon T. E.

Admit that the £400 was not paid, and that the same or some part with interest is still due, but cannot state how much.

Admit that the premises have become absolute in law in the plaintiff.

the said complainant, what shall be found to be due and owing to him for principal-money and interest, and whether for the reasons herein after stated, the said complainant ought to be permitted to have or enjoy the said mortgaged premises; And these defendants further say that they or either of them to the knowledge or belief of the other of them do not know, have never been informed save by the said complainant's bill, and therefore cannot set forth as to their or either of their belief or otherwise, whether the said complainant hath or not made, or caused such applications and requests to be made to the said defendant, T. E., as therein stated or set forth, or any other applications and requests, nor whether the said defendant T. E. doth or not absolutely refuse to comply therewith, nor whether the said defendant T. E. doth or not make such pretence as therein stated; And these defendants deny that the said mortgaged premises are at all a scanty security for the principal and interest due to the said complainant; And these defendants further severally answering, say that by an indenture of demise, by way of mortgage, bearing date the _____ day of _____ 1813, and made between the said testator T. E. of the one part, and R. P. then of, &c. since deceased, of the other part, it is witnessed that in consideration of the sum of £ 800 sterling money, therein expressed to be paid to the said T. E. by the said R. P. and which was in fact so paid, and the receipt whereof the said T. E. did thereby acknowledge, he the said T. E. did grant, bargain, sell, and demise unto the said R. P., his executors, administrators, and assigns, All that, &c. To hold the same unto the said R. P., his executors, administrators, and assigns, from the day of the date thereof, for the term of 900 years from thence next ensuing, and fully to be complete and ended, subject, nevertheless, to the proviso in the said indenture contained, for redemption of the same premises, and making void the said term of 900 years, on payment by the said T. E., his heirs, executors, administrators, or assigns, unto the said R. P., his executors, administrators, or assigns, of the sum of £ 800, with lawful interest for the same, at or upon the _____ day of _____ 1814; As by the said indenture now in the possession of these defendants, and to which they crave leave to refer for greater certainty, as to the tenor and contents thereof when produced, will appear; And these defendants further say that default was made in payment by the said T. E. of the said sum of £ 800 and interest at the time in the said indenture mentioned, for payment thereof, whereby the said estate and premises became vested absolutely at law in the said R. P. for all the then residue of the said term of 900 years therein; And these defendants further say that the said R. P. departed this life on the _____ day of _____, having previously duly made and published his last will and testament in writing, bearing date the _____ day of _____,

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Submit whether T. E. ought not to pay plaintiff what is due to him.

Do not know as to any applications being made to T. E.

Deny that the premises are a scanty security.

State the execution of a mortgage by demise from T. E. to R. P. for securing £ 400;

That default was made in payment, that R. P. died, having made a will and appointed the defendants executrix and executor, and that they proved the same;

CH. IX. 1812, and thereby appointed them, these defendants, executrix and executor thereof, and that on the ——— day of ———, 1818, they, these defendants, duly proved the same in the Consistory Court of the diocese of H. and are thereby become the legal personal representatives of the said R. P. deceased, as to the term and premises; And these defendants further say that the said T. E. did on the ——— day of ——— pay to these defendants as such executrix and executor as aforesaid, the sum of £ 400, part of the said principal sum of £ 800 so due and owing to the said R. P. deceased, together with the arrears of interest thereon, and that M. F. E. the executrix of the said T. E. deceased, did after the decease of the said T. E. duly pay, or cause to be paid unto these defendants, all arrears of interest upon the remaining sum of £ 400 up to the ——— day of ———, 1820; And these defendants further say that there now remains due and owing to them as such executrix and executor as aforesaid, upon or by virtue of the said indenture of mortgage of the ——— day of ———, 1813, the principal sum of £ 400, together with the sum of £ ——— for interest thereon, at the rate of £ 5 per cent. per annum from the said 3d day of August, 1820; And these defendants further say they have been informed, and believe it to be true, that at the time of the execution of the said indenture of mortgage, bearing date the 3d day of February, 1813, the said testator R. P. insisted upon having the title deeds and writings relating to the said estate called Little C. delivered over to him, and the said testator T. E., pretending that the same were not then in his possession, promised to deliver them up in a few days, but that he neglected to fulfil such promise, and refused at any time afterwards to deliver them up, when requested so to do by the said R. P.; And these defendants deny that any fraud was ever intended by the said R. P. in not having such title deeds and writings delivered up to him, or that the same were so left in the hands of the said testator T. E. for the purpose of imposing upon the said complainant, or any other person, or of permitting the said testator T. E. to obtain any further sums of money on the security of the said premises; And these defendants submit to the judgment of this Honorable Court whether they as the legal personal representatives of the said testator R. P. are not for the reasons aforesaid, entitled to the said estate and premises called Little C., and to have the said principal and interest so due to them as aforesaid paid in preference to the said complainant; Or in case this Honorable Court shall be of opinion that the said complainant is entitled to the said mortgaged premises, and to be paid all arrears of principal and interest in preference to these defendants by reason of the title deeds being delivered over to him by the said testator T. E., and which these defendants allege was a fraud by the said T. E. upon the said

that T. E. paid to them £ 400, part of the £ 800, with all arrears of interest, and that the executrix of T. E. paid interest to 1820.

Statement of the amount due for principal and interest; that at the time of the execution of his mortgage R. P. insisted upon having the deeds delivered up to him, which T. E. promised to do, but afterwards refused.

Deny that any fraud was intended in not having the deeds delivered up, or that they were left for the purpose of imposing on the plaintiff, or permitting T. E. to obtain further sums, and submit the defendants are not entitled to a preference to the plaintiff,

Or, if not, whether they ought not to be permitted to redeem him.

R. P., whether they ought not to be permitted to redeem the said complainant, and to have possession of the said mortgaged premises and of the title deeds and writing relating thereto delivered up to them in case the said defendant T. E. shall make default in payment to the said complainant at the time to be appointed by this Honorable Court; And these defendants deny, &c. (see form No. CXLIV. p. 187). CH. IX.

CLXXVII. Answer to a bill for tithes by a vicar against the occupier of an ancient farm; the defendant asserting that the farm was part of a dissolved abbey which came into the hands of the Crown in the reign of Henry the Eighth, and was from time immemorial held exempt from great tithes; that some of the small tithes were covered by moduses, and that agistment tihe was never paid, and submitting to account for what is due in respect of other small tithes.

(For the title, see form No. CXXXIX. p. 152.) This defendant, &c. (see form No. CXL. p. 184), saith he doth not know or believe that the vicar for the time being of the vicarage and parish church of M. T., in the county of Y., hath at any time been entitled to have and receive, to his own use, the tithes both great and small of the several tithable matters and things from time to time arising, growing, increasing, and renewing within the said vicarage, and the tithable places thereof, except as in the said bill excepted, or other than as hereinafter is mentioned, so far as applies to the farm and lands which are occupied by this defendant. Knows not whether the vicar is entitled to all tithes, great and small, except as appears from the answer. Admits that the vicarage became vacant.

Saith he believes it to be true, that the said vicarage became vacant by the death of the preceding incumbent, at or about the time in the said bill mentioned; and that the *plaintiff* was shortly afterwards duly and lawfully presented, instituted, and inducted into the vicarage and parish church of M. T. aforesaid, and that he might soon after his induction duly qualify himself to act and officiate as vicar thereof, and that he hath ever since acted and officiated, and now acts and officiates in the cure of the said vicarage, and that he may be well entitled to have, take, and receive to his own use, from the death of the last incumbent, all such tithes and payments in lieu of tithes, as his predecessors, the former vicars of the said parish were lawfully entitled to have, take, and receive within the said parish, and the tithable places thereof. That the plaintiff was duly instituted and inducted, and soon after duly qualified himself, and that he is entitled to all such tithes as former vicars were entitled to.

Saith he admits it to be true that from and since the ——— day of ———, this defendant hath held and occupied, and still holds and occupies within the said vicarage and the tithable places thereof, a farm. Admits that defendant occupies an ancient farm.

CH. IX. certain ancient farm called or known by the name of C. G. farm, consisting of a farm-house, and outbuildings, and ——— acres of land or thereabouts.

Saith that the same was parcel of a dissolved abbey, and came into the hands of King Henry VIII.

Saith that the said ancient farm was at the time of the dissolution of the late dissolved abbey of F., in the county of Y., and from time to time and all times from time whereof the memory of man is not to the contrary, had been parcel of the said late dissolved abbey, and with the rest of the possessions of the said late dissolved abbey, which was one of the greater abbeys, and had possessions of the value of £ ——— a year, was given and surrendered unto and came into the hands of his late Majesty, King Henry VIII., under and by virtue of the act of parliament, made and passed in the 31st year of the reign of his said late Majesty, intituled "An act for the dissolution of monasteries and abbeys." And this defendant believes that from time to time and at all times from time whereof the memory of man is not to the contrary, down to and at the time of the dissolution of the said late dissolved abbey of F., the said ancient farm was holden and occupied by the said late dissolved abbey discharged and acquitted of, and from the payment of all great tithes; and that by means thereof, and by force of the said late act of parliament passed in the 31st year of the reign of his said late Majesty, King Henry VIII., the said ancient farm continued to be and hath ever since the passing of the said last-mentioned act of parliament been and now is discharged and acquitted from the payment of all great tithes.

And believes that from time immemorial the same was held by the abbey discharged of all great tithes, and is now discharged therefrom.

Saith that from time immemorial the several moduses stated have been payable to the vicar in lieu of some of the small tithes.

Saith that from time whereof the memory of man is not to the contrary, there hath been paid and payable, and of right ought to be paid to the vicar for the time being of the said vicarage and parish of M. T. aforesaid, by the occupier or occupiers for the time being of the said ancient farm, the several moduses hereinafter stated; (that is to say,) yearly at ——— the sum of ——— for every milch cow; and the sum of ——— for every gelt cow kept and fed upon the said ancient farm, in lieu of the tithe of milk; and also at ——— the sum of ——— for every foal yielded and brought forth upon the said ancient farm, in lieu of the tithe of foals; and also at ——— the sum of ——— for every hive of bees kept on the said ancient farm, in lieu of the tithe of honey and beeswax; and also at ——— the sum of ——— for every person in the family of such occupier or occupiers, who did or ought to receive the holy communion, in lieu of Easter offerings; and on ——— day the sum of ——— for every householder on the said ancient farm, in lieu of the tithe of poultry and eggs.

Believes that the vicar for the time being is entitled to have and receive in kind all other the small tithes (except the tithes of agist-

ment) arising, growing, renewing, and increasing in and upon the said ancient farm. CH. IX.

Saith he admits it to be true that he hath since the said _____ day of _____, grown, cut, and carried from off the said ancient farm, considerable quantities of wheat, barley, oats, beans, and other grain and hay, without setting out the tithes thereof, or making any satisfaction to the *plaintiff* for the same, or any part thereof, inasmuch as for the reasons aforesaid, no tithes was due to the *plaintiff* in respect thereof, the same being great tithes; and defendant for the same reason hath not herein set forth an account of such corn, grain, or hay.

Saith that in the month of _____, this defendant paid to _____, the agent of the said *plaintiff*, the sum of £ _____, in full satisfaction for all small tithes and moduses in lieu of such tithes due to the said *plaintiff* up to _____: and the said _____ then accepted the said sum of £ _____, on the part of the said *plaintiff*, in full satisfaction of all such small tithes and moduses up to _____, and gave this defendant a receipt for the same, as for one year's tithes due to the said *plaintiff* at _____ then last.

Saith that the pasture lands of his said farm consist of _____ acres, or thereabouts, of the yearly value of _____ per acre, as he computed the same, and that from _____ to _____, there was bred upon his said farm, _____ calves, _____ pigs, and _____ geese, and that _____ fleeces of wool, of the value of _____, or thereabouts, are due to the *plaintiff*, for or in respect of the tithes of wool arising on the said farm during the same period, but that no lambs were bred thereon.

Saith that he had growing upon his said farm in that year, _____ acres of turnips, which he computed to be of the value of £ _____ or thereabouts, and that from the middle of the month of _____ to the middle of the month of _____ in the said year _____, he depastured upon his said farm _____ two years old heifers, and _____ two years old steers, together also with _____ sheep.

Saith that to the best of his recollection and belief, he had not between _____ and _____, growing, renewing, arising, or increasing upon his said farm and lands in his occupation in the said parish of M. T. or the tithable places thereof, any tithable matters or things, except as aforesaid.

Saith that he believes that none of the vicars of the said parish ever received any tithes of agistment within the said parish, or any satisfaction for the same; and he therefore submits and humbly insists that the vicars of the said parish are not entitled to any tithes of agistment arising within, upon, or from his said ancient farm, or any satisfaction for the same.

Saith that he hath not since the _____ day of _____, had more

CH. IX. than ——— persons in his family, for whom Easter offerings were or are payable, and that he paid and rendered to the Rev. ———, the curate and agent of the *plaintiff*, the Easter offerings which were due at Easter, ———, Easter ———, and Easter ———, as the same became due and payable, and that by the immemorial usage and custom of the said parish ——— only is due from each such person yearly for Easter offerings.

States in respect of whom Easter offerings were payable, and that the same were paid.

Submits to account for what is due in respect of tithes.

Saith that he is and at all times hath been ready and desirous to account for and pay to the *plaintiff* what is due to him for the tithes arising upon, or from, or due, or payable, in respect of his said farm.

CLXXVIII. Answer of the East India Company to a bill by a lay impropriator, claiming tithes or customary payments in lieu of tithes, in respect of warehouses, &c. held or occupied by the defendants, they denying his right thereto.

These defendants, &c. (*see form No. CXL., p. 184*), say they have heard and believe that the said *plaintiff* is now seised of or entitled to the impropriate rectory of ——— in the said bill mentioned, but how long he hath been seised of or entitled to the said rectory, or whether or not from the year ——— or from any other time, defendants know not nor can any how set forth, nor do they know, nor can they set forth, save as after-mentioned, whether or not *plaintiff* as such impropriator or impropriate rector or otherwise, is or not now or hath not since the said year ——— or any other time, been entitled to have, receive, or enjoy for his own use any tithes, rates for tithes, sums, or customary payments, or other duties in lieu of tithes, for the houses, shops, warehouses, cellars, stables and other buildings of the citizens and inhabitants of that part of the said parish which lies within the city of L. and the liberties thereof as in the bill stated or otherwise.

Admit that plaintiff is seised of the impropriate rectory, but cannot state from what period, nor whether he is entitled to receive any tithes or customary payments.

Admit the act of parliament, and the decree as set forth in the bill.

Admit that such act of parliament as in the bill mentioned was made and passed in the reign of his late Majesty King Henry VIII., and that such decree as in the bill set forth was made in pursuance of the said act of parliament, though defendants for greater certainty as to particular contents of said act and of said decree, crave leave to refer thereto when produced to this Honorable Court.

Admit that they are occupiers and owners of various buildings for their servants.

Admit that they have ever since the year ——— occupied and do now occupy and are the owners of several stacks of warehouses and dwelling-houses, for their warehouse-keepers and servants, and waste ground, situate in or near G. L. and H. A., all which are in that part of the said parish of ———, which is within said city of L., and was built by defendants.

Say that having built and they themselves being the owners of said

warehouses and dwelling-houses they do not now nor ever did hold the same or any part thereof under any yearly or other rent or for any consideration in the nature or in lieu of rent, nor hath any yearly or other rent or any consideration in the nature or in lieu of rent at any time been paid for the said warehouses, dwelling-houses, or ground, though defendants say they do apprehend and believe that certain dwelling-houses, or some edifices or buildings, were formerly erected and did stand upon the site of or upon the same pieces or parcels of land or ground on which defendants' said warehouses and dwelling-houses have been since erected or built, and do now stand as aforesaid, and that some yearly or other rents or payment in the nature of rents were reserved or made payable for or in respect of such dwelling-houses or other edifices and buildings, or the ground on which the same stood, but they are unable to set forth as to their knowledge or otherwise what such rents or payments were, or whether they were paid or not, except that they say they have always understood or believed, and do now understand or believe, that such houses or buildings were inhabited or occupied by persons of very low descriptions and necessitous circumstances, and therefore not likely to pay or make good any rents or payments whatever in respect thereof.

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Say that they being owners do not hold under any rent; believe that their buildings stand upon the site of ancient messuages, and that some rents were formerly payable, but the houses being occupied by poor persons, believe that no rents ever were paid.

Say they do not now inhabit or occupy, nor have they inhabited or occupied since the said year ——— or during any part of that time any messuages or dwelling-houses, warehouses, yards, sheds, wharves, quays, stables, or other edifices, buildings, and premises situate within that part of the said rectory and parish which is in the city of L., or the liberties thereof, save as aforesaid.

Say they do not inhabit any houses, &c. save as aforesaid.

Say they are advised and humbly insist that *plaintiff* as the lay impropriator of said parish or rectory is not entitled under or by virtue either of the act of parliament or the decree in bill mentioned or otherwise to any tithes or yearly or other payments in the nature or in lieu of tithes for or in respect of the said warehouses and dwelling-houses of defendants or any of them, inasmuch as they have also been advised and do conceive that said act of parliament and the said decree were both made with a view to the clergy of L. and not to lay impropriators, and there is not any custom to warrant the demand of any such tithes or payments in lieu thereof.

Insist that plaintiff as lay impropriator is not entitled to any tithes or other payments.

Admit that having been so advised they have not paid, but on the contrary have refused to pay any sums or sum of money to *plaintiff* or to any person for his use since the year ——— for or in respect of tithes or dues for these defendants' said warehouses and dwelling-houses, or any of them, save and except that certain of their said warehouses having been built previous to the year ———, and *plaintiff* having in the month of ——— in that year, made a demand to be paid tithes thereon at the rate of ——— in the pound on the yearly sum

Admit that they have refused to pay plaintiff since they have investigated as to his right to make a demand, and submit that the payments

CH. IX. of £ —, such being as defendants believe the sum the said ware-houses were rated as to the land-tax, and defendants not having sufficiently investigated the right of *plaintiff* to make such demand, defendants did then submit to make such payment to *plaintiff* and they have continued to make the same up to — last; but they do for the reasons aforesaid insist that such payment hath been made in their own wrong and through ignorance of their own rights, and are therefore not bound to continue the same for the future.

CLXXIX. Answer to a bill by a rector, and his lessee for arrears of tithes — three of the defendants had carried on the business of brewers in partnership, which was dissolved as to one, and another defendant admitted a partner; (the other defendant occupying a house and garden as their clerk;) the defendants admit the plaintiff's title, and set forth the accounts required as far as they are able, but insist upon a composition which had been paid annually in lieu of tithes as binding upon the plaintiffs.

A supplemental answer was afterwards filed by three of the defendants by leave of the Court, to explain and correct several mistakes made in setting out the accounts; (*vide post*, p. 235.)

The joint and several answer of W. P. T., J. S., E. W., R. T., and W. H., defendants, to the bill of complaint of the Rev. F. W. B., clerk, and C. E. complainants.

Admit that F. W. B. was duly instituted and inducted, and is now the rector, and as rector entitled to all tithes great and small;

admit that a lease of the tithes was granted by F. W. B. to C. E.

that such lease was afterwards surrendered

These defendants, &c. (*see form No. CXL. p. 184*), severally answering, say they admit it to be true that the said complainant F. W. B., was at or about the time in the said bill in that behalf mentioned, duly and lawfully presented, and instituted, and inducted to and into the rectory and parish church of S. M., in the said bill mentioned, and that he has ever since been, and is now the true and lawful rector thereof, and that as such rector he became entitled to all the tithes both great and small of the several tithable matters and things growing, renewing, arising, or increasing within the said rectory and parish, and the tithable places thereof; and these defendants further severally answering say they do not know of their own knowledge, but they have heard, and believe it to be true, that in or about the month of May 1813, the said complainant F. W. B., did duly demise to the said complainant C. E., the several tithes arising within the said rectory, or parish, for the term of fourteen years from the 25th of March 1813, if the said complainant F. W. B. should so long live and continue rector of the said parish, and that in or about the month of June 1818, the said alleged lease was surrendered by the said complainant C. E., to the said complainant F. W. B., and that the said last-named complainant did thereupon

duly grant another lease of the said tithes of the said complainant C. E., for the term of twenty-one years from the 25th of March 1818, if the complainant F. W. B. should so long live and continue rector of the said parish, and that such last-mentioned lease is still subsisting; And these defendants further severally answering say they admit it to be true that in and previously to the said year 1813, these defendants, W. P. T., J. S., and E. W., did hold and occupy a certain farm and lands hereinafter mentioned, within the said rectory and parish, or the tithable places thereof, in copartnership, and that they did continue from thenceforth so to occupy the said farm and lands until the month of October 1820, and that this defendant, E. W. did then retire from the said copartnership and cease to occupy the said farm and lands, and that upon this defendant E. W.'s retiring from the said concern, this defendant R. T. was admitted a partner in the said concern, in the place of this defendant E. W., and that these defendants W. P. T., J. S., and R. T., did from thenceforth hold and occupy the said farm and lands in copartnership together, and that the said farm and lands were previously to and until the latter end of the year 1813, fifty-seven acres, two roods, and thirty perches, exclusive of plantations and buildings, but including the gardens occupied by the defendants as herein stated; and in the latter end of the year 1813 these defendants W. P. T., J. S., and E. W., purchased an additional piece of land, whereby the whole of their tithable land was increased to sixty-seven acres and eighteen perches, but the said quantity was reduced within the last two years by new plantations and several large ponds; And these defendants W. P. T., J. S., E. W., and R. T., further severally answering say they deny that these defendants, or any or either of them had during the respective times in the said complainant's bill in that behalf stated, growing upon, and took from off, the said farm and lands divers or any quantities of wheat, barley, and oats, and other corn and grain, and that they or any or either of them had in each year during the time aforesaid growing upon and have taken off the said farm and lands divers or any quantities of wheat, barley, and oats, and other corn and grain, or divers or any quantities of clover and other artificial grasses, but these defendants admit that they have had during the time aforesaid, divers quantities of grass which they mowed and made into hay; And these defendants severally deny that they did in any or either of the years of such their respective occupations enter upon and take off from the said farms and lands, divers or any quantities of wood and underwood, excepting for the purpose of repairing the fences upon the said farm; And these defendants severally deny that they, or any, or either of them, had growing upon, and did take from off their said lands in any, or either of such years, divers or

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and a new lease granted, which is still subsisting; admit that the defendants W. P. T., J. S., and E. W. occupied a farm and lands until October 1820, when E. W. retired, and the defendant R. T. was admitted a partner;

that the farm and lands were until 1813, fifty-seven acres, two roods, and thirty perches, when additional land was purchased; the quantity since reduced by plantations and ponds; deny having grown corn, grain, clover, and grasses,

except grass mown and made into hay; deny having cut wood and underwood except for repairs; deny having grown turnips, potatoes, or seeds;

CH. IX. any quantities of turnips and potatoes, flax, hemp, cole seed, mustard seed, turnip seed, or other kinds of seeds; And these defendants admit that they had respectively in each of such years upon their said farm and lands, such milch cows as hereinafter stated, which produced great quantities of milk, and such number of cows which have produced such calves as hereinafter stated, but these defendants deny that during the period aforesaid, they, or any, or either of them have, or hath had upon their said farm and lands, any sows, or any mares which have produced colts, or a colt, excepting in the year 1821, when they had a mare which produced one colt only; And these defendants deny that they, or any, or either of them have or hath during the period aforesaid, kept upon their said farm and lands, any sheep or any ewes which have produced lambs, excepting that in the latter end of the year 1820, they kept about one hundred ewes, which last year produced about one hundred lambs only, and which ewes were duly shorn in the year 1821, but about sixty-two only of the said ewes were shorn in the year 1820, and such ewes produced such quantities of wool as hereinafter stated; And these defendants deny that they or any or either of them have, or hath had upon their said farm and lands during the period aforesaid, any turkeys, ducks, geese, or other fowls; And these defendants further severally answering say that during the period aforesaid, they respectively occupied part of the aforesaid lands as gardens for their own private use, which produced them vegetables and fruit for their families, but believing and fully understanding that the said complainant C. E. had accepted and taken a composition for all the tithable matters and things, arising, growing and increasing upon their said farm and lands, these defendants did not keep any account of the vegetables and fruit growing upon the same as aforesaid, and they are totally unable to set forth any account thereof; and these defendants deny that they or any or either of them did in each or either of such years agist and depasture upon the said farm and lands, any barren and unprofitable horses, mares, geldings, bullocks, oxen, steers, sheep, or other barren and unprofitable cattle excepting as hereinafter stated; And these defendants say that during the period of their occupation of the said farm and lands as herein stated, they have carried on the trade or business of brewers, and for the purposes of their said trade, have kept from sixteen to eighteen horses in each year, but the whole of such horses were kept in the stable and fed on hay, excepting when any of them were sick, when these defendants caused such horses to be turned out and depastured for a few days only, but these defendants cannot otherwise than as herein stated, set forth the number of their said horses so depastured, or any further particulars relative thereto; And these defendants deny that they or any or either

admit hav-
ing had
cows,

but deny
having had
sows or
mares pro-
ducing
yongg, ex-
cept in
1821, when
one colt
was pro-
duced; de-
ny having
kept any
sheep, ex-
cept in
1820, when
they had
one hun-
dred ewes
which pro-
duced one
hundred
lambs.

Deny hav-
ing had tur-
keys, &c.

Say that
part of the
land was
occupied as
gardens
which pro-
duced veg-
etables for
their fami-
lies, of
which they
kept no ac-
count;
deny hav-
ing agisted
barren cat-
tle, except
as after
stated.

Say that
they car-
ried on the
trade of
brewers,
and for the
purposes
thereof
kept horses
which were
kept in the
stable ex-
cept when
sick, when
they were
turned out

of them have or hath had in any or either of such years growing upon, and have taken from off their said farm and lands, any other tithable matters and things than as hereinbefore stated; And these defendants W. P. T., J. S., E. W., and R. T., further severally answering say they admit it to be true that these defendants W. P. T., J. S., and E. W., did previously to the year 1813 convert into a garden, and did from the said month of May, 1813, up to the month of October, 1820, occupy as a garden, certain lands within the said rectory or parish adjoining to a dwelling-house occupied by this defendant E. W., as one of the partners in the said first-mentioned copartnership, but such garden formed part of the farm and land aforesaid, and that this defendant E. W., but neither of these other defendants, did during the time aforesaid, have and take from off the said last-mentioned lands divers quantities of garden stuff and fruit as hereinafter stated; And these defendants W. P. T., J. S., and R. T., further severally answering say they admit it to be true that they these defendants have from the said month of October, 1820, to the present time, and do now occupy by means of the said other defendant W. H., their traveller and clerk, the said house and garden, and that the said defendant W. H., hath, but neither of these other defendants have, from the said month of October, 1820, taken upon and from off the said last-mentioned lands, divers quantities of garden stuff and fruit; And these defendants severally deny that they or any or either of them have or hath during the time in the said bill mentioned, converted into garden ground, any land within the said rectory or parish, other than such land as herein particularly mentioned; And these defendants W. P. T., J. S., E. W., and R. T., further severally answering say they deny that they or any or either of them have or hath in any or either of the years from the said month of March 1813, to the present time, held and occupied, or do now hold and occupy divers or any lands contiguous or near to the said last-mentioned lands or elsewhere within the said rectory or parish of S. M. aforesaid, or the tithable places thereof, or any lands in any other parish; And this defendant W. H., further answering saith he admits it to be true that he this defendant as the traveller and clerk of the said other defendants W. P. T., J. S., and R. T., hath ever since the month of October, 1820, held and occupied, and doth now hold and occupy the hereinbefore-mentioned garden, situate within the said rectory or parish, or the tithable places thereof, and that he hath in each year of such his occupation, had growing upon, and has taken from off the said lands divers quantities of garden stuff and fruit, which this defendant consumed in his family, but this defendant never kept any account thereof, and therefore cannot set forth any particulars thereof or relative thereto; And all these

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and depastured.

Deny having had any other tithable matters.

Admission by four defendants that three of them did up to 1820, occupy as a garden certain lands, and that E. W., but not the other defendants, took therefrom garden stuff and fruit.

Admission by three defendants that they by their traveller, the defendant W. H. have occupied since 1820 the same garden, and that W. H. had therefrom garden stuff and fruit.

Deny that they have converted any other land into garden ground; or that they have occupied or do occupy any other lands.

Admission by W. H. that he occupied the said garden and took therefrom garden stuff and fruit, which were consumed in his own family, and of which no

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account was kept. Admit that the tithes of the several tithable matters aforesaid, if duly set out would have been of considerable value. Admit that they did not set out the whole of such tithes, and that they converted the same to their own use; W. H. saith that he, occupying the garden as clerk to the other defendants, believed that they had made compensation; the other defendants allege and insist that they have duly made compensation for all tithes up to March 1821, and say that believing C. E. had rented the tithes, they agreed with him to pay him £ 11 for one year, which was paid;

A small addition having been made to their lands, the composition was

defendants further severally answering say they admit it to be true, that the tithes of the several tithable matters and things in the said complainant's bill mentioned as aforesaid, if the same had been duly set out and rendered to the said complainant C. E., would have been of considerable value, but of what value these defendants for the reasons aforesaid cannot set forth; And these defendants further severally answering say they admit it to be true that they these defendants did not, nor did any or either of them set out the whole of such tithes to the said complainant C. E., and that they have respectively converted the whole of such tithes during the period, and according to the respective occupations of the said lands by these defendants as aforesaid, to their own use for the reasons hereinafter stated; And this defendant W. H. admits it to be true that he hath never made any compensation for the tithes aforesaid, possessed by him or for any or either of them, by reason that he this defendant having occupied the said garden as aforesaid, as the clerk of the said other defendants, he this defendant considered and believed that the said other defendants W. P. T., J. S., and R. T., had made a compensation or satisfaction for such tithes to the said C. E.; And these defendants W. P. T., J. S., E. W., and R. T., further severally answering say they admit it to be true that they do respectively allege that they have and they do severally insist that they have duly made a compensation or satisfaction to the said complainant C. E., for all and every the tithes of the said several tithable matters and things arising and growing, and taken by these defendants respectively from off the said farm and lands occupied by them within the said rectory and parish, or the tithable places thereof, and including all the said garden, up to the 25th day of March, 1821, for these defendants severally say that in the year 1813, these defendant W. P. T., J. S., and E. W., understanding and believing that the said complainant C. E. had rented the tithes of the said rectory or parish from the said complainant F. W. B., applied to the said C. E. to know what he demanded by way of compensation or satisfaction for the aforesaid tithes, when the said C. E. proposed to these defendants to take and accept the sum of £ 11 by even half-yearly payments by way of compensation or satisfaction for their said tithes from the 25th day of March, 1813, to the 25th day of March, 1814, and these defendants having agreed thereto, accordingly paid the said C. E. the said sum of £ 11 by equal half-yearly payments; And these defendants W. P. T., J. S., and E. W. having afterwards made a small addition to the land in their occupation within the said parish or the tithable places thereof, the said C. E. himself proposed to and demanded of these defendants the sum of £ 13 10s. as a composition or satisfaction for all and every the tithes of the several

tithable matters and things arising, growing, and taken, by them from off the lands occupied by them within the said rectory and parish or the tithable places thereof for the year commencing from the 25th day of March, 1814, to the 25th day of March, 1815, and these defendants having agreed thereto accordingly, paid the said C. E. the said sum of £ 13 10s. by equal half-yearly payments, and these defendants duly paid the said sum of £ 13 10s. yearly and every year to the said C. E. as a compensation and satisfaction for all and every the tithes of the several tithable matters and things arising, growing, and taken by them respectively from off the said lands occupied by them or any or either of them (and including all the said gardens) within the said rectory and parish or the tithable places thereof, from the said 25th day of March, 1814, to Michaelmas, 1820, excepting that on Lady-day, 1815, these defendants only paid the sum of £ 3 15s. for the half-year's tithe due and payable on that day in consequence of these defendants having in that half-year let off considerable part of the lands previously and subsequently occupied by them as aforesaid to divers other persons who paid the tithe thereof the proportion of which was settled and arranged by the said complainant C. E.; And these defendants W. P. T., J. S. and R. T. further severally answering say, that having commenced partnership in the month of October 1820, as aforesaid, they these defendants duly paid to the said C. E. the sum of £ 5 15s. as a compensation and satisfaction for their tithes as aforesaid for the half-year commencing Michaelmas, 1820, to Lady-day, 1821, including the tithes arising from the said garden occupied by the said other defendant W. H. as their clerk as aforesaid, and on Michaelmas-day, 1821, these defendants by their solicitor tendered the sum of £ 6 15s. to the said C. E. for their previous half-year's tithe commencing at Lady-day, 1821, up to Michaelmas-day, 1821, when the said C. E. refused to receive the same, but did not at that time or previously or subsequently thereto give these defendants or any or either of them any notice whatever of his intention, or that they were to consider the said annual payment by way of compensation or satisfaction for the tithes as at an end; And all these defendants further severally answering say, they deny that the said complainants or either of them have or hath frequently or at any times or time made such or the like applications and requests to these defendants or to any or either of them, as in the said complainant's bill in that behalf stated in respect of the matters therein stated, although these defendants severally admit that the said complainant C. E. hath written several letters to these defendants demanding a large sum of money for pretended arrears of tithes, but which these defendants refused to pay, considering the aforesaid composition paid to the said C. E. to be in lieu of all tithes payable by them in respect of the lands occupied by them

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increased to £ 13 10s. and continued to be paid to Michaelmas, 1820,

excepting for one half-year, when the tithes were paid by persons to whom the lands had been let.

Payment made of one half-year's composition to Lady-day 1821.

Tender made at Michaelmas of another half-year's amount, which C. E. refused to accept, but gave no intimation that the composition was to be considered as at an end.

Deny applications being made as stated in the bill, although they admit that C. E. wrote several letters claiming large ar-

CH. IX. respectively within the said rectory and parish or the tithable place thereof, and that thereupon they were not bound to render to him any account or any further payments as demanded by him in and by such letters; And these defendants further severally answering say, they admit it to be true that they have never entered into any agreement or composition with the said complainants or either of them in respect of the tithes or any of them arising from the said lands situate within the said rectory or parish of S. M. aforesaid, or any of them from the 25th of March 1823, or otherwise than as aforesaid, but which payments or composition for tithes these defendants severally submit and insist are binding upon the said complainants respectively, and that the said complainants or either of them are or is not entitled to any further payment or account in respect of the tithes aforesaid during the period aforesaid from these defendants or any or either of them; And these defendants further severally answering say, they admit it to be true that the lands in the said complainant's bill in that behalf mentioned, are respectively situate within the said parish of S. M. and not in any other parish, and that they these defendants are as hereinbefore stated, the owners and occupiers of such lands: And these defendants, W. P. T., J. S., E. W., and R. T. severally answering, say, that they have in the schedule to this their answer annexed, and which they pray may be taken as part thereof, set forth according to the best of their judgment and belief a full, true, and particular account of all and singular the quantities of hay which they have respectively had taken and received on, or from off the said respective lands in each of the years aforesaid, or in any and which of them, and of the value thereof in each of such years, and also a like account of the number of milch cows which they respectively kept on their said lands or any part thereof in each of such years, and of the quantities of milk produced by such cows in each of such years, and also a like account of the number of cows which they respectively had on their said lands or any part thereof, in each of such years, and of the numbers of calves produced thereby in each of such years, and also a like account of the numbers of sheep shorn by them or any or either of them on their said lands in each of such years, and of the quantities of wool produced thereby; And these defendants severally deny for the reasons aforesaid that they or any or either of them have or hath during the period in the said complainant's bill and hereinbefore mentioned, withheld or subtracted from the said complainants any of the tithes of the several tithable matters aforesaid, and submit and insist that they are not liable to account to the said complainants or either of them for any of such tithes, or to pay to them, or either of them, any sum or sums of money in respect thereof; And these defendants severally deny, &c. (*see form No. CLIV. p. 187*).

rears of tithes.

Admit that they have not entered into any composition with the plaintiffs for the tithes from the 25th March, 1823, than as before stated, but insist that the payments made are binding on the plaintiffs.

Admit that certain lands are situate in the parish of S. M., and that the defendants are owners and occupiers thereof.

Reference to a schedule for an account of certain tithable matters.

Deny that they have withheld or subtracted any tithes of the matters aforesaid, and insist that they are not liable to account.

CLXXX. Supplemental answer filed by leave of the Court to explain and correct mistakes made by three defendants in a former answer put in by them jointly with other defendants to a bill by a rector and his lessee for arrears of tithes; (*vide ante*, p. 225.)

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(*For the title, see form No. CXXXIX. p. 182.*) These defendants now and at all times hereafter saving and reserving to themselves and each of them all and all manner of benefit or advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's bill of complaint contained for supplemental answer thereto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them or either of them to make any answer unto, these defendants severally answering say, that by mistake in their said former answer they, these defendants respectively, stated that they denied that they, or any or either of them had in any or either of the years from the month of March 1813 to the then present time, held and occupied, or did then hold and occupy divers or any lands contiguous or near to the last-mentioned lands in the said complainant's bill mentioned, or elsewhere within the rectory or parish of S. M. in the said bill mentioned, or the tithable places thereof, or any lands in any other parish, for these defendants severally say that in the month of June 1821 they, as copartners as in the said bill mentioned, entered into the occupation of certain lands in the said parish of S. M. called T. and containing about twenty-six acres, for a temporary occupation only, and for the purpose of feeding certain sheep then in their possession; And this defendant W. P. T. further answering saith, and these other defendants believe it to be true, that this defendant W. P. T. hath in each and every of the years from the month of March 1819 to the present time held and occupied and now holds and occupies individually certain lands and freehold property of his son the said R. T. within the said parish, and called B., containing about twelve acres, and that he the said defendant was also at the time of the filing of the said complainant's bill and had been for several years previously thereto in the occupation of fourteen or fifteen acres or thereabouts of land of his own freehold property in the parish of A., which parish adjoins the said parish of S. M. and which last-mentioned pieces of land are described in the title deeds relating thereto as follows (that is to say); All that close, &c., &c., all which said closes and lands lie adjoining together, and are situate lying and being in the parish of A. aforesaid; and this defendant W. P. T. saith that such title deeds are not now in his custody or power, although the same lately were, nor are the same or any or either of them in the custody or power of the said other defendants or of any

Say that by mistake they denied having held any lands contiguous to the lands mentioned in the bill, and say that in 1821 they occupied certain lands for the purpose of feeding sheep.

W. P. T. saith, and the other defendants believe that he from March, 1819, held certain lands the property of his son,

and at the time of filing the bill certain other lands of his own. Saith that the title deeds are not in his own or in the other defendants' possession. Say that previously

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to 1821 A. A. occupied the lands called T., and that he paid a composition in lieu of tithes;

Say that they occupied the same until 1822, and afterwards J. D. who has continued to pay the composition.

Admit that they paid no composition for the tithes thereof, the plaintiff not having made any demand.

Admit that they never entered into an agreement for the same.

Deny having grown wheat, &c.

W. P. T. saith, that he purchased the lands called B. and occupies the same, and in 1819, applied to know the amount of composition, when he was told £1 12s. 6d.;

or either of them; And these defendants further severally answering say, they have been informed and believe it to be true that one A. A. was the occupier of the said lands called T. for about ten years previous to Lady-day 1821, when he quitted the same, and that he during his said occupation paid a composition of £ 2 18s. a year by half-yearly payments of £ 1 9s. to the said complainant C. E., in lieu and in satisfaction of all tithes arising from the said lands called T., and that he duly paid the same up to Lady-day 1821, when he quitted the occupation of the said lands; and the said defendants say, that they entered upon the occupation of the said last-mentioned lands in the month of June 1821 as aforesaid, and remained in the occupation thereof until Lady-day 1822, when they quitted the same, and J. D., the owner thereof, entered into the possession and occupation of the said last-mentioned lands, and as these defendants have been informed and believe it to be true, has duly paid a half-yearly composition of £ 1 12s. 9d. in respect of the said lands, and as a composition or satisfaction for the tithes thereof from Lady-day 1822 aforesaid; and these defendants severally admit that they have never paid any composition or satisfaction to the said complainants or either of them for the tithes arising from the said lands called T., during their occupation thereof as aforesaid, but severally say that the said complainants have not nor hath either of them made any demand upon these defendants or any or either of them in respect of the tithes of the said lands called T., or for any sum or sums of money as by way of a composition or satisfaction for the same; And these defendants severally answering say, they admit to be true that they have never entered into any agreement or composition with the said complainants or either of them in respect of the tithes or any of them arising from their said lands called T. aforesaid, or for any or either of them: And these defendants further severally answering say, they deny that these defendants or any or either of them had during the time of such their occupation of the said lands called T., growing upon and took from off the said lands divers or any quantities [*deny having grown any wheat, corn, hay seeds, &c., &c.*]; and this defendant W. P. T. further answering saith, he hath purchased the said lands called B. in the year 1818 for his son the said R. T. and hath ever since been in the occupation thereof, and saith that on the tithe receipt day at or about Michaelmas 1819, to the best of his knowledge, remembrance, and belief, he this defendant attended at the office of the said complainant C. E., for the purpose of ascertaining what sum of money was payable by him to the said C. E., as and by way of composition or satisfaction for his tithes growing, renewing, and increasing upon his said lands called B., and that this defendant was thereupon told that the amount of the composition of this defendant in respect of such tithes was the

sum of £1 12s. 6d., payable by half-yearly payments, and that this defendant thereupon paid to the said complainant C. E. the sum of 16s. 3d., being the first half-yearly payment or composition for this defendant's tithes of the said last-mentioned lands; And this defendant saith that he duly and regularly by himself or some friend of his paid the said sum of 16s. 3d. to the said C. E. as the half-yearly payment or composition of this defendant in respect of such last-mentioned tithes, yearly and every year from Lady-day 1819 until Lady-day 1821; And this defendant W. P. T. further answering saith, he admits it to be true that he doth allege and insist that he hath in manner aforesaid duly made a composition or satisfaction to the said complainant C. E. for all and every the tithes of the several tithable matters and things arising, growing, and taken by this defendant W. P. T. from off the said lands called B. occupied by him during the period aforesaid; And this defendant W. P. T. further answering saith, that he this defendant, instructed his solicitor, the late Mr. J. D. on or about Michaelmas 1821, to tender the sum of 16s. 3d. to the said C. E. for his previous half-yearly tithes of the said lands called B., commencing from Lady-day 1821, up to Michaelmas-day 1821, and this defendant believes that the said Mr. J. D. did accordingly tender the same to the said C. E.; and this defendant saith that the said C. E. hath not at any time either previously or subsequently thereto given this defendant any notice whatever of his intention, or that he, this defendant, was to consider the said annual payment by way of composition or satisfaction for his tithes aforesaid as at an end; And this defendant W. P. T. further answering saith, he denies that the said complainants or either of them have or hath frequently or at any times or time made such or the like applications and requests to this defendant as in the said complainants' bill in that behalf stated in respect of the matters therein stated, otherwise than as in this defendant's former answer stated; And this defendant W. P. T. further answering saith, he admits it to be true that he never entered into any agreement or composition with the said complainants or either of them in respect of the tithes or any of them arising from his said land called B., situate within the said rectory or parish of S. M. aforesaid, or any of them from Lady-day 1819 otherwise than as aforesaid, but which payments or composition for tithes this defendant submits and insists are binding upon the said complainants respectively, and that the said complainants or either of them are or is not entitled to any further payments or account in respect of the tithes aforesaid during the period aforesaid from this defendant; And this defendant W. P. T. further answering saith, he denies that he hath had during the respective times in the said complainant's bill in that behalf stated, growing upon and took from off the said lands called B. divers or any quanti-

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that he then paid one half-year's amount, and continued to pay same until Lady-day 1821.

Admits that he alleges, and insists that he has made a composition of the tithes of the lands called B.

Saith that he instructed his solicitor at Michaelmas, 1821, to make a tender to the plaintiff C. E., believes that he did so, and saith that no notice has been given to determine the composition.

Denies applications being made as stated in the bill; and admits that he never entered into any agreement with the plaintiffs in respect of the tithes than as aforesaid, but insists upon the payments made as binding. Denies having grown on the lands called B., wheat, &c. but ad-

CH. IX. Admits that he has by himself and others sold many copies of the work, and stating the number of such copies. ties of wheat, barley, and other corn, and grain, excepting oats, as hereinafter stated, or had in each year during the time aforesaid, growing upon and had taken from off the said lands divers or any quantities of wheat and other corn and grain excepting oats, but this defendant admits he hath had such quantities of clover as hereinafter stated, but no other artificial grasses, and that he hath had during the time aforesaid divers quantities of grass which he mowed and made into hay, and divers quantities of potatoes, turnips, and parsnips; and this defendant, &c., &c.; And these defendants severally deny, &c. (*see form No. CXLIV. p. 187*).

CLXXXI. Further answer after exceptions taken and allowed to the defendant's former answer to a bill for an account, and to restrain the infringement of a copyright.

Admits that he has by himself and others sold many copies of the work, and stating the number of such copies. (*For the form of title see No. CXXIX. p. 182.*) This defendant, saving and reserving to himself, as in and by his former answer to the said complainant's said bill of complaint was saved and reserved, for further answer thereto, or unto so much thereof as this defendant is advised is material or necessary for him to make answer unto, answereth and saith he admits it to be true that this defendant hath by the defendants T. N. L. and R. O. and by other booksellers employed by him, published and sold many copies of the ——— edition of ——— published by this defendant as in his former answer mentioned; and that the number of such copies sold by him amounts in the whole to ———, or thereabouts, as nearly as this defendant can set forth the same to his knowledge or belief; but this defendant denies that he is now proceeding or threatens to proceed in publishing and selling the said book, having discontinued the sale thereof, as in this defendant's former answer mentioned; And this defendant further answering, saith that the profit which he hath made by such publication doth not exceed the sum of £ ——— to the best of this defendant's knowledge and belief, and this defendant admits that he hath applied the produce and profits of the said publication to his own use; And this defendant saith that he printed and published ——— copies of the said book or work and no more, and that he hath sold ——— copies, and that there now remain ——— copies in his own custody or power, or in the custody or power of other persons by his order or for his use, as nearly as he can set forth the said several particulars as to his knowledge, information, or belief; and this defendant hath, in a schedule to this his further answer annexed or underwritten, and which he prays may be taken as part thereof, set forth to the best of his knowledge, remembrance, infor-

mation and belief, a just and true account of all the sums of money which have arisen by the publication and sale of the said book and the profits which have arisen therefrom. CH. IX.
J. L.

CLXXXII. Answer of a trustee submitting to act as the Court shall direct.

This defendant, &c. (*see form No. CXL. p. 184*), admits it to be true that such indentures of lease and release as in the said bill of complaint are stated to hear date ———, were duly made and executed by and between such parties and to such purport or effect as are therein set forth so far as the same are therein set forth; but for his greater certainty, nevertheless, this defendant craves leave to refer to the said indentures when produced; And this defendant further answering saith he admits it to be true that the intended marriage between the said complainants J. P. and E. P. was soon afterwards had and solemnized, and that the said other complainants (*the children*) are the only children of the said marriage; And this defendant admits that he doth decline to act in the trusts of the said settlement, and that he is desirous of being discharged therefrom, and that he is ready to convey and release the said trust premises to the said complainant S. M. M. and such new trustee as may be appointed by this Honorable Court on being indemnified in that behalf and paid all his costs and expenses.

CLXXXIII. Conclusion of an answer insisting that plaintiff's remedy is at law and not in equity, and claiming the same benefit as if the defendant had demurred to the bill.

And this defendant submits to this Honorable Court that all and every the matters in the said complainant's bill mentioned and complained of, are matters which may be tried and determined at law, and with respect to which the said complainant is not entitled to any relief from a Court of equity, and this defendant hopes he shall have the same benefit of this defence as if he had demurred to the said complainant's bill; And this defendant denies, &c.

ANSWERS AND DISCLAIMERS.

CH. IX. CLXXXIV. Answer and disclaimer by the personal representatives of a mortgagee, relinquishing the security of the premises comprised in the plaintiff's mortgage.

In Chancery.

The joint and several answer and disclaimer of J. F. and R. C. two of the defendants to the original and amended bill of complaint of W. S., J. C., and T. P., complainants.

Admit the death of the testator, his will appointing the defendants executors, and that they proved his will. These defendants, &c. (*see form No. CXL. p. 184*), say they admit that J. C. in the said bill named departed this life on the ——— day of ———, having first duly made his last will and testament, whereby he appointed his sons, these defendants, joint executors thereof, and that they, these defendants, proved the same in the Prerogative Court of the Archbishop of York, on the ——— day of ———, and thereby became his legal personal representatives; And

Say they do not claim any interest in the premises, nor object to the payment of what is due to the plaintiffs, and disclaim all right and interest in the estates. And these defendants further severally answering say they do not claim any interest in the estates in the said bill stated to be charged with the annuities to the said complainants W. S. and J. C., therein mentioned, and with the mortgage therein also mentioned to be assigned to them; And these defendants further severally answering say they do not object to the payment of what may be due to the said complainants out of the rents and profits of the said estates; And these defendants do disclaim all right, title, and interest, in and to the said estates, and every part thereof; And these defendants deny, &c. (*see form No. CXLIV. p. 187*).

CLXXXV. Answer and disclaimer denying having ever claimed any right or interest in the premises in the bill mentioned.

Answer and disclaimer of A. B. the defendant to the bill of complaint of C. D. complainant.

Denies that he ever claimed, and now disclaims all right and interest in the premises. This defendant, &c. (*see form No. CXL. p. 184*), saith that he doth not know that he this defendant to his knowledge or belief ever had, nor did he claim or pretend to have, nor doth he now claim any right, title, or interest, of, in, or to the estates and premises, situate, &c. in the said complainant's bill set forth, or any part thereof, and this defendant doth disclaim all right, title, and interest to the said

estates and premises, and every part thereof; And this defendant CH. IX.
denies, &c. (*see form No. CXLIV. p. 187*).

CLXXXVI. Answer and disclaimer of a trustee under a will, denying having ever interfered in the trusts or received the rents of the trust estates.

The several answer and disclaimer of A. B. one of the defendants to the bill of complaint of L. M. complainant.

This defendant, &c. (*see form No. CXL. p. 184*), answereth and saith that he believes that C. D. did die seised of such estates in ——— as in the said complainant's said bill are mentioned; And this defendant does believe that the said C. D. did make such last will and testament in writing, and did thereby create such trusts out of the said ——— estates, and appointed this defendant trustee thereof in such manner and to such purport and effect as in the said complainant's said bill for that purpose set forth; And this defendant does believe that the said testator made E. F. gent. executor of his said will; and this defendant does believe that the said C. D. soon after making his said will departed this life, (that is to say): on or about the ——— day of ———, without revoking or altering his said will, seised of such estates in ——— as in the said complainant's said bill are set forth; And this defendant further saith that he was advised that the said trust would be attended with some difficulty besides expense and loss of time to this defendant; therefore this defendant absolutely refused to intermeddle therewith, or in any way concern himself therein; And this defendant denies that he or any person or persons for him ever entered on the said trust estate, or ever received any of the rents and profits thereof; but this defendant has been informed and believes that the same were received by G. H. of, &c. gent. who was employed by the said testator, C. D. in his lifetime to receive the rents and profits of the said ——— estate for him the said C. D.; And this defendant believes that the said G. H. hath received the said rents and profits of the said trust estate ever since the death of the said testator C. D. and doth still continue to receive the same; And this defendant positively denies that the said G. H. had any power or authority or direction from this defendant to receive all or any part of the rents and profits of the said trust estate, or that he ever accounted to this defendant for the same: and this defendant is very desirous and ready to be discharged from his said trust, and to do any act for that purpose as this Honorable Court shall direct, this defendant being indemnified in so doing and having his costs; And this defendant further saith that as to so much

Believes that the testator died seised of certain estates, that he made a will appointing defendant trustee,

and E. F. executor,

that he died soon after, seised of the estates.

Saith that he refused to intermeddle in the trusts, denies having ever entered into possession; believes that the rents were received by G. H. who was the testator's receiver; and that he has continued to receive the same; denies that he has any authority from defendant, who is desirous to be discharged.

CH. IX. of the said bill as seeks a discovery of this defendant's title to the lands in ———, this defendant saith that he doth not know that he Denies that he ever claimed, and doth disclaim any right or interest in the premises. this defendant to his knowledge or belief ever had nor did he claim or pretend to have nor doth he now claim or pretend to have any right, title, or interest, of, in, or to the said estate in ———, in the said complainant's bill set forth or any part thereof; and this defendant doth disclaim all right, title, and interest in and to the said estate in ——— in the complainant's said bill mentioned, and every part thereof; And this defendant denies, &c. (*see form No. CXLIV. p. 187*).

CHAPTER X.

REPLICATIONS. (a)

CLXXXVII. A general replication to a defendant's answer.

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The replication of A. B., complainant, to the answer of C. D., defendant.

This repliant saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; Without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed, or denied is true; All which matters and things this repliant is, and will be ready to aver and prove as this Honorable Court shall direct, and humbly prays as in and by his said bill he hath already prayed.

CLXXXVIII. A special replication to the answers of several defendants. (b)

The replication of J. M. complainant, to the several answers of H. N., J. B., W. N., and R. N., defendants to the said complainant's original and amended bill.

This repliant saving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for and by way of replication saith that his said original and amended bill of complaint, exhibited into this Court against the said defendants, and all and every the matters, &c. therein contained, are true, certain, and sufficient in the law to be answered unto by the said defendants,

(a) Eq. Plead. Chap. XIII.

(b) A special replication is always signed by counsel.

CH. X. and that the answers of the said defendants are untrue, uncertain, and insufficient in the law to be replied unto by this repliant, save and except that this repliant doth admit it to be true as in the said answers, some or one of them is by the said defendants some or one of them alleged, that the mortgage in the said original and amended bill mentioned to be made by P. M., deceased, to R. N. and R. N., deceased, and therein respectively named, and bearing date the 2d day of June, 1754, was made and entered into between them of and concerning and comprehended all the said P. M.'s then plantations and meadows in ———, and in the said original and amended bill and the said defendants' said answers respectively mentioned, and that the same plantations and meadows were or are all situate and being in ———, afresaid in the said bill also mentioned: and this repliant doth moreover admit it to be true as in the said answers of the said defendants, some or one of them is alleged, that on or about the 2d day of October, 1755, the said P. M. did settle an account with an agent of or for the said R. N., then deceased, and in the said bill named, or of or for his executors, of and concerning all and every sum and sums of money therefore due and owing from the said P. M. to the said R. N. and R. N., or either of them, their or either of their executors or administrators, and did by an agreement of that date in writing, under his hand and seal admit, and this repliant doth now hereby admit and acknowledge, that on the said 2d day of October, 1755, there was due and owing from the said P. M. on the said security of all the said plantations and premises, and on the balance of such accounts the full sum of £ 577 3s. in the said answers or some or one of them mentioned and claimed as the then balance of such accounts and payable with interest; Without that, that there is any other matter or thing in the said defendants' said answers contained, material or effectual for this repliant to reply unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; All which matters and thing (save and except as aforesaid) this repliant is ready to aver and prove as this Court shall award, and prays as in and by his said original and amended bill he hath prayed.

CHAPTER XI. .

EXAMINATIONS.

Form of examination of a defendant before a Master upon interrogatories settled by a Master pursuant to a decree. CH. XI.

In Chancery.	{	Between A. B. - - - - Complainant,
		and
		C. D. - - - - Defendant.

The answer and examination of the said defendant C. D. to interrogatories exhibited on behalf of the said complainant A. B. for the examination of the said defendant before Sir J. S., bart., one of the Masters of this Court to whom this cause stands referred, pursuant to the decree made on the hearing of this cause, dated _____.

To the first interrogatory this examinant saith that, &c.

Examination of executors before a Master, referring to schedules annexed.

In Chancery.

Between, &c. [*naming all the parties, plaintiffs and defendants*].

The examination of the said complainants J. W. and A. G., the executors of S. P., deceased, in the pleadings in this cause named, upon interrogatories exhibited by the said defendants before J. W. Esq. one of the Masters of this Honorable Court, pursuant to the decree made on the hearing of this cause, bearing date the _____ day of _____.

1st. — To the first interrogatory, these examnants say that shortly after the decease of S. P. the testator in the pleadings in this cause named, which happened on or about the 3d day of December, which was in the year of our Lord _____, these examnants employed T. N., then a licensed appraiser and auctioneer in the city of _____,

CH. XI. but now deceased, to take an inventory and make an appraisement, and the said T. N. did as these defendants believe, take an inventory and make an appraisement, of all the household goods and furniture, linen, and other personal estate and effects of the said testator then being in and about his dwelling-house, situate in, &c. (other than and except such parts thereof as consisted of chattel interests in houses or lands, and money due on mortgages, bonds, and promissory notes, and also other than and except such parts of his said personal estate as were and are by the said testator in and by his said will and codicil specifically given, bequeathed, and disposed of), and such household goods, household furniture and linen so inventoried and appraised, were afterwards sold and disposed of by public auction by the said T. N., and such inventory and appraisement so made and taken by the said T. N. is now in the custody or power of this examiner A. G., and these examiners crave leave to refer thereto; And these examiners say that they did not make any inventory or particular of the real estates or of the chattels real or securities of their said testator, but the same are nevertheless hereinafter in this their examination fully and particularly mentioned, described, and set forth according to the best of their knowledge and belief.

2d. — To the second interrogatory these examiners say that the said S. P. the testator in the pleadings in this cause named, was at the time of his death in manner hereinafter mentioned, possessed of, interested in, or entitled unto, a considerable personal estate, consisting of leases for terms of years, absolute and determinable with lives, and also of moneys due and owing to him upon mortgages, bonds, and promissory notes, rents, and arrears of rent, and the several household goods and furniture contained and set forth in the said inventory and appraisement, but no cash to the knowledge or belief of these examiners; And these examiners say that in a schedule hereunto annexed, entitled "The first schedule," and which they pray may be taken as a part of this their examination and to which they crave leave to refer, they have according to the best of their knowledge, remembrance, information, and belief, each speaking for himself, set forth a full, true, and particular account of all the goods, chattels, rights, credits, debts, personal estate and effects whatsoever, of or belonging to their said testator, the said S. P. at the time of his death, with the several and respective natures, species, kinds, sorts, quantities, qualities, and true and utmost values thereof respectively, distinguishing what part thereof consisted of chattels real from the said testator's other personal estate; And these examiners also say that their said testator was, at the time of his death, seised of a freehold estate, consisting of two messuages or dwelling-houses, coach-houses, stables, and other buildings, situate in ———

Reference
to the 1st
Schedule.

aforesaid, but no other freehold estate to the knowledge or belief of these examiners; And these examiners in another schedule hereunto annexed entitled, "The second schedule," which they pray may be taken as a part of this their examination, and to which they also crave leave to refer, have according to the best of their knowledge, information, and belief, set forth a true and particular account of the said freehold estates of the said testator, and of the yearly value thereof, and of all rents due and in arrear for such freehold estates at the time of their said testator's death; And in another schedule hereunto annexed entitled "The third schedule," which they pray may be taken as a part of this their examination, and to which they also crave leave to refer, these examiners have set forth a true account of how much and what particular parts or part of the said testator's personal estate, or of such rents and profits have or hath at any time or times and when been received, got in, or possessed by these examiners respectively, or by any person or persons and whom by their or either of their order or direction, privity, or consent, or for their or either of their use respectively, with the several and respective particulars and the value thereof, and how and when and by whom, and for what use or purpose the same have been sold, paid, applied, administered, or disposed of, and how much and what part thereof, doth now remain in the hands of these examiners, and of each of them, and what is become thereof; And these examiners also say that in the same schedule they have to the best of their knowledge, information, and belief, set forth a true and particular account of what debts due and owing to their said testator's estate, are now standing out and unreceived either wholly or in part, and from whom the same are so respectively due and owing, and why the same have not been got in and received by them; And they have also in the same schedule set forth an abstract, or list, and short account of all securities now in their hands, custody, or power, and of all debts due and owing to their said testator's estate.

3d. — To the third interrogatory these examiners say that the said S. P. was at the time of his death indebted unto several persons in divers sums of money to a considerable amount; And these examiners have in another schedule hereunto annexed, entitled "The fourth schedule," which they also pray may be taken as part of this their examination, and to which they crave leave to refer, set forth according to the best of their respective knowledge and belief, and so far as they are able, a full, true, and particular account of all sums of money paid by these examiners in discharge of debts due and owing from their said testator at the time of his death, and to whom such debts were due, and for what, and when, and by whom such debts were paid or satisfied respectively; And these examiners

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Reference
to the 2d
Schedule.Reference
to the 3d
Schedule.Reference
to the 4th
Schedule.

CH. XI. believe that all such sums of money so paid as aforesaid, were really due and owing from their said testator at the time of his death, and that nothing now remains due for or on account of any debts or debt of their said testator, so far as such debts have come to their knowledge respectively: And these examinants say that they have also paid or expended divers large and considerable sums of money for or on account of the said testator's funeral expenses, and for the probate of his will, and other expenses relating to his affairs; and these examinants have in the last-mentioned schedule set forth an account of such sum or sums of money as they have so respectively paid on the accounts aforesaid, and also the times when, and the persons to whom the same have been so paid, or how the same have been expended; And these examinants verily believe that no further sum or sums of money now remain due or owing to any person or persons in respect of the debts or funeral expenses of the said testator or otherwise on account of his estate, except the cost and charges of these examinants as executors as aforesaid, and particularly the costs of the suit.

Examination of femes covert entitled to shares of money in a cause; with the certificate of the commissioners and affidavit of the attesting witness.

Between, &c. [*naming all the parties, plaintiffs and defendants*].

The examination of the plaintiffs Hannah D. and Mary G., in pursuance of an order made in this cause, bearing date the —— day of ——, 1786.

Whereas it is ordered by the said order of the —— day of —— last, that the plaintiff Hannab, the wife of the plaintiff R. D. who resides at ——, and the plaintiff Mary, the wife of the plaintiff I. G., who resides at ——, should respectively attend E. B. of, &c. Esq. the Rev. W. L. of, &c. the Rev. J. Q. of, &c. and H. D. of, &c. or any two of them, and the said plaintiff Hannah D. was to be solely and secretly examined by them separate and apart from her said husband, how and in what manner, and to what uses, she was willing and desirous the third part of the sum of —— cash, in the said order mentioned, should be paid and applied, and the said plaintiff Mary G., was also to be solely and secretly examined by them separate and apart from her said husband, how and in what manner, and to what uses she was willing and desirous her third part of the said cash should be paid and applied, and the said E. B., W. L., J. Q., and H. D., or any two of them who should examine the said Hannah

D. and Mary G., were to take their examinations respectively in writing, and the same were to be signed by them respectively, and the said E. B., W. L., J. Q., and H. D. or any two of them who should take such examinations, were to certify the same in writing, and the signing of the said Hannah D. and Mary G., and such certificates were to be verified by affidavit, and upon the return of such certificates, such further order should be made as should be just: Now I the said plaintiff Hannah D. being solely and secretly examined by the said E. B., and H. D., separate and apart from the said plaintiff R. D. my husband, how and in what manner, and to what uses I the said plaintiff Hannah D. am willing and desirous my third part of the said sum of ——— cash, in the said order mentioned, should be paid and applied, I the said plaintiff Hannah D., do say and declare that I am willing and desirous that the sum of ———, being my third part of the said sum of ——— cash, in the said order mentioned, may and shall be paid to the said plaintiff R. D., my husband, to and for his own use and benefit, and I the said plaintiff Hannah D. do hereby freely and voluntarily consent that the same may be paid to him accordingly; And I the said Mary G. being solely and secretly examined by the said E. B. and H. D. separate and apart from the said plaintiff J. G. my husband, how and in what manner, and to what uses I the said plaintiff Mary G. am willing and desirous my third part of the said sum of ——— cash, in the said order mentioned shall be paid and applied, I the said plaintiff Mary G., do say and declare that I am willing and desirous that the said sum of ———, being my third part of the said sum of ——— cash, in the said order mentioned, may and shall be paid to the said plaintiff J. G. my husband, to and for his own use and benefit, and I the said Mary G. do hereby freely and voluntarily consent that the same may be paid to him accordingly; In witness whereof we the said plaintiff Hannah D., the wife of the plaintiff R. D., and the said plaintiff Mary G., the wife of the said plaintiff J. G., have hereunto signed our names respectively, the ——— day of ———, 1786.

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Witness

HANNAH D.

MARY G.

[*Indorsed.*]

(A)

This is the paper referred to by the affidavit of Wade Smith, sworn to by him this ——— day of ———, 1786, when the same paper-writing was produced and shown to the said deponent.

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COMMISSIONERS' CERTIFICATE.

Between, &c. [*naming all the parties*].

To the Honorable, &c.

We, E. B. of ——— Esq. and H. D. of ——— gent. do hereby certify unto your honor that pursuant to an order made by your honor in this cause, bearing date the ——— day of ——— 1786, we have been attended by the plaintiff Hannah, the wife of the plaintiff R. D. who resides at ———, and by the plaintiff Mary, the wife of the said plaintiff J. G. who resides at ———, respectively, and we have in pursuance of the said order, examined the said plaintiff Hannah D., solely and secretly, separately and apart from the said plaintiff R. D. her husband, how, and in what manner, and to what uses she the said plaintiff Hannah D. was willing and desirous the third part of the sum of ——— cash in the said order mentioned should be paid and applied, and we did at the same time read the said order to her, and explain to her the purport and effect thereof, and we do certify unto your honor that the said plaintiff Hannah D., did on such her examination say and declare she was willing and desirous that the sum of ———, being her third part of the said sum of ——— cash, in the said order mentioned, might and should be paid to the said plaintiff R. D. to and for his own use and benefit, and she did thereby freely and voluntarily consent that the same be paid to him accordingly; And we do further certify unto your honor, that we have in pursuance of the said order, also examined the said plaintiff Mary G., solely and secretly, separately and apart from the said plaintiff J. G. her husband, how and in what manner, and to what uses she the said plaintiff Mary G. was willing and desirous her third part of the sum of ——— cash, in the said order mentioned should be paid and applied, and we did at the same time read the said order to her, and explain to her the purport and effect thereof, and we do certify unto your honor, that the said plaintiff Mary G. did on such her examination say and declare she was willing and desirous that the sum of ———, being her third part of the said sum of ——— cash in the said order mentioned, might and should be paid to the said plaintiff J. G. her husband, to and for his own use and benefit, and she did thereby freely and voluntarily consent that the same be paid to him accordingly, and we took down such the examinations, declarations, and consents of the said Hannah D. and Mary G. in writing, and they thereupon signed the same

respectively as thereby now appears. Witness our hands the _____ CH. XI.
day of _____, 1786.

Witness, WADE SMITH.

E. B.

H. D.

[*Indorsed.*]

(B)

This is the paper-writing referred to by the affidavit of Wade Smith, sworn to by him this _____ day of _____, 1786, when the same paper-writing was produced and shown to the said deponent.

AFFIDAVIT.

Between, &c. [*naming all the parties*].

Wade Smith of _____, gent. maketh oath and saith that he was present and did see Hannah D., wife of the plaintiff R. D., and Mary G., wife of the plaintiff J. G., respectively sign the examination, declaration, and consent, being the paper-writing marked with the letter (A), and saith that he was also present and did see E. B. of _____, Esq. and H. D. of _____, gent. sign the certificate marked with the letter (B), and that the names of Hannah D. and Mary G. now appearing set to the said examination, declaration, and consent, as the names of the said Hannah D. and Mary G. and the names E. B. and H. D. now appearing set to the said certificate as the parties signing the same are of the respective, proper handwriting of the said Hannah D. and Mary G., and E. B., and H. D., and that the name "Wade Smith" now appearing, set, or subscribed to the said examination, declaration, and consent, and also to the said certificate as a witness to the signing the same respectively, is and are respectively of the proper handwriting of this deponent.

WADE SMITH.

Sworn, &c.

Examination of a feme covert upon a commission, as to her execution of a deed of moneys to be laid out in lands in tail; with the certificate of the commissioners and affidavit of the attesting witness.

In Chancery.

Between, &c. [*naming all the parties, plaintiffs and defendants*].

I, D. W. the wife of the said J. G. W. do hereby declare that I freely and voluntarily executed the deed mentioned in the pleadings

CH. XI. in this cause, bearing date the 12th day of April, 1783, and that I am well acquainted with the purport and effect thereof, and desire that the same may be carried into execution. Witness my hand this ——— day of ———, 1784.

Witness, JOHN GIBBS.

D. W.

COMMISSIONER'S CERTIFICATE.

Between &c. [*naming all the parties*].

To the Honorable, &c.

We whose names are hereunto subscribed do hereby certify to your honor, that pursuant to an order made in this cause bearing date the ——— day of ———, 1783, we attended the said D. W. the wife of the said J. G. W., and after having separately and apart from her said husband read to her the deed bearing date the 12th day of April, 1783, in the said decree mentioned, and explained to her the purport and effect thereof, we did examine her separately and apart from her said husband whether she had freely and voluntarily executed the said deed, and whether she was consenting that the same should be carried into execution, and on such examination the said D. W. did declare that she had executed the said deed freely and voluntarily, and was consenting and desirous that the same should be carried into execution, and that we took down such her examination or declaration in writing, and that she thereupon signed the same as the same now appears above written. Witness our hands this ——— day of ———, 1783.

Witness, JOHN GIBBS.

A. B.

C. D.

AFFIDAVIT.

Between, &c. [*naming all the parties*].

John Gibbs of ———, gent. maketh oath and saith, that he was present and did see the said defendant D. W. the wife of the said defendant J. G. W. sign the examination or declaration above written, and that he was also present and did see the said A. B. and C. D. sign the certificate above written, and that the name D——— W——— now appearing set to the said examination or declaration, and the names A——— B——— and C——— D——— now appearing set to the said certificate as the parties signing the same respectively, are of the respective proper handwriting of the said D. W., A. B., and

C. D., and that the name John Gibbs now appearing set or subscribed to the said examination or declaration, and also to the said certificate as a witness to the signing the same respectively, is and are of the proper handwriting of him this deponent. CH. XI.

JOHN GIBBS.

Sworn, &c.

Examination of a person claiming an interest in the premises in the pleadings mentioned, who had petitioned to be examined upon an interrogatory *pro interesse suo*.

In Chancery.	{	Between H. R. an infant, by John Miller his next friend - - - - - Plaintiff, and T. J. W., M. A. T., &c. &c. Defendants.
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The answer and examination of G. R. of ——— to a certain interrogatory exhibited before F. C. Esq., one of the Masters of this Honorable Court for the examination of the said G. R. *pro interesse suo* in certain premises in the pleadings in this cause mentioned, pursuant to an order of this Honorable Court bearing date the —— day of ——, made on the petition of the said G. R.

To the said interrogatory this examinant saith, that by a certain indenture of lease bearing date, &c. ; And this examinant further saith, that by a certain indenture of assignment bearing date, &c. ; And this examinant further saith, that the said T. J. W. being entitled to the said two tenth parts or shares of and in the said last-mentioned leasehold messuages or tenements, and premises under and by virtue of the last two mentioned assignments, did in and by a certain indenture of assignment bearing date on or about the —— day of ——, for the considerations therein mentioned, grant, bargain, sell, assign, transfer, and set over unto him, this examinant, all those two full and equal undivided tenth parts or shares, (the whole into ten equal parts or shares to be divided) of and in all the said last-mentioned leasehold messuages or tenements and premises hereinbefore described, To hold the same unto this examinant, his executors, administrators, and assigns, for all the rest, residue, and remainder then to come and unexpired of the said term of —— years ; And this examinant further saith, that under and by virtue of the last will and testament of the said W. H. and the several assignments hereinbefore mentioned, he is entitled to eight tenths of the said leasehold messuages or tenements and premises comprised in and demised by the said indenture of lease of the —— day of ——, for all the residue of the said term of —— years thereby granted.

CHAPTER XII.

EXCEPTIONS.

Exceptions to Answers. (a)

An exception to the answer of several defendants.

CH. XII.

In Chancery. { Between W. W., J. W., and C. L., on behalf
of themselves and all other the
creditors of J. B. who shall come
in and contribute to the expense
of this suit, - - Complainants,
and
J. G. and T. B. - - Defendants.

An exception taken by the said complainants to the insufficient answer of the said defendants.

For that the said defendants have not to the best of their knowledge, remembrance, information, and belief, answered and set forth a full, just, and true inventory and account of all and singular the goods and chattels, personal estate and effects whatsoever which J. B. the younger in the said bill named, was possessed of, entitled to, or interested in, at the time of the date of the indenture in the said bill mentioned, and all the particulars whereof the same consisted, and the quantities, qualities, full, real, and true values thereof and of every such particulars; And whether all or some and which of such particulars have not, and when, been possessed or received by, or come to the hands of them, the said defendants, or the one, and which of them, or some, and what person or persons, by their or either of their order, or for their or either of their use, and how, and in what manner, and when and where, and by and to whom, and for how much the same and every or any, and what part thereof hath been sold and disposed of; And whether any, what parts thereof, and to what value or amount now remain undisposed of, and what is become thereof.

In all which particulars the said complainants except to the answer of the said defendants as evasive, imperfect, and insufficient, and humbly pray that the said defendants may be compelled to put in full and sufficient answer thereto.

(a) Eq. Plead. § 689, 860 - 886, 891.

An exception taken to the answer of a defendant to an amended bill. CH. XII.

In the Exchequer. { Between A. B. - - - Complainant,
and
C. D. - - - Defendant.

An exception taken by the said complainant to the insufficient answer of the said defendant to the said complainant's amended bill of complaint.

For that the said defendant hath not to the best and utmost of his knowledge, remembrance, information, and belief, set forth the documents by which the modus or composition in the said defendant's former answer alleged and insisted upon is made out.

In which particular the said complainant excepts to the answer of the said defendant as evasive, imperfect, and insufficient, and humbly prays that the said defendant may be compelled to put in a full and sufficient answer thereto.

Several exceptions taken to a defendant's answer.

In Chancery. { Between J. R. - - - Complainant,
and
J. F. and C. R. - Defendants.

Exceptions taken by the said complainant to the insufficient answer of the said defendant C. R. to the said complainant's bill of complaint.

1st. — For that the said defendant C. R. hath not to the best and utmost of his knowledge, remembrance, information, and belief, answered and set forth whether at the time when the reversionary interest of the said C. R. in the said bill mentioned, was put up for sale as therein mentioned, the Reverend J. F. R. in the said bill named, the father of the said complainant, did not and without the knowledge of the said complainant request T. C. in the said bill named to attend or procure some person to attend the said sale and purchase the reversionary interest for him the said J. F. R., nor whether the said T. C. did not request J. G. in the said bill named, to attend such sale, and to purchase the reversionary interest of the said C. R. in the estate in the said bill mentioned for the said J. F. R. as therein mentioned, nor whether the said J. G. did not accordingly attend such sale, nor whether he did not become the purchaser of the said reversionary interest for the said J. F. R. at the sum of \$ 100 or at some other, and what sum of money.

CH. XII.

2d. — For that the said defendant hath not in any manner aforesaid answered and set forth whether in consequence of such purchase the said J. F. R. did not give instructions to his then solicitor for preparing the necessary conveyance of the said reversionary interest in the said estate and premises, and for suffering a recovery and making a complete settlement thereof according to the recommendation of Mr. W., his counsel in the said bill named.

3d. — For that the said defendant hath not in manner aforesaid answered and set forth whether the necessary drafts of such deeds were not accordingly prepared by the said Mr. W. for that purpose, nor whether, before such deeds were executed, the said J. F. R. did not change his mind respecting the same, and give directions to have fit and proper deeds prepared for conveying the said estate and premises to the said complainant for the said complainant's own benefit, nor whether the same was not so made accordingly.

4th. — For that the said defendant hath not in manner aforesaid answered and set forth whether the said J. F. R. did not himself pay the said sum of \$100 out of his own proper moneys as the purchase-money of the said estate.

5th. — For that the said defendant hath not in manner aforesaid answered and set forth whether under the circumstances in the said bill stated, the said complainant was or can be considered as a purchaser himself of the reversionary interest aforesaid of the said estate and premises, and why, nor whether the said complainant was in fact the purchaser thereof, nor whether he did ever and when, advance and pay the purchase-money or any part thereof out of his own proper moneys, nor whether the said J. F. R. was not the actual purchaser thereof in the manner and under the circumstances in the said bill stated, and if not, why not.

6th. — For that the said defendant hath not in manner aforesaid answered and set forth whether the reversionary interest in the said estate so purchased by the said J. F. R. was not a free gift from him to the said complainant and for his advancement in life, and if not why not; nor whether the said C. R. did not well know thereof at the time of the execution of the aforesaid conveyance to the said complainant, nor whether he did not fully concur and approve thereof, nor whether all or some, and which of the rest of the creditors who had proved debts under the said commission did not also fully concur and approve of the same.

7th. — For that the said defendant hath not in manner aforesaid answered and set forth whether the sale of the reversionary interest aforesaid to the said J. F. R. did not take place in the month of June ———, or at some other and what time, nor whether the conveyance to the said complainant did not take place in the month of January ———, or at some other and what time.

8th. — For that the said defendant hath not in manner aforesaid answered and set forth whether, upon the death of his father, the said J. F. R. in the month of March ——— or at some other and what time, the said complainant did not enter into possession of the said estate under and by virtue of the said conveyance, nor whether he hath not ever since been in the undisturbed possession thereof without any claim being made by or on the part of the said C. R., or the validity of the transactions and conveyance in the said bill stated being questioned by him.

9th. — For that the said defendant hath not in manner aforesaid answered and set forth whether under all the circumstances in the said bill stated, the said C. R. hath any and what claim upon the said estate and premises, nor whether he is entitled to question the validity of the said complainant's title to the said estate, nor whether the said complainant at any time and when, executed any declaration of trust of the said estate and premises, or any part thereof, to or in favor of him the said C. R.

In all which particulars the said complainant excepts to the answer of the said defendant C. R. as evasive, imperfect, and insufficient, and humbly prays that the said defendant C. R. may be compelled to put in a full and sufficient answer thereto.

EXCEPTIONS TO REPORTS.

Exceptions to a Master's report relating to copartnership accounts.

In Chancery.	{	Between T. J. Briggs - - Complainant,
		and
		J. Smith, Mark Briggs, &c. [<i>inserting all</i> <i>the names</i>] - - Defendants,
		by original and amended bill
		And between, &c. &c. [<i>stating the names of th</i> <i>parties,</i>]
		by supplemental bill.

Exceptions taken by the said M. B. one of the defendants in the said original and amended bill and supplemental bill named, to the report of J. S. H., Esq. one of the Masters of the Court of ———, to whom the said causes stand referred, made in pursuance of the decree made on the hearing of the said causes bearing date the ——— day of ———.

1st *Exception.* — For that the said Master hath in and by his said

CH. XII. report certified that he has charged this defendant, &c. &c. Whereas the said Master ought to have certified that he found this defendant had expended the further sum of, &c.

2d *Exception.* — For that the said Master hath in and by his said report certified that he found that all moneys, &c.

3d *Exception.* — For that the said Master hath in and by his report certified that he finds that the several balances and sums thereinbefore stated, are the clear profits of such copartnerships respectively as in the said report mentioned, except as to the sums thereinbefore mentioned to be unaccounted for by this defendant, and as to them, he was unable to ascertain the clear profits of the said copartnerships for the reasons expressed; Whereas the said Master ought to have certified that the several sums of money stated by this defendant in his examination to have been the profits made by this defendant on, &c. &c.

Wherefore the said M. B. excepts to the said Master's report, and humbly appeals therefrom to the judgment of this Honorable Court.

Exceptions to a Master's general report taken on the ground of the allowances made to the defendant, an executor, in the accounts subjoined to the report by way of schedule.

In Chancery.	{	Between Ann Freeman, &c.	-	Complainants,
		and		
		W. Fairlie	-	Defendant.

Exceptions taken by the said complainants to the general report of ———, one of the Masters of the Court of ———, to whom the said cause stands referred, made in pursuance of the decree made on the hearing of the said cause bearing date the 3d day of February, 1816.

1st *Exception.* — For that the said Master hath in and by his said general report, and the second schedule to which it refers, allowed to the said defendant by way of discharge, various sums of money, amounting together to \$ ———, or thereabouts, by way of commission, at the rate of 5 per cent. on principal and interest, moneys received by the said defendant on account of the personal estate of his testatrix in the pleadings named; Whereas the complainants submit, the said sums of money by way of commission, or any of them, ought not to have been allowed to the said defendant in respect of such his receipts, he the said defendant being an executor, and his testatrix having by a codicil to her will, desired her executors would each accept \$ ———, as some small acknowledgment for the

trouble they would necessarily have in the execution of the trusts CH. XII.
reposed in them.

2d *Exception.* — For that the said Master hath in and by his said general report and the second schedule to which it refers, allowed to the said defendant by way of discharge, various other sums of money, amounting together to \$ ———, by way of commissions at the rate of \$ 5 per cent. on sums annually credited by the said defendant in his account as executor for interest from time to time in his hands, and with which interest he is charged in the first schedule to the said report; Whereas the complainants submit the said defendant is not entitled to, and ought not to have been allowed such last-mentioned commission for the following (among other) reasons: — *First*, Because the sums credited for interest were not in fact received by the said defendant and invested as part of the personal estate of the said testatrix, but were (as appears by the two examinations of the said defendant) together with the aforesaid principal moneys mixed with the funds of the different mercantile houses in which the said defendant was and is a partner and used in their business of merchants: And *secondly*, Because by virtue of the said decree the said Master is directed to inquire what interest and profit has been made by the said defendant of the personal estate of the said testatrix, and what balance he had from time to time in his hands belonging thereto, and that therefore the complainants are advised the said Master is not at liberty to make to the said defendant any allowance or abatement from the interest admitted by the said defendant to have been made by him, or with which he has submitted to be charged.

Wherefore, &c.

Exceptions to a Master's report in favor of a title depending on the validity
of a recovery.

In Chancery.	{	Between Christopher Shapland, Complainant, and Jane Smith, - - Defendant.
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Exceptions taken by the said defendant to the report of J. E. Esq., one of the Masters of the Court of ——— to whom this cause stands referred by the decree made therein on the 18th day of May 1778, whereby it was referred to him to see whether the plaintiff can make a good title to the estate in question to the defendant, and which report bears date the 27th day of November in the year 1799.

1st *Exception.* — For that the said Master has by his said report

CH. XII. certified that he was of opinion that the plaintiff, together with the trustees and mortgagees, may make a proper conveyance by lease and release to the purchaser (under a good title) in fee, and that the term of fifty years therein mentioned, under the settlement of 1781, in the said report mentioned, the term of ninety years therein mentioned in the deed of September 1770 in the said report mentioned, and the term of one thousand years in the said report mentioned to have been created the 21st of April, 1772, must be assigned to a trustee for the purchaser to attend the inheritance: Whereas the said defendant apprehends that the said Master ought to have certified that a good title could not be made by the plaintiff to the said defendant for the reasons following: *First*, For that it appears by the abstract left by the said complainant with the said Master, that by the indentures of lease and release of the 15th and 16th days of August 1781, therein mentioned, the estates in question were conveyed from and after the death of C. S. and Mary his then intended wife therein named, to trustees in moieties for the term of fifty years in each moiety, in trust for raising £10,000 for the younger children of the said marriage as the said C. S. should by his will direct; and it appeared to the said Master that there were two younger children of the said marriage, viz. C. S. and R. S.; But it has not been made to appear before the said Master that the said two several terms of fifty years have been assigned to attend the inheritance, nor in whom the same are now vested; And *secondly*, For that it appears by the said abstract that J. S. who by the abstract is stated to be seised in fee of the lands in question, by his will, dated the 21st of June 1770, devised the same to trustees to hold to them, their heirs, and assigns forever, upon trust and to and for the uses, intents, and purposes thereafter mentioned; viz. in the words following: "Upon trust that they the said J. B., J. J., and G. S. and their heirs and assigns, shall yearly and every year, by equal quarterly payments by and out of the rents and profits of the said premises after deducting rates, taxes, repairs, expenses, and outgoings, pay such clear sum as shall then remain unto my brother C. S. and his assigns for and during the term of his natural life; And from and after his decease, To the use and behoof of the heirs male of the body of the said C. S. lawfully to be begotten, as they and every of them shall be in priority of birth; And in default of such issue, I give and devise the same unto C. S. son of the said G. S. for his life, and after his decease unto the said J. B., G. S. the elder, and J. S., and their heirs, upon trust to support the contingent remainders from being defeated; And after their decease, To the use and behoof of the right heirs of the body of the said C. S. lawfully begotten; And in default of such issue, I give and devise the same unto his brother G. S. and the heirs male of his body law-

fully issuing; And in default of such issue, To J. S. his brother and the heirs male of his body lawfully begotten; And in default of such issue, To his brother G. S. and the heirs male of his body lawfully begotten; And in default of such issue, to the right heirs of the said J. S. forever." And the said defendant therefore humbly submits to the judgment of this Honorable Court whether by virtue of such will the legal estate of and in the premises did not become vested in the said trustees, and whether the said C. S. the son took any greater interest in the lands than for his natural life and to his first and other sons in tail, and whether therefore the recovery in the said abstract mentioned to have been suffered by the said C. S. in Michaelmas Term 1770, is not void, and whether J. S. the son of the said C. S., (which J. S. is now living, but not a party to the suit mentioned in the report) hath not now as the first son of the marriage an estate tail in the said land; And *thirdly*, For that it appears by the said abstract that by indenture dated the 5th day of October 1775, the said C. S. and E. his wife, declared the uses of a fine levied by them in Trinity Term then last of the estates in question to and for the confirmation of certain indentures of lease and release of the 13th and 14th days of July then last, whereby, after reciting various mortgages, he conveyed the estates in question to trustees and their heirs in trust to be sold; and for securing the payment of several sums of money therein mentioned, and also for securing a farther sum of £ 900, and for raising £ 6000 upon trusts intended to be mentioned in an indenture of the 6th of October 1775, whereby the said C. S. in consideration of his marriage and of his wife's portion of £ 6000, and in consideration that he had previously to his said marriage agreed to settle on her in case she survived him, and on her children, a competent provision, and in consideration that she had acknowledged the said fine, and of the love which he bore to his wife and children, and in performance of the said agreement, did give, grant, and appoint, unto trustees therein named, the sum of £ 6000 (parcel of the surplus money for which he had contracted to sell the estates to the plaintiff,) upon trust that after the £ 6000 should be raised by the said trustees, they should place the same out at interest and pay the same to the said C. S. for his life, and after his decease to the said E. S. for her life, and after her decease, upon trust to pay and divide the said £ 6000 to and among their then children, and to and among such other children as they should have, in manner therein mentioned; but as it is not declared by the said indenture that the receipt of the trustees should be a sufficient discharge for the payment of the said sum of £ 6000, and it has not been made to appear before the Master what the agreement was which is recited in the said deed to have been made previously to the said marriage for making a provision for the wife

CH. XII. and children, and neither the trustees for the sale of the said estates nor the children of the said marriage are parties to the suit, therefore the said defendant humbly submits whether any proper discharge can be given for the said sum of £ 6000 (part of the purchase-money,) and whether the purchaser can therefore safely pay the said purchase-money.

2d *Exception.* — For that as the said Master hath certified that the plaintiff together with the trustees and mortgagees may make a proper conveyance by lease and release to the purchaser under a good title in fee, and it appears by the abstract brought in before the said Master that there are various mortgages and incumbrances upon the estates in question in this cause, and none of such mortgages or deeds have been brought in or produced before the said Master, and therefore it did not appear to the said Master, nor is it stated by the said report what incumbrances there are upon the said estates, nor who are the necessary parties to make a legal conveyance thereof, supposing the said C. S. took an estate tail in the lands in question and legally barred the same and all the remainders over, therefore the said defendant humbly insists that the said Master ought either to have stated by his said report that the said C. S. could not alone make a good title to the estate in question, or should have set forth particularly who by name are necessary parties to make a legal conveyance thereof.

Wherefore the said defendant doth except to the said Master's said report, and appeals therefrom to the judgment of this Honorable Court.

General exception to a Master's certificate of insufficiency, under an order of reference to look into the plaintiff's bill, and the defendant's answer, and the exceptions thereto, and to certify whether the answer be sufficient in the points excepted to or not (the defendant not submitting to answer the exceptions).

In Chancery.	}	Between J. S. and A. his wife, - - Plaintiffs, and G. B. and others, - - Defendants.
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An exception taken by the said defendant G. B. to the report of Sir J. S., bart., one of the Masters of this Court, to whom the said cause stands referred, bearing date the 15th day of November, 1822.

For that the said Master hath in and by his said report certified that the answer of the said defendant G. B. is insufficient in all the points excepted unto; Whereas the said Master ought to have disallowed all and every the exceptions taken by the said complainants to

the said answer of the said G. B., and to have reported that the said answer is insufficient in all the points excepted unto by the said complainant. CH. XII.

In all which particulars the said defendant G. B. excepts to the said Master's said report.

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Exceptions to a Master's report of insufficiency, after a second answer put in by the defendant.

In Chancery.	{	Between J. S. and A. his wife, - Plaintiffs, and G. B. and others, - - - Defendants.
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Exceptions taken by the said defendant G. B. to the report of P. H. Esq., one of the Masters of this Honorable Court, made in this cause, and dated the 14th day of March, 1803.

1st *Exception*.— For that the said Master hath in and by his said report certified that the said defendant's first and second answers put in to the said complainant's bill are insufficient as to part of the 10th exception taken by the said complainants to the said defendant's said answers, and the said Master hath thereby certified that the said defendant hath not answered and set forth according to the best of his knowledge, remembrance, information, and belief, for whose benefit, and on whose account the trade in the pleadings in this cause, and in the said report mentioned, hath been carried on from time to time since the same ceased to be carried on for the benefit or on the account of the persons interested in the estate of A. G. in the said report named, or the income thereof; Whereas the said Master ought not to have so certified.

2d *Exception*.— For that the said Master hath in and by his said report certified that the said defendant's said answer is insufficient in the 12th and 13th exceptions throughout, which the said Master ought not to have done.

3d *Exception*.— For that the said Master in and by his said report hath certified that the said defendant's said answer is insufficient in part of the 17th exception taken thereto by the said complainants; Whereas the said Master ought not to have so certified.

4th *Exception*.— For that the said Master hath in and by his said report certified that the said defendant's said answer is insufficient as to the 19th, 20th, 21st, 22d, 23d, 27th, 28th, and 29th exceptions throughout; Whereas the Master ought not to have so certified.

In all which said particulars the said defendant G. B. doth except to the said Master's said report, and humbly appeals therefrom to the judgment of this Honorable Court.

CH. XII. Exceptions to a Master's certificate of insufficiency, under an order of reference to certify whether an examination of a creditor going in under the decree in a creditor's suit, to interrogatories settled by the Master, is sufficient or not.

In Chancery.	}	Between A. P. and another, - - - Plaintiffs,
		and
		Ann D., widow, - - - Defendant.

An exception taken by C. C. who claims to be admitted a bond-creditor of P. D. to the report of F. P. S. Esq., one of the Masters of this Court, dated the 10th March, 1810.

For that the said Master hath in and by his said report certified that the answer and examination of the said C. C. to interrogatories settled by the said Master for the examination of the said C. C. is insufficient; Whereas the said Master ought to have certified that the said answer and examination is sufficient.

In all which particulars, &c.

CHAPTER XIII.

INTERROGATORIES.

Forms of Titles, and of the first and last general Interrogatories.

Titles of interrogatories *in Chancery*, for examination of witnesses in chief on the part of the plaintiff. CH. XIII.

In Chancery.

Interrogatories to be administered to witnesses to be produced, sworn, and examined in a certain cause now depending and at issue in his Majesty's High Court of Chancery at Westminster, wherein W. C. is complainant and M. W. is defendant, on the part of the said complainant.

CCIV. Title of interrogatories *in Chancery*, for examination of witnesses in chief on the part of some of several defendants.

In Chancery.

Interrogatories to be administered to witnesses to be produced, sworn, and examined in a certain cause now pending, and at issue in his Majesty's High Court of Chancery at Westminster, wherein by original and amended bill J. H., C. H., &c. &c., C. H. and A. H. infants under the age of twenty-one years, by the said L. H. their father and next friend, C. V., &c. &c., are plaintiffs, and T. R. B. and D. his wife, T. W. B., &c., and E. B. and H. B. infants under the age of twenty-one years, by the said T. R. B. their guardian, are defendants; and wherein by supplemental bill J. H., C. H., &c. &c., are plaintiffs, and T. R. B. and D. his wife, &c. &c., are defendants on the part of all the said defendants, except the said defendants J. J. and G. V.

CH. XIII. Title of interrogatories *in Chancery*, for examination of witnesses on the part of the plaintiff pursuant to a decree.

In Chancery. { Between A. B. - - - - - Complainant,
and
C. D. - - - - - Defendant.

Interrogatories to be exhibited for the examination of witnesses on the part and behalf of the said complainant, to be produced, sworn, and examined pursuant to the decree made on the hearing of the said cause bearing date ———.

Title of interrogatories *in Chancery*, for examination of creditors and their witnesses pursuant to a decree.

In Chancery. { Between A. B. and C. D. - Complainants,
and
E. F. and G. H. - - Defendants.

Interrogatories to be exhibited by the said complainants before W. G. Esq., one of the Masters of this Honorable Court, for the examination of the creditors of T. H. Esq., deceased, in the pleadings in this cause named, and of their witnesses, in pursuance of the decree or decretal order of this Court made on the hearing of this cause, bearing date ———.

Title *in Chancery*, in the case of a contempt for signing a counsellor's name to a bill without his authority.

In Chancery.

Interrogatories to be administered to L. M., solicitor to the bill filed in his Majesty's High Court of Chancery on behalf of A. B. against C. D.

Title of interrogatories *in Chancery*, for examination of a person *de bene esse*, pursuant to an order made in a cause.

In Chancery.

Interrogatories to be exhibited to D. G. of ———, for the examination of the said D. G. *de bene esse* in a certain cause now depend-

ing in the High Court of Chancery, wherein J. P. is the plaintiff, and J. S. and T. S. are the defendants, pursuant to an order of this Honorable Court, bearing date ———, on the part and behalf of the said complainant. CH. XIII.

Title of an interrogatory *in Chancery*, for examination of a person *pro interesse suo*, pursuant to an order made on petition.

In Chancery. { Between H. R. an infant by J. M. his next
friend, - - - Plaintiff.
and
T. J. W. and J. S. B. - Defendants.

An interrogatory to be exhibited to G. R. of ——— before F. C. Esq., one of the Masters of this Honorable Court, for the examination of the said G. R. *pro interesse suo* in certain premises in the pleadings in this cause mentioned, pursuant to an order of this Honorable Court bearing date ———, made on the petition of the said G. R.

Title of interrogatories *in Chancery*, for examination of a witness as to his interest in the matters in issue.

In Chancery. { Between A. C. - - - Complainant,
and
T. H. - - - Defendant.

Interrogatories to be exhibited on the part of the said complainant for the examination of A. B. as to his interest in the event or decision of this cause, the said A. B. being a witness produced, sworn, and offered to be examined in the said cause on the part and behalf of the said defendant.

Title of interrogatories *in Chancery*, to the credit of witnesses examined on the part of the defendant.

In Chancery.

Interrogatories to be exhibited to witnesses pursuant to an order of his Majesty's High Court of Chancery, bearing date the ——— day of ———, on the part of A. B. complainant, and made in a certain cause there depending and at issue, wherein the said A. B. is complainant, and C. D. is defendant, to discredit the testimony of E. F. and G. H., two witnesses heretofore examined in the said cause on the part of the said defendant upon interrogatories.

First general Interrogatory.

CH. XIII. Do you know the parties complainant and defendant [*or* complainants and defendants] in the title to these interrogatories named or [any or] either and which of them, and how long have you known them respectively, or such [one] of them as you do know? Declare the truth and your utmost knowledge, remembrance, and belief, herein. [*Or thus*: Declare the truth of the several matters inquired after by this interrogatory, according to the best of your knowledge, remembrance, and belief, with your reasons fully and at large.]

As to the witness's knowledge of the parties in the cause.

The concluding general Interrogatory.

Lastly. — Do you know any other matters or things touching the matters in question in this cause which may tend to the benefit or advantage of the said complainant therein [*or*, the said defendants or any or either, and which of them therein]? If yea, Set forth the same and all the circumstances and particulars thereof fully and at large according to the best of your knowledge, remembrance, and belief, as if you had been thereto particularly interrogated.

Or thus:

Where interrogatories are exhibited on the part of some of several defendants. Lastly. — Do you know or can you set forth any other matter or thing which may in any wise tend to the benefit of the said defendants, or either of them in this cause, other than the said defendants J. J. and G. V.? If so, Set forth the same, and all the circumstances and particulars thereof, according to the best of your knowledge, remembrance, and belief, together with your reasons at large.

FORMS OF INTERROGATORIES FOR THE EXAMINATION OF WITNESSES
IN CHIEF.

To prove the delivery of the abstract of the plaintiff's title to the defendant; whether any objection was made to the title, and what Whether or no did you at any time, and when, as the solicitor of the said complainants, deliver to the said defendant or to any person, and whom by name, on his part, any abstract of the title of the said complainants to the estates and premises in the pleadings mentioned? Whether or no did the said defendant or any person and who on his part at any time or times, and when and how make to you any and what objection to the said title, and what answer did you thereupon make, and if by writing set forth the same in the words and figures thereof, and what afterwards passed between you and the said defend-

ant or any other person, and whom on his part respecting the said title or the agreement for purchase in the pleadings mentioned? Set forth, &c.

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passed relative to the title or agreement for purchasers.

Were you at any time, and when, and by whom, and on whose behalf, furnished with an abstract of the title of the said complainants to the premises described as lot 2 in the pleadings of this cause mentioned? And did you at any time or times apply to any person or persons, and whom by name as the solicitor or solicitors of the said complainants for a copy or abstract of the alleged lease under which the said premises were stated to have been let? If yea, What passed between you and the solicitors for the said complainants at the time of making such application relative to such alleged lease? Declare, &c.

To prove that witness as solicitor for the defendant was furnished with an abstract of title to an estate sold by the plaintiffs,—his

application for an abstract of the lease under which the estate was stated to have been let, and what passed upon such application.

Had or not the said R. W. as you know, or do for any and what reason believe, access to the said M. W. his wife, or was he or not in her company, or did he or not see her at any, and what times or time from the month of ——— to ———? And if yea, When and how often, and at or about what times or time, and for what space of time at each time, and where and on what occasion? Where did the said R. W. live or reside during all such period of time, as you know or do or for any and what reasons believe? Declare, &c.

To prove whether a husband had access to his wife during a particular period, and when, and where he resided.

Whether or not did the said defendant C. L. as you know or do for any and what reasons believe, deliver or cause to be delivered unto the said S. D. F. in his lifetime a written account or any writing purporting to be an account of some debt or debts or sum or sums of money that was or were due or owing by or from the said S. D. F. to the said defendant C. L.? If yea, In what character and language was such account or writing written or made out, and when or about what time was the same delivered to the said S. D. F., and what was or were the particular or particulars of such debt or debts, or sum or sums of money, and how much did the same amount unto in the whole as you know, remember, or believe? Whether or no did the said S. D. F. as you know or do for any and what reason believe, peruse, or examine the said account? Did or did not the said S. D. F. ever deliver the said account to you? If yea, When and about what time and for what purpose did he deliver the said account to you? Did you or did you not by the order or direction of the said S. D. F. or

To prove the delivery of an account of moneys owing from a deceased person to the defendant, in what language written, when delivered, and the particulars of the debt, and whether the deceased examined the account.

To prove that he delivered the

CH. XIII. otherwise, and how, at any time, and when, make or write a true copy of the said account? If yea, In what language and character and for what purpose was such copy made or written, and was or was not such copy at any time, and when, and by whom, delivered to the said S. D. F.? And did or did not the said S. D. F. at any time or times, and when, peruse and examine the said copy, and did he or did he not in his own handwriting or otherwise, and how and in what language and character and at or about what time or times, make or write any and what minutes, memorandums, or observations on the said copy? Whether or no is the paper-writing marked with the letter (B) and now produced by you, or any, and what parts and part thereof, of your own handwriting? If yea, How much or what part or parts thereof is or are your own handwriting, and how much and what part or parts thereof is or are of the handwriting of any other person or persons,

same to the witness, that witness by his direction made a copy thereof, and in what language; the delivery thereof to the deceased; that he examined the same and made observations thereon.

To prove the copy in the possession of the witness as an exhibit, and the handwriting;

That witness may translate the copy into English and the observations made thereon, distinguishing the parts written by the witness and by other persons.

and whom as you know, or do for any and what reason believe? Is or is not the said paper-writing marked with the letter (B) the copy which was made or taken by you of the aforesaid account? If yea, Translate the said paper-writing marked with the letter (B) and all the minutes, memorandums, and observations written or made thereon into, and set forth the same in the English language, and in making such translation, distinguish and point out the English, of so much, or of such part or parts of the said paper-writing as was or were written by you, and also the English of so much or of such part or parts of the said paper-writing as was or were written by any other person or persons, and whom? Declare, &c.

To prove that witness was a party as a trustee to certain deeds;

That he was in the employ of certain persons, and that an account existed between them and a deceased plaintiff;

That witness, a trustee, sold certain houses;

Were you or not a party as a trustee for sale or otherwise and how, to certain and what indentures of lease and release bearing date the 9th and 10th days of March, 1792, in the pleadings in this cause stated, or to some, or one, and which of them? And were you or not for some length of time, and from and to what period, in some, and what manner, in the employ of T. E. and G. D., both now deceased, in the pleadings in this cause named? And do you or not by some, and what means, know whether some, and what account, did not exist between the said T. E. and G. D., or one, and which of them, in their or his lifetime with W. J. deceased, the late plaintiff, in this cause? Did you or not as a trustee for sale as aforesaid, ever and when, sell and dispose of the respective houses and premises of which you were a trustee for sale under such indentures of lease and release as aforesaid? And was there or not, some, and what account, open and unsettled between the said W. J. deceased and the said T. E.

and G. D. or with one and which of them, at the time the said houses and premises were respectively so sold and disposed of by you? If yea, Was such account ever to your knowledge settled and adjusted between them, or any, and which of them, and was or not such account an open and unsettled account at the time of the death of the said W. J. as you know, or for some, and what reason, believe? And if such account had ever been stated, settled, and adjusted between the said T. E. and G. D. and the said W. J. in his lifetime, should you or not, from your connection or by your employment with the said T. E. and G. D., or by some, and what other means, have known thereof? Do you or not know whether the said W. J. in his lifetime made or caused to be made any, and what, application to the said T. E. and G. D., or to one, and which of them, for a statement of, or to come to a settlement of the said account existing between them? If yea, Set forth the number of such applications, and the respective times or time in particular, when the said W. J. made or caused to be made such applications or application, and the nature thereof, and when and by whom made, and in whose presence, and upon what occasions or occasion, and on or about what date in particular was the last time the said W. J. made or caused to be made, such application to the said T. E. and G. D., or to either, and which of them, and what passed between the said parties respectively, at the respective times or time such applications or application were or was made? Declare, &c.

CH. XIII.

That at the time of such sale, an account existed unsettled between the deceased plaintiff and certain other persons.

Also to prove the applications made by the deceased plaintiff for a settlement.

and what passed at the time of such applications.

Were you or not, present at any time, and when, at the stating of any, and what account, between the said complainant and the said defendants touching or concerning the estate and effects of the said testator R. F. in the pleadings of this cause named? If yea, Was or were, or not, any account or accounts touching such estate or effects then settled between them, and was or not any and what balance then settled and ascertained as due to any, and which of the said parties, and was or not, such balance then paid over, and if not, why and for what reason? Declare, &c.

To prove a statement of accounts between the plaintiff and defendants relative to a testator's estate, what balance was ascertained to be due, and, the payment thereof.

.Whether or no did you at any time, and when, deliver to the said defendants, or either, and which of them, any bill for business done by you on their, or either, and which of their account not connected with the said cause, and whether or no did you at any time, and when, cause any and what proceeding to be commenced against the said defendants or either, and which of them, for the amount of such bill? Declare, &c.

To prove the delivery of an attorney's bill, and that an action was commenced for the recovery of the amount.

CH. XIII.

Did you or not, at any or either, and which of the meetings between you and the said ——— inquired after by the last preceding interrogatory, produce or shew unto the said ——— all or any, and which of the acknowledgments or memorandums to which his name appears to be subscribed, and which are written or contained respectively in the ——— folios of the said produced book marked (A)? And did the said ——— on any, and which of such occasions, or on any other, and what occasions or occasion, and when in particular, say or declare anything, and what, unto you or unto any persons or person, and whom by name, in your presence or hearing, relative to such acknowledgments or memorandums, and to his name appearing to be subscribed thereto, and purporting that he had signed the same, or any and which of them, or that his name appearing to be subscribed thereto, or to any and which of them was in his own handwriting, or to any such or the like effect? Set forth how and in what manner the said ——— expressed himself at such times or time in relation thereto? Declare, &c.

To prove that the defendants commenced an action against the plaintiff's agent, and when, and the nature thereof, and of the defence thereto;

That the same came on to be tried, that the plaintiffs got a verdict which the Court of K. B. set aside and directed a new trial;

That the same came on at the assizes, and what passed on the trial, and the judge's charge to the jury. That the jury were desirous to find a special verdict, the minute thereof made by the judge. The agreement to refer the amount of damages to arbitration, and what amount was awarded by the arbitrator.

Whether or not did the said defendants, or any, and which of them, commence an action at law against J. F., the agent of the said complainants in the said bill named? If yea, Set forth when such action was commenced, and the nature of, and object of the action? Whether or not did the said J. F. plead to such action? If yea, Declare the nature of his defence; Whether or not did such action come on to be tried? If yea, Whether or not did the plaintiffs in such action get a verdict? If yea, Whether or not did the Court of King's Bench set aside such verdict and direct a new trial to be had of the said action? Whether or not did such new trial come on to be tried at the summer assizes held for the county of Y. for the year 1818? If yea, Were you present at such trial? If yea, Declare to the best of your remembrance what passed thereat, and how and in what terms the judge charged the jury; Whether or not were the jury desirous to find a special verdict; Whether or not did the judge make a minute of it in his notes, and if yea, Set forth the purport and effect of such minute; Whether or not was it agreed between the plaintiffs and defendant in the said action that the amount of the damages to be recovered by the plaintiffs in the said action should be left to arbitration? If yea, Whether or not was any arbitrator appointed? If yea, Has such arbitrator ever made his award? If yea, Declare the damages awarded by the said arbitrator to the plaintiffs in the said action. Declare, &c.

Did you at any time or times, and when, and at whose request, or in pursuance of any directions or instructions given to you by any person or persons, and whom by name, cause any, and what, advertisement or advertisements, to be inserted in any or what, public paper or papers relating to, or for the discovery of the said A. G., and was or were such advertisement or advertisements inserted in such public paper or papers at any time or times, and when, as you know, or for any, and what reason, believe? Have you heard of the said A. G., or had you any, and what application or applications made to you with respect to him, or the matter comprised in such advertisement or advertisements since the same was or were so inserted? Declare, &c.

CH. XIII.
To prove advertisements being inserted in the public papers for the discovery of a person and by whose direction; and whether the witness has heard of the individual, or had any applications respecting him since the advertisements.

Were you, or not, employed, and when, by the said complainant, and defendant, or either, and which of them, to prepare the agreement in the said former interrogatory mentioned? If yea, Had you any, and what directions from the said defendants, respecting the terms of the said agreement, and concerning the land-tax in the said agreement mentioned, and what did the said defendant say to you, or in your presence or hearing as to the said land-tax, and the sum of \$200 to be paid by the plaintiff to the said defendant, and were you informed by either, and which of the said parties, for what consideration the said premium or sum of \$200 was to be paid? Declare, &c.

To prove that witness was employed in preparing an agreement, and the directions given respecting the terms thereof.

Did you or not, at any time, and when, hear the said complainant make any proposition to the said defendant respecting his, the said complainant's residing with the said defendant in his house, and was any, and what agreement come to between the said complainant and the said defendant respecting such matter, and did you or not, hear upon that or any other and what occasion, the said complainant make any, and what promise, to the defendant respecting the amount and nature of the recompense which the defendant was to receive from the said complainant, for his residing in the said defendant's house? Declare, &c.

To prove a parol agreement respecting the plaintiff's residing with the defendant.

Did you or not, and by whose desire or direction, make any, and what division or allotment of the lands in the pleadings of this cause mentioned? If yea, To whom, and when did you deliver such division or allotment, and did or not, the said defendant J. P. acquiesce in or approve of such allotment, and did he take possession of his part or share? Did you or not, at any time afterwards, and when, review or reconsider such allotment, and upon what occasion, and by

To prove that witness made an allotment of certain lands, and to whom, and when he delivered the al-

CH. XIII. whose desire, and did you or not make any second allotment or any lotment; and what alteration in your former allotment, and was or not the said that defend- division or allotment made by you, a fair, impartial, and just division ant acqui- or allotment. Declare, &c. esced there- in, and took possession of his share; that witness afterwards reviewed the allotment, and by whose desire, and what alterations he made therein.

To prove that the plaintiff entered upon the lands allotted to him in severalty. Do you or not, know whether the said complainant entered upon and enjoyed any, and which of the lands in the pleadings in this cause mentioned, in severalty or not? If yea, State what particular lands were enjoyed by the plaintiff, and what by the defendant.

To prove the value of a life annuity. Are you acquainted with the manner of purchasing annuities on lives, and the value thereof, and the way in which the same are secured in the public funds? If yea, How long have you been acquainted therewith? What was the value of an annuity of \$ — during the life of a person aged — in the month of —, according to the method of computing the value of annuities upon lives, and according to the common and usual course of business in transactions of that nature? Declare, &c.

To prove that the plaintiff was employed by defendant as her confidential attorney or agent, and for what period. Was or not, the said complainant T. C. at any time, and when, to your knowledge or belief, employed as the attorney or agent of the said defendant S. A.? If yea, Declare when the said T. C. was so employed by her, or relative to her affairs, and for what length of time, and whether generally as the confidential attorney or agent of the said S. A. as you know or believe, and set forth the grounds upon which you found such your knowledge or belief; Declare, &c.

To prove who was the author of a book or reputed so to be, and whether it was an original composition. Look upon the book entitled — now produced and shewn to you at this the time of your examination, marked with the letter (A) and in the pleadings in this cause mentioned; Who by name wrote or was the author or composer of the said book, or who was and is reputed so to be? Is the said book an original composition, or a copy of any other, and what work? Declare, &c.

To prove an act of bankruptcy by keeping house. Did you or not, know A. B., in the pleadings of this cause named and previously to —, and for any, and what time before? If yea, Did the said A. B. at that time, and for any and what length of time before, carry on any, and what, trade or business, and where, and do you or not, previously to the said —, recollect any person

and whom by name, calling at the house or dwelling of the said A. B. CH. XIII.
 for money, and was or not such person a creditor of the said A. B.,
 and was or not the said A. B. at home at such time, and did he or not,
 see the person who so called, or what answer was given or sent to
 such person, and was the answer given or sent by the direction of the
 said A. B., or with his privity or consent? Declare, &c.

Did or not the said T. M., in the pleadings of this cause named, pre-
 viously to the _____ day of _____, and from, and up to what time
 in particular, carry on any, and what trade or dealing, and in what
 sort of merchandise? Was or not the said T. M. a prisoner in the
 Fleet Prison, and when did he first become a prisoner there, and for,
 and upon what account was he imprisoned, and how long did he con-
 tinue a prisoner without being bailed or discharged, and what charges
 or detainers were there lodged against him during the whole time of
 such, his imprisonment? Declare, &c.

To prove
 an act of
 bankruptcy
 by lying in
 prison.

Whether or no did the said defendant C. D. in the lifetime of the
 said S. D. send, remit, or deliver unto the said S. D. any bill or bills
 of exchange? If yea, For what sum or sums of money, or of what
 value or amount was or were such bill or bills of exchange respectively
 and in the whole, and when or about what time or times was or were
 such bill or bills of exchange so sent, remitted, or delivered, and was
 or were or not the sum or sums of money mentioned in, or secured or
 made payable by the said bill or bills of exchange, or some and which
 of such sums of money received by or paid to the said S. D. or to his
 order or for his use when and as the same became due and payable or
 soon afterwards, or at any other and what time or times? And did
 or did not the said S. D. in his lifetime, and when, repay the said de-
 fendant C. D. or satisfy him the said sum or sums of money or any
 or either and which of them or any and what parts or part thereof?
 Declare, &c.

To prove a
 remittance
 of bills of
 exchange
 in the life-
 time of a
 deceased
 person,

that the
 same were
 duly paid
 as they be-
 came due,
 and wheth-
 er the de-
 ceased re-
 paid any
 part of the
 amount
 thereof.

Whether or no did you draw and deliver to the said complainant
 any and what number of bills of exchange, and to what amount, for
 the produce of the said cargo upon the said defendants T. R. and C. S.,
 and did you or not at or about that time or at any time and when ship
 on board the said ship called the M. or any other and what ship or
 ships and consign to the said defendants T. R. and C. S. any colonial
 produce or any and what effects and to what amount in order to pro-
 vide for the payment of the said bills so delivered by you to the said

To prove
 that wit-
 ness as the
 purchaser
 of a ship's
 cargo deliv-
 ered bills to
 the plaintiff
 for the prod-
 uce drawn
 upon the
 defendants,
 that he con-
 signed colo-

CH. XIII. complainant for the produce of the said cargo. Or whether or no
 nial prod- have you at any time or times, and when, assigned or conveyed to the
 uce to said defendants T. R. and C. S. or to any other person or persons and
 them to said bills or any of them or any part thereof, or have the said defendants
 provide for whom by name in trust for them or for their benefit any and what
 the pay- estates or property whatsoever in or towards satisfaction of the said
 ment there- bills or any of them or any part thereof, or have the said defendants
 of, or made T. R. and C. S. been in any other and what manner paid or satisfied
 over prop- by you the amount of the said bills or any and which of them or any
 erty to and what part thereof, or have you in any and what manner and when
 them, or had credit in account with the said defendants T. R. and C. S. for the
 that they amount of the said bills or any and which of them or any and what
 have been part thereof? Set forth, &c.
 satisfied the
 amount, or
 have given
 witness
 credit in
 account for
 the amount
 of the bills.

To prove Do you know, and from what circumstances, when and where the
 the birth said complainant A. W. was born and baptized? If yea, Set forth the
 and bap- time and place of her birth and baptism and the reason of your knowl-
 tism of the edge therein, and who were her father and mother, and where they
 plaintiff. usually resided at the respective times of the birth and baptism of the
 said complainant, and what was their situation in life. Set forth, &c.

To prove Do you know the lands in the pleadings of this cause mentioned,
 the bound- called glebe lands? If yea, Where are the same situate and how are
 aries of the boundaries thereof marked and described, and in whose occupa-
 glebe lands, tion and under what term or holding were the said glebe lands on
 in whose the 4th October, 1801, and what was then the annual value of the
 occupation said glebe lands as you know or for any and what reason believe?
 the same Declare, &c.
 were at a
 particular
 time, and
 what was
 then the an-
 nual value.

To prove Are you not acquainted with the premises in the pleadings of this
 abutals of cause mentioned, called the detached garden? If yea, How is such
 a garden, detached garden fenced or surrounded, and by what ground or premises
 and wheth- is it bounded or abutted, and particularly on the east side thereof,
 er there is and is there or not any gate, door, or opening communicating with
 any commu- any and what premises on the east side of the said detached garden?
 nication between the same and the ad- Declare, &c.
 joining
 premises.

To prove Whether or no do you know and how long have you lived in the
 the bound- parish of W. in the county of ———, and whether or no did you at
 aries of a any time or times and when attend any and what public perambula-
 parish, and tions of the said parish, or are you by any and what other means ac-
 how divided quainted with the boundaries of the said parish, and in particular with
 from the the boundary or division between the said parish and the parish of C.,
 adjoining one.

and how and in what manner is the said parish of W. divided from the said parish of C.? Declare, &c. CH. XIII.

Are you or not acquainted with the piece or parcel of land containing a stone quarry in the pleadings of this cause mentioned to be situated at or near certain places called or known by the names of _____ and _____ in the parish of _____ and near to the river A.? If yea, How long have you been acquainted therewith, and how is such piece of land bounded, and at what distance is the same situated from the said river A.? Look upon the map or plan now produced and shewn to you at this the time of your examination, marked with the letter (A), — What doth the same purport to be or contain, and does not the same contain a true and correct plan of the said piece or parcel of land and quarry and of the boundaries thereof as you know or do for any and what reason believe? Declare, &c.

To prove the boundaries of a piece of land containing a stone quarry, and its distance from a river, particularly with reference to a map or plan thereof.

Do you know L. H. chapel, now or formerly situated at L. in the parish of B. in the county of L. or the site thereof? Was the same used as a Roman Catholic chapel or as a Protestant chapel as you know or for any and what reason believe? Were the ceremonies of baptism, marriage, and burial performed in the said chapel as you know or have heard and from whom or for any and what reason believe, and were there or not any registers or register of baptisms, marriages, and burials made or kept in or adjoining to the said chapel? If yea, Are or is there any registers or register thereof now kept in or adjoining to the said chapel, of baptisms, marriages, and burials performed therein? Do you know or have you heard and from whom whether the said chapel and registers were ever, and when destroyed by fire or otherwise and how and by whom; Have you heard any person or persons and whom by name, make any and what declarations relative thereto, and were or was such persons or person in any and what manner connected with or in the service of or in any and what manner related to any person in the service of the family of A. in the pleadings of this cause named, and are or is such persons or person or any or either of them now living, and if dead, when did they respectively die? What is the general report or belief of the persons residing in the neighborhood of the said chapel of L. H. or the site thereof relative to the destruction of the said chapel and registers by fire or otherwise as you know or for any and what reason believe? Set forth according to the best of your knowledge, remembrance, information, and belief, all and every the matters inquired after by this interrogatory and the grounds thereof.

To prove whether a chapel was used as a Roman Catholic chapel or Protestant chapel; whether baptisms, marriages, and burials were performed there, and whether the registers thereof were kept there; Whether the chapel and registers were destroyed and when and how; what declarations witness has heard relative thereto and from whom; Whether such persons were connected with a particular family, and whether living or dead; and the general belief in the neighborhood relative to the destruction of the chapel and registers.

CH. XIII. Are you or not acquainted with the said complainants J. T. and M.

To prove what children the plaintiffs have.

his wife? And if yea, Are you acquainted with the state of the said complainants' family? What children or child have the said complainants J. T. and M. his wife now living, and what are or is the names or name of such children or child? Set forth all you know concerning the particulars inquired after by this interrogatory and the reasons for such your knowledge? Declare, &c.

To prove what children a plaintiff had by her late husband and their names; that certain of the plaintiffs are the surviving children, and that the widow had another son who died without issue.

Whether or no had the said M. H. and A. his wife, heretofore or late A. C. in the preceding or 7th interrogatory mentioned or inquired after, any and what number of children? If yea, What were their respective names or the names of any and which of them, and particularly are or is not the said complainants R. H. &c. or some or one and which of them the children or child of the said M. H. and A. his wife, and had they or not another son named T. H., and is he living or dead? And if dead, when and about what time did he die, and did he or not leave any children or child or issue, and whom? Had or not the said A. H. any and what other children or child or issue other than and besides those hereinbefore named? If yea, Are they, or any and which of them living or dead, and if dead, when or about what times or time did they or any and which of them die as you know or do for any and what reason believe? Declare, &c.

To prove whether a particular person is living or dead; that he contributed to the maintenance of a child, and frequently visited it; the degree of notice or affection he shewed towards it, and in what manner he expressed himself; that he treated such child as his own, and that the child treated him as his father.

Do you know what is become of T. H. in the preceding interrogatory named? Is he living or dead? If living, where hath he from time to time resided since the _____ day of _____? Or if dead, when or about what time did he die and where? Did he or not for any and what period of time in any manner and how pay or contribute any and what sum or sums of money yearly or otherwise, and how, for or towards the maintenance or education of the child which is inquired after by the last interrogatory, and did he or not during any and what period of time ever and when or how often and where visit or see such child? Were you present at all or any and how many and which of such times? And if yea, Did he at all or any and which of such times take any and what kind of notice of such child, or shew or express and how or in what particular manner any and what degree of affection for it and on what account, and how and in what manner did he at such times generally express and behave himself to or respecting such child? Set forth the particulars of such expressions or declarations and any circumstances relating thereto; — Did the said T. H. at all or any and which of such times and in the presence of any other person or persons, and whom by

name, treat such child or speak to it or of it, as being his own child, and did such child at all or any and which of such times speak to or address the said T. H. as being its father, or as being in any and what degree or manner related to it? Declare, &c. CH. XIII.

Whether or no do you know and for how long have you known the defendant J. P., the sister of the said testator W. G. and her family? Whether or no were there any and what children of the said defendant J. P. living at the time of the death of the said testator, and when did the said testator die, and which of such children are now living and what are their respective ages, and if any or either of them have or has died since the said testator, when did she or they die? Declare, &c. To prove what children a defendant had at the death of a testator, the time of his death, and what children are living or dead.

What was the true and real consideration of the said deed marked (A)? Whether or no were or was any and what sums or sum of money at or about any and what times or time paid as or for or in part of the consideration thereof, and when and where and by whom and on whose account and to whom and for whose use and on what occasion? If yea, Were you or not present at the time of paying the same or any and what part thereof? And if yea, Did or not the person whose name appears to be subscribed to the receipt endorsed on the said deed at or about the time of signing such receipt say or declare anything and what concerning his having received or being paid or satisfied the whole or any and what part of the money therein or thereby expressed to be paid to and received by him? Declare, &c. To prove the payment of the consideration-money expressed in a deed, and the acknowledgment of the person on receiving the same.

Were you at any time and when present at any and what conversation between the said complainant and defendant respecting the said defendant's purchasing of the said complainant his the said complainant's interest in the sum of £ 2400 in the pleadings of this cause mentioned to have been paid by him into the Court of Chancery in a certain cause entitled ———? If yea, How did such conversation arise, and what passed between the said defendant and complainant respecting such purchase, and did or not the said defendant agree to purchase such interest upon any and what terms, and what in particular did the said defendant say to the said complainant respecting the said complainant's chance of recovering the said £ 2400? Declare, &c. To prove a conversation between the plaintiff and defendant, respecting the defendant's purchasing the plaintiff's interest in a sum of money paid into Court in another case; the agreement what terms.

to purchase the same and upon

CH. XIII. Have you at any time or times, and when, or how often, had any

To prove and what conversation or conversations with the said defendant
 conversations re- respecting the renewal of the lease granted by the said Dean and
 specting the renewal of a lease, and also the agree- Chapter in the pleadings of this cause mentioned? If yea, How did
 ment by defendant to apply for a renewal. such conversation or conversations arise, and what passed between
 you and the said defendant respecting the obtaining of such renewal,
 and did or not the said defendant agree to apply for or make any and
 what declarations relative to the making of any and what applications
 for the renewal of such lease, and what in particular did the said
 defendant say to you respecting such renewal, and was any other per-
 son and who by name present at the time of such conversation or con-
 versations or any and either and which of them? Declare, &c.

To prove the particulars of a conversation, and an offer made by the plaintiff to one of the defendants. Whether or no were you at any time in the year ———, and when
 and where present with the said complainant and the said defendant,
 J. D., when any conversation passed between them respecting the
 public-house called the ——— at E., in the occupation of the said
 complainant, and any agreement relating thereto? If yea, Set forth
 the particulars of such conversation, and what was said therein by
 the said parties respectively, and whether the said complainant then
 offered to pay any and what sum of money to the said defendant
 J. D.; Set forth, &c.

[This was one of a set of interrogatories on the part of the plaintiff to prove an agreement for purchase of a public-house.]

To prove a knowledge of certain persons deceased, and how and for what length of time witness was acquainted with them. Did you know F. A. deceased, in the pleadings of this cause
 named the uncle of the said complainant, and did you know H. I.
 of ———, deceased, or either and which of them in their or his
 lifetime, and how long did you know them respectively, previously
 to their death, or such one of them as you did know, and how and
 in what manner and for what length of time previously to their deaths
 respectively did you so know or become acquainted with them re-
 spectively? Did you at any time or times, and when in particular,
 hear the said F. A. enter into, any conversation or conversations with
 or make any declaration or declarations to the said H. I. or any
 other person or persons and whom by name and when in particular
 and in whose presence, relative to his family and relations, or any
 estate or estates to which he the said F. A. considered himself en-
 titled? And did you at any time or times and when hear the said
 H. I. make any and what declaration or declarations relative to his
 being present at the time, that any and what agreement was entered
 into by the said F. A. with any person or persons and whom by
 name, relative to any and what estate or estates, or any and what
 moneys that the said F. A. was to receive annually from any person
 or persons and whom by name, and the consideration thereof? And

did you at any time, and when, hear the said F. A. read any and what deed or deeds, agreement or agreements between him and any and what person or persons relative to any and what estate or estates? And do you know whether any deed or deeds, parchment, or paper-writings belonging to the said F. A. was or were at any time or times and when, destroyed by fire or otherwise and how? And did you at any time and when see any and what deeds or deed that were or was at any time and when in possession of the said F. A., that had any and whose seals affixed thereto, or had the names or name of any persons or person and whom signed thereto? If yea, Set forth all and every the particulars inquired after by this interrogatory, or such of them as you do know, and the particulars thereof and of every part thereof. Declare, &c.

CH. XIII.
to which he considered himself entitled. To prove declarations by the other, that he was present at the time an agreement was entered into relative to certain property. To prove that witness

heard the agreement read. To prove the destruction of certain papers by fire; and that witness saw certain deeds in the possession of one of the deceased persons having the names and seals of certain persons thereto.

Interrogatories to be exhibited, &c. (see p. 265, ante,) wherein W. R. and J. P. assignees of the estate and effects of E. T. a bankrupt, are complainants, and T. H. is defendant, on the part and behalf of the said complainants.

To prove the first conversations with the defendant respecting a bankrupt's affairs;

1st. (*As to knowledge of the parties, vide ante, p. 267.*)
2d. Had you at any time, and when first and where, and in whose presence any conversation with the defendant respecting the affairs of E. T. the bankrupt in the pleadings of this cause named? If yea, Set forth upon what occasion such conversation took place, and the particulars of such conversation, and what was said thereon by the said defendant, or by you, or any other person or persons, to or in the presence or hearing of the said defendant respecting the affairs of the said E. T., and was any and what agreement then come to by you on the part of the said E. T. with the said defendant respecting the assignment of any and what leases, or was anything and what then said by the said defendant or by you or any other person and whom to the said defendant or in his hearing respecting any such assignment? And did you then inform the said defendant that the said E. T. was in insolvent circumstances, or did anything and what pass as to the insolvency of the said E. T. or as to any and what composition being made or proposed to his creditors, or as to the said defendant's guaranteeing such composition? Set forth, &c.

What agreement was made respecting the assignment of part of the bankrupt's property, or what passed relative thereto; That the defendant was informed that the bankrupt was in insolvent circumstances, and what passed relative to a composition with his creditors, and as to the defendant's guaranteeing the same. To

3d. Had you at any other time or times and when afterwards before the commission of bankrupt was taken out against the said E. T. any other conversation or conversations with the said defendant respecting the affairs of the said E. T., and where and in whose

CH. XIII.

presence and upon what occasions respecting such affairs? If yea, Set forth the particulars of such conversation or conversations in the order in which the same took place, and what was said thereon respectively by you or the said defendant, or any other person or persons, and whom, in his presence or hearing; And was any and what agreement come to, or anything and what said in any and which of such conversations, as to the assignment of any and what leases by the said E. T. to the said defendant, and did anything and what pass in any and which of such conversations as to the insolvency of the said E. T., or as to any and what composition being made or proposed to his creditors, or as to the said defendant guaranteeing such composition? Set forth, &c.

4th. When did you first inform the said defendant of or did you or not learn from him that he knew or suspected the insolvency of the said E. T., and when first did anything and what pass between you and the said defendant or any other person and the said defendant in your presence and hearing respecting a composition to be made and proposed to the creditors of the said E. T., and when first did the said defendant agree to guarantee such composition? Set forth, &c.

Lastly. (*The last general interrogatory, vide ante, p. 268.*)

[These interrogatories were exhibited to the clerk of the bankrupt, who had discovered his insolvency and informed the defendant of it.]

To prove the defendant was first informed of the insolvency of the bankrupt, and when first anything passed respecting a composition with his creditors, and when first the defendant agreed to guarantee the same.

To prove that witness was employed by a deceased person as his attorney in the purchase of a bankrupt's reversionary estate; that witness laid the abstracts before counsel with instructions to prepare the conveyances, and the intentions

Were you or not employed by the said J. R. deceased, as his attorney or solicitor in the purchase or in completing the purchase of the said reversionary estate and interest of the said bankrupt, and in preparing the necessary conveyances and assurances thereof? If yea, Did you lay the abstract of the title thereto before or employ any counsel and whom by name on behalf of the said J. R. or on whose behalf to prepare the necessary conveyance or conveyances of the said reversionary estate and interest of the said bankrupt, and to whom by name? And did or not the said J. R. inform you of his intentions in making such purchase, and did or not the counsel so employed by you prepare the necessary drafts of such conveyances according to the directions and instructions of the said J. R.? If yea, Set forth the declarations made by the said J. R. to you relative to and expressive of his intentions in making such purchase, and how and in what manner and for what purpose such conveyances

were prepared by such counsel as you know or do for any and what reason believe: Declare, &c. CH. XIII.

of the deceased in making the purchase. That counsel prepared the drafts of the conveyances and the declarations of the deceased relative to such purchase, and the conveyances which were prepared.

Did or not the said J. R. at any time and when alter his intentions with regard to the draft conveyances inquired after by the preceding interrogatory, and did or not the said J. R. give directions to you or to any other person or persons and whom by name to make any and what alterations and insertions in the said draft conveyances, and what was the intention expressed by the said J. R. in making such alterations as you know or do for any and what reason believe? Declare, &c.

To prove that he altered his intentions with regard to the conveyances, the directions which he gave as to the alterations to be made, and his intentions relative thereto.

Do you know or can you set forth whether any deed or deeds of grant or conveyance was or were made for the purpose of carrying the agreement in the last preceding interrogatory mentioned into execution? If yea, By whom was or were such deed or deeds prepared? Was or not Sir T. B. in the pleadings in this cause named a party to such deed or deeds? If yea, Whether or not did he execute such deed or deeds or any of them? If yea, then set forth when and upon what occasion and at what place and in whose presence the said Sir T. B. executed the same; Whether or not were or was any drafts or draft made from which such deed or deeds was or were prepared and engrossed? If yea, Whether or not was or were such draft or drafts, or any and which of them at any time submitted to the said Sir T. B. for his perusal, or to any person on his behalf? If yea, Whether or not did the said Sir T. B. or any person on his behalf peruse such draft or drafts or any and which of them? Whether or not did the said Sir T. B. or any person on his behalf approve of such draft or drafts, or make any and what corrections, amendments, or alterations therein? Whether or not was or were the engrossment or engrossments of such deed or deeds so executed by the said Sir T. B. prepared or copied from such draft or drafts? Whether or not was any attorney or other professional person present at the execution of the said deed or deeds on behalf of the said Sir T. B.? If yea, Whether or not did such attorney or professional person peruse or read over such engrossments or engrossment? Whether or not were or was the same read and by whom to the said Sir T. B. before he executed them? Whether or not were or was such deeds or deed or any counterpart thereof then or at any time and when left in the possession of the said Sir T. B. or of his stewards or agents? Declare, &c.

To prove that certain deeds of conveyance were prepared, and by whom;

That Sir T. B. was a party, and executed the same and the circumstances attending such execution.

To prove whether drafts thereof were previously prepared;

Whether the same were submitted to Sir T. B. for his perusal;

Whether he perused or approved of the same, or made any alterations or corrections therein;

Whether the engrossments were prepared from such drafts; Whether any attorney was present on his part, and whether such attorney read over the engrossments, and whether the same were read over to Sir T. B. before he executed the same, and whether the deeds or a counterpart were left with him or his steward.

CH. XIII. Whether or no did you at any time or times, and when and on

To prove a correspondence with, or the receipt of letters from the defendant; also to prove the handwriting thereof and how the same came into the witness's possession; and in whose handwriting the defendant admitted the letters to be upon the same being shewn to him.

whose behalf correspond by letters or otherwise and how, with the said defendant T. H., or did you or not at any time or times and how or in what manner and by what means receive any letter or letters from him with respect to ———? And if yea, Have you such letters, or any, and which of them in your possession, custody, or power, or what is become of the same respectively? If you are able, produce such letters, and declare how, or in what manner, and by what means the same respectively came into your possession, and of whose handwriting all such letters respectively are, and were or was not the same or any or either and which of them ever, and when and by whom and on what occasion produced or shewn to the said defendant? If yea, in whose handwriting did he declare or admit the same respectively or any and which of them to be, and what is the purport or effect of such letters respectively? Declare, &c.

Whether or no were you on or about the ——— day of ——— and for how long before employed as clerk or bookkeeper in any and what trade or business carried on by the said defendant S. F. in copartnership with his said brother A. F. or any other person or persons, and whom, and at what place? If yea, Whether or no had you any and what opportunity to know, and did you or not know the circumstances and state of credit of the said trade or business, and of the said S. F., and of the other person or persons interested therein, and what were the circumstances and state of credit of the said S. F., and of the said other person or persons on or about the said ——— day of ———, and for some and what time before? Whether or no as you do for any and what reason know and believe, were the said defendants, or any, or either, and which of them, in any and what manner acquainted on or about the said ——— day of ———, with the circumstances and state of credit of the said S. F. and of his said copartner or copartners; and whether or no did the said defendants, or any and which of them, at any time and when, on or about the said ——— day of ———, refuse payment, of any draft for a sum of £ ———, or any other and what sum of money drawn on them, or some and which of them by the said S. F. and his said copartner or copartners, or any and which of them, and for what reason, and under what circumstances did they refuse such payment? State the particulars of the several matters hereinbefore inquired into, fully and at large, and the truth declare, &c.

Did you or not know J. S. in the pleadings of this cause named? CH. XIII.
 If yea, Is he living or dead, and if dead, where and when did he die, and did you or not see him after he was dead, and where was he buried, and did you or not attend at his funeral, or how do you know that he is dead? Declare, &c. To prove the death of a party and his burial.

Did you know the leasehold estate called W. in the particulars of the estate in the pleadings of this cause mentioned? And if yea, Did you know ———? And if yea, Was the said ——— living or dead on the 4th October 1821, and if dead, when did he die, and how do you know that the said ——— is dead? And was or not the said ——— one of the lives named in the lease of the said estate called W. as you know or for any and what reason believe? Declare, &c. To prove death of a nominee in a lease held for lives.

Did you know A. B. and C. D.? If yea, Do you know whether they or either, and which of them be now living or dead? And if they are dead, when did they respectively die, and how do you know that they are both, or either of them is dead? Declare particularly your reasons for knowing or believing that the said A. B. and C. D. are or that either and which of them is dead; And are you acquainted with the character or manner of handwriting of the said A. B. and C. D., or either and which of them? If yea, Look on the exhibit marked with the letter (A) and now produced and shewn to you at this the time of your examination, and at the names of A. B. and C. D. indorsed thereon as witnesses to the sealing and delivering thereof and declare whether the same be of the respective proper handwriting of the said A. B. and C. D. as you know or for any and what reason believe; Declare, &c. To prove the death of a witness, and their handwriting.

Did you or not know J. G. late of ———, a witness examined *de bene esse* in this cause? If yea, Do you know whether he is living or dead, and if dead, when did he die, and how did you become acquainted with his death? Look upon the paper-writing now produced and shewn to you at this the time of your examination marked with the letter (A) and purporting to be a copy of the register of the burials of ———? Did you at any time, and when, carefully examine the same with the entry made in the register book of or kept for any and what parish or place, and is the same a true copy thereof as you know or for any and what reason believe? Declare, &c. To prove the death of a witness examined *de bene esse* and a copy of the register of his burial.

CH. XIII.

Whether or no was the testator W. O. in the pleadings in this cause named, at the time of his death indebted to the said complainants, or either, and which of them in any and what sum or sums of money, and when, and by what means, and on what account did the said testator become so indebted? Declare, &c.

To prove the debt due to the plaintiffs.

To prove that a deceased person was indebted to the defendant; applications made to him for payment;

the deceased's acknowledgments of the debt;

that witness wrote several letters to the defendant by the deceased's direction respecting the debt; that the deceased promised to pay the same;

and whether the debt was ever paid.

Was or not the said S. D. in his lifetime indebted unto the said defendant C. L. in any sum or sums of money as you know or do for any and what reason believe? If yea, In what sum or sums of money, and for what, or on what account or accounts, and to what amount was the said S. D. so indebted unto the said defendant C. L.? Whether or no did the said defendant C. L. by himself, or by any other person or persons, and whom, in the lifetime of the said S. D., apply to or request the said S. D. to pay, or satisfy him, the said defendant C. L., such debt or debts, or any, or either, or which of them, or any, and what parts or part thereof, or make any other and what application to the said S. D. touching or concerning the said debt or debts, or any or either, and which of them, or any and what parts or part thereof? If yea, When or about what time or times, and where and in what manner was or were such application or applications, or request or requests made, and what did the said S. D. do, say, or declare then or on that occasion? Whether or no did the said S. D. in his lifetime, and when, or about what time or times, and where, and upon what occasion or occasions, say, confess, acknowledge, or declare unto you, or unto any other person or persons, and whom, in your presence or hearing, anything, and what touching or concerning such debt or debts, or any or either and which of them, or any and what part or parts thereof? And did you or did you not at any time or times and when, by the order or direction, or at the desire and request of the said S. D. or of any other person or persons, and whom, write or send any and what letter or letters, or any other and what writing or writings, and of what contents, purport, or effect to the said defendant C. L., touching or concerning the said debt or debts, or any, or either, and which of them, or any and what parts or part thereof? Whether or no did the said S. D. at any time or times in his lifetime, and when, where, and in what manner, and upon what occasion or occasions, and to whom, and in whose presence and hearing, admit, confess, or acknowledge, or promise to pay the said debt or debts, or any, or either, and which of them, or any and what parts or part thereof? And did or not the said S. D. at any time or times, and when in his lifetime, pay or in any and what manner satisfy the said defendant C. L. the said debt

or debts, or any, or either, and which of them, or any and what parts CH. XIII.
or part thereof? Declare, &c.

[To prove the execution of deeds; see post.]

Have you now, or have you not lately, and when last had in your custody, or possession, or power, certain deeds, papers, writings, and documents in some and what chest or otherwise, of, or relating to the estates and family of A. in the pleadings in this cause named, or of some and which of them? If yea, How did the same come into your custody or power, and from whom and when did you receive or possess the same and each and every of them, and how did the same come into the custody, possession, or power of the person or persons from whom you received or possessed the same as you know or have heard, or for any and what reason believe? Declare, &c.

To prove that witness had certain deeds in his possession; from whom he received the same, and how the same came into the possession of the persons from whom he received the same.

Look upon the deeds, papers, or writings produced, &c. What do the same respectively purport to be? Were or was the same or any or either and which of them at or about any and what time or times found, and by whom, and on what occasion in the custody of any and what persons or person amongst any deeds or writings relating to any, and what, and whose estate? Where and in whose custody have or hath the same, or any, or either, and which of them been from time to time, and for any and how long time kept, and whether or not amongst the deeds or writings relating to any and what estate, or how otherwise? Declare, &c.

To prove the finding of old deeds and in whose custody the same have been.

By whom were the said indentures brought over to B. to be executed, and upon what day in particular, and whether or no upon occasion of the same being so brought over, and prior to the execution thereof, were the same, or any, and what parts thereof in particular read over to the said Sir T. B. by you or by any person and whom by name on his behalf, for their or his approbation, or were the same, or any, and what part thereof in particular, read over by any person, and whom by name, in or out of the presence of the said Sir T. B.? And if yea, By whose directions and requests did such person so read and inspect the same, and what parts, and for what purpose, and with what view in particular, and where was the said Sir T. B. when such person so inspected the same, or any, and what part thereof; and in particular were you, or was any other person, and

To prove by whom certain deeds were brought to a person to be executed; whether the same were read over to him or on his behalf; Whether witness was requested by the person who brought over the

CH. XIII. who by name upon the occasion aforesaid, requested by the said persons or persons who brought over the said indentures to B. or either deeds to peruse and examine the same on behalf of the said Sir T. B. and to approve thereof for him, and to see that the same was properly and fairly drawn up; and whether or no was the aforesaid memorandum of agreement, or any draft of the said release produced on the occasion aforesaid, or was the same, or any, and what part thereof, comprised with the said release, and whether or no, as you do know, or have any and what reason for believing, was it understood or believed by you and the other persons in the employment or service of the said Sir T. B. who were present, and by the said Sir T. B. when he executed the said release, that the said coal comprised therein was the same only as was comprised in the said memorandum of agreement, or was it understood, and known, or believed by the said Sir T. B. or by you and such other persons or either and which of you that the said release did comprise more than such last-mentioned coal and what other coal? Set forth, &c.

To prove what the person who brought the deeds to be executed said, which had the effect of inducing the witness to believe that the release had been prepared according to the instructions given, and to be less careful in examining the same.

Whether or no did the persons who brought over the said indentures to be executed as aforesaid, or either and which of them then inform or intimate to you, or to any other person present on behalf of the said Sir T. B. that the said release had been prepared by them or by either and which of them, according to the directions of the said Sir T. B. or with his knowledge or consent, or intimate or say anything upon the aforesaid occasion, which had the effect of inducing you or such other persons present on behalf of the said Sir T. B. to suppose that the said release was properly prepared and according to the directions and instructions received from him, or that he was acquainted with the terms and conditions thereof, or intimate or say anything which had the effect of making you inspect or examine the same less minutely and attentively than you would otherwise have done, or which tended thereto? And if yea, What was the nature and purport of such intimation, and what fell from such persons, and from either and which of them so far as you recollect the same, and how long did such person remain at B. after the same release was executed? Set forth, &c.

To prove why witness thought it unnecessary to examine the indenture of release.

Whether or no did you upon occasion of the same release being brought to B. for execution, examine or read over the whole thereof? And if nay, What were the reasons which prevented you from so doing, or which made you think it unnecessary so to do? Set forth, &c.

Whether or no did the persons who brought over the said release to be executed as aforesaid propose or invite any inspection or examination thereof? Set forth, &c. CH. XIII.
To prove whether the person who brought the release to be examined proposed an examination thereof.

Whether or no was there upon the occasion last mentioned any appearance of eagerness and anxiety on the part of the persons in the preceding interrogatory referred to, or other and which of them, that the said indentures of lease and release should be forthwith executed by the said Sir T. B.? And if yea, Did either and which of them express such eagerness and anxiety to you or to any other person in your presence, and what reason did they or either and which of them assign for such eagerness and anxiety shown? And whether or no did such eagerness or anxiety on their part escape your attention and observance at the time when the same was shewn, and did you then draw any conclusion or inference therefrom? And if yea, What conclusion and inference did you then draw, or did you draw any and what inference therefrom at any subsequent time, and when did such eagerness and anxiety if any for the first time appear, state; and when did you for the first time draw any and what conclusion or inference therefrom, and why did you not draw any such inference therefrom at the time when the same was shewn? Set forth, &c. To prove that the person who brought the deeds to be executed showed great anxiety to have them executed; that such anxiety did not escape the witness's observation, and what inference he afterwards drew therefrom, and when for the first time.

Whether or no upon discovering the said grant to be objectionable did you take any and what steps for the purpose of altering the same, and in what particular or particulars did you endeavor to have the same altered, and state all such particulars, and whether or no did you ever and when, endeavor to have any alteration made in the description of the parcels of land in the said release contained with the view of conforming the same with the description of the parcels contained in the said memorandum of agreement or with any other and what view, and if not why not? Set forth, &c. To prove what steps witness took upon discovering the indenture of release to be objectionable, to have the same altered, and the parcels made conformable to the description contained in the previous agreement.

Whether or no did you ever compare the said memorandum of agreement and release as to the description of the coal comprised therein respectively and of the lands comprised therein respectively, and of the lands under which the same coal did lie, and did you or not discover, or were you or not informed that the said memorandum of agreement and release differed in any and what particulars, and when did you for the first time discover that the said memorandum of agreement and release do differ therein, or by whom were you informed thereof, and what was the occasion of such variation being To prove that witness examined the agreement and release; and when he first discovered that the description of the lands comprised in

CH. XIII. discovered so far as you do for any and what reason know or believe, and by whom by name was such variation first discovered? Set forth, &c.

the release differed from the agreement, or by whom he was informed thereof, and when such discovery was first made, and the occasion thereof.

To prove that promises were held out that the indenture of release should be corrected.

Whether or no while you acted in the said land agency were any promises made or expectations held out to you by the grantees named in the said release or by any and which of them that the same should be corrected and in any and what particular, and when and in the presence of whom by name and upon what occasion were such promises made or expectations held out, and in what manner were the same made and held out respectively? Set forth, &c.

To prove that witness after the release was executed by Sir T. B. informed him of various objections which he had discovered to the terms thereof; that Sir T. B. expressed his disapprobation of the terms in which the deed was drawn up; and that he would never have acquiesced to any claim on the part of the grantees to a particular farm if such claim had been made in his lifetime; but that he would have taken proceedings to have had the deed rectified if he had been aware that more coal was comprised therein than in the previous agreement.

Whether or no did you at any time after the release was executed and when inform the said Sir T. B. that you objected to the terms and stipulations thereof or to any and which of them in particular, and whether or no did the said Sir T. B. ever and when in particular express to you or to any other person as you do know or believe by name any disapprobation of the manner and terms in and upon which the said release had been drawn up? And if yea, What was the extent of such disapprobation, and to which of the terms and stipulations of the said release was such disapprobation in particular and exclusively directed? And whether or no as you do for any and what reason know or believe would the said Sir T. B. have continued to acquiesce in the said release, and especially would he have acquiesced in any claim on the part of the said L. M. C. to the said farm, in the year 1789, occupied by J. K. if any claim thereto had been made or declared in his lifetime or if he had conceived that any such claim would thereafter be made? And would he as you do for any and what reason know or believe have endeavored to set aside or alter the said release by any and what proceedings in any and what particulars if he had become aware of the terms and conditions thereof, and especially if he had become aware that more coal was comprised therein than in the said memorandum of agreement? Set forth, &c.

To prove under what circumstances witness happened to be present at the time of the execution of certain deeds.

How came you to be present at B. at the time when the before-mentioned indentures of lease and release were executed, and for what purpose were you there, and whether or no for such purpose exclusively or for any and what other purposes? Set forth, &c.

Was there or not any dispute or difference between the said complainant and defendant relative to the said complainant's paying the sum of £——, or any other and what sum or sums of money to R. T. in the pleadings in this cause named? If yea, When or about what time did such dispute or difference arise or take place, and what was the particular nature thereof? Declare, &c.

CH. XIII.
To prove a dispute having arisen between the plaintiff and defendant with regard to the payment of a certain sum of money;

Did or not the said complainant and defendant ever and when agree to refer such dispute or difference to the arbitration or determination of any person or persons and whom by name? And if yea, Did or not such person or persons undertake such reference and fully and fairly hear the said complainant and defendant touching such dispute or difference? If so, When and where did such arbitrator or arbitrators hear the said complainant and defendant, and did or not such arbitrator or arbitrators make any and what award or decision or give any and what opinion touching the matters so referred to him or them? And was or not the said defendant ever and when and where and by whom and how or in what manner informed or made acquainted with such award, decision, or opinion, and did he or not then or at any other time or times, and when, make any and what declarations respecting the same, and did he or not appear to be satisfied therewith? Declare, &c.

To prove an agreement to refer such dispute to arbitration; the decision made by the arbitrator, and the defendant's acquiescence therein.

Do you or not know, and if yea, how and by what means, whether the said complainant H. S. ever and when and of whom and in what manner received any and what sum or sums of money and to what amount for or in respect or on account of the dividends due upon the sum of £700 3 per cent. consolidated bank annuities in the pleadings of this cause mentioned, and in particular do you know whether she received such dividends or any part thereof and from whom subsequently to the —— day of ——? Declare, &c.

To prove the receipt of dividends upon a sum of stock by the plaintiff.

Were you or not at any time and when, during what space of time in particular employed by the said defendant J. G. in the pleadings in this cause named, as his attorney or solicitor? If yea, Look upon the exhibits now produced and shewn to you at this the time of your examination marked respectively (A) and (B), the one marked (A) indorsed as purporting to be an "abstract of the title of E. F. M." &c. and the one marked (B), indorsed as purporting to be a "further abstract of the title of E. F. M." &c.; Did you at any time or times and when in particular as the solicitor or attorney of the said J. G.

EXHIBITS.

To prove as exhibits the abstracts of title received by the witness as solicitor for the defendant.

CH. XIII. receive the said exhibits respectively or either and which of them
 Exhibits. from any person or persons and whom by name, either on their or
 his own behalf or on the behalf of any and what other person or
 persons? And are the said exhibits respectively in the same state
 and condition in which they respectively were at the time you
 received the same from such person or persons or how otherwise?
 Declare, &c.

Interrogatories for examination of an accountant relative to an account made
 out by him of the dealings between deceased persons.

Outline of the Plaintiff's Case.

G. G. the husband of the plaintiff was agent to D. defendant's hus-
 band in L., and as D. made remittances to G. who paid money for D.
 in the capacity of agent, an account was opened between them; G.
 died. The person to whom these interrogatories were administered
 was employed after G.'s death to settle the accounts between him and
 D., afterwards D. died. The plaintiff brought her bill praying an
 account, and alleging that a sum of money remained due to her from
 the estate of D.

1st. [*As to knowledge of the parties; see p. .*]

To prove
 that wit-
 ness was
 employed
 to make out
 the ac-
 counts; al-
 so to prove
 as exhibits
 the books
 delivered to
 him on the
 part of the
 plaintiff,
 which had
 been kept
 by her de-
 ceased hus-
 band.

2d. Were you or not ever and when employed by any and what
 person or persons and whom by name, to make out any account of the
 dealings and transactions between the said G. G. and T. D. in their
 respective lifetimes? And if yea, When did you receive from the said
 complainant any books, papers, or writings for such purpose, and par-
 ticularly, whether or not any and what books or book which were or
 was, or appeared to have been kept by or for the said G. G. in his
 lifetime for the purpose of making entries of any and what kind, relat-
 ing to dealings between him and the said T. D.? Look upon the books
 now produced, &c. Were or was the same or either and which of
 them ever and when delivered unto you by or on behalf of the said
 complainant for such purpose or on such occasion or for what other
 purpose or on what other occasion, and what do the same respectively
 purport to be? Declare, &c.

To prove
 applica-
 tions made
 to the de-
 fendant's
 late hus-
 band for his
 books of ac-
 count; also
 prove the
 same as ex-
 hibits.

3d. Did you or not ever and when or about what time in any and
 what manner apply to the said T. D. to deliver or send up to you or
 furnish you with any books or book of account, papers, or paper
 matters or things for or towards enabling you to make out or assisting
 you to make out the account of dealings and transactions between the
 said G. G. and T. D., and did or not the said T. D. ever and when
 or in what manner deliver or send unto you any and what books or

book of account, papers or writings for such purpose or in consequence of such application? Look on the books, papers, and writings, &c. Were or was the same or any or either of them delivered or sent unto you by the said T. D. on such occasion or for such purpose, and what do the same produced books, papers, and writings respectively purport to be? Declare, &c.

CH. XIII.

Exhibits.

4th. Did you or not ever and when draw out any account in writing of or concerning the dealings or transactions of all or any and what kinds which were had or passed between the said G. G. and T. D. for any and how long time or times and from and to what times? Did you or not previously to or in order to the drawing out of such account, carefully or otherwise and how, examine, inspect, or peruse all or any and which of the books, papers, or writings which were delivered or sent unto you for such purpose by or on behalf of the said complainant and the said T. D. respectively or by or on behalf of either and which of them? Look upon the book or writing, &c. Is the same or not the account which, if any, was so drawn out by you, or a true copy thereof? Doth the said book or paper marked _____ contain a just and true account of all dealings and transactions between the said G. G. and T. D. for the time for which the same appears to be an account, or are there any and what errors, omissions, or false charges therein and for what reason? Point out all such errors, omissions, and false charges, and how the same happened therein? Declare, &c.

To prove as an exhibit the account made out by witness, or a copy thereof, and whether the same is true or false.

5th. Whether or no was a copy of the account which, if any, was drawn out by you as is inquired after in the 4th interrogatory, at or about any, and what time delivered or sent, and by whom unto the said T. D.? Was the same or not a true copy of the said book or writing, &c., or did the copy which, if any, was so sent or delivered, in any, and what respect, differ or vary from the said produced books or writings marked, &c.? Declare, &c.

To prove that a copy of the account as made out by the witness was sent to the deceased husband of the defendant.

6th. Whether or not were any meetings had, and how many in number, between you and the said T. D. for or in order to the settling, examining, or considering, of the said account which, if any, was drawn out by you as is inquired after in the 4th interrogatory? If yea, When or about what time, and where were such meetings had, and how long were you and he together at each of such times? Did or not the said T. D. at all or any, and which of such meetings with any, and what degree of care or attention, or otherwise, and how examine the whole, or any, and what part of such account, and all or any, and which of the articles therein; and were or not any, and what books, papers, or writings, inspected or examined by him and you, or one, and which of you, at such meetings, or either, and which of them? Set forth what passed between you and the said T. D. at

To prove meetings had by the witness with the husband of the defendant in order to the settling of the account drawn out; what passed thereat and what acknowledgments were made by him.

CH. XIII. such meeting, touching the settling, or adjusting, inspecting, or examining of the said account or in any manner relating to the several items or charges therein, and how the said T. D. at such respective meetings expressed himself relating thereto; Did or did not the said T. D., at any time and which of such meetings, or at any, and what other time in any, and what manner, acknowledge or allow the said account, or any, and what particulars thereof, to be just and true? And did he or not, finally make any, and what objections, thereto, or to any, and what articles, matters, or things, in his favor, and to what amount?

Exhibits.

7th. (*To prove in evidence the acknowledgments made by the deceased husband of the defendant, in his own handwriting, contained in an account book; see the 1st interrogatory inserted in p. 272, ante.*)

8th. (*To prove remittances of bills of exchange; the same interrogatory as inserted post.*)

Lastly. (*The concluding general interrogatory; see p. 268, ante.*)

To prove the handwriting of, and also to prove as an exhibit a diary or account kept by a land agent to a proprietor of extensive coal mines.

Do you know L. N. in the pleadings named, and how long and in what character were you acquainted with him, and can you [or are you able] by and what means [to] speak to his handwriting? Declare the truth, and your utmost knowledge, remembrance, and belief herein.

Look at the exhibit now produced and shewn to you, marked with the letter —, and purporting to be a certain diary or account kept by the said L. N. between the months of January and October 1780; Whether or no is the same such diary or account, and in whose handwriting is the said diary or account, and in what character or capacity was the same kept or written by the said L. N. or by any other, and what person, by name? Declare the truth, &c. (*ut supra.*)

To prove the signature to an agreement by some person acquainted with the party's handwriting.

Look upon the paper-writing now produced, and shewn to you at this, the time of your examination, marked with the letter (A); Whether or no are you by any, and what means, acquainted with the character and manner of handwriting of the said defendant I. D.? And whether or no is the name I. D. appearing to be set and subscribed to the said produced paper-writing of the proper handwriting of the said defendant I. D., as you know, or believe? Declare, &c.

Whether or no were you acquainted with R. D., late of ———, but now deceased, and did you ever see the said R. D. write, or are you by any, and what other means acquainted with the character or manner of handwriting of the said R. D.? Look upon the paper-writing now produced, &c. Whether or no is the name R. D. appearing to be set and subscribed to the said produced paper-writing marked (A) of the proper handwriting of the said R. D., or as you know or believe? Declare, &c.

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Exhibits.

To prove the signature of a deceased person to an agreement, by a person acquainted with his handwriting.

Look at the paper-writing marked with the letter (A) and now produced, &c. Whether or no is your name appearing to be set and subscribed thereto for the said defendant of your proper handwriting? If yea, When did you so set and subscribe your name thereto, and whether or no had you the instruction or direction of the said defendant to sign such paper, or any such paper, or to make any such agreement, or any other, and what agreement, with the said complainant; or did you at any time, and when previously, inform him, or intimate to him, that you would on his part, sign such paper, or make any agreement to any such, or what other effect, with the said complainant, and did he approve of such your intention, or how otherwise; or did you at any time, and when, first afterwards, inform him, or in any, and what manner, intimate to him that you had such paper, or made any agreement to any effect with the said complainant, and did he approve thereof, or how otherwise, or with what authority, and with what intention did you so sign and subscribe the said paper-writing or agreement? Set forth, &c.

To prove witness's signature to an agreement as agent for or on behalf of the defendant; what passed previously to his signing the same, and whether the defendant approved thereof.

Are you acquainted with the character, or manner of handwriting of the said M. S., and the said A. W., and J. F., or either, and which of them? If yea, Look on the paper-writing now produced and shewn to you, at this, the time of your examination, marked with the letter (A), purporting to be an agreement between the said M. S. on behalf of the said A. W. and the said J. F., bearing date ———, and at the names M. S. and J. F., thereunto subscribed, and declare whether the same be of the respective handwriting of the said M. S. and J. F., as you know, or for any, and what reason, believe? And look at the name A. G., set and described as an attesting witness to the execution of the said agreement, and is the same of your proper handwriting, and did you see the execution of the said agreement by the said M. S. and J. F., or either, and which of them? And look at the memorandum indorsed on the said agreement purporting to be a ratification of the said agreement by the said A. W. and the name of A. W. there-

To prove the execution of an agreement which had been signed by the agent of one of the parties thereto;

And the memorandum indorsed

CH. XIII. unto set and subscribed; Is the said name of the proper handwriting of the said A. W., as you know, or for any, and what reason, believe? Exhibits. Declare, &c.

signed by such party, ratifying the act of her agent.

To prove bills of exchange, promissory notes, &c.

Do you know the character and manner of handwriting of _____? If yea, Look upon the exhibits now produced and shewn to you at this the time of your examination marked respectively _____ and purporting to be bills of exchange, and promissory notes drawn, indorsed, or accepted, by the said _____, and look at the names _____ thereon respectively written, as drawer, indorser, or acceptor, of the said bill or bills of exchange, promissory note or promissory notes, or some, and which of them; Are the names _____ thereon respectively written, of the proper handwriting of the said _____ as you know, or for any, and what reason, believe? Declare, &c.

To prove the execution of a bond of a subscribing witness, or if dead, by persons acquainted with the handwriting of the subscribing witness or witnesses.

Look upon the bond or paper-writing now produced, &c., whether or no was the said produced writing at any time, and when, signed, sealed, and delivered, or in any, and what manner, executed by any person, and whom, in your presence? And is your name set and subscribed as a witness thereto, of your proper handwriting, or whether or no were you acquainted with any person or persons, whose name or names appear to be set or subscribed to the said bond or paper-writing as a witness or witnesses thereto? And did you ever see such person or persons write, or were you by any and what other means, acquainted with the character or manner of handwriting of such person or persons? And is or are the name or names of such person or persons so set and subscribed to the said bond or paper-writing of his, her, or their proper handwriting? And whether or no is, or are such person or persons now living or dead, and if dead, when and where did he, she, or they die, as you do for any, and what reason, know or believe? Set forth, &c.

Interrogatories to be exhibited, &c. (*see p. 265, ante*), in a cause wherein J. L. the elder, and J. L. the younger, are plaintiffs, and E. T. and J. G. are defendants, on the part and behalf of the said complainants.

1st. (*The general interrogatory as to knowledge of parties; see p. 268, ante.*)

2d. Whether or no were you in the year _____ employed by T. C.

late of ———, in the county of ———, but now deceased, and in the pleadings in this cause named as his attorney? Whether or no did you in that character, or otherwise, at any time, and when, in or about the month of ———, prepare a bond to be executed by the said complainants for the payment of the sum of £——— to the said T. C.? Look upon the paper-writing now produced, &c.; Whether or no is such paper-writing the said bond so prepared by you as aforesaid? Whether or no did the said complainants, or either of them, in the presence of the said T. C., or otherwise object to the said bond being prepared as a common money-bond, and for what reason, and what passed thereupon between the said complainants, or either of them, and the said T. C., or yourself, and whether or no were you at any time, and when, desired by any person, and whom, and in whose presence, to make a minute in writing of the actual consideration of the said bond, or to any such, or the like, and what effect, and whether or no did you make any such minute, and whether or no with the consent or in the presence of the said T. C., and whether or no did you then, or at any time, and when, read over such minute to, or in the presence of the said T. C. and the said complainants, or either of them; and did the said T. C. make any, and what observation, thereupon? Look upon the paper-writing now produced, &c. Whether or no is the said paper-writing, the minute, so written by you as aforesaid, or what hath become of such minute, and set forth the contents and purport thereof to the best and utmost of your recollection and belief? Declare, &c.

3d. Look upon the paper-writing now produced, &c. Whether or no is your name set and subscribed as a witness thereto of your proper handwriting? When and where and in whose presence did you so set and subscribe your name as a witness thereto? Whether or no previously to the execution of the said bond did any conversation pass between the said complainants or either of them and T. C. in the said bond named, as to the consideration of the said bond? If yea, Set forth the particulars of such conversation, and what was said thereon by the said T. C. and the said complainants, or either of them, or any other person or persons, to, or in the presence or hearing of the said T. C.? Declare, &c.

Lastly. (*The last general interrogatory; see p. 268, ante.*)

Observations. — The bill charges the bond to have been given for the purchase of T. C.'s interest in two farms, ——— farm and ——— farm. By the answer it appears that T. C. had not at the time ——— farm, and there is therefore a plain mistake in the bill, which ought to be amended before the replication is filed. The motion to amend should be amending defendant's office-copy, and requiring no

CH. XIII.

Exhibits.

To prove the preparing a bond by witness as solicitor to a person since dead, for securing payment of a sum of money by the plaintiffs; also to prove the bond as an exhibit; the objection taken by them to the bond being prepared as a common money-bond; also to prove as an exhibit the minute made by witness of the actual consideration of the bond and by whose desire, or to prove the contents and purport thereof. To prove the witness's attestation of the bond, and what conversation passed between the plaintiffs and the obligee as to the consideration of the bond.

CH. XIII. further answer, and will create thereofth no delay. Inquiry ought to be made of Mr. H. as to this minute in writing. If he has it he must be served with a subpoena *duces tecum* to produce it upon his examination. If he delivered it over, it may be necessary to give notices, or to take other measures, before parol evidence can be given by Mr. H. of its contents.

To prove the execution of two bonds, and under what circumstances. Look upon the two bonds or paper-writings now produced and shewn to you at this the time of your examination, marked with the letters (A) and (B); Whether or no were or was the same or either and which of them made and executed by you at the times they respectively bear date or when else and under what circumstances and for what considerations respectively, and on what terms and conditions were you articulated as a clerk to the testator W. G. in the pleadings in this cause named? Declare, &c.

To prove that a case was laid before counsel, and by whom, and the points submitted for counsel's opinion. Whether or no was any case during the life of the said Sir T. B. submitted to any and what counsel or other legal person and whom by name for his advice and opinion upon any matters relating to the said memorandum of agreement or release, or either and which of them; and if yea, By whom was such case so submitted and by whose authority and directions, and what were the points thereby submitted for such opinion and advice? Set forth, &c.

To prove as an exhibit the case which was laid before counsel, with his opinion thereunder written; also to prove whether witness, by the direction of a deceased person, or of his own suggestion, laid any other case before counsel relative to the matters before submitted to counsel. Look upon the exhibit or paper-writing now produced and shewn to you marked with the letters Z. Z. and purporting to be a case stated by you the before-named M. S. for the opinion of C. F. Esq. formerly of Bream's Buildings, with his opinion thereon, dated the 24th day of August, 1790; Whether or no are the same such case and opinion respectively, and by whom was the said case drawn up and prepared and in whose handwriting is the same, and is the opinion thereunder written in the handwriting of the said C. F. or was the same written by his authority and dictation as you do for any and what reason know or believe, and did you receive the same in answer to the case so submitted to the said C. F. as aforesaid; And whether or no did you or any other person being the agent of or in any manner employed by the said Sir T. B. or by the said defendants or either of them prior to or in the month of September, 1790, submit any other case than that set forth in the last-mentioned exhibit upon any other question concerning the said memorandum of agreement or release or either and which of them for the opinion and advice of the said C. F. or any and what other counsel or legal per-

son for his advice or opinion ; And whether or no did you state such case and take such opinion of your own authority or suggestion or by any direction from the said Sir T. B. for that purpose ; And whether or no did he ever know of such opinion being taken or hear or see the same ? Set forth, &c.

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Exhibits.

Look upon the paper or exhibit now produced and shewn to you at this the time of your examination marked (A) ; From whom and upon what occasion did you receive the same, and was the same delivered to you or to any other person to your knowledge or belief, and by whom, as a particular or catalogue of any and what sale ? Declare, &c.

To prove
a catalogue
of sale as
an exhibit.

Whether or no doth the said produced writing marked A. contain the words following or any and what other words, that is to say ; [*Setting out the instrument verbatim.*] Have you or not at any time and when and with whom examined and compared the said produced writing with the words set forth in this interrogatory as being a copy thereof ? Declare, &c.

To prove
the con-
tents of an
exhibit.

Whether or no did the said defendant C. L. as you do for any and what reason believe, deliver or cause to be delivered unto the said S. D. in his lifetime a written account or any writing purporting to be an account of some debt or debts or sum or sums of money that was or were due or owing by or from the said S. D. to the said defendant C. L. ? If yea, In what character and language was such account or writing, written or made out, and when or about what time was the same delivered to the said S. D. and what was or were the particular or particulars of such debts or debt, sum or sums of money, and how much did the same amount unto in the whole as you know, remember, or believe ? Whether or no did the said S. D. as you know or do for any and what reason believe, peruse, or examine the said account ? Did or did not the said S. D. ever deliver the said account to you ? If yea, When or about what time and for what purpose did he deliver the said account to you ? Did you or did you not by the order or direction of the said S. D. or otherwise and how at any time and when make or write a true copy of the said account ? If yea, In what language and character and for what purpose was such copy made or written, and was or was not such copy at any time and when and by whom delivered to the said S. D. ? And did or did not the said S. D. at any time or times and when peruse or examine the said copy, and did he or did he not in his own

To prove as
an exhibit
the copy
made by
witness by
the direc-
tion of a de-
ceased per-
son, of an
account
which had
been deliv-
ered to him
of moneys
owing by
him ; in
what lan-
guage the
account
and the
copy there-
of were
written ;
the observa-
tions which
the deceased
wrote on
the copy,
and in what
language ;
and requir-
ing the wit-
ness to
translate
the copy,

CH. XIII. handwriting or otherwise and how and in what language and character and at or about what time or times make or write any and what minutes, memorandums, or observations on the said copy? Whether or no is the paper-writing marked with the letter (B) and now produced by you, or any and what parts or part thereof of your own handwriting? If yea, How much or what part or parts thereof is or are of your own handwriting? And how much or what part or parts thereof is or are of the handwriting of any other person or persons and whom as you know or do for any and what reason believe? Is or is not the paper-writing marked with the letter (B) the copy which was made or taken by you of the aforesaid account? If yea, Translate the said paper-writing marked with the letter (B) and all the minutes, memorandums, and observations written or made thereon, into, and set forth the same in the English language, and in making such translation distinguish and point out the English of so much or of such part or parts of the said paper-writing as was or were written by you, and also the English of so much or of such part or parts of the said paper-writing as was or were written by any other person or persons and whom? Declare, &c.

To prove a copy of an agreement having been delivered to the defendant. Look upon the said paper-writing or agreement now produced, &c.; Whether or no did you at any time and when and where deliver to the said defendant any paper-writing purporting to be a copy of the said paper-writing, and was the same a true copy thereof? And whether or no did you at the time of delivering such copy produce to the said defendant the said original paper-writing or read the same to him, and did anything and what pass between you and the said defendant thereupon? Declare, &c.

To prove as an exhibit a copy of a draft previously to any alterations being made therein. Look upon the exhibit now produced and shewn to you at this the time of your examination marked ———; Is or not the same the copy made or caused to be made by you of the said draft lease previously to the alterations made therein? And is or not the said exhibit a true and exact copy of such draft lease previously to such alterations? Declare, &c.

To prove a copy of an entry of stock in the Bank stock books. Look upon the paper-writing or exhibit now produced and shewn to you at this the time of your examination marked with the letter ———; Did you compare or examine the same with any and what books or book of the Governor and Company of the Bank of England or with any and what book or books, entry or entries or not?

If yea, Does the same contain a true copy of such book or books, CH. XIII.
entry or entries, with which you so examined or compared the same Exhibits.
or not? Declare, &c.

Look upon the parchment-writing now produced, &c. purporting to To prove a
be a copy of a court roll; Did you at any time or times and when copy of a
carefully examine the same with the court roll to any and what court roll.
manor by name? If yea, Is the same a true copy of the court roll of
which the same purports to be a copy as you know or believe? De-
clare, &c.

Look upon the paper-writing now produced and shewn to you at To prove as
this the time of your examination marked with the letter (A); Did an exhibit a
you at any time or times and when and where examine the same with copy made
any entries or entry thereof made in the court rolls or court books on the court
of the manor of M. in the county of H. and are or is the same or rolls (in
any and which of them true copies or a true copy of such entries or proving the
entry? Declare the truth and your knowledge herein. customs of
a manor).

Look upon the paper-writings now produced and shewn unto you To prove
at this the time of your examination marked with the letters A., B., copies of
&c.; Whether or no did you at any time and when and where entries on
examine the same with any entries thereof made in any and what the court
court rolls of the manor of K. in the pleadings in this cause men- rolls.
tioned; And whether or no are the same true copies of such entries?
Declare, &c.

Look upon the paper-writing now produced, &c. Did you at any To prove a
time and when and where carefully examine the same with any entry copy of an
thereof made in the register book of any and what parish or place? parish reg-
If yea, Whether or no is the same a true copy of such entry? De- ister book.
clare, &c.

Look upon the paper-writings now produced and shewn to you at To prove
this the time of your examination marked respectively with the let- copies of
ters A., B., &c.; Whether or no did you at any time and when and entries in
where carefully examine the same with any entries thereof made in register
the register books of any and what parishes or places and are the books of
same true copies of such entries respectively? Declare, &c. births,
&c. burials, &c.

Look upon the writings now produced to you marked No. 1, &c. To prove
What do the same severally purport or appear to be? Did you ever copies of
and when examine the same or any and which of them with any and registers of
burials, &c. baptisms,
&c.

CH. XIII. what registers or register of baptisms or burials kept in any and what parish or place? If yea, When did you so examine the same,

Exhibits.

In whose custody the registers were, to whom the entries relate, and by what means witness was acquainted with them.

and in whose custody or power were or was such registers or register respectively? Are or is such produced writings true copies or transcripts of any and what entries in such registers or register concerning any and what person or persons, and who is or are or was or were such person or persons respectively as you know or for any and what reason believe, and particularly were you ever and when and by what means acquainted with such person or persons respectively? Declare, &c.

§ To prove copies of entries in parish registers as relating to persons mentioned in the pleadings, and the degree of relationship which such person bore to a deceased person.

Look upon the paper-writings now produced and shewn to you at this the time of your examination marked respectively with the letters ———; Did you compare and examine them or either and which of them with the register books of or kept for any and what parishes or places, and are they or is either and which of them true copies or a true copy of any and what entry or entries in any and which of such register books as you know or for any and what reason believe? And do any or either and which of such exhibits as you for any and what reason know or believe, relate to the births, marriages, or deaths of any or either and which of the persons mentioned in the pleadings of this cause? And what degree of relationship did such persons respectively bear to the said intestate J. N.? Declare, &c.

To prove search made for wills of particular persons, and discovery made of grants of letters of administration to their estates; also to prove copies of entries in the register books of the Ecclesiastical Office.

What is the proper Ecclesiastical Office for the probate of wills of persons dying in the parish of W., commonly called ——— in the county of W.? Whether or no have you carefully examined such office for the purpose of finding wills of J. C. late of, &c., who died in or about the year ———, and of T. C. late of ———, who died in or about the year ———? If yea, Have you found any will of the said J. C. or of the said T. C. or either and which of them, or doth it appear that administration of the goods, chattels, rights, and credits of the said J. C. or of the said T. C. was at any time and when granted to any person or persons and whom? Look upon the paper-writings now produced and shewn to you at this the time of your examination marked with the letters A., B., &c.; Whether or no are the same true copies of entries in the register books of the said Ecclesiastical Office? Set forth, &c.

To prove as an exhibit a copy of

Did you at any time and when, receive any and what handbills, from any person or persons, and whom by name, relating to or for the

discovery of A. G. in the pleadings of this cause named? If yea, CH. XIII.
 Look upon the exhibit now produced and shewn to you at this the Exhibits.
 time of your examination; is the same a true copy of such hand-
 bills as you know, or for and what reason believe, and did you handbills distributed for the discovery of a person.
 distribute or cause to be distributed, any and what number of such
 handbills of which the said exhibit is a copy, in any and what place
 or places, and by any and what means? Declare, &c.

Look upon the paper-writings now produced and shewn to you at To prove
 this the time of your examination, marked respectively with the let- copies of
 ters F. G., &c.; Whether or no did you at any time, and when, and inscrip-
 where carefully examine the same, with any writings or inscriptions tions on
 upon any and what tombstones or monuments in any and what tomb-
 churches or churchyards? If yea, Whether or no are the same true stones.
 copies of such writings or inscriptions respectively? Declare, &c.

Look upon the paper-writing now produced and shewn to you at To prove
 this the time of your examination marked ———, and purporting to the copy of
 be a copy of a judgment in his Majesty's Court of ———, at West- a judg-
 minster, in a certain cause in which ——— are plaintiffs, and ——— ment.
 defendants. Did you compare and examine the said paper-writing,
 with any and what record or roll, and where did you so examine and
 compare the same, and is the same a true copy of such record or
 judgment? Declare, &c.

Look upon the paper-writings now produced and shewn to you at To prove
 this the time of your examination, respectively marked with the let- copies of
 ters ———, and respectively purporting to be copies of judgments judgments.
 in his Majesty's Court of ——— at Westminster, against the said
 E. F. Did you compare or examine all or either and which of such
 paper-writings or writing with any and what record or roll, and
 where did you so examine or compare the same or either and which
 of them, and are, or is the same, or either and which of them true
 copies, or a true copy of such records or record, or judgment or judg-
 ments respectively? Declare, &c.

Look upon the paper-writings or exhibits now produced and shewn To prove
 to you at this the time of your examination marked respectively the copy of
 ———. Did you compare and examine both or either and which of an inquisi-
 such exhibits with any and what original filed or kept in any and tion of lu-
 what office? And when did you so examine and compare the same nacy, and of
 the order directing a
 traverse.

CH. XIII. or either and which of them respectively, and are they, or is either
Exhibits. and which of them respectively true copies, or a true copy of such
 originals respectively? Declare, &c.

[The commission of lunacy being under the great seal proves itself.]

To prove as exhibits copies of maps or plans and of a book of reference, the originals whereof were directed by Act of Parliament to be deposited in a particular office; also to prove that a piece of land and stone quarry were comprised in the original maps.

Have you or not ever and when examined the maps, or plans, and book of reference mentioned and referred to, in and by the Act of Parliament in the pleadings in this cause mentioned? If yea, Where were such maps or plans and book of reference then kept or deposited? Look upon the maps or plans and book of reference now produced, and shewn to you at this the time of your examination marked with the letters ———; Are or is such last-mentioned maps or plans and book of reference or either and which of them so far as the same relate to the piece of ground mentioned or described in the said original maps or plans and book of reference mentioned or referred to in and by the said Act of Parliament as No. 15 in the Parish of ———, true and correct copies, or a true and correct copy of such original maps or plans and book of reference? And have you or not at any time and when, examined the same with such original maps or plans and book of reference? Were or not the said piece or parcel of land and quarry in the preceding interrogatory mentioned comprised or included in the said original maps or plans and book of reference under the said description of No. 15 in the parish of ———, at the time of the passing of the said Act of Parliament as you know or do for any and what reason believe? Declare, &c.

To prove the copy of a notice, and when such notice was served, by whose direction, and by whom signed.

Look upon the exhibit now produced and shewn to you at this the time of your examination marked with the letter ———; Is the said exhibit a true copy of any and what original paper, and did you or not at any time and when compare the said exhibit with any and what original paper? And did you or not at any time and when in particular, serve upon or deliver to any and what persons or persons upon any and what occasion, and by whose order or direction the said original paper of which the said exhibit is a true copy, and what did such person or persons say at the time of the service or delivery of such original paper, and by whom was such original paper signed, and how do you know who signed such original paper? Declare, &c.

To prove copies of records.

Look upon the parchment or paper-writings produced and shewn to you at this the time of your examination marked respectively with the letters A. &c.; Whether or no do or doth the same, or any or

either and which of them contain a true copy or copies of any and what record or records, of any and what court or courts, of any and what original or originals, of which the same do or doth purport to be a copy or copies? Have you or not carefully examined or compared the said produced papers or writings, or either and which of them, with such, if any record or records, or other original or originals, and when, where, and with whom? Declare, &c.

CH. XIII.

Exhibits.

Look upon the paper-writings now produced and shewn to you at this the time of your examination, and marked with the letters —; What do the same severally purport or appear to be? Are or is the same or any and which of them true copies or transcripts, or a true copy or transcript of the whole or any and what part of any and what original writings or writing, and did you examine and compare the said produced writings, or any and which of them, and in whose custody or power were such original writings respectively or any and which of them at the time you so examined and compared such produced writings therewith respectively? What did such original writings purport or appear to be? Declare, &c.

To prove copies of original writings, and in whose custody the same were, and the purport thereof.

Look upon the exhibit now produced and shewn to you at this the time of your examination marked with the letter (B); Is or not such exhibit a true copy of any and what register or enrolment of any and what deed in any and what office for registering of deeds in any and what county? And did you or not compare such exhibit with any and what record or original enrolment in any and what office for the registering of deeds in any and what county? And do you or not know when such enrolment was made? And is not such register or enrolment the register of the said exhibit marked (A) in the preceding interrogatory mentioned and referred to? And is not such register or enrolment indorsed on the said exhibit marked (A) and is or not the said indorsement a true copy of the registry of the said deed in the registry book for and what county? Declare, &c.

To prove the registering of a deed by a copy of the registry, and the indorsement of such registration on the exhibit.

Look at the parchment-writing now produced and shewn to you at this the time of your examination marked with the letter (B) purporting to be a counterpart copy of a lease from the said A. W. to the said J. H. bearing date the — day of —; Did you or did you not examine the said counterpart with any and what deed from — to J. K. of —, and is or not the said parchment-writing a true copy of the same? Declare, &c.

To prove as an exhibit a counterpart of a lease, and that the same corresponded with a former lease of the same premises.

CH. XIII. Do you or not hold any and what office under the Ecclesiastical Corporation of the Dean and Chapter of the Cathedral Church of the Blessed Virgin Mary of S.? If yea, Do you or not know the common seal of, and which is used by the said corporation? If yea, Look at the exhibit marked ——— and now produced and shewn to you at this the time of your examination, and look at the seal thereto fixed and annexed; Is the said seal the common seal of the said Corporation of the Dean and Chapter of the Cathedral Church of the Blessed Virgin Mary of S.? And if yea, By whose order, direction, and authority, and when and by whom was the said seal affixed or annexed to the said exhibit as you know, or for any and what reason believe? Declare, &c.

To prove the debt due to the plaintiff according to the particulars contained in an exhibit. Was or not the said testator J. M. deceased, at the time of his death, justly and truly indebted to the said complainant in any and what sum or sums of money on simple contract? If yea, Look upon the paper-writing now produced and shewn to you at this the time of your examination marked ———; Does or not the said paper-writing contain a just or true account of the particulars of such debt or debts, and are or not the charges therein contained fair and reasonable as you know or for any and what reason believe? Declare, &c.

To prove the execution of a deed by the subscribing witness. Look upon the deed or writing now produced, &c.; Whether or no was such deed or writing at any time, and when, signed, sealed, or delivered in your presence, by any person or persons, and whom? And were you a subscribing witness to the signing, sealing, or delivery thereof, by such person or persons? And is your name indorsed and set as a subscribing witness thereto, of your proper handwriting? Declare, &c.

To prove a marriage settlement by the subscribing witnesses. Look upon the [paper or] parchment-writing now produced and shewn to you at this, the time of your examination, marked with the letter (A) and purporting to be a settlement made on the marriage of the said J. B. with the said A. R.; Did you or not, see the same signed, sealed, and delivered, and by whom respectively, and when, and where, and in whose presence? And look upon the names ——— subscribed thereto; Are such respective names of the respective handwriting of the said ———? And look upon the names ——— signed as witnesses to the said exhibit; Is either and which of those names of your proper handwriting, and did you see either, and which, of the said other witnesses write their names as witnesses

thereto, and were you and such other witnesses present at the time the respective parties, or either, and which of them, signed, sealed, and delivered the said deed? *CH. XIII.*
Exhibits.
 Declare, &c.

Look upon the exhibit now produced and shewn to you, at this, the time of your examination marked with the letter (A), and look upon the indorsement on the back of the said exhibit; Did you or not at any time, and when, see the said exhibit sealed and delivered by any, and what person or persons, and delivered as the act and deed of any, and what person or persons, and whom by name? And did you or not see the indorsement or acknowledgment at the back of the said exhibit, signed, and by whom, and did you or not see the money in the said acknowledgment mentioned to have been received, paid, and by and to whom? And are the names —— indorsed and set as one of the subscribing witnesses to the sealing and delivery of the said exhibit, and the receipt of the said consideration-money of your own proper handwriting? And are the names and characters —— indorsed and set as the names of the other subscribing witnesses attesting the sealing and delivery of the said exhibit and the receipt of the said consideration-money of the proper handwriting of the said —— or whom else, and did you see the said —— set his name as a subscribing witness to the due execution of the said exhibit and the receipt of consideration-money? Declare, &c.

To prove the execution of a deed and payment of the consideration-money by the subscribing witness.

Look upon the exhibit or exhibits now produced and shewn to you at this, the time of your examination, marked ——, and look upon the indorsement on the back of the said exhibit or exhibits respectively; Did you or not at any time, and when, see the said exhibit or exhibits, or either, and which of them, sealed and delivered by any and what person or persons, and delivered as the act and deed of any, and what person or persons, and by whom respectively by name? And did you or not see the indorsement or indorsements, acknowledgment or acknowledgments at the back of the said exhibit or exhibits, and either, and which of them, signed by any, and what person or persons, and by whom by name, and were you or not a subscribing witness to the sealing and delivering of the said exhibit or exhibits, or either, and which of them, by any, and which of the parties thereto, and to the signing of the receipt or receipts for the said consideration-money, by any, and what person or persons, and is your name set or subscribed as such witness, to such sealing and delivering, and to such receipt respectively of your own handwriting, and is or are the name or names of the other subscribing witness or witnesses attesting the sealing and delivering of the said exhibit or exhibits, or either, and which of them, or the receipt or receipts of the said con-

General interrogatory to prove the execution of one or more deeds by the subscribing witnesses, and the signatures to the receipts indorsed. [Where the instructions furnished are not sufficiently accurate.]

CH. XIII. sideration-money, of the proper handwriting of such respective witnesses, or either, and which of them, and set forth how and by what means you are acquainted with the character or manner of handwriting of the said other witnesses to the said exhibits, or either, and which of them, and did they, or either, and which of them, sign and attest the execution of the said exhibit or exhibits, and either, and which of them, by any, and what person or persons, and the indorsement on the back thereof, by any, and what person or persons, in your presence? Declare, &c.

To prove the execution of deeds, and the signature to a receipt indorsed on the back of them.

Look upon the deeds or parchment-writings now produced, &c.; Whether or no were or was the said produced writings, or either, and which of them at any time, and when, signed, sealed, and delivered, or in any, and what manner executed, by any persons or person, and whom, in your presence, and is your name set and subscribed as a witness thereto, of your proper handwriting? Look upon the writing indorsed upon the back of the said deed or parchment-writing marked (B) and purporting to be a receipt for the sum of \$——; Whether or no was such writing so indorsed at any time, and when signed by any person, and whom, in your presence, and is your name set and subscribed a witness thereto, of your proper handwriting? Set forth, &c.

To prove as an exhibit a lease which had been tendered to the defendant; also to prove applications made to him to accept the lease and execute a counterpart, and the reasons of his refusal.

[See the first interrogatory in p. 308, ante.]

To prove certain letters as having been written by the witness, and the re-

Look at the parchment-writing now produced and shewn to you, at this, the time of your examination, marked with the letter (C), purporting to be a lease from the said complainant A. W., to the said defendant, and bearing date ——. Did you or not, at any and what time, and by whose order or direction, tender the said lease and the counterpart in the preceding interrogatory mentioned, or either, and which of them, to the said defendant, and did you or not at any, and what time, and by whose order and direction, request the said defendant to accept the said lease, and execute the said counterpart, and did or did not the said defendant refuse to comply with such requests, or either, and which of them, and for what reason, as you know, or for any, and what reason believe? Declare, &c.

Look upon the paper-writings now produced, &c. Whether or no were, or was such produced writings, or either, and which of them, or any, and what part thereof, or the name H—— P—— appearing to be set and subscribed thereto of your proper handwriting? And whether or no did you duly receive the several sums therein respec-

tively mentioned, or any, and which of them, according to the pur- CH. XIII.
port and effect of the said paper-writings, or either of them? De- Exhibits.
clare, &c.

Look upon the paper-writing now produced and shewn to you at ceipt of the
this, the time of your examination, marked with the letter (A); Of sums there-
whose handwriting is the said paper-writing and the name R. R. in men-
set and subscribed thereto, and the superscription or direction there- tioned.
of, as you know, or for any, and what reason, believe? Who acted To prove a
as the solicitor or solicitors of the said complainant, with respect to letter writ-
the purchases in the said bill of complaint mentioned? And whether ten by the
or no did the said R. R. in any, and what manner act, with respect solicitor of
to the said purchases on the part and behalf of any, and which, of the the defend-
said defendants? Declare, &c. ants to the
plaintiff's
solicitor.

Look upon the letter or paper-writing now produced, &c.; To prove a
Whether or no is the said produced letter, or paper, and the signa- letter as be-
ture thereto, and the direction thereof, or either, and which of them ing in the
of your proper handwriting, or of the proper handwriting of any witness's
person and whom employed by you, or was such letter or paper-writ- own hand-
ing written by any person and whom, by your direction and instruc- writing, or
tion, or with your approbation or privity, and what was your motive as having
or inducement for such letter or paper-writing being written and sent been writ-
by you, or by your direction or instruction, or with your privity or ten or sent
approbation, and did not such motive or inducement equally apply to by his di-
the said defendant T. B., and if not why? Declare, &c. rection, and
the motive
or induce-
ment for
writing it.

Are you or not by any and what means acquainted with the char- To prove a
acter or handwriting of L. M. in the pleadings of this cause named? letter as an
Look upon the paper-writing or letter now produced and shewn to exhibit; the
you at this the time of your examination, marked with the letter handwrit-
(A), and purporting to be a letter written by L. N., and bearing date ing and
the 31st day of October, 1789; In whose character or handwriting signature
is the said letter written, and in whose character or handwriting is and the oc-
the name L. N. signed or subscribed thereto, and when and upon casation of
what occasion was the said letter written? Is or is not Mr. J. to its being
whom the said letter purports to be directed, the said defendant written; that
J. J.? Whether or not did the said J. J. ever receive the said letter? it was writ-
Whether or not did you know, or were you by any and what means ten to one of
acquainted with the said L. N.? If yea, How long did you know the defend-
him, and whether or not was he the steward or agent of Sir T. B. in ants, that
the pleadings in this cause named? Whether or not do you know he received
the reason why or what it was that induced the said L. N. to write the same,
also to
prove how
long wit-
ness was
acquainted
with the
person who
wrote the
letter; that

CH. XIII. the said letter? If yea, Whether or not was the said letter written on account of or in consequence of any applications made to the said Sir T. B. or to the said L. N. respecting the purchase of the coals in the said letter mentioned? If yea, Set forth when and by whom such applications were made, and the purport and effect thereof, and all the particulars relating thereto; Set forth the situation of the lands under which the coals lay which were the subject of such applications? What do you understand to have been the meaning of the words "Cold harbor, &c. at Wibsey" in the said letter contained? Do you know or can you set forth whether or not the said defendant J. J. or the said J. H. the elder, after the said 31st of October, 1749, had any interview or meeting with the said Sir T. B. or with the said L. N. for the purpose of treating respecting the purchase of the coals in the said letter mentioned? If yea, Set forth when and where and upon what occasion such meeting took place, and set forth to the best of your remembrance and belief, the conversation that passed at such meeting, and who was present thereat.

Exhibits.
 he was steward to Sir T. B.; the reason which induced him to write the letter; that it was in consequence of applications to purchase certain coal lands, and by whom made; The meaning of a particular expression in the letter: and whether any meeting took place respecting the purchase of the coals, and what passed thereat.

Look upon the exhibits now produced and shewn to you at this the time of your examination marked respectively with the letters —, and purporting to be letters addressed by you to some person and whom by name, and dated respectively 18th March, 1811, and the 19th day of April in the same year; In whose handwriting are the said two exhibits respectively, and especially the signature and superscription, and to whom by name were the same respectively addressed and sent, and by what means, and what was the situation or employment of the person to whom the said respective letters were so directed and sent, and by what means are you enabled to state that the same respectively were addressed and written to such persons; and in whose handwriting is the indorsement on the back of the said exhibit dated the 19th of April, 1811, and by what means are you enabled to state the same? And whether or no are or is the said exhibits respectively or either and which of them the original letters or letter addressed and sent by you as in the former part of this interrogatory mentioned, or a copy or copies thereof, or extract or extracts therefrom, and how do you know, and are you enabled to state the same? Declare the truth, together with your means of knowing and reasons for believing the same.

To prove two letters as exhibits, and the handwriting, signatures, and superscriptions, and to whom addressed, and his situation in life; also to prove the handwriting of an indorsement on the back of one of them, and whether the exhibits are the original letters or copies or extracts therefrom.

Look upon the paper-writing now produced and shewn to you at this the time of your examination marked with the letter (B); Of whose handwriting is the said paper-writing and the signature thereto

To prove a notice sent to the plaintiff's

and the superscription thereof? Whether or no was the said paper-writing sent to the said complainant, or any person and whom on his behalf at any time and when by you or by your direction? And whether or no were you employed as the solicitor or attorney of the said defendants R. R. and C. his wife, and R. W., or any, or either, and which of them in the matter of the purchases made by the said complainant and in the said bill mentioned? Declare, &c.

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Exhibits.

solicitor by the solicitor for the defendants, and the handwriting, signature, and address.

Whether or no did you at any time in or about the year _____, and on or about what day or days in particular deliver to the said complainants respectively, or either and which of them and where, any and what writing purporting to be a notice from the defendant of her desire that the defendant should not be disturbed in the possession of any and what house, or to any such or the like effect? Was or not the name of the defendant subscribed thereto, or to either and which of them? Were both such notices or writings in the same words and figures or in any and what respect different from each other? Did you or not keep a copy of each or either and which of such notices or writings which if any were or was so delivered? Look upon the paper-writing now produced and shewn to you at this the time of your examination marked with the letter (B); is the same or not a true copy of each or either and which of the notices or writings which if any were or was so delivered? Did you or not ever examine and compare the said produced writing with the notices or writings so delivered or with either and which of them? Declare &c.

To prove service of notices upon the plaintiffs, by whom signed, and the contents thereof; also to prove as an exhibit a copy made by witness of the notices.

Look at the exhibit now produced and shewn to you at this the time of your examination marked (A); Is or not the same the particular which was produced by the vendor or the agents of the vendor at the time of the sale of the premises in the pleadings of this cause mentioned? And is or not the said exhibit the particular by which the said premises were sold, and was or not the said exhibit read to the company present at the said sale, and was or not the same declared to the said company to be the particulars and conditions of sale? Declare, &c.

To prove a printed particular of sale as the one by which premises were sold by auction.

Look upon the paper-writing now produced, &c., and purporting to be a promissory note for \$ _____ from A. B. deceased, in the pleadings of this cause named to the said complainants, and bearing date the _____ day of _____; Whether or no did you ever see the said A. B. write, or are you by any other and what means acquainted with the character and manner of his handwriting? And whether or no is the name A. B. appearing to be set and subscribed to the said pro-

To prove a promissory note.

CH. XIII. Exhibits. produced paper-writing of the proper handwriting of the said A. B. as you for any and what reason know or believe? Declare, &c.

To prove receipts by persons acquainted with the handwriting of the party signing the same. Look at the exhibits now produced and shewn to you at this the time of your examination marked respectively A. B. C., and look at the names respectively signed to such exhibits; Do you know the parties whose names respectively appear to be set or subscribed to the said respective exhibits, and are you by any and what means acquainted with the character or manner of handwriting of either and which of them respectively? If yea, Of whose handwriting is or are such exhibit or exhibits, and in particular of whose respective handwriting is or are the respective names set or subscribed to such respective exhibits? Set forth the reasons on which you form your belief; Declare, &c.

To prove receipts indorsed on deeds by the subscribing witness. Look upon, &c. Whether or no were or was any and what receipts or receipt indorsed thereon, or on any or either and which of them, at or about any and what times or time, by any and what persons or person in your presence? Are you or not a subscribing witness to the signing of all or any or either and which of such receipts by all, or any, or either, and which of such persons, and of whose handwriting is your name now appearing to be set or subscribing as a witness to all or any and which of such receipts? Declare, &c.

To prove a will by the attesting witnesses. Look upon the paper or parchment-writing now produced and shewn to you at this the time of your examination, marked with the letter (A) and consisting of ——— sheets or skins; Whether or no was the said produced writing at any time and when signed, sealed, published, and declared by W. H. late of ———, the testator in the pleadings in this cause named, as and for his last will and testament in your presence and in the presence of any other person or persons and whom by name; or did the said testator in any other and what manner execute the said produced writing, or acknowledge the same as and for his last will and testament in your presence, and in the presence of any other person or persons and whom? Whether or no is your name and the name or names of the other person or persons set or subscribed as a witness or witnesses thereto, of your, his, or their proper handwriting respectively? And whether or no did you and such other person or persons or either and which of you set or subscribe your name or names as a witness or witnesses thereto in the presence of the said testator? And whether or no is or are such subscribing witness or witnesses

now living or dead? And if any or either of them are or is dead, where and when did such witness or witnesses die as you for any and what reason know or believe, and if any or either of them are living, where do they respectively or where doth he reside? Whether or no was the said testator at the time of his signing, sealing, publishing, and declaring the said produced writing as and for his last will and testament, or otherwise executing or acknowledging the same, of sound and disposing mind, memory, and understanding, or how otherwise, as you for any and what reason know or believe? Set forth, &c.

CH. XIII.

Exhibits.[*Or thus :*]

Look upon the paper-writing now produced and shewn to you at this the time of your examination marked with the letter (A); Did or not the said testator J. M. deceased, sign, seal, publish, and declare the said paper-writing as and for his last will and testament in the presence of you and of any other and what person or persons, or are you or not a subscribing witness to such the signing and publishing or execution of the said will by the said testator J. M., and are or not the several names set or subscribed as witnesses to the signing and publication or execution of the said will by the said testator J. M. of the proper handwriting of you and of such other person or persons whose names appear to be subscribed, and did or not you and such other person or persons respectively subscribe and set your and their names as witnesses to the signing and publication or execution of the said will by the said testator J. M. in the presence of the said J. M. and of each other, or how otherwise, and what is now become of such other persons, and where do they respectively now live and reside, or are or is any or either and which of such persons now dead? And if yea, When and where did they or he die? And was or not the said testator J. M. at the time of signing and publishing or executing his said will of sound and disposing mind, memory, and understanding as you know or do for any and what reason believe? Declare, &c.

Look upon the writings now produced to you, and marked with the letters (A) and (B) and purporting to be the last will and testament of J. P., in the second interrogatory named, and a codicil thereto? Did you at any time, and when, see the said J. P. sign, seal, publish, and declare, the said produced writings, or either, and which of them, as, and for her last will and testament, and a codicil thereto, and is the name J. P. set and subscribed to the said produced writings respectively, or either, and which of them, of the proper hand-

To prove a will and codicil where one of the subscribing witnesses is dead.

CH. XIII. writing of the said J. P.? Were you, and was, or were any, and
Exhibits. what person or persons besides yourself, present at the time when
 — such produced writings, or either, and which of them were, or was
 so signed, sealed, published, and declared, and did such persons or
 person, or any, and which of them, see the said J. P. sign, seal,
 publish, and declare, the said produced writings, or either, and which
 of them, and did you, and any other, and which of such persons
 or person, set or subscribe your, their, his, or her, name or names,
 to such produced writings respectively, or either, and which of them,
 as a witness or witnesses thereto, or to either, and which of them,
 and was, or were such name or names, or any, and which of them,
 so subscribed in the presence of the said J. P., or not? Is or are
 your name or names, or the name or names of any other, and what
 person or persons, appearing to be set or subscribed to such writ-
 ings respectively, or to either, and which of them, as a witness or
 witnesses thereto, or to either, and which of them, of your hand-
 writing, or of the handwriting of such person or persons respectively,
 or of any, and which of them, and did you see such person or per-
 sons, or any, and which of them, set and subscribe such produced
 writings, or either, and which of them? Is or are, such person or
 persons, or any, and which of them, dead? And if yea, When did
 they respectively, or any, and which of them, die? Was the said J. P.
 at the time she signed, or sealed, published, and declared such pro-
 duced writings, or either, and which of them, of sound mind, memory,
 and understanding? Declare, &c.

To prove the average annual expenses of the family of a person deceased, who was in his lifetime employed as a treasury messenger, and as to declarations made by him as to what one child, not resident in his family, annually cost him, also to prove the manner in which he usually travelled, and at what expense.

Whether or no were you acquainted with the manner of living of the said A. B.? And if yea, At what sum, upon the average, do you compute the annual expenses of himself and his family to have been, other and beside his travelling expenses, and whether or no had the said A. B. any child who did not live in his family, and in what situation was such child, and have you ever heard the said A. B. make any, and what, declaration or declarations, as to what such child annually cost him, and do you know the manner in which the said A. B. usually travelled in the journeys in which he was employed as treasury messenger, and at what expense? Declare, &c.

To prove whether a person had other means of

Whether or no had the said A. B., as you for any, and what reason, know or believe, any, and what means, of providing for the expenses of himself and his family, and for the expense of journeys, other than

from the moneys which he from time to time received from the said F. G.? Declare, &c. CH. XIII.

Whether or no did you know M. S., formerly of, &c., and when or about what time did the said M. S. die? And whether or no did you know W. C., formerly of, &c., and S. C. his wife, and was the said S. C. in any manner, and how, related to the said M. S., and when or about what time, and where, did she die, and what children had the said S. C., and what children survived her, and if any child or children of the said S. C. died in her lifetime, did such child or children have any child or children, and what has become thereof? And whether or no did you know J. C. of, &c., the son of the said S. C., and S. C. the younger, and E. C., the daughters of the said S. C., and did the said S. C. ever, and when, marry, and when, and where did he die, and whether testate or intestate, and had he, or did he leave any child or children? And if yea, What is become thereof? And did the said S. C., the daughter of the said S. C., ever, and when, marry, and to whom, and when, and where, did she die, and what children had she, or did she leave? And whether or no did you know W. C. and T. C., sons of the said S. C. the younger, and what became of the said W. C., and did he ever, and when, marry, as you know or believe, and did the said T. C. ever, and when, marry, and where, and when, or about what time, did he die, and whether testate or intestate, and had he, or did he leave any child or children? And if yea, What is become thereof? And did the said E. C., the daughter of the said S. C. the elder, ever, and when, marry, and to whom, and when, or about what time did she die, and had she or did she leave any child or children? And if yea, What is become thereof? Whether or no did you know the father of the said W. C. of, &c., the husband of the said S. C. the elder, and what was his name, and where did he live, and when, or about what time, and where, did he die, and what child or children had he besides the said W. C., and who was his eldest son, and who was his second son, and did his eldest son, in case the said W. C. was not his eldest, or if the said W. C. was his eldest, did his second son at any time, and when, and where, marry, and when, and where, did he die, and had he, or did he leave any, and what child or children? And whether or no, is the said complainant his eldest son, or who else is such eldest son? Set forth the particulars at large, according to the best of your knowledge, remembrance, and belief, and the truth declare.

providing for his family besides what he received as a treasury messenger.

To prove the state of a family in proving a pedigree.

Whether or no were any changes made in the out-fences of the two farms, in the pleadings mentioned to have been occupied by To prove when alteration

CH. XIII. James K. and John K. respectively, at any time within your memory, and how long have you known the said farms respectively, and especially were any changes made in the out-fences thereof, in or about, or prior to the year 1773, or at some, and what other time in particular? And whether or no were you, and during what period of time in particular, in the habit of attending at the collection of payment of rents to Sir T. B. in the pleadings named, or to his agent, at the place, and on the days of the collection and payment thereof, and did you attend at any and what dinner, and by and to whom given, on such days? And if yea, Whether or no, during such period as you attended thereat, and especially before the year 1773, and for some, and what time prior thereto, did one person attend to pay rent and attend at the said dinner, as the sole tenant or occupier of the said two farms, or did two persons so attend as several and distinct occupiers, the one of the one farm and the other of the other of the said two farms, and whether or no was the rent for the said farms paid as two separate rents paid by two tenants, or as one gross rent paid by one? And whether or no, as you do for any, and what reason know or believe, were the said two farms prior, and how long prior to the said year 1773, assessed for and did pay government taxes and parish rates, as two separate and distinct farms, or as one joint and undivided farm? And whether or no, in the year 1789, and how long previously thereto were the said two farms commonly known and reputed in the neighborhood thereof to be one joint farm, and held by one tenant, or two separate and distinct farms held by two tenants, and for what reason were the same so reputed, and state the various occupiers of the said two farms, and under whom they have respectively occupied, and the names and descriptions whereby the said two farms have been known since you have known the same? Declare the truth and your utmost knowledge, remembrance, and belief herein.

To prove goods sold and delivered by the plaintiffs to the defendant.

Do you know of any goods having been at any time previously to the month of ——— sold or delivered by the said complainant H. H. or by the said complainant J. A., to the said defendant R. P.? If yea, Set forth what goods were so sold and delivered by the said complainants H. H. and J. A., or either, and which of them, to the said R. P., and what was the value thereof, and at what time or times in particular, the same were delivered to the said R. P., and how, and by what means in particular you are acquainted with the several matters aforesaid? Declare, &c.

Look on the several books or exhibits now produced and shewn to you at this, the time of your examination, marked respectively with the letters ———; Are you or not, and by any, and what means acquainted with the character or manner of handwriting of the person or persons who made the several entries in the said books, or any and which of them? If yea, Of whose handwriting are such entries, or any, and which of them, and who made such entries, or occasioned such entries to be made as you know, or for any, and what reason, believe? Are the entries and accounts therein contained just and right as you know or for any and what reason believe? If not, What error or errors are therein contained? Set forth the same error or errors, if any, fully and distinctly? Declare, &c.

CH. XIII.

To prove the handwriting of entries made in books, whether the same are correct or not, and if incorrect to prove in what respect they are so.

Look upon the book now produced and shewn to you at this, the time of your examination, marked with the letter (A), and on the entry or entries made therein in folio ———; Are you acquainted with the character or manner of handwriting of the person or persons who made such entry or entries, or any, or either, and which of them, and did you see such person or persons, or either, and which of them, write? If yea, Of whose handwriting is or are such entry or entries, or either, and which of them, or any, and what part thereof, as you know or believe, and is or are such person or persons living or dead, that made such entry or entries, or any, and what part thereof, and on what occasion, or by whose direction, was or were the same, or any, and what part thereof made, as you know, or believe? Declare, &c.

To prove the handwriting of entries made in a book, and whether the persons who made such entries are living or dead, and by whose direction the same were made.

Did you know A. B. in the pleadings of this cause named, and for any, and what length of time? If yea, Do you or not, know whether he was ever married, and had he or not, any child or children by his wife, and what was or were the name or names of such child or children, and which of such children was the eldest son, and is such eldest son now living? Declare, &c.

To prove the eldest son of a deceased person as being his heir-at-law.

Did you know E. M. in the pleadings of this cause named, and for any, and what length of time? If yea, Do you or not know whether he was ever married, and if not, had he any brothers, and what were their names, and the order of their births, and which of them have survived him, and which of them was his eldest brother? Declare, &c.

To prove the brother of a deceased person, as being his heir-at-law.

Did you or not know J. E., the testator in the pleadings of this cause named? If yea, Do you or not know whether the said J. E.

To prove the nephew of a de-

CH. XIII. was ever married, or whether he had any legitimate child or children, ceased per- or whether such child or children survived him, or died in his life- son, as time, and whether such child or children left any, and what issue, being his heir-at-law. and whether such issue is, or are now living; and do you or not know whether the said testator J. E. had any brothers or sisters, and what were their names, or whether they, or either of them survived him, and whether either, and which, of such brothers and sisters had any child or children, and what were their names, and which was the eldest son of the eldest brother of the said testator, and do you or not know who is the heir-at-law of the said testator? And if yea, In what degree of kindred is he to the said testator, and how does he appear to be his heir-at-law?

To prove Whether or no did the said T. B. and J. E., or either, and which that the de- of them, or any other person, and who, on their, or either and which fendants in- of their part and behalf, at any time and when, after the date of the formed the witness, aforesaid letter or paper-writing, call at your office, or see you else- their solici- where, and where, and inform you, or any other person, and whom, tor, of their where, and where, and inform you, or any other person, and whom, intention to employ an- on your part and behalf, that they, or either, and which of them, had other solici- employed or meant to employ Mr. J. or any other person than your- tor, and self, as their solicitor in the said cause, and when and by what when it first came to his knowledge. means did you first know or had reason to believe and suspect that the said defendants, or either, and which of them, had, or meant to employ the said Mr. J., or any other person than yourself, as the soli- citor in the said cause? Declare, &c.

To prove Whether or no did you at any time and when before the said whether witness in- cause came on to be heard, inform the said defendants T. B. and formed his J. E. or either and which of them that you should instruct counsel to clients, two appear for them at the hearing, or did you at any time and when re- of the de- ceive any instructions from the said defendants or either and which of fendants in a cause, them so to do, or did you in fact give any briefs or instructions to that he should in- counsel to appear for the said defendants, or either and which of them, struct counsel to other than the briefs delivered by you for the other defendants, and appear for did you not previously to such hearing and when first know that the them at the hearing, what in- said Mr. J. as the solicitor for the said defendants T. B. and J. E. structions had taken copies of the depositions and had prepared or meant to pre- he received pare briefs for the instruction of counsel at the hearing on the part of and wheth- the said defendants or one and which of them? Declare, &c. er he did in fact deliver briefs to counsel other than the briefs delivered for other defendants, and when he first knew that another solicitor had prepared briefs for counsel.

Whether or no did you know W. G. late of ——— but now CH. XIII.
 deceased, the testator in the pleadings of this cause named, for any To prove a
 and how long a time previously to his death, and did you know S. J. knowledge of a person
 the nephew of the said testator, and in what profession or situation who entered the navy,
 of life was the said S. J.? Did the said S. J. ever and when serve and in what char-
 on board his Majesty's ship U. and in what character, and what has acter, and what has
 become of the said S. J. as you know or for any and what reason become of him;
 believe. Declare, &c.

Look upon the paper-writing now produced and shewn to you at also to
 this the time of your examination marked with the letter (A); prove a
 Whether or no did you at any time and when compare the same copy of an
 with any entry in any and what book kept at his Majesty's Navy entry in a
 Office, and whether or no is the same a true copy of such entry? book kept at the Navy
 Office.
 Declare, &c.

How many years as you do for any and what reason know or To prove
 believe, prior to the year 1780, was the said L. N. land-agent to the for how
 said Sir T. B. or to the owners and proprietors of the said W. estate; many years
 and whether or no as you do for any and what reason know or a person
 believe, prior to the year 1780, was the said L. N. land-agent to the was em-
 said Sir T. B. or to the owners or proprietors of the said W. estate, ployed as
 and whether or no as you do for any and what reason know or land agent
 believe was the said L. N. during the whole or any and what part of to the pro-
 such period accustomed to keep such diary or account as is contained rietors of
 in the exhibit which has been shewn to you or any and what diary or an estate
 account of his agency or of the matters relating thereto, and up to (containing
 what period of time in particular did he keep such diary or account coal
 of his agency, and why did he then cease or discontinue keeping the mines); al-
 same, and whether or no did he ever afterwards keep any and what so to prove
 diary or account of his said agency or the matters relating thereto, that he kept
 and if not why not? Declare the truth and your utmost knowledge, a diary or
 remembrance and belief herein. account of
his agency,
and when
he discon-
tinued
keeping
same.

When and upon what occasion did the said S. D. come to live To prove
 and reside in England and for how long time did he live or reside the resi-
 there? In what language did the said S. D. always or generally dence of a
 write or correspond and converse during the time of his residence in person in
 England, and was he or was he not conversant in the English lan- England,
 guage? Are you or are you not well or in any and what degree and in what
 acquainted with the character and manner of handwriting of the language he
 said S. D., and have you or have you not frequently or at any times corre-
 sponded or
 conversed;
 also to
 prove a

CH. XIII. and how often seen him write in any and what language or languages and character? Did or did not the said S. D. when he was resident in England, manage, or carry on or employ himself in or about any work or works? If yea, Of what nature, sort or kind was or were such work or works, and when and for how long time and at or in what house or houses or place or places was or were the same so managed or carried on? Declare, &c.

To prove the loans of sums of money by the plaintiffs to the defendant.

Do you know of any money having been at any time previously to the month of ——— lent or advanced by the said complainant H. H. or by the said complainant J. S. to the said defendant R. P.? If yea, Set forth what sums of money were so lent and advanced by the said complainants H. H. and J. S. or either and which of them to the said R. P., and at what time or times in particular the same and each of them were and was so lent and advanced and how and by what means in particular you are acquainted with the several matters aforesaid? Declare, &c.

To prove loans of sums of money by the defendant to a deceased person, and whether any part was repaid.

Whether or no did the said defendant C. L. in the lifetime of the said S. D. lend or advance unto the said S. D. any sum or sums of money? If yea, What sum or sums of money and to what amount in the whole did the said defendant C. L. lend or advance unto the said S. D. in his lifetime, and when or at or about what time or times was or were the same so lent or advanced? And did or not the said S. D. at any time or times in his lifetime and when repay such sum or sums of money or any or either and which of them unto the said defendant C. L. or satisfy him the same? Declare the truth of the matters inquired after by this interrogatory according to the best of your knowledge, remembrance, and belief, together with the grounds, reasons, or circumstances on which such your belief is founded, fully and at large.

To prove the amount due to the plaintiffs in respect of advances made by them as bankers.

Whether or no was there on the ——— day of ——— any and what sum of money due and owing to the above-named complainants T. B. and B. B. and their partners in the R. Bank in respect of moneys advanced by the said complainants to or for the use or on the account of the said T. B. and B. B. and their said partners, or how otherwise, and what is now due to the said complainants in respect thereof? Set forth, &c.

To prove marriage

Do you or not know whether the said J. B. deceased and A. R. also deceased, in the pleadings of this cause named, did at any time

and when intermarry together or not? If yea, Were you present at such marriage ceremony or not, and by whom and in the presence of what witnesses and at what place and when and on what day in particular was such marriage solemnized and whether by banns or license? Declare, &c.

CH. XIII.
ceremony
by witness-
es present.

Whether or no was the said J. C. in the preceding interrogatory mentioned or inquired after ever and when married and to whom, and what was the maiden name of his wife? Had or not the said J. C. any and what children or child or issue by his said wife or by any other wife and whom by name, and particularly had he or not a daughter called by the name of _____, and had he or not any other children or child and of what names or name? Declare, &c.

To prove a
marriage,
and that the
parties had
one daugh-
ter.

Whether or no do you know or were you acquainted with the said A. C. in the preceding interrogatory mentioned or inquired after for any and how long time and from and to what time? Did or not the said A. C. ever and when intermarry with M. H. late of, &c., and now deceased, and when and about what time did the said M. H. die? Declare, &c.

To prove a
marriage,
and the
death of
the wife.

Whether or not have you ever been employed in mining concerns or are you acquainted with coal mines and the manner in which coals are won and got? If yea, Set forth the nature of your profession or occupation and how you came to be acquainted with the nature of coal mines and the method of winning and getting coals; Whether or not do you know the R. H. estate in the pleadings in this cause mentioned and the mines and minerals lying thereunder and the estates in the pleadings in this cause mentioned to have been the property of Sir T. B. in the pleadings in this cause named, deceased, or any of them? If yea, Set forth how long you have known them and each of them and how and by what means you became acquainted with them; Whether or not are there any coal mines, strata of coal, or minerals lying under such estates or any part thereof? If yea, State what is the dip or inclination of such coal mines from the horizon; Whether or not was it necessary for the purpose of winning and getting such coals or coal mines that the same should be loosed or freed from water? Whether or not did Mr. L. in the pleadings in this cause mentioned, drive any drain or make any sough or soughs for the purpose of loosing the coals and coal mines lying under the said R. H. estate? If yea, Set forth and describe particularly the nature of such drain or drains, sough or soughs, and set forth particularly the direction and course of such drain or drains, sough or soughs from the tail or opening thereof where the water is discharged

To prove
that wit-
ness has
been em-
ployed in
mining con-
cerns, and
his knowl-
edge of the
coal mines
lying under
an estate;
the dip or
inclination
thereof
from the
horizon,
and the na-
ture and
course of
the drains
or soughs
made for
the purpose
of carrying
off the
water and
loosing the
coals;
also to
prove that
the coals
lying under
lands with-
in a ring-
fence have

CH. XIII. throughout the full extent of the driving of and the making of the same; Whether or not are the coals and coal mines lying under the lands and grounds within the ring-fence in the pleadings in this cause mentioned now loosed and in a condition to be worked, won, and got without the aid of a steam-engine to pump up and discharge the water therefrom? If yea, Whether or not are such last-mentioned coals and coal mines so loosed and in a condition to be won and got by means of the said drain or drains, sough or soughs? And whether or not is the water drained or carried away from such last-mentioned coals and coal mines by means of such drain or drains, sough or soughs? Whether or not were such last-mentioned coals and coal mines so loosed and drained at the date of the agreement with the said Sir T. B. in the pleadings in this cause mentioned? Set forth when and upon what occasion and by whom such last-mentioned coals and coal mines were loosed and drained; Whether or not could the said defendant J. J., and R. H., J. H., and J. D. in the pleadings in this cause named or either of them have prevented such last-mentioned coals and coal mines from being loosed or drained? If yea, Set forth how and by what means they could have prevented the same from being loosed or drained; If such last-mentioned coals and coal mines had not been loosed or drained by means of a drain or sough, whether or not would it have been necessary in order to win and get the same that a steam-engine or steam-engines should be erected for such purpose? If yea, Set forth how many steam-engines would have been necessary for that purpose; Set forth the original expense or prime cost of such steam-engines or steam-engine, and set forth the annual expenses that would be incurred in keeping in repair and in the working of such steam-engines or engine. Suppose the coals lying under the lands occupied by Jonathan K. in the pleadings in this cause mentioned were not loosed or drained and could not be loosed or drained without a steam-engine, what in your opinion would be the present value of such last-mentioned coals and coal mines? Suppose the coals lying under the lands occupied by James K. in the pleadings in this cause mentioned were not loosed or drained and could not be loosed or drained without a steam-engine, what in your opinion would be the present value of such last-mentioned coals and coal mines? Declare, &c.

Also to prove what would have been the value of the coals lying under the lands of different tenants, supposing the coals could not have been loosed or drained without a steam-engine.

To prove the inclination from the horizon of certain beds of coal From what points of the compass do the beds of strata of coal under the said W. estate or under any and what part thereof in general rise and sink, and especially from and to what points do the beds of coal or either and which of them being underneath such

parts of the said estate as lie to the west of the sough or drain in the last preceding interrogatory mentioned rise and sink, and from and to what points do such of the beds of coal under the said estate as lie on the east of the said sough or drain rise and sink respectively, and from what distance therefrom do they rise or sink respectively? Declare the truth and your utmost knowledge, remembrance, and belief herein.

Whether or no supposing a bed or vein of coal to have a general inclination downwards from one given point to another, is it common or uncommon to find occasional variations in the dip of such bed or vein between the two points aforesaid? And if yea, Whether or no is the coal to be found under the lands and grounds in the second of these interrogatories mentioned or referred to as much or more subject to such occasional variations than beds or veins of coal to be found under other lands and grounds in general, and assuming such occasional variations to exist, and a sough or drain driven along that side of the bed, which according to the general inclination would be the lowest side, how would such parts of the coal as might occasionally vary from such general inclination be loosed and worked? Declare the truth, together with your means of knowing, and reasons for believing the same.

Whether or not had the said complainants or those through whom they claim, sunk any pits or pit, or made and erected any steam-engines or steam-engine, or got any coals or coal in the lands and grounds occupied by the said Jonathan K. in the pleadings in this cause mentioned at the date of the agreement therein mentioned? If yea, Set forth when such pits or pit, steam-engines or steam-engine, were or was sunk, made, and erected; Set forth the purpose for which such steam-engines or steam-engine were or was made or erected; Whether or not were the said defendants or their or any of their stewards, agents, or tenants, informed of or acquainted with, or were they privy to the sinking, making, and erecting such pits or pit engines or engine? If yea, Set forth when and to whom, and by whom such information was given; Whether or not was a Mr. B. the steward or agent of the said defendants, or either of them? If yea, Did he ever inspect or overlook the said defendant's estate at W. in the pleadings in this cause mentioned? If yea, Whether or not did he upon such inspection see the said pits and engines? Whether or not are such pits and engines large objects and easy to be seen at a considerable distance? Whether or not is a person of the name of H. the steward or agent of the said defendant's W. estate? If yea, Whether or not did the said ——— H. about eight years ago inspect or overlook the

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lying under
different
parts of an
estate.

To prove
that veins
of coals
which in-
cline down-
wards, oc-
casionally
vary in the
dip; and
that the
coals under
the lands in
question
are subject
to such
variations,
and suppos-
ing a sough
driven
along the
lower side,
how would
the coal
found in the
parts vary-
ing from
the general
inclination
be loosed
and
worked.
To prove
that the
plaintiffs
had sunk
pits and
erected
steam-en-
gines on the
lands of a
particular
tenant at
the date of
an agree-
ment, and
when the
same were
sunk and
erected
and the
purpose for
which the
steam-en-
gines were
erected,
and wheth-
er the de-
fendants or

CH. XIII. said estate? Whether or not did you then see him, and if yea, Was he when you saw him in such a situation that he could see the said pits and steam-engines and other works in the lands and grounds occupied by the said Jonathan K. ? Declare, &c.

their stewards, agents, or tenants

were informed thereof or privy thereto. Also to prove whether a former steward of the defendants inspected the estate, and saw the pits and engines, and that the same might have been seen at a considerable distance. Also to prove that the present steward some years ago, inspected the estate, and that he could see the pits, steam-engines, and other works.

To prove the method of working coals where there are two strata and one of them is intermixed with a bed of iron-stone, and in case of the sale of the upper stratum of coal, what stipulations are usually made to prevent the grantee from destroying the iron-stone, or to prevent the iron-stone from being rendered useless to the grantor at the will of the grantee, and what instances have come within the witness's knowledge.

Whether or no in grants or leases of coal, where there are two beds or strata of coal whereof the upper bed or stratum is united to or intermixed with or contiguous to a bed of iron-stone, is it necessary as you do for any and what reason know or believe to dig and get the upper bed of coal before the iron-stone can be dug and got, and *vice versâ*; and whether or no is it usual to sell and dispose of such upper bed or stratum, when the iron-stone is not also sold and disposed of, but if nevertheless the upper bed of coal should be sold and the iron-stone reserved, whether or no would any and what provisos and stipulations be necessary, in order to prevent a grantee in the fee or lessee having the power so to work the said upper bed of coal as to destroy entirely or to damage greatly and in what manner the said iron-stone from delaying to work and dig such bed of coal so as to lock up and render useless the said iron-stone as long as he might think fit, and what provisions and stipulations would be proper and necessary for the purposes aforesaid, namely, 1st. What provisos and stipulations are necessary and proper to prevent the lessee or grantee so working such upper bed of coal as to destroy or greatly damage the said iron-stone; and 2dly. What provisos and stipulations are proper and necessary to prevent the said iron-stone from being locked up and rendered useless to the grantor at the will of the grantee in fee, and whether or no did you ever hear of a grant or lease of any upper bed or stratum of coal so united and intermixed or contiguous as aforesaid, with provisos or stipulations proper for the above purposes, and by whom and to whom was any such grant or lease made? Set forth, &c.

To prove notice given to the defendant of the plaintiff's claim to an estate, and whether the same was before or after the

Had or not the said defendant at any time or times and when in particular, and how or in what manner and upon what occasion or occasions any and what notice or information given to him by or on behalf of the said complainant or any other person or persons and whom by name, or otherwise and how, that the said complainant had or claimed to have some and what right, title, or interest in or to the premises in the pleadings of this cause mentioned? And if yea,

Was such notice or information so given to the said defendant before or after and how long before or after he the said defendant had any and what lien, charge, or security upon the said premises, or how otherwise? Declare, &c. CH. XIII.
defendant
had a
charge
thereon.

Did you at any time, and when, and by whose authority, make any and what offer to the said complainant relative to the subject-matter of this cause, or any and what part thereof? And if yea, On whose behalf? Set forth all you know touching or concerning the matters inquired after by this interrogatory fully and at large. To prove
an offer
made to the
plaintiff.

Are you or not, acquainted with the several manors and other freehold hereditaments situate in the counties of _____ in the pleadings in this cause mentioned, or any, and which of them? Were you or not employed as the surveyor and agent for and on behalf of any, and which of the said several parties in the preceding interrogatory inquired after in the partition of the said several manors and other hereditaments in the pleadings of this cause stated? If yea, When or at what time, and by which of the said several parties were you so employed? And did you or not act as such surveyor or agent in the business of such partition, and are you or not acquainted with the several allotments made to the said parties respectively, or any, and which of them, and to whom? And do you or not know a certain farm called W. farm, in the pleadings of this cause mentioned? If yea, Where or in what parish or parishes is the same situate, and did or not the said farm called W. farm form part of any and which of the said allotments made in the partition of the aforesaid manors and other hereditaments, and to whom was the same allotted? And do you or not know a certain piece or parcel of land situate in White Meadow, containing eleven acres or thereabouts, in the pleadings in this cause particularly mentioned? Was or not such piece or parcel of land ever, and when, and by whom shewn to you as forming part of any, and what farm comprised in the aforesaid partition between the said several parties, and was or not the said piece or parcel of land situate in White Meadow included in the allotment of the said farm called W. farm, or in any and what allotment on the partition of the aforesaid manors and other hereditaments, and to whom was the same allotted as you know, or for any, and what reason believe? Declare, &c. To prove
that wit-
ness was
employed
as surveyor
on the parti-
tion of es-
tates; his
knowledge
of the allot-
ments and
as to a par-
ticular
farm in
what allot-
ment it was
comprised;
that a piece
of land was
to him as
forming
part of the
farm, and
was allotted
therewith,
and to
whom.

Were or not the several allotments of the said manors and other hereditaments made to the said parties respectively in the first inter- To prove
whether the
allotments

CH. XIII. rogatory named in the partition thereof of equal value, or what was made upon the partition of certain estates were of equal value; and that the allotment made to the plaintiffs comprised a particular piece of land as part of a farm, [which piece of land had been shewn to the surveyor by mistake as being part of the farm;] also to prove whether the allotment made to the plaintiffs was of equal value with the other allotments.

made upon the partition of certain estates were of equal value; and that the allotment made to the plaintiffs comprised a particular piece of land as part of a farm, [which piece of land had been shewn to the surveyor by mistake as being part of the farm;] also to prove whether the allotment made to the plaintiffs was of equal value with the other allotments.

rogatory named in the partition thereof of equal value, or what was made upon the partition of certain estates were of equal value; and that the allotment made to the plaintiffs comprised a particular piece of land as part of a farm, [which piece of land had been shewn to the surveyor by mistake as being part of the farm;] also to prove whether the allotment made to the plaintiffs was of equal value with the other allotments.

the difference in value between the said allotments respectively as you know, or do for any, and what reason believe? And did or not the allotment made to the said complainants comprise or contain a certain piece or parcel of land forming part of a certain meadow called White Meadow, in the pleadings of this cause particularly mentioned as for owelty or equality of partition, or why or for what reason was the said piece of land forming part of the said meadow called White Meadow comprised or included in the allotment made to the said complainants? And was or not the said piece of land forming part of the said meadow called White Meadow allotted unto the said complainants subject to tithes as part of and together with the said freehold farm called W. farm? And in particular, was or not the allotment made to the said complainants of equal value with the several other allotments made of the said manors and other hereditaments as you know, or do for any, and what reason believe? Declare, &c.

Interrogatories relating to Partnership Matters.

Interrogatories to be administered, &c., wherein S. W. is complainant, and T. F., H. J. F., R. F., S. G. F., M. F., and S. F., are defendants, on the part and behalf of the said complainant.

1st. (*General interrogatory as to knowledge of parties.*)

To prove how long witness continued in the service of certain deceased persons, and when he left them, and whether he afterwards returned; also as to any declarations which he may have heard made by J. F. that R. J. F. was his partner.

2d. Whether or no did you ever, and when, first live and in what situation, and at what age with J. F. and R. J. F., both late of, &c., but now deceased, in the pleadings of this cause respectively named, and for how long did you continue with them, and when did you quit them; and did you ever, and when, return to them, and for how long did you afterwards remain with them, and in what situation? Whether or no did the said J. F. ever and when and where and how often declare to you or in your hearing that the said R. J. F. was his partner in any, and what trades or business, or make any declarations to such and what effect? Whether or no did you ever, and when, and how often by the directions of the said J. F., make out bills to customers of the said trades or businesses, or any of them in the name of "J. F. and company," and who was intended by the word "company" as you know, or collected, and how, from the said J. F.? And how many keys were there to the till of the shop in which the said businesses were carried on, and by whom were such keys respectively kept, and who had access thereto, and what, and whose expenses were paid therefrom? What name or names was or were

painted over the shop door in which the said business was carried on, or painted or engraved on the passage door of the house in which the said J. F. and R. J. F. lived, and by whom or by whose direction was or were such names or name painted or engraved, and who was or were intended thereby as you know, or for any, and what reason believe? Who appeared to act as masters or partners in the said trades or businesses, and who had access to all the books of the said trade and made entries therein and gave receipts for moneys received and in what names? Whether or no did the said R. J. F. ever, and when, and how often in the presence or hearing of the said J. F. speak to himself as a partner in the said trades or businesses with the said J. F., or to such effect; and did or not the said J. F. upon such occasions deny or admit the same, or how otherwise? What part did the said complainant take in the management of the family or of the said trades or businesses, as you know or believe? Set forth the particulars, &c.

3d. What is your trade or business, and where do you live? Whether or no did you ever, and when, and for how long, deal in any and what goods with J. F. and R. J. F., late of, &c., but now deceased, and in the pleadings of this cause named, or either, and which of them? In what name or names were your invoices or bills of parcels for such goods made out during the life of the said R. J. F. and after his death? Whether or no were or was any bills or bill of parcels ever returned to you by the said J. F. which had been made out in his name alone, and with any and what instructions as to making out the same in a different and what manner? Whether or no were you ever, and when, informed by, or did you in any manner, and how, collect from the said J. F. that he had any, and what partner in his said business; and whether or no did you know from the course of any dealing with the said J. F. and R. J. F. that they were partners together in the said business? Declare, &c.

4th. Whether or no are you a partner in any; and what banking-house or house of business? Whether or no did J. F., late of, &c., but now deceased, at any time when he was in ——— and when in particular, open any cash account with you, and in what name or names; and whether or no did he upon that, or any other, and what occasion or occasions, make any, and what declaration or declarations to you or to any person, and whom in your hearing respecting his brother R. J. F. in the pleadings in this cause also named being in partnership with him in any and what trades or businesses? Set forth, &c.

5th. Whether or no were you at any time, and for how long, employed in any and what situation in the late firm or banking-house of B. and company? Whether or no had J. F. and R. J. F. late of

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 many keys there were to the till, what names were painted over the shop door and house door, who appeared to act as masters or partners, and who had access to the books; also to prove that R. J. F. spoke of himself as being a partner in the hearing of J. F. and whether he denied or admitted the same, and what part the plaintiff had in the management of the business.
 To examine tradesmen who dealt with the deceased as to the names in which the invoices were made out, and as to their knowledge or information that R. J. F. was a partner with J. F.
 To examine a banker with whom J. F. was banked, as to declarations made by him respecting R. J. F. being in partnership with him.
 To examine

CH. XIII. — but now both deceased, and in the pleadings in this cause named, or either, and which of them, any cash account with the said banking-house during such your situation therein, and what was the name or style of such account; and did the said J. F. and R. J. F., or either, and which of them, draw in their own names upon such account, and were such drafts honored, and were such accounts with such drafts credited therein afterwards admitted by them, or either, and which of them? Declare, &c.

To prove whether R. J. F. voted for a member of parliament, and whether he served any parochial office in the borough. 6th. What is the right of voting for members of parliament at ———? Whether or no did R. J. F., late of, &c., ever, and when vote for any member or members of parliament for the said borough, and in what right and character; and whether or no did the said R. J. F. ever, and when, serve any, and what, parochial offices in the said borough? Set forth, &c.

To prove whether J. F. at the election, made any declarations respecting being a partner with him. 7th. Whether or no did J. F. in the pleadings of this cause named, upon the occasion of any, and what election for a member or members of parliament for the borough of ———, make any, and what declaration, and when, respecting his brother R. J. F. in the pleadings of this cause named, being a partner with him? Declare, &c.

To prove conversations with J. F. respecting the provision intended to be made for the plaintiff by him or R. J. F. 8th. Whether or no were you acquainted with J. F. and R. J. F. late of, &c., but now deceased, the testators in the pleadings of this cause respectively named, or either, and which of them, and how long before their respective deaths? Whether or no had you at any time, and when, any conversation or conversations with the said J. F. respecting the said complainant, or respecting any provision which he had made or intended to make for the said complainant, or which had been made for the said complainant by the said R. J. F.? If yea, set forth all the particulars of such conversations, and when and upon what occasions the same passed according to the best of your knowledge, remembrance, information, and belief, and the truth declare.

To prove a conversation between R. J. F. and J. F. respecting the provision made for the plaintiff by the will of R. J. F., and whether he then delivered his will to J. F. 9th. Whether or no were you at any time, and when and where present when any conversation passed between R. J. F. and J. F., both late of, &c., but now deceased, respecting any provision made for the complainant S. W., by the will of R. J. F.? If yea, set forth what was said both by the said R. J. F. and the said J. F. upon that occasion; And whether or no did the said R. J. F. then or at any other time, and when, deliver to the said J. F. his will, or any paper which he described as his will. Set forth, &c.

To prove a purchase 10th. Whether or no did J. F. and R. J. F., in the pleadings of this cause respectively named, or either, and which of them, at any time, and when, purchase any, and what sum in any, and what stock, and in whose names as a gift for the said complainant as you know,

or for any, and what reason believe; and whether or no was the same at any time, and when, and upon what occasion and by whose advice after the death of the said R. J. F., transferred into the name of the said complainant as you know, or for any, and what reason believe? Whether or no did the said J. F. ever, and when, and upon what occasion, make any, and what declaration respecting his brother R. J. F. being a partner with him, and respecting the share and interest which he had in the joint trade and property? Set forth, &c.

ferred into the plaintiff's name; also to prove declarations by J. F. respecting R. J. F. partner with him, and his share in the business.

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of stock by J. F. and R. J. F. as a gift for the plaintiff, and that the same after the death of R. J. F. was transferred to being a

11th. Whether or no were you present in the room with the said J. F. about two days before his death, when the said J. F. made any declaration to the defendant H. J. F. and S. F. respecting the said complainant? If yea, set forth the particulars of such declaration, and what was said thereupon by the said H. J. F. or S. F. Declare, &c.

To prove a declaration made by J. F. two days before his death, respecting the plaintiff.

12th. Whether or no did you, on the part of the defendant H. J. F. ever, and when, attend any meeting of the said several defendants or any, and which of them, for the purpose of settling the share of the said H. J. F. in the said J. F.'s estate? If yea, Was the value of the said J. F.'s estate then stated to be or admitted by the said defendants, or any, and which of them, to be of any and what amount in the whole? Declare, &c.

To prove whether the witness ever attended any meeting of the defendants for the purpose of settling the share of H. J. F. and what the value thereof was admitted to be.

13th. (*Interrogatory to prove exhibits in the handwriting of J. F.*)

Lastly. (*The concluding general interrogatory; vide ante, p. 268.*)

Look at the deed or writing now produced or shewn to you at this, the time of your examination, marked with the letter (A), purporting to be articles of copartnership between the said W. G. and the said A. E. Whether or no was the same at or about any, and what time or times, signed, sealed, or delivered by any, and what persons or person in your presence? Are you or not a subscribing witness to the signing, sealing, and delivering thereof, by the said W. G. and the said A. E., or either and which of them? Of whose handwriting is your name now appearing to be subscribed or indorsed as witness thereto? Declare, &c.

To prove a partnership deed as an exhibit.

Were you or not ever and when and for how long between the _____ day of _____ and the _____ day of _____ employed at _____ in the county of _____ in the conduct or management of any and what trade or trades carried on during such time or any and what part of such time in the name of the said W. G. or any other and what person or persons as his partner or partners? And if yea,

To prove entries in books of the dealings in trade by the person employed in the management of

CH. XIII. Did you or not during such or any and what part of such time keep any and what book or books for the purpose of making entries of any and what kind respecting the dealings and transactions of such trade or trades or either of them? Look upon the books produced and shewn to you at this the time of your examination marked respectively with the letters ———; Were or not the several entries therein or in some and which of them or some and which of such entries made by you? And if yea, When and upon what occasion and for what purpose did you make such entries respectively, and what do the same respectively purport to be? And did you or not during such time or any part of such time and when, make out or deliver any bill or bills to any person or persons and to whom, for goods sold during such time and when, from such trade or trades or some and which of them? And if yea, To whom was or were such person or persons charged to be indebted by the title of the said bill or bills; and did you or not during such time and when receive from any person or persons and whom any and what sum or sums of money for goods sold from the said trade or trades or some and which of them during such time? And if yea, For whom and for whose use did you by writing or otherwise and how acknowledge the same to be received; and was there or not during such time or some and what part of such time some written or painted inscription in or on the external part of the shop or warehouse in which the said trade or trades or some and which of them were carried on, denoting the name or names of the person or persons by whom or upon whose account the same were carried on? And if yea, set forth what in particular was such writing or inscription in the very words thereof. Declare, &c.

the business, and how the bills were made out, and also the receipts;

also to prove what names were written over the shop.

To prove as an exhibit a paper containing heads of articles of copartnership; also to prove that the same were delivered to a solicitor to have regular articles of copartnership drawn, that the trade was carried on agreeably to the stipulations

Look at the paper-writing now produced, &c. purporting to be a proposal for or heads of articles of copartnership between ———; Whether or no do you know or are you acquainted with the character or manner of handwriting in which the same or any and what parts or part thereof are or is written? If yea, set forth of whose handwriting the same and every or any and what parts or part thereof is or are, and have you or not seen such persons or person write? Whether or no was the said paper-writing at any time and when and by whose direction sent or delivered to any person or persons and whom in order that regular articles of copartnership might be drawn pursuant thereto, or otherwise? Whether or no did you for any time and when, and for how long and where, carry on any and what trade or trades in copartnership with the said T. E. upon the terms stipulated and expressed in the said paper-writing, or upon any and what terms and conditions? Look upon the printed news-

papers now produced, &c. entitled respectively ———, and upon the advertisement in each of the said newspapers marked ———; When and for what purpose and by whose direction were the said several advertisements or some and which of them inserted in the said several newspapers, and were the same or any and which of them inserted with your knowledge or approbation? Declare, &c.

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contained therein, and also to prove by whose direction certain advertisements were inserted in newspapers.

In what manner and at what periods were the balance sheets of the said accounts made up? Were or not such balance sheets from time to time delivered to the said T. B.? If yea, and for what purpose were such balance sheets made up and delivered to the said T. B.? Did you or did you not at any time and when during the continuance of the said partnership between the said G. P. and T. B. and yourself, consider the said T. B. entitled to any and what share and proportion of the profits of the said brokage business? And if the said T. B. had demanded any share or proportion of such profits in the years when such business was profitable, should you or should you not have complied with such demand, &c.? Set forth, &c.

To prove by the examination of a partner when the balance sheets of the copartnership accounts were made up, and whether the same were delivered to T. B. and why; also to prove whether

witness considered T. B. entitled to any share of the profits of the brokage business, and whether if he had demanded a share thereof the witness would have complied therewith.

Do you and by any and what means know whether the said A. B. advanced any and what sum or sums of money as of the capital of the said trade in the pleadings of this cause mentioned? And if yea, set forth the several sums of money which he advanced for such purpose; And have you or not examined the said copartnership books? And if yea, What sum or sums of money does the said A. B. by the said books appear to have brought into the said trade? Declare, &c.

To prove the amount of capital advanced by a partner.

Do you or not know the nature and extent of the trade in the pleadings of this cause mentioned? If yea, What was the extent of the said trade at the time of the commencement of the said partnership between the said ———, and was or not the said trade afterwards increased and by whom and to what extent and by what means? Declare, &c.

To prove a partnership business being increased.

Whether or no had the said defendants R. and S. or either and which of them any acquaintance or connection with R. C. who was some time since your partner, before he became your partner; And

To prove whether the defendants were

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acquainted defendants R. and S. depend upon the continuation of your partnership
or connected with the said R. C. or upon the personal confidence which the said
R. C. the defendants R. and S. reposed in you? Declare, &c.
witness's late partners, and whether witness's dealings with the defendants depended on the continuance of
the partnership or upon the confidence reposed in the witness.

To prove that witness commanded a packet boat; that the plaintiff was a passenger on a particular voyage, and what name he assumed. Whether or no did you in the month of ——— command the packet boat in his Majesty's service called the ———, bound from F. to L.; and whether or no did you at any time in or about the said month of ——— make a voyage in the said packet from F. to L. and on what day did you sail from F. and on what day did you arrive at L.? whether or no did the said complainant, the Honorable Mr. M. sail with you as a passenger in the said packet on the said passage? And if yea, What name did the said complainant assume, and under what name did he pass upon the said voyage? Set forth, &c.

To prove the particulars of a conversation between the plaintiff and witness respecting the defendant. Whether or no did you in the month of ———, see the complainant, the Honorable Mr. M. at L.? If yea, When and where and upon what occasion did you first see him, and did any conversation then pass between you and the said complainant respecting the defendant S.? If yea, set forth the particulars of conversation, and what was said thereon by the said complainant and by you respectively, according to the best of your knowledge, remembrance, and belief.

To prove the particulars of subsequent conversations, and the declarations made by the plaintiff respecting the defendant. Whether or no did you on the ——— day of ———, see the complainant, the Honorable J. M. at L.? If yea, When and where and upon what occasion did you first see him, and what passed thereupon, and when and how soon afterwards did you next see him, and did the said complainant enter into any conversation with you, or make to you any declarations respecting the defendant S.? If yea, set forth the particulars of such conversation or declarations according to the best of your knowledge, remembrance, and belief, and the truth declare.

To prove letters as exhibits. Look upon the letters or paper-writings now produced, &c. marked, &c. Of whose handwriting are the said several letters or paper-writings and every of them, or the superscriptions thereof and the signatures thereto, as you know or believe? And did you ever see the person or persons write, whom you believe to have written, subscribed, or signed the same respectively, or by what means are you acquainted with the manner or character of the handwriting of such person or persons? Set forth, &c.

Do you or not know whether the said J. N. the intestate deceased was ever married, and when, and to whom, and whether he left any and what legitimate children living at his death, or any legitimate grandchildren or grandchild, or any wife, or any father or mother, brother or sister, brothers or sisters, or brother's or sister's children, uncles or aunts, or uncle's or aunt's children respectively living at the time of his death? And if any, set forth whom by name particularly. And do you or not know whether the said complainants A. B. and C. D. or either and which of them were or was in any manner and how related to the said intestate J. N. deceased? And if yea, set forth their or her or his degree of kindred, and how you make out the same; and if you at any time heard the said intestate J. N. make any and what declarations touching or concerning any persons in particular and whom by name, being his nearest relations of the whole or of the half blood; Set forth all you know and have heard and believe concerning the matters inquired after by this interrogatory, according to the best of your knowledge, remembrance, and belief, with the reasons and circumstances to induce your belief fully and at large.

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To prove the plaintiff's pedigree, and declarations of a deceased person respecting his nearest relations.

Whether or no were or was the said W. C. and S. his wife, or either and which of them at any time and for how long in possession or in the receipt of the rents and profits of any messuages, farms, or lands in the parish of ———, commonly called ———, and by whom are such messuages, farms, and lands, now respectively occupied? And whether or no did the said S. C. continue in such possession or receipt until death, or how otherwise? And whether or no did J. C. the son of the said W. and S. C. at any time and when enter into the possession, or into the receipt of the rents and profits of the said messuages, farms, or lands, and whether or no did he continue in such possession or receipt until his death, or how otherwise? And whether or no did T. C. in the last interrogatory named, at any time and when enter into the possession or into the receipt of the rents and profits of the said messuages, farms, or lands? And whether or no did he continue in such possession or receipt, or how otherwise? Declare, &c.

To prove that certain persons occupied certain farms until their death; that upon their death their son entered and continued in possession until his death; and that upon his death another person entered into possession.

Whether or no was J. C. late of, &c. commonly called ——— yeoman, at any time and when in possession or in the receipt of the rents and profits of the freehold and copyhold messuages, lands, and tenements which were subject to a mortgage which formerly belonged to the late A. M. clerk, and afterwards to the defendant M. M. and now to the defendant T. F., and whether or no did he continue in such possession or receipt until his death, and when did he die?

To prove that a person was in possession of lands, &c. until his death; that he died intestate and without issue;

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Also to prove that another person had possession of the lands, &c. and whether he left any family;

Also to prove that an allotment of common land was made to him in respect of the same lands.

whom, and had he and did he leave any child or children, and whether or no did he die testate or intestate, and who upon his death entered upon such possession or receipt? And whether or no was T. C. late of, &c. aforesaid, at any time and when in the possession or in the receipt of the rents and profits of the said freehold and copyhold messuages, lands, and tenements, and whether or no did he continue in such possession or receipt until his death, or how otherwise, and when did he die, and was he ever and when married and to whom, and had he and did he leave any child or children, and did he die testate or intestate? And whether or no was any and what allotment made to the said T. C. in respect of the said freehold and copyhold lands, or any and what part thereof under any act of parliament passed for embanking the common salt-marsh in the township of W. aforesaid, and for inclosing the same? Set forth, &c.

To prove that a treasury messenger received moneys due to another messenger, that he paid over the moneys so received, and whether he was in the habit of taking receipts for the same.

Whether or no did the said F. G. as you for any and what reason know or believe receive any moneys from the Treasury or elsewhere, and where on the account of the said A. B., and have you ever and in what years and how often seen the said F. G. pay any and what sums of money to the said A. B. in respect of the moneys so received by him, and whether or no was it the practice of the said F. G. at such times to take receipts or memorandums for the moneys so paid to the said A. B. or how otherwise, and whether or no was it as you for any and what reason know or believe the general habit of the said F. G. to be regular in his accounts and to take receipts or make memorandums of moneys paid by him or how otherwise? Declare, &c.

To prove remittances of drafts and bills to an agent for the purpose of receiving the money due thereon; that it appeared reasonable to the person employed to make out the accounts between the parties that an allow-

Whether or no did the said G. G. in the course of the dealings and transactions between him and the said T. D. frequently and how often for any and how long time receive from the said T. D. drafts or bills of exchange for money, and to what amount yearly for the purpose of the said G. G. receiving the money payable thereby or for what other purpose; and whether or not also for the purpose of the said G. G.'s paying all or part of the money so received to any other person or persons on account of the said T. D.? Did it or not appear to you on drawing out the accounts between the said G. G. and T. D. that it was reasonable that any and what sum of money should be allowed by the said T. D. and on what ground unto the said G. G. or his representatives or estate as or by way of commission for receiving the money on or by virtue of such bills or drafts? Was or were or

not any and what sum or sums of money charged in the accounts drawn out by you as aforesaid for such commission and whether or not for postage of letters? Had you or not ever and when any discourse or conversation with the said T. D. with regard to his making any and what allowance to the estate or representative of the said G. G. for such commission and postage of letters or on either and which of such accounts? If yea, What answer did the said T. D. make or how did he express or declare himself relating to such matters or things or either and which of them? Declare, &c.

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ance should be made for commission and postage of letters; also to prove what was said by the person charged therewith

[Refer to p. 294, ante.]

Hath or have or not any and what sum or sums of money been paid to or to the use of the said J. A. in the title to these interrogatories named by any tenant or tenants as the rent or rents of any and what part of the premises in the 5th interrogatory mentioned? If yea, set forth for what and by whom by name, and what sum or sums hath or have been so paid. Declare, &c.

To prove what rents have been paid to the defendant by the tenants of the premises in question.

Interrogatories to be exhibited to witnesses, &c. wherein J. B. is complainant and R. B. is defendant, on the part and behalf of the said complainant.

1st. (*As to knowledge of the parties.*)

2d. Whether or no did you or any person and who in partnership with you at any time and when and by whose order or authority cause the premises in the pleadings in this cause mentioned amongst others to be advertised for sale by auction, and whether or no did you or any person and who in partnership with you at any time and when and where and by whose order or authority put up the said premises to sale by public auction, and were the same described as lot 1, or as what other lot at the said auction? And whether or no did any and what conversation pass between you and the said defendant previously to the said lot being put up to the price at which the same should be sold, and whether or no did the said defendant bid for the said lot and how much, and to whom was the said lot knocked down and at what price? And was it so knocked down fairly and *bona fide* or how otherwise? And had the said defendant any time or opportunity to make a further bidding? and did the said defendant when the same was so knocked down publicly or otherwise and how object thereto, or when first did the said defendant object to the said sale? Set forth, &c.

To prove that witness advertised the premises for sale and sold the same by auction; what conversation witness had with the defendant the vendor as to the price at which the same should be sold; whether the lot was knocked down fairly and *bona fide*, and whether the defendant then made any objection thereto.

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To prove as an exhibit the memorandum or receipt signed by the auctioneer, what authority he had for signing the same, and the general usage of auctioneers as to signing receipts on the part of the vendors, and whether witness had received the deposit. To prove as an exhibit the agreement signed by the plaintiff, whether the defendant was present when the same was signed and objected thereto, and what passed at the time of sale.

3d. Look upon the paper-writing now produced, &c.; Of whose handwriting is the said paper-writing and every part thereof and in particular the signatures of "John White & Son" set and subscribed thereto; And whether or no had you authority from the said defendant to set and subscribe your name to such memorandum or receipt or to sign any agreement as to the sale of the said premises? And is it the usage for persons employed as auctioneers to sign such memorandum receipts or agreements on the part of the persons by whom they are employed to sell, and whether or no had you then actually received from the said complainant the said sum of \$ ——— or for what reason did you give a receipt for the said sum as if you had actually received it? Set forth, &c.

4th. Look upon the paper-writing now produced, &c.; Of whose handwriting is the said agreement, and whether or no was the same signed by any person and whom in your presence? And is your name set and subscribed as a witness thereto of your proper handwriting? Where was the said agreement written and signed, and was the said defendant then present, and did he make any and what objection thereto, and whether or no were you present when the sale of the said lot took place? And if yea, state what passed thereupon, and whether when the said lot was knocked down to the said complainant any and what objection was made thereto by the said defendant. Set forth, &c.

Lastly. (*The concluding general interrogatory.*)

Opinion. — The question in this cause is, whether any memorandum of the sale was signed by any person lawfully authorized by the defendant, and the only paper that can be stated to have that effect is the memorandum and receipt of the \$ ——— mentioned in the bill to have been signed by one of the Whites.

The agreement signed by the plaintiff does not bear upon the difficulty of the case. If the evidence comes up to the representation of it, I think the plaintiff will succeed; but the ease is not without doubt.

Interrogatories to be exhibited to witnesses, &c. (*see p. 265, ante.*)

1st. (*As to the knowledge of the parties, see p. 268, ante.*)

To prove by the auctioneer in how many lots an estate was sold; also to prove as an exhibit a

2d. Whether or no were you employed on ——— as auctioneer at the sale of a certain copyhold estate which had belonged to the late S. C. late of, &c. innholder? If yea, In how many lots was the estate sold, and who was the purchaser at such sale of lots ——— and ———, and at what prices? Look upon the printed paper now produced, &c. marked with the letter (M); Whether or no is the

same one of the copies of the particular and condition of the said sale, and were the said lots ——— and ———, purchased subject to such particular and condition? And if yea, What was the amount of half the auction duty on the said lots ——— and ———, and what was the appraised value of the fixtures which were to be taken by the purchaser of lot ———, and at what sum was the timber on lot ——— valued? Set forth, &c.

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copy of the particulars of sale, the amount of half the auction duty, and the value of fixtures and timber.

3d. Whether or no were you at any time or times and when after ——— present at any conversation or conversations between the said complainant and the said defendant as to whom the said complainant was to consider as the purchaser of lots ——— and ——— part of the estate of the late S. C., being the premises in the pleadings in this cause mentioned? If yea, Set forth all and every the particulars of such conversation or conversations, and what was said therein both by the said complainant and the said defendant respectively, and when and where, and in whose presence and hearing, and upon what occasion or occasions all and every such conversation or conversations took place. Set forth, &c.

To prove conversations between the plaintiff and defendant as to whom the plaintiff was to consider as the purchaser of particular lots.

4th. Whether or no were you present when the said complainant delivered to Mr. K. the possession of the premises in the pleadings in this cause mentioned? If yea, Set forth the particulars of what passed upon that occasion, and what was said thereupon by the said complainant to the said Mr. K. Set forth, &c.

To prove delivery of possession by plaintiff to a Mr. K. and what passed thereat.

5th. Whether or no were you at any time present when the said defendant made any application or request to the said complainant to give him time to pay the purchase-money of the premises in the pleadings mentioned? If yea, Set forth the particulars of such application and request, and when the same was made, and whether or no after the said Mr. K. was in possession of the said premises. Set forth, &c.

To prove application made by defendant to the plaintiff for time to pay the purchase-money, and whether the same was after possession was delivered to Mr. K.

6th. Whether or no did you ever and when hear the said Mr. K. make any and what declaration and to whom as to his having or not employed the said defendant to purchase for him of the said complainant the premises in the pleadings in this cause mentioned? Set forth, &c.

To prove declaration by Mr. K. as to his having employed the defendant to purchase the premises for him.

Lastly. (*The concluding general interrogatory, see p. 268, ante.*)

In Chancery.

Interrogatories to be administered to witnesses, &c. (*see p. 265, ante*) wherein J. D. is complainant, and I. D. and T. R. C. are defendants on the part and behalf of the said complainant.

1st. (*As to knowledge of the parties, see p. 268, ante.*)

CH. XIII. 2d. (*To prove as an exhibit the agreement signed by the defendant I. D. with the plaintiff; see the last interrogatory inserted in p. 294, ante.*)

To prove as an exhibit a letter written by one of the defendants.

3d. Look upon the letter or paper-writing now produced and shewn to you at this the time of your examination marked with the letter (B), and the superscription or direction thereof; Whether or no are you by any and what means acquainted with the character and manner of the handwriting of the said defendant I. D., and whether or no is the body of the said letter or paper-writing and the name I. D. appearing to be set and subscribed thereto, and the superscription or direction of the said letter or either and which of them of the proper handwriting of the said defendant I. D. as you know or believe? Declare, &c.

4th. (*To prove the particulars of a conversation between the plaintiff and one of the defendants, and an offer made by the plaintiff to pay part of the consideration-money; see the 3d interrogatory inserted in p. 280, ante.*)

To prove by the examination of the solicitors employed in negotiating the treaty between the defendants by whom they were employed, that they received directions from the partners of the defendant T. R. C. and that pending the treaty or before the purchase-money was paid, they received an intimation that the plaintiff and I. D. had entered into an agreement, and whether they informed T. R. C. of it.

5th. Whether or no did you at any time and when treat with or enter into any agreement with the said defendant I. D. for the sale by him of the ——— public-house at E. in the pleadings of this cause mentioned, to the defendant T. R. C.? If yea, When and by whom were you employed to enter into such treaty and agreement, and when and from whom respectively did you receive all and every your instructions or directions as to such treaty or agreement? And in particular did you ever and when receive any instructions or directions respecting such agreement from D. W. and W. H. the partners of the said defendant T. R. C. or either and which of them? And whether or no pending such treaty, or after the said agreement was concluded, and before the purchase-money was paid by the said defendant T. R. C. pursuant to such agreement, did you know or believe or had you any intimation that the agreement in the pleadings in this cause set forth, or any agreement had been entered into between the said complainant and the said defendant I. D. as to the sale of the said public-house called the ——— by the said I. D. to the said complainant; and when and from whom and upon what grounds did you know or believe the same, or when and from whom did you receive such intimation? And did you at any time and when before the said agreement was concluded, or before the said purchase-money was paid by the said defendant T. R. C., inform the said defendant of such your knowledge or belief, or of such intimation, and if not, why? Set forth, &c.

6th. Whether or no did you ever, and when, treat or agree with the defendant I. D. for the sale by him of the ——— public-house at E., in the pleadings of this cause mentioned, to the defendant T. R. C.,

To prove by the examination

or employ any person or persons, and whom, in any such treaty or agreement, or did you ever, and when, and to whom give any, and what instructions or directions as to such treaty or agreement? And whether or no did you so treat or agree with the said defendant I. D. or so employ such person or persons, in such treaty or agreement, or give such instructions or directions as to such treaty or agreement by the previous authority of the said T. R. C., or with his privity or approbation; or did he after you had so treated or agreed, or so employed such person or persons, or given such directions or instructions, know and approve of the same, or how otherwise? And whether or no pending the treaty with the said defendant I. D. for the sale of the said public-house to the said defendant T. R. C. or after the agreement for such sale was concluded, and before the purchase-money was paid by the said T. R. C. pursuant to such agreement, &c. (*the same as the concluding part of the former interrogatory.*) Set forth, &c.

7th. Whether or no did you on any day, and when in particular in or about the month of ——— dine in company with the said complainant at the public-house at B.? And whether or no did the said complainant then say to you, or to any other person, and whom, in your presence or hearing, that he had made any agreement for the purchase of the public-house called the ———, at E. in which he lived, or to any such and what effect? And whether or no was the agreement between the defendants I. D. and T. R. C. as to the sale of the said house then concluded, or had the said T. R. C. then paid his purchase-money for the said house to the said I. D. as you know or believe? And whether or no did you mention or give any intimation to the said T. R. C. of what the said complainant had then said before the said agreement was concluded between the said defendants I. D. and T. R. C., or before the said purchase-money was paid by the said T. R. C., and if not, why? Set forth, &c.

8th. Whether or no did you ever, and when, and how often, and at what particular times in or about the month of ———, and whether alone or in company with any other person, and whom, call at the house of the said complainant and ask to look at the agreement which he had entered into for the purchase of his house, or to any such and what effect? Or have you had any other and what conversation with the said complainant respecting any such agreement? And whether or no did you or any other person, and who in your presence at any and which of such times see the said agreement? And whether or no did you or any other person, and who, in your presence, at any, and which of such times, desire to take the said agreement away, and allege any, and what reason for so doing, or actually take the said agreement away, and allege any, and what reason for so doing? And

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of the partners of the defendant T. R. C. whether they entered into or employed other persons and whom to enter into a treaty with the defendant I. D. for sale of the premises; whether they had the previous authority of T. R. C. or whether he afterwards knew or approved of it. To prove that at a dinner the plaintiff informed one of the partners of T. R. C. that he had agreed for the purchase of the premises, and whether the agreement between the defendants was then concluded, or the purchase-money paid, and whether witness informed T. R. C. of what he had heard. To prove by the examination of one of the partners of T. R. C. that he frequently called at the plaintiff's house to look at

CH. XIII. for how long did you or such other person keep such agreement, and for what reason? And when did you or such other person return the same to the said complainant? And whether or no did you or such other person when the said agreement was so returned to the said complainant, make any and what declaration as to the value that the said agreement would be of to the said complainant if he knew how to use the same, or to any such, or any other, and what effect? And whether or no when you first called at the house of the said complainant as aforesaid, and had any conversation with the said complainant respecting any such agreement as aforesaid, or when you or such other person took away such agreement as aforesaid, had the treaty for the purchase of the said public-house called the ——— by the said defendant T. R. C. been entered into with the said defendant I. D.? Or if entered into, had the same been concluded, or if concluded, had the purchase-money for the said house been paid by the said T. R. C. as you know or believe? Set forth the particulars at large according to the best of your knowledge, remembrance, and belief, and the truth declare.

his agreement, that he took the same away and how long he kept it, and what passed when he returned the same; Also to prove whether when he first had any conversation with the plaintiff respecting his agreement or took the same away, the agreement between the defendants had been entered into or concluded, or the purchase-money paid.

Lastly. (*The concluding general interrogatory; see p. 268, ante.*)

Interrogatories to be exhibited, &c. (*see p. 268, ante.*)

1st. (*As to knowledge of the parties; vide p. 268, ante.*)

As to witness's knowledge of N. L. deceased.

2d. Did you know N. L. in the pleadings named, the said complainant's late grandfather, deceased, in his lifetime and for how long before his death, and when, or about what time did he die? Declare, &c.

As to witness's knowledge of the premises in question.

3d. Whether or no do you know, and have you or not at any, and how long time known or been acquainted with a messuage or tenement and premises situate, &c., now called or known by the name of, &c., and heretofore or formerly called or known by the name of, &c., and late, or heretofore, the estate of the said N. L.? Declare, &c.

To prove that N. L. sold the premises in question to the defendants and executed conveyances thereof to them; and that the defendants had previously there-to notice

4th. Whether or no did the said N. L. ever, and when, in his lifetime, sell or dispose of the messuage or tenement and premises in the third interrogatory mentioned or inquired after to the said defendants or any, and which of them, or to any, and what other persons or person, and whom by name, and for what sums or sum of money, or for any other and what consideration; and were, or was, or not the same or any, and what part thereof by any, and what deeds or deed, or otherwise, and how conveyed, and by whom, and particularly whether or not by the said N. L., to such purchasers or purchaser, or any and which of them? Had or not such persons or person, purchasers or

purchaser, or any, and which of them, at any, and what time before, or at the time of making such purchase or of the execution of the conveyance of the said premises, or of the payment of the whole or any, and what part of the purchase-money or consideration for the same, and by what means any, and what knowledge, notice, or information, that the title of the said N. L. to the said message or tenement and premises, or any, and what part thereof, was defective, or that he had not full power or authority to sell or dispose of the same, or of the inheritance thereof, or that any, and what other person, and who by name, had any right, title, claim, or interest thereto or therein, or to, or in any, and what part thereof, as you know, or for any, and what reason believe? Declare, &c.

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that N. L.'s title was defective and that some person claimed title to the same premises.

5th. Whether or no had the purchaser or purchasers of the said message or tenement and premises in the said 3d interrogatory mentioned or inquired after, or any, or either, and which of them at any and what time before or at the time of making such purchase or executing the conveyance of the said premises or of the payment of the whole, or any, and what part of the purchase-money for the same and by what means any and what knowledge, notice, or information that the complainant had any and what right, title, claim, or interest thereto or therein, or to or in any and what part thereof? Declare, &c.

To prove that the purchasers of the premises in question had notice of the plaintiff's claim thereto previously to the time of purchase or payment of the consideration-money.

6th. Whether or no was the price or the sum of money paid by the said purchasers or purchaser of the said message, or tenement and premises, as in the said preceding interrogatory is mentioned and inquired after, the full or utmost price or value thereof, or was or not the same and for what reason less and by how much less than the full value thereof in case a good title could have been made thereto to such purchasers or purchaser? Were or not the same premises purchased for some and what sum of money less than the real and full value thereof on account of some and what defect in the title of the vendors or vendor thereof, and whom by name in the title thereto or therein, or was or not some and what deduction or allowance made out of the purchase-money for the same or such or some and what other account? Declare, &c.

To prove that the purchase-money was less than the full value of the premises, and that an allowance was made thereout on account of the defective title.

7th. Whether or no did you ever and when on any and what occasion hear the said defendants, or any and which of them say or declare anything and what touching or concerning their or any and which of their right or title to the aforesaid message or tenement and premises, or any and what part thereof, or any defect therein, or touching or concerning the right, title, interest, or claim of any and what other persons or person, and whom by name thereto or therein? Set forth all and every the particulars and when and where and before whom or in whose presence or hearing and upon what occasion the

To prove declarations by, and conversations with the defendants relative to their title to the premises.

CH. XIII. same or any of them were or was made; Had you or not ever and when any and what conversation with the said defendants or any and which of them touching their or any and which of their right or title to the aforesaid premises or any and what part thereof? Declare, &c. Lastly. (*The concluding general interrogatory; vide ante, p. 268.*)

To prove the particulars of a conversation between the plaintiff and defendant respecting the title of the plaintiff to a house and ground previous to the agreement entered into for purchase.

Whether or no were you at any time or times and when previously to the agreement between the said complainant and the said defendant respecting the purchase by the said defendant of the house and premises of the said complainant at ———, present at any conversation or conversations which passed between the said complainant and the said defendant upon the treaty for the said purchase? If yea, Set forth the particulars of such conversations and what was said therein by the said complainant to the said defendant respecting his title to the said premises; and whether anything and what was said by the said complainant to the said defendant as to the title to the newly enclosed ground in front of the said premises; Set forth all and every the matters and things aforesaid, according to the best of your knowledge, remembrance, information, and belief.

To prove a proposal made by the defendant to be released from his contract for purchase.

Whether or no at any time and when after the agreement between the said complainant and the said defendant respecting the said purchase, did the said defendant desire you to communicate to the said complainant any proposal on his part as to his being released from the said agreement? If yea, Set forth the particulars of such proposal, and when and upon what occasion the said defendant made the same; Set forth, &c.

To prove that previously to the agreement for purchase, witness communicated with the plaintiff as to the defendant's title, and that the plaintiff stated that there existed objections to the title by reason that certain persons claimed an inter-

Whether or no had you at any time and when previously to the making of the agreement of the ——— day of ———, in the pleadings in this cause stated, and upon what occasion, any and what communication with the said complainant as to the title of the said defendant to the premises comprised in the said agreement? And did the said complainant at any time, and when, and upon what occasion previously to the making of the aforesaid agreement, state to the said defendant or to you or to any other person and whom as the solicitor or agent of the said defendant that there existed any and what objections to the title of the said defendant to the said premises, and in particular any and what objections by reason that one R. B. had not joined in the conveyance of the said premises to the said defendant, or any and what objections by reason that one A. S. claimed to have some right or interest in the said premises, and for what purpose did the said complainant state the said objections to the

title of the said defendant to the premises, and had the said objections any and what effect as to the price which the said defendant agreed to accept from the said complainant for the said premises? Declare, &c.

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est in the premises ; also to prove what was the plaintiff's object in making such objections.

Did or not J. A., the defendant in the title to these interrogatories named, at any and what time sell to any and what person or persons by name, any and what part of the premises in the last interrogatory mentioned? If yea, Set forth for what price, and what sum or sums of money the said defendant received as the consideration thereof. Declare, &c.

To prove that the defendant has sold part of the premises in question and at what price.

Did you at any time and when act as an auctioneer and put up to sale by auction the estate in the pleadings in this cause mentioned, and was or not the said estate sold in lots, and did you or not at the time of such sale, and before the putting up of any of the lots, produce some and what plan or particular of the said estate, and did you at or before the said sale make any and what declaration concerning the lots so to be put up to sale, or concerning the plan or particular of the said estate? Declare, &c.

To prove that witness as auctioneer sold an estate, and the plan produced at the time of sale.

Were you at any time, and when, and by whom, and on whose behalf employed to sell by public auction or otherwise, a certain freehold estate situate, &c., in the pleadings of this cause mentioned? If yea, Did you prepare or cause to be prepared, any plan or particular of the said estate, or was any plan or particular of the said estate prepared? If yea, Where was such plan or particular left, and was the same open for the inspection of persons who might be desirous of buying the said estate, or any part thereof? And was the sale of the said estate advertised, and was any and what plan or particular referred to in such advertisements, and were or not the respective lots marked or described in such plan or particular? Declare, &c.

To prove that witness was employed as auctioneer to sell an estate, and that he prepared the plan thereof referred to in the advertisements, and that the same was left open to the inspection of persons desirous to purchase.

Did you know J. O. late of ———, deceased, in his lifetime, and for any and what length of time previously to his decease? Was he or not, at any time in the service or employ of the said Bristol Dock Company? If yea, In what station or capacity, and for what length of time was he so employed by the said Bristol Dock Company? Declare, &c.

To prove that a deceased person was in the defendant's service, and in what capacity.

Whether or no have you now and have you for any, and what time, had any, and what situation or office, situations or offices in or about his Majesty's Treasury, or connected with the business thereof, and

To prove what situation witness holds in his

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Majesty's
Treasury,
and his
knowledge
of the
duties and
profits of
the treasury
messengers.

To prove
what situa-
tion a per-
son held
before he
was ap-
pointed a
treasury
messenger,
and wheth-
er he was
reputed to
be a man of
property.

To prove
that wit-
ness had a
relation
who was
employed
as a treas-
ury messen-
ger, that
another
messenger
received
the moneys
due to him,
and what
was the
state of ac-
counts be-
tween them
at the de-
cease of
such per-
son.

To prove
the death
of a person,
and when
first and
how long
witness
was ac-
quainted
with him,
when first
and in what
capacity
witness
lived with
him, and in
the circum-
stances and
situation in
life of the
deceased
during the
respective

whether or no have you by means of such office or situation, or by any other, and what means, had any opportunity to become acquainted, and are you in any, and what degree acquainted with the duties, employment, and profits of the Treasury messengers? Declare, &c.

Whether or no were you intimately or otherwise, and how, acquainted with F. G. and A. B. who were lately two of the said Treasury messengers, but are now deceased, and for how long did you severally know them, and what was the situation of the said A. B. before he was appointed a Treasury messenger, and was he before such appointment a person of property, or reputed to be a person of property, or how otherwise? Declare, &c.

Whether or no had you any, and what relation or connection who was a Treasury messenger at the same time with the said F. G.? And if yea, Did the said F. G. receive the moneys which were due to such your relation or connection in his employ of messenger, in the same manner as he received the moneys due to the said A. B., and did the said F. G. from time to time pay over to such your relation or connection the moneys which he received from him, or what was the state of the accounts between them at the death of the said F. G.? Declare, &c.

Whether or no did you know, or were you acquainted with S. D. of ———, deceased (in the pleadings of this cause named) in his lifetime? If yea, When and where did he die? And for how long time did you know him or were you acquainted with him before the time of his death? And when and where did you first know or become acquainted with him, and for how long time, or to what time did you continue acquainted with him? Did you or did you not live or reside with the said S. D. in his lifetime? If yea, When and where, and for how long time, and in what rank, station, or capacity did you live or reside with, or serve the said S. D. in his lifetime? And in what circumstances and situation in life at the time when you first knew or became acquainted with the said S. D., and from time to time during the time that you knew or were acquainted with him, was the said S. D., and in what circumstances and situation in life at the time when you first lived or resided with or served the said S. D., and from time to time during the time you lived or resided with or served him, was the said S. D.? Declare according to the best of your knowledge, remembrance, and belief, together with the grounds or reasons on which your belief is founded.

Whether or no do you know, and for how long have you known, CH. XIII.
 two pieces of land called the forty aeres, which are now in the occupation of R. B. of the said parish of W., farmer? If yea, Within what parish are the said pieces of land situate, as you know, or for any, and what reason or reasons, believe, and whether or no have you ever, and when, heard from any person or persons, and whom, who are now dead, within what parish the said two pieces of land are situate? And whether or no do you know to what parish the poor's rates or tithes have been paid for the said two pieces of land, and when, and by whom, and to whom? Declare, &c.

periods that witness was acquainted with him, and lived in his service. To prove within what parish two pieces of land are situate or reputed to be situate, and to what parish the poor's rates or tithes have been paid. To prove a survey made of an estate, and of what number of acres it consists.

Whether or no did you ever, and when, and by whose employment make a survey and admeasurement of certain lands called the S., situate in the parish of C., in the county of ———? If yea, Of what number of aeres do the said lands consist? Declare, &c.

Whether or no did the said defendants, or either, and which of them, or any, and what person or persons, or their, or either and which of their behalf, at any times or time, and when, or about what times or time particularly, and whether before or after the ——— day of ———, tender or offer to pay or satisfy unto any, and what persons or person any, and what sums or sum of money in or towards discharging any, and what legacies or legacy, given by the will of ———? Were or was, or not any, and what securities or security, and from and to whom, for the payment of any, and what sums or sum of money, produced and by whom at all, or any, and which of such times? Did the person to whom such, if any, tender was offered or made at any or either, and which of such times agree or refuse to accept the money or other satisfaction so offered, and how and in what manner, did he, she, or they, at such time or times express or declare him, or herself, or themselves, relating thereto? Declare, &c.

To prove a tender of money, or of securities in payment or discharge of legacies, and whether the same was accepted or refused, and what passed relative thereto.

Did or not the said F. E. in the pleadings in this cause named in his lifetime and from and up to what time in particular carry on any, and what trade or dealing, and in what sort of merchandise? Declare, &c.

To prove a deceased person having been a trader within the meaning of the bankrupt laws.

Of what trade or profession are you? Do you know the copyhold premises in the pleadings in this cause and in the 5th inter-

To prove the annual value of

CH. XIII. rogatory mentioned, and how long have you known the same? Of premises at the time the defendant took possession, and also their present value. what annual value were the same when J. A. the defendant in the title to these interrogatories named first took possession of the same as you know or for any and what reason believe? Of what annual value are the same now, and particularly what is the annual value of such part thereof as remain in the possession of the said J. A.? Declare, &c.

To prove the value of an advowson. Are you or not acquainted with the parish of W. and the rectory of W. described in the particular of the estate in the pleadings of this cause mentioned? If yea, do you or not know and by any and what means what was the value of the advowson of the said rectory on the 4th of October, 1821, and how do you calculate and make out such value? Declare, &c.

To prove the estimated value of an estate; ab what quantity witness computed certain lands, and in what degree it would have reduced the estimate if the witness had known that certain lands contained less than they were computed at. Whether or no were you at any time and when employed by _____ to estimate the value of the estate and premises described in the printed particular of sale marked (A) now produced, &c.? If yea, Did you form your estimate of the value from any actual survey and admeasurement or from any and what other information respecting the quantity of lands to be sold, and in particular in forming such valuation at what quantity did you compute certain lands part of the said estate called the _____? And whether or no should you in any and what manner have reduced the estimate of the value of such estate and premises if you had known the said lands called the _____ contained a less number of acres than they were so computed at by you?

To prove the valuation of the reversionary interest in houses after the expiration of existing leases previously to the sale thereof, that the valuation of one lot exceeded another lot containing the same number of houses and let at the like yearly rents, and the reason of such difference. Did you previously to the time of the sale of the estate in the pleadings of this cause mentioned make any and what estimate of the value of the reversion of the said houses or lots after the expiration of the leases under which the said houses were held? And if yea, How did you make such estimation or valuation, and was or not in particular the valuation of lot 10 or the houses comprised in such lot higher than the valuation of some other lot containing the same number of houses and let at the same rents, and what was the reason of such difference in the valuation of such reversion? Declare, &c.

To prove the cancelling of a will. Do you know whether the said T. M. in the 1st interrogatory named ever and when and in whose presence cancelled any will or

testament made by him and of what date in particular? And if yea, CH. XIII.
 Were you present at the time, and did the said T. M. inform you or
 make any declaration why he cancelled such will or testament? And
 set forth the particular words or declarations used or made by the said
 T. M. as the reasons for his cancelling such will or testament as nearly
 and fully as you can recollect the same? Declare, &c.

*Forms of Interrogatories for the Examination of Parties,
 and also for the Examination of Creditors and their Wit-
 nesses, and others, under Decrees and Decretal Orders.*

Interrogatories for the examination of the personal representatives of an ad-
 ministrator as to his intestate's estate and effects exclusive of his share in
 a partnership business, and also to the debts which were owing by the
 intestate.‡

Between, &c.

Interrogatories to be examined, &c.

1st. Whether or no was R. P. the intestate in the pleadings in this
 cause named, at the time of his death possessed of or entitled to any
 personal estate and effects other than, and besides and exclusive of
 his part, share, or interest, in the copartnership trade and business in
 the pleadings in this cause mentioned, and the stock and effects be-
 longing thereto? If yea, Set forth a full, true, and particular inven-
 tory and account thereof, and all the particulars whereof the same
 consisted, and the full, true, and utmost value thereof, and all the
 particulars thereof, which were possessed by you, or any, and which
 of you, and by any other person or persons, by your, or any, and
 which of your order, and for your, or any, and which of your use, or
 by the said late defendant T. P., or any other person or persons by
 his order, or for his use in his lifetime, and how, and in what manner
 the same were and have been applied or disposed of, and also an ac-
 count of all and every sums and sum of money received by sale or on
 account of the said intestate's personal estate and effects other than,
 and independent of, or distinct from his share, interest, or concern in
 the copartnership trade or business in the pleadings in this cause
 mentioned, or the stock or effects belonging thereto, or otherwise on
 account of the said separate personal estate and effects of the said
 intestate, and when, by whom, and of whom, for what and on what
 account or accounts, the same and every part thereof, were or was so

CH. XIII. received, and whether any, and what part or particulars of the said separate personal estate and effects of the said intestate remains or remain outstanding or unreceived.

2d. Whether or no was the said intestate R. P. at the time of his death separately indebted to any persons or person besides or exclusively of the debts owing from him as a partner in the aforesaid copartnership concern or business? If yea, Set forth a full, true, and particular account of all and every such debts; Have you or not, or have or hath, or not any, and which of you, or any persons or person by your, or any, and which of your order, or on your, or on any, and which of your behalf paid, laid out, or expended, and did the said late defendant T. P., or any other person or persons by his order, or on his behalf, in his lifetime pay, lay out, or expend any, and what sums or sum of money in or towards the discharging of all or any, and which of such debts, or of the funeral expenses of the said intestate R. P.? If yea, Set forth a full, just, true, and particular account of all and every such sum or sums of money, and when, and by whom, and to whom, and for what, or on what account or accounts the same, and every part thereof were or was so paid, laid out, or expended.

An interrogatory for the examination of an agent or steward.

To prove whether the examinant was empowered by the testator to let and sell his freehold and leasehold estates and to receive the rents thereof;

Also to prove the particulars of such estates, how long the examinant has been in possession of any part, what rents have been received by him and what re-

Whether or no were you in the lifetime of the said testator T. D., and for how long time before his death empowered by him or any other person, and whom, to let and sell, or any, and what part of the freehold and leasehold estates of the said testator, and to receive the rents and profits thereof, or do you otherwise and how, know of what freehold or leasehold estates, the said testator died seised or possessed, or entitled unto? If yea, Set forth a full, true, and just, rental description and particular thereof, and where the same and every part thereof are situate, and the yearly value of each particular thereof, and in whose tenure or occupation the same and every part thereof then was, or since has been, and now is, and under what leases or terms of years, if any, and at what yearly or other rent or rents; And set forth for how long time you have been in possession or receipt of the rents and profits of such freehold and leasehold estates, or any and what part thereof, and by what right and title, and for whose use; And also set forth a full, true, and particular account of all and every sum and sums of money which have been received by you, or any other person or persons, by your order, or for your use, for, or in respect of the rents and profits of the said estates or any part thereof

which have or hath become due since the death of the said testator, and what, and by whom, and for whose use, and for what rent and of what part of the said estates, and when due, all, and every such sums were respectively received, and whether any, and which of such rents and profits are now in arrear, and if so, why; And also set forth a full, true, and particular account of all and every, the sum and sums of money which have been from time to time paid and disbursed by you since the death of the said testator for, or on account of the said freehold and leasehold estate or estates of the said testator, and when, and to whom, and for what, all and every such sums were respectively paid and disbursed; Set forth, &c.

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main in ar-
rear, and
also as to
what mon-
eys have
been ex-
pended on
the estates.

Interrogatories for the examination of a defendant before the Master, to prove the number and age of her children, and when baptized.

Between B. B. and others, - Plaintiffs,
and
T. A. and others, - Defendants.

Interrogatories exhibited on behalf of the plaintiffs before J. S. H. Esq., &c.

1st. Whether or no were there any children living of the marriage between you and your late husband W. A., in the pleadings in this cause named, at the time of his death, and what were their respective names, and when and where were they severally born, and are or is any or either, and which of them, since dead, and when did he, she, or they, die?

2d. Whether or no were they, or any, or either, and which of them, at any time or times, and when, and where, and by whom baptized, and whether or no were or was, any entries or entry, at any time or times, and when, made in any registers or register, of any, and what parish, church or churches, or chapels or chapel, or other places or place, as to the birth and baptism of all, or any, or either, and which, of them?

Interrogatories for the examination of creditors and their witnesses.]]

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

Interrogatories exhibited by the complainants before W. G. Esq. one of the Masters of this Honorable Court, for the examination of the creditors of T. H. Esq. deceased, in the pleadings in this cause named, and of their witnesses, in pursuance of the decree and order of this Court, made on the hearing of this cause on the 8th day of March, 1781.

To prove the debts due to the exami- nants at the time of the intestate's death, and whether any part thereof has been satisfied.

1st. Was the said T. H. in his lifetime and at the time of his death indebted to you in any and what sum or sums of money on any and what account, and have you or have you not at any time or times and when and from whom received any and what satisfaction for the same or any part thereof, and is the same and every or any and what part thereof still justly due and owing to you? Declare, &c.

To prove what mon- eys are due on mort- gages or other secu- rities and the partic- ulars there- of.

2d. Was the said T. H. in his lifetime and at the time of his death indebted to you in any and what sum of money for principal and interest due to you on mortgage or other security or securities made from him to you, and when does or do such mortgage deed or other security or securities bear date, and for what consideration was or were the same made and by and before whom and when executed, and who is or are the subscribing witness or witnesses to the execu- tion thereof, and have you or have you not or any other person and who on your account or behalf and when received such principal money and interest, or any and what part thereof, as you know, have heard and believe? Declare, &c.

To prove what mon- eys are due on judg- ment, and when such judgment was con- fessed.

3d. Was the said T. H. in his lifetime and at the time of his death indebted to you in any and what sum or sums of money on any and what judgment, and when was the same confessed or recovered by you or whom else in any and what Court against the said T. H., and have you or have you not or any other person and who on your account or behalf, or on any other account and when and from whom received any and what satisfaction for the same, or any and what part thereof, and is the same and every or any and what part thereof still justly due and owing as you know and do believe? Declare, &c.

To prove what mon- eys are due on bond.

4th. Was the said T. H. in his lifetime and at the time of his death indebted to you in any and what sum or sums of money on any and what bond or other security made and entered into by him to you or

any other person or persons and whom by name, and when was the same so made and given, and for what consideration or on what account and in what penalty, and what was the consideration thereof, and when does the same bear date, and hath or hath not the same been and when paid off and discharged, or is any and what part thereof still justly due and owing to you or whom else on the said bond as you know, have heard, and do believe? Declare, &c. CH. XIII.

5th. Was the said T. H. in his lifetime and at the time of his death indebted to you in any and what sum or sums of money on any and what promissory or other note, and when and for what consideration was the same so made or given or indorsed to you, or whom else by the said T. H. and what is the date thereof, and hath or not the same and every or any and what part thereof been and when paid off and discharged, or is the same or any and what part thereof, still justly due and owing to you, or whom else, as you know, have heard and believe? Declare, &c. To prove what mon-
eys are due
on promiss-
sory notes.

6th. Was the said T. H. in his lifetime and at the time of his death indebted to you in any and what sum or sums of money on any and what book debt or debts, for any and what goods sold and delivered by you to him or by his order or for his use or on his account, and at what particular time or times were the same so sold and delivered by you to him or by his order or for his use, and what was or were the particular or particulars thereof, and hath or have or not the same or some and what part or parts thereof been and when paid off and discharged, and is or are the same and every or any and what part or parts thereof still remaining justly due and owing thereon? Declare, &c. To prove
what is due
for goods
sold and
delivered.

7th. Was the said testator T. H. in his lifetime and at the time of his death justly and truly indebted to you in any and what sum or sums of money for work and labor done and performed by you and your journeymen and servants or any of them and for materials and things found and provided by you and used in and about such work for the said T. H. or by his order, and when, where, and at what place or places? And have you or have you not or any other person or persons and who on your account or behalf, or on any other and what account and when and from whom received any and what satisfaction for the same or any and what part thereof, and is the same and every or any and what part thereof still justly due and owing to you or whom else as you know and do believe? Declare, &c. To prove
what is due
for work
and labor.

8th. Was the said T. H. in his lifetime and at the time of his death justly and truly indebted to you in any and what sum or sums of money for business done by you, and for your fees and for money necessarily paid, laid out, disbursed, and expended by you, and when for him or on his account or behalf in any and what business, and have To prove
what is due
to the de-
ceased's
solicitor.

CH. XIII. you or have you not or any other person or persons and who on your account and behalf, or on any other and what account, and from whom and when received any and what satisfaction for the same or any and what part thereof, and is the same or any and what part thereof still justly due and owing to you or whom else as you know or do believe? Declare, &c.

To prove the execution of bonds and other exhibits by the subscribing witnesses.

9th. Was or were the bond or bonds, or other writing or writings marked ——— now produced and shown to you at this the time of your examination, or any and which of them signed, sealed, or executed in your presence and by whom? Were you or not a witness to the signing, sealing, or executing such bond or bonds, or other writing or writings, or any and which of them? Is your name set or subscribed as a witness to the same respectively, or any and which of them, of your own proper handwriting, and is or are the name or names of the other subscribing witness or witnesses thereto of his, their, or any and which of their own proper handwriting or not? Declare all that you know or believe concerning the same.

Interrogatories for the examination of a person claiming to be a creditor, to prove the actual consideration of a bond, and under what circumstances the same was executed; also as to loans of moneys in the examinant's charge stated to have been lent, and as to an agreement made with him for the passage of a woman and two children on board a vessel.

Between B. M. widow, and others, - Plaintiffs,
and
B. N. and others, - Defendants.

Interrogatories exhibited on behalf of the said defendants before J. S. Esq. one of the Masters of this Honorable Court to whom this cause stands referred, for the examination of T. S. Esq. who claims to be a creditor of the testator G. S. in the pleadings of this cause named, pursuant to the decree made in this cause bearing date the ——— day of ———.

To prove under what circumstances a bond was executed, and the consideration thereof;

Whether the obligor was not intoxicated at

1st. When and where and in whose presence did the said testator G. S. execute the bond to you for the sum of \$ ——— in your charge mentioned, and at what time of the day was such bond executed, and was it not after dinner, and was the said G. S. then intoxicated, or in any and what degree heated with liquor, and was not the said G. S. addicted to drinking, and by whom was such bond prepared, and when in particular, and by whose directions, and what was the consideration of such bond; and if you allege that the consideration

was for moneys advanced or paid by you to or for the use or on the account of the said G. S., then set forth when and where and in what manner and in whose presence and to whom such moneys and every part thereof were so advanced and paid? Did not the said G. S. pay to you the sum of \$ ——— for his passage from ——— to ——— before or upon or soon after his coming on board your ship, and did not the said G. S. bring on board with him the further sum of \$ ——— or thereabouts, or some other and what further sum as you know or believe, and how happened it, therefore, that the said G. S. had occasion for the said sum of \$ ——— and how did he spend the same, and what did he do therewith?

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the time he executed the same, and whether or he had any occasion for the sum alleged to have been lent, for the securing whereof the bond was executed.

2d. When and where and in whose presence did you pay to Mr. S. in your charge named, the sum of \$ ——— therein mentioned, and when and where and in whose presence did the said G. S. request you to pay the same, and when and how did the said G. S. become indebted in the said sum of \$ ——— to the said Mr. S.?

To prove the time of payment of a sum in the examinant's charge alleged to be due to him and to have been paid over to another person. To prove the mode and time of advancement of other sums in the examinant's charge stated to have been lent.

3d. When and where and in what manner and in whose presence did you advance to the said G. S. the sum of \$ ——— and every part thereof in your said charge, stated to have been lent by you to the said testator at ———, and how did the said G. S. spend the same, or what did he do therewith? When and where and in what manner and in whose presence did you advance to the said G. S. the sum of \$ ——— and every part thereof in your said charge stated to have been lent by you to the said G. S. at ———, and for what purpose did he require such loan?

4th. When and where and in whose presence was the agreement made between you and the said G. S. for the passage of Mrs. M. and her two children from ——— to ———? Did the said Mrs. M. or her children dine at your table on the passage, or were they not treated by you as common passengers, or how otherwise? And what is the usual and customary payment for the passage of a woman and two such children from ——— to ———, who are treated as common passengers or one treated as the said Mrs. M. and her two children were treated by you, and what is the usual and customary payment for such a passage for a woman and two such children who dine at the captain's table?

To prove the date of the agreement for the passage of a woman and two children, how they were treated, and the difference in the rate of payment for the passage of a woman

and two children, where they are treated as common passengers, or where they dine at the captain's table.

CH. XIII. As to the existence of a bond, and what has become of the same; also to prove the handwriting, and acknowledgments or admissions made by the obligor.

Between, &c.

Interrogatories exhibited on behalf of W. T. and E. T. who claim to be creditors of the said defendant, before S. T. Esq. one, &c. to whom this cause stands referred, for the examination of W. L. for the proof of their debt, pursuant to, &c.

To prove the existence of the bond.

1st. Whether or no have you at any time and when and for how long had in your custody, possession, or power, or have you at any time or times and when respectively seen in the custody, possession, or power of any other person or persons and whom, a bond or obligation in writing, executed or purporting to be executed by the present Marquess of D. by his then name of Earl of B. of the date and in the words and figures or to the purport and effect hereinafter set forth, or any other and what bond executed or purporting to be executed by the said Marquess of D. by his then name of Earl of B. to J. F. T. the wife of W. T. of M. by her then name of B. of any other and what date, or in any other and what words and figures, or to any other and what purport and effect? (*Setting forth the bond.*)

To prove from whom witness received the same, and to whom he delivered it, and what has become of the same.

2d. Whether and from whom, and upon what occasion did you receive such bond or obligation, if the same hath ever been in your custody, possession, or power, and what is become of the said bond, where is the same now, or was when you last knew thereof, and to whom, and when, and upon what occasion did you give up the custody, possession, or power of the said bond? Or if the said bond hath never been in your custody, possession, or power, and upon what occasion or occasions did you see the same in the custody, possession, or power, of any other person or persons; and what is now become thereof as you know, or for any and what reason, believe?

To prove the handwriting of the signature to the bond, and of the attesting witness, and also the handwriting of the body of the bond.

3d. Are you acquainted with the character of the handwriting of the said Marquess of D., and have you ever seen the said Marquess write, or by what other means did you become acquainted with the character of his handwriting, and whether or no do you believe that the name "B———" set and subscribed in the said bond or obligation was of the proper handwriting of the said Marquess, or if not, why; and whether or no was the name of any attesting witness, and whom set and subscribed to the said bond, and are you by any, and what means acquainted with the character of the handwriting of such attesting witness, and was such name of his proper handwriting, and

is such attesting witness now living or dead, and when did he die? CH. XIII.
 And do you know of whose handwriting was the body and condition of the said bond?

4th. Whether or no was any instrument or other authority produced to you whereby the said Mrs. T., the obligee in the said bond, authorized and empowered any other person, and whom, to receive the money due on the said bond, or otherwise to discharge the same? To prove whether the obligee in the bond gave authority to any person to receive the money due thereon.
 If yea, Set forth the particulars of such instrument or other authority, and what hath become thereof.

5th. Whether or no have you at any time or times, and when and upon what occasion or occasions had any conversation with the said Marquess of D. upon the subject of the said bond, or have you at any time or times, and when and upon what occasion or occasions heard the said Marquess of D. speak of the said bond; and whether or no did the said Marquess of D. upon such occasion or occasions acknowledge or admit that he gave the said bond for the proper use and benefit of the said Mrs. T., or how otherwise? To prove acknowledgments or admissions made by the obligor that he gave the bond for the obligee's own benefit.

6th. Look upon the letters or paper-writings now produced, &c.; Of whose handwriting are the said letters or the signatures and superscriptions thereto respectively as you for any and what reason know or believe? To prove letters as exhibits.

Interrogatories for the examination of executors before the Master.

Between A. B. - Plaintiff,
 and
 C. D., &c. - - - Defendants.

Interrogatories exhibited on behalf of the said plaintiff before I. E. Esq. one of the Masters of this Honorable Court, for the examination of the defendants, pursuant to the decree made in this cause, bearing date the _____ day of _____.

Whether or no was D. W. deceased, in the pleadings of this cause named, at the time of his death possessed of or entitled to or interested in any and what goods, chattels, personal estate, and effects, as you know, or for any and what reason believe? If yea, Set forth a full, true, and just inventory and account thereof, and of every part thereof, and of the particulars whereof the same consisted, and the quantities, qualities, full, real, and true valuations of all such particulars; And whether or no were all, or any, and which of such particulars, and to what amount and value possessed or received by, or come to the hands of you or one and which of you, or any and what persons or person by the order or for the use of you or one and which of you, and how and in what manner, and when and where and by whom and for how As to the particulars of the personal estate and the application thereof by the examiners, and also as to the debts due to the testator at the time of his death, and what moneys have been received in

CH. XIII. much have or hath the same and every, or any, and what part thereof, been sold or disposed of, and whether any and what parts thereof and to what value and amount now remain undisposed of, and what is become thereof? Whether or no were any and what sums of money due or owing to the said D. W. at the time of his death? If yea, Set forth a full, true, and particular account of all and every such sums, and from whom and for what the same were respectively due, and whether on any and what securities or security, and whether carrying interest or not, and at what rate, and how much was due for interest thereon respectively at the time of his death; and also a full, true, and just account of all and every sums and sum of money, from time to time received by or by the order of, or for the use of you or either of you in or towards the discharge of such debts, or any of them, or the interest thereof, or of any of them, since the death of the said D. W., and when and by whom, and for whose use and for what, all and every such sums were respectively received; and what sums or sum of money still remain due in respect thereof, or of the interest thereof, or of any of them and for whom, and why such sums have not been gotten in and received, and where do the persons from whom the same are respectively due live and reside? Set forth all the matters aforesaid according to the best of your respective knowledge, remembrance, information, and belief.

As to the debts owing by the testator, and what moneys have been paid towards the discharge thereof, and of his funeral expenses.

Whether or no was the said D. W. at the time of his death indebted to any and what persons or person in any and what sums or sum of money? If yea, Set forth a particular account of all and every the debts whatsoever which were then justly due and owing from him, and to whom, and for what, and on what security (if any), the same were respectively due; and whether any and what sums or sum of money have or hath been since paid by you in or towards the discharge of all or any and which of such debts, and when, and to whom, and for what; and whether any and what sums or sum of money do or doth now remain unpaid on account thereof; Whether or no were or was any and what sums or sum of money paid and disbursed by you for or on account of the funeral expenses and debts of the said testator or otherwise in relation to his estate, and when and by whom and to whom and for what were all and every such sums respectively paid? Set forth, &c.

As to the testator's leasehold property, what rents have been received

Whether or no was the said testator at the time of his death possessed of or entitled to any leasehold property? If yea, Set forth the particulars of which the same consisted and where the same and every part thereof was situate, and by whom and for what term or terms of years and under what yearly or other rent or rents the same and every

part thereof was held at the death of the testator, and whether any and what sums or sum of money have been received by you or either of you in respect of such rent or rents and when and from whom and for what rents respectively ; And whether or no have you or either and which of you sold any and what part of the said testator's leasehold property ? And if yea, When and to whom and for what was the same sold, and what sum or sums of money hath or have been received by you and either and which of you in respect of such sale, and when and from whom and for what was or were such sum or sums received, and what now remains due in respect of such sale, and why the same is outstanding and unpaid ? And set forth also a full, true, and particular account of the stock in trade which the said testator was possessed of or entitled to at his death, of what the same and every part thereof consisted, and what at the said testator's death was the full and true value of each and every part thereof ; And set forth also a full, true, and particular account of the moneys produced by the sale of such stock in trade, and when and to whom and for what the same and every part thereof was sold or what became thereof. Set forth all and every, &c.

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therefrom,
and what
parts have
been sold;also as to
the testa-
tor's stock
in trade,
the value
thereof, and
what mon-
eys have
been re-
ceived by
sale there-
of.

Whether or no was the said testator J. B. at the time of his death seized of or otherwise and how entitled to any and what freehold and copyhold estates ? If yea, Set forth a full, true, and just rental description and particular thereof, and the number of acres thereof respectively, and where the same and every part thereof is situate, and the yearly value of each particular thereof, and in whose tenure or occupation the same and every part thereof respectively then was or since has been and now is, and under what leases or terms, if any, and at what yearly or other rent or rents ; And set forth also whether any and which of such estates or any and what part thereof have or hath since the death of the said testator J. B. been sold and disposed of, and when and where and by and to whom and for how much every particular thereof hath been sold and disposed of and whether at the full and utmost value thereof, and if not, why, and how and in what manner the money arising from the same hath been paid and applied ; And set forth also a full, true, and particular account of all and every sum and sums of money which have been from time to time received by you or any or either and which of you or by any other person or persons by your or any or either and which of your order or for your or any or either and which of your use for or in respect of the rents and profits of the said freehold and copyhold estates and every or any part thereof which were due and owing at the death of the said testator or which have since become due, and when and by whom and

As to the
freehold
and copy-
hold estates
to which
the testator
was enti-
tled, what
parts have
been sold,
and how
the pur-
chase-
money has
been ap-
plied ; also
as to what
rents have
been re-
ceived, and
what re-
main in
arrear.

CH. XIII. from whom and for what all and every such sum and sums were respectively received, and whether any and which of such rents and profits are now in arrear, and if so, why?

As to what money has been received for principal and interest due on bond.

Whether or no have you been paid or in any manner satisfied any part of the principal-money of \$ ——— mentioned in the bond or obligation of T. B. the said testator, bearing date, &c. or any part of the interest which hath accrued due thereon? If yea, Set forth the particulars and amount of all and every sums or sum which you have been so paid or satisfied and when respectively and by whom and in what manner.

Interrogatory for the examination of executors and trustees as to any personal estate got in or disposed of by them, and moneys received by sale of real estate and from the rents thereof, since the time of the examinants putting in their answers to the plaintiff's bill.

Hath not some and what part of the personal estate and effects of R. H. Esq. deceased, the testator in the pleadings in this cause named, or of the produce of such personal estate, or of the money arisen by sale of his real estate or any part thereof, or in respect of the rents and profits of his real estate or of any part thereof, been possessed by or come to the hands of you or one and which of you, since the respective times of your respectively swearing to your respective answers in the plaintiff's bill in this cause? Set forth a full, true, and just account of all and singular such personal estate and the produce thereof which hath been so possessed or received by you respectively or by your respective order or for your respective use, or come to your respective hands since the time of swearing your said respective answers, and the natures, kinds, qualities, and quantities and the full, real, and true value of all and every such particulars, and when and by whom and to whom all and every or any and which of such particulars have been sold or disposed of, and whether any and what part thereof remains undisposed of, and what is become thereof. Hath any and what part of the personal estate of the said testator R. H. which remained undisposed of at the time of swearing your said respective answers been since sold or disposed of and when and by and to whom and for how much, and whether for the full value thereof, or how much under the full value thereof respectively, and what sums or sum of money have or hath been received for the same, and when and by whom and for whose use? Set forth also a full, true, and just account of all and every the sums or sum of money which have or hath been from time to time received

by you or either of you, or by any persons or person by the order or for the use of you or either of you since the swearing of your said respective answers for or in respect of the produce or money arisen by sale of the real estate of the said testator or any part thereof, or the rents or profits of such real estate or any part thereof, and when and by whom for what and on what account all and every such sums were respectively received? Set forth all and every the matters and things aforesaid according to the best of your respective knowledge, remembrance, and belief.

Interrogatories for the examination before a Master of the executor and heir-at-law of a deceased defendant, who was the agent, steward, receiver, and manager of the estates in question.

Between, &c.

Interrogatories exhibited, &c.

1st. Set forth according to the best of your knowledge and belief a full, true, and particular account of all and every the rents, issues, and profits and sums and sum of money arisen from rents, issues, and profits of the estates of the plaintiffs Viscountess S. and C. C. in the pleadings mentioned, situate in the several counties of, &c. or any of them, which have arisen or become due since the death of J. B. their mother, received by or come to the hands of the late defendant R. B. in his lifetime, and you the now defendant R. B. as his heir-at-law and executor since his death, or any other person or persons by your or either of your orders, or for your or either of your use, or which without your or either or one of your wilful default might have been received thereout, with the times when and from whom and for what the same and each and every of them were respectively received or might have been received.

As to the rents received, or which without wilful default might have been received.

2d. Set forth in manner aforesaid a full, true, and particular account of all and every sums and sum of money paid, laid out, expended, disbursed, or allowed for repairs, taxes, and other outgoings in respect of the estates or otherwise, to, for, or on account of the plaintiffs or any of them by the late defendant R. B. in his lifetime, and you the now defendant R. B. since his death, or by any other person or persons by your or either of your order or on your or either of your account, with the times when and by and to whom and for what the same and each and every of them were so paid, laid out, expended, disbursed, or allowed.

As to monies laid out in repairs, &c.

3d. Set forth in manner aforesaid a full, true, and particular

CH. XIII. account of all such parts of the said estates as were at any time or times sold since the death of the said J. B. the mother of the said plaintiffs, with the times when and to whom and for what prices respectively the same and every part thereof were or was sold, and also an account of all and every sums and sum of money arisen from such sales or sale received by or paid to the account of or in any wise come to the hands of the said late defendant R. B. or to the hands of his bankers or any other person or persons by his order or for his use, with the times when and from whom and for what all and every such sums and sum of money were or was received or paid; and also a full, true, and particular account of all timber which hath been cut down in or upon all or any part or parts of the said estates of the said plaintiffs Viscountess S. and C. C. at any time or times since the death of the said J. B. their mother, with the times when, and the names of the particular woods, fields, grounds, or places in which the same were cut, and the number of trees from time to time so cut, and the prices or value thereof respectively, and to whom the same were sold, and by whom the same were cut down respectively from time to time; and also a full, true, and particular account of all and every sums and sum of money which at any time or times and when were received by or come to the hands of the said late defendant R. B. or any other person or persons by his order or for his use from such timber as aforesaid, or which without his own wilful default might have been received, and from whom and for what all and every such sums and sum of money were or was received.

As to what parts of the estates have been sold, and the moneys received therefrom ;

Also as to what timber has been cut down and on what grounds, the value thereof, and to whom sold, and the moneys received on account thereof, or which without wilful default might have been received.

4th. Set forth also in manner aforesaid a full, true, and particular rental of all and every the said estates of the plaintiffs, &c. in the several counties aforesaid as the same stood at the time of the death of the said J. B. their mother, specifying therein the names of all and every the tenants and the yearly rents of each of the said estates at that time; And also set forth all and every increase and advance of all and every or any of the rents of the said estates from time to time made, with the particular times or periods when and from which such increase or advance took place, so as to show what was the yearly amount of the rentals of the said estates in every year when any advancement or increase took place from the death of the said J. B. at this time, save and except such increase or advance as may have been made by the plaintiffs in the rents of such of the said estates as were delivered into their hands since their possession thereof.

5th. Set forth in manner aforesaid, a full, true, and particular account of all the woods and woodlands parcel of the said estates, with the names and quantities or number of acres thereof respectively, and the places where the same are situate; and also a full, true, and

As to the woods and woodlands, and the names and number of

particular account of all such lands and tenements parcel of the said estates as at any time or times were not let to any tenant or tenants, or were in hand or occupied by the said late defendant R. B. or any other person or persons by his order or on his account, with the names and quantities or number of acres and yearly value thereof, respectively, and when and how long from time to time the same were so unlet to any tenant or tenants, or were in hand or occupied by the said late defendant R. B.; And set forth also in manner aforesaid the names of the several manors belonging to the said estates, and in what particular counties the same are situate, with the natures and extents of such manors respectively, and a full, true, and particular account of all quit rents, and of all fines, heriots, and other uncertain profits belonging or arising from each of such manors respectively, with the yearly amounts thereof.

6th. Set forth in manner aforesaid the name or names and place or places of abode of the steward or several stewards employed by the said late defendant R. B. from time to time in the collection of the rents and management of the said estates and each of them respectively, from the time of the death of the said J. B. down to the time when possession of any of the said estates was taken by the plaintiffs, and down to the time of his own death as to such of the said estates as he continued in possession of to that time.

7th. Set forth in manner aforesaid a true and particular schedule of the accounts of all and every the stewards and agents of the said estates respectively from the time of the death of the said J. B. down to the time when the possession of any of the said estates was delivered into the possession of the plaintiffs, and down to this time as to such of them as the said late defendant continued in possession or until his death and which are now in your possession; and also a true and particular schedule of all the surveys, field-books, maps, plans, counterparts of leases, rentals, particular books and papers of accounts, minutes, entries, agreements, and memorandums, kept by all or any of the said stewards or agents of or concerning the said estates or any of them, or the rents, profits, or management thereof, and whether any such have at any time or times to your knowledge, information, or belief, been torn, burnt, or destroyed, and when and by whom; or whether you have ever seen or heard of any such, which are or is not now forthcoming, and what is become thereof according to the best of your knowledge, information, and belief.

8th. Set forth also in manner aforesaid, a full and particular schedule and description of all and every or any books or book of account, memorandums, agreements, declarations of trust, letters, minutes, entries, or other papers at any time or times kept by the late said defendant R. B. of or concerning his receipts, payments, or transac-

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acres thereof; Also as to the estates which were from time to time on hand or occupied by the deceased defendant.

Also as to the names of the manors belonging to the estates and the descriptions thereof, and of the quit rents, fines, &c. belonging thereto.

As to the names of the stewards employed by the deceased defendant in the collection of the rents and management of the estates.

Schedule required of the accounts of the stewards and agents of the estate;

Also of all surveys, maps, rentals, &c. kept by them; and whether any have been destroyed and how.

Schedule and description required of all accounts, declarations

CH. XIII. tions for or upon account of the plaintiffs Viscountess S., &c. or all or any of their estates, or the plaintiffs Lord S., &c. or in any wise concerning the said estates or any of them; and whether to your knowledge, information, or belief, any such books or book of account, memorandums, minutes, declarations of trust, letters, entries, or papers, have at any time been torn, burnt, or destroyed, or whether you have ever seen or heard of any such which are or is not now forthcoming, and if so, what is become thereof according to the best of your knowledge, information, and belief.

9th. Set forth in manner aforesaid a full, true, and particular account of all and every the manors, messuages, lands, tenements, and hereditaments, which are comprised in the indentures of, &c. in the pleadings mentioned, and in the indenture of, &c. in the pleadings also mentioned, and in each and every of them; And also set forth a full, true, and particular account and rental of all such of the said manors, &c. as now remain unsold, specifying therein the names of all and every the tenants or tenant or occupiers, and the names and quantities or number of acres of the fields and lands occupied by each tenant.

10th. Set forth in manner aforesaid a true and particular schedule of all title deeds and writings, and other deeds, instruments, evidences, and writings relating to the said estates of the said Viscountess S., &c. in the several counties aforesaid, or to any of them now in your custody or power, or which at any time or times have been in your custody or power or in the custody or power of the said late defendant R. B., and if any of the deeds and evidences relating to the said estates or any of them were at any time or times in the custody or power of the said late defendant R. B. or in your custody or power and are not now in your custody or power, set forth in whose custody or power the same now are or what is become thereof as you know, have heard, or for any and what reason believe.

11th. Do you not admit assets of the said late defendant R. B. sufficient to answer what on taking the aforesaid accounts shall appear to have come to the hands of the said late defendant? If not, Then set forth in manner aforesaid a full, true, and particular account of all and every the sums and sum of money, securities for money, arrears of rent, goods, chattels, personal estate and effects whatsoever of or belonging to the said late defendant R. B. at the time of his death, with the kinds, qualities, natures, true and real values thereof respectively, and also set forth a full, true, and particular account of all such parts thereof as have been possessed and received by or which have come to the hands of you the said now defendant R. B. as his executor, with the times when and how and from whom you have possessed or received the same, and what part or parts thereof, if any, now remain outstanding.

As to whether the examinant admits assets of the deceased defendant sufficient to answer what may appear to have come to his hands.

An account required of all the manors, &c. comprised in certain deeds, and a rental of such as remain unsold.

Schedules required of all deeds, &c. relating to the estates in question.

Interrogatories for the examination of executors before the Master.

CH. XIII.

Between L. M. - - - Plaintiff,
 and
 E. C. and others - - Defendants.

Interrogatories exhibited on behalf of the plaintiff, before J. S. Esq., one of the Masters of this Honorable Court, to whom this cause stands referred, for the examination of the defendants M. C. and A. C. pursuant to the decree made on the hearing of this cause, bearing date the _____ day of _____.

1st. Whether or not was T. C. deceased, the testator in the pleadings of this cause named, at the time of his death possessed of, entitled to, or interested in any books, pictures, china, household goods, and household furniture, and live or dead stock, or any and which of such particulars? If yea, Set forth a full, true, and particular inventory or schedule of such several articles, and the descriptions and true and utmost value of all such articles and effects at the time of the death of the said testator, and how and by what means do you ascertain the value thereof, or hath the value thereof been ascertained by any and what persons or person, and whom by name, and whether or not are such several articles or any and which of them now in your or either of your possession or power, or what hath become of the same, and have or hath or not you or either and which of you sold or otherwise and how disposed of the same or any and which of them? Have you or hath either and which of you or have any person or persons and who by name by your or either of your order or for your or either of your use, possessed or received all or any and which of such several articles, or any and what sum or sums of money from the sale and disposition thereof, and of any and which of them? If yea, Set forth a full, true, and particular account of all such sum and sums of money, and of the times when the same were received, and of the purposes to which the same have been applied, and of the amount or balance due from you and each of you in respect thereof; Set forth the several matters inquired after by this interrogatory, and all the particulars relating thereto, fully and at large, according, &c.

As to certain particulars of the testator's personal estate, an inventory or schedule thereof required to be set forth; Also as to the value of all such particulars and whether any of them have been sold, what moneys have been received therefrom and how the same have been applied, and what balance remains due from the examiners.

2d. Whether or no was the said testator T. C. at the time of his death possessed of, entitled to, or interested in any, and what goods, chattels, personal estate, and effects, other than and besides the several articles inquired after by the preceding interrogatory? If yea, Set forth a full, true, and particular account of all such personal

As to any other personal property to which the testator was entitled, and

CH. XIII. estate and effects distinguishing the several particulars thereof; And whether or not have or hath you or either of you, or any and what persons or person, by your or either of your order, or for your or either of your use, possessed or received all or any, and what part of such last-mentioned personal estate and effects of the said testator T. C., or any and what moneys produced from the sale and disposition thereof, or of any and what part or parts thereof? If yea, Set forth a full, true, and particular account of all such personal estate and effects, and of all and every the sum or sums of money so possessed and received from the sale and disposition thereof, distinguishing the several particulars thereof, together with the names of the persons or person by whom the same and every part thereof were or was possessed and received, and what parts of such personal estate and effects now remain in your, or either and which of your hands or power, and what is the amount or balance due from you and each of you in respect of the moneys so possessed or received, and all other particulars relating thereto, fully and at large? And whether or not is any part of the said testator's personal estate and effects now outstanding, and if so, in whose hands or power? Declare, &c.

As to any moneys laid out by the examiners in payment of the testator's debts, funeral and testamentary expenses. 3d. Have or hath you or either of you, or any and what person or persons by your or either of your order, or for your or either of your use, paid, laid out, expended, or allowed any sum or sums of money in or towards payment and satisfaction of the said testator's debts, funeral and testamentary expenses or otherwise on account of the said testator's personal estate? If yea, Set forth a full, true, and particular account of all such sum and sums of money so paid, laid out, or expended, together with the times when, and the names of the persons by and to whom and for what, the same and every part thereof have or hath been so paid, laid out, expended, or allowed, and all the particulars relating thereto fully and at large, according to the best and utmost of your knowledge, remembrance, information, and belief.

As to what debts remain unpaid. 4th. Have all the debts due and owing by the said testator T. C. at the time of his decease, and his funeral expenses been paid and satisfied, or do any and which of such debts now remain due and owing? And if so, To whom, and to what amount, and on what security or securities? Declare, &c.

As to the particulars of the testator's interest in leasehold premises, and in whose occupancy. Was or not the said testator P. C. at his death possessed of or in some manner interested in a messuage or tenement at H., in the county of M.? If yea, Set forth the particulars of which the same consisted, and from whom, and under what lease or agreement and for what term, and at and by what yearly or other rent the same and

every part thereof was holden by the said testator, and set forth also CH. XIII.
 at what rent and other conditions and for what term of years you pation the
 have since taken the same, and in whose occupation the same same have
 every part thereof hath been since the death of the said testator and been since
 now is, and at what rent or rents. his death,
and at what
rent.

Whether or no have you or either and which of you, since the As to what
 death of the said testator, possessed any and what property of the said property
 testator which was specifically bequeathed by him, other than and specifically
 except such moieties as you have delivered to the specific legatees? bequeathed
 If yea, Set forth a full, true, and particular inventory and account has been
 thereof, and of every part thereof, and all the particulars whereof possessed
 the same consisted, and the quantities, qualities, full, real, and true by the ex-
 values of the said particulars, respectively. aminants
besides
such as has
been deliv-
ered over.

Whether or no are any and which of the annuitants in the said As to what
 testator's will named living, and have any and which of the said an- annuitants
 nuitants died since the death of the said testator, and when in partic- under a will
 ular, and hath or have any and what sum or sums of money been paid are living
 in discharge of any and which of their said annuities, and in partic- and who
 ular in discharge of the annuities given for the charitable purposes in have died
 the said will mentioned, and when and by whom, and have any and since the
 what fund or funds been set apart and in whose name or names, and testator's
 in what manner to answer the same annuities, or any, and which of death, what
 them? Set forth, &c. sums have
been paid
in dis-
charge of
their annu-
ities, and
what funds
have been
set apart to
answer the
same.

Interrogatories for the further examination of executors, defendants, pursu-
 ant to a decree.

Between S. H. and others, infants, by J. F. their
 next friend, - Complainants,
 and
 J. S. H. an infant, J. G., S. G., and
 W. B., - - - - - Defendants.

Interrogatories exhibited on the behalf of the defendant J. S. H.
 for the further examination of the defendants J. G. and S. G., pur-
 suant to the decree made on the hearing of this cause, bearing date
 the _____ day of _____, before J. S. Esq., one of the Masters of
 this Court, to whom the said cause stands referred.

1st. Have any and what money, securities for money, book and As to mon-
 other debts, goods, chattels, estate, and effects belonging to the per- eys and ef-

CH. XIII. sonal estate of J. S. H. deceased, the testator in the pleadings of this cause named, at the time of his decease, or which have since accrued, arisen, or become due on account of his business carried on by you by virtue of his will or otherwise, been received by you or either and which of you, or come to your or either and which of your hands, custody, possession, or power, or to the hands, custody, possession, or power of any other person or persons by your or either of your order, or for your or either of your use since the time of and other than and besides what is set forth in your last examination put in before the said Master? Set forth a full and particular account of all and singular such money, securities for money, book and other debts, goods, chattels, estate, and effects, and when and by whom and from whom and on what particular account the same and each and every part thereof were or was received.

fects received on account of the business carried on by the examiners by virtue of the will since the former examination

As to the expenses incurred in the executorship or the management of the testator's business since the former examination.

2d. Have you or either and which of you paid any and what sum or sums of money, or been at any and what expense or expenses in and about your executorship or in and about the management and conduct of the business of the said testator J. S. H. either by yourselves or by any person or persons appointed or authorized by you to manage and conduct the same business since your former examination put in before the said Master in this cause, other than and besides what are set forth in your former examination? Set forth the particulars of all such payments and expenses, and when and by whom and to whom paid and on what account; Were the same and every of them just debts and necessary expenses? Declare according to the best of your and each of your several and respective knowledge and belief.

As to any outstanding personal estate, debts, and effects, particularly as to certain specific articles.

3d. Are there any parts of the goods, chattels, moneys, securities for money debts, estates or effects either specific or pecuniary of or belonging to the estate of the said testator J. S. H. deceased, at the time of his death, or which have accrued or become due since his death, now outstanding unreceived or now remaining in your hands undisposed of and unaccounted for, and particularly a five guinea piece, a silver pencil-case, sundry medals, and small pieces of silver coin and other things? Have any and what means or endeavors been used by you or either and which of you or by your order to collect or get in such outstanding debts and effects, and when and in what manner? Have any or either and which of the persons owing such debts or sums of money to the said testator's estate, declined or refused to pay the same and for what reasons? Declare the truth of the several matters inquired after by this interrogatory, according to the best of your knowledge, remembrance, and belief.

Interrogatories for the examination of witnesses before the Master as to a testator's real estates, and the title-deeds belonging thereto. CH. XIII.

Between T. H. and S. his wife, Complainants,
and
H. J. and others, - - Defendants.

Interrogatories exhibited on behalf of the said complainants, before A. P. Esq. one, &c. [*the usual title*] for the examination of witnesses.

1st. Whether or no as you for any and what reason know or believe was A. B. the testator in the pleadings of this cause named at the time of his death seised of or otherwise and how entitled to or in any and what manner interested in any and what freehold and copyhold estates, and in particular had he any and what interest in a certain estate called P. in the parish of K. in the county of M.? Set forth a full, true, and just description and particular of all and every the freehold or copyhold estates which the said testator was seised of or entitled to or interested in at the time of his death, and where the same and every part thereof is situate, and in whose tenure or occupation the same and every part thereof then was or since has been and now is respectively. Set forth, &c.

1. As to the real estates to which the testator was entitled, and his interest in a particular estate.

2d. Have you or had you at any time and when last in your custody or power any deeds or deed, instruments or instrument, papers or paper-writings or writing belonging or in any manner relating to any and what freehold or copyhold estate which the said testator was seised of or entitled to or interested in at the time of his death, and in particular relating to the said estate called P., or to a certain messuage, lands, and premises situate in the said parish of B. in the said county of M. called L., in the occupation of D. H., or to another messuage, lands, and premises in the said parish of B. called T. P., in the occupation of the said D. H., or to another messuage, lands and premises called C. P. situate in the parish of M. in the said county, in the occupation of J. J.? Set forth a list or schedule of all and every such deeds or deed, instruments or instrument, papers or paper-writings or writing, and set forth what is become of such thereof as were but are not now in your custody or power, and set forth also whether any person or persons and who in particular as you know or for any and what reason believe has or have now or has or have at any time and when had in his, her, or their custody or power any and what deeds or deed, instruments or instrument, papers or paper-writings or writing belonging or in any manner relating to the said freehold and copyhold estates of the said testator, or any and what part thereof.

2. As to the title-deeds relating thereto;

Schedule thereof required to be set forth.

CH. XIII. As to what the property of a lunatic consists, also as to the rents received and the application thereof, the repairs done to the estates and what land-tax has been redeemed.

1st. Of what did the property of the said lunatic consist at the death of his father, and of what doth it now consist, and what part of it did then and doth now consist of personal property? And set forth a full, true, and just rental and particular of the real estate to which the lunatic became entitled at the death of his father, and the nature, quantities, and qualities thereof, and where the same and every part thereof is situate, and the yearly value of each particular thereof, and in whose tenure and occupation the same and every part thereof was at the death of the father of the said lunatic, and since has been, and now is, and under what yearly or other rent or rents, and for what term or terms of years, and whether at full rack-rent, or how otherwise.

2d. Have not you, or some person or persons, and who by your order or to your use since the death of the father of the said lunatic, been in possession or receipt of the rents and profits of the real estates to which the said lunatic became entitled at the death of his father, or of some and what part thereof? If yea, Set forth a full, true, and particular account of all and every sum and sums of money which hath and have been received by you or by any person or persons by your order, or to your use, for or in respect of the rents and profits of the said estates, or any part thereof which have become due since the death of the father of the said lunatic, and when and by whom and from whom and for what rent, and of what part of the said estates and when due all and every such sums were respectively received; And set forth also a full, true, and particular account of the manner in which such rents and profits have been applied or disposed of by you in each year, particularly distinguishing how much thereof hath in each year been applied for the maintenance and provision of the lunatic and how much thereof for repairs and other out-goings.

3d. Were the repairs which have been so done to the said estates been done by you by the advice of any surveyor or builder, and whom, and were the same necessary and such as the tenants of the said several premises had a right to require from their landlord? If so, why? And was the father of the said lunatic at the same average expenses for repairs in his lifetime as you have incurred since his death? And if not, why? And whether or no is it a prudent course of management to let the said estates upon such terms that the tenants have a right to require such repairs, and might not the same have been let on repairing leases or otherwise upon terms more ad-

vantageous to the landlord? And would you have let the said estates upon such terms and have done the said repairs thereto if the said estates had been your own property? And have you not redeemed the land-tax on some and what part of the said estates, and for what reason? CH. XIII.

Interrogatories for the examination of mortgages in possession.

Between, &c.

Interrogatories exhibited, &c. (*Before the Master.*)

1st. Whether or no is or are there any and what sum or sums of money due and owing to you, or any or either and which of you for principal or interest on the mortgaged premises in the pleadings in this cause mentioned? If yea, Set forth how much is due for principal and how much for interest, and the particulars thereof respectively, and how you make out or compute the same. Set forth, &c. As to what is due for principal and interest.

2d. Have you or either and which of you, or any other person or persons, and who by your or either and which of your order, or for your or either and which of your use, been for any time and how long in possession or receipt of the rents and profits of the said mortgaged premises, or of any and what part thereof? If yea, Set forth a full, true, and just rental and particular thereof and where the same and every part thereof is situate, and the yearly value of each particular thereof, and in whose tenure and occupation the same and every part is and hath been during the time of such possession, and under what yearly or other rent or rents. And set forth also a full, true, and particular account of all and every sum and sums of money which hath and have been received, or but for your or some, or one, and which of your wilful default or neglect might have been received by you, or some, or one and which of you, or by any other person or persons, and whom by your or some or one and which of your order or for your or some or one, and which of your use, for or in respect of the rents and profits of the said mortgaged premises or any part thereof, and when and by whom and from whom, and for what rent, and of what part of the said mortgaged premises, and when due all and every such sums were respectively received or might have been received. Set forth, &c. How long the exam-nants have been in receipt of the rents and profits of the premises, and what has been received on account thereof.

CH. XIII. Interrogatories for the examination of a mortgagee of an estate in the West Indies.

Between W. D. Q. and J. G., - Plaintiffs,
and
W. B., W. A., J. J., G. B., and
W. L., - - - Defendants.

Interrogatories exhibited by the plaintiffs and the defendants J. J. and W. L. before Sir W. W., bart., one, &c.

As to the amount of the principal and interest due on the securities.

1st. Is there or not any sum of money due and owing to you for principal or interest on the mortgages in the pleadings in this cause mentioned and in the decree in this cause particularly specified? If yea, Set forth how much is due to you for principal and how much for interest, and the particulars thereof respectively, and how you make out or compute the same. Set forth the matters in this interrogatory inquired after according to the best of your knowledge, remembrance, information, and belief; distinguish whether you set forth the same from your own knowledge or from any and what written book, document, or account, or from the information of any other person or persons, and if from the information of any other person or persons set forth the name or names of such person or persons and the time when you received such information; and if according to your belief only, set forth how and from whom in what manner and when you received the information on which you form your belief and all the grounds and reasons for such your belief, fully and at large.

As to what moneys have been laid out in necessary repairs or lasting improvements.

2d. Have you laid out or expended any sum or sums of money in necessary repairs or lasting improvements upon the estates and premises in the island of J. comprised in the indentures of mortgage in the decree in this cause particularly mentioned? If yea, set forth what sum or sums of money you so laid out or expended, and for what repairs or lasting improvements, and when, where, by whom and to whom particularly such sum or sums of money and every of them respectively was or were paid, laid out, or expended; And set forth and distinguish how much of such sum and sums of money hath been laid out or expended in necessary repairs, and how much in lasting improvements; Set forth the matters in this interrogatory inquired of you according to the best of your knowledge, remembrance, information, and belief; distinguish whether you set forth the same from your own knowledge or, &c. (*Conclude as in the first interrogatory.*)

As to what

3d. Set forth a full, true, and particular account of the rents, pro-

duce, and profits of the estates and premises comprised in the mortgages in the decree in this cause mentioned, received by you or by any other person or persons by your order or for your use, or which without your wilful default might have been received thereout, and when, where, and at what times respectively and by whom and from whom respectively such rents, produce, and profits and every part thereof have and hath and might have been received, and why and for what reason or reasons any and what part and parts of such rents, produce, and profits have or hath not been received; Set forth the matters in this interrogatory inquired of you according to the best and utmost of your knowledge, remembrance, information, and belief; distinguish whether, &c. (*Conclude as in the first interrogatory.*)

4th. Whether or no did you or any person for your use or on your account under color of the writ of assistance in the decree in this cause mentioned, enter upon and take possession of any estates and premises the property of or belonging to the plaintiffs or those under whom they claim which were not comprised in the said several mortgages in the said decree mentioned or any or either of them? If yea, Set forth what estate or estates or premises you or any person for your use or on your account so took possession, and the nature, quantity, and quality thereof and the particulars thereof and of every part thereof; And also set forth a full, true, and particular account of the rents, produce, issues, and profits of the said estates and premises in this interrogatory inquired after received by you or by any other person or persons by your order or for your use, or which without your wilful default might have been received thereout; and distinguish the same from the rents and profits of the estates and premises comprised in the said several mortgages, and set forth when and at what time and times particularly and by whom such rents, produce, issues, and profits as by this interrogatory are inquired after have or hath been or might have been received, and why and for what reason or reasons any and what parts or part of such rents, produce, issues, and profits have or hath not been received; Set forth the matters, &c.; Distinguish, &c.

5th. Have you expended any sum or sums of money in lasting improvements upon the estates and premises in the preceding interrogatory inquired after, being the estates and premises not comprised in the mortgages in the decree in this cause mentioned? If yea, Set forth what sum or sums of money you so expended and for what lasting improvements, and when, where, by whom, and to whom particularly such sum or sums of money and every of them respectively was or were paid, laid out, or expended; Set forth the matters, &c.; Distinguish, &c.

6th. Has it not been the constant and invariable usage for your To prove at

CH. XIII.
rents have
been or
without his
wilful de-
fault might
have been
received by
the exam-
inant.

As to the
estates
taken pos-
session of
by the ex-
aminant
under a
writ of as-
sistance,
and the
rents re-
ceived
therefrom.

As to what
sums have
been laid
out in last-
ing im-
prove-
ments on
the estates
last men-
tioned.

CH. XIII. agents or managers of your estates in the West Indies to transmit what times the agents of his own estates transmitted their accounts of the produce of the estates in question; at what times such accounts were examined and settled; whether the same contain an account of all the produce of the estates in question, and of the application thereof since the examinant took possession; and whether such accounts have been left with the Master. As to the names of the managers of the estates in question.

As to the number of negroes or slaves on the estates in question at the time the examinant took possession under the writ of assistance and of the issue and increase thereof, and whether any have been removed to any other

accounts every year or at any and what other stated or uncertain periods of all the sugars, rum, and other produce arising from the estates in the pleadings in this cause mentioned, and how the same have been disposed of? Were not such books annually or at some and what other stated or uncertain periods examined and the accounts therein contained signed or allowed by you as settled accounts or by some and what person or persons duly or in some and what manner authorized by you to settle and sign such accounts or to act on your behalf? Do not such accounts contain an account of all the produce arising from the estate in the pleadings mentioned, and how the same from time to time have been disposed of for the whole of the time since the same were taken possession of under the writ of assistance to the present time or for any and what part of such time; and if not for the whole of such period, Set forth from what time the accounts of the produce of the estates in question in this cause have been omitted to be included in the accounts returned to you or your agents in England of the produce of your other estates in the West Indies, and why and for what reason the same were so omitted? Have all and each and every of such signed accounts been produced and left with the Master to whom this cause stands referred, and if not why? answer fully and distinctly the several matters inquired after by this interrogatory; And distinguish, &c.

Set forth a true and accurate account of the names of the managers of the estates in the pleadings mentioned, in the West Indies, and of the consignee or consignees of the produce thereof in England from the time the same were taken possession of as aforesaid to the present time, and from what time and up to what time each and every of such persons were manager or managers, or consignee or consignees; Set forth the particulars inquired after by this interrogatory according to the best of your knowledge, information, and belief.

8th. What number of negroes or slaves was there on the estates in the pleadings in this cause mentioned at the time you took possession thereof under the writ of assistance in the said pleadings mentioned? Set forth a list or schedule thereof with the names of each and every of such negroes or slaves, and of the issue and increase thereof existing at the time or since produced after you had so taken possession of the said estates; Were or were not some and which of such negroes or slaves removed at some and what time or times off and from the said estates to some and what other estates belonging to you in Jamaica, or to some and what other place or places? If yea, Which of such slaves were so removed? Set forth the particulars and names of such slaves which were so removed and of the issue and increase thereof, and when they were respectively so removed and what became of them, and how they and each and every of them and their

issue, and increase were disposed of; were any and which of such negroes, or of the issue and increase thereof sold, and when and to whom, and for what price or prices? Set forth, &c.

CH. XIII.
estates and how disposed of, whether any were sold and at what prices.

Interrogatories for the examination of a mortgagee of a West India estate.

1st. Whether or no on the sale of the plantation and estate by you to H. G. for which the said sum of \$ ——— was the consideration or purchase-money, was the crop then on the said plantation or estate or any and what part thereof comprised in the said sale and in the said purchase-money of \$ ———? If yea, whether or no have or has any persons or person and who, applied or converted any and what part of the crop so sold to your use, and when and to what amount as you for any and what reason know or believe?

To prove that the crop on the plantation at the time the examinant sold the estate was comprised therewith in the sale, and that the same has been converted to his own use.

2d. Whether or no have you in pursuance of the agreement or articles of sale between you and the said H. G. made the said plantation and other premises comprised in such agreement or articles, free and clear of and from all estates, rights royal, and other duties, particularly the duties if any, payable to the King of Denmark in respect of the said plantation and premises on the sale and transfer thereof or otherwise howsoever, and of and from all other duties, claims, and incumbrances? Do the said plantation and other premises or any and which of them now remain subject or liable to any and what duties, claims, or incumbrances, contrary to the effect of the said agreement?

As to whether the examinant has cleared the estate from all duties charged thereon on the sale thereof, and from all other incumbrances.

3d. Whether or no had you any security or securities for the payment of the said principal sum of \$ ——— and the interest thereon or any part thereof other than the said bond of the said testator T. B. and the covenant of the said H. G. and the mortgage or security of the said plantation or estate? If yea, Set forth the particulars of all and every such securities and the value and amount thereof and what is now due thereon, and from whom respectively.

To prove whether the examinant held any other securities besides the testator's bond and the mortgage of the plantation.

4th. Whether or no have you in any and what manner and when, resorted for payment of any and what part of the said sum of \$ ——— and the interest thereof or of any and what part thereof to any and what other security other than the said bond of the said testator T. B., and if not, why? And whether if you had used due and reasonable diligence could not the payment of some and what part of the said principal sum of \$ ———, or some and what part of the interest thereof have been in some and what manner enforced from some and which other of your securities other than the said bond?

To prove what security mortgagee resorted to for payment of his money, and whether if he had used due diligence the bond.

gence the payment thereof could not have been enforced on his other securities besides

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Interrogatories relating to partnership matters.

Between, &c.

Interrogatories to be, &c.

As to partnership moneys received.

1st. Set forth a full, true, and particular account of all and every the sum and sums of money received by you, or by any person or persons, by the order or for the use of you and G. B. deceased, in the pleadings mentioned, or either of you on account of the copartnership trade carried on by the said G. B. and the said R. B., and after the decease of the said G. B., by you the said R. B., as in the pleadings mentioned, and when and from whom and to whom and by whom and on what account the same have been received and paid; Declare the truth, &c.

As to what moneys have been drawn out by the examinant for any other than partnership purposes, and in what securities any part thereof has been invested.

2d. Have you or not at any and what time or times since the —— day of ——, drawn any sum or sums of money out of the trade which was so carried on by you and the said G. B. and afterwards by you alone for any other purpose than for the purposes of such trade? If yea, Set forth a full, true, and particular account of all and every such sum and sums of money, and when the same were drawn out by you respectively; And have you or not placed out or applied any and which of such sums of money at interest or in the purchase of government or other, and what stocks and funds, or in any and what other manner so as to make any profit or advantage thereby? If yea, Set forth how and in what manner, and in what stocks, funds, or how otherwise, you have applied each and every of such sums and sum of money, and all and every the sum and sums of money which you have received as the interest or dividends thereof or otherwise on account or by means thereof; Declare, &c.

As to the particulars of the partnership stock in trade and effects, and what debts are due on the partnership account.

3d. Set forth a full, true, and particular account of the stock in trade, outstanding debts, and other property and effects which belong to the said trade or business which was carried on by you and the said G. B. as in the pleadings mentioned, and which has since been carried on by you, and all the particulars whereof the same consisted, and the natures, kinds, quantities, qualities, full, true, and utmost value thereof; and in case the same or any of them are not now in your possession or power, set forth in whose possession or power the same are; and set forth an account of the debts which are justly due and owing on account of such concerned, and to whom and for what the same are due and owing; Declare, &c.

As to the gains and profits

4th. Set forth a full, true, and particular account of the gains and profits which have been made since the —— day of ——, in the

said trade or business which was so carried on by you and the said G. B. and afterwards by you alone, and by means of the moneys which you have received on account thereof, and how and in what manner you compute the same; Declare, &c.

CH. XIII.
made during and since the partnership.

1st. Whether or no were you acquainted with C. H. late of ——— but now deceased, and for how long did you know him before his death, and when and about what time did he die? Whether or no did the said ——— at any time and when take ——— as a partner with him in any and what business? If yea, What were the terms of such partnership, and what proportion or share was the said ——— to have therein, and for how long did such partnership continue, and when and for what reason was the same determined or dissolved and upon what terms, and whether or no have you at any time or times respectively heard the said ——— make any and what declaration or declarations respecting the said copartnership or the terms or conditions thereof or the commencement or dissolution thereof? Set forth, &c.

To prove the existence of a partnership and the terms thereof, how long it continued, and upon what terms it was dissolved, and as to any declarations made relative thereto.

2d. Whether or no were you at Christmas ——— and for how long before in any and what manner employed by the late ——— in the carrying on of his paving business? Whether or no did the said ——— at Christmas ——— or at any other time and when take any partner and whom in his said business, and for how long did such partnership continue, and in what name or names were the bills made out from that time to the persons for whom such business was done? And whether or no were you at any time and when after Christmas ——— employed and by whom and by whose directions in the making out or delivering of such bills, or in the receipt of moneys for the same, and in whose name or names were receipts for such moneys given? Set forth, &c.

To prove the admission of a person into partnership and in what names bills and receipts were afterwards made out.

3d. Whether or no did the said ——— in any and what manner and when and for how long time after Christmas ——— continue to carry on the paving business in which he had been concerned or in any and what manner to interfere therein or in any part thereof, or by whom was the said paving business and every part thereof, and particularly the business of the government boards done and performed from Christmas ——— until the death of the said ———, and in whose name or names were the bills made out from that time to the persons for whom such business was done? And whether or no were you at any time and when after Christmas ——— employed, and by whom and by whose directions in the making out or delivering of such bills or in the receipts of moneys for the same, and in whose name or names were receipts for such moneys given? And

To prove whether after a particular period, a person continued, to carry on or interfered in the business, and by whom it was carried on, and how bills and receipts were made out; also to prove a valuation made of the stock of carts, horses, &c. employed in the business, and under what agreement.

CH. XIII. whether or no in or about Christmas ——— or at any other time and when were the stock of carts, horses, barges, and other property employed in the said paving business or any part thereof valued by any person or persons and whom? And if yea, upon what occasion did such valuation take place and under what agreement and at what prices? Declare, &c.

To prove who were employed during particular years in paving certain streets, and to whom the profits were to belong, and as to any declarations made relative thereto.

4th. Whether or no were ——— and the said ——— or either and which of them in or about the years ——— or ——— employed in the paving of ——— and any other and what street or places in the city of L.? If yea, To whom were the profits of such particular paving business to belong as you for any and what reason know or believe, and did you at any time or times and when hear the said ——— make any and what declaration or declarations respecting the same? Declare, &c.

To prove a partnership entered into in several trades, the shares of the parties interested, by whom the capital was provided, and the agreements made relative thereto, and as to the partnership monies; by whom stock was provided at the commencement of the partnership; an account required of the partnership stock and the value thereof.

5th. Whether or no did you the defendant I. C. and R. C. now deceased, or either and which of you at any time or times and when respectively enter into copartnership with the bankrupt T. C. in the pleadings of this cause respectively named, in the several trades or businesses of ——— or in any and which of such trades or businesses? And if yea, In what shares and proportions were you the said I. C. and the said R. C. and the said bankrupt respectively interested in such trades and every of them, and what was the capital employed in such trades or businesses or every of them, and by whom was the same provided, and what were the conditions and agreements between you in each and every of such trades with respect to the providing of capital and the bringing into and taking out moneys from the said trades and to whom did the buildings, stock, and utensils, in each and every such trade belong at the commencement thereof, or by whom were the same provided, and what was then agreed between you with respect thereto? And set forth the particulars of all such buildings, stock and utensils, and the full, true, and utmost value thereof, and of every part thereof, and what hath since become thereof? Declare, &c.

Interrogatories as to the sale of a ship, the moneys received for freight, and the sums expended for seamen's wages and the ship's disbursements.

Between H. D. - - - - Plaintiff,
and
G. B. - - - - Defendant.

Interrogatories exhibited on behalf, &c. (*usual title before a Master.*)

1st. Whether or no is the ship called the Sir E. H. in the plead-

ings of this cause mentioned sold? If yea, When and where and by whom and to whom and at what price was the same so sold; and have you or hath or have any other person or persons and who by your order or to your use or by the order or to the use of any other person or persons and whom at any time or times and when respectively received the said purchase-money or any and what part thereof, or for what reason doth the same or any and what part thereof now remain unreceived and what hath become thereof, and if the said ship be not sold, for what reason does the same remain unsold?

CH. XIII.
As to the sale of the ship, and the moneys produced thereby.

2d. Whether or no have you or hath or have any other person or persons and who by your order or to your use received any sum or sums of money for the freight of the said ship? If yea, Set forth a full, true, and particular account of all and every such sum and sums of money which hath or have been received by you or any other person or persons by your order or to your use for the freight of the said ship, and when respectively and for what and from whom and by whom all and every such sums were so received and set forth, also whether any and what sum or sums of money now remain due and owing in respect of the freight of the said ship, and from whom and for what all and every such sums are due and owing, and why the same respectively are unreceived.

As to the moneys received for the freight of the ship.

3d. Whether or no have you paid any sums or sum of money for the seamen's wages and other charges in respect of the said ship forming a prior lien to the demand of the said complainant, or for any bills drawn by the captain of the said ship from the island of C. for the ship's disbursements? If yea, Set forth a full, true, and particular account of all and every the sum and sums of money which hath or have been so paid by you and when and to whom and for what all and every such sums were respectively paid and disbursed; Set forth; &c.

As to the sums paid for seamen's wages, and the ship's disbursements.

An interrogatory for the examination of a person *pro interesse suo*.

Have you any and what estate, right, or interest in or to the premises in the pleadings of this cause mentioned situate in ———, or the rents and profits thereof, or in any and what part or share parts or shares thereof? If yea, Set forth the nature and extent of such your estate, right, or interest, and how and in what manner you make out or derive the same.

CH. XIII. *Forms of Interrogatories for the Cross-Examination of Witnesses.*

In Chancery.

Interrogatories to be administered for the cross-examination of witnesses to be produced, sworn and examined on the part of the plaintiffs in a certain cause now depending and at issue in the High Court of Chancery, wherein the Most Noble Charles Duke of D. and J. S. are complainants, and E. C. spinster is defendant, on the part and behalf of the said defendant.

As to witness having acted as auctioneer, and prepared the particulars of sale;

1st. Did you act as the auctioneer of and put up to sale by public auction the premises in the pleadings in this cause mentioned? If yea, Did you prepare or cause to be prepared the printed particulars of sale by which the said premises were sold, and by whom and by whose direction were such printed particulars of sale prepared, and by whose direction and upon whose account and for whom did you prepare or cause the same to be prepared? Did you not or did not your assistants or some other agent of the said complainants and who by name inform the company present at the time of the sale of the said premises, or represent to them that the said premises were let on lease as stated in the said particulars of sale, and did you in any and what manner explain to them such statement contained in the said particulars of sale? Did you not produce and exhibit to the said company present at the time of the said sale a lease or some paper-writing purporting to be a lease of the said premises, and was or not the same produced and shown to the said company by you or by your assistants or some other agent of the said complainants and whom by name, as the lease or copy of the lease of the said premises referred to in lot 2 of the said particulars of sale? Did you not or did not your assistants or some other agent of the said complainants and who by name read or state from the said paper-writing or alleged or pretended lease to the said company present at the time of the said sale, the terms and conditions under which the said premises in the pleadings of this cause mentioned to be comprised in lot 2 of the said particulars of sale were so stated by you or such other person or persons to be on lease? Did you not or did not your assistants or some other agent of the said complainants and who by name at the time of the said sale comment upon the covenants and conditions contained in such pretended or alleged lease, and represent the same as being highly advantageous to a purchaser and more beneficial to a landlord than what are usually introduced into leases in general, and particularly did you not or did not such person or persons represent or state to the said company at the time of the said sale, that the

As to representations made by him or the plaintiff's agents at the sale, that the premises were let on lease, and as to his having produced an instrument purporting to be the lease or a copy of the lease referred to in the particulars of sale, and also as to comments made by him on the covenants therein contained.

tenant of the said premises was bound to keep the same in repair, and was not entitled to timber from off the same premises for that purpose, or to that or the like or some other and what effect? Declare, &c. CH. XIII.

2d. Did not Mr. A. the solicitor for the said defendant apply to you for a copy or abstract of the alleged lease under which the premises described as lot 2 in the pleadings in this cause mentioned were stated to have been let, and when or at what time was such application made? Did you not at the time of such application inform the said Mr. A. for the first time that no such lease had been then granted, and had any such lease in fact been then granted? Declare, &c.

As to application being made to witness by the defendant's solicitor for a copy of the alleged lease, and whether the same had in fact been granted.

3d. Did you not and when deliver to the said Mr. A. as the solicitor for the said defendant a draft or copy of a draft lease purporting to be the same as was produced by the auctioneer or agent on behalf of the said complainants at the time of the said sale, or what did you represent the same to be at the time, and what passed between you and the said Mr. A. relative to such draft lease? Did not the said Mr. A. return such draft lease to you with some and what observations thereon, and did you not afterwards and when return the same to him with several and what alterations made therein? Declare, &c.

As to witness having delivered to the defendant's solicitor a draft lease purporting to be the same as was produced at the sale, what passed relative thereto, and therein.

as to the alterations which were made by the witness

4th. Did not the intended lessee of the said premises make some and what objections to the said proposed draft lease, and did not considerable negotiations take place between you and the said intended lessee before the terms of the said proposed draft lease were agreed upon and settled with him? Did not the indenture of lease which was ultimately executed by the said intended lessee contain several and what clauses different and in what respect from the said draft lease when first delivered to the said Mr. A., and also different and in what respect from such draft lease when last delivered to the said Mr. A.? Declare, &c.

As to the objections made by the intended lessee to the proposed draft lease, and the negotiations which took place in consequence thereof, and in what respect the lease when executed differed from the draft when first delivered.

5th. What is the date of the said indenture of lease? When and at what time was the said indenture of lease of the said premises and the counterpart thereof executed by the lessor and the lessee thereof respectively? And when or at what time did you give or cause notice thereof to be given to the said Mr. A. or to his copartners as the solicitor for the said defendant or to either and which of them, and deliver or cause to be delivered to him or them a copy of such lease? Declare, &c.

As to the date and time of execution of the lease and when notice thereof was given to the defendant's solicitor.

thereof was given to the defendant's solicitor.

CH. XIII. 6th. Do you know any other matter or thing not inquired after by

these interrogatories which may tend to the benefit or advantage of the said defendant in this cause? If yea, Set forth the same fully and at large as if you had been thereto particularly interrogated.

As to the knowledge of a steward or land-agent of the value and nature of coal mines, in what capacity he was employed by the deceased owner thereof, and as to his occupation in life previously thereto.

Was the said L. N. capable at the time when the said agreement was made of forming an accurate judgment or competent opinion of the value of the coal mines or beds of coals under the lands and grounds in the said memorandum of agreement and release comprised? And had he as you do for any and what reason know and believe any and what knowledge of and practice in such matters or in any matters relating to coal mines, and had he ever and when been employed in any coal mines or in or about concerns or business of that description, or was he in any respect acquainted therewith, and had he in any and what manner been in any way obtaining knowledge and information of the nature and value of coal mines, and in what capacity or character was he employed by the said Sir T. B. deceased, and especially at the time when the said memorandum of agreement and release were respectively made and thenceforth to the time of his decease, and what had been his business or occupation previously to his being so employed by the said Sir T. B.? Declare the truth and your utmost knowledge, remembrance, and belief herein.

Whether a deed was read over to the grantor previously to his executing the same, and whether he was aware of the terms thereof or the effect thereof, and the mode of payment of the consideration-money.

Upon what occasion of and prior to the execution of the said release by the said Sir T. B. was the same read over by or to him, and by whom by name was the same read over to him? Was the said Sir T. B. as you do for any and what reason know or believe aware of the terms and conditions of the said release, and in particular of the number of acres of coal thereby conveyed, and the mode of payment for the same, and that the same might be gotten as quickly as possible, and that the payment for the same would not be completed for 276 years or for any and what number years, and that according to the terms of the said release he would be a trespasser if he entered the pits of the said company to ascertain that the iron, stone, and upper bed of coal were not damaged or carried away, and that the coals then under the lands then occupied by the before-named S. F., &c. or any and which of them were therein comprised? Set forth the several matters inquired after by this interrogatory fully and at large, according to the best and utmost of your knowledge, remembrance, information, and belief, together with the means of knowing and reasons for believing the same, and the truth declare, &c.

If the said Sir T. B. had been aware of all or any and which of the circumstances in the last preceding interrogatory mentioned, or that the said upper bed was intended to be included so as to destroy and lock up the iron-stone, would he as you do and for any and what reason know or believe have executed the same? And did he not execute the same in confidence that the said release had been prepared with a view to the fair and equal benefit of both parties, and in ignorance that such terms and conditions as in the preceding interrogatory mentioned were contained therein, and if not, why not? And had not the said Sir T. B. a high opinion of the said J. H. and J. J., or of one and which of them, and did he either read over the whole of the said release, or any and what part thereof, himself, or give directions that any other person should do so for him before he executed the same? And if yea, Whom did he direct to read over the whole of the said release, or any and what part thereof, and to whom and in whose presence were such directions given? Set forth, &c. (*Conclude as in the preceding interrogatory.*)

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As to a party having executed a deed without its having been examined by him or on his part and in confidence that it had been fairly prepared.

What was the age of L. N. at the time when the memorandum of agreement in the pleadings in this cause mentioned was made, and what was the state of his bodily health and mental faculties at the time; had he not been twice, or how often stricken with palsy previously thereto, and was he not thereby to a great, or to some and what extent, or from some and what other cause, inefficient or incapacitated to transact business requiring knowledge and skill, or requiring the exercise of mental faculties to transact the same, and in particular was not the said L. N. unfit and unequal to treat for the sale of the said coal mines and for making proper stipulations and provisions for carrying such treaty into effect? Declare the truth and your utmost knowledge, remembrance, information, and belief herein.

As to the age and state of mental faculties of a steward or land-agent, and whether from attacks of palsy he was not incapacitated or unequal to enter into a contract relating to coal mines, with a view to securing the interest of his employer.

Were you not acquainted with the handwriting of the said L. N. for a long, and for some, and what period of time in particular, before the two letters dated respectively the 31st day of October, 1789, and the 18th day of December, in the same year, marked respectively with the letters (C) (D), and which have been produced and shewn to you, were written or do bear date, and is not the manner or character of handwriting of the same respectively a different character and manner from that wherein the said L. N. wrote at some and what earlier period during the time you have known his handwriting, and in particular is not such character or manner of handwriting much more unsteady and indistinct, and more scrawling, and so far as you can judge, more feeble than the character or manner of the said L. N.'s

As to the character of the handwriting of certain letters (written by a steward or land-agent), and whether the same was not more feeble than at an earlier

CH. XIII. handwriting, at some and what earlier period in particular, of your acquaintance with him, and do you not know or believe and for some period, and whether he was not then in fact in a feeble state of health. and what reason that the said L. N. was in a feeble state of health at the time when the said two letters do respectively bear date? Declare the truth of the matters aforesaid, together with your utmost knowledge and belief herein, and your reasons for the same.

Interrogatories to be administered for the cross-examination of witnesses to be produced, sworn, and examined on the part of the plaintiff in a certain cause now depending and at issue in the High Court of Chancery where M. H. is complainant and J. H. and E., his wife, E. R. and H. L. and J. H., an infant, are defendants, on the part and behalf of the said defendant J. H.

As to the due execution of a will.

1st. Are you a subscribing witness to the pretended or alleged last will and testament of J. H. deceased, in the pleadings of this cause named, and which has been exhibited to you on your examination on the behalf of the said plaintiff? If yea, Did the said J. H. sign the said pretended or alleged last will and testament, and publish the same as his last will and testament in your presence and in the presence of the other subscribing witnesses thereto, or either and which of them as you know, and were you all present together with him, when he signed and published the same as his last will and testament, or how else? And did you and the other subscribing witnesses to the said pretended or alleged will respectively, or either and which of them, sign or set your or their name or names as subscribing witnesses to the signing and publishing thereof by the said J. H. in the presence of the said J. H., or how else, and did not you or the subscribing witnesses to the said pretended or alleged will, or one and which of them attest and subscribe the same when the said J. H. was not present? And on what day and at what time of the day, and when was the said pretended will signed and published by the said J. H., and attested by you and the other subscribing witnesses, and how came you to be an attesting witness to the said pretended or alleged will, and by whom were you requested to be present at the signing and publishing thereof, and to attest the same? And was there or not some other and what last will and testament of the said J. H. at the time when he signed and published the said pretended or alleged will? And if yea, What has become thereof? Declare, &c.

As to the republication of the will.

2d. Are you a subscribing witness to the alleged writing or memorandum at the bottom of the pretended or alleged last will and testa-

ment of J. H. deceased in the pleadings of this cause named and which has been exhibited to you on your examination on behalf of the said plaintiff, and alleged to be a re-execution and republication thereof by the said J. H. deceased? If yea, Did the said J. H. sign the said pretended or alleged writing or memorandum in your presence and in the presence of the other subscribing witnesses thereto or either and which of them as you know, and were you all present together with him when he signed and published the same as a re-execution and republication of his last will and testament, or how else? And did you and the other subscribing witnesses to the said pretended or alleged writing or memorandum respectively, or either and which of them sign or set your or their name or names as subscribing witnesses to the signing and publishing thereof by the said J. H. in the presence of the said J. H., or how else? And did not you or the other subscribing witnesses to the said pretended or alleged writing or memorandum, or one and which of them attest and subscribe the same when the said J. H. was not present? And on what day and at what time of the day and when was the said pretended or alleged writing or memorandum signed and published by the said J. H. and attested by you and the other subscribing witnesses, and how came you to be an attesting witness to the said pretended or alleged writing or memorandum, and by whom were you requested to be present at the signing and publishing thereof and to attest the same? And was there or not some other and what last will and testament of the said J. H. at the time when he signed and published the said pretended or alleged writing or memorandum? And if yea, What is become thereof? Declare, &c.

3d. How do you know and what particular reason have you to believe that the said J. H. was of sound and disposing mind, memory, and understanding, at the time when he signed and published the said pretended or alleged will, or writing, or memorandum? And was he or not, or might he or not, for anything you know, or have any reason to believe to the contrary, be at the time of unsound and undisposable mind, memory, and understanding, and incapable of making a will, and how did you consider him to be in that respect? And in what state of health of body and of what age was he at the time? And what opportunity had you to judge of his sanity or insanity, of his capacity or incapacity to make a will, or conduct his worldly affairs? And did or not you or the other attesting witnesses respectively, or any or which of them converse with him at, or before, or after the time when you say he signed and published the said pretended or alleged will, or writing or memorandum? And if yea, Was his conversation sensible and indicative of his capacity to make a will, and

As to the
sanity and
mental
capacity
of the tes-
tator.

CH. XIII. manage his concerns, or how else? And had you or not any acquaintance or intimacy with him for any and what length of time before or after he, as you say, signed and published the said pretended or alleged will, or writing, or memorandum? And was he or not in some and what manner, as you know or believe, and why, influenced and prevailed upon, and by whom, to make the said pretended or alleged will, or to sign or publish the said alleged writing or memorandum? And was he or not under great mental imbecility from his age and infirmities? Declare, &c.

The concluding general interrogatory.

4th. Do you know any other matter or thing not inquired after by these interrogatories which may tend to impeach the validity of the said pretended or alleged will, or writing, or memorandum, to the benefit of the said defendant J. H. in this cause? If yea, Set the same forth.

Title of interrogatories for the cross-examination of a party examined *pro interesse suo*.

Between W. A. - - - - Plaintiff,
and
H. S. &c. &c. - Defendants.

Interrogatories exhibited before W. W. P., one of the Masters of the High Court of Chancery for the cross-examination of the above-named defendant W. O., pursuant to an order made in this cause, bearing date the —— day of ——, whereby it was ordered that the said defendant W. O. be at liberty to go before Mr. P., one of the Masters of the said court, and be examined *pro interesse suo*.

Interrogatories to the competency of witnesses, exhibited to them on their cross-examination.

As to witness being interested in the event of the suit, and whether he is not defendant in an action of trespass in which the title to the lands in question is depending, whether a

Are you not interested in all or some, and which of the matters in issue between the parties, or some and which of them in this suit, and shall you not and in some and what manner lose or gain by the event thereof, and especially are you not the defendant in an action of trespass, or in some and what action at law wherein the defendants in this cause or some and which of them are plaintiffs, and wherein is or was at issue or depending either mediately or immediately the right and title of the complainants and defendants in this cause, or of some and which of them, to the same beds or strata of coal, the right and title whereto is litigated and in issue in this cause,

or to some and which of the same beds or strata, or to some or what other beds or strata of coal, and has not a verdict been found in the aforesaid action at law in favor of the plaintiffs therein, and is not execution stayed therein by the order and injunction of the High Court of Chancery obtained in this cause upon the application of the complainants or of some and which of them therein? Declare the truth of the several matters aforesaid, together with your utmost knowledge and belief herein.

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 verdict was not found for the plaintiffs at law, and whether execution is not stayed by injunction.

Have you not lately and since this suit was instituted, and at what time in particular, become a copartner together with the before-named several complainants or some and which of them in the establishment or concern called or known by the name or style of the "L ——— M ——— Company" and in the pleadings mentioned, and have you not thereby or by some and what other means acquired, and have you not now and do you not and for what reason claim to have a beneficial interest, or some and what interest in the beds or strata of coal, the right and the title whereto is litigated in issue between the complainants and defendants, or some and which of them in and by this suit, or a beneficial, or some and what interest in some and which of the said beds or strata of coal, or in some and what parts thereof, or in some and which of the several matters whereto this suit has relation? Declare the truth of the several matters aforesaid, together with your utmost knowledge and belief herein.

As to whether witness has not become copartner with the plaintiffs in the concern carried on by them, and whether he does not claim a beneficial interest in the lands the title whereto is in issue between the parties.

Shall you not be in some manner a gainer or be otherwise affected in case the will of the said J. H. should be established and carried into execution? If so, set forth how and in what manner or in what respect you are likely to be a gainer or affected thereby. Declare, &c.

As to whether witness has not an interest in the establishment of the will in question.

Interrogatories for the examination of a witness, on the *voir dire* as to his being interested.

(For a form of title, *vide ante*, No. 8, p. 267.)

1st. Have you any and what interest in the performance or non-performance of the agreement in the pleadings of this cause mentioned? And if yea, Set forth the nature of such your interest and how the same arises. Declare, &c.

To ascertain what interest witness has in the performance of the agreement in question.

2d. Have you any and what interest in the determination or decision of this cause, or can you by any and what means gain or lose by the event of the said suit? Declare, &c.

As to his interest in the event of the suit.

CH. XIII.

As to any obligation he may be under to pay or secure the defendant's costs.

3d. Are you under any and what honorary or legal obligations and to whom to pay or secure or to see paid or secured the costs or any part of the cost of the said defendant which she has or may incur in this suit or be liable by decree or otherwise to pay? Declare, &c.

Articles to discredit witnesses.

Articles exhibited by A. B. complainant in a certain cause now depending and at issue in the High Court of Chancery wherein the said A. B. is complainant, and C. D. defendant, to discredit the testimony of E. F., G. H., and J. K., three witnesses examined before L. H. Esq., one of the examiners of the said Court on the part and behalf of the said defendant.

1st. The said A. B. doth charge and allege that the said E. F. hath since his examination in the said cause owned and acknowledged that he is to receive or be paid and also that he doth expect a considerable reward, gratuity, recompense, or allowance from the said defendant in case the said defendant recovers in the said cause, or the said cause be determined in his favor, and that the said E. F. is to gain or lose by the event of the said cause.

2d. The said A. B. doth charge and allege that the said G. H. and J. K. are persons of bad morals and of evil fame and character, and that they are generally reputed and esteemed so to be, and that the said G. H. and J. K. are persons who have no regard to the nature or consequences of an oath, and that they are persons whose testimony is not to be credited or believed.

*The title must be varied if the depositions are taken by commission ;
As thus :*

Articles exhibited by A. B. complainant in a certain cause depending and at issue in the High Court of Chancery wherein the said A. B. is complainant, and C. D. defendant, to discredit the testimony of E. F. and G. H., two witnesses examined by virtue of a commission issued out of the said Court to J. K. and others directed for the examination of witnesses in the said cause, upon certain interrogatories exhibited before them for that purpose, and which said witnesses were examined in the said cause on the part and behalf of the said defendant.

EQUITY PRECEDENTS.



PART II.

DECREES AND DECRETAL ORDERS.

CHAPTER I.

DECREES AND DECRETAL ORDERS.

Original Decree.

I. Introductory part.

Circuit Court of the United States for Massachusetts District.

A. B. - - Plaintiff in equity,
vs.
C. D. - - - Defendant.

This cause came on to be heard (or to be further heard, as the case may be) at this term, and was argued by counsel: and thereupon upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz: (a)

ORDERING PART.

USUAL DIRECTIONS.

The Directions which follow frequently occur in the Ordering Part of Decrees.

II. Directions for reference to a Master.

It is ordered that it be referred to a Master to inquire and state to the Court, &c. And for the better discovery of the

(a) See Eq. Rules of the Circuit Courts of the United States, Rule LXXXVI.

matters aforesaid, the parties are to produce before the said Master, upon oath, all deeds (or books), and writings in their custody or power relating thereto, and are to be examined upon interrogatories as the said Master shall direct.

III. Where account directed.

It is ordered that it be referred to a Master to take an account, &c. And for the better taking of the said account, and discovery of the matters aforesaid, the parties are to produce, &c., and are to be examined, &c. as the said Master shall direct, who in taking the said account is to make unto the parties all just allowances.

See Decrees for Account, *post*, p. 393.

IV. Directions in decree for an account where the parties are to be examined as witnesses.

In the taking of the which account the said Master is to make to all parties all just allowances. And for the better taking of the same, they are to produce before, and leave with, the said Master all deeds, books, papers, and writings in their custody or power relating thereto, and are to be examined upon interrogatories as the said Master shall direct. For which purpose, and for the examination of parties as witnesses in aid of the said account, if necessary, the said Master is hereby armed with a commission. And the said Master is to make his report touching the matters hereby referred to him, with all convenient speed. And if, in taking the said account, any special matter shall arise, the said Master is at liberty to state the same to the Court.

V. Direction for production limited.

And for the better taking of the accounts before directed, the parties are to be examined upon interrogatories, and pro-

duce before the said Master, upon oath, all books, papers, and writings in their custody or power relating thereto, as the said Master shall direct, who in taking the said accounts is to make unto the parties all just allowances.

VI. Liberty to state special circumstances.

And the Master is to be at liberty to state any special circumstances.

VII. Separate report.

And let the Master be at liberty to make a separate report as to any of the matters aforesaid.

VIII. Direction for sale of estates.

It is ordered that the said estates or a sufficient part thereof, be sold, with the approbation of the said Master, to the best purchaser or purchasers that can be got for the same, to be allowed of by the said Master, wherein all proper parties are to join as the said Master shall direct. And in order to such sale, the parties are to produce before the said Master upon oath, all deeds and writings in their custody or power relating to the said estates.

IX. Direction for production limited.

It is ordered and decreed, that the said intestate's real estate, or a sufficient part thereof, be sold, &c. And in order for such sale, the parties are to produce before the said Master, upon oath, all deeds and writings in their respective custody or power relating thereto, as the said Master shall direct.

X. Direction to settle conveyance, &c. in case parties differ.

And the said Master is to settle the said conveyances, in case the parties differ about the same.

XI. Direction for payment or transfer by party.

It is ordered, that the said defendant do pay unto the plaintiff the sum of \$———.

XII. Order for reference to Master to fix time, &c.

The Court doth order that it be referred to the said Master to appoint a time and place for the execution of the purchase-deeds, and payment of the purchase-money. And it is further ordered, that the plaintiffs do execute the purchase-deeds at the same time and place; and at the same time, on execution of those deeds, the defendant is to pay the plaintiffs the purchase-money.

XIII. Direction for payment or transfer into Court.

It is ordered, that the said defendant do pay the sum of \$——— into this Court, to the credit of this cause, subject to the further order of the Court.

XIV. Direction for payment out of Court.

It is ordered, that the sum of \$——— standing in this Court to the credit of this cause be paid to the plaintiff, and for the purposes aforesaid, the clerk is to draw, &c.

XV. Further directions.

And the Court doth reserve the consideration of all further directions, until after the said Master shall have made his report.

XVI. Reservation of interest.

And the Court doth reserve the consideration of, &c. and of interest, until after the said Master shall have made his report.

XVII. Reservation of costs.

And the Court doth reserve the consideration of, &c. and of the costs of this suit, until after the said Master shall have made his report.

XVIII. Direction for taxation and payment of costs, &c.

Let the Master tax all parties their costs of this suit. And it is ordered, that such costs, when taxed, be paid as follows, viz: the plaintiffs' costs to Mr. ———, their solicitor, &c.

XIX. Liberty to apply.

And any of the parties are to be at liberty to apply to the Court as occasion shall require.

DECREES FOR ACCOUNT GENERALLY.

XX. Decree for account.

The Court doth order and decree, that it be referred to Mr. E. one of the Masters of this Court, to take a mutual account of all dealings and transactions between the plaintiff and the defendant, for the better clearing of which account, the parties are to produce, &c. (*see usual directions, No. II. ante*), as the said Master shall direct, who, in taking of the said account, is to make unto the parties all just allowances, and what, upon the balance of the said account shall appear to be due from either party to the other, is to be paid as the said Master shall direct. And it is further ordered, that the injunction formerly granted in this cause, for stay of the de-

fendant's proceedings at law, be in the mean time continued, and the defendant's judgment is to stand a security for payment of what, if any thing, shall appear to be coming to him on the balance of the said account; and the Court doth reserve the consideration of the costs of this suit, and of all further directions, until after the said Master shall have made his report, when either side is to be at liberty to apply, &c.

XXI. Decree for account, with special direction.

And in taking the said accounts against the defendant Jacob Wilkinson, the said Master is to charge the defendant Jacob Wilkinson with the sum of ———, borrowed by him from the testator's estate, to enable him to purchase the estate in the pleadings mentioned, together with interest from the time of the purchase, at the rate reserved in the mortgage of the estate in the pleadings mentioned.

XXII. Decree for account, regard being had to particular circumstances.

In taking of which accounts, the said Master is to have regard to the said agreement, by the said order of the 1st day of March, 1738, made an order of this Court relating to the personal estate of the said testator Nicholas Hardinge, which is hereby established, and to be taken as such in the said accounts.

XXIII. Direction for allowing stated account.

And if, in taking the said accounts, the said Master shall find any account stated, he is not to ravel into the same.

XXIV. Decree for account.

Liberty to surcharge and falsify Stated Accounts.

[A bond had been given for the balance of the stated account.]

The Court doth think fit, and so order and decree, that the account stated the 24th day of May, 1744, between the plaintiff and the defendant do stand, with liberty to either side to falsify or surcharge the same. And it is hereby referred to Mr. H., one, &c. to take a general account of all dealings and transactions between the said plaintiff and defendant, from the foot of the said account; and that the said Master do likewise take an account of what is due for principal and interest on the bond in question, and that the same be brought into the general account; and if, in taking the said account between the parties, the Master shall find the said defendant debtor to the plaintiff on the said general account, at any particular period of time, and after that time the plaintiff does not become debtor to the defendant in the said general account, then from such period of time, that the said Master do apply what shall be coming due from the defendant to the plaintiff, first, to pay the interest on the said bond, and then to sink the principal. And it is ordered, that what shall appear to be due from either party to the other on the balance of the said account, be paid by such party from whom such balance shall be found due to the other. And it is further ordered, that an injunction be awarded to stay the said defendant's proceedings at law on the said bond against the plaintiff, until after the said Master shall have made his report; and for the better clearing of the said accounts before directed, all parties are to produce, &c. (*See usual directions, No. III. ante.*) And the Court doth reserve the consideration of costs, and of all further directions, until after the said Master shall have made his report, and any of the parties are to be at liberty to apply, &c. (*See usual directions, No. XIX.*)

XXV. Decree setting aside stated accounts, and directing general account.

[*Inter alia.*] The Court declared that the three stated accounts dated, &c. ought to be opened and set aside, and doth order and decree the same accordingly; and it is hereby referred to Mr. S., one, &c. to take a general account of all dealings and transactions between the plaintiffs, or either of them, and the defendant; and also of the value of any tim-

ber, &c., in the taking of which account, the said Master is to make unto all parties all just allowances ; and for the better taking the said account, all parties are to be examined, &c. (*See usual directions, No. III. ante.*) And it is ordered and decreed, that what shall be found due upon the balance of the said account from either party to the other, be paid by the party from whom the same shall be found to be due to the others of them ; and it is ordered and decreed that the said defendant do pay to the plaintiffs their costs of so much of the cause as relates to the setting aside the said stated accounts, to be taxed by the said Master. And the Court doth reserve the consideration of the rest of the costs of this suit until after the said Master shall have made his report, and the said parties are to be at liberty to apply, as, &c. (*See usual directions, No. XIX. ante.*)

DECREES RESPECTING PERSONAL ASSETS.

XXVI. Decree in creditor's suit.

This Court doth order and decree, that it be referred to Mr. H., one, &c., to take an account of what is due to the plaintiffs, and all other the creditors of James Robinson, deceased, the intestate in the pleadings named, and of his funeral expenses, and to compute interest on such of the debts as carry interest, after the rate the same respectively carry interest, and the said Master is to cause an advertisement to be published in the ——— and such other public papers as he shall think fit, for the creditors of the said intestate to come in before him and prove their debts, and he is to fix a peremptory day for that purpose, and in default of their coming in to prove their debts by the time so to be appointed, they are all to be excluded the benefit of this decree, but the persons so coming in to prove their debts, not parties to this suit, are, before they are to be admitted creditors, to contribute to the plaintiffs their portion of the expense of this suit, to be settled by the Master. And it is ordered, that the said Master do take an account of the personal estate of the said intestate come to the hands of the said late defendant, his administrator, or to the hands of any other person by his order, or for his use. And it is ordered,

that the said intestate's personal estate be applied in payment of his debts and funeral expenses in due course of administration. And for the better taking of the said accounts, &c. (*See usual directions, No. III. ante.*) And this Court doth reserve the consideration of all further directions, and of the costs of this suit, until after, &c. (*See usual directions, No. XV. ante.*) And any of the parties are to be at liberty to apply, &c. (*See usual directions, No. XIX. ante.*)

XXVII. Direction for sale of personal estate specifically bequeathed, and for apportionment on deficiency of assets.

It is ordered, that the said Master do take an account of the testator's personal estate specifically bequeathed; and it is ordered that the same be sold by the said defendant, in such manner as the Master shall direct. And it is ordered, that the money to arise by such sale, be paid into Court. (*See usual directions, No. XIII. ante.*) And it is ordered, that the said Master do apportion the money to arise, &c. and the moneys hereinbefore directed to be paid into Court, when paid in, among the creditors of the testatrix, named in the first schedule to his report, according to the sums reported due them; and he is to make a separate report of the matters aforesaid; and out of the moneys to arise, &c. and the moneys hereinbefore directed to be paid into Court, when paid in, it is ordered, that the several sums to be apportioned to such creditors, be paid to them respectively, or to the legal personal representatives of such of them as may be dead. And for the purposes aforesaid, the clerk is to draw, &c.

XXVIII. Decree in suit by legatee.

It is ordered, &c., that it be referred to Mr. C., one, &c., to take an account of the personal estate of William Robert Mingay, the testator in the pleadings named, come to the hands of James Mingay, deceased, the sole executor of the said testator, William Robert Mingay, in the lifetime of him the said James Mingay, and to the hands of the defendants,

the executors of the said James Mingay, since his death, or any or either of them, or to the hands of any other person or persons, &c. And it is ordered, that what on the said account shall appear to have come to the hands of the defendants be answered by them personally; and what on the said account shall appear to have come to the hands of the said James Mingay in his life, be answered by the defendants, his executors, out of his assets, in a course of administration. But in case the defendants shall not admit assets, &c. (*See decrees respecting executors and trustees, post.*) And it is ordered, that the said Master do take an account of the debts, funeral expenses, and legacies of the said testator, William Robert Mingay, and compute interest on such of his debts as carry interest, after the rate, &c. And upon his legacies, from the time and after the rate directed by the said testator's will, and where no time of payment or rate of interest is thereby directed, then after the rate of 4 per cent. per annum, from the end of one year after the said testator's death. And it is ordered, that the said Master do cause an advertisement to be published in the ——— for the creditors of the said testator to come in before him and prove their debts; and he is to fix a peremptory day, &c. And such of them as shall not come in by the time so to be limited are to be excluded, &c. (*See decree in creditor's suit, No. XXVI. ante.*) And it is ordered, that the said testator's personal estate be applied in payment of his debts and funeral expenses in a course of administration, and then in payment of his legacies. And for the better taking of the said accounts, &c. (*See usual directions, No. III. ante.*) And it is ordered that all parties be paid their costs of this suit, to be taxed by the said Master out of the said testator's estate. And this Court doth reserve the consideration of all further directions until after, &c. (*See usual directions, No. XV. ante.*) And any of the parties are to be at liberty to apply, &c. (*See usual directions, No. XIX. ante.*)

XXIX. Direction for abatement.

And in case his (the testator's) personal estate shall not be sufficient for the payment of his legacies, then the legatees are to abate in proportion to be settled by the said Master.

XXX. Inquiry as to the next of kin.

And the said Master is also to inquire and state to the Court who were the next of kin of the said testator living at the time of his death, and whether any of them are since dead; and if dead, who is or are their personal representative or representatives. And for that purpose the said Master is to cause advertisements to be published in the ——— and such other public papers as he shall think fit, for such next of kin to come in and make out their kindred; and he is to fix a peremptory day for that purpose, and in default thereof they are to be excluded the benefit of this decree. And for the better taking, &c. and discovery of the matters aforesaid, &c. (*See usual directions, No. III. ante.*)

XXXI. Decree on bill by next of kin, with inquiry.

This Court doth order and decree, that it be referred to Mr. S., one, &c. to take an account of the personal estate of J. D. the testator in the pleadings named, not specifically bequeathed, &c. And it is ordered, that the said Master do also take an account of the said testator's debts, &c. and compute interest, &c. And it is ordered, that the said Master do cause advertisements, &c. And it is ordered, that the said testator's personal estate, not specifically bequeathed, be applied in payment, &c. And it is ordered, that the said Master do inquire and state to the Court who were the next of kin of the said testator living at the time of his death, and for that purpose the said master is to cause advertisements, &c. And for the better taking of the accounts, &c. And this Court doth reserve the consideration of all further directions, and of the costs of this suit, until after, &c. And any of the parties are to be at liberty to apply, &c.

XXXII. Decree on bill by next of kin, subject to inquiry.

The Court doth order that it be referred to Mr. A., one, &c. to inquire whether the plaintiffs, or either of them, are or is, or not next of kin of G. J., deceased, the intestate in the pleadings

named. And in case the said Master shall find that they or either of them are or is, then it is ordered and decreed, that the said Master do take an account of the personal estate of the said intestate, &c. And it is ordered, in case the said Master shall take such last-mentioned account, he do also take an account of the said intestate's debts, &c. ; and he is to compute interest, &c. and for that purpose he is to cause advertisements, &c. And it is ordered, that the personal estate of the said intestate be applied in payment of his debts, &c. And in case the said Master shall find the plaintiffs, or either of them, are or is any of such next of kin, then it is ordered that the said Master do inquire and state to the Court who are such next of kin, if any, besides the plaintiffs, and whether any or either of them is or are since dead, and if dead, who is or are his, her, or their personal representative or representatives. And for the better taking of the said accounts, &c. And this Court doth reserve the consideration of all further directions, and of the costs of this suit, until after, &c. ; and any of the parties are to be at liberty to apply, &c.

XXXIII. Direction for establishing will.

It is ordered, &c., that the will of the said testator B. H. S., is well proved, and ought to be established, and the trusts thereof performed, and doth therefore order and decree the same accordingly.

Where will admitted.

The Court declared that the will of the said testator being admitted by the said defendant Philip Herbert, his heir-at-law, ought to be established and the trusts thereof performed, and doth order and decree the same accordingly.

XXXIV. Decree in suit by bond creditor where assets legal.

(The plaintiff's annuity was secured by bond.)

It is ordered, &c., that it be referred to Mr. A., one, &c., to take an account of the said intestate Francis Barefoote's per-

sonal estate, come to the hands of the said defendant, or to the hands of any other person or persons by his order or for his use. And the said Master is also to take an account of what is due to the plaintiff for the arrears of his annuity, and of all other the said intestate's debts and funeral expenses. And it is ordered and decreed, that the said intestate's personal estate be applied in payment of what shall be so reported due to the plaintiff, and of his other debts and funeral expenses, in a course of administration. And in case the said intestate's personal estate shall not be sufficient for that purpose, then the said Master is to take an account of the rents and profits of the real estate of the said intestate received by the said defendant, or by any other person or persons by his order, or for his use, and thereout the said plaintiff and the said intestate's other specialty creditors are to be paid what shall be remaining due to them as aforesaid. And in case the said rents and profits shall not be sufficient, then it is ordered and decreed that the said intestate's real estate or a sufficient part thereof be sold, &c. (*See usual directions, No. VII. ante.*) And out of the money arising by such sale, the plaintiff and the other specialty creditors of the said intestate are to be paid what shall be remaining due to them. And in case the said intestate's specialty creditors shall exhaust any part of his personal estate in payment of their demands, then the said intestate's simple contract creditors are to come in and receive a satisfaction *pro tanto* out of his real assets. And the Court doth reserve the consideration of the costs of his suit, and of all further directions until after the said Master shall have made his report. And for the better clearing of the accounts before directed, &c. (*See usual directions, No. III. ante.*)

XXXV. Decree where assets equitable.

The defendant J. P., the heir-at-law of the testator T. P., having admitted his will, the Court declared the same ought to be established, &c. (*See establishing will, No. XXXIII. ante.*), and doth order and decree the same accordingly, and that it be referred to Mr. H., one, &c. to take an account of what is due to the said defendants B. and M. for principal and interest on their respective mortgages, and to tax them their costs of these

suits. And also to take an account of what is due to the plaintiffs in both causes, and to all other the creditors of the said testator for their respective debts, and to compute interest, &c., and to this end the said Master is to cause an advertisement, &c., and the said Master is likewise to take an account of the said testator's personal estate, come to the hands of, &c. (*See decree in creditor's suit, Personal Assets, No. XXVI. ante.*) And such personal estate is to be applied in payment of the debts of the said testator in the course of administration. And in case the said testator's personal estate shall not be sufficient to pay his debts, then the said Master is to take an account of the rents and profits of the said testator's real estate which have accrued since his death, and have come to the hands of, &c., and the same are to be applied in payment of the said testator's debts not satisfied out of his personal estate, *pari passu*. And in case the personal estate and the rents and profits of the real estate of the said testator shall not be sufficient to pay his debts, the mortgagees now submitting to a sale of the said real estate, it is ordered and decreed that the said real estate, or a sufficient part, be sold, &c. (*See usual directions, No. VIII. ante.*) And the money arising by the said sale is to be applied in the first place in payment of what the said Master shall certify to be due to the said defendants, the mortgagees respectively, for their principal, interests, and costs, according to their respective priorities, and in the next place in payment of what shall be remaining due to the other creditors of the said testator *pari passu*. And if any of the creditors by specialty have exhausted or shall exhaust any part of the said testator's personal estate in the satisfaction of their debts, then they are not to come upon or receive any further satisfaction out of the said testator's real estate, until the other creditors of the said testator shall thereout be made up equal to them. And in case there shall be any surplus remaining of the money arising by the sale of the said testator's real estate after the payment of his said debts, it is ordered and decreed that the same be paid to the said defendant J. P. And for the better taking of the aforesaid accounts, &c. (*See usual directions, No. III. ante.*) And the said Master is also to tax the plaintiffs in both causes, and the defendants P. and P. their costs of these suits to this time, which are to be paid them out of the

said testator's estate. And the Court doth reserve the consideration of their subsequent costs until after the said Master shall have made his report. And the said parties are to be at liberty to apply to this Court, as, &c. (*See usual directions, No. XIX. ante.*)

XXXVI. Decree for foreclosure.

It is ordered, &c., that it be referred to Mr. K. one, &c., to compute what is due to the plaintiffs for principal and interest on their mortgage, and to tax them their costs of this suit; for the better discovery whereof, &c. (*See usual directions, No. III. ante.*) And upon defendants paying unto the plaintiffs what shall be reported due to them for principal, interest, and costs as aforesaid, within six months after the said Master shall have made his report, at such time and place as the said Master shall appoint, it is ordered, that the said plaintiffs do reconvey the mortgaged premises free and clear of all incumbrances done by them, or any claiming by, from, or under them, and do deliver up all deeds and writings in their custody or power relating thereto upon oath to the said defendants, or to whom they shall appoint. But in default of the said defendants' paying unto the said plaintiffs such principal, interest, and costs as aforesaid, by the time aforesaid, it is ordered and decreed, that the said defendants do stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to, the said mortgaged premises.

XXXVII. Order for enlarging time.

This Court doth order, that upon the said defendant's paying unto the plaintiff, on or before the 23d day of December, inst. the sum of \$——, reported due to the plaintiff for interest and costs on his said mortgage by the said Master's Report, the time for the defendant's redeeming the said mortgaged premises be enlarged for six months. And upon such payment it is ordered, that it be referred back to the said Master to compute the plaintiff his subsequent interest and tax

him his subsequent costs, and also the costs of this application, and to appoint a new time and place for payment of what shall be found due to the plaintiff in respect thereof. But in default of the defendant's paying unto the plaintiff the said sum of \$—— by the time aforesaid, the said defendant is to stand absolutely foreclosed.

XXXVIII. Final order for foreclosure.

Upon opening of the matter this present day unto this Court by Mr. J., being of the plaintiff's counsel, it was alleged that by the order made on the hearing of this cause, it was referred to Mr. E. one, &c., to take an account, &c., pursuant whereunto the said Master on the 5th of March last made his report, and thereby certified the sum of \$—— to be due to the plaintiff for principal, interest, and costs, on the said mortgage, which he appointed to be paid on the 5th day of September last between the hours of ten and twelve of the clock in the forenoon, at which time and place W. W. being duly authorized by the plaintiff, attended, to have received the said money, but neither the plaintiff, or any person on his behalf did then attend to pay, or have since paid or tendered the same, as by the affidavit of the said W. W. now read appears; and therefore it was prayed that the said defendant may now be and stand absolutely debarred and foreclosed, of and from all right, title, interest, equity, and benefit of redemption, of, in, and to, the said mortgaged premises; which, upon reading the decree, the Master's report, and the order for confirming the same, this Court held reasonable; and doth order the same accordingly.

XXXIX. Decree for redemption against mortgagee in possession.

It is ordered, &c., that it be referred to Mr. B., one, &c., to take an account of what is due to the defendant R. for principal and interest on his said mortgage, and to tax him his costs of this suit. And the said Master is also to take an account of the rents and profits of the said mortgaged premises come to the hands of the said defendant R., or of any other person or

persons by his order or for his use, or which he without his wilful default might have received. And what shall be coming on the said account of rents and profits is to be deducted out of what shall be found due to the said defendant R. for principal, interest, and costs. And for the better taking the said account, all parties are to produce, &c. (*See directions, No. III. ante.*) And what upon the balance of the said account shall be certified due to the said defendant R. for his principal, interest, and costs, it is ordered and decreed that the said plaintiff A. O. do pay the same unto the said defendant R. within six months after the said Master shall have made his report, at such time and place as the said Master shall appoint, and that thereupon the said defendant do re-surrender the said mortgaged premises unto the said plaintiff A. O., or unto such person or persons as he shall direct, free and clear of all incumbrances done by him or any person claiming by, from, or under him, and deliver unto the said plaintiff upon oath all deeds and writings in his custody or power relating to the said mortgaged premises. But in default of the said plaintiff's paying unto the said defendant R. what shall be so certified due to him for principal, interest, and costs, as aforesaid, after such deductions made thereout as aforesaid, at such time and place as aforesaid, it is ordered that the said plaintiff's bill as against the said defendant R. do from thenceforth stand dismissed out of this Court, with costs, to be taxed by the said Master.

XL. Decree for foreclosure against mortgagor and second mortgagee.

(The plaintiffs were the executor and executrix of the first mortgagee. The defendant Meriton was the second mortgagee. The defendants the Colliers were the mortgagors. The defendant Meriton submitted by his answer, that in case the defendants, the Colliers, should not redeem, the mortgaged premises should be sold.)

It is ordered, &c., that it be referred to Mr. S., one, &c., to compute what is due to the plaintiffs for principal and interest on their mortgage, and to tax, &c. And upon the defendant H. M., his paying unto the said plaintiffs what, &c.,

within six months after the said Master shall have made his report, as such time, &c. it is ordered and decreed, that the said plaintiffs do assign the said mortgaged premises, free, &c., and to deliver up all deeds, &c. to the said defendant H. M., or to whom he shall appoint. But in default of the said defendant H. M. his paying, &c., it is ordered and decreed, that the said defendant H. M. do from thenceforth stand absolutely debarred and foreclosed, &c. (*See decree for foreclosure, No. XXXVI. ante.*) And in case of such foreclosure it is ordered and decreed, that the said Master do compute what is due to the plaintiffs for subsequent interest on their mortgage, and do tax them their subsequent costs. And upon the said defendants M. C. and A. C. their paying unto the plaintiffs what, &c. within three months after the said Master shall have made his subsequent report, at such time, &c. it is ordered and decreed, that the said plaintiffs do reassign the said mortgaged premises, free, &c. and do deliver up all deeds, &c. to the said defendants A. C. and M. C., or to whom they shall appoint. But in default of the said defendants A. C. and M. C., their paying unto the said plaintiffs such principal, interest, and costs as aforesaid, it is ordered and decreed, that the said defendants A. C. and M. C. do from thenceforth stand absolutely debarred and foreclosed, &c. (*See decree for foreclosure, No. XXXVI. ante.*) But in case the said H. M. shall redeem the said plaintiffs, then it is ordered and decreed, that the said Master do compute what is due to the said defendant H. M. for principal and interest in his mortgage, and tax him his costs of this suit; and do also compute interest for what the said defendant H. M. shall so pay unto the plaintiffs for principal, interest, and costs as aforesaid. And upon the said defendants A. C. and M. C. their paying unto the said defendant H. M. what shall be so reported due to him for principal, interest, and costs in his mortgage as aforesaid, together with what he shall so pay unto the plaintiffs as aforesaid, with interest for the same, within three months after the said Master shall have made his subsequent report, at such time, &c. it is ordered and decreed that the said defendant H. M. do convey and assign the said mortgaged premises, free, &c. and do deliver up all deed, &c. to the said defendants A. C. and M. C., or to whom they shall appoint. But in default of the

said defendants A. C. and M. C., their paying unto the said defendant H. M. such principal, interest, and costs as aforesaid, by the time aforesaid, then the said defendant H. M. is to be at liberty to apply to the Court to have the said mortgaged premises sold. And for the better closing of the accounts aforesaid, all parties are to produce, &c.

XLI. Decree establishing lien on real estates.

It is ordered, &c., that the plaintiff has a lien upon the reversion of the said estates, for the money paid by the plaintiff to John Manners or his representatives, in discharge of the several bonds entered into by him and John Martindale in the bill named, bearing date, &c. to the said John Manners. And it is ordered that it be referred to Mr. P., one, &c., to take an account of what is due to the plaintiff for principal and interest of the money so paid by the plaintiff in satisfaction and discharge of the said bonds. And it is ordered that the defendant do pay to the plaintiff what shall be reported due to him within one month after the Master shall have made his report. And in case the defendant shall not pay to the plaintiff what shall be reported due to him on the said account within the time so limited for the payment thereof, it is ordered, that the money which shall be so reported due to the plaintiff, be raised by mortgage or sale of the said freehold, leasehold, and copyhold estates, with the approbation of the said Master, and as he shall direct; and in case the said money shall be raised by sale, it is to be to the best purchaser, &c.; and all proper parties are to join in such mortgage or sale as, &c., and are to produce, &c. (*See usual directions, No. IX. ante.*) And it is ordered that the money to be raised be paid into Court. (*See usual directions, No. XIII. ante.*) And it is ordered that the money so to be raised be applied in payment of what shall be found due to the plaintiff as aforesaid. And for the better taking of the accounts before directed, &c. (*See usual directions, No. III. ante.*) And the Court doth reserve the consideration of the costs of this suit, and all further directions until after, &c. (*See usual directions, Nos. XV. and XVI. ante.*) And any of the parties are to be at liberty to apply, &c. (*See usual directions, No. XIX. ante.*)

XLII. Decree for foreclosure on bill by equitable mortgagee.

(The original suit was against the mortgagor, and, upon his death, was revived against the defendant Mill, his heir-at-law. The defendant Arnold was a purchaser with notice.)

It is ordered that it be referred to W. P., one, &c., to take an account of what is due to the plaintiff from J. M., for principal and interest on his securities in the pleadings mentioned, and to tax him his costs of this suit. And it is ordered, that the said Master do also tax the defendant J. M., the infant, his costs of the supplemental suit. And it is ordered, that such costs be paid by the plaintiff, and added to his own costs. And upon the defendant A. A. his paying unto the plaintiff what shall be reported due to him for principal, interests, and costs, and the costs he shall so pay to the defendant J. M., within six months after, &c., at such time and place, as, &c., it is ordered, that the plaintiff do convey the said premises free, &c., and deliver all deeds and writings, &c., to the said defendant A. A., or as, &c. But in default of the said A. A. his paying unto the plaintiff what shall be found due to him for principal, interest, and costs, as aforesaid, by the time aforesaid, the said defendant is from thenceforth to stand absolutely debarred and foreclosed, &c. (*See decree for foreclosure, No. XXXVI. ante.*) And it is ordered that he do convey and procure all proper parties to join in conveying the same to the plaintiff and his heirs, or as he shall appoint, free from all incumbrances done by him, or any claiming by, from, or under him, and deliver on oath all deeds, papers, and writings, in his custody or power relating thereto to the plaintiff, or as he shall appoint. And it is ordered that the said Master do settle such conveyance. And it is ordered that the said A. A. do deliver up possession of the said estates to the plaintiff or as he shall direct. And for better taking the accounts, &c. (*See usual directions, No. III. ante.*) And this decree is to be binding on the said defendant, J. M. the infant, unless, &c. (*See decrees respecting infants, post.*) And any of the parties are to be at liberty to apply, &c. (*See usual directions, No. XIX. ante.*)

XLIII. Decree for sale on bill by equitable mortgagee.

This Court doth order and decree, that it be referred to Mr. A., one, &c., to take an account of what is due to the plaintiff for principal and interest on the sum of \$ 500, in the pleadings mentioned, and to tax the plaintiff his costs of this suit. And it is ordered, that the defendant do pay the plaintiff what the said Master shall find due for principal, interest, and costs as aforesaid, within six months after the said Master shall have made his report, at such time and place as, &c. And upon such payment it is ordered, that the plaintiff do deliver up to the defendant the indenture of lease in the pleadings mentioned, dated, &c. And in default of the defendant so paying to the plaintiff what shall be found due to him for principal, interest, and costs as aforesaid, by the time aforesaid, it is ordered, that the premises comprised in the said indenture of lease, be sold, &c. (*See usual directions, No. VIII. ante.*) And it is ordered, that the money arising by the said sale be paid into the Court, with the privity, &c. (*See usual directions, No. XIII. ante.*) And it is ordered, that the same be applied in payment of what shall be found due to the plaintiff for principal, interest, and costs as aforesaid. And for the better taking the said accounts, &c. (*See usual directions, No. III. ante.*) And this Court doth reserve the consideration of all further directions until after, &c. (*See usual directions, No. XV. ante.*) And any of the parties are to be at liberty to apply, &c. (*See usual directions, No. XIX. ante.*)

 XLIV. Decree for redemption of goods pledged.

(The plaintiff was the assignee of W. C., the bankrupt.)

It is ordered, &c. that it be referred to Mr. H., one, &c., to take an account of what remained due on the, &c. the date of the last note exhibited in this cause for principal and interest of the money advanced and lent by the defendant Westbrooke to the said W. C., the bankrupt, on the pledge of the jewels, plate, and effects mentioned in the original note from the defendant to the said W. C. dated, &c., and to carry on interest

on so much of the principal as remained due. And it is further ordered, that the said master do likewise take an account of the said jewels, plate, and effects, specified in the last-mentioned note, and see which of them remain *in specie* in the custody or power of the defendant, and what part thereof hath been sold or otherwise disposed of by the defendant. As to such part thereof as hath been so sold or disposed of, it is further ordered, that the said Master do take an account of the real value thereof; and that the value of such part thereof, as hath been so sold or disposed of by the defendant be applied in the first place towards paying the interest, and then towards sinking the principal, of what shall be so found to have been due to the defendant for the money lent or advanced by him as aforesaid. And if upon the balance of the said account, anything shall be found to remain due to the defendant for principal or interest, then on payment thereof by the plaintiff to the said defendant at such time and place as the said Master shall appoint, it is further ordered, that the defendant do deliver to the plaintiff such part of the said jewels, plate, and effects, as shall be found to remain *in specie*. But in default of such payment by the plaintiff to the defendant as aforesaid, it is further ordered that the said plaintiff's bill do from thenceforth stand dismissed out of this court with costs to be taxed by the said Master. And in case it shall appear on the said account that the defendant is overpaid his said principal and interest, then it is further ordered that the said defendant do pay to the plaintiff so much as shall remain due to the plaintiff on the said account, and also to deliver to the plaintiff such part of the said jewels, plate, and effects as shall remain *in specie*, to be applied as part of the personal estate of the bankrupt, for the benefit of the creditors seeking relief, under the said commission. And the Court doth reserve the consideration of interest of any money that may be found due from the defendant to the plaintiff, in case there shall be any such, and also the consideration of costs, till after the said Master shall have made his report. And for the better taking of the aforesaid accounts, &c. (*See usual directions, No. III. ante.*) And any of the parties to be at liberty to apply, &c. (*See usual directions, No. XIX. ante.*)

DECREES FOR PARTITION, AND TO SETTLE BOUNDARIES.

XLV. Decree for partition.

It is ordered, &c. that a partition be made of _____, in two moieties, between the plaintiff and defendant, E. M. and J. M. And that a commission or commissions do issue, directed to certain commissioners to be therein named for that purpose; and if the parties differ about the number of commissions to be issued, or any other matter relating to the issuing of such commission or commissions, the said Master is to settle the same between them. And it is ordered that the said commissioners do respectively make a division of _____ with the appurtenances, into two equal moieties, and make the same by metes and bounds where they shall see occasion. And all deeds and writings, relating to the said estates, in the custody or power of any of the parties, are to be produced before the said commissioners upon oath, as the said commissioners shall direct. And it is further ordered, that the said commissioners do examine witnesses on interrogatories, or otherwise, relating to the matters in question as they shall think fit. And that the said commissioners do allot one moiety of the said estate to the plaintiff, to be enjoyed by him in severalty; and one other moiety thereof to the said defendant, the infant, to be enjoyed by him in severalty. And after such partition shall have been so made, it is further ordered, that the said plaintiff and the said defendant do convey such several moieties to each other respectively, to be held in severalty. And if the parties differ about the conveyances and assurances to be executed for that purpose, the said Master is to settle the same. And after the commissioners shall have made such partition and returned the same, it is further ordered, that such of the deeds and writings in the custody or power of any of the parties as relate to such part of the premises as shall by such division be allotted to either of the parties alone, be delivered to them respectively; and as to those that concern any parts of the premises that shall be so allotted to one of the said parties jointly with those allotted to the other, any of the parties are to be at liberty to apply to the Court for

directions concerning the same. And it is further ordered, that the costs of the partition before directed, be borne in equal moieties between the plaintiff and the defendant.

XLVI. Decree for partition with reference to ascertain shares.

It is ordered, &c. that it be referred to Mr. B., one, &c., to see what shares the several defendants are respectively entitled to of the estates in question. And it is ordered and decreed that a commission do issue, directed to certain commissioners to be therein named, to make a partition of the said lands between the said defendants, according to the shares the Master shall find they are respectively entitled to. And the Court doth reserve the consideration of the costs of this suit, and of all further directions, until after the said Master shall have made his report, and the return of the said commission.

Direction where shares in settlement.

And in case the Master, in making the aforesaid inquiries, shall find that the shares of the said several parties, or any of them, are comprised in any marriage settlements, it is ordered, that the several allotments to be made to them as aforesaid be subject to the uses of the said settlements respectively.

XLVII. Commission of partition.

To James Taylor, &c., greeting. Whereas by a decree pronounced in our Honorable Court of C. bearing date the 8th day of July, 1783, and made upon the hearing of a certain cause depending in our said Court, wherein A. C. and J. A. C. Esquires, are complainants, and T. L. Esq. is defendant, it was ordered and decreed, that a commission should issue, &c. Now, know ye, that we, in confidence for your prudence and fidelity, have appointed you, and do by these presents give full power and authority unto you, any three or two of you, and hereby command you, that any three or two of you do meet together at certain proper and convenient times and places, by

you, any three or two of you, to be for that purpose appointed ; and that you, any three or two of you, do from thence, go to, enter upon, walk over, and survey the estate in question, in the said decree and pleadings in this cause mentioned, and according to the best of your skill, knowledge, and judgment, make a fair partition, division, and allotment thereof, and the same separate, set apart, and divide, and allot and appoint one moiety thereof as and for the share of the said complainants, and the other moiety thereof as and for the share of the said defendant, to be held and enjoyed by the said complainants and the said defendant in severalty ; and the parts so divided to distinguish and separate by certain metes and bounds. And for the better making such division, we do hereby authorize and empower you, any three or two of you, to cause all such witnesses as you shall see occasion for, to come before you, and then and there examine each and every of them apart, upon their respective corporal oaths, first taken before you, any three or two of you, upon such interrogatories in writing, as you shall see occasion for, to discover and make out the truth of the premises, and to take the depositions of such witnesses in writing, and cause the same to be plainly and fairly engrossed. And when ye have done and performed all these things, ye shall certify and return into our Court of ———, without delay, wheresoever our said Court shall then be, the facts and proceedings in the premises, by your certificate fairly written, together with the said examinations and interrogatories, and also this writ closed up, under the seals of you, any three or two of you. Witness at ——— the ——— day of ———, in the ——— year ———.

DECREES FOR SPECIFIC PERFORMANCE.

XLVIII. Decree for reference of title.

It is ordered, &c. that it be referred to Mr. W., one, &c., to inquire whether a good title can be made to the estates comprised in the agreement in the pleadings mentioned. And it is ordered, that he do state his opinion thereon to the Court.

And in case he shall be of opinion that a good title can be made, it is ordered that he do inquire and state when it was first shewn that a good title could be made. And for the better discovery of the matters aforesaid, &c. (*See usual directions, No. II. ante.*) And this Court doth reserve the consideration of all further directions, and of the costs of this suit, until after the said Master shall have made his report. And either of the parties are to be at liberty to apply, &c. (*See usual directions, No. XIX. ante.*)

XLIX. Decree for specific performance. — Further directions.

This Court doth order and decree, that the agreement in the pleadings mentioned, dated the 23d day of September, 1812, be specifically performed and carried into execution. And it is ordered, that it be referred to the said Master to compute interest, at the rate of \$4 per cent. per annum on the sum of \$——, the residue of the purchase-money for the estate and premises comprised in the said agreement, from the 30th day of November, 1812, the time when the same ought to have been paid, according to the terms of the said agreement. And the said Master is to take an account of the rents of the said estate and premises received by or come to the hands of the plaintiff, or to the hands of any person or persons by his order or for his use. And it is ordered, that what shall be coming on the said account of rent (after deducting therefrom the sum of \$——, the moiety of the tax which by the said conditions is to be paid by the defendant) be deducted from the sum of \$——, and what shall be found due for interest thereon as aforesaid. And upon the plaintiff executing and delivering to the defendant, at the expense of the defendant, according to the said agreement and conditions of sale, a proper conveyance of the said estate and premises contained in the said agreement, such conveyances to be settled by the said Master if the parties differ about the same, it is ordered, that the defendant do pay unto the plaintiff what shall remain due on the balance of the said account. And the Court doth not think fit to give any costs on either side. And any of the parties are to be at liberty to apply, &c. (*See usual directions, No. XIX. ante.*)

L. Decree for specific performance with an abatement.

The Court doth declare that the plaintiff is entitled to a specific performance of the agreement in the pleadings mentioned, and to an abatement from the residue of the purchase-money and interest, but to the amount only of what would be the worth of the deficiency of the soil mentioned in the pleadings covered with wood, after deducting the value of the wood thereon, and doth order and decree the same accordingly. And that it be referred to Mr. T. one, &c. to settle such abatement, and to compute interest on the residue of such purchase-money after the rate of \$—— per cent. per annum, in case the parties differ about the same. And upon the plaintiff paying unto the defendants what the said Master shall find to be due from him on account of the purchase-money under the said agreement stipulated to be paid, after such abatement as aforesaid, it is ordered that the defendants do convey and assign the premises so contracted to be sold, to the plaintiff, or as he shall direct; such conveyance to be settled by the said Master in case the parties differ about the same. And the Court doth not think fit to give costs on either side. And any of the parties are to be at liberty to apply, &c. (*See usual directions, No. XIX. antè.*)

LI. Decree for specific performance of agreement for lease.

The Court doth declare that the said agreement dated the 14th day of August, 1741, ought to be carried into execution, according to the true intent and meaning of the parties, and doth order and decree the same accordingly. And that a lease be executed by the defendants S. and his wife to the plaintiff, of the premises in question, with the appurtenances, for the life of the said Mary the defendant's wife, at the yearly rent of \$9 free from taxes; and that such clauses and agreements be inserted in the said lease as are directed by the memorandum of the said agreement. And if the parties differ it is hereby referred to Mr. B. one, &c. to settle the same. And it is ordered, that the said plaintiff do execute a counterpart of such

lease to the said defendants, and that such lease and counterpart be at the equal expense of the said plaintiff and defendants. And it is ordered, that the plaintiff do pay the said defendants their costs of this suit, to be taxed by the said Master.

DECREES FOR SETTING ASIDE DEEDS.

LII. Decree setting aside annuity for defect of the memorial.

It is ordered, &c. that it be referred to Mr. S. one, &c. to take an account of what is due to the defendant for principal and interest in respect of the sum of \$——, paid for the purchase of the annuity in question, and tax the defendant his costs of this suit. And the said Master is also to take an account of all sums of money received by the defendant, or by any other person or persons by his order or for his use, on account of the said annuity. And it is ordered, that what shall be found due from the said defendant on the said account be deducted out of what shall be found due to the defendant for principal, interest, and costs as aforesaid. And upon the plaintiff's paying to the defendant what, if any thing, shall remain due to the defendant for principal, interest, and costs as aforesaid, within three months after the Master shall have made his report, at such time and place as the Master shall appoint, or in case it shall be found the defendant hath been fully satisfied, it is ordered that the defendant do deliver to the plaintiffs the indenture, dated the 9th day of July, 1784, and the bond dated the same day, to be cancelled; and that the defendant do also reconvey the premises free and clear of and from all incumbrances done by him, or any claiming by, from, or under him, out of which the said annuity was payable to the plaintiff, or to whom he shall appoint; and also deliver all deeds and writings in his custody or power relating to the said premises to the plaintiff, or to such person as he shall direct. And in case it shall appear that the defendant hath been overpaid, it is ordered, that he do pay such overplus to the plaintiffs. And in case the plaintiff shall not so pay to the defendant what, if any thing, shall be found due to him for prin-

cipal, interest, and costs as aforesaid, after such deductions as aforesaid, by the time aforesaid, the plaintiff's bill is to stand dismissed out of this Court with costs, to be taxed by the Master. And for the better taking the account, &c. (*See usual directions, No. III. ante.*) And any of the parties are to be at liberty to apply, &c. (*See usual directions, No. XIX. ante.*)

DECREES RESPECTING PARTNERS.

LIII. Decree for an account of partnership dealings.

It is ordered, that it be referred to Mr. A., one, &c., to take an account of the partnership dealings between the plaintiff and the defendant, from the foot of the account, stated the 25th day of December, 1736, except as to the item relating to the value of the lease of the house in question. And as to the said lease, the said Master is to set a value thereon at the time of the dissolution of the partnership. For the better discovery whereof, &c. (*See usual directions, No. III. ante.*) And what upon the balance of the said account shall appear to be due from either party to the other, is to be paid accordingly. And the defendant is to pay unto the plaintiff one moiety of the value that shall be set upon the said lease, as aforesaid; and thereupon the plaintiff is to release his interest therein to the defendant; and the defendant is to indemnify the plaintiff against the covenants contained in the said lease; which release is to be settled by the said Master, in case the parties differ about the same. And the consideration of the costs of this suit is hereby reserved until after, &c. (*See usual directions, ante.*)

LIV. Decree for account of assets of deceased partner.

It is ordered, that the said Master do take an account of what was due at the time of the death of the said W. D. deceased, from the partnership of W. D. deceased, J. D., W. N., R. H. C., and R. B., to the plaintiff T. B., as executor of J. W. in the said bill mentioned, and to E. S. respectively; and

also what was due to all such other persons as were the creditors of the partnership of W. D., J. D., W. N., R. H. C., and R. B., at the time of the death of the said W. D. ; and also an account of what is now due from the said last-mentioned partnership to the said plaintiff T. B., as executor of the said J. W., and to F. S. respectively, and to all such other persons as were creditors of the same partnership at the time of the death of the said W. D., deceased. And the said Master is to compute interest, &c. And it is ordered, that the said Master do inquire whether the said plaintiffs and creditors, or any or either and which of them, continued to deal with the said J. D., W. N., R. H. C., and R. B., after the death of the said W. D., and what sum or sums of money were or was paid by the said surviving partners to the said plaintiffs and creditors respectively, from the death of the said W. D. to the bankruptcy of the said surviving partners, and what has been since received by them respectively ; and whether the said plaintiffs and creditors have, or any or either, and which of them hath, by subsequent dealing released the estate of the said W. D. from the payment of their respective debts, or what, if any thing, remains due in respect thereof. And in making the aforesaid inquiries, the said Master is to state any special circumstance to the Court, and to make a separate report, or separate reports, as he may think proper. And for the better taking the said accounts, &c. (*See usual directions, No. III. ante.*) And the Court doth reserve the consideration of all further directions until after, &c. (*See usual directions, No. XV. ante.*) And any of the parties are to be at liberty to apply, &c. (*See usual directions, No. XIX. ante.*)

LIV. Deeree for administration of joint and separate estates.

It is ordered, &c. that it be referred to Mr. B. one, &c. to take an account of the partnership estate come to the hands of the said defendants, B., P., and M., the assignees of the said defendants S. and M., the bankrupts of the said defendant W., who did not become a bankrupt, or any of them, or to the hands of any other person or persons, by their or any of their order, or for their or any of their use. And it is ordered, that

the said Master do also take an account of the partnership debts, down to the time the said defendants S. and M. became bankrupts. And the plaintiff, and all other the creditors of the said partnership, are to be at liberty to come in and receive a dividend under the said commission, in proportion to their debts. And for that purpose the said Master is to cause an advertisement, &c. (*See Decrees respecting Personal Assets, ante.*) And it is ordered, that the said partnership estate be applied in payment of such partnership debts. And the surplus is to be divided into three equal parts, and two third parts thereof are to be paid to the said defendants the assignees, to be by them applied in discharge of the separate debts of the said defendants S. and M. the bankrupts, and the remaining third part thereof is to be paid to the said defendant W. And it is ordered, that the said Master do likewise take an account of the separate estate of the said defendants S. and M., the bankrupts, come to the hands of the defendants B., P., and M., the assignees, or any of them, or to the hands of any other person or persons, by their or any of their order, or for their or any of their use. And the said Master is also to take an account of the separate debts of the said defendants, the bankrupts. And it is ordered, that such separate estate of the said defendants S. and M., the bankrupts, be applied by the said defendants, the assignees, first, in discharge of such separate debts, and then in payment of the partnership debts remaining unsatisfied; the said defendant W. contributing one third part thereof. And in case there shall be any surplus of such separate estate, the same is to be paid to the said defendants S. and M. And for the better taking the several accounts before directed, &c. (*See usual directions, No. III. ante.*)

DECREES RESPECTING SURETIES.

LVI. Decree for contribution against surety and indemnity from principal.

It is ordered, &c. that it be referred to Mr. E. one, &c. to take an account of all sums of money paid by T. W. deceased, in the pleadings named, and the plaintiffs A. L. and T. W. his

executors, or any of them, agreeable to the undertaking in the pleadings mentioned, dated, &c. and compute interest on such sums of money, at the rate of \$4 per cent. per annum, from the times the several payments were made, and tax the plaintiffs their costs of this suit. And it is further ordered, that the defendant G. W. do pay unto the plaintiffs one moiety of what shall be found due for principal and interest as aforesaid, together with their costs of this suit. And it is further ordered, that the defendant G. W. do pay unto the plaintiffs the other moiety of what shall be found due for principal and interest as aforesaid, and do also pay unto the defendant G. W. the principal and interest before directed to be paid by him to the plaintiffs, together with the costs of the said defendant G. W. to be taxed by the said Master, and also the costs which he shall pay unto the plaintiffs under the direction before given. And for the better taking of the said accounts, &c. (*See usual directions, No. III. ante.*) And any of the parties are at liberty to apply, &c. (*See usual directions, No. XIX. ante.*)

DECREES RESPECTING EXECUTORS AND TRUSTEES.

LVII. Direction in decree where executors admit assets.

And it is further ordered, that such part of the personal estate of the said testator, as shall upon the said account appear to have come to the hands of the said T. be answered by the defendants R. and A. his executors, they having admitted assets of their said testator.

LVIII. Where assets not admitted.

And what shall appear to have been received by the said J. H. the son, of the said J. H. the father's personal estate, is to be answered by the said defendants F. and T. his executors out of his assets in a course of administration. And if they shall not admit assets of the said J. H. the son, before the Master, then they are to come to an account before the said

Master for his personal estate received by them or either of them, or by any other person, by their or either of their order, or for their or either of their use.

LIX. Direction in decree against executors, charging them with interest on balances.

And the said Master is to take an account of the moneys and estate of the said testator, which remained in the hands of his executors, or either of them, unapplied, at the end of twelve months from his death; and also an account of all sums of money received by them or either of them, or by any other person or persons by their or either of their order, or for their or either of their use, subsequent to that time; and is to compute interest at the rate of \$4 per cent. per annum on the balances in their or either of their hands at the end of the said twelve months. And the said Master, in taking the said accounts, is to make half-yearly rests; and charge the said defendants with interest after the rate aforesaid, upon the balances which shall appear from time to time to have been in their hands respectively.

LX. Decree for appointment of new trustees.

It is ordered, &c., that it be referred to Mr. S., one, &c., to approve of two new trustees in the room of the said defendant. And it is ordered and decreed, that the said defendant do assign and transfer the trust estate vested in her by the said indentures, and also the ——— mentioned in her answer, to such new trustee to be approved of by the said Master, upon the same trusts, and subject to the trusts mentioned in the said indenture of release, dated the 9th of January, 1728; and such assignment is to be settled by the said Master, in case the parties differ about the same. And it is ordered and decreed, that the said defendant do deliver over to such new trustees all deeds and writings in her custody or power relating to the said trust estate. And it is ordered that the plaintiffs do pay unto the defendant her costs of this suit, to be taxed by the said Master. And any of the parties are to be at liberty to apply, &c. (*See usual directions, No. XIX. ante.*)

LXI. Decree against trustees for account of charity estates and inquiry as to leases.

It is ordered, &c., that it be referred to Mr. S. one, &c., to inquire what were the estates subject to the charitable uses created by the deeds dated, &c. in the pleadings stated. And it is ordered that the said Master do take an account of the rents and profits of such estates, and of the fines taken for the renewals of the leases thereof, to the hands of the defendants, or any person or persons by their order or for their use, and to state at what times such fines were received, and in what manner the same and the rents and profits have been applied. And it is ordered that the said Master do inquire whether the said estates have been properly let; and if he shall be of opinion that the same have not been properly let, he is to inquire whether it will be proper to take any, and if any, what steps to set aside the leases so improperly made; and he is to state his opinion thereon to the Court: And it is ordered, that the said Master do approve of a scheme, &c. And it is ordered, that the said Master do appoint proper persons to be feoffees or trustees of the charity estates; and inquire in whom the legal estate therein is vested. And for the better taking the said account, &c. (*See usual directions, No. III. ante.*) And it is ordered that the said Master do tax the relator his costs of this suit to the time, and make a separate report thereof; and it is ordered, that such costs when taxed be paid by the defendants out of the money in their hands on account of the charity estates. And the Court doth reserve the consideration in what manner the same shall ultimately be paid, and also the consideration of all further directions, and of the rest of the costs of this suit, until after the said Master shall have made his general report. And any of the parties are to be at liberty to apply, &c. (*See usual directions, No. XIX. ante.*)

DECREES RESPECTING FEMES COVERT.

LXII. Decree on consent of feme covert. — Introductory part.

Whereupon, and upon debate of the matter, and hearing the said testator's will, &c. read, and what was alleged, &c., and the plaintiff J. H. being now present in Court and examined, consenting that her share of the said ——— shall be transferred to E. H. her husband, the Court doth order and decree that, &c.

LXIII. Order for taking the consent of a feme covert by commissioners.

It is ordered, &c. that the said plaintiff S. E. do attend M. R., &c. Esqrs. or any two of them, and declare before them by writing under her hand, whether she does consent that her moiety of the said ——— shall be transferred to the said E. E. her husband. And they, or any two of them, are desired to examine her separate and apart from the said E. E. her husband, concerning the same; and to attest, under their hands, such declaration in writing as shall be made and signed by her. And it is further ordered, that the signing of the said plaintiff S. E., and the attestation of the said M. R., &c., or any two of them, be verified by affidavit, to be made before a Master in Chancery, and thereupon such further order shall be made as shall be just.

LXIV. Direction for settlement on wife.

And it is ordered that the said Master do inquire and state to the Court, whether the plaintiff R. C. has made any settlement on, or provision for the plaintiff S. his wife, and the issue of their marriage; or entered into any agreement for that purpose. And in case the said Master shall find that he has not, or having made any such, the said Master should not approve the same, then it is ordered that the said plaintiff R. C. be at liberty to lay proposals before the said Master for that purpose. And it is ordered that the said Master do state the same with his opinion thereon to the Court.

LXV. Decree for dower in freehold and copyhold lands.

It is ordered, &c. that it be referred to the said Master to inquire what freehold lands the said S. M. died seised of, wherein the said plaintiff B. M. is dowable. And that the said Master do assign to the plaintiff B. her dower in such freehold lands and tenements. And the said Master is to assign and set out particular lands and tenements for that purpose, and after the lands and tenements shall be set out and ascertained, it is ordered, that the said defendant do deliver possession to the plaintiff of the lands and tenements that shall be so set out and ascertained for the said dower or widow's estate of the plaintiff B. ; and the tenants thereof are to attorn and pay their rents to the said plaintiff B. And it is ordered and decreed, that the said Master do take an account of the rents and profits of the said freehold lands and tenements whereof the said S. M. died seised, accrued since the death of the said S. M., which have been received by the said defendant, or by any other person by his order or for his use. And that one third part of what shall be coming on the said account of rents and profits of such freehold lands and tenements be paid to the plaintiff B. by the said defendant in respect of her dower out of such lands and tenements. And for the better clearing of the accounts, &c. (*See usual directions, No. III. ante.*) And it is ordered, that the defendant do pay unto plaintiff B. M. her costs of this suit to this time, to be taxed by the said Master, of which the said Master is to make a separate report. And the Court doth reserve the consideration of the subsequent costs as between the plaintiff B. and the said defendant until after, &c.

LXVI. Commission to assign and set out dower.

To ———, greeting : Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give unto you, any three or two of you, full power and authority, in pursuance of an order of our Court of Chancery, made in a certain cause there depending, wherein A. B. is complainant, and C. D. defendant, bearing date the ——— day of ——— last, to assign and set out dower for the afore-

said complainant, out of all and singular the lands and tenements, being lately the estate of ———, deceased, in the said order mentioned, called ———. And therefore we command you, any three or two of you, that you meet at a certain time and place to be appointed by you for that purpose, in order to come unto, inspect, and view the aforesaid estate, lands, and premises, wheresoever they shall be found to be situate, lying, or being; and according to the best of your skill and judgment, do assign and set out dower for the said complainant, out of the aforesaid farm, lands, and premises; and doing in all and singular the premises, according to the true intent and meaning of these presents and the aforesaid order. And when you shall have thus done, that you transmit unto us, in our said Court of Chancery, wheresoever it shall be, your certificate concerning the said complainant's dower engrossed, together with your proceedings in the premises as is usual, with this writ.

DECREES RESPECTING INFANTS.

LXVII. Direction for day to shew cause against decree.

And this decree is to be binding unto the said defendant R. S. the infant, unless he being served with a subpoena to shew cause against the same, shall within six months after he shall attain his age of twenty-one years shew unto this Court good cause to the contrary.

LXVIII. Direction for parol to demur.

And in case the said intestate's personal estate shall not be sufficient to pay his debts, then the plaintiff is to be at liberty to apply to the Court touching the receiving a satisfaction for the same out of real assets of the said intestate when the defendants, the infants, shall come of age.*

* *Parol Demurring.* — At law, where an infant heir is sued on a specialty of his ancestor, the parol demurs (*i. e.* he may plead that he is an infant, and that he ought not to answer until he is of age). See Com. Dig. "Enfant." (D.) 3. Pleader, 2 (E.) 3. Chitty on Pleading, vol. ii. p. 520.

And where the lands in fee descend to an infant, the parol demurs in equity as well

LXIX. Direction for marshalling assets where defendant an infant.

And in case the said intestate's personal estate shall not be sufficient for that purpose, and the said intestate's specialty creditors shall exhaust any part of his personal estate in satisfaction of their demands, then it is ordered that the said intestate's simple contract creditors are entitled to come in and receive a satisfaction *pro tanto* out of his real assets. And the parties are to be at liberty to apply to this Court for satisfaction of their demands out of the real estate, when the defendant J. P. shall attain his age of twenty-one years.

LXX. Decree for sale against infants.

The Court doth declare the will of the said testator W. W.,

as at law. *Chaplin v. Chaplin*, 3 P. W. 368. And see *Lechmere v. Brasier*, 2 J. & W. 290.

Hence, where real estate descends to an infant heir, and bond creditors file a bill for satisfaction of their debts, no sale can take place till the heir comes of age. *Lechmere v. Brasier*, *supra*.

So on a bill to marshal assets against an infant heir, the Court will declare the right, but will not decree a satisfaction out of the real estate, until the infant comes of age. *Wilson v. Pollard*, Appendix (1). And see what is said by Mr. Hart, in *Pott v. Gallini*, 1 S. & S. 209.

In *Powell v. Robins*, 7 Ves. 211, on a bill to marshal assets against an infant devisee, the Master of the Rolls declared the right, but did not direct a sale. But in *Plaskett v. Beeby*, 4 E. R. 485, it was held that where an infant devisee is sued under the statute, 3 W. & M. c. 14, the parol does not demur.

In *Lechmere v. Brasier*, *supra*, the Lord Chancellor thought that in the case of the heir of a trader sued under the statute 47 Geo. 3, Sess. 2, c. 74, the parol might demur. But a sale was afterwards directed. See S. C. 1 Russ. 72.

Where lands descend to an infant, subject to a trust for sale, the parol does not demur, and a sale will be directed, with a day to shew cause. *Uvedale v. Uvedale*, 3 Atk. 117. And see *Davison v. Goddard*, Gilb. 66. But see *Scarth v. Cotton*, Ca. tem. Talb. 198. S. C. Jac. 685, note.

So where lands descend subject to a charge of debts. *Hatgrave v. Tindal*, 1 Bro. 136, note. Or of Legacies. *Mould v. Williamson*, 2 Cox, 386. *Pope v. Gwyn*, 2 Dick. 683. And see Decree for Sale against Infant, No. III. *post*. Or to any equitable lien or charge. *Brookfield v. Bradley*, Jac. 632. And this, although the suit is instituted by other creditors. S. C. But a sale cannot be directed on the ground that it will be for the benefit of the infant. S. C.

Where the heir takes as special occupant, the parol does not demur. *Chaplin v. Chaplin*, 3 P. W. 368.

Whether, where the trusts of an estate in fee descend to an infant, the parol demurs. *Q. Creed v. Colville*, 1 Vern. 173.

Where the parol demurs, the Court will appoint a receiver. *Sweet v. Partridge*, 1 Cox, 433. S. C. 1 Dick. 696. *Lechmere v. Brasier*, *supra*. *March v. Bennet*, 1 Vern. 428. [This note is taken from Seton on Decrees, p. 269.]

to be well proved, &c. And doth also declare that the defendants, the infants, the coheirs-at-law of the said testator, are to be considered as trustees for the benefit of the said testator's creditors in respect of the charge for their debts. And doth order that it be referred to Mr. E. one, &c. to take an account of what is due to the plaintiffs and the other creditors of the said testator for their debts, and to compute interest, &c. ; and the said Master is likewise to take an account of the said testator's personal estate, which hath been received by the defendant C., his surviving executor, and by the said T., deceased, and the defendants R. and A., the executors of the said T., or any of them, or by any other person, &c. And such personal estate is to be applied in payment of the said testator's debts in a course of administration. And it is further ordered that such part of the personal estate of the said testator as shall upon the said account appear to have come to the hands of the said T., be answered by the said defendants R. and A., his executors, &c. And all the creditors of the said testator are to be at liberty to come in before the said Master and prove their debts. And the said Master is to cause an advertisement, &c. And in case the said testator's personal estate shall not be sufficient for the payment of his debts, the Court doth declare that the residue of the said testator's debts is a charge on his real estate by virtue of this will, and doth order and decree that so much of the said testator's real estate as shall be sufficient for that purpose, be sold with the approbation, &c. And it is further ordered that the money arising by such sale, be applied in payment of so much of the said testator's debts as his personal estate shall not extend to satisfy, and if there shall be any surplus of the money arising by such sale, the Court doth declare that the same will belong to the defendants, the coheirs-at-law of the said testator, to be equally divided between them. And in case any of the creditors of the said testator shall exhaust, &c. (*See decrees respecting marshalling assets, No. LXIX. ante.*) And for the better taking the said accounts (*see usual directions, No. III. ante.*) And the defendants, the heirs-at-law of the said testator, are to join in the conveyance of the said estate to any purchaser or purchasers thereof when they shall attain their respective ages of twenty-one years, unless, &c. (*See No. LXVII. ante.*) And in the mean time, it is

further ordered that any purchasers of the said estate, or any part thereof, do hold and enjoy the same against the said defendants the coheirs-at-law of the said testator till they shall respectively come of age; and that all parties be paid their costs of this suit hitherto, to be taxed by the said Master, out of the said testator's estate. And the Court doth reserve the consideration of subsequent costs, till after, &c. (*See usual directions, No. XV. ante.*) And any of the parties are at liberty to apply, &c. (*See usual directions, No. XIX. ante.*) And this decree is to be binding upon the said defendant B., unless, &c. (*See decrees by default, post.*)

LXXI. Decree for sale on bill by mortgagee against infant.

[The bill prayed a sale.]

It is ordered, &c. that it be referred to Mr. E., one, &c., to take an account of what is due to the plaintiff for principal and interest on his mortgage, and to tax the plaintiff and the defendant their costs of this suit. And, by consent of the plaintiff, it is further ordered and decreed, that the said mortgaged premises be sold, &c. (*See usual directions, No. VIII. ante.*) And out of the money arising by such sale the plaintiff and the defendant are to be paid their costs of this suit, and then the plaintiff is to be paid what shall be reported due to him for principal and interest on his said mortgage. And if there shall be any residue of the said purchase-money, the same is to be laid out, &c. for the defendant the infant's benefit. And the defendant is to be at liberty to apply to this Court for the same when he shall come of age. And for the better taking of the said accounts, &c. (*See usual directions, No. III. ante.*) And this decree is to be binding upon the defendant, unless, &c. (*See No. LXVII. ante.*)

LXXII. Order for guardian and maintenance on petition.

It is ordered, that it be referred to Mr. S., one, &c., to approve of a proper person or persons to be appointed guardian or guardians of the person and estate of the petitioner during

her minority. And it is ordered, that all proper parties have notice to attend the said Master thereon, and be at liberty to propose such guardian or guardians. And it is ordered, that the said Master do inquire and state the petitioner's age, and the nature and amount of her fortune, and what relations she has, and on what evidence or ground he approves of such person or persons so to be appointed guardian or guardians. And it is ordered, that the said Master do inquire and state what will be proper to be allowed for the maintenance and education of the petitioner during her minority, and from what past period such allowance should commence, and out of what fund it should be taken. And after the said Master shall have made his report, such further order shall be made as shall be just.

LXXIII. Order for Habeas Corpus for bringing up children.

It is ordered, &c., that a writ of Habeas Corpus do issue, returnable immediately, directed to the said E. M. to bring before this Court the bodies of L. D. and L. R. N. at ———, on the 19th instant, at 11 o'clock.

LXXIV. Order on Habeas Corpus for delivery of children to father.

It is ordered, &c. that the bodies of the said L. D. and L. R. N., the children of the said E. W., be delivered to him.

LXXV. Order for Habeas Corpus for bringing up children on application of father.

It is ordered, &c. that a writ of Habeas Corpus do issue, directing the said defendants G. B. and M., his wife, to bring into this Court the plaintiffs M. L., F. L., and J. B. L. the infant children of the said J. L. at the sitting of this Court, at ———, on the 10th of February next.

LXXVI. Writ of Habeas Corpus in the above case.

To G. B. and M. his wife, greeting. We command you, that you do on Thursday, the 15th day of February next, bring be-

fore us in our Court of Chancery, at the sitting thereof at ———, the bodies of M. L., F. L., and J. B. L., or by whatsoever name or addition they are known or called, who are detained in your custody, to perform and abide such order as our said Court shall make in their behalf. And hereof fail not, and bring this writ with you. Witness at ———, the 29th day of January, in the year ———.

LXXVII. The return to the above writ.

The within-named G. B. and M. his wife do hereby certify to the ———, that the within-named plaintiffs M. L., F. L., and J. B. L., are detained by and are under the protection of the said M. B. for the purpose of their being educated and maintained by her as their guardian, under the will of their grandmother M. B. deceased, and according to the trusts and directions for those purposes contained in the said will.

LXXVIII. Order appointing guardian in the nature of receiver.

Whereas the said J. M. on the 9th day of October last, preferred his petition to the ———, setting forth that the petitioner is entitled, by virtue of the settlement made on the marriage of the petitioner's late father and mother, to a real estate of about the clear yearly value of \$200; that the petitioner's father and mother are both dead, without appointing any person guardian to the petitioner; and the petitioner being now about the age of nineteen years, is not, in law, capable to manage the said estate, and is desirous that W. B., of ———, Esq., should be appointed guardian to the petitioner; and forasmuch as, &c. It was prayed that, &c. Whereupon all parties concerned were ordered to attend, &c. And counsel for the petitioner this day attending accordingly, upon hearing the said petition read, and what was alleged by the petitioner's counsel, and the said petitioner J. M. being of the age of nineteen years and upwards, and in Court desiring that the said W. B. may be assigned his guardian, the Court doth order that the said W. B., Esq. be appointed guardian to the said petitioner J. M. the infant, and that it be referred to Mr. A. one, &c. to consider

of a proper maintenance for the said petitioner J. M. the infant, as well for the 'time past as to come, and state the same to the Court; whereupon such further order shall be made relating thereto as shall be just. And that what shall be allowed for the past maintenance of the said petitioner J. M. the infant, be paid to the person or persons that have maintained him; and what shall be allowed for the time to come be paid to the person who shall maintain him.

LXXIX. Direction for reference whether father of ability.

It is ordered, &c. that it be referred to Mr. A., one, &c. to see what is fit and proper to be allowed for the maintenance and education of the defendants the infants for the time past and to come, and whether the plaintiff William Bailey the father is of sufficient ability to maintain the said defendants the infants or not, and state the same to the Court, and, thereupon such further order shall be made relating thereto as shall be just.

LXXX. Order for liberty to take infants abroad.

It is ordered, &c., that the petitioner, as the father of the said infants, plaintiffs, be at liberty to remove the said infants, plaintiffs, with him to ——— aforesaid, or to such other parts and places beyond the seas, and out of the jurisdiction of this Court, in which he shall in the execution of his duty be ordered or find it necessary to reside, there to remain with the petitioner in case the petitioner shall so think fit; the petitioner by his said petition, undertaking to bring the said infants, plaintiffs, or such of them as shall then be living, back with him, on his return to this country on the fulfilment of his mission in the petition mentioned, unless the petitioner shall in the mean time, from any unforeseen circumstance, deem it advisable to send them, or any of them, back to this country. But the petitioner is half-yearly to transmit, properly vouched, to be laid before the Court, the plan of tuition and education for each of the said infants actually

adopted and in practice at the time of such half-yearly return, and specifying particularly where and with whom they reside.

DECREES AND ORDERS RESPECTING INJUNCTIONS.

LXXXI. Order extending common injunction to stay trial.

Whereas by an order bearing date the 21st day of February, 1815, it was ordered that an injunction should be awarded to stay the defendant's proceedings at law, for and touching any of the matters there in question, until, &c. Upon opening of the matter this present day unto this Court, by Mr. M. of counsel for the plaintiff, it was alleged that it appears by the affidavit of the plaintiff that if the defendant shall answer all the matters in the plaintiff's bill contained, the said answer will contain matter very material to the plaintiff upon the trial of the action at law, and that the plaintiff cannot safely proceed to a trial of the said action without a discovery of the matters or things in the said bill mentioned, and which discovery the plaintiff expects the said answer, when put in, will contain. It was therefore prayed, &c. Whereupon and upon hearing the said affidavit of the plaintiff R. C. and Mr. T. of counsel for the defendants, this Court doth order that the injunction issued in this cause do extend to stay trial.

LXXXII. Order nisi to dissolve injunction.

Whereas the plaintiff obtained an injunction for staying of the defendant's proceedings at law, till answer and other order to the contrary. Now, upon motion this day made unto this Court by Mr. J. being of counsel for the defendant G. it was alleged, that the defendant hath since put in a full and perfect answer to the plaintiff's bill, and thereby denied the whole equity thereof. And therefore it was prayed, that the said injunction may be dissolved; which is ordered accordingly, unless the plaintiff's counsel having notice hereof, shall on Thursday, the 19th day of this instant November, shew unto this Court good cause to the contrary.

LXXXIII. Order to enlarge time for showing cause against dissolving injunction.

Whereas by an order of the 19th day of this instant, November, for the reasons therein mentioned, it was ordered that the injunction, &c. should be dissolved, unless, &c. Now, upon motion this day made unto this Court, by Mr. C. being of the plaintiff's counsel, it was alleged that the plaintiff is not prepared to shew cause against the said order. And therefore it was prayed that the time for the plaintiff's shewing cause against the said order may be enlarged to ———, which is ordered accordingly; but the plaintiff is then to shew cause on the merits.

LXXXIV. Order continuing injunction till hearing, the plaintiff giving judgment, &c.

Whereas by an order of the 27th day of May last, it was ordered that the injunction, &c. should be dissolved, unless, &c. Now upon opening the matter this present day unto the Court, and Mr. P. being of the plaintiff's counsel, who came to shew cause against the said order, and moved, and offered divers reasons for the discharge thereof, and for continuing the said injunction, in the presence of Mr. J. of counsel for the defendants Todd and his wife. Whereupon, and upon hearing of what was alleged by the counsel for the said parties, the Court doth order upon the plaintiff's giving unto the defendants judgment in the ejectment already brought at law, in a fortnight, with a release of errors, and consenting to bring no writ of error, that the said injunction be continued till the hearing of this cause, which the plaintiff is to speed; but in default of the plaintiff's giving such judgment with a release of errors as aforesaid, it is further ordered that the said injunction be dissolved without further motion.

LXXXV. Order to dissolve injunction made absolute, no cause being shewn.

Whereas by an order of the 13th day of October instant, it was ordered that the injunction, &c. should be dissolved, un

less, &c. Now upon motion this day made unto this Court, by Mr. B. being of the defendant's counsel, it was alleged, that due notice has been given of the said order, to the plaintiff's counsel, as by affidavit appears, and that no cause is shewn to the contrary thereof, as by the clerk's certificate also appears. It was therefore, prayed, that the said order may be made absolute, which is ordered accordingly.

LXXXVI. Order for dissolving injunction on merits.

Whereas by an order made the 14th day of July last, for the reasons therein contained, it was ordered that the injunction, &c. should be dissolved, unless, &c. Now upon opening of the matter this present day unto the Court by Mr. W. being of counsel with the plaintiff who came to shew cause against the said order, and moved, and ordered divers reasons for discharge thereof, and for continuance of the said injunction. Whereupon, and upon hearing of Mr. B. being of counsel with the defendants, and what was alleged on both sides, this Court disallowed the cause now shewn, and doth therefore order that the said injunction be dissolved.

LXXXVII. Order for dissolving injunction in default of reviving.

Upon opening of the matter this present day unto this Court by Mr. E. being of counsel for Thomas Morris and Ann his wife, it was alleged that the plaintiffs having exhibited their bill in this Court, among other things, for an injunction to stay the defendant from proceeding at law for the recovery of the possession of the premises in question in this cause, &c. and the defendant not putting in her answer in time, the plaintiffs obtained the common injunction; since which the defendant is dead, and administration with the will annexed of the said Jane Fisher, hath been since granted to Ann, the wife of the said Thomas Morris; that the suit being abated, and the plaintiffs neglecting to procure this suit to be revived, the said A. M. is prevented from proceeding at law for recovery of the possession of the said premises. And therefore it was prayed that the plaintiffs may procure this cause to be revived in a

month, and in default thereof, that the said injunction may be absolutely dissolved without further motion; which, upon reading an affidavit of notice of this motion, is ordered accordingly, of which notice is forthwith to be given.

LXXXVIII. Direction in decree for continuing injunction.

And it is further ordered that the injunction formerly granted in this cause for stay of the defendant's proceedings at law, be in the mean time continued; and the defendant's judgment is to stand as a security for payment of what, if anything, shall appear to be coming to him on the balance of the said account.

LXXXIX. Decree for perpetual injunction after verdict. (In England.)

[The bill was on behalf of the proprietors of lands within the chapelry, who claimed the right to present. The defendant Benison was the vicar, who also claimed the right, and nominated the defendant Hodgson, and on his resignation, the defendant Petty, who had been licensed by the bishop. On the original hearing an issue was directed to try the right.]

His Lordship doth declare that the customary right of electing or nominating a curate or chaplain to the chapel of Preston Patriek, within the parish of Burton in Kendal, in the county of Westmoreland, ought to be established according to the said verdict, and doth order and decree the same accordingly. And the Court doth declare further, that the Bishop of Chester ought to license such clerk as hath been or shall be nominated, according to the right found by the said verdict, unless some legal objection shall appear to the bishop against the qualification of such person to be licensed. And doth order that a perpetual injunction be granted against the defendants Benison and Hodgson to stay their proceedings at law in the actions of prohibition and replevin. And that a perpetual injunction be granted against the defendant Petty to restrain him from disturbing any person who hath been or shall be nominated curate or chaplain of the said chapel, pursuant to the right hereby

declared and established in the possession or enjoyment of the said chapel, or officiating there. And it is further ordered, that the defendant Benison do pay unto the plaintiffs their costs at law, to be taxed by the said Master; and that the plaintiffs do pay unto the defendant the Bishop of Chester his costs of this suit, to be taxed by the said Master; but as between the plaintiffs and the other defendants, no costs are to be paid on either side in this Court.

XC. Order for special injunction against creditor to restrain proceedings at law after decree. (In England.)

The Court doth order, that the defendants, Phillip Corral and James Denton, do pay unto the said George Syder the costs of the action brought by him against the defendants, as executors of John Mingay, deceased, in His Majesty's Court of K. B. up to the time the said George Syder had notice of the decree in this cause, to be taxed by the said Master C. And it is ordered that an injunction be awarded to restrain the said George Syder from further proceeding in the said action. And it is ordered that the said George Syder be at liberty to go before the said Master, and prove the debt, for recovery whereof the said action is brought under the decree in this cause.

XCI. Order for injunction to stay waste.

It is ordered, &c. that an injunction be awarded to restrain the defendant, his servants, agents, and workmen, from committing any waste or spoil upon the premises in question, until the said defendant shall fully answer the plaintiff's bill and this Court make other order to the contrary.

XCII. Order for injunction to restrain equitable waste.

It is ordered, &c. that an injunction be awarded to restrain the defendant Harriott Dummer, her servants, workmen, and agents, from cutting down any timber or other trees growing on the estate in question, which are planted or growing there

for the protection or shelter of the several mansion-houses belonging to the said estate, or for the ornament of the said houses, or which grow in lines, walks, vistas, or otherwise, for the ornament of the said houses, or of the gardens, or parks, or pleasure-grounds thereunto belonging. And let the said injunction also extend to restrain the defendant Harriott Dummer, her servants, workmen, and agents, from cutting down any timber or other trees, except at seasonable times, and in an husband-like manner; and likewise from cutting down saplings and young trees, not fit to be cut as and for the purposes of timber, until the hearing of this cause or the further order of the Court.

XCIII. Order for injunction to restrain negotiation of note.

It is ordered, &c. that the defendants be restrained from parting with, out of the custody of them or any of them, or indorsing, assigning or negotiating, the promissory note in question, dated on or about the _____ day of _____, mentioned in the plaintiff's bill and affidavit, until the said defendants shall have appeared to and answered the plaintiff's bill, and the further order of this Court.

XCIV. Order for injunction to restrain transfer of stock by executrix. (In England.)

This Court doth order that the defendant Betty White be restrained by the injunction of this Court from transferring any stock standing in the name of Roger White, the testator in the pleadings named, or in the name of the said Betty White, as the executrix of the said Roger White, and purchased with the assets of the said testator. And it is ordered, that the Governor and Company of the Bank of England be also restrained by the injunction of this Court from permitting such transfer to be made until the said defendant shall fully answer the plaintiff's bill, or this Court make other order to the contrary.

XCV. Order for injunction against partner.

This Court doth accordingly order that an injunction be awarded against the said Joseph Benson, his agents and servants, from entering into any contract or contracts, and from accepting, drawing, indorsing or negotiating any bills or bill of exchange, notes or note, or written securities or security in the name of the said copartnership firm of Dyson and Benson; and from contracting any debts or debt, and buying and selling any goods, and from making or entering into any verbal or written promise, agreement or undertaking, and from doing or causing to be done any acts or act in the name or on the credit of the said partnership firm of Dyson and Benson, or whereby the said partnership firm can or may in any manner become or be made liable to or for the payment of any sums or sum of money, or for the performance of any contract, promise, or undertaking, until the said defendant shall fully answer the plaintiff's bill and the further order of this Court.

XCVI. Order for injunction and receiver against executor and guardian.

This Court doth order that the said defendant John Cooke be restrained by the injunction of this Court from receiving or collecting any part of the outstanding personal estate and effects of W. B. the testator in the pleadings named, and from receiving or collecting any part of the debts due and owing in respect of the business or concern of a bricklayer, carried on by the said W. B. up to the time of his death, and afterwards by the said John Cooke; and also from receiving or collecting any part of the freehold estate of the said W. B. and from letting or managing the same, or interfering therewith, or with any other part of the said testator's estate or effects, until the said defendant shall fully answer the plaintiff's bill, or this Court make other order to the contrary. And it is ordered, that it be referred to Mr. S. one, &c. to appoint a proper person to receive the rents and profits of the said testator's freehold estates, and to collect and get in his outstanding personal estate, and the debts due or owing in respect of the said testator's business of a bricklayer, &c.

XCVII. Order for injunction to restrain partial infringement of copyright.

This Court doth order that an injunction be awarded to restrain the defendant, his servants, agents, or workmen, from printing, publishing, selling, or otherwise disposing of, such parts of the book in the bill mentioned to have been published by the defendant as hereinafter specified, viz.: that part of the said book of the said defendant which is entitled "———," &c., and also that part of the book of the said defendant which is entitled "———," and also that part of the book of the said defendant, entitled "Exercise I." until the said defendant shall fully answer the plaintiff's bill, or this Court make other order to the contrary.

XCVIII. Order for reference in suit for infringement of copyright.

It is ordered, &c. that it be referred to Mr. P., one, &c. to see whether the copperplate published by the defendant, entitled, &c. is of the same size and scale, and has the same marginal notes and directions or instructions, and is in all respects the same as the first plate published by the plaintiff, entitled, &c. save an affected variation in the historical and geographical anecdotes in the margin. And the said Master is to state the same, with his opinion thereon, to the Court, and thereupon such further order shall be made relating thereto as shall be just.

XCIX. Order for dissolving special injunction.

Whereas the plaintiff obtained an injunction to restrain the defendant, his servants, &c. from committing any waste, &c. until the defendant should have fully answered the plaintiff's bill, and this Court make other order to the contrary. Now upon opening of the matter this present day unto the Court by Mr. S. being of the defendant's counsel, it was alleged that the defendant has since put in a full and perfect answer to the plaintiff's bill, and thereby denies the whole equity thereof. Whereupon, and upon hearing of Mr. A. of counsel for the

plaintiff, and of what was alleged, &c. it is ordered, &c. that the said injunction be dissolved.

C. Decree for perpetual injunction to restrain infringement of copyright.

It is ordered, &c. that the injunction formerly granted in this cause for stay of the defendants, their servants, agents, or workmen, from printing, publishing, or vending a book, comedy, or farce, called "Love à-la-mode," or any part thereof, be made perpetual. And the plaintiff waiving the account prayed by the bill, the Court doth not think fit to direct any account. And it is further ordered, that the defendants do pay to the plaintiff his costs of this suit, to be taxed, &c.

CI. Decree for perpetual injunction to restrain infringement of patent, and for payment "of profits."

Upon the coming in of the Master's report, and on motion of the complainant's counsel, it is ordered and decreed by the Court, that the said report be confirmed and established, and that the said defendant B. and his agents and servants be perpetually enjoined from making, using, or vending to others to be used, any one or more locks substantially the same in mode of operation as the lock described in the letters-patent in the said bill of complaint mentioned.

And the Court doth further order and decree that the said defendant B., do forthwith pay unto the said complainant Allen, the sum of eleven thousand seven hundred dollars, being the amount of profit found by the said Master's report to have been received by the said B. and his copartner S., mentioned in the said bill of complaint, from the sale of locks substantially the same in mode of operation, as the lock described in the said letters-patent, in violation of the exclusive right of the complainant, secured to him by the letters-patent aforesaid. And the Court doth further order and decree that the said defendant B. do pay to the said complainant Allen the costs of this suit, taxed at ———.

CII. Decree for perpetual injunction against a judgment at law in part.

This cause came on to be heard upon the bill, answers, depositions, and other proceedings in the cause, and was argued by counsel. On consideration whereof, it is declared by the Court, that the plaintiffs are entitled to relief in respect to the seven hundred pezzos in the bill of complaint mentioned, upon the ground that the recovery for the same was had against them by surprise, and without any adequate knowledge, or means of defence on their part at the trial, and without any default on their part, although there was no want of equity in asserting the claim thereto by the defendants at the trial, under all the circumstances, and therefore it is declared that the plaintiffs ought in this cause to have relief against the judgment in the bill and answers mentioned, to the extent of the damages given by the verdict of the jury, for and on account of the said seven hundred pezzos, to wit: for the sum of thirteen hundred and seventy-nine dollars and twelve cents, but no farther, and that the said judgment ought to stand confirmed as to the residue thereof. And it is ordered, adjudged, and decreed accordingly by the Court, and in furtherance thereof, it is ordered, decreed, and adjudged by the Court, that the said judgment as to the said sum of thirteen hundred and seventy-nine dollars and twelve cents be perpetually enjoined, so that no execution unsatisfied thereon be allowed in behalf of the defendants, but in all other respects the said judgment to be held valid and executed and satisfied. And inasmuch as it further appears to the Court, that the defendants in this cause have been guilty of no default or want of equity in resisting the bill of the plaintiff, it is further ordered and adjudged that they be allowed their full costs in the premises, and unless the same be paid, that they have a right of satisfaction of the same out of the security in the cause as heretofore ordered by the Court.

DECREES AND ORDERS RESPECTING RECEIVERS.

CIII. Order for receiver of real estate.

It is ordered, &c. that it be referred to Mr. C., one, &c. to appoint a proper person to be receiver of the rents and profits of the estates, situate at ——, in the pleadings in this cause mentioned, and to allow him a proper salary for his care and pains therein; the person so to be appointed receiver first giving security, to be approved of by the said Master, duly and annually to account for and pay what he shall so receive, as is hereinafter directed, or as the Court shall direct. And the tenants of the said estates are to attorn, and pay their rents in arrear and growing rents to such receiver; who is to be at liberty to let the said estates from time to time, with the approbation of the said Master, as there shall be occasion. And it is ordered, that the said receiver do from time to time pass his account before the said Master, and pay the balances that shall be reported due from him into court, to be there placed to the credit of this cause, subject to the further order of this Court.

CIV. Inquiry as to repairs.

And it is further ordered that the said Master do inquire whether it will be for the benefit of the estate that the testator's house in —— should be put in repair. And if the said Master should find that it will, it is further ordered, that then so much as the said Master shall find to be sufficient for such repairs to be laid out accordingly, and be paid by the receiver out of the personal estate, and be allowed to him in passing his accounts. And it is further ordered that the said Master do make a separate report, touching, &c. and the repairs of the testator's house in ——.

CV. Order for receiver where prior incumbrances.

It is ordered, &c. that it be referred to Mr. J. one, &c. to appoint a proper person to be receiver of the rents and profits

of the capital mansion-house, &c. But the appointment of the said receiver is not to affect prior incumbrances upon the said estates and premises, who may think proper to take possession of the said estates and premises, by virtue of the said securities respectively. And it is ordered that the said Master do also allow to such persons so to be appointed, &c. (*See No. CIII. ante.*) And it is ordered that the said Master do inquire what incumbrances there are affecting the said estates and premises, and also into the priorities thereof respectively. For the better discovery whereof, &c. (*See usual directions, No. II. ante.*) And it is ordered that the person so to be appointed receiver as aforesaid do, out of the rents and profits so to be received by him, keep down the interest and payments in respect of the said incumbrances, according to their priorities, and pay the balances thereof, which shall be from time to time reported due from him, into court. (*See usual directions, No. XIII. ante.*)

CVI. Order for receiver in case of partnership.

[The plaintiffs were the assignees of D. G.]

It is ordered, &c. that it be referred to Mr. A. one, &c. to appoint a proper person to be receiver of the outstanding debts and effects of the late partnership of D. G., T. G., and J. G., in the pleadings of this cause mentioned, and to allow him, &c. (*See No. CIII. ante.*), such person to be appointed receiver, first giving security, &c. (*See No. CIII. ante.*), to be answerable for what he shall receive of such outstanding debts and effects, and to pay the same as this Court hath hereby directed, and shall hereafter direct. And it is ordered that the defendants J. G., and T. G., do deliver over to such person so to be appointed receiver, all securities in their hands for such outstanding debts and effects, together with all books and papers relating thereto. And in case there shall be occasion to put any of the debts in suit for the recovery thereof, the same is to be done with the approbation of the said Master. And such person so to be appointed is to make use of the names of the plaintiffs and defendants, or either of them, for that purpose; who are to be indemnified therein out of the said estate

and effects. And it is ordered that the person so to be appointed receiver, do from time to time annually pass his accounts, &c. (*See No. CIII. ante.*)

CVII. Order for manager and receiver of a colliery.

It is ordered, &c. that it be referred to Mr. J. one, &c. to appoint a proper person to take and have the management of the partnership colliery, stock, and effects, and to have the direction and superintendence of the working the said partnership mines, and the carrying on the partnership trade in question, and to collect and get in the outstanding debts and effects belonging to the said partnership. And each of the partners of and in the said colliery and trade, who shall show to the satisfaction of the said Master that he is a partner of and in the said colliery, regularly admitted as such by the other partners or owners thereof, and legally entitled to a share of the mines belonging thereto, and to receive a share of the profits of the said colliery, is to be at liberty to propose himself, or such other person as he shall think fit, (such other person being a practical miner) to the said Master, to be appointed such manager and receiver. And the said Master is to be at liberty, if he shall see occasion, to proceed *de die in diem*, in the appointing of such manager and receiver. And the said Master is to make such person so to be appointed, an allowance in respect thereof. But such person so to be appointed is first to give security to be allowed of, &c. (*See No. CIII. ante*), duly to manage the said partnership colliery, and to be accountable for what he shall so receive in respect thereof, and to pay the same as this Court hath hereby directed and shall hereafter direct. And it is ordered that the plaintiffs and defendants do deliver over to such person so to be appointed manager and receiver, the stock, goods, effects, books, and accounts, belonging to the said partnership. And the said manager and receiver is to be at liberty to bring actions as there shall be occasion, for the recovery of such of the debts as are now due, or shall hereafter become due, in the names of the parties or either of them; and the person or persons in whose name such action shall be

brought, is or are to be indemnified against the costs and charges thereof out of the stock, goods, and effects of the said partnership, and out of the money to be received in respect of the said debts, by the said manager and receiver. And it is ordered that he do pay the debts due, and to become due, from the said partnership. And it is ordered that the said manager and receiver do pass his accounts before the said Master half-yearly; and after retaining in his hands such sum of money as the Master shall deem sufficient for carrying on the said colliery, do pay the balances as the same shall become due from him into court, subject to the further order of this Court.

CVIII. Order for receiver of property abroad.

[*Inter alia.*] It is ordered, that the said Master do appoint a proper person or persons to be a receiver or receivers of the rents and profits of the said testator's real estates in ———, and also to collect and get in the outstanding personal estate of the said testator in ———, and make him or them a reasonable allowance in respect thereof; such person or persons, so to be appointed receiver or receivers, in ———, is or are first to give security to be approved of by the said Master, to be answerable for and to remit what he or they shall so receive to a proper person in ———, to be also approved of by the said Master to receive the same. And the said Master is to make such person, to whom the same shall be so remitted, a reasonable allowance in respect thereof; but such person is first to give security, to be approved of by the said Master, duly to account for and pay what he shall so receive, as this Court shall direct. And the tenants of the said estates are to attorn, and pay their rents in arrear and growing rents to such receiver or receivers; who is or are to be at liberty to let and set the said estates, with the approbation of the Master, as there shall be occasion. And it is ordered, that such person so to be appointed in ———, to whom the moneys aforesaid are to be so remitted, do pass his accounts annually before the said Master, and pay the balances which shall be reported due from him into Court, &c. (*See usual directions, No. XIII. ante.*) And it is ordered, that the said Master do consider and state to the

Court, whether any and what steps ought to be taken by such receiver or receivers so to be appointed, to enforce the payment of any and which of the outstanding debts due to the said late testator in ———, and out of what fund the necessary expense attending the same, and also the allowances to the said receiver or receivers, should be paid.

CIX. Direction in decree for continuing receiver.

And it is further ordered, that the receivers appointed in this cause be continued, and pass their accounts before the said Master; and that the several orders directing the payment of the balances in the receivers' hands into court, from time to time, upon passing their accounts, be also continued. [□] _□

CX. Order for passing accounts of deceased receiver, and appointment of new receiver.

This Court doth order that the said A. B., the administratrix of J. G., deceased, the receiver appointed in this cause, do pass the accounts of the said J. G. as such receiver, before Mr. F. the Master to whom this cause stands transferred. And it is ordered, that the said R. B. and A. B. his wife, do pay what the said Master shall certify to be due from the said J. G. on the balance of such account into Court, &c. (*See usual directions, No. XIII. ante.*) And upon such payment being made, it is ordered that the recognizance entered into by the said J. G. and J. F. and T. F. his sureties, be vacated. And it is ordered that it be referred to the said Master to appoint a proper person to be receiver of the rents, &c. and profits of the said ———, in the pleadings of this cause mentioned, in the room and stead of the said J. G. &c.

DECREE, ETC. ON BILL OF INTERPLEADER.

CXI. Order for injunction on bill of interpleader, in England.

[The plaintiffs had sold to the defendants, the Withers's, a quantity of resin, but retained the possession of it at their request. The Withers's afterwards sold to Bromer, who before the delivery of it became bankrupt, upon which actions were commenced against the plaintiffs by the Withers's, and Campbell, Hodgson, and Mitchell, the assignees of Bromer. Blann was assignee under a deed of trust for the creditors of the Withers's.]

Whereupon and upon hearing Mr. A. of counsel for the defendant Charles Campbell, and the said affidavit, and an affidavit of notice of this motion to the other defendants read, and the plaintiff undertaking not to part with the twenty-nine and a half tons of resin mentioned in the plaintiff's bill, until the further order of the Court, and also undertaking to give a notice of motion that the said twenty-nine and a half tons of resin may be sold, and the proceeds thereof paid into court, His Lordship doth order, that an injunction be awarded to restrain the defendants Thomas Withers, and Henry Brown Withers, Charles Campbell, and John Hodgson, and John Mitchell, from prosecuting the actions at law commenced by them against the said plaintiffs, for or in respect of the twenty-nine and a half tons of resin in the plaintiffs' bill mentioned, and also to restrain the said defendants, together with the defendant Edward Blann, from commencing or prosecuting any further or other action or suit against the said plaintiffs, for or in respect of the said twenty-nine and a half tons of resin, until the said defendants shall fully answer the plaintiffs' bill, or until the further order of this Court.

CXII. Decree on bill of interpleader, in England.

[For statement of case, see *No. CXI. ante.*]

This Court doth order that the parties do interplead; and for that purpose it is ordered that the defendants Thomas

Withers and Henry Brown Withers, do proceed in the action of trover brought by them against the plaintiffs, with liberty for the defendants, Charles Campbell, John Hodgson, and John Mitchell, the assignees of David Bromer, to defend such action. And it is ordered that it be referred to Mr. C. one, &c. to tax the plaintiffs their costs of this suit, and also the costs of the said action of trover, as well as of the like action brought by the defendants Charles Campbell, John Hodgson, and John Mitchell, against the plaintiffs, as far as the same actions have proceeded. And it is ordered that so much of the £ ——— Bank 3 per cent. annuities standing in the name of the Accountant-General of this court, in trust in this cause, as, with the £ ——— cash in the bank in this cause, will raise what shall be taxed for such costs, be sold, &c. (*See usual directions, No. VIII. ante.*) And thereout it is ordered that what shall be taxed for the plaintiffs' costs, be paid to Mr. W. G. B. their solicitor. And for the purposes aforesaid, the said Accountant-General is to draw, &c. And this Court doth reserve the consideration of the rest of the costs of this suit, and of all further directions until after the trial of the said action. And any of the parties are to be at liberty to apply, &c. (*See usual directions, No. XIX. ante.*)

DECREES FOR ISSUE; CASE, ETC. IN ENGLAND.

CXIII. Decree for issue on modus.

It is ordered that the parties do proceed to a trial at law the next summer assizes twelve months, to be holden for the county of Leicester, upon the following issue: Whether from the time whereof the memory of man is not to the contrary, there has been paid and payable, by the farmers or occupiers of the yard-lands within the said parish, to the rector of the said parish for the time being, yearly, a modus of 5s. per annum for every yard-land, in lieu and satisfaction of all small tithes arising and renewing upon such yard-lands respectively. And the plaintiff here is to be plaintiff at law; and the said defendants are forthwith to name an attorney to accept a declaration, appear and plead to issue. And it is hereby referred to the

said Master to settle the said issue, in case the parties differ about the same. And it is ordered and decreed, that all books, papers, and writings, in the custody or power of any of the parties relating to the matters in question be produced before the said Master upon oath, on or before the last day of Michaelmas term next; and any of the parties are to be at liberty to inspect the same, and to take copies thereof, or of such parts thereof as they shall think fit, at their own expense; and such of the said books, papers, and writings, are to be produced at such trial, as either party shall give notice of for that purpose. And His Lordship doth reserve the consideration of costs, and of all further directions until after the said trial shall be had. And any of the parties are to be at liberty to apply, &c. (*See usual directions, No. XIX. ante.*)

CXIV. Direction for trial at bar in England.

His Lordship doth order that the parties do proceed to a trial at law at the bar of the Court of Common Pleas in Middlesex, some time in the next Michaelmas term, or at the sittings after next term, or at such other time as the Lord Chief Justice of that court shall think fit to appoint, upon the following issues, viz., &c.

CXV. Direction for examination of parties.

And it is ordered, that either party be at liberty to examine the plaintiffs Thomas Crow and Samuel Whiting, and the defendant Henry Pitham, or any or either of them, as witnesses, or a witness at such trial.

CXVI. Direction for reading depositions.

It is ordered, that the parties be at liberty to read the depositions taken in this cause of such of the witnesses as upon such trial shall be proved to be dead, or unable to attend to be examined.

CXVII. Direction for indorsement on postea.

And if the jury shall find any special matter, the same is to be indorsed on the postea.

CXVIII. Decree.— Issue *devisavit vel non*.

His Lordship doth order, that the parties do proceed to a trial at law, at the sittings of the Court of King's Bench, in London, in the next term, or at such other time as the Lord Chief Justice of that court shall appoint upon the following issue, namely, *devisavit vel non*. And that the plaintiff Samuel Fenwick be plaintiff at law, &c. (*See No. CXIII. ante.*) And to the end the merits may come in question upon such trial, it is further ordered, that it be admitted on both sides that the said Nathan James was seised in fee of the estate in question. And the plaintiff Samuel Fenwick and the defendant William James are to produce before the said Master, upon oath, all wills and drafts of wills that were at any time made by, or prepared for the said Nathan James, and all other deeds, papers, and writings, &c. (*See No. IX. ante.*) And His Lordship doth reserve the consideration of costs, and of all further directions, until after, &c. (*See Nos. XV., XXI. ante.*) And any of the parties are to be at liberty to apply, &c. (*See usual directions, No. XIX. ante.*)

CXIX. Order for issue as to clause in will.

His Lordship doth order, that the parties do proceed to a trial at law at the next assizes to be holden for the county of Somerset, on the following issues: First, whether Thomas Horner, late of Mills Park, in the county of Somerset, Esq. deceased, did, in and by a certain paper-writing, bearing date the 15th day of January, in the year of our Lord, 1804, purporting to be a codicil to the last will and testament of the said Thomas Horner, devise in manner and form following, that is to say, &c. (stating so much of the codicil as was not disputed :) 2dly. Whether the said Thomas Horner having

in and by his will, bearing date the 29th day of November, 1800, from and after, &c. devised, &c. did by his said codicil devise in manner and form following, that is to say, &c. (stat- ing so much of the codicil as was disputed.) And the defend- ant Thomas Strangways Horner is to be plaintiff at law, &c. (*See No. CXIII. ante.*) And His Lordship doth reserve the consideration of all further directions, and of the costs of this suit, until after the trial shall have been had. And any of the parties are to be at liberty to apply, &c.

CXX. Decree on further directions in the same case.

His Lordship doth declare, that it appears by the finding of the jury, that the part of the codicil of the said testator Thomas Horner, whereby he expressed himself as follows, &c. does not constitute the will of the said testator; and that the part of the codicil of the said testator Thomas Horner, whereby he expressed himself as follows, &c. doth constitute the will of the said testator Thomas Horner; and that one part of the said codicil constituting, and another part thereof not con- stituting, the will of the said testator, this Court cannot order the same to be given up. But it being consonant to equity, that the parties should stand in such a situation as if the said codicil could be delivered up, this Court doth declare, that so much of the said codicil as does not constitute the will of the said testator, is void; and that the devise to the heirs of the body of the said testator Thomas Horner, contained in his said codicil, ought not to take effect; and doth decree the same accordingly; and doth also decree that the said defendant Thomas Strangways Horner be restrained from setting up any title at law to the several estates so devised to the heirs of the body of the said testator Thomas Horner, contained in the said codicil, and in question in these causes.

CXXI. Order for new trial of issue.

Whereas by an order made in this cause bearing date the 7th day of December, 1813, it was ordered that the parties should proceed to a trial at law, &c. (*See No. CXIV. ante.*)

In pursuance of which order the parties proceeded to trial of the second issue mentioned in the said order, when the jury found a verdict for the plaintiff. And whereas Mr. D. &c. of counsel for the defendant Charles Dickenson, this day moved and offered divers reasons unto the Right Honorable, &c. that a new trial might be had of the said issue, in the presence of Sir A. P. &c., of counsel for the plaintiff, Mr. W. of counsel for the defendants Thomas Watmore and James Watmore, who consented thereto. Whereupon, and upon hearing an affidavit of R. C. &c. read, His Honor doth order that upon the defendant Charles Dickenson paying unto the plaintiff his costs of the former trial, to be taxed by Mr. A. one, &c. in case the parties differ, the parties do forthwith proceed to a new trial of the second issue directed in this cause, by the order bearing date the 7th day of December, 1813, in the manner directed by the said order.

CXXII. Decree on further directions, after trial of issue.

[The bill was for the discovery of a lease granted by a former owner of the manor, under whom the plaintiff claimed, to those under whom the defendant claimed, for lives, charging that the lives had expired. Upon the original hearing an issue was directed, which was found for the plaintiff.]

His Lordship doth think fit, and so order and decree, that the said defendant do deliver possession of the lands mentioned in the said issue found for the plaintiff to the plaintiff, and that the plaintiff be quieted in the possession thereof, against the said defendant, and all persons claiming under him. And that the said defendant do come to an account before the said Master, for the rents and profits of the said premises accrued since the 5th of November, 1728, the day on which the said last life, in the said lease, died, which have been received by the said defendant, or by any other person, &c. For the better clearing of which account, &c. (*See usual directions, No. III. ante.*) And it is ordered and decreed that the said defendant do pay unto the plaintiff what shall be found due to him, on the balance of the said account; and that the said defendant do pay unto the plaintiff his costs, both at law and in this court, to be taxed by the said Master.

CXXIII. Decree on further directions after issue on bill by lord of a manor, establishing his right to a fine.

His Lordship saw no cause to give the plaintiffs in the cross cause any relief; and doth therefore order that the matter of the said cross bill do stand dismissed out of this court, with costs, to be taxed by the said Master. And in the original cause His Lordship declared that a general fine was and is due and payable from the said defendants, the tenants, and all other the tenants of customary tenements, called tenant-right estates respectively, within the said honors, boroughs, and manor of Cockermonth, &c. unto the plaintiff the Duke of Somerset, as the next admitting lord, after the death of the late Duchess of Somerset, his wife, according to the verdict found upon the said trial so directed. And doth therefore order and decree, that such the said Duke of Somerset's right to the said general fines be established. And it now appearing by the answer of the defendants, the tenants, to the said original bill, and also by the said cross bill of the said tenants, that several other of the plaintiff, the Duke of Somerset's tenants of tenant-rights estates within the said honors, boroughs, and manors, were concerned in the defence of the said original bill, and exhibiting the cross bill, and agreed to join in the expense thereof, His Lordship doth therefore order, that it be referred to the said Master to examine into the matter; and for that purpose that the articles mentioned in the said answer be produced before him by the defendants, the tenants, their agents and solicitors, and that they be examined on interrogatories concerning the same; and that whoever subscribed the said articles to carry on the suits shall, as between the plaintiff in the original cause, and the defendants the tenants, be considered in the original cause as defendants, and in the cross cause as plaintiffs, and be subject to pay the costs in like manner as the other defendants to the original bill; and that the defendants, the tenants, do pay the costs in the original cause, both at law and in this court, to be taxed by the said Master. And as to the said fines, the plaintiff in the original bill having thereby waived the benefit of the forfeiture, His Lordship doth order and decree, that the defendants and the other tenants of

such tenant-right estates within the said honors, manors, and boroughs, do pay their fines for their several tenements, according to their fines assessed by the plaintiffs' stewards or commissioners in open court. And if any particular tenant shall think the fine imposed on his tenement to be excessive, and do certify the same under his hand to the registrar of this court, before the 1st day of March next, and desires to try the same, that then the plaintiff, the Duke of Somerset, shall be discharged from his consent to waive the forfeiture as to such tenement, and be at liberty to bring his ejectment for the forfeiture, or other action for the said fines, as he shall be advised; to which action such particular tenant shall forthwith appear, and take a declaration, and try it the next assizes in Cumberland, or at bar, either by a common or special jury, as the Court upon motion shall direct. And on that trial the Duke of Somerset's right to a ground fine shall be admitted; and the question at such trial is only to be, whether such fine be reasonable or unreasonable. And as to the defendant, the Earl of Hertford, the said original is to stand dismissed without costs. And the said Master is to tax the said Earl of Hertford his costs in the cross cause to be paid by the plaintiffs therein.

CXXIV. Decree. — Case.

[The devise by the codicil was to trustees and their heirs, in trust for the defendant Millington Buckley, at twenty-one years, for life, and in the mean time the rents and profits were directed to be applied in payment of debts and legacies. By the will, the same estate had been devised to charitable uses.]

His Lordship doth order that a case be made upon the said testator's will and codicils, and the act of Parliament to prevent the disposition of lands, whereby the same become unalienable, for the opinion of the judges of the Court of King's Bench; and that the same be settled by the said Master, in case the parties differ about the same. And upon the case so stated, it is further ordered, that the question be, whether the said testator's real estate in Stretton and Shrewsbury be well

devised by the said codicil, dated the 17th day of March, 1736, to the defendant Millington Buckley for life, with remainders over to his first and every sons in tail male, the said Millington Buckley having attained his age of 21 years. And the judges of the Court of King's Bench are to be attended with the said case. And His Lordship doth reserve the consideration of all further directions until after the judges shall have made their certificate; and thereupon such further order shall be made as shall be just.

CXXV. Order to amend case.

His Lordship doth order that the case whereupon the judges of the Court of King's Bench have certified their opinion, be amended, by introducing therein a statement of the facts that, &c. and by inserting therein the following extract from the will of Richard Lowe, the testator in the said case named, that is to say, &c. And it is ordered that the said case, when so amended, be referred back to the said judges for their opinion, whether the facts so introduced are admissible in evidence in the said case, and if so, whether on the case so amended as aforesaid they are of the same opinion as before certified by them, or how otherwise. And His Lordship doth reserve the consideration of all further directions until after the judges shall have made their certificate. And any of the parties are to be at liberty to apply to this Court as they shall be advised.

CXXVI. Decree directing action.

His Lordship doth order, that the parties do proceed to a trial at law, at the next summer assizes to be holden for the county of Somerset, upon the ejectment already brought, or on any new ejectment to be brought by the defendants, or either of them, for the premises in question. And it is further ordered, that all copies of court rolls, deed, and writings, which are in the custody or power of any of the parties, relating to the premises in question be produced, &c. And it is further ordered, that the injunction granted in this cause be continued,

so far as to restrain the defendants from taking possession in the mean time. And His Lordship doth reserve the consideration of costs, and of all further directions, until after such trial shall be had, when any of the parties are to be at liberty to apply, &c. (*See usual directions, No. XIX. ante.*)

CXXVII. Decree retaining bill, with liberty to bring action.

His Honor doth order, that the plaintiff's bill be retained for twelve months, with liberty for the plaintiff, in the mean time to proceed at law touching the matter in question in this cause, as he shall be advised. But in case the plaintiff shall not proceed at law, and proceed to trial within the time aforesaid, the plaintiff's bill is from thenceforth to stand dismissed out of this court with costs, to be taxed by Mr. P., one, &c. But in case the plaintiff shall proceed at law, and to trial as aforesaid, within the time aforesaid, His Honor doth reserve the consideration of the costs of this suit, and of all further directions, until after such trial shall be had. And in either case, any of the parties are to be at liberty to apply to the Court, as they shall be advised.

DECREE FOR CAUSE TO STAND OVER, ETC.

CXXVIII. Order for cause to stand over, with liberty to add parties.

This cause coming this present day to be heard and debated in the presence of counsel learned on both sides; and the pleadings in the cause being opened, and it appearing that the plaintiffs had not all proper parties before this Court. Whereupon, and upon debate of the matter, and hearing the answer, &c. and what was alleged, &c. the Court doth order that this cause do stand adjourned over. And the plaintiffs are to be at liberty to amend their bill by adding proper parties, and bring on their cause again to a hearing, as they shall be advised; but the plaintiffs are to pay unto the defendants the costs of the day.

CXXIX. Decree for cause to stand over, with liberty to supply proofs.

It is ordered that this cause do stand over; and that the plaintiff do pay unto the defendants the costs of this day's attendance. And that the plaintiff be at liberty to exhibit an interrogatory, or to take out a commission to examine witnesses for proof of the settlement of the 25th and 26th days of February, 1738, in the pleadings of the cause mentioned; and that the defendants do join and strike commissioners' names, in a week after notice thereof to their solicitor, or in default thereof, that the plaintiff be at liberty to take out such commission, directed to her own commissioners. And in case the defendants shall not examine any witness produced by themselves, then such commission is to be at the plaintiff's expense; but this is not to prevent the defendants from cross-examining any witness. And it is further ordered, that the defendants, the representatives of Thomas Johnson, the mortgagee of the estate in question, do produce the said settlement to the examiner, or at the execution of such commission, to the end it may be examined to, and also at the hearing of this cause.

DECREE BY DEFAULT, ETC.

CXXX. Decree by default.

This cause coming before this Court in the presence of counsel learned for the plaintiff, none appearing for the defendant, although he hath been duly served with a subpoena to hear judgment in this cause, as by affidavit now read appears; the substance of the plaintiff's bill appeared to be that, &c. Whereupon and upon hearing the defendant's answer read and what was alleged, &c. this Court doth think fit, and so order and decree, that, &c. And this decree is to be binding unto the said defendant, unless he on being served with a subpoena, to be served on him for that purpose, shall shew unto this Court good cause to the contrary. But the said defendant before he is to be admitted to shew such cause, is to pay unto the plaintiff his costs of this day's default in appearance, to be taxed, &c.

CXXXI. Order making decree absolute.

Whereas by an order of the 14th day of May last, made on the hearing of this cause, it was ordered and decreed, that, &c. and the said decree was to be binding upon the defendant E. M. unless, &c. Now upon motion this day made unto this Court by Mr. C. being of the plaintiff's counsel, it was alleged that the defendant E. M. hath been duly served with a subpœna to show cause against the said decree, returnable the first day of this term, as by affidavit appears; and no cause being shewn to the contrary thereof, as by the Registrar's certificate appears: it was therefore prayed that the said decree may be made absolute, which is ordered accordingly.

CXXXII. Decree for taking bill *pro confesso*.

This cause coming this present day to be heard and debated in the presence of counsel learned for the plaintiff, and all the defendants except the defendant Walter Hendley. The substance of the plaintiff's bill appeared that, &c. Whereupon, and upon debate of the matter, and hearing of what could be alleged by the counsel for the plaintiff, and all the defendants except the defendant Walter Hendley; and forasmuch as the said plaintiff sued out a subpœna to compel the defendant Walter Hendley to appear to, and answer the plaintiff's bill, and the said defendant not appearing thereto, and absconding to avoid being served with such subpœna, as by affidavit appeared, the said plaintiff obtained an order bearing date the 27th day of May, 1746, that the said defendant should appear to the plaintiff's bill on or before the 27th day of June then next; and the said order having been duly published and read, as by affidavit of H. M. appeared; and the said defendant not having appeared to the plaintiff's bill, the Court doth order and decree that the same be taken *pro confesso*.

DECREES BY CONSENT.

CXXXIII. Decree by consent.

This Court doth by consent order, &c. (*See Decree for Reference to Arbitration, No. CXXXIV. post.*)

CXXXIV. Decree for reference to arbitration.

This Court doth by consent order that all matters in difference between the parties, and the costs of this suit and of the arbitration, be referred to the arbitration, final end, and determination of W. C. of, &c. who is to make his award in writing on or before the 26th day of May next. And by the like consent, it is ordered that all deeds, books, and papers, in the custody or power of either of the parties relating to the matters in question be produced before the said W. C. as he shall direct, to be ascertained by the oaths of the respective parties producing the same. And the parties and their witnesses, being first sworn before one of the Masters of this court, are to be examined upon interrogatories or otherwise as the said arbitrator shall think proper. And by the like consent, no bill or bills is or are to be filed by either of the parties against the said W. C. for any matter or thing he shall do in, about, or touching the matter referred to him. And by the like consent, the said arbitrator is to have power from time to time to enlarge the time for making his award as he shall think fit.

DECREES FOR DISMISSION.

CXXXV. Decree for dismission.

It is ordered, &c. that the plaintiff's bill do stand dismissed out of this court with costs to be taxed, &c.

CXXXVI. Decree for dismissal as to part.

It is ordered, &c. as to so much of the plaintiff's bill as seeks, &c. that the same be dismissed with costs, &c. (*See above.*) And as to the rest of the relief sought by the plaintiff's bill, it is ordered, that, &c.

CXXXVII. Decree for dismissal, with liberty to bring action.

It is ordered, &c. that the plaintiff's bill, as against the defendant Samson, do stand dismissed out of this court with costs, to be taxed by, &c. and as against the defendant Hockin, without costs. And the plaintiff is to be at liberty to bring an action on the said agreement against the defendant Hockin, in the name of himself and the defendant Samson, he indemnifying the defendant Samson therein.

 DECREES ON BILLS OF REVIVOR AND SUPPLEMENT, ETC.

CXXXVIII. Order for revivor.

Upon motion this day made unto this Court by Mr. G. being of the plaintiff's counsel, it was alleged that the plaintiffs, in or about, &c. exhibited their bill into this court against W. B. and others, to be relieved touching the several matters therein contained; and that the said bill was afterwards amended by order of this Court, and several parties added thereto as defendants; and the said Sir W. B. and the other defendants appeared accordingly, and put in their answers thereto. That before any further proceedings were had in the said cause, the said W. B. died, having first duly made his will, thereof appointed his daughter E. R., T. P. and M. R., Esq. executors, who duly proved the same, and the said suit and proceedings abated by the death of the said W. B. That the plaintiffs have lately exhibited their bill of revivor into this court, against the defendants, to which they have appeared; and their time for answering being out, it was therefore prayed

that the said suit and proceedings may stand revived, and be in the same plight and condition they were in at the time of the death of the said W. B., which is ordered accordingly.

CXXXIX. Decree in supplemental suit to have the benefit of former decree.

It is ordered, &c. that the decree made in the original causes, wherein the present plaintiffs were plaintiffs, and Thomas Claughton was defendant, and Thomas Claughton was plaintiff, and the present plaintiffs were defendants, bearing date, &c. be carried on and prosecuted between the parties to this present suit, in like manner as thereby directed between the parties to the said original suits. And the Court doth reserve the consideration of all further directions, and of the costs of this suit, in like manner as costs and further directions were reserved by the said former decree. And any of the parties are to be at liberty to apply, &c. (*See usual directions, No. XIX. ante.*)

ORDERS ON REHEARINGS AND APPEALS.

CXL. Order reversing decree.

It is ordered that that part of the said decree complained of by the said petition of rehearing be reversed, and instead thereof that, &c.

CXLI. Order for committal for breach of injunction.

Upon opening of the matter this day unto this Court by Mr. B. of counsel for the plaintiff, it was alleged, that by an order dated the 14th day of March, 1815, it was ordered, that an injunction should be awarded to restrain the defendant, George Hustwick, from leading or taking away, &c. And it appearing by the affidavit of T. R. the younger, that the de-

defendant was duly served with the said injunction, and by the affidavit of the said T. R. &c. that since the 6th day of April last, the said defendant hath ploughed, broken up, &c. It was therefore prayed, that, &c. Whereupon, and upon hearing Mr. H. of counsel for the defendant, and the affidavit of T. R. the younger, whereby it appears that he did serve the said defendant with a writ of the said injunction, by delivering to and leaving with the said defendant a copy of the said writ, and shewing him the original, and the affidavits of T. R. the younger, &c. this Court doth order, that the said defendant, George Hustwick, do stand committed to, &c.

CHAPTER II.

FORMS OF ORDERS ACCORDING TO THE PRACTICE IN ENGLAND. (a)

I. Order to amend an answer.

Forasmuch, &c. that the defendant since putting in his answer to the plaintiff's bill, hath discovered that in the title to his said answer he hath made a mistake in the Christian name of the plaintiff by calling him —— instead of ——, it is therefore prayed that the defendant be at liberty to take his said answer off the file and amend the same in the title thereof by naming the plaintiff —— instead of ——, which is ordered accordingly, and that after such amendment the defendant do re-swear the said answer.

II. Order that bonds of submission to arbitration be made an order of Court.

Whereas the plaintiff and defendant have severally entered into bonds, &c. [*reciting the bonds*] which said bonds were duly executed as by the affidavit of —— a subscribing witness thereto now produced and read appears, It is on the motion of —— ordered that the said bonds of submission entered into as aforesaid be made an order of this Court, and that the said parties do submit to and be finally concluded by the award which the said arbitrators shall make pursuant to the said commission according to the statute in that case made and provided.

III. Order directing that an agreement be made an order of Court.

Whereas by articles of agreement bearing date, &c. it is recited and agreed as follows ; (that is to say,) [*setting forth*

(a) Taken from the Equity Draftsman.

the instrument verbatim;] Now upon motion, &c. and upon producing one part of the said articles under the respective hands and seals of ———, and praying that the same may be made an order of this Court, It is ordered that the said agreement be made an order of this Court, to be observed and performed by the parties thereto according to the tenor and true meaning thereof, Mr. ——— of counsel for ——— consenting thereto.

IV. Order for payment of the plaintiff's costs, part to the executors of his deceased solicitor, and other part to his present solicitor; the deceased solicitor before his death obtained an order for taxation, but died before the same was completed.

Vice-Chancellor.

Wednesday the ——— day of ———, in the 6th year, &c. 1825.

Between J. S. on behalf of himself and all other the
creditors of B. R. deceased, - - - Plaintiffs,
J. R., M. D., and others, - - - - - Defendants.

Whereas A. C. and C. R. and C. C. did on the 26th day of July, 1825, prefer their petition unto the Right Honorable the Lord High Chancellor of Great Britain, setting forth that by the order made on the hearing of this cause on further directions and bearing date the 1st day of August 1823, it was amongst other things referred to the Master to tax the parties' costs subsequent to the last taxation thereof, and what should be taxed for such subsequent costs of the plaintiffs should be paid by the Accountant-General of this court to Mr. T. O. or his solicitor; That before the completion of the said suit and taxation of costs the said Mr. T. O. died, having duly made his will and thereby appointed the petitioners A. C. and C. R. executors thereof, who have since duly proved the same in the Prerogative Court of Canterbury; and the petitioner C. C. since his death has acted as the solicitor of the said plaintiff, and prosecuted the said suit to a close; That the said taxation of costs has lately been completed, and the costs of the said plaintiff amount to the sum of £ 245, as appears by the said

Master's report, and that such part thereof as had accrued in the said T. O.'s lifetime and belong to his estate is the sum of £ 183, which the first-named two petitioners are entitled to receive and be paid as such executors as aforesaid, and the residue thereof amounting to the sum of £ 62, the petitioner C. C. is entitled to receive and be paid as the said plaintiff's present solicitor in the said cause, but the said Accountant-General cannot pay the same to the petitioners without the order of this Court ; And therefore praying that instead of the direction in the said order dated the 1st day of August, 1823, to pay out of the sums therein mentioned, what should be taxed for the plaintiff's subsequent costs to Mr. T. O. his solicitor, the said Accountant-General might be directed to pay to the petitioners A. C. and C. R. or one of them as such executors as aforesaid, the sum of £ 183, part of the said plaintiff's said subsequent costs, and also to pay to the petitioner C. C. the said plaintiff's present solicitor the sum of £ 62, the residue thereof ; Whereupon all parties concerned were ordered to attend His Lordship on the matter of the said petition, and counsel for the said petitioners this day attending accordingly, upon hearing the said petition, the said order dated the 1st day of August, 1823, the Master's report dated, &c. the probate of the will of the said T. O. dated, &c. read, and what was alleged by the counsel for the petitioners ; THIS COURT DOTH ORDER that instead of the direction in the order made in this cause bearing date the 1st day of August, 1823, to pay out of the sums therein mentioned what the Master should tax for the plaintiff's subsequent costs of this suit thereby directed to be paid to Mr. T. O. the plaintiff's then solicitor, and which costs have since been taxed by the said Master at the sum of £ 245, the sum of £ 183 part of the plaintiff's said subsequent costs be paid to the said petitioners A. C. and C. R. or one of them as such executors as aforesaid, and that the sum of £ 62 the residue thereof be paid to Mr. C. C. the plaintiff's present solicitor ; And for the purposes aforesaid the said Accountant-General is to draw on the bank according to the form prescribed by the act of parliament and the general rules and orders of this Court in that case made and provided.

V. Order for a sheriff's officer to attend with a suitor whom he had arrested on his returning from court.

Whereas Mr. L. as counsel for R. A. B. this day moved the Right Honorable the Lord High Chancellor of Great Britain that the said R. A. B. who on the ——— day of ——— was arrested by J. L. the officer for the sheriff of Middlesex in an action at the suit of S. H. gent. might be discharged out of the custody of the said sheriff, for that the said R. A. B. at the time of such arrest was returning home from this court after his attendance as plaintiff on a motion made in a cause depending therein wherein he was plaintiff, and H. and others were defendants, or that the said J. L. might bring the said Mr. B. into this court. Whereupon and upon hearing an affidavit of the said R. A. B. read, HIS LORDSHIP DOTH ORDER that the sheriff for the county of M. do attend with the said R. A. B. in this court to-morrow on the sitting thereof.

VI. Order for the discharge of a suitor who had been arrested on leaving the court.

Complaint being on this day made to the Right Honorable the Master of the Rolls by Mr. ——— as counsel for the plaintiff in this cause, that on yesterday the ——— the plaintiff E. H. on leaving this court when this cause was partly heard was arrested, and the said plaintiff E. H. being present in court in custody of W. J. A. one of the officers of the sheriff of Middlesex who arrested her, and the said plaintiff being sworn and examined, and deposing that she is one of the plaintiffs in this cause, and that on her return and before she got home she was arrested by the said W. J. A. by virtue of a warrant from the sheriff of Middlesex at the suit of the defendant D. R. for a debt of £ ———, and the warrant being produced in court, IT IS THEREUPON ORDERED that the said plaintiff E. H. be forthwith discharged out of custody.

VII. Order that the plaintiff may make his election to proceed at law or in equity.

Forasmuch as this Court was this present day informed by Mr. ——— being of the defendant's counsel that the plaintiff doth prosecute the said defendant both at law and in this court for one and the same matter, whereby the defendant is doubly vexed; IT IS THEREFORE ORDERED that the plaintiff do within eight days after notice to his attorney at law and clerk in court make his election, in which court he will proceed, and if he shall elect to proceed in this court, then his proceedings at law are hereby stayed by injunction, but in default of such election by the time aforesaid, or if the plaintiff shall elect to proceed at law, then the plaintiff's bill is from thenceforth to stand absolutely dismissed out of this court with costs to be taxed by Mr. ——— one of the Masters of this court.

VIII. Order for the separate examination of *femes covert* as to the application of a sum of money.

Upon motion of, &c. IT IS ORDERED that the said ——— the wife of ——— and ——— the wife of ——— do severally attend ——— or any ——— of them to be solely and secretly examined by them separate and apart from their said husbands, how, and in what manner, and to what uses they are willing and desirous that ——— may be paid and applied; and the said ——— or any ——— of them who shall take such examinations are to take the same in writing signed by the said ——— respectively, and to certify the same in writing under their hands, and the signing of the said ——— and such certificates are to be verified by affidavit; and upon the return of such certificates such order shall be made as shall be just.

IX. Order that a defendant, a foreigner residing abroad, may answer in his own language, and directing that the answer be translated by a notary-public into English.

Upon motion, &c. that the plaintiff having exhibited his bill into this court against the defendant that lives at ——— in the

kingdom of ———, he hath appeared thereto and hath obtained an order for a commission for taking his answer at ———, and such commission hath issued accordingly; that the defendant doth not understand the English language, and therefore it was prayed that the defendant may be at liberty to swear his answer in the. ——— language, and that a notary-public may be appointed to translate the same into the English language, and that he may be sworn to the true translation thereof, and that such translation may be filed with the defendant's other answer, which is ordered accordingly, but notice hereof is first to be given to the plaintiff's clerk in court.

X. Order directing that certain exhibits proved on a commission abroad be delivered to a notary-public to be translated, and that his translation thereof may be read at the hearing of the cause.

Upon motion, &c. that the plaintiff having examined several witnesses in ——— in this cause several of the plaintiff's exhibits and proceedings are written in the ——— language, and therefore it was prayed that such of the said proceedings and exhibits as are written in the ——— language may be delivered to a notary-public in order to translate the said several proceedings and exhibits into the English language, that the said ——— may be sworn to the true translation thereof, and that such translation may be read at the hearing of this cause, which is ordered accordingly, saving all just exceptions.

XI. Order appointing an interpreter upon the examination of a foreigner as a witness.

Upon consideration this day had by the Right Honorable the Master of the Rolls of the humble petition of the plaintiff, stating (amongst other things) that this cause is at issue, and that J. L. P. of, &c. is a material witness for the plaintiff, and that the said J. L. P. speaks the French language but does not understand the English language, so that the plaintiff cannot have the benefit of his testimony without the assistance of an interpreter; and therefore it was prayed and His Honor doth

accordingly order that B. B. of, &c. be appointed interpreter to the said J. L. P. on his being examined as a witness in this cause on behalf of the petitioner; And that the said B. B. be sworn truly to interpret the oath to be administered to the said J. L. P. and also the interrogatories on which he shall be examined and his depositions to such interrogatories, and likewise to keep such depositions secret until publication shall duly pass in this cause, of which notice is first to be given to the defendant's clerk in court.

XII. Order for an injunction enjoining the defendant to deliver possession to the plaintiff.

Upon motion, &c. it was alleged that by the order made on the hearing of this cause, it was ordered that the defendant should deliver possession of the estate in question and all deeds and writings in his custody or power relating thereto to the plaintiff; That the defendant who is in possession of the said estate was served with a writ of execution of the said order, and the plaintiff required him to deliver possession, which he refused to do as by the affidavit appears; and an attachment having been made out against the said defendant, It was therefore prayed that an injunction may be awarded against the said defendant to enjoin him to deliver possession of the said estate to the said plaintiff pursuant to the said decree, which upon reading the affidavit is ordered accordingly.

XIII. To dissolve an injunction nisi.

Whereas the plaintiff obtained an injunction for stay of the defendant's proceedings at law until the defendant should answer the plaintiff's bill, and this Court make other order to the contrary; Now upon motion this day made by Mr. ——— being of the defendant's counsel, it was alleged that the defendant hath since put in a full and perfect answer to the plaintiff's bill and thereby denied the whole equity thereof, And it was therefore prayed that the said injunction may be dissolved, which is ordered accordingly unless the plaintiff his

clerk in court having notice hereof shall on ——— shew unto this Court good cause to the contrary.

XIV. Order made upon shewing cause against dissolving an injunction, exceptions having been taken to the defendant's answer, — reference directed to the Master to certify whether the answer is sufficient or not, provided his report be obtained within a limited time.

Whereas by an order of the ——— day of ——— for the reasons therein contained, it is ordered that the injunction granted in this cause for stay of the defendant's proceedings at law should be dissolved, unless the plaintiff his clerk in court having notice thereof should on this day shew unto this Court good cause to the contrary; Now upon motion, &c. it was alleged that the defendant having put in an insufficient answer to the plaintiff's bill, the plaintiff hath taken exceptions thereto, since which the defendant hath not put in any further answer although the defendant's is very insufficient as the plaintiff is advised; And therefore it was prayed that the said injunction may be continued until the said defendant hath put in a perfect answer to the plaintiff's bill; Whereupon and upon hearing of what was alleged by the counsel on both sides, IT IS ORDERED that it be referred to Mr. ———, one, &c. to look into the plaintiff's bill the defendant's said answer and the plaintiff's said exceptions, and certify whether the said answer be sufficient or not; But the plaintiff is to procure the Master's report in ——— days, or in default thereof the said injunction is to stand dissolved without further motion, which in the mean time is hereby continued.

XV. Order made on the petition of a purchaser directing a reference to the Master to inquire at what time the vendors (who were trustees for sale) had shewn a good title, and when the incumbrancers and all parties interested were ready to join; what expenses had been incurred by the purchaser in getting in the incumbrances, and in the execution of certain instruments, which ought not to have been borne by him, and also what dilapidations have taken place.

Friday the 5th day of August, &c. 1825.

Between T. Tunstall, Esq. and M. I. his wife,
&c. - - - - - Plaintiffs,

and
 F. M. Trappes and E. his wife, &c. Defendants.
 And between the said T. T. Esq. and M. I. his
 wife, &c. - - - - Plaintiffs,
 and
 M. A. Tasburgh, &c. - - Defendants.
 And between B. Rawson, Esq. - Plaintiff,
 and
 the said M. A. Tasburgh, &c. Defendants.

Whereas the above-named B. Rawson did on the 22d day of June last prefer his petition unto the Right Honorable the Lord High Chancellor of Great Britain, setting forth that on the ——— day of ——— 1821 the petitioner entered into a contract or agreement in writing with the above-named defendants in the third mentioned cause whereby, &c.

That the said conveyances and assurances were not executed by all parties thereto by the said 15th day of November last, several of them having made various objections and others requiring certain conditions and compensations to be previously given or secured to them; And by another order of His Lordship made in the said cause, and also in the other two causes therein before mentioned, upon the application to the defendants to the said thirdly mentioned suit, and bearing date the 13th day of November last, It was ordered by and with the consent and approbation of all parties beneficially interested in the said purchase (being the several parties to the first mentioned cause, or who had already executed the said conveyance) that the said time for completing the same should be further enlarged to the 10th day of January then next, and that upon the execution of the said conveyances, releases, mortgages, and other assurances approved of by the Master by the parties thereto respectively except C. T. party thereto for whose signature within two years the petitioner thereby agreed to accept the undertaking of J. J. P. and G. P. and the fine levied by F. M. T. and E. his wife, and satisfaction of or a sufficient substantial indemnity against the judgments remaining unsatisfied on the rolls, and when the said conveyances, releases, mortgages, and other assurances were so executed, the

said fine levied, satisfaction so entered or indemnity given, and possession of the said estates delivered to the petitioner except the portion thereof in the possession of the defendant J. S. and the said conveyances and releases and the title deeds, evidences, and writings, deposited in the office of Mr. C. the Master to whom these causes stood referred ready for delivery thereof to the petitioner, after payment of the purchase-money, It was ordered that the full amount of the purchase-money, except £ 1030 and £ 3000, being the sum of £ 48,685, should be paid by the plaintiff into the bank, in the name and with the privity of the Accountant-General of this court to the credit of the three causes subject to the several charges, liens, and incumbrances affecting the said estates and to the further order of the Court, but without prejudice to the claims of the plaintiff for costs and dilapidations; and it was ordered that £ 2520 9s. 6d. part of the said £ 48,685 when paid in should be carried over to a separate account in these causes, to be entitled, "The account of the S. estate," upon which W. R. the mortgagee of that estate was to have the first claim for principal, interest and costs, in respect of such mortgage-money and costs; And it was ordered that the mortgage for £ 1030 should be paid off within one month after the execution thereof, and that upon the execution of proper and sufficient releases such sum of £ 1030 should be also paid by the petitioner into the bank to the credit of these causes; And it was ordered that the interest of the £ 3000 remaining on mortgage should be also from time to time during the life of the said F. M. T. paid into the bank to the credit of these causes, and upon payment of the sum of £ 48,685, as aforesaid by the petitioner, It was ordered that the said title-deeds, evidences, and writings should be delivered up by the said Master to the plaintiff, and that the possession of the portion of the said estates in possession of the said J. S. should be then delivered by him to the petitioner, and that the purchase-money should not be paid out without notice to all parties in the said order named, and that the petitioner should be let into the receipt of the rents and profits as from the 11th day of October instant, paying interest from the 1st day of November then instant to the day of paying the money into court; That the said conveyances, releases, and other assurances were not completed

and executed, or the other matters and things in the said recited order mentioned done and performed by the said 10th day of January, and the time for doing or procuring the same was enlarged to the 10th day of February last, and from thence the same was further enlarged to the 15th day of March last, when another order was made in the said three causes and bearing date the same 15th day of March last, whereby the said time was by and with the like consent as aforesaid still further enlarged to the 20th day of April last; And it was ordered that the provisions in the said order of the 13th day of November last, so far only as regards the payment by the petitioner into the bank in the name of the Accountant-General of the full amount of the petitioner's purchase-money, except the sum of £ 1030 and £ 3000, and his being let into the receipt of the rents and profits of the said estates from the 11th day of October last, paying interest from the first day of November to the day of paying the money into court should be varied, and instead thereof, It was ordered that the petitioner should on or before the said 20th day of April then next, and when the said conveyances, releases, mortgages, and other assurances were executed, such execution to be certified by the Master, and when the other matters and things directed in the said order to be done before the payment of the purchase-money into court, were done and performed as directed by the said order (the same to be verified by affidavit,) pay into the bank with the privity of the said Accountant-General his said purchase-money with interest to be there placed to the credit of the said three causes as aforesaid, but subject and without prejudice as in the said order mentioned, and that the petitioner should be let into the receipt of the rents and profits of the said estate from the 5th day of April then next; That the said conveyances, releases, and assurances and other matters and things in the said order mentioned were not completed and done and performed by the said 20th day of April last, but by another order of this Court bearing date the 2d day of May, 1825, the said time was finally enlarged to the 9th day of May last, and the said order of the 15th day of March, 1825, was also thereby varied and directed to be as follows, viz: That the time for executing and settling all proper and necessary conveyances, releases, mortgages, and assurances of the estate and premises to the petitioner the pur-

chaser, which stood enlarged by the said order of the 13th day of November, 1824, to the 10th day of January, 1825, and which had been further enlarged to the said 15th day of March last, should be further enlarged to the 9th day of May then instant, and that the provisions of the order dated the 13th day of November, 1824, so far only as regards the payment by the petitioner into the bank in the name of the Accountant-General of this court of the full amount of his purchase-money, except the sums of £ 3000 and £ 1030, in the said order mentioned, and being let into the receipt of the rents and profits of the said estates from the 11th day of November then last, paying interest from the 1st day of November to the day of paying the money into court should be varied, and instead thereof that the petitioner should on or before the 9th day of May instant, and when the said conveyances, releases, and other assurances (the said mortgages excepted) were executed, and when the said matters and things directed by the said order dated the 13th day of November, 1824, to be done before the payment of the purchase-money into court were done and performed as directed by the said order of the 13th day of November last, pay into the bank with the privity of the said Accountant-General to be there placed to the credit of these causes, his purchase-money, except the said sums of £ 3000 and £ 1030 as aforesaid, being the sum of £ 48,685 with interest, but subject and without prejudice as in the said order mentioned, he the petitioner as to his own execution, and the defendants M. A. T., S. T. S., and C. V. the trustees as to the execution by themselves and all other parties (except the plaintiffs in the first and second causes, and except the defendants R. W., I. S., and R. O.) undertaking to procure the execution of the mortgages on or before the 26th day of May then next, and of the release of the mortgage for £ 1030 on or before the 26th day of June then next, the execution of such mortgages and releases as to the excepted parties being undertaken for by them respectively, the said mortgages and releases so far as the same had not already been approved of by or on behalf of the parties to be settled by the said Master in case the parties differ about the same, and that £ 2520 9s. 6d. part of the £ 48,685, when so paid into the bank shall be so carried over to a separate account in these causes, to be entitled, "The account of the S.

estate"; upon which W. R. the mortgagee of that estate was to have the first claim for principal, interest and costs in respect of such mortgage, and that upon the execution of a proper and sufficient release for the said mortgage of £ 1030, the petitioner should pay the said sum of £ 1030, and the interest thereon into the bank with the privity of the Accountant-General to be there placed to the credit of these causes subject to the further order of this Court, and that the petitioner should also pay the interest of the £ 3000 remaining on mortgage from time to time during the life of the said F. M. T. into the bank with the privity of the said Accountant-General to be there placed to the credit of these causes, the amount to be verified by affidavit, subject to the further order of this Court, and that the petitioner should be let into the receipt of the rents and profits of the said estates from the 5th day of April last; That the said defendants to the thirdly mentioned suit having at length completed the said conveyances and done and performed the matters and things in the said several orders required of them, the petitioner on the 7th day of May last, paid his said purchase-money, except as aforesaid, into the bank, as by the same orders directed, part whereof has been carried over to the separate account of the said ——— estate and the whole has since, pursuant to another order of this Court, been laid out in the purchase of bank £ 3 per cent. annuities, in the name of the said Accountant-General, In trust in these causes, subject to the further order of the Court; That it was in and by the said purchase-contract provided that inasmuch as the said manorland and hereditaments at N. aforesaid were subject to certain family portions not exceeding in the whole £ 7300 for persons some of whom from legal disabilities might for a time be incompetent to release the said estate, a full and sufficient sum of money for securing the payment of such portions should be set apart from the said purchase-money and be invested by the said defendants and petitioner, their respective heirs, executors, administrators, or assigns, on government security in the joint names of trustees, two of whom to be named by the said defendants and two by the petitioner, until the payment and release of such portions, and a proper deed or instrument in writing should at the ex-

pense of the said defendants the vendors be prepared and executed by such trustees, declaring the trusts thereof, which deed when so executed as aforesaid should be deposited with the petitioner, his heirs, appointees, or assigns, but it was afterwards agreed by all parties and at the request of the defendants in the third mentioned cause, that to avoid setting aside so large a part of the said purchase-money as would be required to secure such portions upon government security, the petitioner should retain the two sums of £ 1030 and £ 3000 being the only portions which were incapable of being released, and grant mortgages of competent parts of the said estates for securing the payment thereof when the parties entitled thereto should be enabled to release the same, and which mortgages were prepared and approved of by the said Master with the other deeds and instruments, and are the same as are mentioned and referred to in the said recited orders; That immediately after the payment by the plaintiff of his purchase-money and his obtaining his said conveyances, he did according to his undertaking in the last order execute and deliver over such two mortgages, and has also prepared and delivered for execution a release for the said sum of £ 1030 and is ready and desirous of paying off the same with the interest accrued thereon immediately the same is executed; That since the date of the said purchase-agreement and during the period the title to the said estates and premises had been under investigation, and the subsequent length of time consumed in the settlement of the said conveyances and the said inquiry as to the necessary parties thereto and obtaining the concurrence and execution thereof by such parties, the said estates and premises and the buildings thereon have become greatly dilapidated, and the mortgages and other incumbrancers in possession thereof have suffered the tenants thereof to carry off the produce thereof and otherwise cultivate the same in an unhusband-like manner contrary to the custom of the country, whereby the land is greatly deteriorated, and the petitioner has lately caused the same to be surveyed and the damage estimated, and the same is found to amount to a very large sum of money, which the plaintiff is advised and submits he is entitled to have paid back to him out of the said purchase-money as an

abatement, the same having been expressly paid under the several orders without prejudice to the said petitioner's said claim ; That from the circumstances in the said Master's report of the number and amount of the incumbrances and of the various proceedings and negotiations and other matters incident to the situation of the several parties, the conveyances and assurances to the petitioner have been greatly increased in number and length, and the expenses thereof and of the said purchase throughout have been also thereby greatly increased ; and the plaintiff submits that he is entitled to be paid all such increase of expenses thereof out of the said purchase-money so paid by him into court as aforesaid, or that the said defendants in the third-mentioned cause as vendors, are themselves bound to contribute thereto such portions of the said expenses as have been occasioned by reason of such incumbrances, proceedings, and negotiations or incident thereto, or as shall exceed the amount the petitioner would have had to bear had the said defendants the said vendors in the first instance procured conveyances of the several interests of such incumbrances to themselves, and then have conveyed to the petitioner by a common conveyance, and to be allowed the same as trustees in their accounts, and the petitioner has also at present been at the expense of the said two mortgages and the proceeding relative thereto for securing the parts of the said purchase-money for the said parties stated to be under legal disabilities and as provided by the said purchase-agreement, but which it is thereby also provided should be paid by the said defendants in the third-mentioned cause as hereinbefore stated ; and the plaintiff has also entered into a certain deed of covenant for the production of the title deeds of the said estates for the purposes of the inquiries in the first-mentioned cause, the expenses whereof it has been agreed should be borne by the said defendants ; and therefore, Praying that it might be referred back to the said Master to tax the petitioner his costs of the said third-mentioned suit, and also his costs of the second-mentioned suit, and the costs of the said several orders and applications and other proceedings made and had in the said three suits jointly and in the said thirdly mentioned suit separately. Or if necessary, that it might also be referred to the said Master to inquire and certify to this

Court whether the said defendants had shewn a good title to the said estates and premises, or whether they were able to execute or procure to be executed to the petitioner good and sufficient conveyances, releases, and assurances of the same free from all incumbrances save as appears by the said contract or agreement for sale previously to the filing of the petition in the said thirdly mentioned cause, or at what period they made out such good title or were able to execute or cause or procure to be executed such conveyances, releases, and other assurances as aforesaid; And that the said Master might also ascertain and allow to the petitioner the part or proportion of the costs, charges, and expenses of the said several conveyances, releases, and other assurances, and of the various proceedings, negotiations, and other matters and things incurred and paid by him in consequence of or by reason or means of the number of incumbrances on the said estates and of the situation of the said several parties and incident thereto, together also with such costs, charges, and expenses as petitioner has incurred or may incur in or in relation to the said mortgages granted to secure the said portions as provided by the said purchase-contract, and of the releases when paid off, and also of the said deed of covenant entered into by the petitioner as aforesaid and of the production thereunder and incident thereto respectively; And that it might also be referred to the said Master to take an account and valuation of the dilapidations which have taken place on the said estates and premises since the date of the said agreement and of the deterioration and waste committed thereon since the same period and previously to the plaintiff taking possession thereof; And that what the said Master shall tax for the plaintiff's said costs of these suits respectively, and what he shall allow for the part or proportion of the said other costs, charges, and expenses hereinbefore mentioned, and also what he shall certify to be the amount or valuation of the said dilapidations, deteriorations, and waste might be paid back to the petitioner out of his said purchase-money so paid into the bank as aforesaid; and that for this purpose the Accountant-General might be directed to sell so much of the sum of £ 50,870 3 per cent. consolidated annuities now standing in his name in the books

of the Bank of England In trust in these causes as will raise sufficient to pay the same; Whereupon all parties concerned were ordered to attend His Lordship on the matter of the said petition; And counsel for the petitioner and for the plaintiffs in the first and second causes, and for the defendants F. M. T. and E. his wife, F. T. &c. &c. &c. this day attending accordingly, no one attending for the other parties although they have been duly served with a copy of the said petition and order thereon as by affidavit now read appears, upon hearing the said petition, the agreement dated, &c. &c. [*referring also to the several orders*] read, and what was alleged by the counsel for the petitioner and for the said parties, HIS LORDSHIP DOTH ORDER that it be referred back to the Master, Mr. C., to inquire and state to the Court at what time the defendants the vendors in the third-mentioned cause had shewn a good title to the estate and premises, and when the several incumbrancers and other parties joined, and when they were ready to join respectively in the conveyance thereof to the petitioner, the purchaser; And it is ordered that the said Master inquire whether any and what cost, charges, and expenses have been incurred and sustained by the said petitioner, the purchaser, in and about getting in the several incumbrances on the said estates and the mortgages to secure the portions and the deed of covenants mentioned in the petition and incident thereto which ought not to be borne by the petitioner, the purchaser; And it is ordered that the Master do also inquire and state to the Court whether any and what dilapidations have taken place upon the said N. estate between the date of the contract for sale thereof and the petitioner taking possession, and to distinguish at what times such dilapidations have taken place, and the parts of the said estate upon which the same have so taken place; and the said Master is to be at liberty to state special circumstances arising out of any of the said inquiries, and the same are to be without prejudice to the costs thereof respectively; and it is ordered that the rest of the petition do stand over.

XVI. Order for the appointment of a receiver with liberty to let the estate with the approbation of the Master.

Upon opening, &c. IT IS ORDERED that it be referred to Mr. ———, &c. to appoint a proper person to be receiver of the rents and profits of the real estate of ———, and to allow him a reasonable salary for his care and pains therein, such person so to be appointed receiver first giving security to be allowed of by the said Master and to be taken before a Master Extraordinary in the country if there shall be occasion, duly and annually to account for and pay what he shall so receive as this Court shall direct, and the tenants of the said estate are to attorn and pay their rents in arrear and growing rents to such receiver, who is to be at liberty to let and set the said estate from time to time with the approbation of the said Master as there shall be occasion.

N. B. If the estate be in Ireland say “and let the person who shall be appointed receiver of the rents and profits of the said estate in Ireland give security to be approved of by the said Master; but the recognizance is to be acknowledged by the person so to be appointed receiver before a Master of the Court of Chancery in Ireland, and to be duly entered and enrolled according to the course of that Court; and the taking and enrolling thereof is to be duly certified to this Court by one of the Masters of that Court.”

If there be copyhold estates and Courts to be held, add at the end the following words: “and let such Courts as have been usually held and are proper to be held for the copyhold estate, be from time to time held by the receiver in the name or names of the person or persons in whom the legal estate is, and let the receiver bring into this Court his account of all such fines and other profits as shall be taken by him at such Courts.”

If a manor, insert before the preceding clause “and any other person or persons in receipt of any part of the profits of the said manor are also to pay the arrears and growing payments thereof to such receiver,” and conclude thus, “and let such receiver let or set such part or parts of the land and premises and the quit rents and other manorial rights and profits of the

said manor as have been usually let or set by copy of court-roll or otherwise according to the custom of the said manor with the approbation of the Master as there shall be occasion.”

XVII. Order made upon petition for sale of an estate ; with liberty to the petitioners to proceed in a suit in the names of the plaintiffs upon indemnifying them against the costs.

IT WAS ORDERED on the consent of the parties therein mentioned, that the said estate should be sold before the Master, together or in parts as the said Master should think fit, and all proper parties were to join as the said Master should direct ; And in order to the said sale, all deeds and writings in the custody or power of any of the parties relating thereto were to be produced before the said Master upon oath ; And it was ordered that the monecy arising by such sale should be paid by the purchaser or purchasers into the bank in the name and with the privity of the Accountant-General of this court, to be there placed to the credit of the said cause, subject to the further order of this Court ; And it was further ordered that S. T. &c. the petitioners, should be at liberty to proceed in the said suit in the names of the plaintiffs A. S. &c. the petitioners, indemnifying them against all costs which might be occasioned thereby.

XIX. That service of a subpoena on the defendant's attorney be deemed good service on the defendant.

Upon motion, &c. it was alleged that the defendant prosecutes the plaintiff at law and cannot be found to be served with a subpoena, as by affidavit appears, and it was therefore prayed that service of a subpoena to appear to answer the plaintiff's bill upon the defendant's attorney-at-law be deemed good service on the defendant to compel him to appear to and answer the plaintiff's bill, which upon hearing the said affidavit read is ordered accordingly.

XX. Order made on an infant's having attained twenty-one, directing an immediate transfer to her of a sum of stock, and payment of the accruing dividends thereon, also payment of a sum of cash in the bank to her solicitor, and further directing upon the execution by her of the conveyances of certain estates to the purchasers thereof, under a decree for sale made during her minority (which decree is set forth in the recital of the petition), a transfer to be made to her of a sum of stock purchased with the moneys produced by sale of the estates, and payment of the accruing dividends thereon. (The petitioner having married previously to the transfer of the latter sum, and covenanted that the same should be transferred to the trustees of the settlement executed previously to her marriage, it became necessary to obtain another order, which is inserted *post*, p. 489.)

Vice-Chancellor.

Wednesday the 8th day of August, &c. 1827.

Between J. M. and I. his wife, E. L. and M. his
 wife, - - - - Plaintiffs,
 and
 J. S., J. W. and L. his wife, &c. Defendants.

Whereas the above-named defendant L. L. S. did on the 1st day of August instant prefer her petition unto the Right Honorable the Lord High Chancellor of Great Britain, setting forth that W. S. late of, &c. deceased, by his last will and testament bearing date the 8th day of June, 1809, duly executed and attested for the validity of devises of real estates, gave and devised unto his mother C. S. the messuage, &c. for and during the term of her natural life, and from and immediately after her decease, in case she survived the said testator, which event happened, he gave and devised the same premises unto his son J. S. his heirs and assigns forever, subject nevertheless to and charged with the payment of the sum of £ 500 which he directed should be considered as part of his personal estate ; And the said testator also gave and devised unto his wife M. S. the messuage, &c. for and during the term of her natural life, and from and after the decease of his said wife, in case she survived the said testator (which she did) he gave and devised the said last-mentioned premises unto his said son J. S. his heirs and assigns forever, subject nevertheless to and charged and chargeable with the payment of the sum of £ 1000 which

he directed should be also considered as part of his personal estate, and all the residue of the said testator's personal estate as well as the said several sums before mentioned to be considered as his personal estate, he gave and bequeathed unto his five daughters equally to be divided between them as particularly mentioned in the said will ; That the said testator departed this life on or about the —— day of ——, leaving his said mother C. S. who departed this life on or about the —— day of December ——, and the said M. S. who died on or about the —— day of January —— ; That the said J. S. the son of the said testator and to whom he gave and devised the said estates charged as aforesaid after the death of the said C. S. and M. S. also departed this life on the —— day of —— intestate, leaving the defendant L. W. then L. S. his widow and the petitioner his only daughter and heiress at law him surviving ; That the said L. S. afterwards intermarried with the defendant J. W. and they as the bailiffs or guardians of the petitioner entered into the possession of the said estates so devised and charged as aforesaid, and into the receipt of the rents and profits thereof ; That by an order made in this cause bearing date the 23d day of December, 1817, it was referred to Mr. C. then one of the Masters of this court, to take an account of what was due for interest on the said sums of £ 1000 and £ 500 so charged on the said estates as aforesaid, and also to take an account of the rents and profits of the several premises so charged with the payment thereof, which had come to the hands of or been received by the said defendants J. W. and L. his wife, or by any person or persons by their or either of their order or for their or either of their use ; And it was further ordered that the said several premises so respectively charged with the payment of the said sums of £ 1000 and £ 500 or so much or such part thereof respectively as the said Master should deem necessary, should be sold with his approbation to the best purchaser or purchasers that could be got for the same to be allowed of by the said Master, wherein all proper parties were to join and concur as the said Master should direct, and in order thereto, All deeds and writings were to be produced, and the petitioner was also to join in such sale when she should attain the age of twenty-one years, unless on being served with a subpoena to

shew cause against the said order, the petitioner should within six months after attaining that age shew good cause to the contrary; And in the mean time it was ordered that the purchaser should hold and enjoy the same against the said defendant the petitioner and her heirs; And it was ordered that the moneys to arise by such sale should be paid into the bank with the privity of the Accountant-General of this court to be there placed to the credit of this cause, "The amount of moneys produced by sale of real estates," subject to the further order of the Court; That the said Master by three several reports of sale bearing date respectively the 13th day of October, 1818, which were all duly confirmed, certified that he had been attended by the solicitors for all parties, and that it appearing to him to be necessary that the whole of the premises so charged as aforesaid should be sold, he had therefore provided to sell the same in three lots in manner therein mentioned, and by one of such reports he certified that W. F. of, &c. (one of the defendants) was the best bidder for and the purchaser of the premises comprised in lot 1 at the price or sum of £ 1000, and that in the conditions it was stipulated that the purchaser should pay for the fixtures in and about the same according to the valuation therein mentioned, which in the particular of sale was stated to have been made at the sum of £ 15, which said sum of £ 15 being added to the sum of £ 1000 they made together the sum of £ 1015, being the whole purchase-money for lot 1; And by another of such reports he certified that J. G. and J. S. of, &c. were the best bidders for and the purchasers of the premises comprised in lot 2 at the price or sum of £ 1320; And by the other of such reports he certified that J. M. of, &c. (one of the plaintiffs) was the best bidder for and the purchaser of the premises comprised in lot 3 at or for the price or sum of £ 1000, and that in the said conditions it was stipulated that the purchaser of the said lot 3 should pay for all fixtures belonging to the vendors according to the valuation therein also mentioned, which in the particular of sale was stated to have been made at the sum of £ 5, which being added to the sum of £ 1000 made £ 1005, the whole amount of the purchase-money for the said lot 3; That the said Master by his general report under the said order also certified that he had computed interest at

£ 4 per cent. per annum on the said two several sums of £ 1000 and £ 500 from the times of the respective deaths of the said C. S. and M. S. to the 27th day of January, 1821, the date of that his report; and he found that there was due for interest on the said sum of £ 1000 the sum of £ 237, and on the said sum of £ 500 the sum of £ 82, making in all the sum of £ 319; and he found that there had been received by the said defendants, J. W. and L. his wife, on account of the rents and profits of the said several premises the several sums set forth in the schedule to this report amounting to £ 535, but that they had paid, expended, or disbursed thereout on account of the same premises the several sums also set forth in the schedule to his report amounting to £ 97, which being deducted from the said £ 535 there remained a balance of £ 438 which he found due from the said defendants J. W. and L. his wife on account of such rents and profits; and he further found that the purchase-moneys for all the said lots and amounting altogether to £ 3391 had been paid into the bank with the privity of the Accountant-General to the credit of this cause, "The amount of moneys produced by sale of real estates," pursuant to the directions of the said order, and that the same had been laid out in the purchase of £ 4871 bank 3 per cent. annuities in the name of the said Accountant-General in trust in this cause as aforesaid, which together with the sum of £ 73 cash account due for half a year's dividend thereon then stood in trust to the credit of the said cause as aforesaid; That by another order made in this cause bearing date the 13th day of February, 1821, It was ordered that the said Master's report dated the said 25th day of January, 1821, should be confirmed, and that the said defendants J. W. and L. his wife should out of the said sum of £ 438 certified to be due from them and remaining in their hands on account of the rents and profits of the said estates and premises charged with the said sums of £ 1000 and £ 500 in the said report mentioned, pay to the plaintiff J. M. in right of I. his wife the sum of £ 63, being one fifth part of the sum of £ 319, certified to be the interest which had accrued on the said sums of £ 1000 and £ 500 from the time of the respective deaths of the said M. S. and C. S. and the like sum of £ 63, being one other fifth part thereof to the plaintiff E. L. in right of the plaintiff M. his

wife, the like sum of £ 63, being one other fifth part thereof to the defendant C. S. the younger, the like sum of £ 63, being one other fifth part thereof to the defendant W. F. in right of the defendant M. his wife, and the like sum of £ 63, being the remaining one fifth part thereof to the defendant T. G. in right of the defendant M. his wife; And it was ordered that the said defendants J. W. and L. his wife should pay the sum of £ 118 the residue of the said sum of £ 438 after making such several payments thereout as aforesaid into the bank with the privity of the Accountant-General, to be there placed to the credit of this cause to an account to be entitled "The defendant L. L. S. her account of dividends and interest;" And it was ordered that it should be referred back to the Master to tax all parties their costs of obtaining the said order of the 28th day of December, 1817, and of the said Master's report, and of the application for the now stating order, and that so much of the £ 4876 bank 3 per cent. annuities then standing in the name of the said Accountant-General in trust in this cause, "The amount of moneys produced by sale of real estates," as would be sufficient to raise such costs when taxed, and also the several sums of £ 1000 and £ 500 should be sold in the usual manner, and out of the moneys to arise by such sale, it was further ordered that such costs should be paid in manner therein mentioned, and that the sum of £ 300 should be paid to the plaintiff J. M. in right of the plaintiff I. his wife, being one fifth part of the said sums of £ 1000 and £ 500, and that the further sum of £ 300, being one other fifth part thereof, should be paid to the plaintiff E. L. in right of the plaintiff M. his wife, and that the further sum of £ 300, being one other fifth part thereof should be paid to the defendant W. F. in right of the defendant M. his wife, and that the further sum of £ 300, being one other fifth part thereof should be paid to the defendant C. S. the younger, and that the further sum of £ 300 being the residue of the said two sums of £ 1000 and £ 500 should be carried over to "The account of the defendant M. G. and her children," to be laid out in manner thereby directed; And it was ordered that the sum of £ 73 cash in the bank remaining to the credit of this cause, "The amount of moneys produced by sale of real estates," should be carried over to the said account of the defendant

L. L. S. her account of dividends and interest; And it was ordered that the same when so carried over and also the sum of £ 118 when so paid into the bank by the said defendants J. W. and L. his wife as aforesaid should be also laid out in the purchase of bank 3 per cent. annuities in the name and with the privity of the said Accountant-General in trust in this cause, "The defendant L. L. S. her account of dividends and interest," subject to the further order of the Court; And it was ordered that the dividends from time to time to accrue due on the said bank annuities when purchased, and also the dividends to accrue due on the residue of the said £ 4871 bank 3 per cent. annuities standing in the name of the said Accountant-General in trust in this cause, "The amount of moneys produced by sale of real estates," after such sale as aforesaid, and on the accumulations thereof respectively, should be from time to time laid out in the purchase of like bank annuities in the name and with the privity of the said Accountant-General in trust in this cause, "The defendant L. L. S. her account of dividends and interest," subject to the further order of the Court; That the said defendants J. W. and L. his wife duly paid the said five sums of £ 63 to the several parties in the said order named, and the residue of the said sum of £ 438 so reported due from them as aforesaid, and being the sum of £ 118 the said defendants paid into the bank to the credit of the said cause, "The defendant L. L. S. her account of dividends and interest," as also directed by the said order and the same when so paid in together with the said sum of £ 73 cash in the bank to the credit of the said cause, "The amount of moneys produced by sale of real estates," was pursuant to the said order laid out in the purchase of the sum of £ 251 bank 3 per cent. annuities in trust in this cause, "The defendant L. L. S. her account of dividends and interest," and the costs of all parties were taxed by the Master under the said order, and amounted altogether to the sum of £ 270 as appeared by his certificate thereof, which together with the said two sums of £ 1000 and £ 500, making in all £ 1770 were raised by the sale of £ 2325 bank 3 per cent. annuities, part of the sum of £ 4871 bank 3 per cent. annuities mentioned in the said order, and such costs together with such two sums of £ 1000 and £ 500 were paid and divided in manner

and according to the directions of the said order as appears by the said Accountant-General's certificates thereof, whereby there was left standing in the name of the said Accountant-General in trust in this cause, "The amount of moneys produced by sale of real estates" the sum of £ 2545 bank 3 per cent. annuities, and on the defendant L. L. S. her account of dividends and interest the said sum of £ 251 bank 3 per cent. annuities; that the dividends which have accrued due on the said sum of £ 2545 bank 3 per cent. annuities, the amount of moneys produced by sale of real estates have been from time to time as the same have accrued due carried over to the said account entitled "The defendant L. L. S. her account of dividends and interest," and have been together also with the dividends on the said sum of £ 251 £ 3 per cent. annuities standing in the said last-mentioned account and the accumulations thereon respectively laid out in the purchase of other like annuities whereby there is now standing in the name of the said Accountant-General in trust in this cause, the said account entitled "The defendant L. L. S. her account of dividends and interest," the sum of £ 956 bank 3 per cent. annuities and the sum of £ 13 cash as appears by the said Accountant-General's certificate thereof; That the petitioner attained her age of twenty-one years on the 3d day of May last, and is ready and willing and hereby offers to execute all proper and necessary conveyances and assignments of the said several estates and premises so sold as aforesaid unto the respective purchasers thereof, and the petitioner has already become absolutely entitled to have transferred to her the said sum of £ 956 bank 3 per cent. annuities standing in the name of the said Accountant-General in trust in this cause, "The defendant L. L. S. her account of dividends and interest," and to have paid to her the said sum of £ 13 cash to the credit of the said last-mentioned account as aforesaid, and upon the execution of such several conveyances will be entitled to have transferred to her the said other sum of £ 2545 bank 3 per cent. annuities, also standing in the name of the said Accountant-General in trust in this cause, "The amount of moneys produced by sale of real estates," and to be paid any cash which might accrue thereon previously to such transfer; And praying that the said Accountant-General might be forth-

with ordered to transfer into the name of the petitioner the said sum of £ 956 bank 3 per cent. annuities so standing in his name in trust in this cause, "The defendant L. L. S. her account of dividends and interest," and to pay unto the petitioner's solicitor on account of his costs, the said sum of £ 13 cash in the bank to the credit of this cause the like account, and that upon the due execution by the petitioner of the several conveyances and assurances of the said estates so sold as aforesaid, to the said purchasers thereof, the same to be verified by affidavit, the petitioner might have also transferred into her name the said sum of £ 2545 bank 3 per cent. annuities so standing in the name of the said Accountant-General in trust in this cause, "The amount of moneys produced by sale of real estates" as aforesaid, and might also have paid to her any future dividends which may accrue due thereon previous to such transfer thereof; Whereupon, &c. upon hearing the said petition, the said will, the said order dated the 23d day of December 1817, the said order dated the 13th day of February 1821, the said report dated the 27th day of January 1821, an affidavit of L. W. the wife of the defendant J. W. whereby it appears that she is the mother of the defendant L. L. S. and that the said L. L. S. has attained her age of twenty-one years, and that she is sole and unmarried, and the Accountant-General's certificate read and what was alleged by the counsel for the petitioner and for the said parties and purchasers, THIS COURT DOTH ORDER that the £ 956 bank 3 per cent. annuities standing in the name of the Accountant-General of this court in trust in this cause, "The defendant L. L. S. her account of dividends and interest, together with any interest which shall accrue on the said bank annuities previously to the transfer thereof hereby directed, be transferred and paid to the defendant L. L. S. spinster; And it was ordered that the sum of £ 13 cash in the bank to the credit of this cause the like account be paid to Mr. C. S. the petitioner's solicitor on account of his costs; And upon the due execution by the petitioner of the several conveyances and assurances of the said estates sold as in the petition mentioned to the several purchasers thereof, such execution to be verified by affidavit, IT IS ORDERED that the £ 2545 bank 3 per cent. annuities standing in the name of the said Accountant-General in trust in this cause, "The

amount of moneys produced by sale of real estates," and the interest to accrue due on the said bank annuities previously to the transfer thereof hereby directed, be transferred and paid to the said defendant L. L. S. spinster; and for the purposes aforesaid the said Accountant-General is to draw on the bank according to the form prescribed by the act of parliament and the general rules and orders of this Court in that case made and provided.

XXI. Order directing the transfer of a sum of stock to the trustees of a settlement, which stock by a former order made before the marriage had been directed to be transferred to the wife upon the execution by her of certain conveyances; *vide ante*, 481.

At the Rolls.

Master of the Rolls.

Monday the 25th day of February, &c. 1828.

Between J. M. and J. his wife, E. L. and M.
 his wife, - - - Plaintiffs,
 and
 J. S., J. W. and L. his wife, &c. &c.
 Defendants.

Whereas the Rev. H. O. clerk, and L. L. O. his wife (late L. L. S. one of the defendants above named), and the Rev. J. W. (one other of the above-named defendants), and the Rev. J. L. W. clerk did on the 12th day of February 1828, prefer their petition unto the Right Honorable the Master of the Rolls, setting forth that by an order made in this cause bearing date the 8th day of August 1827, It was (among other things) ordered that upon the due execution by the said petitioner of the several conveyances and assurances of the estates sold as in the said petition mentioned to the several purchasers thereof (such execution to be verified by affidavit) the sum of £ 2545 bank 3 per cent. annuities standing in the name of the Accountant-General of this court in trust in this cause, "The account of moneys produced by sale of real estates," and the interest to accrue due on the said bank annuities previously to the transfer thereof thereby directed

should be transferred and paid to the said defendant the said petitioner (and by her then name and addition of) L. L. S. spinster; That before the complete execution of the said several conveyances and assurances of the said estates sold as in the said petition and order mentioned by the said petitioner L. L. O., and before any transfer of the said sum of £ 2545 bank annuities unto her, she the said petitioner intermarried with and is now the wife of the petitioner H. O., but before the solemnization of such marriage, certain indentures of settlement were made and executed bearing date respectively the 3d and 4th days of February now instant, the latter made between the said petitioner L. L. S. of, &c. spinster, of the first part, the petitioner H. O. of the second part, the petitioners J. W. and J. L. W. of the third part, and P. P. and P. B. L. therein described, of the fourth part, whereby after reciting (amongst other things) that the said petitioner L. L. O. (then L. L. S.) was possessed of or entitled (*inter alia*) to the said sum of £ 2552 bank 3 per cent. annuities standing in the name of the said Accountant-General, and which would be transferred unto her immediately upon the execution of certain conveyances to be certified by affidavit, and that a marriage had been agreed upon and was shortly intended to be had and solemnized between the said H. O. and L. L. S., and that upon the treaty for the said marriage it was stipulated and agreed (amongst other things) that the said sum of £ 2545 bank 3 per cent. annuities should be settled and assured upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements thereafter expressed and declared of and concerning the same; It was (amongst other things) witnessed that in pursuance of the said stipulation and agreement and for effectuating the same, and for and in consideration of the said marriage, he the said H. O. for himself, his heirs, executors, and administrators, and also for the said L. L. S. his said intended wife did covenant, promise, engage, and agree, and the said L. L. S. did with the privity, consent, and approbation of the said H. O. (testified as therein mentioned) for herself, her heirs, executors, and administrators, further consent, covenant, declare, and agree to and with the said J. W. and J. L. W. their executors, administrators and assigns, that in case the said in-

tended marriage should take effect they the said H. O. and L. L. S. should and would with all convenient speed after the solemnization thereof, make, do, and execute or cause and procure to be made, done, and executed, or join and concur in and procure all proper and necessary parties to join and concur in all such acts, deeds, matters, things, transfers, and assurances, as by the said J. W. and J. L. W. or the survivor of them, or by their or his counsel, should be required for effectually transferring and making over the said sum of £ 2545 bank 3 per cent. annuities which were so standing in the name of the said Accountant-General, and to which the said L. L. S. was so entitled as aforesaid, so and in such way and manner as that the same bank annuities might be vested in or in the joint names of the said J. W. and J. L. W. their executors, administrators, and assigns, upon the trusts, and to and for the ends, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements thereafter particularly declared of and concerning the same; That the petitioner the said L. L. O. has now fully completed the execution of the said several conveyances and assurances of the said estates sold as in the said order mentioned, and is thereby become entitled to have the said sum of £ 2545 bank 3 per cent. annuities transferred, and the petitioners are desirous that the same should be transferred into the names of the said J. W. and J. L. W. pursuant to their said covenant in that behalf; That since the date of the said order the sum of £ 38 cash has arisen and now stands to the credit of the said cause the before-mentioned account for half a year's dividend upon the said sum of £ 2545 bank annuities, which sum the petitioners H. O. and L. L. O. his wife are desirous should be paid unto their solicitor on account of his costs of obtaining the said order and of this application; And therefore praying that the sum of £ 2545 bank 3 per cent. annuities standing in the name of the Accountant-General in trust in this cause, "The account of moneys produced by sale of real estates," and mentioned in and directed by the said order of the 8th day of August last to be transferred to the petitioner L. L. O. by her then name and description of L. L. S. spinster, might be transferred unto the petitioners J. W. and J. L. W. upon the trusts and to and for the ends, intents, and purposes, and with, under

and subject to the powers, provisoes, declarations, and agreements mentioned and declared in and by the said indenture of settlement of the 2d day of February now instant of and concerning the same; and that the sum of £ 38 cash in the bank to the credit of this cause the like account might be paid to the petitioner's solicitor on account of his costs of obtaining the said order and of this application; Whereupon, &c. upon hearing the said petition, the said order dated, &c. the said indenture of settlement dated, &c. and the affidavit of P. B. L. whereby it appears that the said conveyances and assurances have been duly executed, and an affidavit of the said P. B. L. identifying the said indenture of settlement, and that there is not any other settlement of the fund in question, and the Accountant-General's certificate read, and what was alleged by the counsel for the petitioners, HIS HONOR DOTH ORDER that the £ 2545 bank 3 per cent. annuities standing in the name of the Accountant-General of this court in trust in this cause, "The account of moneys produced by sale of real estates," directed by the order of the 8th day of August last, to be transferred to the petitioner L. L. O. by her then name and description of L. L. S. spinster, be instead thereof transferred to the petitioners the defendants J. W. and J. L. W. upon the trusts and to and for the ends, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements mentioned and declared in and by the indenture of settlement of the 4th day of February instant, in the petition mentioned of and concerning the same, it appearing by the affidavit of P. B. L. that the several conveyances and assurances mentioned in the former order have been duly executed by the petitioner L. L. O.; And it is ordered that the sum of £ 38 cash in the bank remaining on the credit of this cause the like account be paid to Mr. C. S. the petitioner's solicitor on account of his costs of obtaining the said order and of this application; And for that purpose the said Accountant-General is to draw on the bank according to the form prescribed by the act of parliament, and the general rules and orders of this Court in that case made and provided.

XXII. Order for a will to be delivered out of the Prerogative Court in order to be proved on a commission, security being first given for the return of the same.

Upon opening, &c. by Mr. M. of counsel for the defendant T. A. it was alleged that this cause came on to be heard, &c. and it was ordered that the same should stand over with liberty for the defendant T. A. to prove the will of W. A. dated, &c. made and executed by him at B. in France, whereof defendant T. A. is the only devisee and executor; That the said defendant on the death of the said testator proved the will in common form, and thereupon the said testator's original will was deposited in the Prerogative Court of C.; That ——— W. one of the witnesses to said will is master of a packet-boat which goes from D. to C. and B. in F., and ——— H. one of the other witnesses to the said will now resides at B. aforesaid, and ——— B. the other witness lives in L.; That as said defendant T. A. cannot get the said ——— W. up to L. or the said ——— H. to come over from B., it is necessary that he should have a commission to be executed at D. and B. in order to examine the said witnesses to prove the said will, at which commission it will be necessary that the said will be produced; and it being customary in such cases for the Prerogative Office to deliver out original wills to be proved at places distant, on taking bond from one or more sufficient persons in a reasonable penalty to return the same, the said defendant T. A. hath applied to the register and record keeper of said Prerogative Court to have said will delivered out accordingly, but they refuse to deliver out the same upon any security, but insist upon sending a messenger of their own with it, which will put the said defendant to a considerable expense; It was therefore prayed that, &c.; Whereupon and upon hearing, &c. HIS LORDSHIP DOTH ORDER that the said defendant T. A. be at liberty to take out a commission for the examination of his witnesses at B. and D. aforesaid to prove the said will, and that the plaintiff and the other defendants in this cause do join in commission and strike commissioners' names within six days after notice hereof, and in default thereof, that the said defendant T. A. be at liberty to sue out such commission directed to his own

commissioners; and it appearing that the defendant T. A. is the only devisee who can claim any real estate under the said will, It is ordered that the original will be delivered out by the proper officer of the Prerogative Court to a proper person to be named by the said defendant in order to be proved at the said commission, such person first giving security to be approved of by the Judge of the Prerogative Court to return the same in ——— from the delivery thereof to him.

XXIII. Order for the like purpose as the preceding order.

Upon opening, &c. by Mr. Attorney-General of counsel for the plaintiffs and defendants in this cause, it was alleged that W. R. having in his lifetime contracted several debts, on the ——— day of ——— made his will, and thereby devised to the defendants L. H. and W. R. his son, all his real estate in trust to be sold for payment of his debts, and appointed them executors, and died in ———, soon after which the defendants his executors proved the same in common form, and thereupon the said testator's original will was deposited in the Prerogative Office, and that the plaintiffs in ——— Term exhibited their bill in this court against the defendants for an account of the said testator's personal estate, and to have the said will proved and the testator's real estate sold for payment of his debts, to which the said defendants have appeared and put in their answers and plaintiffs have replied, and the cause being at issue, a commission issued for the examination of witnesses in the county of ———, at which commission it will be necessary to have the said testator's will proved in regard to the defendant W. R. who is heir-at-law to said testator and an infant, and it being customary in such cases for the Prerogative Office to deliver out original wills to be proved in the country, on taking bond from one or more sufficient persons in a reasonable penalty, the parties in this cause have applied to the registers of the Prerogative Court to have the same delivered out accordingly, but they refuse to deliver out same on any security, but insist to send a messenger of their own with it, which will put the parties to a considerable expense; and in regard the testator's estate is not sufficient for payment, it was therefore prayed

that the registers of the Prerogative Court or their deputy may forthwith deliver out the said original will in order that the same may be proved at the said commission, upon giving sufficient security to bring back and redeliver same unto the said office in six weeks; Whereupon and upon hearing Mr. Solicitor-General of counsel for the register of the Prerogative Court, an order in a cause of L. against D. dated ———, an order in a cause B. against B. dated ——— and an order in a cause S. against B. dated ——— read, and what was alleged by the counsel for said parties, HIS LORDSHIP DOTH ORDER, that the said original will be delivered out by the proper officer of the Prerogative Court of a proper person to be named by the plaintiffs and defendants the said executors and devisees under the said will, in order to be proved at the said commission, such person first giving security to be approved of by the Judge of the Prerogative Court to return the same in six weeks from the delivery thereof to him.

XXIV. Order to compel a witness to attend to be examined, or stand committed.

Upon motion, &c. that ——— is a material witness for the plaintiff in this cause, and hath been served with a subpoena returnable immediately to attend and be examined as a witness for the plaintiff in this cause, as by affidavit now produced and read appears, notwithstanding which the said ——— hath not attended to be sworn and examined, as by the examiner's certificate now also produced and read appears; IT IS THEREUPON ORDERED that the said ——— do in four days after personal notice hereof attend and be sworn and examined as a witness for the plaintiff in this cause, or in default thereof that the said ——— do stand committed to the prison of the Fleet.

XXV. Order for liberty to exhibit interrogatories as to the credit of a witness.

Upon motion, &c. it was alleged that the plaintiffs have examined A. B. as a witness for them in this cause who is a

person of ill fame, and the defendant hath exhibited articles in the examinant's office touching the credit of the said A. B. as by certificate appears; It was therefore prayed that the defendant may be at liberty to exhibit interrogatories for the examination of witnesses to the credit of the said A. B. which is ordered accordingly.

CHAPTER III.

DECREES AND DECRETAL ORDERS ACCORDING TO THE PRACTICE IN ENGLAND.

- I. Decree opening stated accounts, and directing a general account to be taken of all dealings and transactions between the plaintiffs and defendants; costs given as to so much as relates to setting aside the stated accounts.

His Lordship doth declare that the three stated accounts dated, &c. ought to be opened and set aside and doth order and decree the same accordingly; And it is hereby referred to Mr. — one, &c. to take a general account of all dealings and transactions between the plaintiffs or either of them and the defendants, and also of the value of any timber felled and taken by the defendants from off the plaintiffs' estate, in the taking of which account the Master is to make unto all parties all just allowances; And for the better taking the said account all parties are to be examined upon interrogatories, and produce all books and papers in their custody or power relating thereto upon oath before the said Master as the said Master shall direct; And it is ordered and decreed that defendants do pay to the plaintiffs their costs for as much of the cause as relates to the setting aside the said stated accounts to be taxed by the said Master, and His Lordship doth reserve the consideration of the rest of the costs of this suit until after the said Master shall have made his report, and the said parties are to be at liberty to apply to the Court as occasion shall require.

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- II. Decree for payment of the arrears of an annuity secured by bond given for maintenance with interest upon each half-yearly payment, against the devisee of the real and personal estate of the obligor. (See *Newman v. Auling*, 3 Atk. 579.)

This cause came on to be heard 9th November 1747, before the Lord Chancellor, when His Lordship was pleased to order

and decree that it should be referred to Master Allen, one of the Masters of this court, to take an account of what was due to the complainant for the arrears of an annuity of £ 30 a year secured by bond, and to compute interest on each respective half-yearly payment from the end of six months after the same respectively became due, after the rate of 4 per cent. per annum ; And the defendant having by her answer admitted that the personal and real estate of her said father were together more than sufficient to answer the said annuity, It was further ordered that the plaintiff should pay to the said defendant what should be found due for the arrears of the said annuity and interest at such time and place as the said Master should appoint, and continue to pay to plaintiff the growing payments of the said annuity as they should become due half-yearly ; And in case the defendant should not pay what should be found due for the arrears of the said annuity and interest as aforesaid, then the plaintiff was to be at liberty to apply to the Court for a sale of a sufficient part of the real estate in question ; And it was further ordered that the said Master should see a sufficient part of the said real estate set apart for securing to the plaintiff the growing payments of the said annuity during her mother's life ; And it was further ordered that the defendant should execute to the plaintiff a proper conveyance of the said estate or grant thereout for securing the growing payments of the said annuity accordingly with the approbation of the said Master ; And that the defendant should pay to plaintiff her costs of this suit up to this time to be taxed by the said Master ; the consideration of subsequent costs reserved till the Master should make his report ; liberty to parties to apply, &c.

III. Decree by consent directing a reference to arbitration.

His Lordship doth by consent order that all matters in difference between the plaintiffs and defendants in this cause be referred to the award and determination of I. H. of, &c. Esq. so that he shall make and publish his award in writing of and concerning the premises in question on or before — now next ensuing, or on or before such further time as hereinafter

mentioned, and that the said parties do stand to, abide by, perform, and fulfil the award which the said arbitrator shall so make of and concerning the premises; And by the like consent it is ordered that the said arbitrator is to be at liberty to examine upon oath or upon interrogatories or otherwise at his discretion the said plaintiffs and defendants or any of them, or any other person or persons who shall be produced as a witness or witnesses before him by either party, such plaintiffs and defendants or other person or persons being sworn before one of the Masters of this court or before a Master Extraordinary in the country if there shall be occasion; And the said parties are to produce before the said arbitrator upon oath, if required, all deeds, instruments, books, papers, writings, and accounts, in their or any or either of their custody or power touching the matters in question or any of them as the said arbitrator shall direct; And by the like consent it is ordered that the costs of this suit and also of the said reference and award and all other costs, charges, and expenses, attending or relating to the matters in difference between the said parties or either of them shall be in the discretion of the said arbitrator, and shall be paid in such manner and by whom and to whom and at such time or times as shall be directed by his award; And by the like consent it is ordered that the said arbitrator shall be at liberty by writing under his hand to enlarge the time for making his award from time to time as he shall see occasion; and that the said arbitrator may if he thinks fit proceed *ex parte* in the said reference in case of the refusal or neglect of any of the said parties to attend him thereon after reasonable notice in that behalf; And by the like consent it is ordered that no bills or bill are or is to be filed in any Court of Equity by any or either of the said parties against the said arbitrator for any matter or thing he shall do in, about, or touching the matters to him hereby referred; And any or either of the said parties are or is to be at liberty to apply to this Court to have the said award made an order of this Court.

IV. Minutes of a decree directing a reference to arbitration, with a direction for appointing an umpire in case the arbitrators disagree.

Let all matters in difference between the parties be referred to the arbitration and determination of T. T. and S. S. and they to make their award on or before —, and in case they shall not agree they are to name an umpire, and he is to make his umpirage on or before —, and both parties are to produce all books and papers relating to the matters in question in their custody or power before the arbitrators and umpire respectively, or such of them as the arbitrators and umpire shall respectively direct, to be ascertained by the oath of the respective parties producing the same, and the award or umpirage is to be made an order of this Court, and no bill in equity is to be brought against the arbitrators or umpire.

V. Decree for establishing a charity.

His Lordship doth declare that the charitable bequest and uses made and created by the will of W. B. ought to be established and the trusts thereof performed and carried into execution, and doth order and decree the same accordingly; And His Lordship doth order that the information as against the defendant T. S. do stand dismissed out of this court with costs, &c.; And as between the relators and the other defendants it is ordered and decreed that it be referred to Mr. — one, &c., to take an account of the rents and profits of the charity estate accrued since the death of J. B. son of the testator N. B. which have been received by the defendant R. L. and the other defendants or any of them, or by any other person, &c., the Master to make all just allowances, &c. and particularly an allowance of, &c.; And it is ordered and decreed that what shall be coming on the balance of the said account be divided into two equal moieties, whereof one moiety is to be paid to or retained by the defendant the Corporation of C., according to the said testator's will, and the other moiety is to be paid or retained by the defendants the ministers of, &c., for the charitable purposes devised by the said will concerning the moiety to be paid to the minister of those parishes; And it is ordered

that any of the relators and the Corporation of the City of C. do produce before the said Master a scheme or schemes for the application of what shall be coming on the balance of the said accounts for the moiety of the said rents and profits for the poor inhabitants of the said city of C. and also for that moiety of the growing rents and profits of the said charity estate in such manner as may be most beneficial for said poor inhabitants, and the said Master is to state the same with his opinion thereon; And the number of the trustees mentioned in the last conveyance of the said charity estate being reduced to six, let eighteen other proper persons of the borough of C. or inhabiting near thereto be appointed with the approbation of the Master to be feoffees and trustees of said charity estate, and let the relators and defendants be at liberty to propose proper persons before the Master for that purpose; And when eighteen such persons shall be appointed by the said Master, let defendants, the surviving trustees, convey the said charity estate to the said eighteen persons and their heirs to and upon the charitable uses and trusts declared in the said schedule annexed to —; And let the Master settle the conveyances in case the parties differ about the same.

VI. Another form of a decree directing the appointment of new trustees of a charity estate jointly with the surviving trustees.

And it being admitted that the trustees of the said charity were reduced to three, it was ordered that nine proper persons should be appointed with the approbation of the said Master to complete the said number of twelve, and when such persons should be appointed, the three remaining trustees should with the approbation of the Master make conveyance of the said charity estate to the use of themselves and the new trustees so to be appointed, subject to the same charitable uses and trusts.

VII. Decree on a bill by creditors against an executrix.

Whereupon, &c. His Honor was pleased to order and decree that it should be referred to Mr. S. one of the Masters of this

Honorable Court, to take an account of what was due to the plaintiffs and to all other the creditors of the said testator A. I. and of his funeral expenses, and to compute interest on such of his debts as carried interest after the rate of interest they respectively carried; and the said Master was to cause an advertisement to be published in the London Gazette and such other public papers as he should think proper, for the creditors of the said testator to come in before him and prove their debts, and he was to fix a peremptory day for that purpose; and such of them who should not come in and prove their debts by the time so to be limited were to be excluded the benefit of the said decree, but such persons not parties to the said suit who should come in before the said Master to prove their debts, were, before they should be admitted creditors, to contribute to the plaintiffs their proportion of the expense of the said suit to be settled by the said Master; And it was ordered that the said Master should also take an account of the said testator's personal estate come to the hands of the said C. I. his executrix, or to the hands of any other person or persons by her order or for her use, and the said testator's personal estate was to be applied in payment of his debts and funeral expenses in a course of administration; and for the better taking of the said accounts, &c. (*usual directions given*).

VIII. Part of an order directing the delivery of deeds and attested copies and the execution of deeds of covenant for the production of deeds.

Let such of the title-deeds and writings as relate solely to the estate comprised in lot —, and also such as relate to the same estate jointly with other estates of less value, be delivered to —, he submitting to produce the last-mentioned deeds and writings on necessary occasions and to enter into covenants for that purpose and to give attested copies thereof if required at the expense of the party requiring the same; and as to such of the title-deeds and writings as relate to the estate comprised in the said lot — jointly with other estates of greater value, he is to have attested copies if required at the expense of the estates, and the persons entitled to such estates are to execute to him the like deed or deeds of cov-

enant to produce the same on necessary occasions ; and in case any dispute shall arise between the parties touching the copies of any particular deeds or writings relating to the title, the Master is to settle the same.

IX. Decree for dower out of freehold and copyhold lands.

His Lordship doth order that it be referred to the Master to inquire what freehold lands the said S. M. died seised of wherein the plaintiff B. M. is dowable, and also to inquire what copyhold or customary lands the said S. M. died seised of wherein plaintiff B. M. is entitled to dower or any other estate by the custom of the manor wherein the said copyhold or customary lands or any of them do lie ; And that the said Master do assign to the plaintiff B. M. her dower in such freehold lands and tenements, and also her dower and widow's estate in such customary or copyhold lands and tenements, and the said Master is to assign and set out particular lands and tenements for that purpose ; And after the said lands and tenements shall be set out and ascertained, it is ordered that the defendant do deliver possession to plaintiff B. M. of the lands and tenements that shall be so set out and ascertained for the said dower or widow's estate of plaintiff B. M. and the tenants thereof are to attorn and pay their rents to the said plaintiff B. M. ; And it is ordered and decreed that the Master do take an account of the rents and profits of the said freehold and copyhold or customary lands and tenements whereof the said S. M. died seised, accrued since the death of the said S. M. which have been received by the said defendant or by any other person by his order or for his use ; And that one third part of what shall be coming on said account of the rents and profits of such freehold lands and tenements is to be paid to plaintiff B. M. by the said defendant in respect of her dower out of such lands and tenements, and that such part of what shall be coming on said account of rents and profits of the said copyhold or customary lands and tenements as the said plaintiff B. M. shall appear to be entitled to in respect of her said dower or other widow's estate in such copyhold or customary lands and tenements, is to be paid to the said plaintiff B. M.

by the said defendant ; And for the better taking the said account and discovery of the matters aforesaid the said defendant is to produce before the said Master upon oath all deeds, writings, papers, and books, of account in his custody or power relating to the matters in question, and both sides are to be examined upon interrogatories as the said Master shall direct, and the said Master is to make unto both sides all just allowances ; And it is ordered that the said defendant do pay unto the plaintiff B. M. her costs of this suit to this time to be taxed by the said Master, of which the said Master is to make a separate report ; And His Lordship doth reserve the consideration of subsequent costs as between the plaintiff B. M. and defendant until the Master shall have made his report ; And it being declared by the counsel for the plaintiff that they do intend to controvert the probate of the will of the said S. M. insisted on by the said defendant in the Ecclesiastical Court, His Lordship doth reserve liberty to any of the parties to apply to the Court for further directions in respect of other demands made by the bill in respect either to the real or personal estate of the said S. M. as occasion shall require.

X. Decree for foreclosure.

His Lordship doth order and decree that it be referred to Mr. E. one, &c. to see what is due to the plaintiff for principal and interest on his mortgage and to tax him his costs of this suit, and the defendant is to pay unto the plaintiff what shall be reported due to him for such principal, interest, and costs within ——— after the said Master shall have made his report, at such time and place as the said Master shall appoint, and thereupon the said plaintiff is to reconvey the said mortgaged premises free and clear of all incumbrances done by him or any person claiming from, by, or under him, and to deliver up upon oath unto the defendant, or to whom he shall appoint, all deeds and writings in his custody or power relating thereto ; But in default of the said defendant paying unto the said plaintiff such principal, interest, and costs as aforesaid by the time aforesaid, the said defendant is from thenceforth to stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to the said mortgaged premises.

XI. Minutes of a decree by consent, directing the plaintiff to confirm the defendant's jointure in the settled estates, and when confirmed, the defendant to produce all deeds in her possession or power relating thereto.

And the plaintiff Sir W. A. now offering to confirm the jointure of the defendant C. A. in the several estates settled upon her in jointure by the deeds dated, &c., Decree that plaintiff Sir W. A. do confirm the jointure of said defendant C. A. in all the said estates as the Master shall direct; and let the Master settle the deeds or assurances for the confirmation of such jointure in case the parties differ about the same; And after such jointure shall be confirmed as aforesaid, let defendant C. A. produce before the said Master upon oath all deeds and writings in her custody or power relating to the several estates comprised in the settlement dated, &c.; and reserve the consideration of all further directions until after the deeds and writings shall be produced.

XII. Minutes of a decree declaring the plaintiff to be entitled to a jointure, and directing the defendant to convey to her the lands to be set out by the Master.

Declare that plaintiff is entitled in equity to have a jointure of £ ——— a year made good to her out of the estate in question according to the settlement, &c.; and therefore refer it to the Master to set out and allot so much of the lands and premises comprised in the said settlement of, &c. as shall amount to and not exceed the value of £ ——— a year, subject to taxes and repairs, for plaintiff's jointure for her life; And let defendant M. H. settle and convey such lands and premises so to be set out and allotted as aforesaid to plaintiff for her life for her jointure by such conveyances and assurances as the said Master shall think fit, free from all incumbrances done by defendant M. H., and let all proper parties join in such conveyances as the said Master shall direct; And let defendant M. H. deliver possession to plaintiff of the lands and premises which shall be so allotted and set out with the appurtenances; And let the plaintiff enjoy the same for her life against defendant M. H. and all persons claiming under him or E. H. her late husband

deceased, and let all deeds and writings relating to the estate in question, be produced before the Master upon oath.

XIII. Decree directing the execution of several leases; accounts to be taken of principal and interest due on several mortgages, — and also of the arrears of rents in respect of different parts of the premises in question according to certain drafts of leases and agreements between the parties, with a direction to the Master to set an occupation rent on other parts of the premises, and to ascertain what is due in respect thereof; a set-off directed as between the amount of the account of rent to be found due from one defendant, and the amount of principal and interest to be found due on her mortgage; the bill dismissed as to certain defendants with costs; there having been several former hearings which proved fruitless, special directions given as to the costs of them.

At the Rolls.

Master of the Rolls.

Monday the 26th day of November, &c. 1827.

Between S. Page - Plaintiff,
 and
 J. Brown, J. Harris, &c. Defendants,
 By original bill;

And
 Between S. Page - Plaintiff,
 and
 P. F. Page - - - Defendant,
 By supplemental bill.

These causes coming on the 12th, 13th, 15th, and 19th days of November, 1827, to be heard and debated, &c. the substance of the plaintiff's bill appeared to be, That, &c. [*after stating the substance of the bill, the decree set forth the prayer of the bill as follows:*] That an account may be taken of what is now due to the plaintiff under and by virtue of the aforesaid agreements or otherwise; And that the said agreement may be specifically performed and carried into execution, and that a lease of the said premises thereby agreed to be demised to the plaintiff may be executed by all necessary parties, the plaintiff

being ready and willing to do all things to be done therein on his part and behalf; And that an account may be taken of what is due from the said Mary Linwood in respect of the said sum of £ 1,000 so agreed to be paid to the plaintiff with interest thereon from the time the same ought to have been paid, and also in respect of the said annual rent of £ 250 with interest from the times such annual sums ought respectively to have been paid, and that what shall be so found to be due may be paid to the plaintiff, and that the plaintiff may be declared to have a lien upon the said Mary Linwood's estate and interest in the said premises for the payment thereof, and that the same may be raised and paid thereout accordingly in reduction of the plaintiff's said demand; And that an account may be also taken of what is now due in respect of the said two annual sums of £ 200 and £ 200 so agreed to be paid by the said T. Willows together with interest thereon from the times the same ought respectively to have been paid, and that the plaintiff may be declared to have a lien upon all the estate and interest of and in the said premises which belonged to the said Thomas Willows for payment of the amount of what shall be so found to be due, together with so much of the plaintiff's demands as shall remain unpaid by the means aforesaid, and that the same may be raised and paid thereout to the plaintiff accordingly, and that the plaintiff may have the full benefit of the aforesaid securities for the payment of what is so due to him; And if necessary for that purpose, that such of the rents and profits of the said premises, if any, as are not applicable to the payment of the plaintiff's aforesaid demands may be applied in discharging all such incumbrances upon the said premises as have priority to the plaintiff's aforesaid demands; And that the mortgage-debt due to the said John Broom and Herbert Broom may be considered as satisfied to the amount of the rents and profits of the said premises received by them and of the occupation value of such parts of the said premises as have been occupied by them, and that accounts of such rents and profits and occupation value may be taken accordingly; and that all other necessary directions may be given for the purpose of paying or securing to the plaintiff the payment of what is so due to him out of the said premises; and that some proper person may be appointed receiver of the said premises,

and particularly of such parts thereof as were so agreed to be demised to the plaintiff for securing his aforesaid demands ; And that the rents and profits thereof may be applied according to the provisions of such agreements, and to be relieved is the scope of the bill ; [*and after stating the substance of the defendant's answers, the decree proceeded thus :*] That T. Willows being dead, the plaintiff thought it advisable to institute a suit in the Prerogative Court for the purpose of procuring administration of the estate and effects of the said T. W., and accordingly letters of administration of the estate and effects of the said T. W. were duly granted by such Court to P. F. P. but limited to the purpose only of attending, supplying, substantiating, and confirming the proceedings already had or which might be thereafter had in the aforesaid cause or suit or in any other cause or suit which might thereafter be commenced in this or any other Court between the aforesaid parties or any other parties touching or concerning the aforesaid premises, or until a final decree should be had and made therein, and the said decree carried into execution, and the execution thereof finally completed ; And the plaintiff thereupon filed the supplemental bill in this Court against the said defendant P. F. P., stating the several matters aforesaid, and thereby praying that the plaintiff may have the same relief against the said P. F. P. as if he had been originally a party defendant to the said original bill ; Whereto the counsel for the defendant P. F. P. alleged that he by his answer saith he admits, &c. [*admitting the letters of administration granted, the proceedings had in the original cause, and claiming such interest as he might appear to be entitled to as such personal representative.*] Whereupon, and upon debate of the matter and hearing an exhibit, &c., &c. read, and what was alleged by counsel on both sides, His Honor did order that this cause should stand for judgment ; And this cause standing this present day in His Honor's paper of causes for judgment accordingly, in the presence of counsel learned on both sides, and the defendants J. B. and R. B. by their counsel at the bar now consenting that the four several exhibits marked, &c. being drafts of leases in the possession of the defendant M. L. and proved by her in this cause shall be considered by this Court as proved by the plaintiff against the said defendants J. B. and R. B., HIS HONOR

DOTH DECLARE that the plaintiff is entitled to have the lease to him, the two several leases from him, and the underlease from the defendant Mary Linwood to him executed by all proper parties according to the drafts prepared by Mr. White in the year 1809 and approved on the part of the plaintiff, with this difference, that the lease thereby proposed to have been made by the plaintiff to Thomas Willows in the bill named is to be made to John Broom, H. Broom, and John Harris, or those who represent them, who by virtue of the agreement in the pleadings mentioned as between the said T. Willows and the said J. B., H. B., and J. H. are entitled thereto, and with this difference also, that if the mortgage to the defendant John Broom and the late Herbert Broom shall appear to be satisfied, the plaintiff Samuel Page is entitled to have the lease granted to him for the additional term of fifty years at the rent of 40s. per annum; And it is ordered that all proper parties do execute the same and counterparts thereof; And it is further ordered that as soon as such lease shall have been executed to the said plaintiff as aforesaid, the said plaintiff do forthwith grant and execute to the said defendant M. Linwood a demise of the said premises agreed to be let to her according to the lease prepared by the said Mr. White, to hold for forty-seven years and three quarters wanting ten days from the 25th day of December 1807, at the annual rent of £ 250 to be paid and payable according to the said agreement of the 21st November 1808; And His Honor doth declare that upon such lease being executed by the said plaintiff, the plaintiff will be entitled to receive from the said defendant M. Linwood the sum of £ 1,000 agreed by the said agreements of the 27th June 1806 and 21st November 1808 to be paid to him, with interest on the same after the rate of 4 per cent. per annum, according to the instalments and from the respective times when such instalments were to have been paid according to the said agreement of 21st November 1808, and the draft of the said lease prepared by the said Mr. White; And it is ordered that it be referred to the Master in rotation to take an account of what is due for principal and interest in respect of the said sum of £ 1,000 as aforesaid; And it is ordered that the said Master do also take an account of what is due from the said defendant Mary Linwood to the plaintiff in respect of the rent of £ 250

per annum from the 25th day of December, 1807, being the time from which such rent was reserved, &c. &c. payable in and by the said draft lease prepared by Mr. White as aforesaid; And the said Master in taking such last-mentioned account is to make unto the said M. L. all just allowances for and in respect of all or any rates, taxes, assessments, and other proper disbursements paid, laid out, assessed, and made upon or by her; And it is ordered that the said Master do take an account of what is due to the said M. L. for principal and interest in respect of her mortgage in the pleadings mentioned, and also an account of the costs, charges, and expenses which she has paid, been put to, or sustained in certain suits entitled "Browning against Willows," and "Broom against Linwood," or in any other suit or suits brought against them as mortgagees or in any wise incidental to or respecting the said mortgage; and it being alleged by the counsel for the plaintiff and the said M. L. that it has been agreed that the said plaintiff shall become the assignee of the said mortgage, It is ordered the difference between the amount of the account of the principal, interest, and costs of the mortgage, and the amount of the account of the rent and of the before-mentioned sum of £1000 and interest after making such allowances thereout as aforesaid above directed to be taken, be paid by the said plaintiff to the said Mary L., or be paid by the said M. L. to the plaintiff according to the result of the balance between such accounts, and if it shall be found that the said mortgage debt with interest and costs aforesaid is satisfied, or upon the balance of such mortgage account being paid to the said M. L. by the plaintiff and such underlease being executed to the said M. L. by the plaintiff as hereinbefore directed, It is ordered that the said M. L. do thereupon transfer and assign her said mortgage unto the said plaintiff S. P. or as he shall direct, and all proper parties are to join in such transfer and assignment, which is to be settled by the said Master in case the parties differ about the same; And it is ordered that the said Master do tax the said M. L. her costs of this suit, and of all costs, charges, and expenses of the different hearings in this suit or incidental thereto as between solicitor and client; And it is ordered that the said plaintiff do pay the same to the said M. L.; And it is ordered that thereupon and upon the said M.

L.'s doing what she is hereinbefore directed to do, the plaintiff's bill do stand dismissed out of this court as against the said defendant M. L. ; And His Honor doth reserve the consideration as between the said plaintiff and the other defendants by whom so much of the costs hereby directed to be in the first place allowed and paid by the plaintiff to the defendant M. L. as is or shall be properly costs as between party and party in this cause, shall be ultimately borne, until after the said Master shall have made his report ; And His Honor doth declare that the plaintiff ought to be considered as having a charge upon the several premises in the pleadings mentioned for the purpose of supplying the deficiency, if any, of the rent of £200 a year to be reserved to him by the lease before mentioned, which was agreed to be granted to Thomas Willows, and also for the payment of an additional sum of £200 per annum during the term of forty-eight years and three quarters of a year wanting ten days mentioned in the deed-poll of the 26th November, 1807, or until such time as the plaintiff's demands are satisfied, and to have a proper deed executed for that purpose, but such charge is not to take effect until it shall appear that the mortgage (for £3000) which was held by the defendant John Broom and the deceased Herbert Broom is satisfied, but in case it shall appear that such last-mentioned mortgage is satisfied, then It is ordered that the said Master do settle and approve of a proper deed for securing such two rents-charge accordingly ; and in case it shall appear such last-mentioned mortgage is satisfied, then it is ordered that the said Master do compute interest upon the sum of £13,290 1s. 6*d.* from the 25th day of March, 1809, according to the acknowledgment of the said Thomas Willows dated the 19th day of July, 1810, after the rate of £5 per cent. per annum, and according to the agreement of the 27th June, 1806 ; but in case it shall appear that such mortgage as last aforesaid is not satisfied, then it is ordered that such last-mentioned account be postponed until the further order of the Court ; And it is ordered that the said Master do take an account of what is due from the defendants J. Broom and John Harris or either of them or the estate of Herbert Broom deceased to the plaintiff in respect of the rent of £ 200 a year from the 25th December 1807 according to the draft prepared by Mr. White, and according to the said agreement

of the 27th June 1806, up to the date of the report to be made by the said Master ; And it is ordered that the said Master do also take an account of what is due from the defendant J. Broom and John Harris or either of them or the estate of Herbert Broom deceased, in respect of the rents reserved by the lease of the 2d day of August 1806, and the agreement of the 30th day of June 1808, and in respect of any other rents of the premises or any part thereof received by them or any or either of them or by any other person or persons by their or any or either of their order, or for their or any or either of their use ; And it is ordered that the said Master do set an occupation rent on such part (if any) of the premises not included in such lease or agreement of which they or any or either of them shall have had a valuable occupation, or which would have produced rent but for their or his wilful default, and ascertain what is due in respect thereof ; And it is ordered that what he shall find due on such several accounts or any of them be set against what he shall find due in respect of the principal and interest of the mortgage for £ 3,000 which was vested in the defendant J. Broom and the said H. Broom deceased ; And it is ordered that the said Master do ascertain and state whether after so doing anything and what remains due upon such mortgage, or when by such means the same was paid off ; And it is ordered that he do for such purpose take the account of principal and interest on such mortgage ; And it is ordered that the Master do take an account of the rents and profits of the said premises or any of them received by the defendant R. Rosser or by his order or for his use under the deed of the 20th day of September 1806 ; And His Honor doth reserve the question whether he is liable for any and what further portion of the rents and profits of the said premises ; And it is ordered that the Master do also take an account of what rents and profits of the premises or any of them were received by the defendant R. Rosser and the deceased R. S. White jointly or by their order or for their use, and what has become thereof ; And for the better taking of the said accounts and discovery of the matters aforesaid, the parties are to be examined upon interrogatories, and to produce on oath before the said Master all deeds, books, papers, and writings in their custody or power relating thereto as the said

Master shall direct, who in taking of the said accounts is to make unto the parties all just allowances, and the said Master is to be at liberty to make a separate report or reports as to any of the matters hereby referred to him, and to state any special circumstances at the request of either of the parties as he shall think fit; And it is ordered that the plaintiff do pay unto the defendants E. Willows, Sarah M. Sankey, John Hanbury, and Daniel Sutton, their costs of this suit to be taxed by the said Master in case the parties differ about the same, including the costs of all the former hearings; And it is ordered that thereupon the plaintiff's bill do stand dismissed out of this court as against the said four last-named defendants; And His Honor doth reserve the consideration of all parties' costs so far as not hereinbefore provided for, and also the consideration of all further directions and of the subsequent costs of this suit until after the said Master shall have made his general report; And His Honor doth declare that the plaintiff in his costs is not to be allowed the costs of more than one hearing, and any of the parties are to be at liberty to apply to this Court as there shall be occasion.

XIV. Decree declaring the legitimacy of the plaintiff, as the eldest surviving son of his father, as established by the verdict of a jury on the trial of an issue; also declaring certain agreements entered into by the plaintiff with a younger brother to be void, (the grounds on which such decree was founded being inserted in the decree,) and directing a reference to the Master to take an account of moneys paid by the plaintiff to the defendant, and to compute interest thereon, the amount to be paid into the bank, subject to further order; decree made without prejudice to any claims which the defendant might establish against the plaintiff. (*Gordon. v. Gordon*, 3 Swanst. 400, 478.)

The decree stating that the cause now stood for judgment, and reciting the pleadings, and that the parties proceeded to a trial of the issue on the 27th February, 1818, when the jury found that the plaintiff was and is the legitimate son of Colonel Harry Gordon, proceeds thus: — “His Lordship doth declare that it is established by the verdict found in this matter that the plaintiff is the legitimate son of his father, and His

Lordship doth declare that Peter Gordon, his elder brother, must also have been legitimate, and consequently that the defendant, James Gordon, was not the heir-at-law of Harry Gordon the elder, nor of the said Peter Gordon, and farther that it appears that if Peter Gordon was not legitimate, yet if having survived Harry Gordon the elder he became entitled in fee in law or equity to the estates in question by virtue of his father's will mentioned in the agreement of 1790 to bear date the 5th day of August, 1787, the defendant James Gordon could not be entitled at his father's death or at the death of Peter Gordon to the estates of Harry Gordon the father as his heir-at-law, or have any well-founded claims to the said estates as such heir-at-law ; that nevertheless the agreement of 1790 purports to be made between the plaintiff Harry Gordon and the defendant James Gordon claiming to be the heir-at-law of the said testator Harry Gordon the elder, and as such, making certain claims upon the estates therein mentioned, over and besides the provisions made for him by the will and codicil of 1776, 1782, and 1787, recited in the said agreement of 1790, and which will and codicil are thereby by the said plaintiff and defendant admitted to have been made by the said Harry Gordon the elder ; that it further appears from the recitals of the said agreement of 1790, that if Peter Gordon had been illegitimate and Henry Gordon the younger also illegitimate, and if the estates were vested in Peter Gordon by virtue of the said will of 1787, the said James Gordon could not as heir-at-law of his father or otherwise by his contract or by any other his act authorize or give title to Harry Gordon the younger to enter upon the said estates or empower him effectually to require the mortgagees mentioned in the said agreement to reconvey to him the said Harry Gordon the younger upon payment of what was due to them, or vest in the said Harry Gordon the younger any interest in the said estates, save the said James Gordon's interest as a legatee ; that it also appears that the other agreement of the 4th day of February, 1805, as well as the said agreement of 1790, was made between the parties thereto in consequence of the supposed illegitimacy of the plaintiff negatived by the before-mentioned verdict ; and that the defendant, if the plaintiff was illegitimate, had no title to the lands in America, nor any right for

his own behoof to hinder the plaintiff from obtaining possession thereof subject to the charges thereon, in case such lands under the grant thereof were vested in his father, and passed by his father's will to Peter Gordon; And His Lordship doth declare that if the plaintiff could not be relieved against the said agreements on the mere ground of mistake respecting his legitimacy, or on the ground that the said agreements were entered into in consequence of mistake and misapprehension respecting such legitimacy, yet that the plaintiff is entitled to be relieved against the same as having been also entered into under a misapprehension and misunderstanding that the said James Gordon the defendant had such right and interest in the said estate as would enable him effectually to give and assure to the plaintiff those benefits and interests which, for the considerations mentioned in the said agreements, are contracted or agreed to be given and assured to him by the said James Gordon; and inasmuch also as it is established by the evidence in the cause, that prior to the entering into the said agreement the defendant James Gordon had been informed and knew that a ceremony of marriage had previously taken place between his father and mother before the birth of the plaintiff (being the marriage which by the aforesaid verdict has been established as a valid marriage,) and the said agreement having been entered into with such previous information on his part, and without such information being imparted to the plaintiff, who might, if the said James Gordon had communicated to him that information, have been able by due inquiry to prove his legitimacy as he has since proved the same after he had discovered that such ceremony had previously taken place; His Lordship doth therefore declare the agreements in the pleadings mentioned, bearing date the 30th day of March, 1790, and the 4th day of February, 1805, to be void, and doth order and direct that the same be delivered up to be cancelled; And it is further ordered that it be referred to Mr. Dowdeswell, to whom this cause stands referred, to take any account of all sums of money paid by the plaintiff to the said defendant, James Gordon, or to any other person or persons by his order or for his use in respect of the annuity mentioned in the agreement bearing date the 31st day of March, 1790, and of the sums of £ 4,600 and interest, and £ 1,040 in the said

agreement also mentioned ; And it is ordered that the said Master do compute interests on the respective sums paid by the plaintiff to the defendant James Gordon from the respective times of paying the same, and for the better taking the said account, &c ; And it is ordered that what the said Master shall find to be the amount of such sums and interest, be paid into the bank with the privity of the Accountant-General of this court on the credit of this cause, subject to the further order of this Court ; And His Lordship doth reserve the consideration of costs, &c ; And this is to be without prejudice to any claims which the defendant, James Gordon, may have or can establish against the plaintiff in respect of the estate or effects of Harry Gordon the elder deceased, or Peter Gordon deceased, or either of them in any suit or proceedings which he may be advised to institute against him and other proper and necessary parties." — Reg. Lib. A. 1820, fol. 1984.

XV. Decree for sale of an estate and payment of mortgagees and judgment creditors according to their priorities.

It was declared that one account should be taken of what was due to the defendants the mortgagees for principal and interest on their respective mortgages, and to tax them their costs of this suit and at law ; And that the Master should take an account of the rents and profits of the premises comprised in the defendants the Nicholl's mortgage which had been received by the said defendants or by their testator or any of them, or by any person by their or either of their order or for their or either of their use, or which without their or any of their wilful default might have been received ; And that what should be coming on the account of the rents and profits should be deducted out of what should be found due to the said defendants the Nicholls's for principal, interest, and costs ; And the Master was also to take an account of what was due for principal and interest to the several judgment creditors who were parties to the said suit, and also to the several judgment creditors of the defendant H., and all the said judgment creditors were to be at liberty to come before the said Master and prove their judgments ; And the said Master was to cause an

advertisement to be published in the London Gazette, and appoint a peremptory day for that purpose; And such of the said judgment creditors as should not come in by that time were to be excluded the benefit of the said decree; And the said Master was to state the priorities of the several mortgages, incumbrances, and judgments; And by consent of the defendant T. C. the only acting executor of J. C. Esq. deceased, another mortgagee, It was ordered that the estate in question should be sold with the approbation of the Master to the best purchaser that could be got for the same; and the money arising by the sale of the respective parts of the estate in question comprised in the mortgages and in the securities of such mortgages be applied in satisfaction of the money due on the respective mortgages according to their respective priorities; And that the money arising by the said sale should be applied in payment of the judgment creditors according to their respective priorities; And if there should be a surplus of the moneys arising by sale, it was ordered that the same should be paid to the defendant H. [*with the usual directions for taking the accounts*].

XVI. Form of a decree nisi where defendant makes default.

This cause coming on, &c. in the presence of counsel learned for the plaintiff, no one appearing for the defendant, although he was duly served with a subpoena to hear judgment in this cause as by affidavit now produced and read appears, the substance of the plaintiff's bill appeared to be that, &c. Whereupon and upon hearing, &c. read, and what was alleged by the counsel for the plaintiff, His Lordship doth order and decree that, &c.; And this decree is to be binding on the defendant unless he, on being served with a subpoena to shew cause against the same, shall at the return thereof shew unto this Court good cause to the contrary; but before the said defendant is to be admitted to shew such cause, he is to pay unto the plaintiff his costs of this day's default in appearance to be taxed by the Master.

XVII. Minutes of a decree for a partition ;— an infant defendant to have a day to shew cause.

Let a commission issue to commissioners to be therein named to make partition of the estate in question, who are to take the depositions of witnesses to be examined by them in writing and return the same with the said commission, and let the said estate be divided into moieties and set out in severalty, whereof declare one moiety to belong to Mr. N. and the other moiety to plaintiff Sir W. M. and let the respective parties convey their several moieties to each other to hold in severalty according to the respective undivided moieties thereof, and let the Master settle the conveyances in case the parties differ about the same ; And until such conveyances shall be made let the several parties generally hold and enjoy their respective divided moieties against each other or any claiming under them ; And let the defendant Miss N. an infant execute the conveyance before directed to be executed by her, unless she on being served with a subpœna, shall, within — months after she shall attain her age of twenty-one years, shew unto the Court good cause to the contrary.

XVIII. Minutes of a decree for a partition of an advowson in moieties, the bill being dismissed as to one defendant with costs.

Declare that plaintiff is entitled to have a partition of the advowson of the vicarage of the parish church of W. in K. into moieties, to present by alternate turns, and decree that a partition be accordingly made thereof in moieties between plaintiff and defendant E. S. devisee in the will of J. S. ; And for making such partition the plaintiff and defendant E. S. are mutually to execute conveyances to each other, so that plaintiff may hold one moiety of the advowson to him and his heirs, and defendant E. S. may hold the other moiety to her and her heirs, as tenants in common in severalty respectively ; And in such conveyance let a clause be inserted that the plaintiff and his heirs and defendant E. S. and her heirs shall present to the said vicarage by alternate turns, and if the parties differ, the Master is to settle the conveyances, and the charges of the

conveyances are to be borne equally between the plaintiff and defendant E. S. ; And it appearing in the cause that J. S. under whom defendant E. S. claims, hath since the agreement for the partition or division of the premises presented upon the last avoidance, It is ordered and decreed that the plaintiff do present on the next avoidance being the first turn from this time ; And it is further ordered that the plaintiff's bill as against the defendant the heir-at-law of the said J. S. be dismissed out of this court with costs according to the order of the Court, but His Lordship does not think fit to give any costs as between the plaintiff and the defendant E. S.

XIX. Order for liberty to apply to the Court of King's Bench for payment to the plaintiff and defendants of money paid into the hands of the Master of that court, the amount to be paid into the bank to abide the event of the cause. (*Hawkshaw v. Parkins*, 2 Swanst. 539, 550.)

His Lordship doth order that the plaintiff be at liberty to make an application to the Court of King's Bench for payment to him and to the defendants of the money paid by the plaintiff into the hands of the Master of the said Court of King's Bench pursuant to the order of Mr. Justice Bayley on the 23d day of June 1818, and it is ordered that they do pay the same when so received, to be verified by affidavit, into the bank with the privity of the Accountant-General of this court on the credit of this cause to abide the event of this cause, but this order is to be without prejudice to the right of any of the parties to such money or any of the questions in this cause ; Reg. Lib. A. 1818, fol. 1281.

XX. Direction to a Master to appoint a receiver for one moiety of the estates in question, the receiver to be at liberty to let the estates with the approbation of the Master.

And the said Master is to appoint a receiver for one moiety of the estates in question and allow him a reasonable salary for his care and pains therein, such person to be appointed receiver first giving security to be allowed of by the Master, and to be taken before a Master Extraordinary in

Chancery in the country if there shall be occasion, duly and annually to account for and to pay what he shall so receive as the Court shall direct, and the tenants of the said estates are to pay their rents in arrear and growing rents to such receiver, who is to be at liberty to let and set the said estates from time to time with the approbation of the said Master as there shall be occasion, and the said receiver is to pay the balance of his accounts from time to time into the bank, subject to the further order of the Court.

XXI. Minutes of an order directing a consignee of an estate in the West Indies (being appointed by the Master pursuant to the decree) to transmit his accounts half-yearly of the produce consigned to him, also to make insurances on the consignments, also to transmit stores and effects for the use of the estate; the defendant to deliver over an inventory of the negroes, &c. on the estate, and the consignee to remit to him such sums as should be laid out in negroes and repairs; the consignee to pass his accounts annually and to pay the balance due into the bank.

OUTLINE OF THE CASE.

R. C. by will devised a plantation at St. C. to his eldest son D. for life with limitations to other children, and directed that the clear produce of his plantation till his debts and legacies should be paid, to be from time to time shipped in such ships as defendant C. his heirs and assigns should direct, and consigned to him, and that his son should send an account every year of the produce, and if he did not, then defendant C. with the consent of his trustees was to put an overseer on the estate.

The bill was brought against the trustees and sons for an account of the rents and profits, and that an overseer or receiver might be appointed of the estate.

The decree referred it to the Master to appoint a proper person in L. to whom the defendant C. should consign and send over the profits of the plantation and houses in question to be disposed of according to testator's will, and defendant C. was accordingly from time to time to consign and send over the profits to such person so to be appointed, and R. S. was appointed consignee.

ORDER.

Let R. S. the consignee approved by the Master, twice in every year transmit to defendant C. a true account of the sugars and other produce of the plantation consigned to and received by him upon the respective consignments, and of the sales thereof, and let the said R. S. make insurances upon the sugars and other produce of the plantation that shall be consigned to him in such manner as shall be reasonable with the approbation of defendant D. C. or of such person as he shall appoint, and let the charges thereof be paid out of the money arising by the sale, and let the said R. S. transmit over from the said plantation to D. C.'s attorney at St. C. such stores, provisions, and other effects for the necessary use and consumption of the said estate as the said R. C. shall by letter from time to time desire with the approbation of the Master, and let defendant C. deliver over to the said R. S. an inventory of the negroes, mills, and utensils now upon the plantation, and let the said R. S. pay or remit to the said R. C. such sums of money as shall be reasonably laid out by the said C. in negroes, utensils, cattle, and repairs upon the plantation, to be ascertained by an account to be sent from time to time by the said C. to be verified by affidavit, which sums are to be settled by the Master if the parties differ; And let the said R. S. pass his accounts annually before the Master, and pay what shall appear to be due from him on the balance of his account from time to time into the bank with the privity of the said Accountant-General of this court, &c.

XXII. Minutes of an order directing the appointment of persons to manage an infant's estates in the West Indies, with directions as to remitting the rents and produce: also directing the appointment of a guardian for the infant.

Let it be referred to the Master to approve of a proper person in the island of B. to manage the plaintiffs the infant's estate there, and receive the rents and profits thereof, and to remit same over to defendants in E. in trust for plaintiff; and what shall be from time to time so remitted by such person so

to be approved of as aforesaid to defendant is, after a deduction of what shall be allowed for plaintiff's maintenance, to be placed out at interest, &c.

Let it be referred to the Master to approve of a proper person to be appointed guardian of the person and estate of plaintiff E. O. the infant, and he is to state same to the Court, and thereupon such further order shall be made relating thereto as shall be just.

And let the Master appoint one or more proper person or persons in the island of B. to manage said plaintiff's the infant's estate there, and to receive the rents, produce, and profits thereof, and he or they is or are to remit same to a proper person in L. to be approved of by the Master for that purpose; and the said Master is to make such person to whom the same shall be so remitted a reasonable allowance in respect thereof; but such person is first to give security to be approved of by the Master duly to account for and pay what he shall so receive by such remittance as this Court shall direct.

XXIII. Decretal order under the stat. 7 Geo. 2, c. 20, upon a petition for redemption of a mortgage, presented by the party entitled to the equity of redemption, defendant to a bill of foreclosure. (a)

At the Rolls.

Master of the Rolls.

Wednesday the 6th day of August, &c. 1794.

Between Richard Huson, -- Plaintiff,
and
Jane Hewson, -- Defendant.

Whereas Jane Hewson, widow, did on the 25th day of July last prefer her petition unto the Right Honorable the Master of the Rolls, setting forth that by indentures of bargain and sale dated the 14th day of May, 1759, and made between J. H. the petitioner's late husband (in right of the petitioner)

(a) See *Huson v. Hewson*, 4 Ves. 104, 2d edit., and the cases referred to in note (57), *ibid.*; 2 Madd. Ch. Pr. 265, 428; *Pread v. Hull*, 1 Sim. & Stu. 331.

the petitioner and M. S. of the one part, and Thomas Gibson of the other part, the said J. H. and the petitioner in consideration of £ 200 paid to them by the said T. G. did grant and surrender to the said T. G. a messuage or tenement by way of mortgage for securing £ 200 and interest ; that plaintiff has become assignee of the said mortgage, and that the petitioner is entitled to the equity of redemption, and is willing and desirous to redeem the said mortgaged premises, and to pay the plaintiff R. H. all principal money and interest due on the said mortgaged premises, and has applied to the said R. H. and offered to pay the same ; that the said plaintiff R. H. notwithstanding in Easter Term last and subsequent to such offer filed his bill in this cause to foreclose the said mortgaged premises, to which the petitioner has appeared and obtained an order for time to answer ; and in the same Term the said R. H. served the tenant in possession of the said mortgaged premises with a declaration in ejectment, to which petitioner has appeared and entered the common rule, and praying that it might be referred to the Master of this court to take an account of the money due to the plaintiff for principal and interest and for costs as well at law as in this court ; and that upon payment by the petitioner of what shall be found due upon such account the plaintiff might reconvey the said mortgaged premises to the use of the petitioner, her heirs and assigns forever, and might deliver up to the petitioner all deeds and writings in his custody or power relating to the same, and that in the mean time the plaintiff might be restrained from proceeding in this cause and in the aforesaid ejectment and from all other proceedings at law against the petitioner in respect of the matters aforesaid ; Whereupon all parties concerned were ordered to attend His Honor in the matter of the said petition this day, and counsel for the petitioner and for the plaintiff this day attending accordingly, upon hearing the said petition and the said indenture dated the 14th day of May, 1759, read, and what was alleged by the counsel for the petitioner and for the plaintiff, and the defendant by her counsel admitting the mortgage in the pleadings mentioned, and that the principal-money and interest secured thereby are still due to the plaintiff, and now offering to pay the same to the plaintiff, together with his costs in this court and at law pur-

suant to the late act of parliament in that case made and provided, His Honor doth order and decree that it be referred to Mr. H. one of the Masters of this court to take an account of what is due to the plaintiff for principal and interest on the mortgage in the pleadings mentioned, and to tax him his costs in this court and at law ; and upon the defendant's paying unto the plaintiff what shall be reported due to him for principal and interest and costs as aforesaid within six months after the said Master shall have made his report at such time and place as the said Master shall appoint, It is ordered that the plaintiff do surrender the said mortgaged premises free and clear of and from all incumbrances done by him or any claiming by, from, or under him, and deliver up all deeds and writings in his custody or power relating thereto upon oath to the said defendant or to whom she shall appoint ; but in default of defendant's paying unto the said plaintiff, such principal, interest, and costs, as aforesaid, by the time aforesaid, the said defendant is from thenceforth to stand absolutely debarred and foreclosed of and from all right, title, interest, and equity of redemption of, in, and to the said mortgaged premises ; and for the better taking of the said accounts the parties are to produce before the Master upon oath all deeds, papers, and writings in their custody or power relating thereto, and are to be examined upon interrogatories as the said Master shall direct, who in taking of the said account is to make unto the parties all just allowances, and any of the parties are to be at liberty to apply to the Court as there shall be occasion.

XXVI. Order directing an action of trover to be brought, and that the defendant should make certain admissions.

Doth decree that the parties do proceed to a trial at law in the Court of King's Bench in London, at the Sittings in the next Term, or at such other time as the Lord Chief Justice of that court shall appoint, in an action of trover to be brought by plaintiff against the defendant T. for — packs of woollens in question in this cause, and the said W. T. is to name an attorney and appear and accept a declaration and plead the

general issue ; and in order that the property of said goods may be tried on such trial, said defendant is to admit that the goods in question came to his hands, and also to admit a demand and refusal ;

And it is further ordered that all proceedings under the said commission and all other books, &c. be produced, &c. on or before ——— next as said Master shall direct, and either side is to be at liberty to take copies thereof at their own expense ; and it is ordered that such copies thereof be produced at the trial as either side desire, and give notice thereof in writing.

Further consideration reserved till after trial.

XXVII. Minutes of an order directing a trial at law in ejectment.

Let all parties proceed to a trial at law at the next ——— assizes for the county of S. in an ejectment upon the demise of the now plaintiff, and defendants to name an attorney to appear to the ejectment, and to enter into the common rule to confess lease, entry, and ouster ;

And let the original lease, &c. all deeds, &c. be produced, and reserve all, &c.

XXVIII. Minutes of an order directing a trial at law, to ascertain whether and when a person became bankrupt.

Let the parties proceed to a trial at law upon this issue, *whether M. P. did on or before ——— commit any act of bankruptcy within the intent and meaning of the several statutes relating to bankrupts, or any of them*, and if the jury shall find he did not commit any act of bankruptcy on or before that day and that he committed an act of bankruptcy at any time afterwards, in such case the particular time when he committed such act of bankruptcy is to be indorsed on the *postea*.

And plaintiff here is to be plaintiff at law, &c. &c.

XXIX. Order directing a trial at law upon certain issues, with directions in case the jury should find any particular right varying in circumstances from the issues as laid.

Doth order that the parties do proceed to a trial at law at the next ——— assizes for the county of Y. upon the following issues, whether, &c.

And it is further ordered that plaintiff the mayor and commonalty of the city of Y. be plaintiff at law, and it is hereby referred to Mr. ———, &c. to settle the issues in case the parties differ about the same; And to the end such trial may be had, defendants are forthwith to name an attorney to accept a declaration and appear and plead to issue;

And in case on said trial the jury shall find any particular right though varying in some circumstances from the issues as laid, it is ordered that the same be indorsed on the *postea*.

Further directions reserved, &c.; liberty for either party to apply.

XXX. Minutes of an order directing a trial at bar in the Court of King's Bench by a special jury, six of whom to have a view of the premises.

Let plaintiff P. and defendants proceed to a trial at bar in the Court of King's Bench next ——— Term or at such time as that Court shall think fit, by a special jury of the county of S. on this issue, whether, &c.

And the sheriff of the county of S. is to attend the Master with his book of freeholders, whereout the names of forty-eight persons are to be taken, and each is to be at liberty to strike out twelve and the remaining twenty-four are to stand and be returned on the jury, and six of the jury are to have a view of the premises;

And the plaintiff P. is to be plaintiff at law, and the Master is to settle the issue if the parties differ;

And to the end said trial may be had, defendants are forthwith to name an attorney to accept a declaration to appear and plead to issue;

And let both sides produce before the Master all deeds, &c. and either side is to be at liberty to inspect and take copies thereof at their own expense, and such of them as either side

shall give notice for are to be produced at said trial ; And after said trial shall be had, either party is to be at liberty to apply to the Court for further directions.

XXXI. Order directing issues to be taken *pro confesso*, unless the plaintiffs proceed to trial within a limited time.

Upon opening, &c. unless the plaintiffs in the issues do proceed to the trial thereof some time in ———, it is ordered that the said issues be taken *pro confesso* as if the same had been tried and found against them, without further motion.

XXXII. Minutes of an order directing the plaintiff's bill to be retained for a limited period, with liberty to him to bring an action at law, and in default thereof within the time limited, the bill to stand dismissed with costs.

Let the plaintiff's bill be retained for ——— months, and in the mean time plaintiff is to be at liberty to bring his action against defendant for what is due to him for the matters complained of in bill, and the same is to be tried at the next assizes for the county of S. ;

And both sides are to produce before Mr. S., one, &c. upon oath, all books, &c. on or before, &c. ; either side to take copies, &c. ; and such of them as either side shall give notice for are to be produced at said trial ;

And in default of plaintiff's bringing such action and proceeding to trial by the time aforesaid, then it is ordered that plaintiff's bill do stand dismissed out of this court with costs to be taxed by said Master ;

But in case plaintiff shall bring such action and proceed to trial as aforesaid, then the Court will reserve the consideration of all further directions, &c.

XXXIII. Order declaring an account to have been forged, and recommending a prosecution for forgery.

His Lordship declared he was of opinion that the account produced before him dated, &c. is a forged account, and recommended it to plaintiff to prosecute said defendant for

forging said account or publishing same knowing it to be forged.

And said account being filed in the office of the Register for filing affidavits in this court annexed to the affidavit made by said J. H. it is ordered that same be carefully preserved in the affidavit office, to the end it may be forthcoming in case any prosecution shall be carried on against the said defendant or any other person for forging the same.

And that the proper officer in the said office do attend with the said account on any trial to be had for such forgery, being paid his fees for such attendance.

XXXIV. Decree by the Lord Chancellor reversing an order of dismission made by the Master of the Rolls, and directing inquiries as to the application of certain trust-moneys and the acts of the trustees thereof relative thereto, and in case the Master should find that either of the trustees had committed a breach of trust, then the Master to state in what such breach of trust took place, and whether the *cestui que trust* knew of the trustees' liability in respect of such breach of trust previously to her executing a power of attorney. (*Walker v. Symonds*, 3 Swanst. p. 2, 44.)

[The decree on further directions is inserted *post*.]

That the order of dismission made on the hearing of this cause be reversed, and that it be referred to Mr. Thompson, one, &c. to inquire and report in whose hands the trust-money mentioned in the pleadings had been since the year 1782, and when the same should appear to have been placed out on any security or securities, to report on what security or securities the same was placed out; And it was ordered that the Master should state specially and particularly the nature of such security or securities when the same were not governmental or real securities, and also report in whose custody, possession, order, or disposal, the instruments of security were from time to time, and that the Master should also inquire and report what were the acts of each of the trustees respectively as to the receipt and placing out of the trust-money from time to time and the possession of the securities for the same; And it was ordered that such inquiry should be made not only as to the acts of the trustees respectively, but as to the consent, per-

mission, or privity of each of the trustees respectively to any act of the others or other of them ; And that the Master should inquire and report whether the trust-money was at any time and for what time in the hands of any of the trustees without security, and whether the same was so with the consent, privity, or permission of the others or other of them, and in case upon such inquiries it should appear to the Master that the defendant William Symonds deceased or Thomas Griffith by any act, neglect, or default, committed any breach of trust in respect of which they or either of them were or was answerable personally for the trust-money or any part thereof, that the Master should state in what such breach of trust took place ; And it was ordered that the Master should inquire and report whether the plaintiff Loveday previously to her executing the power of Attorney in the pleadings mentioned had any knowledge or notice that by reason of such breach of trust they or either of them were or was so answerable ; And it was ordered that the Master should state all special circumstances ; And for the better discovery of the matters the parties were to be examined upon interrogatories, &c. and His Lordship reserved the consideration of costs and of all further directions until after the Master should have made his report, and any of the parties were to be at liberty to apply to the Court as they should be advised. — Reg. Lib. B. 1811, fol. 1211.

XXXV. Decree on further directions, overruling exceptions which had been taken to the Master's report, and declaring that the assets of two deceased trustees were liable to make good a breach of trust by the decree declared to have been committed by the deceased trustees, reserving liberty to their representatives to use the names of the plaintiffs in any proceedings which they might be advised to take against other persons upon giving an indemnity to the plaintiffs to be settled by the Master ; an account directed to be taken of principal and interest due in respect of the trust-money, and of the plaintiff's costs, the same to be paid out of the assets of the two deceased trustees ; the bill dismissed as against one defendant without costs, but without prejudice to any ulterior proceedings. (*See the preceding decree, and 3 Swanst. p. 79.*)

The decree ordered that the exceptions be overruled as insufficient, and that the sum of £ 5 deposited with the regis-

ter, &c. be paid to the plaintiffs, and His Lordship declared that the late defendant William Symonds and Thomas Griffith were proved to have committed a breach of trust in respect of which they were answerable personally for the trust-money in question, and that under all the circumstances of the case the plaintiff Loveday Walker ought not to be considered as having relinquished or barred herself from the right to consider them as being so answerable for the said breach of trust, or as having bound herself to accept such provision only in respect of the trust-money as she or William Symonds and Thomas Griffith were or might be entitled to under the trusts of the indentures of lease and release of the 24th and 25th days of March, 1797, but that under such circumstances either the plaintiff Loveday Walker under the true construction of the said indentures remained entitled to charge William Symonds and Thomas Griffith personally, or if she was not so entitled under such construction she was not bound to take the benefit of such provisions and relinquish her demands against them personally on account of such breach of trust; And His Lordship declared that William Symonds and Thomas Griffith having made themselves, by having executed the said indentures of release and other acts, creditors of the defendant Isaac Harris, as in the said indenture of release is mentioned, and the plaintiff Loveday Walker, not having been bound to accept the benefit of their demands as such creditors, the plaintiffs were entitled to have such payment made out of and such account directed as thereafter was ordered and directed as to the assets of William Symonds and Thomas Griffith respectively, without compelling an account to be taken of the assets of Nicholas Donnithorne deceased, which appear to be included in the trusts of the said indenture of release, or enforcing in the said suit any demand which by the plaintiffs or on their behalf could be enforced under the trusts of that indenture, but with such liberty reserved to the respective representatives of William Symonds and Thomas Griffith as thereafter provided; And it was ordered that it be referred to the Master to take an account of what remained due to the plaintiffs for principal and interest of the trust-money in question, and that the defendants William Symonds and Thomas Cooke out of the assets of the late defendant William Symonds deceased,

and the defendant John Lilly out of the assets of Thomas Griffith pay what the Master should find to remain due for principal and interest on taking the said account, into the bank with the privity of the Accountant-General, to be there placed to the credit of the cause, "The plaintiffs' account," subject to the further order of the Court, and the plaintiffs were to be at liberty to make such application to the Court touching the same as they should be advised; And in case the defendants William Symonds and Thomas Cooke should not admit assets of William Symonds deceased sufficient for the purpose aforesaid, then they were to come to an account before the Master for his personal estate come to their or either of their hands, &c. and unless the defendant John Lilly should admit assets of Thomas Griffith, It was ordered that the Master do take an account of his personal estate come to the hands of John Lilly his executor, &c.; And His Lordship declared that in case after having satisfied what they were liable to pay under the directions thereinbefore contained, the defendants William Symonds and Thomas Cooke and John Lilly as such representatives respectively as aforesaid or any representative of Symonds or Griffith respectively should be advised to make any claim or demand against the assets of Nicholas Donni-thorne deceased, or against the trust-premises or the trustees in the said indenture of release contained and named, or against the defendant Isaac Harris, which it should be necessary or they should be advised to make in the names of the plaintiffs or any of them, they were to be at liberty to use the names of the plaintiffs or any of them in any such proceedings, they giving to the plaintiffs a proper and sufficient indemnity against the costs and expenses of all such proceedings: And it was ordered that such indemnity be settled by the Master if the parties differ about the same; And it was ordered that it be referred to the Master to tax the costs of the plaintiffs, and that such costs when taxed be paid by the defendants the executors out of the assets of respective testators; And it was ordered that the plaintiffs' bill as against the defendant Harris be dismissed without costs between the plaintiffs and him, but such dismissal was to be without prejudice to any such proceedings as aforesaid for the benefit of the representatives of the other deceased trustees, either in their own names or those

of the plaintiffs or any of them thereafter to be taken relative to the matters in question ; And for the better taking of the said accounts the parties were to produce before the Master all books, &c. ; and the Master was to be at liberty to make a separate report or separate reports of any of the matters aforesaid ; And His Lordship reserved the consideration of all further directions until after the Master should have made his report, and any of the parties were to be at liberty to apply to the Court as there should be occasion. — Reg. Lib. B. 1817, fol. 1977.

XXXVI. Decree for an account of a testator's personal estate and the annuities and legacies given by his will ; the will not being duly executed ; the real estate declared to have descended to the testator's daughter and heiress at law, a plaintiff, and to be subject to the articles entered into upon her marriage ; an annuity in fee granted by King Charles the Second out of the Barbadoes Duties decreed to have become vested under the will in the testator's daughter as a fee simple conditional, to be subject to make good the annuities and legacies given by his will in case the personal estate should be deficient. Liberty reserved to the executor to make his election between a debt claimed to be due to him, and a legacy given to him by the will. (*Earl of Stafford v. Buckley*, 2 Ves. sen. 170.)

Decree that it be referred to the Master to take an account of the personal estate of the testator, Richard Cantillon, deceased, which has been received by the plaintiffs, the Earl and Countess of Stafford, and the defendant, F. Garvan, or any of them, or by any other person by their or any of their order or for their or any of their use ; Let the Master likewise take an account of the said testator's debts and funeral expenses, and of the annuities and other legacies given by the will, and what is due for the arrears of such annuities : And let the Master compute interest on such of the legacies as carry interest from the end of one year from the said testator's death at the rate of 4 per cent. ; And let such personal estate be applied in payment of the said testator's debts, funeral expenses, annuities, and other legacies in a course of administration ; And in taking of the accounts of the said testator's personal estate against the said defendant F. G. in case the Master shall find any account stated between him and the administrators during

the minority of the plaintiff, the Countess of S., (a) he is not to unravel the same; And it being insisted in the cause that there was a debt due from the testator at the time of his death to the said defendant F. G., declare that the said defendant is not entitled to claim both his debt and his legacy given him by the will of the said testator in this cause, but that he has a right to make his election whether he will claim his debt out of the testator's estate or accept the legacy given him by the will after the account of his personal estate shall be taken; And reserve liberty to the said defendant F. G. to make such election after such account shall be taken; And also reserve any directions as to any account of what was due from the said testator at the time of his death to the said defendant F. G. until after such election shall be made; And let the Master state and ascertain what shall appear to be the clear surplus of the said testator's personal estate after payment of his debts, funeral expenses, annuities, and other legacies as aforesaid; And as to the annuities given by the testator's will, declare that the annuities given to his brothers T. C. and B. C. are annuities for life only, redeemable in the manner mentioned in his will, and that the annuities given to the other annuitants are to continue so long as they have issue of their bodies redeemable in the manner mentioned in the said testator's will; And let the Master consider of a proper part of the said testator's estate to be set apart to secure the growing payments of the said annuities, to which the personal estate is to be considered as liable in the first place; And let the Master state the same unto the Court, whereupon such further order shall be made as shall be just; And several questions arising in the cause touching the extent and construction of that clause in the testator's will whereby he has directed the trustees to entail upon his daughter and her issue all his estate and effects after the payment of the jointures to his wife and of his annuities and legacies, with such limitation as therein mentioned, declare that the said testator's will not being executed according to the statute against frauds and perjuries, the testator's real estate in the county of L. is not comprised in or affected thereby, but is

(a) The executors Garvan and Stoper had renounced probate, and letters of administration with the will annexed were granted during the minority of the testator's daughter, and for her benefit, to the testator's widow, who had intermarried with F. Bulkeley.

descended to the plaintiff, the Countess of S., his daughter and heiress at law ; But declare that the testator's annuity of £ 1000 per annum, which was originally created by grant of King Charles the Second to the Earl of Kinnoul in fee, and also the surplus of testator's personal estate arising at the time of his death are subject to the power thereby given to his executors ; And declare that the said annuity of £ 1000 per annum in fee being capable of being settled and limited to the testator's daughter and the heirs of her body, the same did by virtue of his will vest in her in equity as a fee-simple conditional, and that she having had issue is capable of aliening or settling the same ; And declare that according to the true construction of the said clause in the will, the limitation over the residue of the testator's personal estate to his two nephews, the defendants B. C. and T. C. is too remote and void ; And declare also that the said annuity of £ 1000 per annum, subject to make good the annuities and legacies given by the said testator's will in case his personal estate shall be deficient for that purpose, and also the said real estate in the city of L. are subject to and affected by the articles dated the 6th of July, 1743, entered into upon the plaintiff's marriage ; And declare that the interest and profits of the surplus of the testator's personal estate over and above the £ 200 a year, given for the maintenance of the plaintiff, the Countess of S., accrued before her marriage (if any shall be) did by virtue of the said will go to and belong to the plaintiff, the Countess of S. ; And declare that the articles ought to be performed and carried into execution, and decree the same accordingly, and let proper settlements, conveyances, and assurances be executed by the respective parties to the said articles, so far as the deaths of parties will admit thereof, with the approbation of the Master, except so far as the said articles relate to any surplus of the testator's personal estate existing at the time of his death which shall remain after payment of his debts, funeral expenses, annuities, and legacies, touching which surplus His Lordship doth reserve any directions till after the said account shall be taken and the Master shall have made his report ; Let the Master also take an account of the income of the said annuity of £ 1000 a year which has been received by the defendant E. or by any other person by his order or for his use ; And in

taking of the said account let the Master make unto the said defendant all just allowances ; And it being admitted by the said defendant E. that he has in his hands the sum of £ 6000 part of the money arising out of that annuity, let the said defendant E. pay the said sum of £ 6000 into the bank with the privity of the said Accountant-General of this court to be placed to the credit of this cause, subject to the further order of this Court ; And the defendant S. W., being the heir-at-law of her father, who was the trustee of the testator's real estate in the county of L., desiring to be discharged from the trusts, let her convey the same to a new trustee to be approved by the Master, at the plaintiff's expense, subject to the trusts and provisions of the said marriage articles ; And it being admitted that the defendant G. entered into security to the Bank of England for the benefit of the testator's estate in respect of certain bank notes burnt in his house, let the said defendant G. be indemnified in respect of such security given by him out of the testator's estate ; And let the Master be at liberty to make separate reports as to the account hereby directed against the defendant E. and as to the account of what is due to the annuitants for the arrears of their several annuities, and as to any fund to be set apart for securing the said annuities ; [And for the better clearing of the several accounts before directed, the usual directions given for production of books and papers, and examination of the parties ; the costs of all parties out of the testator's estate ; The consideration of subsequent costs and of all further directions, and particularly as to any question that may arise between the interest which the Countess of S. may take and the interest which any child or children she hath had or may have, may take in the surplus of the said testator's personal estate reserved until after the Master shall have made his report ; Liberty to any of the parties to apply, &c.]

XXXVII. Decree establishing a will with several codicils thereto, and directing the trusts to be carried into execution, except as to a direction in the will for the accumulation of the interest and dividends of the residuary personal estate and the rents of the real estate during the minority of any person or persons entitled thereto, which is declared to be too remote and void ; a grandson of the testator, an infant, declared to be entitled to the devised estates for life, with remainder to his first and other sons in tail general ; directions given as to an allowance for his maintenance ; the testator's widow having made her election to take under the marriage settlement, declared to be barred of her dower ; a trustee declared to be entitled to certain leasehold premises for his own benefit, and special directions given as to prospective and retrospective allowance to be made to him for his trouble. (*Marshall v. Halloway*, 2 Swanst. 432, 450.)

April 22, 1820. — His Lordship doth declare that the will of Thomas Halloway the testator, &c. dated, &c. and the three several codicils of the testator dated, &c. are respectively well executed and proved, and that the trusts thereof ought to be carried into execution, except in so far as the said will directs the laying out and investing the dividends, interest, and annual proceeds of the stocks and securities in and by the said will directed to be purchased with the surplus of the said testator's personal estates after the payment of his debts, funeral, and testamentary expenses and legacies, and the rest of his personal estate, and also the clear yearly rents and profits of his real estates from time to time, and when, and so often, and during all such times as any person or persons beneficially interested in or entitled to his real or personal estates under the trusts thereafter declared thereof should be under the age of twenty-one years, and the adding all such investments to his personal estate in order to accumulate the same ; And His Lordship doth declare that such direction to lay out and accumulate the said rents and profits, interest and dividends is too remote and void in law ; And His Lordship doth declare that the defendant the infant H. F. K. Martelli is entitled in possession to the rents and profits of the said testator's freehold and copyhold and leasehold estates, and to the dividends, interest, and annual proceeds of his personal estate and effects for and during the term of his natural life, with remainder to the first and other sons of his body lawfully to be begotten

successively, according to seniority of age, and the heirs of their bodies respectively, with such remainders over as in the said will and codicils in that behalf respectively contained. The decree after the usual directions for an account of the personal estate of the testator and the rents and profits of his real estate received by the plaintiffs, proceeded thus :

It appearing that the defendant Horatio Martelli the father of the said defendants the infants, is dead, it is ordered that the said Master do inquire and state to the Court by whom the said defendant the infant H. F. K. Martelli has been maintained since the decease of the said testator, and what sums of money have been paid in respect thereof and by whom, and what will be proper to be allowed for his maintenance and education for the time past, and to whom, and also what will be proper to be allowed for his maintenance and education, and out of what fund for the time to come, and to whom, and in making such allowance the said Master is to have regard to the situation and circumstances of the other defendants the younger brothers and sisters of the said H. F. K. Martelli, and the said Master is to be at liberty to make separate report, &c. ; And the defendant Ann Holloway having elected to take the provision made for her by the indenture of settlement in the pleadings in this cause mentioned to bear date the 17th day of November, 1798, in lieu of her dower thirds and free-bench in and out of the said testator's freehold and copyhold estates, His Lordship doth declare that the said defendant, Ann Holloway is barred of all claim in respect of such dower or thirds and free-bench, and doth order that the said defendant do execute a proper and sufficient release of such claims, such release to be settled by the said Master ; And it is ordered that all the costs, charges, and expenses attending the making and executing thereof, be paid and discharged by the said plaintiff out of the personal estate and effects of the said testator, &c. ; And His Lordship doth declare that the said defendant Faithful Croft is entitled to the leasehold house and premises in Chancery Lane given and bequeathed to him in and by the codicil of the said testator bearing date the 20th day of January, 1816, for the remainder of the term of years now to come therein, from the death of the said testator, for his own use and benefit ; And it being alleged by the said plaintiffs

the trustees that the nature and circumstances of the estate of the said testator require the application of a great proportion of time by and on the part of the said trustees for the due execution of the trusts of his said will in regard to his estate, and that they cannot undertake to continue the execution of the trusts without the aid and assistance of the said Faithful Croft as a co-trustee, he having during the life of the said testator had the principal and confidential management thereof, and being better acquainted therewith than any other person, and therefore it will be for the benefit of the said testator's estate that he should continue to be a trustee thereof, and the said Faithful Croft alleging that due attention to the affairs and concerns of the said testator will require so much of his time and attention as will be greatly prejudicial to his other pursuits and concerns in business, and therefore that he would not have undertaken to act therein, but under the assurance that an application would be made to this Court to authorize the allowance and payment of a reasonable compensation out of the said testator's estate for such his labor and time, and that he cannot continue to act therein without such reasonable allowance being made to him; It is ordered that it be referred to the Master to settle a reasonable allowance to be made to the said Faithful Croft out of the said testator's estate for his time, pains, and trouble in the execution of the said trusts for the time past; and in settling such allowance the said Master is to have regard to the legacy of £ 200 given and bequeathed to the said Faithful Croft by the said will of the said testator on the execution of the trusts thereby reposed in him; And it is ordered that the said Master do inquire whether it will be for the benefit of the said testator's estate that the said Faithful Croft should continue to be a trustee under the said will and to receive a compensation for the future employment of his time and trouble; and in case the said Master shall be of opinion that it will be for the benefit of the said testator's estate that the said Faithful Croft should be continued a trustee, then the said Master is to settle reasonable allowance to be made to the said Faithful Croft therein, and the said Master is to be at liberty to make a separate report, &c. And it is ordered that the said Master do tax all parties their costs, &c. And it is ordered that the same when taxed be paid to them

by the said plaintiffs as executors out of the personal estate and effects of the said testator, &c. — Reg. Lib. B. 1819, fol. 777, 780.

XXXVIII. Decree establishing a will of real estate, and directing an account to be taken of the testator's debts, funeral expenses, and legacies with directions in case the personal estate should be deficient, for raising the deficiency by mortgage or sale of the real estate.

Declare that the will of the said testator being admitted by the said defendant P. H. his heir-at-law, ought to be established and the trusts thereof performed, and doth order and decree the same accordingly; And that it be referred to Mr. ———, one, &c. to take an account of the said testator's debts, funeral expenses, and pecuniary legacies, and to compute interest on such of his debts as carry interest, and also to compute interest on his said legacies at the rate of £ 4 per cent. per annum from the time the same ought to have been paid according to the said testator's will; And the said Master is to cause an advertisement to be published in the London Gazette for the testator's creditors and pecuniary legatees to come in before him and prove their respective debts, and claim their respective legacies, within a time to be therein limited, or in default thereof they will be excluded the benefit of this decree. And the said Master is also to take an account of the personal estate of the said testator not specifically bequeathed come to the hands of the said defendant J. H. his surviving executor and the defendant P. H. or either of them, or any other person or persons for their or either of their use or by their or either of their order; And the said personal estate of testator is to be applied in payment of his debts, funeral expenses, and legacies in a due course of administration; And if there shall be any surplus of testator's personal estate remaining after payment of said testator's debts, funeral expenses, and pecuniary legacies, it is ordered and decreed that the same be equally divided between and paid or retained by the said defendant P. H. and the defendants Lord Viscount W. and S. his wife in right of the said S. and the defendant A. H. according to the said testator's will; But in case the said

testator's personal estate shall not be sufficient to pay the said testator's debts and funeral expenses and pecuniary legacies, then it is ordered and decreed that the said defendant P. H. do out of the rents and profits of the said testator's real estates which have accrued since his death and been received and taken by him, keep down the interest of such of the said testator's debts and legacies as carry interest; And that so much of the principal of the said testator's debts and pecuniary legacies as his personal estate shall be deficient to pay and satisfy, be raised by mortgage or sale of a sufficient part of the said testator's real estate as the said Master shall direct, and that a sufficient part thereof be for that purpose mortgaged or sold with the approbation of the said Master, wherein all proper parties are to join, and all deeds and writings relating thereto in the custody or power of any of the parties are to be by them produced upon oath before the said Master as the said Master shall direct; And the money arising by such mortgage or sale is to be applied in the first place in payment and satisfaction of so much of the principal of the said debts as the said testator's personal estate shall fall short to satisfy, and then in payment of so much of the principal of the said pecuniary legacies as the said personal estate shall fall short to satisfy, and if the same shall be raised by mortgage of the said estate, then the said defendant P. H. is to keep down the interest thereof during his life; And it is further ordered that all the parties have their costs of this suit out of the said testator's estate to be taxed by the said Master.

XXXIX. Decree for an account of a testator's personal estate, and directing the appointment of a receiver.

Decree that it be referred to Mr. ———, one, &c. to take an account of what leasehold estates the testator was entitled to at the time of his death, and of the annual value thereof, and also an account of the rents and profits thereof accrued since the testator's death received by the defendants his executors or either of them or by any person or persons by their or either of their order or for their or either of their use; And it is ordered that the said Master do also take an account of the

personal estate of the said testator not specifically bequeathed, possessed, or received by the defendants his executors or either of them, or by any person or persons by their or either of their order or for their or either of their use ; And it is ordered that the Master do also inquire and state to the Court what is the value of the leasehold house at, &c. lately belonging to the testator and taken by the defendant ; And it is ordered that the said Master do also inquire and state to the Court whether the defendants have possessed any and what specific articles bequeathed by the testator other than and except those which they have delivered to the specific legacies thereof ; And for the better taking the said accounts and discovery of the matters aforesaid the parties are to be examined upon interrogatories and to produce all deeds, &c. ; the Master to make just allowances, &c.

And it is ordered that the Master do appoint a proper person to be receiver of the rents and profits of the leasehold estates in question in this cause, and allow him a reasonable salary for his care and pains therein ; such person so to be appointed receiver first giving security to be allowed of by the said Master, and taken before a Master Extraordinary in the country if there shall be occasion, duly and annually to account for what he shall receive of such rents and profits as the Court shall direct ; and the tenants of the said estates are to attorn and pay their rents in arrear and growing rents to such receiver, who is to be at liberty to let and set the said estates from time to time with the approbation of the said Master as there shall be occasion ; And it is ordered that the person so to be appointed receiver do from time to time pass his accounts before the Master and pay the balances that shall be reported to be in his hands into the bank to be there placed to the credit of this cause, subject to the further order of this Court ; And reserve further consideration, &c.

XL. Decree on further directions, directing the Master to compute subsequent interest on such debts as carried interest, and to take an account of any other debts remaining unpaid, also directing the sale of a sum of stock and payment thereof and out of other moneys of the debts to be reported due to the creditors, except the plaintiff, he consenting to waive his right; the executor directed to pay the balance in his hands into court, and directions given as to applying the proceeds in the hands of a consignee of a West India estate.

His Honor did order that it should be referred back to the said Master to compute subsequent interest on such of the debts of the testator W. M. B. mentioned in the first schedule to his general report dated —— whereon interest is thereby computed, and also to take an account of any other debts due from the said testator at his death remaining unpaid and not mentioned in the said first schedule to the said report; And it was further ordered that the sum of £—— bank 3 per cent. annuities standing in the name of the said Accountant-General in trust in the said cause, “The account of the said testator’s real estate,” should be sold with the privity of the said Accountant-General, and the money arising by such sale paid into the bank with the privity of the said Accountant-General to be there placed to the credit of the said cause, the like account; and that out of such money and out of the interest of the said bank annuities until such sale, and also out of the sum of £—— cash in the bank on the credit of the said cause, “The testator’s real estate,” and likewise out of the sum of £—— cash in the bank on the credit of the said cause, “The testator’s personal estate,” the several creditors of the said testator or their legal personal representatives should be paid what should be reported due to them except the said complainant W. H. he by his counsel consenting to waive his right or claim to receive any part of his debt out of the said bank annuities and cash; And it was further ordered that the said J. F. B. should pay into the bank the sum of £—— reported due from him by the said Master’s general report dated, &c. on account of the personal estate of the said testator with the privity of the said Accountant-General to be there placed to the credit of the said cause, “The account of the said testator’s personal estate;” And it was further ordered

that C. S. the consignee of the rents, profits, and produce of the testator's estate in the said island of St. C. should be continued and pass his accounts before the said Master; and that the said C. S. should out of the profits and produce of the said testator's estate which might come to his hands pay the arrears and growing interest of the debt reported due to the said W. H. and of the legacies given by the said testator's will and codicil, and also the arrears and growing payments of the annuities thereby given, and that he should pay the residue of such rents, profits, and produce into the bank with the privity of the said Accountant-General to be there placed to the credit of the said cause, subject to the further order of the Court; And it was further ordered that the said Master should tax all parties their cost of this suit other than the mortgagees who had been paid their costs, and that such costs when taxed should be paid to the solicitors for the said several parties out of the residue of the money to arise by sale of the said bank annuities before directed to be sold, and of the dividends that should accrue thereon until the sale thereof, and of the said sums of £ ——— and £ ———, cash in the bank in the said cause, the aforesaid accounts, (after payment of the said several creditors,) and also out of the said sum of £ ——— before directed to be paid into the bank on the account of the personal estate, as far as the same would extend, and that the residue of such costs should be paid by the said C. S. out of the rents, profits, and produce of the said testator's estate in the said island of St. C. [and the usual directions were thereby given for the said Accountant-General to draw on the bank for the purposes aforesaid]; And His Honor did continue the reservation of any directions as to the question whether there were any and what circumstances affecting the said testator's estate to make it proper any ways and how far to lessen the two legacies of £ ———, each given by the said testator's will to his two daughters the said E. B. and L. B. and also the annuities of £ ——— sterling, given by the said will to the said D. M. G., £ ——— St. C.'s currency thereby given to the said L. F. and also the two annuities of £ ——— each given by the first codicil to the testator's will to the said E. B. and L. B.; And His Honor did reserve the consideration of any question that might arise between the creditors of the said

testator respecting the jewels and ornaments of the person of the said testator's wife which she usually wore, and of all further directions ; and any of the parties were to be at liberty to apply to the Court as there should be occasion.

XLI. Order directing a reference to the Master to inquire as to what part of a testator's personal estate is out on securities, which of them are proper to be continued or called in, with directions given for the latter purpose.

Let the Master inquire what part of the said testator's estate is standing out upon securities and what debts are owing to the said estate, and whether any and which of them are proper to be called in or continued, and let such of them as the Master shall find are proper to be continued be continued accordingly, and let such of them as the Master shall find are proper to be called in be called in with the approbation of the said Master, and let the Master appoint a proper person for that purpose, and make him a reasonable allowance in respect thereof ; and if it shall be necessary to put any of them in suit, let the same be put in suit accordingly in the name of the defendant E. C. the executrix, and let her be indemnified therein out of the said testator's estate.

XLII. Decree on further directions in the original cause, and on the hearing of a supplemental suit ; the plaintiffs in the latter suit declared to be entitled to the benefit of the proceedings in the original cause, and to prosecute the same ; the accounts directed to be carried on from the foot of the former accounts, and the executor to be charged with a legacy retained by him and allowed in the Master's general report ; the testator's real estates declared to be subject to the payment of his simple-contract debts, and the plaintiffs in the second suit declared to be creditors to the amount of a sum of stock sold out by the testator, and an account directed to be taken of the dividends which would have accrued due in case the same had not been sold out ; construction of the will declared with regard to a devise of certain estates not exceeding £ 3,000 a year as being to the separate use of a married woman for life (she having for some years been separated from her husband) with remainder to her children in fee ; the testator's shares in a theatre directed to be sold and the purchase-moneys paid into the bank. The costs of all parties to be taxed as between solicitor and client, and directions given out of what funds the same were to be paid.

The prayer of the original bill, the decree made at the original hearing, the Master's general report, and the prayer of the supplemental bill recited.

Thursday the 15th day of March, in the 8th
year of, &c. 1827.

Between G. Gooch, Plaintiff,
and

J. Haworth and S. his wife, &c.
Defendants.

And between L. M. Mestaer, &c. infants,
all out of the jurisdiction of this Court,
at the Cape of Good Hope, by their next
friend, - - - Plaintiffs,
and

G. G., J. H. and S. his wife, &c.
Defendants.

By original and supplemental bills.

The first-mentioned cause coming on the 18th day of April, 1820, to be heard and debated before the Right Honorable the Master of the Rolls, in the presence of counsel learned on both sides, the scope of the plaintiff's bill appeared to be, that the will of the said testator P. E. M. might be established, and that the trusts thereof might be performed and carried into execution by and under the direction and decree of this Court, and that the rights and interests of all the parties entitled and interested under the same right be ascertained and declared, and that an account might be taken of the said testator's freehold and copyhold estates devised by his will, and of the rents and profits thereof, and of the personal estate and effects of the said testator not specifically bequeathed, and of the said testator's funeral and testamentary expenses, and of his debts, and of the legacies and annuities given and bequeathed by his said will and codicil, and which accounts the plaintiff was ready and willing and thereby offered to come to in such manner as this Court should direct, upon being indemnified and having all just allowances made to him in taking of such accounts, and that the said personal estate might be applied in payment of the said funeral and testamentary expenses, debts, legacies, and annuities in a due course of administration, and that the clear residue (if any) might be ascertained and secured

for the benefit of the persons who should be declared to be entitled thereto; and in case the said personal estate not specifically bequeathed should be found insufficient to pay the said funeral and testamentary expenses, debts, legacies, and annuities, that the rents and profits of the said freehold and copyhold estates might be applied in aid of the said personal estate, and that the deficiency (if any) might be supplied by the sale or mortgage of the whole or a competent part of the said freehold and copyhold estates, subject to such mortgages or equitable liens as were then subsisting therein, and that all proper parties might join in such sales, and that the residue of such freehold and copyhold estates (if any) and the surplus produce of the sales of such part as should be sold might be ascertained, and might be conveyed to or secured for the benefit of such persons as should be declared by the Court entitled thereto or interested therein; and that the plaintiff might be authorized and directed either to complete the ship on the stocks or to sell and dispose thereof in its then present condition; and that some proper person or persons might be appointed to collect and receive the rents and profits of the said testator's freehold, copyhold, and leasehold estates, and also to collect and get in the debts and outstanding personal estate of the said testator, and that such directions might be from time to time given for the better collecting in and administering the estate of the said testator as to this Court should seem fit; and that the said defendant S. H. might set forth a full, true, and just account of all the personal estate and effects of the said testator come to her possession or power, and in particular, a full, true, and exact inventory of all the household goods, furniture, linen, china, plate, jewels, and effects in the possession of the said testator or in the said testator's dwelling-house, or known at his decease, and that it might be referred to one of the Masters of this court to ascertain whether any and what part of the said household furniture and effects were the separate property of the said defendant; and that in the mean time the said defendant might be restrained by the injunction of this Court from selling or disposing of the said household goods, furniture, linen, china, plate, jewels and effects, or any other part thereof, and from removing or permitting the same or any part thereof to be removed from the

said testator's dwelling-house or houses, or from the place or places where the same then were ; Whereupon and upon debate of the matter and hearing the will of P. E. M. dated the 2d day of June, 1809, and the codicil thereto read, and what was alleged by the counsel on both sides, His Honor did order and decree that it should be referred to Mr. A. then one of the Masters of this court, to take an account of the testator's personal estate not specifically bequeathed come to the hands of the plaintiff the executor, or any person or persons by his order or for his use, and of such part of the personal estate as had been sold, and of the outstanding personal estate ; and the said Master was to distinguish such part of the said personal estate as was specifically bequeathed ; And it was ordered that the said Master should inquire whether any part of the personal estate specifically bequeathed had been sold by the plaintiff, and if any had been sold, It was ordered that the said Master should inquire and certify the amount of the produce thereof ; And it was ordered that the said Master should also take an account of the said testator's debts, funeral expenses, legacies and annuities, and compute interest on his debts carrying interest after such rate of interest as they respectively carried, and on his legacies from the time and at the rate directed by his will ; and where no time of payment or rate of interest was directed, then at the rate of £ 4 per cent. per annum from the end of one year after the death of the testator ; And the said Master was to cause advertisements to be published in the London Gazette and such other public papers as he should think proper, for the creditors of the said testator to come in before him and prove their debts, and he was to fix a peremptory day for that purpose, and such of them as should not come in to prove their debts by the time so to be limited were to be excluded the benefit of the said decree ; And it was ordered that the said testator's personal estate not specifically bequeathed should be applied in payment of his funeral expenses and debts in a course of administration, and then in payment of his legacies and annuities ; And it was ordered that the clear residue thereof should be ascertained ; And it was ordered that the said Master should inquire and certify whether any part of the household goods, furniture, linen, china, plate, jewels and effects in the possession of the said testator or in

and about his dwelling-houses at his decease, belonged to the said defendant S. H. ; And it was ordered that the said Master should inquire and certify whether the said defendant J. E. M. was the heir-at-law of the said testator and whether there was or were any and what other child or children of the said defendant living at the decease of the said testator besides the said defendant L. M. M. the daughter of the said J. E. M. ; And it was ordered that the said Master should inquire whether the said defendant L. M. M. or any of the said children had or hath attained the age of twenty-one years, and what age they had respectively attained, and whether any and which of them had died, and whether any and what child or children had been born to the said defendant J. E. M. since the decease of the said testator. And it was ordered that the said Master should inquire whether any and what deed or instrument was entered into and executed on the occasion of the separation of the said defendant J. H. from the said defendant S. H. and whether notwithstanding such deed or instrument the said defendant J. H. had any and what claim or was entitled to any and what part of the property and effects given or devised to the said defendant S. H. by the will and codicil of the said testator in his the said defendant's marital right or otherwise ; And it was ordered that the receiver of the rents and profits of the real and leasehold estates, and of the outstanding personal estate should be continued and pass his accounts before the said Master ; And it was ordered that the said Master in passing the said receiver's accounts should distinguish the accounts of the freehold from the accounts of the leaseholds, and distinguish the accounts of such part of the said testator's real and leasehold estates as was specifically devised by his will ; And it was ordered that the said Master should inquire whether any and what sum of money had been paid by the said plaintiff and the said receiver or either of them in the reparation of or relating to the said estate specifically devised ; And the said Master was to be at liberty to make a separate report or reports of any or either of the matters aforesaid as he should think proper, and for the better taking the several accounts and discovery of the matters aforesaid, the parties were to produce before the said Master upon oath all papers and writings in their custody or power relating to the matters aforesaid, and

were to be examined upon interrogatories as the said Master should direct, who in taking of the said accounts was to make unto the parties all just allowances; And it was ordered that the said Master should tax the costs of the said suit of all the parties to that time, the costs of the plaintiff to be taxed as between solicitor and client; And it was ordered that the said Master should inquire whether any and what costs, charges, and expenses had been properly incurred by the said plaintiff as executor and trustee of the said testator's will in the execution and performance of the trusts of the said testator's will, or otherwise relating to the said testator's affairs; And His Honor did reserve the payment thereof, and also the consideration of all further directions and of the subsequent costs of this suit until after the said Master should have made his general report; And the parties were to be at liberty to exhibit an interrogatory in the Master's office and examine witnesses thereon to prove the will of the testator as to his real estate; And any of the parties were to be at liberty to apply to this Court as there should be occasion; That in pursuance of the said decree the said Master made his report dated the 6th day of December 1824 which stands absolutely confirmed, and thereby certified that he found that all the creditors of the said testator named in the several reports thereinbefore mentioned had subsequently been paid the several sums reported due to them out of a sum of £ 9115 in manner directed by an order of the 30th day of July 1822, but a claim had been laid before him on behalf of the defendant J. E. M. and his children, the plaintiffs in the second-mentioned cause, being the claim hereinafter mentioned, in respect of the trust funds sold out by the said testator as hereinafter stated; And the said Master after stating the will and codicil of P. M. the father of the defendant J. E. M. and of the said testator P. E. M. certified that it appears that the said P. M. died in January 1791, being at the time of his decease possessed of £ 100 per annum consolidated long annuities standing in the books of the Governor and Company of the Bank of England in his own name; And that the will was proved by the said P. E. M. and J. M. in the Prerogative Court of Canterbury on the 5th day of February 1791, and that the said J. M. died leaving the said testator P. E. M. him surviving, and that the said testator P.

E. M. received the dividends which became due on the said long annuities up to the 10th day of October 1801, and afterwards departed this life on the 6th day of February 1819, having by his will appointed the said plaintiffs G. G. and R. P. and W. L. his executors, and that in pursuance of an act of parliament passed in the 56th year of the reign of his late Majesty King George the Third, intituled "An act to authorize the transferring stock upon which dividends shall remain unclaimed for the space of at least ten years at the Bank of England, and also all lottery prizes, or benefits, or balances, or sums issued for paying the principal of stocks or annuities which shall not have been demanded for the same period, to the commissioners for the reduction of the national debt," the said £ 100 per annum consolidated long annuities were transferred out of the name of the said P. M. or otherwise in pursuance of the said act appropriated to the account of the commissioners for the reduction of the national debt, together with the amount of the dividends which accrued due thereon from the said 10th day of October 1801 inclusive, and that there became due for dividends on the said annuities up to and inclusively of the 5th day of April 1823, the sum of £ 2150, being for forty-three half-yearly dividends thereon; and that by an order made in the matter of the said act of parliament on the 29th day of November 1822, It was referred to Mr. J. lately one of the Masters of this Honorable Court, to inquire and state to the Court what bank long annuities which were standing in the name of the said P. M. in the books of the Governor and Company of the Bank of England had been transferred into the names of the commissioners for the reduction of the national debt under and by virtue of the said act of parliament, and what was due and unreceived for dividends in respect of the said bank long annuities; And also to inquire and state to the Court who was or were beneficially entitled to the said bank long annuities and the interest due and unreceived thereon, and in what shares and proportions; And that in pursuance of the said order Mr. T. the successor of the said Master J. made his report bearing date the ——— day of ——— 1823, and thereby certified that he was of opinion that the said £ 100 per annum consolidated long annuities standing in the name of the said P. M. which had been transferred

into the name of the said commissions for the reduction of the national debt by virtue of the said act of parliament belonged to the said P. M. deceased, and that the same passed under the will of the said P. M. to the said testator P. E. M. as his residuary legatee, and that the same, together with the sum of £ 2150 being the amount of forty-three half-yearly dividends upon the said long annuities from the 5th day of April 1802 to the said 5th day of April last inclusive, then formed part of the outstanding personal estate of the said testator P. E. M., and that he was further of opinion that the said G. G. as executor of the said P. E. M. deceased, was beneficially entitled to the said consolidated long annuities, and that the same ought to be transferred by the said G. G. into the name of the Accountant-General of this court, in trust in this cause, and that the sum of £ 2150 accrued for dividends thereon ought to be paid to the said C. T. the person appointed to collect and get in the outstanding personal estate of the said testator P. E. M., to be disposed of by him under the order and direction of this Court; And the said Master W. by his said report of the ——— day of ——— 1824, found that by an order dated the ——— day of ——— 1823, It was ordered that the report of the said Master T. should be absolutely confirmed; And it was further ordered that the secretary or deputy secretary of the Governor and Company of the Bank of England should transfer unto the Accountant-General of this court in trust in this cause, the said sum of £ 100 per annum consolidated long annuities theretofore standing in the name of the said P. M. and since transferred into the names of the commissioners for the reduction of the national debt; And it was further ordered that the said sum of £ 2150, being the amount of the dividends accrued upon the said consolidated long annuities up to and inclusive of the 5th day of April 1823, should be paid unto the said receiver C. T.; And it was referred to the said Master T. to tax and settle the costs incurred by the said commissioners for the reduction of the national debt, and also by his Majesty's Attorney-General by the said plaintiff G. G. in the said matter, and that the said costs when taxed should be paid by the said C. T. out of the said sum of £ 2150, and that the residue of the said sum of £ 2150 should be applied and disposed of by the said C. T. as such receiver as aforesaid under

the direction of this Honorable Court; And he found that the said £ 100 per annum consolidated long annuities were transferred into the name of the Accountant-General of this court in trust in this cause on the —— day of —— 1823, and that the said long annuities were then standing in the name of the said Accountant-General in trust in this cause; And he further found that the said C. T. as such receiver as aforesaid on the 14th day of August 1823 received the sum of £ 2025, being the said sum of £ 2150 dividends accrued due on the said consolidated long annuities up to and inclusive of the dividends due on the 5th day of April last [*after allowing thereout for property, tax, and costs,*] and which said sum of £ 2025 was included in the said C. T.'s fifth account as receiver of the outstanding personal estate of the said testator; And he further certified that under the circumstances aforesaid he had at the request of the solicitor for the said defendant J. E. M. thought fit to state those circumstances for the judgment of the Court; And he further certified that a statement on the part of the said plaintiff G. G. had been laid before him, whereby it appeared that on or about the 10th day of January 1817, G. E. since deceased filed his bill in this court against the said testator, setting forth the bond of the said testator bearing date the 1st day of March 1805, whereby the said testator became bound unto the said G. E. in the penal sum of £ 10,000, with a condition for making the same void on payment of £ 5000 and interest at the times thereafter mentioned, and also setting forth certain indentures of lease and release dated respectively the 28th day of February and the 1st day of March 1805, and made between the said testator of the one part and the said G. E. of the other part, by which indenture of release in consideration of £ 5000 therein expressed to be paid to the said testator by the said G. E., he the said testator did convey a certain dock-yard and several messuages, tenements, or dwelling-houses situate at R. in the county of S., part of the real estate of the said testator, and comprising the whole of his R. estate unto and to the use of the said G. E. his heirs and assigns forever, subject to redemption on payment by the said testator to the said G. E. of the said sum of £ 5000 with interest at £ 5 per cent. per annum on the 1st day of March, 1806, and praying that an account might be taken by one of the Masters of this court of what

was due to the said G. E. for principal and interest on his said security, and that the said testator might be decreed to pay to the said G. E. what should be so found due, and in default thereof that the said testator might be foreclosed from all equity of redemption in the same premises ; And that the said testator filed a cross-bill against the said G. E. and thereby prayed that he the said testator might be let in to redeem the said mortgaged premises, and that an account might be taken of the principal and interest secured by the said mortgage, and of all sums paid or advanced by the said testator to or for the use of the said G. E. on account of the said mortgage ; And in case it should appear that the said G. E. had been overpaid the amount of what was due to him in respect of his said mortgage, then that he might be decreed to repay to the said testator so much money as it should be found he had been overpaid, and that the said G. E. might be decreed to reconvey to the said testator and to deliver up the said indentures of lease, and release, and bond, together with six several bills of exchange in the said cross-bill mentioned ; And that after the death of the said testator the said G. E. filed his bill of revivor against the plaintiff G. G., and that afterwards the said G. E. died, having appointed A. H. C. and W. H. executors of his will, and that since the death of the said G. E. his said executors had filed their bill of revivor and supplement against the said plaintiff G. G. and J. R. of, &c. Esquire, who under and by virtue of certain indentures of lease and release, bearing date the 27th and 28th days of November, 1818, made between the said testator of the one part and the said J. R. of the other part was a mortgage of the same premises for the sum of £ 8000 and interest at £ 5 per cent. per annum ; And the said Master further found that the said G. G. put in his answer to the said last-mentioned bill, and that the said suits and proceedings were then pending, but the sum of £ 3000 had been paid to the said J. R. under an order made in this cause on the _____ day of _____, 1824, out of the outstanding personal estate of the said testator in part discharge of the said principal sum of £ 8000, and that the said interest on the remaining principal sum of £ 5000 had been paid up to the 28th day of November, 1824, out of the rents and profits of the said testator's real estate ; And as to the directions in the said decree that his predecessor should take an account of the said

testator's legacies and annuities and compute interest on his legacies from the time and at the rate directed by his will, and where no time of payment or rate of interest was directed then at the rate of £ 4 per cent. per annum from the end of one year after the death of the said testator, the said Master W. by his report found that the plaintiff G. G. had retained his said legacy of £ 500 out of the personal estate of the said testator, and that he had been allowed the same in his accounts of the said testator's personal estate. come to his hands; And as to the bequests given by the said testator's will, he found that the sum of £ 4666 was then due to the defendant J. E. M. for arrears of the aforesaid annuity of £ 800 given to him for his life, such arrears being computed from the —— day of ——, 1819, the day of the death of the said testator, unto the —— day of ——, 1824, being the date of his said report; and that the sum of £ 466 was due to the defendant F. M. P. late F. M. M. but then the wife of the defendant J. P. for arrears and interest of the aforesaid sum of £ 2000 bequeathed in manner aforesaid, such arrears being computed for the same period and at the rate of £ 4 per cent. per annum; and that the like sum of £ 446 was due to the defendant E. E. M. A. widow, late E. E. M. M. for arrears of interest bequeathed as aforesaid in respect of the aforesaid sum of £ 2000, such arrears being also computed for the period and at the rate aforesaid; and that the several sums aforesaid particularly set forth in the last schedule to his said report and amounting together to the sum of £ 620 then remained due to the several other legatees in the testator's will and in the first schedule named, for the principal of their respective legacies, and for interest thereon computed at £ 4 per cent. per annum from the 7th day of February 1820 (being one year after the death of the testator) unto the 5th day of December 1824; And as to the aforesaid bequest of £ 3000 per annum to the defendant S. H. for her life, and after her decease for the benefit of the children of the defendant J. E. M., he had not proceeded to take any account thereof, being of opinion that no such account could be taken until this Court should have declared the right and interests of the defendant S. H. under and by virtue of the testator's will; And as to the direction in the said decree that his predecessors should inquire whether any part of the household goods, furniture, linen, china, plate, jewels, and

effects in the possession of the testator or in or about his dwelling-house at his decease belonged to S. H., he found that by an order dated the —— day of —— 1820, on the application of the said defendant S. H., it was ordered that the plaintiff should be at liberty to deliver to the said defendant S. H. the keys of the iron chests in the petition mentioned containing the jewels and plate, and that she should sign an inventory of such jewels and plate and a receipt for the same; And he found that in pursuance of the said order the said keys were delivered to the said defendant S. H. on the —— day of —— 1820, and that she signed an inventory and receipt for the same which was then in the hands of the said plaintiff; And as to the other part of the effects in question, he found that by his predecessor's said separate report of the 19th day of June, 1821, the said plaintiff had with the consent of the said defendant S. H. sold twelve horses and several cows specifically bequeathed to her for several sums of money amounting together to the said sum of £ 974 which was received by the plaintiff, and was included in the sum which his predecessor charged him in and by his said separate report; And he found that the clear residue of the said testator's personal estate subject to the payment of the residue of the said mortgage debt of £ 8000 to the said J. R. and also to the said claim of the executors of the said G. E., and also subject to the claim of the said J. E. M. and his children in respect of the sale of the said £ 6666 bank 3 per cent. annuities, consist of the following particulars; in the name of the Accountant-General of this court in trust in this cause the sum of £ 100 per annum consolidated long annuities, and the sum of £ 100 cash arisen from interest thereon up to the —— day of —— 1824 inclusive, also the sum of £ 124 cash remaining in the bank on the credit of this cause being the balance of personal estate paid into court after payment thereof of the debts found due to the creditors of the said testator as thereinbefore mentioned and of the costs of the said suit paid thereof as aforesaid, also of two Drury-Lane shares of small value, also of five River-Lea shares amounting to £ 500 which were deposited by the testator in the hands of R. W. of, &c. as security for payment of a balance of £ 500 and upwards due to him from the said testator and still continue in his hands, also of the several outstanding debts remaining due to

the said testator's estate, and an unliquidated claim made by the said receiver upon the Columbian Government amounting to £ 7000, but which claim hath not been admitted by the said Government, and doth also consist of a leasehold public house situate at W. let at the yearly rent of £ 30, and which was held by the said testator by lease granted by I. Earl T. deceased to the said P. M. deceased, the father of the said testator, at a ground rent of £ 7 10s. per annum, and which lease would expire at Lady-day, 1833 ; And as to the direction in the said decree that his predecessor should inquire whether the said defendant J. E. M. was the heir-at-law of the said testator, he certified that having made the said inquiry he found that the said testator the said P. E. M. died a bachelor, leaving the said defendant J. E. M. his only brother and heir-at-law him surviving ; And as to the inquiry respecting the children of the said defendant J. E. M. he found his predecessor had made the separate report hereinbefore mentioned bearing date the _____ day of _____ 1823 ; And as to the direction in the said decree that his predecessor should inquire whether any and what deed or instrument was entered into and executed on the occasion of the separation of the said defendant J. H. from the said defendant S. H., and whether notwithstanding such deed or instrument the said defendant J. H. had any and what claim or was entitled to any and what part of the property and effects given or devised to the said defendant S. H. by the will and codicil of the said testator in the said defendant's marital right or otherwise, he found that by an affidavit of the said J. H. made in the said cause on the 25th day of July 1823, he made out that he had not then in his custody or possession or power the deed of separation made between him the said defendant J. H. and the said defendant S. H., nor did he know in whose custody, possession, or power the same was ; And the said Master certified that the said defendant S. H. by an affidavit made before him in the said cause on the 5th day of March, 1824, made out that a deed was executed on the occasion of her separation from the said defendant J. H. in or about the month of April, 1797 ; and that one part of such deed was delivered to her and remained with her until the month of September, 1820, or thereabouts, when at the request of T. H. who then acted as her solicitor in this cause she delivered the same to him for the purpose as he represented to

her of laying the same before his the said Master's predecessor, and further that she had caused numerous applications to be made to the said T. H. for the said deed without being able to obtain the same, he the said T. H. stating that the said deed was lost, upon consideration of which several matters the said Master found that a deed was entered into and executed on the occasion of the said separation between the said defendant, but the same not having been produced to him, and no evidence given as to the provisions of the said deed, he was not able to give any opinion how far the rights of the said parties were affected thereby; And as to the direction that the said receiver of the rents and profits of the real and leasehold estates and of the outstanding personal estate should be continued and pass his accounts before his predecessor, and that in passing the said receiver's accounts he should distinguish the accounts of the freehold from the accounts of leasehold, and distinguish the accounts of such part of the said testator's real and leasehold estate as was specifically bequeathed by his will, he certified that the said receiver had passed his said accounts as to the said real estate up to Christmas in 1823 as appears by his said report bearing date the — day of — 1824; and that under an order of the — day of — 1823, and his certificate bearing date the — day of — 1824, he paid the said balance of the said account amounting to the sum of £186 unto the said defendant S. H. on the said 4th day of June, and as to the said personal estate that he had passed his account up to the — day of — 1824, as appeared by his report bearing date the — day of — 1824, and had under an order bearing date the — day of — 1824, paid the balance of the said accounts to J. R. hereinbefore mentioned, and he certified that in passing the said accounts he distinguished the same in the manner directed by the said order; And as to the direction in the said decree that his predecessor should inquire whether any and what sums of money had been paid by the said plaintiff and the said receiver or either of them in the reparation or otherwise relating to the said estate specifically devised, he found that his predecessor had included the same in the separate report of the — day of — 1821, hereinbefore mentioned; and that his predecessor had taxed the costs of the said suit and of all parties to the time of making the said order, and made a separate report thereof, which bore

date the — day of — 1821, and that the said costs were paid under the said order of the — day of — 1821; And he further found that in pursuance of another order bearing date the 30th day of July, 1822, his predecessor taxed the subsequent costs of all the parties at the time of making the said order as between solicitor and client, and made a separate report thereof which bore date the 6th day of August, 1823, and that the said costs had been since paid under an order bearing date the 25th day of July, 1823; And as to the direction in the said decree that his predecessor should inquire whether any and what costs, charges, and expenses had been properly incurred by the said plaintiff as executor and trustee of the said testator's will in the execution and performance of the trusts of the said will or otherwise relating to the said testator's affairs, he certified that having made the said inquiry he found that the said plaintiff had incurred certain costs in the said suit instituted by the said A. H. C. and W. H. as executors of the said G. E. against him the said plaintiff amounting to the sum of £ 38, and also certain costs amounting to £ 41 in defending an action brought by J. P. against the plaintiff as executor of the said testator to recover a debt which had previously been rejected by the said Master W.'s predecessor, and also certain other costs amounting £ 70 in defending an action brought by J. L. against the said plaintiff as executor of the said testator to recover another debt which had previously also been rejected by his predecessor, and also certain charges amounting to £ 49 for various business relating to the said testator's estate transacted by the solicitors of the said plaintiff from August 1820 to March last past, and which said several costs, charges, and expenses amounted together to the sum of £ 200; and he found that the said plaintiff exclusive of the above costs and charges had also incurred costs in a suit instituted by or on behalf of E. J. A. widow against the said plaintiff as executor of the said testator, but which suit was dismissed, and the costs of the said plaintiff were ordered to be paid by the said E. J. A., but which have not yet been paid; And the said cause coming on the 14th instant and on this present day to be heard for further directions and costs, in the presence of counsel learned on both sides, and the second mentioned cause coming on to be heard at the same time in the presence of counsel learned on both sides, The substance of

the said bill, after stating the said decree and report in the said first-mentioned cause, appeared to be, that P. E. M. being at the respective times of making his will and of his death seised of divers freehold and copyhold estates, and being at the time of his death possessed of or entitled to a considerable personal estate and effects, and being a trader within the true intent and meaning of the laws relating to bankrupts, did make and publish his will bearing date ———, which was signed by him and attested in such manner as by law is required for passing freehold estates, and was in the words and figures or to the import and effect following: (The bill after stating the will, the particulars of the testator's property, and various petitions, orders, and reports, proceeded thus:) That in pursuance of the said order the said J. L. has been duly appointed receiver of the rents and profits of the freehold, copyhold, and leasehold estates, [in the place of C. T. the former receiver deceased] and S. M. S. has been duly appointed receiver of the outstanding personal estate and effects, and that the executors of the said C. T. the late receiver have duly passed his last accounts of the rents and profits and also of the personal estate and effects, and have paid the balance appearing due on account of the rents and profits to the said S. H. pursuant to the order of this Court, and have paid the balance appearing due on account of the personal estate and effects with the privity of the Accountant-General to the credit of the said suit under the order of this Court; That being entitled to a beneficial interest under the said will of the said testator P. E. M., the plaintiffs are, as they humbly submit, entitled to have the benefit of the said decree, orders, reports, and proceedings in the said cause, and to have their rights and interests ascertained and secured by and under the direction and decree of this Court; That the plaintiffs are, as they humbly submit, entitled to have the said trust fund or sum of £ 6666 3 per cent. consolidated bank annuities which was appropriated by the said testator P. E. M. out of the assets of the said testator P. M. to answer the said annuity of £ 2000 bequeathed by the said testator P. M. to the said P. E. M. and the plaintiffs, which was afterwards sold out by the said testator P. E. M. as aforesaid, raised and secured for the benefit of the plaintiffs; and that the said sum of £ 100 per annum long annuities, part of the assets of the said P. M., which has been transferred into and now stands in

the name of the Accountant-General in trust in this cause, and that the said sum of £ 2050 being the dividends thereof up to the 5th day of April, 1823, received by the said C. T. the late receiver as aforesaid, and the subsequent dividends which have since accrued due thereon ought to be applied in the first place towards raising the said trust fund or sum of £ 6666 bank annuities, and that the deficiency ought to be raised out of the estate and effects of the said testator P. E. M.; And the plaintiffs charge that the said sum of £ 2050 having been applied towards payment of the said sum of £ 3000 to the said J. R. as aforesaid, the plaintiffs are entitled to stand in the place of the said J. R. as creditors upon the said mortgage estate for the sum of £ 2050 and the interest thereof, and the said defendant S. H. claims to be entitled by virtue of the said will of the said testator P. E. M. to some part of the said testator's real and personal estate absolutely, or in all events to some interest greater than a life estate therein, and the plaintiffs charge and humbly submit that according to the true construction of the said will of the said testator P. E. M. the said defendant S. H. is entitled only for her life to the yearly rent or sum of £ 3000 by and out of the annual income of the real and personal estates of the said testator if such income shall be sufficient for that purpose, and that subject to such yearly rent or sum of £ 3000 or to so much thereof as shall be produced by the annual income of the said real and personal estate, the same belongs to the plaintiffs the children of the said P. E. M. in equal shares; Therefore that the defendants in the second-mentioned cause might answer the matters aforesaid; And that they might have the benefit of the said suit, decree, decretal orders, report and proceedings in such manner as this Court shall direct, and might be at liberty to prosecute the same; And that the rights and interests of the plaintiffs under the will and codicil of the said testator P. E. M. might be ascertained and declared and secured for the benefit of the plaintiffs, subject to raising and paying of the said trust fund or sum of £ 6666 3 per cent. consolidated bank annuities; And that it might be declared that the plaintiffs are entitled to have the said trust fund or sum of £ 6666 3 per cent. bank annuities raised and secured for their benefit; And that the said sum of £ 100 per annum long annuities

standing in the name of the said Accountant-General in trust in the said cause of *Gooch v. Haworth*, and the said sum of £ 2050, the dividends thereof received by the said late receiver C. T. and the subsequent dividends of the said long annuities, ought to be applied towards raising the said sum of £6666 bank annuities, and that the deficiency might be raised out of the estate and effects of the said testator P. E. M., and that the said long annuities the sum of £ 2050 and subsequent dividends might be applied accordingly; And that the deficiency might be raised accordingly out of the real and personal estate and effects of the said P. E. M. and that for that purpose it might be declared that the said P. E. M. was at the time of his death a trader within the true intent and meaning of the laws relating to bankrupts; And that it might be declared that the plaintiffs are entitled to stand in the place of the said J. R. as creditors upon the said mortgaged estate for the said sum of £ 2050, part of the said sum of £ 3000 paid to him as aforesaid and the interest thereof, and that the plaintiffs might have the benefit of the said mortgaged security accordingly; And to be relieved is the scope of the plaintiff's bill in the second mentioned cause; Whereto the counsel for the defendant S. H. alleged that, &c. [*stating the substance of the answers of the several defendants;*] Whereupon and upon debate of the matter and hearing the decree dated the 18th day of April, 1820, the report dated the 6th day of December, 1824, an exhibit marked (A), being the will of P. E. M. the codicil thereto, and the proofs taken in these causes read, and what was alleged by the counsel on both sides, THIS COURT DOETH DECREE that the plaintiffs in the cause of *Mestaer v. Gooch* are entitled to the benefit of the proceedings in the original cause *Gooch v. Haworth*, and doth order that they be at liberty to prosecute the same as parties thereto; And it is ordered that it be referred back to the Master to carry on the account of the testator's personal estate from the foot of his report dated the 6th day of December, 1824; And this Court doth reserve any question as to the application of the specific legacies given by the will of the testator P. E. M. to the payment of the said testator's debts; And it is ordered that the said Master do carry on the account of the defendant G. G. from the foot of his last account, and therein charge him with the sum of £ 500 allowed to him in the schedule to the said Master's report

dated the 19th day of June, 1821, on account of his legacy under the said testator's will; And this Court doth declare the will of the testator P. E. M. well proved and doth declare that the said testator having been a trader at the time of his death, his freehold estates are liable to the payment of his simple-contract debts in case of a deficiency of his personal estate, and that J. E. M. and L. M. M. and P. M., J. E. M. and M. M. infants, his children, are to be considered as creditors on the estate of the said P. E. M. to the amount of £ 6666 bank annuities; And it is ordered that the said Master do take an account of what is due under or by virtue of the indenture of mortgage made to J. R. in the Master's report mentioned; And this Court doth declare that the testator's copyhold estate at ——— and all the freehold and copyhold estate of the said testator not exceeding £ 3000 per annum, are well devised to the defendant S. H. for her life for her separate use, with remainder to the children of the defendant J. E. M. as tenants in common in fee, and are not subject to the legacies given by the said testator's will; And it is ordered that the said Master do take an account of what is now due to the estate of the said testator P. E. M. under the indenture of the 31st day of December, 1796, in the pleadings of this cause mentioned; And it is ordered that the said Master do make an account of the dividends which would have accrued due in respect of the £ 6666 bank 3 per cent. annuities, in case the same had not been sold out; And it is ordered that the said testator's shares in the Theatre Royal Drury Lane be sold by some proper person to be approved of by the said Master to the best purchaser or purchasers that can be got for the same, to be allowed of by the said Master, wherein all proper parties are to join as the Master shall direct; and in order to such sale, It is ordered that all deeds and writings in the custody or power of any of the parties be produced before the Master upon oath; And it is ordered that the moneys to arise by such sale, the amount thereof to be verified by affidavit, be paid into the bank with the privity of the Accountant-General of this court, to the credit of the said cause, *Gooch v. Haworth*, subject to the further order of the Court; And it is ordered that the receiver of the rents appointed in the cause of *Gooch v. Haworth* of the said testator's freehold and copyhold and leasehold estates be continued and pass his accounts before the Master, and pay the

balances to be reported due from him according to the order of the 28th day of May, 1823; And it is ordered that the person appointed to collect and get in the said testator's personal estate be continued and pass his accounts, and pay the balance to be reported due from him into the bank with the privity of the said Accountant-General to the credit of the cause, *Gooch v. Haworth*, subject to the further order of the Court; And it is ordered that the said Master do tax the costs of these suits of all parties to this time as between solicitor and client; And it is ordered that the said Master be at liberty to make a separate report thereof, and also separate reports of any other of the matters hereby referred to him as he shall think fit; And it is ordered that such costs when taxed, and also the sum of £ 200 the amount of the costs, charges, and expenses found by the said Master's report of the 6th day of December, 1824, to have been incurred by the plaintiff G. G. be paid out of the said sum of £ 150, part of the sum of £ 358 cash, on the credit of the cause *Gooch v. Haworth*, and out of any other cash which may remain on the credit of the same cause; and in case such cash shall not be sufficient, It is ordered that so much of the £ 3805 bank 3 per cent. annuities standing in the name of the Accountant-General of this court in trust in the same cause, as will with the said sum of £ 150 cash raise the amount of such costs when taxed and the said sum of £ 200 be sold with the privity of the said Accountant-General, and one of the cashiers of the bank is to have notice and receive the money to arise by such sale, who upon receipt thereof is to pay the same into the bank with the privity of the said Accountant-General, to be there placed to the credit of the said cause; And out of the money to arise by such sale and such cash, It is ordered that such costs when taxed, and also the said sum of £ 200, the amount of the costs, charges, and expenses found by the said Master's report of the 6th day of December, 1824, to have been incurred by the said plaintiff G. G. be paid in manner following, viz. &c. &c.

And for the purposes aforesaid the said Accountant-General is to draw on the bank according to the form prescribed by the act of parliament, and the general rules and orders of this Court in that case made and provided; And any of the parties are to be at liberty to apply to this Court as there shall be occasion.

APPENDIX.

RULES OF PRACTICE
FOR THE
COURTS OF EQUITY OF THE UNITED STATES.

PRELIMINARY REGULATIONS.

1.

The circuit courts, as courts of equity, shall be deemed always open for the purpose of filing bills, answers, and other pleadings, for issuing and returning mesne and final process and commissions, and for making and directing all interlocutory motions, orders, rules, and other proceedings, preparatory to the hearing of all causes upon their merits.

2.

The clerk's office shall be open, and the clerk shall be in attendance therein on the first Monday of every month, for the purpose of receiving, entering, entertaining, and disposing of all motions, rules, orders, and other proceedings, which are grantable of course, and applied for, or had by the parties, or their solicitors, in all causes pending in equity, in pursuance of the rules hereby prescribed.

3.

Any judge of the circuit court, as well in vacation as in term, may, at chambers, or on the rule days, at the clerk's office, make and direct all such interlocutory orders, rules, and other proceedings, preparatory to the hearing of all causes upon their merits, in the same manner and with the same effect as the circuit court could make and direct the same in term, reasonable notice of the application therefor being first given to the adverse party, or his solicitor, to appear and show

cause to the contrary at the next rule day thereafter, unless some other time is assigned by the judge for the hearing.

4.

All motions, rules, orders, and other proceedings made and directed at chambers, or on rule days, at the clerk's office, whether special or of course, shall be entered by the clerk in an order book, to be kept at the clerk's office, on the day when they are made and directed; which book shall be open at all office hours to the free inspection of the parties in any suit in equity, and their solicitors. And except in cases where personal or other notice is specially required or directed, such entry in the order book shall be deemed sufficient notice to the parties and their solicitors, without further service thereof, of all orders, rules, acts, notices, and other proceedings entered in such order book, touching any and all the matters in the suits to and in which they are parties and solicitors. And notice to the solicitors shall be deemed notice to the parties for whom they appear and whom they represent, in all cases where personal notice on the parties is not otherwise specially required. Where the solicitors for all the parties in a suit reside in or near the same town or city, the judges of the circuit court may, by rule, abridge the time for notice of rules, orders, or other proceedings not requiring personal service on the parties, in their discretion.

5.

All motions and applications in the clerk's office for the issuing of mesne process and final process to enforce and execute decrees, for filing bills, answers, pleas, demurrers, and other pleadings; for making amendments to bills and answers; for taking bills pro confesso; for filing exceptions, and for other proceedings in the clerk's office which do not, by the rules hereinafter prescribed, require any allowance or order of the court, or of any judge thereof, shall be deemed motions and applications, grantable of course by the clerk of the court. But the same may be suspended, or altered, or rescinded by any judge of the court, upon special cause shown.

6.

All motions for rules or orders and other proceedings, which are not grantable of course, or without notice, shall, unless a different time be assigned by a judge of the court, be made on a rule day, and entered in the order book, and shall be heard at the rule day next after that on which the motion is made. And if the adverse party, or his solicitor, shall not then appear, or shall not show good cause against the same, the motion may be heard by any judge of the court *ex parte*, and granted, as if not objected to, or refused, in his discretion.

PROCESS.

7.

The process of subpoena shall constitute the proper mesne process in all suits in equity, in the first instance, to require the defendant to appear and answer the exigency of the bill; and unless otherwise provided in these rules, or specially ordered by the circuit court, a writ of attachment, and if the defendant cannot be found, a writ of sequestration, or a writ of assistance to enforce a delivery of possession, as the case may require, shall be the proper process to issue for the purpose of compelling obedience to any interlocutory or final order or decree of the court.

8.

Final process to execute any decree may, if the decree be solely for the payment of money, be by a writ of execution, in the form used in the circuit court in suits at common law in actions of *assumpsit*. If the decree be for the performance of any specific act, as, for example, for the execution of a conveyance of land or the delivering up of deeds, or other documents, the decree shall, in all cases, prescribe the time within which the act shall be done, of which the defendant shall be bound without further service to take notice; and upon affidavit of the plaintiff, filed in the clerk's office, that the same has not been complied with within the prescribed time, the clerk shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged, unless upon a full compliance with the decree and the payment of all

costs, or upon a special order of the court or of a judge thereof, upon motion and affidavit, enlarging the time for the performance thereof. If the delinquent party cannot be found, a writ of sequestration shall issue against his estate upon the return of non est inventus, to compel obedience to the decree.

9.

When any decree or order is for the delivery of possession upon proof made by affidavit of a demand and refusal to obey the decree or order, the party prosecuting the same shall be entitled to a writ of assistance from the clerk of the court.

10.

Every person not being a party in any cause, who has obtained an order, or in whose favor an order shall have been made, shall be enabled to enforce obedience to such order by the same process as if he were a party to the cause; and every person, not being a party in any cause, against whom obedience to any order of the court may be enforced, shall be liable to the same process for enforcing obedience to such order as if he were a party in the cause.

SERVICE OF PROCESS.

11.

No process of subpoena shall issue from the clerk's office in any suit in equity until the bill is filed in the cause.

12.

Whenever a bill is filed, the clerk shall issue the process of subpoena thereon, as of course, upon the application of the plaintiff, which shall be returnable into the clerk's office the next rule day, or the next rule day but one, at the election of the plaintiff, occurring after twenty days from the time of the issuing thereof. At the bottom of the subpoena shall be placed a memorandum, that the defendant is to enter his appearance in the suit in the clerk's office on or before the day at which the writ is returnable; otherwise, the bill may be taken pro confesso. Where there are more than one defendant, a writ of subpoena may, at the election of the plaintiff, be sued out sepa-

rately for each defendant, except in the case of husband and wife defendants, or a joint subpoena against all the defendants.

13.

The service of all subpoenas shall be by a delivery of a copy thereof by the officer serving the same to the defendant personally, or, in case of husband and wife, to the husband personally, or by leaving a copy thereof at the dwelling house or usual place of abode of each defendant, with some free white person who is a member or resident in the family.

14.

Whenever any subpoena shall be returned not executed as to any defendant, the plaintiff shall be entitled to another subpoena, toties quoties, against such defendant, if he shall require it, until due service is made.

15.

The service of all process, mesne and final, shall be by the marshal of the district, or his deputy, or by some other person specially appointed by the court for that purpose, and not otherwise. In the latter case, the person serving the process shall make affidavit thereof.

16.

Upon the return of the subpoena as served and executed upon any defendant, the clerk shall enter the suit upon his docket as pending in the court, and shall state the time of the entry.

APPEARANCE.

17.

The appearance day of the defendant shall be the rule day to which the subpoena is made returnable, provided he has been served with the process twenty days before that day; otherwise, his appearance day shall be the next rule day succeeding the rule day when the process is returnable.

The appearance of the defendant, either personally or by his solicitor, shall be entered in the order book on the day thereof by the clerk.

BILLS TAKEN PRO CONFESSO.

18.

It shall be the duty of the defendant, unless the time shall be otherwise enlarged, for cause shown, by a judge of the court, upon motion for that purpose, to file his plea, demurrer, or answer to the bill, in the clerk's office, on the rule day next succeeding that of entering his appearance. In default thereof, the plaintiff may, at his election, enter an order (as of course) in the order book, that the bill be taken pro confesso; and thereupon the cause shall be proceeded in ex parte, and the matter of the bill may be decreed by the court at the next ensuing term thereof accordingly, if the same can be done without an answer, and is proper to be decreed; or the plaintiff, if he requires any discovery or answer to enable him to obtain a proper decree, shall be entitled to process of attachment against the defendant, to compel an answer, and the defendant shall not, when arrested upon such process, be discharged therefrom, unless upon filing his answer, or otherwise complying with such order as the court or a judge thereof may direct, as to pleading to or fully answering the bill, within a period to be fixed by the court or judge, and undertaking to speed the cause.

19.

When the bill is taken pro confesso, the court may proceed to a decree at the next ensuing term thereof, and such decree rendered shall be deemed absolute, unless the court shall, at the same term, set aside the same, or enlarge the time for filing the answer, upon cause shown upon motion and affidavit of the defendant. And no such motion shall be granted, unless upon the payment of the costs of the plaintiff in the suit up to that time, or such part thereof as the court shall deem reasonable, and unless the defendant shall undertake to file his answer within such time as the court shall direct, and submit to such other terms as the court shall direct, for the purpose of speeding the cause.

FRAME OF BILLS.

20.

Every bill, in the introductory part thereof, shall contain the names, places of abode, and citizenship of all the parties, plaintiffs and defendants, by and against whom the bill is brought. The form, in substance, shall be as follows: "To the judges of the circuit court of the United States for the district of —: A. B., of —, and a citizen of the State of —, brings this his bill against C. D., of —, and a citizen of the State of —, and E. F., of —, and a citizen of the State of —. And thereupon your orator complains and says, that," &c.

21.

The plaintiff, in his bill, shall be at liberty to omit, at his option, the part which is usually called the common confederacy clause of the bill, averring a confederacy between the defendants to injure or defraud the plaintiff; also what is commonly called the charging part of the bill, setting forth the matters or excuses which the defendant is supposed to intend to set up by way of defence to the bill; also what is commonly called the jurisdiction clause of the bill, that the acts complained of are contrary to equity, and that the defendant is without any remedy at law; and the bill shall not be demurrable therefor. And the plaintiff may, in the narrative or stating part of his bill, state and avoid, by counter averments, at his option, any matter or thing which he supposes will be insisted upon by the defendant, by way of defence or excuse, to the case made by the plaintiff for relief. The prayer of the bill shall ask the special relief to which the plaintiff supposes himself entitled, and also shall contain a prayer for general relief; and if an injunction, or a writ of *ne exeat regno*, or any other special order pending the suit, is required, it shall also be specially asked for.

22.

If any persons, other than those named as defendants in the bill, shall appear to be necessary or proper parties thereto, the bill shall aver the reason why they are not made parties, by

showing them to be without the jurisdiction of the court, or that they cannot be joined without ousting the jurisdiction of the court as to the other parties. And as to persons who are without the jurisdiction and may properly be made parties the bill may pray that process may issue to make them parties to the bill if they should come within the jurisdiction.

23.

The prayer for process for subpoena in the bill shall contain the names of all the defendants named in the introductory part of the bill, and if any of them are known to be infants under age, or otherwise under guardianship, shall state the fact, so that the court may take order thereon as justice may require, upon the return of the process. If an injunction, or a writ of ne exeat regno, or any other special order pending the suit, is asked for in the prayer for relief, that shall be sufficient without repeating the same in the prayer for process.

24.

Every bill shall contain the signature of counsel annexed to it, which shall be considered as an affirmation on his part, that upon the instructions given to him and the case laid before him, there is good ground for the suit, in the manner in which it is framed.

25.

In order to prevent unnecessary costs and expenses, and to promote brevity, succinctness, and directness in the allegations of bills and answers, the regular taxable costs for every bill and answer shall in no case exceed the sum which is allowed in the State court of chancery in the district, if any there be; but if there be none, then it shall not exceed the sum of three dollars for every bill or answer.

SCANDAL AND IMPERTINENCE IN BILLS.

26.

Every bill shall be expressed in as brief and succinct terms as it reasonably can be, and shall contain no unnecessary recitals of deeds, documents, contracts, or other instruments, in hæc verba, or any other impertinent matter, or any scandalous

matter not relevant to the suit. If it does, it may on exceptions be referred to a master by any judge of the court for impertinence or scandal; and if so found by him, the matter shall be expunged at the expense of the plaintiff, and he shall pay to the defendant all his costs in the suit up to that time, unless the court or a judge thereof shall otherwise order. If the master shall report that the bill is not scandalous or impertinent, the plaintiff shall be entitled to all costs occasioned by the reference.

27.

No order shall be made by any judge for referring any bill, answer or pleading, or other matter, or proceeding depending before the court for scandal or impertinence, unless exceptions are taken in writing and signed by counsel, describing the particular passages which are considered to be scandalous or impertinent; nor unless the exceptions shall be filed on or before the next rule day after the process on the bill shall be returnable, or after the answer or pleading is filed. And such order, when obtained, shall be considered as abandoned, unless the party obtaining the order shall, without any unnecessary delay, procure the master to examine and report for the same on or before the next succeeding rule day, or the master shall certify that further time is necessary for him to complete the examination.

AMENDMENT OF BILLS.

28.

The plaintiff shall be at liberty as a matter of course, and without payment of costs, to amend his bill in any matters whatsoever, before any copy has been taken out of the clerk's office, and in any small matters afterwards, such as filling blanks, correcting errors of dates, misnomer of parties, misdescription of premises, clerical errors, and generally in matters of form. But if he amend in a material point (as he may do of course) after a copy has been so taken, before any answer or plea, or demurrer to the bill, he shall pay to the defendant the costs occasioned thereby, and shall, without delay, furnish him a fair copy thereof, free of expense, with suitable references to the places where the same are to be inserted. And if

the amendments are numerous, he shall furnish in like manner, to the defendant, a copy of the whole bill as amended; and if there be more than one defendant, a copy shall be furnished to each defendant affected thereby.

29.

After an answer, or plea, or demurrer is put in, and before replication, the plaintiff may, upon motion or petition, without notice, obtain an order from any judge of the court to amend his bill on or before the next succeeding rule day, upon payment of costs or without payment of costs, as the court or a judge thereof may in his discretion direct. But after replication filed, the plaintiff shall not be permitted to withdraw it and to amend his bill, except upon a special order of a judge of the court, upon motion or petition, after due notice to the other party, and upon proof by affidavit that the same is not made for the purpose of vexation or delay, or that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the bill, and upon the plaintiff's submitting to such other terms as may be imposed by the judge for speeding the cause.

30.

If the plaintiff so obtaining any order to amend his bill after answer, or plea, or demurrer, or after replication, shall not file his amendments or amended bill, as the case may require, in the clerk's office, on or before the next succeeding rule day, he shall be considered to have abandoned the same, and the cause shall proceed as if no application for any amendment had been made.

DEMURRERS AND PLEAS.

31.

No demurrer or plea shall be allowed to be filed to any bill, unless upon a certificate of counsel, that in his opinion it is well founded in point of law, and supported by the affidavit of the defendant, that it is not interposed for delay; and if a plea, that it is true in point of fact.

32.

The defendant may, at any time before the bill is taken for confessed, or afterwards with the leave of the court, demur or plead to the whole bill, or to part of it, and he may demur to part, plead to part, and answer as to the residue ; but in every case in which the bill specially charges fraud or combination, a plea to such part must be accompanied with an answer fortifying the plea, and explicitly denying the fraud and combination, and the facts on which the charge is founded.

33.

The plaintiff may set down the demurrer or plea to be argued, or he may take issue on the plea. If, upon an issue, the facts stated in the plea be determined for the defendant, they shall avail him as far as in law and equity they ought to avail him.

34.

If, upon the hearing, any demurrer or plea is overruled, the plaintiff shall be entitled to his costs in the cause up to that period, unless the court shall be satisfied that the defendant had good ground in point of law or fact to interpose the same, and it was not interposed vexatiously or for delay. And upon the overruling of any plea or demurrer, the defendant shall be assigned to answer the bill, or so much thereof as is covered by the plea or demurrer, the next succeeding rule day, or at such other period as, consistently with justice and the rights of the defendant, the same can, in the judgment of the court, be reasonably done ; in default whereof, the bill shall be taken against him, pro confesso, and the matter thereof proceeded in and decreed accordingly.

35.

If, upon the hearing, any demurrer or plea shall be allowed the defendant shall be entitled to his costs. But the court may, in its discretion, upon motion of the plaintiff, allow him to amend his bill upon such terms as it shall deem reasonable.

36.

No demurrer or plea shall be held bad and overruled upon argument, only because such demurrer or plea shall not cover so much of the bill as it might by law have extended to.

37.

No demurrer or plea shall be held bad and overruled upon argument, only because the answer of the defendant may extend to some part of the same matter, as may be covered by such demurrer or plea.

38.

If the plaintiff shall not reply to any plea, or set down any plea or demurrer for argument, on the rule day when the same is filed, or on the next succeeding rule day, he shall be deemed to admit the truth and sufficiency thereof, and his bill shall be dismissed as of course, unless a judge of the court shall allow him further time for the purpose.

ANSWERS.

39.

The rule, that if a defendant submits to answer he shall answer fully to all the matters of the bill, shall no longer apply in cases where he might by plea protect himself from such answer and discovery. And the defendant shall be entitled in all cases by answer to insist upon all matters of defence (not being matters of abatement, or to the character of the parties, or matters of form) in bar of or to the merits of the bill, of which he may be entitled to avail himself by a plea in bar; and in such answer he shall not be compellable to answer any other matters than he would be compellable to answer and discover upon filing a plea in bar, and an answer in support of such plea, touching the matters set forth in the bill, to avoid or repel the bar or defence. Thus, for example, a bona fide purchaser for a valuable consideration, without notice, may set up that defence by way of answer instead of plea, and shall be entitled to the same protection, and shall not be compellable to make any further answer or discovery of his title than he would be in any answer in support of such plea.

40.

A defendant shall not be bound to answer any statement or charge in the bill, unless specially and particularly interrogated thereto; and a defendant shall not be bound to answer any

interrogatory in the bill, except those interrogatories which such defendant is required to answer; and where a defendant shall answer any statement or charge in the bill, to which he is not interrogated, only by stating his ignorance of the matter so stated or charged, such answer shall be deemed impertinent.*

41.

The interrogatories contained in the interrogating part of the bill shall be divided as conveniently as may be from each other, and numbered consecutively 1, 2, 3, &c.; and the interrogatories which each defendant is required to answer shall be specified in a note at the foot of the bill, in the form or to the effect following; that is to say, "The defendant (A. B.) is required to answer the interrogatories numbered respectively 1, 2, 3, &c.;" and the office copy of the bill taken by each defendant shall not contain any interrogatories except those which such defendant is required to answer, unless such defendant shall require to be furnished with a copy of the whole bill.

42.

The note at the foot of the bill, specifying the interrogatories which each defendant is required to answer, shall be considered and treated as part of the bill, and the addition of any such note to the bill, or any alteration in or addition to such note after the bill is filed, shall be considered and treated as an amendment of the bill.

43.

Instead of the words of the bill now in use, preceding the interrogating part thereof, and beginning with the words "To the end, therefore," there shall hereafter be used words in the form or to the effect following: "To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder

* *Vide post*, 93d Rule, page 596.

written they are respectively required to answer ; that is to say : —

“ 1. Whether, &c.

“ 2. Whether, &c.”

44.

A defendant shall be at liberty, by answer, to decline answering any interrogatory, or part of an interrogatory, from answering which he might have protected himself by demurrer ; and he shall be at liberty so to decline, notwithstanding he shall answer other parts of the bill, from which he might have protected himself by demurrer.

45.

No special replication to any answer shall be filed. But if any matter alleged in the answer shall make it necessary for the plaintiff to amend his bill, he may have leave to amend the same with or without the payment of costs, as the court, or a judge thereof, may in his discretion direct.

46.

In every case where an amendment shall be made after answer filed, the defendant shall put in a new or supplemental answer, on or before the next succeeding rule day after that on which the amendment or amended bill is filed, unless the time is enlarged or otherwise ordered by a judge of the court ; and upon his default the like proceedings may be had as in cases of an omission to put in an answer.

PARTIES TO BILLS.

47.

In all cases where it shall appear to the court that persons, who might otherwise be deemed necessary or proper parties to the suit, cannot be made parties by reason of their being out of the jurisdiction of the court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the court as to the parties before the court, the court may in their discretion proceed in the cause without making such persons parties ; and in such cases the decree shall be without prejudice to the rights of the absent parties.

48.

Where the parties on either side are very numerous, and cannot, without manifest inconvenience and oppressive delays in the suit, be all brought before it, the court in its discretion may dispense with making all of them parties, and may proceed in the suit, having sufficient parties before it to represent all the adverse interests of the plaintiffs and the defendants in the suit properly before it. But in such cases the decree shall be without prejudice to the rights and claims of all the absent parties.

49.

In all suits concerning real estate, which is vested in trustees by devise, and such trustees are competent to sell and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the estate, or the proceeds, or the rents and profits, in the same manner, and to the same extent, as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested in such real estate, or rents and profits, parties to the suit; but the court may, upon consideration of the matter on the hearing, if it shall so think fit, order such persons to be made parties.

50.

In suits to execute the trusts of a will, it shall not be necessary to make the heir at law a party; but the plaintiff shall be at liberty to make the heir at law a party where he desires to have the will established against him.

51.

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

52.

Where the defendant shall, by his answer, suggest that the bill is defective for want of parties, the plaintiff shall be at liberty, within fourteen days after answer filed, to set down the cause for argument upon that objection only ; and the purpose for which the same is so set down shall be notified by an entry, to be made in the clerk's order book, in the form or to the effect following, (that is to say,) "Set down upon the defendant's objection for want of parties." And where the plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not, at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled as of course to an order for liberty to amend his bill by adding parties. But the court, if it thinks fit, shall be at liberty to dismiss the bill.

53.

If a defendant shall, at the hearing of a cause, object that a suit is defective for want of parties not having by plea or answer taken the objection, and therein specified by name or description the parties to whom the objection applies, the court (if it shall think fit) shall be at liberty to make a decree saving the rights of the absent parties.

NOMINAL PARTIES TO BILLS.

54.

Where no account, payment, conveyance, or other direct relief is sought against a party to a suit, not being an infant, the party, upon service of the subpœna upon him, need not appear and answer the bill, unless the plaintiff specially requires him so to do by the prayer of his bill ; but he may appear and answer, at his option ; and if he does not appear and answer he shall be bound by all the proceedings in the cause. If the plaintiff shall require him to appear and answer, he shall be entitled to the costs of all the proceedings against him, unless the court shall otherwise direct.

55.

Whenever an injunction is asked for by the bill to stay proceedings at law, if the defendant do not enter his appearance and plead, demur, or answer to the same within the time prescribed therefor by these rules, the plaintiff shall be entitled as of course, upon motion without notice, to such injunction. But special injunctions shall be grantable only upon due notice to the other party by the court in term, or by a judge thereof in vacation, after a hearing, which may be ex parte, if the adverse party does not appear at the time and place ordered. In every case where an injunction, either the common injunction or a special injunction, is awarded in vacation, it shall, unless previously dissolved by the judge granting the same, continue until the next term of the court, or until it is dissolved by some other order of the court.

BILLS OF REVIVOR AND SUPPLEMENTAL BILLS.

56.

Whenever a suit in equity shall become abated by the death of either party, or by any other event, the same may be revived by a bill of revivor, or a bill in the nature of a bill of revivor, as the circumstances of the case may require, filed by the proper parties entitled to revive the same; which bill may be filed in the clerk's office at any time; and upon suggestion of the facts, the proper process of subpoena shall, as of course, be issued by the clerk, requiring the proper representatives of the other party to appear and show cause, if any they have, why the cause should not be revived. And if no cause shall be shown at the next rule day which shall occur after fourteen days from the time of the service of the same process, the suit shall stand revived, as of course.

57.

Whenever any suit in equity shall become defective, from any event happening after the filing of the bill, (as, for example, by change of interest in the parties,) or for any other reason a supplemental bill, or a bill in the nature of a supplemental bill, may be necessary to be filed in the cause, leave to

file the same may be granted by any judge of the court on any rule day, upon proper cause shown, and due notice to the other party. And if leave is granted to file such supplemental bill, the defendant shall demur, plead, or answer thereto, on the next succeeding rule day after the supplemental bill is filed in the clerk's office, unless some other time shall be assigned by a judge of the court.

58.

It shall not be necessary in any bill of revivor, or supplemental bill, to set forth any of the statements in the original suit, unless the special circumstances of the case may require it.

ANSWERS.

59.

Every defendant may swear to his answer before any justice or judge of any court of the United States, or before any commissioner appointed by any circuit court to take testimony or depositions, or before any master in chancery appointed by any circuit court, or before any judge of any court of a State or Territory.

AMENDMENT OF ANSWERS.

60.

After an answer is put in, it may be amended as of course, in any matter of form, or by filling up a blank, or correcting a date, or reference to a document or other small matter, and be re-sworn, at any time before a replication is put in, or the cause is set down for a hearing upon bill and answer. But after replication, or such setting down for hearing, it shall not be amended in any material matters, as by adding new facts or defences, or qualifying or altering the original statements, except by special leave of the court or of a judge thereof, upon motion and cause shown after due notice to the adverse party, supported, if required, by affidavit. And in every case where leave is so granted, the court, or the judge granting the same, may, in his discretion, require that the same be separately engrossed and added as a distinct amendment to the original answer, so as to be distinguishable therefrom.

EXCEPTIONS TO ANSWERS.

61.

After an answer is filed on any rule day, the plaintiff shall be allowed until the next succeeding rule day to file in the clerk's office exceptions thereto for insufficiency, and no longer, unless a longer time shall be allowed for the purpose, upon cause shown to the court or a judge thereof; and if no exception shall be filed thereto within that period, the answer shall be deemed and taken to be sufficient.

62.

When the same solicitor is employed for two or more defendants, and separate answers shall be filed, or other proceedings had by two or more of the defendants separately, costs shall not be allowed for such separate answers or other proceedings, unless a master, upon reference to him, shall certify that such separate answers and other proceedings were necessary or proper, and ought not to have been joined together.

63.

Where exceptions shall be filed to the answer for insufficiency within the period prescribed by these rules, if the defendant shall not submit to the same and file an amended answer on the next succeeding rule day, the plaintiff shall forthwith set them down for a hearing on the next succeeding rule day thereafter before a judge of the court, and shall enter, as of course, in the order book, an order for that purpose. And if he shall not so set down the same for a hearing, the exceptions shall be deemed abandoned, and the answer shall be deemed sufficient: provided, however, that the court, or any judge thereof, may, for good cause shown, enlarge the time for filing exceptions, or for answering the same, in his discretion, upon such terms as he may deem reasonable.

64.

If at the hearing the exceptions shall be allowed, the defendant shall be bound to put in a full and complete answer thereto on the next succeeding rule day; otherwise the plaintiff shall, as of course, be entitled to take the bill, so far as the matter of

such exceptions is concerned, as confessed, or, at his election, he may have a writ of attachment to compel the defendant to make a better answer to the matter of the exceptions; and the defendant, when he is in custody upon such writ, shall not be discharged therefrom but by an order of the court, or of a judge thereof, upon his putting in such answer and complying with such other terms as the court or judge may direct.

65.

If, upon argument, the plaintiff's exceptions to the answer shall be overruled, or the answer shall be adjudged insufficient, the prevailing party shall be entitled to all the costs occasioned thereby, unless otherwise directed by the court, or the judge thereof, at the hearing upon the exceptions.

REPLICATION AND ISSUE.

66.

Whenever the answer of the defendant shall not be excepted to, or shall be adjudged or deemed sufficient, the plaintiff shall file the general replication thereto on or before the next succeeding rule day thereafter; and in all cases where the general replication is filed the cause shall be deemed to all intents and purposes at issue, without any rejoinder or other pleading on either side. If the plaintiff shall omit or refuse to file such replication within the prescribed period, the defendant shall be entitled to an order, as of course, for a dismissal of the suit; and the suit shall thereupon stand dismissed, unless the court, or a judge thereof, shall, upon motion for cause shown, allow a replication to be filed *nunc pro tunc*, the plaintiff submitting to speed the cause, and to such other terms as may be directed.

TESTIMONY — HOW TAKEN.

67.

After the cause is at issue, commissions to take testimony may be taken out in vacation as well as in term, jointly by both parties, or severally by either party, upon interrogatories filed by the party taking out the same in the clerk's office, ten

days' notice thereof being given to the adverse party to file cross-interrogatories before the issuing of the commission ; and if no cross-interrogatories are filed at the expiration of the time, the commission may issue *ex parte*. In all cases the commissioner or commissioners shall be named by the court, or by a judge thereof. If the parties shall so agree, the testimony may be taken upon oral interrogatories by the parties or their agents, without filing any written interrogatories.

DECEMBER TERM, 1854.

Ordered, That the sixty-seventh rule governing equity practice be so amended as to allow the presiding judge of any court exercising jurisdiction, either in term time or vacation, to vest in the clerk of said court general power to name commissioners to take testimony in like manner that the court or judge thereof can now do by the said sixty-seventh rule.

DECEMBER TERM, 1861.

Ordered, That the last paragraph in the sixty-seventh rule in equity be repealed, and the rule be amended as follows: Either party may give notice to the other that he desires the evidence to be adduced in the cause to be taken orally, and thereupon all the witnesses to be examined shall be examined before one of the examiners of the court, or before an examiner to be specially appointed by the court, the examiner to be furnished with a copy of the bill and answer, if any ; and such examination shall take place in the presence of the parties or their agents, by their counsel or solicitors, and the witnesses shall be subject to cross-examination, and re-examination, and which shall be conducted as near as may be in the mode now used in common law courts. The depositions taken upon such oral examination shall be taken down in writing by the examiner in the form of narrative, unless he determines the examination shall be by question and answer in special instances ; and, when completed, shall be read over to the witness and signed by him in the presence of the parties or counsel, or such of them as may attend ; provided, if the witness shall refuse to sign the said deposition, then the examiner shall sign the same ; and the examiner may, upon all examinations, state any special matters to the court as he shall think fit ; and any

question or questions which may be objected to shall be noted by the examiner upon the deposition, but he shall not have power to decide on the competency, materiality, or relevancy of the questions; and the court shall have power to deal with the costs of incompetent, immaterial or irrelevant depositions, or parts of them, as may be just.

The compulsory attendance of witnesses, in case of refusal to attend, to be sworn, or to answer any question put by the examiner, or by counsel or solicitor, the same practice shall be adopted as is now practised with respect to witnesses to be produced on examination before an examiner of said court on written interrogatories.

Notice shall be given, by the respective counsel or solicitors, to the opposite counsel or solicitors or parties, of the time and place of the examination, for such reasonable time as the examiner may fix by order in each cause.

When the examination of witnesses before the examiner is concluded, the original deposition, authenticated by the signature of the examiner, shall be transmitted by him to the clerk of the court, to be there filed of record in the same mode as prescribed in the thirtieth section of act of Congress September 24, 1789.

Testimony may be taken on commission in the usual way by written interrogatories and cross-interrogatories, on motion to the court in term time, or to a judge in vacation, for special reasons satisfactory to the court or judge.

68.

Testimony may also be taken in the cause, after it is at issue, by deposition, according to the acts of Congress. But in such case, if no notice is given to the adverse party of the time and place of taking the deposition, he shall, upon motion and affidavit of the fact, be entitled to a cross-examination of the witness either under a commission or by a new deposition taken under the acts of Congress, if a court or a judge thereof shall, under all the circumstances, deem it reasonable.

69.

Three months, and no more, shall be allowed for the taking of testimony after the cause is at issue, unless the court or a

judge thereof shall, upon special cause shown by either party, enlarge the time ; and no testimony taken after such period shall be allowed to be read in evidence at the hearing. Immediately upon the return of the commissions and depositions, containing the testimony, into the clerk's office, publication thereof may be ordered in the clerk's office, by any judge of the court, upon due notice to the parties, or it may be enlarged, as he may deem reasonable under all the circumstances. But, by consent of the parties, publication of the testimony may at any time pass in the clerk's office, such consent being in writing, and a copy thereof entered in the order books, or indorsed upon the deposition or testimony.

TESTIMONY DE BENE ESSE.

70.

After any bill filed, and before the defendant hath answered the same, upon affidavit made that any of the plaintiff's witnesses are aged or infirm, or going out of the country, or that any one of them is a single witness to a material fact, the clerk of the court shall, as of course, upon the application of the plaintiff, issue a commission to such commissioner or commissioners, as a judge of the court may direct, to take the examination of such witness or witnesses de bene esse upon giving due notice to the adverse party of the time and place of taking his testimony.

FORM OF THE LAST INTERROGATORY.

71.

The last interrogatory in the written interrogatories to take testimony now commonly in use shall in the future be altered, and stated in substance, thus: "Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer."

CROSS-BILL.

72.

Where a defendant in equity files a cross-bill for discovery only against the plaintiff in the original bill, the defendant to the original bill shall first answer thereto, before the original plaintiff shall be compellable to answer the cross-bill. The answer of the original plaintiff to such cross-bill may be read and used by the party filing the cross-bill at the hearing, in the same manner and under the same restrictions as the answer praying relief may now be read and used.

REFERENCE TO AND PROCEEDINGS BEFORE MASTERS.

73.

Every decree for an account of the personal estate of a testator or intestate shall contain a direction to the master, to whom it is referred to take the same, to inquire and state to the court what parts, if any, of such personal estate, are outstanding or undisposed of, unless the court shall otherwise direct.

74.

Whenever any reference of any matter is made to a master to examine and report thereon, the party at whose instance, or for whose benefit, the reference is made, shall cause the same to be presented to the master for a hearing on or before the next rule day succeeding the time when the reference was made; if he shall omit to do so, the adverse party shall be at liberty forthwith to cause proceedings to be had before the master, at the costs of the party procuring the reference.

75.

Upon every such reference it shall be the duty of the master, as soon as he reasonably can after the same is brought before him, to assign a time and place for proceedings in the same, and to give due notice thereof to each of the parties or their solicitors; and if either party shall fail to appear at the time and place appointed, the master shall be at liberty to proceed *ex parte*, or, in his discretion, to adjourn the examination and

proceedings to a future day, giving notice to the absent party or his solicitor of such adjournment; and it shall be the duty of the master to proceed with all reasonable diligence in every such reference, and with the least practicable delay, and either party shall be at liberty to apply to the court, or a judge thereof, for an order to the master to speed the proceedings, and to make his report, and to certify to the court or judge the reasons for any delay.

76.

In the reports made by the master to the court no part of any state of facts, charge, affidavit, deposition, examination, or answer brought in or used before them shall be stated or recited. But such state of facts, charge, affidavit, deposition, examination, or answer shall be identified, specified, and referred to, so as to inform the court what state of facts, charge, affidavit, deposition, examination, or answer were so brought in or used.

77.

The master shall regulate all the proceedings in every hearing before him, upon every such reference; and he shall have full authority to examine the parties in the cause upon oath touching all matters contained in the reference; and also to require the production of all books, papers, writings, vouchers, and other documents applicable thereto; and also to examine on oath, *vivâ voce*, all witnesses produced by the parties before him, and to order the examination of other witnesses to be taken, under a commission to be issued upon his certificate from the clerk's office, or by deposition, according to the acts of Congress, or otherwise, as hereinafter provided; and also to direct the mode in which the matters requiring evidence shall be proved before him; and generally to do all other acts, and direct all other inquiries and proceedings in the matters before him, which he may deem necessary and proper to the justice and merits thereof and the rights of the parties.

78.

Witnesses who live within the district may, upon due notice to the opposite party, be summoned to appear before the commissioner appointed to take testimony, or before a master or

examiner appointed in any cause, by subpoena in the usual form, which may be issued by the clerk in blank, and filled up by the party praying the same, or by the commissioner, master, or examiner, requiring the attendance of the witnesses at the time and place specified, who shall be allowed for attendance the same compensation as for attendance in court; and if any witness shall refuse to appear, or to give evidence, it shall be deemed a contempt of the court, which being certified to the clerk's office by the commissioner, master, or examiner, an attachment may issue thereupon by order of the court or of any judge thereof, in the same manner as if the contempt were for not attending, or for refusing to give testimony in the court. But nothing herein contained shall prevent the examination of witnesses *vivâ voce* when produced in open court, if the court shall in its discretion deem it advisable.

79.

All parties accounting before a master shall bring in their respective accounts in the form of debtor and creditor; and any of the other parties who shall not be satisfied with the accounts so brought in shall be at liberty to examine the accounting party *vivâ voce*, or upon interrogatories in the master's office, or by deposition, as the master shall direct.

80.

All affidavits, depositions, and documents which have been previously made, read, or used in the court, upon any proceeding in any cause or matter, may be used before the master.

81.

The master shall be at liberty to examine any creditor or other person coming in to claim before him, either upon written interrogatories or *vivâ voce*, or in both modes, as the nature of the case may appear to him to require. The evidence upon such examination shall be taken down by the master, or by some other person by his order and in his presence, if either party requires it, in order that the same may be used by the court, if necessary.

82.

The circuit courts may appoint standing masters in chancery in their respective districts, both the judges concurring in the appointment; and they may also appoint a master pro hac vice in any particular case. The compensation to be allowed to every master in chancery for his services in any particular case shall be fixed by the circuit court in its discretion, having regard to all the circumstances thereof, and the compensation shall be charged upon and borne by such of the parties in the cause as the court shall direct. The master shall not retain his report as security for his compensation; but when the compensation is allowed by the court, he shall be entitled to an attachment for the amount against the party who is ordered to pay the same, if, upon notice thereof, he does not pay it within the time prescribed by the court.

EXCEPTIONS TO REPORT OF MASTER.

83.

The master, as soon as his report is ready, shall return the same into the clerk's office, and the day of the return shall be entered by the clerk in the order book. The parties shall have one month from the time of filing the report to file exceptions thereto; and if no exceptions are within that period filed by either party, the report shall stand confirmed on the next rule day after the month is expired. If exceptions are filed, they shall stand for hearing before the court, if the court is then in session; or, if not, then at the next sitting of the court which shall be held thereafter by adjournment or otherwise.

84.

And in order to prevent exceptions to reports from being filed for frivolous causes, or for mere delay, the party whose exceptions are overruled shall, for every exception overruled, pay costs to the other party, and for every exception allowed shall be entitled to costs—the costs to be fixed in each case by the court, by a standing rule of the circuit court.

DECREES.

85.

Clerical mistakes in decrees, or decretal orders, or errors arising from any accidental slip or omission, may, at any time before an actual enrolment thereof, be corrected by order of the court or a judge thereof, upon petition, without the form or expense of a rehearing.

86.

In drawing up decrees and orders, neither the bill, nor answer, nor other pleadings, nor any part thereof, nor the report of any master, nor any other prior proceeding, shall be recited or stated in the decree or order; but the decree and order shall begin, in substance, as follows: "This cause came on to be heard (or to be further heard, as the case may be) at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz.: [Here insert the decree or order.]

GUARDIANS AND PROCHEIN AMIS.

87.

Guardians ad litem to defend a suit may be appointed by the court, or by any judge thereof, for infants or other persons who are under guardianship, or otherwise incapable to sue for themselves. All infants and other persons so incapable may sue by their guardians, if any, or by their prochein ami; subject, however, to such orders as the court may direct for the protection of infants and other persons.

88.

Every petition for a rehearing shall contain the special matter or cause on which such rehearing is applied for, shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party, or by some other person. No rehearing shall be granted after the term at which the final decree of the court shall have been entered and recorded, if an appeal lies to the Supreme Court.

But if no appeal lies, the petition may be admitted at any time before the end of the next term of the court, in the discretion of the court.

89.

The circuit courts (both judges concurring therein) may make any other and further rules and regulations for the practice, proceedings, and process, mesne and final, in their respective districts, not inconsistent with the rules hereby prescribed, in their discretion, and from time to time alter and amend the same.

90.

In all cases where the rules prescribed by this court or by the circuit court do not apply, the practice of the circuit court shall be regulated by the present practice of the High Court of Chancery in England, so far as the same may reasonably be applied consistently with the local circumstances and local convenience of the district where the court is held, not as positive rules, but as furnishing just analogies to regulate the practice.

91.

Whenever, under these rules, an oath is or may be required to be taken, the party may, if conscientiously scrupulous of taking an oath, in lieu thereof, make solemn affirmation to the truth of the facts stated by him.

92.

These rules shall take effect and be of force in all the circuit courts of the United States from and after the first day of August next; but they may be previously adopted by any circuit court in its discretion; and when and as soon as these rules shall so take effect and be of force, the rules of practice for the circuit courts in equity suits promulgated and prescribed by this court in March, 1822, shall henceforth cease and be of no further force or effect. And the clerk of this court is directed to have these rules printed, and to transmit a printed copy thereof, duly certified, to the clerks of the several courts of the United States, and to each of the judges thereof.

DECEMBER TERM, 1850.

93.

Ordered, That the fortieth rule heretofore adopted and promulgated by this court as one of the rules of practice in suits in equity in the circuit courts be, and the same is hereby, repealed and annulled. And it shall not hereafter be necessary to interrogate a defendant specially and particularly upon any statement in the bill, unless the complainant desires to do so, to obtain a discovery.

DECEMBER TERM, 1863.

94.

Ordered, That in suits in equity for the foreclosure of mortgages in the circuit courts of the United States, or in any court of the Territories having jurisdiction of the same, a decree may be rendered for any balance that may be found due to the complainant over and above the proceeds of the sale or sales, and execution may issue for the collection of the same, as is provided in the 8th rule of this court regulating the equity practice, where the decree is solely for the payment of money.

