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THE LAW OF COSTS.

J. W. P. S.

A TREATISE

ON THE

LAW OF COSTS

IN THE

Chancery Division of the High Court
of Justice.

BEING

THE SECOND EDITION

OF

MORGAN AND DAVEY'S COSTS IN CHANCERY.

WITH AN APPENDIX

CONTAINING

FORMS AND PRECEDENTS OF BILLS OF COSTS.

BY

THE RIGHT HONOURABLE

GEORGE OSBORNE MORGAN, Q.C., M.P.,

HIS MAJESTY'S JUDGE-ADVOCATE-GENERAL.

AND

EDWARD ALBERT WURTZBURG,

OF LINCOLN'S INN, BARRISTER-AT-LAW.

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PREFACE TO THE SECOND EDITION.



THE interval of seventeen years, which has elapsed since the first appearance of this work, has witnessed something like a revolution in the Procedure of what was once the High Court of Chancery. And in no branch of the practice have the changes introduced by the Judicature Acts, and The Rules of Court, been more marked than in that which forms the subject of the present Treatise.

Under such circumstances a New Edition of a work on the Law of Costs must, of necessity, partake, to a great extent, of the character of a new book. Every Rule of Court, and every decision of the High Court of Justice relating to Costs in the Chancery Division, will, it is believed, be found in this Volume. But, while a very large amount of entirely new matter has thus been added to the present Edition, no effort has been spared to render it more complete and useful by embodying in it every reported case bearing upon those portions of the original work which have been retained. The Precedents of Bills of Costs in

Costs

Appendix III. have been prepared by a gentleman of much experience in this branch of practice, to whom the Editors desire to express their thanks for his assistance.

The whole Volume is offered to the Profession in the hope that it may be received with the same generous indulgence which was so freely accorded to its predecessor.

G. O. M.

E. A. W.

July, 1882.

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ADDENDA ET CORRIGENDA.

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- 14 13. Add "In *Brown v. North* (C. A.), W. N. (1882), 56 ; 30 W. R. 531, the general rule was stated to be, that where a married woman has no visible means of payment, she ought not to be allowed to sue alone without giving security for costs, but that the rule did not apply where she had such means."
- 68 37. Add, "See *In re Sutton*, W. N. (1882), 68 ; 30 W. R. 657."
- 102 16. Add, "As to the costs where the plaintiff succeeds on some issues and is nonsuited on others, see *Abbott v. Andrews*, 8 Q. B. D. 648.
- 15 11. *Re Cartu Para Gold Mining Co.*, is now reported 19 Ch. D. 457.
- 98 19. Add references to *Re Foster v. Gl. Western Ry. Co.*, 8 Q. B. D. 515 ; and *Will v. Corcoran*, 2 Ch. D. 69.
- 103 5. Add a reference to *Heatley v. Newton*, 19 Ch. D. 326.
- 107 30. Add a reference to *In re Cooper*, *Cooper v. Vesey*, W. N. (1882), 55 ; 30 W. R. 648.
- 117 36. Add a reference to *Broughton v. Key*, W. N. (1882), 3.
- 120 10. *Hornby v. Cardwell* is now reported 8 Q. B. D. 329 ; and add references to *Williams v. South Eastern Ry. Co.*, 26 W. R. 352 ; and *Piller v. Roberts*, W. N. (1882), 78 ; 30 W. R. 595.
- 131 2. *Sparrow v. Hill* was reversed on appeal, 8 Q. B. D. 479.
- 143 16. Add, "Where an appellant is ordered to give security for costs within a certain time, and fails to do so, his right of appeal is utterly extinguished, and his appeal will be dismissed with costs (*Harris v. Fleming*, 30 W. R. 555)."
- 158 7. Add, "A defendant to an action which has been dismissed without costs, if he wishes to obtain leave from the Court to appeal on the question of costs, should apply at the time when the action is so dismissed ; and such leave will not be given on an application by the defendant for that purpose after the plaintiff has given notice of, and set down, an appeal from the dismissal of the action (*May v. Thompson* (2), W. N. (1882), 53)."
- 158 27. Add, "The authority of these cases, however, seems to be somewhat shaken by the recent case of *Turner v. Hancock* (C. A.), W. N. (1882), 47. It would appear that any order directing a trustee to pay costs, or depriving him of costs, may now be appealed against."
- 159 32. *Hornby v. Cardwell* is now reported, 8 Q. B. D. 329.
- 191 7. Add, "In *Lewis v. Trusk*, W. N. (1882) 68, however, the trustee in bankruptcy of the defendant, a defaulting trustee, was only held entitled to the defendant's costs of the action incurred subsequently to the bankruptcy, provided the defendant first paid into court the amount in which he was in default ; but see *Clare v. Clare*, W. N. (1882), 72."
- 205 30. For 59 Geo. III., c. 91, read 52 Geo. III., c. 101.
- 212 32. For 59 Geo. III., c. 91, read 52 Geo. III., c. 101.
- 223 27. Add, "So where mortgages were wrongly ordered to pay costs (*In re Cooper*, *Cooper v. Vesey*, 30 W. R. 648 ; W. N. (1882) 55)."
- 232 17. Add a reference to *Turner v. Hancock*, W. N. (1882), 47.
- 269 37. Add "A *bonâ fide* creditor who presents a petition in ignorance of a prior petition, and if he has good reason to suppose that the other is not a *bonâ fide* one, he may proceed with his own, and will be allowed his costs (*In re General Financial Bank*, 30 W. R. 417)."

- Page. Line.
- 320 36. Add "Trustees who are made respondents and have accepted 42s. for their costs under R. S. C. (Costs), Sched. r. 17, will not be allowed their costs of appearing on the petition, unless they come for some useful purpose (*In re Sutton*, 30 W. R. 657 ; W. N. (1882) 68)."
- 382 33. Add "A receiver cannot be brought before the Court except in cases of personal misconduct, nor unless in such a case can costs be asked against him (*In re Wetley Brick Co.*, 30 W. R. 445 ; *per* Jessel, M. R.)."
- 385 26. Add, "The right of the solicitor to a trustee in bankruptcy to be paid his costs out of the estate is only the right of his client the trustee ; he has no independent right ; and if either the trustee or the solicitor has been guilty of misconduct, the Court can refuse to allow the solicitor's costs to be paid out of the estate, and this notwithstanding the costs have been taxed, and an allocatur made by the Taxing Master (*Ex parte Harper*, *In re Pooley* (C. A.) W. N. (1882), 70 ; 30 W. R. 650.)"
- 343 2. Add references to *Lewis v. Trask*, W. N. (1882), 68 ; and *Clare v. Clare* *id.*, p. 72.
- 361 18. Add, "And see *Brown v. North*, W. N. (1882), 56."
- 370 20. Add a reference to *Price v. Mayo*, W. N. (1873), 81 ; 21 W. R. 539.
- 431 17. Add, "But see *Thomas v. Palin*, W. N. (1882), 81."
- 499 3. Add a reference to *Smith v. Chadwick*, 20 Ch. D. 81.
- 533 37. Add, "It is now the practice to append to a writ of attachment issued in cases falling under s. 4 of the Debtor's Act, 1869, a note in the following terms :—'Note : This writ does not authorise an imprisonment for any longer period than one year.' And where this has been done, it is unnecessary to obtain any order for the discharge of the prisoner at the expiration of his year of imprisonment. (*In re Edwards*, *Brooke v. Edwards*, 30 W. R. 656 ; W. N. (1882), 73)."
579. 23. For "Of notice to the sheriff marked as a seal of renewal," read "Or notice to the sheriff marked with a seal of renewal."
605. 31 and 38. For "Administrations," read "Admissions."

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<i>Brooke v. Edwards</i> , <i>In re Edwards.</i>	<i>May v. Thompson.</i>
<i>Broughton v. Key.</i>	<i>Piller v. Roberts.</i>
<i>Brown v. North.</i>	<i>Pooley</i> , <i>In re</i> , <i>Ex parte Harper.</i>
<i>Carta Para Gold Mining Co., Re.</i>	<i>Price v. Mayo.</i>
<i>Clare v. Clare.</i>	<i>Smith v. Chadwick.</i>
<i>Cooper</i> , <i>In re</i> , <i>Cooper v. Vesey.</i>	<i>Sparrow v. Hill.</i>
<i>Edwards</i> , <i>In re</i> , <i>Brooke v. Edwards.</i>	<i>Sutton</i> , <i>In re.</i>
<i>Foster v. Great Western Ry. Co., Itc</i>	<i>Thomas v. Palin.</i>
<i>General Financial Bank</i> , <i>In re.</i>	<i>Turner v. Hancock.</i>
<i>Harper</i> , <i>Ex parte</i> , <i>In re Pooley.</i>	<i>Wetley Brick Co., In re.</i>
<i>Harris v. Fleming.</i>	<i>Williams v. South Eastern Ry. Co.</i>
<i>Heatley v. Newton.</i>	<i>Witt v. Corcoran.</i>
<i>Hornby v. Cardwell.</i>	

C O S T S

IN THE

CHANCERY DIVISION.

CHAPTER I.

COSTS GENERALLY.

PRIOR to the passing of the Judicature Acts different rules prevailed as to costs in Courts of Equity and Courts of Common Law. In the former, costs were always in the discretion of the Court; in the latter, the general rule was that the costs followed the event and were given to the party who was successful. The Statute of Gloucester, passed in the 6th Ed. I., was the foundation of the Common Law jurisdiction as to costs. This statute gave to the plaintiff in an action the right to recover his costs if he succeeded in obtaining any damages, which right was modified and regulated by a variety of statutes passed in later times; and subsequently a right to costs was conferred upon successful defendants. All these statutes, however, proceeded upon the same principle, that of making the party who was worsted bear the expense occasioned by the litigation; and the general rule, therefore, was that in a Court of Common Law the successful litigant, whether plaintiff or defendant, was entitled to recover his costs. To this general rule, however, many exceptions were from time to time created by various Acts of Parliament, until the rules as to costs at Common Law became extremely complicated. The enactments on the

Former
rule as to
costs.

County
Courts Act,
1867.

subject were very numerous, but the whole of them with one exception have now been repealed by the Judicature Act, 1875 : see *Garnett v. Bradley*, 3 App. Cas. 944; 26 W. R. 698; *Parsons v. Tinling*, 2 C. P. D. 119; *Ex parte Mercers' Company*, 10 Ch. D. 481; 27 W. R. 424; *Tenant & Co. v. Ellis & Co.* 6 Q. B. D. 46. The one exception is the County Courts Act, 1867, 30 & 31 Vict. c. 142, s. 5, which provides that if in any action in a superior court the plaintiff recovers a sum not exceeding £20 in an action of contract, or £10 in an action of tort he shall not be entitled to any costs unless (1) the judge certify for costs, or (2) the Court or a judge at chambers shall allow them. This Act was held to apply to all actions without distinction, but is now by s. 67 of the Judicature Act, 1873, limited to such actions as can be brought in a County Court.

R. S. C.
Ord. LV.
r. 1.

It is now provided (R. S. C. Ord. LV., r. 1) that subject to the provisions of the Judicature Act, the costs of and incident to all proceedings in the High Court shall be in the discretion of the Court, but nothing contained in this rule is to deprive a trustee, mortgagee, or other person of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in Courts of Equity: provided that where any action or issue is tried by a jury, the costs shall follow the event, unless upon application made at the trial for good cause shown the judge before whom such action or issue is tried or the court shall otherwise order. The Judicature Act, 1875, s. 33, provides that, "From and after the commencement of this Act there shall be repealed" certain specified Acts, and also "any other enactment inconsistent with this Act or the principal Act." The only provision in the Judicature Acts in connection with the subject of costs to which Ord. LV. appears to be subject is s. 67 of the Act of 1873, which makes the provisions contained in the fifth, seventh, eighth, and tenth sections of the County Courts Act, 1867, applicable to all

actions in the High Court of Justice, in which any relief is sought which can be given in a County Court.

The result therefore is that in the Queen's Bench Division : Costs in the Queen's Bench Division.

I. If the trial be before a judge alone, the costs are absolutely in his discretion.

II. If the trial be by judge and jury, the costs follow the event :

(i.) Unless upon application made at the trial and for good cause shown, the judge or the Court otherwise order ;

or, (ii.) Unless the action be one which could be tried in a County Court, and the result of the trial show that it ought to have been. If the jury find for a sum not exceeding £20 in an action of contract, or not exceeding £10 in an action of tort, the plaintiff will be punished for not suing in the County Court by being deprived of his costs, unless the judge will certify that the action was one fit to be tried in the Superior Court.

In the Chancery Division, however, the costs are always in the discretion of the Court, as they were in the old Court of Chancery, subject only to the provisions of the County Courts Act, 1867, s. 5 (R. S. C. Ord. LV., r. 1.; Jud. Act, 1873, s. 67); for a judge of the Chancery Division cannot try a case with a jury (*Clarke v. Cookson*, 2 Ch. D. 746; *Warner v. Murdoch*, 4 Ch. D. 750).

There are three ways in which costs awarded by any judgment, decree, or order of the Chancery Division may be taxed : Three ways of taxing costs.

I. As between party and party ;

II. As between solicitor and client ;

III. As between solicitor and client, but with the addition of other charges and expenses properly incurred but not strictly costs of suit.

By R. S. C. (Costs) Sched. r. 28, the rules, orders, and practice as to costs and the taxation of costs existing prior

to 1875, except where altered by the new rules or by the Act itself, are to remain in force in the Chancery Division (*Pringle v. Glogg*, 10 Ch. D. 676).

First, as
between
party and
party.

I. When costs are directed to be taxed simply, without any further direction, they will be taxed as between party and party; and this, although the party to whom the costs are awarded would according to the ordinary practice of the Court be entitled to his costs as between solicitor and client, or to his costs, charges, and expenses. If therefore the costs are intended to be taxed as between solicitor and client, or any costs, charges, and expenses not strictly costs of suit are to be allowed, or the taxation is in any respect to vary from taxation as between party and party, this should be expressed in the judgment decree or order (Seton, p. 124).

As to what costs will be allowed on taxation as between party and party, see *post*, ch. VIII. The general principle of such a taxation is that the successful party shall receive only such costs as were necessary to enable him to conduct the litigation.

Secondly,
as between
solicitor
and client.

II. When, on the other hand, costs are directed to be taxed "as between solicitor and client," a much more liberal allowance will be made. The party in whose favour such an order is made is entitled to receive all such costs as a solicitor would reasonably incur in the ordinary conduct of his client's case. Thus in a case of more than ordinary difficulty the Court allowed the costs of a consultation with a Queen's Counsel to settle the draft bill, though of course no such allowance would have made "as between party and party" (*Forster v. Davies*, 32 Beav. 624; 11 W. R. 813). But it is not every charge to which the solicitor would be entitled as against his own client, which will be allowed by the taxing-master. Extraordinary costs will be disallowed, as for instance where by the client's own instructions an unusual number of counsel were employed, or where the costs were incurred through the party's own default in incurring a contempt. The

particular actions in which, and the particular persons to whom, costs as between solicitor and client are ordinarily awarded, will be discussed in subsequent chapters.

A distinction is made by the taxing-master, without special directions, first, where the costs are to be paid by another party personally or out of a fund belonging wholly to other parties; secondly, where they are to be paid out of a fund in which the party receiving costs has a common interest with other parties; thirdly, where the fund out of which they are to be paid belongs wholly to the party himself (Seton, p. 124; 1 Smith's Ch. Pr. 1081). When costs are given out of a fund they are ordered to be paid to the solicitors of the parties; in all other cases to the parties themselves.

Costs as between solicitor and client are also occasionally awarded by the Court in cases of scandal or misconduct, by way of marking its disapproval. But the difference between solicitor and client costs and party and party costs in an action cannot be given by way of damages in the same action, the latter being all that the successful party is entitled to (*Cockburn v. Edwards*, (C. A.) 18 Ch. D. 449). The judge has no discretion to impose costs by way of penalty, beyond the costs of the suit (*Willmott v. Barber*, W. N. (1881) 107).

III. Trustees, executors, and administrators are usually allowed their costs of suit as between solicitor and client out of the trust funds or the general estate; and, in addition to costs of suit, all other costs, charges, and expenses properly incurred by them in the execution of the trust or the administration of the estate.

It should be stated to the Court that such additional costs, charges, and expenses have actually been incurred, and the order will then provide for their taxation and payment; but this is not absolutely necessary, for though not mentioned, they will be allowed by implication as "just allowances," under Cons. Ord. XXIII. r. 16 (*Fearn's v. Young*, 10 Ves. 184; *Amard v. Broadbourne*, 2 Ch.

Costs as
damages.

Thirdly,
costs,
charges,
and ex-
penses.

Ca. 138). In an old case (*Humphrys v. Moore*, 2 Atk. 108), it was held that executors were not entitled to their charges and expenses on taxation without an express direction, on the ground that they were presumed to retain them.

The charges and expenses of trustees are not "costs incident to proceedings in the High Court," and therefore are not within the provisions of R. S. C. Ord. LV., r. 1, and consequently not "in the discretion of the Court" in the ordinary sense of the term. Of course the Court *may* deprive a trustee of his charges and expenses, but to do this has been called a "violent" exercise of the Court's discretion, and such an order is only made in very special circumstances, and when the trustee has been guilty of gross misconduct (*In re Chennell*; *Jones v. Chennell*, 8 Ch. D. 492; 47 L. J. Ch. 583; 26 W. R. 595; 38 L. T. 494).

Mort-
gagees.

A mortgagee will also be allowed, in addition to his costs of a foreclosure or redemption action, all costs, charges, and expenses properly incurred in relation to his security; see *post*, ch. IV. s. VII.

CHAPTER II.

SECURITY FOR COSTS.

WHEN the sole plaintiff is resident or (if there be more than one) all the plaintiffs are resident out of the jurisdiction, and whether such plaintiff is a Sovereign, a Sovereign State, a corporation, or an individual (*Republic of Costa Rica v. Erlanger*, 3 Ch. D. 62; 24 W. R. 955; 35 L. T. 19), any defendant may require the plaintiff or plaintiffs to give security for costs. But the possession of real estate within the jurisdiction is a good answer to an application for security (*Kilkenny Railway v. Feilden*, 6 Ex. 81). The rule formerly applied to residents in Scotland (*Kerr v. Duchess of Munster*, Bunb. 35; *Ex parte Latta*, 3 De G. & S. 186; *In re East Llangynoy Mining Co.*, 23 W. R. 587; W. N. (1875), 81); and Ireland (*Hill v. Reardon*, 6 Mad. 46; *Moloney v. Smith*, 1 M'Cl. & Y. 213; *Craig v. Bolton*, 2 Bro. C. C. 609; *White v. Carroll*, Ir. R. 8 C. L. 296; *Clarke v. Croker*, *ibid.*, 318; *Corner v. Irwin*, *ibid.*, 504; *Yorke v. M'Laughlin*, *ibid.*, 547); the Judgments Extension Act, 1868, 31 & 32 Vict. c. 54, being held to apply only to actions at law. But now it is submitted that that Act is extended to all proceedings in any Division of the High Court, by the Judicature Act, 1873, s. 76; and that therefore residents in Scotland or Ireland are now exempted from giving security; and see *Keegan v. Keegan*, 7 L. R. Ir. 101. No order will be made on a plaintiff residing abroad to give security for costs, if there are co-plaintiffs residing in England (*Winthorp v. Royal Exchange Assurance Co.*, 1 Dick. 282; *Walker v. Easterby*, 6 Ves. 612; see, however, *Hanmer v. Mangles*, 12 M. & W. 313); *sed quare*, where all the plaintiffs are out of the juris-

By whom to be given :
1. When the plaintiff is out of the jurisdiction.

diction, but one of them sues by a next friend in this country (*Laider v. Parr*, 16 L. J. Ch. 269; and see *Smith v. Etches*, 1 H. & M. 558). The defendant is equally entitled to security whether the plaintiff is described as resident out of the jurisdiction, or has gone abroad at any time after the institution of the suit (*Loneragan v. Rokeby*, 2 Dick. 799; *Weeks v. Cole*, 14 Ves. 518; *Vale v. Offert*, 22 W. R. 629; 30 L. T. 457); or was in fact resident abroad at the time when the suit was instituted, though not so described. But the plaintiff must be *resident* abroad and not merely there on a visit or for a temporary purpose, without abandoning his residence in this country (*Green v. Charnock*, 1 Ves. jun. 396; 2 Cox, 284; *Hoby v. Hitchcock*, 5 Ves. 699; *Blakeney v. Dufaur*, 2 De G. M. & G. 771; *Edwardes v. Burke*, 9 L. T. 406). In *O'Conner v. Sierra Nevada Co.*, 23 Beav. 608, 24 Beav. 435, security seems to have been required from a plaintiff who had gone abroad, after bill filed, merely on matters connected with the suit—a case difficult to reconcile with the earlier decisions; see particularly *White v. Greathead*, 15 Ves. 2, and *Green v. Charnock*, 1 Ves. jun. 396. In *Blakeney v. Dufaur*, 2 De G. M. & G. 771, the plaintiff was in embarrassed circumstances and had gone to Jersey to avoid his creditors, and the Court held that he was “resident abroad,” and must give security. In the same way security was required from a plaintiff who had given up his house in England since the filing of the bill and gone to reside abroad, as he stated, for a temporary abode, but who left it uncertain whether and when he intended to return (*Kennaway v. Tripp*, 11 Beav. 588; and see *Stewart v. Stewart*, 20 Beav. 322). The plaintiff will not be required to give security if he is abroad in some official capacity on the public service: as in *Colebrook v. Jones*, 1 Dick. 154, where the plaintiff was a consul abroad; *Evelyn v. Chippendale* 9 Sim. 497, where the plaintiff was a half-pay officer who had resided sixteen years in Barbadoes, where he held the offices of harbour-master and captain of the port; and see *Fisher v. Bunbury*,

Sau. & Sc. 625. But it must distinctly appear that the plaintiff is abroad on the public service. In *Lillie v. Lillie*, 2 My. & K. 404, the plaintiff was described in the bill as 'a lieutenant in Her Majesty's 58th regiment, resident at Ceylon in the East Indies;' and it was held that he must give security, though it appeared that the regiment was in Ceylon. In *Clark v. Fergusson*, 1 Giff. 184, the plaintiff was described as 'a lieutenant in her Majesty's ship *Gladiator*, now on service,' and he was exempted from giving security. There seems to be no exemption in favour of a seafaring man (*Stewart v. Stewart*, 20 Beav. 322), though the contrary was held in *Gowran v. Barnett*, Sau. & Sc. 651. A peer, if resident abroad, must give security (*Lord Aldborough v. Burton*, 2 My. & K. 401), even though he possesses large estates in this country (*Lord Lucan v. Latouche*, 1 Hog. 448; but see *Kilkenny Ry. v. Fielden*, 6 Ex. 81). Security will not be required merely because the plaintiff intends to go abroad. In *Buddeley v. Harding*, 6 Mad. 214, where the plaintiff had been convicted of a misdemeanour and sentenced to be transported for seven years, but was then in prison in this country, a motion that he should give security was refused; and see *Seilaz v. Hanson*, 5 Ves. 261. Again, a foreigner, usually residing abroad, but temporarily resident here, will not be required to give security, though it is not denied that he intends to return to his own country (*Cumbottie v. Inngate*, 1 W. R. 533; *Redondo v. Chaytor*, 4 Q. B. D. 453; 27 W. R. 701; 40 L. T. 797, where the cases are discussed in an elaborate judgment by Thesiger, L. J.; *Ainslie v. Sims*, 17 Beav. 57, must be taken to be overruled; and see *Anon*, 5 L. J. Ch. (Old S.) 71); but *secus*, if he cannot be found at the address in this country given by him (*Perrot v. Novelli*, 9 Jur. 770; and see *Swanzy v. Swanzy*, 4 K. & J. 237; 27 L. J. Ch. 419). Executors and administrators, if out of the jurisdiction, must give security (*Shaw v. Dempsey*, Sau. & Sc. 628); and even where, on the death of a plaintiff from

whom security might have been, but was not, required, they obtained the common order for revivor (*Jackson v. Davenport*, 29 Beav. 212; 7 Jur. N. S. 1224). In *Desprez v. Mitchell*, 5 Mad. 87, a defendant obtained, on motion in the Court of Chancery, security for the costs of an action at law which, at the hearing, the plaintiff, who was out of the jurisdiction, had obtained leave to bring; but see *Hilton v. Lord Granville*, 5 Beav. 263. When the plaintiff comes within the jurisdiction the order will be discharged (*Mathews v. Chichester*, 30 Beav. 135; *O'Conner v. Sierra Nevada Company*, 24 Beav. 435).

2. An ambassador's servant, but not an ambassador.

An ambassador's servant, being a person privileged under 7 Ann. c. 12, must give security for costs (*Goodwin v. Archer*, 2 P. Wms. 452; *Adderly v. Smith*, 1 Dick. 355; *Anon.*, Mos. 175); but, *semble*, not an ambassador himself (*Duke de Montellano v. Christin*, 5 M. & S. 503).

3. Where the plaintiff mis-describes his residence, or is keeping out of the way.

The mere fact of the plaintiff not describing, or insufficiently describing his residence, is not of itself sufficient to entitle the defendant to require him to give security (*Hurst v. Padwick*, 12 Jur. 21), though the contrary seems to have been held in *Sandys v. Long*, 2 My. & K. 487; see this case commented on by Lord Cottenham, C., in *Hurst v. Padwick*. There must be a fraudulent intention to keep out of the way (*Hurst v. Padwick*; *Lumley v. Hughes*, 2 W. R. 112; *Simpson v. Burton*, 1 Beav. 556; *Griffiths v. Ricketts*, 5 Ha. 195; *Knight v. Cory*, 1 N. R. 229). If the plaintiff cannot be found at the place of which he is described, and no information can be obtained from his solicitors, he must give security: see *Bailey v. Gundry*, 1 Keen, 53; *Manby v. Bewicke*, 8 De G. M. & G. 468; 2 Jur. N. S. 671, overruling S. C. 3 W. R. 646; 1 Jur. N. S. 1015. In the latter case the decision of Wood, V.C. below, went on the grounds that the plaintiff had paid the costs of a demurrer allowed, which fact outweighed the evidence of his not being found; but this circumstance does not seem to have been adverted to by the Lords Justices. In *Oldale v. Whitcheer*, 5 Jur. N. S. 84,

S. C. *sub nom.* *Oldale v. Whitehead*, 7 W. R. 157, the plaintiff's affidavit, in answer to evidence that inquiry had been made for him, but he could not be found at the place of which he was described, stated that 'he occupied and rented apartments there, and his wife and family resided there,' and he was ordered to give security. In *Sandys v. Whateley*, 2 Jur. 1058, it was held that the plaintiff was sufficiently described as rector of a certain parish, although it appeared he was travelling about the country. In *Knight v. Cory*, 1 N. R. 229, Wood, V. C. held that where the plaintiff could not be found at the place of which he was described, the defendant ought to communicate with the plaintiff's solicitors; and he made the defendant pay the costs of the motion because he had omitted to do so. It seems, however, to have been otherwise held in Ireland (*Shaw v. Dempsey*, Sau. & Sc. 628). In *Smith v. Cornfoot*, 1 De G. & S. 684, the misdescription having been innocently inserted, and the defendants admitting that they knew the plaintiff's real address, the Court refused the motion, but gave the defendant his costs on his not putting the plaintiff to amend his bill; see also *Lamb v. Fottrell*, Ir. Rep. 8 Eq. 69. As to an insufficient description, see *Sibbering v. Earl of Balcarras*, 1 De G. & S. 683, where the motion was ordered to stand over for the plaintiff to amend his description of himself. In *Player v. Anderson*, 15 Sim. 104, the plaintiff, whose residence was correctly described when the bill was filed, was ordered to give security because he had since frequently changed his abode; see *Hutchinson v. Swift*, 13 W. R. 532; *Culvert v. Day*, 2 Yo. & Coll. 217; *Fraser v. Palmer*, 3 Yo. & Coll. 279; and *Dick v. Munden*, 13 W. R. 1013, where the plaintiff was allowed to amend instead of giving security. Security will not be required on account of an error in the plaintiff's description; see *Watts v. Kelly*, 6 W. R. 206, where the plaintiff, a letter-carrier, was described as a "clerk."

Security for costs on the ground of poverty may be required from the next friend of a married woman, but not

4. By the next friend

of a married woman, but not of an infant, on account of poverty.

from the next friend of an infant. A distinction between the next friend of a married woman and the next friend of an infant, appears to have been first drawn in *Pennington v. Alvin* (cor. Sir J. Leach, V. C.), 1 S. & S. 264; and it is now settled, 1st, that any person may bring an action in the name of an infant, and that security for costs will not be required from an infant's next friend (either original or substituted) on account of his poverty (*Davenport v. Davenport*, 1 S. & S. 101; *Pennington v. Alvin*; *Fellows v. Barrett*, 1 Keen, 119; *Murrell v. Clapham*, 8 Sim. 74; *Nalder v. Hawkins*, 2 My. & K. 243); and 2ndly, that the next friend of a married woman must be a person of substance, and the Court will on the defendant's application, and evidence of the next friend's poverty, order the next friend to be changed or security for costs to be given (*Pennington v. Alvin*, 1 S. & S. 264; *Drinan v. Mannix*, 3 Dr. & W. 154; *Stevens v. Williams*, 1 Sim. N. S. 545; *Wilton v. Hill*, 2 De G. M. & G. 807; *Hind v. Whitmore*, 2 K. & J. 458; 4 W. R. 379; *Elliot v. Ince*, 7 De G. M. & G. 475; *Mucann v. Borradaile*, 16 W. R. 175; W. N. (1867), 283, following *Wilton v. Hill*). But the onus is on a defendant, who seeks to have a next friend removed on the ground of insolvency to make out a clear case (*Giacometti v. Prodyers*, 21 W. R. 282); and there must be a distinct allegation that he is believed to be insolvent or unable to answer the costs of the suit, a mere statement of belief that he is poor not being sufficient (*Beach v. Sleddon*, 39 L. J. Ch. 123).

Where the next friend could not produce any authority from the wife, but deposed that he was a man of substance, V. C. Bacon refused to dismiss the action or order security for costs to be given; but the Court of Appeal dismissed the action with costs, to be paid by the solicitors of the next friend (*Schjott v. Schjott*, 19 Ch. D. 94).

If a married woman and infants sue by the same next friend, security may be obtained (*Pennington v. Alvin*, 1 S. & S. 264; *Drinan v. Mannix*, 3 Dr. & W. 154). And the circumstance that there are other plaintiffs on the

record, will not in every case prevent the next friend of a married woman having to give security for costs: see *Smith v. Etches*, 1 H. & M. 558; 9 Jur. N. S. 1228; 10 Jur. N. S. 124, where a husband who had become bankrupt and his wife by her next friend being co-plaintiffs in a suit for the redemption of the wife's estate, Wood, V. C., made the wife's next friend give security for costs: see also *Picard v. Hine*, 5 Ch. 274; 18 W. R. 75. And in *Balguy v. Broadhurst*, 2 W. R. 680, a female adult co-plaintiff, on being appointed next friend for her mother and brothers and sisters, had to give security. In *Jones v. Fawcett*, 2 Ph. 278, overruling S. C. 11 Jur. 687, the Court even refused, on the application of a plaintiff, a married woman, to remove her next friend, and to appoint another, where it was evident that the defendant's security for costs would be thereby prejudiced.

If the next friend, whether of an infant or a married woman, is changed in the course of the suit, he must give security for the costs already incurred, and proceedings will be stayed in the meantime (*Witts v. Campbell*, 12 Ves. 493; *Davenport v. Davenport*, 1 S. & S. 101; *Payne v. Little*, 14 Beav. 647); and *semble*, the proper security is a bond of the former next friend, and a responsible surety in a sufficient amount (*Payne v. Little*, 16 Beav. 563). A next friend is, of course, in other respects in the same position as an ordinary plaintiff, and must give security for costs, if resident out of the jurisdiction (*Alcock v. Alcock*, 5 De G. & S. 671), or if insufficiently described (*Major v. Arnott*, 2 Jur. N. S. 80; 4 W. R. 229). But it is immaterial that an infant plaintiff is resident out of the jurisdiction if the next friend is amenable (*Kerr v. Gillespie*, 7 Beav. 269); and *semble*, also in the case of a married woman plaintiff (*Lander v. Parr*, 16 L. J. Ch. 269). A married woman may, by special leave, sue *in formâ pauperis* without a next friend (*Hind v. Whitmore*, 2 K. & J. 458, and cases there cited), and such leave can be obtained *ex parte* (*Wellesley v. Mornington*, 2 W. R. 514; *In re*

Where next friend is changed.

Lancaster, 2 W. R. 337; 18 Jur. 229, overruling *Page v. Page*, 1 W. R. 262).

Now by R. S. C. Ord. XVI., r. 8, married women are empowered to sue as plaintiffs by their next friends in the manner practised in the Court of Chancery before the passing of the Judicature Act; and may also, by the leave of the Court or a judge, sue or defend without their husbands and without a next friend, on giving such security (if any) for costs as the Court or a judge may require. Where a married woman (defending) was in receipt of a separate income of £1,500 a year, she was not required to give security (*Noel v. Noel*, 13 Ch. D. 510; 28 W. R. 720; 42 L. T. 352); and the judge has complete and unfettered judicial discretion under the present practice to allow a married woman to sue either alone or by a next friend, and either with or without giving security for costs (*Martano v. Mann* (C. A.), 14 Ch. D. 419; 49 L. J. Ch. 510; 42 L. T. 890; *Kingsman v. Kingsman*, 6 Q. B. D. 122). *See addenda ante p. 1v.*

5. By plaintiff on account of poverty.

The general rule is perfectly clear that the Court will not require security for costs from any plaintiff merely on account of his poverty. But in *Burke v. Lidwell*, 1 Jo. & Lat. 703, S. C. *sub nom.* *Burke v. Hutchinson*, 7 Ir. Eq. Rep. 508, where the plaintiff was a pauper to whom an old judgment had been assigned in trust for a solicitor, the beneficial owner, for the purpose of instituting the suit to enforce it, Sir E. Sugden, L. C., ordered the plaintiff to give security for costs. This case, however, which the Court considered one of gross fraud, depended on the special circumstances, and would probably not be generally followed. See the comments upon it by Sir E. Sugden himself in *Worrall v. White*, 3 Jo. & Lat. 513. There is also a case in the Exchequer (*Tredwell v. Byrch*, 1 Yo. & Coll. Ex. 476), in which a plaintiff, who filed a bill on behalf of himself and all other the rated inhabitants of a parish against certain commissioners, alleging a breach of trust, was ordered to find security for costs on account of his insolvency. And in a recent case in the Probate Division, a

plaintiff who had executed a deed of assignment of all his property to an assignee, was required to give security for the costs of suit, unless he could satisfy the Court of his solvency (*The Lake Megantic*, 36 L. T. 183). Where the plaintiff became insolvent, and filed a liquidation petition, he was ordered to give security both for past and future costs (*Brocklebank v. King's Lynn Steamship Co.*, 3 C. P. D. 365; 47 L. J. C. P. D. 321; 27 W. R. 94; 38 L. T. 489). Similarly, an insolvent petitioner will be ordered to give security, proceedings under the petition being stayed in the meantime (*Re Carta Para Gold Mining Co.*, W. N. (1881), 166; 30 W. R. 117. In *Macneal v. Biggart*, 18 W. R. 470, a case at law in Ireland, a nominal plaintiff who was a pauper was compelled to give security for costs, though the action was brought under the direction of the Court of Chancery to try a right.

Insolvent
plaintiff or
petitioner.

19 Ch. D 457

A relator in a charity suit, however, may, it seems, be required to give security for costs on the ground of his poverty (*Att.-Gen. v. Skinners' Company*, 1 C. P. Coop. 1, 5; *Att.-Gen. v. Mayor of Rochester*, Reg. lib. A. fol. 271, cited in *Shelford on Mortmain*, 425). But where in an information and bill the relator was also the plaintiff, it was held that security could not be required (*Att.-Gen. v. Knight*, 3 My. & Cr. 154). In the last case the defendants proceeded by memorial to the Attorney-General, but in the two former cases by motion to the Court.

6. By a
poor rela-
tor in a
charity
suit.

By 25 & 26 Vict. c. 89 (The Companies Act, 1862), s. 69, it is enacted that:

“Where a limited company is plaintiff or pursuer in any action, suit, or legal proceeding, any judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that, if the defendant should be successful in his defence, the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.”

7. When
a limited
company is
plaintiff.

This section does not alter the principle on which the

Court refuses to allow a defendant in a cross suit to call on the plaintiff in the cross suit to give security for costs ; and therefore where a company was plaintiff in a suit to set aside a policy on which the defendant was then suing the company at law, the Court refused to order the company to give security (*Accidental Co. v. Mercati*, 3 Eq. 200). *Secus*, where the second suit is not strictly a cross suit (*Washoe Mining Co. v. Ferguson*, 2 Eq. 371 ; *Moscow Gas Co. v. International Financial Society*, 7 Ch. 225, where it was said that whenever a suit was instituted in the name of a company which was being wound up, security for costs must be given, whether the suit were a purely cross suit or not). And the fact of a plaintiff company being in liquidation is sufficient "reason to believe" the assets to be insufficient, unless evidence to the contrary is given (*Northampton Coal Co. v. Midland Waggon Co.*, 7 Ch. D. 500, 26 W. R. 485 ; 37 L. T. 82); and see also *Freehold Land, &c. Co. v. Spargo*, W. N. (1868), 94. The section applies only to limited companies. Where an unlimited company was being wound up and an action at law was brought in the name of the company, the Court of Queen's Bench refused to order the plaintiffs to give security (*The United Ports Co. v. Hill*, L. R. 5 Q. B. 395). Where the statement of claim had been amended, thereby making a new case and greatly increasing the costs, the defendants were held entitled to security (*Northampton Coal Co. v. Midland Waggon Co.*, 7 Ch. D. 500). The Court may direct security to be given for the costs up to a certain stage in the proceedings and then allow the application to be renewed (*Western of Canada Oil Co. v. Walker*, 10 Ch. 628 ; 23 W. R. 738). Under the repealed Act, 20 & 21 Vict. c. 14, s. 24, where the words were "if it be proved to his [the judge's] satisfaction," an affidavit by the defendant's agent to the effect stated in the section was held, if unanswered, a sufficient ground for requiring security for costs (*Official Liquidators of Southampton, &c. Co. v. Rawlins*, 2 N. R. 544 ; 9

Jur. N. S. 887; S. C. *nom. Official Liquidators, &c. v. Pinnock*, 11 W. R. 978).

In *Anglo-Danubian Co. v. Rogerson*, 3 N. R. 185; 10 Jur. N. S. 87, it was held that an *ex parte* injunction could not be granted on the application of a limited company, without an undertaking as to damages from some responsible person; but see *Pacific Steam Co. v. Gibbs*, 14 W. R. 218; 13 L. T. 431. As to what is "sufficient security" see below, p. 20.

By the Life Assurance Companies Act, 1870, 33 & 34 Vict. c. 61, s. 21, the Court cannot give a hearing to a petition to wind up a company under the Act until security for costs to such amount as the judge shall think reasonable shall be given, and a *prima facie* case be established. Where a company had passed a resolution to wind up voluntarily, Malins, V. C. held, on a petition being presented for compulsory winding up, that he was not bound to consider whether the petition stated a *prima facie* case, nor to order security for costs (*In re British Alliance Assurance Corporation*, 9 Ch. D. 635; 26 W. R. 628).

It was considered irregular for plaintiffs to amend by striking out the names of any of their co-plaintiffs (*Sloggett v. Collins*, 13 Sim. 456), but leave would be granted on special application, on the terms of security being given for the costs of the suit (*Att.-Gen. v. Cooper*, 3 My. & Cr. 258; *Lloyd v. Makeam*, 6 Ves. 145; *Motteux v. Mackreth*, 1 Ves. jun. 142; *Fellowes v. Deere*, 3 Beav. 353); and see *Drake v. Symes*, 7 Jur. N. S. 399; *Davey v. Bennett*, 3 W. R. 353; *Andrews v. Nelson*, 15 W. R. 378. The Court will not make an order to join a number of persons as plaintiffs in an action merely by way of giving the defendant a security for his costs (*De Hart v. Stevenson*, 45 L. J. Q. B. 575; 24 W. R. 367).

Security for costs will be required from a petitioner under the same circumstances as from a plaintiff: see *Ex parte Foley*, 11 Beav. 456; *In re Latta*, 3 De G. & S. 186

Where plaintiffs amended by striking out names of co-plaintiffs.

8. By petitioners.

(where the petition was for winding up); *Ex parte Seidler*, 12 Sim. 106 (where the petition was under an Act of Parliament); and *In re Pasmore*, 1 Beav. 94; *In re Norman*, 11 Beav. 401; *In re Dolman*, 11 Jur. 1095 (the petition in each of which cases was for taxation of a solicitor's bill of costs). See also *In re Home Assurance Association*, 12 Eq. 112; and *In re East Llangynog Mining Co.*, 23 W. R. 587; W. N. (1875) 81.

On a petition for taxation the petitioner, if out of the jurisdiction, must give security not only for the costs of taxation, but also for the amount to be found due from him (*Anon.* 12 Sim. 262; Seton, 612). Where a petition is presented in a cause, security will not be required from the petitioner, if he is a party to the suit (*Cochrane v. Fearon*, 18 Jur. 568); *secus*, if he is not a party to the suit (*Drever v. Maudesley*, 5 Russ. 11; *Partington v. Reynolds*, 6 W. R. 307), and a substantive motion for the purpose may be made before the petition comes on to be heard (*Atkins v. Cooke*, 3 Drew. 694); and see *Glazbrook v. Gillatt*, 9 Beav. 492.

9. By defendants.

In *Knox v. Brown*, 1 Cox, 359, on motion of the plaintiff to dismiss his own bill without costs, Lord Thurlow ordered the defendant, who had absconded, to find security for costs, or, in default, that the bill should be dismissed without costs; but this case does not seem to have been followed: see Beames on Costs, 183. Security for costs may be required from a defendant obtaining the conduct of the cause (*Mynn v. Hart*, 9 Jur. 860), and from a defendant in an interpleader suit, being in the position of a plaintiff, if resident out of the jurisdiction (*Smith v. Hammond*, 6 Sim. 10). In *Annesley v. Simeon*, 4 Madd. 390, *cestuis que trustent* (defendants) were restrained from bringing an action at law in the name of their trustee (a co-defendant) till security was given for the costs of the action.

Not from plaintiffs in cross

A person, nominally a plaintiff, but in reality a defendant or a person in any way compelled to litigate, cannot be

required to give security for costs. Thus, a plaintiff in a cross suit cannot be required to give security (*Vincent v. Hunter*, 5 Ha. 320; *Wild v. Murray*, 18 Jur. 892; 2 W. R. 613; *Accidental Co. v. Mercati*, 3 Eq. 200; and see *Washoe Mining Co. v. Ferguson*, 2 Eq. 371; and *Moscow Gas Co. v. International Financial Society*, 7 Ch. 225). The rule was held to apply as between the plaintiff in the original suit and the plaintiff in the cross suit, though other matters were comprised in the cross bill; but defendants to the cross suit, not parties to the original suit, might have security (*Wild v. Murray*, 18 Jur. 892; *Sloggett v. Viant*, 13 Sim. 187). A litigant, resident abroad, who is made plaintiff in an interpleader issue, but does not, substantially, occupy the position of the plaintiff commencing an action, will not be ordered to give security (*Belmonte v. Aynard*, 4 C. P. D. 221, 352; 40 L. T. 627; *S. C. sub nom. Belmonte v. Gütschow*, 27 W. R. 789). A shareholder in a company, though resident out of the jurisdiction, who appears to oppose a petition for winding up the company, of course cannot be required to give security (*In re Percy Nickel Co.*, 2 Ch. D. 531; 24 W. R. 1057). See further, as to cross suits, *Macgregor v. Shaw*, 2 De G. & S. 360, where security was not required; *Moscow Gas Co. v. International Financial Society*, 7 Ch. 225; and *Tynte v. Hodge*, 2 J. & H. 692, where the bill sought to impeach an annuity deed, on the footing of which a decree had been already made in a former suit, and security was required from the plaintiff, being out of the jurisdiction.

A defendant who admits the cause of action sued upon and sets up a counterclaim founded upon a distinct claim, is not entitled to security for costs from the plaintiff, a foreigner residing without the jurisdiction (*Winterfield v. Bradnum*, 3 Q. B. D. 324; 47 L. J. Q. B. 270; 26 W. R. 472; 38 L. T. 250).

In *Mapleson v. Masini*, 5 Q. B. D. 144; 49 L. J. Q. B. 423; 28 W. R. 488; 42 L. T. 531, the plaintiff sued the

defendant, a foreigner residing abroad, for breach of contract; the defendant by his defence denied the breaches, and made a counterclaim for breaches of the same contract by the plaintiff, claiming damages to an amount less than the plaintiff's claim; it was held that the defendant could not be ordered to give security for the plaintiff's costs occasioned by the counterclaim. And see further as to security for costs when there is a counterclaim, *The Carnarvon Castle*, 26 W. R. 876; 38 L. T. 736; *The Julia Fisher*, 2 P. D. 115; 25 W. R. 756; 36 L. T. 257.

Application for security may be made at any time.

The old rule of the Court of Chancery, that the application for security must be made before any step is taken, and also the old rule at Common Law that the application must be made before issue joined, are abrogated by the new rules, and the Court may direct security for costs to be given at any stage (*Martano v. Mann*, 14 Ch. D. 419; 42 L. T. 890; and see *Arkwright v. Newbold*, W. N. (1880) 59).

Form of the order.

The order is that all proceedings be stayed until the plaintiff gives security (*Fox v. Blew*, 5 Mad. 147); and for form of order see Seton, 1643.

Amount and form of security.

R. S. C. Ord. LV., r. 2 (Feb. 1876), provides that "In any cause or matter in which security for costs is required, the security shall be of such amount and given at such time or times, and in such manner or form as the Court or a judge shall direct." This rule applies to suits commenced before November, 1875 (*Republic of Costa Rica v. Erlanger*, 3 Ch. D. 62; 24 W. R. 955). Cons. Ord. XL., r. 6, provided that one hundred pounds should be the penal sum in the bond to be given as a security to answer costs by any plaintiff who is out of the jurisdiction of the Court. Formerly it was £40 only. £100 is still, it seems, the proper penalty of the bond to be given in all ordinary cases in which security for costs is required by the Court (*Bailey v. Gundry*, 1 Keen, 53; *Paxton v. Bell*, 24 W. R. 1013; W. N. (1876) 221, 249); and see *Barry v. Jenkins*, 19 L. T. 276; but in a proper case the security may be

largely increased, and may in fact be ordered to any amount the Court thinks fit, in accordance with the old Common Law practice (*Massey v. Allen*, 12 Ch. D. 807 ; 48 L. J. Ch. 692 ; 28 W. R. 243 ; *Sturla v. Freccia*, W. N. (1878) 161 ; *Republic of Costa Rica v. Erlanger*, 3 Ch. D. 62 ; 45 L. J. Ch. 743 ; 24 W. R. 955). Security may be ordered for past as well as future costs (*Massey v. Allen* ; *Brocklebank v. King's Lynn Steamship Co.*, 3 C. P. D. 365 ; 47 L. J. C. P. D. 321 ; 27 W. R. 94 ; 38 L. T. 489). May extend to past costs.

The amount of the security to be given is in the discretion of the judge to whom the application for security is made ; but if he proceeds on a wrong principle the Court of Appeal will exercise its own discretion : see *Sturla v. Freccia*, W. N. (1877) 166, 188, where an application that the security for costs, which had been ordered to the amount of £500, might be increased by £5,000, was refused by Malins, V. C., but the Court of Appeal increased the amount by £1,000.

In the case of a company, the security must be "sufficient," and must be for an amount equal to the probable amount of costs payable (*Imperial Bank of China v. Bank of Hindustan*, 1 Ch. 437 ; 12 Jur. N. S. 493 ; 14 W. R. 811 ; *Freehold Land Co. v. Spargo*, W. N. (1868) 94). In *Western of Canada Oil Co. v. Walker*, 10 Ch. 628, security was ordered sufficient to cover the costs of the defendant's answers, with liberty to apply again for further security when the answers had been put in.

Where a petitioner is required to give security, £40 Petitioner. is generally considered a sufficient amount (*In re Pasmore*, 1 Beav. 94 ; *Atkins v. Cook*, 5 W. R. 381) ; except in the case of a petition under the Companies Acts (*In re Home Assurance*, 12 Eq. 112 ; *Ex parte Latta*, 3 De G. & S. 186, in each of which cases £100 was required). The plaintiff may, instead of giving security, pay into Court the £100, together with a sufficient sum to cover the

expense of paying it in and getting it out, usually £120 (*Cliffe v. Wilkinson*, 4 Sim. 122), but the undertaking of his solicitor to be answerable for the costs is not sufficient (*Re Norman*, 11 Beav. 401).

By R. S. C. Ord. LV., r. 3 (April, 1880), where a bond is to be given as security for costs, it shall, unless the Court or a judge otherwise directs, be given to the party or person requiring the security, and not to an officer of the Court.

Who may
be sure-
ties.

The plaintiff's proposed sureties must be solvent persons (*Cliffe v. Wilkinson*, 4 Sim. 122), and it is improper that his solicitor should be his surety (*Panton v. Labertouche*, 1 Ph. 265; S. C. *nom. Ganteaume v. Labertouche*, 7 Jur. 589); but in *Plestown v. Johnson*, 1 Sm. & G. app. xx.; 2 W. R. 3, the bond of the British Guarantee Association, incorporated by Act of Parliament, was held sufficient security. And the bond of an officer in the army whose regiment is at the time quartered in Scotland is sufficient (*Miller v. Hales*, 17 Eq. 430; 43 L. J. Ch. 446; 22 W. R. 625; 30 L. T. 10). If the surety dies or becomes bankrupt, the plaintiff must find fresh security (*Lautour v. Holcombe*, 1 Ph. 262; *Veitch v. Irving*, 11 Sim. 122); but the defendant must not delay his application for that purpose, otherwise proceedings will not be stayed in the mean time (*Lautour v. Holcombe*).

Each
defendant
entitled to
separate
security.

In *Ogborne v. Bartlett* (Beames on Costs, app. ix.) the assignees of a bankrupt, on being made defendants, were allowed security, though the original defendant (the bankrupt) had previously obtained it; and in *Lowndes v. Robertson*, 4 Mad. 465, it was held that each defendant employing a separate clerk in Court, was entitled to a separate bond, but the plaintiff was bound to pay one bond only.

Applica-
tion for,
how to be
made.

An order for security for costs cannot be obtained as of course; a special application must be made, and in general by summons in Chambers (*Vale v. Offert*, 22 W. R. 629; 30 L. T. 457; and see *Tynte v. Hodge*, 2 J.

& H. 692). The order may also be made on motion. The application must be supported by affidavit, and it seems that evidence of belief, putting the plaintiff to answer it, is sufficient (*Busk v. Beetham*, 2 Beav. 537; *Ainslie v. Sims*, 17 Beav. 57).

‘The day on which an order that the plaintiff do give security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be reckoned in the computation of time allowed to a defendant to plead, answer, or demur, or otherwise make his defence to the suit’ (Cons. Ord. XXXVII., r. 14). But taking out a summons for security for costs does not prevent the time allowed for demurring from running (*Henderson v. Atkins*, 7 W.R. 318). If, therefore, there is danger of the time running out before the order can be obtained, the defendant, it would seem, should deliver his defence or demur, giving notice that he does so without prejudice to his right of security for costs (*Drinan v. Mannix*, 3 Dr. & W. 154).

In *Cumac v. Grant*, 1 Sim. 348, Sir A. Hart, V. C., ordered that a plaintiff who had made default in giving security should give security within a limited time, or his bill be dismissed. That judge, however, appears to have afterwards doubted the correctness of his order: see 2 Sim. 570. And it was disapproved of by Lord Lyndhurst, C., in *Lautour v. Holcombe*, 1 Ph. 263, 264; and by V. C. Shadwell, in *Fort v. Bank of England*, 10 Sim. 616. The practice, however, is now settled, after some fluctuation of opinion, in accordance with *Cumac v. Grant*; see *Giddings v. Giddings*, 10 Beav. 29, where all the earlier cases are collected in the note; *Cooper v. Purton*, 1 N. R. 468; *Kennedy v. Edwards*, 11 Jur. N. S. 153; *Charras v. Pickering*, 39 L. J. Ch. 190. The time limited is generally a fortnight. The dismissal will be with costs (*Giddings v. Giddings*). But a reasonable time, which will vary according to the circumstances, must elapse between the original order for the

Effect of order.

Where plaintiff makes default in giving security.

plaintiff to give security, and the order limiting the time; see *O'Connor v. Sierra Nevada Company*, 23 Beav. 608, where the motion was held to be premature.

Where a plaintiff resided in Australia, and a defendant obtained the usual order that he should give security for costs, the Court allowed four months for the plaintiff to find such security, and ordered dismissal of the bill with costs, unless the security should be perfected within that time (*Grant v. Ingram*, 20 L. T. 70). In a recent case at law it was held that, where the plaintiff has failed to comply with an order to give security for costs, proceedings having been stayed in the meantime, the action may be dismissed for want of prosecution (*La Grange v. McAndrew*, 4 Q. B. D. 210; 48 L. J. Q. B. 315; 27 W. R. 413; 39 L. T. 500).

Where an appellant had for nine months neglected to comply with an order that he should give security for costs, the Court, on the application of the respondent, made an order dismissing the appeal with costs, for want of prosecution (*Judd v. Green*, 4 Ch. D. 784; 46 L. J. Ch. 257; 35 L. T. 873). And as to security for costs of appeal generally, see *post*, Ch. III., s. XI.

There are certain other cases provided by statute in which security for costs may be ordered.

In place of
remitting
to County
Court.

By the County Courts Acts, 1867, s. 10, the defendant, in an action of tort brought in a superior Court, may make an affidavit that the plaintiff has no visible means of paying the defendant's costs should a verdict be not found for the plaintiff, and thereupon a judge of the Court in which the action is brought has power to make an order that, unless the plaintiff shall within a time to be therein mentioned give full security for the defendant's costs, or satisfy the judge that he has a cause of action fit to be prosecuted in the superior Court, all proceedings in the action shall be stayed, or, in the event of the plaintiff being unable or unwilling to give such security, or failing to satisfy the judge as aforesaid, that the cause be remitted for trial before a County Court therein named.

By the Judicature Act, 1873, s. 67, the provisions contained in the 10th section of the County Courts Act, 1867, are to apply to all actions in the High Court of Justice, in which any relief is sought which can be given in a County Court.

The time for giving security may be extended at any time before the defendant has lodged the writ and order at the County Court (*Welply v. Buhl*, 3 Q. B. D. 80, 253).

By 28 & 29 Vict. c. 99, s. 3, a judge of the Chancery Division on granting an order at Chambers for transfer of an equitable matter from a County Court may impose such terms, if any, as to security for costs and otherwise as he may think fit. On transfer from County Court.

Security may also be ordered on the transfer of certain other actions: see 9 & 10 Vict. c. 95, s. 90; 19 & 20 Vict. c. 108, s. 38.

By s. 93 of the C. L. P. Act, 1854, 17 & 18 Vict. c. 125, the plaintiff, in a second action of ejectment for the same premises against the same defendant, may be ordered to give security for costs. In actions for the recovery of land.

In an action brought under the Conveyancing Act, 1881, by a person interested in a right of redemption, and seeking a sale, the Court, on the application of any defendant, may order the plaintiff to give such security for costs as it thinks fit (44 & 45 Vict. c. 41, s. 25 (3)).

As to security for costs under the Declaration of Titles Act, 1862, 25 & 26 Vict. c. 67, s. 9, see *In re Roberts*, 10 Eq. 402.

CHAPTER III.

COSTS OF AN ACTION GENERALLY.

SECT. I.—*Costs of Demurrers.*

Demurrers. A DEMURRER must state specifically whether it is to the whole or to a part, and if so, to what part, of the pleading of the opposite party. It must state some ground in law for the demurrer, but the party demurring will not, on the argument of the demurrer, be limited to the ground so stated. If there is no ground, or only a frivolous ground of demurrer stated, the Court or judge may set aside such demurrer with costs (R. S. C. Ord. XXVIII., r. 2).

Frivolous
demurrer.

Demurrer
ore tenus.

By Cons. Ord. XIV., r. 1, it is provided that where any grounds of demurrer are urged on arguing a demurrer beyond the grounds therein expressed, and those grounds which are so expressed are disallowed, the defendant shall pay the same costs as if the demurrer were overruled, although the grounds of demurrer so newly urged may be allowed.

Where the demurrer on the record is overruled and a demurrer *ore tenus* allowed, the general rule is, that the party demurring must pay the costs of the demurrer on the record, and no order will be made as to the costs of the demurrer *ore tenus* (*Macyntire v. Connell*, 1 Sim. N. S. 257, where the marginal note is incorrect; *Attorney-General v. Brown*, 1 Swan. 265, 288; *Ward v. Sittingbourne & Sheerness Ry. Co.*, 9 Ch. 488); and *semble*, the Court will not be disposed to depart from that rule (*Mortimer v. Fraser*, 2 My. & Cr. 173). In *Brown v. Douglas*, 11 Sim. 283, however, the Court refused the plaintiff the costs of the demurrer on the record, but

allowed the demurrer *ore tenus* without costs; and see *Cooper v. Earl Powis*, 3 De G. & S. 688, where it does not appear whether the plaintiff had the costs of the demurrer on the record.

Where the plaintiff, on a demurrer *ore tenus* for want of parties being allowed with leave to amend, desired to amend more extensively than by adding parties, he was required to pay the defendant the costs of the demurrer (*Newton v. Earl of Egmont*, 4 Sim. 574, 585).

If a demurrer is not entered, and notice thereof given within ten days after delivery, and the party whose pleading is demurred to does not within such time serve an order for leave to amend, the demurrer will be held sufficient for the same purposes, and with the same results as to costs as if it had been allowed on argument (R. S. C. Ord. XXVIII., r. 6). The order for payment of these costs is of course (*Jacobs v. Hooper*, 1 W. R. 61); and see, as to the effect of laches on the costs, *Campbell v. Joyce*, 2 Eq. 377, a case of a plea.

“While a demurrer to the whole or any part of a pleading is pending, such pleading shall not be amended, unless by order of the Court or a judge; and no such order shall be made except on payment of the costs of the demurrer” (R. S. C. Ord. XXVIII., r. 7).

“Where a demurrer to the whole or part of any pleading is allowed upon argument, the party whose pleading is demurred to shall, unless the Court otherwise order, pay to the demurring party the costs of the demurrer” (R. S. C. Ord. XXVIII., r. 8).

“If a demurrer to the whole of a statement of claim be allowed, the plaintiff, subject to the power of the Court to allow the statement of claim to be amended, shall pay to the demurring defendant the costs of the action, unless the Court shall otherwise order” (R. S. C. Ord. XXVIII., r. 9).

These two rules are substantially the same as rule 13 of Cons. Ord. XIV., under which, though not so provided, it was held that the question of costs was in the discretion

Demurrer
not entered.

Amendment
pending
demurrer.

Demurrer
allowed to
whole or
part of any
pleading :

to the
whole of a
statement
of claim.

of the Court; and, for the purpose of determining them, the Court would regard the allegations in the bill, though admitted only for the purpose of the demurrer (*Schneider v. Lizardi*, 9 Beav. 461); and see *Mayor, &c., of Basingstoke v. Lord Bolton*, 1 Drew. 270. In *Vansittart v. Vansittart*, 4 K. & J. 62, S. C., on appeal, 2 De G. & J. 249, which was a suit by a wife for specific performance of an agreement made in consideration of her abandoning a suit for divorce, a demurrer by the husband to the whole bill was allowed, but without costs; see, however *per* L. J. Knight Bruce, 2 De G. & J., p. 258. But in *Walrond v. Walrond*, Johns. 18, which was a suit for specific performance of an agreement for separation simply, the husband's demurrer was allowed with costs. In *Bothomley v. Squires*, 1 Jur. N. S. 694, the bill stated a case of fraudulent collusion, and V. C. Kindersley allowed a general demurrer, on the ground that the allegations of fraud were too general; but without costs, because the defendants, by demurring, had admitted the fraud. *Sed qu.*, for the fact that the bill contained charges of fraud was no reason for not demurring (*Nesbitt v. Berridge*, 1 N. R. 345; 32 Beav. 282; 11 W. R. 446; 9 Jur. N. S. 1044; but see S. C. on appeal, 10 Jur. N. S. 53; 12 W. R. 283; and see also *Motion v. Moojen*, 14 Eq. 202).

Demurrer
allowed
without
costs.

When a statement of claim alleged particular facts which amounted practically to a charge of fraud against a particular defendant, but by the accidental omission of several facts the pleading was technically incomplete, a demurrer by the defendant was allowed without costs but with leave to amend, and the costs were reserved (*Hodges v. Hodges*, 2 Ch. D. 112; 24 W. R. 293). Where the plaintiff charged fraud against the demurring defendants, the demurrers being allowed and leave to amend given, the question whether their costs of the demurrers should be paid by the plaintiff, was reserved till the trial of the action (*Duckett v. Gover*, 6 Ch. D. 82; 25 W. R. 455). In *Payne v. Dicker*, 6 Ch. 578, a demurrer to a bill filed by a bankrupt was

under the circumstances allowed with costs, varying the decree of Stuart, V. C., and liberty to amend was refused. Where the question raised was whether illegitimate children could take under a gift to "children," Malins, V. C., held that, though the law was clear that they could not, yet it was equally clear that they were intended to take, and therefore allowed the demurrer but without costs (*Ellis v. Houston*, 10 Ch. D. 246; 27 W. R. 501).

It seems that the inclination of the Court is not to refuse the defendant the costs of a demurrer allowed: see *per* V. C. Wood, Johns. 28. Where a question of the construction of a will is decided on demurrer, the Court will, if it was a proper question to raise, give the costs of the demurrer out of the estate (*Evans v. Rosser*, 3 N. R. 685).

Where a demurrer to the whole bill was allowed, but with leave to amend, the plaintiff paid to the defendant the costs of the demurrer only, and not the whole costs of the suit (*Hammond v. Messenger*, 9 Sim. 338).

Where several demurrers by different parties had been allowed, one set of costs only was allowed in respect of two demurrers put in by defendants appearing by the same solicitor, although he acted as agent for one defendant and directly for the other defendant (*Walters v. Webb*, 18 W. R. 86, 587).

Where an amended bill was filed, but a copy not properly amended was served upon the defendant, who demurred to the bill as served upon him, it was ordered that the demurrer be taken off the file, and the defendant's appearance to the amended bill be struck out, and that he should have his costs if no further demurrer were filed (*Hopkin v. Ollard*, 21 W. R. 285).

An order allowing a demurrer to the whole bill [state-
ment of claim] carries with it the costs of a pending
motion (*Gladstone v. The Ottoman Bank*, 1 N. R. 512),
even where the motion has stood over at the request of
the defendant (*Finden v. Stephens*, 12 Jur. 319, overruling
S. C. 11 Jur. 898). But if leave to amend is given the

What costs
payable on
demurrer
to whole
statement
of claim
allowed.

motion is not entirely lost; see *Harding v. Tingey*, 4 N. R. 10, where V. C. Kindersley, following the decision of V. C. Wood in *Rawlings v. Lambert*, 1 J. & H. 458, gave the plaintiff a week to amend his bill without prejudice to the motion, and if the motion was not brought on on the first seal day after the week the plaintiff to pay the costs of it. In *Dew v. Clarke*, 1 S. & S. 108, a demurrer having been allowed to a bill to examine witnesses *de bene esse*, the plaintiff, who had obtained an *ex parte* order for the examination of the witnesses, was ordered to pay the costs of the depositions but not of the cross-examination.

In *Barry v. Croskey* (No. 3), 2 J. & H. 136; 10 W. R. 76, a motion by a defendant, whose demurrer to the whole bill had been allowed, for the Record and Writ clerk to strike his name out of the record, was allowed with costs.

Demurrer
overruled.

“Where a demurrer is overruled the demurring party shall pay to the opposite party the costs occasioned by the demurrer, unless the Court shall otherwise direct.” (R. S. C. Ord. XXVIII., r. 11.)

Demurrer
partially
overruled.

When a demurrer on two grounds succeeds as to one and fails as to another no costs are given on either side (*Benson v. Hadfield*, 5 Beav. 546; *Allan v. Houlden*, 6 Beav. 148); but in *Davis v. Read*, 5 Sim. 443, a demurrer by a witness to two interrogatories was allowed as to one and overruled as to the other, and the Court gave the witness half his costs. In *Postgate v. Barnes*, 1 N. R. 389, where the defendant put in a plea to part of the bill and a demurrer to the rest, and the former succeeded and the latter failed, no costs were given on either side.

Demurrer
overruled
without
costs.

In *Reed v. O'Brien*, 7 Beav. 32, the Court overruled a demurrer for want of equity, but refused the plaintiff the costs of it, on the ground of the vagueness and uncertainty of the allegations; and see *Commings v. Scott*, 20 Eq. 11; 23 W. R. 498; 32 L. T. 420, where the costs were made costs in the cause. In *Barber v. Barber*, 4 Dr. 666, a demurrer to the jurisdiction was overruled without costs,

on the ground that the plaintiff might prove to be entitled to some relief, though not to the principal relief sought by his bill.

Where a demurrer was overruled, but the question in issue had been raised in the simplest and cheapest manner by the course taken by the defendant, no costs were given against him (*Willis v. Radford*, 7 Ch. 7; 41 L. J. Ch. 19; 20 W. R. 132; 25 L. T. 720). Where a demurrer is ordered to stand to the hearing the costs will generally be reserved (*Cox v. Barker*, *Barker v. Cox*, 3 Ch. D. 369). Under the old practice the Court often hesitated to determine on demurrer any legal question of great difficulty, and in such case overruled the demurrer, with liberty to raise the objection by answer, reserving the costs until the hearing (*Evans v. Evans*, 18 Jur. 666; 23 L. J. Ch. 827; *Devenish v. Brown*, 4 W. R. 783; *Mortimer v. Hartley*, 3 De G. & S. 316; *Great Western Railway Company v. Metropolitan Railway Company*, 2 N. R. 209; *Walsham v. Stainton*, 3 N. R. 56); and see *Cochrane v. Willis*, 3 N. R. 446; 9 L. T. 792, where the costs were made costs in the cause. In *Singleton v. Selwyn*, 3 N. R. 27, V. C. Wood overruled the demurrer, but reserved the costs till the hearing or further order, apparently because his Honour was inclined to think the suit unnecessary.

On reversing an order allowing a demurrer, the costs are ordered to be refunded (*Oats v. Chapman*, 1 Ves. 542; 2 Ves. 100; 1 Dick. 148). Demurrer
overruled
on appeal.

The costs of demurrers by witnesses follow the same rule as those of an ordinary demurrer (*Sawyer v. Birchmore*, 3 My. & K. 578; *Strathmore v. Strathmore*, 11 L. J. Ch. 400; 6 Jur. 1101; *Langley v. Fisher*, 5 Beav. 443; 7 Jur. 164; S. C. on appeal, 14 L. J. Ch. 302; *Wright v. Wilkin*, 4 Jur. N. S. 527). See also *Lee v. Hammerton*, 12 W. R. 975; 10 L. T. 730, where a demurrer by a witness was overruled with costs, though the Court held it to be justifiable. Demurrer
by witness.

SECT. II.—*Costs of Amendments.*

Amendment of writ.

General powers of amendment.

Striking out.
Improper matter.

Amendment without leave by plaintiff.

Without leave by defendant.

Disallowance of amendment.

The Court or a judge may at any stage of the proceedings allow the plaintiff to amend the writ of summons in such manner and on such terms as may seem just (R. S. C. Ord. XXVII., r. 11); and may at any time, and on such terms, as to costs or otherwise, as to the Court or judge may seem just, amend any defect or error in any proceedings; and all such amendments may be made as may be necessary for the purpose of determining the real question or issue raised by or depending on the proceedings (R. S. C. Ord. LIX., r. 2, April, 1880). By R. S. C. Ord. XXVII., r. 1, the Court or a judge may, at any stage of the proceedings, allow either party to alter his statement of claim, or defence, or reply, or may order to be struck out or amended any matter in such statements respectively which may be scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action; and all such amendments are to be made as may be necessary for determining the real controversy between the parties. By rule 2 of the same Order the plaintiff may without any leave amend his statement of claim once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time before the expiration of four weeks from the appearance of the defendant who shall have last appeared. By rule 3 of the same Order a defendant who has set up in his defence any set-off or counterclaim may, without any leave, amend such set-off or counterclaim at any time before the expiration of the time allowed him for pleading to the reply, and before pleading thereto; or in case there be no reply, then at any time before the expiration of twenty-eight days from the filing of his defence.

Where any party has amended his pleading under either of the last two preceding rules, the opposite party

may, within eight days after the delivery to him of the amended pleading, apply to the Court, or a judge, to disallow the amendment, or any part thereof, and the Court or judge may, if satisfied that the justice of the case requires it, disallow the same, or allow it, subject to such terms as to costs, or otherwise as may seem just (r. 4, *ibid.*). And where any party has amended his pleading under rule 2 or 3 of Ord. XXVII., the other party may apply to the Court or a judge for leave to plead or amend his former pleading within such time and upon such terms as may seem just (r. 5, *ibid.*).

Counter-amendment.

In all cases not provided for by the first five rules of Ord. XXVII., application for leave to amend any pleading may be made by either party to the Court or a judge in chambers, or to the judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may seem just (r. 6, *ibid.*).

Amendment by leave.

The Court or a judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may seem just, order the name of any party improperly joined to be struck out, and the name of any party who ought to have been joined, or whose presence may be necessary to enable the Court finally to adjudicate upon all questions involved in the action, to be added (R. S. C. Ord. XVI., r. 13). Any application to add or strike out or substitute a plaintiff or defendant may be made to the Court or a judge at any time before trial by motion or summons, or at the trial of the action in a summary manner.

Amendment in case of misjoinder of parties.

Application to amend.

The general rule is, that where a party desires to amend his own pleading, leave to amend will be given, but he must pay all costs of and occasioned by the amendment.

Amendment generally allowed on payment of costs.

“ My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting *malâ fide*, or that, by his blunder he had done some injury to his opponent which could not be compensated for

by costs or otherwise," *per* Bramwell, L. J., in *Tildesley v. Harper*, 10 Ch. D. 393 ; 48 L. J. Ch. 495 ; 27 W. R. 249 ; 39 L. T. 552 ; and see *Broder v. Saillard*, 2 Ch. D. 698 ; *Chesterfield Co. v. Black*, 25 W. R. 409 ; *Rutter v. Tregent*, 27 W. R. 902 ; 41 L. T. 16. In *Cargill v. Bower*, 4 Ch. D. 78 ; 46 L. J. Ch. 175 ; 25 W. R. 221 ; 35 L. T. 621, a defendant who had put in a joint defence was allowed to put in a separate and amended defence, and he was ordered to pay the costs rendered necessary by his not having put in such defence earlier ; but the plaintiff, who had instructed two counsel, was allowed the costs of only one, and the other defendants, who had appeared and objected, were only allowed 40s. for costs.

Amend-
ment.
Ord.
XXVII.
r. 1.

Applications for leave to amend under R. S. C. Ord. XXVII. r. 1, are matters of practice within the discretion of the judge, and the Court of Appeal generally declines to interfere (*Golding v. Wharton Salt Works Co.*, 1 Q. B. D. 374 ; 24 W. R. 423 ; 34 L. T. 474).

Where an action is ordered to stand over in order that an amendment may be made, the party who is in fault will generally be ordered to pay the costs occasioned by the action having been placed in the paper for trial (*King v. Corke*, 1 Ch. D. 57 ; *Lydall v. Martinson*, 5 Ch. D. 780 ; *Dowdeswell v. Dowdeswell*, W. N. (1877) 228 ; 9 Ch. D. 294 ; and see *Long v. Crossley*, 13 Ch. D. 388).

Where leave to amend is given to a plaintiff upon payment of costs, such costs should be paid or tendered before any further proceedings are had ; otherwise the defendant may apply to the Court to stay the proceedings until the plaintiff has made the required payment ; and if default is made in payment of the costs the action may be dismissed with costs : see *Blackmore v. Edwards*, W. N. (1879) 175 ; *White v. Bromige*, 26 W. R. 312.

When an application is made for leave to alter a writ and a statement of claim by striking out the names of some of the parties, the order giving that leave does not justify the striking out of the name of some other party without

providing for his costs of the action (*Wymer v. Dodds*, 11 Ch. D. 436 ; 48 L. J. Ch. 568 ; 27 W. R. 675 ; 40 L. T. 420).

Although very extensive amendments have been made by striking out allegations, the Court will not assume at the hearing that the statements struck out were absurd or unreasonable, or distinguish the costs of such amendment from the general costs (*Hardingham v. Thomas*, 2 Drew. 353, 362).

Where amendments are made by striking out allegations.

If it is desired to charge the plaintiff with the costs of a case originally made and afterwards struck out by amendment, a special application must be made, and the most convenient time for making it is immediately upon the cause of complaint arising (*Mounsey v. Burnham*, 1 Ha. 22) ; but in *Stewart v. Stewart*, 22 Beav. 393, and *Leather Cloth Co. v. Bressey*, 3 Giff. 474, the plaintiff was ordered at the hearing to pay the costs of allegations struck out by amendment. In order to charge the plaintiff with such additional costs the amendments must have been vexatious and oppressive. See *Monck v. Earl of Tankerville*, 10 Sim. 284 ; *Delawney v. Delawney*, 4 L. J. Ch. 50, where the application was refused ; and *Strickland v. Strickland*, 3 Beav. 224, 242 ; *Watts v. Manning*, 1 S. & S. 421, where the application was granted, and in the latter case the defendant was apparently allowed full costs and charges as between solicitor and client. Where charges of misconduct were introduced into a bill by amendment, and denied by the answer, and the plaintiff then re-amended his bill and struck out the charges, he was ordered, at the hearing, to pay all the costs occasioned by the charges (*Finch v. Westrope*, 12 Eq. 24). If the claim as amended

Amendments vexatious and oppressive.

sets up a wholly different and inconsistent case from that originally made, the defendant will be entitled to all the costs of the suit up to the time of the amendment (*Smith v. Smith*, G. Coop. 141 ; *Dent v. Wardell*, 1 Dick. 339 ; *Mavor v. Dry*, 2 S. & S. 113 ; *Briant v. Lightfoot*, 1 Jur. 20 ; *Kernot v. Critchley*, W. N. (1867) 252 ; *Blackmore v. Edwards*, W. N. (1879) 175) ; but see *Abram v. Ward*,

Where an entirely different case is made by the amendments.

9 Jur. 1070 ; *Allen v. Spring*, 22 Beav. 615. Where, however, in proceedings hurriedly taken to stop wrongdoing, the plaintiff has not accurately stated his title, the defendant will not it seems be relieved from the payment of the extra costs occasioned by the plaintiff's mistake as to his title (*Attorney-General v. Tomline*, 5 Ch. D. 750).

Unnecessary and improper amendments.

By R. S. C. (Costs) Sched., r. 18, the Court may disallow the costs of any improper or unnecessary amendment, or may refer it to the taxing officer to do so, and the party whose costs are so disallowed must pay to the other parties the costs occasioned by such amendments; and see rr. 19 and 20. This rule supplies the place of Cons. Ord. XL, r. 8. For directions to the taxing-master to tax the costs occasioned by unnecessary amendments, see *Burchell v. Giles*, 11 Beav. 34; and see also *Pledge v. Buss*, Johns. 663.

The defendant's solicitor by accepting the costs of amendment waives all objections for irregularity in the order giving the plaintiff leave to amend: see *Tarleton v. Dyer*, 1 R. & M. 1; *Hair v. Woodbridge*, *ibid.* 5; *Boswell v. Tucker*, 2 Ke. 188; and see *Campbell v. Joyce*, 2 Eq. 377. Where the plaintiff proposes to abandon a part of his case no order will in general be made as to the costs occasioned by that part before the hearing (*Snell v. Skinner*, W. N. (1874) 212).

SECT. III.—*Costs occasioned by scandalous and embarrassing matter.*

1. Costs occasioned by scandal.

If scandalous statements, not relevant to the issue, are introduced into a pleading or affidavit, or otherwise put upon the records of the Court, they may be struck out, and the offending party will be ordered to pay to the other parties the whole expense to which they have been put by his introduction of scandalous matter (R. S. C. Ord.

XXVII., r. 1; *Christie v. Christie*, 8 Ch. 499; 42 L. J. Ch. 544; 21 W. R. 493; 28 L. T. 607; *Forester v. Read*, 6 Ch. 40; 19 W. R. 114; 24 L. T. 79; *Rubery v. Grant*, 13 Eq. 443; 26 L. T. 538); that is, their costs as between solicitor and client, including (see *Christie v. Christie*) the costs of an appeal. See also *Coyle v. Cuming*, 27 W. R. 529; 40 L. T. 455, where the next friend of a married woman was ordered to pay the costs; *Pearse v. Pearse*, 22 W. R. 69; 29 L. T. 453, where the Court allowed a wife, as against her husband, costs of exceptions for scandal as between solicitor and client; *Cracknall v. Janson*, 11 Ch. D. 1; 27 W. R. 55, where it was held by Fry, J., that the Court has power to strike out scandalous matter from an affidavit, or to order the person who has filed it to pay the costs of it, on the application of any person, even a stranger to the action, or *mero motu*: *Blake v. Albion Assurance Co.*, 45 L. J. C. P. 663; 24 W. R. 677; *Devonsher v. Ryall*, Ir. R. 11 Eq. 460; *Atwool v. Ferrier*, 14 W. R. 1014; 14 L. T. 728; *Edmunds v. Lord Brougham*, 13 L. T. 790; 12 Jur. N. S. 156; W. N. (1866) 67, 93, (where, however, the costs were ordered to be taxed as between party and party, *sed qu.*); *Duncan v. Vereker*, W. N. (1876) 64.

Such pleadings as ought to be struck out should it seems be struck out by the judge, rather than be left to be dealt with as a question of costs (*Watson v. Rodwell*, 3 Ch. D. 380); and charges and statements which would not have been improper under the former system may, nevertheless, be struck out under the Judicature Acts (*ibid.*).

In *In re Savage*, 15 Ch. D. 557, parties lost their costs of a successful motion because they had filed an irrelevant affidavit containing improper imputations.

But nothing relevant to the issue can be considered scandalous, however offensive or libellous it may be in itself (*Christie v. Christie*, 8 Ch. 499; 42 L. J. Ch. 544; 21 W. R. 493; 28 L. T. 607; *Rubery v. Grant*, 13 Eq. 443; 26 L. T. 538); and see *Fisher v. Owen*, 8 Ch. D.

Nothing relevant can be scandalous.

645; 47 L. J. Ch. 681; 26 W. R. 581; 38 L. T. 577; *Bruff v. Cobbold*, 20 W. R. 734; 26 L. T. 786.

Scandalous affidavit.

In *ex parte Simpson*, 15 Ves. 476, an affidavit in bankruptcy was ordered to be taken off the file as scandalous and impertinent, with costs against the solicitor who made it, as between solicitor and client. Cf. *ex parte Thorp*, 1 Ves. jun., 394; *ex parte Porter*, 2 M. & A. 220.

In *Rattray v. George*, 16 Ves. 232, it was held that counsel and agent were liable for costs on account of scandal and impertinence; and cf. *Emerson v. Dallison*, 1 Ch. Rep. 194. In *Bishop v. Willis*, 5 Beav. 83, n., a solicitor, having put scandalous matter in an answer, and put counsel's name to it without his authority, was committed, and ordered to pay costs.

Officer of the Court, solicitor.

Where, in the course of any proceeding in the Court, imputations are cast on the character of one of its officers, as such, he is entitled to appear and defend himself therefrom, and, if successful, he will get his costs (*Talbot v. Talbot*, 16 W. R. 201, which was the case of a solicitor whose character had been impugned).

Application to strike out, how made.

Applications to strike out scandalous matter may be made either by summons or motion; but, as a rule, if they are made by motion only the costs of a summons attended by counsel will be allowed (*Marriott v. Marriott*, 26 W. R. 416; W. N. (1878) 57). If the scandalous matter should occur in any proceeding at chambers, the application must be made by summons (Cons. Ord. XXXV., r. 60). By R. S. C. Ord. XXXI., r. 5 (Nov. 1878), an application to strike out interrogatories for scandal may be made at Chambers within four days after service of the interrogatories.

2. Costs occasioned by irrelevancy or prolixity.

When the insertion of irrelevant, immaterial, or prolix matter may occasion embarrassment to the opposite party, such matter, or even the whole pleading containing it, may be ordered to be struck out (R. S. C. Ord. XXVII., r. 1); and the party in fault will be ordered to pay the costs:

see *Davy v. Garrett* (C. A.), 7 Ch. D. 743 ; 26 W. R. 225 ;
Cashin v. Cradock (C. A.), 3 Ch. D. 376 ; 25 W. R. 4 ;
Williamson v. L. & N.-W. Ry. Co., 12 Ch. D. 787. In
 adjusting the costs of an action the Court will inquire, at
 the instance of any party, into any needless prolixity in
 the statements of claim, defence, and reply, and will order
 the costs thereby occasioned to be borne by the party
 chargeable with the same (R. S. C. Ord. XIX., r. 2).
 And any costs occasioned by the use of any more prolix
 or other forms of writs and endorsements than those pre-
 scribed by the rules must be borne by the party who
 uses them, unless the Court otherwise directs (R. S. C.
 Ord. II., r. 2).

Prolixity
in plead-
ings.

By R. S. C. (Costs) Sched., r. 18, the Court or judge
 may direct the costs of any proceeding (whether the same
 is objected to or not) which is improper, unnecessary, or
 contains unnecessary matter, or is of unnecessary length,
 to be disallowed, or may direct the taxing officer to look
 into the same and to disallow the costs thereof, or of such
 part thereof as he shall find to be improper, unnecessary,
 or to contain unnecessary matter, or to be of unnecessary
 length ; and in such case the party whose costs are so
 disallowed must pay the costs occasioned to the other
 parties by such unnecessary proceeding, matter, or length.
 Where such question shall not have been raised before
 and dealt with by the Court or judge, the taxing officer
 may look into the same (and, as to evidence, although the
 same may be entered as read in any decree or order) for
 the purpose aforesaid, and thereupon the same conse-
 quences shall ensue as if he had been specially directed
 to do so. The taxing-master must exercise the discretion
 given him by this rule without special directions from the
 judge ; see *Re Wormsley, Baines v. Wormsley*, 47 L. J.
 Ch. 844 ; 27 W. R. 36 ; 39 L. T. 85 ; W. N. (1878), 193.
 By rule 19, the taxing officer may in such cases adjust
 such costs, certifying for payment, or set-off, or may delay
 their allowance ; and by rule 20, where questions as to

Disallow-
ance of the
costs of im-
proper or
unneces-
sary pro-
ceeding or
matter.

such costs are dealt with at Chambers in the Chancery Division, the chief clerk is to make a note thereof for the information of the taxing-master.

In *Owens v. Emmens*, W. N. (1875), 210, 234, a motion to take an affidavit off the file for length and irrelevancy was refused, and it was said that the attention of the Court should be drawn to such matters at the hearing. For a direction to the taxing-master under r. 18 to look into and disallow the costs of affidavits of unnecessary length, see *Cracknall v. Janson*, 11 Ch. D. 1; 27 W. R. 55.

In *London & St. Katharine Docks Co. v. Metropolitan Ry. Co.*, 35 L. T. 733, portions of the plaintiff's reply were struck out as irrelevant, but the application being frivolous and unnecessary no costs were given.

Costs of
improper
interroga-
tories.

By R. S. C. Ord. XXXI., r. 2, the Court in adjusting the costs of the action shall at the instance of any party inquire, or cause inquiry to be made, into the propriety of exhibiting any interrogatories that may have been delivered, and if it is the opinion of the taxing-master or of the Court or judge, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

Costs of
unneces-
sary matter
in affida-
vits.

The costs of every affidavit which unnecessarily sets forth matters of hearsay or argumentative matter, or copies of or extracts from documents, must be paid by the party filing the same (R. S. C. Ord. XXXVII., r. 3; *Hirst v. Procter*, W. N. (1882), 12). Under this rule affidavits by persons having no personal knowledge of the matters deposed to, cannot be used at the hearing, and the costs of them will be disallowed: *per* Jessel, M. R., W. N. (1876), 59; and see also r. 3a of this Order (April, 1880), prescribing the form of affidavits; no costs will be allowed of any affidavit or part of any affidavit substantially departing from this rule.

SECT. IV.—*Costs and Expenses of Witnesses.*

In the old Court of Chancery the evidence was usually given by affidavit, though occasionally it was given *vivâ voce*. The Judicature Act has altered this, and the rule now is that the witnesses at the trial of an action must be examined *vivâ voce* and in open Court, unless the parties agree to take the evidence by affidavit, or the Court otherwise order. But upon any motion, petition, or summons, evidence may be given by affidavit, and any party making an affidavit may be ordered to attend for cross-examination (R. S. C. Ord. XXXVII., rr. 1, 2). In some cases the examination or cross-examination is conducted before an examiner.

Defendants (trustees) who perversely and unreasonably refused to consent to have the evidence taken by affidavit were ordered to pay the costs of an unsuccessful motion for this purpose (*Patterson v. Wooler*, 2 Ch. D. 586 ; 24 W. R. 455 ; 45 L. J. Ch. 274 ; 34 L. T. 415).

When any person is called to give evidence in chief, or to be cross-examined on evidence already given by him, he is entitled to his reasonable expenses ; and if they are not tendered to him he may refuse to be sworn. This applies as well to a party to the cause called to be examined, as to a witness stranger to the cause (*Davey v. Durrant*, 24 Beav. 493 ; 2 De G. & J. 506).

Witness
entitled
to his
expenses
before
being
sworn ;
whether a
party or a
stranger.

The witness's expenses should be tendered to him at the time when he is served with the subpœna, or at any rate a reasonable time before the trial ; and even though he actually appears, he cannot be attached for declining to give evidence, unless these charges are paid or tendered. But he cannot refuse to be examined on the ground that the expenses incurred by him on former attendances have not been paid. If the witness be a married woman, the money should be tendered to her, rather than to her husband ; and if a person be subpœnaed by both parties,

he is entitled, before giving evidence, to be paid by the party actually calling him all the expenses to which he will be liable, after exhausting what he may have received from the opposite side.

Witness before an examiner refusing to be sworn after tender of his expenses.

If a witness before an examiner, after tender of a sufficient amount for his expenses refuses to be sworn, an order may be obtained, on an *ex parte* application, that he shall attend within four days and be examined at his own expense (*Wilson v. Broughton*, 6 L. J. Ch. 205; *Cast v. Poyser*, 3 Sm. & G. 369; *Nokes v. Gibbon*, 5 W. R. 216; 26 L. J. Ch. 208; *Lawton v. Price*, 16 W. R. 73, 666); but such order should not direct that he shall pay the costs of the application (*Cast v. Poyser*, on appeal, 26 L. J. Ch. 353.)

Witnesses' cross-examination.

Where affidavits made before decree were subsequently used in Chambers, and the witnesses objected before the examiner to be cross-examined, the objection not having been made in Chambers, they were ordered to be cross-examined within two months before the examiner, but not at their own expense, and no costs of a motion to compel them to submit to cross-examination were given (*Hughes v. Spittal*, 13 W. R. 251; 11 L. T. 691; 11 Jur. N. S. 151). Witnesses summoned under sec. 115 of the Companies Act, 1862, and refusing to attend, are liable to pay the costs of compelling their attendance (*Trower & Lawson's Case*, 14 Eq. 8).

Scale of allowances to witnesses.

There is no fixed scale of allowances to witnesses in the Chancery Division; the amount to be allowed is a matter of discretion, but the taxing-masters generally adopt the old common law scale, if it be found to be applicable (*Nokes v. Gibbon*, 5 W. R. 216; 26 L. J. Ch. 208; *Clark v. Gill*, 1 K. & J. 19; *Brocas v. Lloyd*, 23 Beav. 129; 26 L. J. Ch. 758; *Thomas v. Parry*, W. N. (1880), 184; *In re Charles Lafitte & Co.*, 20 Eq. 652; *Batley v. Kynock*, 20 Eq. 632; 44 L. J. Ch. 565). All reasonable expenses properly incurred in procuring evidence and the attendance of witnesses will be allowed (R. S. C. (Costs) Sched., r. 8);

and this includes costs incurred in witnesses qualifying to give evidence, as to which see *post*, Ch. VIII., s. VII., and cases there cited.

A professional witness will be allowed compensation for his loss of time at the rate of one guinea a day, if resident in London (*Nokes v. Gibbon*, 5 W. R. 216 ; 26 L. J. Ch. 208 ; *Clark v. Gill*, 1 K. & J. 19) ; and *semble*, also expenses of cab hire (*Turner v. Turner*, 7 W. R. 573 ; 5 Jur. N. S. 839). And any professional man, in the absence of evidence to the contrary, will be assumed to be practising his profession (*ibid.*). Profes-
sional man.

A country gentleman subpoenaed as a witness, is entitled to his full travelling expenses and one guinea per day for hotel or lodging whilst in town (*Turner v. Turner* ; *Brocas v. Lloyd*, 23 Beav. 129). Where the taxing-master allowed 25s. a day for each of a number of farmers who had attended the Court from Wales, as a fair allowance for maintenance and loss of time, the Court refused to interfere (*Thomas v. Parry*, W. N. (1880), 184). Country
witnesses.

In *Wiltshire v. Marshall*, W. N. (1866), 80, a witness, a country auctioneer, who had been kept in attendance eight days, refused to be sworn until his expenses were paid ; and Wood, V. C., held that he was entitled to two guineas a day, being one guinea for his maintenance, and another for his loss of time and business, on week days, and one guinea only for his maintenance on Sunday, in addition to his railway fare to and from his place of residence. The remuneration for loss of time claimed by medical witnesses who had attended during the examination of other witnesses, was allowed on taxation as between solicitor and client (*Ryan v. Dolan*, Ir. R. 7 Eq. 92.). Medical
witnesses.

If a foreign witness, who is not accessible by subpoena but whose evidence is material in the cause, refuses to leave his home unless he be remunerated for his trouble, the compensation paid to him, if reasonable in amount, will generally be allowed, and taxed against the losing party ; and where the captain of a ship has been detained for a Foreigners,
and persons
detained.

long time in this country in order to give evidence on a trial, large sums, calculated at a guinea a day, and amounting in the whole to above £100, have been allowed for his detention. So,—although it is not a general rule, either that parties, if witnesses in their own favour, are to have an allowance for their attendance at the trial, or that after a rule for a new trial has been obtained, witnesses may be detained at the cost of the losing party,—the Court, under very special circumstances, has allowed, in taxation of costs, subsistence money to a seafaring man, who was a necessary witness in his own cause, and who, after having obtained a verdict, remained in England until a rule for a new trial, granted at the instance of his opponent, had been discharged. See Taylor on Evidence, p. 1042; *Potter v. Rankin*, L. R. 5 C. P. 518; “*The Bahia*,” L. R. 1 A. & E. 15.

When cross-examination is abandoned.

Where the plaintiff obtained leave to cross-examine the two defendants at the hearing, and they attended accordingly, but the plaintiff then declined to cross-examine them, he was disallowed all costs in reference to the cross-examination, although entitled to the general costs of the suit, and was ordered to pay the expenses of the witnesses so attending (*Guilfoyle v. Hutchinson*, Ir. R. 8 Eq. 298).

If the cross-examining party abandons the cross-examination, he cannot file interrogatories for the examination of the same person as an accounting party without first paying him his expenses of the attempted cross-examination (*Davey v. Durrant*, 2 De G. & J. 506).

Examination through interpreter.

A party examining, by means of an interpreter, a witness ignorant of the English language, must bear the expense of the interpreter's services as well on the cross-examination as on the examination in chief (*Plunkett v. Williams*, 6 Ir. Eq. R. 80).

A witness refusing to produce a deed.

In *Bradshaw v. Bradshaw*, 3 Sim. 285 (affirmed by Lord Brougham, C., 1 R. & M. 358), a person who refused without sufficient reason to produce a deed in his posses-

sion to be proved by the subscribing witness, was ordered to produce the deed at his own expense, and to pay the expenses of the witness attending to prove it, and all other expenses caused by his refusal. A solicitor is not justified in refusing to produce a deed in his possession, to be proved on behalf of persons not his clients, because he has a lien upon it for costs due from his clients (*Brassington v. Brassington*, 1 S. & S. 455; *Hope v. Liddell*, 7 De G. M. & G. 331), even when the party requiring production claims under his client (*Lockett v. Cary*, 3 N. R. 405; 10 Jur. N. S. 144). A witness summoned for examination under sec. 96 of the Bankruptcy Act, 1869, is not entitled to the costs of employing a solicitor or counsel (*Ex parte Waddell, in re Lutscher*, 6 Ch. D. 328; 26 W. R. 9; 37 L. T. 345); and see *In re Leighton & Bennett*, 1 Ch. 331.

By R. S. C. Ord. XXXVIII., r. 4, any party on whose behalf an affidavit has been filed may be required to produce the deponent for cross-examination before the Court at the trial; but the party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production. This rule abrogates the order of 5th February, 1861, r. 19. It will be observed that the rule does not mention proceedings in Chambers: for the practice there, see *Stebbing v. Atlee*, 2 Jur. N. S. 1161; *Jenner v. Morris*, 10 W. R. 640.

A party applying for an order for the oral examination of any witnesses at the hearing under 15 & 16 Vict. c. 86, s. 39, did so at his own risk (*Ridley v. Meek*, 25 L. T. (Old S.), 90); and see further as to the costs of such *vivâ voce* examination, *Martin v. Pycroft*, 2 De G. M. & G. 785, 806; 22 L. J. Ch. 94; *Langford v. May*, 22 L. J. Ch. 978.

The costs of a commission abroad must in the first instance be borne by the party who applies for it (*In re Imperial Land Co. of Marseilles*, W. N. (1877), 244; 37 L. T. 588). In *Spiller v. Paris Skating Rink Co.*, 27 W. R. 225; W. N. (1878), 228, the costs were reserved.

Practice as to production of witness for cross-examination under R. S. C. Ord. XXXVIII., r. 4.

Oral examination under 15 & 16 Vict. c. 86, s. 39.

Costs of commission abroad.

Costs incurred in a colony.

The costs incurred in a colony, under a commission to examine witnesses, must be taxed in England upon the scale which would be allowed in the colony, and the taxing-master, in case of difficulty, ought to refer to the colony for information, but not to send the bill of costs there for taxation (*Wentworth v. Lloyd*, 13 W. R. 486; 34 Beav. 455; 12 L. T. 226).

SECT. V.—*Costs of Motions and Petitions Generally.*

Motions : costs may be given though not asked for by the notice.

It is now settled, contrary to Lord Eldon's opinion in *Mann v. King*, 18 Ves. 297, that the costs of a motion may be granted to the moving party though they are not asked for in the notice of motion (*Powell v. Cockerell*, 4 Ha. 557; *Clarke v. Jaques*, 11 Beav. 623, in the reporter's note to which case the earlier cases are collected; *Butler v. Gardener*, 12 Beav. 525; *Dawson v. Jay*, 2 W. R. 598; *Tampier v. Ingle*, 1 N. R. 159); but not unless the respondent appears (*Pratt v. Walker*, 19 Beav. 261); and the same rule, it would seem, applies to petitions. But an order for payment of costs made on motion *ex parte* is irregular (*Nokes v. Gibbon*, 3 Jur. N. S. 282; 5 W. R. 216; *Cast v. Poyser*, 26 L. J. Ch. 353). By R. S. C. Ord. LIII., r. 3, no motion is to be made without notice except where (1) under the previous practice any order or rule was made *ex parte* absolute in the first instance; (2) otherwise provided by the rules themselves; (3) the motion is for a rule to show cause only; but the Court or judge if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or judge may think just; and any party affected by such order may move to set it aside.

Where two persons move on separate notices, but for

the same object and by the same counsel, and the motions are refused with costs, each is answerable only for the costs of his own motion (*Oakes v. Turquand*, L. R. 2 H. L. 325).

In disposing of the costs of interlocutory applications the Court is generally guided by the following rules laid down by Sir John Leach, V.C., in 1823:—

“First, That the party making a successful motion is entitled to his costs as costs in the cause; but the party opposing it is not entitled to his costs, as costs in the cause.”

Sir John
Leach's
Rules.

“Second, That the party making a motion which fails is not entitled to his costs, as costs in the cause; but the party opposing it is entitled to his costs, as costs in the cause.”

“Third, That when a motion is made by one party and not opposed by the other, the costs of both parties are costs in the cause.”

“The Vice Chancellor added, that it was therefore the duty of the Court whenever, by reason of special circumstances, it was not the intention of the Court that these rules should apply, to give particular directions with respect to the costs; but that the Court very rarely gave any special directions with respect to the costs of a motion for the purpose of obtaining, continuing, or dissolving an injunction to stay proceedings at law, leaving the costs of such motions to abide the event of the suit” (1 S. & S. 357).

Before these rules were laid down it was necessary, in order that the costs of a motion might be costs in the cause, expressly to mention them in the order on the motion, or in the decree or order disposing of the costs of the suit (*Wild v. Hobson*, 4 Mad. 49); but now the costs of the successful party will be costs in the cause without express directions. (*Hind v. Whitmore*, 2 K. & J. 458; *Harris v. Hilliard*, 20 L. T. 216).

Will now be
followed
when order
is silent as
to costs.

However, if a defendant unsuccessfully resists a motion

Exceptions.

Motion
ordered
to stand
over.

for an injunction, but succeeds at the trial and gets his costs of the suit, his costs of the motion will, notwithstanding the first of the above rules, be costs in the cause (*Stevens v. Keating*, 1 Mac. & G. 659; 14 Jur. 157, overruling S. C. 13 Jur. 974). So, also, where the motion for an injunction stood over until the trial of an action at law, and the bill was ultimately dismissed with costs (*Betts v. Clifford*, 1 J. & H. 74). Parties coming for an injunction *ex parte* will, even if successful, have to pay the costs, unless they state their case fully and fairly to the Court (*Holden v. Waterlow*, 15 W. R. 139). In *Markwick v. Pawson*, 4 N. R. 528; 33 L. J. Ch. 703, it was doubted whether the costs of a motion ordered to stand over were costs in the cause on the plaintiff dismissing his own bill. In *Corcoran v. Witt*, 13 Eq. 53; 41 L. J. Ch. 67; 25 L. T. 653, where the bill was dismissed for want of prosecution, the Court refusing to make any order as to the costs of a motion by the plaintiff which had been ordered to stand till the hearing, it was held that these costs were costs of an unsuccessful motion, and, as such, costs in the cause, payable by the plaintiff.

The result of ordering a motion to stand over on certain terms till the hearing of the cause is nearly the same as if the only order made on the motion had been that the costs might be costs in the cause. The only distinction seems to be that the Court reserves to itself the means of dealing differently with the costs of the motion from the manner in which it may deal with the costs in the cause; *per Wickens, V. C.*, in *Singer v. Audsley*, 13 Eq. 405.

Where a motion by the plaintiff was ordered to stand till the hearing, no order being made as to costs, and the plaintiff ultimately obtained a decree with costs, but the costs of the motion were not mentioned in the decree, it was held that the motion was substantially a successful one, and that the costs of it were costs in the cause (*Mounsey v. Earl of Lonsdale*, 10 Eq. 557; S. C. *sub nom. Atty.-Gen. v. Earl of Lonsdale*, 6 Ch. 141).

Where the plaintiff, who was ultimately successful, was ordered to pay the costs of the suit up to a certain day, it was held that the usual rules did not apply, and that he must pay the costs of motions to obtain and dissolve an injunction made prior to that day (*Webster v. Manby*, 4 Ch. 372 ; 17 W. R. 545 ; 20 L. T. 387).

Where one party was wrong in form only and the other resisted the motion *in toto*, the order was made without costs on either side (*Powell v. Williams*, 27 W. R. 796 ; 40 L. T. 679).

The exceptions to Sir J. Leach's rules occur chiefly (1) where, on the merits the costs are reserved until the trial; (2) where the motion is rendered necessary by the default of the moving party, or for some other reason he is asking for an indulgence; (3) where the motion is rendered necessary by the opposite party's default; or (4) where the motion is irregular.

Exceptions
to Sir John
Leach's
Rules.

The costs are not generally reserved where a motion is granted; but where a plaintiff moving would be entitled to an injunction, but for the case made by the defendant's affidavits (*Rochdale Canal Company v. King*, 2 Sim. N. S. 78), especially if, under the old practice, before answer (*Waring v. Manchester, Sheffield, & Lincolnshire Railway Company*, 14 Jur. 613), the costs are sometimes reserved until the trial. However, in *Lewis v. Smith*, 1 Mac. & G. 417, 420, Lord Cottenham said he could not approve of the practice of reserving the costs of a proceeding for the purpose of eventually giving them to the unsuccessful party; and therefore, it would seem, that if the party unsuccessfully moving gets his costs of the suit, the reserved costs of the motion will not be given to him. On the same principle, in *Marsack v. Reeves*, 6 Mad. 108, the costs of an unsuccessful motion, to dissolve an injunction against suing on a *post-obit* bond, were not made costs in the cause, because the plaintiff generally paid the costs of such suits. When costs were reserved until the hearing, they could not be

1. Where
the
costs are
reserved
until the
trial.

Reserved costs should be expressly included in the judgment at the trial.

obtained in case the bill was dismissed before the cause came to a hearing. It is therefore a useful precaution to ask that the costs may be reserved, not simply until the trial, but until the trial *or further order* (*Rumbold v. Forteach*, 4 Jur. N. S. 608); and see *Jones v. Batten*, 10 Ha. app. xi., where the order provided for the event of the bill being dismissed before the hearing, as to all or any of the defendants, by making the costs of such defendants costs in the cause. Where costs are reserved until the trial or further order they should, it seems, be mentioned to the Court and provided for by the judgment or subsequent order; where, however, an action is dismissed with costs this includes all costs reserved; see *Hodges v. Hodges*, 25 W. R. 162; *Memorandum*, W. N. (1876) 271, where the M. R. said that he would give instructions to the registrars to insert without special directions in all orders made in that branch of the Court the words "including costs of all applications ordered to stand over until trial, and all costs reserved to be disposed of at the trial." Where the costs of the suit were reserved till further consideration, but no mention was made of the reserved costs of a motion in the cause, it was held that the costs of the motion were not included in the general reservation of costs, and no order could be made respecting them (*Gardner v. Marshall*, 14 Sim. 575; and see *Whalley v. Ramage*, 8 L. T. 499). However, where certain costs reserved till the hearing were by mistake omitted to be mentioned in the decree which had been enrolled, the Court of Appeal on petition made a separate order for their payment under the general liberty to apply reserved (*Viney v. Chaplin*, 3 De G. & J. 282; *Harris v. Hilliard*, 20 L. T. 216). And in *Fritz v. Hobson*, 14 Ch. D. 542; 28 W. R. 722; 42 L. T. 677, where a motion for an interim injunction was adjourned to the trial, no order being made as to costs and liberty to apply not being expressly reserved, it was held that either under the liberty to apply reserved by the judgment, or under

the liberty to apply implied in the order adjourning the motion, or by virtue of R. S. C. Ord. XLIA. (Dec. 1879), the Court had jurisdiction to order the payment of these costs; and a separate order was accordingly made directing the taxation and payment of the plaintiff's costs of the motion. And see also *Mounsey v. Earl of Lonsdale*, 6 Ch. 141. It is submitted that these cases correctly express the practice of the Court; and that *Kendall v. Marsters*, 2 De G. F. & J. 200, where Lord Campbell, C., expressed an opinion that the ordinary direction for liberty to apply did not extend to an application to be allowed costs not expressly provided for by the decree, cannot be relied on. When an interlocutory motion is refused, and at the same time the Court makes an order as to costs of the motion, this addition does not enlarge the time for appealing (*Swindell v. Birmingham Syndicate*, 3 Ch. D. 127; 24 W. R. 911). In *Chilton v. Campbell*, 20 Beav. 531, a motion to restrain an action at law was refused on the ground that the plaintiff's equity might be enforced as well after as before verdict, but the costs were made at once costs in the cause; and see *Clark v. Watkins*, 1 N. R. 342; *Walker v. Daniell*, 22 W. R. 595; 30 L. T. 357; *Hardwick v. Wright*, 13 W. R. 560; 12 L. T. 138; 11 Jur. N. S. 297; *Duckett v. Gover*, 25 W. R. 554; *Kinsman v. Jackson*, 28 W. R. 337.

Costs of a motion refused made costs in the cause.

The party moving, although he is successful, must pay the costs of his application if it is rendered necessary by his own default; as where the plaintiff omitted to file interrogatories in time (*Dakins v. Garratt*, 4 Jur. N. S. 579, where the costs were fixed at 50s.); or where a party applies, after the evidence is closed, for leave to file an affidavit negligently omitted to be filed before (*Douglas v. Archbutt*, 23 Beav. 293; *Connolly v. Smyth*, Ir. R. 3 Eq. 145). And see *Campbell v. Joyce*, 2 Eq. 377; *Williams v. Carmarthen Ry. Co.*, 17 W. R. 346; 12 L. T. 762; but see *Robb v. Connor*, Ir. R. 4 Eq. 574. The same rule in general applies, but less strictly,

2. Where the motion is occasioned by the default of the moving party;

or he is
seeking an
indulgence.

where the party moving, though not in default, is seeking an indulgence from the Court (*Bartlett v. Harton*, 17 Beav. 479, 482; *Cocks v. Purday*, 12 Beav. 451; *Blackman v. Cornish*, 42 L. J. Ch. 576; 21 W. R. 741; 29 L. T. 85); and see also *Sobey v. Sobey*,¹⁵ Eq. 200; 42 L. J. Ch. 271; 21 W. R. 309; 27 L. T. 808; but the right of the other party to claim such costs must not be abused (*Attorney-General v. Corporation of Halifax*, 18 W. R. 37). Thus it was held that the costs of an application to advance a cause, whether successful or not, must be paid by the party applying (*Browne v. Lockhart*, 10 Sim. 420); but see *contra*, *Carthew v. Barclay*, 10 Sim. 273, where they were made costs in the cause; see also *Adair v. Young*, 11 Ch. D. 136; 40 L. T. 598; *Norton v. L. & N. W. Ry. Co.*, 27 W. R. 773; 40 L. T. 597. In *Weston v. Cohen*, 20 L. T. 299, a motion by the defendant, who had been attached for want of an answer, to discharge the attachment was allowed, but, under the circumstances, without costs. Where defendants applied, successfully, to be struck out, under R. S. C. Ord. XVI., r. 13, they were refused their costs because they had not applied sooner (*Vallance v. Birmingham, &c. Corporation*, 2 Ch. D. 369; 24 W. R. 454). A defendant who raises a new defence by amendment will have to pay the costs rendered necessary by his not having put in such defence at an earlier period, subject, however, to such directions as the Court may think fit to give where it sees that unnecessary or oppressive costs have been incurred by the plaintiff in opposing the application (*Cargill v. Bower*, 4 Ch. D. 78; 46 L. J. Ch. 175; 25 W. R. 221; 35 L. T. 621). The costs of an application to set aside a judgment obtained by default must be paid by the party applying (*Cockle v. Joyce*, 7 Ch. D. 56; 47 L. J. Ch. 543; 26 W. R. 59; 37 L. T. 428; *Wright v. Clifford*, 26 W. R. 369; *Burgoine v. T aylor*, 26 W. R. 568; 38 L. T. 438; *King v. Sande-*

Petitioner.

man, 26 W. R. 569; 38 L. T. 461). And where a defective decree was rectified on petition, the plaintiff, through

whose omission the defect had arisen, was ordered to pay the costs of the petition (*Williams v. Carmarthen Ry. Co.*, 17 W. R. 346; 19 L. T. 762).

The staying of proceedings under a decree, pending an appeal against it, is an indulgence which will only be granted under special circumstances; and the costs of an application for that purpose must, as a general rule, be paid by the party applying, whether successful (*Merry v. Nickalls*, 8 Ch. 205; 42 L. J. Ch. 479; 21 W. R. 305; 28 L. T. 296; *Cooper v. Cooper*, 2 Ch. D. 492—where it was held that no alteration had been made in the former practice as to the payment of costs in such cases—*Morgan v. Elford*, 4 Ch. D. 352; 25 W. R. 136; *Bauer v. Mitford*, 9 W. R. 135; *Topham v. Duke of Portland*, 1 De G. J. & S. 603; 11 W. R. 813; *Lamb v. Eames*, 23 L. T. 135; *Re Peninsular Bank, Jopp's Case*, W. N. (1867) 192); or unsuccessful (*Waldo v. Caley*, 16 Ves. 212; *Atherton v. British Nation Assurance Co.*, 5 Ch. 720; *Grant v. Banque Franco-Egyptienne*, 3 C. P. D. 202; 47 L. J. Ch. 455; 26 W. R. 669; 38 L. T. 612; *Beattie v. Lord Ebury*, 28 L. T. 458). And see also *Attorney-General v. Swansea, &c., Co.*, 9 Ch. D. 46, where the motion was withdrawn. In some cases it was held that the costs should abide the event of the appeal (*Burdick v. Garrick*, 5 Ch. 453); see *Walford v. Walford*, 3 Ch. 812; 5 Ch. 455 n. (4); 16 W. R. 1161; 19 L. T. 233, where no costs were given; and see *Earl of Shrewsbury v. Trappes*, 2 De G. F. & J. 172, where Knight Bruce, L. J., said that it was not an inflexible rule that a person applying under such circumstances must pay the costs of the application. In *Morison v. Morison*, 1 Jur. N. S. 339; 3 W. R. 296, Stuart, V. C., refused to give costs against the petitioner, although the petition, there being no special circumstances, could not be granted; see also *Barrs v. Fewkes*, 1 Eq. 392; *Wilson v. West Hartlepool Ry.*, 34 Beav. 414. Where both parties obtained a benefit by the order, the costs of the application were made costs in

Staying
proceed-
ings under
decree
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appeal.

the appeal, notwithstanding the general rule in *Merry v. Nickalls* (*Adair v. Young*, 11 Ch. D. 136; 40 L. T. 598).

If the decree or order appealed from is reversed before the application to stay proceedings is heard, there being no longer any presumption of the correctness of such decree or order, the costs of the application will be costs in the cause (*Richardson v. Bank of England*, 1 Beav. 153), or no costs of it will be given (*Pennell v. Roy*, 1 W. R. 271).

3. Where the motion is rendered necessary by the other party's default.

If, on the other hand, the motion is rendered necessary by the respondent's default, he must pay the costs of it if it is successful (*Tampier v. Ingle*, 1 N. R. 159). Thus, where a bill was dismissed with costs, the plaintiff was, nevertheless, held entitled to the costs of a second motion for the production of documents rendered necessary by the defendant's omission of certain documents from his first schedule (*Lovell v. Yates*, 11 L. J. Ch. 158; 6 Jur. 479). Again, the costs of a successful motion to make a co-plaintiff, who had revoked his authority, a defendant, were given against the co-plaintiff (*Brown v. Sawyer*, 3 Beav. 598). And the same rule was followed when the opposite party's bad faith had occasioned the application (*Re Cattlin*, 30 L. T. (Old. S.) 110, affirming S. C. 3 Jur. N. S. 33). The party moving will be entitled to his costs, and to bring the motion on for the purpose of obtaining them, although the motion is intercepted by the opposite party's compliance with the order sought (*Newton v. Ricketts*, 11 Beav. 164; *Maw v. Marsden*, 4 Jur. 1079; *Ackerley v. Frodsham*, 8 L. J. Ch. 240; *Re Minter*, 19 Beav. 33). The motion in the case last cited was for a solicitor, after taxation and payment, to deliver papers, which were delivered before the motion was heard; but in *Peasnall v. Coultart*, 1 Keen, 183, and *In re Christmas*, 19 Beav. 519, it was held that the costs of the common 'four day order' were payable by the party applying for it. And see *Meacham v. Cooper*, 21 W. R. 745; *Re Devonshire*, 32 Beav. 241, where an application

by a respondent for leave to file a copy of a petition, of which the petitioner refused to file the original, was allowed with costs; *Yeatman v. Read*, 35 L. J. Ch. 176, 14 W. R. 123; 13 L. T. 580. In *Patterson v. Wooler*, 2 Ch. D. 586; 24 W. R. 455; 45 L. J. Ch. 274; 34 L. T. 415, defendant trustees, who had improperly refused to allow the evidence to be taken by affidavit instead of *vivâ voce*, were ordered to pay the costs of a motion that the evidence should be taken by affidavit, although the motion was, under R. S. C. Ord. XXXVII., r. 1, of necessity refused.

Under this class of cases come motions to dismiss for want of prosecution. According to the present practice the defendant may apply to dismiss the action for want of prosecution if the plaintiff (1) being bound to deliver a statement of claim does not deliver the same within the time allowed; (2) fails to comply with an order to answer interrogatories, or for discovery or inspection of documents; (3) fails to give notice of trial within six weeks after the close of the pleadings or such extended time as the Court or judge may allow; see R. S. C. Ord. XXIX., r. 1; Ord. XXXI., r. 20; Ord. XXXVI., r. 4a.

Costs of applications to dismiss for want of prosecution.

The application should generally be made by summons at Chambers rather than by motion in Court (*Freason v. Loe*, 26 W. R. 138), but may be made either way (*Evelyn v. Evelyn*, 13 Ch. D. 138). If the usual notice is given and the plaintiff does not at once submit to speed the cause and tender the costs of the notice, the defendant, if the usual order is made, will have his costs of making the motion in Court (*Evelyn v. Evelyn*).

Where a motion to dismiss failed but there had been some irregularity on the plaintiff's part no order was made on the motion except that the costs of all parties should be costs in the action (*Ambroise v. Evelyn*, 11 Ch. D. 759; 27 W. R. 639).

In *Higginbottom v Aynsley*, 3 Ch. D. 288; 24 W. R. 782, Hall, V. C., gave the plaintiff, who appeared and gave

a reason for his delay, a week in which to take further proceedings, he paying the costs of the motion; and see *Sutton v. Huggins*, W. N. (1875) 235.

The defendant if otherwise in a position to move may obtain his costs although the motion cannot be granted by reason of the plaintiff having taken the next step in his action (*Corry v. Curlewis*, 8 Beav. 606), or obtained an order to amend (*Findlay v. Lawrance*, 11 Jur. 705); but not if the plaintiff also tenders the costs incurred up to that time (*Newton v. Ricketts*, 11 Beav. 164); and see *Hewison v. Kenmir*, W. N. (1874) 145.

Where one of several defendants has delivered his defence and the time for the plaintiff to reply to it has expired, but the plaintiff has, without the knowledge of that defendant agreed with the other defendants to extend the time for delivering their defences, that defendant cannot move to dismiss the action as against him for want of prosecution, the pleadings not yet being closed within the meaning of R. S. C. Ord. XXIX., r. 12, and Ord. XXXVI., rr. 4, 4a. The defendant's course in such circumstances is to write to the plaintiff's solicitor and inquire how the action stands as regards the other defendants (*Ambroise v. Evelyn*). A motion to dismiss for want of prosecution will be refused with costs if the defendant's conduct has been improper (*Partington v. Baillie*, 5 Sim. 667; *Wintthrop v. Murray*, 7 Ha. 150; *Barber v. Kavanagh*, 1 C. P. C. 418; *Hay v. Farr*, *ibid.* 419); and see also *Ingle v. Partridge*, 33 Beav. 287; *Barker v. Piele*, 12 W. R. 460; *Herd v. Lupton*, W. N. (1869) 29; 19 L. T. 674; *London, &c. Co. v. Elworthy*, 18 W. R. 246. A motion to dismiss a bill of discovery for want of prosecution was irregular and would be dismissed with costs (*Bennett v. Harrop*, 22 L. T. 647). A defendant moving to dismiss will not lose his costs because he has allowed some time to expire since he was in a position to do so (*Athenæum Assurance Co. v. Bartlett*, 5 W. R. 477); but on the other hand, the motion was refused with costs, where notice was given before,

though the motion came on after, the time fixed by the Consolidated Orders (*Ponsardin v. Stear*, 2 N. R. 476; 32 Beav. 666; 11 W. R. 926, and the cases there cited).

Where on motion to dismiss for want of prosecution 'the usual order' was made, but incorrectly, as the suit had abated, the defendants were held not entitled to the costs of the motion to dismiss (*Hinde v. Morton*, 13 W. R. 401). Where, after notice of motion to dismiss had been given, the plaintiff's solicitor's clerk by mistake gave an undertaking to speed the cause within fourteen days, the plaintiffs being in reality anxious to amend, and at the end of the fourteen days the defendants moved to dismiss, the motion was refused and the plaintiff's solicitors were ordered to pay the costs of the application personally (*Sheffield v. Sheffield*, 23 W. R. 150; S. C. 10 Ch. 206; 44 L. J. Ch. 304; 23 W. R. 378).

The costs of a successful motion to commit any person for contempt are payable by such person (*Pennell v. Roy*, 1 W. R. 271; *Fripp v. Bridgewater and Taunton Canal Co.*, 3 W. R. 356; *Lane v Sterne*, 3 Giff. 629; *Daw v. Eley*, 7 Eq. 49). In the last case a motion to commit the publisher of a newspaper for contempt in publishing certain letters was refused, but without costs, he having been in some degree to blame; and see *Tichborne v. Mostyn*, 7 Eq. 55 n. (1); *In re Cheltenham Wagon Co.*, 8 Eq. 580; *In re Bryant*, 4 Ch. D. 98; *In re Fells, ex parte Andrews*, 4 Ch. D. 509; *Ex parte Langley, Ex parte Smith, In re Bishop*, 13 Ch. D. 110; *Jackson v. Mawby*, 1 Ch. D. 87; 45 L. J. Ch. 53; 24 W. R. 92; *Baker v. Baker*, W. N. (1876) 256; *Steele v Hutchings*, W. N. (1879) 18. Where the defendant, against whom an interim injunction had been obtained, had not received clear notice of the continuance of the injunction, but the Vice Chancellor held that under the circumstances his solicitor ought to have known and in fact did know of it, the motion was refused, but without costs (*Carrow v. Ferrior, Dunn v. Ferrior*, 17 L. T. 536). The order is, strictly, for committal

Motion to
commit for
contempt.

for the contempt, but it has been usual to ask only for the costs of the motion by way of penalty (*Bullen v. Ovey*, 16 Ves. 144; *Leonard v. Attwell*, 17 Ves. 386). If the party cannot be treated as liable to commitment, he cannot be made to pay the costs as the price of the contempt. An order of this kind merely directing the defendant to pay the costs may of course be appealed from (*Witt v. Corcoran*, 2 Ch. D. 69; 45 L. J. Ch. 603; 34 L. T. 550; 24 W. R. 501). But there is no rule that a motion to commit if refused must be refused with costs; and an appeal as to costs in such a case will not be entertained (*Hope v. Carnegie*, 4 Ch. 264; *Ashworth v. Outram*, 5 Ch. D. 943; and see *post*, p. 158).

The Court of Appeal has recently expressed a strong opinion against the practice of moving to commit for contempt when it is not intended to ask for a committal but only for an apology and payment of costs; a party making such a motion in future instead of getting any costs will in all probability have to pay them (*Plating Co. v. Farquharson*, 17 Ch. D. 49). But such costs could only be party and party costs, though costs as between solicitor and client may sometimes be given to the party moving (*ibid.*; *Steele v. Hutchings*, W. N. (1879) 18). Where a party in custody for contempt has purged his contempt, he cannot be detained in prison for non-payment of the costs of his contempt (*Jackson v. Mawby*).

The costs of an application to commit must be recovered together with the other costs of the contempt; otherwise, it seems, they cannot be obtained as costs in the cause, and will be lost (*Const v. Ebers*, 1 Mad. 530; *Attorney-General v Lord Currington*, 6 Beav. 454; *Landars v. Allen*, 6 Sim. 619, notwithstanding *Anon.* 15 Ves. 174). As to the costs of contempt incurred by paupers, see *post*, Ch. VI., s. IX.

When costs
of con-
tempt and
damages

If the sheriff having a person in his custody under an attachment for non-payment of a sum of money lets him go at large, he may be ordered on motion to indemnify the

party to whom the sum was payable, and to pay the costs of the application (*Levett v Letteney*, Beames, App. 5; *Solly v. Greathead*, Beames, App. 6, S. C. *Anon.* 11 Ves. 170; *Moore v. Moore*, 25 Beav. 8). But the measure of the sheriff's liability is not the whole sum due, but the amount which would probably have been recovered from the prisoner (*Moore v. Moore*).

Where a sheriff's officer took a solicitor into custody on a writ of attachment, while the latter was on his way to conduct a case for a client, notwithstanding that the officer had been warned of the fact, the parties served with the notice of motion to discharge (both the plaintiff and the officer), were made personally liable for the costs of the motion (*Dodd v. Holbrook*, 14 W. R. 125; 13 L. T. 426; 11 Jur. N. S. 969; 12 Jur. N. S. 19; 35 L. J. Ch. 175, following the decision of Lord Eldon in *List's Case*, 2 V. & B. 373).

Where a sheriff had failed to make any return to a writ of *fi. fa.*, notwithstanding an order of course directing him to make his return forthwith, he was, upon an application *ex parte* against him for an order *nisi*, ordered to pay both the costs of the order *nisi* and of the previous order of course (*in re Heiron's Estate*, *Hall v. Ley*, 12 Ch. D. 795; 27 W. R. 750, following *Evans v. Davies*, 7 Beav. 81).

As a general rule an action instituted in one branch of the Chancery Division when another action as to the same matter is pending in another branch will be transferred to the latter, and the plaintiff in the second action may have to pay the costs of the transfer; but the plaintiff in the first suit ought before giving notice of motion to ask the plaintiff in the second suit for his consent to the transfer, and if he neglect to do so may have to pay the costs of the application (*Lyall v. Weldhen*, 9 Ch. 287; 22 W. R. 633; 30 L. T. 146; *Sayers v. Corrie*, 9 Ch. 52; 43 L. J. Ch. 337; 22 W. R. 101; 29 L. T. 602; *Salter v. Tildesley*, 13 W. R. 376; 11 L. T. 759; *Orrell v. Busch*,

may be recovered from the sheriff.

Sheriff arresting a solicitor on his way to conduct a case for a client.

Sheriff failing to make a return to a *fi. fa.*

Motion to transfer.

5 Ch. 467; 18 W. R. 588; 22 L. T. 461). The application of the rule is not affected by the fact that a decree has been made in the second suit (*Lucas v. Siggers*, 7 Ch. 517; 41 L. J. Ch. 364; 20 W. R. 478; 26 L. T. 651). Where a party on insufficient grounds refuses to consent to a transfer he must pay the costs if the notice of motion asks for them (*Cocq v. Hunasgeria Coffee Co.*, 4 Ch. 415; 17 W. R. 509; 20 L. T. 207). And as to transfers from one Division to another of the High Court, or from one judge to another of the Chancery Division, see further R. S. C. Ord. LI.; *Cannot v. Morgan*, 1 Ch. D. 1; 24 W. R. 91; 45 L. J. Ch. 50; 33 L. T. 402; *Chapman v. Real Property Trust*, 7 Ch. D. 732. In *Holloway v. York*, 2 Ex. D. 333; 25 W. R. 403, the costs of an application to transfer an action from the Exchequer to the Chancery Division, and the costs of the appeal, were made costs in the action; and see *In re Timms*, 26 W. R. 692; 38 L. T. 679; *Smith v. Whichcord*, *Evans v. Debenham*, *Debenham v. Lacey*, 24 W. R. 900.

4. Where the motion is irregularly made,

Where a motion is made irregularly, the moving party must in general pay the costs of it; but it is not of course that he should do so. In *Newton v. Chorlton*, 10 Ha. app. xxxii., where short notice of motion had been given without the leave of the Court, V. C. Wood said it was not of course to make the party moving pay the costs, unless any costs had been specially occasioned to the other parties by the irregularity; and he there gave no costs, following an unreported case of *Blakeney v. Dufaur*, cor. Sir J. Romilly, M. R.; and see *Steedman v. Poole*, 10 Jur. 979, where the defendant served notice of motion to dismiss for want of prosecution for a day not a seal day, and the plaintiff having in the meantime filed replication, the Court refused the defendant his costs, but did not make him pay any. In *Russell v. L. C. & D. Ry. Co.*, 9 L. T. 14, a motion by defendant to restrain an action by a co-defendant before decree was refused with costs. Affidavits were held to be inadmissible on motion after

answer, under the old practice, to contradict it, and a motion on affidavits under those circumstances was therefore refused with costs as irregular (*Barwell v. Barwell*, 5 Beav. 373; and see *Castellani v. Blumenthal*, 12 Sim. 47, and *Ord v. White*, 3 Beav. 357). Where the plaintiff's gave an invalid notice of motion and then failed to appear, the Exchequer Division held that the defendants were not bound to appear either, and were not entitled to their costs of doing so (*Daubney v. Shuttleworth*, 1 Ex. D. 53).

Where a successful application was made by motion, which should properly have been made by summons, only the costs of a summons in Chambers attended by counsel were allowed (*Marriott v. Marriott*, 26 W. R. 416). In *Meyrick v. James*, 46 L. J. Ch. 579, a motion to take certain affidavits off the file was refused as irregular, but under the circumstances no order was made as to costs.

The Court can dismiss with costs an application, which it has no jurisdiction to entertain (*Re Isaac*, 4 My. & Cr. 11). And see *Yearsley v. Yearsley*, 19 Beav. 1, where notice of motion in a Vice Chancellor's cause was irregularly given before the Master of the Rolls; but in *Rashleigh v. Mount*, 16 Sim. 390, such a motion was treated as abandoned. So also, the Court may refuse with costs a motion to enforce an order which it had no jurisdiction to make (*In re King*, 10 Sim. 605). In *Pearse v. Cole*, 16 Jur. 214, a motion by a married woman without a next friend was dismissed with costs to be paid by her solicitor. See now R. S. C. Ord. XVI., r. 8, and see *post*, Ch. VI., s. VIII. A party having an objection of form should be prepared to answer the merits, otherwise he will have to pay the costs of the application standing over for him to file affidavits (*Ex parte Bellott*, 2 Mad. 261). But see *Camille v. Donato*, 13 W. R. 358; 11 L. T. 584; 11 Jur. N. S. 26, where a defendant having succeeded in dissolving an interim injunction, on the

ground of want of parties, was not allowed the costs of affidavits to the merits not read.

or is made
to dis-
charge a
previous
order irre-
gularly
obtained.

In like manner, the party guilty of the irregularity must pay the costs of a motion to discharge an order irregularly obtained (*Frowd v. Lawrence*, 1 J. & W. 655; *Darley v. Nicholson*, 2 Dr. & War. 86; *Stephenson v. Biney*, 2 Eq. 303; 14 W. R. 788; 14 L. T. 432; 12 Jur. N. S. 428, where the order was an order of course; *Warwick v. Queen's College, Oxford*, 16 W. R. 884; 18 L. T. 752); and notwithstanding that an offer is made to pay all the expenses which the party has been put to in consequence of the irregularity (*Frowd v. Lawrence*). So also of a motion to take off the file a document irregularly filed (*Official Liquidators of the Southampton, &c. Steamboat Co. v. Rawlins*, 3 N. R. 349; *McKewan v. Sanderson*, 21 W. R. 807; 29 L. T. 206; *Spittle v. Walton*, 11 Eq. 420); or filed by a solicitor without proper authority (see *post*, p. 86); but not if the party moving raises an issue on which he cannot be believed (*Jerdein v. Bright*, 10 W. R. 380). In *Ashley v. Taylor*, 48 L. J. Ch. 406; 27 W. R. 228, the costs were made costs in the action.

Receiver
improperly
appointed.

In *Allen v. Lloyd*, 12 Ch. D. 447; 28 W. R. 8, the plaintiff, a member of the firm of solicitors acting for the defendant, was appointed receiver; the Court of Appeal held that the appointment was improper, discharged him from being receiver and ordered him to pay the costs in both Courts.

Where an order had been made outside the terms of the motion the Court of Appeal considered that it must have been made *per incuriam*, and discharged the order with costs (*West v. Downman*, 27 W. R. 697).

Where an order had been made at chambers, by consent, which the Court had as a matter of fact no power to make, on the cause coming on for hearing upon the order it was discharged, and the costs were made costs in the cause (*Republic of Bolivia v. Bolivian Navigation Co.*, 24 W. R. 361).

In *Davis v. Whiffen*, 22 W. R. 109, an order of course, irregularly obtained, for setting down a demurrer after the time allowed by Cons. Ord. XIV., r. 14, had expired was discharged with costs; and see also *in re Norwich Building Society*, 22 W. R. 856, where an order to change solicitors, irregularly obtained, was discharged with costs. An irregular order will be discharged with costs, although the irregularity occurs through a mistake in the registrar's office, it being the duty of the party procuring the order to see that it is properly drawn up (*Landars v. Allen*, 6 Sim. 620); but see *contra*, *Hibberson v. Cooke*, 4 Mad. 248. Where an order had been obtained for service out of the jurisdiction and service had been duly effected, a motion to discharge the order was refused, the irregularity being only small, but no costs were given (*Phospho-Guano Co. v. Guild*, 17 Eq. 432; 43 L. J. Ch. 360; 22 W. R. 526; 30 L. T. 117). See also *Davis v. Park*, 42 L. J. Ch. 204; 21 W. R. 136; 28 L. T. 295, affirmed on appeal, 21 W. R. 301, where the Court discharged with costs an order for service out of the jurisdiction, being of opinion that it would not be a proper exercise of discretion to uphold the order; *Tottenham v. Barry*, 12 Ch. D. 797; 48 L. J. Ch. 641.

If an order though technically regular has been obtained in breach of good faith, it will also be discharged with costs (*Betts v. Barton*, 3 Jur. N. S. 154). However, in *Lloyd v. Solicitors & General Life Assurance Co.*, 3 W. R. 640, V. C. Wood said that the Court did not encourage summary applications on a mere slip in practice, without communicating with the other side, and gave no costs. In *Stephens v. Workman*, 11 W. R. 503, an order to commit for breach of an injunction was discharged for a slight irregularity in the form of it, but without costs; but in *In re Reynolds*, 10 W. R. 709, it was held that an attachment for non-payment of costs would be set aside, if the copy of the taxing-master's certificate was not a true copy, however slight the error; and in that case costs of the

application were given, though the error was only in the omission of the word 'pounds;' and see *In re Holt*, 11 Ch. D. 168; 27 W. R. 485; 40 L. T. 207. Where a bill was filed on behalf of a person of unsound mind not so found by inquisition, and he was afterwards found a lunatic by inquisition, whereby the suit abated, and all subsequent proceedings taken without the sanction of the jurisdiction in lunacy became irregular and void, the solicitors who took proceedings in the suit after the date of the inquisition were, on the petition of the committee of the lunatic's estate, ordered to refund costs and expenses which had been paid out of the estate under an order in the suit, and to pay the costs of the petition, and of an appeal, as between solicitor and client (*Beull v. Smith*, 9 Ch. 85; 43 L. J. Ch. 245; 22 W. R. 121; 29 L. T. 625).

It seems the better opinion that an irregular order (although obtained as of course) is in force until it is discharged (*Blake v. Blake*, 7 Beav. 514; *Traile v. Bull*, 1 Beav. 475). In *De Geneve v. Hannam*, 1 R. & M. 494, however, Lord Lyndhurst, C., expressed his opinion that an order obtained in defiance of the General Orders was a mere nullity, and that it was unnecessary to set it aside; and see *Tanner v. Dean*, 4 Mad. 176; *Jones v. Lord Charlemont*, 12 Jur. 389. In *Richards v. Dudley*, 2 Jur. 464, it was held that a person was not justified in refusing to obey an order, which was technically defective, without stating his objection to it, and on motion to cure the defect and enforce the order, he was refused his costs of appearance. It is now provided that non-compliance with any of the rules of the Supreme Court shall not render the proceedings in any action void, unless the Court or a judge shall so direct, but such proceedings may be set aside, amended, or otherwise dealt with in such manner and upon such terms as the Court or judge shall think fit (R. S. C. Ord. LIX.); and by rule 2 of the same Order (April, 1880) wide powers of amendment are given.

An order to discharge an irregular order carries with it

the costs of the application to discharge it, though not expressly mentioned in the order (*West v. Smith*, 3 Beav. 492). The notice of motion need not mention the ground of irregularity, but such omission may be material on the question of costs (*Brown v. Robertson*, 2 Ph. 173); and see *Lambert v. Hill*, 1 Dr. & War. 74.

“When a party gives a notice of motion, and does not move accordingly, he shall pay to the other side costs to be taxed by the taxing-master, unless the Court itself shall direct, upon production of the notice of motion, what sum shall be paid for costs” (Cons. Ord. XL., r. 23). Abandoned motions.

The following were treated as abandoned motions:—where counsel were not instructed to move on the day for which notice of motion was given (*Re Smith*, 23 Beav. 284); where a motion was brought on and stood over until a day named, and in the interval the plaintiff amended his bill, and a fresh notice was given (*Eccles v. Liverpool Borough Bank*, Johns. 402); or where notice of motion was given, but the motion was not brought on before amendment (*London & Blackwall Ry. Co. v. Limehouse Board of Works*, 3 K. & J. 123); where, pending an appeal against an order allowing a demurrer, the plaintiff gave notice of motion to restrain the defendants from parting with certain funds, and the order was affirmed before the motion came on (*Attorney-General v. Mayor of Norwich*, 2 My. & C. 406, 431); a motion set down in the Lords Justices’ paper, and not made when called on (*Turner v. Turner*, 15 Jur. 1165); and in the last case the motion was struck out of the paper. Where the defendants gave notice of motion and then failed to appear, they were ordered to pay the plaintiff’s costs of appearing to show cause against the motion (*Berry v. Exchange Trading Co.*, 1 Q. B. D. 77; 45 L. J. Q. B. 224; 24 W. R. 318); and see *Webb v. Mansel*, 2 Q. B. D. 117; 25 W. R. 389; *Waddell v. Blockey*, 10 Ch. D. 416. In *Dugdale v. Johnson*, 5 Ha. 92, it was held that a motion once opened could not be treated as an abandoned motion, but

if it stood over, and no further steps were taken, it must be treated as a motion refused; but see *contra*, *Gorely v. Gorely*, 25 Beav. 234; *Eccles v. Liverpool Borough Bank*, Johns. 402. In *Felkin v. Lewis*, 11 W. R. 981, where a motion for an injunction stood over from time to time on an undertaking, which was ultimately discharged on defendants doing what they had professed their intention to do, the Court held it was not an abandoned motion, and reserved the costs till the hearing. Where a plaintiff gave notice of a motion and died, and his executors revived but did not proceed with the motion, it was held not to be an abandoned motion (*Warner v. Armstrong*, 4 Sim. 140); and on the bill in the same suit being dismissed with costs, the defendants were not allowed their costs of that motion (*Lewis v. Armstrong*, 3 My. & K. 69). The costs of an abandoned motion must be applied for on the next seal after that for which notice is given (*Woodcock v. Oxford, Worcester & Wolverhampton Ry. Co.*, 17 Jur. 33; and see *Wedderburne v. Llewellyn*, 13 W. R. 939), and it is too late to apply for them at the hearing, and certainly on speaking to minutes (*Eccles v. Liverpool Borough Bank*, Johns. 402); and where defendant dismisses a suit for want of prosecution, without making a motion of which he has given notice, the plaintiff cannot afterwards obtain the costs of the motion as abandoned (*Farquharson v. Pitcher*, 4 Russ. 510). In *Yetts v. Biles*, 25 W. R. 452, the Court allowed the costs of an abandoned motion which were applied for at the close of the seal, subject to the case being mentioned by the other side in the course of the day.

Notice should be given of intention to ask for the costs of an abandoned motion.

When a counsel intends to ask for the costs of a motion as abandoned he ought before doing so to communicate his intention to the counsel who is instructed to move; and where this had not been done Malins, V. C., discharged an order previously made in the action for payment of the costs of a motion which had not been brought on, and directed that the costs should be dealt with when the

motion was brought on (*Aitken v. Dunbar*, 25 W. R. 366).

The costs of an application for the costs of an abandoned notice of appeal will not be allowed unless they have been previously asked for and refused (*Griffin v. Allen*, 11 Ch. D. 913; 28 W. R. 10).

In *Von Bolton v. Cruden*, 21 W. R. 356, the Court allowed two sets of costs of an abandoned motion to A. and B., who were Sheriffs of London and also Sheriff of Middlesex, and had been served with the notice of motion in each capacity.

To obtain the costs of an abandoned motion notice must be given before to the Court, and produced to the Registrar (*Withey v. Haigh*, 3 Mad. 437). A person in contempt cannot apply for the costs of an abandoned motion (*Ellis v. Walmsley*, 4 L. J. Ch. 461), and a motion cannot be renewed until the costs of an abandoned motion for the same purpose are paid (*Bellchamber v. Giani*, 3 Mad. 550). As to the costs of a summons in chambers abandoned, see *post*, p. 139.

So, if a petitioner does not appear, the respondent is entitled to costs on producing his own affidavit of having been served (*Ex parte Garth*, 2 Glyn & Jam. 392).

In *Charlesworth v. Gartsed*, 2 N. R. 568, Sir J. Romilly, M. R., held that a party moving to vary the chief clerk's certificate on a point which had been brought before the judge personally in chambers (in which case no further argument will be heard, *York & North Midland Railway Co. v. Hudson*, 18 Beav. 70, 73) should inform the other side that the motion is only *pro formâ* to found an appeal upon, otherwise he must pay the full costs of the motion.

For a statement of the practice as to taxation of costs of an abandoned motion, see *Harrison v. Leutner*, 16 Ch. D. 559; 29 W. R. 393; 44 L. T. 331.

A party who has been served with notice of motion but who has no interest in the subject matter, or a respondent to a petition who appears unnecessarily after service and

Abandoned
petition.

Motion *pro*
formâ.

Costs of
parties
served with
notice of
motion or

petition,
and ap-
pearing,
though
having no
interest.

tender of a sufficient sum to enable him to get legal advice, will not have his costs (*Campbell v. Holyland*, 7 Ch. D. 166; *Re Duggan's Trusts*, 8 Eq. 697; *Wood v. Boucher*, 6 Ch. 77; 40 L. J. Ch. 112; 19 W. R. 234; 23 L. T. 723; *Walter v. Beauclerk*, 15 S. J. 506); and see *Re Gore Langton's Estate*, 10 Ch. 328; 44 L. J. Ch. 405; 23 W. R. 843; 32 L. T. 785; *Re Halsted United Charities*, 20 Eq. 48; *Ex parte Jones*, 14 Ch. D. 624.

If a petitioner, when he serves a petition, at the same time offers the respondent 40s. in order to enable him to get the advice of his solicitor as to whether he shall appear or not, and the respondent after that appears, the Court will consider whether such appearance be justified or not; and if it finds that it is not justified will not order the petitioner to pay the costs of the respondent's appearance; otherwise it will; *per James, V. C.*, in *re Duggan's Trusts*. But where a party was served with a notice of motion and no intimation was given him that he need not appear, and no tender was made to him of his costs of being advised as to the effect of the motion, he was allowed 40s. costs (*Campbell v. Holyland*, 7 Ch. D. 166).

By R. S. C. (Costs) Sched., r. 17, where a petition in any cause or matter assigned to the Chancery Division is served, and notice is given to the party served that in case of his appearance in Court his costs will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be £2 2s. The party making such payment shall be allowed the same in his costs provided such service was proper, but not otherwise; but this order is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the Court or judge shall consider the party entitled, notwithstanding such notice or tender, to appear in court. In any other case in which a solicitor of a party served necessarily or properly peruses any such petition without appearing thereon, he is to be allowed a fee not exceeding £2 2s. *Re Sutton v N.* [1882] 68. 30 W. R. 657

And by r. 21, any party appearing on any application or proceeding in which he is not interested, or which he ought not to attend, will not be allowed costs unless expressly directed.*

Where the registrar of trade marks is served with notice of an application to the Court for leave to be given him to proceed with a registration and he appears but does not oppose the application he will have his costs of appearance (*In re Orr Erving & Co's. Trade Marks*, 28 W. R. 412).

Registrar of trade marks.

As to the costs of the Copyhold Commissioners, see *Templer v. Swete*, W. N. (1874), 175.

Copyhold Commissioners.

In applications for transfer to the credit of a cause of purchase-money paid into court by a public company it is not necessary to serve all the parties to the suit (*Eden v. Thompson*, 4 N. R. 87; 2 H. & M. 6).

A purchaser who has paid his money into Court, but has not got his conveyance, is entitled to appear, and will receive his costs of appearance, when the money is dealt with (*Noble v. Stow*, 30 Beav. 272), *secus*, if he has got his conveyance (*Barton v. Latour*, 18 Beav. 526). "The practice is to draw up the order with the purchaser's consent, in which case he is entitled to his costs of appearance, or on proper evidence that he has been served with notice, and has got his conveyance" (*Noble v. Stow*).

Purchaser appearing on motion to deal with his purchase-money.

A party properly served with, and appearing on, a

Persons appearing and opposing.

* There has been a curious fluctuation of opinion as to the right of a person served with a notice of motion or petition, but having no interest, and appearing, to his costs of appearance. The following are the cases, arranged as far as possible chronologically:—(1) *Templeman v. Warrington* (M. R., Dec. 1819), 1 J. & W. 377 n.; *Garey v. Whittingham*, T. & R. 405; and *Wormall v. Williamson*, 2 Jur. 440; where the costs were disallowed. (2) *Heneage v. Aiken*, 1 J. & W. 377; *Crawshay v. Thornton*, 2 My. & Cr. 24; *Bamford v. Watts*, 2 Beav. 202; *Bruce v. Kinloch*, 11 Beav. 432; *Rowley v. Adams*, 16 Beav. 312; *Clark v. Simpson*, 6 Eq. 336; where the costs were allowed. (3) *Major v. Major*, 13 Jur. 1 (but see *Bruce v. Kinloch*, 11 Beav. 432); *Barton v. Latour*, 18 Beav. 526; *In re Justices of Coventry*, 19 Beav. 158; *In re Hertford Charities* (cor. Lord St. Leonards, C.), 19 Beav. 518, n.; *Day v. Croft*, 19 Beav. 518; *In re Birch's Will*, 2 K. & J. 369; *Ex parte Churchill*, 1 N. R. 140; where the costs were disallowed.

petition does not forfeit his right to costs, because his counsel raises an unsuccessful opposition to the prayer (*Ex parte Stevens*, 2 Ph. 772); but if a person, by setting up a groundless claim previous to the petition being presented, renders it necessary that he should be served, he will not get his costs (*Re Shrewsbury School*, 1 Mac. & G. 85); and see *Re Parry's Trust*, 12 Jur. 615.

Persons not served but appearing.

A person not served, but appearing, will not get his costs (*Bennett v. Biddles*, 10 Jur. 534); *secus*, if his solicitor appears for him at the express request of the petitioners, and the petition is dismissed with costs (*Shaw v. Forrest*, 20 Beav. 249).

Petition served on solicitor for two parties, who appeared for both.

In *Kilminster v. Noel*, 12 Beav. 246, a petition having been served on the solicitor for two parties in the cause, without any intimation for which party it was intended; he appeared for both and was allowed his costs, though the appearance of one only was necessary.

Motion for several objects failing in the principal one.

If the notice of motion embraces more than one object, and the party moving fails in the principal part of the motion, he must pay the full costs of the motion (*Sturch v. Young*, 5 Beav. 557; *Lancashire v. Lancashire*, 9 Beav. 130; *British Dynamite Co. v. Krebs*, 25 W. R. 846).

Notice of motion entitled in several causes.

The costs of an interlocutory application entitled in several causes may be set off in one, if such application related wholly to the matters in that cause, but not otherwise (*Jenner v. Morris*, 2 N. R. 479; 11 W. R. 943); and see further, as to set-off for costs, *post*, p. 132.

Payment of fixed sums in lieu of costs.

By Cons. Ord. XL., r. 37, the Court may, upon interlocutory applications, direct payment of a sum in gross in lieu of taxed costs. V. C. Wood, however, is reported, in the *London and Blackwall Ry. Co. v. Limehouse Board of Works*, 26 L. J. Ch. p. 170, to have said that the Court would not act on this rule unless the parties were poor, and anxious to put an end to the matter; but see *ex gr. Yearsley v. Yearsley*, 19 Beav. 1; *Dakins v. Gurratt*, 4 Jur. N. S. 579. In *Gover v. Stilwell*, 21 Beav. 182, Sir J. Romilly, M. R., said an inflexible rule, adopted by him

on petitions for transfer of funds standing to a separate account, and in which no person other than the petitioner was interested, was to allow £10 to the solicitor for his costs without taxation.

Where a petition for payment out of Court is drawn at unnecessary length, only ten guineas will in general be allowed for costs (*Bull v. Jones*; *Eccles v. Walker*, W. N. (1880) 65; *Bourne v. Buckton*, 36 L. J. Ch. 792).

If two motions are made (*Hawke v. Kemp*, 3 Beav. 288), or two petitions presented (*Re Wortham*, 4 De G. & S. 415), where the objects sought might have been obtained by one motion or petition, the party moving or the petitioner will, as a general rule, have to pay the extra costs occasioned by such proceeding. When two petitions were presented on the same day in the same matter, Bacon, V. C., ordered the costs of the more perfect petition only to be paid out of the estate, though the less perfect petition was presented first (*Re Pring's Trusts*, 42 L. J. Ch. 473; 28 L. T. 467).

Two motions or petitions where only one necessary.

All costs occasioned by unnecessary evidence must be paid by the party offering it (*Littlewood v. Collins*, 1 N. R. 457; 11 W. R. 387; *Attorney-General v. Corporation of Halifax*, 18 W. R. 37; *In re Star & Garter Hotel Co.*, 42 L. J. Ch. 374; 28 L. T. 258; *In re Herne Bay Waterworks Co.*, 10 Ch. D. 48; where the costs of affidavits filed in opposition to a demurrable petition were disallowed); and see as to the costs of unnecessary matter in pleadings and affidavits, R. S. C. (Costs) Sched., r. 18, similar to Cons. Ord. XL., rr. 9, 10, *ante*, p. 39. Where the petition of a married woman by her next friend for the appointment of new trustees contained personal and irrelevant charges against the petitioner's husband, the next friend was ordered to pay so much of the costs on both sides as were occasioned by the introduction of such charges (*Re Wills' Trusts*, 3 N. R. 107; 12 W. R. 97; 9 L. T. 570; 9 Jur. N.S. 1225).

Unnecessary evidence and irrelevant matter.

A person obtaining a stop order on a fund in Court is

Costs of obtaining a stop order

on funds in
Court,

liable, "at the discretion of the Court or the judge at chambers, as the case may be, to pay any costs, charges, or expenses which, by reason of any such order having been obtained, shall be occasioned to any party to the cause or matter, or any person interested in any such stocks, funds, &c." (Cons. Ord. XXVI., r. 1). Persons having claims on funds in court are not entitled, under all circumstances, to the costs of obtaining a stop order (*Grimsbey v. Webster* 8 W. R. 725; but such costs were allowed in that case); and see *Edwards v. Grove*, 29 L. J. Ch. 839. But the mortgagee of a fund in Court empowered by his mortgage deed to apply for a stop order, is entitled to the costs of his so doing (*Waddilove v. Taylor*, 6 Ha. 307); he must, however, ask specially for them, or they will not be allowed by the taxing-master, under the common order, to tax the mortgagee's costs (*ibid.*). A trustee who, before paying into court, became aware that a *distringas* had been placed on the fund, and omitted to mention the claim, was made personally liable for the assignee's costs of obtaining a stop order (*Re Allen*, 40 L. T. 456). In *Hoole v. Roberts*, 12 Jur. 108, an incumbrancer petitioning for a stop order, after notice that a petition had been presented for payment out of the fund, was not allowed his costs. See also *Mildmay v. Quicke*, 6 Ch. D. 553. It is now settled that the application for a stop order should in all cases be made by summons, and not by petition (*Wrench v. Wynne*, 17 W. R. 198; 38 L. J. Ch. 235; *Wellesley v. Mornington*, 41 L. J. Ch. 776; *Walsh v. Wason*, 22 W. R. 676; 30 L. T. 743), whether the assignor concurs or opposes; the costs of a petition will be refused (*Walsh v. Wason*); and in *Wellesley v. Mornington* the petitioner was ordered to pay the difference between the costs of obtaining the order on a summons at chambers and the costs of the petition. As to the costs of obtaining a charging order under 1 & 2 Vict. c. 110, on stock standing in the name of a party to a suit, see *Stanley v. Bond*, 8 Beav. 50.

and a
charging
order under
1 & 2 Vict.
c. 110.

As to the costs of petitions for the payment of money out of Court, or the dividends on funds in Court, see "The Trustee Relief Act," *post*, Ch. V., Sec. III; and as to the costs of petitions under particular Acts of Parliament, see *post*, Ch. V.

SECT. VI.—*Where the Costs of the Action are disposed of on Interlocutory Application.*

The plaintiff may at any time before receipt of the defendant's statement of defence, or after the receipt thereof before taking any other proceeding in the action (save an interlocutory application) by notice in writing wholly discontinue his action or withdraw any part or parts of his alleged cause of complaint, upon payment of the defendant's costs of the action; or, if the action be not wholly discontinued, upon payment of the defendant's costs occasioned by the matter so withdrawn. Such costs are to be taxed and such discontinuance or withdrawal, as the case may be, will not be a defence to any subsequent action. Save as in this rule otherwise provided, it is not competent for the plaintiff to withdraw the record or discontinue the action without leave of the Court or a judge, but the Court or a judge may before or at or after the hearing or trial, upon such terms as to costs and as to any other action and otherwise as may seem fit, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The Court or a judge may, in like manner, and with the like discretion as to terms upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counterclaim to be withdrawn or struck out, but it is not competent to a defendant to withdraw his defence, or any part thereof, without such leave. (R. S. C. Ord. XXIII., r. 1.)

Discontin-
uance
by plaintiff
before
defence by
notice on
payment
of costs.

Discon-
tinuance
no bar to
subsequent
action.

Discon-
tinuance
by plaintiff
by leave of
the Court.

With-
drawal of
defence or
counter-
claim by
leave of
the Court.

By r. 2a of the same Order, a defendant may sign judg- Costs when
action dis-
continued.

ment for the costs of an action if it is wholly discontinued, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued. This rule was added by the Orders of June, 1876, to supply the want of any provision for signing judgment for costs to be recovered on a discontinuance; see Set. 1538; *Bolton v. Bolton*, 3 Ch. D. 276; 24 W. R. 663.

Terms
on which
plaintiff
may dis-
continue.

As a general rule, the plaintiff will be allowed to discontinue his action on proper terms and on payment of the costs; but the discretion to allow this must not be exercised so as to take away from the defendant any advantage to which he is fairly and reasonably entitled (*Stahlschmidt v. Walford*, 4 Q. B. D. 217; 48 L. J. Q. B. 348; 27 W. R. 412; 40 L. T. 194, where, after an action had been referred to an arbitrator to state a special case, and he had in the case found the facts with regard to all but a very small portion of the claim in the defendant's favour, the plaintiff was not allowed to discontinue).

In *Real & Personal Advance Co. v. McCarthy*, 14 Ch. D. 188; 28 W. R. 418, one of the defendants to an action was allowed to withdraw his defence, after the action had been in the paper for trial but had been postponed, upon the terms of (1) giving the plaintiffs all the relief to which they could be entitled at the trial; (2) paying the costs occasioned by the defence; and (3) paying the costs of a summons for leave to withdraw. Where the plaintiff, before delivering a statement of claim, wholly discontinues the action without leave of the Court, the action will be dismissed, and the defendant is entitled as of right to all the costs of the action (*The St. Olaf*, 2 P. D. 113; 46 L. J. P. D. & A. 74; 36 L. T. 30).

Under an order giving a defendant leave to withdraw his defence on paying to the plaintiffs their costs of the action, "so far as they were occasioned by the said defence of the said defendant," the defendant is only liable to pay the increased costs caused by his having defended the action; he is not liable to pay an apportioned

part of the plaintiff's general costs (*Real & Personal Advance Co. v. McCarthy*, 18 Ch. D. 362; 44 L. T. 514).

Where a plaintiff in an action after giving notice of appeal gives notice of discontinuance of the action the appeal becomes *ipso facto* vacated, and there is no need for the plaintiff to give any special notice relating to the appeal; see *Conybeare v. Lewis*, 13 Ch. D. 469; 28 W. R. 330. As to taxation of costs on a discontinuance, see *Harrison v. Leutner*, 16 Ch. D. 559; 29 W. R. 393; 44 L. T. 331.

Under the practice in Chancery the plaintiff might dismiss his own bill without costs against any defendant before that defendant's appearance; unless his so doing involved a breach of good faith towards the defendant (*Betts v. Barton*, 3 Jur. N. S. 154).

After appearance, the plaintiff might dismiss his bill with full costs by an order of course at any time before the cause had been actually heard; see 4 Ann. c. 16, s. 23; *Curtis v. Lloyd*, 4 My. & Cr. 194. Formerly, dismissal on the plaintiff's own application after the cause was set down to be heard was equivalent to dismissal on the merits, and might be pleaded in bar to another suit for the same matter (Cons. Ord. XXIII., r. 13); but this rule has ceased to have any application, as by R. S. C. Ord. XXIII., r. 1, a plaintiff cannot dismiss his action under those circumstances without the leave of the Court. A co-plaintiff, however, could not dismiss the bill as to himself with costs, unless with the consent of the other co-plaintiffs, or on terms framed so as not to injure them (*Holkirk v. Holkirk*, 4 Mad. 50), though the contrary was held in *Langdale v. Langdale*, 13 Ves. 167, on the authority of *Bathew v. Needham*, Prac. Reg. 179. In *Winthrop v. Murray*, 7 Ha. 150, V. C. Wigram said that *Langdale v. Langdale* had not been followed, and refused to allow a co-plaintiff to withdraw from the suit. A sole plaintiff might dismiss his own bill with costs, though he sued on behalf of others as well as himself (*Manton v. Roe*, 14 Sim. 353); and an infant plaintiff might, on motion by himself, by his next

Effect of notice of discontinuance.

Former practice; dismissal by plaintiff: before appearance, without costs: after appearance and before hearing, by order of course, with costs.

Co-plaintiff could not dismiss bill as to himself without consent of other plaintiffs.

A sole plaintiff suing on behalf of himself and others

might
dismiss ;
and an
infant.

Pauper
might not
dismiss
ex parte
without
costs.

Dis-
claiming
defendant.

friend in the cause, dismiss any defendant with costs, though, if the Court considered the defendant ought never to have been made a party, it would reserve the consideration of how such costs ought ultimately to be borne, as between the plaintiff and his next friend, till the hearing (*Pearce v. Pearce*, 9 Ves. 548). The circumstance of a plaintiff suing *in formâ pauperis* did not entitle him to dismiss his own bill by *ex parte* application without costs (*Pearson v. Belcher*, 3 Bro. C. C. 87; *Parkinson v. Hanbury*, 4 De G. M. & G. 508).

If a defendant disclaimed all interest in the subject of the suit, the plaintiff might, on motion, dismiss him with costs to be paid by the plaintiff, but without prejudice to the question by whom such costs should ultimately be borne (*Baily v. Lambert*, 5 Ha. 178; *Styles v. Shipton*, 3 W. R. 158; *Clements v. Clifford*, 14 W. R. 22; 13 L. T. 267; 11 Jur. N. S. 851; *Berndston v. Churchill*, W. N. (1866) 8; but see *contra*, *Wigginton v. Pateman* (cor. V. C. Shadwell), 12 Jur. 89). And the order might be made without service on the other defendants (*Baily v. Lambert*; *Styles v. Shipton*; *Collis v. Collis*, 14 L. J. Ch. 56). See now, however, R. S. C. Ord. XXIII., r. 1, *ante*, p. 73. But it was held that a plaintiff could not dismiss his bill as to certain defendants, when he had elected to sue the defendants jointly (*Fussell v. Elwin*, 7 Ha. 29). This however has, it is believed, been doubted.

The following are the principal cases in which, under the practice in Chancery, the plaintiff was allowed to dismiss his suit without costs :—

Cases
where
under the
old prac-
tice the
Court
would dis-
miss a bill
without
costs before
the hear-
ing, on
applica-

The Court would, on motion by the plaintiff, dismiss a bill without costs in pursuance of an agreement come to at the trial of an action at law (*Tebbutt v. Potter*, 4 Ha. 164). So where the defendant had absconded, or was insolvent, and the plaintiff had obtained the substantial object of the suit (*Pinfold v. Pinfold*, 9 Ha., app. xiv.); or the defendant by his own act had destroyed the subject matter of the suit and rendered its further prosecution useless

(*Knox v. Brown*, 2 Bro. C. C. 186; 1 Cox, 359; and see *Blanshard v. Drew*, 10 Sim. 240; *Gooday v. Sleigh*, 3 W. R. 87). So, where the suit was instituted under a pardonable mistake as to fact (*Broughton v. Lashmar*, 5 My. & Cr., 136, where the plaintiff had obtained administration in ignorance of the existence of a will subsequently discovered); or even as to law, as where the bill was filed on the authority of a case which, in the course of the proceedings, was overruled (*Robinson v. Rosher*, 1 Y. & C. C. C. 7; *Sutton Harbour Co. v. Hitchens*, 1 De G. M. & G. 167; *Lancashire & Yorkshire Ry. Co. v. Evans*, 14 Beav. 529); or where the plaintiff had been misled by the act or suggestion of the Court (*Lister v. Leather*, 1 De G. & J. 361). And lastly, see *Elsey v. Adams*, 2 De G. J. & S. 147; 3 N. R. 696, where, although the suit could not be maintained, the defendant had confessedly been guilty of gross fraud; but see *Riley v. Croydon*, 10 Jur. N. S. 1251; 13 W. R. 223. But a plaintiff could not dismiss his bill as to some defendants without costs after it had been dismissed as to others with costs for want of prosecution (*Troward v. Attwood*, 27 Beav. 85).

It is exceedingly doubtful whether an action can be dismissed with costs to be paid by a defendant;* and where the costs of an action are ordered to be paid by a defendant on interlocutory application before judgment, the common order is to stay all further proceedings. In *Sivell v. Abraham*, 8 Beav. 598, Lord Langdale, M. R., threw out a dictum, that where the plaintiff's demand has been satisfied, he should not bring the suit to a hearing, but should make an application to the Court to stay proceedings and dispose of the costs; and in *Hennet v. Luard*, 12 Beav. 479, the same judge adhered to the opinion expressed by him in *Sivell v. Abraham*. It has accordingly been held by some judges, that the Court would, on motion or petition by the plaintiff, under such circumstances,

tion of
plaintiff.

The Court will not dispose of the costs of the action on interlocutory application, or order the defendant to pay them, unless he consents that they should be so disposed of.

* See the cases on this point collected, *post*, p. 97.

enter into the merits of the cause for the purpose of determining the question of costs, and would, in a proper case, make the defendant pay the costs of the suit: see *North v. Great Northern Ry. Co.*, 2 Giff. 64; *Nicholls v. Elford*, 5 Jur. N. S. 264; *Tompson v. Knights*, 7 Jur. N. S. 704; 9 W. R. 780; *Wilde v. Wilde*, 10 W. R. 368; while on the other hand, V. C. Knight Bruce in *Langham v. Great Northern Ry. Co.*, 1 De G. & S. 503, and *M'Naughtan v. Hasler*, 12 Jur. 957, expressly refused to follow that practice; and it seems to have been disapproved of by Sir J. Romilly, M. R., in *Burgess v. Hills*, 26 Beav. 244 (but see *Troward v. Attwood*, 27 Beav. 85), and by V. C. Kindersley in *Wallis v. Wallis*, 4 Drew. 458. It was subsequently decided by the Lords Justices (*Wilde v. Wilde*, 10 W. R. 503, overruling S. C. *ibid.* 368), that the Court would not, on motion by plaintiff to stay proceedings, make the defendant pay the costs of the suit, unless by consent. L. J. Turner there says: "The case of *Sivell v. Abraham* appears to have been misunderstood. All that was there decided was, that a plaintiff might apply to the Court to stay the proceedings, and order the defendant to pay the costs of the suit, and that if the defendant made no objection the suit might be disposed of in that way; but here the defendant objects to that course." This decision was (reluctantly) followed by V. C. Wood in *Morgan v. Great Eastern Ry. Co.*, 1 H. & M. 78; but it would seem, nevertheless, that the omission of the plaintiff to apply for the defendant's consent to having the costs disposed of on an interlocutory application, where that question was the only one left in the cause, might preclude him from having the extra costs occasioned by going on to a hearing (*ibid.*); see also *Ventilation & Sanitary Improvement Co. v. Edelsten*, 2 N. R. 53, where V. C. Stuart refused the motion, but made the costs of it costs in the cause, because it was a well-meant endeavour to put an end to useless litigation.

It may, therefore, be considered as settled that the Court will not, under any circumstances, on interlocutory application, make the defendants pay the costs of the action, unless they consent to have the costs so disposed of. And from a comparison of the cases where the Court has allowed the plaintiff to dismiss his own suit without costs, the principle would seem to be that the Court, in such cases, will not go into the merits of the suit, but decides on grounds extrinsic to the merits: see on this point the instructive judgment of V. C. Kindersley in *Wallis v. Wallis*, 4 Drew. 458; and cf. *Andrews v. Morgan*, 3 W. R. 145; but see, on the other hand, *Elsey v. Adams*, 2 De G. J. & S. 147; 3 N. R. 696. Where the matters in dispute had been really adjusted before the bill was filed, the plaintiff was ordered to pay all the costs of the suit and of the motion to stay further proceedings, the parties agreeing that the Court should dispose of the costs upon the merits as if upon the hearing of the cause (*Chester v. Metropolitan Ry. Co.*, 13 W. R. 333; 11 Jur. N. S. 214; 11 L. T. 669).

An exception to the above rule was made in the case of suits for a receiver pending litigation in the Ecclesiastical Court, which were never brought to a hearing, and could not be dismissed for want of prosecution (*Anderson v. Guichard*, 9 Ha. 275; *Edwards v. Edwards*, 17 Jur. 826; *Barton v. Rock*, 22 Beav. 81). In such suits the Court would, on motion, dispose of the costs of the suit; and the costs in the Court of Chancery generally followed the disposition of the costs in the Ecclesiastical Court (*Barton v. Rock*). The costs of other suits which are never brought to a hearing, such as suits for discovery (*Woodcock v. King*, 1 Atk. 286; *Rhodes v. Hayne*, 9 Jur. 175; *South-Eastern Ry. Co. v. Submarine Telegraph Co.*, 17 Jur. 1044), and suits to perpetuate testimony (*Wright v. Tatham*, 2 Sim. 459; *Longman v. Barham*, *ibid.* n.; *Beavan v. Carpenter*, 11 Sim. 22; *Edwards v. Edwards*, 22 L. J. Ch. 1055), are paid by the plaintiff, unless the

Seemle the Court will not, unless by consent, enter into the merits of the action on interlocutory application, with reference to the costs.

Exception. Suits for a receiver pending litigation as to probate.

Costs of other suits which are never brought to a hearing.

defendant has examined witnesses in chief. See further on this point *post*, Ch. IV., s. IV. An exception was also made in interpleader suits, when all claims but one were withdrawn (*post*, Ch. IV., s. VI.).

Inter-pleader suits.

An infant plaintiff may move by a person not a party to the cause, as his next friend, for the purpose of the application, to have an action, improperly instituted, dismissed with costs against the next friend in the action (*Guy v. Guy*, 2 Beav. 460). But it seems that he cannot, after coming of age, move to dismiss the suit with costs against the next friend (*Anon.* 4 Mad. 461); and see further as to costs of infants, *post*, Ch. VI., s. VII.

Infant plaintiff may move as next friend in the action with costs against his next friend in the cause.

A defendant whose interest has ceased pending the suit cannot get his costs of the action from the plaintiffs, although he has been improperly struck out by them under an order to amend without any provision being made for his costs (*Wymer v. Dodds*, 11 Ch. D. 436; 48 L. J. Ch. 568; 27 W. R. 675; 40 L. T. 420, where a defendant during the action filed a liquidation petition, thereby determining his interest in the subject matter of the action, and was afterwards struck out by the plaintiffs, who had obtained an order for leave to amend which said nothing about striking out this particular defendant).

Costs of defendant whose interest has ceased *pendente lite*.

Under the present practice the dismissal of an action for want of prosecution is usually with costs (*Higginbottom v. Aylesley*, 3 Ch. D. 288; 24 W. R. 782; and see *ante*, p. 55).

Dismissal by defendant.

The dismissal of a bill for want of prosecution under the practice in Chancery was also with costs (Stat. 4 Ann. c. 16, 23); and the Court would not on motion for that purpose enter into the merits as to whether the dismissal should be with or without costs; but the order depended solely on the conduct of the plaintiff with regard to the prosecution of the suit (*Stagg v. Knowles*, 3 Ha. 241; *Troward v. Atwood*, 27 Beav. 85; *Lancashire & Yorkshire Railway Co. v. Evans*, 14 Beav. 529). The dismissal was with costs, though nothing was said as to costs in the usual previous

1. For want of prosecution, with costs. *Primer* *practicæ*.

order on the plaintiff to speed, or in default to be dismissed (*Stephenson v. Mackay*, 24 Beav. 252). The circumstance of the defendant's having, since the institution of the suit, become a bankrupt, or taken the benefit of the old Insolvent Debtors' Act, or filed interrogatories for the examination of the plaintiff, did not prevent his dismissing the bill with costs, subject to the usual order to speed (*Monteith v. Taylor*, 9 Ves. 615; *Rhode v. Spear*, 4 Mad. 51; *Blackmore v. Smith*, 1 Mac. & G. 80; *Robson v. Earl of Devon*, 3 Sm. & G. 227; *Leri v. Heritage*, 26 Beav. 560; *Jackson v. Ivimey*, 1 Eq. 693); and see *La Grange v. McAndrew*, 4 Q. B. D. 210. But although the Court would not dismiss without costs on the defendant's motion, it might direct the defendant's motion to stand over with liberty for the plaintiff to move to dismiss his own bill without costs, and file affidavits in support of such motion; and on the plaintiff's application the Court might dismiss the bill without costs (*Pinfold v. Pinfold*, 9 Ha. app. xiv.; *Goodday v. Sleigh*, 3 W. R. 87). However, in *Kemball v. Walduck*, 1 Sm. & G. app. xxvii., V. C. Stuart made an order for dismissal without costs, on the defendant's application to dismiss in the usual way, on the grounds of the defendant's great delay in moving; *sed qu.* In *Findlay v. Lawrence*, 2 De G. & S. 303, the bill appears to have been dismissed without costs on an undertaking (in effect) not to file a fresh bill. For the form of the order, where the plaintiff does not proceed, in the case of suits to perpetuate testimony, and other suits which are not brought to a hearing, and therefore cannot be dismissed for want of prosecution, see *Beaven v. Carpenter*, 11 Sim. 22. A bill dismissed for want of prosecution might be restored under special circumstances (*Jackson v. Purnell*, 16 Ves. 204); but not for the mere purpose of agitating the question of costs (*Hannam v. South London Waterworks Co.*, 2 Mer. 61).

Where by a former order in an action the plaintiff has been ordered to do some act, and proceedings are stayed

Defendant's motion might be allowed to stand over for plaintiff to move to dismiss, without costs. *Case the other way.*

As to suits which were never brought to a hearing.

Bill dismissed for want of prosecution restored, but not for purpose of dismissing costs.

2. Where plaintiff has made

default in obeying an order of the Court : with costs :

in the meanwhile, and the plaintiff makes default, the defendant or defendants at whose instance the former order was obtained may in certain cases obtain a further order that the plaintiff do the act within a limited time or his action be dismissed with costs : as where the plaintiff has failed to pay the taxed costs of a demurrer (*White v. Bromige*, 26 W. R. 312) ; or makes default in giving security (*Giddings v. Giddings*, 10 Beav. 29, and the cases cited *ante*, p. 23 ; and see *La Grange v. McAndrew*, 4 Q. B. D. 210) ; or where proceedings are stayed till the costs of a former suit for the same matter are paid (*Lautour v. Holcombe*, 11 Beav. 624 ; *Ernest v. Givell*, 2 N. R. 486). So where under the former practice a motion for an injunction stood over with liberty for a plaintiff to bring an action at law and no action was brought (*Bell v. Bell*, 14 Jur. 1129) ; or where the plaintiff made default in the production of a document in his possession, the Court having given the defendants a limited time to answer after the production of it (*Prisoners of Wales v. Earl of Liverpool*, 3 Swans. 567) ; or where the plaintiff makes default in giving discovery, or in short fails to take any step which the Court thinks necessary to facilitate the decision of the cause (per Lord Hatherley, in *Republic of Liberia v. Roy*, 1 App. Cas. 139 ; 45 L. J. Ch. 297 ; 24 W. R. 967 ; 34 L. T. 145).

Where there has been great delay an immediate order may be made for the dismissal of the suit, as in *Lautour v. Holcombe*, 11 Beav. 624.

But not where plaintiff is in contempt and proceedings have been stayed.

But where the plaintiff was in contempt for non-payment of costs, and proceedings had been stayed on that ground, Jessel, M.R., declined to make an order that he should clear his contempt within a limited time, or in default that his bill should be dismissed (*Gould v. Twine*, 43 L. J. Ch. 381 ; W. N. (1874) 68 ; 22 W. R. 398 ; 30 L. T. 243 ; and see *Futwage v. Kennard*, 2 Giff. 533).

3. Where suit has abated.

According to the practice of the Court of Chancery, where a suit abated by the death of a sole plaintiff the

Court, on motion of any defendant served on the legal representative of the deceased plaintiff, might order that such representative should revive the suit within a limited time, or that the bill be dismissed (Cons. Ord. XXXII., r. 4); and such dismissal was without costs (*Hill v. Gaunt*, 9 W. R. 68); and see also *Price v. Berrington*, 11 Beav. 90; *Mills v. Dulgeon*, 1 W. R. 514. As to the order where the suit abated by the marriage of a sole female plaintiff, see *Westropp v. Healy*, Fl. & K. 141.

Upon the death of one of several co-plaintiffs any defendant might move that the surviving plaintiffs should revive within a limited time, or in default the bill be dismissed with costs (see *Adamson v. Hall*, T. & R. 258, overruling S. C. 1 S. & S. 249; *Chichester v. Hunter*, 3 Beav. 491; *Hinde v. Morton*, 2 H. & M. 368; 13 W. R. 401; *Holcombe v. Trotter*, 1 Coll. 654); nor was it any answer to such a motion that no administration had been taken out to the deceased plaintiffs (*Saner v. Deaven*, 16 Beav. 30). No order was usually made as to the costs of the motion (*Hinde v. Morton*).

Under the present practice, however, an action does not abate by the marriage, death or bankruptcy of any party if the cause of action survive or continue; nor become defective by any devolution of estate *pendente lite* (R. S. C. Ord. L., r. 1; and see *Lloyd v. Dimmick*, 7 Ch. D. 398; and Morg. Ch. Acts and Ord., p. 589). But where a sole plaintiff became bankrupt and the defendants moved to dismiss the action for want of prosecution, serving the trustees in the bankruptcy with notice of the motion, the action was dismissed with costs, the defendants undertaking not to enforce the order against the plaintiff personally but only against his estate in bankruptcy (*Wright v. Swindon Ry. Co.*, W. N. (1876), 296; S. C. 4 Ch. D. 164; *Abbotson v. Gregg*, 19 W. R. 340; W. N. (1871), 2; *Jackson v. N. E. Ry. Co.*, 5 Ch. D. 844). Under the former practice the proper course was for the defendant to move on notice, served on the assignees

and the plaintiff, that the assignees revive within a limited time, or in default the bill be dismissed without costs: see *Vestris v. Hooper*, 8 Sim. 570; *Sharpe v. Hulett*, 2 S. & S. 496; *Lord Huntingtower v. Sherborn*, 5 Beav. 380; *Fisher v. Fisher*, 6 Ha. 628; *Meiklum v. Elmore*, 4 De G. & J. 208. If the bankruptcy happened after decree, the order was that proceedings be stayed instead of the bill being dismissed (*Whitmore v. Orlorow*, 1 Col. 91; *Clarke v. Tipping*, 16 Beav. 12).

Where the plaintiff became bankrupt and no one appeared at the trial either for him or his trustee, and there was no evidence that the trustee had been served with notice of the action, it was held that the action had abated and must simply be struck out of the list (*Eldridge v. Burgess*, 7 Ch. D. 411; 47 L. J. Ch. 342; 26 W. R. 435; 38 L. T. 232).

Representatives of deceased defendant may dismiss in default of plaintiff continuing.

Where an action has abated by the death of a defendant before judgment his representatives may move that the plaintiff obtain an order to carry on the proceedings against them within a limited time or that in default the action be dismissed; and such dismissal will be without costs (*Motion v. King*, 29 W. R. 73; *Burnell v. Duke of Wellington*, 6 Sim. 461; *Norton v. White*, 2 De G. M. & G. 678; *Powell v. Powell*, 2 De G. M. & G. 678 n.; *Cross v. Cross*, 11 W. R. 797; 2 N. R. 351; *Reeves v. Baker*, 13 Beav. 115, is incorrectly reported, see 2 De G. M. & G. 679 n.). In the case of the bankruptcy of a defendant the Court refused (in *Manson v. Burton*, 1 Y. & C. C. C. 626) to make an order that a supplemental bill should be filed within a limited time against the assignees, or in default the bill be dismissed; and see *Barter v. Dubœux*, 50 L. J. Q. B. 527; 29 W. R. 622; 44 L. T. 596.

1. On defendant satisfying plaintiff's demand, and paying his costs of the suit;

Any defendant may at any time before decree, by paying to the plaintiff all his demands, together with all the costs of the suit (*i.e.*, the plaintiff's own costs and the costs of the other defendants), obtain an order for dismissal of the suit, or staying proceedings, on such

payment being made (*Praed v. Hull*, 1 S. & S. 331; *Damer v. Lord Portarlington*, 2 Ph. 30; *Paynter v. Carew*, Kay, app. xxxvi.); notwithstanding the opposition of the plaintiff (*Damer v. Lord Portarlington*), or of the other defendants (*Paynter v. Carew*; *Jones v. Tinney*, Kay, app. xlv.); and although the plaintiff sues on behalf of others as well as himself (*Manton v. Roe*, 14 Sim. 353; *Pemberton v. Topham*, 1 Beav. 316). And proceedings may be stayed without costs if the defendant is willing to comply with the plaintiff's demand, and would have done so before suit if he had been asked (*Rudd v. Rowe*, 10 Eq. 610; 18 W. R. 977; 22 L. T. 785). In a foreclosure suit, the defendant must have actually paid to the plaintiff, or tendered to him, the amount of his demand before he moves, and be ready at once to pay a sum into Court to answer costs (*Paynter v. Carew*, Kay, app. xxxvi.; *Challie v. Gwynne*, Kay, app. xlvi.; *France v. Couper*, W. N. (1871), 76). The defendant cannot obtain the order, if there is any question in dispute between him and the plaintiff (*ex. gr.* whether certain costs incurred in reference to the subject matter of the suit ought or ought not to be paid by the defendant), and the defendant does not submit thereto (*Field v. Robinson*, 7 Beav. 66; *Wainwright v. Sewell*, 11 W. R. 560); but see *Penny v. Beavan*, 12 Jur. 936, where the Court decided, on the motion, the question whether certain costs were properly included in the plaintiff's costs of the suit. In *Holden v. Kynaston*, 2 Beav. 204, proceedings were stayed against two defendants, who had satisfied the plaintiff's demand as against them, without costs on the ground of a previous tender; *sed qu.* see *Wainwright v. Sewell*, 11 W. R. 560. In a legatee's suit, the bill was dismissed on payment into Court of the amount of the legacy, and to the plaintiff of the costs of the suit, as against all the executors except one, who was also the representative of an incumbrancer on the legacy, and between whom and the plaintiff was a question of account (*Sawyer v. Mills*, 1 Mac. & G. 390);

but not if any question is left.

And *semble* not without costs, though a previous tender has been made.

As to dismissing suit against some only of defendants.

and see further as to staying proceedings against particular defendants, *Holden v. Kynaston*, 2 Beav. 204.

5. Where two creditors' suits are instituted.

As to the costs where proceedings are stayed in a creditor's suit, after a decree has been obtained in another suit for the same purpose, see *post*, ch. IV., sec. II.

6. Where infant's suit is improper, with costs against next friend.

If it appears to the Court that a suit instituted on behalf of infants was improperly instituted and is not for their benefit, the Court will on interlocutory application by any of the defendants, dismiss it with costs to be paid by the next friend (*Foe v. Satterthorp*, 1 Beav. 583); and in a clear case the order will be made without a previous reference (*Sale v. Sale*, *ibid.* 586).

7. Disclaiming defendants.

Disclaiming defendants may move to have the suit dismissed against them with, or without costs, according to circumstances (*Hawkins v. Gardiner*, 1 W. R. 345), or to have their names struck out of the record (*Bellamy v. Brickenden*, 4 K. & J. 670). As to the cases in which a disclaiming defendant will be dismissed with or without costs, see *post*, p. 114.

Action commenced without authority may be dismissed on plaintiff's application with costs against the solicitor.

If an action is commenced without proper authority, it will be dismissed on motion by the plaintiff, and the solicitor will be ordered to pay the costs of the plaintiff as between solicitor and client, and the costs of the defendant as between party and party; the plaintiff should give the defendant notice of his motion (*Newbiggin-ley-the-Sea Gas Co. v. Armstrong*, 13 Ch. D. 310; 49 L. J. Ch. 231; 28 W. R. 217; 41 L. T. 631; *Noyse v. Durnford*, 13 Ch. D. 764; 49 L. J. Ch. 229; 28 W. R. 145; 41 L. T. 611); and see *La v. Savage*, 15 Ch. D. 557, where parties had been joined as co-partitioners without their authority.

Former practice in Chancery.

Under the former practice in Chancery the defendant was not served with notice of the motion, but was left to get his costs from the nominal plaintiff, who had afterwards to get them (if he could) from the solicitor. The

Former practice at Common Law now followed in the Chan-

present rule adopts the practice of the old Common Law Courts; see *Reynolds v. Howell*, L. R. 8 Q. B. 398.

For cases under the former practice where the bill was either dismissed or taken off the file, in either case with costs against the solicitor, see *Wright v. Castle*, 3 Mer. 12; *Allen v. Bone*, 4 Beav. 493; *Wade v. Stanley*, 1 J. & W. 674; *Martindale v. Lawson*, C. P. C. 83; *Jerdein v. Bright*, 10 W. R. 380. And see also *Davies v. Davies*, 18 L. T. 701; *Robson v. Dodds* (2), 8 Eq. 301; 38 L. J. Ch. 647; 17 W. R. 782; 20 L. T. 968; *Palmer v. Walesby*, 3 Ch. 732; 16 W. R. 924, where a bill filed by a next friend in the name of a supposed lunatic, who was really of sound mind, was ordered to be taken off the file, the next friend paying all the costs; *Fenton v. Queen's Ferry Co.*, 7 Eq. 267; *Thomas v. Finlayson*, 19 W. R. 255.

If the suit is dismissed with costs before the plaintiff interposes, he cannot be relieved from his liability to the defendants (*Dundas v. Dutens*, 1 Ves. Junr. 196; 2 Cox, 235; *Hood v. Phillips*, 6 Beav. 176; *Tarback v. Woodcock*, *ibid.* 581); but the plaintiff may afterwards recover his costs, charges, and expenses from the solicitor, either by petition (*Norton v. Cooper*, 3 Sm. & G. 375), or motion (*Malins v. Greenway*, 10 Beav. 564; *Hood v. Phillips*). In *Jerdein v. Bright*, 10 W. R. 380, the bill was filed under an authority which had, in the opinion of the Court, been improperly obtained from the plaintiff, and V. C. Wood made the same order as if the bill had been filed without authority; but he refused the plaintiff his costs of the application, because he raised an issue between himself and the solicitor, on which he could not be believed. In like manner, one of several co-plaintiffs may apply to have his name, if inserted without proper authority, struck out of the record with costs of the suit and of the application to be paid by the solicitor (*Wilson v. Wilson*, 1 Jac. & W. 457; *Tabbemor v. Tabbemor*, 2 Keen, 679; *Pinner v. Knights*, 6 Beav. 174; *Maries v. Maries*, 23 L. J. Ch. 154). But the Court will not allow a co-plaintiff, who originally authorised the suit, to withdraw from it to the prejudice of the other plaintiffs; and a

motion by a co-plaintiff that on further proceedings being taken he should be indemnified by the solicitor was refused with costs (*Winthrop v. Murray*, 7 Ha. 150). The order made on the plaintiff's motion will of course be without prejudice to any rights, which the solicitor may have against any person who really authorised the suit; but the Court will not, on the plaintiff's motion adjudicate between the solicitor and such other person, though one of the defendants (*Cressley v. Crompton*, 9 Ha. 384).

A motion may be made by a defendant to have the proceedings in an action commenced by a solicitor, without proper authority of the nominal plaintiff, stayed, and for payment of the costs by the solicitor; see *Duckett v. Gover*, 25 W. R. 554, and cases cited there; and see *Hubbart v. Phillips*, 13 M. & W. 702. On such a motion the nominal plaintiff should be served, and the solicitor will be ordered to pay his costs as between solicitor and client, and the costs of the moving defendant as between party and party (*Cape Breton Co. v. Fenn* (C. A.), 17 Ch. D. 498); and see also *Fergina Navigation and Embankment Co. v. Kington*, 4 L. T. 262, where the bill was filed in the name of a company on the authority of one of the directors against the other directors; and *Burgesses of Rother v. Adams*, 7 Sim. 345. If the suit is really instituted by one of the defendants, the costs may be ordered to be paid by that defendant; see *Blake v. Smith*, 10 594, where the plaintiff was imbecile. In *Hall v. Bennett*, 2 S. & S. 78, where a bill had been filed without authority from the nominal plaintiff, who had absconded eight years before, and was dismissed with costs for want of prosecution, the Court, on motion by the defendants, ordered the solicitor to pay the costs. Where a solicitor gave the relator in a charity information an indemnity against costs, or used his name without authority (though afterwards assented to), the Court would order the information to be taken off the file with costs against the relator and solicitor (*Attorney-General v. Skinners' Co.*, C. P. C. 7). "The view of the Court is that

On defendant's application.

when a solicitor takes upon himself the conduct of a suit by saying that he will indemnify his client against all costs—where the plaintiff is a mere puppet, and the real party suing is the solicitor—the Court will hold the solicitor liable for all the expenses to which he has put the other parties by his conduct;” *per* Lord Hatherley, L. C., in *In re Jones*, 6 Ch. p. 49. See also *In re E. S.*—, 4 Ch. D. 301. As to what is a sufficient retainer, see *Hall v. Larer*, 1 Ha. 571; *Bewley v. Seymour*, 14 Jur. 213; *Atkinson v. Abbott*, 3 Drew. 251. The onus of proving the retainer lies on the solicitor (*Wright v. Castle*, 3 Mer. 12; *Allen v. Bone*, 4 Beav. 493; *Wiggins v. Peppin*, 2 Beav. 403; *Crossley v. Crowther*, 9 Ha. 384); but the retainer need not be in writing (*Lord v. Kellett*, 2 My. & K. 1, and cases there cited); and the authority to a country solicitor is sufficient without express authority to the London agents (*Solley v. Wood*, 16 Beav. 370). If, however, there is no written retainer, there should unquestionably be an authority to institute the suit given directly by the client to the solicitor (*Re Gray, ex parte Incorporated Law Society*, 20 L. T. 730).

Where a plaintiff, having had four bills successfully demurred to, filed a fifth for substantially the same object, the Court ordered the bill to be taken off the file, and made the plaintiff pay all the costs of the litigation (*Mortlock v. Mortlock*, 20 L. T. 773).

SECT. VII.—*Costs of the Day.*

Any verdict or judgment obtained where one party does not appear at the trial may be set aside by the Court or a judge upon such terms as may seem fit upon an application made within six days after the trial (R. S. C. Ord. XXXVI., r. 20).

A judgment will be set aside under this rule if a proper case is shewn, but the party in default must pay the actual costs of the day when the action was called on and of the

Retainer,
what suffi-
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R. S. C.
Order
XXXVI.
r. 20.

Judgment
set aside
on payment
of actual
costs of the

day and of
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cation to
restore.

application to restore (*Cockle v. Joyce*, 7 Ch. D. 56; 47 L. J. Ch. 543; 26 W. R. 59; 37 L. T. 428; *Wright v. Clifford*, 26 W. R. 369); including all costs thrown away, and the costs of applications both to a Divisional Court and to the Court of Appeal (*King v. Sandeman*, 26 W. R. 569; 38 L. T. 461; but see *Burgoine v. Taylor*, 26 W. R. 568; 38 L. T. 438, where no costs of the appeal were given). In *Birch v. Williams*, 24 W. R. 700, the solicitor through whose oversight the dismissal was caused had to pay the costs. And see Cons. Ord. XXI, r. 12, under which if a cause is struck out for want of papers, the plaintiff's solicitor may be ordered to pay the costs occasioned to the adverse parties.

Where the plaintiffs brought the action to a hearing in an imperfect state, and it was allowed to stand over under R. S. C. Ord. XXXVI, r. 21, in order that they might amend, the plaintiffs were required to pay the actual costs of the day (*Lydall v. Martinson*, 5 Ch. D. 780; 25 W. R. 866; 37 L. T. 69; including the expenses of the defendant's witnesses who had been kept in attendance (*Ibid.*). See also *Dowdeswell v. Dowdeswell*, W. N. (1877), 228; *Masley v. Cowie*, 47 L. J. Ch. 271; 26 W. R. 854; 38 L. T. 908.

Cons.
Ord. XL. r.
21.

By Cons. Ord. XL, r. 21, where a cause coming on for hearing was struck out for want of parties or other defect on the part of the plaintiff, the defendant was entitled to the taxed costs occasioned by the first setting down, although he did not get the costs of the suit. When a cause was set down as "short" and struck out, the defendants were entitled to their costs of the day unless they had concurred (*Mellish v. Brooks*, C. P. C. 474).

Former
practice
where
there was
a defect for
want of
parties.

For the former practice, where there was a defect for want of parties, see *Russell v. Morris*, 17 Eq. 20; *Furze v. Shurwood*, 5 My. & C. 96; *Sambrooke v. Hayes*, 6 L. J. Ch. 258; *Bierdermann v. Seymour*, 1 Beav. 594; *Priest v. Berrington*, 2 Beav. 285.

The costs

By Cons. Ord. XL, r. 22, the costs of the day were fixed

at £10 unless the Court should otherwise direct; and only one sum of £10 was payable though there might be several defendants. The costs of the day would not be given where the defect occurred after the cause was at issue (*Fussell v. Elwin*, 7 Ha. 29); nor where the cause was set down by the plaintiff for further consideration, and on exceptions to the Chief Clerk's certificate, and the exceptions were allowed (*Osborne v. Harvey*, 12 L. J. Ch. 66).

The Court would sometimes also reserve the costs when the cause stood over with liberty to amend (*Mason v. Franklin*, 1 Y. & C. C. C. 242).

SECT. VIII.—*Costs of Special Cases.*

The practice in special cases, which was formerly governed by 13 & 14 Vict. c. 35, is now regulated by R. S. C. Ord. XXXIV., which provides (r. 7, Ap. 1880) that no special case shall hereafter be stated under that Act. Under the present practice, if it is desired to obtain a decision of the Court on a special case, an action is commenced in the usual way, and after the writ is issued the parties may then concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court (Ord. XXXIV., r. 1). The parties may also agree that on judgment being given a fixed sum shall be paid by one party to the other, either with or without costs of the action, and judgment may be entered for such sum with or without costs, as the case may be, and execution may issue forthwith, unless otherwise agreed, or unless stayed on appeal (r. 6, Ap. 1880). In the absence of any agreement the costs are in the discretion of the Court, and the ordinary rules as to costs apply; and see *Usticke v. Peters*, cited below. In practice, however, the costs are frequently arranged, see *Blinston v. Warburton*, 2 K. & J. 406; or a question is asked how and by

whom the costs of the action and special case are to be borne (*Harrison v. Cornwall Minerals Ry. Co.*, 16 Ch. D. 66; 29 W. R. 258).

Former practice.

General rule as to costs of special case.

Under the old Special Case Act, 13 & 14 Vict. c. 35, the costs were also in the discretion of the Court, and as a general rule, the Court, in disposing of them, was governed by the rules which regulated it in ordering payment of the costs of a suit instituted by bill. Thus, if the difficulty arose out of a testator's will, the costs, as in an administration suit, were ordered to be borne by the testator's general estate (*Cookson v. Bingham*, 17 Beav. 262; *Hindle v. Taylor*, 5 De G. M. & G. 577; *Armitage v. Coates*, 35 Beav. 1; *Earl Cowley v. Welleley*, *ib.* 635; but see *Lloyd v. Cocker*, 27 Beav. 649); or residuary real estate (*Marshall v. Grime*, 28 Beav. 379); or if there were no general estate, by the fund specifically bequeathed (*Cookson v. Bingham*; but see also, *Lloyd v. Cocker*). In *Burnaby v. Tassell*, 11 Eq. 363, the costs of all parties to a special case on the construction of a will were ordered to be paid out of the estate, the personal estate being first liable.

Where costs of special case ordered to be paid by unsuccessful party.

In *Ustick v. Peters*, 4 K. & J. 457, however, V. C. Wood held that the costs of a special case were not to be decided on the same principle as those of an administration suit, and that a plaintiff succeeding upon a special case arising out of the construction of a will was entitled to his costs from the defendant, each party fairly claiming what he thought himself entitled to; and there being no question of conduct involved. From the report of the case, it does not appear that any question as to the costs was inserted in the special case. So in *Mortimore v. Mortimore*, 4 De G. & J. 472, a special case having been stated for the opinion of the Court, at the instance of a tenant for life, with a view to obtaining an increase of her income by an investment, of which the Court in its judgment expressed disapprobation, the income of the tenant for life was ordered to bear the costs. Again, in *Sabin v. Heape*, 27 Beav. 561, the costs of a special case

were, in answer to a question in the case, declared to be payable by the defendant, upon the principle that, if a bill had been filed for specific performance, a decree would have been made against him with costs.

SECT. IX.—*Costs of the Action.*

Where further consideration of the action is reserved, the costs of the action are generally also reserved (*Seaborough v. Burton*, 2 Atk. 111; *Jellicoe v. Price*, 1 Y. & C. C. C. 74); but otherwise they are usually disposed of at the trial. If the costs of the suit are reserved at the trial, that reservation will not it seems include costs of interlocutory proceedings, &c., reserved until the trial, which therefore, unless expressly mentioned, may be lost (*Gardner v. Marshall*, 14 Sim. 575; *Whalley v. Ramage*, 8 L. T. 499). Although the costs of the suit are not expressly reserved at the hearing, yet the usual direction for the adjournment of the further consideration of the cause in effect reserves them (*Seton*, p. 72); and see *Wallis v. Bastard*, 2 W. R. 47.

The costs of the action, when disposed of.

Where, however, in a partnership suit, there was no special reservation of costs in the original decree, it was held that the defendant could not, on further consideration, be ordered to pay the costs of the action (*Austin v. Jackson*, 11 Ch. D. 942); and see *Powell v. Elliot*, 10 Ch. 424; 23 W. R. 777; 33 L. T. 110.

It has recently been laid down that the costs of applications ordered to stand over until trial, and costs reserved to be disposed of at the trial, should follow the event of the trial unless otherwise ordered, without any special directions; see *Hodges v. Hodges*, (M. R.), 25 W. R. 162, Mem. W. N. (1876), 271. Under R. S. C. Ord. XV., r. 1, any matter required on further consideration as to costs may be proved by affidavit (*Beaney v. Elliott*, W. N. (1880), 99).

May be
disposed of
at different
times.

In some instances the Court divides the costs, and gives at the trial the costs up to the judgment or decree, and reserves the subsequent costs (as in *Macartney v. Graham*, 2 R. & M. 353; and see *post*, p. 127) or, on further consideration, gives the costs up to the judgment to the plaintiff, and the subsequent costs to the defendant (as in *Mentler v. McCready*, 1 Moll. 119; *Axon*, 4 Mad. 273; *Scutcheon v. Porter*, 7 Ha. 426); or, healy, gives the costs of a part of the action at the hearing, and reserves the rest (*Harsly v. Hull*, 17 Bay. 355; *Slack v. Midland Ry. Co.*, 16 Ch. D. 81). Where the question of costs is partly disposed of at the hearing, the further consideration of the costs undisposed of should be expressly reserved (Seton, p. 72). An express reservation of costs as to some defendants did not prevent the Court giving their costs to other defendants as to whom an issue had been directed, and consideration of all further proceedings had been reserved till after the trial at law (*Rice v. Gordon*, 14 Bay. 508). If the costs of the action are given at the hearing, this includes all the costs of the action, and the subsequent costs are not reserved (*Quarrell v. Beckford*, 1 Mad. 286; *Clutton v. Pardon*, T. & R. 304; *Keehl v. Park*, 10 Ch. 334; 44 L. J. Ch. 280; 23 W. R. 175; 33 L. T. 83). In the last-mentioned case specific performance was decreed against a vendor, an inquiry was directed as to damages, and the defendant was ordered to pay the costs of the suit. The plaintiff carried in claims for damages to a very large amount, the whole of which were disallowed, several of them not coming within the scope of the inquiry directed; and it was held that the defendant must pay so much of the costs as were properly incurred in carrying out the inquiry, and the plaintiff must pay all the rest.

General
rule:
in Chan-
cery actions
costs are in
the discre-

By R. S. C. Ord. LV., r. 1, the costs of, and incident to all proceedings in the High Court (*i.e.* all proceedings that have actually come into the High Court, *In re Broadbent's Trade Mark*, 9 Ch. D. 618; 27 W. R. 281),

are in the discretion of the Court, but not so as to deprive a trustee, mortgagee, or other person, of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted on in Courts of Equity. This is the rule when the action is tried without a jury; when an action or issue is tried by a jury, costs follow the event unless otherwise ordered. As to costs of an action or issue tried by a jury, see *post*, p. 101.

The rules of the old Court of Chancery as to costs, with a few exceptions, remain in force in the Chancery Division; see R. S. C. (Costs) Sched., r. 28, providing that the rules, orders, and practice relating to costs, existing prior to the Judicature Act, shall remain in force so far as they are not inconsistent with the Act and Rules; and see also *Pringle v. Gloag*, 10 Ch. D. 676; 48 L. J. Ch. 380; 27 W. R. 574; 40 L. T. 512; (M. R).

Although the costs of an action in the Chancery Division, being in the discretion of the Court, (as were the costs of suits under the practice in Chancery) do not invariably follow the result, yet they do so as a general rule. *Prima facie*, the party who fails must pay the costs; and the onus lies on him to show why, in any particular case, he should not do so (*Vancouver v. Bliss*, 11 Ves. 463; *Hampson v. Brandwood*, 1 Madd. 394). The tendency of modern decisions is very strongly in favour of making the costs follow the result; see the *dicta* of Lord Eldon in *Vancouver v. Bliss*, 11 Ves. 463, and *Staines v. Morris*, 1 V. & B. 8, 15; of Lord Cottenham, in *Millington v. Fox*, 3 My. & C. 352; of Lord Westbury in *Bartlett v. Wood*, 9 W. R. 817; and of Lord Cairns in *Patch v. Ward*, 3 Ch. p. 210, and in *Ferguson v. Wilson*, 2 Ch. p. 92.

In some very peculiar cases the plaintiff, though successful, has been ordered to pay all the costs of the suit; see *ex. gr. Woolton v. Woolton*, W. N. (1869), 175; *Norman*

tion of the Court;

in jury trials, follow the event.

Rules of the old Court of Chancery as to costs apply in the Chancery Division, except where altered by the new rules.

Costs in Chancery Division generally follow the result.

Success

Successful plaintiff may be ordered to pay costs.

v. *Johnson*, 29 Beav. 77. Such an order has been made even where the action was tried before a jury (*Harris v. Petherick*, 4 Q. B. D. 611). But of course such cases are very rare.

Unsuccessful party only pays party and party costs. Exceptions.

It seems that the Court cannot, or at least will not, make an unsuccessful party pay costs as between solicitor and client, unless (1) there is a fiduciary relation between the parties, or (2) there has been something in the nature of scandal, *cc. gr.*, gross charges of fraud made, and not sustained; but he may have to pay the costs of trustees as between solicitor and client, whether there is any fund out of which they can be paid or not (*Turner v. Collins*, 12 Eq. 438); and see *Forester v. Roul*, 6 Ch. 40; 19 W. R. 114; 24 L. T. 79. In *Simpson v. Muller*, 4 Giff. 707; 6 N. R. 245, a bill collusively filed for a purpose different from its ostensible one, was dismissed with all costs, charges, and expenses properly incurred by the defendant in relation to the suit.

Power of arbitrator to award costs.

In *Keean v. Crawford*, 6 Ch. D. 29, so much of a bill as contained very gross charges of immorality was dismissed with costs as between solicitor and client. An arbitrator to whom the matters in issue and the costs have been referred by the Court, can award solicitor and client costs if there is a fiduciary relation between the parties (*Mordue v. Palmer*, 6 Ch. 22). The mistake of an arbitrator as to the law of costs is no ground for setting aside the award (*Allen v. Greenslade*, 33 L. T. 567). Where an arbitrator awards damages, but says nothing about costs, the costs are recoverable by action (*Metropolitan Ry. Co. v. Sharpe*, W. N. (1880), 79).

A plaintiff failing in the suit may nevertheless get his costs, if there is a fund, or estate in litigation;

Even where the plaintiff fails in his suit, it is now settled, contrary to the former doctrine (*Wykhain v. Wykhain*, 18 Ves. 423), that he may nevertheless receive his costs, if there is a fund to be administered or an estate in litigation, and the case involves a point of construction on which it is necessary that the opinion of the Court should be taken (*Thomason v. Moses*, 5 Beav. 77; *Lee v.*

Delane, 4 De G. & S. 1; *Westcott v. Culliford*, 3 Ha. 274; *Wedgwood v. Adams*, 8 Beav. 103; and see the earlier cases collected in the notes to the two last cases; *Leighton v. Leighton*, 18 Eq. 458; *Garth v. Townsend*, 7 Eq. 220). The principle of these cases is thus stated by Lord Langdale, M. R.: "If, through the exertions of a plaintiff, the Court is enabled to distribute a fund, or if it makes a declaration of rights necessary for its administration, there, although the plaintiff may fail in his claim, the Court will not permit the other parties to carry off the fruit of his exertions without defraying his costs out of the fund" (8 Beav. 105); and see *Taylor v. Haygarth*, 8 Jur. 135. The plaintiff may obtain his costs out of the fund or estate, although the action be dismissed (*Ashe v. Berry*, 3 Moll. 97; *Lynn v. Beaver*, T. & R. 69; *Windham v. Graham*, 1 Russ. 347; *Harley v. Hawkshaw*, 12 Beav. 552; *Douglas v. Cooper*, 3 My. & K. 382). But the circumstance of the defendants asking for a declaration of title in their favour is an inducement for the Court to give costs (*Thomason v. Moses*, 5 Beav. 77; *Johnston v. Todd*, 8 Beav. 489; *Merlin v. Blugrave*, 25 Beav. 125). Where letters of administration are revoked the administrator will not get his costs of an administration action instituted by him with knowledge that another person claimed to administer (*Houseman v. Houseman*, 1 Ch. D. 535). In *Wisden v. Wisden*, 5 Jur. N. S. 86, where the costs of the suit were payable out of a fund belonging to the plaintiffs, defendants who took a declaration of title had no costs. A plaintiff claiming to be a creditor of a deceased person and failing, does not come within the rule (*Jones v. How*, 14 Jur. 145; and see *Berry v. Morse*, 1 H. L. C. 71, 78); and the plaintiff must have a *probabilis causa litigandi* (*Boreham v. Bignall*, 8 Ha. 134). If, however, the plaintiff has acquiesced in the construction in favour of which the Court decides for a long period before taking proceedings, the suit will be dismissed without costs, though the point

est quæ,
whether
personally
from a
defendant,
where there
is no fund
or estate.

was sufficiently doubtful to justify its institution (*Yockney v. Hunsard*, 3 Ha. 620). But where there is no fund or estate in litigation, it is at least doubtful whether a plaintiff whose action is dismissed can have his costs from a defendant personally; see *Cooth v. Jackson*, 6 Ves. 41; *Tidwell v. Ariel*, 3 Mad. 409; *Lewis v. Latham*, 3 Mer. 429, where the jurisdiction was denied. On the other hand see *Springfield v. Ollett*, 3 Mer. 429, n.; *Dufour v. Sigel*, 4 De G. M. & G. 520, 525. "I have had considerable doubt, and have looked with my learned brother into several cases, upon the question of directing costs to be paid by a defendant, where there is neither a fund to be administered nor an estate in dispute, and where a plaintiff's case fails. Without saying that the jurisdiction does not exist, I think it a jurisdiction of considerable delicacy and difficulty."—*Per* L. J. Knight Bruce (4 De G. M. & G. 525). The better opinion undoubtedly is that the defendant cannot be ordered to pay the costs in such a case; see *Dicks v. Yates* (C. A.), 18 Ch. D. 76.

Foster v. St. v. R. G. & Co. D.
St. v. R. G. & Co. D.
St. v. R. G. & Co. D.
Certain
general
principles
followed
by the
Court in
disposing
of the costs
of the
action.

Although the disposal of costs is in the discretion of the Court, there are, nevertheless, certain general principles adopted by the Court, which regulate the costs of actions generally, as well as others in reference to the costs of particular kinds of actions. The latter are discussed in the next chapter; of the former it is attempted to give some explanation below.

Where the
plaintiff
sues in
respect of a
legal title.

Where a plaintiff comes to enforce a legal right and there has been no misconduct on his part he is entitled to his costs as of right (*Copper v. Whittingham*, 15 Ch. D. 501; 28 W. R. 720; 43 L. T. 17; *Corporation of Rochester v. Lee*, 2 De G. M. & G. 427; and see *Trinity House v. Ryall*, 3 Bro. P. C. 389; *Farina v. Silverlock*, 4 K. & J. 650; *Burgess v. Hatley*, 26 Beav. 249).

On the other hand, where the plaintiff sues in respect of a legal title which he fails to establish, his action will generally be dismissed with costs (*Chappell v. Purday*, 2 Ph. 227; *Boucicault v. Delafield*, 3 N. R. 32; *Corporation of*

Rochester v. Lee); and so where the bill was ancillary to the plaintiff's legal rights, and he failed at law (*Meyrick v. Whishaw*, 4 Mad. 272). But this rule is not inflexible (*Leather Cloth Co. v. American Leather Cloth Co.*, 3 N. R. 264, where a bill to restrain the infringement of an alleged trade mark was dismissed but without costs on account of the defendant's conduct). Where, according to the old practice, proceedings at law were had in the course of the suit in equity, the Court frequently made a distinction between the costs at law and those in equity. The former almost invariably followed the result of the action or issue,* whilst in the disposal of the latter the Court was influenced by considerations as to the conduct of the parties (*Clifton v. Orchard*, 1 Atk. 610; *Anon.*, 2 Atk. 14; *Forward v. Duffield*, 3 Atk. 555; *Stevens v. Prued*, 2 Ves. junr. 519; *Wright v. Hunter*, 5 Ves. 732; *Jones v. Farrell*, 1 De G. & J. 208); and see further as to the costs of issues generally following the result, Beames, 233 seq., and *Corporation of Rochester v. Lee*. In *Wilson v. Metcalfe*, 3 Mad. 45, an issue having been granted in a foreclosure suit, whether the mortgagee's heir was dead, and found against the mortgagee, he paid no costs, because the Court by granting the issue showed that it thought the objection reasonable. The costs of an issue ordered to be tried in the course of the suit are not strictly part of the costs of the suit; and, if the issue were ordered on interlocutory application, might even be disposed of before the hearing of the cause (*Duncan v. Varty*, 2 Ph. 696, overruling *Malins v. Price*, 2 Coll. 190; *Rigby v. Great Western Ry. Co.*, 14 Jur. 710). But the costs of a case sent for the opinion of a Court of Law have been held to be costs in the cause (*Humphrey v. Grey*, 3 De G. & S. 450; but see *contra*, *Salkeld v. Johnston*, 1 Mac. & G. 533). In *Prevost v. Benett*, 2 Price, 272, where several issues were found partly for the plaintiff and partly for the

Distinction between the costs at law and in equity.

Costs of issues.

Issues found each way.

* Except in the case of a bill to establish a will against an heir-at-law, as to which see *post*, ch. VI., sec. VI.

defendant, each party was allowed the costs of the issues found in his favour, and had to pay the costs of those found against him; but in *Weatherley v. Ross*, 1 H. & M. 349, no costs of the issues were given under similar circumstances, though the defendant had the costs of the suit.

Where a
new trial
was
directed.

It was a general rule that where a trial at law failed through misdirection of the judge, and a new trial was directed, no costs of the first trial were given to either party, whatever might be the result of the second trial (*Boarblock v. Tyler*, Jac. 571; *Corporation of Rochester v. Lee*, 2 De G. M. & G. 427, 431; *White v. Lisle*, 3 Swans. 343; 4 Mal. 214; *Dunston v. Varty*, 2 Ph. 696). In *Dunston v. Varty*, where the plaintiff succeeded at the first trial and failed at the second, no costs were given of the first trial or of the motion for a new trial; but in *Boarblock v. Tyler*, under similar circumstances, the party failing at the last trial had to pay the costs of the motion; and see *White v. Lisle*. Where a new trial was ordered on payment by the defendants to the plaintiffs (the successful parties at the first trial) of the costs of the first trial, it was held that the defendants were not compellable to pay those costs unless they proceeded to a new trial (*Lambert v. Fisher*, 7 Sim. 525). In *Parker v. Marrell*, 2 Ph. 453, a party failing on an issue appealed against the order directing it, and the Lord Chancellor reversed the order and directed a new issue but reserved the costs.

The former practice of the Court of Chancery of sending issues to be tried at law was altered by Stat. 25 & 26 Viet. c. 42 (Rolt's Act), after the passing of which the Court declined as a general rule to direct an action to be brought or issues to be tried at law (*Davenport v. Jepson*, 1 N. R. 173; *Egmont v. Darell*, 1 H. & M. 563; *Young v. Fernie*, 1 De G. J. & S. 353).

The above cases were decided under the old practice, but they are retained in the present edition as it is possible

that they may have some bearing on the question of the costs of issues or actions directed to be tried before juries under the Judicature Act.

Now by R. S. C. Ord. LV., r. 1, where any action or issue is tried by a jury, the costs follow the event unless upon application made at the trial for good cause shown the judge before whom such action or issue is tried or the Court shall otherwise order.

Under this rule, if an application as to the costs of a jury trial is not made to the judge at the trial, a subsequent application may be made to a Divisional Court (*Bowey v. Bell*, *Brooks v. Israel*, 4 Q. B. D. 95; 48 L. J. Q. B. 161; 27 W. R. 247; 39 L. T. 607; *Myers v. Defries*, *Siddons v. Lawrence*, 4 Ex. D. 176; 48 L. J. Ex. 446; 27 W. R. 791; 40 L. T. 795). But not to the judge who tried the case, nor to a judge at chambers (*Baker v. Oakes*, 2 Q. B. D. 171; 46 L. J. 246; 25 W. R. 220; 35 L. T. 832; *Tyne Alkali Co. v. Lawson*, 36 L. T. 100; W. N. (1877), 18). And if the judge at the trial has made an order as to costs a Divisional Court has no jurisdiction (*Marsden v. L. & Y. Ry. Co.*, 7 Q. B. D. 641; 50 L. J. Q. B. 318). As to the time within which such an application must be made, see *Kynaston v. Muckinder*, 47 L. J. 76; 37 L. T. 390; *Collins v. Welch*, 5 C. P. D. 27; 49 L. J. C. P. 260; 28 W. R. 208; 41 L. T. 785.

Should the judge desire to deprive the successful party of his costs, he may if he please do so without any actual application being made to him (*Turner v. Heyland*, 4 C. P. D. 432; 48 L. J. C. P. 535; 41 L. T. 556); provided both parties are present and have an opportunity of arguing the question at the time (*Collins v. Welch*; *Marsden v. L. & Y. Ry. Co.*).

Where in the same action the jury find for the plaintiff with damages as to one cause of action, and for the defendant as to other and distinct causes of action, the word "event" must be read distributively, and the defendant is entitled to tax his costs of the issues found for

Costs of issues tried by a jury.

Costs of jury trials under the present practice.

"Follow the event."

him, unless the Court or judge otherwise order; see *Myers v. DeFries*, 5 Ex. D. 15, 180; 48 L. J. 446; 28 W. R. 406; 41 L. T. 659; *Davidson v. Gray*, 5 Ex. D. 189, n.; 40 L. T. 192; *Ellis v. De Silva*, 6 Q. B. D. 521.

Where a nonsuit is set aside and a new trial had which results in the plaintiff's favour the rule gives him his costs of both trials (*Green v. Wright*, 2 C. P. D. 354; 46 L. J. 427; 25 W. R. 502; 36 L. T. 355; *Field v. Great Northern Ry. Co.*, 3 Ex. D. 261; 26 W. R. 817; 39 L. T. 80).

Where the plaintiff sued for two sums of £85 and 6s., respectively, and was nonsuited, and on the second trial which was awarded, and which was tried with a jury, failed as to the £85 and succeeded as to the 6s., he was ordered to pay the costs of both trials (*Harris v. Petherick*, 4 Q. B. D. 611; 48 L. J. 521; 28 W. R. 11; 41 L. T. 146).

The judge is not confined to the conduct of the party during the litigation, but he must assume the truth of the verdict (*Harnall v. Fins*, 5 Ex. D. 307).

If a defendant at any time during the progress of the action offers to submit to all the relief to which the plaintiff is entitled, the Court will not give the plaintiff the costs of the subsequent prosecution of the action if he brings it to a hearing (*Colburn v. Simms*, 2 Ha. 543; *Smith v. Green*, 1 Cell. 555; *Gregg v. Shuter*, 22 Beav. 314; *Hudson v. Bennett*, 14 W. R. 911; 14 L. T. 698; 12 Jur. N. S. 519). But a tender must be very express to save costs; and, at least, where prior to the Judicature Acts the courts of law and equity had concurrent jurisdiction, as in the case of a mortgage debt, it must have been a legal tender or a court of equity would not support it (*Gannon v. Stone*, 1 Ves. 339; and see *Paynter v. Carey*, Kay, app. xxxvi. When defendants desire to stay their liability to costs in an action they must make a "clear unconditional offer, equivalent to the whole rights of the plaintiff at the time;" per Fry, J. in *Trotter v. Maclean*, 13 Ch. D. 588; 28 W. R. p. 247. And the tender must of course include

(Costs the costs, unless the plaintiff succeeds, some cases in which costs are allowed to the defendant & Q. B. D. C. 8. Where costs are affected by tender — after action brought.

the costs of the action up to that time (*Lill v. Robinson*, Beatt. 83; *Fradella v. Weller*, 2 R. & M. 247; *Jamieson v. Teague*, 3 Jur. N. S. 1206; *Harris v. Harris*, 1 N. R. 43; 11 W. R. 62; *M. Andrew v. Bassett*, 4 N. R. 12; *Moet v. Couston*, *ibid.* 86). [^]Where the defendants offered to submit to a decree, each party to pay their own costs, which offer the plaintiffs who were ultimately successful merely refused, no costs were given on either side after the date of the offer (*Lord Kensington v. Metropolitan Railway Co.*; *Williams v. Same*, 14 W. R. 754; 14 L. T. 580). In *Geary v. Norton*, 1 De G. & S. 12, V. C. Knight Bruce held, in a suit to restrain the infringement of a patent, that the plaintiff was entitled to an injunction, although the defendant promised not to infringe the patent and offered to pay the costs of preparing the bill; and, therefore, the defendant not having tendered the costs of obtaining an injunction, the plaintiff was entitled to bring the suit to a hearing and get the costs of it. And in *Kelly v. Hooper*, 1 Y. & C. C. 197, the same judge held that the plaintiff was entitled to an answer from the defendant with a view to the account, and accordingly gave him his costs of the suit, though the defendant had before answer tendered the costs up to that time. See also *Stephens v. Brett*, 10 L. T. 231.

Hoath v. Newton
11 Ch D 326

Where the defendant pays money into Court under R. S. C. Ord. XXX., and the sum paid in is accepted by the plaintiff in satisfaction of the entire cause of action, the plaintiff, after notice to the defendant, may tax his costs and in case of non-payment within forty-eight hours sign judgment for his costs so taxed (R. S. C. Ord. XXX., r. 4). If the plaintiff does not accept the sum paid into Court but goes on with his action and then fails to recover more than the amount paid in, the general rule is that the plaintiff will be entitled to the costs of the action up to the time of the payment into Court, and the defendant will be entitled to the costs after that time (*Buckton v. Higgs*, 4 Ex. D. 174; 40 L. J. Ex. 755; 27 W. R. 803; *Gretton v.*

Payment
into Court.

Mees, 7 Ch. D. 839; 26 W. R. 607; 38 L. T. 506). In *Langridge v. Campbell*, 2 Ex. D. 281; 46 L. J. Ex. 277; 25 W. R. 351; 36 L. T. 64, however, where the plaintiff in the event recovered nothing beyond the amount paid into Court, it was held that the defendant was entitled to the costs of the suit from the commencement. If the plaintiff fails to give notice to the defendant that he accepts the amount paid in within four days, as required by R. S. C. Ord. XXX., r. 4, he loses his absolute right to costs, but he may still apply for them under Ord. LV. (*Greaves v. Fleming*, 4 Q. B. D. 226; 48 L. J. Q. B. 335; 27 W. R. 458). "The true construction of Ord. XXX., r. 4 and Ord. LV. is that Ord. XXX., r. 4 is subject to Ord. LV., and the effect of the two rules is that in cases falling within Ord. XXX., r. 4, the plaintiff is entitled to his costs unless there are some sufficient reasons for depriving him of them; but if there are he can be so deprived" (*Broadhurst v. Willey*, W. N. (1876), 21, Lindley, J., at Chambers).

Ground of
defence
arisen after
action
brought.

Whenever a defendant alleges any ground of defence which has arisen after the commencement of the action the plaintiff may deliver a confession of such defence and sign judgment for his costs up to the time of pleading such defence unless the Court or a judge shall, either before or after the delivery of such confession otherwise order (R. S. C. Ord. XX., r. 3); see *Champion v. Formby*, 7 Ch. D. 373; 47 L. J. Ch. 395; 26 W. R. 391, where it was held that a plea of adjudication in bankruptcy four months after the date of the service of the writ is a "ground of defence which has arisen after the commencement of the action." This rule seems to be the same in effect as r. 22 of Trinity Term, 1853 (*Foster v. Ganga*, 1 Q. B. D. 666; 24 W. R. 319, where the defendant pleaded pleas in bar and then pleaded in addition the bankruptcy of the plaintiff after action brought, and the plaintiff confessed the plea and was held entitled to judgment for his costs up to the time of such pleading).

In an action for rent, and for damages for breach of covenant in not building a wall, the defendant paid money into Court to satisfy the claim for rent, pleaded performance of the covenant by building the wall after action brought and paid £1 into Court in respect of the breach before action ; it was held, that the plaintiff, who took the money out of Court and confessed the "defence" as to the wall, was not entitled to costs under this rule, on the ground that the allegations did not amount to a "defence," but that he was entitled to the costs of the action under Ord. LV., or under 15 & 16 Vict. c. 54, s. 4 (*Callander v. Hawkins*, 2 C. P. D. 592 ; 26 W. R. 212).

In like manner an offer before action from the defendant of all the relief which the plaintiff ultimately obtains by the action will be a reason for depriving him of the whole costs of it (*Millington v. Fox*, 3 My. & Cr. 352 ; *Williams v. Thomas*, 2 Dr. & Sm. 29, 37 ; *Burrell v. Delevante*, 10 W. R. 362 ; 8 Jur. N. S. 205 ; 31 L. J. Ch. 365 ; *Remnant v. Hood*, 27 Beav. 74, 82 ; *Harmer v. Priestley*, 16 Beav. 569) ; or on the other hand, if the plaintiff before taking proceedings substantially offers the terms which the Court imposes upon him, it will be a reason for giving him the costs of the suit (*Nesbitt v. Berridge*, 1 N. R. 345 ; 11 W. R. 446, overruled on the merits, 3 N. R. 53). But the defendant's offer must be unconditional ; and therefore, in *Walter v. Patey*, 1 Russ. 375, which was a suit by the trustees of a settled legacy for payment of it, the costs were ordered to be paid by the executor, because he had qualified his offer for payment of the legacy by insisting that it should be invested in such security as he should approve. In *Edelsten v. Edelsten*, 1 De G. J. & S. 185 ; 9 Jur. N. S. 479, Lord Westbury, C., said that he could not take notice of negotiations antecedent to the suit, save in cases of bad faith, or where the negotiations had amounted to a binding release of the cause of suit ; and that the defendants in that case (who had substantially acceded to the terms offered

Offer before
action
brought.

by the plaintiff before suit), having resisted the plaintiff's claim and taken the chance of obtaining a benefit by the suit, must bear the costs of it; and see *McAndrew v. Bussett*, 4 N. R. 12. On the other hand, see *Williams v. Thomas*, 2 Dr. & Sm. 29, 37.

Where
fraud is
charged

There is no rule more general than that, where a plaintiff claims on the ground of fraud, the judgment or dismissal shall be with costs (*Scott v. Dunbar*, 1 Moll. 442; *New Brunswick, &c. Co. v. Conybeare*, 9 H. L. C. 711; *Langley v. Fisher*, 9 Beav. 90; *West v. Jones*, 1 Sim. N. S. 295; *Straker v. Ewing*, 13 W. R. 286; *Grills v. Dillon*, W. N. (1876), 69; *Ship v. Crossbill*, 10 Eq. 87); and see the cases collected in Beames, 164, nn. (12) (14). Even if the plaintiff succeeds in obtaining the relief prayed for and has the costs of the suit generally, but fails to establish the allegations of fraud, he must pay the costs occasioned by such allegations being introduced (*Blest v. Brown*, 10 W. R. 569; 8 Jur. N. S. 602; *Jones v. Rickotts*, 10 W. R. 576; and see *Clinch v. Financial Corporation*, 5 Eq. 450; *London Bank of Australia v. Lempriere*, 12 R. 4 P. C. 572; 21 W. R. 513; 29 L. T. 186; *Taber v. Cunningham*, 24 W. R. 153; *Thomson v. Eastwood*, 2 App. Cas. 215); or, for the sake of simplicity, no costs will be given to either side, where, but for the allegations of fraud, the plaintiff would have been entitled to the costs (*Cullingworth v. Lloyd*, 2 Beav. 385; *Rawlins v. Wickham*, 6 W. R. 509); and see further on the subject of the apportionment of costs, *infra*. But in *Staniland v. Willott*, 3 Mac. & G. 664, where charges of fraud in the bill were neither supported nor repelled by evidence on either side, the costs were not thereby affected, as it did not appear that any costs were specially occasioned by such charges. In *Fyler v. Fyler*, 3 Beav. 550, however, a bill containing unproven charges of fraud against solicitors was dismissed without costs, because, by mixing up their personal interests in the transactions in question, the defendants had rendered an investigation not unreasonable; and in

De Montmorency v. Devereux, 7 Cl. & F. 188, a bill to set aside a gift to a solicitor was dismissed on the ground of confirmation, but without costs; and see *Lord Clanricarde v. Henning*, 30 Beav. 175. In *Parker v. McKenna*, 10 Ch. 96; 44 L. J. Ch. 425; 23 W. R. 271; 31 L. T. 739, the plaintiff set up a case which entitled him to relief and also a separate case of fraud; so much of his bill as was founded on the case of fraud was dismissed with costs and he got no costs of the rest of the suit. See also *Gray v. Lewis*, *Parker v. Lewis*, 8 Ch. 1035; 21 W. R. 923; 29 L. T. 12.

In like manner charges of fraud made by defendants will, if unsubstantiated, be visited with costs, even though the defendants get the costs of the action generally: see *Wright v. Howard*, 1 S. & S. 190, 205, where the defence was by answer and cross bill; *Warrin v. Thomas*, 2 W. R. 442; *Pledge v. Buss*, Johns. 663. Where a plaintiff succeeds in a suit on the ground of fraud, he will be entitled to all the costs occasioned by it, and therefore, in *Stanley v. Bond*, 6 Beav. 423, a bill for the delivery up of securities fraudulently obtained being taken *pro confesso*, the plaintiff was held entitled to the costs of an action at law commenced on the securities, though not specifically prayed for by the bill.

Misconduct or harsh or vexatious conduct of any party, either before suit or in the prosecution of it, is a reason for depriving him of costs, in cases where he might otherwise be entitled to them (*Hardy v. Eekersley*, W. N. (1877), 199; *Tarquand v. Marshall*, 4 Ch. 387; *Vickers v. Vickers*, 4 Eq. 537; *Lawes v. Gibson*, 1 Eq. 135); though it is perhaps too much to speak of costs in the language of L. C. Hart (*Armstrong v. Blake*, 1 Moll. 178) as "the testimonial of good conduct which the Court dispenses in awarding costs." If the plaintiff has been guilty of delay or laches in taking proceedings he will not get his costs although he succeeds in obtaining relief (*Lee v. Brown*, 4 Ves. 362; *Pearce v. Newlyn*, 3 Mad. 186; *Attorney-*

Misconduct
in plaintiff
or de-
fendant.

R. Cooper v N [1882] 55
30 W R. 648.

Laches.

General v. Eastlake, 2 Eq. Rep. 145; *Lord v. Lord*, 3 Jur. N. S. 485; and if there had been proceedings at law under the former practice as well as in equity the Court although it allowed a successful plaintiff his costs at law would refuse him those in equity on account of his laches (*Anon.*, 2 Atk. 14); and see the other cases cited *ante*, p. 99. So delay in prosecuting the suit will be a ground for refusal of costs (*Archbold v. Scully*, 9 H. L. C. 360, 377; *Craig v. Allen*, 2 Dow, 289, 299); and see *Purcell v. Blennerhassett*, 3 Jo. & Lat. 24, where the original bill was filed in 1828 and the then plaintiff having died, and a bill of revivor not having been filed till 1843, L. C. Sugden gave costs only from the filing of the bill of revivor. But in suits between members of one family, which would naturally not be instituted without much consideration, the Court will not attach importance to the circumstance of some time having elapsed before the claim is made; see the observations of Sir J. Romilly, M. R. in *Lover v. Fielder*, 1 N. R. 188. His Honour was there speaking of laches as a bar, but as he gave the costs to the plaintiff in that case, his remarks apply as well to the subject of costs. In like manner the action will be dismissed without costs, if the defence is successful, but the defendant's conduct has not met with the Court's approval (*Leather Cloth Co. v. American Leather Cloth Co.*, 3 N. R. 264; *Field v. Churchill*, 4 Jur. 739; *Clayton v. Beck*, 2 De G. M. & G. 731; *Pitts v. Kingsbridge Highway Board*, 19 W. R. 884; 25 L. T. 195; *Estcourt v. Estcourt Hop Essence Co.*, 10 Ch. 276; 44 L. J. Ch. 223; 23 W. R. 313; 31 L. T. 567, where both parties were manufacturers of substances intended to deceive the public; *Gray v. Lewis*, 8 Ch. 1035; 21 W. R. 923; 29 L. T. 12; *Wigham v. Clarke*, W. N. (1876), 68). Or if the defendant by his harsh or vexatious conduct has rendered the suit unavoidable, he will have to pay the costs of it, though there is a question to be tried (*Lillie v. Legh*, 3 De G. & J. 204); and see *Lord Cranstoun v. Johnson*, 5 Ves. 277. The same prin-

Dismissal
without
costs.

inciple was applied by L. C. Sugden in *Wise v. Wise*, 2 Jo. & Lat. 403, where a person's negligence in settling an estate without notice of a prior incumbrance rendered a suit to enforce it necessary. And generally, where costs are occasioned by the conduct of either party, that party must bear them; and where, by the misconduct of both parties, neither party has costs: (*per* V. C. Kindersley, *Parr v. Lovegrove*, 4 Jur. N. S. 600, 605); and see *Wallis v. Bastard*, 17 Jur. 1107; *Bloomer v. Spittle*, 13 Eq. 427. Where the plaintiff's carelessness had been such that he would according to the general rule have lost his costs, he was nevertheless held entitled to them on the ground of his having made a fair offer to the defendant the refusal of which led to the litigation (*Torrance v. Bolton*, 14 Eq. 124; *affd.* 8 Ch. 118).

Where the plaintiff is himself *particeps criminis*, and seeks to set aside a security or transaction on the ground of public policy, the decree will sometimes be without costs (*Debenham v. Ox*, 1 Ves. 276; *Morgan v. Bruen*, Ll. & G. temp. Sugd. 180; but see *contra*, *Jackman v. Mitchell*, 13 Ves. 581; *Wood v. Barker*, 1 Eq. 139; 11 Jur. N. S. 905).

In many of the older cases, the bill was dismissed or decree made without costs, because the Court, although it decided in favour of one party, thought it a hard case upon the other party (*Shales v. Barrington*, 1 P. W. 481; *Coppin v. Coppin*, 2 P. W. 291; *Forbes v. Taylor*, 1 Ves. Junr. 99; *Brodie v. St. Paul*, 1 Ves. Junr. 326; *Mosely v. Virgin*, 3 Ves. 184; *Dickinson v. Lockyer*, 4 Ves. 36; *Everett v. Buckhouse*, 10 Ves. 94). But now that the principles of equity are more settled, and in the present inclination of the Court to make the costs follow the result, it would seem that less weight would be attached to such a consideration; still, in a case of extreme hardship, it is not to be entirely overlooked; *per* Jessel M. R. in *Broder v. Saillard*, 2 Ch. D. p. 699; 24 W. R. 1011; and see *Ex parte Wainwright*, 19 Ch. D. p. 152. Where, however, the point of law involved in the case is a

Where the plaintiff is *particeps criminis*.

Where it is a hard case;

or the point of law is new.

new one, the Court will not in general visit the unsuccessful party with costs in the absence of any misconduct on his part, especially if the case is a hard one upon him; see *ex. gr. Job v. Bunnister*, 2 K. & J. 374. And if the suit is instituted on the authority of a case which is overruled during the progress of the suit, it is the course of the Court to dismiss it without costs (*Robinson v. Rosler*, 1 Y. & C. C. C. 7; *Lancashire Railway Co. v. Evans*, 14 Beav. 529; *Sutton Harbour Co. v. Hitchcock*, 1 De G. M. & G. 167). On the other hand, the circumstance of a previous decision on exactly the same point is a strong reason for giving the successful party his costs (*Biscoe v. Wilks*, 3 Mer. 456; *Attorney-General v. Etheridge*, 11 W. R. 199; *Furcell v. Gleason*, 11 Cl. & F. 702; *Russell v. Dickson*, 4 H. L. C. 293).

The person who gets the benefit of the suit should bear the costs of it.

It is also a general principle that the party who is "caused by the institution of the suit," or has the exclusive benefit of it, should pay the costs of it; and, therefore, the plaintiff in a suit under the limited liability clauses of the Merchant Shipping Acts was required to pay the costs of all the defendants, both at law and in equity (*African Steam Ship Co. v. Swanzy*, 2 K. & J. 660; and see *London & South-Western Railway Co. v. James*, 8 Ch. 241). So where a plaintiff sued in respect of a lost bill of exchange, he paid the costs at least up to the hearing (*Macartney v. Graham*, 2 R. & M. 353); but not the subsequent costs, if the indemnity offered by him were found to be sufficient (*ibid.*); and in a suit for contribution amongst co-sureties each party paid his own costs (*Hitchman v. Stewart*, 3 Drew. 271). Upon this principle the costs of redemption actions are disposed of, and the cases will be more conveniently discussed in the following chapter, where the costs of actions for redemption are treated of.

Where the plaintiff occasions unnecessary expense by

If the plaintiff raises his case in such a form as to occasion unnecessary expense, that circumstance is taken into consideration with reference to costs, either by disallowing the plaintiff the extra costs occasioned by his

mode of pleading, or giving him no costs at all. In *Bensusan v. Nehemias*, 4 De G. & S. 381, two suits having been instituted where, in the opinion of the Court, all the objects might have been comprised in one suit, the Court allowed costs only as of one suit; so where the plaintiff proceeded by supplemental bill instead of by petition (*Davies v. Williams*, 1 Sim. 5); and see *Besant v. Wood*, 12 Ch. D. 605; *The Pasithea*, W. N. (1879), 112; *Baker v. Wood*, W. N. (1881), 7. Where a bill was filed for the appointment of new trustees in a case which came within the Trustee Act, the plaintiff was ordered to pay all the costs (*Thomas v. Walker*, 18 Beav. 521); but in *Wells v. Malbon*, 10 W. R. 364; 8 Jur. N. S. 249; 31 L. J. Ch. 344, trustees who had filed a bill instead of paying an ascertained sum claimed by opposite parties into Court under the Trustee Relief Act, were disallowed only the extra costs occasioned by their doing so. Again, in *Attorney-General v. Holland*, 2 Y. & C. 683, no costs up to the hearing were given to the relators in a charity information, the object of which might have been attained by a petition under Sir S. Romilly's Act; and see *Attorney-General v. Berry*, 11 Jur. 114. In like manner, a bill by an unsuccessful plaintiff was dismissed without costs because the defendants, by not serving him with a petition, had forced him to file a bill (*Crause v. Cooper*, 1 J. & H. 207). On the same principle allegations in a bill which prevented the case being decided on demurrer, and were unsupported by the evidence, were considered to be ground for dismissing the bill with costs (*Lind v. Isle of Wight Ferry Co.*, 1 N. R. 13). On the other hand a defendant ought as a general rule to make his defence in the least expensive form; and it was formerly the practice to dismiss the bill without costs if the defendant did not demur when he might have done so (*Webb v. England*, 29 Beav. 44; *Ernest v. Weiss*, 1 N. R. 189). In *Godfrey v. Tucker*, 3 N. R. 20; 33 Beav. 280, Sir J. Romilly, M. R. refused the defendant his extra costs only, and allowed him the costs

his mode
of raising
his case.

as of a demurrer. But the practice in this respect is now altered and the action will be dismissed with costs although the defendant might have demurred (*Bush v. Troachbridge Co.*, 10 Ch. 459; 23 W. R. 641; 33 L. T. 137; *Pearce v. Watts*, 20 Eq. 492; 44 L. J. Ch. 492; 23 W. R. 771); but see *In re Star & Garter Limited*, 42 L. J. Ch. 374, and *In re Steam Stealer Co.*, 23 W. R. 545, where the costs of evidence to oppose a demurrable petition were disallowed. A defendant is not justified in not demurring on the ground that the statement of claim contains charges of fraud; see *ante*, p. 28.

Costs of unnecessary proceedings.

The costs of unnecessary proceedings in an action must as a general rule be paid by the party who has occasioned them (*Pannell v. Hurley*, 2 Coll. 241); as the costs of making an infant defendant instead of plaintiff in a legatee's suit (*Hooking v. Nicholls*, 1 Y. & C. C. C. 478); or of a useless inquiry (*Westover v. Chapman*, 1 Coll. 181); or of unnecessary evidence (*Audley v. Horn*, 26 Beav. 195; *Perpetual, &c., Society v. Gillespie*, W. N. (1882), 4). By R. S. C. Ord. XVI., r. 1, a defendant, though unsuccessful, will be entitled to his costs occasioned by joining as plaintiffs any person or persons who are not found entitled to relief, unless the Court otherwise directs. And if a plaintiff delivers a statement of claim unnecessarily, the Court may make such order as to the costs occasioned thereby as shall seem just (R. S. C. Ord. XXI., r. 1c.)

Unnecessary plaintiffs.

Unnecessary statement of claim.

Refusal to admit allegations of fact.

Refusal to admit documents.

By R. S. C. Ord. XXII., r. 4, where the Court or a judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the Court may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted. And by R. S. C. Ord. XXXII., r. 2, either party may call upon the other party to admit any document, saving all just exceptions, and in case of refusal or neglect to admit after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the

action may be, unless at the hearing or trial the Court certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is in the opinion of the taxing officer a saving of expense. As to the costs of improper matter, and affidavits, &c., of unnecessary length, see R. S. C. (Costs) Sched. r. 18, *ante*, p. 39.

It seems that, notwithstanding the opinion expressed by V. C. Wigram in *Mounsey v. Burnham*, 1 Ha. 22, the Court will in some cases, at the hearing, order the plaintiff to pay the costs occasioned by allegations struck out by amendment (*Stewart v. Stewart*, 22 Beav. 393; *Leather Cloth Company v. Brossley*, 3 Giff. 474; *Finch v. Westrope*, 12 Eq. 24). But a defendant is not justified in entering into evidence with regard to charges against him struck out by amendment, and will be liable for the costs of such evidence being taken (*Stewart v. Stewart*).

However, the rule, by which the Court visits the costs of unnecessary proceedings upon the party who has occasioned them, is not carried to the extent of depriving a successful plaintiff or defendant of his costs, because the decision of the Court goes upon a part only of the case or defence put forward. "Although the plaintiff's case might have been much narrowed, yet we must remember that it is often impossible for a plaintiff to know what will be the particular views or facts which will most influence the opinion of the Court" (*per* L. J. Knight Bruce, *Perry v. Shipway*, 4 De G. & J. 353). And in *Whratley v. Bastow*, 3 W. R. 296: 19 Jur. 222, though the relief was given on a different equity from that on which it was sought, yet the former being apparent on the bill and evidence, V. C. Stuart gave the plaintiff his costs. In like manner, where the defendant takes several grounds of defence, some of which only are valid, that circumstance will not in general avail the plaintiff in

The costs of a case abandoned by amendment may be obtained at the hearing, *semble*.

A party does not lose his costs because the Court decides on some only of the grounds put forward.

costs (*Claves v. Beck*, 2 De G. M. & G. 731); but *scelus* where the defendant vexatiously raises an issue of fact which fails on the evidence (*ibid.*); see *Jones v. Farrell*, 1 De G. & J. 208; *Wright v. Howard*, 1 S. & S. 205; *Bower v. Cooper*, 2 Ha. 408; *Pledge v. Buss*, Johns. 663. And a plaintiff cannot, by raising a minor and quite subsidiary point, relieve himself of the costs of the suit if he fails on the main and substantial question (*Baldwyn v. Johnson*, Beames, app. 8; *Prosser v. Seale*, 3 Jur. N. S. 711; *Mayor of South Molton v. Attorney-General*, 5 H. L. C. 1). If the plaintiff demands a little more than he is entitled to, and the defendant resists the demand *in toto*, he will generally have to pay the costs up to the hearing (*Jeffryes v. Agra & Musterman's Bank*, 2 Eq. 681, *per* Wood, V. C.). Where the plaintiffs failed to a considerable extent in their case, they got no costs, although judgment was given in their favour (*National Insurance Co. v. Prudential Assurance Co.*, 6 Ch. D. 757; 46 L. J. Ch. 871; 26 W. R. 26; 37 L. T. 91; and see *Evans v. Davis*, 10 Ch. D. 747; 48 L. J. Ch. 223; 27 W. R. 285; 39 L. T. 391, where the plaintiff's proceedings were embarrassing).

Where the suit has been recommended by the Court,

The circumstance that the institution of a suit has been suggested by the Court is no protection to an unsuccessful plaintiff against costs (*Scott v. Duabur*, 1 Moll. 442, where the filing of the bill was suggested by the House of Lords); and see *Earl Nelson v. Lord Bridport*, 10 Beav. 305, where the suit was recommended by a Master in the course of an earlier one. In *Attorney-General v. Dean & Canons of Windsor*, 8 H. L. C. 369, 404, however, an *ex officio* information, filed in consequence of an address from the House of Commons, was dismissed without costs. *A fortiori* a defendant does not escape costs because he has acted on counsel's opinion (*Maling v. Hill*, 1 Cox, 186; *M'Queen v. Farquhar*, 11 Ves. 467; *Boulton v. Beard*, 3 De G. M. & G. 608).

or the defendant has acted on counsel's opinion.

As to the

The costs of particular defendants are often disposed of

on considerations other than those affecting the costs of the action generally. A disclaiming defendant, if brought to the hearing, will be dismissed * with or without costs, according to the form and extent of his disclaimer (*Earl of Cork v. Russell*, 13 Eq. 210; *Ridgway v. Kynnersley*, 2 H. & M. 565, and cases cited in the note to that case). The rules of the Court on this point are thus stated by Sir J. Romilly, M.R., in *Ford v. Lord Chesterfield*, 16 Beav. 516. First, where a defendant disclaims in such a manner as to show that he never had and never claimed an interest at or after the institution of the suit, then he is entitled to his costs; secondly, if a defendant having an interest shows that he disclaimed or offered to disclaim before the institution of the suit, there also he is entitled to his costs; thirdly, where a defendant having an interest allows himself to be made a party to the suit, and does not disclaim, or offer to disclaim, before he puts in his defence or disclaimer, in that case he is not entitled to costs. These rules, which it seems apply to a disclaiming heir-at-law (*Gray v. Adamson*, 35 Beav. 383), were approved of by V. C. Wood in *Bellamy v. Brickenden*, 4 K. & J. 670; and compare the dicta of V. C. Wigram in *Tipping v. Power*, 1 Ha. 405, 408. They may be illustrated by a great variety of cases.

In *Ohrly v. Jenkins*, 1 De G. & S. 543, the defendant omitted to say that he never claimed, and was therefore dismissed without costs. And see further as to the first rule, *Vale v. Meredith*, 18 Jur. 992; *Beddoes v. Pugh*, 26 Beav. 418; *Gabriel v. Sturgis*, 5 Ha. 97; *Earl of Cork v. Russell*, 13 Eq. 210. In *Bellamy v. Brickenden*, 4 K. & J. 670, it was held that the disclaimer of a devisee related back to the date at which the estate passed to him, and was a disclaimer *ab initio*; and the defendant was consequently held to be entitled to his

costs of particular defendants: i. Defendants disclaiming. The rules stated in *Ford v. Lord Chesterfield*.

The first rule.

The disclaimer of a devisee.

* But, it seems, a decree of foreclosure may be made against disclaiming defendants (*Collins v. Shirley*, 1 R. & M. 638; *Perkin v. Stafford*, 10 Sim. 562; *Ahlett v. Edwards*, *ibid.* n.; *Johnson v. Clarke*, 3 W. R. 193).

costs, even though the plaintiff had written to his solicitors before suit to know whether he claimed an interest, and received no answer; and see *Higgins v. Frutkis*, 15 Jur. 277. In *Buchanan v. Greenway*, 11 Beav. 58, however, a devisee disclaiming did not get his costs.

The second rule.

As to the second rule laid down in *Ford v. Lord Chesterfield*, see *Lock v. Lomas*, 15 Jur. 162; *Thompson v. Kendall*, 9 Sim. 397; *Ward v. Shakeshaft*, 1 Dr. & S. 269. In the last case the assignee of a mortgagor, having been made defendant to a foreclosure bill, before appearance disclaimed by letter, and offered to be dismissed, and he was held to be entitled to his costs. But it is not sufficient allegation to say that the defendant was applied to before suit, and did "not refuse" to disclaim (*Harrison v. Pennell*, 4 Jur. N. S. 682; 6 W. R. 712); or to say that, if the plaintiff, in a foreclosure suit, had applied to the defendants, they would have released the equity of redemption (*Collins v. Shirley*, 1 R. & M. 638; *Ford v. Lord Chesterfield*, 16 Beav. 516; *Ford v. White*, 16 Beav. 120); but see *contra*, *Gurney v. Jackson*, 1 Sm. & G. 97, a case which is irreconcilable with those mentioned above.

The third rule.

As to the third of the rules stated above, see *Horns v. Holtom*, 16 Jur. 1077, 16 Beav. 259; *Talbot v. Kenneshead*, 4 K. & J. 93; *Davis v. Whitmore*, 28 Beav. 617. Persons properly made defendants to a suit, and disclaiming, should offer to have the suit dismissed as against them without costs (*Talbot v. Kenneshead*; *Davis v. Whitmore*; *Clarke v. Rowlands*, W. N. (1866), 332, 15 L. T. 176); and if they do so, and the plaintiff continues them on the record, and compels them to put in a defence, the course is to dismiss the suit as against them without costs up to the time of the offer, but with costs subsequently incurred (*Davis v. Whitmore*; *Gowing v. Mowbray*, 2 N. R. 384; 11 W. R. 851; *Jones v. Rhind*, 17 W. R. 1091). It makes no difference that the defendant has previously disclaimed by

letter (*Gowing v. Mowbray*); but see *Ward v. Shakeshaft*, 1 Dr. & Sm. 269. In *Clarke v. Toleman*, 21 W. R. 66; 42 L. J. Ch. 23; 27 L. T. 599, however, in a foreclosure suit, the assignee of the mortgagor disclaimed and offered to be dismissed without costs, but on the ground that he had not disclaimed before suit he had to bear them. In *Dillon v. Ashwin*, 3 N. R. 359; 12 W. R. 366, a defendant to a foreclosure suit, who assigned *pendente lite*, and offered to be dismissed without costs up to the date of notice of the assignment, received his subsequent costs. In *Earl of Cork v. Russell*, 13 Eq. 210, judgment creditors were made defendants to a foreclosure suit, who after issuing execution had assigned away all their interests before bill filed, and disclaimed by their answer; and it was held that they were entitled to their costs. The plaintiff is not bound to ask the defendant's consent to the action being dismissed against him without costs, but it rests with the defendant to offer it (*Talbot v. Kemshead*; *Furber v. Furber*, 30 Beav. 523).

If a disclaiming defendant also pleads and appears to claim his costs, he will not get them (*Maxwell v. Wightwick*, 3 Eq. 210; 15 W. R. 304); and see *Bradley v. Borlase*, 7 W. R. 125; *Slipper v. Gough*, 36 L. T. 92; *Thompson v. Hudson*, 34 Beav. 107.

Where a bill was filed for foreclosure against the mortgagor and a second mortgagee, and the second mortgagee who had been paid off offered to disclaim at the plaintiff's cost, which offer was refused, and the second mortgagee then disclaimed, it was held that he was entitled to his costs (*Day v. Gudgeon*, 2 Ch. D. 209). But a statement by a defendant, a second mortgagee, that he has agreed to transfer his mortgage, and is willing to disclaim, unaccompanied by an offer to be dismissed without costs, will not entitle him to his costs (*Roberts v. Hughes*, 6 Eq. 20). *Broughton v. Key* W N (1833) 3

In *Glover v. Rogers*, 11 Jur. 1000; 17 L. J. Ch. 2, it When a

disclaim-
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evidence.

was held not to be necessary that a disclaiming defendant should prove the facts upon which his disclaimer is based; and in *Hurst v. Hurst*, 1 W. R. 105, the question whether such defendant is entitled to go into evidence was left undecided. If, however, the plaintiff under the old practice filed replication to the answer, and the defendant was thereby compelled to go into evidence, the plaintiff had to pay his costs (*Ford v. Lord Chesterfield*, 16 Beav. 516); and see *Williams v. Longfellow*, 3 Atk. 581. Where the bill prayed for the costs of the suit against a defendant who disclaimed, and stated certain facts as to his not being made to pay costs, the plaintiff was held to be justified in entering into evidence *contra*, and the defendant was ordered to pay the costs of the suit (*Deacon v. Deacon*, 7 Sim. 378). As to the costs of an innocent stakeholder, see *Meat v. Pickering*, 8 Ch. D. 372; 47 L. J. Ch. 527; 26 W. R. 637; 38 L. T. 799.

if persons
unneces-
sarily
made de-
fendants.

If a party is unnecessarily made a defendant to the suit, although he may have an interest in the subject-matter of it, he will be entitled to his costs from the plaintiff; as where a residuary legatee was made defendant to a creditor's suit, there being a bequest in trust for payment of debts (*Smith v. Audley*, 4 W. R. 353); or a certificated bankrupt was made defendant (*Pannell v. Hurley*, 2 Coll. 241). On the other hand, the costs occasioned by an heiress-at-law, who was not a necessary party, being made a co-plaintiff, including the costs of making out her pedigree, were ordered to be paid by the plaintiffs (*Porter v. Watkins*, 5 De G. & Sm. 315). Where the bill prayed alternative relief, and on the view adopted by the Court certain defendants were unnecessary parties, they were dismissed with costs (*Brosly v. Heath*, 3 Sim. 560). In a recent case the plaintiff brought an action against two defendants, claiming alternative relief; he succeeded against one, and failed against the other, who got judgment in his favour with costs. The Court of Appeal, varying the order of the Court below, made the

unsuccessful defendant, who was really to blame for the litigation, repay to the plaintiff the costs the latter had been ordered to pay to the successful defendant (*Child v. Stenning*, 11 Ch. D. 82; 48 L. J. Ch. 392; 27 W. R. 462; 39 L. T. 302). When a plaintiff joins two or more persons as defendants he must pay the costs of any defendant against whom no case is established, and who did nothing to make the plaintiff believe him to be liable (*Marsh v. Dunlop*, 21 S. J. 75). A plaintiff is not justified in making persons parties merely because other defendants insist that they ought to be parties; and persons made defendants under those circumstances, the Court being of opinion that they were not necessary parties, were dismissed with costs (*Williams v. Page*, 24 Beav. 654). In *Williams v. Williams*, 1 W. R. 237, persons interested under a will, but unnecessarily made parties to a suit for administration of the estate, were ordered to bear their own costs, they not having objected to being made parties in their answer or at the hearing. If a person improperly made a defendant claims an interest by his defence, the suit may be dismissed as against him at the hearing, but without costs (*Randall v. Randall*, 4 L. J. Ch. (Old S.) 50). Where defendants, by decree declared to be unnecessary parties, remained before the Court, and attended the inquiries under the decree, their costs subsequent to decree were ordered to be borne by themselves (*Girdleston v. Creed*, 1 W. R. 228). A party made defendant for purposes of discovery, but who is a mere witness, will be dismissed with costs (*De Combe v. De Combe*, 3 Jur. N. S. 712); but see *Healty v. Newton*, 30 W. R. 72.

A defendant may be ordered to pay costs to a third party who appears in consequence of being served by the defendant with a notice under R. S. C. Ord. XVI. r. 18, (*Dawson v. Shepherd* (C. A.) 49 L. J. 529; W. N. (1880) 110). But in *Yorkshire Waggon Co. v. Newport Coal Co.*, 5 Q. B. D. 268; 49 L. J. 527; 28 W. R. 505; 42

Costs of parties brought in under R. S. C. Ord. XVI.

L. T. 637, the contrary seems to have been held. Where the defendants brought in third parties, who, in their turn, brought in fourth parties, and the suit was dismissed with costs, the Court of Appeal held that there was no jurisdiction to make the plaintiff pay the costs of the third and fourth parties (*Witham v. Vane*, 44 L. T. 718; W. N. (1881) 79). In the most recent case on this point the Court held that a third party is in the same position with regard to costs as an original party (*Horsley v. Chesham* (C. A.) 45 L. T. 781; W. N. (1881) 170, 5 C.B.D. 329).

iii. Formal parties.

"Where no account, payment, conveyance, or other relief is sought against a party, but the plaintiff requires such party to appear to or answer the bill, the costs occasioned by the plaintiff having required such party so to appear to or answer the bill, and the costs of all proceedings consequent thereon, shall be paid by the plaintiff." See *Abram v. Ward*, 6 Ha. 170, where defendants in the same interest as the plaintiffs, but who had refused to join as co-plaintiffs, were allowed their costs under this order. And as to formal parties generally, see *Archer v. Robinson*, 2 Moll. 464. In *Tygham v. Duke of Portland*, 3 N. R. 183, the trustees of a settlement made on the plaintiff's marriage, who were necessary parties to the suit, were held not to be entitled to their costs from their co-defendants who paid the plaintiff's costs, but were allowed them out of their trust estate. And see as to parties made defendants for discovery only, *post*, ch. IV., sec. IV.

What evidence may be used as to costs.
Letters.

Although letters written "without prejudice," with a view to the compromise of the suit, are not generally admissible in evidence (*Hoghton v. Hoghton*, 15 Beav. 321), they may be read on the question of costs (*Woodward v. Eastern Counties Ry. Co.*, 1 Jur. N. S. 899; *Williams v. Thomas*, 2 Dr. & Sm. 29, 37), and, *semble*, though not referred to in the pleadings (*Malcolm v. Scott*, 3 Ha. 39), notwithstanding *Whitley v. Martin*, 3 Beav. 226, where the marginal note goes too far (*per* V. C. Wigram, 3 Ha. 63). Where the costs of the suit are dis-

Affidavits.

posed of on further consideration, the Court will not look at the evidence given in chambers, or on interlocutory application, or, in fact, at any evidence but that in the cause (*Corling v. Austin*, 2 Dr. & Sm. 129; 10 W. R. 682). In *Dunstan v. Patterson*, 2 Ph. 341, at the hearing of a motion an immediate decree was taken for an account and costs, and further directions were reserved; and it was held that affidavits filed on the motion could not be read on further directions as to costs. The Court declined to receive, under Stat. 13 & 14 Vict. c. 35, s. 28, affidavits as to conduct filed with reference to costs (*Bateman v. Margerison*, 2 W. R. 607; *Evans v. Lewis*, 2 L. T. 559); but see *contra*, *Fallows v. Lord Dillon*, 2 W. R. 507; 23 L. T. (O. S.) 154. In *Palmer v. Perry*, W. N. (1870) 58, after a decree directing an inquiry as to damages, an affidavit showing attempts on the part of the plaintiff to make an amicable arrangement before the inquiry was proceeded with, was held admissible upon the question of costs, on the authority of *Fallows v. Lord Dillon*.

The Court will not order costs in an action to be paid without taxation even by consent (*King v. King*, 1 Jur. N. S. 272).

Costs in the action, how and by whom payable.

Where several co-plaintiffs or co-defendants are ordered to pay costs, they become jointly and severally liable (*Poole v. Franks*, 1 Moll. 78; *Meredyth v. Hughes*, 3 Yo. & J. 188; *Asplen v. Seddon*, W. N. (1877) 207; *Ex parte Bishop*, 8 Ves. 333); and, therefore, where a decree has been made reserving costs, the defendants are entitled to a continued representation of all the original plaintiffs, though not necessary parties, as a security (*Blackburn v. Jepson*, 3 Swans. 138). Assignees of any party to the suit adopting it become liable to the costs of it from the commencement (*Whitecomb v. Minchin*, 5 Mad. 91; *Poole v. Franks*); so, also, a next friend appointed in the course of the suit; and see *Cook v. Hathway*, 8 Eq. 612. In a tithes suit the Court, in decreeing an account and pay-

Contribution amongst defendants.

ment, may apportion the costs where the defendants have several defences (*Esdaile v. Peacock*, Johns. 216; and see *Wolley v. Brownhill*, 13 Price, 511); but *secus* where there is a common defence (*Esdaile v. Peacock*; *Lloyd v. Mackworth*, 2 Gwill. 646, correcting S. C. Bumb. 138). But the Court will not in general give directions in the decree for contribution by the defendants *inter se*; or after a general decree for costs entertain an application in the suit by one defendant, who has been compelled to pay the whole, for that purpose (*Michol v. Bullen*, 6 Price, 87; *Pitt v. Boomer*, 1 Y. & C. C. C. 670). However, in *North v. Gurney*, 1 Jo. & H. 509 the defendants were ordered to pay the costs of the suit without prejudice to any question between them as to contribution thereto, though the precise effect of such a reservation is not clear.

In *Wilson v. Thomson*, 20 Eq. 459, 23 W. R. 744, a decree for specific performance with costs was made against two defendants, one of whom was mainly responsible for the suit; and Hall, V. C., inserted a declaration in the decree that, as between the two defendants the one who was chiefly to blame ought to pay the whole of the costs and gave the other defendant liberty to apply in chambers as to payment to him of these costs; the order of course being without prejudice to the plaintiff's right to recover his costs from both or either of the defendants; and see *Tarabecrow v. Bevil*, W. N. (1878) 169. Where co-defendants are ordered to pay the costs of an action, one co-defendant cannot by an independent proceeding, obtain contribution in respect of such costs against the other (*Dearsly v. Mibllewick*, 18 Ch. D. 236, 30 W. R. 45). In *Aspley v. Sedden*, W. N. (1877) 207, where a bill had been dismissed with costs, the Master of the Rolls, on the authority of *Meredith v. Hughes*, 3 Y. & J. 188, held that, whether the liability for costs was joint or several, the defendants were equally entitled to have their costs taxed against the surviving plaintiffs in the absence of a legal personal representative of a deceased

plaintiff. In a late case an action was brought by a lunatic, so found, and his committee to set aside an agreement, on the ground that the lunatic was of unsound mind when he entered into it; during the trial the lunatic died. The interest of the committee thereupon ceased, and his administratrix obtained an order to carry on the proceedings. The action was dismissed with costs, to be paid by the administratrix, but the estate was insolvent. A motion to vary the judgment by rendering the committee liable for the costs of the action up to the death of the lunatic was refused with costs (*Harland v. Garbutt*, W. N. (1851) 8). The costs of all parties liable to make a contribution should, it seems, be added together, and borne by them in proportion to the shares in which they are bound to contribute (*Moye v. Sparrow*, 18 W. R. 400; 22 L. T. 154).

In suits to restrain the infringement of trade marks, the plaintiff has sometimes been held entitled to a lien for his costs on the goods bearing the pirated mark in the hands of innocent parties (*Upmann v. Elkun*, 12 Eq. 140; 7 Ch. 130; *Ponsardin v. Pato*, 33 Beav. 642). But in *Moet v. Pickering*, 8 Ch. D. 372; 47 L. J. Ch. 527; 26 W. R. 637; 38 L. T. 799, where the goods were in the hands of wharfingers, the Court of Appeal questioned this doctrine, and held that even if the plaintiff had any such lien, it must certainly be postponed to the wharfingers' lien for their charges. As to the cases where costs payable out of a fund are paid before division or apportioned on the different shares, see *post*, ch. IV., sec. II.

The Court of Chancery would not, except in charity suits where there was no relator (*Attorney-General v. Corporation of Chester*, 14 Beav. 338), and interpleader suits, directly make an order for the payment of costs between co-defendants; but that object was indirectly attained by ordering the costs of one defendant to be paid by the plaintiff, and received back by him from another defendant; see *ex. gr.* *Blenkinsopp v. Blenkins*

Lien for costs.

Order may now be made for payment of costs between co-defendants.

supp., 12 Beav. 568. The practice in this respect is now altered, and the defendant who is liable to the costs as between himself and his co-defendant, will be ordered to pay them directly to the co-defendant (*Rudow v. Great Britain Assurance Soc.* (C. A.), 17 Ch. D. 600).

Advance made to a plaintiff on account of costs.

Where there is a fund in Court in the suit, or the litigation is respecting an estate vested in trustees who are before the Court, the Court has in some instances allowed an advance to be made to the plaintiff, if in poverty, on account, to enable him to prosecute the suit (*Jones v. Coetzer*, 2 Atk. 399; *Hindley v. Appleby*, 2 Cox. 409; *Perishal v. Squire*, 1 Dick. 31, S. C. Beames, app. 22; *Dickenson v. Marie*, 2 Dick. 582, S. C. Beames, app. 3), especially where some heavy expense, such as the costs of an action at law (*Perishal v. Squire*), or of a commission abroad (*Dickenson v. Marie*), had to be incurred. "But there must be very special circumstances indeed to warrant an advance of money for the purpose of feeding litigation" (*per* V. C. Leach in *Tillitson v. Hargreaves*, 4 Mad. 172, where the application was refused). There is no recent reported case where such an application has been granted; and see *Nye v. Maule*, 4 My. & C. 342; *Peck v. Beechey*, 2 Sim. 40, where it was refused. The Lords Justices have allowed a suit to perpetuate testimony to be instituted with the approbation of the Master in lunacy, if he should be satisfied that there was reasonable ground for it, such costs as the Master should think proper being paid out of the estate of the lunatic (*In re Taylor*, 6 Ch. 416).

To whom payable. Parties severing.

Parties representing the same interest, if they sever their defences, will not, except under special circumstances, be allowed separate sets of costs, but one set only between them (*Hughes v. Key*, 20 Beav. 397; *Bull v. West London School Board*, 34 L. T. 674; *De Burgh v. Chichester*, 19 W. R. 221); though as to the difficulty of laying down any precise rule, see *Greedy v. Lavender*, 11 Beav. 417. In *Eden v. Naish*, 7 Ch. D. 781, where two

defendants severed upon a summons, and appeared by four counsel, the costs of only one counsel for each defendant were allowed. Where one of a class of defendants is separately charged, and relief is prayed against him, he is entitled to appear separately and have his costs, though such charge and the prayer for relief be struck out by amendment (*Shaw v. Johnson*, 9 W. R. 629). Where the bill charged fraud, the defendants who severed and did not oppose the plaintiff's claim, had their costs of separate answers (*Clinch v. Financial Corporation*, 5 Eq. 450). Where several defendants have a joint fiduciary interest, the circumstance that one of them has also a beneficial interest is not a ground for their severing, unless the beneficial interest conflicts with their duty (*Gaunt v. Taylor*, 2 Beav. 346, though separate costs were for special reasons allowed in that case). And generally trustees and their cestuis-que-trust are not justified in severing (*Farr v. Sheriffe*, 4 Ha. 528; *Reade v. Sparkes*, 1 Mol. 8); and so with mortgagor and mortgagee (*Remnant v. Hood*, 27 Beav. 74, 613; *Greedy v. Lavender*, 11 Beav. 417). In *Aldridge v. Westbrook*, 4 Beav. 212; *Wiles v. Cooper*, 9 Beav. 294, 299; and *Russell v. Nicholls*, 9 Jur. 613, residence in different parts of the country was held sufficient cause for severing; and see *Hamilton v. James*, 1r. R. 11 Eq. 223; but see *contra*, *Farr v. Sheriffe*. In *Garey v. Whittingham*, 5 Beav. 268, husband and wife, living apart, were held entitled to one set of costs only between them; and see *Mildmay v. Quicke*, 46 L. J. Ch. 667. Two trustees having severed, and one imputing misconduct to the other, the Court, having no evidence but the answers, gave one set of costs only, and left the division to the taxing master (*Course v. Humphrey*, 26 Beav. 402; *Attorney-General v. Wyeille*, 28 Beav. 464). But if the evidence is clear, the costs will be given wholly to the innocent trustee (*Webb v. Webb*, 16 Sim. 55). In *Meldrum v. Hayes*, 21 W. R. 746, an executor, whose co-executors, acting in opposition to his

advice, had brought heavy losses upon the estate, was held justified in severing and his representatives, he having died *pendente lite*, were held entitled to a separate set of costs. But an allegation by one trustee that he knows nothing of the accounts prayed for, is not a ground for separate costs (*Hobson v. Cash*, 1 Jur. N. S. 864). In *Prince v. Hine* (2, 27 Beav. 345, two trustees, who had severed, having been ordered to pay a sum of money into Court, and one of them having paid the whole amount, one set of costs only was allowed, and was directed to be paid to the trustee who had paid the money, the other trustee's share being a contribution towards that amount. An innocent trustee ought to join as plaintiff in a suit to recover trust funds lent in breach of trust, otherwise he will not receive any costs as defendant (*Hughes v. Key*, 20 Beav. 397).

Personal charges of fraud against a trustee will, it seems, justify his co-trustees in declining to join with him in his defence (*Walters v. Woodbridge*, 7 Ch. D. 504, where a trustee, who defended a suit quit trustee, had his costs out of the estate, although he at the same time defended his own character).

As to the right of a trustee, in whom property of a banking company is vested, to defend by a separate solicitor when the right to bring and defend actions is given to the directors, see *Heinrich v. Sutton*, 6 Ch. 220. A cestui-que-trust about to bring an action should apply to his trustee to join him as co-plaintiff with an indemnity; if he refuses he must bear his own costs, but if he is not applied to, the plaintiff must pay them (*Reade v. Sparkes*, 1 Moll. 8). Persons not parties to the action having liberty to attend proceedings under a judgment or decree are allowed one set of costs only, if they are in the same interest (*Stevenson v. Abington*, 5 L. T. 719; 11 W. R. 936).

Several
defendants
appearing

On the other hand, if one solicitor appears for two or more defendants who make separate defences, and the action

is dismissed with costs as to one of them, such defendant will only be entitled to receive from the plaintiff the costs of the proceedings which relate exclusively to his defence, and a proportionate part of the costs of the proceedings taken jointly for all the defendants for whom the solicitor appears (*Re Colquhoun*, 5 De G. M. & G. 35); and the same rule applies as between the solicitor and any one of the several defendants for whom he appears (*ibid.*); and see *Harner v. Harris*, 1 Russ. 155, 157; *Davies v. Chatwood*, 11 Ch. D. 244. But the rule in *Re Colquhoun* does not apply to the solicitor to the suitor's fee fund, appearing for a defendant at the instance of the plaintiff, and also for defendants defending *in forma pauperis* (*Frazer v. Thompson*, 1 Giff. 337). However, by Cons. Ord. XL. r. 12, the taxing master is to consider whether two or more defendants employing the same solicitor ought to have defended separately; and there is no appeal from the taxing master's discretion (*Beattie v. Lord Ebury*: 22 W. R. 68; 43 L. J. Ch. 80; 29 L. T. 419).

Where costs are directed to be paid out of a fund in Court, they are, as observed above, ordered to be paid to the solicitors of the parties directly. Where a solicitor, by arrangement with his client, retired from the suit, and another solicitor conducted it thenceforth to its conclusion, it was held that the latter solicitor had priority for his costs (*Cormack v. Beisly*, 3 De G. & Jo. 157; and see *Re Barnard*, 14 Beav. 18). In *Prebble v. Boghurst*, 1 R. & M. 744, it was discovered after taxation that the agent was not a solicitor, and the master was directed to review his taxation, and disallow all items except disbursements to the clerk in Court, though some of the costs were incurred at law, and the agent was an attorney; and see *Coates v. Hawkyard*, 1 R. & M. 746; *Sumner v. Ridgway*, *ibid.*, 748.

If the costs are payable to a partnership firm, they may be directed to be paid to the members of the firm as co-

by the
same
solicitor.

Costs out
of a fund
paid to
solicitors.

Costs pay-
able to a
partner-
ship firm.

partners, naming them in the order by their Christian and surnames. Any member of the firm can then receive them (Seton, p. 121).

Apportionment of costs:

i. As to time.

ii. Amongst defendants.

iii. With reference to subject-matter of the suit.

We have already seen that the costs of the suit may be apportioned (1) with respect to time, the costs up to a certain period being given to the plaintiff, and the subsequent costs to the defendant or *vice versa* (see *ante*, p. 94); (2) with respect to different defendants both when payable by and to them (see *ante*, p. 121, *seq.*); and (3) some instances have been given of apportionment with respect to the subject-matter of the suit, as where the plaintiff or defendant succeeds, but has to pay the costs occasioned by unfounded charges of fraud, or other statements of fact failing in the evidence, or of unnecessary evidence or other proceedings, &c. (see *ante*, pp. 90, 106, 112, 113). The same principle applies where the suit embraces more than one object. In *Dunn v. Morris*, 5 W. R. 345, the costs of a suit to administer two estates vested in the same trustees upon the same trusts were ordered to be paid out of the two funds equally; and see the cases where the costs are apportioned between the real and personal estates, *post*, ch. IV, sec. 11. So in *Irby v. Irby*, 24 Beav. 525, the costs of a suit to administer the estate of a deceased person, and incidentally to execute the trusts of a settlement under which he was tenant for life, were payable, as of an administration suit, out of the assets of the deceased; but, so far as they were increased by its being a suit to execute the trusts of the settlement, out of the settled funds; and in *Stewart v. Marquis of Donegal*, 2 Jo. & Lat. 636, the costs of raising a family charge were borne by the estate, but the costs of dealing with it when raised were payable out of the fund itself; and see *Boycoll v. Newman*, 4 W. R. 707; 2 Jur. N. S. 702. But the Court is not inclined to make refined distinctions on the apportionment of costs, on account of the expense of apportionment (*Kaull v. Coltee*, 16 Beav. 81). And in *Jones v. Farrell*, 1 De G. & J. 208, Lord Cranworth

The Court not inclined nicely to apportion costs.

held that the plaintiff ought to pay the costs of part of the case, and was entitled to receive the rest ; “ but,” he added, “ my experience leads me to say that such a distribution generally leads to a great deal of unnecessary expense to both parties, and I think the best practical course is to cut the knot by saying that there shall be no costs given or received ; ” and see *Bower v. Cooper*, 2 Ha. 408, 410 ; *Tanner v. Heard*, 23 Beav. 555 ; *Bankart v. Tennant*, 10 Eq. 141 ; *Dicks v. Brooks*, 15 Ch. D. 41 ; *Metzler v. Wood*, 8 Ch. D. 606.

Where an apportionment of costs is directed, the order may be framed in one of two ways. In one way it may be so expressed as to involve an apportionment of the whole of the general charges ; in the other way it may be expressed so that the exception only extends to the excess of expense incurred in consequence of the excepted matter (1 Smith's Ch. Pr. 1085). Where the exception is of “ so much of *the costs of the suit* as,” &c. ; or the direction is to “ tax the costs of the plaintiff of this cause, except so far as *such costs* have been occasioned,” &c. ; or, “ that the plaintiff's action, so far as it seeks relief on the footing, &c., be dismissed with costs,” the general charges are apportionable ; see *Highington v. Grant*, 1 Beav. 230 ; *Proud v. Bates*, W. N. (1866) 22 ; 14 W. R. 306 ; 1 Smith's Ch. Pr. 1085, 1086, and the MS. cases there cited ; and Seton, pp. 117, 118 ; forms 16, 17, 18. On the other hand, a direction to “ tax the costs of the plaintiff (or defendant) of this action, except so far as such costs have been increased by,” &c., followed by a direction “ to tax the costs of the defendant (or plaintiff) so far only as the same have been increased by,” &c. (Seton, p. 118, form 19) ; or an order dismissing “ so much of the information as seeks,” &c., without costs, and directing that the defendant should pay to the informant “ his costs of the suit ” (*Attorney-General v. Lord Carrington*, 6 Beav. 454) ; or a direction for the defendant to pay to the plaintiff “ so much of *the costs* as have been occasioned by,” &c. (*Morris v. Simmons*, 1 Smith's

Apportionment :
i. including proportion of the general charges of the suit.

ii. not including any part of the general charges.

Ch. Pr. 1086, n. 7), does not involve an apportionment of the general charges.

In *Begbie v. Fenwick*, *Fenwick v. Begbie*, 6 Ch. 869, original and cross suits, a decree made in both dismissed the bill in the second suit with costs, so far as it sought to set aside certain securities, and ordered that the costs of B., the plaintiff in the first suit, "so far as the same have been increased by the answer of F.," the plaintiff in the second suit, should be taxed and paid by F. to B. It was held that the costs of so much of B.'s bill as was directed to anticipating F.'s answer were included in this, and that the costs of the hearing must be apportioned in like manner. In the cross suit the bill, which was for two objects, was, as to the first, dismissed with costs, and F. had to pay a proportion of the general costs of the suit, following *Heighington v. Grant*, 1 Beav. 230; *Hurdy v. Hull*, 17 Beav. 355.

In an action for an injunction the plaintiff succeeded on one of the three points in issue and failed on the other two; an order was made to tax the costs of the defendant of so much of the action as had been dismissed, and to tax the costs of the plaintiff of the rest of the action, with a set-off of the costs of the plaintiff against those of the defendant; under this order the taxing-master taxed the costs as a whole and apportioned them in thirds between the parties, allowing the plaintiff one-third and the defendant two-thirds; the plaintiff objected to this mode of taxation, and contended that each item ought to be gone into and allowed to each party according as it was incurred in respect of that part of the claim on which he had succeeded. The taxing-master overruled the objection, saying that if it had been intended to give the plaintiff anything more than he had allowed him the order would have given him the costs of the action "except so far as they had been increased by the addition of the issues on which he had failed;" and on appeal the judge held that the taxing-master was right (*Knight v. Pursell*,

49 L. J. Ch. 120; 28 W. R. 90; W. N. (1879), 182; 41 L. T. 581); and see *Sparrow v. Hill*, 7 Q. B. D. 362. *8&B D. 1179*

Where the plaintiff in a light and air case succeeded as to eight windows and failed as to five, no costs were given of the suit in the ordinary way, but it was left to the taxing-master to apportion the costs by finding how much of the costs related to the five windows and how much to the eight, the balance being paid to the party entitled to most costs (*Bourke v. Alexandra Hotel Co.*, 25 W. R. 782). And see *Cracknall v. Janson*, 11 Ch. D. 1, 23.

In *Umfreville v. Johnson*, 10 Ch. 580, two plaintiffs joined in a suit to restrain a nuisance; the second plaintiff got an injunction, with costs to be paid by the defendant; but as regarded the first plaintiff, the bill was dismissed, and the costs occasioned by his being added were ordered to be deducted from the costs so to be paid by the defendant.

Where a claim and a counterclaim are both dismissed with costs, the plaintiff pays to the defendant the general costs of the action, and the defendant pays to the plaintiff only the amount by which the costs have been increased by reason of the counterclaim; there is no apportionment (*Mason v. Brentini*, (C. A.) 15 Ch. D. 287; 29 W. R. 126; 42 L. T. 726; 43 L. T. 557; *Saner v. Bilton*, 11 Ch. D. 416; 48 L. J. Ch. 545; 27 W. R. 472; 40 L. T. 134; and see the opinion of the taxing-master in the last case).

Claim and counter-claim, both dismissed with costs.

If both parties recover something, the plaintiff on his claim and the defendant on his counterclaim, then, if the action is tried by a jury and no special order is made as to costs, the plaintiff is entitled to the general costs of the action, and the defendant to the costs of the counterclaim; see *Baines v. Bromley*, 6 Q. B. D. 691; *Potter v. Chambers*, 4 C. P. D. 457; 48 L. J. C. P. 274; 27 W. R. 414; 39 L. T. 350; *Blake v. Appleyard*, 3 Ex. D. 195; 47 L. J. Ex. 407; 26 W. R. 592; *Hallinan v. Price*, 27 W. R. 490; 41 L. T. 627; *Neale v. Clarke*, 4 Ex. D. 286; 41 L. T. 438; *Davidson v. Gray*, 5 Ex. D. 189 n.; 40 L. T. 192 (C. A.); 42 L. T. 834; *Cole v. Firth*, 4 Ex.

Costs in cases of counter-claims.

D. 301 ; 40 L. T. 857 ; *Stoble v. Taylor*, 5 Q. B. D. 569 ; 49 L. J. Q. B. 857 ; 29 W. R. 49 ; 43 L. T. 208). If, however, the counterclaim is not in the nature of a cross-action, but is a mere set-off, and the balance is in favour of the defendant, then it would seem that the defendant ought to have the general costs of the action (*Baines v. Bromley*). In that case, Brett, L. J., expressed a decided opinion that the rule ought to be as follows, viz. where there is a claim with issues on it, and a counterclaim (which is not a set-off but is in the nature of a cross-action) with issues on it, and the plaintiff succeeds on the claim, and the defendant succeeds on such counterclaim, the taxation, if not otherwise ordered, should be by taxing the claim as if it and its issues were an action, and by taxing the counterclaim as if it and its issues were also an action, and the allocatur for costs should be given for the balance in favour of the party in whose favour is such balance; the master on taxation dividing items which are common to both actions; and see *Watersfield v. Bradnum*, 3 Q. B. D. 326 ; *Chutfield v. Seljwick*, 4 C. P. D. 459 ; 27 W. R. 790.

The County Courts Act, 1867, s. 5, does not apply to counterclaims at all (*Blake v. Applegard*).

Set-off.

Where the costs of a suit had been apportioned, so that costs were payable by the plaintiff to the defendant and also by the defendant to the plaintiff, it was the practice in the Court of Chancery to direct the one set of costs to be set off against the other, and the balance only to be paid. This rule has been adopted under the new procedure; and it is now provided (R. S. C. (Costs) Sched. r. 19) that in any case in which a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such officer may

allow or certify the costs to be paid, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered. An order to set off may be obtained in chambers (*Robarts v. Bude*, 8 Ch. D. 198). For forms, see Seton, pp. 117, 118.

Where money is payable by the defendant to the plaintiff, and costs are directed to be paid by the plaintiff to the defendant, or *vice versa*, the costs may be set off against the money; see *Cooper v. Pitcher*, 4 Ha. 485; *Pringle v. Gloag*, 10 Ch. D. 676; 48 L. J. Ch. 380; 27 W. R. 574; 40 L. T. 512, where the money was payable by the plaintiff under an award, and the plaintiff had absconded; and see the cases occurring in administration actions, *post*, p. 190. Nor is the right to set off interfered with by the ordinary solicitor's lien for costs (*Pringle v. Gloag*; *Robarts v. Bude*, 8 Ch. D. 198; *Mercer v. Graves*, L. R. 7 Q. B. 499); but see *ex parte Cleland*, 2 Ch. 808. But costs will not be set off against sums due on an unascertained account (*Whalley v. Ramage*, 8 L. T. 499). In *Wright v. Chard*, 4 Drew. 702, where the bill was dismissed with costs as against husband and wife, defending jointly, so far as it charged the wife's separate estate, and other payments were directed to be made by the husband, it was held that the costs being payable on the husband's sole receipt (see *post*, Ch. VI., s. VIII.), a set-off arose. Costs payable under different orders in the same suit may also be set off against each other. In *Bryon v. Saloon Omnibus Co.*, 4 Drew. 546, the plaintiff had been ordered to pay the costs of a motion in the cause refused, and subsequently the defendant had to pay to the plaintiff other costs; execution having previously issued for the first set of costs, it was held on motion that the defendants were entitled to a set-off on their undertaking not to levy more than the balance. In *Cuttell v. Simons*, 6 Beav. 304, costs ordered by the Master of the Rolls to be paid by the plaintiff to the defendant were ordered, on

Set-off
of costs
against
money
payable.

Not inter-
fered with
by solicitor's
lien.

motion before the Master of the Rolls, to be set off against costs ordered by the Lord Chancellor to be paid by the defendant to the plaintiff. In *Throckmorton v. Crouley*, 3 Eq. 196, costs of a suit were set off against costs of a summons to vary a certificate; and see *Roberts v. Budge*, 8 Ch. D. 198, where the defendant changed his solicitor between the two orders. Costs payable in two suits in Chancery, in which the same estate was being administered, could be set off one against the other (*Lee v. Pain*, 4 Ha. 255); but not the costs of a suit against the costs of an action at law between the same parties, (*Wright v. Mulie*, 1 S. & S. 206). The Court of Bankruptcy follows the practice of the old Court of Chancery in this respect; see *ex parte Griffin, in re Adams*, 14 Ch. D. 37; 49 L. J. Bkcy. 28; 28 W. R. 714; 42 L. T. 704, where the Court of Appeal refused to allow the costs of proceedings in the Queen's Bench Division to be set off against costs of proceedings in bankruptcy. Nor is there any right of set-off under r. 19, where, though the parties happen to be the same, the proceedings in which the costs are incurred are really separate and distinct (*Boyer v. Hemming* (C. A.), 5 Q. B. D. 609).

Where costs are accidentally omitted from the decree.

After a decree was passed, the Court refused on petition to give a defendant, whose costs were accidentally omitted from the decree, his costs of the suit, although he was a mere trustee, and would have been entitled to them (*Colman v. Strell*, 2 Cox, 206). In *Armstrong v. Storer*, (2) 27 Beav. 471, the costs of certain parties were ordered to be paid out of a fund, previous to its distribution, to a firm of solicitors, who had acted for them since 1840, but were not their solicitors on the record; another firm who had acted till 1840 and had not been changed, having had no notice till the fund was distributed, obtained on petition an order for the payment of their costs by the beneficiaries. As to the means of recovering costs reserved till the hearing, and then omitted to be disposed of, see *ante*, pp. 49, 50.

The mere fact that, after action brought, the defendant has conceded to the plaintiff the principal relief sought, does not disentitle the plaintiff to bring the action to trial for the purpose of getting his costs; but where the parties have compromised the action, so that everything is settled but the question of costs, the Court will refuse to decide the question of costs at the trial: *per* Jessel, M. R., in *Storr v. Corporation of Maidstone*, W. N. (1878) 219; and see further on this point, *Roberts v. Roberts*, 1 S. & S. 39; *Gibson v. Lord Cranley*, 6 Mad. 365; *Whalley v. Lord Suffield*, 12 Beav. 402; *Kelly v. Hooper*, 1 Y. & C. C. C. 197; *Fruella v. Weller*, 2 R. & M. 247; *Burgess v. Hills*, 26 Beav. 244; *Burgess v. Hatley*, *ibid.* 249; *Morgan v. Great Eastern Ry. Co.*, 1 H. & M. 78; *Griffin v. Brady*, 39 L. J. Ch. 136; 18 W. R. 130. But the plaintiff should not bring the cause to a hearing, without first applying for the defendant's consent to have the costs disposed of on motion; see *ante*, p. 78. Where the matter in dispute has been determined otherwise than by the parties themselves, the Court will always hear the cause for the purpose of determining the question of costs (*Landed Estates Co. v. Weeding*, W. N. (1871) 148).

As to what costs are included in the costs of the action, see "Costs of Demurrers," *ante*, p. 26; "Costs of Amendments," *ante*, p. 32; "Costs occasioned by scandalous and embarrassing matter," *ante*, p. 36; "Costs of Motions and Petitions generally," *ante*, p. 46; "Taxation of Costs," *post*, ch. VIII. The costs of speaking to the cause on minutes may also be included in the costs of the cause. "If there is fair ground for the application, and there has been no improper opposition, the costs are usually made costs in the cause; and the decree, &c., is often post dated, so as to include the costs of the day."—*Seton*, p. 1546. But a party moving to vary the minutes as settled by the Registrar does so at his own peril as to costs (*Prince v. Howard*, 14 Beav. 208; *British Dynamite Co. v. Krebs*, 25 W. R. 846).

Whether action may be heard on the question of costs alone.

What are costs in the action.

Costs of speaking to on minutes.

Where plaintiff makes default at the trial.

If the plaintiff does not appear when the action is called on for trial, the defendant, if he has no counter-claim, will be entitled to judgment, dismissing the action with costs (R. S. C. Ord. XXXVI. r. 19; *Farrell v. Wale*, 36 L. T. 95); without proving that he has been served with notice of trial (*James v. Crow*, 7 Ch. D. 410; 47 L. J. Ch. 200; 26 W. R. 236; 37 L. T. 749; *Robson v. Robson*, 22 S. J. 70; *Ex parte Lows*, 7 Ch. D. 160; 47 L. J. Bkey. 24; 26 W. R. 229; *Cockle v. Joyce*, 7 Ch. D. 56; 47 L. J. Ch. 148; 26 W. R. 41; 37 L. T. 428, is overruled on this point). A test action has been dismissed with costs under this Order; see *Robinson v. Chadwick*, 7 Ch. D. 878; 26 W. R. 556; but another may be substituted for it (*Amos v. Chadwick*, 9 Ch. D. 459; 26 W. R. 840; 39 L. T. 53). In the absence of agreement, the plaintiff in such an action has no right to be indemnified against costs by the other plaintiffs (*ibid.*). Where the action had abated by the bankruptcy of the sole plaintiff, and no notice of the action had been served on the trustee, the action was simply struck out of the list (*Ebleidge v. Burgess*, 7 Ch. D. 411). If the defendant has a counter-claim, he must, in order to obtain judgment on it, prove such claim so far as the burden of proof lies upon him (R. S. C. Ord. XXXVI. r. 19). For the former practice, where the plaintiff made default at the hearing, see Beames, 236; Smith's Ch. Pr. 668; *Ellis v. King*, 5 Mod. 21; *Rogers v. George*, 17 Ves. 130.

Where defendant makes default at the trial.

Similarly, if the plaintiff appears, and the defendant does not, the plaintiff may prove his claim so far as the burden of proof lies on him (R. S. C. Ord. XXXVI. r. 18); and the Court will then give him such decree as he may be entitled to. The plaintiff need not prove service of notice of trial (*Chorlton v. Dickie*, 13 Ch. D. 160; overruling *Cockshott v. London Cab Co.*, 47 L. J. Ch. 126; 26 W. R. 31). In *Williams v. Brisco*, 29 W. R. 713, a defendant obtained an order to set aside a judgment which had been entered against him in default, and

liberty to appear and defend the action, upon the terms of paying to the plaintiff all his costs of the action subsequent to the delivery of the statement of claim. As to the former practice, see *Hokewell v. Webber*, 9 Ha. 541; *Browne v. Smith*, 5 Jur. 1195; and notes to Cons. Ord. XXIII. r. 12, in Morgan's Ch. Acts and Orders, 4th ed. As to the terms on which an action dismissed for non-appearance of the plaintiff may be restored, or a judgment obtained through non-appearance of the defendant may be set aside, see *ante*, p. 90.

SECT. X.—*Costs of Proceedings in Chambers.*

If any party appears upon any application or proceeding at chambers, in which he is not interested, or upon which, according to the practice of the Court, he ought not to attend, he will not be allowed any costs of such appearance, unless the Court or judge shall expressly direct such costs to be allowed (R. S. C. (Costs) Sched. r. 21). And by Cons. Ord. XI. r. 28, parties attending proceedings in chambers without previous leave of the judge, get no costs unless by special order.

Party im-
properly
attending
will get no
costs of so
doing.

To entitle a person interested in an administration action to the costs of attending proceedings in chambers under the decree, he must attend by special leave of the judge; if he attend under the common order without special leave, he may be ordered to pay not only his own costs, but also the extra costs occasioned by his attending unnecessarily (*Sharp v. Lush*, 10 Ch. D. 468; 27 W. R. 528; *Re Marshall, Bowyer v. Marshall*, W. N. (1879), 12; and see R. S. C. Ord. XVI. r. 12b. (April, 1880), *post*, p. 190).

Special
leave to be
obtained.

“The law stands in this way, that any persons interested who ought to be served can, under the general practice, attend, as of course, the proceedings; but that does not entitle them to the costs of attending. That

is determined by the judge in chambers, who, under a general order,* decides what parties interested in the estate shall attend the taking of the accounts at the cost of the estate; that is the subject of a special application. I cannot prevent anybody attending the proceedings; if there were fifty people, I could not prevent them instructing fifty solicitors to attend all the proceedings; but if they did, they would not only pay their own costs where I found forty-eight of them unnecessary, but I should make them pay the extra costs occasioned by attending unnecessarily. That has always been the practice in my chambers since I have had the honour of sitting here." (*Sharp v. Lush*, 19 Ch. D. 473, *per* Jessel, M.R.).

By Cons. Ord. XXXV. r. 20, the judge may nominate one solicitor to represent a class; and any member of the class who insists on being represented by a different solicitor must pay his own solicitor's costs, and also all the extra costs occasioned by his being separately represented; and see *post*, p. 189. If the same solicitors appear for different parties in the same suit, the costs of only one attendance in chambers can be allowed; but the solicitors may have separate sets of costs of briefs to counsel, and for costs out of chambers (*Brown v. Gellatly*, W. N. (1867), 120, 15 W. R. 887; 16 L. T. 553). And where a receiver passed his accounts in chambers, and the same solicitor appeared both for him and for one of the parties in the suit, only one copy of the account was allowed (*Sharp v. Wright*, 1 Eq. 634).

Costs of
counsel
attending
at cham-
bers.

The costs of counsel attending at chambers will not be allowed, unless the judge certifies it to be a proper case for counsel to attend (R. S. C. (Costs) Sched. r. 14). This rule is from Cons. Ord. XL r. 29. Costs of counsel are allowed in all cases at the Rolls without certificate, except in applications for time (*Webb v. Fitzgerald*, W. N. (1875), 244).

* Cons. Ord. XXXV. r. 16.

Where a summons is adjourned into Court, the Court is to be understood to certify that it is a proper case to be heard by counsel, unless the contrary is stated (*Greville v. Greville*, 8 W. R. 130; 5 Jur. N. S. 1237; *Graham v. Graham*, Johns. 624). On an adjournment from chambers, costs are reserved without express direction (*Wallis v. Bastard*, 2 W. R. 47; and see *Leeds v. Lewis*, 3 Jur. N. S. 1290; *Dicken v. Homer*, 2 L. T. 276). Where the summons was adjourned into Court, and the point was then considered unarguable, the costs were made part of the costs of the proceedings in chambers (*Re Mitchell*, 33 L. J. Ch. 187; 12 W. R. 39; 9 L. T. 282; 9 Jur. N. S. 1272; but see *Clark v. Simpson*, 17 L. T. 559).

Where a summons is adjourned into Court.

Where a summons, which ought to have been brought before the judge personally in chambers, was adjourned into Court at the suggestion of all parties, V. C. Stuart not only did not make the party taking out the summons, who entirely failed, pay costs, but gave him £5 for costs (*Halliley v. Henderson*, 4 Jur. N. S. 202).

Where defendants, who had been ordered to produce documents, omitted, in their original affidavit, to state their desire to seal up part of a book, the costs of a subsequent summons for leave to do this, were made costs in the cause (*Talbot v. Marshfield*, 1 Eq. 6).

If an adjourned summons is refused with costs, this includes, as a rule, not only the costs of the adjournment into Court, but also the costs of the summons in chambers (*Re Ipstone Park Co.*, W. N. (1870), 7; 18 W. R. 285; *Beach v. Sleddon*, 39 L. J. Ch. 123; *Alcock v. Gill*, 21 L. T. 704; W. N. (1869), 270).

Costs where summons refused.

Costs follow a reversal of a decision of a judge at chambers (*Friend v. London Chatham & Dover Rail. Co.*, 25 W. R. 735). In *Real & Personal Advance Co. v. McCarthy*, 14 Ch. D. 188; 28 W. R. 418; 42 L. T. 48, where the defendants had offered in chambers what the Court considered proper terms, the plaintiffs were ordered to pay the costs of the adjournment into Court.

Where the chief clerk's certificate was referred back to him, and subsequently confirmed, the Court under the circumstances refused to make any order as to the costs of the summons and subsequent references (*Kelly v. Hadge*, 29 L. T. 387).

Costs of
abandoned
summons.

The costs of a summons taken out and abandoned, must be paid by the party taking it out (*Lister v. Bell*, 5 Jur. N. S. 115); and see *Tucker v. Hermann*, 24 L. J. Ch. 456.

Where
summons
cannot be
proceeded
with
through
non-
attendance
or neglect
of a party.

As to attendances at judges' chambers, where by reason of the non-attendance of any party (and it is not considered expedient to proceed *ex parte*), or where by reason of the neglect of any party in not being prepared with any proper evidence, account, or other proceeding the attendance is adjourned without any useful progress being made, the judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally; and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested (R. S. C. (Costs) Sched. r. 11). This rule is from Cons. Ord. XL r. 31; and see also Cons. Ord. XXXV, r. 11.

As to the power of the judge or master to allow extra fees for long attendance at chambers, or for cases of difficulty, see R. S. C. (Costs) Sched. r. 10; and as to costs of unnecessary or improper matter, see *ibid.*, r. 18, *ante*, p. 39. As to the costs of creditors proving their claims in chambers, see Cons. Ord. XL rr. 24, 25, *post*, Ch. IV., s. II. As to the costs of members of a class or next-of-kin proving their titles in chambers, see *post, ibid.* As to the costs of a purchaser in a sale under a decree, see *post*, Ch. VI., s. X. And as to the costs of proceedings under the Companies Acts, see *post*, Ch. V., s. I.

Applica-
tions for
time.

By R. S. C. (Costs) Sched. r. 22a. (April, 1880), the costs of an application for further time, in the absence of any order, are in the discretion of the taxing master.

SECT. XI.—*Costs of Appeals.*1.—*In the Court of Appeal.*

By R. S. C. Ord. LVIII. r. 15, "such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be directed under special circumstances by the Court of Appeal." Under this rule security for costs has been required in the following cases:—*Wilson v. Smith*, 2 Ch. D. 67; 45 L. J. Ch. 692; 24 W. R. 421; 34 L. T. 471, where the special circumstances were the appellant's poverty, and the great length of the evidence; *Clarke v. Roche*, 46 L. J. Ch. 372; 25 W. R. 309; 36 L. T. 78, where a County Court judge was a respondent, the appeal was a second appeal in a County Court matter, and had been twice argued before the Exchequer Division, and the appellants had failed to pay taxed costs already incurred; *Waddell v. Blockey*, 10 Ch. D. 416; 27 W. R. 233; 40 L. T. 286, where the appellant was insolvent, and three appeals had been brought when one would have sufficed; *Wilson v. Church*, 11 Ch. D. 576; 27 W. R. 843, where in a heavy case the appellants were ordered to pay £200 into Court; *Smith v. White*, W. N. (1879), 203, where there had been great delay in prosecuting the action; *Stock v. Hooper's Telegraph Works*, W. N. (1876), 230; *Re Tees Bottle Co.*, 20 S. J. 584.

Security for costs of appeal; R. S. C. Ord. LVIII. r. 15. When to be given.

It makes no difference that both parties are appealing (*Dence v. Mason*, W. N. (1879), 31).

The fact that the appellants are foreigners not domiciled in England is a "special circumstance," entitling the respondents to security (*Grant v. Banque Franco-Egyptienne*, 2 C. P. D. 430; 47 L. J. C. P. 41; 26 W. R. 68; 38 L. T. 622; *Naersness Shipping v. Royal Mail Co.* W. N. (1880), 133). So where the appellant is resident out of the jurisdiction (*Re Kathleen Mavourneen*, W. N. (1878), 215).

Appellant foreigner domiciled abroad.

Insolvent
appellant.

If an appellant is insolvent and the Court is of opinion that he is vexatiously and unreasonably prosecuting the appeal, he will be ordered to give security (*Usil v. Brouley*, 3 C. P. D. 206; 26 W. R. 371). Where the question at issue had not been previously considered in a Court of Error, the Court of Appeal refused to order an insolvent appellant to give security (*Rourke v. White Moss Colliery Co.*, 1 C. P. D. 556).

Poverty of
appellant.

The mere poverty of the appellant, it is now settled, is sufficient ground for requiring security (*Hartlock v. Ashberry*, 19 Ch. D. 84; 30 W. R. 112; and see *Gathercole v. Smith*, W. N. (1880), 102). An appellant who is clearly liable to give security ought to offer it without waiting for an application to be made to the Court, and such offer, if reasonable, ought to be accepted. If afterwards an application is made to the Court, the Court in dealing with the costs will consider whose conduct made the application necessary (*The Constantine*, 4 P. D. 156; 27 W. R. 747).

Appeal
from
winding up
order.

Wherever an order absolute for winding up a company has been made, and that order is appealed from by the company itself, without anyone else being made responsible for costs, the Court will be ready to entertain an application for security (*In re Diamond Fuel Co.*, 13 Ch. D. 400; 28 W. R. 309; 41 L. T. 373).

Applica-
tion must
be made
promptly.

An application for security must always be made promptly, otherwise it will be refused (*Corporation of Salford v. Goodwin*, W. N. (1880) 167).

In *Grant v. Banque Egyptienne*, 1 C. P. D. 143; 24 W. R. 339; 34 L. T. 470, it was held that after the costs incident to an appeal had been actually incurred by the respondent, and after the time had been fixed for hearing the appeal, it was too late to apply for security; and see *Ex parte Hutchins and Romer*, W. N. (1879), 99. The applicant must of course make good the grounds on which his application is based, otherwise it will be dismissed (*Potter v. Cotton*, W. N. (1879), 204).

Order
to give

It is not the practice of the Court of Appeal when order-

ing an appellant to give security for costs to fix a time within which this is to be done (*Polini v. Gray, Sturla v. Freccia*, 11 Ch. D. 741; 28 W. R. 81; 40 L. T. 861, explaining on this point, *In re Ivory*, 10 Ch. D. 372); if the order is not complied with in a reasonable time, the respondent may move to dismiss the appeal for want of prosecution; but what is a "reasonable time," must depend on the circumstances of each case (*Polini v. Gray, Sturla v. Freccia; Vale v. Oppert*, 5 Ch. D. 633; 25 W. R. 610). Where an appellant had neglected to comply with the order for nine months, the appeal was dismissed with costs for want of prosecution (*Judd v. Green*, 4 Ch. D. 784; 46 L. J. Ch. 257; 25 W. R. 293; 35 L. T. 873); and see *Ex parte Isaacs, in re Baum*, 10 Ch. D. 1; 47 L. J. Bkey. 111; 27 W. R. 297; 39 L. T. 520; *Kanitz v. Scarborough*, W. N. (1878), 216. *see addenda ante p 1x*

security must be complied with within a reasonable time;

or the appeal will be dismissed.

Security may be ordered either by payment into Court or by bond with sureties (*Phosphate Sewage Co. v. Hartmont*, 2 Ch. D. 811, where security was ordered to be given for £200, the costs of the application to follow the costs of the appeal).

Security how to be given.

It is not necessary to obtain leave to serve an appellant with notice of motion for security for costs (*Grills v. Dillon*, 2 Ch. D. 325; 45 L. J. Ch. 432; 24 W. R. 481; 34 L. T. 781).

The Court of Appeal can require such security as it thinks fit to be given for the costs of a bankruptcy appeal, notwithstanding rule 145 of the Bankruptcy Rules, 1870 (*Ex parte Isaacs, in re Baum*, 9 Ch. D. 271).

Bankruptcy appeal.

Upon an appeal from the Admiralty Division the Court of Appeal refused to order the defendant to give security for costs, although his ship had been arrested and released on bail, and he had obtained a stay of execution pending the appeal (*The Victoria*, 1 P. D. 280; 24 W. R. 596).

Admiralty appeals.

Under the practice in chancery a deposit of £20 was required in all cases where a petition of appeal or re-

Former practice in chancery.

hearing was presented; but this amount might be increased in a proper case (*Corporation of Hastings v. Ivall*, 9 Ch. 758).

R. S. C.
Ord. LVIII,
r. 5, 1875.

A success-
ful appell-
ant will, as
a general
rule, get
his costs.

By R. S. C. Ord. LVIII. r. 5, the Court of Appeal has power to make such order as to the costs of the appeal as may seem just. "Under the new law costs are in the discretion of the Court; and the opinion of the judges of the Court of Appeal is that, as a general rule, the successful appellant will get his costs. The old rule of this Court, that the unsuccessful appellant has to bear his own costs, is no longer to be acted upon unless the particular Court in the particular case shall make an order to the contrary;" *Memoirandum* 1 Ch. D. 41, *per* James, L. J., *Olsson v. Wright*, 45 L. J. Ch. 1. And see *Crawford v. Jenson*, 11 Ch. D. 1, 23, 27 W. R. 851; 40 L. T. 640; and for the former practice, *Dewey v. Hansel* (No. 2) 6 Ch. 138. The rule applies to Admiralty appeals (*The Candor v. The Seconna*, W. N. (1879), 67; *The City of Berlin*, 2 P. D. 187; 25 W. R. 793); to appeals from the Palatine Court (*Anderson v. Welsby*, W. N. (1876), 230, and see *Lee v. Nuttall*, 12 Ch. D. 61); to County Court appeals (*Abbey v. Sadywick*, 15 Eq. 245); and to bankruptcy appeals (*Ex parte Masters*, 1 Ch. D. 113; 45 L. J. Bkey. 18; 24 W. R. 113; 33 L. T. 613). But a trustee in bankruptcy who is respondent to a successful appeal will not be ordered to pay costs personally (*Ex parte Stapleton, In re Nuthall*, 10 Ch. D. 586). An appellant who failed in proving allegations of fraud, but succeeded on a mere point of law, was deprived of his costs (*Ex parte Cooper, in re Baum*, 10 Ch. D. 313); and see *in re Harrison*, 13 Ch. D. 603. And in general when an appellant succeeds on a point not raised in the Court below, he will be allowed the costs in the Court below, but not the costs in the Court of Appeal; see *Hussey v. Horne Payne*, 8 Ch. D. 670, 47 L. J. Ch. 751; affd, 4 App. Cas. 311. In *ex parte Harris, in re James*, 19 Eq. 253, an appellant who succeeded only on a ground not raised in the Court of first instance was made to pay the costs of the original

hearing, *sed qu.* Where the Court of Appeal reverses the decision below and dismisses the action with costs, this will not include costs incurred in chambers under the decree which is reversed; to obtain these costs a special order is necessary (*Marshall v. Berridge*, 19 Ch. D. 245).

The Court of Appeal cannot annul a direction in a judgment previously delivered that a third party shall pay the costs of the interlocutory proceedings taken to bring him before the Court, although by the judgment in the action it is ordered that he be dismissed from the action with costs to be paid by the defendants (*Beynon v. Godden*, 4 Ex. D. 246; 48 L. J. Ex. 80).

An action was dismissed, and as against C. and D., two of the defendants, without costs; they both appealed on the ground that the dismissal ought to have been with costs, and that an inquiry as to certain damages should have been granted. The plaintiffs gave a cross notice of appeal; the cross appeal having wholly failed, and the other appeal having succeeded as to the damages, held, that C. and D. were entitled to the costs of both appeals, but that the Court could not vary the order of the Court below as to costs (*Graham v. Campbell*, 7 Ch. D. 490; 47 L. J. Ch. 593; 26 W. R. 336; 38 L. T. 195). No variation in the order of the Court below as to costs will be made when the appeal is dismissed, even if the Court of Appeal considers that the order was erroneous, provided that the judge below had a discretion in the matter, and has exercised it as he thought right (*Harpham v. Shacklock*, 19 Ch. D. 215).

A respondent, who, after the time for appealing has expired, knowingly allows his opponent to incur expense in preparing for the appeal, without telling him that he intends to object that the appeal is too late, may lose his costs (*in re Blyth & Young*, 13 Ch. D. 416). And if a respondent takes the objection that the notice of appeal was given too late, and the appeal is dismissed on that ground, the appellant will not be ordered to pay the costs

of affidavits filed by the respondent after the appeal was set down (*Ex parte Fardon's Vinegar Co., In re Jones* 14 Ch. D. 285; 28 W. R. 821; and see *Mitchell v. Condy*, W. N. (1881), 83).

R. S. C.
Orl.

LVIII. r. 6.

If a respondent omits to give notice that upon the hearing of the appeal he will contend that the decision of the Court below should be varied, this will be ground, in the discretion of the Court of Appeal, for an adjournment of the appeal, or for a special order as to costs (R. S. C., Ord. LVIII. r. 6). A respondent who has given cross notice of appeal under this rule is in the same position as to costs as if he had presented a cross appeal (*Harrison v. Cornwall Minerals Ry. Co.*, 18 Ch. D. 334). Where there were two respondents to an appeal, one of whom gave cross-notice of appeal affecting his co-respondent, the Court made an apportionment of the costs of the appeal (*ibid.*).

Where in the Court below the judge deprived the successful party of his costs, and no notice of his intention to ask for such costs was given by him, it was held that it was not open to him when respondent on the appeal to ask for such costs (*Harris v. Aaron*, 4 Ch. D. 749; 46 L. J. Ch. 488; 25 W. R. 353; 36 L. T. 43).

Where the appellant gave notice to a respondent whose costs the appellant had been ordered to pay that no alteration in the order as to his costs was asked for, and offered to pay his costs, the respondent was not allowed his costs of appearing on the appeal (*Upmann v. Elkun*, 7 Ch. 130).

When on an appeal a notice has been given by the respondents that they intend to apply to have the judgment below varied, and the appeal is dismissed, the appellants must pay the costs of the appeal except such as were occasioned by the notice (*The Lauretta*, 4 P. D. 25; 48 L. J. P. D. & A. 55; 27 W. R. 902; 40 L. T. 444).

R.S.C.,
Orl.
LVIII. r.
12, party

Any party printing evidence for the purpose of an appeal without an order of the Court below or the Court of Appeal, or a judge of either, shall pay the costs thereof,

unless the Court of Appeal or a judge thereof, shall otherwise order (R. S. C., Ord. LVIII. r. 12).

Copies of the judge's notes were ordered to be printed for use on an appeal by Lindley, J. (W. N. (1876), 23). The charge for a copy of a shorthand writer's notes of the proceedings in a County Court was allowed as part of the costs of an appeal (*Ex parte Sawyer, in re Bowden*, 1 Ch. D. 698).

The costs of short-hand notes of evidence in the Court below are not usually allowed upon an appeal, and only where a special case is made for allowing them (*In re Duchess of Westminster Co.*, 10 Ch. D. 307; 27 W. R. 539; 40 L. T. 300; *Kelly v. Byles*, 13 Ch. D. 682; 49 L. J. Ch. 181; 28 W. R. 585; 42 L. T. 338, where James, L. J., said the Court strongly discouraged shorthand notes of evidence); see also *Hill's Executors v. Managers of Metropolitan Asylum District*, 49 L. J. Q. B. 668; 28 W. R. 664; W. N. (1880), 98; and see as to the costs of shorthand notes generally, *post*, ch. VIII., sec. VII.

Where the *vidi voce* evidence was voluminous and indispensable for the proper argument of the appeal the costs of printing and transcribing it were allowed, but not the costs of taking the notes by the shorthand writer (*Biggsby v. Dickinson*, 4 Ch. D. 24; 46 L. J. Ch. 280; 25 W. R. 89, 122; 35 L. T. 679).

If the appellant does not appear when his appeal is called on for hearing, it will be dismissed with costs without proof by the respondent of service of notice of appeal (*Ex parte Lows, in re Lows*, 7 Ch. D. 160; 47 L. J. Bkey. 24; 26 W. R. 229).

A party applying to discharge an abandoned notice of appeal with costs must apply on notice (*in re Oakwell Collieries*, 7 Ch. D. 706; 26 W. R. 577); and an application for the costs of such abandoned notice will not be allowed unless a previous demand for them has been made and not complied with (*Griffin v. Allen*, 11 Ch. D. 913). When a party gives notice of appeal and then omits to get the motion set down, so that it is not in the paper, the

printing
evidence
for an
appeal
must pay
the costs.

Costs of
short-hand
notes of
evidence.

Where
appellant
makes de-
fault at the
hearing.

Costs of
abandoned
appeal
motion.

other party should not appear but should make a substantive application for his costs (*Webb v. Mansel*, 2 Q. B. D. 117; 25 W. R. 389). In a late case, A. gave notice of appeal, but before setting it down sent a letter withdrawing his notice. The respondent's solicitor, thereupon, wrote to say that he had delivered briefs and should require payment of the respondent's costs of the appeal; to which A. returned no answer. On motion to dismiss the appeal for want of prosecution, the Court made an order to that effect, and ordered A. to pay the costs of the appeal and of the motion to dismiss, leaving the question of the costs of the briefs delivered on the appeal to be dealt with by the taxing-master (*Charlton v. Charlton*, 16 Ch. D. 273). As to serving a second notice of appeal when the first had not been set down in time and the costs in such a case, see *Norton v. Lombard & North-Western Ry. Co.*, 11 Ch. D. 118; 27 W. R. 773; 40 L. T. 597. A statement made by counsel on the hearing of the case below that he does not intend to appeal in consequence of which the counsel on the other side does not ask for costs, will not prevent an appeal if the undertaking not to appeal is not embodied in the order (*Re Hull & County Bank, Trotter's Claim*, 13 Ch. D. 261). But if the appeal is dismissed the appellant will, if the respondent asks for them, be ordered to pay the costs in the Court below (*Ibid.*).

In *re Clark*, 1 De G. M. & G. 43, where the Lords Justices differed, the appeal was dismissed with costs on the ground that their lordships' difference of opinion was not as to the correctness of the decision below on the materials before the Court, but as to whether the appellant should have an opportunity of further investigation. But the usual course, under the former practice, when the Lords Justices differed, was to affirm the decree appealed from without costs (*King v. King*, 1 De G. & J. 663, 674). And generally where there was a fair question to be raised or a difficult point of construction, the Lords Justices

would dismiss the appeal without costs; see *ex. gr. Boys v. Bradley*, 4 De G. M. & G. 58; *Hodgson v. Smithson*, 26 L. J. Ch. 110; *Vickers v. Bell*, 3 N. R. 624. This practice, however, is no longer followed. A difference between the members of the Court of Appeal is not a ground for depriving a successful appellant or respondent of his costs.

Where the appellants obtained leave to withdraw their appeal they were ordered to pay such costs as they would have had to pay if the appeal had been dismissed with costs (*Attorney-General v. Corporation of Halifax*, 5 Ch. 116; and see *Re Burned's Banking Co.*, 37 L. J. Ch. 86). With-
drawal of
appeal.

Where the respondents had consented to the withdrawal of a petition of appeal under the former practice they were not allowed their costs of appearing on the appellant's motion for leave to withdraw it (*Lawton v. Price*, 3 Ch. 304).

Where a trustee in bankruptcy presented an appeal but was removed before the appeal was heard, and a new trustee was appointed who declined to prosecute the appeal, it was held that the appeal must be dismissed, the creditors not having adopted it although an opportunity had been afforded them of so doing, and that the respondent was entitled to his costs out of the deposit, but that no personal order for costs could be made against the appellant (*Ex parte Sheard, in re Pooley* (No. 2), 16 Ch. D. 110).

2.—In the House of Lords.

A PARTY presenting a petition of appeal to the House of Lords is required by the Standing Orders of the House to give security for costs by recognizance, either in person or by substitute, to the amount of £500, and a bond for £200, or in lieu of the bond by payment of £200 into the Fee Fund of the House; see Standing Order 4; Appellate Security to
be given
on appeal
to the
House of
Lords.

Jurisdiction Act, 1876, 39 & 40 Vict. c. 59, s. 11. These securities must be given by every appellant, whether he appeals on his own behalf or in a representative capacity, within one week after the presentation of the appeal to the House; otherwise the appeal stands dismissed. The whole sum of £700 is then subject to the order of the House with regard to the costs of the appeal; see Standing Orders, 4 & 10. No recognizance is required from the Attorney-General, Lord Advocate, or other officer of the Crown suing on behalf of the Crown (*Lord Advocate v. Lord Douglas*, 9 Cl. & F. 173); nor from persons suing *in forma pauperis*. When the Attorney-General prosecutes at the instance of relators, the latter must enter into the recognizance (*Deu. & Scott*, 51).

Costs of appeal
usually
follow the
result,

Where the appeal is dismissed, and the judgment or decree appealed from affirmed, the costs of the appeal as a general rule follow the result (*Stewart v. Menzies*, 8 Cl. & F. 309), though the House disapproves of the respondent's conduct (*Clarke v. Hart*, 6 H. L. C. 633, 641).

especially
where there
have been
two or more
decisions
below.

And where two judges have successively decided against a party who appeals to the House of Lords, it is almost of course to give costs on affirmance of the decree (*Richardson v. Attorney-General*, 12 Cl. & F. 30; 9 Jur. 383), even although the judges below gave different reasons for their judgments (*ibid.*). But see *written*, *Sweet v. Bradley*, 5 H. L. C. 873, 905; and in *Prendergast v. Prendergast*, 3 H. L. C. 195, 225, an appeal on a point of construction, was dismissed after two previous decisions the same way, and the costs were allowed out of the estate. There is no rule in the House of Lords that an appeal shall be dismissed without costs, where the case has gone through two Courts below, and conflicting decisions have been given (*Nottidge v. Prichard*, 8 Bl. N. S. 493; 2 Cl. & F. 379; *Clarke v. Hart*, 6 H. L. C. 633, 661, in both of which cases the appeal was under such circumstances dismissed with costs). But

Where two
Courts
below have
given con-
flicting
decisions.

Where
there is a
difference

if there is a difference of opinion amongst the Lords the appeal is sometimes dismissed without costs (*Wing v.*

Angrave, 8 H. L. C. 183; *Simpson v. Westminster Palace Co.*, *ibid.*, 712; *Monypenny v. Monypenny*, 9 H. L. C. 114, 149). But there is no rule to that effect (*Hopkinson v. Rolt*, 9 H. L. C. 555); and under the present practice the mere fact of their Lordships differing in opinion is perhaps hardly a sufficient reason for departing from the general rule (*Dublin Railway Co. v. Slattery*, 3 App. Cas. 1155).

The practice of the House when their Lordships are equally divided in opinion is explained by Earl Cairns, L.C., in *Pryce v. Monmouthshire Canal & Railway Cos.*, 4 App. Cas. 197, 219. His lordship there says: "There are upon these occasions always two separate motions proposed to the House. The first is the motion that the decree appealed against be reversed. That motion may be rejected by a majority, or it may be carried by a majority, or the numbers of contents and non-contents may be equal and thereupon the decree stands affirmed. But in all these cases if anything is said about costs a second motion is necessary. For example, if a decree stands affirmed and the appeal is dismissed and if it is desired that the appellant should be ordered to pay costs, a farther motion must then be made that the appeal be dismissed with costs, not for the purpose of obtaining the dismissal of the appeal, for that has been done by the first motion, but for the purpose of ordering the costs to be paid by the appellant. Now it is obvious that if your Lordships are divided upon the first motion and the votes for reversing the decree and for affirming it are equal and the decree stands affirmed, merely on account of the ancient rule that the presumption is in favour of the negative, the result of a second motion that the appeal be dismissed with costs would be (unless, which is not to be supposed, the minds of some of your Lordships were to change in the interval) that the numbers would again be equally divided upon the second motion and the presumption would again be in favour of the negative, and therefore the motion for ordering costs

of opinion
amongst
the Lords.

Practice
of the
House
when the
Lords are
equally
divided.

to be paid by the appellant would not be carried, consequently the effect would be the same as if nothing were said about costs." See also *Baker v. Lee*, 8 H. L. C. 495; 7 Jur. N. S. 1; *Ambeman v. Murion*, 1 App. Cas. 713, 750; *Prudential Assurance Co. v. Edmunds*, 2 App. Cas. 487.

In cases of hardship or difficulty the appeal is sometimes dismissed without costs. See *Murray v. Bush*, 6 H. L. C. 37, where the House was equally divided, and on account of the differences of opinion and the irregularities in the transfer of certain shares (though no fraud was established), no costs were given; and see *Dublin Railway Co. v. Slattery*, 3 App. Cas. 1156, where there was great difference of opinion (the judgment below being affirmed by five to three), and under the circumstances the appeal was dismissed but without costs.

In *Wilson v. Wilson*, 5 H. L. C. 40, 71, Lord St. Leonards seems to have thought that the appellant might have escaped without costs, there being a question of real difficulty, had he not insisted on what he knew was not an honest or fair construction of his contract. And see *Sayer v. Bradley*, 5 H. L. C. 873, 905, where, in a case of "grave difficulty," the appeal on a point of construction was dismissed without costs, though there had been two previous decisions the same way*; *Whalley v. Whalley*, 3 Bl. 1, 18, where the appeal was dismissed without costs on the not very intelligible ground that no costs were given in the Court below; *Inglis v. Mansfield*, 3 Cl. & F. 362, 384, where the decree below was affirmed, except as to costs, without costs on account of the hardship of the case; and *Attorney General v. Dean & Canons of Windsor*, 8 H. L. C. 369, 384, where the appeal of the Attorney General on an *ex officio* information, filed in consequence of an address from the House of Commons, was dismissed without costs; but *quæ*, the power of the House to give costs in that case (*ibid.* p. 385). A slight variation in the details of a decree which is substantially affirmed will not generally save the

* See *Boye v. Fealdy*, 16 H. 389, 8 C. 4 D. G. M. & G. 58.

Dismissed
may be
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costs in
cases of
hardship
or diffi-
culty.

A slight
variation
in the

appellant from costs (*Wallace v. Patton*, 12 Cl. & F. 491; *Savery v. King*, 5 H. L. C. 627; *National Bolivian Navigation Co. v. Wilson*, 5 App. Cas. 176); especially if the error might have been set right by an application to the Court below (*Savery v. King*); and see *Trustees of Dundee Harbour v. Dougall*, 1 Macq. 317; *Neilson v. Betts*, 5 H. L. 1. In a late case, however, where the House substantially affirmed the decision of the Court below but altered their interlocutor, it was held that the respondents were not entitled to their costs in the appeal, on the grounds that the alteration in the interlocutor was necessary to give complete security to the interests represented by the appellants, and because the attitude of both sets of respondents before action brought was such as to justify the institution of some action for the purpose of obtaining the declarations made by the House (*Paterson v. Provost &c. of St. Andrews*, 6 App. Cas. 833).

Where there is a fund or an estate in litigation, the costs of an unsuccessful appellant may be allowed out of such fund or estate (*Prendergast v. Prendergast*, 3 H. L. C. 195, 225; *Thellusson v. Rendlesham*, 7 H. L. C. 429; *Earl of Bective v. Hodgson*, 3 N. R. 654; *Bruce v. Presbytery of Deer*, 1 H. L. Sc. 96, where, however, it was said that the awarding of costs out of charity estates was an encouragement to groundless litigation). In *Fisher v. Brierly*, 10 H. L. C. 159, the costs of an appeal by some of the residuary legatees were given out of their shares only of the estate; *i.e.* the appeal was in effect dismissed with costs.

In *Charter v. Charter*, 7 H. L. 364, where their Lordships were equally divided, the costs of both parties were ordered to come out of the estate, the difficulty having been created by the act of the testator himself; and see *Maxwell v. Maxwell*, 4 H. L. 506; *Singleton v. Tomlinson*, 3 App. Cas. 404. In *Sayer v. Bradley*, 5 H. L. C. 873, the respondent's costs only were given out of the fund.

decree will
not save
costs.

Where
there is a
fund or an
estate in
litigation,
and the
decree is
affirmed.

Where the decree appealed from is reversed. Under former practice successful appellants never got costs of appeal.

It was formerly an inflexible rule in the House of Lords that a successful appellant could under no circumstances have his costs of appeal from the respondents who supported the decree of the Court below; see *Morgan v. Evans*, 3 Cl. & F. 159; *Mackery v. Ramsay*, 9 Cl. & F. 818, 851; *Household Coal, &c. Co. v. Neilson*, *ibid.*, 817; *Attorney General v. Cox*, 3 H. L. C. 240, 277; *Hamilton v. Littlejohn*, 4 Cl. & F. 20; *Dixon v. Evans*, 5 H. L. 606.

Unless there were fund or estate.

A successful appellant, however, sometimes had his costs out of the fund or estate if there was one in litigation (*Stokes v. Heron*, 12 Cl. & F. 203), and see *Duyn v. Durin*, 7 H. L. 568. In *Eyre v. M'Donnell*, 9 H. L. C. 119, a successful appellant was allowed to add the costs of the appeal to his mortgage security.

Under the present practice successful appellants get their costs.

Since the passing of the Appellate Jurisdiction Act, 1876, however, this rule has been altered, and the course now is to give successful appellants all their costs, including their costs of appeal unless there is some special reason for depriving them of them; see *Metropolitan Railway Co. v. Jackson*, 3 App. Cas. 193; *O'Rourke v. Bolingbroke*, 2 App. Cas. 814; *Ort Ewing v. Colquhoun*, *ibid.* 839; *Rositer v. Miller*, 3 App. Cas. 1124.

Where an order made on an application with reference to the taxation of costs granted leave to appeal, reserving the costs for the Court of Appeal, it was held that the costs thus reserved must be dealt with in the same manner as the costs of appeal, and the judgment of the Court of Appeal being reversed, the respondent was ordered to repay the costs which he had received under it (*Garnett v. Bradley*, 3 App. Cas. 944).

In "*Singer*" *Machine Manufacturers v. Wilson*, 3 App. Cas. 376, where the order of the Court of Appeal was reversed and the case remitted to the Chancery Division, it was ordered that any costs which had been paid by the plaintiffs to the defendant should be repaid, and that the costs of the suit *ab initio* including the costs of the

appeal to the House, should be in the discretion of the Court below upon the farther hearing of the case.

Where two questions of difficulty in an appeal had been created by the testator, all parties in the appeal had their costs out of the estate (*Bedford v. Kirkpatrick*, 4 App. Cas. 96).

Applications on the part of a successful appellant for the costs of reversal should be made at the bar before the question is put to the House, because they will be ineffectual after judgment has been pronounced (*Den. & Scott*, 145).

Where the decree appealed from is partly reversed and partly affirmed, the practice is to give no costs of the appeal (*Torre v. Browne*, 5 H. L. C. 555); and where the House reversed the decision of the Court of Appeal on the construction of a deed, but all the other points raised by the appeal were abandoned by the appellants, each party was left to bear their own costs both in the Court of Appeal and the House of Lords (*Elliot v. Lord Rokeby*, W. N. (1881), 154; 45 L. T. 769). On the other hand if the decree is substantially affirmed and varied only in its details, the appeal will be dismissed with costs (*Wallace v. Patton*, 12 Cl. & F. 491; *Savery v. King*, 5 H. L. C. 627; and see *Neilson v. Betts*, 5 H. L. 1).

If the House of Lords, reversing the decree of the Court below, dismisses the suit as at the hearing with costs, such costs are costs up to the hearing only, and will not include the costs of the prosecution of enquiries, or issues directed by the decree appealed from (*Sirce v. Kirwan*, 9 Cl. & F. 716, 746; *Shaw v. Lawless*, 5 Cl. & F. 129; *Mayor, &c. of South Molton v. Attorney General*, 5 H. L. C. 1; *M. Mahon v. Burchell*, 2 Ph. 139).

In *Godson v. Hale*, 7 Cl. & F. 549, the appeal having been unexpectedly called on, the appellant's counsel were not present, but he appeared in person, and the House allowed the appeal to stand over on payment of the costs of the day by the appellant. In *Frazer v. Gordon*, 3 Cl.

Application for costs of reversal, when to be made.

Where the decree is partly reversed and partly affirmed, no costs given.

Where costs of the suit are given on appeal, the costs of proceedings subsequent to the hearing not included.

Where appellant or respondent makes default at the hearing of an appeal,

& F. 719, the respondent, on the non-appearance of the appellant, opened so much of his case as showed a *prima facie* case, and the appeal was then dismissed with costs. But in *Ricketts v. Lewis*, 2 Cl. & F. 100, and *Murphy v. Conway*, 9 Cl. & F. 73, the appeal was at once dismissed with costs without hearing the respondents. Where the respondents did not appear to support the decree of the Court below, and had not even answered the petition of appeal, the House reversed the decree, but without costs, although there had been a previous decision on the same point (*Hamilton v. Littlejohn*, 4 Cl. & F. 20). And lastly, where neither party appeared, the appeal was dismissed without costs (*Sheshbourn v. Middleton*, 9 Cl. & F. 72). Costs cannot be given to a respondent who has omitted to answer the appeal (*Clyde's Trustees v. Clyde*, Maclean & Rob. 115).

Where respondent has an objection to the competency of the appeal.

If a respondent has an objection to the competency of an appeal to the House of Lords, he should bring it, by preliminary petition, before the Appeal Committee; for if it is not raised till the hearing, and it proves fatal, the appeal will be dismissed without costs (*Rochford v. Buttersby*, 2 H. L. C. 388). If the petition against the competency of the appeal is dismissed, the practice is to reserve the costs of it till the hearing of the appeal (*Geils v. Geils*, 3 H. L. C. 280; *McMahon v. Leonard*, 5 H. L. C. 931); and if the appeal is afterwards dismissed with costs on the merits, the costs of the preliminary discussion will not be included, unless the consideration of them was reserved (*Campbell v. Campbell*, 7 Cl. & F. 166). In *Gray v. Forbes*, 5 Cl. & F. 356, the costs of the respondent unsuccessfully disputing the competency of the appeal (which had been reserved, *ibid.* 379) were included in the costs of the appeal on its dismissal with costs. But in *Lambert v. Peyton*, 8 H. L. C. 1, the costs of the preliminary petition dismissed were deducted from the costs of the appeal, dismissed on the merits.

Where there are cross appeals.

If there are cross appeals, one may be dismissed with and one without costs, according to circumstances (*Court*

v. *Roberts*, 6 Cl. & F. 65). And in *Morgan v. Evans*, 8 Bl. N. S. 777; 3 Cl. & F. 159, the appellant in the original appeal was held entitled to a decree with costs in the Court below, and received his costs of the cross appeal, which was dismissed, by way of indemnity, as he could not have the costs of his own appeal. Where there were cross appeals and neither party was completely successful, neither of them got costs, either in the Court of Appeal or the House of Lords (*Aitchison v. Lokre*, 4 App. Cas. 755).

An action will lie on an order of the House of Lords directing an unsuccessful appellant to pay the respondent's costs (*Marbella, &c. Co. v. Allen*, 38 L. T. 815).

In *Prendergast v. Prendergast*, 3 H. L. C. 195, 225, a trustee was held to be entitled to appear by counsel on the appeal, but not to print a case or appendix, and was disallowed the costs of so doing: see *Banque Franco-Egyptienne v. Grant*, W. N. (1879), 165.

As to taxation of costs ordered to be paid by the House, see Standing Order 10; and as to recovery of such costs, see *post*, ch. IX., sec. III.

SECT. XII.—*Appeals for Costs.*

By the 49th section of the Judicature Act, 1873, no order made by the High Court of Justice, or any judge thereof, as to costs only, which by law are left to the discretion of the Court, is to be subject to any appeal, except by leave of the Court or judge making such order.

Judicature Act, 1873, s. 49, no appeal for costs without leave.

The rule is imperative. In *Harris v. Aaron*, 4 Ch. D. 749; 46 L. J. Ch. 488; 25 W. R. 353; 36 L. T. 43, a bill was dismissed without costs; the plaintiff appealed against the whole decree, but his appeal was dismissed; it was held that the Court had no power to vary the order of the Court below by directing that the bill should

be dismissed with costs; and see *Harcourt v. Shacklock*, 19 Ch. D. p. 215; *Llanover v. Humphrey*, *Phillips v. Llanover*, *ibid.*, p. 231; *Graham v. Campbell*, 7 Ch. D. 490; 47 L. J. Ch. 593; 26 W. R. 336; 38 L. T. 195. No appeal lies from a judge's order as to the plaintiff's costs in an interpleader issue (*Hurtmant v. Foster*, 8 Q. B. D. 821. *See note under ante p. 18.*

Order merely directing a party guilty of contempt to pay the costs may be appealed from.

Secus, where the application to commit is refused.

An order declaring that a defendant has committed a breach of an injunction, but giving no directions, except that he pay the costs of the application to commit, is not within the 49th section of the Judicature Act, 1873, and may be appealed from (*Witt v. Corcoran*, 2 Ch. D. 69; 45 L. J. Ch. 603; 24 W. R. 501; 34 L. T. 550; *In re Clements*, 46 L. J. Ch. 375). Where the application is refused, however, there can be no appeal (*Ashworth v. Outram* (No. 2), 5 Ch. D. 943; *Hope v. Carnegie*, 4 Ch. 264; but see *Jarvis v. Chatterton*, W. N. (1882) 21). In the same way, where at the trial the Court simply orders the defendant to pay the costs of the action, an appeal will lie; for no such order could have been made without admitting that the plaintiff was entitled to bring the action, and this is therefore the real question at issue in the appeal (*Dicks v. Yates*, 18 Ch. D. 76).

Costs payable by trustee in exception.

Secus, as to "costs, charges, and expenses."

An order directing trustees to pay costs personally forms no exception to the rule that there can be no appeal for costs (*In re Hoskins's Trusts*, 6 Ch. D. 281; 25 W. R. 779; 35 L. T. 935; *Taylor v. Darden*, 4 Ch. 697).^X But an order giving a trustee his "costs, charges, and expenses," is not simply an order as to costs "within the discretion of the Court," and may be appealed from; for a trustee has a right to his charges and expenses, and can only be deprived of them for gross misconduct (*In re Chennell*, *Jones v. Chennell*, 8 Ch. D. 492; 47 L. J. Ch. 583; 26 W. R. 595; 38 L. T. 494). Similarly, an executor or a residuary legatee, who sues for administration, is *prima facie* entitled to his costs out of the estate; and therefore an order depriving him of them is subject to

^X. *See note under ante p. 18.*

appeal (*Farrar v. Austin*, 18 Ch. D. 58) ; and see *Ex parte Wainwright*, 19 Ch. D. p. 152). So, where in a suit between incumbrancers to ascertain priorities in a fund, the Court decided in favour of one of the defendants, and ordered the costs of the action to be paid out of the fund, an appeal by the successful defendant as to the costs was allowed (*Johnstone v. Cox*, 19 Ch. D. 17).

If a decision, although relating to costs, also involves a question of law and principle, it is clearly the subject of appeal (*In re Rio Grande Da Sul Steamship Co.*, 5 Ch. D. 282 ; 46 L. J. Ch. 277 ; 25 W. R. 328 ; 36 L. T. 603 ; see also *Ex parte Waddell, in re Lutscher*, 6 Ch. D. 331). And where an innocent vicar and churchwardens had been ordered to pay the costs of a suit to which they were parties merely in their representative character, it was said that an appeal by them for costs only would have been entertained (*Etherington v. Wilson*, 1 Ch. D. 160 ; 45 L. J. Ch. 153 ; 24 W. R. 303 ; 33 L. T. 652).

Where a question of principle is involved an appeal lies.

Where the judge made an order adopting the report of a referee, which was silent as to the costs of the reference, and leaving the costs to be dealt with by the taxing master, an appeal from that order was held an appeal for costs only (*Rowliffe v. Leigh*, 26 W. R. 729).

In a recent case, the plaintiff recovered damages for breach of covenant against his lessee the defendant, and the latter recovered the same amount against his sub-lessee, whom he had brought in as third party. On the defendant claiming from the third party the damages and costs in the case between the plaintiff and the defendant, the third party demurred to the claim for costs ; an appeal from an order overruling the demurrer, was held an appeal for costs only (*Hornby v. Cardwell*, W. N. (1881), 170 ; 45 L. T. 781).S C, R D 237 319

Section 49 does not apply to a master or a district registrar, and therefore a judge can vary as to costs the order of a district registrar, dismissing an action without costs (*Foster v. Edwards*, 48 L. J. C. P. 767).

House of
Lords.

No appeal lies to the House of Lords for costs alone (*Inglis v. Mansfield*, 3 Cl. & F. 362; *M. Aubay v. Adams*, *ibid.* 385; *Metropolitan Asylum District v. Hill*, 5 App. Cas. 582). But an appeal against an order which imposes, as a condition of having a new trial, the payment within a certain time of the costs of the first trial, is not within the rule (*Metropolitan Asylum District v. Hill*).

Former
practice in
chancery.

Under the practice in chancery, the general rule was the same, viz., that as the disposal of the costs of the suit was in the discretion of the judge, there could not be an appeal or rehearing on the question of costs alone. To this rule however, there were certain well recognised exceptions. Thus, where the costs were laid upon an estate, or ordered to be paid out of a fund, the Court would hear an appeal, though for costs alone (*Chappell v. Purday*, 2 Ph. 227; *Taylor v. Popham*, 15 Ves. 72; *Taylor v. Southgate*, 4 My. & C. 203, 208). And soe further, as to this exception to the general rule, *Angell v. Daise*, 4 My. & Cr. 360; *Eyre v. Mersden*, *ibid.* 251; *Jenour v. Jenour*, 10 Ves. 562; *Johnstone v. Col*, 10 Ch. D. 17.

Excep-
tions.
Where
costs were
ordered
out of an
estate
or fund

Where a
question
of prin-
ciple or
practice was
involved.

Again, where the question involved a principle or a rule of practice to be laid down, then an exception was made (*Chappell v. Purday*; and see *Walker v. French*, 21 W. R. 493; *Palmer v. Walsley*, 3 Ch. 732; 16 W. R. 924; *Yeo v. Tatem, The Orient*, L. R. 3 P. O. 696). An appeal for costs alone was allowed against a decree dismissing without costs a bill by a plaintiff who failed to establish his legal title (*Chappell v. Purday*; *Comparison of Rochester v. Lee*, 2 De G. M. & G. 427); and where a mortgagee was refused his costs of a redemption suit (*Owen v. Griffith*, 1 Ves. 250; *Norton v. Cooper*, 5 De G. M. & G. 728; *Cottrell v. Stratton*, 8 Ch. 295); and against a judgment awarding costs against an officer of the Crown suing on its behalf (*Lord Advocate v. Lord Dunlop*, 9 Cl. & F. 173); and where the question was as to the mode of providing for the costs of administration suits (*Menzies v. Connor*, 3 Mac. & G. 648;

Taylor v. Southgate, 4 My. & C. 203; *Eyre v. Marsden*, *ibid.* 231). So an appeal would lie, when the Court was directed by Act of Parliament to give costs, and they were not given according to the Act (*Tod v. Tod*, 1 Bl. N. S. 639; *Ex parte Bishop of London*, 2 De G. F. & J. 14; *Re Merton College*, 1 De G. J. & S. 361).

or costs
were
payable
according
to an Act
of Parlia-
ment.

CHAPTER IV.

COSTS IN PARTICULAR ACTIONS.

SECT. I.—*Actions for an Account.*

Where the question is one of amount.

“IT is generally true, that if a suit is instituted for an account between two persons, one alleging that nothing is due from him, and a balance is found to be due from him, that person will have to pay the costs of the suit and of the account. But the case would be wholly varied if the case were that one party admitted a given sum to be due from him, and the other had claimed a much larger sum, and the suit proceeded only for the purpose of ascertaining whether such contested balance were really due or not. In this case the costs would depend upon the substantial result, that is, if the balance claimed, or a substantial part of it, were shown to be due, the claimant would obtain the costs of the suit; if no part of it were due, he would have to pay them; and if only a small portion of it were due, the Court would probably give no costs on either side. But in all these cases the Court endeavours to see what were the substantial questions and causes of litigation between the parties” (*per* Sir J. Romilly, M. R. *May v. Biggenden*, 24 Beav. 207, 214). In that case, the defendant, who claimed a large balance to be due to him from the plaintiff, and failed on every item which the plaintiff disputed, had to pay the costs of the suit, though a large sum was still due to him after all deductions.

Where the accounting party refuses to

An accounting party who refuses to render his accounts before action brought, or disputes his liability to account, will have to pay the costs up to and including the hearing

(*Anon.* 4 Mad. 273; *Attorney-General v. Gibbs*, 1 De G. & S. 156; S. C. on appeal, 2 Ph. 327; *Boynton v. Richardson*, 31 Beav. 340; *Sellar v. Griffin*, 11 W. R. 583; 9 Jur. N. S. 612; *Kemp v. Burn*, 4 Giff. 348; 1 N. R. 257; *Jefferys v. Marshall*, 19 W. R. 94; 23 L. T. 548), even though it should turn out that nothing is due to the plaintiff (*Attorney-General v. Gibbs*), or the plaintiff waives the account at the hearing (*Colburn v. Simms*, 2 Ha. 543), or the defendant offers a gross sum which it turns out would have covered what was due from him (*Collyer v. Dudley*, T. & R. 421). Where the defendant, an agent, unsuccessfully resisted the plaintiff's right to surcharge and falsify, and five items of error were proved, the plaintiff got the costs of the action up to and including the hearing, and the future costs were reserved for further consideration (*Mozley v. Cowie*, 26 W. R. 854). But on duly accounting, the defendant will get his costs subsequently to the hearing out of the balance (if any) found due from him (*Boynton v. Richardson*); and if the plaintiff perseveres in having the accounts taken after the defendant has rendered his accounts by answer (now, statement of defence), which turn out to be substantially correct, and there is no balance, the plaintiff must pay the defendant's costs subsequent to the hearing (*Anon.* 4 Mad. 273; *Attorney-General v. Gibbs*; *Thompson v. Clive*, 11 Beav. 475). But in *Collyer v. Dudley*, the defendant paid the whole costs of the suit. In *Springett v. Dashwood*, 2 Giff. 521, where the amended bill contained charges of wilful neglect and default, which were disproved, and the accounts in the answer were substantially correct, the Court gave a trustee, who had refused to account, his costs from the filing of the amended bill, and made him pay the costs up to that time. In the same case a trustee who had not acted had no costs down to the filing of the amended bill. If the defendants have occasioned the suit by not keeping accounts, they must pay the whole costs of it (*Pearse v. Green*, 1 J. & W.

135); and see *Payne v. Evans*, 18 Eq. 356, where the bill was dismissed, but without costs, because the defendants had not kept accounts and vouchers. However, in *White v. Jackson*, 15 Beav. 191, it was said by Sir J. Romilly, M. R., that an executor had a right to have his accounts taken in this Court, and the mere neglect, as distinguished from pertinacious refusal, to render his accounts, was not sufficient to deprive him of his costs; and see *Price v. Gresham*, 35 Beav. 47. An executor or trustee is not justified in refusing accounts to the solicitor of the parties, though he may suspect that the solicitor requires them for his own purposes (*Kemp v. Burn*). Where an information was filed against a public officer, and he was ordered to account for a great number of years, Giffard, V. C., on the ground that it was a hard case, and the defendant was not morbidly to blame, refused to make him pay any costs (*Attorney-General v. Edmunds*, 18 L. T. 505).

A solicitor and agent may be charged as an accounting party, although he is a mortgagee for the sums due to him, and the plaintiff asks for redemption (*Deillon v. Gale*, 7 Ves. 586; and in that case Lord Eldon gave the defendant the costs down to the answer as mortgagee, but made him pay the costs of the subsequent enquiries). But see *Norton v. Cooper*, 5 De G. M. & G. 728.

In *Jellison v. Price*, 1 Y. & C. C. C. 74, the Court declined, in a suit for an account to give the costs down to the hearing to the plaintiff at the hearing, but reserved the question of costs until further directions. This seems to be the more usual practice; but see *Boynston v. Richardson*; *Kemp v. Burn*; *Sellar v. Griffin*; where the Court made an order at the hearing for the payment of the costs down to that time.

An executor's mere neglect to furnish accounts not sufficient to charge him with costs.

He is not justified in refusing accounts to the solicitor of the parties.

A mortgagee, being also an agent, may be made to pay costs as an accounting party.

Order for payment of costs may be made at the hearing.

SECT. II.—*Actions for Administration of Assets.*

It is a general rule, that wherever an action for the administration of the assets of a deceased person is rendered necessary by the nature of his will, or the circumstances of his property, or by his dying intestate, his general personal estate must bear the costs of it (*Jolliffe v. East*, 3 Bro. C. C. 27; *Studholme v. Hodyson*, 3 P. W. 300; *Pearson v. Pearson*, 1 Sch. & L. 12; *Wilson v. Brown-smith*, 9 Ves. 180; *Gwyther v. Allen*, 1 Ha. 505; *Philpott v. St. George's Hospital*, 6 H. L. C. 338; *Shuttleworth v. Howarth*, Cr. & Ph. 228). And as to cases where costs should be given out of an estate generally, see *Di Sora v. Phillips*, 10 H. L. C. 625. The rule equally applies, though the doubt on the construction of the will was introduced by parol evidence for the defendant (*Nourse v. Finch*, 1 Ves. Junr. 362). Nor will it make any difference that a declaration of the rights of the parties (which the Court can make without giving relief, under Stat. 15 & 16 Vic. c. 86, s. 50), is all that is required to enable the executors or trustees to administer the estate or execute the trusts of the will. Where the bill, in an administration suit, raised a question in regard to the testatrix's will, upon the decision of which the plaintiff's title to any interest in her estate depended, and the decision was against the plaintiff taking any interest, the bill was dismissed with costs (*Anderson v. Anderson*, 41 L. J. Ch. 247). The costs of a special case on the construction of a will generally follow the same rules as those of an administration suit (*Cookson v. Bingham*, 17 Beav. 266). In *In re Cope's Trusts*, W. N. (1877), 87, trustees of a will who had realised the estate and paid the debts, were directed to retain the surplus for a year on the chance of an administration action being commenced.

In an action for the general administration of assets the costs of all proper and necessary parties are paid in the

Wherever the testator or intestate has occasioned the difficulty, his estate bears the costs.

Costs of an action for general

administration where the estate is sufficient. What is residue.

first instance out of the assets before they are distributed ; that is, in effect, where the estate is sufficient for all purposes, out of the residue. The residue, however, is, properly speaking, only what remains after all the expenses of administering the estate have been paid (*Eyre v. Marsden*, 4 My. & Cr. 231 ; *Shuttleworth v. Howarth*, Cr. & Ph. 228 ; *Elburne v. Gould*, 14 Sim. 165), including the costs of an administration action (*Trethewey v. Helgar*, 4 Ch. D. 53 ; 46 L. J. Ch. 125) ; and including also where there is a gift of residue to persons and classes of persons, the costs of ascertaining of whom such classes consist (*in re Rouse's Trusts*, 4 Ch. D. 841 ; 46 L. J. Ch. 412 ; 25 W. R. 628 ; 36 L. T. 906). And therefore where there is a residuary gift, but a portion of the residue is undisposed of, either through the happening of some event, or by operation of law, the Court will not throw the costs exclusively on the part undisposed of, but will apportion them between such part and the part which is well given (*Eyre v. Marsden*, 4 My. & Cr. 231 ; *Luchcroft v. Pridham*, 48 L. J. Ch. 636 ; W. N. (1879), 94 ; *Trethewey v. Helgar*, 4 Ch. D. 53 ; 46 L. J. Ch. 125 ; *Fenton v. Wills*, 7 Ch. D. 33 ; 47 L. J. Ch. 191 ; 26 W. R. 139 ; 37 L. T. 373 ; *Blain v. Bell*, 7 Ch. D. 382 ; 47 L. J. Ch. 120 ; 26 W. R. 165) ; the cases of *Gowan v. Broughton*, 19 Eq. 77, and *Scott v. Cumberland*, 18 Eq. 578, cannot be considered as law. The rule applies equally whether the partial intestacy arises from lapse (as in *Ackroyd v. Smithson*, 1 Bro. C. C. 503 ; 4 My. & Cr. 245 ; *Roberts v. Walker*, 1 R. & M. 752 ; *Trethewey v. Helgar*, 4 Ch. D. 53 ; *Fenton v. Wills*, 7 Ch. D. 33 ; 47 L. J. Ch. 97 ; 26 W. R. 139 ; 37 L. T. 373), or from revocation of the bequest by the testator himself (as in *Cresswell v. Cheslyn*, 2 Ed. 123 ; 1 Swans. 571, n.) ; but see *contra*, *Chatteris v. Young*, Beames, app. 27 ; and *Skeynshire v. Northcott*, 1 Swans. 566 ; the effect of which latter case seems to be misstated in Lord Cottenham's judgment in *Eyre v. Marsden*, 4 My. & Cr. 245. Instances of the costs being apportioned where the partial

Costs apportioned between different portions of the residue.

intestacy arises from operation of law are *Eyre v. Marsden*, and *Elborne v. Goode*, 14 Sim. 165, where accumulations beyond the limit of the Thellusson Act were held to be undisposed of; and see also *Green v. Gaseoyne*, 13 W. R. 371; 11 Jur. N. S. 145; and *Attorney-General v. Lord Winchelsea*, 3 Bro. C. C. 273, S. C. *sub nom.* *Attorney-General v. Hurst*, 2 Cox, 364; *Paice v. Archbishop of Canterbury*, 14 Ves. 364; *Jones v. Mitchell*, 1 S. & S. 290; *Crashie v. Mayor, &c., of Liverpool*, 1 R. & M. 761, n.; *Johnson v. Woods*, 2 Beav. 409; *Hopkinson v. Ellis*, 10 Beav. 169; *Ware v. Cumberlege*, 20 Beav. 503, 509; *Gillam v. Taylor*, 16 Eq. 581; *Luckerft v. Pridham*, 48 L. J. Ch. 636; W. N. (1879), 94, where gifts of residue to charity failed as to the realty, or personalty savouring of realty under the Mortmain Act. As to the form of the order in such case, see Set. 589, *Williams v. Kershaw*, 1 Ke. 274, n. So where a testator gave charitable legacies to be paid out of his pure personalty, it was held that the costs of suit were payable out of the two kinds of personalty rateably (*Tempest v. Tempest*, 7 De G. M. & G. 470; reversing S. C. 2 K. & J. 635; *Beaumont v. Oliveira*, 4 Ch. 309). In *Taylor v. Mogg*, 27 L. J. Ch. 816; 5 Jur. N. S. 137, however, a testatrix bequeathed to charity so much of her residue "as she could lawfully give to charitable uses," and made no disposition of the remainder, and it was held (but qu.) that the costs of the suit ought to be paid wholly out of the impure personalty. See *Johnstone v. Hamilton*, 14 L. T. 282; *Adolph v. Dolman*, 26 W. R. 53; *Lewis v. Boctefour*, 38 L. T. 93; W. N. (1878), 21, (1879), 11; *Taylor v. Linley*, 5 Jur. N. S. 701. In *Shepherd v. Beetham*, 6 Ch. D. 597, where the bequest was held to be specific, the costs were paid first out of the undisposed of personalty, next out of the realty, and lastly out of the specific bequest.

A legatee is now considered as bringing his action on behalf of himself, and all other the legatees of the testator

Costs of a legatee's suit.

(*Thomas v. Jones*, 1 Dr. & S. 134; 29 L. J. Ch. 570). The costs of an action to establish a title to a legacy, whether pecuniary or specific (*Bugbace v. Newton*, Beames, 17; *Barton v. Cooke*, 5 Ves. 464; *Lonsdale v. Borchthold*, 3 Jur. N. S. 528), are *prima facie*, and always if there is a difficulty of construction, or general administration is necessary, payable out of the general assets. So the general estate, and not the particular fund, must bear the costs of a suit to establish a *donatio mortis causa* (*Gardner v. Parker*, 3 Mad. 184); or to declare the rights of parties to a legacy charged on real estate (*Dydale v. Dydale*, 12 Beav. 247); or to have a legacy in which the plaintiff has a reversionary interest, whether vested or contingent, set apart and secured (*Stadholme v. Holyoak*, 3 P. W. 300; *Harroley v. Davies*, 5 Jur. N. S. 90); and *assable*, including the costs of investment (*Handley v. Davies*); but *see contra*, *Guyther v. Allen*, 1 Ha. 505, where it was held that if a fixed sum is to be laid out in land the costs of investment come out of the fund, but if lands of a certain value are to be bought, such costs come out of the general personal estate. But if the plaintiff's interest is contingent, and fails pending the suit, or even after decree, he cannot have his costs (*Hay v. Benson*, 5 Beav. 610). The costs, however, of enquiries for the benefit of the legatee, as to his maintenance, &c., will come out of the legacy (*Ilvaton v. Cooke*, 5 Ves. 464). And as to the costs of members of a class entitled to a legacy, *see post*, p. 186.

Admission of assets by an executor sufficient for payment of a legacy is an admission for all purposes of the suit, and extends to costs (*Attorney-General v. Lovell*, 8 Ha. 32, 44; *Philanthropic Society v. Hobson*, 2 My. & K. 357; *Roch v. Callen*, 6 Ha. 531; *McCarthy v. McCarthy*, 1 Moll. 186). And where a decree is made for payment of a legacy on admission of assets, it will in general be with costs, either out of the estate or by the executor personally, as to which *see post*, pp. 180, *seq.*

Where the executor is charged on admission of assets, decree for payment of a legacy will generally be with costs.

But it seems that the plaintiff in such a case should exhaust every means of obtaining payment of his legacy without suit; see *Aylmer v. Winterbotham*, 4 Jur. N. S. 19, where the plaintiff omitted to offer a power of attorney, and had no costs of the suit. The plaintiff may also lose his costs if he is guilty of laches in bringing forward his claim (*Lord v. Lord*, 3 Jur. N. S. 485), though the defendants set up the Statute of Limitations and fail (*ibid.*). In *Davies v. Austen*, 1 Ves. Jun. 247, a decree for payment of a legacy was made without costs, on account of the ungraciousness of the claim, the executors having spent more than the amount of the legacy on the legatee during his infancy.

Where, however, a legacy has been severed from the bulk of the estate, and becomes the subject of litigation, the particular fund, and not the general estate, must bear the costs of a suit respecting it (*Attorney-General v. Lawes*, 8 Ha. 32; *Martineau v. Rogers*, 8 De G. M. & G. 328); and see *King v. Taylor*, 5 Ves. 809; *Jenour v. Jenour*, 10 Ves. 562; *Wilson v. Squire*, 13 Sim. 212; *Hill v. Rottey*, 2 J. & H. 634; *Percuington v. Buckley*, 6 Ha. 453. In the case last cited, the question was between the residuary legatees and a charity as to the title to a fund, which had been transferred into the names of trustees, after a life interest, and the Court held that it went to the residuary legatees as part of the general assets; and, therefore, the costs came out of it. Where the legatee was an imbecile at the date of the will the Court on that ground gave the costs out of the testator's general estate (*Pothecary v. Pothecary*, 2 De G. & S. 738). An executor trustee cannot by paying a legacy into Court relieve the residue from its proper burden (*In re Birkett*, 9 Ch. D. 576; 47 L. J. Ch. 846; 27 W. R. 164; 39 L. T. 418). Where the estate had been administered, and a large fund set apart to answer certain legacies, the costs of a suit for appropriating and securing one of those legacies were held to be payable out of the corpus of the legacy (*Governesses' Benevolent Institution v. Rusbridger*, 18 Beav. 467), notwithstanding

Seems if the fund has been severed from the bulk of the estate.

that the tenant for life of the legacy was not a party to the suit (*Richardson v. Rosbridge*, 20 Beav. 137). But the fund must be actually severed from the estate when the action is commenced, and it makes no difference that it was raised and set apart before the persons entitled to it were actually ascertained (*Duiphale v. Duiphale*, 12 Beav. 247). Nor will the admission of assets in a legatee's suit alter the case, or the mere fact that the particular amount has been paid into a bank or placed in custody pending the decision. See *Attorney-General v. Lawson*, 8 Ha. 32, where the distinction between the *cross*, where the fund is severed, and where it is not, is thus pointed out by V. C. Wigram: "If the executors, admitting the legacy to be payable, sever it from the estate, and a dispute afterwards arises between the persons to whom, or some of whom, the legacy belongs, and the Court has to decide to whom it belongs, there the particular fund bears the costs; but if the dispute arises between the persons claiming the legacy and those claiming the estate in the residue, whether the legacy is payable or not, that cannot be the case of a *severance* in the sense in which the rule I have referred to applies, because then, until the Court makes its decree that the legacy is payable, the legacy is not severed from the estate: the executors have kept it under their control for the purpose of having the point decided" (p. 43); and see *Wollaston v. Wollaston*, 47 L. J., Ch. 117; 26 W. R. 77; 37 L. T. 681. The costs of an unsuccessful action by legatees to set aside probate may be set off by the executor against legatees to which they are entitled under the will, notwithstanding assignments and incumbrances (*In re Knapman's Knapman v. Wrefield*, 18 Ch. D. 300). In *Holgate v. Harrold*, 17 Beav. 259, where the administrator settled with the owners of three-fourths of the residue, and a bill was filed by the owner of the other fourth for an account, it was held that the plaintiff's share was liable to only one-fourth part of the costs of the suit. See also *Spencer v. Ward*, 9 Eq. 507.

An exception to the general rule which gives the costs of an administration action out of the estate is made where the action is not for the benefit of the estate, or as to so much of the costs as are occasioned by unfounded charges or vexatious proceedings. "No costs ought to be given out of an estate except for those proceedings only which are in their origin directed with some show of reason and a proper foundation for the benefit of the estate, or which have in their result conduced to that benefit" (*per* Lord Westbury, C., in *Bartlett v. Wood*, 9 W. R. 817); and in that case the costs occasioned by charges of fraudulent conduct made in an infant legatee's bill against the executor and disproved were disallowed. So in *Marshall v. Beaman*, 2 W. R. 320, the assignees in insolvency of one entitled in remainder having filed an administration claim seeking to have certain leaseholds converted, the Court being of opinion that the tenant for life was entitled to enjoy the leaseholds *in specie*, gave the plaintiff no costs. In *Mackenzie v. Taylor*, 7 Beav. 467, a bill for general administration was filed on behalf of infants entitled to one moiety of the residue, and the persons entitled to the other moiety by answer, and at the hearing objected to the suit as unnecessary, and the accounts having proved to be substantially correct, the costs were ordered to be paid out of the plaintiff's share alone. See also *Barber v. Barber*, 3 My. & Cr. 688, where the costs were paid out of the two shares of residue which alone were substantially affected by the suit; *Hilliard v. Fulford*, 4 Ch. D. 389; 46 L. J. Ch. 43; 25 W. R. 161; 35 L. T. 750; *In re Chennell, Jones v. Chennell*, 8 Ch. D. 492.

But if the suit has enabled the Court to administer the estate, the plaintiff though he fails in his particular claim will be allowed his costs; see *Thompson v. Sheppard*, 2 Cox, 161, where the plaintiff filed his bill on the footing of an intestacy, and a will was afterwards established in the Ecclesiastical Court; and *Taylor v. Haygarth*, 8 Jur. 135, where the plaintiff's unsuccessfully claimed to be the

Exception to the general rule in administration actions, when the action or some proceeding in it is not for the benefit of the estate.

But the plaintiff may be allowed costs though he fails in his claim.

next of kin of an intestate, and the real next of kin were ascertained by enquiries in the suit; and see the cases on this point collected, *ante*, p. 97, *seq.* The Court also considers that it is *prima facie* a benefit to an infant to be made a ward of Court and have his property secured and duly administered (*per* L. J. Turner, *Clayton v. Clarke*, 9 W. R. 718).

An action for administration of an infant's property *prima facie* a benefit to him.

What words sufficient to throw the costs on a particular fund.
"Testamentary expenses."
"Executors' expenses."

It is now settled (contrary to some former cases), that the term "testamentary expenses," or "executors' expenses," includes the costs of an action for administration; and therefore a particular fund charged with the payment of such expenses will have to bear the costs of the action in execution of the general clause (*Miles v. Harrison*, 9 Ch. 316; 43 L. J. Ch. 585; 22 W. R. 441; 30 L. T. 190; *Re Young*, *Young v. Dolman*, 44 L. T. 499; *Hartie v. Hartie*, 20 Eq. 471; 44 L. J. Ch. 512; 23 W. R. 789; 33 L. T. 247 (distinguishing *In re Biel's Estate*, *Gray v. Worcester*, 19 Eq. 577; 21 W. R. 808); *Penny v. Penny*, 11 Ch. D. 440; 48 L. J. Ch. 691; 40 L. T. 393; *Sharp v. Lush*, 10 Ch. D. 468; *Morrell v. Fisher*, 4 D. G. & S. 422). *Brown v. Groundridge*, 4 Mad. 495, and the numerous cases that followed it, must therefore be considered to be overruled.

But the term "testamentary expenses" does not include the costs of administering real estate (*Patching v. Bennett*, 45 L. T. 292); and notwithstanding a direction in a will that costs of administration are to come out of a particular fund, the Court will not hesitate to deprive of his costs any plaintiff who has instituted an improper administration suit (*Re Young*, *Young v. Dolman*). The charge in a will of the "costs of executing the trusts hereof," upon a fund to be set aside by the executors, was held not to extend to the costs of executing the trusts of the real estates, being confined to the costs of executors in that character (*Lord Brougham v. Lord W. Poulett*, 19 Beav. 119). In a creditor's action, the costs are payable out of the same funds as the debts, and therefore, if

a particular fund or estate is charged with debts, the costs of a creditor's action also will be charged upon it (*Wilson v. Heaton*, 11 Beav. 492; and see *Mutlow v. Mutlow*, 4 De G. & J. 539). Where a testator had charged his real estate with payment of his debts in exoneration of his personalty, it was held, Lord Kingsdown *diss.*, that this did not include costs to which the executor had been put in resisting an unfounded demand by a creditor; such costs being costs of administration, and therefore payable out of the general personal estate (*Lovut v. Fraser*, L. R. 1 Sc. Ap. 24).

If an administration action is also for other purposes, or it becomes necessary to administer or execute the trusts of another estate or fund in it, the costs of the action will be divided; see *Young v. Martin*, 2 Y. & C. C. C. 582, where the costs of a suit to administer the estate of a testatrix, including a fund appointed by her will, were payable, so far as related to the appointed fund, out of that fund, and as to the remainder only, out of general estate. In *Irby v. Irby*, 24 Beav. 525, the costs of a suit to administer the estate of a tenant for life of a settlement, to whom the trust funds had been lent on mortgage, and to realise the mortgage and incidentally execute the trusts of the settlement, were payable, so far as an administration suit, out of assets, but so far as increased by its being a suit to execute the trusts of the settlement out of the settlement funds. And in *Dean v. Morris*, 5 W. R. 345, it was held that the costs of administering two estates, which had been dealt with as one fund, should be paid out of the estates equally, though they were unequal in amount.

Where the action is also for other purposes.

The costs of a suit to execute the trusts of the will of a married woman, made under a power, her general estate, which was not comprised in the will, being administered under the decree, were borne by the two funds equally (*Mayd v. Field*, 24 W. R. 660). In *Menteath v. Campbell*, 26 W. R. 848, it was held that the costs of obtaining

probate of the will of a married woman, which purported to be made under a power, but merely operated to pass her separate estate, must fall upon the appointed fund; but see *Bluiklock v. Grindle*, 7 Eq. 215; 17 W. R. 114. Where a suit was instituted by the administrator *de bonis non* of a testator against the personal representative of a defaulting executor of the same testator, to recover the amount due from him, and also to administer the estate of the original testator, it was held that the executor's estate must bear the costs of it (*Hyatt v. Hyatt*, 30 Beav. 630); but in *Palmer v. Jones*, 43 L. J. Ch. 349, where an executor died insolvent, having misapplied the assets, and an administration suit was instituted against his executors, who accounted for what they had received of the testator's estate, it was held that they were entitled to the costs of accounts against themselves, but not to costs of accounts against the estate of the insolvent executor; and that as to other costs of suit, being parties in both capacities, they should have half the costs; and see also *Kitto v. Luke*, 28 W. R. 411.

A direction that costs are to be paid out of a particular fund, does not conclusively determine that that fund is ultimately to bear them; see *Shppard v. Shppard*, 33 Beav. 129, where costs had been ordered to be paid out of income instead of out of capital, and it was held that this did not prevent the matter being afterwards set right.

Where real and personal estates are administered in the same action.

As to the mode in which the costs of a suit to administer both real and personal estate should be borne, the rule seems formerly to have been as follows, viz., that where a testator created a mixed residue of realty and personalty, and the two were administered together as a common fund, the costs of the suit were paid out of both rateably, according to their respective values; but where the real and personal estate were given upon different trusts, and a suit was necessary to determine the rights of parties, the general costs of the suit were payable exclusively out of the general personal estate, even

although the difficulty arose with respect to the real estate solely, if there was a prayer in the bill for administration of the personal estate also. See in illustration of the practice as stated above, *Cradock v. Owen*, 2 Sm. & G. 241; *Bunnett v. Foster*, 7 Beav. 540; S. C. on appeal *sub nom. Christian v. Foster*, 2 Ph. 161; *Johnston v. Todd*, 8 Beav. 489; *Green v. Busby*, W. N. (1866), 344; *Skirrow v. Skirrow*, 17 W. R. 759, where the costs were paid rateably; and *Ripley v. Moysey*, 1 Ke. 578; *Pickford v. Brown*, 2 K. & J. 426; *Stringer v. Harper*, 26 Beav. 585; *Barnewell v. Iremonger*, 1 Dr. & S. 255; *Maddison v. Clupman*, 1 J. & H. 470; *Puxley v. Puxley*, 1 N. R. 509; *Randfield v. Randfield*, 2 N. R. 309; 11 W. R. 847; where the costs were paid out of the personal estate only. In *Sanders v. Miller*, 25 Beav. 154, however, the costs of the suit, so far as it was for the administration of the real estate, were ordered to be paid out of the undisposed-of realty, and so far as for the administration of the personal estate out of the undisposed-of personalty. And the Court of Appeal has recently laid it down that where an action is brought for the administration of real and personal estate, the general costs of administration must be borne by the personal estate, and any additional costs caused by administering the real estate must be borne by the real estate; and, further, that it is the duty of the judge to apportion the costs, and not leave the matter to be dealt with by the taxing master (*Patching v. Barnett*, 45 L. T. 292; *In re Middleton*, *Thompson v. Harris*, W. N. (1882), 15; 30 W. R. 293). This must, therefore, be taken to express the present practice of the Court on this point.

The cases as to the liabilities of descended and devised real estates for the costs of an administration action, do not appear to lay down any very certain or uniform principle. In *Row v. Row*, 7 Eq. 414, it was held that the costs of administration must, as between the heir-at-law and specific devisees, be borne primarily by the real

estate descended; but see *Luckcraft v. Pridham*, 48 L. J. Ch. 636; W. N. (1879), 94. In *Scott v. Cumberland*, 18 Eq. 578, Malins, V. C., said that the old rule that descended estates must exonerate devised estates, was still in force, and held further, that real estate descended, whether by reason of lapse, or because it was never devised, must be applied in payment of the costs of administration in priority to personal estate effectually disposed of. On the other hand, it was held that where part of the real estate was undisposed of, and descended to the heir, the costs must be divided between the devised and descended estates *pro rata* (*Maddison v. Pye*, 32 Beav. 658; and see *Bagot v. Legge*, 2 Dr. & S. 259; 13 W. R. 1; 5 N. R. 5; 11 L. T. 263; *Hardwick v. Hardwick*, 42 L. J. Ch. 636). In this conflict of authority, it is difficult to discover a principle; but it is submitted that the true principle is that followed in *Maddison v. Pye* and *Bagot v. Legge*. There is no such thing as a residue of real estate, properly so called, and the devisee has no equity to charge the heir with the whole expenses of administering the devised as well as the descended estates. In *Stead v. Hardaker*, 15 Eq. 175, where the testator charged all his real and personal property with the payment of his debts and funeral and testamentary expenses, and the personalty proved insufficient for payment of debts, it was held that the specifically devised and descended estates were liable rateably to the payment of the debts and expenses, and the costs of the suit. See also *In re Jones, Jones v. Caless*, 10 Ch. D. 40. Where the residuary personalty is insufficient to pay the costs of the suit, then, as between pecuniary legatees and residuary devisees, the deficiency must be made up by the former (*Tomkins v. Colthurst*, 1 Ch. D. 626), following out the principle of *Hensman v. Fryer*, 3 Ch. 420. The costs of the general administration of personal estate should not, in favour of legatees, be thrown upon descended realty (*Harrison v. Harrison*, 8 Ch. 342; 21 W. R. 164). In

Jackson v. Pease, 19 Eq. 96; 23 W. R. 43, where the residuary personalty after payment of debts was insufficient to pay the costs, V. C. Hall held that the deficiency must be borne by the specifically bequeathed personalty, the specifically devised realty, and the residuary realty, rateably.

The particular costs and expenses, however, incurred after an order for sale of any part of the real estates in effecting the sale, should, it seems, be borne out of the proceeds of sale (*Barnewell v. Iremonger*, 1 Dr. & S. 255). If the personal estate is exhausted in payment of debts, the costs will come out of any estate or fund charged with the payment of debts (*Wisden v. Wisden*, 5 Jur. N. S. 86; *Puxley v. Puxley*, 1 N. R. 509). If the action is for the administration or execution of the trusts of the real estate alone, the costs will fall on the residuary real estate (*Marshall v. Grime*, 8 W. R. 385); or if there is no such real estate, upon the estates specifically devised (*Sanders v. Miller*, 25 Beav. 154; *Barnewell v. Iremonger*, 1 Dr. & S. 255); and for the purpose of apportionment, the amount of the incumbrances (if any) on each estate should be deducted from its gross value (*ibid.*). If part of the real estate is undisposed of and descends to the heir, the costs will be divided between the devised and the descended estates *pro ratâ* (*Bagot v. Legge*; *Maddison v. Pye*, cited *ante*, p. 176). In a suit for executing the trusts of real estate which has been settled by will upon infants, the Court has power, if necessary, to direct a sale or mortgage of sufficient part of the property for payment of the costs of the suit (*Mandeno v. Mandeno*, Kay, app. ii.; *Adams v. Adams*, cited *ibid.*, iii.; *Cunnell v. Beeby*, 1 Dick. 115, Beames, app. 7). But the Court does not charge the costs of an administration suit on any part of the estate administered and direct a sale against the will of a person beneficially entitled, who submits to pay his share of the costs (*Lees v. Lees*, 15 Eq. 151).

The rule which throws the costs of the action on the part of the estate which is not specifically disposed of,

Costs of suit to execute trusts of real estate only.

But the rule by which costs

are payable out of residue does not apply as between the appointed and unappointed parts of a fund.

does not apply as between the appointed and unappointed portions of a fund in course of administration (*Trollope v. Routledge*, 1 De G. & S. 662, 671; *Warren v. Postlethwaite*, 2 Col. 116); but the costs in that case are payable out of the appointed and unappointed parts rateably, according to their respective values (*ibid.*); and see *Moore v. Dixon*, 15 Ch. D. 566; 29 W. R. 12. In *Warren v. Postlethwaite*, the suit was to administer the estate of a married woman, who had made her will under a power. When several administration suits have been consolidated, and one decree made in all, and the conduct of them given to the plaintiff in one of them, he will be entitled to his further costs properly incurred in prosecution of the decree, beyond his ordinary costs as plaintiff in his own suit, including his costs, charges, and expenses incurred in the conduct of sales under the decree (*Lockhart v. Hurdy*, 10 Beav. 292).

Costs of a plaintiff having the conduct of several suits consolidated

Costs of suit, a prior charge to costs of litigation in Probate Division, but not to charges of an officer of the Court.

The costs of an administration action are payable in priority to the costs of a suit in the Probate Division respecting the will, and there ordered to be paid out of the estate (*In re Maghera, Rowles v. Maghera*, 5 Ch. D. 596; *Major v. Major*, 2 Drew. 281); but not to the charges incurred in reference to the estate by an officer of the Court where the estate is being administered: see *Morison v. Morison*, 7 De G. M. & G. 214, 224, where the estate comprised West India property, and the consignee appointed by the Court was allowed to retain advances made by him out of the estate in priority to the costs of the suit. An executor or administrator has also a right to retain his own debt in priority to the costs of the suit (*Chissina v. Davis*, 5 Russ. 29; *Tipping v. Power*, 1 Ha. 405; *Horne v. Shepherd*, 26 L. J. Ch. 817; 3 Jur. N. S. 806; *Richmond v. White*, 12 Ch. D. 361); notwithstanding *Loomes v. Stotherd*, 1 S. & S. 458, *contra*. And as to the priority of the costs of the suit over debts, see *post*.

Right of retainer by executor of his own debt in priority to the costs of the suit.

Costs of executors and

Executors and administrators are, in the absence of gross misconduct, entitled to their full costs of the suit as

between solicitor and client out of the estate, together with any other costs, charges, and expenses properly incurred by them (*ante*, p. 5; and see *Sharp v. Lush*, 10 Ch. D. 468; 27 W. R. 528);* and in priority to all other parties, as to which see *post*. As executors can only obtain complete exoneration by having their accounts passed in the Court, the Court is anxious not to deter them from so doing by refusing them costs (*Low v. Carter*, 1 Beav. 426; *Hall v. Hallet*, 1 Cox, 141; and see *Howard v. Easton*, 29 W. R. 885; *Carteis v. Candler*, 6 Mad. 123). And if an executor refuses to join his co-executor as a plaintiff in a proper case, and is therefore made a defendant, he will be refused his costs (*Collyer v. Dudley*, 2 L. J. Ch. (O. S.) 15). The mere fact of executors being charged with interest on balances in their hands, or any mere negligence, is not in itself a sufficient ground for visiting them with the costs of the action, or even refusing them costs (*Flanagan v. Nolan*, 1 Moll. 84; *Travers v. Townsend*, *ibid.* 496; *Noble v. Meymott*, 14 Beav. 471; *Bennett v. Atkins*, 1 Y. & C. 247; *Woodhead v. Marriott*, C. P. C. 62; *Eglin v. Saunderson*, 3 Giff. 434); notwithstanding Lord Loughborough's dictum in *Seers v. Hind*, 1 Ves. junr. 294, which was disapproved of by Sir W. Grant in *Ashburnham v. Thompson*, 13 Ves. 402, as too broadly stated. "I have often heard it laid down as a principle by some of the greatest judges, that an executor, though in the result made answerable for default by reason of loss incurred through neglect, or chargeable with interest for retaining money in his hands, yet if there was nothing beyond such negligence or retention of money against him, is entitled to the costs of the suit" (*per* Sir A. Hart, L. C., in *Travers v. Townsend*).

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Executor
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But if the executors' accounts are falsified, or they have been guilty of gross or wilful negligence, or have acted

But if the
executors
are guilty
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* The costs, charges, and expenses of getting in a particular debt specifically bequeathed are allowed to the executors out of the general estate and are not charged on the particular fund (*Perry v. Mallowcroft*, 4 Beav. 204).

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from fraudulent or interested motives, they will have to pay the costs of the suit, or so much of it as has been occasioned by their misconduct; or, at least, will not be allowed costs; and see *Gilbert v. Lee*, 13 W. R. 1012, where Romilly, M. R., disallowed the costs of an executor who vexatiously obstructed the taking of his accounts. The general principle is thus stated by Sir T. Plumer: "If a suit would have been proper, and the executor a necessary party, though the executor had not misconducted himself, he ought not to pay all the costs of such suit, though in the course of the suit it appears that he has misconducted himself; but if the misconduct of the executor was the sole occasion of the suit, he ought then to pay the costs" (*Tebbs v. Carpenter*, 1 Mad. 290). And in *Hough v. Scord*, 24 W. R. 51, Sir G. Jessel, M. R., expressed himself as follows:—

"In certain cases of mere neglect or refusal to furnish accounts, where the neglect is very gross, or the refusal wholly indefensible, I reserve to myself the right of making the executor or trustee pay the costs of litigation caused by his neglect or refusal. But I expressly guard myself from saying that in every case of mere neglect, or even in every case of mere refusal, an honest executor or trustee, who has fairly discharged his duty, an onerous and thankless duty, is to pay costs. But where I find, in addition to an unjustifiable neglect or delay that there has been misconduct in dealing with the trust fund, then I look upon that neglect or delay, as an aggravation of the latter misconduct; and although, standing alone, the neglect or delay might not be sufficient to induce me to order the trustee or executor to pay costs, yet, when combined with such misconduct I should order him to do so."

Cases
where
executors
were
allowed
their full
costs.

In the following cases—*Bailey v. Gould*, 4 Y. & C. 221; *Bennett v. Atkins*, 1 Y. & C. 247; *Noble v. Meymott*, 14 Beav. 471; *Flanagan v. Nolan*, 1 Moll. 84; *Travers v. Townsend*, *ibid.* 496; *Royds v. Royds*, 14 Beav. 54; *Cotton v. Clarke*, 16 Beav. 134; *Holyate v. Heworth*,

17 Beav. 259, executors retaining balances in their hands and charged with interest thereon, were nevertheless allowed their full costs; and in *Taylor v. Tabrum*, 6 Sim. 281, they were allowed costs, though charged with a loss of £3,000. Again, in *Bennet v. Going*, 1 Moll. 529, an executor in whose accounts £300 had been disallowed had his costs; the disallowance of a credit honestly claimed not being a falsification of accounts; and see *Smith v. Cremer*, 24 W. R. 51; *Massey v. Massey*, 17 L. T. 233.

In *Raphael v. Boehm*, 11 Ves. 92; 13 Ves. 590; *Tebbs v. Carpenter*, 1 Mad. 290; *Pocock v. Reddington*, 5 Ves. 800; *Colyer v. Colyer*, 11 W. R. 79; 32 L. J. Ch. 101, executors, though charged with interest on balances in their hands, were allowed the costs of the suit, except as to the enquiries thereby rendered necessary, of which they had to pay the costs in *Tebbs v. Carpenter*, and of which no costs were given in the other cases cited. And in *Heighington v. Grant*, 1 Ph. 600, they were charged with compound interest, and made to pay the costs of so much of the suit as sought to charge them with interest, but received their full costs of the rest of the suit; and see *Pride v. Fooks*, 2 Beav. 430; *Sculthorpe v. Tipper*, 13 Eq. 232, where trustees were ordered to pay so much of the costs as was caused by their default; *Wilding v. Landor*, W. N. (1866), 327. In *Birks v. Micklethwait*, 34 L. J. Ch. 362, where large balances were found due from executors, they were not allowed any costs, even on condition of making good the balances.

Lastly, in *Seers v. Hind*, 1 Ves. junr. 294; *Newton v. Bennet*, 1 Bro. C. C. 362; *Roche v. Hart*, 11 Ves. 58, 62; *Mosley v. Ward*, *ibid.* 581, 3; *Ashburnham v. Thompson*, 13 Ves. 402; *Crackelt v. Bethune*, 1 J. & W. 586; *Tickner v. Smith*, 3 Sm. & G. 42; *Eglin v. Sanderson*, 3 Giff. 434; *Walrond v. Walrond*, 29 Beav. 586, the executors had to pay all the costs of the suit; and see *Wroe v. Seed*, 4 Giff. 425; *In re Radclyffe*, *Pearce v. Radclyffe*, 50 L. J. Ch. 317; 29 W. R. 420; *Hooper v. Hooper*, W. N. (1874),

Where executors were allowed the costs of the suit except as to special inquiries occasioned by their breach of trust.

Where the executors were charged with all the costs of the suit.

174. But if, when ordered to pay the costs at the hearing, they comply with the decree, they may receive their subsequent costs (*Hewell v. Foster*, 7 Beav. 348). In *Hide v. Haywood*, 2 Atk. 126, executors guilty of fraud were charged with costs, notwithstanding a special direction in the will that they should have costs out of the estate. But if the plaintiff fails to establish the particular charges made, the executors, though they have been guilty of negligence, will be entitled to their costs of meeting those charges; see *Smith v. Chambers*, 2 Ph. 221, where it was held that the costs incurred in injudiciously defending an action were not within "wilful neglect and default," and therefore the executors were allowed costs. And see further as to the costs of injudiciously defending an action, *Noble v. Brett*, 5 Jur. N. S. 4; 28 L. J. Ch. 322, where they were not allowed; *Graham v. Wickham*, 34 L. J. Ch. 220; 13 W. R. 396; 11 Jur. N. S. 168; 12 L. T. 39.

But executors entitled to costs of disproving particular charges, though guilty of negligence.

Executors implicated in breach of trust charged jointly.

Where two or more defendants are implicated in a breach of trust, the plaintiff is entitled to an order for payment of his costs by all, and the Court will not distinguish between the relative degrees of culpability (*Lancester v. Bowle*, 2 Ph. 140). The circumstance that the estate proves insufficient may be a reason for refusing the trustees all or a part of their costs, if they have not strictly administered their trust (*Bow v. Tapp*, 10 W. R. 277). But in *Haldenby v. Spofforth*, 9 Beav. 195, the representatives of a defaulting executor fairly accounting were held entitled to retain their costs of the suit out of the assets, though insufficient to repair the breach of trust. The suit was, in fact, a mere creditor's suit.

Where executors have acted perversely or with unreasonable caution:

Or again, if the executors, though not guilty of any breach of trust and without any fraudulent motives, have acted perversely or with unreasonable caution or suspicion, they will have to pay the costs of a suit occasioned by such conduct. An executor is ordinarily bound to render the accounts of his testator's estate to the solicitor of the residuary legatee, and if he refuses he will have to pay personally

refusing to

the costs of the suit up to the hearing (*Kemp v. Burn*, 4 account, Giff. 348; 1 N. R. 257; 11 W. R. 278; 9 Jur. N. S. 375); but not the subsequent costs if he accounts fairly (*ibid.*); and see the cases collected *ante*, p. 162. In *Gresham v. Price*, 35 Beav. 47, however, executors who had neglected to produce their accounts were merely deprived of their costs up to the hearing. So in a legatee's suit, where the executor has returned evasive answers to enquiries by the legatee (*Grierson v. Astle*, 3 L. T. 288); or has been unreasonably cautious as to the evidence of a matter of fact (*Lyse v. Kingdon*, 1 Coll. 184); or has annexed conditions to the payment of the legacy which he has no right to impose (*Walter v. Patey*, 1 Rus. 375). But it seems the legatee should exhaust every means of obtaining payment of his legacy before instituting a suit (*Aylmer v. Winterbotham*, 4 Jur. N. S. 19). Trustees ought not to refuse to pay a settled legacy into Court under the Trustee Relief Act, if so requested, and having refused so to do, they were charged with the costs of a suit to secure it (*Handley v. Davies*, 5 Jur. N. S. 190). And an executor or trustee is not justified in refusing to pay a legacy or distribute a fund without the direction of the Court, on the ground of legal doubts in a clear case. See *Harvey v. Harvey*, 3 Jur. 949; *Burrows v. Greenwood*, 4 Y. & C. 251; *Firmin v. Pulham*, 2 De G. & S. 99; *Price v. Loudon*, 21 Beav. 508, where the executor or trustee had to pay costs; and *Knight v. Martin*, 1 R. & M. 70, where he got no costs. But on the other hand, the opinion of counsel, however eminent, is no protection to an executor against costs if he takes upon himself to act upon a particular construction of the will without seeking the direction of the Court (*Boulton v. Beard*, 3 De G. M. & G. 608); and if he distributes the whole estate according to a wrong construction, he will have to pay personally the costs of a suit, in which the plaintiff successfully establishes his title to a share (*ibid.*). The reason there assigned for charging the executor personally with costs was that by

or pay a legacy,

or secure it, when settled, in Court.

Executor or trustee having legal doubts in a clear case.

Opinion of counsel no protection to executor against costs.

distributing the estate he had prevented the plaintiff having his rights determined at the expense of the estate; and see *Curtis v. Robinson*, 8 Beav. 242.

Where surviving executors improperly resisted the claim of a legatee on an administration summons, but gave no notice of the proceedings to the executor of their deceased co-executor, it was held that the estate of the deceased executor was not liable for the costs of such proceedings (*Paul v. Mortimer*, 29 L. T. 418).

Where executors in making a partial distribution of a residue made two serious mistakes, it was held that the whole costs of the suit should be taken out of the estate as if they had never divided it, and the executors then charged personally with the share of costs attributable to each of the distributed shares (*Hillier v. Fulford*, 4 Ch. D. 389, 46 L. J. Ch. 43; 25 W. R. 161; 35 L. 750); and see *Bath v. Bell*, 59 L. T. 422.

In *In re Tunn, Greatell v. Tunn*, 7 E. 436, executors (beneficiaries) made up their accounts, set apart a portion of the residue as an indemnity fund, and paid the adult legatees their shares, retaining their own shares and investing those of certain infant legatees. The infants instituted an administration suit, in which the executor's accounts were substantially upheld; and it was held that the costs must be paid out of the undistributed residuary estate; that neither the adult legatees nor, in the first instance, the executors should receive costs without accounting for their shares and contributing to the costs; but that after payment of the costs of the plaintiffs, and any other parties entitled thereto out of the indemnity fund (which was in Court) the surplus of the fund should be paid to the executors towards payment of their costs.

Costs of administrator whose letters are revoked.

An administrator of a supposed intestate, acting *bonâ fide*, was held to be entitled to costs out of the estate, although a will was afterwards produced, the residuary legatee under which obtained revocation of the letters of administration and probate of the will (*Mirchouse v.*

Herbert, 5 W. R. 583); and see *Taylor v. Haygarth*, 8 Jur. 135. But an administrator whose letters are revoked will not get his costs of an administration suit instituted by him with knowledge that another person claimed to administer (*Houseman v. Houseman*, 1 Ch. D. 535; 24 W. R. 592; 34 L. T. 633).

In a recent case a grant of probate to A. was revoked and probate granted to B.; on appeal to the House of Lords their lordships were equally divided and the decree therefore stood, and the costs of both parties, "as well in the Court below as in this House," were ordered to be paid out of the estate. The personal estate being insufficient, A. filed a bill for administration in order to get his costs, and sums expended by him as executor before the revocation; and it was held that the direction of the House of Lords, being based on the jurisdiction of the Probate Court, did not make A.'s costs of the probate litigation payable out of the real estate, and that administration must be limited to the testator's personalty (*Charter v. Charter*, 3 Ch. D. 218; 45 L. J. Ch. 705; 24 W. R. 874; 34 L. T. 412). Where, however, executors took legacies under the will of their testator, which also gave them the residue, and the next of kin disputed the will, which was established with the exception of the residuary clause, the executors were allowed all costs of proving the will, including costs ordered by the House of Lords to be paid to the next of kin (*Fulton v. Andrew*, 46 L. J. Ch. 131). A personal representative claiming part of the estate beneficially is in no better position in that respect than any other defendant, and will have to pay the costs of an action in which that portion is successfully recovered from him (*Bruin v. Knott*, 12 Jur. 616).

Where there is a bequest to a trustee for payment of debts and then in trust for one absolutely, the legatee is not a necessary party to a creditor's suit, and will be dismissed with costs, to be paid by the plaintiff (*Smith v. Andrews*, 4 W. R. 353); but *semble*, not if he does not

Where the beneficiary is not a necessary party.

object before or at the hearing (*Williams v. Williams*, 1 W. R. 237). In that case he must bear his own costs (*ibid.*).

Costs of members of a class proving their title to share in a legacy, come out of the fund, *semble*.

It seems that where a pecuniary or specific legacy is given to a class, the costs of raising the legacy only will come out of the general estate, and the costs of administering the fund, comprising the costs of each person proving his title as a member of the class, will come out of the fund itself (*Boycott v. Newman*, 4 W. R. 707; 2 Jur. N. S. 702; *Wallis v. Witham*, Beames, app. 1); but see *contra*, *Dugdale v. Dugdale*, 12 Beav. 247. And, of course, where a fund charged upon an estate by a previous settlement has to be raised in an administration suit, the costs of raising it only come out of the estate (*Stewart v. Marquis of Donegal*, 2 Jo. & Lat. 636).

But costs of residuary legatees and next of kin, out of the estate before division.

But all the costs of ascertaining the members of a class entitled to a residue, or the next of kin of an intestate, are part of the general costs of the suit, and are payable out of the general personal estate before division (*Shuttleworth v. Howarth*, Cr. & Ph. 228; *Doody v. Higgins*, 9 Ha. app. xxxii.); and see further as to the costs of next of kin proving their title in chambers, *Bennett v. Wood*, 7 Sim. 522; *Bakerwell v. Tugart*, 3 Y. & C. 173. Where a residue was given as to one part to A. and as to other parts to several classes, the whole residue, including A.'s part, bore the costs of ascertaining the classes (*In re Reeve's Trusts*, 4 Ch. D. 841; 46 L. J. Ch. 412; 25 W. R. 628; 36 L. T. 906; and see *Boulton v. Beard*, 3 De G. M. & G. 608). The rule applies although the testator has given his residue in certain proportions amongst different classes; and all the costs of ascertaining the members of the several classes in such case must be borne by the estate generally, although some classes are more numerous than others, and the expenses of ascertaining the members of them consequently greater (*Shuttleworth v. Howarth*). In *Attorney-General v. Haberdashers' Co.*, 4 Bro. C. C. 177, two unreported cases (*Whistler v. Rawlinson*; *Holden*

v. *Burnell*) are cited in which persons who came in under the decree, and claimed to be next of kin or heirs at law, and failed to prove their title, were nevertheless allowed their costs; and see *Singleton v. Tomlinson*, 3 App. Cas. 405; 1 L. R. Ir. 57; 26 W. R. 722; 38 L. T. 653.

But any extra costs which are occasioned by the conduct of a residuary legatee, or the party entitled to a distributive share, or are for his exclusive benefit, will come out of his own share. Thus in *Basevi v. Serra*, 14 Ves. 313; 3 Mer. 676, the defendants being entitled to a residue in equal shares, and long enquiries having been rendered necessary by the bankruptcy of a person entitled to one share, the costs were apportioned on the several shares. So where pending the suit the plaintiff, residuary legatee, compounded with his creditors and became insolvent, whereby two supplemental bills were necessary, the costs of them fell on the plaintiff (*Bruce v. Ormond*, 2 J. & W. 435). Where any of the persons entitled have incurred their shares the rule is that the assignor and assignee are only entitled to one set of costs between them, viz., the costs of the assignor, which are directed to be paid to the assignee towards his costs, so far as the same may be required; and the excess (if any) of the assignee's costs is payable out of the particular share (*Greedy v. Lavender*, 11 Beav. 417); and see *Re Bright's Trusts*, 3 W. R. 544; *Remnant v. Hood*, 27 Beav. 613; *Turner v. Gowdon*, 19 W. R. 403, S. C. *sub nom.* *Turner v. Sowdon*, 23 L. T. 799; *Perceval v. Perceval*, 9 Eq. 394; *Ward v. Yates*, 1 Dr. & S. 80. Lord Langdale, M. R., added a direction to the order in *Greedy v. Lavender*, to exclude from the assignor's costs "any additional costs incurred by reason of the said defendants, or any of them, having assigned, mortgaged, or incumbered their shares" (11 Beav. 421); but Sir J. Romilly, M. R. disapproved of this direction as too refined (*Coates v. Coates*, 3 N. R. 355). Hall, V. C., has recently held that if in an administration suit an inquiry as to incumbrances is added in Chambers,

But any extra costs occasioned by a party himself, or incurred for his sole benefit, come out of his share.

Where any of the parties to an administration suit have incumbered their shares.

the costs of the inquiry must be treated as part of the general costs of administration and be paid out of the general estate (*Ger v. Mahood*, 23 W. R. 71 ; W. N. (1874), 207). In *Heywood v. Gracbrook*, 13 Jur. 619, where some of the parties who had incumbered their shares had joined other defendants in their defence, V. C. Knight Bruce held that the estate should have the benefit of the assignor having joined with the others, and the assignee must add his costs to his incumbrance ; but in *Greedy v. Lavellee*, 11 Beav. 417, it was said that the costs under such circumstances must be apportioned. In *Ross's Trust*, 15 Jur. 241, Lord Cranworth, V. C., gave the assignee of a life interest his own costs, and no costs to the tenant for life ; and in *Masson v. Hackett*, 2 L. T. 592, the Court gave a married woman, who had settled her interest, and her children, and the trustees of her settlement, but one set of costs, and left it to the taxing master to say to whom they should be paid. Where there were two assignees of specific portions of a fund the two portions bore the costs of the suit rateably (*Harrison v. Harrison*, W. N. (1876), 45). An incumbrancer will not be entitled to costs from the plaintiff merely because he is a necessary party, though from the frame of the suit he can get no relief in it (*Joyce v. De Moleyns*, 3 J. & Lat. 698). And it seems that, if the assignor is not entitled to any costs, neither will his assignees be so (*Carr v. Henderson*, 11 Beav. 415 ; *Massey v. Moss*, 1 Ha. 319). In the latter case the executor was in default and bankrupt, and his assignees were made parties ; and V. C. Wigram seems to have thought they might have had their costs, if the bill had unsuccessfully attempted to charge them with specific parts of the testator's estate (p. 321). But where an executor, who was an insolvent, filed a bill for administration and made his assignees defendants, it was held that they were entitled to separate costs (*Chilwell v. Hocknell*, 2 W. R. 630). In *Kitchener v. Kitchener*, 13 Jur. 761, the costs of the Attorney-General, made a party

Costs of assignees in bankruptcy of executor.

in respect of a reversionary interest belonging to a felon, were not provided for by the decree, as his right would not arise till the reversion fell into possession. The costs of taking out administration to a beneficiary, who had mortgaged her share for more than its value, for the mere purpose of making the suit complete, were ordered to be paid out of the general fund (*Cotton v. Penrose*, 13 Jur. 761).

Residuary legatees and other persons served with the decree and obtaining an order (under Stat. 15 & 16 Vict. c. 86, s. 42, r. 8) for liberty to attend the subsequent proceedings are, it would seem, in the same position as to costs as persons parties to the cause; and see under the old practice *Hutchinson v. Freeman*, 4 My. & Cr. 490. But where a number of persons in the same interest appear separately, only one set of costs will be allowed (*Stevenson v. Abington*, 11 W. R. 936; and see *Foxen v. Foxen*, 13 W. R. 33). In *Re Taylor's Estate*, *Daubney v. Leake*, 1 Eq. 495; 35 Beav. 311; 35 L. J. Ch. 347, Lord Romilly laid down the rule that in an administration suit by a residuary legatee, other residuary legatees, served with notice of the decree and having liberty to attend the proceedings, would not be allowed their costs of attending the taking of the accounts in Chambers, unless the plaintiff and the accounting defendant employed the same solicitor, and in that case would be allowed one set of costs between them. This has been followed in *Hubbard v. Latham*, 35 L. J. Ch. 402; 14 W. R. 553; 14 L. T. 616; *Wragg v. Morley*, 14 W. R. 949; *Armstrong v. Armstrong*, 12 Eq. 614; *Joseph v. Goode*, 23 W. R. 225; W. N. (1875), 4. See however *Bland v. Daniell*, W. N. (1867), 169; and see also *Bellew v. Bellew*, W. N. (1868), 253; *Lewis v. Matthews*, 38 L. J. Ch. 510; 17 W. R. 841.

If a defendant, by the decree declared to be an unnecessary party, nevertheless remains before the Court and attends the proceedings in Chambers he does so at his own risk (*Girdleston v. Creed*, 1 W. R. 228; *Grace v. Ter- rington*, 2 Coll. 53); and no costs were allowed although

Costs of persons served with decree and having liberty to attend proceedings.

the defendant was next-of-kin to the residuary legatee, who was a lunatic (*Thorp v. Thorp*, 3 Mer. 116).

By R. S. C. Ord. XVI., r. 12b. (April, 1880), in any cause for the administration of the estate of a deceased person, no party to the cause other than the executor or administrator shall, unless by leave of the judge, be entitled to appear either in Court or in Chambers on the claim of any person not a party to the cause against the estate of the deceased in respect of any debt or liability. The judge may direct any other party to the cause to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as he shall think fit. And by Cons. Ord. XL., r. 28, parties attending any proceeding in chambers without having obtained the previous leave of the judge to attend the same, are not allowed any costs of such attendance unless by special order; and see *ante*, p. 137.

Residuary legatees not entitled to costs as between solicitor and client, unless by consent.

It is a common practice to allow residuary legatees their costs out of the estate as between solicitor and client; but it can only be done with the consent of all parties (*Blenkinsop v. Foster*, 3 Y. & C. 207; *Fenner v. Taylor*, 5 Mad. 470, 6 Mad. 3; *Martin v. Maugham*, 8 Jur. 609); but in *Blenkinsop v. Foster*, the Court refused to vary an order giving them costs as between solicitor and client, on the mere ground that it was not by consent of all.

Set-off of the costs awarded to any party against a debt due from him to the estate.

If any of the parties to an administration action are debtors to the estate and insolvent, their costs will be set off *pro tanto* against the debt due from them (*Harmer v. Harris*, 1 Russ. 155); and in *Nicholson v. Norton*, 7 Beav. 67, they were carried to the separate account of the legatee instead of being paid to her. So in *Cooper v. Pitcher*, 4 Ha. 485, the plaintiff's costs were directed to be set off against payments erroneously made by the executors to the use of the plaintiff, who, by the decree made in the cause, was declared to have no interest in the fund, but was allowed his costs. If an executor becomes bankrupt in the course of the suit, his costs before

bankruptcy must be set off against the balance due from him to the estate, but he will be entitled to his costs incurred subsequently to the bankruptcy (*Samuel v. Jones*, 2 Ha. 246). So if the bankruptcy was before suit, and a sum is found due from him, no part of his costs can be set off against such sum (*Cotton v. Clark*, 16 Beav. 134). * Although the executor is indebted to the estate in an amount exceeding the amount of his costs payable at a future day, if there is no reason to suspect his solvency, he will be entitled to immediate payment of his costs (*Stevens v. Pillen*, 12 Jur. 282; 17 L. J. Ch. 214). Where two executors, defendants in a suit, gave a joint retainer, and one died insolvent and indebted to the estate, the survivor was held entitled to be paid out of the estate *all* the costs for which he was liable; and the costs incurred for the deceased executor in taking the account of his debt, were set off against the debt (*Watson v. Row*, 18 Eq. 680; 22 W. R. 793); *sed qu.*, see *Smith v. Dale* (M. R.), 18 Ch. D. 516; 44 L. T. 460; 29 W. R. 330.

* See addenda ante p. 18.

“A creditor who has come in and established his debt in the Judge’s Chambers under a decree or order in a suit shall be entitled to the costs of so establishing his debt; and the sum to be allowed for such costs shall be fixed by the Judge, unless he shall think fit to direct the taxation thereof, and the amount of such costs, or the sum allowed in respect thereof shall be added to the debt so established” (Cons. Ord. XL., r. 24).

Costs of a creditor proving his debt in chambers.

This rule does not affect the costs to which the plaintiff in a creditor’s suit is entitled (*Flintoff v. Haynes*, 4 Ha. 309). In general, all creditors required under the General Order of 27th May, 1865, to prove their debts, are allowed a fixed sum of £1 13s. 4d. if the debt is under £5, and £2 2s. if above (Seton, 832). In *Waterlow v. Burt*, 18 W. R. 683, S. C. *sub nom.* *Waterton v. Burt*, 39 L. J. Ch. 425; W. N. (1870), 106, three guineas was held a proper sum to allow. By rule 4 of the same Order a creditor failing to

Costs of a person failing in his claim to be a creditor ;

produce his security or other evidence of his claim, will get no costs. Creditors attending under r. 3 of the Order, to produce securities or other evidence, will be allowed a proper fee for such attendance. Where an estate which was insufficient had been apportioned amongst the creditors, but not paid out, a creditor was allowed to come in on payment of the costs of the application and of the re-apportionment (*Angell v. Haddon*, 1 Mad. 529). If a person claiming to be a creditor fails in his claim, the Court will order him to pay the costs thereby occasioned (*Hatch v. Scarles*, 2 Sm. & G. 157 ; *Yeomans v. Haynes*, 24 Beav. 127 ; *Colyer v. Colyer*, 10 W. R. 748 ; and see *Wright v. Larmuth*, W. N. (1869), 36). The more proper course is to ask for the costs when the claim is adjudicated on, but an order for payment of them may be made on a distinct summons (*Yeomans v. Haynes*) ; and notwithstanding the pendency of an appeal against the order disallowing the claim (*Colyer v. Colyer*). In *Morgan v. Elstob*, 4 Ha. 477, the Court gave a bond creditor leave to bring an action at law, and, the jury having given nominal damages, refused the creditor his costs of making the claim and his costs of the action, but gave him the costs of exceptions to the Master's report disallowing the claim. Where a person made a claim against the estate, and failed as against the estate, but succeeded as against the beneficial interest of the administratrix, it was held that he must pay so much of the costs of the summons as were occasioned by the claim being made against the estate (*Bentley v. Bentley*, 1 N. R. 390) ; but in *Scurrah v. Scurrah*, 2 W. R. 53, the claimant was allowed to add such costs to his claim against the beneficial interest. A plaintiff, whose title as devisee is admitted, must yet pay the costs of an unsuccessful attempt to establish his claim as a creditor (*Lancefield v. Iggulden*, 10 Ch. 136 ; 44 L. J. Ch. 203 ; 23 W. R. 223 ; 31 L. T. 813).

but succeeding as against the administratrix.

Where a creditor's

Under the practice in Chancery wherever a decree had

been made in any suit for the administration of a deceased person's estate, any creditor who had commenced an action at law to recover his debt might be restrained, upon the application either of the plaintiff in the suit or the personal representative, upon the terms of the personal representative paying the costs at law down to the time when the creditor had notice of the decree, and the costs of the application; and if the creditor, instead of bringing an action had instituted a suit, the proceedings in such suit would be stayed on the same terms (*Paxton v. Douglas*, 8 Ves. 521; *Goate v. Fryer*, 2 Cox, 202; 3 Bro. C. C. 24; *Lawton v. Lawton*, 8 W. R. 458; *White v. Leatherdale*, 1 W. R. 405; *West v. Swinburne*, 14 Jur. 360; and see the earlier cases collected in the note to *Jackson v. Leaf*, 1 J. & W. 229, 232). The practice in this respect remains substantially the same under the Judicature Act and Rules; see R. S. C. Ord. LI. r. 2a (June, 1876).

suit is stayed upon a decree being made in another suit.

Where an order *nisi* to sign judgment had been obtained in a creditor's action in the Exchequer Division, but before judgment was signed a decree for administration was obtained by another creditor in the Chancery Division, the action was transferred under this rule, and the proceedings in it stayed, the plaintiffs being allowed to prove for their claim and costs in the administration (*In re Stubbs' Estate*, *Hanson v. Stubbs*, 8 Ch. D. 154). If the personal representative admits assets, and does not dispute the debt, the creditor's costs are payable at once (*Cole v. Burgess*, Kay, app. i.; *Davey v. Plestow*, 14 Jur. 388; *West v. Swinburne*; *Canham v. Neale*, 26 Beav. 266). But if the executor does not admit assets, he must make an affidavit as to the moneys in his hands, which should be forthwith brought into Court (*Bookless v. Crum-mack*, C. P. C. 125), and the creditor's costs will be added to his debt (*Paxton v. Douglas*; *White v. Leatherdale*; *Lawton v. Lawton*; *West v. Swinburne*; *Canham v. Neale*); and see the form of the order in Seton, p. 322. An order for payment by the executor of the costs of the

creditor does not give them any priority over the costs of the second suit; they must be paid "in a due course of administration;" see *In re Clark, Cumberland v. Clark*, 4 Ch. 412; 17 W. R. 524. If, on the other hand, the executor admits assets, but does not admit the debt, the order will generally be that, immediately on the creditor establishing his debt, the costs be taxed and paid to him by the executor (*King v. King*, 4 N. R. 474; and see *Davey v. Plestow*; *Mathew v. Mathew*, W. N. (1876), 47; 33 L. T. 804). In *Re Molyneux, Pimbley v. Molyneux*, W. N. (1867), 250, the conduct of a creditor's suit was given to a residuary legatee on payment of the plaintiff's debt and costs. The rule applies equally to a creditor suing in a foreign country (*Graham v. Maxwell*, 1 Mac. & G. 71; *Beauchamp v. Marquis of Huntley*, Jac. 546). It was formerly doubted whether the creditor was entitled to his costs of the application to restrain his action at law, or stay proceedings in his suit (*Jones v. Jones*, 5 Sim. 678; *Anon.* 2 S. & S. 424; *Curry v. Bowyer*, 3 Mad. 456; *Anon.* 3 L. J. Ch. 227; *Earl of Portarlington v. Damer*, 2 Ph. 262); but the point was ultimately decided in favour of the creditor (see the Registrar's certificate in *White v. Leatherdale*, and the other cases cited above). Where a creditor's suit was stayed upon an order that he should have his costs out of the estate, this included the costs he had paid to a trustee properly made a party, but who had disclaimed (*Rees Jones v. Pickslay*, W. N. (1868), 26). But if a creditor institutes a suit after notice of decree in a former suit, it will be dismissed with costs if prosecuted to a hearing (*Menzies v. Connor*, 3 Mac. & G. 648), even though the first suit is only a next of kin's suit, and the decree does not provide for the administration of the real estate (*ibid.*); and as to the last point, see also *Bush v. Windley*, 13 Jur. 273. Where a second suit was improperly instituted, the plaintiff in it was ordered to pay the costs of the order to transfer and of the motion to stay proceedings (*Salter v. Tildesley*, 13 W. R. 376). So

where the plaintiff at law had notice of the decree before he issued his writ, he was not allowed any costs either of the action or of the motion (*Jones v. Brain*, 2 Y. & C. C. C. 170). And he had to pay the costs of the motion where he proved under the decree, and refused to discontinue his action or suit, after having been requested to do so (*Graham v. Maxwell*; *Beauchamp v. Marquis of Huntley*). And in *Gardner v. Garrett*, 20 Beav. 469, it was held that mere notice of the decree was sufficient ground for making a creditor pay the costs of the application to restrain him, if he prosecuted his action after notice; but he was allowed to set them off against his costs at law up to notice of the decree. So where the plaintiff in the action at law was the solicitor of the defendants in the suit, and prosecuted his action after decree, he was ordered to pay the costs of the executors of such subsequent proceedings and the costs of the motion to restrain his action, the former costs to be set off against his debt, and the latter to be paid at once (*Boston v. Richardson*, 3 W. R. 432). On the other hand, it was the duty of the executor or administrator to apply at once to restrain the action at law (*Therry v. Henderson*, 1 Y. & C. C. C. 481; *Packwood v. Maddison*, 1 S. & S. 232); and if he appeared to, or defended the action after decree (*Cooke v. Turner*, 15 Sim. 620), or merely omitted to apply to restrain the creditor's proceeding with it (*Bear v. Smith*, 16 Jur. 708), the creditor would be entitled to all his costs of so doing (*ibid.*); but *semble*, not as against other creditors, if the estate was insolvent (*Sharrod v. Winfield*, 1 Jur. N. S. 1154; 25 L. J. Ch. 176); though possibly in that case against the personal representative personally (*ibid.*).

But the second or less-advanced suit will be allowed to proceed if the first is so constituted as to be likely to become ineffective (*Coysgarne v. Jones*, Amb. 613; *Law v. Rigby*, 4 Bro. C. C. 60; and see *Hoskins v. Campbell*, 2 H. & M. 43); or if the plaintiff in the second suit

But if the second suit seeks more extensive relief proceedings

in it
cannot be
stayed.

raises a case of breach of trust, or wilful neglect and default against the executors, or in other respects seeks a different relief (*Taylor v. Southgate*, 4 My. & Cr. 203; *Shepherd v. Towgood*, T. & R. 379). And if the plaintiff in the less-advanced suit ultimately succeeds in obtaining a decree, the costs of that suit are payable out of the assets in the first suit (*Costerton v. Costerton*, 2 Ke. 774; *Illingworth v. Nelson*, *ibid.* 776, n.). But the circumstance of the second suit praying for relief against the real estate, which is not directed by the decree made, is not by itself a reason for not staying proceedings in it (*Menzies v. Connor*, 3 Mac. & G. 648; *Bush v. Windley*, 13 Jur. 273). On the other hand, if the plaintiff in the second suit abandons the special relief, or fails to obtain a decree at the hearing, he must pay the costs of his suit since notice of the decree in the first suit, but the costs up to that time will be paid out of the funds in the first suit (*Taylor v. Southgate*). As to the proper course to be adopted where a party claims his costs out of a fund paid into Court in an old suit, and a second suit, which afterwards abates, is instituted with respect to the fund, see *Harris v. Rich*, 43 L. J. Ch. 440.

Costs in a
legatee's
suit where
a previous
adminis-
tration
decree has
been made.

In the same way, if a legatee's suit be prosecuted after an administration decree in another suit in which the legatee might have obtained his object by petition, the executor should move to stay proceedings (*Puckwood v. Maddison*, 1 S. & S. 232; and the suit having, in that case, been brought to a hearing, neither the plaintiff nor the executor was allowed any costs). Where a legatee's suit is restrained after an administration decree, the costs of it up to notice of decree and the costs of the application will be paid out of the funds in Court (*Jackson v. Leaf*, 1 J. & W. 229), but without prejudice to the creditors (*ibid.*).

Costs of a
mortgagee
instituting
a suit for
adminis-
tration.

In *Armstrong v. Storer*, 14 Beav. 535, it was held that if a mortgagee, instead of taking proceedings to enforce his securities, institutes or adopts a suit for a general administra-

tion, he is seeking a relief beyond that given by his contract, and the costs of the suit are to be paid out of the proceeds of the estate comprised in the security, in priority to the mortgagee's principal and interest; and see *Dighton v. Withers*, 31 Beav. 423; *Wright v. Kirby*, 23 Beav. 463; *Sheppard v. Burbage*, 22 L. T. O. S. 94; *In re Spensley's Estate*, *Spensley v. Harrison*, 15 Eq. 16; 42 L. J. Ch. 21; 21 W. R. 95; 27 L. T. 600; and the dictum of V. C. Stuart in *Macrae v. Ellerton*, 6 W. R. 851; 4 Jur. N. S. 967. On the other hand, in *Aldridge v. Westbrook*, 5 Beav. 188, 193, it was held that where a creditor's bill was filed by a mortgagee, who was also a creditor by simple contract, he was entitled to payment of his mortgage money out of the mortgaged estate, before the payment of any part of the costs of the suit; and see *Pinchard v. Fellows*, 17 Eq. 421; 43 L. J. Ch. 227; 22 W. R. 612; 29 L. T. 882, which was a suit by a legal mortgagee for a sale and general administration, *Cook v. Hart*, 12 Eq. 459; 19 W. R. 947; 24 L. T. 779, where *Macrae v. Ellerton* is commented on. In *Tipping v. Power*, 1 Ha. 405, which was a suit by an equitable mortgagee by deposit to have his security realised by sale and to administer the general real and personal estate, V. C. Wigram held that the plaintiff was entitled to the proceeds of the mortgaged premises, which were insufficient, towards satisfaction of his debt; and that the general assets should then be applied, (1) in retainer by the executors of a debt due to them, (2) in payment of the costs of the executors as between solicitor and client, (3) in payment of the plaintiff's costs, including those of the purchaser, (4) in payment of the other defendants' costs; and see *Walter v. Stanton*, 10 W. R. 570, where, however, the plaintiff was a creditor by simple contract as well as on equitable mortgage. The true rule would seem to be that a mortgagee will lose his right to payment of his mortgage debt out of the security in preference to all other claims thereon, if he adopt or carry on proceedings which are inconsistent with that right. By thus seeking

a new right, which is not included in his contract, he brings himself within that rule of administration suits which makes the costs of suit costs of administration, and payable in the first instance out of a deficient estate in preference to debts. It was formerly held, however, that an *equitable* mortgagee, being entitled by his contract to sell the estate and recover the difference by proof against the mortgagor's assets, might seek administration and sale of the mortgagor's estate and yet preserve his right to full payment in priority to the costs of suit; but it being now settled that foreclosure and not sale is the remedy of an equitable mortgagee (*Pryce v. Bury*, 2 Dr. 41; 16 Eq. 153, n.; 2 W. R. 216; 18 Jur. 967; *James v. James*, 16 Eq. 153; 42 L. J. Ch. 386; 21 W. R. 522, where the cases are collected; *Backhouse v. Charlton*, 8 Ch. D. 444; *secus* as to a pledge of personal chattels, *Carter v. Wake*, 4 Ch. D. 605), the reason for this distinction has ceased; see *Fisher on Mortgages*, 3rd Ed. p. 826. However, in *York Union Banking Co. v. Artley*, 11 Ch. D. 205, Jessel, M.R., said that an equitable mortgagee by deposit of deeds, accompanied by an agreement to execute a legal mortgage, was entitled to either sale *or* foreclosure.

Where claim for administration is only in event of security being insufficient.

The old rule was that a mortgagee was entitled to prove in an administration suit for the full amount of his debt and then realise his security for the balance (*Mason v. Bogy*, 2 My. & Cr. 443); and therefore, in *Tuckley v. Thompson*, 1 J. & H. 126, (but see S. C. on app., 29 L. J. Ch. 548), where an equitable mortgagee filed a bill to realise his security by sale in the first instance, and praying that any balance should be paid in due course of administration, and that, "so far as necessary," the real and personal estate of the mortgagor might be administered, V. C. Wood held that the plaintiff was entitled to his principal, interest, and costs in priority to the costs of the executors, the course pursued by the plaintiff being for the benefit of the estate. And it made no difference in such a case whether the mortgage was legal or equitable. Now by Judicature Act,

1875, s. 10 (substituted for Judicature Act, 1873, s. 25, (1)), in the administration by the Court of the assets of any person dying after the 1st of Nov. 1875, whose estate may prove to be insufficient for the payment in full of his debts and liabilities the same rules are to prevail as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively as may be in force for the time being in bankruptcy. See further as to the costs of a mortgagee bringing an action for sale of his security, *post*, sec. VII.

If an estate is sold in an administration action with the concurrence of the mortgagee, he is entitled, whether he is a party to the action or not, to his principal, interest, and costs incurred in the sale out of the proceeds, in priority to all other parties (*Brace v. Duchess of Marlborough*, Mos. 50; *Hepworth v. Heslop*, 3 Ha. 485; *Berry v. Hebblethwaite*, 4 K. & J. 80; *Crosse v. General Reverendary Co.*, 3 De G. M. & G. 698; and see *Re Mackinlay*, 2 De G. J. & Sm. 358; 10 Jur. N. S. 1063; 34 L. J. Ch. 54; *Threlfall v. Harrison*, W. N. (1877), 192; *Dighton v. Withers*, 31 Beav. 423); but if he is a defendant, the plaintiff's costs of the sale will have priority over the mortgagee's general costs of the action, which will be payable out of the general assets (*Berry v. Hebblethwaite*). In *Carr v. Henderson*, 11 Beav. 415, the costs of parties properly appearing on the mortgagee's petition for the payment out to him of the purchase monies were postponed to his principal, interest, and costs. In *Wickenden v. Rayson*, 4 W. R. 443, where the estate was sold under the mortgagee's power of sale, the mortgagee, who had unsuccessfully set up two other mortgages, was held entitled to retain all his costs incurred by him as a mortgagee, as in taking the accounts, &c., but not his other costs of the suit. And in *White v. Gudgeon*, 30 Beav. 545, where the assets consisted almost entirely of the mortgaged premises, and the debt of the mortgagee

Costs of a mortgagee consenting to a sale of the mortgaged property, in an administration action.

(a defendant) had been reduced from £1,492 to £924, the costs of all parties were directed to be paid out of the mortgaged premises in priority to the mortgage debt.

Costs of petition by tenant for life.

The costs of a petition for payment of income to the petitioner, if in an administration suit, are payable out of the *corpus* (*Longuet v. Hockley*, 22 L. T. 198; *Scrivener v. Smith*, 8 Eq., 310); but see *Eady v. Watson*, 12 W. R. 682; 33 Beav. 481, *contra*. As to cases under the Trustee Relief Act, see *post*, Ch. V., sec. III.

Where the assets are insufficient.

If the personal estate not specifically bequeathed is not sufficient for payment of pecuniary legacies after payment of debts and the costs of the suit, the legacies abate rateably; and if the general assets are insufficient for the payment of debts and costs, the specific legacies must contribute to the deficiency rateably (*Bristow v. Bristow*, 5 Beav. 289; *Cookson v. Bingham*, 17 Beav. 266; *Newbegin v. Bell*, 23 Beav. 286).

Executors and administrators entitled to costs in priority to all parties, and to debts.

Executors and administrators are entitled to their costs out of the estate in priority to those of all other parties, whether as plaintiffs or defendants (*Tanner v. Dancy*, 9 Beav. 339; and see also *Wetenhall v. Dennis*, 12 W. R. 66; 33 Beav. 285; *In re Spensley's Estate*, *Spensley v. Harrison*, 15 Eq. 16); and even to the payment of debts, where the estate is insolvent (*Young v. Everest*, 1 R. & M. 426; *Gaunt v. Taylor*, 2 Ha. 413; *Sanderson v. Stoddart*, 11 W. R. 275; *Sutton v. Winstanley*, 1 Smith's Ch. Pr. 1069), though it was formerly held that the executors of an insolvent estate could not have costs, as they need not have administered (*Adair v. Shaw*, 1 Sch. & Lef. 380; *Humphrey v. Morse*, 2 Atk. 408; and see *Uredale v. Uredale*, 3 Atk. 119). So an heir at law, where the real estate is exhausted by creditors, will be entitled to costs (*Humphrey v. Morse*; *Tardrew v. Howell*, 2 Giff. 530; 7 Jur. N. S. 537); and as between solicitor and client being in the position of a trustee, whether he is plaintiff or defendant (*Tardrew v. Howell*; *Shittler v. Shittler*, 4 N. R. 475). Where an order had been made on further directions for

Costs of heir at law where real estate is exhausted by creditors.

the payment of the costs of all parties out of a fund in Court, which proved insufficient for the purpose, it was held that, notwithstanding the order, the executors were entitled to be paid their costs in priority (*Gaunt v. Taylor*, 2 Ha. 413; *Blenkinsop v. Foster*, 3 Y. & C. 205); but see *contra*, *Swale v. Milner*, 6 Sim. 572. Where the plaintiff was the administrator *de bonis non* of an intestate and the defendant was the executor of a deceased administratrix, and each had a balance in his hands, the plaintiff's being sufficient to pay his costs but the defendant's being insufficient for payment of his costs, the plaintiff was allowed to retain his costs in full, but the defendant was only allowed to retain his balance, and lost the remainder of his costs (*Rice v. Orgles*, 25 L. T. 263; W. N. (1871) 177).

The plaintiff in a legatee's action, and a residuary legatee, whether as plaintiff or defendant, if they have enabled the estate to be distributed, are also entitled to their costs out of an insufficient or insolvent estate. See *Wroughton v. Colquhoun*, 1 De G. & S. 357, where the estate was insufficient to pay legacies; and *Weston v. Clowes*, 15 Sim. 610; *Sutton v. Winstanley*, 1 Smith's Ch. Pr. 1069; *Newman v. Hatch*, Seton, 875; *Wetenhall v. Dennis*, 12 W. R. 66; 33 Beav. 285; where the estate was insolvent. Where legacies were made payable out of residue which was insufficient, the fund being in Court, the legatees were held entitled to their costs out of the residuary fund (*In re Jarman's Trusts*, 1 Eq. 71). But next of kin can have costs only out of undisposed-of personalty, and therefore, where the next of kin filed a bill, and the residue, which was undisposed of, was exhausted in the payment of debts, they got no costs (*Newbegin v. Bell*, 23 Beav. 386).

If, however, there is a surplus after payment of creditors, but it is insufficient for the payment of legacies in full, the plaintiff in a legatee's action will get costs as between solicitor and client (*Cross v. Kennington*, 11 Beav. 89; *Waldron v. Francis*, 10 Ha. App. x.; *Thomas v. Jones*,

Residuary legatee and plaintiff in legatee's action entitled to costs out of an insolvent estate.

Secus next of kin, entitled to residue.

Plaintiff in legatee's action when entitled to costs as between solicitor and client.

1 Dr. & S. 134; 29 L. J. Ch. 570); but as between party and party only if there is no surplus (*Thomas v. Jones*; *Wetenhall v. Dennis*). And the fact of one of the plaintiff legatees being a large creditor does not entitle him to solicitor and client costs (*Horne v. Horne*, 14 W. R. 957). A residuary legatee plaintiff, where there is no residue, will not be entitled to costs as between solicitor and client (*Weston v. Clowes*, 15 Sim. 610, overruling *contra*, *Burkitt v. Ransom*, 2 Coll. 536); except so far as the estate has been increased by his exertions (*Wroughton v. Colquhoun*, 1 De G. & S. 357), and as to sales of real estates conducted by him (*Newman v. Hatch*, Set. 875). In *In re Burrell*, *Burrell v. Smith*, 9 Eq. 443; 39 L. J. Ch. 544; 22 L. T. 263, however, he was allowed costs as between solicitor and client, *sed qu.* See *Richardson v. Richardson*, 14 Ch. D. 611; 49 L. J. Ch. 612; 28 W. R. 942.

Where the plaintiff in a creditor's action will have costs as between solicitor and client.

Similarly in a creditor's action, if the fund is insufficient for the payment of all the creditors in full, the plaintiff will be entitled to costs as between solicitor and client (*Stanton v. Hatfield*, 1 K. 358; *Tootal v. Spicer*, 4 Sim. 510; *Hood v. Wilson*, 2 R. & M. 687; *Bissett v. Burgess*, 23 Beav. 278; *Goldsmith v. Russell*, 5 De G. M. & G. 556; *Thomas v. Jones*, 1 Dr. & S. 134; 29 L. J. Ch. 570); and the sufficiency of the estate for the payment of debts is to be looked at after allowing the plaintiff costs as between party and party (*Sutton v. Doggett*, 3 Beav. 9). The rule applies equally to the case of a creditor who obtains the conduct of an action originally commenced by a legatee or next of kin (*Richardson v. Richardson*; and see *Joseph v. Goode*, 23 W. R. 225). But the insufficiency of the estate is the only case in which costs as between solicitor and client are allowed to a plaintiff in a creditor's action (*Brodie v. Bolton*, 3 My. & K. 168). In *Henderson v. Dodds*, 2 Eq. 532, which was a suit by creditors to administer the realty, there being no personalty and the realty proving deficient, the Court ordered the costs of the plaintiffs and of the defendants, who were beneficial

devises, to be taxed as between party and party, and paid *pari passu* out of the fund, and the balance of the fund then remaining to be applied in payment of the plaintiff's extra costs as between solicitor and client, and then in payment of debts; and this case was followed in *Ferguson v. Gibson*, 14 Eq. 379. In *Young v. Everest*, 1 R. & M. 426, and *Rowlands v. Tucker*, *ibid.* 635, it was held that, if the assets were insufficient for the payment of the specialty creditors, a plaintiff, simple contract creditor, was not entitled to any costs. But those cases were disapproved of in *Larkins v. Paxton*, 2 My. and K. 320, where it was held that the plaintiff, under such circumstances, was entitled to his costs; and, *semble*, as between solicitor and client (*Barker v. Wardle*, 2 My. & K. 818; *Richardson v. Jenkins*, 17 Jur. 447). But the plaintiff has no right to withhold the order for payment of the creditors from them for the purpose of enforcing a contribution towards his extra costs from them (*Shortley v. Selby*, 5 Mad. 447; *Lechmere v. Brazier*, 1 Russ. 72). Creditors, who had come in, but through association with the administrator obtained payment in full, were nevertheless held bound to contribute, under the direction for that purpose, towards the plaintiff's costs, the fund having proved insufficient to pay them (*Thompson v. Cooper*, 2 Coll. 87). A direction to contribute to the plaintiff's costs did not extend to costs occasioned by a claim unsuccessfully raised by him (*Dunning v. Hards*, 2 Ph. 294). However, the direction for contribution, which was formerly inserted in every decree made in a creditor's suit, is now omitted (Set. 832).

But if the plaintiff in a creditor's suit, after information that there are no assets applicable to the payment of his debt, persists in prosecuting his suit, he does so at his own risk; and if the information turns out to be correct, he will have to pay the costs of it (*Bluett v. Jessop*, Jac. 240; *King v. Bryant*, 4 Beav. 460; *Fuller v. Green*, 24 Beav. 217; *King v. Hammett*, 11 L. J., Ch. 14; 5 Jur.

Where
creditors
contribute
to
plaintiff's
costs.

If plaintiff
perseveres
after notice
that the
assets are
insufficient
for his
payment,

1052). But in *Sullivan v. Beran*, 20 Beav. 399, where the plaintiff did not receive notice of the state of the assets and the claim of a superior creditor until after decree, he was allowed his costs up to notice. And in *Robinson v. Elliott*, 1 Russ. 599, the bill was dismissed without costs, as the executrix was charged with more than she admitted by her answer, but there were not any assets applicable to payment of the plaintiff's debt.

So also in a legatee's suit (*Ottley v. Gilby*, 8 Beav. 602); and see further, *ante*, sec. 1.

Where an administration action is brought in a County Court, taxation as between solicitor and client can be obtained in the Chancery Division (*In re Worth*, 18 Ch. D. 521; 50 L. J. Ch. 262; 29 W. R. 371; 44 L. T. 462).

SECT. III.—*Actions relating to Charities.*

Where the
Attorney-
General
sues
without a
relator.

The Court may order defendants to a charity suit, instituted by the Attorney-General *ex officio* without a relator, to pay the costs of the Attorney-General (*Attorney-General v. Ashburnham*, 1 S. & S. 394). A charity suit is not within the provisions of 18 & 19 Vict. c. 90, and the Attorney-General cannot be made to pay costs in such suits (*Attorney-General v. Dean & Canons of Windsor*, 8 H. L. C. 369, 385; and see *post*, ch. VI., s. II.); and see before the Act, *Attorney-General v. Lord Chesterfield*, 18 Beav. 596; 18 Jur. 686. Where the Attorney-General sued without a relator, the Court would, even under the former practice, make a decree for payment of costs between co-defendants (*Attorney-General v. Mercers' Co.*, 18 W. R. 450; 22 L. T. 222; *Attorney-General v. Corporation of Chester*, 14 Beav. 338). In the case last cited, the Court gave the trustees, defendants, their costs as between solicitor and client out of the estate, and directed that such costs as between party and party should be repaid by the corporation.

Where there is a relator, a brief to the Attorney-General, as well as to two other counsel, will be allowed on taxation as between party and party (*Attorney-General v. Drapers' Co.*, 4 Beav. 305). But if the Attorney-General attends the proceedings under the decree by a separate solicitor, without an order of the Court for so doing, he will not be allowed a separate set of costs (*Attorney-General v. Dove*, T. & R. 328). In the case cited this course was taken at the request of the Master, who suspected collusion between the relator and the defendants.

It was formerly held that an information respecting a charity established by the Crown should be dismissed with costs, if it failed; but the Court would not dismiss one respecting a private charity, but would make a decree to establish it (see *Attorney-General v. Smart*, 1 Ves. 72); and the case of *Attorney-General v. Gleg*, 1 Atk. 356, is said to have been the first instance of an information of the latter kind being dismissed with costs. But such distinction has long since been lost sight of in practice. Where the Court sees that some relief is required for the charity, it will make the proper decree, whatever be the frame of the suit; but with reference to the costs will look at the pleadings (*Attorney-General v. Hartley*, 2 J. & W. 369, where so much of an information as contained unproved charges of misconduct against trustees was dismissed with costs); and see *Attorney-General v. Holland*, 2 Y. & C. 683; *Attorney-General v. Cullum*, 1 Ke. 118. And if the whole of the relief given might have been obtained by a petition under Sir S. Romilly's Act (⁵⁷Geo. III., c. ¹⁹¹91) no costs will be given to the relators up to the hearing (*Attorney-General v. Holland*; *Attorney-General v. Cullum*; *Attorney-General v. Berry*, 11 Jur. 114). In *Attorney-General v. Bolton*, 3 Anst. 820, the principal part of the relief prayed was abandoned at the hearing, but the Court, holding that the information had some foundation, said that the relator should not pay costs. But where the information appears

Where there is a relator.

Costs of relators.

to proceed from a feeling of private revenge in the relator, it will be dismissed with costs (*Attorney-General v. Middleton*, 2 Ves. 326). In *Attorney-General v. Lewis*, 8 Beav. 179, where a defendant who had been ordered to pay costs proved insolvent, the Court, on a subsequent application, gave the Attorney-General and trustees their costs out of the estate.

Where the
suit was by
informa-
tion and
bill.

Where the suit was by information and bill, and the relator in the former, was also plaintiff in the latter, the bill might be dismissed with costs, though relief for the benefit of the charity was given on the information (*Attorney-General v. Vivian*, 1 Russ. 226); but see *Attorney-General v. Oglender*, 1 Ves. Junr. 246.

Solicitor
and client,
costs fre-
quently
allowed ;

Where the costs of all parties are given out of the charity fund, they are frequently directed to be taxed as between solicitor and client (*Moggridge v. Thuckwell*, 7 Ves. 36, 88; *Bishop of Hereford v. Adams*, 7 Ves. 331; *Attorney-General v. Carte*, 1 Dick. 113, Beames, app. 2; *Mills v. Farmer*, 19 Ves. 491; *Gaffney v. Hevey*, 1 Dr. & Walsh, 25); and see *Attorney-General v. Stewart*, 14 Eq. 17; 26 L. T. 419. But there is no rule that in suits relating to charity property costs shall be allowed as between solicitor and client (*Aria v. Emanuel*, 9 W. R. 366; and see *Carter v. Green*, 3 K. & J. 608). In *Wilkinson v. Barber*, 14 Eq. 96, next of kin who appeared in opposition to a charitable bequest and failed were not allowed costs as between solicitor and client.

but no
rule to that
effect.

Relator
usually
entitled to
solicitor
and client
costs ;

The relator, however, if the suit was a proper one, is generally entitled to costs as between solicitor and client. "The relator in a charity information, where there is nothing to impeach the propriety of the suit, and there are no special circumstances to justify a special order is, upon obtaining a decree for the charity, entitled to his costs as between solicitor and client, and to be paid the difference between the amount of such costs and the amount of the costs which he may recover from the defendants, out of the charity estate" (*per* Lord Langdale,

M. R., *Attorney-General v. Kerr*, 4 Beav. 297, 303); but see *Attorney-General v. Drummond*, 3 Dr. & War. 162. In *Attorney-General v. Fishmongers' Co.*, 1 Ke. 492, where the defendants had technically been guilty of a breach of trust, but no loss whatever had resulted to the charity, the Court made a decree and gave the relators costs against the company, but refused them their extra costs out of the funds, as the information was not for the benefit of the charity. The relator is also sometimes allowed his charges and expenses, in addition to his costs of suit as between solicitor and client (*Osborne v. Denne*, 7 Ves. 424; *Attorney-General v. Corporation of Winchester*, 3 L. J. Ch. (O. S.) 64; C. P. C. 502; *Attorney-General v. Skinners' Co.*, Jac. 630). In the case last cited the costs of all parties, including the costs of appeal, to be taxed as between solicitor and client, were ordered to be paid out of the rents together with "any costs, charges, and expenses reasonably and properly incurred by the relators to enable them to institute and prosecute the suit." And in *Attorney-General v. Tyler*, C. P. C. 358, the relator being changed before the cause was at issue, was allowed out of the fund his "costs, charges, and expenses preparatory to, and of and relating to the suit and of that application." And see the unreported cases cited in *Attorney-General v. Kerr*, 4 Beav. 297. But it is only in special cases, depending on their peculiar circumstances, to be brought forward and established by evidence, that such additional charges and expenses ought to be allowed (*Attorney-General v. Kerr*, 4 Beav. 297, where Lord Langdale refused to allow them).

The relator should not take any proceeding in the cause after decree without the authority of the Court; see *Attorney-General v. Ironmongers' Co.*, 10 Beav. 194, where the Court refused the relator his costs of issuing advertisements and collecting information with a view to the scheme, without the authority of the Master; but as the proceeding was beneficial to the charity, allowed

and, in special cases, to costs, charges, and expenses.

Costs of proceedings under a decree, taken without the sanction of the Court.

Costs of obtaining an Act of Parliament for regulation of a charity.

his costs out of pocket. The costs of obtaining an Act of Parliament for the regulation of a charity were allowed, though the sanction of the Court to the application was not previously obtained (*Attorney-General v. Vigor*, 2 Russ. 519; *Downing College Case*, *ibid.*); but *secus*, where the application was unsuccessful, though not on the merits (*Attorney-General v. Earl of Mansfield*, 2 Russ. 501, 518). But where an unsuccessful application to Parliament had the previous sanction of the Court, the costs of it were allowed (*Re Bedford Charity*, 29 L. T. (O. S.) 5); and also the costs of a subsequent application for leave to introduce a fresh bill, which was refused (*ibid.*). The costs of proceedings before the Attorney-General to obtain his *fiat* for an information, rendered necessary by the conduct of the defendants, are costs in the cause payable by the defendants under a decree directing payment to the plaintiffs of their costs of the suit and of the information (*Attorney-General v. Corporation of Hulijax*, 12 Eq. 262); and so also are the costs of proceedings before the Attorney-General, pending an appeal, to induce him to withdraw his *fiat* (*ibid.*).

Where a relator is changed before the cause is at issue.

Where a relator refused to proceed further with an information, new relators who offered an indemnity for all past and future costs were substituted (*Attorney-General v. Corporation of Cashel*, Sau. & Sc. 333). And in *Attorney-General v. Tyler*, C. P. C. 358, the relator being changed before the cause was at issue was

Where the suit is not *bond fide*.

allowed his costs, charges, and expenses out of the fund. Where the solicitor had given the relator an indemnity against the costs, the information was ordered to be taken off the file with costs against the relator and solicitor (*Attorney-General v. Skinners' Co.*, C. P. C. 7). As to security for costs to be given by a relator on the ground of poverty, see *ante*, p. 15.

Heir at law and next of kin.

As to the costs of the heir at law and next of kin in charity cases, see *post*, ch. VI., s. VI.

The costs of persons appearing, in pursuance of public notice, on an application for the appointment of new trustees under the provisions of the Municipal Corporations Act, for the purpose of aiding the Attorney General in securing fit appointments, are not allowed out of the charity estate (*Re Gloucester Charities*, 10 Ha. app. iii.)

The general principles, on which the costs of trustees in charity suits are disposed of, do not differ from those observed in other cases, and will be more conveniently discussed hereafter (see ch. VI., s. XIII.). However, in *Attorney-General v. Drummond*, 3 Dr. & War. 162, Sir E. Sugden, L. C. drew a distinction between private trustees and the trustees of a charity, and observed that to refuse the latter costs might be to make them pay for the errors of their predecessors; and in that case he allowed the trustees their costs, though held to be guilty of a breach of trust. It should be observed, however, that the trustees had derived no personal advantage from the breach of trust, which consisted merely in the admission of persons not objects of the charity to the benefit of it; but see *Lady Hewley's case (Shore v. Wilson)*, 9 Cl. & F. 355, on the authority of which *Attorney-General v. Drummond* was decided, and where the trustees were not allowed their costs. In *Attorney-General v. Stroud*, 19 L. T. 545, trustees were ordered to pay the costs up to the hearing, their conduct having been vexatious; and see *Attorney-General v. Webster*, 20 Eq. 483; 44 L. J. Ch. 766, where trustees defending a suit after being advised by counsel that the property they claimed was held for charitable purposes were allowed no costs, the Attorney-General not pressing for costs against them personally. Where trustees who had been ordered to pay the costs of a suit personally paid them out of the charity funds, they were ordered to refund with four per cent. interest (*Attorney-General v. Daugars*, 33 Beav. 621; 12 W. R. 363). In *Attorney-General v. Mercers' Co.*, 18 W. R. 448; 22 L. T. 222, charity trustees were held not entitled to charge the

Other persons.

Costs of trustees in charity cases.

costs of a suit dismissed without costs against the charity estate; but a trustee who had severed in his defence and supported the information was allowed his costs. The trustees of a charity ought not to be visited with costs because of the misapprehension of the Charity Commissioners as to the construction of a public statute (*Moore v. Clench*, 1 Ch. D. p. 450).

Where a Corporation are trustees.

A Corporation, as trustees for a charity, may be charged with the costs of the suit, payable out of their corporate funds (see *Haberdashers' Company v. Attorney-General*, 2 Bro. P. C. 370, where they had mismanaged the charity; and *Salop v. Attorney-General*, *ibid.* 402, where the Corporation had appointed a schoolmaster contrary to the particular tenor of their charter). It is the duty of a Corporation to examine their documents before putting in their defence; and having alleged ignorance as to facts, which were afterwards discovered from the scheduled documents, they were, therefore, charged with the costs of the suit (*Attorney-General v. East Retford*, 2 My. & K. 35); and see *Borough of Hertford v. Poor of Hertford*, 2 Bro. P. C. 377, where the Corporation concealed evidence. A new Corporation as altered by the Municipal Corporations Act (5 & 6 Will. IV. c. 76), is a continuation of and succeeds to the rights and liabilities of the old (*Attorney-General v. Kerr*, 2 Beav. 420; *Attorney-General v. Corporation of Leicester*, 9 Beav. 546). In the former case, the present Corporation received no costs of a suit to set right a breach of trust committed by their predecessors; in the latter case they were visited with costs. But see *Attorney-General v. Corporation of Newbury*, cited in *Shelford on Mortmain*, 473, n.; and *Attorney-General v. Caius College*, 2 Ke. 150, as to the difficulty of charging Corporations with the defaults of their predecessors. Where the charity had fallen into desuetude, and the Corporation funds had benefited by the non-application, the Corporation were ordered to pay the costs of the suit, except of settling a new scheme (*Attorney-*

General v. Mercers' Company, 2 My. & K. 654). In *Attorney-General v. Caius College*, the Court, notwithstanding long misappropriation, there being a large accumulated fund through the economical management of the college, gave them their costs out of it. But in *Solicitor-General v. Corporation of Bath*, 13 Jur. 866; 18 L. J. Ch. 275, where the Corporation had confounded the boundaries of the charity lands with their own, but the charity had benefited by the lands being let, in breach of trust, on building leases, V. C. Wigram thought it was not a case for following *Attorney-General v. Caius College*, and held that the Corporation ought to pay the costs of that part of the suit, but instead of so directing gave them no costs of the suit generally, to avoid the necessity of apportioning and setting off the costs. Although the breach of trust is in the result beneficial to the *cestui què trust*, he is nevertheless entitled to the costs of an enquiry respecting it, as until then he does not know whether it be so or not (*ibid.*). As to the costs of an information to restrain a Corporation from illegally promoting a bill in Parliament, see *Solicitor-General for Ireland v. Lord Mayor and Corporation of Dublin*, 1 L. R. Ir. 166.

In *Attorney-General v. Grainger*, 7 W. R. 684, certain charity lands were held to have been lost through breach of condition; the Attorney-General, in an *ex officio* information, appealed unsuccessfully, and it was held that the trustees, defendants, could not have costs either from the Attorney-General or out of the estate, which was no longer in their possession.

Trustees filing exceptions similar to those filed by the Attorney-General were not allowed the costs of them; and the principal defendants, though charged with costs, received their extra costs, occasioned by the double sets of exceptions, out of the estate (*Attorney-General v. Ward*, 11 Beav. 203).

Where one parish had been formed out of another sub-

Where a breach of trust has been beneficial to a charity.

Where the estate in litigation is lost to the charity, the trustees cannot have costs out of it.

Trustees should not except where Attorney-General has excepted.

The costs of one

parish
formed
out of
another.

sequently to a charitable gift to the original parish, the second parish was treated as an incumbrancer on the original one, and the two were allowed one set of costs only (*Attorney-General v. Earl Craven*, 7 March, 1860, A. 508, cited in Seton, p. 553).

Costs, how
payable
out of the
funds or
estates of
the
charity.

The costs, if necessary, will be directed to be raised by mortgage of a portion of the charity estates (*Attorney-General v. Bishop of St. David's*, Set. 555, where the form of order is given; *Attorney-General v. Atherstone School*, cited in Shelf. on Mortmain, 478; *Re Lambeth Charities*, 8 Nov. 1850, B. 58, Set. 553); but *semble*, the Court is unwilling, except upon a very special case, to order a sale of charity estates (*Attorney-General v. Mayor, &c., of Newark-upon-Trent*, 1 Ha. 395). It is more regular and proper, in the first instance at least, to charge the costs on the fund recovered by the information; but the Court will, if justice to the relator or the interests of the charity require it, direct the costs to be paid out of the funds of the charity generally (*Attorney-General v. Kerr*, 4 Beav. 297). In *Attorney-General v. Skinners' Company*, 2 Russ. 407, 446, the costs were apportioned between two estates as to one of which the company failed, and as to the other of which they succeeded in their claim to the surplus income, except the costs of a scheme relating only to one estate. The costs of settling a scheme for all the charities in a town were ordered to be ultimately borne by all rateably, but for the present to be paid out of an existing fund belonging to three of the charities only (*Re Stafford Charities*, 26 Beav. 567; and see *Re Saffron Walden Charities*, Set. 555).

Where
there are
several
charities.

Where the
Court
exercises a
statutory
jurisdic-
tion;

The Court has power, under Sir S. Romilly's Act (¹⁰¹ 52 Geo. III. c. 51), to dismiss a petition with costs; see *Chertsey Market Case*, 6 Price, 261, where the application was held to be vexatious; and *in re Poplar & Blackwall Free School*, 8 Ch. D. 543, where trustees were not allowed the costs of an abortive petition. But the Court had no

power to award the costs of proceedings under the Bedford Charity Act (53 Geo. III. c. 101) (*Re Bedford Charity*, 2 Swans. 532; see now R. S. C. Ord. LV. r. 1).

On an appeal to the Lord Chancellor, as visitor of a charitable foundation on behalf of the Crown, he can award costs; see *Queen's College Case*, Jac. 19, where they were given out of the funds of the college.

or the Lord Chancellor hears an appeal as visitor.

Commissioners of charitable uses, under 43 Eliz. c. 4, had no power to award costs (*Aylet v. Dodd*, 2 Atk. 238); but the Lord Chancellor could do so on appeal from their decision (*ibid.*; and see *Burford v. Lenthall*, 2 Atk. 550).

Commissioners of charitable uses under 43 Eliz., c. 4.

The lessees must pay the costs of a suit to set aside an improvident lease of charity land (*Attorney-General v. Lord Hotham*, T. & R. 220; *Attorney-General v. Owen*, 10 Ves. 562). In the latter case the decree was under special circumstances made without costs, but Lord Eldon said it should not be a precedent. In *Attorney-General v. Greenhill*, 3 N. R. 236, where the lease had been made in pursuance of a direction which the Court held to be void as tending to a perpetuity, the Master of the Rolls thought that the relators, the lessors, should pay all the lessee's costs.

Costs of suit to set aside improper lease.

The Court has no authority to make an order adversely with regard to the costs of proceedings before the Attorney-General not under its direction or sanction (*Attorney-General v. Harper*, 8 L. J. Ch. 12).

When the Attorney-General, upon making an application to the Court in the matter of a charity, desires an order for taxation and payment of his costs, charges, and expenses relating to the charity, not being costs in the matter, the summons must contain a statement of the matters in respect of which payment of such costs is desired (*In re Dulwich College*, 15 Eq. 294).

SECT. IV.—*Actions for Discovery or Perpetuation of Testimony.*

Actions for discovery.

Under the former practice the plaintiff paid the costs of the suit.

Under the present practice actions for discovery, though rare, may still be necessary in certain cases, *e.g.*, with a view to intended proceedings; see *Orr v. Diaper*, 4 Ch. D. 92. In the Court of Chancery the rule in suits for discovery was that unless the bill was a cross bill, in which case the costs were costs in the original cause unless the Court should otherwise direct (Cons. Ord. XL. r. 14), the plaintiff paid the costs of the suit (*Simmonds v. Lord Kinnaird*, 4 Ves. 735; *Firkins v. Lowe*, 13 Pr. 193). The suit was never brought to a hearing, and the only order made in it was that the plaintiff pay the defendant the costs of the suit (*Woodcock v. King*, 1 Atk. 286). On putting in a full answer the defendant was entitled to this order as an order of course (*Rhodes v. Hayne*, 9 Jur. 175; *Coventry v. Bentley*, 3 Mer. 677). It is presumed that the old chancery practice in relation to suits for discovery will be followed whenever it is found applicable, and that the plaintiff will generally be ordered to pay the defendant's costs; but that the defendant will no longer be able to obtain them by an order of course.

Under the former practice it was held that the defendant's right to his costs was not waived by his subsequently accepting the costs of an amendment, nor by his neglecting to serve the plaintiff with the order for payment of costs, until after service of the order to amend (*Coventry v. Bentley*). And an order for payment of costs by the plaintiff was regular, though he had become bankrupt (*Hibberson v. Fielding*, 2 S. & S. 371). *Semble* the plaintiff must pay the costs though no interrogatories were served, the defendant having given the discovery required without answer (*Fitzgerald v. Bult*, 9 Ha. app. lxxv.). A prayer that "such further order may be made as the nature of the case may require," did not convert a bill, otherwise for

discovery only, into one for relief (*South-Eastern Ry. Co. v. Submarine Telegraph Co.*, 17 Jur. 1044); and, therefore, a motion by defendant for dismissal was refused as unnecessary, but without costs on account of the unusual form of the prayer (*ibid.*). The defendant was entitled to costs only as between party and party (Beames, 33).

If the discovery required was in aid of the defence to an action at law, and the bill prayed an interim injunction, the defendant, if he filed affidavits and unsuccessfully resisted the injunction, was held liable to pay the costs of the motion (*Lovell v. Galloway*, 19 Beav. 643); though the contrary seems to have been held in *Noble v. Garland*, 1 Mad. 344. Where the bill also prayed a commission to examine witnesses, the costs could not be obtained until the return of the commission (*Anon.* 8 Ves. 69; *Bunbury v. ———*, 9 Ves. 103). And it seems that the defendant will be entitled to his costs of discovery, though he has examined witnesses in chief under the commission (*London Assurance Co. v. Hankey*, 1 Anst. 9); so also in a suit for discovery and to perpetuate testimony, where the defendant examines witnesses (*Skrine v. Powell*, 15 Sim. 81); notwithstanding *Anon.* 8 Ves. 69.

In a suit to perpetuate testimony the defendant is entitled to his costs from the plaintiff, if he has not examined witnesses of his own, or only cross-examined the plaintiff's witnesses; but if the defendant examines witnesses in chief no costs are given on either side (*Blinkehome v. Feast*, 1 Dick. 153; *Bidulph v. Bidulph*, 2 P. W. 285; *Berney v. Eyre*, 3 Atk. 387; *Earl of Abergavenny v. Powell*, 1 Mer. 434); and the costs of perpetuating testimony merely are never given against the defendant (*Clifton v. Orchard*, 1 Atk. 610). In *Lady Codrington v. England*, 2 Atk. 166, Lord Hardwicke seems to have thought that no costs on either side were given in such suits, but he afterwards admitted the general rule (see *Berney v. Eyre*). The defendant is entitled to his costs immediately after the commission is executed upon an allegation that he

Where bill also prayed an interim injunction to restrain an action at law,

or a commission to examine witnesses;

or to perpetuate testimony.

Costs of suits to perpetuate testimony.

has not examined witnesses in chief (*Foulds v. Midgley*, 1 V. & B. 138). The order under the former practice was always made *ex parte*, and, therefore, where it was made upon notice, the costs of service were disallowed on taxation (*Watkins v. Atchison*, 10 Ha. app. xlvi.). The defendant was entitled, on a bill to perpetuate testimony, to his costs of answering, though no answer was required (*Lecky v. Murray*, 1 B. & B. 391). The costs of a bill to perpetuate testimony to a will were allowed though the defendant had filed a cross bill to set aside the will (——— v. *Andrews*, Barn. 333). Where a demurrer to the bill was allowed after the plaintiff had obtained an *ex parte* order to examine witnesses *de bene esse*, the plaintiff paid the costs of the examination in chief, but not of the cross-examination (*Dew v. Clarke*, 1 S. & S. 115).

Suits to
perpetuate
testimony
not brought
to a
hearing.

A suit to perpetuate testimony, like one for discovery, ought not to be brought to a hearing (Cons. Ord. IX. r. 7); and if it is, it will be dismissed with costs, but so as not to prejudice the plaintiff in perpetuating the witnesses' testimony (*Anon.*, Amb. 236; 2 Ves. 497; *Hall v. Hoddesdon*, 2 P. W. 161; *Mackrell v. Hunt*, 2 Mad. 34, n.). In the anonymous case just cited, it was said that the bill might be dismissed for want of prosecution at any time before replication and examination of witnesses: *sed qu.*, see *Barton v. Rock*, 22 Beav. 81; *Beavan v. Carpenter*, 11 Sim. 22. Instead of dismissal, an order will be made that the plaintiff proceed within a certain time or in default that he pay to the defendant the costs of the suit (*Beavan v. Carpenter*; *Wright v. Tatham*, 2 Sim. 459; *Barham v. Longman*, *ibid.* n.). But if the bill prayed also for relief, as that a certain copy of a will might be established as a true copy, it might be dismissed for want of prosecution (*Vaughan v. Fitzgerald*, 1 Sch. & L. 316, where an order was made to amend by striking out so much of the bill as prayed for relief, and then for payment of costs according to the usual course).

Order
where
plaintiff
does not
proceed.

As to the costs of suits to establish a will, see *post*, ch. VI., sec. VI.

The principle that the plaintiff paid the costs of discovery applied where a person was made defendant merely for purposes of discovery to a bill seeking relief against other parties (Cons. Ord. XL. r. 16); but such defendant could not, upon putting in his answer, move for his costs at once (*Attorney-General v. Bureh*, 4 Mad. 178; but see *Williams v. Williams*, 2 Bro. C. C. 87).

Costs of a party made defendant to action for discovery merely.

If a person who is a mere witness is made a defendant, he will be dismissed with costs, but as between party and party only (*De Combe v. De Combe*, 3 Jur. N. S. 712; *Attwood v. Small*, 6 Cl. & F. 232; *Cockell v. Taylor*, 15 Beav. 128).

A witness made defendant entitled to party and party costs only.

SECT. V.—*Actions for Dower.*

No costs are given of a suit simply for assignment of dower where the right is admitted (*Lucas v. Calcraft*, 1 Bro. C. C. 133), in analogy to the practice at law on a writ of dower (*Mundy v. Mundy*, 2 Ves. junr. 128). But the plaintiff will be entitled to her costs where the defendant has vexatiously kept her out of her dower (*Worgan v. Ryder*, 1 V. & B. 20); or where the plaintiff's title is unsuccessfully resisted (*Fry v. Noble*, 7 De G. M. & G. 687; 4 W. R. 145, affg. S. C. 20 Beav. 606). So a defendant who did not admit the plaintiff's title until after the bill was filed, and then without tendering costs, was ordered to pay costs up to the hearing (*Harris v. Harris*, 1 N. R. 43; 11 W. R. 62). However, in *Bamford v. Bamford*, 5 Ha. 203, where the defendant disputed the title on information as to the death of the plaintiff's husband, who was a convict, derived from the returns of the Secretary of State, but which proved to be incorrect, the decree was made without costs. Where a bill for dower was dismissed on the ground of the lapse of time, it

No costs of suits for assignment of dower.

Unless defendant has kept dowress out, or disputes her title.

was with costs, although the right was admitted (*Marshall v. Smith*, 5 N. R. 161; 10 Jur. N. S. 1174). Where the defendant set up an assignment of rent which he failed to prove, and entered into evidence as to the improvement of the lands since the title of the dowress accrued, he was ordered to pay so much of the costs of the suit as was thereby occasioned (*Stormont v. Wickens*, 14 W. R. 192; 13 L. T. 533).

SECT. VI.—*Interpleader Actions.*

Where no proceedings have been taken against the stakeholder, an interpleader action may now, it would seem, be brought in any division of the High Court. Where such an action is brought in the Chancery Division, the practice of the old Court of Chancery and the rules of that Court as to the costs of interpleader suits will, it is conceived, be followed wherever they are applicable.

On a sheriff's application for interpleader, however, the Common Law practice must be followed, even where no action has been brought against the sheriff; see *Seton*, p. 361. The sheriff's costs of an appeal must be paid by the party who is decided to be in the wrong (*Ex parte Streeter, in re Morris*, 19 Ch. D. 219).

The losing
defendant
pays the
costs.

In Chancery the rule in interpleader suits has always been that the defendant against whose claim the Court decides pays the costs of the plaintiff and of the other defendants (*Dowson v. Hardeastle*, 1 Ves. junr. 368; 2 Cox, 278; and the cases cited in Beames, p. 37). But in *Meux v. Bell*, 1 Ha. 73, the plaintiff had his costs out of the fund, but no costs were, under the circumstances, given to any of the defendants (a). If an action at law were

(a) The effect of this would seem to be that the successful defendant paid the plaintiff's costs,

directed by the decree, the result of it was conclusive, and the failing defendant paid the costs of the suit though the equitable rights were not determined (*Luscombe v. Callaghan*, 1 Mol. 204). So a defendant who occasioned the suit by making a claim which he withdrew after bill filed paid the costs of it (*Mason v. Hamilton*, 5 Sim. 19). But the plaintiff should not bring the suit to a hearing when all claims but one are withdrawn, but should apply to stay proceedings (*Symes v. Magnay*, 20 Beav. 47): and a plaintiff, having brought the suit to a hearing in such case, was allowed no costs subsequent to the withdrawal of the claim (*ibid.*; and see *Glynn v. Locke*, 3 Dr. & W. 11). So a decree was made with costs against a defendant who did not appear (*Hodges v. Smith*, 1 Cox, 357).

Where a claim is withdrawn after action brought,

or one defendant does not appear.

If a stakeholder, instead of seeking his remedy by interpleader, litigates with rival claimants separately, he loses his right to costs against the successful claimant (*Laing v. Zeden*, 9 Ch. 736).

If the subject of dispute is a fund, which has been brought into Court, the plaintiff is entitled, at the hearing, to have his costs out of it in the first instance without prejudice to the question by which defendant they should ultimately be borne (*Campbell v. Solomans*, 1 S. & S. 462; *Hoggart v. Cutts*, Cr. & Ph. 197; *Secretary of State for India v. Kelson*, Set. 359); or if the fund is not in Court, the order will be for retainer of his costs out of it by the plaintiff (*Cowtan v. Williams*, 9 Ves. 107; *Hodges v. Smith*, 1 Cox, 357). And the plaintiff is entitled to costs out of the fund, though an immediate order is made for their payment by one of the defendants (*Hodges v. Smith*, *Campbell v. Solomans*). But the plaintiff is not entitled to move for his costs before the hearing (*Jones v. Gilham*, G. Coop. 49); but *secus*, if all claims but one are withdrawn (*Symes v. Magnay*, 20 Beav. 47). In *Glynn v. Locke*, 3 Dr. & W. 11, part of the bill was dismissed with costs, and the plaintiff had costs only up to the withdrawal of his claim by one defendant; and the costs payable to

The plaintiff has a lien on the fund, if any, for his costs;

but cannot obtain them before the hearing. Set-off where part of bill dismissed,

the plaintiffs were set off against the costs payable by them to the successful defendant, and the latter had his costs so set off and his other costs over from the other defendant.

Where the plaintiff has no costs, or pays costs.

The plaintiff, though it is a proper case for interpleader, may lose his costs by misconduct (*Brymer v. Buchanan*, 1 Dick. 292, n. ; and see Beames, 38. n. 5), and will have to pay the costs of unnecessary evidence, such as of an affidavit verifying the bill on motion for injunction, or of obtaining an injunction where no action or proceedings are threatened (*Crawford v. Fisher*, 1 Ha. 436). "Vexatious conduct or culpable negligence on the part of the plaintiff in an interpleading suit, whereby needless expense is occasioned, ought, in my opinion, to be visited in all cases with costs against the plaintiff" (*per* V. C. Wigram, 1 Ha. 444); and see *Dutton v. Furness*, 14 W. R. 600; 35 L. J. Ch. 463; 12 Jur. N. S. 386; 14 L. T. 319, where a sheriff had hastily filed a bill of interpleader, and being clearly in the wrong, was ordered to pay all the costs. Where the plaintiff was colluding with one of the defendants, the bill was dismissed, and the plaintiff and his solicitor were ordered to pay all the innocent defendant's costs and expenses as between solicitor and client (*Dungey v. Angove*, 2 Ves. junr. 304). If the plaintiff

Collusion between plaintiff and one defendant.

Where there is no case for interpleader.

raises no case for interpleader as against all or some of the defendants, the suit will be dismissed with costs as against such defendants (see *ex. gr.* *Hoggart v. Cutts*, Cr. & Ph. 197; *Glynn v. Locke*, 3 Dr. & W. 11); but in *Cochrane v. O'Brien*, 2 Jo. & Lat. 380, the bill was dismissed without costs as to the defendants whose misconduct had occasioned the suit. Although one defendant submits to a decree against him with costs, the plaintiff will not, if it was not a proper case for interpleader, be allowed a lien on the fund for his costs (*Watts v. Hammond*, 3 W. R. 312). However, the old rule as to defendants losing their costs by not demurring applied to interpleader suits (*Cook*

v. *Earl of Rosslyn*, 1 Giff. 167; 3 Giff. 175; 7 W. R. 537; see now as to this rule, *ante*, p. 111); and *semble*, notwithstanding Lord Eldon's dictum in *Hyde v. Warren*, 19 Ves. 322, that a defendant could not demur after the fund was in Court; a dictum which rests on no principle, and was disapproved of in *Hoggart v. Cutts*, Cr. & Ph. 197.

The plaintiff will be entitled to costs as between party and party only (*Dunlop v. Hubbard*, 19 Ves. 205); and not to any charges and expenses *dehors* the suit (*Hale v. Saloon Omnibus Co.*, 4 Drew. 492), but his costs were under the old practice held to include the costs at law, if any (*Dowson v. Hardeastle*, 2 Cox, 278; 1 Ves. junr. 368). The lower scale of costs applies to an interpleader suit where the matter in dispute is under the value of £1,000 (*Gibbs v. Gibbs*, 6 W. R. 415).

In a suit by the owner of an estate, subject to a charge, against conflicting claimants to the money raisable, the plaintiff was allowed his costs against those defendants who failed in their claim (*Vyvyan v. Vyvyan*, 9 W. R. 869, *affd.* on appeal, 10 W. R. 179). A defendant in the position of an interpleading plaintiff, as a debtor whose debt is claimed by the plaintiff and by one of the defendants, is entitled to retain his costs out of the debt (*Applin v. Cates*, 30 L. J. Ch. 6); and an auctioneer being ordered to pay a deposit into Court in a specific performance suit was allowed to retain his costs and expenses out of it (*Annesley v. Muggridge*, 1 Mad. 593; *Yates v. Farebrother*, 4 Mad. 239).

SECT. VII.—*Actions relating to Mortgages.*

By R. S. C. Ord. LV., r. 1, any right of a mortgagee to costs out of a particular estate or fund to which he would be entitled according to the rules of equity is preserved. The rule of equity as between mortgagor and mortgagee

Costs as between party and party only and not to charges and expenses *dehors* the suit.

Suit in the nature of interpleader.

A defendant in the position of a stakeholder.

General rule as to costs between mortgagor and mortgagee.

Actions to foreclose or enforce a security.

is, that the latter is entitled to add all his costs properly incurred to his security, and that the mortgagor or subsequent incumbrancers can redeem only on payment of principal, interest, and costs; see *Cotterell v. Stratton*, 8 Ch. 295; *Cottrell v. Finney*, 9 Ch. 541. But a mortgagor, if foreclosed, does not pay costs personally, though the estate is insufficient to pay the plaintiff's debt (*Howard v. Queen's Trustees*, 2 Mod. 173; *Frazer v. Jones*, 5 Ha. 475, 483), unless he unsuccessfully disputes the validity of the security (*Tildesley v. Lodge*, 3 Jur. N. S. 1000; *Sharples v. Adams*, 32 Beav. 213; 1 N. R. 460; and see *Tuner v. Ivie*, 2 Ves. 467). And where, by settling an estate without notice of a charge upon it, the owner rendered a suit to enforce the charge necessary, he had to pay the costs of it (*Wise v. Wise*, 2 J. & L. 403).

Equitable mortgagee;

An equitable mortgagee by deposit is entitled to his costs as against the mortgagor (*Aberdeen v. Chitty*, 3 Y. & C. 379); or his personal representative (*Connell v. Hardie*, 3 Y. & C. 582); or in equity as against his trustee in bankruptcy (*The Queen v. Chambers*, 4 Y. & C. 54), though the deposit was made without a memorandum (*ibid.*). But in bankruptcy the rule is, that an equitable mortgagee by deposit *without* memorandum, seeking to enforce his security, pays costs (*Ex parte Barclay*, 5 De G. M. and G. 407; *Anon.* 2 Mad. 281; *Ex parte Warry*, 19 Ves. 472); though not if the trustee raise a frivolous opposition (*Ex parte Horne*, 1 Mad. 622; *Ex parte Garbutt*, 2 Rose 78); or if the deposit was made under circumstances in which it is not customary, according to the course of business, to give a memorandum (*Ex parte Moss*, 3 De G. & S. 599). If there is a memorandum, the costs are added to the security (*Ex parte Barclay*, 5 De G. M. & G. 407; *Ex parte Trew*, 3 Mad. 372; *Ex parte Brightens*, 1 Swans. 3). And where an agreement for a lease had been deposited with a memorandum, and afterwards the lease was deposited without one, the costs were allowed (*Ex parte Anderson*, 3 De G. & S. 600). In a decree for foreclosure, in case of

an equitable mortgage, the practice is to direct a conveyance by the mortgagor without saying at whose expense (Ball v. Harris, 8 Sim. 485). In Pryce v. Bury, 2 Drew. 41; affirmed, on appeal, 16 Eq. 153, n.; 18 Jur. 967; 2 W. R. 216, V. C. Kindersley seems to have thought that where the property consists of *freeholds or leaseholds* the mortgagee must bear the costs, because he prepares the conveyance and tenders it to the mortgagor; but he decided that, in the case of *copyholds*, the mortgagor must pay the costs of surrender, because there he takes the initiative. But *quære* the soundness of this distinction; as between vendor and purchaser of copyholds, for instance, the latter must bear the expense both of the surrender to him and of his own admission (Sugd. V. & P. 562). Where the defendant had acquired the legal estate with notice of an equitable charge, but disputed the validity of it, he was ordered to pay personally so much of the costs as the security was insufficient to satisfy (*Sharpley v. Adams*, 1 N. R. 460; 32 Beav. 213).

Again, the plaintiff in an action for redemption, according to the general rule, pays the costs of it (*Detillin v. Gale*, 7 Ves. 583). And it is so far a matter of principle that an appeal for costs will lie where a mortgagee is refused his costs (*Owen v. Griffith*, 1 Ves. 250; *Norton v. Cooper*, 5 De G. M. & G. 728; *Cotterell v. Stratton*, 8 Ch. 295; *In re Rio Grande do Sul Steamship Co.*, 5 Ch. D. 282; 46 L. J. Ch. 277; 25 W. R. 328; 36 L. T. 603). There must be something of positive misconduct to deprive a mortgagee of his costs (*Loftus v. Swift*, 2 Sch. & L. 642); the fact of his merely extending his claim beyond what the Court decides that he is entitled to is not sufficient (*ibid.*; and see *Cotterell v. Stratton*). Where a bill was filed for redemption of two estates, and one was held not to be redeemable, the plaintiff was allowed to redeem the other only on payment of principal and interest and the whole costs of the suit (*Batchelor v. Middleton*, 6 Ha. 75). In default of redemption the action is dismissed

Costs of conveyance of the legal estate to an equitable mortgagee.

Redemption actions.

So where mortgages were wrongly ordered to pay costs. In Re Cooper v. N. [1882] 55. 30 W. R. 648

with costs. And see *Riley v. Croydon*, 5 N. R. 160; 13 W. R. 223; 11 L. T. 591, where a bill by the assignee of the tenant for life to redeem a mortgage on the inheritance, the tenant for life having died *pendente lite*, was dismissed with costs.

Actions by
puisne
incum-
brancers
for fore-
closure
and re-
demption.

In an action by a *puisne* incumbrancer for redemption and foreclosure merely, the costs of each party are added to his security and paid with his principal and interest according to his priority (*Wright v. Kirby*, 23 Beav. 463; *Wild v. Lockhart*, 10 Beav. 320; 16 L. J. Ch. 519; *Barnes v. Raester*, 1 Y. & C. C. C. 401; and see *Wonham v. Machin*, 10 Eq. 447). But where the suit is instituted to ascertain priorities upon an estate or fund, the plaintiff has costs in the first instance, and the costs of other parties are added to their securities (*Wright v. Kirby*, 23 Beav. 463; *White v. Bishop of Peterborough*, Jac. 402; *Bruce v. Duchess of Marlborough*, Mos. 50; *Ford v. Lord Chesterfield*, 21 Beav. 426; and see *Johnstone v. Cox*, 19 Ch. D. 17).

Where
mortgagee
consents to
a sale.

We have already seen (*ante*, p. 199), that a first mortgagee does not lose his priority in respect of costs by consenting to a sale of the mortgaged property in an action to administer the mortgagor's estate. Nor will he do so by consenting to a sale in a *puisne* incumbrancer's action (*Wild v. Lockhart*, 10 Beav. 320; 16 L. J. Ch. 519); and he is entitled to his principal, interest, and costs in priority even to the costs of the sale (*ibid.*; and see *Crosse v. General Reversionary Co.*, 3 De G. M. & G. 698; *Ward v. Mackinlay*, 2 De G. J. & S. 358; 5 N. R. 28). So in a suit for foreclosure, where the plaintiff consented to a sale, and the fund proved insufficient to pay him his principal, interest, and costs, the whole fund was ordered to be paid to him (*Upperton v. Harrison*, 7 Sim. 444); and see *Wonham v. Machin*, 10 Eq. 447; 18 W. R. 1098. In *Kenbel v. Scrafton*, 13 Ves. 370, it was held that where, in a suit for foreclosure, the mortgaged property had been sold with the concurrence of the subse-

Where
subsequent
incum-
brancers
consent to
a sale.

quent mortgagees, the costs of all parties were payable out of the proceeds in priority to the principal and interest of the first incumbrancer. But that case has not been approved or followed in practice (*per* V. C. Wigram, *Hepworth v. Heslop*, 3 Ha. 485) ; and see *Wonham v. Machin*, and *Barnes v. Rueter*, 1 Y. & C. C. C. 401, where V. C. Knight Bruce held that the mere circumstance of there being a decree for sale instead of foreclosure did not *primâ facie* change the rights of the parties ; if a decree for sale was conceded on terms in order to prevent the operation of the general rule, the terms must appear in the decree itself. In *Wontner v. Wright*, 2 Sim. 543, which is often cited on this point, the mortgagee had lost his deeds, as to which see *post*, p. 228. In *Cutfield v. Richards*, 26 Beav. 241, where the plaintiff being a mortgagee of a term only filed a bill for foreclosure or sale, and by consent the fee simple was sold in the suit, he was held entitled to his costs in priority to other parties. "A mortgagee, by amending his pleadings and consenting to a sale of the estate instead of insisting upon his original claim to foreclose, does not forfeit his right to his costs in priority to the costs of the sale ; and, until his claim is satisfied, nothing can be taken from the estate by the mortgagor or subsequent incumbrancers" (Set. p. 1061 ; and see *Cook v. Hart*, 12 Eq. 459). In *Maeræ v. Ellerton*, 6 W. R. 851, where the bill prayed foreclosure or sale, the plaintiffs being legal mortgagees with a power of sale as to part and equitable mortgagees by agreement as to other part of the mortgaged property, V. C. Stuart held that the real and personal representatives of the mortgagor were entitled to costs, as between solicitor and client, out of the proceeds of sale of the property in priority to the plaintiffs' principal and interest. His Honour placed much reliance on the circumstance that the plaintiffs had ineffectually attempted to sell without the concurrence of the mortgagors' representatives. V. C. Stuart followed his own decision in *Fuller v. Morgan*,

Where plaintiff seeks foreclosure or sale.

Where legal mortgagee seeks a sale only.

unreported, Set. 380, 3rd ed.; but it was disapproved of by V. C. Kindersley in *Wade v. Ward*, 4 Drew. 602, and forms an exception to the general rule; see *Cook v. Hart*, 12 Eq. 459. Where a legal mortgagee with a power of sale filed a bill for a sale, it was formerly held that the subsequent incumbrancer and mortgagor concurring in the sale were entitled to costs in priority to the plaintiff's principal and interest (*Cooke v. Brown*, 4 Y. & C. 227; *Alston v. Parker*, 5 L. J. Ch. 3). But in *Hutton v. Sealy*, 6 W. R. 350, a decree was made for sale and payment of the plaintiff's principal, interest, and costs out of the proceeds, on the apparent grounds that the mortgagee had a right to have the trust of the purchase monies administered by the Court. Where the mortgaged property had been sold by the first mortgagee under his power of sale, and the second mortgagee filed a bill for an account, the first mortgagee was expressly charged as a trustee (*Tanner v. Heard*, 23 Beav. 555). But where the equity of redemption was settled in trust for sale to pay off the mortgage and then hold the surplus upon certain trusts, and a judgment creditor of the mortgagee filed a bill to charge the mortgagee's interest under the deed, it was held that the trustees were entitled to their costs in the first instance (*Clare v. Wood*, 4 Ha. 81); and this seems to have been the point decided in *Siffken v. Davis*, Kay, app. xxi., though the report is not very intelligible.

Or avails himself of a trust for sale of the equity of redemption.

Right of an equitable mortgagee to sale or foreclosure.

There has been considerable difference of opinion whether the strict right of an equitable mortgagee by deposit is to foreclosure or sale; see the cases collected in *Tuckley v. Thompson*, 1 J. & H. 126, where V. C. Wood inclined to the opinion that a sale was the proper remedy. But it seems that the balance of authority, at least as respects the more recent cases, is clearly in favour of foreclosure; see *Pryce v. Bury*, 16 Eq. 153 n.; 2 W. R. 216; 2 Drew. 41; 18 Jur. 967; *Cox v. Toole*, 20 Beav. 145; and the cases cited *ante*, p. 198. An equitable mortgagee

seems to be in the same position with respect to costs as a legal mortgagee; see *Lewis v. John*, 9 Sim. 366; and *Wade v. Ward*, 4 Drew. 602, where the Court directed a sale, and held that the plaintiff was entitled to his principal, interest, and costs in priority to the infant heir of the mortgagor. In *Tuckley v. Thompson*, 1 J. & H. 126 (but see S. C. on app. 29 L. J. Ch. 548), an equitable mortgagee filed a bill to realise his security by sale and prove against the mortgagor's estate for the balance, and V. C. Wood gave him his costs in priority to all other claims, because by seeking only to prove for the balance against the estate he was asking less than his just rights; but the Vice Chancellor, following his own decision in *Berry v. Hebblethwaite* (4 K. & J. 80), thought the costs of the actual sale should come out of the proceeds of the mortgaged estate.

As to the costs of a mortgagee instituting or adopting an administration suit, see *ante*, p. 196.

The Court will not, on light grounds, deprive a mortgagee of his costs or make him pay costs (*Loftus v. Swift*, 2 Sch. & L. 642; *Detillin v. Gale*, 7 Ves. 583); but will do so in a proper case. A mortgagee resisting the right to redeem, and relying on the transaction as an absolute purchase, was allowed no costs in *Sevier v. Greenway*, 19 Ves. 413; *Lawley v. Hooper*, 3 Atk. 278; and had to pay the whole costs in *Baker v. Wind*, 1 Ves. Sen. 160; *England v. Codrington*, 1 Eden, 169; and see *National Bank of Australasia v. United, &c., Co.*, 4 App. Cas. 391; *Graham v. Horn*, W. N. (1866), 166. In *Harvey v. Tebbutt*, 1 Jac. & W. 197, where the mortgagee relied on a foreclosure decree which had been collusively obtained, he had to pay only so much of the costs as were thereby occasioned, which were set off against the money payable by the plaintiff; and so in *Perkins v. Bradley*, 1 Ha. 219; *Wheaton v. Graham*, 24 Beav. 483, where the right to redeem was disputed; and see *Credland v. Potter*, 10 Ch. 8; 44 L. J.

Exceptions to rule that mortgagee pays no costs.
i. Where he resists the right to redeem.

Ch. 169; 23 W. R. 36; 31 L. T. 522; *Tomlinson v. Gregg*, 15 W. R. 51; W. N. (1866), 339; *Shannon v. Casey*, Ir. R. 8 Eq. 307. In *Cowdry v. Day*, 5 Jur. N. S. 1199, the defendant resisted the right to redeem; but as the bill contained injurious charges struck out by amendment, the usual decree was made. In *Wicks v. Scrivens*, 1 J. & H. 215, where the equity of redemption was in settlement, and the mortgagees had refused to be redeemed by the tenant for life, they had no costs up to the hearing, but did not pay costs, as the tenant for life had the advantage of having the account taken in the presence of the trustees of the settlement. Where the question whether the estate was redeemable or not involved a difficult point of real property law, the decree was made without costs (*Kirkham v. Smith*, 1 Ves. 258).

Where there is a question of priorities between two mortgages.

As between two mortgagees when the question in dispute is as to their respective priorities, the one in whose favour the Court decides is entitled to his costs from the other one, the latter not having them over from the mortgagor (*Mocatta v. Murgatroyd*, 1 P. W. 392; and see *Banks v. Whittall*, 1 De G. & S. 536; *Horns v. Holtom*, 16 Jur. 1077); but where the question had arisen from the acts and conduct of the mortgagor himself, the plaintiff failing, was allowed the costs over (*Polly v. Wathen*, 7 Ha. 351).

ii. Where a mortgagee has lost his deeds.

A mortgagee who had lost some of the title deeds had to pay the costs of a foreclosure suit in *Stokoe v. Robson*, 19 Ves. 385; *Shelmardine v. Harrop*, 6 Mad. 39; so of a redemption suit (*Lord Middleton v. Eliot*, 15 Sim. 531). In the case last cited the mortgagee had refused to give any indemnity for the loss of the deeds. Where a mortgagee, who had lost his deeds, came to the Court for a sale, the subsequent incumbrancers were allowed their costs out of the proceeds, though insufficient to pay the plaintiff's debt (*Wontner v. Wright*, 2 Sim. 543). Where the mortgagees' solicitor, to whom the deeds had been delivered, fraudulently deposited the most important of them with a stranger to secure a debt of his own, the

mortgagees had to bear all the costs of the consequent proceedings by the mortgagor to assert his title (*James v. Rumsey*, 11 Ch. D. 398 ; 48 L. J. Ch. 345 ; 27 W. R. 617) ; but no compensation was allowed for the loss of the deed. In *Hornby v. Matcham*, 16 Sim. 325, where the mortgagee had destroyed the deeds in a fit of insanity, a decree for redemption was made on payment of principal and interest only, the amount of compensation for the loss of the deeds to be set off against what was found due on the mortgage ; and see *Brown v. Sewell*, 11 Ha. 49. However, V. C. Knight Bruce said (in *Woodman v. Higgins*, 14 Jur. 846) that a mortgagee who took the same care of the deeds forming his security as of his own, ought not to be hardly dealt with ; and the deeds having been found, he made a decree for redemption on payment of principal and costs, the defendant waiving his claim for compensation, and electing to have interest stopped from the date of his tender.

On the simple fact that something was due to the mortgagee when the mortgagor came to redeem, the mortgagee is entitled to the costs of the suit, though he is in possession and the account is directed with annual rests (*Barlow v. Gains*, 23 Beav. 244) ; but if the mortgagor alleges, and proves, that nothing was due when the action, whether for redemption or foreclosure, was brought, the mortgagee must pay the costs (*ibid.* ; and see *Binnington v. Harwood*, T. & R. 477 ; *Wilson v. Cluer*, 4 Beav. 214 ; *Archdeacon v. Bowes*, M'Clel. 149, 167 ; *O'Neill v. Innes*, 15 Ir. Ch. R. 527). Where overpayment is alleged, the usual course is to reserve the costs until the result of the account is certified. After a decree for redemption on payment of principal, interest, and costs without any reservation, it was held that the Court could not deprive the mortgagee of his costs, although it turned out that he was overpaid (*Lord Trimleston v. Hamill*, 1 B. & B. 377 ; and see *Gilbert v. Golding*, 2 Anstr. 442). Where the defendant by answer

iii. Where the mortgagee is overpaid.

claimed a balance due to him, and by the accounts it appeared that a sum was due to him when the bill was filed, but he was overpaid when the answer was put in, he was allowed the costs up to putting in his answer but no subsequent costs (*Montgomerie v. Calland*, 14 Sim. 79); but in *Snagg v. Frizell*, 3 J. & L. 385, his conduct having been vexatious, he had to pay the costs subsequent to answer. If a mortgagee in possession refuses to account, he must pay the costs of the suit up to the hearing (*Powell v. Trotter*, 1 Dr. & S. 388).

iv. Where principal, interest, and costs have been tendered.

The general principles with regard to the effect of tender on the costs of the suit have been stated, *ante*, p. 102. In addition to the cases there cited, see as to tender between mortgagor and mortgagee, *Shuttleworth v. Lowther*, 7 Ves. 586; ——— *v. Trecothick*, 2 V. & B. 181; *Williams v. Sorrell*, 4 Ves. 389; *Roberts v. Williams*, 4 Ha. 129; *Morley v. Bridges*, 2 Coll. 621; *Lyle v. Scarth*, W. N. (1874), 62, 82; *Lewis v. Webber*, W. N. (1876), 187. In *Harmer v. Priestley*, 16 Beav. 569, where an unconditional tender of a certain sum had been made before suit, a decree was made for an account at the date of the tender, and directions were given that if the amount found due should not exceed the amount tendered, the mortgagee should pay the costs; but if otherwise, the usual decree should be made. But in *Thomas v. Cooper*, 18 Jur. 688, where the plaintiff claimed more and the defendant offered less than was ultimately found due, V. C. Stuart gave no costs. There were other points in that case, which, perhaps, might take it out of the general rule, which is very precise, that in the absence of a tender of the whole amount due to him the mortgagee is entitled to his costs of suit, although he demands more than is due (*Loftus v. Swift*, 2 Sch. & L. 642). "There are several cases of foreclosure in which, though very reasonable proposals may be made, yet, if there is no proof of an actual tender, the Court, on a bill to foreclose, never refuses costs" (*per* Lord Hardwicke, *Gammon v. Stone*, 1

Ves. 339). If the tender is not such as would, according to the rule of the Court, stop interest, it will not deprive the mortgagee of his costs (*Garforth v. Brudley*, 2 Ves. 678). A notice by second mortgagee of his intention to redeem will not save the costs of a foreclosure suit by the first mortgagee up to the time when an actual tender is made (*Smith v. Green*, 1 Coll. 555). In *Hodges v. Croydon Canal Co.*, 3 Beav. 86, where the question in the suit was as to the number of years for which arrears of interest could be claimed, the mortgagor, though he succeeded in reducing the amount to six years, had to pay the whole costs because no actual tender had been made. But a mortgagee may reasonably refuse a tender, if, at the same time, a deed of reconveyance containing covenants is presented to him for his immediate execution, and such refusal will not stop interest or deprive him of costs (*Wiltshire v. Smith*, 3 Atk. 89). A tender, even after the account has been taken under the decree, will save the subsequent costs (*Sentance v. Porter*, 7 Ha. 426); and the tender may be proved on motion, or by petition at the hearing on further consideration (*ibid.*). In *Cliff v. Wadsworth*, 2 Y. & C. C. C. 598, where a mortgage was vested in three trustees, an innocent trustee got his costs; a second who had omitted to attend personally at the time and place appointed for settlement got no costs; a third, who by an untenable claim to the interest beneficially had prevented the settlement, had to pay the plaintiff's and the innocent trustee's costs. As to dismissal of a foreclosure action by the defendant on payment of principal, interest, and costs before the hearing, see *ante*, pp. 84, 85.

A mortgagee may also lose his costs of a redemption suit, or a part of them, by vexatious conduct; see *Delillin v. Gale*, 7 Ves. 583, where the defendant was a solicitor and agent who took a mortgage for sums due to him without any settlement of accounts, and having put every impediment in the way of the account being taken in the

What is sufficient tender.

v. Vexatious, fraudulent, or oppressive conduct.

Master's office, had to pay the costs of those proceedings and got costs down to the answer only. And so where the plaintiff seeks to be relieved against the mortgagee's fraudulent or oppressive conduct, on payment of the amount fairly owing; see *Morony v. O'Dea*, 1 B. & B. 109, where the defendant had no costs; *Thornhill v. Evans*, 2 Atk. 330; *Cockell v. Taylor*, 15 Beav. 103, where the mortgagee paid costs up to the hearing. In the case last cited it was held that an innocent equitable sub-mortgagee had no equity against the plaintiff, and a defendant in that position had to pay the costs of insisting on his security. But the right of the mortgagee to costs rests substantially upon contract, and can only be lost or curtailed by such inequitable conduct on his part as amounts to a violation or culpable neglect of his duty under the contract; see *Cotterell v. Stratton*, 8 Ch. 295, where the principle is laid down by Lord Selborne, L.C. In *Rider v. Jones*, 2 Y. & C. C. C. 328, the mortgagee was insolvent, and as he would have paid costs if solvent, neither he nor his assignee got any costs. And see the other cases collected in 1 *Hov. Supp.* 355, and the notes to *Harvey v. Tebbutt*, 1 J. & W. 197; and as to suits to set aside securities on reversionary interests, see *post*, sec. XI. Where, however, the mortgagor unsuccessfully impeaches a security, it is almost of course that he should pay costs (*Taner v. Ivie*, 2 Ves. 467).

The mort-
gagee must
not put the
mortgagor
to un-
necessary
expenses
by his
action.

The mortgagee must not introduce extraneous or improper matters into a foreclosure action. Therefore, where the plaintiff, by amendment, changed his bill from one for an account against a bailiff into a foreclosure bill after an issue finding that he was a mortgagee, he was allowed costs only as if the bill had originally been one for foreclosure (*Smith v. Smith*, G. Coop. 141). The devisee of a mortgagee, plaintiff in a foreclosure suit, will not be allowed the costs of the heir at law made a party to establish the will against him (*Skipp v. Wyatt*, 1 Cox, 353). So where the plaintiff attempted to tack a bond

Turner v. Hancock
W.N. [1882] 47.

to his mortgage debt, his bill was dismissed with costs to this extent (*Hamerton v. Rogers*, 1 Ves. Junr. 513); and in a suit to establish a mortgage, the plaintiff had his costs generally, but had to pay the costs of unproven charges of fraud against his co-trustee who was made a defendant (*West v. Jones*, 1 Sim. N. S. 205); and the plaintiff must pay the costs of defendants not necessary parties (*Coles v. Forrest*, 10 Beav. 552). But the mortgagor's trustee to bar dower is a proper party to a foreclosure suit, and will not be allowed any costs from the plaintiff (*Horrocks v. Ledsam*, 2 Coll. 208). The plaintiff was held entitled to add to his own costs the costs of a trustee of a term for better securing the plaintiff, made defendant to the bill (*Browne v. Lockhart*, 10 Sim. 420; and see *Bartle v. Wilkin*, 8 Sim. 238). And where one of two mortgagees filed a bill for foreclosure and made the other one a defendant, the decree directed foreclosure on default in payment of the whole debt and the costs of both mortgagees (*Davenport v. James*, 7 Ha. 249). But should not the trustee and co-mortgagee in these cases have been co-plaintiffs, and ought the mortgagor to bear the extra expense occasioned by their being defendants? The practical effect of the decisions seems to be, to throw on the mortgagor the *onus* of proving the willingness of the defendant to have joined as plaintiff if he had been asked (see *ante*, p. 126). As to the costs of persons made defendants to a foreclosure action and disclaiming, see *ante*, pp. 114, 115, *seq.* In a suit by a tenant for life to redeem a mortgage on the inheritance the plaintiff paid the costs of the remaindermen made defendants, with liberty to add them to his own (*Riley v. Croydon*, 5 N. R. 160; 13 W. R. 223; 11 L. T. 591).

The mortgagor, in a redemption action, must pay the costs of all persons claiming an interest in the equity of redemption under the mortgagee (*Wetherell v. Collins*, 3 Mad. 255); "upon this principle,—that at law, after a mortgage is forfeited, the estate is the absolute property of

Costs of mort-
gagee's
trustee.

Where mortgagee has assigned before action.

the mortgagee, and he may deal with it as his own ; and that if the mortgagor comes for the redemption which the equity of this Court gives him, it must be upon the terms of indemnifying the mortgagee from all costs arising out of his legal acts" (*ibid.*). This reasoning applies as well to a foreclosure suit (*Bartle v. Wilkin*, 8 Sim. 238 ; *Bennett v. Partridge*, W. N. (1877), 165) ; and, therefore, where the mortgagee had put the mortgage into settlement, and the *cestui que trust* filed a bill and made the trustee a defendant, the plaintiff was held entitled to add the trustee's costs to his own (*Bartle v. Wilkin*). Any number of sub-mortgagees will be entitled in a foreclosure suit by the original mortgagee to their costs from him, and he will have them over with his own (*Smith v. Chichester*, 2 Dr. & W. 393). So if the mortgage becomes divided in various shares (*Cane v. Brownrigg*, 2 Ir. Eq. R. 413). And it has even been held that the mortgagor must pay all the costs of a redemption suit, where the right to receive the mortgage money was in dispute between two defendants (*Drew v. Harman*, 5 Pr. 319).

Costs
incurred
respecting
the mort-
gage deed.

On the same principle, an application to have out of Court deeds relating to mortgages become absolute at law, properly deposited in the course of an administration suit, was at the costs of the mortgagor (*Burden v. Oldaker*, 1 Coll. 105). But where the mortgage has been assigned with other property by one deed, the mortgagor redeeming is entitled to the deed on entering into a covenant for the production of it at the costs of the mortgagee (*Cupper v. Terrington*, 1 Coll. 103 ; 13 L. J. Ch. 239) ; or if the mortgagees are allowed to retain it, they must give an attested copy and covenant for its production at their own expense (*Dobson v. Land*, 4 De G. & S. 575).

Assign-
ment
pendente
lite ;
or after
decease.

But if the mortgagee assigns after decease, or, it seems, at any time pending the suit (*Coles v. Forrest*, 10 Beav. 552), and his assignees are brought before the Court, they must bear the extra costs thereby occasioned (*Barry*

v. *Wrey*, 3 Russ. 465; *James v. Harding*, 24 L. J. Ch. 749; *Coles v. Forrest*, 10 Beav. 552). And where, a decree for redemption and foreclosure having been obtained in a former suit by a second mortgagee, one of the subsequent incumbrancers sub-mortgaged, and the sub-mortgagee filed a bill to redeem all prior to himself, the bill was dismissed with costs as against all the defendants, except the plaintiff's transferor, against whom a decree for foreclosure was made in default of his paying principal and interest and the plaintiff's costs, including what he should pay to the other defendants (*Booth v. Creswicke*, 8 Sim. 352). However, in *Selby v. Selby*, 2 Jur. 106, where a tenant for life paid off charges on the inheritance and then filed a bill to have them raised, he was held entitled to his costs of assigning the charges after decree, on the grounds that the suit was in the nature of a family suit. The first mortgagee, plaintiff in a foreclosure suit, is entitled to the costs of taking a transfer pending the suit of a second mortgage (*Coles v. Forrest*, 10 Beav. 552).

But where the interest on a mortgage is regularly paid, and the mortgagor is never called on to pay the principal, the costs of a transfer of the mortgage will not be allowed against the mortgagor, if made without his concurrence (*Re Radcliffe*, 22 Beav. 201); or *à fortiori* against mesne incumbrancers. A mortgagee is not bound to transfer his mortgage to a nominee of the mortgagor after payment, if he have notice of an equitable claim on the estate by another person; and having agreed to transfer on the representation that he was bound to do so, and having afterwards refused, he was allowed against the mortgagor and his nominee the costs of a suit to compel such transfer (*Banks v. Whittall*, 1 De G. & S. p. 541). The mortgagor is not liable for the costs incurred by the mortgagee's solicitors in an abortive negotiation for a transfer of the security (*Edwards v. Smith*, W. N. (1869), 24).

“The Court, in settling accounts between mortgagor What ex-
penses are

allowed to mortgagee in settling accounts.

Costs of actions at law against,

and mortgagee will give the latter all that his contract, or the legal and equitable consequences of it, entitle him to receive, and all the costs properly incurred in ascertaining or defending such rights, whether at law or in equity" (*per* Lord Cottenham, C., *Dryden v. Frost*, 3 My. & C. 670, 675); or in recovering the mortgage money (*Ellison v. Wright*, 3 Russ. 458; but see *Merriman v. Bonney*, 12 W. R. 461). And the same rule applies in the case of a person substantially in the position of a mortgagee (*In re Rio Grande do Sul Steamship Co.*, 5 Ch. D. 282; 46 L. J. Ch. 277; 25 W. R. 328; 36 L. T. 603); and to the costs of a successful appeal (*Addison v. Cox*, 8 Ch. 76). In *Hunt v. Fownes*, 9 Ves. 70, the mortgagee was allowed the costs of taking out administration, in the course of the suit, to an annuitant under the mortgagor's will, the annuity being in arrear at her death; and see *Costa Rica v. Strousberg*, W. N. (1880), 155. And the costs of taking out administration to the mortgagor will be allowed (*Ramsden v. Langley*, 2 Vern. 536); but not if before suit and the bill did not state such costs to have been incurred (*Ward v. Barton*, 11 Sim. 534; *Millard v. Magor*, 3 Mad. 433). On a bill by the mortgagor's heir to redeem, the mortgagee was allowed the full expenses of an action at law brought by the heir alleging an entail (*Ramsden v. Langley*, 2 Vern. 536). But the mortgagee will be entitled to the costs of defending his title to the mortgage only as against such of the persons entitled to the equity of redemption as concurred in the litigation (*Parker v. Watkins*, Johns. 133). In the case last cited, the equity of redemption being in settlement, a decree was made for redemption by the tenant for life on payment of principal, interest, and costs, including the costs of an action by him, but as against the remaindermen the usual costs only were allowed. But the mortgagee is entitled to add to his security the costs of defending the title to the estate against strangers, that being in the interest of all parties (*Godfrey v. Watson*,

3 Atk. 517; *Parker v. Watkins*). A party in the position of a mortgagee, defending an action on a bill of exchange on which he was clearly liable, was only allowed 6s. 8d. costs (*In re Rio Grande do Sul Steamship Co.*, 5 Ch. D. 282; 25 W. R. 328). The costs of an action of ejection by the mortgagee to recover the mortgaged premises, the interest being in arrear, will be allowed (*Sandon v. Hooper*, 6 Beav. 246; and see *Horlock v. Smith*, 1 Coll. 298, where the principle was recognised, though the Court, being bound by a former decree, refused to allow the costs). In *Blackford v. Davis*, 4 Ch. 304 (where the mortgage deed provided that it should be a security for all costs incurred by the mortgagee in selling the property, or in any actions or suits relating to it), the mortgagee was held entitled to the costs of actions by and against himself as "just allowances." In *Ellison v. Wright*, 3 Russ. 458, the mortgagee was held entitled to the costs of an action against a surety who had joined the mortgagor in a bond, the surety having proved insolvent; but in *Lewis v. John*, 9 Sim. 366, the mortgagee was not allowed, as against the devisees of the mortgagor, the costs of proceeding on the mortgage bond against the personal estate. And in *Merriman v. Bonney*, 12 W. R. 461, it was doubted whether the costs of an action against the mortgagor on his covenant for payment of interest should be allowed. Where the mortgagee contracted to sell under his power of sale, and by the advice of counsel filed a bill for specific performance, which was dismissed with costs, he was not allowed to add his costs of that suit to his security (*Peers v. Ceeley*, 15 Beav. 209). And an equitable mortgagee was not allowed the costs of an unsuccessful defence to an action at law to recover the mortgaged premises (*Dryden v. Frost*, 3 My. & Ca. 670). The Court, on making a foreclosure decree, refused to give the costs of a cross suit to redeem which was then pending (*Anon.*, Mos. 45). Where the mortgagee was a solicitor, Costs of

preparing
the mort-
gage deed.

it was held that the bill of costs of his firm for preparing the mortgage deed were not covered by the security (*Gregg v. Slater*, 22 Beav. 314); and see *Morley v. Bridges*, 2 Coll. 621, where the mortgagee had taken £35 out of Court in an action for the costs of preparing the mortgage deed, and having refused to receive his mortgage money without the full amount claimed for such costs, had to pay the costs of a redemption suit: *Wytt v. Cook*, W. N. (1868), 237. And where, after accounts had been taken under a foreclosure decree, the plaintiffs incurred costs in another suit by prior incumbrancers respecting other property mortgaged to them, it was held that they could not on petition add such costs to their costs of suit (*Barron v. Lancefield*, 17 Beav. 208).

Other
costs.

Inquiry
as to
mort-
gagee's
costs, &c.
not of
course.

In a proper case an inquiry will be directed as to costs, charges, and expenses properly incurred in relation to the mortgage security, but such inquiry is not of course, and some case for it must be made by the pleadings (*Merriman v. Bonney*, 12 W. R. 461; and see *Ward v. Barton*, 11 Sim. 534; and *Millard v. Mayor*, 3 Mad. 433).

“Just al-
lowances.”

By Cons. Ord. XXIII. r. 16, “just allowances” are imported into every decree directing an account without any direction for that purpose; as to what is included under this head, see *Wilkes v. Sannion*, 7 Ch. D. 188; 47 L. J. Ch. 150, where it was held to include expenses incurred by mortgagees of a ship in taking and holding possession of it, advertising it for sale, and effecting insurances; *Tipton Green Co. v. Tipton Moat Co.*, 7 Ch. D. 192; 47 L. J. Ch. 152; 26 W. R. 348, where it was held to include “necessary repairs;” and *Rees v. Metropolitan Board of Works*, 14 Ch. D. 372. As to accounts against a mortgagee in possession, see generally Fisher on Mortgages, 935 *et seq.*; 2 W. & T. L. C. 1092, 5th ed.

Costs of
reconvey-
ance
generally;

The costs of reconveyance must be borne by the mortgagor, even in a case where the mortgagee has to pay the costs of the suit generally (*Lord Middleton v. Eliot*,

15 Sim. 531; *Wilson v. Cluer*, 4 Beav. 214). So the mortgagor pays the costs of the proceedings necessary to obtain a reconveyance from the infant heir of the mortgagee (*Ex parte Ommaney*, 10 L. J. Ch. 315; 10 Sim. 298); or from his devisees in trust, where a petition is necessary (*King v. Smith*, 6 Ha. 473; 18 L. J. Ch. 43). In like manner in *Re Marrow*, Cr. & Ph. 142; 10 L. J. Ch. 340, it was held that the costs of obtaining a reconveyance from a lunatic mortgagee, not found so by inquisition, must be borne by the mortgagor. But in an earlier case of *Ex parte Richards*, 1 J. & W. 264, the costs of the committee necessarily incurred to enable him to convey, including the costs of the reference, were given out of the lunatic's estate; and that decision having been acted on, has been followed in preference to *Re Marrow*, though not considered satisfactory (*Re Townsend*, 2 Ph. 348; 16 L. J. Ch. 456; *Re Thomas*, 22 L. J. Ch. 858; 1 W. R. 155; *Re Biddle*, 23 L. J. Ch. 23; 2 W. R. 50; *Re Rowley*, 1 De G. J. & S. 417; 1 N. R. 251). This rule, however, will not be followed where the mortgagor applies, unless the committee has declined to act (*In re Wheeler*, 1 De G. M. & G. 434; 21 L. J. Ch. 759), nor where the mortgagee appears on the face of the mortgage deed to be a trustee only (*Re Lewes*, 1 Mac. & G. 23; 1 H. & T. 123; *Re Townsend*, 1 Mac. & G. 686). In that case the mortgagor pays the costs (*ibid.*); but if the mortgagee is a trustee, but does not appear to be so in the deed, the *cestui que trust* pays the costs (*Re Jones*, 2 Ch. D. 70; 45 L. J. Ch. 688; 24 W. R. 377; 34 L. T. 470). Where the committee makes the application, the mortgagor should not be served, and whether served or not, will not be allowed his costs of appearance (*In re Phillips*, 4 Ch. 629; 17 W. R. 904). The Court has no jurisdiction to order the costs of a vesting order occasioned by the lunacy of the mortgagee to be paid out of the mortgage debt (*Re Sparks*, 6 Ch. D. 361; 25 W. R. 869; (overruling *Re Biddle*), where each party was ordered to

from
lunatic
heir of
mortgagee

bear his own costs). But the costs of obtaining a reconveyance from the lunatic heir of a mortgagee must be borne by the mortgagor (*Re Jones*, 2 De G. F. & J. 554; 9 W. R. 175; 7 Jur. N. S. 115; 30 L. J. Ch. 112; *Re Stuart*, 4 De G. & J. 317). In *In re Viall, Hawkins v. Perry*, 8 De G. M. & G. 439, the petition was presented by a purchaser of the property and the plaintiffs in an administration suit, and a portion only of the costs was ordered to be paid out of the mortgage money, the remainder to be costs in the cause. It makes no difference that the lunatic is not found so by inquisition (*ibid.*).

A power in trustees to raise by mortgage a fixed sum implies a power to raise also the incidental costs of the mortgage (*Armstrong v. Armstrong*, 18 Eq. 541).

SECT. VIII.—*Actions for Partition and to Settle Boundaries.*

Former
rule as to
costs of
partition
suits.

Prior to the Partition Act, 1868, 31 & 32 Vict. c. 40, the rule in suits for partition was that no costs were given to either party up to the issuing of the commission, in analogy to the rule of law on writ of partition. The costs of issuing, executing and confirming the commission, were borne by the parties in proportion to the value of their interests (*Agar v. Fairfax*, 17 Ves. 533; *Calmady v. Calmady*, 2 Ves. junr. 568; *Baring v. Nash*, 1 V. & B. 554; *Jones v. Robinson*, 3 De G. M. & G. 910, 913; *Elton v. Elton*, (1) 27 Beav. 632).

Costs
under
Partition
Act, 1868,
s. 10.

By sect. 10 of the Partition Act, 1868, the Court may make such order as it thinks just respecting costs up to the time of the hearing. In *Landell v. Baker*, 6 Eq. 268, Lord Romilly, M. R., said the Act was not intended to alter the practice with regard to costs; but this is incorrect, and the decision has not been followed. The rule now is that all the costs of the action, both the costs up to the hearing, and the subsequent costs must, in the absence of special circumstances, be borne by the parties in pro-

All costs
now borne
by the
parties in
proportion
to their

portion to their several interests (*Cannon v. Johnson*, 11 Eq. 90; 40 L. J. Ch. 46; 19 W. R. 175; 23 L. T. 583; *Osborn v. Osborn*, 6 Eq. 338; 18 L. T. 679; *Miller v. Marriott*, 7 Eq. 1; 17 W. R. 41; 19 L. T. 304; *Simpson v. Ritchie*, 16 Eq. 103; *Leach v. Westall*, 17 W. R. 313; *Thompson v. Richardson*, Ir. R. 6 Eq. 596; *Ball v. Kemp-Welch*, 14 Ch. D. 512; 49 L. J. Ch. 528; 43 L. T. 116, where a sale was directed; *Bowes v. Marquis of Bute*, 27 W. R. 750, where there was a partition).

interests,
whether
there is a
sale or a
partition.

The Court may, however, in the exercise of its discretion, give no costs up to and including the hearing; see *Wilkinson v. Joberns*, 16 Eq. 14; 42 L. J. Ch. 663; 21 W. R. 644; 28 L. T. 734, where the owner of one moiety unsuccessfully resisted a sale under s. 4 of the Partition Act, 1868. In *Wilkinson v. Castle*, 37 L. J. Ch. 467; 16 W. R. 501; 18 L. T. 100, the defendant contested the plaintiff's title and was ordered to pay so much of the costs as was thereby occasioned, no order being made as to the other costs; and a defendant whose conduct has rendered the suit necessary may be ordered to pay his own costs (*Graham v. Cole*, L. J. Notes of Cases, 1873, 102). In *Porter v. Lopes*, 7 Ch. D. 367, Jessel, M. R., says: "If this had been a frivolous contest I should have made the party who had incurred the unnecessary costs pay the costs, but when there is a fair ground for discussion, and a reasonable ground for asking for the decision of the Court, then I think the proper course is to give no costs on either side up to the trial." Where husband and wife defendants to a partition action severed in their defence, the costs occasioned by the severance were ordered to be borne by the wife's share (*Mildmay v. Quicke*, 46 L. J. Ch. 667).

Exceptions.

Where the defendant set up an agreement as a bar to partition and failed, he was ordered to pay such portion of the costs as were thereby occasioned (*Morris v. Timmins*, 1 Beav. 411). And where the bill prayed for partition and account of the rents and profits against the

defendant, who was in possession, and the defendant disputed the plaintiff's title, he had to pay the costs thereby occasioned, and of taking the accounts (*Hill v. Fullbrook*, Jac. 574). But where the defendant questioned the plaintiff's title as heir at law to one tenant in common, and an inquiry was directed which found for the plaintiff, the defendant paid no costs of the inquiry except so far as they might have been increased by any act of hers, and it was held that mere cross-examination of the plaintiff's witnesses would not be within the exception (*Lyne v. Lyne*, 21 Beav. 318).

Costs
declared
a charge.

Former
practice as
to sales for
the purpose
of raising
the costs.

Where a partition is ordered, the costs of all parties not *sui juris* may be declared a charge upon their shares of the property; see Seton, p. 1020. In *Cal-mady v. Calmady*, 2 Ves. junr. 568, the costs of the trustees of a settlement of the plaintiff's share were ordered to be raised by sale or mortgage according to the trusts of the settlement. And in *Singleton v. Hopkins*, 4 W. R. 107; 25 L. J. Ch. 50; 1 Jur. N. S. 1199, V. C. Stuart directed that the costs of the third tenant in tail who was made a defendant, the first two being respectively a lunatic and an infant, should be a charge on the undivided share in which he was interested. On the authority of that case, V. C. Wood made the costs of infant defendants a charge upon their shares (*Cox v. Cox*, 3 K. & J. 554); and subsequently it became the practice to charge the costs of parties under disability upon their shares, and then, declaring it to be for their benefit that a sale should take place for the purpose of raising the costs, and the parties *sui juris* desiring a sale, to order a sale of the entirety. In this circuitous way a jurisdiction was established to sell the estate and divide the purchase-money without the expense of a partition; see now the Partition Acts, 1868 and 1876, 31 & 32 Vict. c. 40, and 39 & 40 Vict. c. 17; and *France v. France*, 13 Eq. 173; *Young v. Young*, *ibid.* 175, n.; *Davey v. Wietlisbach*, 15 Eq. 268. In *Fleming v. Armstrong*, 5 N. R. 181; 11

L. T. 470, the costs of a married woman were charged on her share, notwithstanding a restraint on anticipation.

Where an undivided share is in settlement, the first tenant in tail, in ordinary cases, sufficiently represents the inheritance; but where the first tenant in tail was a lunatic, and the second an infant, V. C. Stuart declared the third not to be an improper party, and gave him his costs out of the share in which he was interested (*Singleton v. Hopkins*, 4 W. R. 107; 25 L. J. Ch. 50; 1 Jur. N. S. 1199). A purchaser of the plaintiff's undivided share made a defendant by amendment is entitled to his costs from the plaintiff (*Williams v. Williams*, 10 W. R. 609). Where one tenant in common had made a lease of his undivided share, the lessee was a necessary party to a suit for partition, and his costs were required to be borne by the lessor (*Cornish v. Gest*, 2 Cox, 27; but see *Herbert v. Hedges*, 10 Ir. Eq. R. 479). Legatees whose legacies were charged on one undivided share had to bear their own costs (*Green v. Mercer*, 4 Ir. Eq. R. 705). In the same case it was held that a tenant for life of an undivided share had no equity to call on the tenant in tail to contribute to his costs: *sel qu.* See now as to parties, the Partition Act, 1868, s. 9, and the Partition Act, 1876, s. 3; Sect. 1016.

Where two tenants in common agreed to partition, each to take a moiety of the premises in severalty, and both died before a deed of partition was executed, the survivor specifically devising his moiety but allowing the legal estate in half the other moiety to descend to his heir-at-law, it was held that the costs of carrying the agreement into effect (including the costs of getting in the outstanding legal estate) must be borne by the devisees of the survivor and not by his personal estate (*In re Tann, Gravatt v. Tann* (1), 7 Eq. 434).

Where a solicitor was employed to conduct a partition suit on the joint retainer of two co-plaintiffs with equal

may be several.

rights as tenants in common, there being no special contract, it was held that the liability for costs was several as well as joint (*Furlong v. Scallan*, Ir. R. 9 Eq. 202).

Costs, how taxed.

The costs of a partition action can be taxed as between solicitor and client only by consent of the parties; otherwise they must be taxed as between party and party (*Bull v. Kemp-Welch*, 14 Ch. D. 512; 49 L. J. Ch. 528; 43 L. T. 116).

Actions for settling boundaries.

In *Norris v. Leneve*, 3 Atk. 83,* the costs of a commission to ascertain boundaries, and separate freeholds from copyholds, were ordered to be borne by the plaintiff and defendant equally, though their interests were unequal. But in *Habergham v. Stansfeld*, Set. 1034, the costs, up to the hearing, were ordered to be paid out of the testator's estate, rateably, according to the values of the freeholds and copyholds. Where, however, a bill was filed to settle the boundaries of plaintiff's and defendant's manors, and the question was agreed to be tried by a feigned issue, the plaintiff, having failed in three successive trials, was ordered to pay all the costs, both at law and in equity (*Metcalfe v. Beckwith*, 2 P. W. 377).

Costs of commissioners.

The commissioners have no lien on the commission for their charges and expenses (*Young v. Sutton*, 2 V. & B. 365).

SECT. IX.—*Actions for Dissolution of Partnership.*

Costs in partnership actions are payable out of the assets.

The general rule as to costs in a partnership action is the same as in any other administration action, that is, they are payable out of the assets, "partnership assets" meaning the assets remaining after payment of all the partnership debts, including balances due to any of the partners; if the assets are insufficient for payment of the costs of the action, then such costs must be borne by the

* This seems to be the case referred to in *Parker v. Gerard*, Amb. 236, as *Nevis v. Levine*.

partners in proportion to their shares in the profits (*Hamer v. Giles*, 11 Ch. D. 942; 27 W. R. 834; *Austin v. Jackson*, 11 Ch. D. 942, n.; *Potter v. Jackson*, 13 Ch. D. 845; 28 W. R. 412; *Bonville v. Bonville*, 35 Beav. 129). The rule established by *Hawkins v. Parsons*, 10 W. R. 377; 8 Jur. N. S. 852, that the Court made no order as to costs up to the hearing, is no longer in force.

If, however, the action has been rendered necessary by the negligence or misconduct of one partner, he may be ordered to pay the costs of the action so far as they have been occasioned by his misconduct, including the costs up to the trial (*Hamer v. Giles*). Where the executors of a deceased partner filed a bill against the surviving partner, who was bound to pay them annually half the profits of the business, alleging that no accounts had been rendered though application had been made for some years, and the defendant by his answer admitted the allegations in the bill and submitted to account, it was held that he must pay the costs up to the hearing (*Norton v. Russell*, 19 Eq. 343; 23 W. R. 252). If a decree for dissolution were made on the ground of the defendant's insanity, the costs came out of the estate, even under the former practice (*Jones v. Welch*, 1 K. & J. 765; and see *Rowlands v. Evans*, 14 W. R. 882).

Where the matters in dispute were referred to arbitration, the costs of suit, reference, and award were borne by plaintiff and defendant in proportion to their shares in the partnership profits and losses (*Newton v. Taylor*, 19 Eq. 14; 23 W. R. 330).

SECT. X.—*Actions relating to Patents.*

The 43rd section of the Patent Law Amendment Act, 1852, 15 & 16 Vict. c. 83, provides as follows:—

In taxing the costs in any action for infringing letters patent, regard shall be had to the particulars delivered in

Partner guilty of misconduct may have to pay costs.

Costs of reference.

Patent Law Amendment Act, 1852.

such action, and the plaintiff and defendant respectively shall not be allowed any costs in respect of any particular unless certified by the judge before whom the trial was had to have been proved by such plaintiff or defendant respectively, without regard to the general costs of the cause. The judge before whom any such action shall be tried may certify on the record that the validity of the letters patent came in question; and the record, with such certificate, being given in evidence in any suit or action for infringing the letters patent, or in any proceeding by *seire facias* to repeal the letters patent, shall entitle the plaintiff in any such suit or action, or the defendant in such proceeding by *seire facias* on obtaining a decree, decretal order, or final judgment, to his full costs, charges, and expenses, taxed as between solicitor and client, unless the judge making such decree or order, or the judge trying such action or proceeding, shall certify that the plaintiff or defendant respectively ought not to have such full costs.*

Costs as to particulars.

In an action for the infringement of a patent, the judge's certificate that the defendant's particulars of objections have been proved, is a condition precedent to his right on taxation to any costs in respect of such particulars, even in the case of a non-suit (*Honiball v. Bloomer*, 10 Ex. 538). But it was held that this rule did not apply to the case of a plaintiff who dismissed his own bill before the hearing; see *Batley v. Kynock*, 20 Eq. 632, V. C. B.

Costs must be ordered to be taxed as between solicitor and client.

Notwithstanding the above section, the decree or order should contain an express direction for taxation of the costs as between solicitor and client (*Lister v. Leather*, 4 K. & J. 425; and see *Hill v. Evans*, 4 De G. F. & J. 288; *Needham v. Oxley*, 11 W. R. 852).

The object of the section is to prevent patentees being put to the necessity of bringing repeated actions to determine their rights after the principle has been once established; see *per Wood*, V. C., in *Davenport v. Rylands*,

* See a similar provision in the "Merchandise Marks Act, 1862," 25 & 26 Vict. c. 88, s. 23.

1 Eq. 302; 35 L. J. Ch. 204. It does not apply to the costs of a first trial (whether before a judge and jury, or of issues of fact before a judge of the Chancery Division), but only to the costs of a subsequent trial, upon production of the record of the first trial, with the certificate endorsed (*Penn v. Bibby*, 3 Eq. 308; 36 L. J. Ch. 277).

As to what is a sufficient certificate to enable the Court to direct the costs to be taxed as between solicitor and client, see *Betts v. De Vitre*, 11 Jur. N. S. 9; *Bovill v. Hadley*, 17 C. B. N. S. 435; 10 L. T. 650. Certificate.

Where in a suit to restrain the infringement of a patent four issues were found for the plaintiff, but the fifth, as to infringement, for the defendant, and the bill was accordingly dismissed with costs, the Court gave the defendant the general costs of the motion for an injunction, but the plaintiff was allowed the costs of the issues found in his favour (*Parkes v. Stevens*, W. N. (1869), 269). Where the defendant infringed the patent in ignorance, submitted immediately on complaint being made, and offered before suit to account for all profits, which were very trifling, the plaintiff, though he got a perpetual injunction, got no costs (*Nunn v. D'Albuquerque*, 34 Beav. 595).

Directors of a company who infringe a patent may be made personally liable for the costs of a suit to restrain the infringement (*Betts v. De Vitre*, 11 Jur. N. S. 9).

A defendant will not be allowed to amend his particulars of objection at the last moment so as to raise a new case, except upon the terms of the plaintiff having a given time to elect whether he will discontinue his action in consequence, and payment by the defendant, in the event of discontinuance, of all costs incurred by the plaintiff since delivery of the original particulars; and the defendant must of course pay the costs of the application for leave to amend (*Edison Telephone Co. v. India Rubber Co.*, 17 Ch. D. 137, where the form of the order is given). In *Penn v. Bibby*, 1 Eq. 548, however, the costs occasioned by the introduction of new particulars of objection were reserved. Terms on which defendant allowed to amend his particulars of objection.

SECT. XI.—*Actions to set aside Sales, &c., of Reversions.*

Former doctrine that costs were given on the principle of redemption,

The old rule of the Court in suits to set aside conveyances of reversions was, that where inadequacy of value was the sole ground for the interference of the Court, and the decree was that the conveyance should stand as security for the price, or money actually advanced, the suit was to be considered in the nature of a bill for redemption, and the plaintiff must pay the costs of it (*Bawtree v. Watson*, 3 My. & K. 339, 341; *Gwynne v. Heaton*, 1 B. C. C. 1; *Twisleton v. Griffith*, 1 P. W. 310; *Peacock v. Evans*, 16 Ves. 512; *Gowland v. De Faria*, 17 Ves. 20, 26); and so in a suit to set aside post obit bonds (*Marsack v. Reeves*, 6 Mad. 111; *Boves v. Heaps*, 3 V. & B. 117); but in *Chesterfield v. Janssen*, 2 Ves. 125, the decree was made without costs. But when fraud or oppression formed part of the equity, the case was altered; see *Lord Portmore v. Taylor*, 4 Sim. 182; *Newton v. Hunt*, 5 Sim. 511; *Wood v. Abrey*, 3 Mad. 417, where no costs were given up to the hearing; and *Barnardiston v. Lingood*, 2 Atk. 133; *Crowe v. Ballard*, 1 Ves. Junr. 215; *Baugh v. Price*, 1 Wils. 320; *Bawtree v. Watson*, 3 My. & K. 339; *Wharton v. May*, 5 Ves. 27, where the defendant had to pay costs. So, if the transaction was one which—if the property had been in possession—would have come within that degree of inadequacy of consideration which has been considered as evidence of fraud (*Davies v. Cooper*, 5 My. & C. 270, 277). In *Boothby v. Boothby*, 15 Beav. 212, the Court being bound by the decree made at the hearing, which dismissed so much of the bill as charged fraud with costs, refused, on further consideration, to treat very gross inadequacy as fraud, and gave the defendant the remainder of the costs, except of the inquiry as to value.

In some later cases, however, it was laid down that the costs of such suits should not be disposed of on the principle of redemption; and that even where the equity was

inadequacy of value only, the defendant was not entitled to costs (*Edwards v. Burt*, 2 De G. M. & G. 55; *Foster v. Roberts*, 29 Beav. 467; *St. Albyn v. Harding*, 27 Beav. 11, 13; *Talbot v. Staniforth*, 1 J. & H. 484). In *Salter v. Bradshaw*, 26 Beav. 161, a decree was made, but without costs, on account of the lapse of time; so in *Foster v. Roberts*, where the inadequacy was only £30; and in *Talbot v. Staniforth*, on account of the *bona fides* of the transaction, and the purchaser having acted from a desire to keep the estates in the family; and see *Edwards v. Burt*; *Bromley v. Smith*, 26 Beav. 644, 675, where, under the circumstances, no costs were given. In *St. Albyn v. Harding*, the defendant had to pay costs.

Now by the Sales of Reversions Act, 31 Vict. c. 4, no purchase of any reversionary interest, made *bonâ fide* and without unfair dealing, is to be set aside merely on the ground of undervalue; and the general rule at the present day as to the costs seems to be that first above stated, viz. that they must be paid by the plaintiff. "Generally speaking, if a man comes to redeem, he must pay the costs of redemption; and if a man comes to get rid of his own deliberate act, he must also, generally speaking, pay the costs of his own folly in being obliged to come and ask the Court to undo what he has deliberately done;" *per* Stuart, V. C., in *Tyler v. Yates*, 11 Eq. 276 (affirmed on appeal, 6 Ch. 665), where, however, under the circumstances, neither side had costs; and see also *Miller v. Cook*, 10 Eq. 641. In *Earl of Aylesford v. Morris*, 8 Ch. 484, an expectant heir succeeded in obtaining relief against an unconscionable bargain with a money lender, but Lord Selborne, L. C., said he thought it not unjust that he should obtain it at his own expense, and no costs were given, affirming the decision of the Court below; and see *Croft v. Graham*, 2 De G. J. & S. 155; 5 Giff. 1.

If the defendant has refused a proper offer before action brought he will be ordered to pay the costs of the suit (*Beynon v. Cook*, 10 Ch. 389; 23 W. R. 413; *Benyon v.* Plaintiff coming to redeem generally pays costs. Defendant refusing an offer pays costs.

Fitch, 35 Beav. 570; *Wyatt v. Cook*, 16 W. R. 502; *Howley v. Cook*, Ir. R. 8 Eq. 570; *Tottenham v. Emmet*, 13 W. R. 123; 14 W. R. 3; 11 L. T. 404; 12 L. T. 838; 10 Jur. N. S. 1093; *Nevill v. Snelling*, 15 Ch. D. 679). But the plaintiff must in all cases, according to the rule stated *ante*, p. 106, pay the costs occasioned by unproven charges of fraud or oppression (*Edwards v. Burt*, 2 De G. M. & G. 55; *St. Albyn v. Harding*, 27 Beav. 11, 13; *Jones v. Ricketts*, 10 W. R. 576).

Where the suit is dismissed on account of lapse of time.

Where the suit is dismissed on the ground of lapse of time alone, the Court not being satisfied as to the transaction itself, the dismissal will be without costs (*Lord Clanricarde v. Henning*, 50 Beav. 175; but see *Sibbering v. Earl of Balcarras*, 3 De G. & S. 735).

Costs of assignees of the property.

Innocent assignees for value of the property have no equity against the plaintiff, as knowledge that the property was acquired when reversionary is notice of all the legal incidents of such transaction; see *Tottenham v. Green*, 1 N. R. 466, where a decree was made against sub-mortgagees, but they were allowed to add their costs to their securities as against their mortgagor; and *Cockell v. Taylor*, 15 Beav. 103, 119, where the sub-mortgagees had to pay the costs of insisting on their securities. But in *Wharton v. May*, 5 Ves. 27, the plaintiff had to pay the costs of innocent holders of post-obit bonds, and recover them from the principal defendants with his own.

SECT. XII.—*Actions for Specific Performance.*

Specific performance being in every case discretionary with the Court, it is extremely difficult, as observed by Mr. Beames (p. 58, n.), to extract rules with respect to the costs of suits for that purpose; and see the remarks of Malins, V. C. in *Cruikshank v. Duffin*, 13 Eq. p. 563.

Where the question is

Where there is a fair objection to a title, on which the

purchaser is justified in taking the opinion of the Court, though he fails in substantiating it, the decree for specific performance will in most cases be without costs (*Aislaby v. Rice*, 6 Mad. 256; *Thorpe v. Freer*, 4 Mad. 466; *Cox v. Chamberlain*, 4 Ves. 631; *Cruikshank v. Duffin*). So if the purchaser insists on inquiry as to a matter of fact respecting which there is a fair doubt (*Thorpe v. Freer*). And the same principle applies, though the question is one of conveyance, and not of title (*Staines v. Morris*, 1 V. & B. 8, 16). But the rule is not invariable (*Bishop of Winchester v. Paine*, 11 Ves. 194); and it may help the title to make the purchaser pay costs (*M^cQueen v. Farquhar*, 11 Ves. 467). In *Osborne to Rowlett*, 13 Ch. D. 774, the Master of the Rolls, Sir G. Jessel, said:—"Upon the question of costs, I do not consider that because a particular title may be one which a conveyancer would not recommend a purchaser to accept without a decision of the Court, the purchaser ought not to pay costs if the Court is of opinion that a good title can be made: on the contrary, the general rule is to order the purchaser to pay the costs, so as to assure his title and show that the Court entertains no doubt upon it." In that case no order was made as to costs, the difficulty having arisen entirely from conflicting decisions. See also *Hall v. May*, 3 K. & J. 590. Counsel's opinion is no protection to a purchaser unsuccessfully objecting to a title against costs (*Maling v. Hill*, 1 Cox, 186; *Thomas v. Townsend*, 16 Jur. 736). And where the purchaser had notice of a previous decision in favour of the same title, the decree was made with costs (*Biscoe v. Wilks*, 3 Mer. 456). If the purchaser's objection is futile or frivolous the decree will be with costs (*Morris v. Debenham*, 2 Ch. D. 540; *Thorpe v. Freer*); and see *Hood v. Oglander*, 6 N. R. 57; *Forster v. Abraham*, 17 Eq. 351.

On the other hand, there is no rule that a vendor failing for want of title pays the costs of the suit (*Vancouver v. Bliss*, 11 Ves. 458). It makes only a *prima facie* case for

one of title; and the title is good.

Where the title is bad or doubtful,

costs, which may be outweighed by circumstances (*Edwards v. Harvey*, Coop. 40). In *White v. Foljambe*, 11 Ves. 337, 463, where the question involved a point of law of great difficulty, the vendor's bill was dismissed without costs. And where the Court of Exchequer had pronounced against the point, but in Lord Eldon's opinion wrongly, he dismissed the bill without costs (*Rose v. Calland*, 5 Ves. 186). So in *Willecox v. Bellaers*, T. & R. 491, where the Master reported in favour of the title, but the Court dismissed the bill without costs, without either allowing or disallowing the exceptions. But in *Bruce v. Bainbridge*, Sugd. V. & P. 648, where the Master reported in favour of the title, but the Common Pleas, on a case sent to them, certified against it, the bill was dismissed with costs from the date of the report. And, in general, if the title is clearly bad, the action will be dismissed with costs (*Playford v. Hoare*, 3 Y. & J. 175; *Vancouver v. Bliss*, 11 Ves. 458); which may be done on motion after a reference on the title (*Walters v. Pynam*, 19 Ves. 351). Where the title deeds were burnt before the title was accepted, and the vendor was unable to give secondary evidence, his bill was dismissed with costs (*Bryant v. Busk*, 4 Russ. 1). In *Heseltine v. Simmons*, 6 W. R. 268, where a claim was raised by a person not a party to the suit, on which the Court thought there was a reasonable doubt, the vendor's bill was dismissed without costs. Where also the contract was for a lease determinable on notice, and the defendant gave notice to determine it, the bill was dismissed without costs (*Western v. Perrin*, 3 V. & B. 197). In *Mullings v. Trindor*, 10 Eq. 449; 18 W. R. 1186, specific performance was decreed at the suit of the vendor, but no costs were given, the Court considering the suit in the nature of a special case. It is immaterial on the question of costs that the vendor is only a trustee for sale (*Edwards v. Harvey*, Coop. 40).

Costs of
objections
argued

Where the action is dismissed against a purchaser with costs, he is not entitled to the costs of objections argued

in chambers, but abandoned at the hearing (*Hayes v. Bailey*, Sugd. V. & P. 647). and abandoned.

If the title is found to be bad, unless some other party will concur, the vendor, though he obtains the concurrence of such party, must pay the costs of the suit (*Freer v. Hesse*, 4 De G. M. & G. 497; *Ashley v. Waugh*, 9 L. J. Ch. 31; 4 Jur. 572); and see *Sidebotham v. Barington*, 5 Beav. 261, where, however, the decree was made without costs, as the defendant had not raised the objection till after the filing of the bill. But in *Collard v. Roe*, 4 De G. & J. 525, where the purchaser insisted on the concurrence of the vendor's dower trustee, the Court held the objection tenable but vexatious and frivolous, and gave no costs up to the hearing. Where the concurrence of a third party is required.

But if the purchaser brings an action and it turns out that the vendor cannot make a good title, the practice is to dismiss the action without costs (*Lewis v. Loxham*, 3 Mer. 429; *Malden v. Fyson*, 9 Beav. 347; *Thomas v. Dering*, 1 K. 729; and see Sugd. V. & P. 646). But it seems that if the purchaser on the face of his bill [statement of claim] insists that the vendor cannot make a good title, he must pay costs whether he accepts or refuses the title (Sugd. V. & P. *loc. cit.*, citing, but with a *query*, *Nicloson v. Wordsworth*, 2 Swans. 365). The purchaser cannot recover his costs of the suit as damages in an action at law against the vendor (*Malden v. Fyson*, 11 Q. B. 292); but in *Wood v. Scarth*, 2 K. & J. 33, 44, V. C. Wood dismissed the bill without costs, but without prejudice to an action at law for damages, and the costs of the suit being included in such action. Costs in purchaser's suit, when title is bad.

It is very material on the question of costs whether the purchaser knew of the objection when he entered into the contract (*Cox v. Chamberlain*, 4 Ves. 631). If a purchaser brings an action with knowledge of the objections, and, the report being against the title, he waives the objections, he must pay the costs of investigating the title, but the vendor the other costs (*Bennett v. Fowler*, 2 Beav. 302). Where the defect of title is known before suit.

But *secus*, where no abstract is produced till the parties are in chambers, though the only defect is one previously known to the purchaser, for he is entitled to inquiry (*Wilson v. Williams*, 3 Jur. N. S. 810).

Vendor
pays costs
up to the
time of his
showing a
good title.

If the vendor, on the other hand, has not shown a good title before he brings his action, he must pay the costs of the suit up to the time when a good title is first shown (*Harford v. Purrier*, 1 Mad. 532; *Wilson v. Allen*, 1 J. & W. 611, 623; *Lewin v. Guest*, 1 Russ. 325; *Townsend v. Champervorne*, 3 Y. & C. 505; *Freere v. Hesse*, 4 De G. M. & G. 497; *Phillipson v. Gibbon*, 6 Ch. 428; 40 L. J. Ch. 406; 19 W. R. 661; 24 L. T. 602; and see the earlier cases of *Wynn v. Morgan*, 7 Ves. 202; *Seton v. Slade*, *ibid.* 265; *Fielder v. Higginson*, 3 V. & B. 142; ——— v. *Collinge*, 3 V. & B. 143, n.; *Wilson v. Clapham*, 1 J. & W. 36). And it seems that if the purchaser takes no step inconsistent with the finding in chambers, the vendor pays the whole costs of the suit (Sugd. V. & P. 648); but if the purchaser raises unsuccessful objections to the title, no costs of the reference will be given, or the purchaser will pay costs according to circumstances (*Wilson v. Allen*, 1 J. & W. 611, 623; *Townsend v. Champervorne*, 3 Y. & Coll. 505). Where the vendors had not made a good title until the production of a certain document in chambers, but the purchaser occasioned costs by unsuccessfully disputing the construction of the document, the decree was made without costs (*Weddall v. Nixon*, 17 Beav. 170). The costs of the reference as to title in a purchaser's suit are thrown on the vendor if the abstract is not produced till the parties are in chambers, though the only defect was known to the purchaser (*Wilson v. Williams*, 3 Jur. N. S. 810). But of course the rule will not apply, although additional deeds are furnished after action brought, if the Court thinks the deeds not essential to the title (*Litchfield v. Brown*, 23 L. J. Ch. 176). Where the suit was occasioned by the vendor's refusal to produce documents insisted on by the

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purchaser, to some of which only he was entitled, no costs were given (*Newall v. Smith*, 1 J. & W. 263). In *Grove v. Bastard*, 1 De G. M. & G. 69, after the title was approved the heir at law gave notice of his intention to dispute the will and brought an action at law, in which he failed; Lord Cottenham then, at the purchaser's request, allowed the cause to stand over till the will was established; the heir at law having again failed, the vendor was allowed the costs from the time of the first verdict against the heir at law, though Lord Truro seems to have thought that it should be from the time when the title was originally approved.

In *Wilkinson v. Hartley*, 15 Beav. 183, it was said that the rule stated in the last paragraph ought to be strictly adhered to. But the fact of a title having been first perfected in the course of the suit does not determine the costs, if the real contest in the suit was on some other question or claim, and not the mere question of title. The costs in that case, including the costs of investigating the title, will follow the event of the suit (*Scoones v. Morrell*, 1 Beav. 251; *Croome v. Lediard*, 2 My. & K. 293; *Abbott v. Sworder*, 4 De G. & S. 460; *Peers v. Sneyd*, 17 Beav. 151; *Carrodus v. Sharp*, 20 Beav. 56; *Bridges v. Longman*, 24 Beav. 27; *Lyle v. Lord Yarborough*, Johns. 70; *Murrell v. Goodyear*, 29 L. J. Ch. 425; 6 Jur. N. S. 356; 8 W. R. 398; *Nene Valley Commissioners v. Dunkley*, 4 Ch. D. 1; and see *Hyde v. Dallaway*, 4 Beav. 606). But in *Woodward v. Miller*, 16 L. J. Ch. 16; 10 Jur. 1027, the defendant paid the costs of investigating the title, which the Court thought under the circumstances unnecessary. The Court looks to the real subject-matter of the litigation, and where it is manifest that, if the further abstract or particular evidence which completed the title had been furnished, the suit would not have been avoided, will not throw costs on the vendor (*Monro v. Taylor*, 8 Ha. 51; S. C. affirmed on appeal, 3 Mac. & G. 713). So if the reason why the title was not completed

But the rule does not apply where the real question in the cause is other than the one of title;

or the purchaser insisted on other objections ;

was because the defendant insisted on other objections to the title on which he failed, especially if it appears that the vendor offered before suit the further evidence required in chambers (*Long v. Collier*, 4 Russ. 267; *Holwood v. Bailey*, *ibid.* 271); but where the purchaser's objection is frivolous, the vendor is not warranted in considering it unnecessary to make out further title (*Wilkinson v. Hartley*, 15 Beav. 183; and see *Lyle v. Lord Yarborough*, Johns. 70). Again, if a purchaser having made various objections to the title, all of which have been removed before action brought, afterwards raises an objection which he might have taken but did not take before, the mere circumstance of an objection so taken not having been removed until after the suit was instituted will not determine the question of costs (*Lyle v. Lord Yarborough*; *Freer v. Hesse*, 4 De G. M. & G. 497). In *Phillipson v. Gibbon*, 6 Ch. 428; 40 L. J. Ch. 406; 19 W. R. 661; 24 L. T. 602, a fatal objection was taken by the purchaser late in the suit; the vendor ought to have known of the defect but did not; the purchaser would have discovered it if he had inspected the property before he bought. There was no question whatever between the parties except as to title, but the plaintiff had refused an offer by the defendant to have a common reference to chambers as to title. The Court made the vendor pay such costs as had been unnecessarily occasioned by him, and gave no other costs to either party. Where a purchaser took a fatal objection very late he was refused his costs (*Upperton v. Nickolson*, 6 Ch. 436; 40 L. J. Ch. 401; 19 W. R. 733; 25 L. T. 4). In *Radford v. Willis*, 7 Ch. 7; 41 L. J. Ch. 19; 20 W. R. 132; 25 L. T. 720, the Court was clearly of opinion that the defendant's objection was unsustainable, but as he had concurred in raising the question in the simplest and cheapest way no costs were given.

or the particular objection was not taken before action brought.

In *McNichol v. Kay*, 4 W. R. 801; 28 L. J. Ch. 20, where the purchaser had failed in disputing the contract

as not *bond fide*, it was held that he must pay the costs of the title being investigated in chambers, but two attendances only were allowed, because a good title was not shown (apparently) until five fresh abstracts had been delivered. Where the suit was originally occasioned by the purchaser resisting his liability under the contract, but he submitted after the bill was filed, and the suit went on the question of title, the plaintiff having refused evidence which he afterwards produced paid costs up to that point from the time of the defendant's submission, but the defendant, having then unnecessarily forced the suit on to a hearing, paid the subsequent costs (*Parr v. Lovegrove*, 4 Jur. N. S. 600). The Court is not concluded from giving the vendor all the costs, by the fact of an inquiry having been directed when a good title was first shown, though it turns out to be after action brought (*Abbott v. Swarder*, 4 De G. & S. 460).

If a purchaser by taking possession has waived investi- Where the purchaser by taking possession or otherwise, has waived the title.
 gation into the title, a decree for specific performance will be made against him with costs irrespective of the title (*Fleetwood v. Green*, 15 Ves. 594; *Margravine of Anspach v. Noel*, 1 Mad. 310; *Hall v. Laver*, 3 Y. & C. 191; *Peter v. Nicolls*, 11 Eq. 391; 19 W. R. 618; 24 L. T. 381, where he had been in possession upwards of twenty years); especially if he takes possession after delivery of an abstract, on the face of which an objection appears (*Burnell v. Brown*, 1 J. & W. 168). But if the purchaser takes possession at the vendor's instance he is relieved from the ordinary consequences (*Vancouver v. Bliss*, 11 Ves. 463). On the other hand, where the vendor unsuccessfully insisted that the purchaser had accepted the title, but his title proved good, the decree was made without costs (*M^{rs} Queen v. Farquhar*, 11 Ves. 467). Where the purchaser had retained possession for several years without paying the purchase money, and refused either to accept the title or give up the agreement, a decree to have the

agreement cancelled was made against him with costs (*King v. King*, 1 My. & K. 442).

Where the question in the suit is one affecting the contract itself, or some collateral matter.

Where the real contention in the cause is not a question of title, but one affecting the contract itself, or some collateral matter, the costs usually follow the event. Thus, where the defendant insisted that the contract had been abandoned (*Taylor v. Brown*, 2 Beav. 180; *Bennett v. Fowler*, *ibid.* 302); or where the purchaser resisted specific performance on the ground of overvalue and misrepresentation (*Abbott v. Swoorder*, 4 De G. & S. 460); or misdescription (*Nene Valley Commissioners v. Dunkley*, 4 Ch. D. 1); but in *Burrows v. Lock*, 10 Ves. 470, a contract for purchase at an undervalue was executed at the purchaser's instance, it not amounting to fraud, but without costs. So again, where the vendor has been guilty of misrepresentation, though without fraud (*Vancouver v. Bliss*, 11 Ves. 458; *Burton v. Lister*, 3 Atk. 382). And the Court will exercise its discretion in dismissing an action, and with costs, on the ground of circumstances which would nevertheless not be sufficient to cancel the agreement on the ground of fraud (*Davis v. Symonds*, 1 Cox, 402). In *Sale v. Lambert*, 18 Eq. 1, the defendant, the vendor, set up the Statute of Frauds; but specific performance was decreed, and he was ordered to pay the costs up to the hearing. In *Potter v. Duffield*, 18 Eq. 4, the statute was successfully pleaded, and the purchaser having refused a reasonable offer, his bill was dismissed with costs. Unproven charges of fraud, according to the ordinary rule (*ante*, p. 106), will be visited with costs; see *Wright v. Howard*, 1 S. & S. 190, 205, where the vendor's bill for specific performance was dismissed with costs on the ground of bad title and delay, except as to so much of the costs as were occasioned by the defendant's charges of fraud, which the defendant had to pay, and relief was granted on the defendant's cross bill to have the agreement delivered up to be cancelled, but without costs, because it charged fraud. But where the evidence was

unsatisfactory as to the circumstances under which a contract was signed by a deceased vendor, a bill against his heir-at-law and administratrix was dismissed without costs (*Valentine v. Dickinson*, 9 W. R. 625). Where there has been a mutual misunderstanding, the action will be dismissed without costs (*Stratford v. Bosworth*, 2 V. & B. 341); and so where parol evidence of mistake was admitted in opposition to specific performance (*Marquis of Townshend v. Stangroom*, 6 Ves. 328). And if the defendant does not raise his objection to specific performance till he puts in his defence, he will get no costs (*Winch v. Winchester*, 1 V. & B. 375). If parol evidence to vary the contract is introduced by the defendant, the action should strictly be dismissed, and therefore if the Court makes a decree, at the plaintiff's desire, for the specific performance of the contract according to the defendant's evidence, the plaintiff must pay the costs (*Fife v. Clayton*, 13 Ves. 546; *Mortimer v. Orchard*, 2 Ves. Jun. 243). But the Court will not receive parol evidence to vary the contract from the plaintiff, and, therefore, a bill for specific performance of a contract with parol variations, though left out by fraud, was dismissed, but without costs (*Wollam v. Hearn*, 7 Ves. 211). In *Deller v. Simonds*, 5 Jur. N. S. 997, specific performance was decreed, but without costs on account of the difficulty of the construction of the contract. But the Court requires the parties to be active in asserting their rights, and will punish delay by refusing costs (*Grover v. Hugell*, 3 Russ. 428; *Burke v. Smyth*, 3 J. & L. 193; *Barrett v. Pearson*, 2 B. & B. 189; *Deane v. Lord Waterford*, 1 Sch. & L. 451 n.; *Nunn v. Fubian*, 1 Ch. 35). Where there had been great delay on the part of the defendants the costs were reserved (*Gunston v. East Gloucestershire Ry. Co.* 18 L. T. 8). And where both parties had slept on their rights until recourse to the Court was unavoidable, no costs were given on either side, though the plaintiff succeeded on the only real question in the suit (*Wallis v. Bastard*, 4 De G. M. & G. 251). In

Cowell v. Watts, 2 H. & Tw. 224, specific performance of a parol agreement was refused, on the grounds of the plaintiff's delay and acquiescence, with costs generally, but the defendant was disallowed the costs of setting up the Statute of Frauds, and denying part performance. Where one of two defendants claimed under an alleged prior contract, a decree was made with costs in favour of the plaintiff, but a declaration was inserted that as between the defendants the costs should be borne by the one who made the claim (*Wilson v. Thomson*, 20 Eq. 459; 23 W. R. 744). Negotiations after the contract, with a view to an amicable compromise, do not affect the right to specific performance, but may affect the costs (*Bunning v. Bunning*, 1 L. J. Ch. (O. S.) 56; *Powell v. Martyr*, 8 Ves. 146); but see on this point, *ante*, p. 105. Where the plaintiff filed his bill after an appointment had been made for completion of the purchase, and the only question between the parties was as to costs, he was ordered to pay all the costs of the suit (*Chester v. Metropolitan Ry. Co.*, 13 W. R. 333; 11 L. T. 669; 11 Jur. N. S. 214).

Where specific performance with compensation is sought.

Where the plaintiff claims specific performance with compensation, and fails on that point, he must pay costs, though a decree is made for specific performance generally (*Fewster v. Turner*, 11 L. J. Ch. 161, where the question of compensation was the only one in the cause, and the plaintiff paid all the costs; *Lyle v. Lord Yarborough*, John. 70, where the bill was dismissed so far as related to compensation, with the costs of so much of the suit as related to that claim); and so also where the action is dismissed altogether (*Williams v. Edwards*, 2 Sim. 78). Where a claim for compensation failed because the Court thought the representation in the particular likely to mislead, but that being indefinite it should have put the purchaser on inquiry, no costs were given (*Fenton v. Brown*, 14 Ves. 144). But where a purchaser obtains specific performance with compensation, it will be in general with costs (*Leyland v. Illingworth*, 2 De G. F. & J. 248;

Gedge v. Duke of Montrose, 26 Beav. 45). In *Powell v. Elliot*, 10 Ch. 424; 23 W. R. 777; 33 L. T. 110, the vendors sued for specific performance; the purchasers alleged misrepresentation as to value, and instituted a cross suit for rescission of the contract on this ground. Specific performance was decreed, but with a considerable abatement, and it was held that the vendors must pay all the costs of the suits. Where the purchaser claimed to have comprised in the agreement a piece of land which was covered by the description, but was not in the contemplation of either party, the bill was dismissed with costs (*Calverley v. Williams*, 1 Ves. Junr. 210). So costs will follow the event, where the question is as to the payment of interest on the purchase money (*Fludyer v. Cocker*, 12 Ves. 25; *Williams v. Glenton*, 1 Ch. 200; but see *Powell v. Martyr*, 8 Ves. 146; *Sherwin v. Shakspeare*, 17 Beav. 267; 5 De G. M. & G. 517).

Where the question is as to payment of interest.

It is now settled that if a vendor dies before the completion of the contract intestate, and leaving an infant heir, no costs of the necessary action for specific performance are given to the purchaser or the legal personal representative of the vendor, but the costs of the infant heir will be paid out of the purchase money (*Barker v. Venables*, 34 L. J. Ch. 420; 13 W. R. 803; 11 Jur. N. S. 480; *Scott v. Scott*, 11 W. R. 766; 13 W. R. 803, n.; *Hanson v. Lake*, 2 Y. & C. C. C. 328; *Armitage v. Askham*, 1 Jur. N. S. 227; *Hodson v. Carter*, 1 N. R. 179; *Longinotto v. Morss*, 26 L. T. 828). The earlier cases of *Prytharch v. Havard*, 6 Sim. 9, *Midland Counties Rail. Co. v. Westcomb*, 11 Sim. 57, and *Eastern Counties Rail. Co. v. Tufnell*, 3 Ry. Ca. 133, where the costs were allowed out of the purchase money, are overruled. So where the vendor became a lunatic before completion (*Cresswell v. Haines*, 8 Jur. N. S. 208). But where the vendor has devised the estate to an infant, or in such a manner that a suit is necessary, his estate must bear the costs, at least if the will be made after the

Costs of action occasioned by vendor dying before completion, leaving an infant heir;

or becoming a lunatic; or devising to an infant.

contract (*Purser v. Darby*, 4 K. & J. 41; *Sanderson v. Chadwick*, 2 N. R. 414); but if the will was made before the contract, no costs, it seems, should be given (*Murdin v. Patey*, 1 N. R. 566; *London & South Western Rail. Co. v. Bridger*, 12 W. R. 948; 4 N. R. 261). But this distinction does not appear to have been taken in the older cases, the decisions in which, however, are not always consistent: see *Farrar v. Lord Winterton*, 4 Y. & C. 472; *Worham v. Lord Daere*, 2 K. & J. 437, where the vendor's estate paid the costs, though it does not appear when the will was made; and *Hinder v. Strecton*, 10 Ha. 18; *Bannerman v. Clarke*, 3 Drew. 632, where no costs were given. See also *White v. Beck*, Ir. R. 6 Eq. 63; 20 W. R. 275; and *Hall v. Bushill*, 14 W. R. 495, where *Bannerman v. Clarke* was followed. In *Williams v. Glenton*, 1 Ch. 200, the vendor by will dated after the contract devised the estate to infants, two of whom were his heirs. Great delay took place, and at length the vendor's representatives filed a bill for specific performance, the purchaser being willing to complete but not to pay interest. The Master of the Rolls decreed specific performance and ordered the defendant to pay interest and all the costs. On appeal, however, it was held that the purchaser should not have been ordered to pay all the costs, but only the costs of so much of the suit as related to the interest; as to the costs of the suit so far as it related to getting in the legal estate from the infants, the Lords Justices differed in opinion, L. J. Knight Bruce thinking they should fall entirely on the vendor; L. J. Turner that under the circumstances no costs should be given; and therefore £50 was allowed to the purchaser in respect of these costs. The costs of the infants came out of the purchase money. Where the purchaser died before completion intestate, leaving an infant heir, the costs of a suit by the vendor against the heir and administratrix for a resale, including the costs of the heir to be paid by the plaintiff in the first instance, were ordered to be paid by

Purchaser
dying
intestate.

the administratrix (*Popple v. Henson*, 5 De G. & S. 318). But where the non-completion in the vendor's lifetime has been caused by the purchaser's delay, he must pay the costs (*Barrett v. Pearson*, 2 B. & B. 189). The costs of a suit against a vendor's infant heir or devisee are costs occasioned by adverse litigation within the meaning of the 80th section of the Lands Clauses Consolidation Act (*Armitage v. Askham*, 1 Jur. N. S. 227; and see *post*, p. 285, n.).

Where the trustee for the vendor refused to convey, and was made defendant to a bill for specific performance, filed by the vendor, he was ordered to pay all the costs, including those of the purchaser (*Jones v. Lewis*, 1 Cox, 199); but if the purchaser insists on inquiries as to title, he must pay the costs subsequent to the hearing (*Allen v. Currie*, 1 L. J. Ch. (O. S.) 135). The heir at law of a deceased vendor had in like manner to pay the costs of a suit for specific performance by the executor, he having refused to convey and being a bare trustee (*Hoddel v. Pugh*, 12 W. R. 782).

A public company will not be entitled to the costs of a suit for specific performance, if they could have derived the same advantages by proceedings under their Act (*Regent's Canal Co. v. Ware*, 23 Beav. 575).

Where a purchaser's action is dismissed with costs, an application to set off the deposit will be refused (*Williams v. Edwards*, 2 Sim. 78); although a refusal by the vendor to return it may influence the costs (*Gee v. Pearse*, 2 De G. & S. 325); and see as to the return of the deposit, Sugd. V. & P. 55; Dart, V. & P. 1122; and *Rede v. Oakes*, 2 De G. J. & S. 518; 5 N. R. 209; 11 L. T. 549. Where the auctioneer was ordered to pay the deposit into Court, he was allowed to deduct all his costs, charges, and expenses (*Annesley v. Muggridge*, 1 Mad. 593; *Yates v. Farebrother*, 4 Mad. 239). But it is now settled that no person not a party to the contract should be a party to a suit for specific performance (*Tasker v. Small*, 3 My. &

Where vendor's trustee or heir at law refuses to convey.

Public company suing.

Deposit cannot be set off against costs.

Costs of auctioneer.

C. 63 ; *De Hoghton v. Money*, 2 Ch. 164). Where, however, a bill was filed for specific performance against a railway company which had leased its line to another railway company who were working it under a Parliamentary title, the lessee company were held to be necessary parties, and were ordered to pay their own costs (*Goodford v. Stonehouse Ry. Co.*, 20 L. T. 137 ; *Bishop of Winchester v. Mid Hunts Ry. Co.*, 5 Eq. 17 ; 17 L. T. 161).

Other costs.

In *Mackrell v. Hunt*, 2 Mad. 34, n., the purchaser was allowed the costs of a suit to perpetuate the testimony to the execution of a will. Where the misstatement of the vendors that a will had been proved occasioned a suit to secure it, the vendors had to pay the costs of the suit (*Harrison v. Coppard*, 2 Cox, 318). Where after a suit for specific performance the vendor opposed several bills in Parliament to protect his rights, and then an arrangement was made for payment by the company of his "principal interest and costs," the parliamentary costs were held to be included (*Cooper v. London, Chatham and Dover Ry. Co.*, 17 L. T. 283).

Costs deducted from purchase-money.

Where the vendor brought an action claiming a declaration that the contract was at an end, and the purchaser counterclaimed for specific performance of the contract, and had judgment with costs on both claim and counterclaim, it was held that he might deduct his costs from his purchase money in priority to a mortgage of the plaintiff, whose mortgage had been created after the contract but before the action (*Green v. Sevin*, 13 Ch. D. 589).

CHAPTER V.

COSTS UNDER PARTICULAR ACTS OF PARLIAMENT.

THE combined effect of the Judicature Act, and of R. S. C. Ord. LV. r. 1, is to repeal, with certain specified exceptions, all previous Acts directing costs to follow certain rules, without leaving the Court a discretion; and, where a previous Act contains no provision as to the costs of proceedings under it, to supply the omission by leaving the costs in the discretion of the Court (*Garnett v. Bradley*, 3 App. Cas. 944; 48 L. J. Ex. 186; 26 W. R. 698; 39 L. T. 261; *Ex parte Mercers' Co.*, 10 Ch. D. 481; 48 L. J. Ch. 384; 27 W. R. 424; *Morris v. Freeman*, 3 P. D. 65; 47 L. J. P. D. & A. 79; 27 W. R. 62; 39 L. T. 125). No doubt the Court will, as a general rule, follow the rules as to costs prescribed by the particular Act under which the proceedings are taken, as explained and illustrated by the decided cases; but there is no obligation upon it to do so. The right of a trustee, mortgagee, or other person, according to the old practice in Chancery, to costs out of a fund, is, however, preserved (R. S. C. Ord. LV. r. 1).

SECT. I.—*Costs under the Companies Acts.*

By s. 86 of the Companies Act, 1862 (25 & 26 Vict. c. 89), the Court, upon hearing a petition for winding up, may dismiss it with or without costs, or make any other order it deems just. Costs of winding-up petition.

The general rules with respect to the costs of a winding up petition are as follows:—

Where the Court makes the order, the costs of the Where the

order is made.

petitioner and of the company are given out of the estate ; shareholders who appear and support the petition have one set of costs among them (of course out of the estate), and creditors have another set, which Lord Westbury stigmatised as "a very bad practice indeed" (*Gardiner's Case*, L. T. Eur. Arb. 66) ; persons who appear and oppose have no costs (*Re Humber Ironworks Co.*, 2 Eq. 15 ; *Re European Banking Co.*, *ibid.* 521 ; *Re Oriental Commercial Bank*, 14 L. T. 755 ; W. N. (1866), 283, 312 ; 15 L. T. 8, where, however, all parties served had their costs).

Where the order is refused.

Where the petition is dismissed with costs, the petitioner pays the costs of the company opposing the petition, and also the costs of any persons who appear and successfully refute unfounded charges made against them personally ; and (though a different rule was laid down on this point in *Re Humber Ironworks Co.* and *Re Anglo-Greek Steam Co.*, 2 Eq. 1), shareholders who appear and oppose are entitled to one set of costs between them, and creditors who appear and oppose are in like manner entitled to another set (*Re Humber Ironworks Co.* ; *Re European Banking Co.* ; *Re Marlborough Club Co.*, 1 Eq. 216 ; *Re Anglo-Greek Steam Co.* ; *Re Anglo-Egyptian Navigation Co.*, 8 Eq. 660). Whether the petition is by a shareholder or a creditor makes no difference (*Re New Gas Co.*, 5 Ch. D. 703 ; 25 W. R. 643 ; *Re Diamond Fuel Co.*, W. N. (1878), 11). See also *Re European Life Assurance Society*, 10 Eq. 403 ; 22 L. T. 785 ; *Re London & Suburban Bank*, 19 W. R. 88 ; 23 L. T. 447 ; *Ex parte Fox*, 6 Ch. 176 ; *Re Carnarvonshire Slate Co.*, 40 L. T. 35 ; *Re Bosworthon Mining Co.*, 26 L. J. Ch. 612 ; *Re London Permanent Benefit Building Society*, W. N. (1869), 51. But these rules are not inflexible, and the Court will be guided by the circumstances of each particular case ; see *Re Anglo-Egyptian Navigation Co.*, 8 Eq. 660 ; *Re Albion Bank*, 15 W. R. 148 ; 15 L. T. 346 ; W. N. (1866), 388 (where three sets of costs were allowed to shareholders) ; *Re City Glass Co.*,

Shareholders and creditors not entitled to their costs as of right.

W. N. (1874), 116 (where no costs were allowed to creditors and shareholders who unnecessarily appeared separately); *Re Star & Garter Hotel Co.*, 28 L. T. 258; W. N. (1873), 74. And in *Re Hull & County Bank*, 10 Ch. D. 130; 27 W. R. 377, the Master of the Rolls said he by no means assented to the proposition that creditors appearing on a petition to wind up were entitled to their costs as of right, and refused costs to a creditor who appeared without any sufficient reason; see also *Re Military Tailoring Co.*, 47 L. J. Ch. 141; 26 W. R. 75; W. N. (1877), 248. In *Re Alliance Contract Co.* W. N. (1867), 218, no order was, under the circumstances, made on the petition except that the company should pay the costs.

Secured creditors are entitled to share in the set of costs allowed to creditors who support the petition without first electing whether to give up or rely on their securities (*Re Carmarthenshire Coal Co.*, 45 L. J. Ch. 200; W. N. (1875), 243; see Judicature Act, 1875, s. 10). Secured creditors.

A provisional liquidator, although served, is not in general entitled to his costs of appearing upon the petition (*General International Agency Co.*, 36 Beav. 1; 34 L. J. Ch. 337; 5 N. R. 625; 13 W. R. 363). See, however, *Re European Banking Co.*, 2 Eq. 521, where, under the circumstances, he was allowed his costs; and see also *Re Times Life Assurance Co.*, 9 Eq. 382. Provisional liquidator.

The petitioner's costs, including the costs of establishing his debt, where disputed (*Re Universal Insurance Co.*, W. N. (1875), 54; 19 Eq. 485), are the first charge upon the estate, and must be paid in full in priority to the costs of the official liquidator (*Re Audley Hall Cotton Co.*, 6 Eq. 245); and, where he is a debtor to the company in respect of unpaid calls, without any set-off of such calls against the costs (*Re General Exchange Bank*, 4 Eq. 138). But no one else is entitled to priority over any other person to whom costs are also ordered to be paid merely because his order is dated first (*Re Marlborough Club Co.*, 6 Eq. 519; and see *Ship's Case*, 13 W. R. 1016). Petitioner's costs a first charge.
Without set-off.

Petitioner
dismissing
petition.

Where a creditor, who has presented a petition, dismisses it at the hearing, the dismissal will be with costs, and creditors (not served) who appear to oppose, are entitled to their costs of appearance (*Re Patent Cocoa Fibre Co.*, 1 Ch. D. 617; *Re Marlborough Club Co.*, 1 Eq. 216; *Re Home Assurance Association*, 12 Eq. 59; *Re Hereford Waggon Co.*, 17 Eq. 423; *Re Flagstaff Co. of Utah*, 20 Eq. 268). A creditor proceeding with his petition after an offer to satisfy his debt and costs, will be allowed no costs subsequent to the offer (*Times Life Assurance Co.*, 9 Eq. 382; *Re Imperial Assurance Society*, *ibid.*, 447). Where the petition was properly presented in the first instance, though subsequently withdrawn, the costs were allowed (*Re Railway Finance Co.*, 14 W. R. 785).

Abandoned
petition.

If the petition is advertised in the usual way, and then abandoned, creditors who appear are entitled to one set of costs (*Re Anglo-Virginian Land Co.*, W. N. (1880), 155). But where the petition was never served on the company, and both the company and a creditor, who applied for a copy of the petition, were informed of the abandonment, and an undertaking was offered that there should be no further proceedings upon the petition, no costs were allowed either to the company or the creditor (*In re Quartz Hill Co.*, W. N. (1882), 27).

Where a shareholder's petition had been dismissed with costs, to be paid by the petitioners to the company, and before payment the company was ordered to be wound up on a creditor's petition, but in consequence of a liquidator not having yet been appointed, no discharge could be given for the costs, the company's solicitor was appointed provisional liquidator to receive the costs, on his making an affidavit that they had not been paid to him: (*Re Langham Skating Rink Co.*, 6 Ch. D. 102).

Petition
dismissed
without
costs.

A petition for winding up a company may of course be dismissed without costs; see *Re Albert Life Assurance Co.*, 6 Ch. 381, where a beneficial scheme of reconstruction was proposed, which, however, it was held the Court had

no jurisdiction to sanction; *Re Great Northern Copper Mining Co.*, 14 W. R. 705, where the petitioner had a *bonâ fide* case at the time he presented the petition; *Re London Suburban Bank*, 15 Eq. 274. So where a creditor's petition was dismissed because opposed by the great mass of the creditors, but the latter had stood by and made no sign till the actual hearing of the petition when they came forward and opposed it, the dismissal was without costs (*Re Horbury Bridge Coal Co.*, W. N. (1879), 51).

The following rule has been laid down as to costs where there are two petitions :

Where a creditor has presented a winding up petition, and another creditor, being aware of the presentation of the first petition, chooses to present a second, he does so at his own risk as to costs. If it turns out that the first petition was not *bonâ fide*, but presented only with the object of protecting the company against the claims of the other creditors, it is a matter of course that that petition should be dismissed with costs, and a winding up order made on the second. But if the first petition is *bonâ fide*, then the second petition is dismissed with costs; *per* Jessel, M. R., in *Re Norton Iron Co.*, 47 L. J. Ch. 9; and see also *Re Accidental Co., ex parte Rasch*, 36 L. J. Ch. 75; 15 L. T. 173; *Re Joint Stock Coal Co.*, 8 Eq. 146; *Re Empire Assurance Corporation*, 16 L. T. 341; *ex parte Turner*, 3 De G. & Sm. 127; *Re Northfleet Brick Co.*, W. N. (1880), 83.

In *Re Commercial Discount Co., Cooper's Case*, 1 N. R. 416; 32 Beav. 198; *Re Humber Ironworks Co.*, 2 Eq. 15; *Re Marron Paper Co.*, 38 L. T. 140; W. N. (1878), 12, (where a petition after being advertised and coming on for hearing stood over generally, and six months afterwards a creditor presented a second petition in ignorance of the first); *Re Owen's Wheel Co.*, 22 W. R. 151; 29 L. T. 672; and *Re London and Australian Agency Co.*, 22 W. R. 45; 29 L. T. 417, the costs of successive petitions were allowed. See also *Re European Banking Co.*, 2 Eq. 521).

See addenda ante p. 14.

Where an appeal, nominally that of the company but really that of the directors, against a winding-up order was dismissed, the order was that the respondent should have his costs out of the estate, no order as to the costs of the appellants; inasmuch as the simple dismissal of the appeal with costs would have given the directors their costs out of the estate (*Re National Savings Bank Association*, 1 Ch. 547; 14 W. R. 1005; *Re Diamond Fuel Co.*, 28 W. R. 309; 41 L. T. 373).

Costs of winding-up where assets are insufficient.

By s. 110 of the Companies Act, 1862, the Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the costs, charges, and expenses incurred in winding up any company in such order of priority as the Court thinks just. This applies to costs incurred by the liquidator in the course of the winding up; the Court has no jurisdiction to order payment out of the assets of costs incurred by shareholders not representing the company who have commenced an action on their own responsibility and continued it without obtaining leave in the winding up (*Re Hull Drapery Co.*, 15 Ch. D. 326; 29 W. R. 164).

Order of payment of costs.

As to the order in which the costs incurred in relation to the winding up of a company are payable out of the assets, the general rule is that in the first place the costs of the petition for winding up must be paid; next, the general costs of the winding up (which includes the solicitor's bill of costs); and thirdly, the remuneration of the official liquidator; but no remuneration can be given him until all the costs of the winding up are paid, including the costs of any provisional liquidator who may have been properly appointed (*Re Massey*, 9 Eq. 367; and see *Re Trueman's Estate*, 14 Eq. 278). The official liquidator is in no way personally liable to his solicitor for the costs (*Re Anglo-Moravian Ry. Co. (C. A.)*, 1 Ch. D. 130); nor, it would seem, is a voluntary liquidator (*Re Trueman's Estate*). Where the official liquidator changes his solicitor and the assets are not sufficient to pay the whole of the

Official liquidator.

costs, the different solicitors are entitled to be paid *pari passu* (*Re Audley Hall Spinning Co.*, 6 Eq. 245 ; 37 L. J. Ch. 904). As to the solicitor's lien on a fund recovered by him, see *Re Massey*, 9 Eq. 367. An official liquidator who has incurred costs in litigation will have them out of the estate, if they have been properly incurred (*ex parte Bentley*, 12 Ch. D. 850 ; 49 L. J. Ch. 240 ; 28 W. R. 165) ; but an order on him to pay costs simply, without more, means that he is to pay them out of his own pocket in the first instance (*Grand Trunk Ry. Co. v. Brodie*, 3 De G. M. & G. 146 ; *Consols Insurance Co. v. Wood*, 2 Dr. & Sm. 353 ; and see *Caldwell v. Ernest*, 27 Beav. 39 ; *Ferrao's Case*, 9 Ch. 355). If they have been properly incurred he will have them over out of the assets. In the absence of any special direction, an official liquidator is not entitled to have his costs taxed as trustee's costs (*Re East Holyford Mining Co.*, Ir. R. 10 Eq. 361).

An official liquidator who omits to furnish the Court with the necessary documents will lose his costs (*Drummond's Case*, 21 L. T. 317).

A liquidator is not entitled to make any payment to his solicitor without the sanction of the Court, and the solicitor cannot set off his costs against funds recovered through his own exertions (*Re Union Cement Co.*, 20 W. R. 361 ; 26 L. T. 240).

The practice as to the costs of official liquidators on appeals has not been uniform, but the present rule has been stated to be as follows:—"The result, therefore, of the authorities appears to be that the Court of Appeal will now never order payment of the official liquidator's costs out of the estate when he is unsuccessful, and if costs are given against him, will order him personally to pay them ; the effect, of course, being to leave it to the judge below who has charge of the assets, to say whether costs incurred in unsuccessful litigation ought to be borne by the estate or not ;" *Buckley on the Companies Acts*, 3rd Ed., p. 217 ; see *Ferrao's Case*, 9 Ch. 355 ; *Wescomb's Case*, 9 Ch. 553 ;

Costs of
official
liquidator
on appeals.

Ex parte Angerstein, *ibid.* 479; *Orgill's Case*, 21 L. T. 221; *Ex parte Cambrian Steam Packet Co.*, 4 Ch. 112; *contra*, *Robinson's Case*, 4 Ch. 322; *Stringer's Case*, *ibid.* 475; and see also *Ship's Case*, 13 W. R. 599; 12 L. T. 256; 11 Jur. 331; *Sichell's Case*, 3 Ch. 119; *Bush's Case*, 6 Ch. 246.

Costs incurred by company in liquidation.

Where a company in course of liquidation is ordered to pay costs, such costs are not to be proved as a debt in the winding-up, but are payable in full out of the assets of the company (*Madrid Bank v. Pelly*, 7 Eq. 442; *Ex parte Smith*, 3 Ch. 125; *Bailey and Leatham's Case*, 8 Eq. 94; *Re Home Investment Society*, 14 Ch. D. 167; 28 W. R. 576; *May's Case*, W. N. (1871), 18); and execution for them will not be restrained, at any rate where the action is commenced by the liquidators in the name of the company (*Ex parte Levick*, 5 Eq. 69). A company in liquidation is, in fact, to be treated like any other litigant, and failing in litigation, must pay costs (*Bailey and Leatham's Case*). The Court, however, in giving leave to any person to commence an action against a company in liquidation, may impose terms as to costs; see *Re Joseph Peace & Co.*, W. N. (1873), 127, where leave was given to proceed with an action, but any costs to be recovered by the plaintiff in the action were not to be paid by the company in full, but were only to be provable in the usual way. In *re Dimson's Fire Clay Co.*, 19 Eq. 202, where judgment was obtained against a company after presentation of the petition, but before the order for winding-up, leave to issue execution was refused, but the costs of the application and of the action were given after the costs of the official liquidator.

Costs of creditor's action.

Where, after the commencement of a voluntary winding-up, a creditor brings an action and recovers judgment, execution will be stayed upon the terms of the creditor being admitted to prove in the winding-up for the debt, the costs of the action at law, and the costs of the application to stay execution, the costs are a mere appendage to the debt (*Re Poole Firebrick Co.*, 17 Eq. 268, following

the decision of Lord Romilly in *Re Keynsham Co.*, 33 Beav. 123; *Re Life Association of England*, 34 L. J. Ch. 64; 10 Jur. N. S. 762; 12 W. R. 1069; 12 L. T. 43; *Re Peninsular Banking Co.*, 35 Beav. 280). The decision in *Re East Kent Shipping Co.*, 18 L. T. 748; W. N. (1868), 206, does not seem consistent with these authorities. Where, however, a creditor went on with an action after an offer to allow him to prove for his debt and costs, if he would undertake not to proceed further, he was not allowed to add to his debt his costs of appearing on an application to stay proceedings (*Rose & Co. v. Gardden Lodge Coal Co.*, 3 Q. B. D. 235).

Where a claim against a company in liquidation is ad-
 journed into Court, and allowed with costs out of the estate, only the costs of the adjournment into Court. Costs of adjournment into Court. must be given, and the costs incurred by the claimants in Chambers must be added to the amount of the claim (*Re General Estates Co.*, 8 Eq. 123; *Holden's Case*, *ib.*, 444). Creditors proving their debts are allowed costs of proof, in the same manner as in the case of debts proved in a cause (r. 27, Gen. Ord., Nov., 1862; and see r. 13, Gen. Ord., March, 1868).

Where in a winding-up a creditor makes a claim which is partly successful, and the liquidator makes a claim against him in return which is entirely unsuccessful, the costs incurred by the creditor in proving his debt will be added to his debt; the costs he has incurred by reason of the liquidator's claim will be paid in full out of the company's assets (*Re The Lombard Deposit Bank*, 45 L. T. 346; *Morshead v. Reynolds*, 21 Beav. 638).

Where property which is being realised in a winding-up is subject to incumbrances, the general rule is that the costs of realisation must be paid first; subject thereto, the incumbrancers are entitled to their principal, interest, and costs; and the general costs of the winding-up come last. The liquidator's costs of preservation are, as between the incumbrancers and the company, payable by the company; Costs of incumbrancers.

but the liquidator is entitled to be indemnified against so much of such costs as are not paid him out of the assets (*Re Marine Mansions Co.*, 4 Eq. 601; *Re Oriental Hotels Co.*, 12 Eq. 126; *In re Regent's Canal Ironworks Co., ex parte Grissell*, 3 Ch. D. 411). In *Re Bonelli's Telegraph Co.*, 18 Eq. 656, liquidators were held not entitled to their costs, charges, and expenses of investigating claims of creditors upon a fund paid into Court in the winding-up, or of an abortive attempt at arrangement. As to mortgagee's costs of attending winding-up proceedings, see *Re Hamilton's Ironworks Co.*, 27 W. R. 827; 39 L. T. 658.

Calls for costs.

As to the liability of members to contribute to the costs of winding-up, see s. 38 of the Companies Act, 1862. By s. 102 the Court may make calls for the costs, charges, and expenses of winding-up, subject, of course, to the qualifications in s. 38, limiting the liability of members. The costs of winding-up an unregistered mutual insurance association must, on general principles and independently of the Companies Acts, be met by calls upon the contributories, although the winding-up order was made under a mistake in law (*Re Arthur Average Association*, 3 Ch. D. 522; *Re Queen Average Association*, 26 W. R. 432; 38 L. T. 90; W. N. (1878), 27); in *Re London Marine Insurance Association*, 8 Eq. 176, the costs were divided *pro ratâ* among the receivers and payers, and according to the amount which they respectively had to receive and pay. See also *Preece and Evans' Case*, 2 De G. M. & G. 374.

Costs of winding up illegal associations.

A call for costs may be made before all the assets are got in and before the exact amount of the costs payable has been ascertained by taxation (*Gay's Case*, 1 De G. M. & G. 347; 5 De G. & S. 122; *Dale's Case*, 1 De G. M. & G. 513; *Ex parte Woolmer*, 2 De G. M. & G. 665). The right to have a call made for costs may be lost by laches (*Ex parte A'Beckett*, 2 Jur. N. S. 684).

It is the duty of the judge in the winding-up, to ascertain to what costs each contributory or set of contributories

is liable, and to make the call for their liquidation accordingly. It is, however, to be observed, that where costs have been incurred in proceedings, for the benefit of all the contributories as a body, they are all rateably chargeable with the costs of those proceedings, although they may have been taken unsuccessfully, and although some of the contributories may have already paid more than others towards the discharge of the company's debts. Any temporary injustice resulting from this last circumstance must be set right afterwards (*Lindley on Partnership*, vol. ii., p. 1455, 4th ed. ; and see cases there cited).

The rule as to the liability of past members to contribute to the costs of winding-up seems to be as follows : Past members ; liability for costs. if there are no debts in respect of which they can be made liable, then they are not liable for any costs at all. If there are any such debts this may perhaps involve some costs ; and perhaps also some adjustment of mutual rights of past members *inter se*, in respect of which past members may be called upon for further contributions. But this is no ground for including in the measure of their total liability any costs to which they are not justly liable to contribute, or any sums necessary for the adjustment only of the rights of present members (*Clarke's Case*, 16 S. J. (Alb. Arb.) 554 ; *Michael Brown's Case*, (Eur. Arb.) L. T. 21 ; Reil. 32 ; 17 S. J. 310 ; *Brett's Case*, *Morris' Case*, 8 Ch. 800 ; 43 L. J. Ch. 47 ; 22 W. R. 22). In *Marsh's Case*, 13 Eq. 388, past members were held liable to pay the costs of settling the B. list unless the liquidator had money in his hands sufficient to pay them. And see further as to the liability of past members, *Webb v. Whiffin*, L. R. 5 H. L. 711 ; *Burgess's Case*, 15 Ch. D. 507.

In *Davies's Case*, (Eur. Arb.) L. T. 80 ; 17 S. J. 670, a contributory, though discharged from all liability to calls upon his shares, was under the circumstances retained on the register in respect of his liability to costs of winding-up.

Costs of winding-up unlimited insurance companies.

In winding-up unlimited insurance companies, where the policies are payable only out of the funds of the company, the costs of winding-up, the costs of settling the list of contributories, and the costs of recovering calls from shareholders unwilling or unable to pay, must be borne by the company, that is, must be met by further calls (*Re Agriculturist Cattle Insurance Co.*, 10 Ch. 1; 44 L. J. Ch. 108; 23 W. R. 219; 31 L. T. 710; *Re State Fire Insurance Co.*, 34 L. J. Ch. 436; 13 W. R. 152; *Re Professional Life Assurance Co.*, 3 Ch. 167). Where the liability was limited as regarded policy holders but unlimited as regarded other creditors, and the company was wound up and some contributories compromised under s. 160, and others did not, the latter alone were held liable for the costs of liquidation (*Re Accidental Death Insurance Co.*, 7 Ch. D. 568; 47 L. J. Ch. 396; 26 W. R. 473).

Prosecution of delinquent directors.

If the Court orders delinquent directors to be prosecuted it may order the costs and expenses to be paid out of the assets of the company (s. 167); and as to the costs of liquidators in a voluntary winding-up incurred in such prosecution, see s. 168, *post*, p. 277.

Indemnity.

Where the A. company on taking over the business of other companies covenanted to indemnify the latter against all actions, &c., and all costs and charges, and the companies were wound up, it was held by Lord Cairns that as the winding-up in each case would settle many questions with which the A. company would have nothing to do, each company must pay the costs of its own winding-up, and was not entitled to any indemnity in this respect from the A. company (Albert Arbitration, Reil. 17; 16 S. J. 141). In *Re British Nation Indemnity Claims* (Eur. Arb.) L. T. 4; Reil. 3, however, Lord Westbury considered that a part of the costs of winding-up the amalgamated company were attributable to a breach of covenant on the part of the other company, and gave leave for a future application for the purpose of proving such

part of the costs when ascertained ; and see *Royal Naval Society's Indemnity Case* (Eur. Arb.), L. T. 165 ; 18 S. J. 879. As to the liability for the costs of winding-up of a shareholder who retires under s. 161, see *Re Marine Investment Co.*, 8 Ch. 702 ; and as to the costs of an arbitration under s. 162, see *Re Imperial Mercantile Credit Association*, 12 Eq. 504.

Retiring
share-
holder.

By s. 144 all costs, charges and expenses properly incurred in a voluntary winding-up, including the remuneration of the liquidators, are payable out of the assets of the company in priority to all other claims. This means in priority to all claims upon the company where the order to wind up was made (*Re Home Investment Society*, 14 Ch. D. 167 ; 28 W. R. 576). There is no difference in principle between the costs in a voluntary and a compulsory winding-up ; see *per* Lord Cairns, in *Webb v. Whiffin*, L. R. 5 H. L. p. 735.

Costs of
voluntary
winding-
up.

A liquidator under a voluntary winding-up is not personally responsible to his solicitor for the costs of the liquidation (*Re Trueman's Estate*, 14 Eq. 278 ; 41 L. J. Ch. 585 ; 20 W. R. 700).

The costs of the liquidators in a voluntary winding-up incurred in prosecuting delinquent directors are entitled to priority over all other liabilities ; see s. 168, Companies Act, 1862.

Costs of
prosecuting
delinquent
directors.

If a liquidator in a voluntary winding-up desires to appeal, he ought first to obtain leave from the judge below ; otherwise, if his appeal fails, his costs may be refused out of the estate (*Re City and County Investment Co.*, 13 Ch. D. 475 ; 28 W. R. 933 ; 42 L. T. 303).

Appeal
by liqui-
dator in
voluntary
winding-
up.

The costs of a contest by a person disputing his liability to be a contributory, and failing, must, except under very special circumstances, be paid by such contributory (*Gower's Case*, 6 Eq. 77 ; *Re Hampshire Milk Co.*, W. N. (1880), 194 ; *Barry's Representatives Case*, 2 Dr. & Sm. 321 ; 13 W. R. 380 ; 5 N. R. 299 ; *Ritso's Case*, W. N. (1876), 203 ; *Musgrave and Hart's Case*, 5 Eq. 193 ;

Contributory
unsuccess-
fully dis-
puting his
liability.

Andrew's Case, 3 Ch. 161); even though the case is one of extreme hardship (*Ex parte Oakes and Peck*, 3 Eq. 576). But in *Mallorie's Case*, 36 L. J. Ch. 40; 15 W. R. 52; 15 L. T. 236; and *Fletcher's Case*, 37 L. J. Ch. 49; 16 W. R. 75; 17 L. T. 136 (where the application was by the liquidator to have the name placed on the list), and in *Gregg's Case*, 15 W. R. 82; and *Purdey's Case*, 16 W. R. 660 (where the application was by the alleged contributory to have it removed) no costs were given; and see *Cleland's Case*, 14 Eq. 387, where all parties had their costs out of the estate, the decision turning on the construction of a new statute.

The rule seems formerly to have been applied with less strictness than at present, and many cases are cited in Lindley on Partnership, vol. ii., p. 1451, 4th edition, where persons unsuccessfully resisted being made contributories and still were not visited with costs. It may be doubted whether many of these decisions would be followed at the present day; as the tendency of the Courts is now very strongly in favour of making persons who fail in litigation pay the costs, whatever the reason of their failure.

Costs of representative case will come out of the estate.

Where the case is taken as a representative one, the costs of all parties will be allowed out of the estate (*Walker's Case*, 2 Eq. 554; *Ex parte Jeaffreson*, 11 Eq. 109; see, however, *Ex parte Walton*, *Ex parte Hue*, 3 Jur. N. S. 853); but only as between party and party (*Re Mutual Society*, *Grimwade v. Mutual Society*, 18 Ch. D. 530; 50 L. J. Ch. 400; not following *Part's Case*, 10 Eq. 622, where solicitor and client costs were allowed). But this practice does not extend beyond the Court of first instance (*Sichell's Case*, 3 Ch. 119; *Re Cork and Youglal Ry. Co.*, 4 Ch. 748).

An alleged contributory who successfully disputes his liability will have his costs in the Court below out of the estate (*Nation's Case*, 3 Eq. 77; *Coates' Case*, 17 Eq. 169; *Emmerson's Case*, 2 Eq. 231; 1 Ch. 433; *Ship's*

Case, 13 W. R. 450; *Lowe's Case*, 9 Eq. 589); but costs of appeal will be paid by the liquidator personally, see *ante*, p. 271.

By s. 35 of the Companies Act, 1862, upon an application for rectification of the register, the Court may refuse the application, with or without costs, to be paid by the applicant, or may make an order for rectification and order the company to pay the costs and any damages the party aggrieved may have sustained. Where the applicant had been most unjustifiably placed on the register he had his costs as between solicitor and client by way of damages (*Wood's Case*, 15 Eq. 236; *Pontifex's Case*, 36 L. J. Ch. 903; 15 W. R. 955, where he was allowed his preliminary expenses as well; and see *Anderson's Case*, 17 Ch. D. 373). Where an application is made under this section and in the winding-up of a company to substitute one person for another on the list of contributories and, both parties being solvent, it is a matter of indifference to the creditors and other contributories, the unsuccessful party should pay the liquidator's costs (*Musgrave and Hart's Case*, 5 Eq. 193).

Where A., claiming under a legal title, successfully applied to have the register rectified by the substitution of his name for that of B., it was held that there was no jurisdiction under this section to make B. pay the costs; but the company, having chosen to side with him, were ordered to pay them (*Ex parte Sargent*, 17 Eq. 273). But see, *contra*, *Davies' Case*, 33 L. T. 834, and see now R. S. C., Ord. LV., r. 1. See also *Ex parte Kintrea*, 5 Ch. 95, where the application was made in a winding-up, and therefore there was jurisdiction under the Act. The section does not apply to the costs of an appeal from a judge at chambers (*Ex parte Shaw*, 2 Q. B. D. 463).

Where a company engaged in a business not authorised by its deed of settlement, and the solicitors to the company, knowing that the business was unauthorised were

Costs of rectification of register, s. 35.

Jurisdiction under the section.

What costs payable out of company's assets.

employed by the directors to bring an action, and to defend other actions in respect of claims arising out of the unauthorised business, and the defence to the latter actions was on the merits, and not by a plea of *ultra vires*, it was held that the solicitors must be considered with respect to such actions as the solicitors of the directors, and not of the company, and that they could not prove for their bills of costs against the company's assets, and that the solicitors could not appropriate monies of the company paid to them on account generally to the payment of such bill of costs (*Re Phoenix Life Assurance Co.*, 1 H. & M. 433; 2 N. R. 548).

Where a company had been finally dissolved, shareholders who appeared on a summons by a creditor against the former liquidator were not allowed their costs of appearance (*Re Westbourne Grove Drapery Co.*, 27 W. R. 37; 39 L. T. 30).

Creditor's
repre-
sentative.

The costs of the appearance of a creditor's representative will not be allowed except in special cases (*McIver's Claim*, 5 Ch. 424); in *Ex parte Oukes and Peake*, 3 Eq. 576, his costs were allowed out of the estate. In *Re Beariz Tin Co.*, W. N. (1868), 207, an order was made appointing a creditor's representative and giving him leave to attend the proceedings, but the question of how his costs and expenses should be borne was reserved. As to the costs of contributories and creditors attending the proceedings in the winding-up, see r. 60, Gen. Ord., November, 1862; the rule is that they may attend the proceedings and have notice thereof, but only at their own expense.

By s. 12 of the Companies Act, 1867, 30 & 31 Vict. c. 131, the Court may in any proceedings under that Act make such order as to costs as it deems fit.

As to security for costs to be given by a limited company, see *ante*, p. 15; and as to security for costs to be given by a petitioner, *ante*, p. 17. ¶As to security for costs of appeal from a County Court judge to a judge of the

High Court, and the costs of the appeal, see s. 43 of the Companies Act, 1867.

On an application under the Companies Arrangement Act, 1870, the costs of all parties, except dissentient creditors, have been ordered to be paid out of the estate (*Tunis Rys. Co.*, W. N. (1874), 121). Companies Arrangement Act, 1870.

As to taxation of costs, see Gen. Ord., r. 72, November, 1862. The solicitor's bill of costs must be taxed by the liquidator in a winding-up, notwithstanding more than twelve months has elapsed since delivery (*Ex parte Evans*, 11 Eq. 151; 40 L. J. Ch. 197); the effect of the winding-up order being to suspend the operation of the twelve months' rule. In *Re James*, 4 De G. & Sm. 183, taxation was refused, but in that case the bill had been delivered twelve months before the winding-up. Taxation of costs.

SECT. II.—*Costs under Lands Clauses Consolidation Act.*

The Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18), gives to public companies compulsory powers to take, upon certain terms, land belonging "to parties having limited interests, or prevented from treating, or not making title." Sect. 69 of the Act provides that the purchase or compensation money payable for such lands, if amounting to or exceeding £200, is to be paid into the Bank in the name of the Accountant-General,* to his account, *ex parte* the promoters of the undertaking in the matter of the special Act, and is to remain so until applied "In the purchase or redemption of the land tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes; or, In the purchase of other Lands Clauses Consolidation Act, 1845.
Section 69.

* Now "Paymaster General." See 35 & 36 Vict. c. 44, s. 4.

lands, to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled; or, If such money shall be paid in respect of any buildings taken under the authority of this or the special Act, or injured by the proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court of Chancery shall direct; or, In payment to any party becoming absolutely entitled to such money."

Trustees with a power of sale are persons "becoming absolutely entitled" under this section (*In re Gooch's Estate*, 3 Ch. D. 742; *In re Hobson's Trusts*, 7 Ch. D. 708; 47 L. J. Ch. 310; 26 W. R. 470; 38 L. T. 365).

Section 80. The 80th section of the Act provides that "In all cases of monies deposited in the Bank under the provisions of this or the special Act, or an Act incorporated therewith, except where such monies shall have been so deposited by reason of the wilful refusal* of any party entitled thereto

Wilful
refusal.

* A "wilful refusal" is a refusal arising from an exercise of mere will or caprice, and not from an exercise of reason—*per* Vice-Chancellor of England in *Ex parte Bradshaw*, 16 Sim. 174, where a landowner having refused to accept purchase-money awarded to be paid to him by a railway company, because he believed the award (which was afterwards decided to be valid by the Queen's Bench, but only after a long argument and after judgment reserved) to be invalid, was held not to have been guilty of a "wilful refusal" within the section, and see *Ex parte Lawson*, 17 W. R. 186. A similar decision was come to by V. C. Kindersley in *Ex parte Railston*, 15 Jur. 1028. In that case, a railway company having summoned a jury, the landowner, being advised that notice had not been properly served on him, did not appear, and the damages having been assessed in his absence were paid into Court; it was held that the landowner was entitled to the costs of an application to have them paid over to him. See, too, *Re Windsor, Staines, & South Western Railway Act*, 12 Beav. 522, and *Ex parte Dashwood*, 3 Jur. N. S. 103, where a landowner, being advised by counsel that certain companies had no right to take his land, refused to sell, and was nevertheless held entitled to his costs. Where a vendor cannot make a clear title by reason of his not having paid off incumbrances of a larger amount than the land taken, he is clearly not guilty of a "wilful refusal" (*Ex parte Divers*, 1 Jur. N. S. 995). Nor is the failure of the vendor to procure his incumbrancers to concur in a

to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect* of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery in *England* or the Court of Exchequer in *Ireland* to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; (that is to say), the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such monies in government or real securities, and of the reinvestment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such monies shall be invested, and for the payment out of Court of the principal of such monies, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except

petition to the Court for the investment of the fund "a wilful default" (*Ibid.*). See, too, cases cited *post*.

But where a vendor insisted upon payment, not only of the purchase-money, but of his costs also, before he gave up possession, and the company consequently paid the purchase-money into the bank under the 76th section of the Act, V. C. Wood, on a petition to obtain payment out of the money, held that the vendor had been guilty of "wilful refusal," and had thus disentitled himself to receive costs (*Re Turner's Estate*, 10 W. R. 128). The vendor was also ordered to pay the costs of calling in the sheriff to give possession (*ibid.*). In another case where the money was, by reason of the vendor's "wilful refusal" to convey, paid into Court under the 76th section, a petition by the vendor praying costs against the company was dismissed with costs (*Ex parte Hyde*, V. C. K. B., March 27, 1851, cited in Seton on Decrees, 4th ed., 1443).

* Where the title was doubtful and the Company objected to it, they were ordered to pay the costs, there having been no wilful neglect or delay on the part of the owner (*Re Woodburn's Trust*, 13 L. T. 237). But where the difficulty had been created by the owner granting leases after receipt of the notice to treat, he was refused his costs (*Re Marylebone Improvement Act*, 19 W. R. 1058). Wilful neglect,

such as are occasioned by litigation between adverse claimants."*

"Except such as are occasioned by litigation."

* The words "except such as are occasioned," &c., refer to "costs" not to "proceedings" (*per* Lord Justice Turner, in *Re Cant's Estate*, 1 De G. F. & J. 153). "Adverse litigation arises where different parties set up adverse titles to the estate" (*Askew v. Woodhead*, 14 Ch. D. 27, *per* Jessel, M. R.). The usual form of order (on which see Seton on Decrees, 1441, 4th ed., and see *Ex parte Hooper*, 1 Drew. 269), directs the company "to pay the costs of obtaining this order, &c., and of all the proceedings relating thereto." "Notwithstanding what is stated in *Re Cant*, 1 D. F. & J. 159, and *Re Courts of Justice Commissioners*, W. N. (68), 124, it is not and has not been, the practice to insert the exception as to the costs of litigation between adverse claimants, unless it appears or is suggested that some litigation has taken place;" Seton, *ubi sup.* In a simple case the order should specify what costs fall within the exception (*Re Longworth's Estate*, 1 K. & J. 1; *Re Tookey's Estate*, 16 Jur. 608; *Ex parte Collins*, 15 L. T. O. S. 362). And see further as to form of order *Re Hayward's Estate*, 9 L. T. 320; *Ex parte Great Southern & Western Ry. Co.*, Ir. R. 11 Eq. 497.

What costs are within exception.

The exception only applies where there is an actual *litis contestatio* (*Re Spooner's Estate*, 1 K. & J. 220; *Re Hungerford's Trusts*, Id. 413; *Ex parte Hooper*, 1 Drew. 264). Costs incident to the ordinary administration of a fund by the Court, e.g., the costs of an inquiry how much of a fund belongs to a mortgagor, and how much to a mortgagee, must be borne by the company (*In re Barcham*, 17 Ch. D. 329; *Eden v. Thompson*, 2 H. & M. 9). Where the land belonged to a devisee for life with remainder to the testator's heirs, it was held that the company must pay the costs of two petitions by two co-heirs, and also the costs of investigating the title of other parties who claimed to be heirs, in answer to advertisements ordered to be issued by the Court, except such costs as were occasioned by affidavits of the petitioners in answer to such claims (*Re Spooner's Estate*, 1 K. & J. 220). A contest between tenant for life and remainderman as to how much of a fund belonged to one of them, and how much to the other, was held by V. C. Bacon to be within the exception, but this decision was disapproved of by Jessel, M. R. (*Askew v. Woodhead*, 14 Ch. D. 27; 41 L. T. 670; 42 L. T. 567).

It was said by V. C. Kindersley in *Re Tookey's Trusts*, 16 Jur. 708, that the exception was not intended to apply to a question of construction decided by the Court upon petition, but to a case where an action at law was necessary to decide the rights of the parties. See, too, *Ex parte Palmer*, 13 Jur. 781, where V. C. Shadwell laid down that "the exception in the Act was intended to apply to such a case as where an action of ejectment has been brought by one claimant of land against another;" *Re Singleton's Estate*, 11 W. R. 871, where it was said that the mere fact of difficulties occurring in ascertaining who were the parties entitled to the money in Court, did not bring the case within the exception; *Re Wilson*, W. N. (1867), 110. But where the petitioner, although there was no actual hostile litigation, was obliged to bring parties before the Court to

In cases of doubt, the Court, having regard to the large compulsory powers given to the Company by the Act,

General rules as to costs under s. 80.

contest questions with him he paid their costs, though the general costs were borne by the company (*Ex parte Cooper*, 13 W. R. 364 ; 2 Dr. & Sm. 312 ; 34 L. J. Ch. 373 ; 11 Jur. N. S. 103 ; 11 L. T. 661).

—Where a question arising on the construction of a will relating to the property taken was argued by the petitioner and the respondents, the company was only ordered to pay one set of costs (*Ex parte Styun*, Johns. 387 ; *Ex parte Yates*, 17 W. R. 872 ; 20 L. T. 940 ; W. N. (1869), 150).

In another case, an additional application having been rendered necessary by litigation, no order as to costs was made thereon (*Re Jolliffe*, 3 Jur. N. S. 633). But in *Carpmael v. Profitt*, 23 L. J. Ch. 165, it was held that the fact of a second petition being rendered necessary by the investment of the purchase monies in other lands sold in a pending suit did not bring the case within the exception in the Act (see cases cited, *post*).

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

The costs of a suit rendered necessary by the death of a vendor leaving an infant heir or devisee, are within the exception (*Armitage v. Askham*, 1 Jur. N. S. 227 ; *Eastern Counties Railway Company v. Tufnell*, 3 Rly. Ca. 133). See, too, *Pursar v. Darby*, 4 K. & J. 41 ; *Cresswell v. Haines*, 8 Jur. N. S. 208 ; and *Scott v. Scott*, 11 W. R. 766, where no costs were given ; *London & South Western Railway Company v. Bridger*, 4 N. R. 261 ; *Ex parte Cave*, 26 L. T. (O. S.) 176. In the earlier case of *Midland Counties Railway Company v. Westcomb*, 11 Sim. 57, the costs of a suit by a company for specific performance occasioned by the death of a vendor intestate and leaving an infant heir, were ordered to be paid out of the purchase-money. *Comp. Midland Counties Railway Company v. Caldecott*, 2 Rly. Ca. 394. So where the legal right of admittance to copyholds taken by the company was outstanding in the heir of an infant trustee, the company was held not to be liable to pay the costs of a petition under the Trustee Act to obtain a conveyance from the heir (*Re South Wales Railway Company*, 14 Beav. 418 ; but see *In re Liverpool*

Costs of suit, &c., rendered necessary by death of vendor leaving infant heir or devisee.

Costs of proceedings under Trustee Act.

leans towards making the company pay the costs (see observations of Lord Lyndhurst in *Ex parte Marshall*, 1 Ph. 560; of V. C. Stuart in *Re Jones' Settled Estates*, 4 Jur. N. S. 581; and of Lord Langdale in *Re Hull and Selby Ry. Co.*, 5 Ry. Ca. 458). The section applies whether the money is deposited under the earlier or the subsequent clauses (*Ex parte Flower*, 1 Ch. 599); but does not authorise an order for payment of costs out of any particular fund (*Re Neath & Brecon Ry. Co.*, 9 Ch. 263).

What costs payable by Company. The following costs have been held to be payable by the Company under this Act.

The costs of a petition to invest the purchase-monies of glebe land in the erection of a new parsonage house (*Re Incumbent of Whitfield*, 9 W. R. 764; 1 J. & H. 610), or in improving and adding to an old one (*Ex parte Rector of Claypole*, 16 Eq. 574); or in the drainage of glebe lands (*Re Vicar of Queen Camel*, 11 W. R. 503); or in the erection of farm buildings on the remainder of the glebe land (*Ex parte Rector of Shipton*, 19 W. R. 549; *Ex parte*

Improvement Act, 5 Eq. 282, where Lord Romilly himself overruled this decision, and made the company pay the costs of taking out administration). Where, however, freehold lands had been taken by a railway company from the transferee of a deceased mortgagee, whose heir could not be found, it was held that the company were, under this section, bound to pay the costs of a petition by the vendor for the appointment of a person to convey under the Trustee Act, 1850 (*Re Nash's Estate*, 4 W. R. 111; and see *Re Manchester & Southport Railway Company*, 19 Beav. 365; *Re Lowry's Will*, 15 Eq. 78); *secus* if there has been a special agreement that the company should pay all costs and expenses "of and incidental to the conveyance" (*Lake v. Eastern Counties Railway Company*, 19 L. T. (O. S.) 323).

Costs occasioned by vendor's devising lands in strict settlement. Where an estate was limited to B. for life, with remainder to his first and other sons in tail, with remainder to B. in fee, and B. devised all his real estate in strict settlement, and after the date of the will a company purchased part of the estate from him under the powers of the Act, it was held on B.'s death without issue, that the company must pay the costs of investing the purchase-money in real estate to be settled to the uses of the will (*Re De Beauvoir's Settled Estates*, 2 De G. F. & J. 5, reversing S. C. 8 W. R. 625, V. C. K.). A doubt was expressed as to whether if B. had died intestate his heir-at-law would not have been entitled to an investment in land at the expense of the company.

Rector of Gamston, 1 Ch. D. 477; *Ex parte Rector of Holywell*, 27 W. R. 707); the costs of an application to lay out the money in rebuilding (*Re Thorner's Charity*, 12 L. T. (O. S.) 266; *Ex parte Dean and Chapter of Canterbury*, 10 W. R. 505; comp. *Re Partington's Trusts*, 11 W. R. 160); or of erecting temporary accommodation buildings (*Re St. Thomas's Hospital*, 11 W. R. 1018; but see *contra*, *Re Rudyerd's Trusts*, 2 Giff. 394, and other cases cited below); the costs of an application by trustees of a charity for payment to them of the fund to be applied in improving the water supply of their town (*Re Lathropp's Charity*, 1 Eq. 467); the costs of a petition to enfranchise copyholds, and of the proceedings connected therewith (*Dixon v. Jackson*, 25 L. J. Ch. 588); of a power of attorney to take the money out of Court (*Re Godley*, 10 Ir. Eq. R. 222; *Ex parte Incumbent of Guilden Sutton*, 8 De G. M. & G. 380; 2 Jur. N. S. 793); of an application for payment out to the trustees of a settlement of a sum for advancement (*Re Curwen's Settlement*, W. N. (1880), 83); of redeeming the land tax (*Re London & Brighton, &c., Ry. Co.*, 18 Beav. 608; 23 L. T. (O. S.) 216; *Re Vicar of Queen Camel*, 11 W. R. 503; *Ex parte Beddoes*, 2 Sm. & G. 466; *In re Bethlem Hospital*, 19 Eq. 457; 44 L. J. Ch. 406; 23 W. R. 644, where the cases are discussed by Jessel, M. R.; *Ex parte Hospital of St. Katharine*, 17 Ch. D. 378); the brokerage payable to the Accountant-General on the investment of the purchase-money in stock (*Ex parte Braithwaite*, 1 Sm. & G. App. xv.; *Ex parte Earl of Harborough*, 22 L. T. (O. S.) 115; *Ex parte Corporation of Trinity House*, 3 Hare, 95); the costs of and incident to orders for obtaining payment to an incumbent or bishop of the dividends of stock in which the purchase-money had been invested (*Ex parte Incumbent of Guilden Sutton*, 8 De G. M. & G. 380; 2 Jur. N. S. 793; *Ex parte Ecclesiastical Commissioners*, 39 L. J. Ch. 623); and the costs of the half-yearly sales of stock, representing the purchase-moneys of leaseholds taken by

the Company, which became necessary for the purpose of distribution between the tenants for life and remaindermen (*Re Long's Estate*, 1 W. R. 226 ; 20 L. T. (O. S.) 305).

Under an order for half-yearly sales of stock in which the purchase-money of leaseholds has been invested and payment of the proceeds and of the dividends of the rest of the stock to a tenant for life, and for taxation and payment according to the Act, the taxing master may, without a fresh order, tax the costs of each such sale as it occurs (*Re Edmunds*, 35 L. J. Ch. 538 ; 14 W. R. 507 ; W. N. (1866), 111). It seems that the company are, under this section, liable to pay the costs of apportioning ground rents between houses taken by a railway company and those left (*Ex parte Buck*, 1 H. & M. 519, *post*, p. 309 ; *Ex parte Flower*, 1 Ch. 599) ; and the costs of proceedings to summon a jury where the money has been deposited in the bank under the 85th section, although the proceedings have in the end been abandoned (*Ex parte Morris*, 12 Eq. 418).

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

Insolvent
company.

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

The costs of obtaining an order for investment of the purchase-moneys in the erection of new farmhouses (*Ex parte Melward's Devises*, 27 Beav. 571), and in the alteration of almshouses (*Re Bucks Ry. Act*, 14 Jur. 1065) were held not to be payable by the company ; but these decisions have not been followed.

Costs of re-
investment
in land are
paid by the
company.

The company is liable to pay the costs of a re-investment in land, though the re-investment is asked for by a

person who has become absolutely entitled to the money (*Re Jones*, 39 L. J. Ch. 190; 18 W. R. 312; *Re Dodd*, W. N. (1871), 83; and see *Re De Beauvoir's Settled Estates*, 2 De G. F. & J. 5); or proceeds of leaseholds are to be invested in freeholds (*Re Parker's Estate*, 13 Eq. 495; 26 L. T. 12); or in the purchase, under 14 & 15 Vict. c. 104, of leaseholds where the petitioners are the reversioners in fee (*Ex parte Dean and Canons of Manchester*, 28 L. T. 184; *Ex parte the Bishop of London*, 2 De G. F. & J. 14; 2 L. T. 365; and see S. C. 3 L. T. 224, as to form of order); or though the lands to be purchased are to be conveyed to the uses of a will (*Re De Beauvoir's Settled Estates*, 2 De G. F. & J. 5; and see *Re Lye's Estates*, W. N. (1866), 20). But the company only pays such costs as would be purchaser's costs in an open contract, not costs thrown upon the purchaser by special agreement (*Ex parte Governors of Christ's Hospital*, 20 Eq. 605; *Re Temple Church Lands, Bristol*, 26 W. R. 259; and see *Re Mason's Trust Estate*, W. N. (1872) 77). The fines payable on a re-investment in copyholds do not fall on the company (*Ex parte Vicar of Sawston*, 6 W. R. 492; 4 Jur. N. S. 473).

The costs occasioned by the application of the purchase-moneys in the discharge of incumbrances affecting other lands belonging to the vendor are not mentioned in the 80th section, and in *Ex parte The Corporation of Sheffield*, 21 Beav. 162; *Ex parte Sheffield Town Trustees*, 8 W. R. 602; *Ex parte Hardwicke*, 1 De G. M. & G. 297; *Re Yeates*, 12 Jur. 279; and *Re Mark's Trust*, W. N. (1877), 63, were held *not* to be payable by the company. See, however, *Ex parte Trafford*, 2 Y. & C. 522; *Ex parte the Bishop of London*, 2 De G. F. & J. 14; and *Re London & South-Western Railway Act*, 2 J. & H. 390, where, under special circumstances, the company were ordered to pay the costs of a petition presented to obtain the discharge of an incumbrance. In *Re Mark's Trust*, the M. R. declined to follow *Ex parte Trafford*, but he

Costs of
discharging
incum-
brances.

ordered the company to pay the costs of the petition and consequent order.

Costs of
disentail-
ing deed.

A question frequently arose upon the construction of special Acts as to the liability of the company to pay the costs of a disentailing deed executed for the purpose of enabling persons entitled as tenants in tail to the land taken to obtain payment of the purchase or compensation monies to themselves. In *Re Nicholas Brooking's Devisees*, 2 Giff. 31; *Ex parte Marshall*, 1 Phil. 560; 4 Rly. Ca. 58; and *Ex parte Slaters*, 5 Ry. Ca. 700, such costs were held to be payable by the company; and in *Ex parte Thoroton*, 12 Jur. 130; 17 L. J. Ch. 167, they were held not to be so payable. In some cases, however, it seems to have been thought that no disentailing deed was necessary (*Re Watson*, 4 N. R. 528; 10 Jur. N. S. 1011; *Re Tylden*, 11 W. R. 869; *Re Holden*, 1 H. & M. 445; *Re South-Eastern Ry. Co.*, 30 Beav. 215; *Re Tyler's Estate*, 8 W. R. 540; *Sowry v. Sowry*, 8 W. R. 339; *Re Wood's Settled Estates*, 20 Eq. 372; *Notley v. Palmer*, 1 Eq. 241; *Re Row*, 17 Eq. 300); but these cases must now be considered overruled; see *Re Reynolds* (C. A.), 3 Ch. D. 61; *Re Butler's Will*, 16 Eq. 479 (Lord Chancellor Selborne); *Re Norcop's Will*, 31 L. T. 85 (V. C. B.); *Re Broadwood's Settled Estates*, 1 Ch. D. 438 (Jessel, M. R.); *Ex parte Smyth*, Ir. R. 10 Eq. 66, where the cases are discussed. In *Re Watson*, *Re Tylden*, and *Sowry v. Sowry*, the fund was under £200, but the principle would appear to be the same whatever the amount. It follows, therefore, that the company must pay the costs of a disentailing assurance (*Ex parte Vaudrey's Trusts*, 3 Giff. 224).

Costs
occasioned
by land
taken
being
subject of
suit.

It often happens that lands taken by a railway company are the subject of a suit pending in the Chancery Division. In such cases a question arises as to how far the company are bound to pay such additional costs as may have been occasioned by the pending of the suit. There can be no doubt that, subject to the rules hereafter laid down as to costs of unnecessary services and

appearances, the company are bound to pay all such costs.

Thus, in the leading case of *Haynes v. Barton*, 1 Drew. & Sm. 483; 9 W. R. 777, where land which formed the subject of a suit was taken by a railway company, and a petition was presented in the suit and also in the matter of the Act for the reinvestment of the purchase-money (which had been paid into Court), the company were ordered to pay the costs of the tenant for life and of the persons interested in remainder in the land taken by them who were parties to the suit and served with the petition; and they were also ordered to pay the costs of former proceedings in the suit which had been occasioned by the company's taking the land; and see S. C. 1 Eq. 422; 35 L. J. Ch. 233; 14 W. R. 257; 13 L. T. 787. Again, in *Dinning v. Henderson*, 2 De G. & Sm. 485, on a petition presented by the plaintiff in the cause, asking that the fund might be transferred to the credit of the cause, the company were ordered to pay all the costs of the application, including the costs of the parties to the cause who had been served and appeared. See, too, *Ex parte Baroness of Braye*, 11 W. R. 333. The same course was pursued by Lord Langdale in *Re the Hull & Selby Ry. Co.*, 5 Rly. Ca. 458; and comp. *Carpmael v. Proffitt*, 23 L. J. Ch. 165; *Re Long's Estate*, 12 W. R. 460; *Henniker v. Chafy*, 28 Beav. 621. See, however, *Re Picton's Estate*, 3 W. R. 327; and *Hore v. Smith*, 14 Jur. 55, where V. C. Knight Bruce is reported to have said that the company must pay only such costs as they would have paid if the petition had been presented in the matter of the Act and not in the cause. This decision, as pointed out by V. C. Kindersley in *Haynes v. Barton*, 1 Drew. & Sm. 491, seems opposed to *Dinning v. Henderson*, cited above. The cases of *Melling v. Bird*, 22 L. J. Ch. 599; 17 Jur. 155; and *Re Picton's Estate*, 3 W. R. 327, are no exceptions to the rule laid down in *Dinning v. Henderson*, as all that was decided in those cases was, that the company were not bound

to pay the costs of parties who had been *improperly served*. As to this, see *infra*.

Costs of
references,
&c.

In a case before V. C. Wood, *Eden v. Thompson*, 2 H. & M. 6; 4 N. R. 87; 12 W. R. 759, it was stated that in future it would be unnecessary for a plaintiff moving to transfer a fund paid into Court under the Act to the credit of a cause to serve the defendants, and it was intimated that the costs of serving them would not be allowed against the company. But where a petition was presented for transfer of the fund to the credit of a cause, all the costs of the petition, including the costs of the appearance of the respondents, the defendants in the suit, were ordered to be paid by the company (*Re Adams' Estate*, W. N. (1871) 159).

In *Picard v. Mitchell*, 12 Beav. 486, where the lands taken were the subject of an administration suit, in which persons under disability were interested, and a reference was directed to the Master as to which course would be most beneficial for the parties interested, the company were ordered to pay all the costs of the petition and the reference. The case of *Picard v. Mitchell* was followed in *Henniker v. Cluffy*, 28 Beav. 621. In that case, land, the subject of an administration suit, having been taken by a company under their compulsory powers, several proceedings and applications were taken and made in the suit with reference to the propriety of the sale, to which proceedings and applications the company were not parties. The Court held that the company were bound to pay the costs of all parties of obtaining the several orders in the suit, including all reasonable charges and expenses incident thereto and the costs of an application to transfer the fund into the suit. See also an unreported case of *Lord Egremont v. Thompson*, before V. C. Kindersley, Nov. 1858, cited 28 Beav. 625, where the costs of a reference in the cause to ascertain whether the purchase was proper, and the costs of the appearance of all parties to the suit and of a mortgagee on an application to invest the purchase-

money in bank annuities, were ordered to be paid by the company. In *Paterson v. Paterson*, 3 N. R. 657; 10 L. T. 183, the company were ordered to pay the costs of the remaindermen not parties to the suit, but served with a copy of the bill. See, too, *Brandon v. Brandon*, 5 N. R. 214; *Ex parte Cooper*, 5 N. R. 233.

In another case, the committees of a lunatic contracted with the company under the Act for a sale of part of the lunatic's land, and a reference was directed to the Master to enquire into the propriety of the contract. The Master having reported in favour of the contract the committees presented a petition to confirm the Master's report. It was held that the company were liable to pay the costs both of the petition and the reference (*Re Taylor*, 1 Mac. & G. 210). See, too, *Re Walker*, 7 Ry. Ca. 129, where the costs of the appearance of the lunatic's heir were allowed against the company; *Re Briscoe*, 2 De G. J. & S. 249; 4 N. R. 311, where the costs of the next of kin were allowed; and *Re Milnes*, 1 Ch. D. 28.

The rule which requires the company to pay all the costs occasioned by the fact of the lands taken being the subject of a suit, has entailed considerable hardship upon companies, who, in cases where the parties to the suit have been numerous, have frequently been called upon to pay costs to an amount far exceeding the value of the land taken. To remedy this hardship, certain salutary rules have been laid down with regard to service and appearance on petitions under the Act.

Thus, when the plaintiffs who were entitled to one-tenth of a testator's estate presented a petition for a transfer of the fund to the credit of the cause and served the trustees and the parties entitled to the other nine-tenths, who appeared by four separate solicitors, the Court, on the ground that such appearance was oppressive, refused to make the company pay any costs except those of the petitioner and the trustees (*Melling v. Bird*, 22 L. J. Ch. 599; 17 Jur. 155; see, too, *Haire v. Levitt*, 12 L. T. O. S. 307).

In another case (*Sidney v. Wilmer*, 31 Beav. 338) on a petition to transfer the fund into the cause and to accumulate the dividends, the company were held only bound to pay the costs of the petitioners and the costs of *-serving* the respondents, but not the costs of their appearance, on the ground that although served they ought not to have appeared. See, however, *Re Long's Estate*, 12 W. R. 460; and *Re Prebend of St. Margaret, Leicester*, 10 L. T. 221. In the latter case a respondent who had refused to join in the petition, was ordered to pay his own costs.

Costs of
serving
remainder-
men, trust-
ees, &c.

Upon a petition by a tenant for life for investment of purchase monies paid into Court by the company, and payment to him of the dividends, the *remaindermen* need not be served (*Ex parte Staples*; *Re Browne*, 1 De G. M. & G. 294): and if a remainderman is served and appears, the costs of his appearance will not be allowed against the company (*Re Dowling's Trusts*, 45 L. J. Ch. 568; 24 W. R. 729; *Wilson v. Foster*, 26 Beav. 398; and see *Re Legge's Estate*, 8 W. R. 559; but compare *Re Baroness of Braye*, 9 Jur. N. S. 454); unless perhaps an extraordinary investment is asked for (*Re Dowling's Trusts*), or the remaindermen are "parties interested" under s. 74 (*Re Crane's Estate*, 7 Eq. 322; *Re Brailey*, W. N. (1866), 109); and see *Re Romney*, 3 N. R. 287. When the petition is for reinvestment, not in land or hereditaments, but in improvements, the remaindermen should be served (*Re Leigh*, 6 Ch. 887). As to *trustees*, the rule seems to be different (see *Ex parte The East Norfolk Ry. Co.*, cited and followed by V. C. Kindersley in *Re The Duke of Cleveland's Harte Estates*, 1 Drew. & Sm. 48, overruling, on this point, *Wilson v. Foster*, *ante*, where the costs of the trustees were disallowed against the company, comp. *Re Burnell's Estate*, 12 W. R. 568): and the company must pay their costs if they have been properly served and have appeared (*Re Finch*, 14 W. R. 472; *Henniker v. Chafy*, 35 Beav. 124; and see *Ex parte Metropolitan Ry. Co.*, 16 W. R. 997; W. N. (1868), 204). But as a general rule

where the trustees' interests are not affected, and their appearance is unnecessary, 42s. only will be allowed, which should be tendered as directed by R. S. C. (Costs) Sched. r. 17, see *ante*, p. 68. In *Re Pattison's Estate*, 4 Ch. D. 207, on a petition for payment out of a fund in Court three guineas were, under the circumstances, allowed towards the costs of trustees. See also *Ex parte London & South Western Ry. Co.*, 38 L. J. Ch. 527, where the company were petitioning for payment out, *Wilson v. Foster*, 26 Beav. 398. Where the money might have been paid out of Court on the petition of the tenant for life, but for the convenience of persons entitled under a settlement it was wished to deal with the money in a special manner under the provisions of a private Act of Parliament, it was held that the costs of the trustees and remaindermen under the settlement, who had been served, were not payable by the company (*Re Bowes' Estate*, 4 N. R. 315; 12 W. R. 929).

A distinction was taken by V. C. Kindersley in *Bradshaw v. Fane*, 1 N. R. 159; 9 Jur. N. S. 166, between a fund standing to the credit of the matter of an Act of Parliament, and a fund standing to the credit of the cause, whether generally or to a separate account, as well as to the credit of the matter of the Act. In the latter case it was said that all the parties to the cause must be before the Court on a petition to reinvest the fund, and the company must pay their costs. See, too, *Re Brandon's Estate*, 2 Dr. & Sm. 162; 32 L. J. Ch. 20; 9 Jur. N. S. 11; but comp. *Eden v. Thompson*, 2 H. & M. 6; 4 N. R. 87; 12 W. R. 759. Where the purchase-money has been paid into the usual account, and afterwards transferred to the credit of a suit to an account not intituled in the matter of the Special Act, there is no jurisdiction to make the company pay the subsequent costs of payment out (*Fisher v. Fisher*, 17 Eq. 340; *Brown v. Fenwick*, 35 L. J. Ch. 241; W. N. (1866), 7; 14 W. R. 257); and if the petitioner serves the company in such a case the service is

Distinction
when
fund
standing to
the credit
of a cause.

improper, and he will be ordered to pay the company's costs (*Prescott v. Wood*, 37 L. J. Ch. 691; W. N. (1868), 123).

In a recent case (*Nock v. Nock*, W. N. (1879), 125), the money was paid into Court to the general credit of the suit, and to an account not intitled in the Lands Clauses Act or the special Acts of the company, it being agreed that the company should pay the costs of obtaining the order for payment in, but no further costs, except such as they might be liable for under the Lands Clauses Act. On a petition in the suit for dealing with the purchase-money in Court, asking that the company might, pursuant to the agreement, pay the petitioner's costs of the petition as under the Lands Clauses Act, and the costs of the purchase and conveyance, Fry, J., held that he had no jurisdiction to make any order against the company, and dismissed the petition as against them with costs.

Costs of
tenant for
life which
are not
payable
by the
company.

Where a tenant for life has incurred costs and expenses which the company is not bound to pay, they may be ordered to be paid to him out of the purchase money in Court (*Re Strathmore Estates*, 18 Eq. 338; *Re Aubrey*, 17 Jur. 874; 1 W. R. 464; *Re Earl of Berkeley's Will*, 10 Ch. 56; *Re Oldham's Estate*, W. N. (1871), 190).

Costs of
serving
mort-
gagees.

The following rules seem to be now established as to service upon mortgagees and incumbrancers, and the costs of such service. Where there are incumbrancers who as a matter of form are necessary parties but who have no interest in opposing the petition, the proper course is to serve them with a copy of the petition, and tender them 42s. for costs of obtaining advice as to whether their appearance is necessary; if they subsequently appear it is at their peril as regards costs. The rule applies equally to petitions for re-investment in land and to petitions for payment out of Court to persons entitled subject to the incumbrances; and the petitioners will be entitled to add to their costs of the petition, in addition to the 42s., a sum sufficient to cover the costs of an affidavit of service, for which purpose 23s. has been considered a fair sum;

see *In re Gore Langton's Estates*, 10 Ch. 328; 44 L. J. Ch. 405, 23 W. R. 842; 32 L. T. 785; *In re Hulstead United Charities*, 20 Eq. 48; *Ex parte Jones*, 14 Ch. D. 624; a case under the Artizans Dwellings Act, 1875; R. S. C. (Costs) Sched. r. 17; and cases cited *ante*, p. 68. These are the only costs (in addition to the costs of the petitioners) which the company can be required to pay. In *Re Hatfield*, 29 Beav. 370; 32 Beav. 252, the company was held not to be liable to pay any of the mortgagee's costs; but that is not the rule now (*Ex parte Jones*; and see *Re Brook*, 30 Beav. 233; 10 W. R. 35; *Re Thomas*, 12 W. R. 546). The earlier cases were conflicting.

The company are not bound to pay the costs of incumbrancers on the interest of a tenant for life (*Ex parte Smith*, 6 Ry. Ca. 150), unless they are served at the instance of the company (*Re Hungerford*, 1 K. & J. 413), or their interests are affected (*Re Nash*, 1 Jur. N. S. 1082; and see *Re Thomas*). Where the mortgagees were not in possession and consented to the petition the costs were disallowed (*Re Bingham*, W. N. (1868), 244; *Re Lord Bealey*, W. N. (1872), 188). Nor is it necessary on a petition for interim investment and payment of dividends to serve persons having charges on the inheritance prior to the life estate, and the costs of such parties, if served, will not be allowed against the company (*Re Morris' Settled Estates*, 20 Eq. 470; 23 W. R. 851). It is clear that when a mortgage only affects part of the land, but not the part taken by the company, the company will not be ordered to pay the costs of the mortgagee, if served (*Re Yeates*, 12 Jur. 279). So where a small portion of the estate only was in mortgage, and it became necessary to apply to the Court in a pending suit to obtain a release from the mortgagee, it was held that the company were not liable to pay the costs of the application (*Ex parte Phillips*, 11 W. R. 54, reversing S. C. 2 J. & H. 392).

The costs of a mortgagee, whose incumbrance has been created after the lands were taken and the money paid

into Court are not payable by the company (*Re Middle Level Drainage and Navigation Commissioners*, June 23, 1864, V. C. K.; *Re Jones's Trust*, 39 L. J. Ch. 190; 18 W. R. 312.)

Other
persons.

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

Where the purchase monies of leaseholds were ordered to be carried to the account of two lessees, and the dividends were ordered to be paid to one of them and the executrix of the other, it was held that the company, having been unnecessarily served with a petition for payment of the dividends to the husband of the executrix, who had married, were entitled to their costs from the petitioner (*Ex parte Hordern*, 2 De G. & S. 263). Again if the husband of a married woman entitled for her separate use, who petitions by her next friend, is made a respondent instead of a co-petitioner, the company will not be ordered to pay his costs (*Re Osborne's Estate*, W. N. (1878), 179). So when the dividends of a sum in Court had been ordered to be paid to the trustees of a charity, of which new trustees were appointed, it was held that the company were not liable to pay the costs of a petition for payment of the dividends to the new trustees (*Re Audenshaw School*, 1 N. R. 255). *Secus*, where the change of interest was caused by the reconstitution of the charity (*Re Shakespeare Walk School*, 12 Ch. D. 178). In *Re Midland Ry. Co.* 11 Jur. 1095, a party entitled to an aliquot share of purchase money was held entitled to payment out of such share, without service on the other persons interested, the Court holding that the company must be considered as protecting their interests. On a petition for reinvestment of the purchase monies of lands taken by the company in other lands, the vendors of

the second lands, having been served with, and appearing on the petition, were ordered to have their costs as against the petitioners, but the petitioners were not to have such costs over again against the company (*Re Dylar's Estate*, 1 Jur. N. S. 975). Again, where the purchase monies were invested, and the dividends paid to the tenant for life, and on her death her husband resettled the property, and presented a petition for payment to himself, it was held that the company were not liable to pay the costs of the petition (*Re Pick*, 31 L. J. Ch. 495; 10 W. R. 365).

But, as a general rule, where there has been a transmission of interest, and a new order becomes necessary, the company must pay the costs (*Re Jolliffe's Estate*, 9 Eq. 668; *Re Shakespeare Walk School*, 12 Ch. D. 178); and see *Re Lye's Estates*, W. N. (1866), 20; 13 L. T. 664; *Ex parte Manchester Burial Board*, W. N. (1866), 117. Where the petition was for payment of the dividends to new trustees of a settlement, the original petition having been defective, no order was made as to costs (*Re Pryor's Settlement*, W. N. (1876), 141; 35 L. T. 202); but see *Re Goe*, 3 W. R. 119; and *In re Metropolitan Ry. Co. and Maire*, W. N. (1876), 245, and *post*, p. 305, as to costs of unnecessary and defective petitions.

Where there has been a transmission of interest.

The company are not liable to pay the costs of a petition to pay money to a party who by arrangement between the parties only has been nominated as the hand to receive it (*Ex parte Baroness of Braye*, 11 W. R. 333).

As to the costs of serving the ordinary, and of his appearance on the petition where his consent is required, see *Ex parte Vicar of Creech St. Michael*, 21 L. J. Ch. 677, where such costs were allowed; but compare *Ex parte Bishop of London*, 2 De G. F. & J. 14, where the costs of the Ecclesiastical Commissioners, whose consent was necessary to the investment, and *Re Incumbent of Whitfield*, 1 J. & H. 610; 9 W. R. 764, where the costs of the governors of Queen Anne's Bounty were disallowed against the company. In *Ex parte Dean and Canons*

Ordinary.

Ecclesiastical Commissioners.
Governors of Queen Anne's bounty.

Church Estates Commissioners. *of Manchester*, 28 L. T. 184, the costs of the Church Estates Commissioners were ordered to be paid out of the funds in Court.

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

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

Where several companies; costs of payment out borne equally. Costs of re-investment, as a general rule are borne equally, Where lands are taken by several companies, the costs of a petition for payment out of the purchase monies must be borne by the companies, or, if any of them have been amalgamated, by such of them as are subsisting at the time of the application in equal shares (*Ex parte Gaskell*, 2 Ch. D. 360; 45 L. J. Ch. 368; 24 W. R. 752; *Ex parte Ecclesiastical Commissioners*, W. N. (1873), 173). And the same rule applies in general to the costs of a petition for re-investment in land, except that the costs of the *ad valorem* stamp on the conveyance must be borne by the companies rateably, according to the amount contributed by each to the purchase monies (*Ex parte Bishop of London*, 2 De G. F. & J. 14; *Re Moryport and Carlisle Ry. Co.*, 1 N. R. 506; 11 W. R. 410 (S. C. 32 Beav. 397; 1 N. R. 545; 11 W. R. 507, *contra*, is overruled); *Ex parte Corpus Christi College, Oxford*, 13 Eq. 334; *Re Leigh's Estate*, 6 Ch. 887; *Ex parte Governors of Christ's Hospital*, 27 W. R. 458; *Re Byron's Settled Estates*, 1 De G. J. & S. 358; 2 N. R. 294; 8 L. T. 562; *Re Merton College*, 1 De G. J. & S. 361; 3 N. R. 598; 10 Jur. N. S. 223; 12 W. R. 503; 10 L. T. 8; *Ex parte Governors of Christ's Hospital*, 2 H. & M. 166; *London and Brighton Ry. Co. v. The Shropshire Ry. Co.* 23 Beav. 605); and a surveyor's fee will be apportioned in the same way as the costs of the *ad valorem* stamp

(*Ex parte Corporation of London*, 5 Eq. 418; *Re Power*, W. N. (1876), 205).

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

Where part of the monies to be invested was already in the hands of trustees for investment the costs of the petition were borne by the corporation and the trustees in moieties, and the costs for stamps and surveyor's fees in proportion to the funds invested (*Re Power*, W. N. (1876), 205). Where there were originally three companies and one leased its line to another the costs were borne in thirds (*Re Carlisle and Silloth Ry. Co.*, 33 Beav. 253).

Where lands, settled in the same manner, have been purchased by different railway companies and the purchase monies paid into Court and invested, and the tenant for life afterwards dies, the orders directing payment of the dividends of the several funds to the person next entitled, may all be obtained upon the same petition; and the railway companies will not in future be required to pay the costs of more than one petition (*Re Lord Broke's Estate*, 11 W. R. 505; 1 N. R. 568). The point being a new one, however, the petitioner was not deprived of his additional costs out of pocket (*ibid.*).

The provisions of the Lands Clauses Act as to costs have been held to be incorporated with all subsequent Acts authorising the taking of lands (*Ex parte Vicar of St. Sepulchre's*, 4 De G. J. & S. 232; 12 W. R. 499; 33 L. J. Ch. 372; 9 L. T. 819; 10 Jur. N. S. 298; 3 N. R. 594); unless such subsequent Act contains provisions inconsistent with such incorporation (*In re Cherry's Settled*

but may be apportioned where great inequality.

Where Lands Clauses Act incorporated with special Acts.

Estates, 4 De G. F. & J. 332; 10 W. R. 305; *Re St. Katherine's Dock Co.*, 14 W. R. 978).

Where the company was amalgamated with another company by an Act which incorporated the Lands Clauses Act, it was held that the right of the landowner as to costs was governed by the earlier Act (*Re Holden's Estate*, 1 Jur. N. S. 995; *Re Neuchell's Trusts*, 3 W. R. 634; *Re Doncaster's Settled Estates*, V. C. Wood, cited in note to 3 W. R. 635; and *Ex parte Molyneux*, 2 Coll. 273). But in a later case, before the Lords Justices, where monies had been deposited under a special Act which did not provide for the costs of obtaining payment out of Court of the deposited monies, but which was re-enacted by a subsequent Act incorporating the Lands Clauses Act, the Court of Appeal held that the right of the landowner to costs was governed by the Lands Clauses Act (*Re Ellison's Estate*, 8 De G. M. & G. 62, following *Ex parte Eton College*, 15 Jur. 45; and see *Re Derriman's Settlement*, W. N. (1866) 269). Where a railway company under the compulsory powers of the Lands Clauses Act took lands which had been settled by a private Act of Parliament and could only be conveyed to them under the powers in the latter Act, it was held that they were liable to costs under the Lands Clauses Act (*Re Shuttleworth's Estate*, 4 Giff. 87; 8 Jur. N. S. 1090).

Costs payable by Commissioners of Works.

On a petition for the payment out of Court of monies paid into Court by the Commissioners of Public Works on a purchase made under the provisions of the 9 & 10 Vict. c. 34, which incorporates the provisions of the 3 & 4 Vict. c. 87, the commissioners, as promoters of the undertaking, were held, on appeal, not to be liable, under the 80th section of the Lands Clauses Consolidation Act, 1845, to pay the costs of such application (*In re Cherry's Settled Estates*, 4 De G. F. & J. 332; 10 W. R. 305, overruling S. C. 10 W. R. 54; 31 L. J. Ch. 351).

A transfer of a fund in Court standing to the credit of trustees of a charity from the trustees to "The Official

Trustees of Charitable Funds" in trust for the charity, is treated as a payment out of Court for the purpose of making the corporation who took the lands pay the costs of the application to transfer (*Re Bristol Free Grammar School*, W. N. (1878), 26; and see *Ex parte Trustees of Bishop Monk's Horfield Trust*, W. N. (1881), 16).

In cases where the Special Act was dated before, and had *not* been incorporated with the Lands Clauses Act, it was the practice of the old Court of Exchequer to make the company pay costs, whether they were given by the Special Act or not; see *Re Robertson*, 23 Beav. 433; *Re Tiverton Market Co.* (No. 2), 26 Beav. 239; *Re Gould*, 24 Beav. 442; *Ex parte Bishop of Durham*, 3 Y. & C. Exch. 690. But the Court of Chancery was more strict, and held that the company could only be ordered to pay such costs as were provided by their Special Act (*Re Land's Trust*, 4 K. & J. 81, and cases there cited; *Ex parte Ecclesiastical Commissioners*, 13 W. R. 575; *Re Metford*, 8 W. R. 634; *Re Musgrave*, 6 Jur. N. S. 797; *Re Acker*, 11 W. R. 182; *Mitchell v. Newell*, 3 Ry. Ca. 315; *Re Cooke*, 7 Jur. 639; *Re Allen*, W. N. (1867), 11; *Ex parte Molyneux*, 2 Coll. 273; *Re Ballinrove Workhouse*, 15 W. R. 978; *Re Strachen's Estate*, 9 Ha. 185). See also *Re Harrison's Estate*, 10 Eq. 532; 18 W. R. 1065; *Re Williams' Estate*, 12 Eq. 488; *Re Lord Stanley of Alderley's Estate*, 14 Eq. 227; *Re St. Dunstan's Charity Schools*, 12 Eq. 537; 19 W. R. 887; *Re Merceron*, 7 Ch. D. 184. The cases of *Re Tofts*, 2 Jur. N. S. 131, and *Ex parte Slaters*, 5 Ry. Ca. 700, turned on the special wording of the Act; and the decisions in *Re Saunders*, 8 Eq. 681; *Re Spitalfields Schools*, 10 Eq. 671; *Re Cosmi Truppo's Estate*, 18 W. R. 800; and *Re Edmeade*, 6 Jur. N. S. 986, which were opposed to a long line of decisions, have not been followed.

All costs being now in the discretion of the Court, however, there seems no reason why the company should not be ordered to pay them in any proper case, whether the special Act contains any provision to that effect or not;

Present
rule as to
costs.

see *Ex parte Mercers' Co.*, 10 Ch. D. 481 ; 48 L. J. Ch. 384 ; 27 W. R. 424, a case under the Metropolitan Paving Act, 57 Geo. III., c. 29 ; and having regard to the regrets formerly expressed by some of the judges that they had no power to make the company pay the costs, it seems very probable that now the Courts have this power they will avail themselves of it. In *Re Merceron*, 7 Ch. D. 184, the M. R. held that he had jurisdiction under the Metropolitan Paving Act itself to order payment of the costs of an interim investment in consols, including the costs of a petition for the purpose ; and see *Ex parte Hospital of St. Katharine*, 17 Ch. D. 378.

Costs of unnecessary matter.

But the Court will take care that the company are not put to vexatious and unnecessary costs. Thus, the setting out of the sections of the Lands Clauses Act at length in a petition is unnecessary and improper (*Ex parte Osboldiston*, 8 Hare, 31) ; and, in general, where additional expense has been incurred by the setting out of unnecessary matter in the petition, such expense will be made the subject of a reference to the Taxing Master (*Haire v. Levitt*, 12 L. T. (O. S.) 307 ; and see R. S. C. (Costs) Sched. r. 18, *ante*, p. 39 ; Cons. Ord. XL. r. 9, as to costs of unnecessary matter generally). It seems, however, that the introduction into a petition of clauses of Acts, of which, being public Acts, the Court is bound to take judicial cognizance, is not necessarily impertinent (*Re Lilley's Trusts*, 17 Sim. 110).

Where purchase-money exceeds sum paid into Court.

Where the purchase-money sought to be invested exceeds the sum paid in, the Court will take care that the costs of the company are not increased by that circumstance (*Re Branmer's Estate*, 14 Jur. 236 ; followed in *Re Loveband's Settled Estates*, 9 W. R. 12 ; 30 L. J. Ch. 94 ; overruling, it would seem, *Ex parte Lord Palmerston*, 4 Ry. Ca. 57 ; and *Ex parte Vicar of Claborough*, 12 Jur. 239) ; see also *Ex parte Hodge*, 16 Sim. 159 ; *Attorney-General v. Mayor of Rochester*, 15 W. R. 765 ; W. N. (1867), 142 ; *Ex parte Tetley*, 4 Ry. Ca. 55 ; *Ex parte*

King's College, 5 De G. & Sm. 621; and *Ex parte Newton*, 4 Y. & Coll. (Exch.) 518. In *Ex parte Mayor, &c., of Carlisle*, 1 W. R. 103; 20 L. T. (O. S.) 166, in which all costs, except the stamp duty, were ordered to be paid by the company, the order was made by consent. As to the form of an order under the section, see *ante*, p. 284, note, and *Seton on Decrees*, there cited. It was said by V. C. Kindersley, in *Ex parte Eton College*, 7 W. R. 710, that the company were entitled to have the words "upon the approval and execution of the conveyance" inserted in the order. See, however, cases as to abortive investments cited, *post*, p. 308.

The company must pay the costs of an interim invest- Costs of interim investments.
 ment in stock (*Re Liverpool, &c., Railway Company*, 17 Beav. 392); of an interim investment on real security (*Re Flemon's Trusts*, 10 Eq. 612; *Re Sewart's Estate*, 18 Eq. 278; *Re William Smith's Estate*, 9 Eq. 178); and of an application for sale of the stock in which the fund has been invested and reinvestment on mortgage (*Re Blyth's Trusts*, 16 Eq. 468; 21 W. R. 819; *Reading v. Hamilton*, 5 L. T. 628). And the company must pay such costs without any condition as to the costs of any future permanent investment (*Re Blyth's Trusts* (Lord Chancellor Selborne); *Re Sewart's Estate*; the cases of *Re Lomax*, 34 Beav. 294; *Re Wilkinson*, 16 W. R. 537; and *Re Flemon's Trusts* (on this point) must be considered overruled). See also *Ex parte Eton College*, 15 Jur. 45; 3 Rly. Ca. 271.

The Court will always take care that the company are Several petitions.
 not saddled with the costs of a second unnecessary application (*Re London & Brighton, &c., Railway Company*, 18 Beav. 608, 612, where the Master of the Rolls required an affidavit to be filed explaining and justifying the presentation of a second petition). See, too, *Re Leigh*, 6 Ch. 887; *Ex parte Jolliffe*, 3 Jur. N. S. 633; *In re Byrom*, 5 Jur. N. S. 261; *Ex parte Winder*, 6 Ch. D. 696, where two petitions had already been dismissed

without costs, and the Court declined to make the company pay any costs of the third. Where two portions of a settled estate had been taken by different corporations and the purchase-money had been paid into two different branches of the court, and two petitions were presented for reinvestment of the two funds together in one purchase, the Court only allowed the costs of one as costs under the Act (*Re Gore Langton's Estates*, 10 Ch. 328; 44 L. J. Ch. 405; 23 W. R. 842; 32 L. T. 785). In *Re Goe's Estate*, 3 W. R. 119, where a second petition was rendered necessary by a defect in the order on the first petition, the company were ordered to pay the costs of the second petition; and see *Re Bazett*, 16 L. T. 279, and *In re Metropolitan Ry. Co. and Maire*, W. N. (1876), 245; but see *Re Pryor's Settlement*, W. N. (1876), 141; 35 L. T. 202, where no order was made as to costs. Where a fresh petition is rendered necessary by the laches, both of the petitioner and the company, in not taking care that a former order was properly drawn up, each party may be left to pay their own costs (*Ex parte the Governors of Askham & Uppingham Grammar Schools*, 23 L. T. (O. S.) 521). Where petitioners entitled under a will and a settlement to the moneys paid into court presented two petitions, it was held that the company was bound to pay the costs of the first petition and five guineas only towards the petitioner's costs of the second petition, and three guineas for the costs of each set of trustees (*Re Pattison's Estate*, 4 Ch. D. 207). Where several petitions were presented for payment out by the different persons entitled, the costs of all the petitions were allowed but only one set of costs for the petitions presented by parties employing the same solicitor (*Re Nicholls's Trust Estates*, W. N. (1866), 93).

Costs of
several
invest-
ments in
land.

With regard to the costs of several investments in land the 80th section of the Lands Clauses Act contains the following provisions:—

“Provided always, that the costs of one application only for reinvestment in land shall be allowed, unless it shall

appear to the Court of Chancery in England or the Court of Exchequer in Ireland, that it is for the benefit of the parties interested in the said monies that the same should be invested in the purchase of lands in different sums and at different times, in which case it shall be lawful for the Court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking."

Where the purchase-money paid in was large, the costs of three investments were allowed (*Re St. Catherine's Dock Co.*, 3 Rly. Ca. 514, and see p. 513). So in *Re Trustees of St. Bartholomew's Hospital*, 4 Drew. 425, where the third reinvestment was of a very small sum; and comp. *Ex parte Eton College*, 3 Rly. C. 271, but see p. 272; *Re Brandon's Estate*, 2 Dr. & Sm. 162; 9 Jur. N. S. 11; *Ex parte Bouverie*, 4 Rly. Ca. 299; *Ex parte Trustees of Boxmoor*, 3 Rly. Ca. 513; *Ex parte Woolley*, 17 Jur. 850; and *Jones v. Lewis*, 2 M. & G. 163; and *Re Merchant Tailors' Company*, 10 Beav. 485, decided under special Acts, from which it would seem that the costs of more than one investment will always be allowed if it can be shown to be "for the benefit of the parties interested." See, too, *Re Trustees of St. Bartholomew's Hospital*, cited above, *Re Apperley's Estate*, 11 L. T. 335; *Re Paddon's Trusts*, W. N. (1878), 65. In *Ex parte Rector of Loughton*, 3 Rly. Ca. 592, it was held that the fact of a second investment being for £6 only would not prevent the Court from making the company pay the costs thereof. See, too, *Re Brandon's Estate*, 2 Dr. & Sm. 162; 11 W. R. 53; *Ex parte The Fishmongers' Company*, 1 N. R. 85. Where the purchase-money amounted to £125,000 the Court did not consider six applications for reinvestment, still leaving £38,440 uninvested, to be unreasonable (*Ex parte Hospital of St. Katharine*, 17 Ch. D. 378).

The costs of an abortive enquiry or attempt to sell will not necessarily fall on the company (*Ex parte Copley*, 4 Jur. N. S. 297; *Re Macdonald's Will*, 2 L. T. 168; *Ex parte Stevens*, 15 Jur. 243); see, too, *Re Hardy's*

Where investment not carried out.

Estate, 18 Jur. 370, where, on a petition for investment, which was not approved by the Court, the company received their costs out of the fund, but no order was made as to the petitioner's costs. But, as a general rule, the costs of a *bonâ fide* attempt at investment which fails, are payable by the company (*Re Woolley's Estate*, 17 Jur. 850; 1 W. R. 407, 465; *Ex parte Vaudrey's Trusts*, 3 Giff. 224, where the title had been reported good, but the contract was afterwards rescinded in consequence of the expense of making a good title; *Ex parte Rector of Holywell*, 2 Dr. & Sm. 463; 13 W. R. 960; 11 Jur. 579; 12 L. T. 726, where the title was bad; *Re Carney*, 20 W. R. 407; W. N. (1872) 53; 26 L. T. 308). It seems that an order for payment of costs by a company under sec. 80 cannot be varied in their favour unless they appeal (*Re Gregson's Trusts*, 13 W. R. 193; 10 Jur. N. S. 1138).

Es. 81, 82.

Costs of conveyance, title, &c.

The 81st section of the Lands Clauses Consolidation Act provides that lands to be purchased under the provisions of that or any special Act or any Act incorporated therewith may be in the forms specified in the schedules, and that such conveyance shall have the effect of vesting the land in the undertakers, of merging attendant terms, and of barring estates tail. With respect to the costs of such conveyance, the 82nd section provides that "the costs of all such conveyances shall be borne by the promoters of the undertaking, and such costs shall include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title." Under this section all vendor's costs of making out the title and of the conveyance are payable by the company (*Re Spooner's Estate*, 1

K. & J. 220; *Ex parte Marquis of Bath*, 4 Rly. Ca. 567; and see *Ex parte Feoffees of Addies' Charity*, 3 Hare, 22, under a special Act).

The costs of a conveyance prepared but not used by reason of incumbancers refusing to join were in *Re Divers*, 1 Jur. N. S. 995, held to be payable by the company. Costs of unexecuted conveyance.

Where there is a bargain between the ground landlord of houses let at a gross ground-rent, and a railway company who have taken some of the houses, for the payment of compensation at so many years' purchase on the rents of the houses taken, the costs of apportioning the ground rents between the houses taken and those left are not payable by the company under this section (*Ex parte Buck*, 1 H. & M. 519).

The costs incurred in investigating the title to land before the Conveyancing Counsel of the Court are within sections 82 and 83 of the Act, and as they are liable to taxation, the company have, under section 83, a right to require a proper bill thereof to be delivered to them (*Re Spooner's Estate*, 1 K. & J. 220). Where an estate was purchased with the monies arising from the sale of lands taken by a corporation under the compulsory powers of their Act, the costs of laying the abstract of title before the purchaser's counsel, as well as before the counsel of the Court, were allowed as against the corporation (*Re Jones's Settled Estates*, 4 Jur. N. S. 887). But the Lords Justices on appeal (27 L. J. Ch. 706; 6 W. R. 762), refused to allow the whole costs of the private counsel, though they thought that some allowance should be made towards such costs. Costs incurred before conveyancing counsel.

There is a distinction between the costs payable by the Company under section 82 and under section 80, *supra*, the reason being that the earlier section refers to cases where the Company uses its *compulsory* powers and therefore has to pay all the costs arising out of the transaction; but section 82 relates to purchases *by agreement* where the vendor can make his own terms; Distinction between costs under s. 80 and s. 82.

or, if he goes before a jury, can urge any incidental expenses before the jury as a ground for increase of compensation. This section, therefore, deals only with the legal expenses of making a title and conveying the property, taking those expenses in their largest sense, *e.g.*, including the taking out of administration for purposes of conveyance (*Re Liverpool Improvement Act*, 5 Eq. 282; overruling *Re S. Wales Ry.*, 14 Beav. 418), but not with any costs of ascertaining what that is which is to be put into the document (*Ex parte Buck*, 1 H. & M. 519, where the costs of apportioning ground rents between houses taken and houses not taken were disallowed against the company on taxation); and see *Ex parte Incumbent of Alsager*, 2 W. R. 324; *Ex parte Feoffees of Addies' Charity*, 3 Hare, 22; *Re Woodburn's Trust*, 13 L. T. 237. The costs of conveyance under section 82 do not, it seems, include costs of a collateral agreement with the vendor, which, though part of the consideration for the purchase, forms no part of the conveyance (*Re Lietch and Kewney*, 15 W. R. 1055).

The cases as to the costs of suits and other proceedings rendered necessary by the death of the vendor leaving an infant heir or devising the lands sold to an infant have been already considered, *ante*, p. 285, note.

S. 83.

The 83rd section provides that "if the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof" (see *Re Rhodes*, 8 Beav. 224; *Lake v. Eastern Counties Railway Company*, 19 L. T. (O. S.) 323), "such costs shall be taxed by one of the taxing masters of the Court of Chancery, or by a Master in Chancery in Ireland, upon an order of the same Court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said Master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof, the same may be recovered in the same way as any other costs payable under an

order of the said Court, or the same may be recovered by distress in the manner herein-before provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said Master and deducted by him accordingly in his certificate of such taxation." See *Re Spooner's Estate*, 1 K & J. 220, cited *ante*, p. 308, and as to taxation and costs of taxation, see *post*, ch. VIII.

The deposit, which, under the 85th section of the Act the company are required to make before entering on any land, is not subject to any lien for the costs of the vendor; but upon due performance of the condition of the bond mentioned in the same section, the company are entitled to have the money paid out to them, notwithstanding the pendency of a question between them and the vendor with respect to such costs (*Ex parte Stevens*, 2 Phil. 772; 5 Ry. Cas. 269; *Re Neath and Brecon Ry. Co.*, 9 Ch. 263; see, too, *Ex parte Great Northern Railway Company*, 12 Jur. 885; 16 Sim. 169; *Ex parte London, Chatham, and Dover Ry. Co.*, W. N. (1868), 75; *Re Wimbledon and Dorking Ry. Act*, 9 L. T. 703; *Ex parte Birmingham, &c., Ry. Co.*, 1 H. & M. 772). Where the land had been sold and the purchasers presented a petition for payment out of the deposit, the vendors, who had refused to join as co-petitioners, were not allowed any costs of appearing as respondents on the petition (*Re Holman's Settlement*, W. N. (1877), 272).

Lien for costs on deposit.

SECT. III.—*Costs under Trustee Relief Act.*

By the 10 & 11 Vict. c. 96 (usually called the Trustee Relief Act) all trustees, executors, administrators, or other persons having in their hands any moneys belonging to

10 & 11
Vict. c. 96.

any trusts whatsoever, or the major part of them, are empowered to pay the same into the Bank to the account of the Accountant-General* of the Court of Chancery,† in the matter of the particular trusts, and all trustees or other persons having any annuities or stocks standing in their name in the books of the Governor and Company of the Bank of England, or of the East India Company, or South Sea Company, or any Government or Parliamentary securities standing in their names, or in the names of any deceased persons of whom they shall be personal representatives, upon any trusts whatsoever, or the major part of them, are empowered to transfer or deposit such stocks or securities into or in the name of the Accountant-General* in the matter of the particular trust, in trust to attend the orders of the Court.

The 2nd Section of the Act empowers the Court to make such orders as it shall think fit in respect of the trust monies, stocks, or securities so paid in, transferred, and deposited as aforesaid, and for the investment and payment of any such monies, or of any dividends or interest on any such stocks or securities, and for transfer and delivery out of any such stocks and securities, and for the administration of any such trusts generally upon a petition to be presented in a summary way by such party or parties as to the Court shall appear to be competent and necessary in that behalf, and service of such petition shall be made upon such person or persons as the Court shall see fit and direct. For the general practice under the Act, see Morgan's Chancery Acts and Orders, p. 63 *et seq.*, 5th ed. The Act makes no mention of costs, but this omission is now of course supplied by the Judicature Act and Rules; see R. S. C., Ord. LV. r. 1, which leaves the costs of and incident to all proceedings in the High Court in the discretion of the Court. And even before the Judicature Act, it was held that as the fund paid in by the

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

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

trustee was to be paid in *in trust to attend the orders of the Court*, it became subject to the general jurisdiction of the Court, which included a power to order the payment of costs (*Re Woodburn's Will*, 1 De G. & J. 333; *Re Armston's Trusts*, 4 De G. J. & S. 454; 4 N. R. 450; 10 Jur. N. S. 715).

In the older cases it seems to have been thought that a trustee was always justified in paying money in his hands into Court under this Act, and that he ought in all cases to be allowed his costs of appearing on a petition to have it paid out again, see *Re Croyden's Trusts*, 14 Jur. 54; *Mitchell v. Cobb*, 17 L. T. (O. S.) 25.

But though as a general rule such costs will be allowed (*Re Erskine's Trusts*, 1 K. & J. 302), it is now settled that a trustee vexatiously paying money into Court under the Act will not be allowed any costs on a petition to get it out again (*Re Heming's Trusts*, 3 K. & J. 40; *Re Covington's Will*, 25 L. J. Ch. 238; 1 Jur. N. S. 1157); and may even be ordered to pay the costs of a petition to get the money out again (*Re Woodburn's Will*, 1 De G. & J. 333; *Re Cater's Trusts* (No. 1), 25 Beav. 361; *Re Knight's Trusts*, 27 Beav. 45). It seems, however, that if the trustee deducts his costs of paying the money into Court from the fund before doing so, the Court has no jurisdiction, upon the hearing of the petition, to make any order as to these costs (*Re Bloye's Trusts*, 1 Mac. & G. 488, 504; *Re Leake's Trusts*, 32 Beav. 135; 1 N. R. 417; *Re Barber's Trusts*, 2 N. R. 571; *Re Fortune's Trusts*, Ir. R. 4 Eq. 351). But on ordering payment out and taxation of costs, the trustees' costs of paying in may be included, and the sum then deducted by them set off (*Re Hue*, 27 Beav. 337; 5 Jur. N. S. 1235; 7 W. R. 562; *Re Bullass*, V. C. M. 27 Jan. 1871; A. 251; *Re Williams*, V. C. B., 11 March, 1876; B. 781; cited in Seton, p. 498; and see also *Re Sweeper's Trusts*, 19 W. R. 793; 24 L. T. 413).

Old rule as to costs of trustee paying money into Court.

Trustee vexatiously paying money into Court may be refused his costs of appearance, or ordered to pay costs of petition.

But not to refund costs of payment into Court

Where there is a dispute as to the amount of costs to Where there is a

dispute as to the amount of the trustee's costs.

which he is entitled, the trustee ought to pay in the whole fund, and let the Court decide the question; and where a trustee deducted an excessive amount for his costs he was ordered on bill filed to make good the entire trust fund, and pay the costs of the suit; but he was to be allowed such costs as he was properly entitled to when the fund in Court came to be dealt with (*Beaty v. Curson*, 7 Eq. 194; 38 L. J. Ch. 161; 17 W. R. 132; 20 L. T. 61).

What is a "vexatious" payment into Court.

The question what constitutes vexatious conduct on the part of the trustee so as to disentitle him to costs, or make him liable to pay them, is one of some difficulty. In *Re Heming's Trusts*, 3 K. & J. 40, a trustee who paid an alleged balance into Court on the ground that his *cestui que trusts* declined to sign an acquittance in respect of all demands against him as trustee, was disallowed his costs. In *Re Woodburn's Will*, 1 De G. & J. 333, the fact that the trustee had paid the money into Court without waiting for evidence of title, which the *cestui que trusts* were engaged in procuring, and without stating what evidence he should require, was held a ground for making him pay costs. The same order was made in *Re Cuter's Trusts* (No. 1), 25 Beav. 361, where the ground of paying the money in was an alleged refusal, on the part of the other trustees to whom the fund was payable, to give a release by deed; in *Re Fortune's Trusts*, Ir. R. 4 Eq. 351, where executors refused to pay a simple pecuniary legacy unless the legatee would give a release (which he agreed to do), and pay the costs of it (which he refused to do), and see *Re Roberts' Trusts*, 17 W. R. 639; and *Re Elgar*, 11 L. T. 415; in *Re Elliot's Trusts*, 15 Eq. 194; 42 L. J. Ch. 289; 21 W. R. 455, where there seems to have been no reason whatever for paying the money into Court, except a wish to get rid of it; in *Re Glendinning*, W. N. (1867), 191, where the trustees stated in their affidavit that they were going to pay in the capital of the fund and then paid in only a small dividend; in *Re Foligno's Mortgage*, 32 Beav. 131, where the money was paid in by mort-

gagees who had sold under their power, and who refused to pay over the surplus monies to a person to whom the mortgagor had assigned his interest by way of indemnity, with power to sell and give receipts, unless the mortgagor concurred and executed a release to them; in *Re Wise's Trusts*, Ir. R. 3 Eq. 599, where the executors of a surviving trustee refused to pay the fund to new trustees properly appointed, and see *Re Abbot's Trusts*, 38 L. T. 442; and in *Re Knight's Trusts*, 27 Beav. 45; 5 Jur. N. S. 326, where the trustee, before paying the money in, neglected to make any enquiries as to whether the persons entitled were alive or dead.

In *Re Hoskin's Trusts*, 5 Ch. D. 229, a married woman, under a general power, appointed a fund among five persons by will, and appointed executors; the trustees paid the money into Court. Upon a petition for payment out by the appointees, it was held that the trustees ought to have paid the fund to the executors for distribution, and they were therefore ordered to pay the costs; but as the executors were the proper persons to present the petition, the trustees were relieved from so much of the costs as had been occasioned by the appointees proving their title.

A trustee who insists upon the petition being served upon unnecessary parties, will be disallowed his costs (*Re Metcalfe*, 2 De G. J. & S. 122; 3 N. R. 657).

A trustee who pays money into Court under the Act in order to prevent an action being brought against him (*Re Waring*, 21 L. J. Ch. 784; *Re Fagg*, 19 L. J. Ch. 175), and trustees who act with unreasonable caution (*Re Warwick Pearson's Trusts*, 17 W. R. 365; 20 L. T. 8; *Re Thakeham Monies*, W. N. (1871), 172), will be disallowed their costs.

On the other hand, where a trustee, having *bonâ fide* doubts as to the persons entitled to the money in his hands, pays it into Court, the Court will allow him his costs (*Re Wyllly's Trusts*, 28 Beav. 458). Thus, a trustee

Trustee insisting on unnecessary service.

Trustee paying in money to avoid an action against him.

Where trustee's costs allowed,

of a fund subject to a power of appointment, has, of course, a right to "satisfactory evidence" that no appointment has been made before paying the money to the persons entitled in default (*ibid.*). This means such evidence as a conveyancer would require; a letter from the solicitor of the donee of the power, would be quite sufficient; and trustees who are not satisfied with the ordinary evidence and in their excessive caution pay the money into Court will have to pay the costs (*Re Cull's Trusts*, 20 Eq. 561; 23 W. R. 850; 32 L. T. 853). In general a trustee who pays the money into Court, because being in failing health, or of advanced years, he wishes to be discharged (*Re Wyllly's Trusts*, 28 Beav. 458), or because he wishes to avoid being associated with a new trustee to whose appointment he objects (*Re Williams' Trusts*, 6 W. R. 218), will be allowed his costs. So when a married woman, entitled to a legacy, and her husband were abroad, and the executor declined to pay the legacy under a power of attorney, and paid it into Court, he was held to be justified in so doing, and was allowed his costs of paying it in, and of appearing on the petition to have it paid out (*Re Jones*, 3 Drew. 679). *A fortiori*, a trustee is justified in paying his money into Court when he has received actual notice of different claims thereon (*Re Headington's Trusts*, 27 L. J. Ch. 175; 6 W. R. 7), and he is not bound to decide as to the validity of such claims (*ibid.*); and see *Re Maclean*, 19 Eq. 282, where the claim was brought forward *bonâ fide* by a responsible solicitor, and supported by learned counsel. And, where a husband wished to have a sum of money which was in the hands of a trustee for his wife, settled, and a settlement was accordingly prepared, but disputes arose respecting it, and it was not executed, and the husband and wife required the trustee to pay the money to them, it was held that the trustee was justified in paying the money into Court instead, and that he was entitled to his costs (*Re Bendyshe*, 3 Jur. N. S. 727; 5 W. R. 816). Again, in *Re Brocklesby*,

29 Beav. 652, the late Master of the Rolls refused to make trustees, who had paid into Court the ascertained share of a residue belonging to a married woman, pay any costs, observing, that except on a petition there could be no affidavit of a settlement, which the Court always required. So it has been held, that where the person entitled claims by representation, the trustees will be allowed their costs, as the possibility of a disposition by the deceased person is not excluded (*Re Lane's Trusts*, 24 L. T. (O. S.) 181).

The above decisions must be regarded as somewhat *Re Birkett*. qualified by a recent decision of the Master of the Rolls, in which his Lordship said, that when it is doubtful to whom a legacy is payable the better course is not to pay it into Court under the Trustee Relief Act but to take out an administration summons, waiving accounts, simply to obtain the decision of the judge; or, after taking out such a summons, where both parties agree, to submit a statement of facts in the nature of a special case for the opinion of the judge. If the executor does pay it in he will be left to take his costs out of the residuary estate, and will not have them out of the legacy (*Re Birkett*, 9 Ch. D. 576; 47 L. J. Ch. 846; 27 W. R. 164; 39 L. T. 418).

Prior to the Judicature Act, 1873, s. 25 (6), money due on a policy of assurance could not properly be paid into Court under the Trustee Relief Act, unless it was subject to some trust (*Matthew v. Northern Assurance Co.*, 9 Ch. D. 80; 47 L. J. Ch. 562; 27 W. R. 51; 38 L. T. 468). But the objection to the jurisdiction could not be taken upon the hearing of a petition under the Act (*Re Haycock's Policy*, 1 Ch. D. 611, where the payment in having been proper in other respects the company had their costs; and see *Re Sutton's Trusts*, 12 Ch. D. 175; 48 L. J. Ch. 350; 27 W. R. 429, where a banking company paid money into Court, the payment in not being justified either by the Trustee Relief Act or the Judicature Act, and were held entitled to their costs). If the payment in were proper,

Costs where insurance monies are paid into Court.

the company would be entitled to their costs as between solicitor and client, but not to any charges and expenses (*Re Webb's Policy*, 2 Eq. 456). Now by s. 25 (6) of the Judicature Act, 1873, a debtor, trustee, or other person liable in respect of an assigned debt or chose in action, having notice that such assignment is disputed, or of any conflicting claims to such debt or chose in action, is empowered to pay it into Court under the Act; see *Re Sutton's Trusts*. A company properly paying money into Court, but appearing on the hearing of the petition and raising a question on which they fail, will lose their costs of appearance (*Re Rosier's Trusts*, W. N. (1877), 225).

Where a fund belonging to a married woman was paid into Court under the Trustee Relief Act, in order that she might have the benefit of a settlement, the trustees were allowed their costs, notwithstanding repeated expressions by her that she did not desire a settlement (*Re Swan's Settlement*, 2 H. & M. 35; 4 N. R. 53; 12 W. R. 738; which, however, V. C. Malins declined to follow in *Re Roberts' Trusts*, 17 W. R. 639; W. N. (1869) 88).

Where persons successively entitled.

In a case before V. C. Wood (*Re Eyre*, 3rd July, 1858, not reported on this point), that learned Judge expressed an opinion that wherever the fund was settled on one person for life and others in remainder, the trustee had a right to pay the money into Court. See, however, *Re Leake's Trusts*, 32 Beav. 135, where trustees who, having accepted a trust of this nature, had, without the occurrence of any change in the nature of the trust, paid the money into Court under this Act, were disallowed their costs of appearance on a petition for payment of the dividends to the tenant for life.

Where money paid to wrong account.

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

Costs of trustees on petition for stop order

Where a creditor of a party interested in a fund in Court under the Act presents a petition for a stop order

and serves the trustees, he must pay the costs (*Re Blunt's Trusts*, 10 W. R. 379); but where the neglect of the trustee to file a supplemental affidavit had made the application necessary he himself had to pay them (*Re Allen's Trusts*, 27 W. R. 529; 40 L. T. 456).

The costs allowed to a trustee will not include the costs of copies of affidavits of persons claiming beneficial interests (*Re Lazarus*, 3 K. & J. 555). And where a petition was presented by the trustees without the consent of the beneficiaries, and no cause was shown for their moving in the matter, the Court allowed them only respondent's costs (*Re Cuzneaw's Legacy*, 2 K. & J. 249; *Re Hutchinson's Trusts*, 1 Drew. & Sm. 27). See, however, *Re Trowers' Trusts*, 1 L. T. 54.

What costs allowed to trustees. Trustees petitioning only allowed respondent's costs.

In Ireland £8 is the sum ordinarily allowed for costs of payment in (*Re Boyd*, Ir. R. 1 Eq. 489). If the trustees deduct more they may get no costs of appearing on the petition (*Re Blayney's Trust*, Ir. R. 9 Eq. 413).

Costs allowed in Ireland.

It was said by V. C. Wood, in *Mountain v. Young*, 18 Jur. 770, that trustees are always justified in *not* paying money into Court, as it may turn out that there was no occasion for doing so. In a later case, the plaintiffs, who were entitled to the investment of a pecuniary legacy, had by letter requested the defendants, their trustees, one of whom was also the residuary legatee, to pay the legacy into Court under this Act, but the trustees declined to do so, and stated that they had invested the money as directed by the will, and that they did not wish to divest themselves of the trusts. The trustees by their answer objected to pay the money into Court, but at the bar admitted the plaintiffs' right to have it so paid in. It was held by V. C. Stuart that the costs of the suit, which might have been rendered unnecessary by payment of the money into Court under the Act, must be borne by the residuary fund to which one of the trustees was entitled (*Hundley v. Davies*, 28 L. J. Ch. 873). But as a rule where a trustee, who has money in his hands, instead of

Where trustee declines or omits to pay money into Court.

paying it into Court under the Act, institutes a suit to administer the fund, he will only be allowed the costs to which he would have been entitled if he had paid it in under the Act (*Wells v. Mulbon*, 31 Beav. 48): and see *Weller v. Fitz Hugh*, W. N. (1870), 144, and *Gunnell v. Whitecar*, 10 Eq. 664; 18 W. R. 883; 22 L. T. 645, where the trustee, the defendant, was ordered to pay all the costs of the suit, deducting only such costs as he would have been entitled to if he had paid the money into Court, and the costs of appearing on the petition; *secus*, where the trustee has a right to claim to be discharged from the trusts (*Barker v. Piele*, 2 Dr. & Sm. 340).

Costs of respondents.

The general rule is that all persons mentioned in the trustee's affidavit must be served. But the parties served, if they claim no interest, ought not to appear; and, if they do, will not be allowed their costs (*Re Smith*, 3 Jur. 659; *Day v. Croft*, 19 Beav. 518; and *Re Birch's Legacy*, 2 K. & J. 369; and under another Act, *Re Justices of Coventry*, 19 Beav. 158; but see *contra*, *Ex parte Queen's College*, 6 W. R. 9, where V. C. Stewart held that the case differed from that of *parties to a cause* served with a petition). So incumbrancers appearing upon a petition by a prior incumbrancer, whose debt exhausted the fund in Court, in spite of a notice by the petitioner's solicitor, that, if they appeared, the payment of their costs would be resisted, were held disentitled to costs (*Roberts v. Ball*, 24 L. J. Ch. 471). And a party, who, although not mentioned in the affidavit, makes a claim, in consequence of which he is served, but which he afterwards at the hearing of the petition withdraws, will not be allowed his costs (*Re Parry*, 12 Jur. 615). Solicitors who give notice of possible claims whereby money is paid into Court, are not proper respondents to the petition, and are entitled to their costs (*Re Provident Clerks' Association*, 18 W. R. 126; 21 L. T. 384; where, to save taxation, £3 were allowed). And see generally as to costs of unnecessary appearances, *ante*, p. 68.

The costs of paying the money *into Court*, as a general

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rule, ought to be deducted out of the general trust estate, if there be one (*Re Cawthorne*, 12 Beav. 56; *Re Jones*, 3 Drew. 679). But if there be no general residue, or if the fund paid in has been completely "severed therefrom and appropriated," they must come out of the fund itself (*Re Lorimer*, 12 Beav. 521). Such costs, if not deducted, will be ordered to be paid out of the *corpus* of the fund (*Re Sayers*, Seton, 498, 4th ed.) And see *Re Birkett*, 9 Ch. D. 576, cited *ante*, p. 317.

The costs of payment out generally come out of the fund itself (*Re Dickson*, 1 Sim. N. S. 37; *Re Ross*, *ibid.* 196; *Re Jones*, 3 Drew, 679; *Re Robertson's Trusts*, 6 W. R. 405). But as leave may be given to bring an action, which would have the effect of throwing such costs upon the general estate (*Re Sharpe*, 15 Sim. 470; *Re Feltham*, 1 K. & J. 528), so the Court can, upon petition, order the costs to be paid out of the residue (*Re Trick*, 5 Ch. 170; 39 L. J. Ch. 201; 18 W. R. 123; 21 L. T. 739; overruling *Re Bartholomew*, 13 Jur. 380; and *Re Hodgson*, 18 Jur. 786; 2 Eq. Rep. 1083). In *Re Feltham*, 1 K. & J. 533, 534, the costs of the executors who had paid the fund into Court were ordered to come out of the general residue; and see *Re Birkett*.

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

Where a *feme covert* appeared on a petition for distribution of a fund in Court under this Act, and together with her husband opposed the distribution, the Court ordered a part of the fund to which she was entitled for her separate use to be applied in payment of the costs of such opposition (*Newton v. Ricketts*, 9 H. L. C. 262; affirming *Re Ricketts*, 1 J. & H. 70).

In *Mutlow v. Mutlow*, 4 De G. & J. 539, a fund paid into Court under the Act was ordered to bear the costs of

a suit which had been instituted to administer the estate of which it formed part. On an application for payment out, the trustees will not get any costs, charges, or expenses incurred before the payment in, but only those properly incurred since : *Re Behrens*, M. R. 5 Aug., 1874, A. 2309 (Seton, p. 498).

Costs of
petition
for pay-
ment of
income.

It is now settled that upon a petition by the tenant for life for payment to him of the dividends on a fund in Court all the costs of the *petition*, both those of the tenant for life and of the trustees, are payable out of the income (*Re Marner's Trusts*, 3 Eq. 432; 36 L. J. Ch. 58; 15 W. R. 99; 15 L. T. 237; *Re Erans' Trusts*, 7 Ch. 609; 41 L. J. Ch. 512; 20 W. R. 695; 26 L. T. 815; *Re Whitton's Trusts*, 8 Eq. 352; *Re Smith's Trusts*, 9 Eq. 374; *Re Battell*, 21 W. R. 138; *Re Cameron*, Ir. R. 1 Eq. 258; *Re Muntion's Trust*, 22 L. T. 293; W. N. (1870), 106; *Re Mason's Trusts*, 12 Eq. 111); but the costs incurred by the trustee in and about and preliminary to the *payment into Court* are payable out of the *corpus* where not previously deducted (*Re Whitton's Trusts*).

"It is said that a difference ought to be made with respect to the appearance of the trustees, and that this difference has been recognised in some cases. But I think that *In re Marner's Trusts* was intended to apply to *all* the costs of the petition; and I am the more disposed to follow that construction, because the reasonable course for a tenant for life to pursue, when about to petition for payment of his income, would be to write to the trustee and tell him that he did not seek to affect the *corpus*, but only wanted his income, and therefore that there would be no occasion for the trustee to incur costs by appearing. In such a case, if the title of the tenant for life is clear, the trustee ought not to appear. I am of opinion, therefore, that in this case all the costs ought to come out of the income;" *per* James, L. J., in *Re Erans' Trusts*, 7 Ch. p. 609; see now R. S. C. (Costs), Sched., r. 17. In *Re Battell*, 21 W. R. 138, the trustees had been told that the

petition related to income only, and Wickens, V. C., said they would have no costs out of income, whatever right they might have to be paid out of capital.

In *Re Wood's Trusts*, 11 Eq. 155; *Re Gordon's Trusts*, 6 Eq. 335; and *Re Knight's Trusts*, 37 L. J. Ch. 409, the costs of the trustees relating to the petition were held to be payable out of the *corpus*; but these cases and also *Re Tanner*, 14 L. T. 589, and *Re Turnley*, 1 Ch. 152, where the tenant for life's costs came out of the *corpus*, are now overruled. Where the money was paid into Court in a suit and not under the Act, Malins, V. C., declined to follow *Re Marner* (*Scrivener v. Smith*, 8 Eq. 310; and see *Longuet v. Hockley*, 22 L. T. 198); and where an annuity was given free of duty the costs of a petition for payment thereof were given out of the surplus of the fund (*Re Apthorpe*, W. N. (1869), 84). The earlier cases were conflicting.

Where two petitions are *bonâ fide* separately prepared for obtaining payment out of Court of a sum paid in under the Trustee Relief Act, and both raise the same issue, the Court will in general allow the costs of the preparation of the second petition; but where solicitors had been informed that a petition was presented, and they persisted in presenting another for the same object, the costs of the preparation and presentation of the second petition were disallowed (*Re Chaplin's Trusts* (2), 3 N. R. 289; 33 L. J. Ch. 183).

A respondent whose unsuccessful claim was the cause of the payment into Court, will be ordered to pay the costs of an application for payment out (*Re Armston's Trusts*, 4 De G. J. & Sm. 454; 4 N. R. 450; 10 Jur. N. S. 715, where Turner, L. J., said the case must be dealt with as if a bill of interpleader had been filed by the trustees as stakeholders, in which case the unsuccessful claimant would of course have to pay the costs); and see *Re United Kingdom Assurance Co.*, 34 Beav. 493; and *Re Webb's Policy*, 2 Eq. 456.

Costs of second petition.

Costs payable by respondents.

SECT. IV.—*Costs under the Trustee Acts, 1850-2.*

Trustee
Act, 1850,
s. 51.

By the 51st section of the Trustee Act, 1850, it is enacted that "the Lord Chancellor, intrusted as aforesaid" (*i.e.*, intrusted by virtue of the Queen's sign-manual with the care of the persons and estates of lunatics), "and the Court of Chancery may order the costs and expenses of and relating to the petitions, orders, directions, conveyances, assignments and transfers to be made in pursuance of this Act, or any of them, to be paid and raised out of or from the lands or personal estate, or the rents or produce thereof, in respect of which the same respectively shall be made, or in such manner as the said Lord Chancellor or Court shall think proper." In *Ex parte Davies*, 16 Jur. 882, V. C. Parker, upon appointing a new trustee and making a vesting order under the 32nd and 34th sections of the Act, by consent ordered the new trustee to pay the costs of the proceedings, and directed that such costs, with interest thereon at £4 per cent., should form a charge on the inheritance. And see *Re Crabtree*, 14 W. R. 497, where the costs were directed to be raised by mortgage to be settled by the Court.

Costs of
application
occasioned
by lunacy,
&c., of
trustee to
be borne by
trust estate
generally.

As a general rule the costs of an application under this Act, whether occasioned by the lunacy (*Re Fulham*, 15 Jur. 69; *Ex parte Pearse*, T. & R. 325; and see *Re Lewes*, 1 M. & G. 23), infancy (*Ex parte Cunt*, 10 Ves. 554), or bankruptcy (*Ex parte Painter*, 2 Deac. & Ch. 584), of a trustee, must be borne by the trust estate or the *cestui que trust*. As a general rule the costs of such applications, being applications for the benefit of the estate generally, will be ordered to be borne by the estate generally (*Re Parby*, 29 L. T. O. S. 72; *Re Fulham*, 15 Jur. 69; *Re Fellows' Settlement*, 2 Jur. N. S. 62; and see *ante*, p. 322); but may be ordered to be borne by the petitioner (*Re Bruckenbury's Trust*, 10 Eq. 45; 22 L. T. 469).

Apportion- Where new trustees of copyholds were appointed, the

finances payable on the admission of the new trustees were ordered to be borne by the tenant for life and remaindermen in proportion to their respective interests (*Carter v. Sebright*, 26 Beav. 374). On a petition to appoint new trustees of two trust funds of different amounts, the costs were ordered to be paid rateably (*Re Grant's Trusts*, 2 J. & H. 764). As to the costs where two petitions are presented, see *Re Pring's Trusts*, 42 L. J. Ch. 473; 28 L. T. 467.

The costs of trustees served and appearing on a petition to appoint new trustees under the Act will generally be allowed as between solicitor and client (see *Turner v. Mullineux*, 9 W. R. 252; 3 L. T. 687, where a bankrupt trustee was allowed his costs as between solicitor and client). But where a trustee, on a petition to appoint new trustees, disclaimed at the bar, the Court only allowed him party and party costs (*Bulkeley v. Earl of Eglinton*, 1 Jur. N. S. 994; see *Norway v. Norway*, 2 M. & K. 278). Failing health, where the trusts are of a formal character, does not justify a trustee in presenting a petition for appointment of new trustees (*Richardson v. Grubb*, 16 W. R. 176, where the trustee had to pay all the costs).

It has been held that the Court has no jurisdiction to make a respondent trustee pay the costs of an application under the Act rendered necessary by his misconduct (*Re Primrose*, 23 Beav. 590; and see *Re Sparks*, 6 Ch. D., p. 363, *per* L. J. James). But see the remarks on the former case in *Re Woodburn's Will*, 1 De G. & J., p. 346; and see also *Re Adam's Trust*, 12 Ch. D. 634, where a bankrupt trustee who refused to retire was removed and ordered to pay the costs of the petition; *Re Wiseman's Trusts*, 18 W. R. 574; *Re Wills*, 12 W. R. 97.

The Court can, however, dismiss a petition with costs (s. 42); and may order any of the parties to any suit concerning any lands or contingent right as to which an order has been made under the Act, to pay any costs

occasioned by the order under the Act, when the same shall appear to have been improperly obtained (section 44).

Costs occasioned by infancy, &c., of mortgagee.

Where a petition is rendered necessary by the fact that the mortgagee's representative is an infant (*Ex parte Ommaney*, 10 Sim. 298), or cannot be found (*King v. Smith*, 6 Hare, 473), the costs are payable by the mortgagor.

By lunacy of mortgagee.

The practice as to the costs of a petition under the Act rendered necessary by the lunacy of a mortgagee appears to be somewhat unsettled. In *Re Jones*, 2 De G. F. & J. 554, where a petition was presented by the mortgagor for a reconveyance or vesting order, the legal estate being outstanding in the lunatic heir of the mortgagee, the costs were ordered to be paid by the mortgagor (comp. *Re Marrow*, Cr. & Ph. 142; *Re Stuart*, 4 De G. & J. 317; and *Ex parte Clay*, cited in "Shelford on Lunatics," ed. 1847, p. 510, there cited; but see *contra*, under the former Act, *Ex parte Richards*, 1 J. & W. 264; *Re Townsend*, 2 Ph. 348). Where, however, the petition is presented by the committee or other person representing the lunatic, the costs will be ordered to come out of the lunatic's estate: see *Re Wheeler*, 1 De G. M. & G. 435; *Re Biddle*, 23 L. J. Ch. 435; *Re Rowley's Legacy*, 1 N. R. 251; *Re Thomas*, 22 L. J. Ch. 858. But the mortgagor, it seems, even if served, is not entitled to his costs (*Re Phillips*, 4 Ch. 629). In *Re Thomas* the cost of the stamp imposed by the 15 & 16 Vict. c. 55 (the Trustee Act, 1852) was ordered to be borne by the mortgagor. In *Re Violl, Hawkins v. Perry*, 8 De G. M. & G. 439, the petition was presented by a purchaser under a decree for the administration of the mortgagor's estate for an order vesting in him the legal estate outstanding in a lunatic mortgagee, and a portion of the costs were ordered to be paid out of the mortgage money.

Where the mortgagee is a trustee.

Where it clearly appeared from the mortgage deed that the lunatic was only a trustee (see *Re Fulham*, 15 Jur. 69), the costs of obtaining a reconveyance under the

1 Will. IV. c. 60, the older Act, were directed to be borne by the mortgagor (*Re Leves*, 1 M. & G. 23; but see report of *Re Townsend*, 1 M. & G. 686). Where a surviving trustee mortgagee became lunatic and a petition was presented by his committee and the new trustees and not served on any one, the costs came out of the trust estate (*Re Jones*, 2 Ch. D. 70; 45 L. J. Ch. 688; 24 W. R. 377; 34 L. T. 470, where the mortgagor had no notice of the trust). Where a mortgagee became of unsound mind not so found, and the mortgagor applied for a vesting order on payment into Court of the mortgage debt, making the mortgagee a respondent, it was held that the Court had no jurisdiction to make an order for the costs to be paid out of the mortgage debt, but each party must bear his own costs (*Re Sparks*, 6 Ch. D. 361; 25 W. R. 869).

Where land is contracted to be sold, and the state of the title is such that an application to the Court becomes necessary, the costs of the application must be borne by the vendor (*Brudley v. Munton*, 16 Beav. 294; *Heard v. Cuthbert*, 1 Ir. Ch. Rep. 369), even when, by the contract, the costs of a surrender, in respect of which the application had become necessary, were to be borne by the purchaser (*Brudley v. Munton*). The fact that the sale is under the direction of the Court (*Ayles v. Cox*, 17 Beav. 584), or that a Railway Company are the purchasers (*Re South Wales Ry. Co.*, 14 Beav. 418; but see *In re Liverpool Improvement Act*, 5 Eq. 282), makes no difference. Where the sale is in lots, the costs should be paid out of the purchase-money of the particular lot as to which the order is asked, and not out of the fund in court generally (*Ayles v. Cox*).

Where a vendor dies intestate, leaving an infant heir, and an action is brought to make him a trustee under the Act, each party will be ordered to pay his own costs (*Scott v. Scott*, 11 W. R. 766; and see *Purser v. Darby*, 4 K. & J. 41; and the other cases cited, *ante*, p. 285, note).

In cases between vendor and purchaser.

Where suit necessary.

Costs where person proceeded by bill instead of petition under the Act.

Where a person, instead of proceeding under this Act to obtain the appointment of new trustees, filed a bill for that purpose, he was ordered to pay all the costs of the suit (*Thomas v. Walker*, 18 Beav. 521).

SECT. V.—*Costs under other Acts.*

Costs under 22 & 23 Vict. c. 35, s. 30.

By the 30th section of the 22 & 23 Vict., c. 35 (the Law of Property Amendment Act), which authorises any trustee, executor, or administrator, without the institution of a suit, to apply by petition to any Judge of the Court of Chancery, or by summons upon a written statement to any such Judge at chambers, for the opinion, advice, or direction of such Judge on any question respecting the management or administration of the trust property or the assets of any testator or intestate, it is provided that the costs of such application shall be in the discretion of the judge to whom the said application shall be made. As a general rule, such costs will be ordered to come out of the *corpus* of the trust property (*Re Elmore's Will*, 9 W. R. 66; 6 Jur. N. S. 1325; 3 L. T. 359; *Re Thompson's Trusts*, W. N. (1871), 190; *Re Leslie's Trusts*, 2 Ch. D. 185; *Re Lees' Trusts*, W. N. (1875), 61); and see *Re M'Veagh*, cited in *Seton on Decrees*, 491, 4th edition; *Re Elwes*, *ibid.* But where the question arose as to the application of *income*, the costs of a petition presented under the Act were ordered to be borne by the income (*Anon.*, 8 W. R. 333; 2 L. T. 71; 6 Jur. N. S. 386 (*nom. Re Spiller*); *In re T*—, 15 Ch. D. 78; see *ante*, p. 322). And in *Re Stuart* and *Re Swetannoff*, cited in *Seton*, p. 492, no order was made as to the costs of the application.

23 & 24 Vict. c. 38, G. O., Feb. 1st, 1861.

The costs of an application under the Order of 1st February, 1861, to vary an investment are generally payable out of income (*Equitable Reversionary Society v. Fuller*, 1 J. & H. 379; 30 L. J. Ch. 497; 9 W. R. 400; 4 L. T. 50); *secus*, where a petition would in any case

have been necessary (*Re Langford*, 2 J. & H. 458); and see *Bishop v. Bishop*, 9 W. R. 549; 4 L. T. 350.

By s. 34 of the Declaration of Titles Act, 1862, 25 & 26 Vict. c. 67, the Court may order costs, either as between party and party or as between solicitor and client, to be paid by and to any person, party to any proceeding under the Act, and give direction as to the fund out of which such costs shall be paid. Declaration of Titles Act, 1862.

Where a railway had been abandoned under the Railways Abandonment Acts, the costs of a petition by the depositor for the transfer out to him of the bulk of the deposit moneys were ordered to be paid out of the general assets of the company (*Re Laugharne Ry. Co.*, 12 Eq. 454; 19 W. R. 1108). Railways Abandonment Act, 1869.

By s. 55 of the National Debt Act, 1870, 33 & 34 Vict. c. 71, the Court may make such order as to the costs of petitions for re-transfer of stock and payment of dividends as to the Court seems just. All costs and expenses incurred by the Attorney-General or the Commissioners in resisting or appearing on any such petition, if not ordered by the Court to be paid out of the stock and dividends thereby claimed, are to be paid by the Commissioners out of unclaimed dividends. The practice is to order the costs of the Attorney-General and of the Commissioners to be paid by the applicant as between party and party, and to make the transfer conditional upon payment of such costs (*Ex parte Sanford*, W. N. (1867), 77; *Re Steel*, *ibid.* 282; *Ex parte Jameson*, 19 Eq. 430; *Rushworth v. Walden*, 18 W. R. 204). Formerly these costs were usually directed to be paid out of the fund (*Ex parte Holland*, 1 Ph. 379; *Ex parte Gillett*, 3 Madd. 28; *Ex parte Martin*, Jac. 55); but this form fell into disuse because parties having had funds transferred to them had evaded payment of the costs (*Re Ackland's Trusts*, 26 L. T. 418). National Debt Act, 1870.

By sec. 9 of the Vendor and Purchaser Act, 1874, 37 & 38 Vict. c. 78, the judge "shall order how and by whom Vendor and Purchaser Act, 1874.

all or any of the costs of and incident to the application shall be borne and paid."

The general rule is that the purchaser must pay the costs if he fails on a vendor's summons caused by an objection to the title (*Osborne to Rowlett*, 13 Ch. D. 774; 28 W. R. 365; *Re Waddell's Contract*, 2 Ch. D. 172; *Re Cooke's Contract*, W. N. (1877), 5). Where, however, the purchaser failed on an objection as to incumbrances, but the case was a proper one to be brought before the Court, each party had to pay his own costs of a vendor's summons (*Finch v. Jukes*, W. N. (1877), 211; and see *Re Coward and Adam's Purchase*, 20 Eq. 179; 23 W. R. 605). So where the difficulty had arisen entirely from conflicting decisions no costs were given (*Osborne to Rowlett*).

If the vendor is in the wrong his summons will be dismissed with costs (*Re Packman and Moss*, 1 Ch. D. 214; 24 W. R. 170).

Where the purchaser makes an improper requisition and takes out a summons for an order on the vendors to answer it, the summons should be dismissed with costs (*Re Ford and Hill*, 10 Ch. D. 365, where on appeal the order below was reversed and the vendors got the costs of the appeal, but apparently paid the costs below).

Land
Transfer
Act, 1875.

By s. 73 of the Land Transfer Act, 1875, 38 & 39 Vict. c. 87, provision is made for taxation and payment of costs, charges, and expenses incurred by any parties in or about any proceedings for the registration of land under the Act.

Costs
under the
Settled
Estates
Act, 1877.

By the Settled Estates Act, 1877, 40 & 41 Vict. c. 18, s. 41, it is enacted that "it shall be lawful for the Court, if it shall think fit, to order that all or any costs or expenses of all or any parties of and incident to any application under this Act shall be a charge on the hereditaments which are the subject of the application, or on any other hereditaments included in the same settlement, and subject to the same limitations; and the Court may

also direct that such costs and expenses shall be raised by sale or mortgage of a sufficient part of such hereditaments, or out of the rents or profits thereof, such costs and expenses to be taxed as the Court shall direct."

This is a simple re-enactment of 19 & 20 Vict. c. 120, s. 29. For form of order see *Seton on Decrees*, p. 1488. Trustees are allowed their costs of appearing on the petition (*Re Duke of Cleveland's Estates*, 2 L. T. 78).

Costs of trustees.

Where an order made under the Act of 1856, directing a mining lease to be settled by the judge, was amended pursuant to 27 & 28 Vict. c. 45, s. 2, the costs of the application were ordered to be paid out of the one-fourth of the rents set aside by the trustees as representing the inheritance (*Lovut v. Duke of Leeds*, 11 L. T. 442).

In *Re Tunstall's Will*, 14 L. T. 352, the costs of the application were charged upon the property, and the V. C. directed that the name of the person advancing the money necessary for the payment of the costs should be inserted in the order to save the expense of a mortgage-deed; and see *Re Hurl's Settled Estates*, 2 H. & M. 204; 13 W. R. 171; 19 L. T. 592; 11 Jur. N. S. 78, where the costs of all parties as between solicitor and client of so much of the petition as was not dismissed, together with the costs of the trustees of so much of the petition as was dismissed, were ordered to be a charge on the estate.

Costs made a charge on the estate.

Where the powers to be given are for the permanent benefit of the estate, the costs of the application come out of the *corpus* (*Wheeler v. Tootel*, 16 W. R. 273; 17 L. T. 534); if the application is solely for the benefit of the tenant for life, they come out of the income; see *Re Marner's Trusts*, 3 Eq. 432, and other cases cited, *ante*, p. 322. Where the property to be sold comprised copyholds as well as freeholds, the Court directed the copyholds to be enfranchised before the sale, and the costs of enfranchisement to be paid out of the proceeds of sale (*In re Adair's Settled Estates*, 16 Eq. 124).

Costs of proceedings for protection under s. 17.

By s. 17 the Court may sanction proceedings for the protection of any settled estate, and order the costs and expenses in relation thereto to be raised and paid by means of a sale, or mortgage of, or charge upon all or any part of the settled estate, or be raised and paid out of the rents and profits of the settled estate, or out of any moneys or investments representing moneys liable to be laid out in the purchase of hereditaments, to be settled in the same manner as the settled estate, or out of the income of such moneys or investments, or out of any accumulations of rents, profits, or income. Where proceedings have been instituted *without* the previous sanction of the Court for the protection of a settled estate, the Court, either on an application under the Law of Property Amendment Act, 22 & 23 Vict., c. 35, or under this section, may give permission to the trustees to apply moneys in their hands in defraying the costs of the tenant for life incurred in the litigation (*Re Earl de la Warr's Estates*, 16 Ch. D. 587, following *Re Lord Rivers' Estate*, *ibid.* 588 n.; *Re Twyford Abbey Estates*, 30 W. R. 268).

Scale of fees.

The fees and allowances under the Act are regulated by Orders XXIX. and XXX., which incorporate R. S. C. (Costs), Ord. VI., and Rules of Oct. 28th, 1875.

Conveyancing Act, 1881.

By s. 69 (7) of the Conveyancing Act, 1881, 44 & 45 Vict., c. 41, it is provided as follows: "The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application."

CHAPTER VI.

COSTS AFFECTING PARTICULAR PERSONS.

SECT. I.—*Costs of Assignees, Incumbrancers, &c.*

THE principles on which the Court acts in disposing of the costs of assignees and incumbrancers, as between themselves and strangers in administration actions, are also applicable to other actions in which the costs are payable out of a fund; see *ante*, p. 187, and the cases there cited. Where the costs are payable by a party to the action personally, the general rule is that incumbrancers are entitled only to add their costs to their securities against their own assignors. If the assignor is plaintiff, and the assignees defendants, the latter will not in general be entitled to have their costs over from the principal defendants who are ordered to pay the plaintiff's costs (*Topham v. Duke of Portland*, 3 N. R. 183); but in mortgage suits the mortgagee is entitled to add the costs of assignees from him to his own, see the cases cited *ante*, pp. 233, 234. In a suit to raise a legacy charged on land, the mortgagee of the devisee was not allowed costs against the legatee (*Shackleton v. Shackleton*, 2 S. & S. 242). Incumbrancers on the life estate, who are necessary parties to a suit by prior incumbrancers on the inheritance, are not allowed costs against the inheritance (*Ennis v. Brady*, 1 Dr. & Wal. 720). If the first incumbrancer is not a necessary party to a suit respecting the equity of redemption, he will not be entitled to costs out of the fund, but only against the plaintiff personally (*Laird v. Tobin*, 1 Mol. 543); *secus* if the co-defendant

Costs of particular assignees:
i. As between themselves and strangers.

raise such a case as to make the incumbrancer a necessary party (*ibid.*). In *Cockell v. Taylor*, 15 Beav. 127, which was a suit to set aside a mortgage on a reversionary interest, it was held that submortgagees had, under the circumstances, no equity against the plaintiff, and they had to pay the costs of insisting on their securities; but in *Tottenham v. Green*, 1 N. R. 466, they were allowed to add their costs of suit to their security, and see *Gomley v. Wood*, 3 J. & L. 678, and *ante*, p. 250. As to the costs of transferees of a mortgage generally, see *ante*, p. 234, *seq.* As to the costs of persons claiming under one of the parties to a partition suit, see *ante*, p. 243.

ii. As between assignor and assignee.

As to the mode in which costs are disposed of, as between assignor and assignee, see *ante*, pp. 187, 188, and ch. IV. sec. II. generally. Where the plaintiff in an administration suit mortgaged *pendente lite*, his share was carried to a separate account, and he was allowed his costs as between party and party out of it, but not his extra costs, as between solicitor and client, as against his mortgagee (*Smith v. Plummer*, 18 L. J. Ch. 456).

Costs of assignees and trustees in bankruptcy or insolvency.

There is no special right in assignees or trustees in bankruptcy or insolvency which exempts them from the ordinary rule on the subject of costs (*Pattison v. Graham*, 2 Sm. & G. 207); and they have, therefore, no better title to costs than their bankrupt or insolvent would have had (*Walker v. Molloy*, 6 Ir. Eq. R. 218; *Curr v. Henderson* 11 Beav. 415). A trustee in bankruptcy, who makes an unsuccessful application to the Court, will be ordered to pay the costs, which, if the estate is insufficient to bear them, will fall upon him personally (*Ex parte Angerstein*, 9 Ch. 479); *secus*, where the difference has arisen entirely upon the language of the Bankruptcy Act, and the trustee is right in bringing the matter before the Court (*Re Pettit's Estate*, 1 Ch. D. 478). - A trustee in liquidation who wrongly paid the costs of the debtor's solicitor in priority to those of the receiver, the estate being insufficient to pay both, was ordered to pay the costs of the

receiver out of his own pocket (*Ex parte Royle*, 20 Eq. 780; 23 W. R. 908; 33 L. T. 39). Where the assignees of the mortgagor of a share in a ship were made parties to a suit by the owners of the other share to determine a question raised by the mortgagees, they got no costs (*Green v. Briggs*, 6 Ha. 632). In a suit by the wife of a bankrupt, to administer an estate and establish the plaintiff's equity to a settlement, the assignees were allowed no costs, as the bankrupt was a debtor to the estate (*Rotherham v. Battson*, 2 Sm. & G. app. viii.). Assignees or trustees in bankruptcy brought before the Court in the course of a suit may become liable to the whole costs of the suit if they adopt it (*Whitcomb v. Minchin*, 5 Mad. 91; *Poole v. Franks*, 1 Mol. 78), although they do not resist the plaintiff's demand further than by submitting the question to the Court (*Blythe v. Granville*, 13 Sim. 190). In *Whitcomb v. Minchin*, it was held that the plaintiff should apply to the assignees to satisfy his demand or disclaim before instituting proceedings against them, but this will not hold as a general principle (see the cases cited *ante*, p. 117). Where, however, the bankrupt or insolvent would have had to pay costs, his trustees may escape without costs, if the estate has been administered, and they have no assets in their hands (*Williams v. Nixon*, 2 Beav. 472; *Edwards v. Jones*, 1 Coll. 247; *Rider v. Jones*, 2 Y. & C. C. C. 329); and in *Foxwell v. Greatorex*, 33 Beav. 345, where the assignee was entirely in the wrong, he was only ordered to pay the plaintiff's costs incurred *subsequently* to the bankruptcy. In *Collins v. Reece*, 1 Coll. 675, the trustees of a creditor's deed had to pay the costs of a bill filed by the assignee in insolvency of the debtor for an account.

As to the costs where plaintiff or defendant becomes bankrupt, see further, p. 341; and as to the costs of the trustees of a bankrupt executor, see *ante*, p. 188.

SECT. II.—*Costs of Attorney-General, Crown, &c.*

Stat. 18 & 19 Vict. c. 90, sec. 1. By Statute 18 & 19 Vict., c. 90, sec. 1, it is enacted as follows:—

“In all informations, actions, suits, and other legal proceedings to be hereafter instituted before any court or tribunal whatever in the United Kingdom, by or on behalf of the Crown, against any corporation, or person, or persons in respect of any lands, tenements, or hereditaments, or of any goods or chattels belonging or accruing to the Crown, the proceeds whereof, or the rents and profits of which said lands, &c., by any Act now in force, or hereafter to be passed, are to be carried to the Consolidated Fund of Great Britain and Ireland, or in respect of any sum or sums of money due and owing to Her Majesty by virtue of any vote of Parliament relating to the public revenue, Her Majesty’s Attorney-General, or in Scotland the Lord Advocate, shall be entitled to recover costs for and on behalf of Her Majesty where judgment shall be for the Crown in the same manner and under the same rules, regulations, and provisions as are or may be in force touching the payment or receipt of costs in proceedings between subject and subject, and such costs shall be paid into the Exchequer and shall become part of the Consolidated Fund.

Sec. 2.

“2. If in any such information, action, suit, or other legal proceedings judgment shall be given against the Crown, the defendant or defendants shall be entitled to recover costs in like manner and subject to the same rules and provisions as though such proceedings had been had between subject and subject; and it shall be lawful for the Commissioners of Her Majesty’s Treasury, and they are hereby required, to pay such costs out of any monies which may be hereafter voted by Parliament for that purpose.”

See *Attorney General v. Hanmer*, 4 De G. & J. 205; 5 Jur. N. S. 693; and see also *Attorney General v. Sittingbourne Ry. Co.*, 1 Eq. 636; 35 Beav. 268, where a petition was dismissed with costs as against the Crown. As to the form of the order for payment of costs to or by the Crown, see Seton, 556.

It will be observed that the Act does not apply either where the Attorney General is a defendant, or where he sues on behalf of a charity. In the latter case, the rule still applies that the Attorney General cannot be made to pay costs where he sues without a relator (*Attorney General v. Dean and Canons of Windsor*, 8 H. L. C. 369, 404; *Attorney General v. Lord Chesterfield*, 18 Jur. 686). But he may receive costs; and it seems the Court will be more inclined to give costs in a charity suit than when the Attorney General is suing on behalf of a claim by the Crown (*Attorney General v. Ashburnham*, 1 S. & S. 394; and see *Perkins v. Bradley*, 1 Ha. 219). In the case of successful proceedings with respect to charities, he is entitled to costs as between solicitor and client (*Moggridge v. Thackwell*, 1 Ves. Jun. 475; 7 Ves. 36; 13 Ves. 416; *Mills v. Farmer*, 19 Ves. 490; 1 Mer. 104). A summons by the Attorney General in the matter of a charity for an order for taxation and payment of his costs relating to the charity, not being costs in the matter, must state the matters in respect of which payment of such costs is desired (*Re Dulwich College*, 15 Eq. 294; 21 W. R. 519).

The Act does not apply to *ex officio* charity suits.

If the Attorney General is made a party to a suit in respect of a share in an estate or fund claimed by the Crown, he may have costs out of the estate or fund if there is something coming to the Crown, but not otherwise: see *Perkins v. Bradley*, 1 Ha. 219, where the Attorney General unsuccessfully claimed an interest in the share of a felon against purchasers for value; *Murphy v. Osborne*, 9 Ir. Eq. R. 254, where the Attorney General was made a defendant in respect of a charge vested in a

Where the Attorney General is defendant to a suit.

deceased bastard, and nothing was found due on the charge. In *Kitchener v. Kitchener*, 13 Jur. 761, the costs of the Attorney General, made a defendant in respect of a reversionary interest belonging to a felon, were not provided for by the decree, as the right would not arise till the reversion fell into possession; see now 33 & 34 Vict., c. 23, abolishing forfeiture for treason and felony, but not affecting forfeiture consequent upon outlawry. The Attorney General made defendant to a legatee's bill and supporting the plaintiff, whose bill was dismissed, did not receive any costs (*Corporation of Gloucester v. Wood*, 3 Ha. 149). And the Crown will not be entitled to the costs of the Attorney General's appearance, in a suit, to which he is not a party, to argue a question as to legacy duty, if the claim is unsuccessful (*Hobson v. Neale*, 17 Beav. 178); or as to the right of a convict to a share of personal estate (*Gough v. Davies*, 4 W. R. 757). Where a petition under Romilly's Act for the alteration of a scheme was dismissed, the costs of the Attorney General opposing, as between solicitor and client, were given out of the fund (*Attorney General v. Stewart*, 14 Eq. 17). Where the interest in respect of which the Attorney General is made a party is of such a nature that the Court would ordinarily allow three counsel, two counsel will be allowed besides the Attorney General (*Cockburn v. Raphael*, 12 L. J. Ch. 263).

Costs of
the
Solicitor to
the Treas-
ury as
adminis-
trator on
behalf of
the Crown.

Where the Solicitor to the Treasury has taken out administration, as nominee of the Crown, to a deceased person, he is in the same position as any other administrator, and will be entitled to his costs, charges, and expenses accordingly (*Partington v. Reynolds*, 6 W. R. 615). But if he appeals against a decree finding certain persons to be next of kin he cannot have costs, as the appeal is in respect of the beneficial interest of the Crown, and not his legal title as administrator (*ibid.*). And so, if the letters of administration have been revoked before a suit by the next of kin to recover property in the hands of the Solicitor to the Treasury, he cannot have costs (*Kane v.*

Reynolds, 4 De G. M. & G. 565). The Solicitor to the Treasury is now a Corporation Sole (39 & 40 Vict., c. 18, s. 1).

By Statute 23 & 24 Vict., c. 34, s. 11, it is enacted, that upon any such petition of right, as mentioned in the Act, the Attorney General or other person appearing on behalf of Her Majesty shall be entitled to recover costs against the suppliant in the same manner as in proceedings between subject and subject, with the same remedies for recovering the same.

And by section 12 it is enacted, that the suppliant shall in like manner be entitled to costs against the Crown.

And by sections 13, 14, & 15, arrangements are made for the mode of paying the costs incurred by the Crown.

SECT. III.—*Costs of the Bank of England.*

With respect to the transfer of the public stocks, the Bank occupies a quasi-fiduciary position (*Howard v. Bank of England*, 19 Eq. 295), and will, in many cases, be allowed the costs of an action to compel a transfer of stock, which the Bank has refused to permit without the direction of the Court. In *Pearson v. Bank of England*, 2 Bro. C. C. 529; 2 Cox, 175, the tenant for life of stock bought the reversion, and the Bank having refused to transfer it upon a joint memorial, a transfer was directed with costs to the Bank; and see *Austin v. Bank of England*, 8 Ves. 522; *Marryatt v. Bank of England*, *ibid.* 524, n.; *Aynsworth v. Bank of England*, *ibid.*; *King of Hanover v. Bank of England*, 8 Eq. 350. So where the Bank refused to pay dividends without the direction of the Court, on account of a doubt as to the construction of a statute, they were allowed costs, though the decree was against them (*Bristed v. Wilkins*, 3 Ha. 235). 'It is a

question of the greatest nicety, and one requiring to be settled for the protection of the public at large. The property in question is consols, as to which the Bank are public trustees. If it had been Bank stock, which is their own property, a different question might have arisen. As it is, I cannot possibly say that the Bank ought to pay costs' (*per* V. C. Wood, *Bathe v. Bank of England*, 4 K. & J. 564). In that case, which was a suit by a married woman with an order of protection under the Divorce Act, to compel a transfer of stock to which she was entitled as administratrix, a transfer was directed, but the parties being in poor circumstances no costs were given to the Bank. However, in *Franklin v. Bank of England*, 1 Russ. 575, where the Bank refused to permit an executor to transfer a sum of stock specifically bequeathed, it was held that the legacy was not good without the assent of the executor, and therefore he, not having yet assented to it, might transfer the stock, and the Bank had to pay the costs of the suit; and see *Bank of England v. Parsons*, 5 Ves. 668.

No costs given.

Where the bank paid costs.

Costs of the bank unnecessarily made parties.

If the Bank are made parties to a suit in a case where the required relief against them might have been had under Statute 40 Geo. III., c. 36 (enabling the Court to restrain the Bank though not parties to the suit), they will be dismissed with costs (*Edridge v. Edridge*, 3 Mad. 386). But, it seems, a demurrer would not lie in such a case (*Temple v. Bank of England*, 6 Ves. 770). If they are made parties merely for the purpose of discovery as to the amount of stock belonging to the testator a demurrer will lie (*Saunders v. Saunders*, 3 Drew. 387); or if brought to the hearing the Bank will be dismissed with costs, but as between party and party only (*De Combe v. De Combe*, 3 Jur. N. S. 712).

The costs of the bank disobeying an order

In *Ex parte Winter*, 5 Russ. 286, the Bank was held to be entitled to disobey an order under Statute 6 Geo. IV., c. 74 (the old Trustee Act), as made on an insufficient statement of fact, and were allowed the costs of

successfully arguing the point; and see *Re King*, 10 Sim. 605. made by the Court *ultra vires*.

Where the Bank were made parties to a suit to determine the right to a specific legacy of stock, they were allowed costs out of the legacy only, the costs of all other parties coming out of the general personal estate (*Hammond v. Neame*, 1 Swans. 35; and see *Skrymsler v. Northcote*, *ibid.* 566, 573). Out of what fund costs are given to the bank.

Where the Bank is successful, of course it will have costs (*Prosser v. Bank of England*, 13 Eq. 611).

SECT. IV.—*Costs of Bankrupts.*

Where a certificated bankrupt was made a party to a suit in respect of a claim against himself and his partners accruing before the bankruptcy, he was held entitled to have his costs from the plaintiff (*Pannell v. Hurley*, 2 Coll. 241). But in *Gregory v. Bessell*, 6 Mad. 186, a bankrupt who had been guilty of fraudulent conduct was dismissed without costs. A bankrupt made a defendant to a suit to determine the respective rights of his wife and his trustee, will be allowed his costs, although he is a debtor to the estate (*Rotherham v. Battson*, 2 Sm. & G. app. viii.), and in *Green v. Otte*, 2 L. J. Ch. (O. S.) 123, they were allowed as between solicitor and client. Where the bankrupt has become so before suit.

If a sole plaintiff becomes bankrupt in the course of a suit, his trustee in bankruptcy may, if he please, go on with the suit; and in that case he becomes liable to the costs of the suit from its commencement. If the trustee take no step in the matter, the action may be dismissed with costs for want of prosecution, on the defendant undertaking not to enforce the order against the plaintiff personally but only against his estate in bankruptcy (*Wright v. Swindon Ry. Co.*, W. N. (1876), 296; *Abbotson* Where a sole plaintiff becomes bankrupt in the course of the suit.

v. *Gregg*, W. N. (1871), 2; 19 W. R. 340; 23 L. T. 796; *Daniel v. Harding*, 1 Y. & C. C. C. 436).

If the suit is brought to a hearing after the sole plaintiff has become bankrupt and is then dismissed, the dismissal will be without costs; see *Boucicault v. Delafield*, 12 W. R. 1025; 4 N. R. 476, where the plaintiff became bankrupt after the hearing of the cause, but before judgment was given; but see the other way, *Smith v. Fry*, 1 Dick. 288; unless vexatious conduct or fraud is proved against the bankrupt, in which case he may be ordered at the hearing to pay costs personally (*Lock v. Bromley*, 3 Ves. 40; and see the observations of V. C. Wood in *Boucicault v. Delafield*). An order for the payment of the costs of the defendant to a suit for discovery, however, is regular, though the plaintiff has become a bankrupt (*Hibberson v. Fielding*, 2 S. & S. 371).

Where a
defendant
becomes
bankrupt.

A defendant who has become a bankrupt or insolvent may nevertheless dismiss the suit with costs for want of prosecution (see *ante*, p. 81, and the cases there cited). And the Court would not at the instance of the assignees order the plaintiffs to file a supplemental bill, or in default have their bill dismissed (*Manson v. Burton*, 1 Col. 626).

In a recent case where a sole defendant became bankrupt the Court declined to add his trustee as a defendant under R.S.C. Ord. L, r. 2, the plaintiff's claim being a mere money demand, or to make any order as to the plaintiff's costs up to the bankruptcy, which were consequently lost (*Barter v. Dubeux*, (C. A.) 50 L. J. 527; 29 W. R. 622; 44 L. T. 596).

Costs of a
bankrupt
executor
or trustee.

A bankrupt executor or trustee, however, will be entitled to his costs of suit in the usual form, whether the bankruptcy has occurred before the suit (*Cotton v. Clark*, 16 Beav. 134); or after it (*Samuel v. Jones*, 2 Ha. 246; *Turner v. Mullineux*, 9 W. R. 252); and see *Bowyer v. Griffin*, 9 Eq. 340; 18 W. R. 227, where *Turner v. Mullineux* is treated as conclusive. If a balance is found due from the bankrupt to the estate, it may be set off against his costs

up to the bankruptcy, but not against his subsequent costs (see *ante*, p. 190).^X So a bankrupt trustee is entitled to his costs of appearance on a petition for the appointment of new trustees (*Turner v. Mullineux*). <sup>* Lewis v. Trask
WN [1882] 6 G. 532
Clare v. Clare ib. 72</sup>

Costs ordered to be paid, but not taxed before the bankruptcy of the person to receive them, cannot be set off in bankruptcy against a debt due from the party to pay them (*Ex parte Rhodes*, 15 Ves. 539).

SECT. V.—*Costs of Guardian ad Litem.*

‘Where the Court appoints one of the solicitors of the Court to be guardian *ad litem* of an infant or person of unsound mind, the Court may direct that the costs to be incurred in performance of the duties of such office shall be borne and paid either by the parties, or some or one of the parties to the suit in which such appointment is made, or out of any fund in court in which such infant or person of unsound mind may be interested, and may give directions for the repayment or allowance of such costs as the justice and circumstances of the case may require’ (Cons. Ord. XL, r. 4). <sup>Order as to
costs of
guardian
ad litem.</sup>

Except in cases of gross misconduct the guardian *ad litem* of an infant will not be ordered to pay the costs of an unsuccessful defence (*Morgan v. Morgan*, 11 Jur. N. S. 233; 12 L. T. 199). <sup>Costs of
unsuccessful
defence.</sup>

Where the solicitor to the Suitors’ Fee Fund is appointed guardian to a defendant who is an infant, or of unsound mind, at the instance of the plaintiff, it is the settled rule that the plaintiff shall pay his costs in the first instance, and add them to his own (*Fraser v. Thompson*, 4 De G. & J. 659; *Newbury v. Marten*, 15 Jur. 166); although it is a foreclosure suit, and the security is insufficient (*Harris v. Hamlyn*, 3 De G. & S. 470). But in a partition suit, the guardian’s costs were ultimately charged on the infant’s share (*Robinson v. Aston*, 9 Jur. 224; and see <sup>Where
guardian is
appointed
at plain-
tiff’s in-
stance, he
pays the
costs, but
may have
them over.</sup>

Robey v. Whitewood, there cited). Where a guardian was appointed at the plaintiff's instance to a defendant alleged to be, but who was not really, an infant, the plaintiff bore the costs (*Green v. Badley*, 7 Beav. 271). The Court, however, has no jurisdiction to order the costs of a defendant to whom the solicitor to the Suitors' Fee Fund is appointed guardian to be paid out of the suitors' fund (*Fraser v. Thompson*, 4 De G. & J. 659).

Where a person of unsound mind recovers *pendente lite*.

Where a person of unsound mind, to whom a guardian *ad litem* had been appointed at the instance of the plaintiff, recovered before the hearing and applied for leave to appear by his own solicitor, it was held that he must pay the costs of the guardian before obtaining an order to substitute his own solicitor, but might add such costs to his own costs of suit (*Frampton v. Webb*, 2 N. R. 547; 11 W. R. 1018); and see *Blyth v. Green*, W. N. (1876), 214.

The solicitor to the Suitors' Fund appearing in different capacities entitled to full costs in each.

Where the solicitor to the Suitors' Fee Fund is appointed guardian *ad litem* to an infant defendant, and also appears for other parties defending *in forma pauperis*, he will be entitled to his full costs in each case, notwithstanding the rule in *Re Colquhoun*, 5 De G. M. & G. 35, *ante*, p. 127, which was held not to apply (*Fraser v. Thompson*, 1 Giff. 337).

SECT. VI.—*Costs of Heir at law and Next of kin.*

Costs of heir at law, as between himself and devisee.

In *Berney v. Eyre*, 3 Atk. 387, Lord Hardwicke is stated to have 'laid down the following general rules:— that if a devisee bring a bill merely *in perpetuam rei memoriam*, and the heir at law does nothing more than cross-examine the witnesses who are produced to confirm the will, he is entitled to his costs. If he examines witnesses to encounter the will, he shall not have his costs. This is where the bill does not pray relief, or is not brought to a hearing. But when the cause is brought to a hearing, if the heir at law has an issue directed to try the will, and

the will is established, as he has a right to be satisfied how he is disinherited, he shall have his costs. If he sets up insanity or any other disability against the person who makes the will, and fails, he shall not have his costs. But it must be a very strong case which will induce the Court to give costs against him, as spoliation or secreting the will. I should' (said Lord Hardwicke, with reference to the particular case before him) 'have decreed the defendant, the heir, his costs, notwithstanding one witness has sworn positively to an attempt of concealing the will, because it is as positively denied by the defendant's answer, but then it appears likewise that after the heir was informed that the will was in the hands of a particular person, he went and took out administration upon the oath usual on those occasions, without ever making any enquiry after the person whom he was informed by letter had the will in his custody. This is such an improper behaviour in the heir that I will not give him his costs.'

With regard to the first point mentioned by Lord Hardwicke, the costs of the heir in a suit to perpetuate testimony to the will merely, see *ante*, p. 215, *seq.*, and the cases there cited. The heir will be entitled to his costs from the plaintiff, though he refuses to release his right (*Angell v. Brown*, 2 P. W. 285, n.)

The rules above stated with respect to the costs of the heir, where the will is established against him, are followed generally, though subject to some modification. Where the heir is defendant he will be entitled to his costs from the plaintiff, both at law and in equity, though an issue *devisavit vel non* is granted at his request and found against him, if he has not been vexatious or guilty of tampering with the will (*Blinkehorn v. Feast*, 1 Dick. 153; and see *Boson v. Boson*, *ibid.* 300; *Johnson v. Gardiner*, *ibid.* 313; *Gough v. Botewel*, *ibid.* 396; *Crew v. Jolliff*, Prec. Ch. 93; *Tucker v. Sanger*, M'Clel. & Y. 425; 13 Pr. 607; *Wright v. Wright*, 5 Sim. 449); and he is entitled to examine witnesses on his own behalf (*Tuthill v.*

In suits to perpetuate testimony to the will merely.

Where the will is established against the heir:—
i. As defendant; general rule.

Scott, 2 Moll. 468 ; notwithstanding the dictum in *M'Clel. & Y.* 445). 'The Court does not consider the heir bound to litigate with his hands tied ; and he is at liberty to raise any questions before the Court which may be fairly necessary to determine the validity of the will' (*per* V. C. Parker, *Grove v. Young*, 5 De G. & S. 38).

The heir not deprived of costs as of course, where he alleges insanity, and fails.

It seems at one time to have been held that, if the heir set up a case of insanity or incompetence in the testator, and failed, he could not have costs (see *Berney v. Eyre* ; *White v. Wilson*, 13 Ves. 87 ; *Smith v. Dearmer*, 3 Yo. & J. 278). But the rule now followed appears to be, that even in this case the heir will not be deprived of his costs, unless the defence was made without any proper or just grounds (*Waters v. Waters*, 2 W. R. 642, and see 1 K. & J. 759 ; *Roberts v. Kerlake*, 1 K. & J. 751 ; and see *Grove v. Young*, 5 De G. & S. 38, though this case is differently reported on this point in 15 Jur. 1100). In *Webb v. Claverden*, 2 Atk. 424, Lord Hardwicke himself is reported to have said, that even where insanity is alleged, the Court 'very often allows the heir his costs.' Whether the defence is a proper one to make will of course depend upon the circumstances of each particular case. In *Waters v. Waters*, 2 W. R. 642, the heir was allowed his costs. In *Roberts v. Kerlake*, on the other hand, V. C. Wood refused costs, because the heir lived in the neighbourhood of the testator, who was subject to fits of delirium, and knew of all the circumstances on which the testator's sanity was established when the will was made. The Vice-Chancellor there suggested, as a test of the propriety of the proceedings, the consideration whether the Court would antecedently sanction such risk being incurred on behalf of an infant. Again in *Grove v. Young*, where the heir adduced voluminous evidence of the testator's incompetence in the suit, but declined to raise the question in an action which was directed for the purpose of trying the will, the Court gave no costs at law or in equity generally, but made the defendant pay the costs of

the useless evidence. But it must be a very exceptional case in which costs will be given against the heir. In *White v. Wilson*, 13 Ves. 87, the heir (in the language of Lord Erskine) 'wickedly and fraudulently contested this will,' but the Court gave no costs of the issue, made the defendant pay the costs of a motion for a new trial, and gave him the costs in equity.

The circumstance that the heir was a party to previous judicial proceedings in which the validity of the will was upheld, will be a reason for refusing him costs—as where the will as to personalty had been previously established in the Ecclesiastical Court against the heir as one of the next of kin (*Stacey v. Spratley*, 4 De G. & J. 199); or where the heir had previously brought an action of ejectment and failed (*Grove v. Young*, 5 De G. & S. 38). Where a person was made defendant to a bill to establish a devise of gavelkind lands as sole heir of the testator, and admitted his title, but it was afterwards discovered that his elder brother had left children, the original defendant having in his answer to a supplemental bill admitted his knowledge of the fact, but alleged ignorance of the law, was refused costs both at law and in equity (*Roberts v. Scoones*, 7 Sim. 418). In *Man v. Ricketts*, 7 Beav. 93, the heir at law, who was also a trustee under the will, having in a suit against him by the assignees of a *cestui que trust* for an account, disputed the validity of the will after twenty years' acquiescence, was refused an issue, and had to pay the costs of the suit up to the hearing; and see S. C. on appeal, *sub nom. Turquand v. Ricketts*, 1 H. L. C. 472.

An heir at law and executor who elects to take real estate in Scotland, in opposition to a will under which he would be entitled to a legacy, is entitled to his costs out of the personal estate, except the extra costs caused by his election (*Harrison v. Harrison*, 8 Ch. 342; 42 L. J. Ch. 495; 21 W. R. 490; 28 L. T. 545).

But where the heir at law has been guilty of spoliation

What other circumstances will deprive the heir of costs.

Where the

heir has
been guilty
of spolia-
tion, he
pays costs.

or tampering with the will, he will have to pay the costs of establishing it, as laid down by Lord Hardwicke in *Berney v. Eyre*, 3 Atk. 387; and see *Williams v. Williams*, 33 Beav. 306; 3 N. R. 100; 12 W. R. 140. And that will be so, although the costs are not increased by his misconduct (see *Middleton v. Middleton*, 5 De G. & S. 656, where the heir tore the will to pieces, which were put together again, and the will was proved in that shape). In *Marriott v. Marriott*, 12 W. R. 303, the heir burnt a writing which was supposed to be a valid will, but which turned out to be a nullity, and in a suit by the devisee to establish this document as a will, or in the alternative an earlier one—which was ultimately established—the heir having admitted the destruction of the second document, and also a copy of it, had no costs up to the hearing, but had his costs of the issue and his subsequent costs.

ii. Where
the heir
is plaintiff.

Where the heir at law instituted a suit to set aside a will, in a case in which he might have proceeded by ejectment, and failed, he was ordered to pay all the costs occasioned by his controverting the will (*Webb v. Claverden*, 2 Atk. 424; and see *Johnson v. Gardiner*, 1 Dick. 313; *Gough v. Botevel*, *ibid.* 396; *Blinkehorn v. Feast*, *ibid.* 153; *Seal v. Bownton*, 3 Bro. C. C. 214; *Tuthill v. Scott*, 2 Moll. 468). But where an outstanding legal estate, as to all or any part only of the lands, prevented ejectment being brought, and it was otherwise a reasonable case for investigation, the bill was dismissed without costs generally, but the heir paid the costs of the issue (*Tatham v. Wright*, 2 R. & M. 1, 31; *Scuife v. Scuife*, 4 Russ. 309). In *Swinfen v. Swinfen*, 27 Beav. 148, 167, where the heir disputed the will on the grounds of incompetency and fraud, but for anything that appears might have brought ejectment, no costs were given of the first trial, which ended in an ineffectual compromise through the mistake of all parties, but the heir had to pay the costs of the second trial, in which the jury found in favour of the will, and the costs

of an unsuccessful motion for a new trial, and the bill was then dismissed without further costs. Where the heir at law filed a bill against the devisee and executor impeaching the validity of the will, and an issue was directed which resulted in the validity of the will being established, the bill was dismissed without costs as regarded the devisee, and the plaintiff paid the costs of the executor (*Banks v. Goodfellow*, 11 Eq. 472; and see *Cowgill v. Rhodes*, 33 Beav. 310).

So, where the heir, instead of bringing ejectment, filed a bill for discovery of the deeds by which he was disinherited, he had to pay the costs of the suit (*Lurton v. Stephens*, 3 P. W. 373). But in *Leman v. Alie*, 1 Amb. 163, a similar bill was dismissed without costs, with a direction that, if the plaintiff should further molest the defendants, they should be at liberty to apply for costs, and it was said that an heir at law contending for the inheritance on reasonable grounds, should not pay costs; and see *Stephens v. Trueman*, 1 Ves. Sen. 73. But 'in modern times the inclination of the Court has been to place the heir at law in the same situation as other parties' (*per Sir J. Romilly, M. R., Swinfen v. Swinfen*).

Where, however, the question between the heir and devisee is one of construction only, it would seem that on the principles stated, *ante*, p. 96, *seq.*, the heir at law, though unsuccessful, should not pay costs, or may have them out of the estate; and see *Yates v. Compton*, 2 P. W. 308; *Rashley v. Masters*, 1 Ves. Junr. 201. So a bill by next of kin, claiming the surplus against the executors, was dismissed without costs (*Blinkhorn v. Feast*, 2 Ves. 27).

But where the question was whether a particular house passed by the devise, and the heir failed at the trial of an action at law to prove a material fact alleged in the suit, and but for which the action would not have been directed, he had to bear the costs occasioned by the trial of the action (*Newton v. Lucas*, 1 My. & C. 393). In a suit upon the construction of will the heir at law was ordered

Present inclination of the Courts not to show special favour to the heir.

Where the question between the heir and devisee is one of construction. Next of kin.

to be made a party, which was done, and the V. C. decided that he was entitled to the residue. The Court of Appeal reversed this decision, and their judgment was substantially affirmed by the House of Lords, but under the circumstances the heir was allowed his costs both in the court below and in the appeal (*Singleton v. Tomlinson*, 3 App. Cas. 404).

Costs of
heir and
next of
kin in
charity
cases.

In charity cases the heir at law, if he makes no improper point, will, though unsuccessful, be entitled to his costs (*Currie v. Pye*, 17 Ves. 462; *Whicker v. Hume*, 14 Beav. 528); and generally they will be allowed as between solicitor and client (*Currie v. Pye*; *James v. James*, 11 Beav. 397; *Lewis v. Allenby*, 18 W. R. 1127; W. N. (1870), 213), but not, it seems, as of right (*Whicker v. Hume*; and see *ante*, p. 206). So as to the costs of next of kin (*Carter v. Green*, 3 K. & J. 608; *Gaffney v. Herey*, 1 Dr. & Wal. 25; but see *Wilkinson v. Barber*, 14 Eq. 96, where the M. R. decided to follow *Carter v. Green*). In *Attorney General v. Haberdashers' Company*, 4 Bro. C. C. 177, S. C. *Beames*, app. 18, the heir at law having come in under an enquiry in a charity information, and in a supplemental information filed against him unsuccessfully claimed the increased rents of the charity estate, was allowed his costs out of the estate as between solicitor and client, including those which he 'had been put to previously to the time of being made a party to the suit in proving himself such heir at law.' And in other cases the heir at law has been allowed his costs, charges, and expenses (*per* Lord Langdale, M. R., *Attorney General v. Kerr*, 4 Beav. 297, 299).

Costs of
next of
kin and
heir in-
adminis-
tration
suits.

The costs of the heir at law and all other parties to a successful suit to set aside deeds as not duly executed and enrolled will be paid out of the estate (*Wickham v. Marquis of Bath*, 1 Eq. 17; 35 L. J. Ch. 5; 11 Jur. N. S. 988; 14 W. R. 21; 13 L. T. 313). As to the costs of next of kin proving their title in Chambers in an administration suit, see *ante*, p. 186. In *Swift v.*

Swift, 1 De G. F. & J. 160, the testator's heiress at law, who had come in under the decree in a next of kin's suit, was allowed the costs of proving her pedigree, as well as her general costs; and see *Att. Gen. v. Haberdashers' Company*, cited above, and the MS. cases therein referred to. In *Bland v. Daniell*, W. N. (1867), 169, the costs of the enquiry for the heir at law as between solicitor and client were given him out of the real estate.

Where an heir at law, plaintiff, was put to prove his pedigree, and it appeared that the evidence, which satisfied the Court, was submitted to the defendants before suit, the plaintiff had costs against them, though trustees, personally (*Lancashire v. Lancashire*, 1 De G. & S. 288).

Where the real estate of an intestate has been exhausted by his creditors, the heir at law, being in the position of a trustee, will be allowed costs, and as between solicitor and client, whether as defendant (*Turdrew v. Howell*, 2 Giff. 530), or as plaintiff (*Shittler v. Shittler*, 4 N. R. 475). In *Hoddel v. Pugh*, 12 W. R. 782, which was a suit for specific performance by the executor of a deceased vendor, the heir at law having refused to convey had to pay the costs of the suit. As to the costs of an infant heir at law in a suit for specific performance of his ancestor's contract, see *ante*, p. 261, *seq.*

Where the heir at law is in the position of a trustee.

The heir at law of a deceased purchaser is not entitled to have the costs of the conveyance of real estate contracted to be purchased, which has descended on him, paid out of the personal estate (*Waite v. Burnes*, C. P. C. 502).

Heir of deceased purchaser not entitled to costs of conveyance.

A disclaiming heir in a foreclosure suit is in the same position with regard to costs as any other disclaiming defendant (*Gray v. Adamson*, 35 Beav. 383).

Disclaiming heir.

SECT. VII.—*Costs of Infants and their next Friends.*

Any person is at liberty to institute proceedings in the name of an infant, as his next friend (Mitf. Pl. 25; R.S.C. Costs as between the next

friend of
an infant
plaintiff
and the
defend-
ants.

Ord. XVI. r. 8); but by so doing he renders himself liable to the defendants for all the costs of the suit, including those of any interlocutory proceedings in it taken on behalf of the infant plaintiff (*Jones v. Lewis*, 1 De G. & S. 245; and cf. *Buckton v. Buckton*, 2 Dick. 794; *Roddam v. Hetherington*, 5 Ves. 91). As between the next friend and the defendants, the former is in the same position with respect to costs as any adult plaintiff, and the action will, in a proper case, be dismissed with costs payable by the next friend. See *Frank v. Mainwaring*, 4 Beav. 37, where a bill was filed in the name of an infant, under the sanction of a Master, to set aside certain deeds alleged to have been executed by a settlor when a lunatic, and a jury having found in favour of the deeds, the bill was dismissed with costs: and see also *Bartlett v. Wood*, 9 W. R. 817, as to the costs occasioned by unproven charges of misconduct made in an infant's bill. In *Walters v. Woodbridge*, 7 Ch. D. 504, where a bill imputing misconduct to a trustee was dismissed with costs which the next friend was unable to pay, the trustee's costs were allowed out of the trust estate. Where two out of three infant plaintiffs had attained twenty-one before decree and had adopted the proceedings, and a decree was made for payment of costs by the plaintiffs generally, it was held that an attachment against the next friend alone was not irregular (*Purcell v. Woodley*, 5 Ir. Eq. R. 376). If, however, the infant dies before the taxation of costs ordered to be paid by the next friend, it is said that the next friend cannot be proceeded against for them, and the costs are lost (*Morgan v. Compton*, Bunb. 332).

Costs as
between
the infant
and the
next
friend.

But as between the next friend and the infant, the former, though *primâ facie* liable for the infant's solicitor's bill of costs as well as those of the other side (*Re Flower*, 19 W. R. 578), will be entitled to the costs of a suit properly instituted for the infant's benefit (*Dunn v. Dunn*, 3 Drew. 17); even though unsuccessful, see *Taner v. Irie*,

2 Ves. 467, where the bill, which was filed with a Master's sanction, had been dismissed with costs. And in general the next friend's costs will be allowed as between solicitor and client (*Brown v. Weatherhead*, 4 Ha. 122); but not, it seems, as a matter of right (see *Osborne v. Denne*, 7 Ves. 424, where the extra costs were refused). The extra charges and expenses beyond taxed costs might also, it has been said, be allowed to the next friend under the head of 'just allowances' (*Fearn v. Young*, 10 Ves. 184). And in *Palmer v. Jones*, 22 W. R. 909, Jessel, M. R., directed the costs, charges, and expenses of the next friend properly incurred before suit with reference to the institution thereof to be paid out of a fund in Court recovered in the suit.

The Court may provide for the next friend's costs out of any funds under its control in the suit, but it will not give the next friend a charge for his costs on an estate recovered in the suit; see *Bonser v. Bradshaw*, 9 W. R. 229; 7 Jur. N. S. 231; 30 L. J. Ch. 159, where the defendants, who had been ordered to pay the costs, had absconded, and the purchase monies of part of the estate recovered having been paid into Court by a railway company, the Court on petition, ordered those monies to be applied *pro tanto* in payment of the next friend's costs, but declined to make any order as to the residue. *Seem* the Statute 23 & 24 Viet. c. 127, s. 28, does not apply to the costs of a next friend, so as to give him any charge on the estate or funds recovered (*ibid.*); and the Court will not hear an application by the next friend's solicitor to charge the estate with his costs, unless it is substantially opposed on behalf of the infant (S. C. 10 W. R. 481). But the solicitor's application was ultimately granted after the plaintiff came of age (S. C. 4 Giff. 260). And in *Pritchard v. Roberts*, 17 Eq. 222, the costs of proceedings under the Declaration of Titles Act on behalf of an infant, together with the costs of a partition suit, and a suit to obtain a declaration of lien, were held to be costs

The next friend has no lien for costs on an estate recovered in the suit.

for which the solicitor had a lien on the funds recovered ; and see also *Baile v. Baile*, 13 Eq. 497, *post*, Ch. IX. sect. iv.

Costs where the suit is found not to be for the infant's benefit.

The Court will, before judgment, direct an enquiry whether the suit is for the infant's benefit, or if so, whether the next friend is a proper person to conduct it, on motion either of one of the defendants (*Fox v. Suwerkrop*, 1 Beav. 583), or the infant himself by another next friend for the purpose of the application (*Guy v. Guy*, 2 Beav. 460) ; and if the suit appears to have been improperly instituted, it will be dismissed with costs against the next friend (*ibid.* ; *Thomas v. Elsom*, W. N. (1877), 177) ; or some other person may be appointed as next friend (*Clayton v. Clarke*, 2 Giff. 575). In a clear case the suit may be at once dismissed with costs without a reference (*Sale v. Sale*, 1 Beav. 586). But the Court will not direct a reference upon the application of the next friend himself to see whether the suit which he has instituted is for the infant's benefit (*Jones v. Powell*, 2 Mer. 141). And it is irregular to add such an enquiry to a decree for accounts (*Clayton v. Clarke*, 9 W. R. 718, overruling S. C. 2 Giff. 575). See further as to a next friend's liability to costs *Palmer v. Walesby*, 3 Ch. 732, where a next friend filed a bill on behalf of a supposed lunatic and was ordered to pay all the costs.

Where the next friend will be allowed costs, or the contrary.

The Court considers it to be *prima facie* for an infant's benefit to be made a ward of Court, and have his property administered and secured (*Clayton v. Clarke*) ; the question whether the suit is for his benefit, therefore, will not depend upon the result of the accounts (*ibid.* ; but see *Anderton v. Yates*, and *Mackenzie v. Taylor*, cited below). The question is whether the suit was instituted with a fair intention, and not to answer some purpose of spleen, or other improper purpose on the part of the next friend (*Whittaker v. Marlar*, 1 Cox, 285). In the case last cited it was said that ' no degree of mistake or misapprehension is sufficient to charge a next friend with costs ; ' but see *Pearee v. Pearee*, 9 Ves. 548, where the

next friend, having filed his bill without sufficient information of the facts dismissed it with costs, and Lord Eldon reserved the question of costs as between the next friend and the infant; and see also *Caley v. Caley*, 25 W. R. 528; W. N. (1877), 89; and *Strafford v. Warren*, 23 S. J. 740, which show that a next friend will certainly be made to pay the costs in a proper case, and where the suit ought never to have been instituted. In *Clayton v. Clarke*, 9 W. R. 718, it appearing that the bill was filed from motives chiefly personal to the next friend, the Court gave him no costs up to the hearing, but allowed him the subsequent costs, except those of an unsuccessful motion to vary the certificate. In *Walker v. Else*, 7 Sim. 234, where the next friend was of immoral character and in low circumstances, and had filed the bill to spite the mother of the infant, from whose service he had been dismissed, the bill was ordered to be taken off the file, with costs against the next friend. Again, in *Anderton v. Yates*, 5 De G. & S. 202, a bill was filed in the name of infants against the testator's widow (the stepmother of the plaintiffs) and her co-executor, against whom (unproven) injurious imputations were made; the Master having approved of the widow and her co-executor as guardians, and the application of the whole income for maintenance, and in fact left things as they were before suit, the Court made the next friend pay all the costs, and stayed further proceedings. Where a bill was filed on behalf of infants entitled to one moiety of a residue for an account, and the suit was opposed by adults entitled to the other moiety, as unnecessary, the Court gave the costs, including apparently those of the next friend, out of the plaintiff's moiety, though the accounts proved correct (*Mackenzie v. Taylor*, 7 Beav. 467). Where the next friend was removed on the application of the father, but had done nothing wrong in instituting the suit, the costs both in the Court of Appeal, and in the Court below were made costs in the action (*Woolf v. Pemberton*, 6 Ch. D.

19; 25 W. R. 873). The next friend of an infant was disallowed the costs of an appeal as unnecessary (*Campbell v. Campbell*, 2 My. & C. 25); and so of an unnecessary suit (*Ellis v. Ellis*, 1 Russ. 368). But the Court refused, in *Smallwood v. Rutter*, 9 Ha. 24, either to dismiss or refer an infant legatee's bill on the mere ground that the case might have been raised by claim, or the fund might have been paid in under the Trustee Relief Act; the propriety of any expenses being matter for consideration when the costs are disposed of. Where at the hearing costs are ordered to be paid by a next friend, without any reservation of the question who is to bear them ultimately, the order is final against him personally (*Caley v. Caley*, 25 W. R. 528).

Where two or more suits are instituted concurrently in the name of an infant.

If two or more suits are instituted in the name of an infant, an enquiry will be directed which suit it is most for the infant's benefit to have prosecuted, and proceedings in the other or others will be stayed (Mitf. Pl. 27, and the cases there cited). The reference may be obtained on the mere allegation that the suits are for the same purpose; it being at the risk of the party moving, in case the allegation should prove untrue, to have the order discharged with costs (*Sullivan v. Sullivan*, 2 Mer. 40). But the choice of one suit does not imply that the other suit was improper (*Crowther v. Flood*, 5 L. J. Ch. 352; *Starten v. Bartholomew*, 6 Beav. 143). In the former case, the next friend in the first suit, proceedings in which were stayed, was allowed his costs out of the funds in the second suit, in which a decree had been made. In the latter case, the first bill was dismissed without costs, because the next friend was a mere nominee of the solicitor, whose proceedings were in other respects also not strictly regular, and the costs of the defendants only were made costs in the second suit.* It is not usual, however, to direct a reference after a decree has been made in one of the suits (*Taylor v.*

* This case also shows that the bill in one suit could be dismissed at once, which was doubted in *Mortimer v. West*, 1 Swans. 358.

Oldham, Jac. 527); and after one cause is in the paper it is not of course to do so (*Rundle v. Rundle*, 11 Beav. 33).

The next friend will not be entitled to the costs of any proceedings in the cause taken after the infant has come of age. An infant, sole plaintiff, on coming of age, may elect either to proceed with or discontinue the suit. If he adopts the suit, he becomes liable to the costs of it from the commencement (Mitf. Pl. 26). If, on the other hand, he repudiates the suit, or even, it would seem, takes no steps in prosecuting it, he does not become liable for any part of the costs, but the defendant must recover them from the next friend (*Turner v. Turner*, 2 Stra. 708; 2 Eq. Ca. Ab. 228, reversing S. C. 2 P. W. 297). It follows that if the next friend is dead when the plaintiff comes of age, and no new next friend has been appointed, the defendant will not be able to recover the costs of a suit, which the plaintiff has repudiated, at all (*Turner v. Turner*; and see *Morgan v. Crompton*, Bumb. 332).^{*} As between the next friend and the plaintiff, however, the latter will, if the suit was properly instituted on his behalf, be liable for the costs of it, together with the extra costs of the next friend, although he elects to discontinue it (*Anon.* 4 Mad. 461†; *Brown v. Weatherhead*, 4 Ha. 122; and see *Dunn v. Dunn*, 3 Drew. 17, 19). But the plaintiff, it would seem, cannot himself move, on coming of age, to have the suit dismissed with costs against the next friend (*Anon.* 4 Mad. 461). The next friend has no

* Where the next friend of an infant plaintiff dies, his nearest paternal relations are entitled to nominate the new next friend (*Talbot v. Talbot*, 17 Eq. 347; and see *Woolf v. Pemberton*, 6 Ch. D. 19; 25 W. R. 873). As to the practice where the next friend of a married woman dies, see *post*, sect. viii.

† This case appears to have been misunderstood. It was a question apparently between the next friend and the late infant, and not between the late infant and the defendants. In fact the bill may, for anything that appears in the report, have been dismissed with costs against the next friend, the infant undertaking to pay them. It may also be observed that the plaintiff, by moving in the suit, may be said to some extent to have adopted it; and see *Beames*, 111 n. (15).

lien for his costs on deeds left in Court for discovery (*Dunn v. Dunn.*)

Where an infant co-plaintiff comes of age.

The name of an infant co-plaintiff coming of age may be struck out on his own application, either before decree (*Aeres v. Little*, 7 Sim. 138; *Guy v. Guy*, 2 Beav. 461); or after decree (*Bicknell v. Bicknell*, 32 Beav. 379). In *Guy v. Guy*, the next friend was ordered, under the circumstances, to pay the costs of the application; but in *Bicknell v. Bicknell*, no costs of the application were given, and the next friend's costs were made costs in the cause. A married woman who has been made co-plaintiff to a suit when an infant, may, on coming of age, have her name struck out; but it seems she should first be examined apart from her husband (*Cooke v. Fryer*, 4 Beav. 14). But the petition of a co-plaintiff, coming of age, to be let into possession of her undivided share, or to be indemnified against future costs, alleging that the objects of the suit, so far as concerned her interest, were satisfied, was dismissed with costs (*Smith v. Lyster*, 4 Beav. 227). Where one of two infant co-plaintiffs has come of age, and adopted the suit, the next friend has, of course, no longer the exclusive control of it; see *Brown v. Brown*, 11 Beav. 562, where an order of course to change solicitors obtained on the application of the next friend alone was discharged with costs.

The next friend remains liable under an order for payment of costs made during the plaintiff's infancy.

The next friend also remains liable for all costs, for the payment of which an order has been made during the plaintiff's infancy; see *Frizell v. Hodgens*, 2 Moll. 456, where a decree was made for payment of costs to the defendant, who did not apply for them until four years and a half afterwards, during which time the plaintiff had come of age, and got the funds in the suit out of court, and the next friend was held liable.

The next friend of an infant does not give security for

The next friend of a married woman may be required to give security for costs on account of his poverty, but not the next friend of an infant (see *ante*, p. 11, *seq.*). It is an unsettled point whether the next friend of an

infant can sue in *formâ pauperis*. On the one hand, there is a dictum in an anonymous case (1 Ves. Junr. 409) that he cannot do so; and Sir J. Romilly, M. R., expressed the same opinion (*Lindsey v. Tyrrell*, 24 Beav. 124). On the other hand, Lord Cranworth, C., doubted whether it might not be allowed on a special application (S. C. on appeal, 2 De G. & J. 7). But it is quite clear that an order of course for the purpose obtained on the common affidavit of the infant's poverty is irregular (*ibid.*).

A next friend cannot withdraw from the suit without an enquiry whether it is for the infant's benefit that a new next friend should be substituted (*Melling v. Melling*, 4 Mad. 261). But he will in general be permitted to retire upon giving security for the costs already incurred (see *ante*, p. 13). The new next friend will, however, become responsible to the defendants for the costs from the commencement of the suit. In *Lander v. Ingersoll*, 4 Ha. 596, a solicitor, who had been employed by the infant's mother to prosecute the suit, but was afterwards discharged by her, having, on the death of the next friend, named another one, and amended the bill accordingly, the Court removed the new next friend on payment of his costs by the mother, without prejudice to the question by whom they should ultimately be borne, and made the solicitor pay the costs of the application and of appointing a new next friend. On the substitution of one next friend for another, the costs were ordered to be paid out of the estate, without prejudice to any application by the infant plaintiff for reimbursing her estate those costs (*Taylor v. Oldham*, Jac. 529). And see *Wolf v. Pemberton*, 6 Ch. D. 19; 25 W. R. 873.

In *Elsey v. Cox*, 26 Beav. 95, which was a suit by the assignees of a bankrupt to set aside a post-nuptial settlement on his wife and infant child, Sir J. Romilly, M. R. held that the Court could not do more for the infant than not order him to pay costs. But in *Goldsmith v. Russell*,

costs on account of poverty. Qu. whether he may sue in *formâ pauperis*.

Where the next friend is changed.

Costs of infants as defendants.

5 De G. M. & G. 556, which was a similar suit, the costs of all parties except the settlor were allowed out of the settlement funds; and in *Short v. Ridge*, W. N. (1876), 47, an infant defendant had his costs from the plaintiff, though the decree was without costs as regarded the adult defendant. The costs of the unsuccessful defence of an infant in a suit to recover a sum of money under the limitations of a settlement, were charged not upon the general fund, but upon the infant's own share (*Earl of Orford v. Churchill*, 3 V. & B. 59). So in a suit for executing the trusts of real estates settled on infants, the Court has jurisdiction to order the sale of the infants' share for payment of their costs (*ante*, p. 177). As to the costs of a suit for specific performance against the infant heir or devisee of a deceased vendor (see *ante*, p. 261, *seq.*). The costs of settling a conveyance in Chambers on behalf of an infant come out of the estate (*Brown v. Lake*, 15 L. J. Ch. 34). Where an infant was defendant to a foreclosure suit and the property was not worth the amount advanced on it, an order was made for foreclosure absolute in the first instance, on payment by the plaintiff of the infant's costs (*Crozen v. Lever*, 12 W. R. 237; 10 Jur. N. S. 87; *Bennett v. Harfoot*, W. N. (1871), 4; 19 W. R. 428; 24 L. T. 86).

An infant should be made co-plaintiff.

An infant in the same interest with the plaintiffs ought to be made a co-plaintiff; and successful plaintiffs were not allowed to recover with their own the costs of an infant made defendant (*Hosking v. Nicholls*, 1 Y. & C. C. C. 478).

Costs of an infant defendant's contempt.

An infant defendant in contempt for not answering paid no costs; the plaintiff paid the costs of the messenger in that case (*Perkins v. Hamond*, 1 Dick. 287). But a fraudulent infant may be ordered to pay the costs of a suit (*Chubb v. Griffiths*, 35 Beav. 127); and where an infant sued without a next friend, concealing the fact of his infancy, and was taken in execution for non-payment of the costs of the suit, the Court refused to

discharge him (*Finley v. Jowle*, 13 East, 6, and cases cited in note).

As to the costs of a guardian *ad litem* to an infant defendant, appointed at the instance of the plaintiff, see *ante*, sect. v. Costs of appointing guardian *ad litem*.

As to the costs of infant trustees, under the Trustee Relief Act, see *ante*, Ch. V., sect. iii.; and under the Trustee Acts, 1850, 1852, see *ante*, Ch. V., sect. iv. Costs of infant trustees.

SECT. VIII.—*Costs of Married Woman and her Next Friend; and as between Husband and Wife.*

By R. S. C. Ord. XVI. r. 8, married women may, by leave of the Court or a judge, sue or defend without their husbands, and without a next friend, on giving such security (if any) for costs as the Court or a judge may require. Under this rule the judge has complete and unfettered discretion to allow a married woman to sue alone or by a next friend, and either with or without giving security (*Martano v. Mann*, 14 Ch. D. 419; 49 L. J. Ch. 510; 42 L. T. 890; *Kingsman v. Kingsman* (C. A.), 6 Q. B. D. 122). A married woman in receipt of a separate income of £1,500 a year was allowed to defend separately without giving security (*Noel v. Noel*, 13 Ch. D. 510; 28 W. R. 720; 42 L. T. 352). The application for leave to sue alone need not necessarily be made before the action is commenced; and where the plaintiff begins the action alone and the defendant then applies that the action may be stopped until the plaintiff adds a next friend or gives security for costs, and his application is refused, this is tantamount to giving leave to sue alone (*Kingsman v. Kingsman*). Where married woman sues alone.
See Brown v North
W.N. [1882] 56.

It is not easy to say what is the precise liability of a married woman in respect of costs. In an action in the Probate Division an order may, it seems, be made on her personally for payment of costs (*Morris v. Freeman*, 3 P. D. Liability of a married woman to costs: at law;

65; 47 L. J. P. D. & A. 79; 27 W. R. 62; 39 L. T. 125; and see under the Divorce Act, *Miller v. Miller*, L. R. 2 P. & D. 13; *Milne v. Milne*, *ibid.* 202; *M. v. C. ibid.*, 414); and this appears to have been a regular practice in the Common Law Courts before the Judicature Act; see *Newton and wife v. Boodle*, 4 C. B. 359; *Morris v. Freeman*, and cases there cited. It is presumed that the Queen's Bench Division will follow the old Common Law practice in this respect; and Hannen, J., in *Morris v. Freeman*, expressed an opinion that since the Judicature Act the judges of the Chancery Division can also condemn a married woman in costs, if on general principles of justice it should appear right to do so. In the Common Law Courts no distinction seems to have been made between married women with separate estate and married women without, so far at least as *ordering* them to pay costs was concerned. The practical difference was that if the woman had no property the order could not be enforced.

in equity.

There seems no reason why a married woman should not be equally liable to costs in actions in the Chancery Division; but in Equity the practice has been merely to charge the costs on her separate estate without making her personally liable (*Morrell v. Cowan*, 6 Ch. D. 166; 25 W. R. 808; 37 L. T. 122, reversed on other grounds, 7 Ch. D. 151; 47 L. J. Ch. 173; 26 W. R. 90; 37 L. T. 586; *McHenry v. Davies*, 10 Eq. 88; *Collett v. Dickenson*, 11 Ch. D. 687; 40 L. T. 394); and see *Besant v. Wood*, 12 Ch. D. 605, where the Master of the Rolls said: "I am by no means prepared to say I cannot make a married woman pay the costs; I can make her separate property liable for the payment." In *Collett v. Dickenson*, the costs were declared a charge upon an annuity payable to the wife under a separation deed, but without prejudice to any claim of the trustee of the deed; the costs of the husband (who had been added as a defendant) were ordered to be paid by the plaintiff, and added to his own. In another case, *Pemberton v. McGill*, 1 Jur. N. S. 1045,

liberty was reserved to the plaintiff to apply for payment of costs ordered to be paid by a married woman, in case of any moneys becoming payable to her separate use.

By s. 11 of the Married Women's Property Act, 1870, Married Women's Property Acts, 1870, 1874. 33 & 34 Vict. c. 93, a married woman may sue in her own name for her statutory separate property, and she has the same remedies for the protection of such property as if she were an unmarried woman. By s. 3 of the Married Women's Property Act Amendment Act, 1874, 37 & 38 Vict. c. 50, the husband is entitled to judgment for his costs of defence if, when sued for his wife's ante-nuptial debts, it is not found that he is liable; and costs paid to the husband under this section may be recovered against the wife's separate estate, notwithstanding a restraint on anticipation (*London and Provincial Bank v. Bogle*, 7 Ch. D. 773; 47 L. J. Ch. 307; 26 W. R. 573; 37 L. T. 780). By 20 & 21 Vict. c. 85, s. 26, a wife judicially separated from her husband is considered a feme sole for purposes of contract and suing, and her husband is not to be liable for any costs she may incur as plaintiff or defendant.

Notwithstanding the Judicature Acts, however, the rule in Equity still is that a married woman suing to recover separate estate ought in general to sue by a next friend, making her husband a defendant; and if she make him a co-plaintiff, she may lose a part of her costs (*Roberts v. Evans*, 7 Ch. D. 830; 47 L. Ch. 469; 26 W. R. 280; 38 L. T. 99). Where married woman sues by a next friend.

An action cannot be brought in the name of a married woman by her next friend without her consent (*Andrews v. Cradock*, Prec. Ch. 376; 1 Eq. Ca. Ab. 72; *Cooke v. Fryer*, 4 Beav. 14; and see 1 S. & S. 265), and she may disavow the suit at any time (Sayer on Costs, 84; Beames, 103). The objection that the next friend has no authority to sue may be taken by the defendant (*Schjott v. Schjott*, 19 Ch. D. 94, where the action was dismissed with costs to be paid by the solicitors of the next friend).

Where a married woman sues by a next friend he is directly liable to the defendants for the costs, but the married woman is also liable to the extent of her separate estate, where her separate estate is the subject matter of the suit (*Barlee v. Barlee*, 1 S. & S. 100; *Hogan v. Morgan*, 1 Hog. 250). If the plaintiff is restrained from anticipation, the costs cannot be charged on future income, but may be paid out of arrears (*Moore v. Moore*, 1 Coll. 54). In a partition suit the Court has charged the costs of a married woman upon her share, notwithstanding the restraint upon anticipation (*Fleming v. Armstrong*, 5 N. R. 181; 11 L. T. 470). In *D'Oechsner v. Scott*, 24 Beav. 239, the fund was settled without power of anticipation, but the trustees, who were defendants, and against whom the bill had been dismissed, were allowed their costs out of the income under the power of reimbursement in the settlement. Where a married woman, pending a suit for nullity of marriage, filed a bill against her husband without a next friend, and obtained an injunction, it was held (the suit for nullity having been dismissed) that neither she nor her solicitor could be made to pay the costs of the motion to dissolve the injunction (*Sealey v. Gaston*, 13 W. R. 577).

Unneces-
sary pro-
ceedings.

Where a next friend institutes unnecessary proceedings in the name of a married woman without her consent he will be ordered to pay the costs (*Kenrick v. Wood*, 9 Eq. 333; *Cooke v. Fryer*, 4 Beav. 14; *Davies v. Whitehead*, W. N. (1866), 162; *in re Potter*, 7 Eq. 484, where a petition by the next friend of an infant married woman was dismissed with costs). Where a writ was issued by a next friend without a solicitor, the writ and all subsequent proceedings thereon were set aside with costs against the next friend (*Swann v. Swann*, W. N. (1880), 191; 43 L. T. 530); and see *Schjott v. Schjott*, 19 Ch. D. 94, *ante*, p. 12. By 15 & 16 Vict. c. 86, s. 11, the next friend must give a written authority before his name can be used.

The next friend of a married woman must be a person

of substance, and the Court will, on the defendant's application, and evidence of the next friend's poverty, order the next friend to be changed, or security for costs to be given (see *ante*, p. 12, and the cases there cited). Security may be obtained, although a married woman and infants sue by the same next friend (*Pennington v. Alvin*, 1 S. & S. 265; *Drinan v. Mannix*, 3 Dr. & W. 154), or the husband is a co-plaintiff, if he is a formal party merely, and a bankrupt (*Smith v. Etches*, 1 H & M. 558); or the next friend is himself a co-plaintiff (*Balguy v. Broadhurst*, 2 W. R. 680).

A married woman may, by special leave, sue *in formâ pauperis*, without a next friend (*Hind v. Whitmore*, 2 K. & J. 458, and the cases there cited); but poverty must be distinctly shown (*Culdicott v. Baker*, 13 W. R. 449). Such leave may be obtained *ex parte* (*Wellesley v. Mornington*, 2 W. R. 514; 18 Jur. 552; *In re Lancaster*, 2 W. R. 337; 18 Jur. 229; *Re Foster*, 18 Beav. 525, overruling *Page v. Page*, 1 W. R. 262), but not of course (see the cases cited above; notwithstanding *Coulsting v. Coulsting*, 8 Beav. 463).* The order is entitled in the matter of the applicant only (*In re Barnes*, 10 W. R. 464). In *Ex parte Hakewill*, 3 De G. M. & G. 116, a married woman was allowed to present a petition for access to her children, under Stat. 2 & 3 Vict. c. 54 (now repealed, see 36 & 37 Vict. c. 12), *in formâ pauperis*, and without paying the £1 stamp required by the orders of the Court (but, as to the latter point, see *Parkinson v. Chambers*, 3 W. R. 34). In the same case the order, though obtained *ex parte*, was held to be not invalid from the suppression of the fact that the petitioner had near relatives in good circumstances, there being no evidence that any of them were willing to act as her next friend. A married woman may obtain

Next friend of a married woman, if in poverty, must give security for costs.

A married woman may sue *in formâ pauperis*, without a next friend.

* A husband and wife may obtain an order of course to defend *in formâ pauperis*, in a suit respecting the wife's reversionary interest in land, and a special motion was refused, but, as affidavits had been unnecessarily filed in opposition, without costs. (*Pitt v. Pitt*, 1 Sm. & G. app. xiv.)

leave to appeal *in formâ pauperis*, though she sued by a next friend below (*Crouch v. Waller*, 4 De G. & J. 43). A peeress may sue *in formâ pauperis* (*Wellesley v. Wellesley*, 16 Sim. 1). Some technical difficulty, however, occurs when costs become payable to a married woman suing *in formâ pauperis*, as there is no person who can give a receipt for them (see *Wellesley v. Wellesley*, 1 De G. M. & G. 501, where the Lords Justices made an order for payment of costs generally, and gave liberty to apply in case of any difficulty). Probably the costs would be paid on the receipt of the plaintiff's solicitor. And see *Att. Gen. v. City of London*, 3 Bro. C. C. 178, where the Court, being uncertain whether certain defendants could sue as a corporation, made an order for the payment of their costs to their agent.

Where the next friend becomes insolvent in the course of the suit.

If the next friend becomes insolvent in the course of the suit, an order may be obtained staying proceedings until a new next friend is appointed, or the plaintiff obtains an order to sue *in formâ pauperis* (*Wilton v. Hill*, 2 De G. M. & G. 807, where, however, the former next friend was discharged, but without prejudice to her liability already incurred). In *D'Oechsner v. Scott*, 24 Beav. 239, which was a suit to charge the trustees of the plaintiff's settlement with a breach of trust, the bill was dismissed with costs, and the next friend having taken the benefit of the Insolvent Act after taxation, the Court gave the defendants, the trustees, their costs out of a balance in the hands of the receiver belonging to the plaintiff, and then made an order similar to that made in *Wilton v. Hill*.

Where the next friend is changed.

If the next friend is changed, the former next friend must give security for the costs already incurred; as to which, and the proper security to be given, see *ante*, p. 13.

Where the next friend dies.

Where the next friend of a married woman has died, the proper order is that she appoint a new next friend within a limited time, or in default the suit be dismissed (*Barlee v. Barlee*, 1 S. & S. 100). In the case cited, the Court further directed, that in event of the bill being

dismissed, the costs of the defendants, who were the plaintiff's trustees, as between solicitor and client, should be paid out of a balance in court belonging to the plaintiff for her separate use, and that the residue of the fund should be paid to the plaintiff.

If a married woman employ a solicitor in proceedings relating to her separate property, that property is liable for payment of the bills (*Murray v. Barlee*, 3 My. & K. 209; 3 L. J. Ch. 184; 4 Sim. 82); and may be charged though there is a restraint on anticipation, under 23 & 24 Vict. c. 127 (*Re Keane*, 12 Eq. 115; 40 L. J. Ch. 617). But where the instructions, though in writing, related to suits on behalf of the children of the married woman, whose husband was a lunatic, in which suits the mother had no interest, and to which she was not a party, it was held that her separate estate was not liable for the costs (*Re Pugh*, 17 Beav. 336). And see, generally, as to charging the separate estate of a married woman, *Vaughan v. Vanderstegen*, 2 Drew. 165; *Johnson v. Gallagher*, 3 De G. F. & J. 494; 30 L. J. Ch. 298; 7 Jur. N. S. 273; 9 W. R. 506; *Pike v. Fitzgibbon*, 17 Ch. D. 454; and 1 W. & T. L. C., p. 539, *et seq.* The mere fact of business having been done relating to the separate property of a married woman vested in trustees is not sufficient to make that property directly liable to the solicitor (*Callow v. Howle*, 1 De G. & S. 531); though it may be so indirectly through the trustee's right of reimbursement (*Worrall v. Harford*, 8 Ves. 4; *Turner v. Letts*, 20 Beav. 185).

In *Vansittart v. Vansittart*, 4 K. & J. 62, which was a suit for specific performance of an agreement for separation between husband and wife, V. C. Wood said that a case between husband and wife was not a case for costs, and allowed a demurrer by the husband without costs. But this cannot be considered the rule now, and in *Walrond v. Walrond*, Johns. 18, the Vice Chancellor seems to have altered his opinion, and allowed a demurrer to a similar bill with costs; and see the observations of

In what cases the separate property of a married woman is liable for her solicitor's bill of costs.

Costs of litigation between husband and wife.

L. J. Knight Bruce, in *Vansittart v. Vansittart*, on appeal, 2 De G. & J. 249, 258; and *Lampert v. Lampert*, 1 Ves. Junr. 121, where costs were given to a wife against her husband. In *Pearse v. Pearse*, 22 W. R. 69; 29 L. T. 453, a wife was allowed costs of exceptions for scandal as between solicitor and client; and in another case the next friend of a married woman, petitioner, was ordered to pay the costs occasioned by personal charges against her husband in a petition under the Trustee Act (*Re Wills' Trusts*, 3 N. R. 107; 12 W. R. 97; and see *Coyle v. Cuming*, 27 W. R. 529; 40 L. T. 455). In a suit by a married woman to administer the estate of a testator, and enforce her equity to a settlement against her husband, who was a bankrupt, and his assignees, the husband was allowed costs, though a debtor to the estate (*Rotherham v. Battson*, 2 Sm. & G. app. viii.); and in *Green v. Otte*, 2 L. J. Ch. (O. S.) 123, the husband was allowed costs as between solicitor and client. In a suit to foreclose a mortgage vested in trustees for the separate use of a married woman, the husband, who was made a defendant, was held entitled to costs out of the fund (*Dillon v. McCarthy*, 2 Ir. Eq. R. 192). The costs of proceedings justifiably instituted by a married woman against her husband for a divorce or a judicial separation, are chargeable against the husband (*Stocken v. Patrick*, 29 L. T. 507; *Ottaway v. Hamilton*, 26 W. R. 783; 38 L. T. 925; and see *Ex parte Moore*, 4 Notes of Ca. Supp. i.).

Where husband and wife sue as co-plaintiffs, or defend jointly.

Where husband and wife sue as co-plaintiffs, the suit is the husband's only, and he has the sole control over it (*Hope v. Fox*, 1 J. & H. 456); and, therefore, he is solely liable for the costs on the one hand (*Bradbury v. Shawe*, 14 Jur. 1042); and, on the other hand, if costs become payable, they are ordered to be paid to the husband, and his receipt alone is sufficient (Set. 115). So, also, where husband and wife are defendants, and defend jointly (*Orange v. Pickford*, Set. 118); and although the costs become payable in respect of the dismissal of the suit, so

far as it seeks to charge the separate estate of the wife (*Wright v. Chard*, 4 Drew. 702). And, therefore, in the case last cited, it was held that a set-off arose of the costs so payable against other payments directed to be made by the husband. As a general rule, where husband and wife join in defending in respect of the wife's separate property and the defence is successful, the action will be dismissed against them both with costs (*Keran v. Crawford*, 6 Ch. D. 29). Upon the death of the husband, when he and his wife are suing as co-plaintiffs in her right, the widow may elect whether to continue the suit or not. If she does not proceed, she is not liable for the costs (Mitf. Pl. [59]), which are consequently lost. But if she takes any step in the suit after her husband's death, she makes herself liable for the costs from the commencement (*ibid.* [60]; *Anon.* 3 Atk. 726; *Anon.* 2 Vern. 197; *Backhouse v. Middleton*, Freem. 133; *Parry v. Juxon*, 3 Ch. Rep. 40; *Parrott v. Randall*, Cary, 70). Where a decree had been made after the death of the husband, though the fact was unknown to the defendants, for payment of costs to them by the husband, and the wife took out a summons for service of the decree on certain parties, she was held to have adopted the suit, and the decree, though passed and entered, was, on motion by the defendants, varied, by ordering the costs to be paid by the wife (*Mills v. Barlow*, 3 De G. J. & S. 426; 11 W. R. 351; 1 N. R. 412). On the other hand, if costs have been ordered to be paid to the husband, and he dies before payment, the wife is entitled to them by survivorship (*Coppin v. —*, 2 P. W. 496).

Where a suit by a feme sole abates by her marriage, it will be dismissed without costs, in default of her husband reviving (*Westropp v. Healey*, Fl. & K. 141). If the husband revives, and obtains a decree with costs, he will be entitled to costs from the commencement, except (under the old practice) the costs of the bill of revivor (*Durbaine v. Knight*, 1 Vern. 318); or, conversely, becomes liable to them. Where the wife sued out a sub-

Where the husband dies, pending the suit.

Where a feme sole plaintiff marries.

pœna, as single, being then married, it was held that the husband and wife [*qu.* the husband alone] must pay costs (*Hastings v. Jugges*, Cary, 36; *Piers v. Cawse*, *ibid.* 98).

Where the husband and wife defend separately.

In *Barry v. Woodham*, 1 Y. & C. 538, husband and wife living apart, and defending separately, were allowed separate sets of costs, there being no evidence as to the grounds of their separation; and in *Times v. Negus*, 3 Y. & C. 90, the husband had to pay costs, and the wife got no costs; and see *Grigby v. Cox*, 1 Ves. 517. But in *Garey v. Whittingham*, 5 Beav. 268; 6 Jur. 545, where the husband and wife, who lived apart, were made defendants in respect of the wife's share of a residue, and answered separately, they were held entitled to one set of costs only. From a report of the same case at an earlier stage (1 S. & S. 163), it appears that the husband first answered separately, stating that he had no control over his wife, and being attached for want of his wife's answer, he was discharged, and an order was made for the wife to answer separately, and indemnify her husband in respect of costs; and see *Barry v. Cane*, 3 Mad. 472. Price v. Mayo
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The husband does not pay costs for his wife's fraud.

The husband will not, it seems, in equity, be made responsible in costs for his wife's fraud. "I do not know of any case in this Court, where a feme covert has been guilty of a fraud solely, without the husband, and where he has no benefit at all from it, that he should suffer; it would be extremely hard that he should pay costs; I know of no precedent, nor do I believe that the Court would do it" (*per* Lord Hardwicke, *Cotton v. Luttrell*, 1 Atk. 452). The question in this case, however, was respecting the admissibility of the husband's evidence.

Costs of wife insisting on her equity to a settlement.

Where a married woman, defendant, insisted upon her equity to a settlement, and the Court gave her a moiety of the fund, her costs were deducted from the fund before division (*Archer v. Gardner*, C. P. C. 340).

Costs in a suit of husband against his wife.

In a suit by a husband against his wife, to have a settlement rectified, and the income paid to him during their joint lives, the costs of the husband of that suit, and of an

unsuccessful suit by the wife in the Ecclesiastical Court, were allowed him out of the accumulated income, but the wife, who was living in adultery, and set up a different trust from what it really was, got no costs (*Ball v. Montgomery*, 2 Ves. Junr. 196 ; 4 Bro. C. C. 339).

A bill by a widower to be relieved against a bond given by his deceased wife before marriage, and concealed from him, was dismissed, as consideration was positively sworn to, and with costs, as the concealment was at the wife's request, and he was her administrator (*Blanchet v. Foster*, 2 Ves. 264). The husband, however, was suing in his own right, and not as an administrator.

Costs in husband's suit after his wife's death.

SECT. IX.—*Costs of Paupers.*

By r. 5 of the order as to Court fees, Oct. 1875, the existing rules and practice applicable to proceedings by persons suing *in formâ pauperis*, are to apply to the proceedings to which the order relates as to actions *in formâ pauperis*.

As to suits *in formâ pauperis* see 11 Henry VII., c. 12 ; 23 Henry VIII., c. 15 ; and *Drennan v. Andrew*, 1 Ch. p. 301, n. 7. In former days, if a pauper plaintiff failed in his suit, instead of being ordered to pay costs, he was flogged. The 11 Henry VII. c. 12, applied only to actions at law, but the principle of the Act was followed by the Court of Chancery, and has been adopted in the Chancery Division. Persons who can themselves (*Wilkinson v. Belsher*, 2 Bro. C. C. 270) swear that they are not worth £5 in the world, their wearing apparel and the subject matter of the suit excepted (*Allen v. McPherson*, 5 Beav. 469), may sue and defend *in formâ pauperis* (Dan. Ch. Pr. 6th edition, p. 85, and *Spencer v. Bryant*, 11 Ves. 49). A farming tenant with valuable crops on the farm, but no other property, was not allowed to defend *in formâ pauperis*, although restrained by injunction from parting with the crops (*Ridgway v. Edwards*, 9 Ch. 143 ; 22 W. R. 288 ;

Who may sue or defend *in formâ pauperis*.

29 L. T. 907). The £5 means £5 available for the suit (*Dresser v. Morton*, 2 Phil. 286). A party in possession and enjoyment of property the subject of the suit, worth £140 and £10 a year, ought not to be permitted to sue *in formâ pauperis* (*Taprell v. Taylor*, 9 Beav. 493; *Butler v. Gardener*, 12 Beav. 525; and see *Burry Port Co. v. Bowser*, 26 L. J. Ch. 319); nor an officer on half-pay, though he may have passed through the Insolvent Court (*Boddington v. Woodley*, 5 Beav. 555); nor a person who offers to redeem a mortgage (*Fowler v. Davies*, 16 Sim. 182); and it is not enough that he should swear that he has only £5, except &c., "after payment of his just debts" (*Perry v. Walker*, 1 Coll. 229). An executor, even though without assets, cannot sue or defend *in formâ pauperis* (*Oldfield v. Cobbett*, 1 Ph. 613, S. C., before the Court below,* 1 Coll. 169; 2 Beav. 444; 3 Beav. 432), unless he is also beneficially interested (*Martin v. Whitmore*, 17 W. R. 809); and see the cases cited in *Fowler v. Davies*; *Oldfield v. Cobbett*; *Bayly v. Bayly*, 11 Beav. 256; † *Everson v. Matthew*, 3 W. R. 159; *Flattery v. Anderson*, 11 Ir. Eq. Rep. 586; and *Parkinson v. Chambers*, 24 L. J. Ch. 47; 3 W. R. 34, where an administratrix having a beneficial interest was on special application admitted to sue in that form (see also *Royers v. Hooper*, 1 W. R. 474): and in general the same rule applies to all persons filling representative characters (see *St. Victor v. Devereux*, 6 Beav. 584; and *Paradise v. Sheppard*, 1 Dick. 136). A creditor of a joint stock company in course of being wound up may, on the usual affidavit, be allowed to sue *in formâ pauperis* (*ex parte Fry*, 1 Dr. & S. 318). Leave to defend *in formâ pauperis* will be given without a certificate of counsel (*Bird v.*

* In this case V. C. Knight Bruce held that a defendant in contempt, though sued as executor, might apply *in forma pauperis*, for the limited purpose of clearing his contempt.

† It appears from this case that an executor may have the benefit of the 7th rule of Stat. 1 Wm. IV. c. 36, s. 15.

Bird, 17 W. R. 155). A person who is not a defendant to a suit cannot be admitted to defend *in formâ pauperis* (*Holden v. Holden*, W. N. (1868) 180).

As to married women suing *in formâ pauperis*, see *ante*, p. 365, *seq.*; and as to the next friend of infants, see *ante*, p. 358.

A person may appeal (*Bland v. Lamb*, 2 J. & W. 402; *Crouch v. Waller*, 4 De G. & J. 43; *Fitton v. Macclesfield*, 1 Vern. 264), be examined *pro interesse suo* (*James v. Dore*, 2 Dick. 788), present a petition under an Act of Parliament (*Re Money*, 13 Beav. 109; *ex parte Hakewill*, 3 De G. M. & G. 116); or sue as a creditor of a joint stock company being wound up (*ex parte Fry*, 1 Dr. & Sm. 318) *in formâ pauperis*. When an order to sue *in formâ pauperis* had been made in the Court below, it was held unnecessary to obtain a fresh order to appeal *in formâ pauperis* (*Drennan v. Andrew*, 1 Ch. 300).

If at any time pending the suit the party suing or defending *in formâ pauperis* becomes of ability to sue, or to defend himself, the Court will dispauper him (*Perry v. Walker*, 1 Coll. 229; and see *Tunstall v. Freney*, 1 Coll. 234, n.; *Bartlett v. Smith*, *ibid.*; *Clarke v. Pyke*, *ibid.*); but under circumstances he may be readmitted to sue or defend *in formâ pauperis* (1 Smith's Ch. Pr. 871). The mere possession of property, however, is not sufficient, if it is wrongful (*Perry v. Walker*, 1 Y. & C. C. C. 676); nor will the circumstance of the pauper having sued another person at law not *in formâ pauperis* (*ibid.*), or the pauper being in regular employment (*ibid.*), be sufficient. If it is made to appear to the Court that the party was not in fact "a pauper" when he made his affidavit, the order will be discharged with costs (*Romilly v. Grint*, 2 Beav. 186; and see *Goldsmith v. Goldsmith*, 5 Ha. 123). And as no exception of debts should be made on making the application to sue or defend *in formâ pauperis* (see *supra*), an affidavit that the party is largely indebted, or in embarrassed circumstances, is no answer to the applica-

What proceedings may be taken *in formâ pauperis*.

A party may be dispaupered on becoming of ability to sue or defend himself:

tion to dispauper (*Romilly v. Grint*; *Perry v. Walker*, 1 Coll. 229). The circumstance of a subscription having been made to help the plaintiff in the suit, however objectionable on the ground of maintenance, is no ground for dispaupering (*Corbett v. Corbett*, 16 Ves. 409). Where the order was obtained irregularly, and on the suppression of a material circumstance, it was discharged (*Nowell v. Whitaker*, 6 Beav. 407). But it was held too late three years after the order, and after the defendants had answered, and the plaintiff had filed replication, to move to discharge for irregularity an order for the plaintiff to sue *in formâ pauperis* (*Parkinson v. Hanbury*, 4 De G. M. & G. 508).

or if he conducts his suit or defence in a vexatious manner :

A pauper who behaves in a vexatious and improper manner in his conduct of the suit or his defence may be dispaupered (*Wagner v. Mears*, 3 Sim. 127; *Daintree v. Haynes*, 12 Jur. 594; and see *Perry v. Walker*, 1 Coll. 229). But improper or vexatious conduct in a former suit is no ground for dispaupering (*Corbett v. Corbett*, 16 Ves. 409). A pauper's solicitor may also be ordered personally to pay the costs of any irregular proceedings (*Brown v. Dawson*, 2 Hog. 76); and see Cons. Ord. VII. r. 11.

or remunerates his counsel or solicitor.

A party may also be dispaupered for giving remuneration to his counsel or solicitor, or making any agreement for recompensing them (Cons. Ord. VII. r. 9).

Pauper entitled to *divers* costs.

Where costs are ordered to be paid to a party suing or defending *in formâ pauperis*, such costs are to be taxed as *divers* costs, unless the Court shall otherwise direct (Cons. Ord. XL. r. 5).

No remuneration to be taken of the pauper by his counsel or solicitor.

“After an admittance to sue or defend *in formâ pauperis*, no fee, profit, or reward shall be taken of the pauper by any counsel or solicitor, for the despatch of the pauper's business, during the time it shall depend in Court, and he shall continue *in formâ pauperis*; nor shall any agreement be made for any recompense, or reward afterwards. And any person offending herein shall be deemed guilty

of a contempt of Court; and the party admitted who shall give any such fee or reward, or make any such agreement, shall be from thenceforth dispaupered, and not be afterwards admitted again in that suit to sue or defend *in formâ pauperis*" (Cons. Ord. VII. r. 9).

In *Parkinson v. Chambers*, 3 W. R. 34, it was held that the stamp fee of £1, payable on drawing up the order to sue *in formâ pauperis*, could not be remitted, as the plaintiff was not a pauper till the order was made, and it could not be returned; but see *Ex parte Hakewill*, 3 De G. M. & G. 116. In *Thomas v. Ellis*, 8 Ch. D. 518, the chief clerk's certificate was ordered to be delivered out without payment of Court fees, the plaintiff, since it was ready, having obtained an order to sue *in formâ pauperis*. In *Ballard v. Cutling*, 2 Ke. 606, it was held that an order of course to sue *in formâ pauperis*, not served, was no protection against costs, on a bill being dismissed for want of prosecution. But it seems not to be true, as a general proposition, that such an order is inoperative until served, where at least there is no *mala fides* in withholding it, and no step in the cause has been taken inconsistent with it (*Church v. Marsh*, 2 Ha. 652). Where the order has not been served, it is in the discretion of the Court to give costs to the pauper or order him to pay them as the case may be, but *primâ facie* he will be entitled to the benefit of the order (*ibid.*). If notice of motion to dismiss for want of prosecution has been served on a pauper defendant, he cannot apply to sue *in formâ pauperis* without paying the costs of the motion (*Smith v. Pawson*, 2 De G. & S. 490).

A plaintiff suing *in formâ pauperis* was not allowed to amend by leaving out parties without paying their costs (*Wilkinson v. Belsher*, 2 Bro. C. C. 272); nor could he move *ex parte* to dismiss his bill generally without costs (*Parkinson v. Hanbury*, 4 De G. M. & G. 508; *Pearson v. Belcher*, 3 Bro. C. C. 87).

A party, who during the pendency of the suit has

What costs are payable by paupers. Costs of stamp.

Where the order has not been served.

Where order is not obtained until after service of motion.

Pauper not allowed to amend by leaving out parties, or dismiss his bill *ex parte* without paying costs.

Pauper liable for costs of proceedings before he became pauper.

been admitted to sue or defend *in formâ pauperis*, will, if the merits so require it, be ordered to pay costs up to the time when he became a pauper (*Prince Albert v. Strange*, 2 De G. & S. 652, 718; 13 Jur. 507; and see *Anon.*, Mos. 66; *Smith v. Pawson*, 2 De G. & S. 490).

The Lord Chancellor may assign solicitor to pauper defendant confined in the Queen's Prison on the report of the Solicitor to the Suitors' Fee Fund.

The 2nd section of Stat. 23 & 24 Vict., c. 149, directs that the solicitor to the suitors' fund, or other officer of the Court, to be appointed by the Lord Chancellor, shall visit the Queen's Prison quarterly, and examine the prisoners confined there for contempt, and report to the Lord Chancellor, who may assign a solicitor to any such prisoner, not only for defending him *in formâ pauperis*, but generally for taking such steps on his behalf as the nature of the case may require, and make any such orders as the Lord Chancellor was empowered to make by the seventh rule of the old Contempt Act (11 Geo. IV. and 1 Wm. IV., c. 36, s. 15).

The pauper's costs of contempt may be paid out of the Suitors' Fee Fund.

The rule referred to empowered the Court to order that the costs of the contempt of any such prisoner should be paid out of the interest and dividends of the securities standing to the account of the Suitors' Fee Fund, or any cash standing to that account, and to direct any such prisoner to be discharged. Provided that if any such defendant became entitled to any funds out of such cause, the same should be applied, under the direction of the Court in the first instance, to the reimbursement of the suitors' fund.

The 6th section of Stat. 23 & 24 Vict., c. 149, provides that the solicitor to the suitors' fund shall make the necessary and proper payments out of pocket which may be requisite in the proceedings taken on behalf of the prisoners and defendants under the order of the Court, and shall be allowed the same as part of his disbursements in respect of the suitors' fund.* Provided that if

* In *Ward v. Woodcock*, 5 L. T. 816, it was held that the Court had no jurisdiction under this section to order the plaintiff's costs to be paid out of the Suitors' Fee Fund on the discharge of a pauper defendant from custody for the breach of an injunction.

any such prisoner or defendant shall be or become entitled to any funds in the cause, such funds shall be applied in the repayment to the suitors' fund of the sums expended on his behalf as aforesaid. Provided, also, that in case any prisoner or defendant shall become entitled to any costs in any such suit or proceeding, such costs shall be received by the solicitor to the suitors' fund and paid by him into the suitors' fund.

The Suitors' Fee Fund to be reimbursed.

By 32 & 33 Vict., c. 91, the suitors' fund was transferred to the National Debt Commissioners, but the Court has no power on motion on behalf of a pauper defendant in contempt, that he may be discharged from custody, to order the costs of the plaintiff, upon his own application, to be provided for by the Treasury (*Hall v. Hall*, 11 Eq. 290).

Where a pauper institutes a second suit after allowing his first suit to be dismissed for want of prosecution, proceedings may be restrained until the costs of the first suit are paid (*Calvert v. Rooth*, 4 Y. & C. 514; *Brook v. Alcock*, 1 Sm. Ch. Pr. 874). And a second suit in the name of another plaintiff, who was a defendant to the first suit, but for the same purpose, with colourable variations, was stayed in like manner (*Elsam v. Alcock*, *ibid.*). But in *Wild v. Hobson*, 2 V. & B. 105, Lord Eldon said that proceedings in a second suit by persons suing *in formâ pauperis* would only be stayed in case of vexation.

Proceedings in a second suit by a pauper may be stayed until payment of the costs of a first suit.

SECT. X.—Costs of Purchasers under Decree.

A purchaser of property sold under a decree of the Court will be entitled to the costs of the motion for a reference to the title, and of the reference itself, if the title is made out on grounds not appearing in the abstract (*Fielder v. Higginson*, 3 V. & B. 142). And he will not pay costs if the title proves good according to the abstract (*Flower v. Hartopp*, 8 Beav. 199; *Holland v. King*, 20 L.

Costs of reference as to title, where the title is good.

T. Old S. 123 ; 1 W. R. 80, where the marginal note is wrong), unless his objections were frivolous (*Thorpe v. Freer*, 4 Mad. 466 ; *Peers v. Sneyd*, 17 Beav. 151). In *Osborn v. Osborn*, 18 W. R. 421 ; W. N. (1870), 30, however, the Court said that on principle a purchaser must take objections at his own peril, and for the sake of his title pay the costs if he fails. The report of *Cumden v. Benson*, 1 Ke. 671, which states that the Court held the purchaser to be entitled to his costs, appears to be inaccurate (8 Beav. 200). There is nothing in the circumstance of the purchaser being a defendant to take the case out of the general rule (*Holland v. King*, where it was stated that the purchaser was well acquainted with the title).

Where the purchase is completed with compensation.

Costs of motion to pay the purchase money into Court ; to substitute one purchaser for another ;

to transfer purchase monies paid into Court by a public company to the credit of the cause.

Costs of purchaser on motion for pay-

Where the purchaser asked for specific performance of the contract with compensation, he obtained it, on appeal, with costs both in the Court below and the Appeal Court (*Leyland v. Illingworth*, 2 De G. F. & J. 248).

The purchaser is not allowed the costs of a motion to pay the purchase-monies into Court (*Christian v. Chambers*, 4 Ha. 307) ; and where he is in default he will have to pay them (1 Sm. Ch. Pr. 1015). Where the notice also asked that one purchaser might be substituted for another on the usual affidavit of no underhand bargain, the costs not being increased were not ordered to be paid by the purchaser (*Christian v. Chambers*) ; but if such application is made separately it would seem that the second purchaser should bear the expenses of it. In applications for transfer to the credit of a cause of purchase-monies paid into Court by a public company, it is not necessary to serve all the parties to the suit, and their costs will not be allowed against the company (*per V. C. Wood, Eden v. Thompson*, 2 H. & M. 6 ; 12 W. R. 759 ; 4 N. R. 87). And see further as to the costs payable by companies *ante*, ch. V., sec. II.

A purchaser who has paid his money into Court, but has not got his conveyance, is entitled to appear, and will receive his costs of appearance when the money is dealt

with (*Noble v. Stow*, 30 Beav. 272); *secus*, if he has got his conveyance (*Barton v. Lautour*, 18 Beav. 526). "The practice is to draw up the order with the purchaser's consent, in which case he is entitled to his costs of appearance, or on proper evidence that he has been served with notice and has got his conveyance" (*Noble v. Stow*). ment out
of pur-
chase
monies.

Where title deeds are in the hands of persons residing in different parts of the country, the vendor must (in the absence of special condition) bear the expense of the purchaser sending a clerk to compare the abstract with them (*Hughes v. Wynne*, 8 Sim. 85, S. C. affd. 1 Jur. 720). But a country solicitor should not, it would seem, be allowed the costs of journeys to town to examine abstracts (*Re Tryon*, 7 Beav. 496). Costs of
comparing
abstract
with deeds

The general rule is that where the decree contains a direction for settling the conveyances in chambers in case the parties differ, the purchaser pays the costs of his own attendances, unless a special case is made (*Hodgson v. Shaw*, 16 L. J. Ch. 56; 11 Jur. 95). But where the estates of an intestate, whose heir was an infant, were sold by the Court, the costs of settling the conveyance came out of the estate (*Brown v. Lake*, 15 L. J. Ch. 34). Pur-
chaser's
costs of
settling
convey-
ance in
chambers.

If any proceedings under the Trustee Act are necessary in order to make a good conveyance, the vendor must, it seems, bear the costs of them; see *Bradley v. Munton*, 16 Beav. 294, where the contract provided that "the costs of surrender" should be borne by the purchaser, and it was held that the costs of procuring some person to surrender by proceedings under the Trustee Act were not included. Where the heiress at law, who was a party to the suit, refused to acknowledge the deed, the costs of the purchasers occasioned by such refusal, together with a sum paid to the heiress to induce her to convey, were ordered to be paid out of the funds in Court (*Billing v. Webb*, 1 De G. & S. 716); and see *Thomas v. Buxton*, 8 Eq. 120; and the funds being insufficient for the payment of the costs of all parties, the purchaser's costs were paid in Costs of
proceed-
ings neces-
sary to
complete
the con-
veyance.

priority (*Billing v. Webb*). But where the purchaser was a defendant, no costs were given of a petition to have a co-defendant, who refused to convey, declared a trustee under the Trustee Act (*Robinson v. Wood*, 5 Beav. 246).

Where the title is bad the purchaser is discharged with costs, charges, and expenses.

Where the decision in chambers is against the title, or it is too doubtful to be forced on a purchaser (*Blosse v. Lord Clanmorris*, 3 Bl. 62), the purchaser is entitled to be discharged with all his costs, charges, and expenses consequent on his becoming purchaser, and of the application, and of investigating the title (*Att. Gen. v. Corporation of Newark*, 8 Sim. 71; *Perkins v. Ede*, 16 Beav. 268, 1 W. R. 10, where the form of the usual order is given). The costs of the purchaser obtaining his own counsel's opinion will be included (*Barton v. Downes*, 4 Ir. Eq. Rep. 607). If there are funds in court the purchaser's costs will be directed to be paid out of those funds (*Reynolds v. Blake*, 2 S. & S. 117); but without prejudice to the question by what fund they should be ultimately borne, if there are more than one (*Powell v. Powell*, 19 Eq. 422; 10 Ch. 130; Set. 1410). Where there is no fund in court, the purchaser will be entitled to his costs from the plaintiff personally, without prejudice to the question how they should be ultimately borne (*Smith v. Nelson*, 2 S. & S. 557); although the plaintiff is only a pecuniary legatee (*Berry v. Johnson*, 2 Y. & C. 564). But a defendant, to whom the conduct of the sale has been given, will not be ordered to pay the purchaser's costs where there are no funds in court which can be made primarily liable; in such a case leave will be given to the purchaser to apply for payment (*Mullins v. Hussey*, 35 Beav. 301; 1 Eq. 488). Where the Master had reported against the title to one lot, the purchaser of others under the same title was discharged with his costs without further inquiry (*Lewis v. Lewis*, 9 L. J. Ch. 176). Where there had been great delay, and there was little hope of completing the title within a reasonable time, also, the purchaser was discharged with costs (*Fraser v. Wood*, 8 Beav. 339). Where the

title had been found bad, but the purchaser was nevertheless attached for non-payment of the purchase-money, the contract was cancelled, with costs against the solicitor who acted for both parties (*Bromage v. Davies*, 4 Jur. N. S. 682).

In like manner, if a purchaser is discharged on the ground of the vendor's misrepresentation (*Lachlan v. Reynolds*, Kay, 52), or of want of jurisdiction in the Court to sell (*Culvert v. Godfrey*, 6 Beav. 97), he will be entitled to his costs, charges, and expenses. In *Lechmere v. Brasier*, 2 J. & W. 287, the purchaser was discharged on account of an error in the decree, though the parties were proceeding to rectify it; the costs, however, were waived, but it seems that the purchaser should have had them (Sugd. V. & P. 108). But where the defect in the suit was already cured before the petition came on, the purchaser was not discharged, and the costs were reserved (*Sherwood v. Beveridge*, 3 De G. & S. 425). However, the purchaser will not be entitled to the costs of investigating the title, where he is relieved on any such collateral ground (*Mugennis v. Fallon*, 2 Moll. 592; *Mackrell v. Hunt*, 2 Mad. 34 n.).

So where the purchaser is discharged on some collateral ground.

Where the purchaser had resold at a profit, and on examination of the deeds the title proved bad, it was held that he could not recover at law from the vendors the costs of resale, or the costs paid to the sub-purchasers (*Walker v. Moore*, 10 B. & C. 416).

The purchaser cannot recover the costs of a sub-purchaser from the vendors. Practice where a resale is ordered on the purchaser not completing.

Where a resale is ordered, on the purchaser making default in completing, the practice is not to discharge the purchaser, but he is ordered to make good the deficiency in price, and pay the costs of the resale in case a less price should be obtained on it (*Harding v. Harding*, 4 My. & C. 514; *Gray v. Gray*, 1 Beav. 199; S. C. *sub nom.* *Saunders v. Gray*, 4 My. & C. 515, n.; and see Set. 1413).

SECT. XI.—*Costs of Receivers.*

Receiver
an officer of
the Court,
and should
not in gene-
ral appear
in proceed-
ings.

A receiver appointed by the Court is a mere officer of the Court (*Parker v. Dunn*, 8 Beav. 497; *Morison v. Morison*, 7 De G. M. & G. 214, 224, 226), and he ought not in general to present a petition or take any proceedings in the cause, but should apply to the plaintiff to do so (*Ireland v. Eade*, 7 Beav. 55). And where he is served with a petition in the cause, he should not appear, and will get no costs of appearance if he does so (*Herman v. Dunbar*, 23 Beav. 312). But where the receiver had incurred costs which the parties had long neglected to provide for, he was allowed to petition for their payment (*Ireland v. Eade*). And in *Richardson v. Ward*, 6 Mad. 266, a receiver was allowed the costs of his own application to be discharged on the ground of ill-health. But the costs of a receiver's petition to discharge him will be refused where the petition is improperly presented (*Stilwell v. Mellersh*, 20 L. J. Ch. 356).

A receiver
entitled to
his costs,
charges,
and
expenses.

A receiver will be entitled out of the funds to his costs, charges, and expenses properly incurred in the discharge of his ordinary duties, or in extraordinary services which have been sanctioned by the Court (*Malcolm v. O'Callaghan*, 3 My. & C. 52; *Fitzgerald v. Fitzgerald*, 5 Ir. Eq. R. 525). And in *Morison v. Morison*, 7 De G. M. & G. 214, which was a suit to administer West Indian estates, a consignee appointed by the Court, who had become in advance, was held entitled to repayment out of the corpus of the estate in priority to the costs of the suit. The poundage and expenses of passing the receiver's accounts fall upon the tenant for life (*Shore v. Shore*, 4 Drew. 510).

The costs of a receiver under a liquidation petition are payable out of the assets in priority to the costs of the debtor's solicitor (*Ex parte Royle*, 20 Eq. 780; 23 W. R. 908; 33 L. T. 39; and see *Ex parte Page*, 25 L. T. 716).

Receiver's
expenses
of services

In *Malcolm v. O'Callaghan*, Lord Cottenham seems to have held that the expenses of extraordinary services

*See addenda
ante p 171*

undertaken by a receiver without the sanction of the Court, should on that ground alone be refused; but, he added, that if those services resulted in a benefit, it might be inequitable to allow the parties to reap the advantage without reimbursing the expenses. In the case cited, the expenses of journeys to and residence in Paris, for the purpose of prosecuting (unsuccessful) suits there for the recovery of parts of the testator's estate, were refused. Where a receiver, without the leave of the Court, defended an action at law arising out of a distress for rent made by him, and compromised it on the terms of the plaintiff abandoning it, and each party bearing his own costs, he was not allowed his costs (*Swaby v. Dickon*, 5 Sim. 629). But where the defence was completely successful, the extra expenses were allowed, though the receiver acted without the leave of the Court (*Bristowe v. Needham*, 2 Ph. 190). Again, the receiver of a lunatic's estate proceeding in a wrong form of action, which he was advised to abandon, and adopting another form in which he succeeded, was refused the costs of the abandoned proceeding, although the Master reported that he had acted *bonâ fide* (*Re Montgomery*, 1 Moll. 419; and see *Re Ormsby*, 1 B. & B. 189). The receiver should not wait to apply for leave to defend an action till just before trial (*Anon.* 6 Ves. 287). The personal authority of the beneficiaries to incur expenses gives the receiver no lien on the estate (*Malcolm v. O'Callaghan*).

Where a receiver had been irregular in bringing in his accounts, he was ordered, on the application of an incumbrancer, whose charge he was directed to keep down, to bring them in at stated times, and to pay the costs of the application (*Bertie v. Lord Abingdon*, 8 Beav. 53). If a receiver suffer any costs to accrue which ought to have been prevented, he will have to pay them out of his own pocket (*Cook v. Sharman*, 8 Ir. Eq. R. 515). And where the receiver makes default in paying into Court a balance certified to be due from him, he will have to pay the costs

undertaken without the leave of the Court;

defending actions without leave.

Where a receiver is in default.

of the application (see the practice in such cases, stated in 1 Sm. Ch. Pr. 1037). The receiver of leaseholds not paying the rent regularly, will have to pay the costs of the landlord's application to proceed against him for it (*Walsh v. Walsh*, 1 Ir. Eq. R. 209). And where receivers, through carelessness, published a libel, and the chief clerk certified the amount of the damages, though an application to increase the amount was refused, the Court ordered the receivers to bear the applicant's costs personally (*Stubbs v. Marsh*, 15 L. T. 312). On the other hand, an application to remove a receiver for misconduct was refused with costs, and the petitioner being insolvent, the receiver was allowed his costs, as between solicitor and client, out of the funds in his hands (*Courand v. Hammer*, 9 Beav. 3). Where a receiver had been appointed under a mistake, he was removed, but costs were not given against him (*Hunter v. Pring*, 8 Ir. Eq. R. 102).

Costs of other proceedings against him.

It is not the course of the Court, on motion that the tenants may attorn to the receiver, to order them to pay costs (*Hobhouse v. Holcombe*, 2 De G. & S. 208).

Costs of motion that tenants may attorn.

Receiver appointed by will.

A person appointed receiver by will, of a testator's real estates, with a salary, is a proper party to a suit to administer those estates (*Consett v. Bell*, 1 Y. & C. C. C. 569).

Costs occasioned by interference with receiver.

It is the uniform practice to order those who have intruded on a receiver appointed by the Court, to pay the costs and expenses thereby occasioned (*Lane v. Sterne*, 3 Giff. 629; 10 W. R. 555; and see *Fripp v. Bridgewater, &c., Canal Company*, 3 W. R. 356).

Costs in Ireland.

As to what costs will and what costs will not be allowed to receivers in Ireland, see *Sadleir v. Greene*, 2 Ir. Ch. R. 330.

SECT. XII.—*Costs of and relating to Solicitors.*

A solicitor who is sued in respect of fraudulent transactions in which he has been mixed up in his professional capacity, or who prepares improper instruments, which afterwards lead to litigation, may be ordered to pay all the costs thereby occasioned (*Phosphate Sewage Co. v. Hartmont*, 5 Ch. D. 394; 46 L. J. Ch. 661; 37 L. T. 9; *Baker v. Loader*, 16 Eq. 49; 42 L. J. Ch. 113; 21 W. R. 167; *Proctor v. Robinson*, 35 Beav. 329; 15 L. T. 431; *Bennet v. Vade*, 2 Atk. 324; *Beadles v. Burch*, 10 Sim. 332; *Bowles v. Stewart*, 1 Sch. & L. 209, 227); or may be left to bear his own costs (*Harvey v. Mount*, 8 Beav. 439, 452, where, though exonerated from culpability, he had not acted with prudence; *Slator v. Nolan*, Ir. R. 11 Eq. 367, 408; *Bagnall v. Carlton*, 6 Ch. D. 371; 47 L. J. Ch. 30; *Henshall v. Fereday*, 27 L. T. 743). And see further as to the costs of solicitors in cases of this kind *Clark v. Girdwood*, 7 Ch. D. 9; 47 L. J. Ch. 116; 26 W. R. 90; 37 L. T. 614; *Phelp v. Amcotts*, 17 W. R. 703; *Huguenin v. Buseley*, 14 Ves. 273; *Forshaw v. Welsby*, 30 Beav. 243; 30 L. J. Ch. 331. It is no defence for the solicitor to say that he only acted according to his client's instructions. But where the solicitor has not been guilty of participation in a fraud, but at most only of a blunder, for which the remedy is an action for professional negligence, there is no jurisdiction to order him to pay the costs of the suit (*Clark v. Girdwood*). *see addendum ante p 141.*

Where a solicitor, by mixing up his personal interests in his client's transactions, rendered an investigation not unreasonable, the bill was dismissed against him without costs, though it contained unproven charges of fraud (*Fyler v. Fyler*, 3 Beav. 550). A solicitor may be made a party to the suit for the mere purpose of having the costs paid by him, in a case of fraud, but in that case only (*Le Texier v. Margravine of Anspach*, 15 Ves. 159); and the

Where the solicitor is a party to the action.

May be made a party merely for costs.

costs must be specifically prayed against him (*Marshall v. Sladden*, 7 Ha. 428; 19 L. J. Ch. 57). But no other person can be made a defendant for this purpose, except a solicitor or other agent, or an arbitrator (*Weise v. Wardle*, 19 Eq. 172; 23 W. R. 208; and see *Attwood v. Small*, 6 Cl. & F. 232); and the Court discourages the practice (*Barnes v. Addy*, 9 Ch. 244; 43 L. J. Ch. 513; 22 W. R. 505, 30 L. T. 5). If a suit to set aside suspicious transactions with a solicitor fails on some collateral ground, it will be dismissed without costs (*De Montmorency v. Devereux*, 7 Cl. & F. 188, where the defendant proved confirmation; *Lord Clanricarde v. Henning*, 30 Beav. 175, where the bill was dismissed on the ground of the lapse of time). In *Yetts v. Hilton*, 9 L. T. 502, a solicitor who disclaimed to hold as purchaser and claimed only as mortgagee, was allowed costs from the date of the answer. A deed executed by a client and *cestui-que-trust* for securing a solicitor trustee his costs, to which he would not be entitled under the rule stated *infra*, was set aside, but without costs, as the rule was a severe one, and the client had acted inconsistently (*Gomley v. Wood*, 3 J. & L. 8). Where a suit by third parties has been rendered necessary through a solicitor's negligence in the conduct of his client's business, he may be made to pay the costs of it (*Todd v. Studholme*, 3 K. & J. 341); and so at the suit of the client himself (*Craig v. Watson*, 8 Beav. 427).

Where a solicitor trustee acts for himself, he is only allowed costs out of pocket, as against the *cestui-que-trust*.

A solicitor trustee is not allowed, as against his *cestui-que-trust*, any costs other than those out of pocket in respect of any professional services rendered by him, either in the administration of the trust estate out of court, or in conducting a suit by himself, or his own defence to a suit regarding the trust estate (*Moore v. Frowd*, 3 My. & C. 45; *New v. Jones*, 1 Mac. & G. 668, n.; *Fraser v. Palmer*, 4 Y. & C. 515; *Gomley v. Wood*, 3 J. & L. 678; *In re Sherwood*, 3 Beav. 338; *Broughton v. Broughton*, 5 De G. M. & G. 160; *Liquidators of Imperial Mercantile Credit Association v. Coleman*, 6 H. L.

p. 208). "The rule really is that no one who has a duty to perform shall place himself in a situation to have his interests conflicting with that duty; and a case for the application of the rule is that of a trustee himself doing acts which he might employ others to perform, and taking payment in some way for doing them" * (*per* Lord Cranworth, C., 5 De G. M. & G. 164). The case of *Carmichael v. Wilson*, 2 Mol. 537, where the contrary is reported to have been held on Lord Eldon's authority, cannot be relied on (*per* Lord Cottenham, 1 Mac. & G. 678; and Lord Langdale, 8 Beav. 594). The rule applies as well to a constructive as an express trustee. Therefore, where a solicitor executor filed a bill to recover part of the assets and made a judgment creditor a party, the assets being insufficient for payment of the debt, the executor was allowed only costs out of pocket (*Pollard v. Doyle*, 1 Dr. Rule & S. 319). The rule also applies where the trustee is a member of a firm by whom the business is done (*Collins v. Carey*, 2 Beav. 128; and see *Matthison v. Clarke*, 3 Drew. 3); though it is done by one of the partners who is not a trustee, if it is for the profit of all (*Christophers v. White*, 10 Beav. 523; *Lyon v. Baker*, 5 De G. & S. 532, where the Court refused an enquiry whether the employment of the trustee's partner was for the benefit of all parties); but a trustee solicitor may employ his partner, who will be entitled to full costs, provided that the trustee does not participate in the profits (*Clack v. Carlon*, 30 L. J. Ch. 639; 7 Jur. N. S. 441; 9 W. R. 568); and *semble*, two firms may come to an arrangement between them for conducting each other's trust business (*ibid.*). After a dissolution on which the trustee partner retires, a fresh retainer to the continuing members of the firm is necessary; and if they continue to act as solicitors to the trust without such retainer, they will not be entitled to costs, but he may employ his partner.

* The rule also applies to other professional men placed in a fiduciary position: see *post*, p. 405. *Qu.* whether the rule applies where a solicitor executor renounces.

Expenses of town agent allowed.

unless upon the principle of salvage, stated *post*, p. 391 (*Burge v. Brutton*, 2 Ha. 373). The expenses of employing a town agent, if employed by a country solicitor trustee in the ordinary course of business, will be allowed (*ibid.*).

A solicitor trustee appearing for himself and co-trustees.

[104] 2c 36c

In *Cradock v. Piper*, 1 Mac. & G. 664, Lord Cottenham held that a solicitor trustee appearing for himself and his co-trustees in a suit was entitled to full costs as if he was not a party, except so far as the costs were increased by his being a party. The contrary, however, was expressly held by Lord Langdale in the earlier case of *Bainbrigge v. Blair*, 8 Beav. 588, where the solicitor acted for himself, his co-trustees, and *cestuis-que-trust*. In *Lincoln v. Windsor*, 9 Ha. 158, V. C. Turner held that the rule in *Cradock v. Piper*, applied only to costs in a suit, and not to the costs of business done in the course of administration out of court, which he disallowed. This decision was followed by Lord Cranworth, C., in *Broughton v. Broughton*, 5 De G. M. & G. 164, who, however, confessed his inability to see the distinction in principle between costs in and out of Court, and threw doubts on the soundness of Lord Cottenham's decision generally. The rule in *Cradock v. Piper* was also questioned by the same learned Lord in the House of Lords (*Manson v. Baillie*, 2 Macq. 80, 82); and also by Lord Brougham (*ibid.* p. 91).

Solicitor trustee appearing for *cestuis-que-trust*.

A sole trustee acting as solicitor for the *cestuis-que-trust*, parties to a suit, will be allowed his usual costs, at least where they defend separately (*Fraser v. Palmer*, 4 Y. & C. 515; *Cradock v. Piper*, 1 Mac. & G. 664); and according to the latter case where the trustees and *cestuis-que-trust* defend jointly, so far as the costs are not increased thereby, but see *contra*, *Bainbrigge v. Blair*, 8 Beav. 588; and the observations *supra*.

Special directions not made in decree giving

Where a trustee solicitor becomes entitled to costs, the Court will direct the taxation of his costs as between solicitor and client in the usual manner, leaving it to the

Taxing Master to take notice of the fact that he is a solicitor (York v. Brown, 1 Coll. 260; Cradock v. Piper, 1 Mac. & G. 664). As to disputing after many years a bill paid by a trustee solicitor to himself, see Allen v. Jarvis, 4 Ch. 616.

But a solicitor becoming a trustee for his client may make a special contract with him for remuneration for his professional services, the costs of which will in that case be allowed (*Moore v. Frowd*, 3 My. & C. 45; *In re Sherwood*, 3 Beav. 338); though, *semble*, it would be difficult for a solicitor to maintain such special contract, where the client had no independent advice (*Moore v. Frowd*); or at least was not expressly informed by the solicitor of the rule of law. In *In re Sherwood*, the deed was settled by counsel on behalf of the client and *cestui-que-trust*. In *Gomley v. Wood*, 3 J. & L. 678, a deed executed by a client for securing a solicitor trustee his costs, without independent legal advice or information of his rights, was set aside, although the client had admitted his liability in correspondence, and had petitioned for taxation. Where, in a general account and release between a solicitor trustee and his *cestui-que-trust*, the former took credit for bills of costs for professional services, the release was upheld, the *cestui-que-trust* having had independent advice (*Stanes v. Parker*, 9 Beav. 385); but *secus* where the *cestui-que-trust* had no independent advice (*Todd v. Wilson*, *ibid.* 486; and see *In re Wyche*, 11 Beav. 209).

The ordinary clause for trustees' indemnity and reimbursement, or a provision for retainer by trustees of costs "incurred, sustained, or borne" by them, or which they might "sustain or be put to," will not give a trustee solicitor profit costs (*Moore v. Frowd*, 3 My. & C. 45). Where a solicitor executor is authorised to charge for "professional" services, that means strictly professional, and not such as might be performed by an executor in a lay capacity, such as attendances at the Bank to

solicitor
trustee
costs.

Solicitor
may make
special
contract
for costs
on be-
coming
trustee.

What
words
sufficient

Meaning
of "pro-
fessional
services.

receive dividends, &c. (*Harbin v. Darby*, 28 Beav. 325).

The Court may give solicitor trustee remuneration in special cases.

Semble, the Court will, under special circumstances, make an order allowing a solicitor trustee some remuneration for his professional services; but the application should be made before the costs are incurred (*Bainbrigge v. Blair*, 8 Beav. 588); and professional charges would not be given (*ibid.*); and see *Marshall v. Holloway*, 2 Swans. 453.

The rule applies only between trustee and *cestui-que-trust*.

The rule depriving a trustee who acts as his own solicitor of profit costs, however, applies only between the trustee and his *cestui-que-trust*; and, therefore, as against persons unsuccessfully impeaching the trust deed a trustee in such a position will be entitled to full costs (*Pince v. Beattie*, 2 N. R. 546; 11 W. R. 979). So a solicitor trustee may charge with costs another client who advances money to the trust estate on mortgage; see *Whitney v. Smith*, 4 Ch. 513; 17 W. R. 579; 20 L. T. 468.

Solicitor mortgagee acting for himself.

It has been held also that a solicitor mortgagee defending his title to the mortgaged property will be entitled, as against the mortgagor and subsequent incumbrancers, to costs out of pocket only, if he acts for himself (*Slater v. Cottam*, 3 Jur. N. S. 630; 5 W. R. 744). In *Price v. McBeth*, 12 W. R. 818, V. C. Stuart held that objections to allowing profit costs to a solicitor mortgagee should be taken at the hearing, and that, in the absence of special directions, the Taxing Master was bound to tax in the usual way; but see *ante*, p. 388.

5 W. R. 744: 43 C. O. 57.
W. N. 90 864. S.
64 L. T. 80.
[1891] 2 Ch. 366.

Where a solicitor pays costs personally, though not a party to the proceedings.
i. Where he acts without authority.

The Court has power, under its general jurisdiction over solicitors as officers of the Court, to make them personally answerable for the costs of proceedings taken without authority, or for malfeasance or neglect in the conduct of their clients' business.

As to the practice and the costs payable by the solicitor, when proceedings are instituted by him without authority, or without proper authority, see *ante*, pp. 86—89,

where the cases are collected. The liability to pay the defendant's costs in such a case is a liability incurred by means of a fraud within the 49th section of the Bankruptcy Act, 1869 (*Jenkins v. Fereday*, L. R. 7 C. P. 358). As to what is sufficient retainer, see *ante*, p. 89. Although a defendant, for whom a solicitor has assumed to act without a retainer, takes no step to have his name struck out, that is not equivalent to a retainer (*Hall v. Laver*, 1 Ha. 571); but a solicitor under those circumstances may be entitled to his costs if there are funds coming to the party, on the principle that it is inequitable for him to take the benefit of the suit without bearing the expenses of it (*ibid.*; and see *Burge v. Brutton*, 2 Ha. 373; 12 L. J. Ch. 368). The solicitor, however, in that case will have no personal remedy, but merely a lien on the funds (*ibid.*). The solicitors of a company, if they act in business relating to matters which are *ultra vires* as to the company, are to that extent the solicitors of the directors only (*Re Phoenix Life Assurance Company*, 1 H. & M. 433; 2 N. R. 548). Where a solicitor made a motion in the name of a married woman without a next friend, it was dismissed with costs, to be paid by the solicitor (*Pearse v. Cole*, 16 Jur. 214). And where a bill was filed by persons assuming, without title, to sue in a corporate capacity, it was taken off the file with costs, but against the town agent only, not the country solicitor (*Burgesses of Ruthin v. Adams*, 7 Sim. 345).

In *Cockle v. Whiting*, 1 R. & M. 43, it was said that if a bill which is dismissed at the hearing with costs, be so vexatious and frivolous that it cannot have been instituted *bonâ fide*, and the plaintiff is out of the jurisdiction, the Court would compel the plaintiff's solicitor to pay the taxed costs. And upon an application by a client to tax his solicitor's costs the solicitor will be disallowed the costs of a litigation upon which he advised his client to enter when he knew or ought to have known that he could not possibly be successful (*Re Sherwood* (C. A.), 17 S. J. 146).

or the proceedings are irregular.

ii. Where the proceedings are not *bonâ fide*;

or in case
of mal-
feasance of
solicitor.

Where a false plea was put in for purpose of delay, it was ordered to be taken off the file with costs against the solicitor who gave instructions for it (*Aubrey v. Aspinall*, Jac. 441). In an interpleader suit, where the plaintiff was colluding with one of the defendants, the other defendants' costs, as between solicitor and client, were ordered to be paid by the plaintiff and his attorney (*Dungey v. Angore*, 2 Ves. Junr. 304, 313). A bankruptcy petition, being vexatious and frivolous, and though presented in another's name, really for the attorney's private advantage, was dismissed with costs against the attorney (*In re Cuthbert*, 1 Mad. 78). Where the action was frivolous, vexatious, and an abuse of the process of the Court, proceedings were stayed, and the plaintiff's solicitor ordered to pay the defendant's costs as between solicitor and client (*Tilney v. Stansfeld*, W. N. (1880), 77; 28 W. R. 582). Where an illiterate person, having become the purchaser of property under a decree, retained the vendor's solicitor, by whom, though the report was against the title, he was attached for non-payment of the purchase monies, the contract was cancelled on motion, and all the costs were ordered to be paid by the solicitor (*Bromage v. Davies*, 4 Jur. N. S. 682). Again, where a solicitor having been discharged by the infant plaintiff's mother, by whom he had been retained, nevertheless appointed a new next friend in place of the former one who was dead, and went on with the suit, he was charged with the costs of a motion to change the next friend, and of the appointment of a new one (*Lander v. Ingersoll*, 4 Ha. 596). But to make a solicitor pay the costs of improper proceedings he must be guilty of misconduct in the matter sought to be set aside (*In re Greg*, 9 Eq. 137). A solicitor who, knowing that money in court belongs to one person gets it out for another, will be personally liable (*Ezart v. Lister*, 5 Beav. 585); and it is enough, if he knows of circumstances which duly considered would lead him to the knowledge (*ibid.*); and see *Todd v. Studholme*, 3 K. & J. 341; *Re*

Spencer, 39 L. J. Ch. 841; 18 W. R. 240; 21 L. T. 808.

So also in cases of scandal the Court has ordered the solicitor to pay costs; see the cases cited *ante*, p. 38. iii. In cases of scandal.

The Court may also direct the solicitor of one of the parties to pay to another party the costs occasioned by his negligence in the conduct of his client's business. See *Fawkes v. Pratt*, 1 P. W. 592, where the bill omitted to pray process against some of the defendants, and a demurrer having been consequently allowed for want of parties, the costs were ordered to be paid by the solicitor personally, the plaintiff being a poor man; *Courtney v. Stock*, 2 Dr. & W. 251, where a solicitor was ordered to pay the costs of the day, in consequence of his non-attendance in Court when the cause was called on; *Re Commonwealth Land Co.*, 29 L. T. 502, where a solicitor issued a *fi. fa.* for costs contrary to good faith, and was ordered on motion to pay the costs of the execution and of the motion; *Ross v. Wood*, 2 Dr. & Wal. 490, where the solicitor vexatiously refused to accept service for his client; *O'Riordan v. Riordan*, Ir. R. 10 C. L. 547, where a solicitor vexatiously refused to accept a banker's draft in payment of rent; *Taylor v. Gorman*, 4 Ir. Eq. R. 550, where a solicitor misdescribed a lease sold by the Court; *White v. Hillaere*, 3 Y. & C. 278, in the Exchequer, where a solicitor was charged with the costs of an application rendered necessary by his own delay and mistake; and *Re Hogan*, 3 Atk. 812, where a petition on which affidavits had been sworn before the solicitor himself was dismissed with costs to be paid by the solicitor. By Cons. Ord. XXI., r. 12, if a cause is struck out for want of papers, the plaintiff's solicitor may be ordered to pay the costs occasioned to the adverse parties. In *Birch v. Williams*, 24 W. R. 700, where a bill had been dismissed with costs through the plaintiff's solicitor having neglected to instruct counsel or deliver papers, the cause was iv. In case of negligence between third parties and solicitor.

restored, and the solicitor was ordered to pay the costs of the day, and of the application to restore.

It was formerly doubted whether the Court had power under its general jurisdiction to charge a solicitor, as between himself and his client, with loss occasioned to the latter by the solicitor's negligence in the conduct of a suit; see *British Mutual Society v. Cobbold*, 19 Eq. 627; *Frankland v. Lucas*, 4 Sim. 586; *Mare v. Lewis*, Ir. R. 4 Eq. 219, where the jurisdiction was denied; *contra*, *Dixon v. Wilkinson*, 4 De G. & J. 508; *Chapman v. Chapman*, 9 Eq. 276.

Solicitor may be made answerable for negligence by action.

Under the present practice the proper remedy of the client is an action for negligence against the solicitor; see *Whiteman v. Hawkins*, 4 C. P. D. 13; 27 W. R. 262; 39 L. T. 629; *The Papa de Rossie*, 3 P. D. 160; 27 W. R. 367. A solicitor cannot contract himself out of his liability for negligence by any agreement under the Attorneys' and Solicitors' Act, 1870; see section 7 of the Act, *post*, p. 419. Where a fund in an administration suit had, through the negligence of the plaintiff's solicitor, been distributed amongst the creditors without regard to the rights of a mortgagee, the Court, in a suit instituted for the purpose, directed the creditors to refund *pro ratâ*, and the solicitor to make good the deficiency, if any, and pay the costs of the suit (*Todd v. Studholme*, 3 K. & J. 341); and the solicitor had to pay the costs of a suit occasioned by his negligence or misconduct, in taking an insufficient security for his client (*Craig v. Watson*, 8 Beav. 427). Negligence will also be a good answer to the claim of a solicitor against his client's estate in an administration suit for the costs of a suit which failed through his default (*Stokes v. Trumper*, 2 K. & J. 232; but the case was compromised on appeal).

Where the solicitor has given a personal undertaking;

Lastly, a solicitor may become liable in costs, on the grounds of a personal undertaking by him. See *Cook v. Broomhead*, 16 Ves. 133, where a solicitor, having undertaken to appear for a defendant at the hearing and not

having done so, was ordered on motion to pay the plaintiffs the costs occasioned by the defendant not appearing, and the costs of the application. "The difference is where the party thus undertaking for and on behalf of his client has an authority so to do, and where he has not. If such undertaker has no authority, then it is a fraud, and the undertaker ought himself to be liable. But where there is such an authority (as here there was) to the attorney, this is only acting for another, like the case of a factor or broker acting for principals, who were never held to be liable in their own capacities" (*per* L. C. Talbot, *Johnson v. Ogilby*, 3 P. W. 278; and see *In re Williams*, 12 Beav. 510). A personal undertaking by a solicitor to pay costs may be enforced by the summary jurisdiction of the Court (*Gilbert v. Cooper*, 15 Sim. 343; 11 L. T. (Old S.) 169); but not if the payment of the costs is only one of the terms of a compromise (S. C. on appeal, 17 L. J. Ch. 265).

Where a solicitor agrees to indemnify the plaintiff in a suit against the costs and has the control of the suit, he will be ordered to pay the defendants their costs of suit when dismissed (*Re Jones*, 6 Ch. 497; S. C. *sub. nom.*, *Fielden v. Northern Ry. of Buenos Ayres*, 40 L. J. Ch. 113; 18 W. R. 729; 19 W. R. 361; 22 L. T. 511; 23 L. T. 655; *Cockle v. Whiting*, 1 R. & M. 43).

or agrees
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Where the solicitor gave the relator in a charity information an indemnity against costs, the information was ordered to be taken off the file with costs against the relator and the solicitor (*Attorney-General v. Skinners' Co.*, C. P. C. 7). As to agreements between solicitor and client as to costs, see, *post*, Chap. VII.

An agreement to indemnify the plaintiff against costs in consideration of receiving a share of the property recovered in the suit, will amount to champerty and maintenance (*Hilton v. Woods*, 4 Eq. 432; *Harrington v. Long*, 2 My. & Ke. 590; and see *Re Attorneys Act*, 1870, 1 Ch. D. 573; 44 L. J. Ch. 47; 24 W. R. 38; *post*, p. 422.

SECT. XIII.—*Costs of Trustees, Executors, and Administrators.*

i. Costs of trustees, &c., in suits between themselves and strangers. Where trustees are plaintiffs.

In suits between themselves and persons, strangers to the trust, executors, administrators, and trustees, suing in that character, are in no better position as to costs than parties suing in their own right (*Westley v. Williamson*, 2 Mol. 458; *Hill v. Magan*, *ibid.* 460; *Elsÿ v. Lutyens*, 8 Ha. 165; *Rennie v. Massie*, L. R. 1 P. & D. 118; and see *per* Lord Northington, *Burgess v. Wheate*, 1 Ed. 251). Therefore a vendor's bill for specific performance was dismissed with costs, although the plaintiffs were only trustees for sale (*Edwards v. Harvey*, G. Coop. 39); and see *Ex parte Angerstein*, 9 Ch. 479; *Ex parte Royle*, 20 Eq. 780; *Pitts v. La Fontaine*, 6 App. Cas. 482; *Marbella Iron Co. v. Allen*, 38 L. T. 815; *Ex parte Forder*, *In re Sparks*, W. N. (1881) 117. And where a litigant dies, and his executor obtains an order authorising him to continue the suit, he renders himself personally liable for the costs (*Boynton v. Boynton*, 4 App. Cas. 733; 27 W. R. 141, 825; *Horlock v. Priestly*, 8 Sim. 621). If trustees become entitled to costs against strangers, such costs will, as a rule, be taxed as between party and party only; in some very special cases, however, the trustees have received their costs as between solicitor and client (see *Turner v. Collins*, 12 Eq. 438, and the other cases cited, *post*, p. 402). Residuary legatees in trust were not allowed costs as between solicitor and client as against the executrix, who was sued in that character, though she was also tenant for life of the residue (*Hearn v. Wells*, 1 Coll. 323).

Where trustees are defendants.

Costs of trustees under a void deed.

But where trustees are brought into Court in a suit to determine the rights in a fund, they will be allowed costs out of it, although they make a claim, if it is merely by way of submission to the Court (*Rashley v. Masters*, 1 Ves. Jun. 201, 205). In *Elsey v. Cox*, 26 Beav. 95, the Court, on setting aside a voluntary settlement, as void against creditors, held that the utmost it could do was to make

the decree against the trustees without costs; and see *Townsend v. Westcott*, 4 Beav. 58; *Elsay v. Lutyens*, 8 Ha. 159, 164; *Crossley v. Elworthy*, 12 Eq. 158. But in *Goldsmith v. Russell*, 5 De G. M. & G. 556, the costs of all parties, except the settlor, were allowed out of the funds; and see *Ponsford v. Widnell*, W. N. (1869) 81; and *Adames v. Hallett*, 6 Eq. 468; 18 L. T. 789, where the plaintiffs' costs had priority. In *Turquand v. Knight*, 14 Sim. 643, the trustee had made himself a party to the fraud by signing a false receipt on the deed, and was allowed no costs, but did not pay any; and see *Prideaux v. Lonsdale*, 1 De G. J. & S. 433, 439, overruling on this point, S. C. 4 Giff. 159. Where the trustee had also a beneficial interest, and insisted on the validity of the deed, he had to pay costs (*Irwin v. Rogers*, 12 Ir. Eq. R. 159); and see *Tanqueray v. Bowles*, 14 Eq. 151; *Smith v. Dresser*, 35 Beav. 378; 1 Eq. 651, where the trustee insisted on his right to retain his costs and expenses, and had to pay all the costs of a suit to make him give up the property; *Mackay v. Douglas*, 14 Eq. 106, where the trustees actively supported the settlement, and they and the settlor were made jointly liable for the costs; *Ex parte Russell, in re Butterworth*, W. N. (1882), 26. Where the trustee, under a fraudulent assignment of an annuity, was also trustee under the instrument creating it, and a necessary party in that character, he was allowed his costs, and directed to retain them, in default of payment by the insolvent, out of the annuity (*Norcutt v. Dodd*, Cr. & Ph. 100). And where a conveyance by the trustee was asked for, he, being treated as a trustee to that extent, was allowed his costs (*Snow v. Hole*, cited in Lewin on Trusts, 7th ed. p. 848). In a suit by a purchaser to have a voluntary settlement delivered up to be cancelled, no costs were given to the *cestuis-que-trust*, but the trustees had theirs from the plaintiff, who had them over from the settlor (*Daking v. Whimper*, 26 Beav. 568). In *Colman v. Sarrel*, 1 Ves. Jun. 50, the deed was supported, but, the transaction not being meritorious, the trustee was not allowed any

costs. Where the right to relief was not disputed, the costs were ordered to be paid out of the settled property (*Thompson v. Milligan*, 18 L. T. 809).

As between executors and creditors.

As between themselves and creditors, however, executors and administrators are entitled to their full costs, charges, and expenses out of the estate in priority to the payment of debts, though the estate is insolvent (see the cases cited *ante*, p. 200). But if they improperly deny assets, they may be postponed to the creditors' debts and costs (*Lodge v. Pritchard*, 4 Giff. 294).

A personal representative who has distributed the assets under 22 & 23 Vict. c. 35, s. 29, ought to give an unpaid creditor full information as to the parties among whom he has so distributed them; and if he has not given such information before suit instituted by the creditor, he will be refused the costs of defending himself and claiming the protection of the statute (*Re Lindsay*, Ir. R. 8 Eq. 61).

ii. As between trustees, &c., and their *cestuis-que-trust*.

As between trustees and *cestuis-que-trust*, the former are ordinarily allowed their costs of suit as between solicitor and client, and in addition thereto any other costs, charges, and expenses properly incurred by them in the execution of their trust, or the administration of their estate, upon the suggestion of counsel that any such have been incurred (1 Sm. Ch. Pr. 1074: and *Bradshaw v. Bradshaw*, cor. V. C. Kindersley, there referred to in note 4); and the case must be supported before the Taxing Master. Strictly speaking, the charges and expenses of trustees are not "costs" at all, and the words are used because they include items which are not costs. They are not like the ordinary costs of an action in the mere ordinary discretion of the Court; and to deprive a trustee of his charges and expenses, has been termed a "violent" exercise of the Court's discretion. The Court can deprive a trustee of them for gross misconduct, but that is all. An order directing payment of a trustee's costs, charges, and expenses out of a particular fund is, therefore, not within section 49 of the Judicature Act, and may be appealed from (*In re Chennell*, *Jones v. Chennell*,

8 Ch. D. 492 ; 47 L. J. Ch. 583 ; 26 W. R. 595 ; 38 L. T. 494). The Court deals liberally in this matter with a trustee acting *bonâ fide* (*Courtney v. Rumley*, Ir. R. 6 Eq. 99 ; *Ryan v. Nesbitt*, W. N. (1879), 100). "Nothing ought, I think, to be adhered to more sacredly than the general principle, which is that a trustee or executor having done his duty, having faithfully accounted, and having brought forward the estate committed to his charge, should not be deprived of his costs upon light grounds" (*per* Lord Westbury, in *Birks v. Micklethwait*, 34 L. J. Ch. 364). By R. S. C., Order LV. r. 1, the right of a trustee to costs out of a particular estate or fund to which he would be entitled according to the rules of Courts of Equity is expressly preserved. For an instance of trustees being allowed special costs under very peculiar circumstances, see *Mostyn v. Emanuel*, W. N. (1876), 237. For the form of the order, see Seton, 481, where the form of an enquiry whether any extra charges and expenses have been incurred is also given. The trustee will be allowed his usual costs, although he is a bankrupt (*Turner v. Mullineux*, 9 W. R. 252 ; 3 L. T. 687 ; *Bowyer v. Griffin*, 9 Eq. 340 ; 39 L. J. Ch. 159 ; 18 W. R. 227) ; and trustees invalidly appointed but who had acted *bonâ fide*, believing themselves duly appointed, were allowed their costs, charges, and expenses, in the usual way (*Travis v. Illingworth*, W. N. (1868), 206). A bankrupt executor's costs up to the time of his bankruptcy will be set off against a sum due from him to the estate, but not his subsequent costs (see *ante*, p. 190, and the cases there cited). A trustee under a void instrument which passes no trust-fund cannot have costs as between solicitor and client (*Mohun v. Mohun*, 1 Swans. 201, where the bill was filed to establish a will of personalty, which the Court held to be void ; and see *Daking v. Whimper*, 26 Beav. 568).

Trustees, &c., have a lien on the trust funds or estate for their proper costs, charges, and expenses (*Attorney-General v. Mayor of Norwich*, 2 My. & C. 406, 424 ;

Trustees have a lien on the trust estate for

their costs,
charges,
and ex-
penses.

Parsons v. Spooner, 5 Ha. 102, 110; and see Statute 22 & 23 Vict. c. 35, s. 31). And where a married woman's suit against her trustees was dismissed with costs so far as related to an alleged breach of trust, the next friend proving insolvent, the trustees were allowed to retain their costs of suit out of the income under the powers of reimbursement in the settlement (*D'Oechsner v. Scott*, 24 Beav. 239). So, where the estate was being administered by the Court, consignees and receivers appointed by it were allowed advances made by them in excess of the income, out of the corpus of the property (*Morison v. Morison*, 7 De G. M. & G. 214). "These payments must be looked on as payments made in the proper administration of the trust for the protection and preservation of that, which was to be protected and preserved, until it should be converted into money. They must be treated as having been made in execution of a money trust, and it is impossible to permit the trust property to be enjoyed by any persons beneficially under the trust without making good the expenditure and advances *bonâ fide* made in execution of the trust under the authority of the Court, whose duty it was to direct how the trusts were to be executed" (*ibid.* p. 224, 226; *Re Exhull Coal Co.*, 35 Beav. 449). But where an estate was vested in a legal tenant for life, with remainder to trustees, in trust to sell, it was held that the trustees had no lien on the estate for the expenses of an abortive sale, attempted with the approbation of the *cestuis-que-trust*, some of whom were under disability (*Leedham v. Chawner*, 4 K. & J. 458). A power in trustees to raise by mortgage a fixed sum, implies a power to raise also the incidental costs of the mortgage (*Armstrong v. Armstrong*, 18 Eq. 541). A trustee acting *bonâ fide* in concurrence with the heir at law under a will as to real estate, which was supposed to be valid, but proved to be invalid, was held to be entitled to be indemnified out of the personal estate (*Edgecumbe v. Carpenter*, 1 Beav. 171). But charity trustees, having several properties

Where
there are
no funds.

vested in them, cannot indemnify themselves out of one for expenses incurred with respect to others (*Attorney-General v. Grainger*, 7 W. R. 684); nor destroy all the trusts for the sake of recouping themselves expenses properly incurred (*Darke v. Williamson*, 25 Beav. 622). And where, on an *ex officio* information by the Attorney-General, a charity estate was held to be lost through breach of condition, the trustees could get no costs either from the Attorney-General or out of the estate (*Attorney-General v. Grainger*). In *Attorney-General v. Cuming*, 2 Y. & C. C. C. 139, 155, where the subject of the trust was an advowson and there were no funds, trustees (defendants) were allowed costs from their *cestuis-que-trust* (plaintiffs) personally; and see *Edenborough v. Archbishop of Canterbury*, 2 Russ. 112; *Turner v. Collins*, 12 Eq. 438; 40 L. J. Ch. 614; 25 L. T. 264, varied on appeal on the merits, 7 Ch. 629; 41 L. J. Ch. 558; 20 W. R. 305; 25 L. T. 779. An administrator *ad litem* is entitled to his costs out of the fund, if there is one, or, in default, from the plaintiff personally (*Nash v. Dillon*, 1 Mol. 236; *Nicholson v. Falkiner*, *ibid.* 555). A trustee will be allowed the costs of opposing a bill in Parliament which affects the trust estate (*Re Nicoll's Estates*, W. N. (1878), 154).

Costs of
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ad litem

Where a widow on the death of her husband abandoned a suit by her husband and herself, the executors were allowed to enforce their lien for their costs by a supplemental bill (*Jackson v. Woolley*, 12 Sim. 12). But where a trustee, defending separately, died before the hearing on further directions, a petition by his personal representative for payment of his costs out of the funds was refused (*Malins v. Greenway*, 7 Ha. 391). In that case, however, the costs were partly incurred in rebutting charges against him otherwise than in his fiduciary character; but see *Walters v. Woodbridge*, 7 Ch. D. 504; 47 L. J. Ch. 516; 26 W. R. 469; 38 L. T. 83, reversing S. C. below, 20 W. R. 520.

How the
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enforced.

Disclaim-
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entitled to
costs as
between
party and
party only.

Costs
of dis-
claiming
trustees
generally.

A person who disclaims the trust is in the situation of any other defendant, and can have costs only as between party and party (*Norway v. Norway*, 2 My. & K. 278; *Heap v. Jones*, 5 W. R. 106; *Bulkeley v. Earl of Eglinton*, 1 Jur. N. S. 994; *Bray v. West*, 9 Sim. 429, notwithstanding *Sherratt v. Bentley*, 1 R. & M. 655, which is overruled). Where the executrix of a deceased and sole trustee declined to receive or pay any dividends on the trust stock, she was allowed out of the fund the costs of a suit for the appointment of new trustees and a transfer of the fund (*Legg v. Mackrell*, 2 De G. F. & J. 551, overruling S. C. 1 Giff. 165, where V.-C. Stuart said he would have made her pay costs, but that the bill prayed costs against her). But a trustee disclaiming should not put in a full defence, and if he does so, he will not be allowed the costs of it (*Martin v. Persse*, 1 Mol. 146; *Murphy v. O'Shea*, 2 J. & L. 431); but in *Benbow v. Davies*, 11 Beav. 369, where the disclaiming trustee set out a long correspondence to show that he had never acted, he was allowed the costs of it under the circumstances. A person, who had been named as trustee of a term without his authority, on being called on to disclaim was held entitled to receive out of the trust funds the expenses of taking the opinion of counsel as to his obligation to execute a deed of disclaimer (*Re Tryon*, 7 Beav. 496).

Suit may
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trustees
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solicitor
and client
costs.

Where a suit is dismissed with costs as against trustees the Court may order the unsuccessful party, though a stranger to the trust, to pay these costs as between solicitor and client, whether there is any fund out of which they may be paid or not; if it should turn out that he is unable to pay them, they must come out of the fund if there is one (*Turner v. Collins*, 12 Eq. 438; 40 L. J. Ch. 614; 25 L. T. 264; varied on appeal on the merits, 7 Ch. 629; 41 L. J. Ch. 558; 20 W. R. 305; 25 L. T. 779; *Attorney-General v. Cuming*, 2 Y. & C. C. C., 139, 155; *Edenborough v. Archbishop of Canterbury*, 2 Russ. 93; but see *Saunders v. Saunders*, 3 Jur. N. S. 727; 5 W. R. 479, where

Kindersley, V.-C., said that where there was no fund trustees could only have party and party costs).

Trustees severing in their defence will not be allowed separate sets of costs, except under special circumstances (see *ante*, pp. 124—126). In addition to the cases there cited, see *Mortimer v. Picton*, 12 W. R. 292, as to the costs of trustees severing where one imputes misconduct to the other; *Cummins v. Bromfield*, 3 Jur. N. S. 657, where, in a hostile legatee's suit, two trustees severing from a third, who was the sole acting trustee, and lived in a distant part of the country, were allowed separate costs; and *O'Malley v. Blease*, 17 W. R. 952; 20 L. T. 899, where the trustees appeared separately at the request of the plaintiff, and two sets of costs were allowed. As to the costs of executors petitioning in a wrong character, see *Wilson v. Maddison*, 16 W. R. 417. A trustee who refuses to join his co-trustee as co-plaintiff in a suit properly instituted is not entitled to costs as defendant (*Hughes v. Key*, 20 Beav. 397; *Collyer v. Dudley*, T. & R. 421; 2 L. J. Ch. O. S. 15; and see *Gompertz v. Kensit*, 13 Eq. 369; 41 L. J. Ch. 382; 20 W. R. 313; 26 L. T. 95); although the suit is to set right a breach of trust, as to which the defendant trustee is innocent (*Hughes v. Key*); but see *contra*, *Blount v. Barrow*, 3 Bro. C. C. 90. As to the costs of a trustee not joining his *cestui-que-trust* as co-plaintiff, and therefore made defendant, see the rule stated *ante*, p. 126. Where money has been paid into Court by a railway company, and the *cestui-que-trust* petitions for payment out, making the trustee a respondent, it is proper for the trustee to appear by separate counsel to inform the Court that the order is correct, and the company must pay his costs (*Ex parte Metropolitan Ry. Co.*, W. N. (1868), 204; 16 W. R. 996). Where an equitable lessee of tithes with a right to call for the legal estate filed his bill, and made the rector a defendant, the latter was held entitled to his costs from the plaintiff, as there was no express or implied agreement that the lessee should use the rector's name;

Trustees severing, where entitled to separate sets of costs.

Costs of trustee not joining his *cestui-que-trust* as co-plaintiff.

but the plaintiff could not recover the rector's costs with his own, as he might have called for the legal estate before instituting the suit (*White v. Gardner*, 1 Y. & C. 385). However, in suits between mortgagor and mortgagées, it would seem that the ordinary rules do not apply, to co-mortgagées, or a mortgagée and his trustees severing in their defence or not suing jointly (see *ante*, p. 233, and the cases there cited).

* Costs, charges, and expenses," what are.

In *Collis v. Robins*, 1 De G. & S. 131, 135, it was conceded that funeral expenses and costs of probate were not included in "costs, charges, and expenses;" nor are costs incurred in defending other suits relating to the estate instituted against the executor, in that character, included (*Payne v. Little*, 27 Beav. 83); and the costs of rehearings before the Lord Chancellor were not included in costs of the suit as between solicitor and client (*Agabeg v. Hartwell*, 5 Beav. 271). But in *Graham v. Wickham*, 2 De G. J. & S. 497; 5 N. R. 292; 34 L. J. Ch. 220, costs of litigation after decree were allowed, and the Court considered whether such costs had been properly incurred; and see *Walters v. Woodbridge*, 7 Ch. D. 504; 47 L. J. Ch. 516; 26 W. R. 469; 38 L. T. 83; *Fulton v. Andrew*, 46 L. J. Ch. 131; W. N. (1876), 203; *Re Blight*, 21 W. R. 573. As to the meaning of the term "executorship expenses" in a will, see *Sharp v. Lush*, 10 Ch. D. 468, and cases cited *ante*, p. 172. The mere fact that a trustee has been unsuccessful in litigation, whether as plaintiff or defendant, does not, in the absence of misconduct, disentitle him to be reimbursed his costs (*Courtney v. Rumley*, Ir. R. 6 Eq. 99). Where a trustee was about to be discharged, and instructed his solicitor to prepare the proper deeds of release, but on discovering that a breach of trust had been committed, filed a bill instead, he was allowed the costs of preparing the deeds of release which became useless in consequence of the suit (*Stevens v. Lord Newborough*, 11 Beav. 403); and the trustee was also allowed the expenses of a conference with counsel to

advise on a proposed settlement of the suit (*ibid*); and see *Re Tryon*, 7 Beav. 496. Executors will not be allowed the costs of transferring funds from the testator's name to their own names (*Hopkinson v. Roe*, 1 Beav. 183). It is not the practice in taking the account in Chambers under the decree to allow expenses incurred since the suit, but they are provided for on further consideration (Set. 482). A trustee who is respondent to an appeal to the House of Lords, on a question affecting the rights of the *cestuis-que-trust inter se*, will not be allowed the costs of printing a case or appendix (*Prendergast v. Prendergast*, 3 H. L. C. 195, 225). As to the costs which will be allowed to a solicitor trustee acting for himself, see *ante*, p. 386, *seq.* The same principle applies to other professional men, made trustees. Thus an executor trustee, who acts as auctioneer on the sale of trust property, will not be allowed commission (*Kirkman v. Booth*, 11 Beav. 273); though he is only a member of a firm who conduct the sale (*Matthison v. Clarke*, 3 Drew. 3); but *secus* where he is authorised by the trust deed to charge commission, though not described in it as an auctioneer (*Douglas v. Archbutt*, 2 De G. & J. 148). So a land surveyor trustee who superintended the management and sale of the estates was held, under the powers of the instrument creating the trust, to be entitled to compensation for loss of time (*Willis v. Kibble*, 1 Beav. 559). Executors, who are also agents, are not allowed commission on remittances from India (*Hovey v. Blakeman*, 4 Ves. 596); and trustees bankers are not allowed compound interest on advances (*Crosskill v. Bower*, 32 Beav. 86). The Court will not allow an executor interest on costs paid by him pending a suit regarding the estate (*Gordon v. Trail*, 8 Price, 416).

Costs
of pro-
fessional
trustees.

Where the sole object of a suit is to make the trustees answerable for a breach of trust, and a decree is made against them, it will be almost invariably with costs (*Earl Powlet v. Herbert*, 1 Ves. Jun. 297; *Whistler v.*

Costs of
trustees
in suits
respecting
breaches
of trust.

Newman, 4 Ves. 129; *Piety v. Stace*, *ibid.* 620; *Tebbs v. Carpenter*, 1 Mad. 290); although the *cestui-que-trust* had, but in ignorance, dealt with the person in whose hands the money had been suffered to remain, as the person liable (*Adams v. Clifton*, 1 Russ. 297); and though the trustees had no corrupt motive (*Caffrey v. Darby*, 6 Ves. 488; *East v. Ryal*, 2 P. W. 284; *O'Callaghan v. Cooper*, 5 Ves. 129; *Gough v. ETTY*, 20 L. T. 358). "I do not know of any instance where trustees are made to repair a breach of trust, in which they have not been charged with the costs of the suit. It is almost always a necessary consequence, for they ought not to add to the loss of their *cestui-que-trust* the costs of the suit rendered necessary for the purpose of obtaining redress" (per Lord Langdale, M. R., *Byrne v. Norcott*, 13 Beav. 336, 346). But if other parties have had the benefit of the breach of trust, they will be primarily liable; see *Kaves v. Hickson*, 30 Beav. 136, where the costs were ordered to be paid (1) by the parties who had the benefit of the breach of trust, (2) by the party who caused it by forging a certificate, and (3) by the trustees; and see, as to the ultimate liability of the trustees, *Webster v. Le Hunt*,* 8 W. R. 534. The Court, however, can only make the trustees pay party and party costs, not costs as between solicitor and client (*Nash v. Howell*, 21 L. T. 743). Where two trustees are implicated in a breach of trust, the Court will direct the defendants' costs to be paid by both, without distinguishing between their relative degrees of culpability (*Lawrence v. Bowle*, 2 Ph. 140); and see *Littlehales v. Gascoyne*, 3 Bro. C. C. 73, where both executors were held liable to costs, though only one was charged with interest; but in that case the defaulting executor was insolvent. See also *Fetherstone H. v. West*, Ir. R. 6. Eq. 86. Although, however, both trustees are liable to the

* This case was reversed on appeal, on a matter of evidence (9 W. R. 1918), but the principle of law was left untouched.

plaintiff in the first instance, yet, as between themselves, an innocent one is entitled to be indemnified against the consequences of the breach and costs by his co-trustee, and if the former is obliged to pay, he will be in the position of a surety paying his principal's debt (*Lockhart v. Reilly*, 1 De G. & J. 464; 25 L. J. Ch. 697; 4 W. R. 438; and see *Wilson v. Thomson*, 20 Eq. 459; 23 W. R. 744). Independently, however, of the "Mercantile Law Amendment Act" (19 & 20 Vict. c. 97, s. 5), he will be only a simple contract creditor, but as to payments made subsequently to the passing of that Act, though the trust was created before it, he may be a specialty creditor (*Lockhart v. Reilly*). Where in a suit by residuary legatees, the defendants admitted that a settlement come to twenty years before had proceeded on an erroneous footing as to the rights of parties, the bill was dismissed on the ground of lapse of time, but without costs (*Portlock v. Gardner*, 1 Ha. 594); and see *Youde v. Cloud*, 18 Eq. 634. If the defaulting trustee be dead, the *cestuis-que-trust* are only creditors against his estate, and his executor, fairly accounting, will be entitled to his costs, though the estate is insolvent (*Haldenby v. Spofforth*, 9 Beav. 195). Where the executor refused to admit assets, he was made personally liable for the costs of taking the account (*Christian v. Adamson*, W. N. (1869) 208; *Wood v. Weightman*, 13 Eq. 434).

Where a corporation, trustees for a charity, have, without wilful default, commenced an erroneous mode of dealing with the charity property, which they take the first opportunity to correct, the Court will not charge them with the costs of the suit (*Att. Gen. v. Drapers' Company*, 4 Beav. 67); but *secus* where they set up a right in themselves adversely to the charity (*ibid.*; *Att. Gen. v. Christ's Hospital*, 4 Beav. 73), notwithstanding the long usage of their predecessors (*ibid.*); and see *Att. Gen. v. Webster*, 20 Eq. 483; 44 L. J. Ch. 766. And see further, as to the cases where a corporation, as trustees, will be charged

Where a corporation have committed a breach of trust respecting charity property.

with costs, *ante*, pp. 210, 211, and the cases there cited.

Costs of suits to set aside purchases by trustees of trust property.

In a suit to set aside a purchase by a trustee of trust property, the trustee does not necessarily, in the absence of fraud, pay costs (*Baker v. Carter*, 1 Y. & C. 250, where the decree was made without costs); but see *Whichcote v. Lawrence*, 3 Ves. 740; *Sanderson v. Walker*, 13 Ves. 601; *Dyson v. Lum*, 14 W. R. 788; 14 L. T. 588, where costs were given against the trustee.

Trustees promptly repairing a breach of trust entitled to subsequent costs.

If, however, subsequent proceedings are necessary for clearing and distributing the fund, and the trustees by the decree declared liable for a breach of trust, and ordered to pay the costs up to the hearing, promptly comply with the decree, they may be allowed the costs of such subsequent proceedings (*Hewett v. Foster*, 7 Beav. 348; *Knott v. Cottee*, 16 Beav. 77). Where a defaulting trustee, after a decree for an account, paid £4,000 into Court, and on the taking of the account £1,200 more was found due from him, he was held liable for the costs of taking the account, as well as for the costs up to decree (*Payne v. Parker*, 17 W. R. 640).

Where the executor or trustee would have been a necessary party to the suit, independently of the breach of trust.

Where the suit would have been proper, and the executor or trustee a necessary party, independently of the breach of trust, or it comprises other objects besides the remedying of the breach, the defaulting trustee or executor may be allowed his costs of the suit generally, as between solicitor and client, though he may have to pay, but as between party and party only, the costs occasioned by the breach (*Pride v. Fooks*, 2 Beav. 430; and see *Pocock v. Reddington*, 5 Ves. 800; *Sanderson v. Walker*, 13 Ves. 601; *Hall v. Hallet*, 1 Cox 134, 141; *Campbell v. Bainbridge*, 6 Eq. 269; and the observations of Sir T. Plumer in *Tebbs v. Carpenter*, 1 Mad. 290, cited *ante*, p. 180; and of Hall, V.-C., in *Bell v. Turner*, 47 L. J. Ch. 75). In *Bate v. Hooper*, 5 De G. M. & G. 338, the trustees, not having derived any benefit to themselves, were relieved from payment of, but were not allowed, the costs occa-

sioned by the breach. And if the breach of trust is of small importance, and the money is brought into Court, and there is no loss, the trustees may be allowed the full costs of the whole suit (*Royds v. Royds*, 14 Beav. 54; *Fitzgerald v. Pringle*, 2 Mol. 534; and see *Chugg v. Chugg*, W. N. (1874) 185). Where the application to the Court was wholly unnecessary, the conduct of the trustees having been free from blame, judgment was given for the execution of the trusts, but the plaintiff was ordered to pay the costs up to and including the trial (*Fane v. Fane*, 13 Ch. D. 228; 28 W. R. 348; 41 L. T. 551; and see *In re Chennell, Jones v. Chennell*, 8 Ch. D. 492; 47 L. J. Ch. 583; 26 W. R. 595; 38 L. T. 494; *Sykes v. Brook*, 29 W. R. 821).

It has been already stated that any mere negligence on the part of executors (and the same is true of trustees generally) is not sufficient ground for visiting them with costs, or even depriving them of costs (*ante*, pp. 180, *seq.*), but in *England v. Downs*, 6 Beav. 279, where the trustees' negligence occasioned the suit, their costs were disallowed; and see *Youde v. Cloud*, 18 Eq. 634; *Payne v. Evens*, *ibid.* 356, where a bill for an account against trustees was dismissed, but owing to their negligence in not keeping accounts and vouchers, without costs.

As to the costs of executors and trustees retaining balances in their hands, and charged with interest thereon, see the cases cited *ante*, pp. 180, *seq.*, and in addition, *Sammes v. Rickman*, 2 Ves. Jun. 36; *Fozier v. Andrews*, 2 J. & L. 199, where the costs were allowed to the trustees. In *Mousley v. Carr*, 4 Beav. 49, the trustee, who was also tenant for life, was charged with interest on monies appropriated to her own use, and got no costs, but it was said that if she had been merely trustee she might have had costs. In *Att. Gen. v. Brewers' Company*, 1 P. W. 376, charity trustees who claimed as due to them a much larger sum than was found due, were disallowed costs; but see *Bennet v. Going*, 1 Mol. 529, as to the disallowance of credits in executors' and trustees' accounts.

Mere negligence will not deprive trustees of their costs.

Costs of trustees, &c., retaining balances, and charged with interest

or disallowed credits.

Where trustees' conduct has been vexatious they pay costs.

Where the trustee's conduct has been vexatious he will be charged with costs; see *Marshall v. Sladden*, 4 De G. & S. 468, where trustees vexatiously refused to accept, as transferee of a mortgage, an unobjectionable person proposed by the tenant for life; *Toner v. Thompson*, 7 Sim. 145, where the evasive and fraudulent conduct of the administratrix, in the course of taking the accounts, having necessitated the employment of an accountant, she had to pay the costs of it; *Patterson v. Wooler*, 2 Ch. D. 586; 34 L. T. 415, where trustees were ordered to pay the costs of a motion which they had unreasonably opposed, and were disallowed the costs of an improper answer; *Att. Gen. v. Murdoch*, 2 K. & J. 571, where trustees of a meeting-house having become disqualified by change of religion, and refusing to retire, were ordered to pay the costs of the appointment of new trustees; *Paluirt v. Carrow*, 32 Beav. 564, where a trustee for sale, refusing to concur in a sale or retire, had to pay the costs of the suit; *May v. Armstrong*, W. N. (1866) 233; *Hayhow v. George*, W. N. (1869) 191; *Taylor v. Salmon*, W. N. (1881) 102.

A trustee whose vexatious and oppressive conduct has compelled his *cestui-que-trust* to take proceedings against him in a foreign Court, will be ordered to pay all the costs of those proceedings (*Griffin v. Brady*, 39 L. J. Ch. 136, 18 W. R. 130); and trustees whose wilful neglect of their duty has made an administration suit necessary, will have to pay the costs of the suit up to and including the hearing (*Jefferys v. Marshall*, 19 W. R. 94; 23 L. T. 548).

Trustees appointing new trustees *pendente lite*;

Where pending an information for the purpose of appointing new trustees of a charity, the continuing trustees took upon themselves to make an appointment, it was set aside, the propriety of it not being clear, and the trustees had to pay the costs occasioned by their act (*Att. Gen. v. Clack*, 1 Beav. 467); and see *Re Poplar & Blackwall School*, 8 Ch. D. 543. In *Peatfield v. Benn*, 23 L. J. Ch. 497; 2 W. R. 68, a trustee appointed by a surviving

trustee, pending and with notice of a suit to remove the appointor for misconduct, had to bear his own costs.

Executors instituting an improper administration suit were charged personally with costs (*Richards v. Att. Gen. of Jamaica*, 13 Jur. 197); so, trustees for infants persisting in unnecessary litigation (*Campbell v. Campbell*, 2 My. & C. 25); and see *Bradley v. Whitechurch*, W. N. (1868) 81, where a trustee, whose *cestuis-que-trustent* had all attained their majority, commenced and continued an unnecessary suit, and was ordered to pay the costs.

A trustee using his legal estate so as to give an undue advantage to one party, was made personally liable for costs (*Scott v. Dunbar*, 1 Mol. 442); and see *Ellis v. Barker*, 7 Ch. 104, where the trustees availed themselves of their position to extort a concession from the plaintiff, and then contested his right to relief. And where a trustee brought his *cestui-que-trust* into Court, in order to have a point relating to his own private interest determined at the expense of the trust, he paid costs (*Henley v. Philips*, 2 Atk. 48). In a suit to rectify a settlement, a trustee setting up for his own advantage a different trust from what it really was, got no costs (*Ball v. Montgomery*, 2 Ves. Jun. 191); and see *Costello v. O'Rourke*, 19 W. R. 143. Where a trustee made himself a partizan of one beneficiary as against another, and refused to give information properly required of him, he got no costs (*Simpson v. Bathurst*, *Shepherd v. Bathurst*, 5 Ch. 193; 18 W. R. 772; 23 L. T. 29); and see *Shaw v. Thompson*, 3 Ch. D. p. 253. And a trustee, alleging the forfeiture of an annuity, in a bill for payment of arrears of it, paid costs personally (*Lloyd v. Spillet*, 3 P. W. 344).

Where rents were allowed to fall into arrear in consequence of disputes between the trustees, the Court made them pay the costs of a suit by the tenant for life for payment of the income to him (*Wilson v. Wilson*, 2 Ke. 249).

Trustees and executors pertinaciously refusing to account will have to pay the costs of the suit up to the

or causing
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hearing, but will get their subsequent costs on fairly accounting (*ante*, pp. 162, 182, and the cases there cited; see also *Collins v. Reece*, 1 Coll. 675; *Underwood v. Trower*, W. N. (1867) 83; and see, also, *ante*, p. 164, as to the distinction between pertinacious refusal and mere neglect by executors to account).

Where trustees had refused information and an account of the property to the plaintiffs who had an interest in the estate, and other proceedings had subsequently been taken whereby the costs of the suit were greatly increased, the trustees were directed to pay the costs of the suit up to the hearing, as if it had been an ordinary administration suit, and as to the rest of the costs, each party had to bear his own (*Talbot v. Marshfield*, 3 Ch. 622; 19 L. T. 225).

or mis-
stating
accounts ;

Trustees and executors misstating accounts will be charged with costs (*Sheppard v. Smith*, 2 Bro. P. C. 372; *Flanagan v. Nolan*, 1 Moll. 86; *Reech v. Kennegal*, 1 Ves. 123); but see *Sandys v. Watson*, 2 Atk. 79; *Lilley v. Mellicott*, 5 W. R. 412; *Lodge v. Pritchard*, 4 Giff. 294.

or re-
fusing to
act with-
out the
sanction
of the
Court in
a clear
case,

Again, trustees and executors will be charged with costs if they refuse to act without the sanction of the Court in a clear case (see the cases cited, *ante*, p. 183, and *infra*; but see also *Angier v. Stannard*, 3 My. & K. 566; *Taylor v. Glanville*, 3 Mad. 176). In the case last cited, it was said that "trustees are entitled to the protection and direction of the Court in the exercise of their trusts, and can never be called upon to pay costs, unless they refuse to act without suit merely from obstinacy and caprice. It would be against the interests of society to hold otherwise." In *Angier v. Stannard*, a bare trustee making an untenable objection to the execution of a conveyance was relieved from costs, as he had acted *bonâ fide* and on advice of counsel; and see *Knight v. Martin*, 1 R. & M. 70. But the more recent cases cited below have gone further than these cases, and trustees, though acting *bonâ fide*, but with unreasonable caution, have been

though
their con-
duct is
bonâ fide ;

made to pay costs; see *Smith v. Bolden*, 33 Beav. 262; *Re Cull's Trusts*, 20 Eq. 561; *Southwill v. Martin*, W. N. (1869), 191. In *Burrows v. Greenwood*, 4 Y. & C. 251, trustees of a will refusing to pay a sum of money for which their testator was liable under a settlement, had to pay costs, but out of the testator's estate. So a trustee must pay costs, if he refuses to convey the legal estate, according to the proper direction (*Willis v. Hiscox*, 4 My. & C. 197; *Hampshire v. Bradley*, 2 Col. 34; *Jones v. Lewis*, 1 Cox, 199, where in a suit for specific performance by the executrix of a deceased vendor, his trustee, refusing to convey, had to pay all the costs of the suit, including the purchaser's); but will be entitled to costs if full and accurate information has not been given to him (*Holford v. Phipps*, 3 Beav. 434); and see *Angier v. Stannard*, cited above; and *Poole v. Pass*, 1 Beav. 600, where the trustee's costs, charges, and expenses were also allowed. And in *Whitmarsh v. Robertson*, 1 Y. & C. C. C. 715, a trustee refusing to transfer to an assignee was allowed his costs, though a transfer was directed, there being circumstances of suspicion, and the consideration not correctly stated on the deed. The most difficult position for trustees is, perhaps, where they are asked to transfer settled funds to or by the direction of the tenant for life and one of the *cestuis-que-trust* in remainder under an appointment by the tenant for life. See *Firmin v. Pullum*, 2 De G. & S. 99, where the trustees refusing paid costs; *Campbell v. Home*, 1 Y. & C. C. C. 664; *Cockcroft v. Sutcliffe*, 25 L. J. Ch. 313; 2 Jur. N. S. 323; 4 W. R. 339, where they were not allowed any costs; and *King v. King*, 1 De G. & J. 663, where they were allowed costs; and see also *Re Cull's Trusts*, 20 Eq. 561; 44 L. J. Ch. 664; 23 W. R. 850; 32 L. T. 853. In *Cockcroft v. Sutcliffe* the trustees do not seem to have taken any pains to satisfy themselves of the propriety of the transaction. Trustees for the separate estate of a married woman will have to pay costs, if they refuse to transfer the funds into the name of the married

woman (*Thorby v. Yeats*, 1 Y. & C. C. C. 438); so, where the wife's trustees refuse to transfer by direction of husband and wife (*Penfold v. Bouch*, 4 Ha. 271); but see *In re Bendyshe*, 5 W. R. 816, where the trustees, under similar circumstances, were held to be justified in paying the funds into court. And see as to the cases where trustees paying money into court under the Trustee Relief Act will or will not be allowed, or be made to pay costs, *ante*, ch. V., sec. III. Where a trustee who was in doubt as to the person entitled to the fund did not pay it into court under the Trustee Relief Act, but, by his conduct caused the institution of a suit, he was allowed out of the fund only the costs that he would have been entitled to if he had paid it into court under the Act, and the costs of appearing on the petition (*Gunnell v. Whitear*, 10 Eq. 664).

or asking for an indemnity, to which they are not entitled;

or being unreasonably cautious as to a matter of fact.

The trustee of a marriage settlement may not refuse to compel payment of a sum of money secured by a covenant without an indemnity from his *cestui-que-trust* (but see *Parsons v. Spooner*, 5 Ha. 110); and the trustee had, therefore, to pay the costs of a suit to compel him to enforce the covenant (*Kirby v. Mash*, 3 Y. & C. 295). So, where a trustee puts next of kin or an heir at law to the proof of their pedigree in a case in which there is no doubt, or the evidence, which satisfies the Court, has been submitted to the trustee before suit, he must pay the costs thereby occasioned (*Lowson v. Copeland*, 2 Bro. C. C. 156; *Lancashire v. Lancashire*, 1 De G. & S. 288). And executors of trustees were decreed to pay the costs of a suit rendered necessary by their refusal to accept reasonable evidence of a person's death; but, as the trustees had been guilty of a breach of trust, out of the trustees' assets (*Lyse v. Kingdon*, 1 Col. 184).

Trustees not protected by acting on counsel's advice.

Although the circumstance of trustees having acted on the advice of counsel, however eminent, will not in itself entitle them to the costs of the suit (*Devey v. Thornton*, 9 Ha. 232; and see *Angier v. Stannard*, 3 My. & K. 566; *King v. King*, 1 De G. & J. 663); or even

save them from paying costs (*Boulton v. Beard*, 3 De G. M. & G. 608); yet where the question is whether they should be allowed in their accounts the costs of unsuccessful proceedings *bonâ fide* taken by them on the advice of counsel with reference to the trust property, it is a material circumstance (*Foster v. Dawber*, 6 W. R. 47; and see *Forshaw v. Higginson*, 8 De G. M. & G. 827).

A trustee cannot, from mere caprice, retire from the trust without paying the costs thereby occasioned (*Forshaw v. Higginson*, 20 Beav. 485; *Gardiner v. Downes*, 22 Beav. 395; and see *Greenwood v. Wakeford*, 1 Beav. 576; *Marshall v. Sladden*, 7 Ha. 428; *Richardson v. Grubb*, 16 W. R. 176). Any circumstances arising in the administration of the trust which have altered the nature of his duties, justify him in leaving it, and entitle him to receive his costs (*Forshaw v. Higginson*, where the trustee was held to be justified in retiring in consequence of his co-trustee's conduct; but as no relief was asked against the co-trustee, the retiring trustee was not allowed the costs of the evidence respecting his conduct); but if the reasons for the trustee's retirement are personal to himself, he should pay the costs of a new appointment (*ibid*). In *Gardiner v. Downes*, a survivor of three trustees of advanced age was allowed his costs; and see *Re Williams' Trusts*, 6 W. R. 218, and other cases cited *ante*, p. 316. In *Howard v. Rhodes*, 1 K. 581; *Porter v. Watts*, 16 Jur. 757, trustees insisting on retiring without sufficient reason, were not allowed costs, but did not pay any. Where the trustees of a marriage settlement desired to retire in consequence of the responsibility entailed on them by the acts of the tenant for life, incumbering his interest, the tenant for life had to pay the costs of the suit (*Coventry v. Coventry*, 1 Ke. 758).

As to the costs of trustees in proceedings under the Trustee Acts, see *ante*, ch. V. sec. IV.; and under the Trustee Relief Act, *ante*, ch. V. sec. III.; and, further, as to the costs of executors and administrators generally, see

Costs of trustees retiring from the trust.

ante, ch. IV., sec. II. As to the costs of the administrator of a convict appointed by the Crown, see 33 & 34 Vict. c. 23, s. 20.

Where trustees ordered to pay costs personally paid them out of the trust funds, they were ordered to refund with interest at 4 per cent. (*Attorney-General v. Daugars*, 33 Beav. 621 ; 12 W. R. 363).

CHAPTER VII.

AGREEMENTS BETWEEN SOLICITOR AND CLIENT AS TO COSTS.

AN agreement by a solicitor to take a gross sum in lieu of costs, though viewed with jealousy by the Court, was not absolutely void (*Re Whitcombe*, 8 Beav. 140); but an agreement to charge a fixed sum in lieu of costs to be incurred in the future was *ipso facto* void (*Re Newman*, 30 Beav. 196; and see *Re Ingle*, 21 Beav. 275). An agreement with a corporation that a solicitor transacting professional business for no other client should be paid a fixed yearly salary, clear of all office expenses, and to include all emoluments, he paying to the corporation any surplus there might be of receipts over payments, was held not to be opposed to the provisions of the Attorneys and Solicitors Acts, nor to the policy of the law (*Galloway v. Corporation of London*, 4 Eq. 90); and see *Bush v. Martin*, 33 L. J. Ex. 17; 2 H. & C. 311; 11 W. R. 1078. A party ordered to pay costs to a company, who employ a solicitor at a fixed salary, is not entitled, on taxation, to the benefit of the arrangement between the company and their solicitor (*Raymond v. Lakeman*, 34 Beav. 584).

Former rule as to agreements as to costs between solicitor and his client.

By the Attorneys and Solicitors Act, 1870, 33 & 34 Vict. c. 28, which, however, is by s. 9 of the Solicitors Remuneration Act, 1881, made inapplicable to any business to which the latter Act relates (*post*, p. 425), it is provided as follows:—

Attorneys and Solicitors Act, 1870.

A solicitor may make an agreement in writing with his client respecting the amount and manner of payment for the whole or any part of any past or future services, fees,

The remuneration of solicitors may

be fixed by agreement. charges, or disbursements in respect of business done or to be done by such solicitor, whether as a solicitor or as an advocate or conveyancer, either by a gross sum, or by commission or percentage, or by salary or otherwise, and either at the same or at a greater or at a less rate as or than the rate at which he would otherwise be entitled to be remunerated, subject to the provisions and conditions in this part of this Act contained : Provided always, that when any such agreement shall be made in respect of business done or to be done in any action, the amount payable under the agreement shall not be received by the solicitor until the agreement has been examined and allowed by a taxing officer of a court having power to enforce the agreement ; and if it shall appear to such taxing officer that the agreement is not fair and reasonable he may require the opinion of a court or a judge to be taken thereon by motion or petition, and such court or judge shall have power either to reduce the amount payable under the agreement or to order the agreement to be cancelled and the costs, fees, charges, and disbursements in respect of the business done to be taxed in the same manner as if no such agreement had been made (s. 4).

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

By s. 3 "client" includes any person who, as a principal or on behalf of another person, retains or employs, or is about to retain or employ a solicitor, and any person who is or may be liable to pay the bill of a solicitor for any services, fees, costs, charges, or disbursements. The Act does not apply to accounts between country solicitors and town agents (*Ward v. Eyre*, 15 Ch. D. 130 ; 49 L. J. Ch. 657 ; 28 W. R. 712 ; 43 L. T. 525).

A document containing the terms of an agreement as to the amount of costs payable by a client to his solicitor, but signed by one of the parties only, is not an "agreement in writing" within this section, and the solicitor may be required to deliver a detailed bill of costs to be taxed in the ordinary way (*Re Lewis, Ex parte Munro*, 1 Q. B. D.

724; 24 W. R. 1017; *In re Raven*, 30 W. R. 134); and see *Re Fernandes*, W. N. (1878), 57. An agreement not to charge anything for costs need not be in writing (*Jennings v. Johnson*, L. R. 8 C. P. 425). The opinion of the Court cannot be required to be taken before some money is payable under the agreement (*Re Attorneys Act*, 1870, 1 Ch. D. 573; 44 L. J. Ch. 47; 24 W. R. 38).

Such an agreement shall not affect the amount of, or any rights or remedies for the recovery of, any costs recoverable from the client by any other person, or payable to the client by any other person, and any such other person may require any costs payable or recoverable by him to or from the client to be taxed according to the rules for the time being in force for the taxation of such costs, unless such person has otherwise agreed: Provided always, that the client who has entered into such agreement shall not be entitled to recover from any other person under any order for the payment of any costs which are the subject of such agreement more than the amount payable by the client to his own attorney or solicitor under the same (s. 5).

Saving of interests of third parties.

Such an agreement shall be deemed to exclude any further claim of the solicitor beyond the terms of the agreement in respect of any services, fees, charges, or disbursements in relation to the conduct and completion of the business in reference to which the agreement is made, except such services, fees, charges, or disbursements, if any, as are expressly excepted by the agreement (s. 6).

Agreements shall exclude further claims.

A provision in any such agreement that the solicitor shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as such solicitor, shall be wholly void (s. 7).

Reservation of responsibility for negligence.

No action or suit shall be brought or instituted upon any such agreement; but every question respecting the validity or effect of any such agreement may be examined and determined, and the agreement may be enforced or set

Examination and enforcement of agreements.

aside, without suit or action, on motion or petition of any person, or the representative of any person, a party to such agreement, or being or alleged to be liable to pay, or being or claiming to be entitled to be paid, the costs, fees, charges, or disbursements in respect of which the agreement is made, by the court in which the business or any part thereof, was done, or a judge thereof, or if the business was not done in any court, then where the amount payable under the agreement exceeds fifty pounds, by any superior court of law or equity or a judge thereof, and where such amount does not exceed fifty pounds, by the judge of a county court which would have jurisdiction in an action upon the agreement (s. 8).

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

Improper
agreements
may be set
aside.

Upon any such motion or petition as aforesaid, if it shall appear to the Court or Judge that such agreement is in all respects fair and reasonable between the parties, the same may be enforced by such Court or Judge by rule or order in such manner and subject to such conditions, if any, as to the costs of such motion or petition as such Court or Judge may think fit; but if the terms of such agreement shall not be deemed by the Court or Judge to be fair and reasonable, the same may be declared void, and the Court or Judge shall thereupon have power to order such agreement to be given up to be cancelled, and may direct the costs, fees, charges, and disbursements incurred or chargeable in respect of the matters included therein to be taxed in the same manner and according to the same rules as if such agreement had not been made; and the Court or Judge may also make such order as to the costs of and relating to such motion or petition, and the proceed-

ings thereon, as to the said Court or Judge may seem fit (s. 9).

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

Agree-
 ments may
 be re-
 opened
 after pay-
 ment in
 special
 cases.

Where any such agreement is made by the client in the
 capacity of guardian, or of trustee under a deed or will, or
 of committee of any person or persons whose estate or
 property will be chargeable with the amount payable
 under such agreement, or with any part of such amount,
 the agreement shall before payment be laid before the
 taxing officer of a Court having jurisdiction to enforce the
 agreement, and such officer shall examine the same, and
 may disallow any part thereof, or may require the direc-
 tion of the Court or a Judge to be taken thereon by
 motion or petition; and if in any such case the client pay
 the whole or any part of the amount payable under the
 agreement, without the previous allowance of such officer
 or Court or Judge as aforesaid, he shall be liable at any
 time to account to the person whose estate or property is
 charged with the amount paid, or with any part thereof for
 the amount so charged; and if in any such case the
 solicitor accept payment without such allowance, any
 Court which would have had jurisdiction to enforce the
 agreement may, if it think fit, order him to refund the
 amount so received by him under the agreement (s. 10).

Prohibition
of certain
stipula-
tions.

Nothing in this Act contained shall be construed to give validity to any purchase by a solicitor of the interest, or any part of the interest, of his client in any suit, action, or other contentious proceeding to be brought or maintained, or to give validity to any agreement by which a solicitor retained or employed to prosecute any suit or action, stipulates for payment only in the event of success in such suit, action, or proceeding (s. 11).

An agreement that in the event of a solicitor recovering certain property for the client he shall receive ten per cent. on the property recovered is pure champerty (*Re Attorneys Act*, 1870, 1 Ch. D. 573; 44 L. J. Ch. 47; 24 W. R. 38; *per* Jessel, M. R.). But an agreement to charge the client nothing if he lost the action, and to take nothing for costs out of any money awarded in the action, is not invalid and need not be in writing (*Jennings v. Johnson*, L. R. 8 C. P. 425.)

Not to give
validity to
contracts,
&c., which
may be
void in
bank-
ruptcy.

Nothing in this Act contained shall give validity to any disposition, contract, settlement, conveyance, delivery, dealing, or transfer, which may be void or invalid against a trustee or creditor in bankruptcy, arrangement or composition, under the provisions of the laws relating to bankruptcy (s. 12).

Provision
in case of
death
or incapacity
of the
solicitor.

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

ance of the agreement to be ascertained by taxation, and the taxing officer in ascertaining such amount shall have regard so far as may be to the terms of the agreement, and payment of the amount found to be due may be enforced in the same manner as if the agreement had been completely performed by the solicitor (s. 13).

If, after any such agreement as aforesaid shall have been made, the client shall change his solicitor before the conclusion of the business to which such agreement shall relate (which he shall be at liberty to do notwithstanding such agreement), the solicitor, party to such agreement, shall be deemed to have become incapable to act under the same within the meaning of section thirteen of this Act; and upon any order being made for taxation of the amount due to such solicitor in respect of the past performance of such agreement, the Court shall direct the taxing master to have regard to the circumstances under which such change of solicitor has taken place; and, upon such taxation, the solicitor shall not be deemed entitled to the full amount of the remuneration agreed to be paid to him unless it shall appear that there has been no default, negligence, improper delay, or other conduct on his part affording reasonable ground to the client for such change of solicitor (s. 14).

As to change of solicitor after agreement.

Except as in this part of this Act provided, the bill of a solicitor for the amount due under an agreement made in pursuance of the provisions of this Act shall not be subject to any taxation, nor to the provisions of the Act of the sixth and seventh Victoria, chapter seventy-three, and the Acts amending the same respecting the signing and delivery of the bill of a solicitor (s. 15).

Agreements shall be exempt from taxation.

A solicitor may take security from his client for his future fees, charges and disbursements, to be ascertained by taxation or otherwise (s. 16).

Security may be taken for future costs.

Further provision has recently been made by statute respecting the remuneration of solicitors in conveyancing and other non-contentious business, to which it may perhaps

Solicitors Remuneration Act, 1881.

be convenient here shortly to refer. By this statute—The Solicitors Remuneration Act, 1881, 44 & 45 Vict. c. 44—power is given to the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the President of the Incorporated Law Society, and the President of one of the Provincial Law Societies or Associations, to make general orders prescribing the remuneration of solicitors in non-contentious business (s. 2). The rules proposed to be embodied in any such order must be communicated to the Council of the Incorporated Law Society, who are to be at liberty to make observations thereon as they may think fit (s. 3). Section 4 lays down the principles of remuneration to be observed by the general orders under the Act; and section 5 provides that any such order may authorise and regulate the taking by a solicitor from his client of security for future remuneration in accordance with any such order to be ascertained by taxation or otherwise, and the allowance of interest. Any order under the Act must be laid before Parliament, and may be disallowed on address by either House (s. 6). As long as any general order under the Act is in operation, the taxation of bills of costs of solicitors is to be regulated thereby (s. 7).

Section 8 relating to agreements between solicitor and client, is as follows :

Power for solicitor and client to agree on form and amount of remuneration.

(1.) With respect to any business to which the foregoing provisions of this Act relate, whether any general order under this Act is in operation or not, it shall be competent for a solicitor to make an agreement with his client, and for a client to make an agreement with his solicitor, before or after or in the course of the transaction of any such business, for the remuneration of the solicitor to such amount and in such manner as the solicitor and the client think fit, either by a gross sum, or by commission or percentage, or by salary, or otherwise; and it shall be competent for the solicitor to accept from the client, and for the client to give to the solicitor, remuneration accordingly. *W.N. 90.104*

(2.) The agreement shall be in writing, signed by the

person to be bound thereby or by his agent in that behalf.

(3.) The agreement may, if the solicitor and the client think fit, be made on the terms that the amount of the remuneration therein stipulated for either shall include or shall not include all or any disbursements made by the solicitor in respect of searches, plans, travelling, stamps, fees, or other matters.

(4.) The agreement may be sued and recovered on or impeached and set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of a solicitor; and if, under any order for taxation of costs, such agreement being relied upon by the solicitor shall be objected to by the client as unfair or unreasonable, the taxing master or officer of the Court may inquire into the facts, and certify the same to the Court; and if, upon such certificate, it shall appear to the Court or Judge that just cause has been shown either for cancelling the agreement or for reducing the amount payable under the same, the Court or Judge shall have power to order such cancellation or reduction, and to give all such directions necessary or proper for the purpose of carrying such order into effect, or otherwise consequential thereon, as to the Court or Judge may seem fit. *WN 90 104*

By section 9 the Attorneys and Solicitors' Act, 1870, is not to apply to any business to which this Act relates.

Restriction
on Solici-
tors Act,
1870, 33
& 34 Vict.
c. 28.

CHAPTER VIII.

ON THE DELIVERY AND TAXATION OF BILLS OF COSTS.

SECT. I.—*Delivery of Bills of Costs.*

It would seem that, independently of any statutory enactment, the right of a solicitor to recover by action for professional work and labour done, is like that of any other creditor, and that the courts have no inherent right to direct a prior delivery and taxation of his bills of costs (see *Cowdell v. Neale*, 1 C. B. N. S. 332; *Ex parte Lord Cavdross*, 5 M. & W. 545; *Ex parte Arrowsmith*, 13 Ves. 125; *Re Forsyth*, 34 Beav. 140; on appeal, 2 De G. J. & S. 509; 13 W. R. 932; 12 L. T. 687). From an early period, however, this right has been regulated by various Acts of Parliament, passed for the purpose of restraining attornies and solicitors from commencing actions for their costs until they have delivered bills of such costs, and for empowering courts of law and equity to refer such bills for taxation. Solicitors and attorneys are now styled "solicitors of the Supreme Court" (Judicature Act, 1873, s. 87); and see Judicature Act, 1875, s. 14, as to the power of adapting enactments to solicitors of the Supreme Court.

Solicitors
not to
commence
an action
for fees till
one month
after deli-
very of
their bills.

By the 37th section of the 6th and 7th Vict. c. 73 (The Attorneys and Solicitors' Act), which partially re-enacts the provisions of earlier statutes, it is provided:—"That from and after the passing of this Act no attorney or solicitor, nor any executor, administrator, or assignee * of any attorney or solicitor, shall commence or maintain

* An assignee in bankruptcy was held to be within the Act (*Re Walton*, 4 K. & J. 78),

any action or suit for the recovery of any fees, charges, or disbursements * for any business done by such attorney or

* Those payments *only* which are made in pursuance of the professional duty undertaken by the solicitor, and which he is bound to perform, or which are sanctioned as professional payments by the general and established custom and practice of the profession, ought to be entered and allowed as professional disbursements in the bill of costs (*Re Remnant*, 11 Beav. 603). Where legacy and probate duties, estimated at £140, were payable, in order to make available certain funds in court, and the solicitor, at the request of the client, engaged to pay them, and took a charge on the funds for £140, and interest, and then paid the duties, amounting to £78 only, it was held that that sum formed a proper item in his account on the taxation of his bill of costs (*Re Bedson*, 9 Beav. 5). Money lent (*Hemming v. Wilton*, 4 C. & P. 318), or paid in consequence of an undertaking to pay debts and costs in an action in which the attorney is not professionally engaged (*Prothero v. Thomas*, 6 Taunt. 196; and see *Re Lees*, 5 Beav. 410), does not seem to be within the section; *secus* if the monies were expended in the course of proceedings in which the attorney was himself engaged (*Latham v. Hyde*, 1 C. & M. 128; *Fearnie v. Wilson*, 6 B. & Cr. 86; *Re Bedson*, 9 Beav. 5; but see *Cowdell v. Neale*, 1 C. B. N. S. 332).

Agency business done by one firm of solicitors for another (*Smith v. Dimes*, 4 Exch. 32; *Billing v. Coppock*, 1 Exch. 14; *Re Strother*, 3 K. & J. 518; *Re Gedge*, 23 Beav. 347; and see *Harvey v. Mayhev*, 2 W. R. 128; *Re Taylor*, 18 Beav. 165; *Jones v. Roberts*, 8 Sim. 397) is within the Act. And where one solicitor was employed by another to search among documents in his possession, and make a schedule of them, his bill was held taxable (*Re Bowen*, 20 W. R. 395; 41 L. J. Ch. 327).

When the solicitor retained his bill in his possession, and refused to produce it, such bill was presumed to be taxable (*Re Loughborough*, 23 Beav. 439; and see *Re Ingle*, 21 Beav. 275).

But the statute does not authorise the taxation of *every* pecuniary demand or bill which may be made or delivered by a person who is a solicitor for every species of employment in which he may happen to be engaged; thus, the fees of the steward of a manor, who is a solicitor, but acts in the character of a steward only, are not taxable under the Act (*Allen v. Aldridge*, 5 Beav. 401); *secus*, as to the charges of a solicitor retained to act as electioneering agent, and to advise and assist the committee (*Re Osborne*, 25 Beav. 353; 6 W. R. 401; 27 L. J. Ch. 532; 4 Jur. N. S. 296). Where, however, the solicitor was retained merely as a canvassing agent, and not professionally, his bills were not liable to taxation (*Re Oliver*, 36 L. J. Ch. 261; 15 W. R. 331). Where a solicitor was appointed returning officer for a School Board election, and sent in his bill of expenses in the usual form of a bill of costs, it was held that the bill could be taxed (*Re Jones*, 13 Eq. 336; 41 L. J. Ch. 367; 20 W. R. 395). A solicitor has no statutory right to have the amount of his charges ascertained by taxation only (*Ex parte Dilton, re Woods*, 13 Ch. D. 318; 23

solicitor, until the expiration of one month * after such attorney or solicitor, or executor, administrator, or assignee of such attorney or solicitor, shall have delivered unto the party to be charged therewith, or sent by the post to or left † for him at his counting-house, office of business, dwelling house, or last known place of abode, a bill of such fees, charges, and disbursements, and which bill shall either be subscribed ‡ with the proper hand of such attorney or solicitor (or, in the case of a partnership, by any of the partners, either with his own name or with the name or style of such partnership), or of the executor, administrator, or assignee of such attorney or solicitor, or be enclosed in or accompanied by a letter subscribed in like manner referring to such bill." A suit to foreclose the equity of redemption in property mortgaged to secure costs is not a suit "for the recovery of fees" within this section; and a solicitor is not debarred from commencing such suit though he has not delivered his bill of costs, nor will the proceedings be stayed till the requisites of the Act be complied with in a case where there are subsequent incumbrancers (*Thomas v. Cross*, 11 L. T. 430; 13 W. R. 166; 10 Jur. N. S. 1163; 5 N. R. 148; and see too *Waugh v. Waddell*, 16 Beav. 521).

W. R. 402; 42 L. T. 161); and where he proves for his costs in the bankruptcy of a client, the registrar has jurisdiction to determine the amount due, availing himself, if necessary, of the advice of the taxing master (*ibid.*).

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

† The bill must be left for, not merely shown to, the client (see *Phippis v. Daubney*, 16 Q. B. 514; *Crowder v. Shee*, 1 Camp. 437).

‡ An unsigned bill, accompanied by a signed letter, referring to the bill, is sufficient (*Re Bush*, 8 Beav. 66). An unsigned bill of costs may be referred to taxation by the party chargeable, if he chooses to waive the irregularity (*Re Pender*, 8 Beav. 299; *on appeal*, 2 Phil. 69; 16 L. J. Ch. 25; *Re Foster*, 2 De G. F. & J. 114; *Re Gedy*, 14 Beav. 56); but he is not bound to do so (*Billing v. Coppock*, 1 Exch. 14). An unsigned bill, delivered more than twelve months, can only be taxed under special circumstances (*Re Gedy*, 14 Beav. 536).

The Act is to be construed liberally for the client (*Engleheart v. Moore*, 15 M. & W. 548).

Where the clients were liable on a joint contract, a delivery of the bill to one of them was held sufficient (*Mant v. Smith*, 4 H. & N. 324). A delivery to the authorised agent (*Re Bush*, 8 Beav. 66), or servant (*Macgregor v. Keily*, 3 Exch. 794) of the client is sufficient. But not a delivery to his solicitor (*Re Abbott*, 4 L. T. 576), or to a friend or relation (*Gridley v. Austen*, 16 Q. B. 504, 511). Leaving the bill at the office of a solicitor where the party chargeable, having no place of business of his own, occasionally called, and wrote letters, and directed communications to be addressed to him, is, it seems, sufficient (*Spier v. Bernard*, 8 L. T. 396). If the action is brought against the client's executors, a delivery to him in his lifetime is sufficient (*Reynolds v. Caswell*, 4 Taunt. 193, under the 2 Geo. II., c. 23, which contained a similar enactment; and see *Tate v. Hitchens*, 7 C. B. 875). A letter addressed to the provisional committee of a railway company, of which A. was a member, and delivered to another member of the committee at his place of business, is not a delivery to A., within the statute (*Edwards v. Lawless*, 5 Rly. Ca. 357).

A bill of costs signed by the attorney, and headed in the matter of business, but not addressed to any one, was inclosed in an envelope, and sent by post to the client: it was held that there was a sufficient delivery within the Act (*Roberts v. Lucas*, 11 Exch. 41; and see *Manning v. Glyn*, 1 Jones Ir. Ex. Rep. 513; *Taylor v. Hodgson*, 3 Dowl. & Low. 115). See also as to delivery, *Re Abel*, 15 W. R. 730.

Notwithstanding the statute, a solicitor may, before delivering his bill, set off a bill of costs (*Lester v. Lazarus*, 2 C. M. & R. 665; *Brown v. Tibbits*, 31 L. J. C. P. 406; 10 W. R. 465; 6 L. T. 385); or prove in bankruptcy (*Ex parte Prideaux*, 1 Gl. & Jam. 28; and see *Ex parte Dewdney*, 2 Rose, 59; *Ex parte Steele*, 16 Ves. 166); or

What constitutes delivery.

What acts a solicitor may do before delivery of bill.

sue on a promissory note received on account of fees (*Jeffreys v. Erans*, 14 M. & W. 210; 14 L. J. Ex. 363; and see *Reece v. Cox*, 16 L. T. 327); and where he has taken a mortgage to secure his costs he may sue for foreclosure though an order for taxation has been obtained against him (*Thomas v. Cross*, 13 W. R. 166; 10 Jur. N. S. 1163; 11 L. T. 430; 5 N. R. 148). It should be remembered, too, that the summary jurisdiction given by the Act does not preclude the client from bringing an action in the Chancery Division against his solicitor for an account (*O'Brien v. Lewis*, 9 Jur. N. S. 321; *Morgan v. Higgins*, 5 Jur. N. S. 236; *Lyldon v. Moss*, 4 De G. & J. 104) or enforcing an agreement for delivery by petition; (*Re Bailey*, 34 Beav. 392). But a solicitor cannot recover on an account stated in respect of a bill of costs, unless the bill has been duly delivered (*Brooks v. Bockett*, 9 Q. B. 847). On the other hand, a *cestui que trust*, out of whose property the bills have been paid, cannot sue the solicitors employed by the trustees for an account and taxation of the bills (*In re Spencer, Spencer v. Hart*, W. N. (1881), 170).

The contents of the bill need not be proved (6 & 7 Vict. c. 73, s. 37). But the other party may show that the bill delivered was not a *bonâ fide* compliance with the Act (*ibid.*).

Non-delivery of bill must be pleaded. The client must specially plead the non-delivery of the attorney's bill in defence to an action by the attorney (*Morgan v. Ruddock*, 10 Dowl. Pr. Ca. 311; *Lane v. Glenny*, 4 Ad. & Ell. 83; and see *Hitchens v. Tate*, 7 C. B. 873).

Where the holders of shares in an Industrial and Provident Society, employed a solicitor in proceedings as to the winding up thereof in a County Court, and afterwards agreed to sell the shares, and it was part of the agreement that the purchaser should pay the amount due to the solicitor, it was held that the purchaser had no right to require delivery of a bill (*Re Simpson*, W. N. (1878), 214).

The common order for delivery, after reciting that the petitioner desires to obtain the papers in the possession of the solicitor belonging to him, and that the solicitor refuses to deliver up the same till his bill is paid, and, although applied to, has not delivered his bill, and submitting to pay what shall appear to be due, directs "that the said solicitor do, within a fortnight after service of this order, deliver to the petitioner a bill of fees and disbursements in all suits, causes [actions], and other matters of business in which he has been employed as the attorney or solicitor for the petitioner; and that it be referred," &c. (see Seton, p. 614).

Form of
order for
delivery.

The proper mode of enforcing delivery of the bill is to serve the order for delivery with a proper endorsement, under Cons. Ord. XXIII. r. 10, as varied by Gen. Ord., 7th Jan. 1870; see Morgan's Chancery Acts and Ord. p. 296. The order may then be enforced in the same manner as a judgment to the same effect (R. S. C. Ord. XLII. r. 20), *i.e.*, by writ of attachment or by committal (Ord. XLII., r. 5); see *Re Bowen*, 9 Jur. N. S. 612; 11 W. R. 607; *Ex parte Belton*, 25 Beav. 368; *Ex parte Alcock*, 1 C. P. D. 68; 24 W. R. 320; 33 L. T. 523. Where the order was served without the proper indorsement, and was therefore irregular, it was held that it might be served over again with a proper indorsement (*Re Gregg*, 9 Eq. 137). As to the costs of motions to compel delivery of papers, &c., see *ante*, p. 54. The application to compel delivery of the bill, and of deeds, &c., except when the order is of course, must now be made by summons at chambers (Gen. Ord., 17th April, 1867; Morgan's Ch. Acts and Ord. p. 20); and this applies though the client also asks that a sum of money improperly retained by the solicitor may be refunded (*Re May*, 34 Beav. 132; 13 W. R. 377; 34 L. J. Ch. 236; 11 Jur. N. S. 149; 11 L. T. 658; *Re Edmunds*, 19 W. R. 104). An application for the delivery of bills of costs or documents in a solicitor's possession for purposes other than

How
delivery
enforced.

But see *Thomas v Pain* v. N. [1882] 81

taxation may be by petition (*Re Justice*, 16 W. R. 821).

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

Effect of
delivery.

When a bill has once been delivered the solicitor cannot make, nor can the taxing-master permit any alterations in it, except by consent (*Re Catlin*, 18 Beav. 519; *Re Andrews*, 17 Beav. 510; *Re Wells*, 8 Beav. 416; and see *Re Jones*, *id.* 479; *Re Curven*, *id.* 436; *Re Heather*, 5 Ch. 694; 39 L. J. Ch. 781; 18 W. R. 1079; or special leave (*Re Walters*, 9 Beav. 303, *note*). In *Re Chambers*, 34 Beav. 177; 5 N. R. 298; 13 W. R. 375; 11 L. T. 726, a solicitor was allowed to substitute a reduced bill for the one first delivered; but this can only be done under special circumstances, such as fraud or mistake (*Re Holroyde & Smith*, W. N. (1881), 6; 29 W. R. 599; 43 L. T. 722). The above rule does not apply in the case of a taxation as between party and party (*per* Sir John Romilly, M. R., in *Davis v. Earl of Dysart*, 21 Beav. 124). As to the mode in which the application to alter a delivered bill must be made, and the evidence by which it must be supported, see 1 Smith's Chanc. Pr. 151, 7th ed.

SECT. II.—*Form of Bills of Costs.*

General
rules.

The bill of costs is intituled in the action or matter. In preparing it the business should be entered under the sittings in which it is transacted, and at the head of each sittings the year should be placed; but it is not desirable to distinguish the vacation from the sittings. The bill of

costs should be copied bookways, and there should be a broad margin on the left-hand side for taxation. It is a great convenience in taxation to have the year and month placed at the top of each page. Dates should never be put in the left-hand column, as they confuse the taxation, and may be cast up amongst the deductions. They may be conveniently placed immediately within the margin, and should be large and legible, and scored under. It is of great importance in a bill where many attendances are charged, or journeys taken, to be very accurate in furnishing dates, and the time occupied on attendances and journeys, where the fees for the same are regulated by time. In journeys, also, distances should be stated, and the actual expenditure should be accurately given; it will also be necessary to show that the solicitor charging for a journey was not occupied upon any other business during the time so charged for.

Bills of costs for business done in relation to different matters or different estates are frequently made out under different heads, in the following manner: "Costs relating to letting — farm;" "Costs relating to the settlement of the claim of A. B." Where the items are mere strict charges in actions, motions, petitions, and like applications, this answers very well; but where attendances are charged the correct mode of making out the whole bill is by following the order of date. Where attendances are charged under different heads of business transacted contemporaneously, repetition of the same attendances is almost unavoidable, and the trouble that the Taxing Master experiences in duly checking bills of costs so made out, is as great as it is needless.

The bill of costs should be prepared from the payments made, and the attendances entered; see 2 Smith's Ch. Practice, 7th ed. 113.

The bill, or some accompanying letter or other document (*Taylor v. Hodgson*, 3 Dowl. & Low. 115; *Lucas v. Roberts*, 11 Exch. 41) must specify the parties sought to

What should be specified in bills of costs.

be charged (*Gridley v. Austen*, 16 Q. B. 504; 13 Jur. 680; *Champ v. Stokes*, 6 H. & N. 683; 7 Jur. N. S. 607); the Court in which the business charged for was done (*Lewis v. Primrose*, 6 Q. B. 265; *Dimes v. Wright*, 8 C. B. 831; and see *Ivimey v. Marks*, 16 M. & W. 843; and *Engleheart v. Moore*, 15 M. & W. 584), and the name of the cause (*Martindale v. Falkner*, 2 C. B. 706; but see *Cozens v. Graham*, 12 C. B. 398); *semble* it is sufficient, however, if the name of the cause appears in one of the items of the bill (*Anderson v. Boynton*, 13 Q. B. 308; and see *Keene v. Ward*, *ibid.* 515); and, as a general rule, it is sufficient if the bill gives such information as will enable the client to obtain advice as to the taxation (*Haigh v. Ousey*, 7 Ell. & Bl. 578; *Cook v. Gillard*, 1 Ell. & Bl. 26; *Sargent v. Gannon*, 7 C. B. 742). And the bill need not be drawn in the technical form of a debtor and creditor account (*Holmes v. Magrath*, 5 Ir. Law Rep. 376).

The bill should also specify the particular items charged for (see *Drew v. Clifford*, 2 Car. & P. 69; *Wilkinson v. Smart*, 24 W. R. 42; 33 L. T. 573; *Philby v. Hazle*, 8 C. B. N. S. 647).

Thus, payments in respect of counsels' fees should specify the particular fee paid (*Re Smith*, 4 Beav. 304). Particular attendances should be specified (*Re Pender*, 10 Beav. 390), and where deeds are charged for, the number of folios in the deeds should be stated (*per* V. C. Wood, in *Re Foster*, 1 L. T. 130). The bill is not invalidated by the fact that it contains charges for business done when the firm was differently constituted (*Pilgrim v. Hirschfeld*, 12 W. R. 51).

A delivery of a bill containing only the items of the extra costs, and omitting items of taxed costs, which had been received from the other side, was held not to be a compliance with the provisions of the 2 Geo. II., c. 23, s. 23, as to delivery (*Waller v. Lacy*, 1 M. & Gr. 54); and it seems that if the bill contains, amongst other items, certain extra costs, not mentioning the taxed costs, it is

bad under the modern statute (*Pigot v. Cadman*, 1 H. & N. 837; and see *Ivimey v. Marks*, 16 M. & W. 843). For precedents of bills of costs see *post*, App. No. III.

SECT. III.—*Taxation under Orders of Course.*

The 37th section of the 6 & 7 Vict., c. 73, provides that "upon the application of the party chargeable by such bill" (*i.e.* the bill required to be delivered by the preceding clause of the section) "within one month, it shall be lawful, in case the business contained in such bill or any part thereof shall have been transacted in the High Court of Chancery, or in any other Court of Equity, or in any matter of bankruptcy or lunacy, or in case no part of such business shall have been transacted in any Court of law or equity, for the Lord High Chancellor,* or the Master of the Rolls, and in case any part of such business shall have been transacted in any other Court, for the Courts of Queen's Bench, Common Pleas, Exchequer, Court of Common Pleas at Lancaster, or Court of Pleas at Durham, or any judge of either of them, and they are *hereby respectively required*,† to refer such bill, and the demand of such attorney or solicitor, executor, administrator, or assignee, thereupon to be taxed and settled by the proper officer of the Court in which such reference shall be made, without any money being brought into Court; and the Court or Judge making such reference shall restrain such attorney or solicitor, or executor, ad-

Reference
of bills for
taxation.

W N. 90.72

* These words include the Vice Chancellors (*Re Carew*, 8 Beav. 128; *Re Howard*, 8 Beav. 424). As a general rule, the application need not be made to the Judge who heard the cause (*Robins v. Mills*, 1 Beav. 227; and see *Re Elmslie*, 12 Beav. 538, where the suits were dismissed and stayed). But the rule is different where the merits of the cause must enter into the discussion (*Webb v. Grace*, 12 Beav. 489). Where an order of course made at the Rolls for the taxation of a solicitor's bill of costs of a suit is not made in such suit, an application to discharge the same should be made at the Rolls (*Re Bell*, 4 N. R. 497).

† See *Ex parte Jarman*, 4 Ch. D. 835.

Taxation
after one
month.

administrator, or assignee of such attorney or solicitor, from commencing any action or suit touching such demand pending such reference; and in case no such application as aforesaid shall be made within such month as aforesaid, then it shall be lawful for such reference to be made as aforesaid, either upon the application of the attorney or solicitor, or the executor, administrator, or assignee of the attorney or solicitor, whose bill may have been so as aforesaid delivered, sent, or left, or upon the application of the party chargeable by such bill, with such directions and subject to such conditions as the Court or Judge making such reference shall think proper; and such Court or Judge may restrain such attorney or solicitor, or the executor, administrator, or assignee of such attorney or solicitor, from commencing or prosecuting any action or suit touching such demand pending such reference, upon such terms as shall be thought proper." The section as it originally stood, further empowered the judge to authorise an action before the month had expired, on satisfactory proof that there was probable cause for believing that the party chargeable was about to leave England; but this clause was repealed by s. 2 of "The Legal Practitioners Act, 1875," 38 & 39 Vict. c. 79, which has substituted the following more comprehensive provision:—"It shall be lawful for any judge of the Superior Courts of law and equity to authorise an attorney or solicitor to commence an action or suit for the recovery of his fees, charges, or disbursements against the party chargeable therewith, and also to refer his bill of fees, charges, and disbursements, and the demand of such attorney and solicitor thereupon, to be taxed and settled by the proper officer of the Court in which such reference shall be made, although one month shall not have expired from the delivery of the bill of fees, charges, or disbursements, on proof to the satisfaction of the said judge that there is probable cause for believing that the party chargeable therewith is about to quit England, or to become a bankrupt, or a liquidating or

compounding debtor, or to take any other steps or do any other act which, in the opinion of the judge, would tend to defeat or delay such attorney or solicitor in obtaining payment."

Under the Attorneys and Solicitors' Act, 1843, and the Judicature Act, 1873, an order for taxation of costs in any Court may now be made by any judge of the High Court of Justice; the jurisdiction conferred by s. 37 of the former Act being now transferred by s. 16 of the latter Act to the Judges of the High Court. Consequently, where the claim exceeds £20, the costs of an administration action in a County Court may be taxed in the Chancery Division (*In re Worth*, 18 Ch. D. 521; 50 L. J. Ch. 262; 29 W. R. 371; 44 L. T. 462). Any of the Chief Clerks in the Chancery Division can now issue orders of course for taxation (Memorandum, W. N. (1880), 7); formerly they could only be obtained at the Rolls.

Order for taxation may be made by any judge of the High Court.

Questions frequently arise as to the meaning of the words "the party chargeable by such bill." It has been held that a married woman, having separate estate, which she has agreed to make liable for the costs of a solicitor retained by her, is a party "chargeable" within the section (*Waugh v. Waddell*, 16 Beav. 521; and see *Murray v. Barlee*, 3 My. & K. 209; *Re Pugh*, 17 Beav. 336; *Re Bennett*, cited in *Seton*, p. 608). So, too, the next friend of an infant (*Re Fluker*, 20 Beav. 143; *Re Flower*, 19 W. R. 578); the executors (*Jefferson v. Warrington*, 7 M. & W. 137), or trustees in bankruptcy (*Clarkson v. Parker*, 7 Dowl. 87) of the party originally liable, are parties chargeable within the Act; but an insolvent was not (*Re Halsall*, 11 Beav. 163); nor an outlaw (*Re Mander*, 6 Q. B. 867). Where the client became bankrupt and the solicitor did not prove for his costs in the bankruptcy, the assignees could not get an order to tax without undertaking to pay the whole bill (*Re Elmslie & Co.*, 9 Eq. 72). A party in contempt, however, may apply for and proceed with taxation (*Newton v. Ricketts*, 11 Beav. 67).

"Party chargeable."

A married woman should apply by her next friend (*Re Waugh*, 15 Beav. 508); and in *Re Godfrey*, cited in Seton, p. 608, the order was discharged on the ground (*inter alia*) that she had no next friend. Where several persons are jointly chargeable, they should concur in the application (*Re Lewin*, 16 Beav. 608; *Ex parte Mobbs*, 8 Beav. 499; *Re Perkins*, 8 Beav. 241); and an order obtained by some only of several parties jointly liable will be discharged as irregular (*Re Perkins*; *Re Ilderton*, 33 Beav. 201); and see *Re Yetts*, 33 Beav. 412. But it seems that if one of the parties so liable refuses to concur, the order may be obtained by the other (*Lockhart v. Hardy*, 4 Beav. 224; *Re Hair*, 10 Beav. 187; *Re Kitton*, 35 Beav. 369, where the Court gave both parties liberty to question the retainer, and directed the Taxing Master to distinguish by and to whom each sum found due was to be paid). In *Re Colquhoun*, 5 De G. M. & G. 35; 23 L. J. Ch. 515, taxation was ordered on the application of one party, the retainer having been *separate*. See, too, *Re Stephen*, 2 Ph. 562. Where the client is a trustee, the solicitor ought to tell him that if he does not tax the bill items not properly charged will be disallowed him in passing his accounts (*Ex parte Flower*, 18 L. T. 457).

Applica-
tion of
course.

Costs of
unneces-
sary
special ap-
plication.

The application under the clause set out above is *ex parte* and of course (*Re Pender*, 2 Ph. 69; 7 Beav. 487; *Re Gaitskell*, 1 Ph. 576; *Re Becke*, 5 Beav. 406; *Ex parte Ellis*, 2 L. T. 233; *Re Byrch*, 8 Beav. 124). Where a special petition was unnecessarily presented, the petitioner was ordered to pay the costs (*Re Bignold*, 9 Beav. 269; *Re Atkinson*, 26 Beav. 151; *Barwell v. Brooks, re Cattlin*, 8 Beav. 121). On the other hand, a solicitor will be ordered to pay the costs of a special application rendered necessary by his refusal to consent to the common order (*Re Adamson*, 18 Beav. 460; *Re Lett*, 31 Beav. 488); or by his breach of an agreement (*Ex parte Bailey*, 3 Jur. N. S. 33). An order to tax as against two solicitors, partners, where the work was done and the costs incurred

by one of them alone before the partnership, will be discharged (*Re Curnot & Parkinson*, 40 L. J. Ch. 608).

The fact that an action has been commenced does not necessarily make a special application necessary; see *Seton*, 4th ed., p. 616; and see *Re Farington*, 33 Beav. 346. In what cases order of course irregular. But where a solicitor delivered a bill of costs, with a cash account at the foot which showed a balance due to him larger than the amount of the bill, and then brought an action for the whole amount, it was held that a special application must be made (*Re Yetts*, 3 N. R. 598; 33 Beav. 412). So where the bill forms part of a settled account (*Re Holland*, 19 Beav. 314), or the bill forms one of two bills, the other having been paid (*Re Hinton*, 15 Beav. 192), or the retainer is questioned (*Re Thurgood*, 19 Beav. 541; *Re Ingle*, 21 Beav. 275; *Re Eldridge*, 12 Beav. 387), or there has been an order to change solicitors (*Gillow v. Rider*, 15 C. B. 729), or the costs have been referred to arbitration (*Re Winterbottom*, 15 Beav. 80), or where there has been an agreement that the solicitor shall have interest with annual rests and a lien on the estates recovered (*Re Moss*, 17 Beav. 59).

The mere fact, however, that an agreement exists Where agreement between client and solicitor on the subject of costs. between the solicitor and the client as to the costs to be charged does not itself make a special application necessary (*Re Philp*, 2 Giff. 35, from the Taxing Master's certificate in which case it seems that even under the common order of course to tax the Taxing Master will have regard to an agreement by the solicitor to charge only costs out of pocket). But wherever an agreement of a special kind exists, going to the whole bill, the proper course is to apply specially (see *Re Ransom*, 18 Beav. 220; *Re Gedye*, 23 Beav. 347; *Re Ingle*, 21 Beav. 275; *Re Fisher*, 18 Beav. 183). Indeed, in the earlier cases it appears to have been thought that the existence of a special agreement prevented the Court from ordering taxation at all, until the agreement had been set aside by bill (*Re Whitcombe*, 8 Beav. 140; *Barwell v. Brooks*, *re*

Cattlin, 8 Beav. 121; *Re Rhodes*, 8 Beav. 224; and see *Re Eyre*, 10 Beav. 569, *on appeal*, 2 Ph. 367). But these cases have been long overruled. In *Ward v. Lawson*, 8 Ch. 65, a demurrer to a bill by a country solicitor against a London solicitor for an account and delivery of bills of costs as plaintiff's agent, on the ground that the proper remedy was by petition, was overruled.

Where a client obtained an order of course for taxation, and there existed an agreement between them which ought to have been mentioned, but which was in the possession of the solicitor, the Master of the Rolls, although he regarded the order of course as irregular (see *ante*), refused to discharge it (*Re Ingle*, 21 Beav. 275). As to agreements between solicitor and client on the subject of costs, see *ante*, p. 417.

Order of course to tax one of several bills.

An order of course to tax two bills only where five are claimed is irregular (*Re Law*, 21 Beav. 481; *Holland v. Gwynne*, 8 Beav. 124; *Re Wavell*, 22 Beav. 634). But the fact that some of the items in the bill happen to be included in an existing order to tax costs in a suit, is no objection to an order of course (*Re Fluker*, 20 Beav. 143).

Order of course if irregular cannot be supported on the merits.

An order of course obtained in a case where a special application is necessary, will be discharged, even though right upon the merits (*Harris v. Start*, 4 M. & C. 261; *Grove v. Sansom*, 1 Beav. 297; *Gregg v. Taylor*, 1 Beav. 123); the suppression of circumstances which, if stated to the Court, would have made a special application necessary, such as a special agreement (*Re Moss*, 17 Beav. 59), or a previous reference of the costs to arbitration (*Re Winterbottom*, 15 Beav. 80), or a payment of one of two bills of costs (*Re Hinton*, 15 Beav. 192, and *comp. Re Holland*, 19 Beav. 314; *Re Thurgood*, *ibid.* 541; *Re Walker*, 14 Beav. 227; and see *ante*) being itself a ground for discharging the order of course. See, however, *Re Ingle*, 21 Beav. 275, cited above, and *Re David*, 30 Beav. 278, where, in an action by a client against his solicitor, the latter pleaded his bill of costs by way of set-

off, and the client obtained an order for the delivery of the bill, and suffered himself to be *non proessed*; and it was held that it was not necessary to state these circumstances on an *ex parte* application for taxation; and the fact that the special circumstance is disputed by the client, makes no difference (*De Feuchères v. Dawes*, 11 Beav. 46).

The irregularity in the order will be waived, however, if the solicitor attends the taxation, or otherwise acts upon the order (*Re Wavell*, 22 Beav. 634; *Re Field*, 16 Beav. 593). So, upon a petition for consequential directions after taxation, it was held to be too late to object that the application ought to have been a special one (*Re Hair*, 11 Beav. 96). Where, after a solicitor had delivered his bill of costs, he executed a deed of assignment of all his property, which became binding on all his creditors under the Bankruptcy Act, 1861, and the clients afterwards obtained the common order to tax, the M. R. held that the solicitor, by going in before the Taxing Master and defending himself by affidavits, had precluded himself from objecting to the order, and dismissed with costs his motion to discharge the order for taxation (*Re Bartrum*, 12 W. R. 660); but, on appeal, the Court discharged the order as to costs, and allowed the clients to complete the taxation on their undertaking not to proceed personally against the solicitor (S. C. *ibid.* 699; 10 L. T. 313, 257). See, too, *Re Bevan v. Girling*, 12 W. R. 196. An application to amend or vary a taxation on the ground of a mistake in the order must be made promptly, or it will be refused (*In re Tibbitts*, W. N. (1881), 168).

A form of order to tax on the client's application is given in the schedule to the Rules of April, 1880, H. 39; that of the order on the solicitor's application in the same schedule, H. 40. The Chancery form, however, is that given in *Seton*, 4th ed., pp. 604, 605. For form of order to tax after action brought, see same Sched. H. 41; *Seton*, p. 616.

Under the common order for taxation, the Master is bound to take a general account of receipts and payments

Waiver of
irregu-
larity.

Forms of
orders to
tax.

Powers of
Taxing
Master

74 J. T. 718.
[1886] 2 Ch. 1192
65 J. T. Ch. 767
45 W. R. 83.

under
order of
course for
taxation.

by the solicitor as agent to the client (*Russel v. Buchanan*, 9 Sim. 167; *Cooper v. Ewart*, 15 Sim. 564; 2 Ph. 362); but see *Jones v. James*, 1 Beav. 307; *Re Smith*, 4 Beav. 309; 9 Beav. 182, from which it would seem that the Master is not, under such an order, authorised to take an account of pecuniary matters between the solicitor and client generally, but must confine himself to payments by the client, *on account of the bill of costs*, unless by agreement between the solicitor and client the monies coming into the hands of the solicitor are to be applicable to payment of the bill of costs. See observations on these cases in *Cooper v. Ewart*, 2 Ph. 362; and see also *Davenport v. Powell*, 14 Sim. 275; *Re May*, 34 Beav. 132; 5 N. R. 297; 13 W. R. 377; 34 L. J. Ch. 236; 11 L. T. 658; *Jones v. James*, 1 Beav. 307; *Re Savery*, 13 Beav. 424.

Unprofes-
sional
items.

In *Waring v. Williams*, 2 Beav. 1, it was held that a solicitor ought to have credit for various items in his bill of costs (if due), though entirely unconnected with professional employment. See as to this, *post*, sect. V.

Improper
or informal
proceed-
ings.

Under the common order to tax, the Master may take into consideration the costs of improper (*Wiggins v. Peppin*, 2 Beav. 403; *Re Atkinson*, 26 Beav. 151) or informal proceedings (*Clayton v. Meudows*, 2 Hare, 34).

Monies out
of pocket.

It seems that, under the usual taxation order, a solicitor is entitled, in the absence of negligence or improper conduct, to be allowed all monies paid out of pocket (*Re Page*, 32 Beav. 487; 9 Jur. N. S. 1116; 11 W. R. 584).

Interest.

The Taxing Master may allow interest at such rate as he thinks just on disbursements by the solicitor, and on the client's money improperly retained by the solicitor, and have special regard to the skill, labour, and responsibility involved (33 & 34 Vict., c. 28, ss. 17, 18).

As to the power of the Taxing Master to go into a question of retainer on an order of course, see *ante*, p. 438.

Where
solicitor
claims
lien.

The order should not direct the solicitor to deliver up all papers belonging to the petitioner if the solicitor has

a lien on some of the papers (*Re Pender*, 8 Beav. 229). It is discretionary with the Court whether or not to add the order for the delivery up of papers; see *Ex parte Jarman*, 4 Ch. D. 835; 46 L. J. Ch. 485, where the rule is laid down by Jessel, M. R., following *Re Byrch*, 8 Beav. 124; *Re Teague*, 11 Beav. 318, must be considered overruled. The Court will, before the completion of a taxation, order the delivery up of papers by a solicitor to his client, upon payment into Court of the amount claimed (*Re Jewitt*, 34 Beav. 22); or in case it appears, from the solicitor's own account, that a balance is due from him to his client (*Re Bevan and Whitting*, 33 Beav. 439, where the solicitor had been discharged; see 6 Eq. 328).

SECT. IV.—*Taxation on special Applications.*

(A) BEFORE PAYMENT.

The 37th section of 6 & 7 Vict., c. 73, provides that no such reference as aforesaid (see *ante*, p. 435) shall be directed upon an application made by the party chargeable with such bill after a verdict shall have been obtained or a writ of inquiry executed in any action for the recovery of the demand of such attorney or solicitor, or executor, administrator, or assignee of such attorney or solicitor, or after the expiration of twelve months after such bill shall have been delivered, sent, or left as aforesaid, except under special circumstances, to be proved to the satisfaction of the Court or Judge to whom the application for such reference shall be made. Twelve months after delivery even an unsigned bill can only be referred for taxation under "special circumstances" (*Re Gedye*, 14 Beav. 56).

"To entitle a client to taxation under this clause, he must show one of two things—either pressure or gross overcharge, amounting to what this Court designates as fraud" (*per* V. C. Wood, in *Re Strother*, 3 K. & J. 528).

What are
"special
circum-
stances."

Large and unusual charges, requiring explanation, are sufficient (*Re Robinson*, L. R. 3 Ex. 4; 16 W. R. 110; 37 L. J. Ex. 11; 17 L. T. 479); and see also *Watson v. Rodwell*, 7 Ch. D. 625; 47 L. J. Ch. 418; 26 W. R. 524, *post*, p. 457.

The question as to what constitutes pressure or gross overcharge amounting to fraud more frequently arises on application to tax after payment, the authorities on which question are considered in the next part of this section (*post*, p. 447). As a general rule, the same circumstances which would be considered "special," so as to justify taxation after payment, will be held to justify taxation under the clause cited above (but see observations of V. C. Wood, in *Re Strother*, 3 K. & J. 532; and *Re Williams*, 15 Beav. 417, *post*). It seems, however, that the Court may order taxation under this clause on grounds which could not arise in the case of an application for taxation after payment. Thus a dispute as to the bill being completed has been held to be a "special circumstance" justifying taxation more than twelve months after delivery (*Re Bagshawe*, 2 De G. & Sm. 205; *Binns v. Hay*, 13 L. J. Q. B. 28; see, too, dicta in *Re Mander*, 6 Q. B. 871; and *Hughes v. Murray*, 9 L. T. 93). Where a solicitor has been retained for a particular business, his bill of costs for carrying it through generally constitutes one bill (*Stokes v. Trumper*, 2 K. & J. 232; and see *Re Peach*, 2 D. & L. 33). But successive bills of costs in such matters as bankruptcy administration or winding up are not necessarily to be treated as one bill brought down to the date of the latest delivery (*Re Hall & Barker*, 9 Ch. D. 538; 47 L. J. Ch. 625; 26 W. R. 501); and see *Re Cartwright*, 16 Eq. 469, where, however, under the circumstances, taxation of a series of bills, most of them delivered more than twelve months, was directed, *Re Street*, 10 Eq. 165. So the continuance of the relationship of solicitor and client after the delivery and until directly before the application for taxation, has been con-

sidered a material circumstance (see observations of L. J. Knight Bruce in *Re Nicholson*, 3 De G. F. & J. 93, 100; *Ex parte Flower*, 18 L. T. 457; S. C. *sub nom. Re F*—, 16 W. R. 749); but in *Re Elmslie & Co.*, 16 Eq. 326; 28 L. T. 731, Bacon, V. C., held that this alone was not sufficient; and see *Re Cartwright*, 16 Eq. 469. And the possession of the papers in the cause by the solicitor (*Re Gedye*, 14 Beav. 56), and the fact that he has commenced an action against the client (*Bennett v. Hill*, 21 L. T. Old S. 101), have been held not to be circumstances justifying the reference for taxation. Where a country solicitor with an office in town conducted personally the business which would ordinarily be transacted by a town agent, it was held that he was not entitled to charge for letters passing between the two offices, but that such charges were not “overcharges amounting to fraud,” such as to induce the Court to refer the bill more than twelve months after delivery (*Re Harle*, 17 W. R. 21; 19 L. T. 305).

It was said by Lord Cranworth, in *Re Barnard*, 2 De G. M. & G. 365, that the special circumstances relied on “must be such as to afford a reasonable excuse for not applying sooner, not circumstances of which the client could reasonably have availed himself before.” See, however, this observation explained by V. C. Wood, in *Re Strother*, 3 K. & J. 527. Thus, in the case just cited, taxation was ordered under this clause upon a petition presented more than twelve months after delivery on the ground of gross overcharges amounting to fraud, coupled with misrepresentations by the solicitor in accounting for one of the items overcharged, notwithstanding that the client knew of the circumstances, and had another legal adviser within a month of the delivery, and might reasonably have availed himself of those circumstances to present the petition within the twelve months (*Re Strother*, 3 K. & J. 518). In another case (*Re Williams*, 15 Beav. 417) taxation was ordered eighteen months after delivery,

Should afford excuse for not applying sooner.

the bill having been delivered long after application, just as the client was going abroad, and containing substantial overcharges not acquiesced in.

Re Nicholson.

In *Re Nicholson*, 3 De G. F. & J. 93, the solicitor had acted for the client from 1833 to 1857, and during that period received and paid large sums of money on his account. In November, 1853, the solicitor delivered to his client his account current from 1833 to that time, and in it took credit for twenty-seven bills of costs, which he delivered at the same time. The solicitor afterwards, in February, 1857, and June, 1857, delivered continuations of his accounts, taking credit in them for subsequent bills of costs, which were delivered along with the accounts in which they were included. None of the accounts were ever settled. In July, 1857, the relation of solicitor and client was determined, and the client placed the matter in the hands of a fresh solicitor. In March, 1858, the last account was delivered, with another bill of costs. In April, 1858, the client presented a petition for taxation of all the bills, showing considerable items of overcharge. It was held that a taxation of all the bills ought to be directed, though most of them had been delivered more than twelve months before the petition was presented.

Re Barnard.

But where in an action brought by a solicitor against his client, upon his bill of costs, the client obtained an order for taxation on the terms of withdrawing all his pleas except that of *nunquam indebitatus*, and afterwards he withdrew all his pleas, and applied to the Judge for an order of taxation, under the 6 & 7 Vict., c. 73, which was refused for want of jurisdiction, it was held that the client could not obtain an order for taxation from the Court of Chancery, there being no special circumstance beyond mere overcharge (*Re Barnard*, 2 De G. M. & G. 359). In this case it seems to have been thought that the jurisdiction given by the Act did not exist when the solicitor had obtained judgment in his action.

Where

Where an action had been brought by an attorney for

£68, being the balance of untaxed costs, more than twelve months after the delivery of the bill, and it appeared that before action the attorney had offered to take £40 in full, the bill was ordered to be taxed (*Hughes v. Murray*, 9 L. T. 93). solicitor offers to take less than the amount of bill.

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

Special applications for taxation must now be made by summons at Chambers (Ord. April 17th, 1867, r. 1).

As to taxation after twelve months in cases where there is an order to tax outside the Act, see *Ex parte Blair*, 5 Ch. 482; *De Bay v. Griffin*, 10 Ch. 291; 23 W. R. 737.

(B) AFTER PAYMENT.

The 41st section of the 6 & 7 Vict., c. 73, enacts that 6 & 7 Vict. c. 73, s. 41. "the payment of any such bill as aforesaid" (*i.e.* any bill the taxation of which is provided for by the preceding sections of the Act, see *ante*, pp. 426, 427, and notes thereto, *Re Downes*, 5 Beav. 425), "shall in no case preclude the Court or Judge to whom application shall be made from referring such bill for taxation, if the special circumstances of the case shall in the opinion of such Court or Judge appear to require the same, upon such terms and conditions and subject to such directions as to such Court or Judge shall seem right, provided the application for such reference be made within twelve calendar months after payment." The application must now be by summons in Chambers, see above.

Whether security equivalent to payment.

The giving of security is for the purpose of this section equivalent to payment (*Re Boyle, Ex parte Turner*, 5 De G. M. & G. 540; *Re Harper*, 10 Beav. 284; *Re Currie*, 9 Beav. 602). But in a case at common law (*Re Harries*, 13 M. & W. 3) it was held that if a client gave the solicitor a bill of exchange or promissory note for the amount of his bill, the twelve months mentioned in this section ran not from the time when the bill or note was given, but from the time when it was actually paid, unless there were circumstances in the case to show that the contrary was the intention of the parties. See, too, *Re Drake*, 22 Beav. 438; *Sayer v. Wagstaff*, 5 Beav. 415.

Retainer of monies by solicitor not equivalent to payment.

But it is clear that the mere retainer by the solicitor out of monies in hand of the amount of his bill without any settlement of accounts, is not equivalent to payment (*Re Bignold*, 9 Beav. 269; *Re Steele*, 20 L. J. Ch. 562; *Re Cawley & Whatley*, 18 W. R. 1125; *Re Brady*, 15 W. R. 632; *Re Street*, 10 Eq. 165; 39 L. J. Ch. 495; 22 L. T. 429); nor a mere payment on account (*Re Woodard*, 18 W. R. 37); nor an agreement entered into by the solicitor with his client, an ignorant person, that the solicitor shall receive a fixed sum in lieu of his costs (*Re Ingle*, 21 Beav. 257; *Re Newman*, 30 Beav. 196); nor a compromise effected under circumstances of pressure followed by payment of a gross sum (*Re Stephen*, 2 Ph. 562): it being settled that the payment of a gross sum to a solicitor in discharge of his claim without any bill of costs being delivered, does not disentitle the client to have a proper bill delivered and taxed (*Re Blackmore*, 13 Beav. 154). In such cases therefore a special application is not generally necessary; but in *Re Street* it was held that under the circumstances a special application must be made.

Under special circumstances, however, such as the lapse of a number of years, during which the right to retain the money has not been questioned, a retainer by the solicitor may be treated as equivalent to payment (*Ex parte*

Shackell, Re Vines, 2 De G. M. & G. 842); and see *Allen v. Jarvis*, 4 Ch. 616.

The application under this section which was formerly by petition, is now made by summons in chambers (General Order, April 17th, 1867, r. 1). Application, how made.

The application should be made as soon as possible after payment; the unexplained lapse of several months being in itself an objection to the application even though the whole period of twelve months has not elapsed (*Re Bayley*, 18 Beav. 415, where the delay was for eleven months; *Re Pugh*, 32 Beav. 173, where it was for ten months; *Re Browne*, 1 De G. M. & G. 322, where it was for nine months). See, too, *Re Whicher*, 13 M. & W. 569; 2 Dowl. & L. 407, where it was said that the special circumstances relied on ought to be "circumstances newly come to the knowledge of the client;" and *Re Pugh*, 32 Beav. 173, 175, on appeal, 1 De G. J. & S. 673; 11 W. R. 762, where the Master of the Rolls stated that the reason why the Court would not allow taxation after payment where there had been delay in making the application, was that the solicitor might lose his vouchers, or, no objection being made to his bill, he might not think it necessary to preserve them, and so might be deprived of the means of proving the facts material for the allowance of money items. See, too, *ante*, p. 444, *seq.* In *Re Fielder and Sumner*, 40 L. J. Ch. 615; 25 L. T. 56, the Master of the Rolls held, that where the client has paid under pressure before delivery of the bill he is entitled to have it taxed at any time within one year. Effect of delay in applying

The "special circumstances" which induce the Court to order taxation after payment are: first, pressure, accompanied by some overcharge; and secondly, overcharges amounting to evidence of fraud (see *ante*, p. 444, as to taxation twelve months after delivery; and see *Re Newman*, 2 Ch. 707; *Re Foster, Ex parte Walker*, 2 De G. F. & J. 117). What are "special circumstances,"
"on special circumstances"
v. 65 v. 7 68

Cases of pressure usually occur where the solicitor, having i. Pressure accom-

panied by some overcharge.
Refusal of solicitor to deliver up deeds unless paid.

deeds in his possession which it is of importance to the client to obtain, refuses to deliver up such deeds unless his bill is paid. Thus, where a deed was necessary for the completion of a purchase, but the solicitor refused to deliver it up, unless his bill was paid, taxation was ordered under the 41st section of the Act (*Re Tryon*, 7 Beav. 496; *Re Pugh*, 32 Beav. 173, 176, S. C., on appeal, 1 De G. J. & S. 673; 11 W. R. 762; *Re Bennett*, 8 Beav. 467; *Re Wells*, 8 Beav. 416; and see *Re Newman*, 2 Ch. 707). So, again, where a solicitor for a mortgagee refused to allow a redemption of the mortgaged premises on a transfer of the mortgage to take place, unless the mortgagor paid his bill (*Re Alcock, ex parte Wilkinson*, 2 Coll. 92); or threatened that unless his bill were paid, the property should be sold under the power of sale (*Re Mosely*, 15 W. R. 975). In such cases the fact that the bill has not been delivered in sufficient time to enable the client to examine it before payment is always a material circumstance. Thus, where the bill was not delivered until the day appointed for the completion of a transfer of mortgage, taxation was ordered, notwithstanding payment (*Re Philpotts*, 18 Beav. 84; see, too, *Ex parte Wilkinson*, where the bill was not delivered until the evening of a Saturday, the day appointed for payment of the mortgage being the following Monday). Again, in *Re Rance*, 22 Beav. 177 (where, however, there were also items of overcharge), the bill was delivered to the mortgagor four days before payment, there being at the time legal proceedings pending against him, and the Court, considering it a mixed case of pressure and overcharge, ordered taxation; see, too, *Re Jones*, 8 Beav. 479; *Re Sludden*, 10 Beav. 488; and *Re Elmslie*, 12 Beav. 538, where the bill was delivered the evening before it was paid. "When the completion of the business within a short time is necessary, and the party who is liable to pay is willing to pay at once the whole amount, provided the right to taxation be reserved, and this offer is refused, I think these are special circumstances which justify

Payment following immediately after delivery.

taxation, if, when the bill of costs is looked at, it appears substantially to require taxation" (*per* Rolt, L. J., in *Re Newman*, 2 Ch. p. 713).

The fact that the solicitor is about to enforce his securities by legal proceedings (*Re Rance*, 22 Beav. 177; *Re Kinneir*, 7 W. R. 175), or by a sale (*Re Sladden*; 10 Beav. 488), is of importance as evidencing pressure. In *Re Foster, ex parte Walker*, 2 De G. F. & J. 105, the solicitor, who had a security on his client's furniture, farming stock, &c., with a power of sale, gave notice that unless his bill was paid on the same day he should take possession under his bill of sale, and accordingly did so, and the client paid the bill under protest. On proof that the bill contained items to a considerable amount subsequent to the security, and on proof of over-charges, the bill was ordered to be taxed, although it had been delivered four months before payment; see, too, *Nokes v. Warton*, 5 Beav. 448, where the client had had time to examine the bill, and had actually obtained professional advice respecting it, and had obtained a considerable deduction. Again, where solicitors had acted for the committee of a provisionally registered company who compromised their claim by paying them a fixed sum in lieu of their bill, under pressure of threats that the solicitors would act adversely to the wishes and policy of the committee, a member of such committee was, notwithstanding payment, held entitled to have the bill taxed (*Re Stephen*, 2 Ph. 562, 577).

Where the bill had been delivered a month before payment, the Court held that no case of pressure had been made out (*Re Jones*, 8 Beav. 479); so where the period which elapsed between delivery and payment was nearly three weeks (*Re Harrison*, 10 Beav. 57), or a fortnight (*Re Neate*, 10 Beav. 181), or even a week (*Re Welchman*, 11 Beav. 319; comp. *Re Mash*, 15 Beav. 83); and where the bill is paid voluntarily and without pressure, it seems that the fact of the payment following immediately upon the delivery will not of itself warrant a taxation (*Re Drew*,

Other cases of pressure

Where some time elapses between delivery and payment.

10 Beav. 368; *Re Fyson*, 9 Beav. 117; *Re Currie*, 9 Beav. 602; but, coupled with other circumstances, it may be material (*Re Currie*; *Re Abbott*, 18 Beav. 393). Indeed, if the client is in the power or at the mercy of the solicitor—if the bills delivered be not sufficiently explanatory—if the client, though having time to examine the bills, has not been able to obtain, or has not been allowed to employ the most effective means of examination,—if it appears that the solicitor in whose power the client is driving a bargain with him on unequal terms, and that the relation of solicitor and client, and the power of the solicitor continues, the Court may order taxation, notwithstanding the client has had an opportunity of examining the bill before paying it (*Nokes v. Warton*, 5 Beav. 448).

Where an arrangement had been made for a transfer of a mortgage, in respect of which the mortgagee had instituted a foreclosure suit, and the bill of costs was not delivered until the day of completion, but was not paid for fourteen days after delivery, the Master of the Rolls, in the absence of any evidence of overcharge refused to order taxation (*Re Towle*, 30 Beav. 170). In this case it was stated that the proper course for the mortgagor to have adopted was to have obtained the usual order to tax the bill, and an order to stop the suit on payment of what was due on the mortgage and on deposit of what was claimed to be due for the costs. Indeed, it would seem that in all cases where taxation is asked for, on the ground of pressure, some items of overcharge must be chosen (*Re Hubbard*, 15 Beav. 251; *Re Abbott*, 18 Beav. 393), although not necessarily overcharges so great as to be evidence of fraud (*Re Wells*, 8 Beav. 416). In a case before the Lords Justices (*Re Finch, ex parte Barton*, 4 De G. M. & G. 108) a mortgagor, without giving six months' notice, requested his mortgagee to accept payment and transfer the mortgage, and the transfer being executed, the mortgagor's solicitor paid the bill of costs of the mortgagee's solicitor in full—though he objected to certain

Over-charge must be shown, even where pressure.

items, amounting to £9 in all—in order to obtain the deeds, which the mortgagee's solicitor refused to deliver up without such payment. It was held that no case of pressure entitling the mortgagor to taxation had been made out. In a recent case the defendant in an action agreed to pay the plaintiff's solicitor a fixed sum for his costs, and for his trouble in promoting a composition between the defendant and his creditors. Within twelve months after payment of the amount, the defendant took out a summons for delivery of a bill of costs. The Queen's Bench Division held, affirming an order of Field, J., at chambers, that no fraud or pressure having been established, there were no "special circumstances" within the meaning of the Act to warrant the application (*Re Heritage, ex parte Docker*, 3 Q. B. D. 726 ; 47 L. J. Q. B. 509 ; 26 W. R. 633 ; 38 L. T. 509). Where a suit was compromised, one of the terms being that the plaintiffs should pay the defendant's attorney a fixed sum for his agreed costs, which was done, it was held that the Court could not afterwards order his bill to be taxed on the application of the client (*Holditch v. Carter*, L. R. 3 P. & D. 115 ; 42 L. J. P. & M. 78 ; 29 L. T. 249).

A solicitor delivered his bill of costs to his client, made out in double columns, one being the amount allowed on taxation, which he refused to accept when tendered. The client then paid the larger sum to obtain his papers ; it was held, notwithstanding the payment, that he was entitled to an order to tax the bill, as he had been constrained to pay the larger sum by the refusal of the solicitor to accept what he himself had stated that he was legally entitled to (*Re Lett*, 31 Beav. 488 ; 32 L. J. Ch. 100 ; 8 Jur. N. S. 1119 ; 11 W. R. 15 ; 7 L. T. 303 ; 1 N. R. 8 ; see, too, *Hughes v. Murray*, 9 L. T. 93 ; *ante*, p. 447).

Where a bill of costs was delivered on the completion of a purchase, to which the solicitor was a party, and he refused to complete the purchase without payment, it was held that the circumstances evidenced pressure, and justi-

fied taxation after payment, notwithstanding five months had elapsed before the presentation of the petition (*Re Pugh*, 32 Beav. 173; on appeal, 1 De G. J. & S. 673; 11 W. R. 762; 8 L. T. 586).

Payment
under
protest.

The fact that payment is made under protest does not of itself entitle the client to taxation (*Re Welchman*, 11 Beav. 319; *Re Harrison*, 10 Beav. 57; *Re Stirke*, 11 Beav. 304; *Re Neate*, 10 Beav. 181; *Re Browne*, 15 Beav. 61; and see *Re Finch, ex parte Barton*, 4 De G. M. & G. 108). Coupled with other circumstances, however, it may become material (*Re Alcock, ex parte Wilkinson*, 2 Coll. 92; and comp. *Re Foster, ex parte Walker*, 2 De G. F. & J. 105; *Re Dearden*, 9 Exch. 210). Where a bill is paid under protest, the particular items objected to should, if possible, be pointed out before payment (*Re Davie, ex parte White*, 8 W. R. 15).

65-L. 168

Doctrine of
pressure
not to be
extended.

"The doctrine of pressure in cases of taxation after payment is not to be extended" (*per* Sir John Romilly, in *Re Barrow*, 17 Beav. 547; and see *Re Hubbard*, 15 Beav. 253; *Re Mash*, 15 Beav. 83). See, too, *Re Browne*, 1 De G. M. & G. 322, where it was said that to constitute a case for taxation after payment on the ground of pressure, the pressure must have been of such a kind as to have rendered it impossible or difficult to have had the costs taxed before payment and in the ordinary course. Comp., too, *Re Boyle, ex parte Turner*, 5 De G. M. & G. 540, where the solicitor pressed for payment, but offered to give the client an opportunity of taxation, apprising him that it would be difficult to have the bill taxed after payment.

ii. Over-
charges
amounting
to evidence
of fraud.

When there is no pressure, the Court will only order taxation on proof of overcharges amounting to evidence of fraud. Thus an application to reopen a paid bill, in which only trifling items of overcharge are pointed out, will be dismissed with costs (*Re Drake*, 8 Beav. 123; *Re Thompson*, 8 Beav. 237). Moreover the overcharges on which it is intended to rely should be very specifically

Must be
specifically
stated.

pointed out (*Re Browne*, 1 De G. M. & G. 322, 333; *Dunt v. Dunt, re Colquhoun*, 9 Beav. 146; and see *Re Thompson*; *Re Harrison*, 10 Beav. 57; *Re Towle*, 30 Beav. 170); though it is not necessary to specify all the items objected to (*Re Dawson*, 28 Beav. 605; comp. *Ex parte Andrews*, 13 L. J. Ch. 222); *secus* if the solicitor refuses to produce the bill (*Re Loughborough*, 23 Beav. 439; see *post*, p. 456).

The onus of showing that the charges in question are overcharges amounting to fraud lies on the applicant (*Re Towle*, 30 Beav. 170). Thus, if the practice in the Taxing Master's office as to allowing the charges impugned be in uncertainty, the Court will give the solicitor the benefit of such uncertainty (*Re Walsh*, 12 Beav. 490). Charges for attendances to the extent of eight on one day are not necessarily sufficient to open a paid bill (*Re Towle*). Nor charges for 240 letters in one year (*Re Boyle, ex parte Turner*, 5 De G. M. & G. 546), it being "impossible without knowing the circumstances of each case to give an opinion of the fairness of the charge" (*ibid.*). So again, where the ground of over-charge was that abstracts charged for contained less than ten folios in each sheet, the strict rule being that each sheet should contain that number, the petition was dismissed with costs, there being some doubt as to the practice on the subject in the Taxing Master's offices (*Re Walsh*, 12 Beav. 490); and see *Re Harle*, 17 W. R. 21; 19 L. T. 305.

Onus lies on petitioner.

What overcharges insufficient to open a paid bill.

It seems that an item objected to, not because the business charged for was not done, or because the charge was excessive, but because the liability to pay it is disputed, is not such an overcharge as to be a sufficient ground for taxing a paid bill (*Re Finch, ex parte Barton*, 4 De G. M. & G. 108, 113).

Liability disputed.

But when a considerable portion of the bill is for business, which in the exercise of a fair and honest discretion ought never to have been done, the Court will direct taxation under this section (*Re Barrow* 17 Beav.

What sufficient.

547) ; and the same course will be adopted when the application is made by a legatee for the taxation of a bill paid by the executors, and the items objected to are of a considerably greater amount than would be allowed to the executors in a suit to administer the testator's estate (*Re Dickson*, 8 De G. M. & G. 655 ; see, too, *Horlock v. Smith*, 2 My. & Cr. 495, 520, there cited ; and *Waters v. Taylor*, 2 M. & C. 526). See, further, as to taxation at the instance of a third party, *post*, p. 458.

Where bill is retained by the solicitor. Where the solicitor, immediately after payment, took the bill of costs away with him and refused to produce it afterwards, the Court ordered taxation, although no specific overcharges were pointed out (*Re Loughborough*, 23 Beav. 439 ; see, too, *Re Stephen*, 2 Ph. 562, 576 ; *Re Wyche*, 11 Beav. 209). So where the solicitor, at the time of payment, undertook to refund (*Re Fisher*, 18 Beav. 183 ; see, too, *Re Foljambe*, 9 Beav. 402). Where there is evidence of actual fraud, the Court will always reopen the bill (see observations in *Re Harding*, 10 Beav. 252 ; *Nokes v. Warton*, 5 Beav. 448 ; *Re Boyle, ex parte Turner*, 5 De G. M. & G. 545).

Or there is undertaking to refund. Where actual fraud.

Where solicitor offers to pay items objected to. Where, on a petition being presented for taxation of a paid bill, the solicitor offered to pay some of the items objected to, and the petitioner nevertheless brought on his petition for hearing, the Court ordered taxation, treating those items as omitted (*Re Catlin*, 23 Beav. 412 ; but see *Ex parte Hemming*, 28 L. T. O. S. 144).

How twelve months calculated. For the purpose of calculating the twelve months within which the petition must be presented, it was considered as presented on the day of answering it (*Sayer v. Waystaff*, 5 Beav. 415). But see now 1st rule of Gen. Order of April 17th, 1867.

Where a petition was presented within the twelve months, but no order was made, the Court refused to allow it to stand over for amendment, twelve months having in the meantime expired (*Barwell v. Brooks* ; *Re Catlin*, 7 Beav. 345 ; 8 Beav. 121).

After the twelve months have elapsed, a paid bill cannot be reopened under the Act (*Re Harper*, 10 Beav. 284; *Re Downes*, 5 Beav. 425; *ex parte Pemberton*, 2 De G. M. & G. 960); unless, perhaps, actual fraud be shown (*per* Lord Cranworth in *Ex parte Pemberton*). And the rule is the same in the case of an application by a third party (see *post*, p. 458, *Re Massey*, 8 Beav. 458); even though the payment may have taken place behind his back (*Re Rees*, 12 Beav. 256). In *Re Woodard*, 17 W. R. 1006, Malins, V. C., said that where it was desired to tax a bill paid several years previously, the proceeding must be by petition, and not by summons.

Twelve months absolute bar to taxation under Act,

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

but not to delivery.

A paid bill may of course be reopened after the twelve months by suit; though the Court is very reluctant to adopt such a course: see *Turner v. Hand*, 27 Beav. 561; *Blagrove v. Routh*, 2 K. & J. 509; on appeal 8 De G. M. & G. 620; *Todd v. Wilson*, 15 L. J. Ch. 450; *Stanes v. Parker*, 10 Jur. 603; *Foley v. Smith*, 12 Beav. 154. And the right of the client to sue for an account is in no way interfered with by the Statute (*O'Brien v. Lewis*, 9 Jur. N. S. 321; *In re Spencer*, *Spencer v. Hart*, W. N. (1881) 170).

Opening a paid bill by suit.

74 II. I. 506.

In *Watson v. Rodwell*, 7 Ch. D. 625; 47 L. J. Ch. 418; 26 W. R. 524, an account settled between a client—a widow lady aged seventy-seven—and her solicitor, including arranged bills of costs, was opened and the bills referred to taxation in an action instituted nearly two years after such settlement, on the ground, (1) of undue influence, (2) that the charges were improper and excessive, and that much of the business charged for was unnecessary and ought never to have been done. On appeal the decree was affirmed, the Court of Appeal holding that in such a case no proof of error or overcharge was necessary

(S. C. 11 Ch. D. 150; 48 L. J. Ch. 209; 27 W. R. 265; 39 L. T. 614).

An application under the Attornies & Solicitors Act which, though in form an application to tax a bill of costs, is in substance an application to reform a mortgage, cannot be entertained. For this purpose the remedy, if any, is by suit (*Re Forsyth*, 13 W. R. 307, 932; 2 De G. J. & S. 509; 12 L. T. 687).

The following form of a special order for taxation after payment is given in Seton, 4th ed., p. 618:—

“Refer, &c., to tax and settle the bill of fees, charges, and disbursements amounting to the sum of £——, delivered by the said solicitors to the applicant, and paid by the applicant to the said solicitors; And let the applicant and the solicitor produce, &c.; And let the said solicitors give credit, &c.; and in case it shall appear that the said bill is overpaid Let the said master certify the amount overpaid; and Let the said solicitors (names), within, &c., repay to A. what shall be certified to be the amount so overpaid by him; And the said master is to be at liberty to state any circumstance specially at the request of either party, as he shall think fit. Reserve the consideration of costs of taxation and of application until after certificate. *Re Winterbottom*, V. C. M. at Chambers, 11 Nov. 1872, B. 2871.”

SECT. V.—*Taxation by Third Party.*

6 & 7 Vict.
c. 73, s. 38. It frequently happens that the person liable to pay the solicitor's bill is not the “party chargeable” within the 37th section (see *ante*, p. 435). Thus, where a solicitor is employed and paid by a mortgagee, the mortgagor, although ultimately liable to pay the bill, would not be entitled to tax it as a “party chargeable” under the above section. This right, however, is given to him by the 38th section of the Act, which provides “that where any person,

not the party chargeable with any such bill within the meaning of the provisions herein-before contained, shall be liable to pay or shall have paid such bill either to the attorney or solicitor, his executor, administrator, or assignee, or to the party chargeable with such bill as aforesaid, it shall be lawful for such person, his executor, administrator, or assignee, to make such application for a reference for the taxation and settlement of such bill as the party chargeable therewith might himself make, and the same reference and order shall be made thereupon, and the same course pursued in all respects, as if such application was made by the party so chargeable with such bill as aforesaid." Under this section a mortgagor (*Re Wells*, 8 Beav. 416; *Re Lees*, 5 Beav. 410), or a second incumbrancer (*Re Taylor*, 18 Beav. 165; 2 W. R. 249; *Re Jessop*, 32 Beav. 406), may obtain taxation of a bill paid by a mortgagee. Where, on the transfer of a mortgage the amount of the costs is added to the mortgage debt and charged on the property, there can be no taxation under the Act; but where the bill is paid but the amount is not inserted in the transfer and charged on the property, there all the ordinary rules with respect to the payment of a bill of costs apply (*Re Gold*, 19 W. R. 343; 24 L. T. 9; *Re Forsyth*, 2 De G. J. & S. 509; 34 Beav. 140; 13 W. R. 307, 932; 11 Jur. N. S. 213; 11 L. T. 616, 687). A mere volunteer under no previous liability does not acquire a right to tax a solicitor's bill by paying it (*Re Becke*, 5 Beav. 406; and see *Re Barber*, 14 M. & W. 720).

Who is
"third
party"
within
section.

Where a plaintiff and defendant compromised a suit, the former agreeing to pay the latter's costs, it was held that the plaintiff was entitled to an order of course to tax the bill of costs delivered to him by the defendant's solicitor (*Re Hartley*, 30 Beav. 620; following *Vincent v. Venner*, 1 M. & K. 212; and *Balme v. Paver*, Jac. 305); and under the particular circumstances of the case no doubt this decision was correct. The report, however, is

imperfect, and if not very carefully examined, somewhat misleading. See *In re Grundy, Kershaw & Co.*, 17 Ch. D. 108; 29 W. R. 581; 44 L. T. 541, where the case is explained and commented on by Sir G. Jessel, M. R. In the latter case, *Re Grundy*, the circumstances were as follows:—a winding-up petition was withdrawn, and the solicitors of the company gave a personal undertaking to the solicitors of the petitioning creditor to pay the costs of the petition, such costs to be taxed in case of difference. The amount of the costs not being agreed upon, the company obtained an order of course for taxation under section 38. The M. R. held that the undertaking was to pay party and party costs, whereas section 38 only applies to solicitor and client taxation; and further that the order was wrong because it had been obtained by the company, instead of by the solicitors who had given the undertaking, and discharged the order with costs. Where the defendant agreed to pay the plaintiff's solicitor a fixed sum for his costs and other payments, it was held that the case was not within the Act (*Re Heritage, Ex parte Docker*, 3 Q. B. D. 726; 47 L. J. Q. B. 509; 26 W. R. 633; 38 L. T. 509; and see *Re Morris*, 27 L. T. 554).

Taxation
how ob-
tained.

The proceedings under this section may be by order of course in cases where a similar proceeding might have been had under the 37th section (see *ante*, p. 438; *Re Bignold*, 9 Beav. 269; *Re Bracey*, 8 Beav. 338; *Re Straford*, 16 Beav. 27; *Re Hartley*, 30 Beav. 620). Where the bill has been paid, or where more than twelve months have elapsed from delivery, the taxation can only be obtained on a special application, *i.e.*, on summons in Chambers (Gen. Ord. April 17th, 1867, r. 1), and on showing "special circumstances" (*Re Wells*, 8 Beav. 416; *Re Carew*, 8 Beav. 150; *Re Becke*, 5 Beav. 406; *Re Bignold*, 9 Beav. 269). See, however, *Re Drake*, 22 Beav. 438; and cases cited, *post*, p. 463.

On what
principle
ordered.

The taxation at the instance of a third party must be as between the solicitor and his client, not as between the

solicitor and the third party (*Re Wells*, 8 Beav. 416; *Re Jones*, 8 Beav. 479; *Re Taylor*, 18 Beav. 165; *Re Fyson*, 9 Beav. 117; *Re Barrow*, 17 Beav. 547; see, too, *Re Baker*, 32 Beav. 526; 11 W. R. 792). And an agreement between the immediate client and the third party paying does not affect the mode of taxation (*Re Newman*, 2 Ch. 707). Where a client has paid a bill and is not in a position to tax it, a third party liable cannot tax it, either against the solicitor or the client; his only remedy, if any, in such a case is by suit (*Re Massey*, 34 Beav. 463; 11 Jur. N. S. 594; 13 W. R. 797; 12 L. T. 519; and see *Re Press & Inskip*, 35 Beav. 34; *Re Forsyth*, 2 De G. J. & S. 509; 34 Beav. 140; 13 W. R. 307, 932; 11 Jur. N. S. 213; 11 L. T. 616, 687; *Re Gold*, 19 W. R. 343; 24 L. T. 9; *Re Knockers*, 18 S. J. 344).

In *Re Abbott*, 4 L. T. 576, it was said by the Master of the Rolls that, although after a mortgagor had paid a bill of costs, he could not, *as between himself and the solicitor*, have it taxed except under special circumstances, yet, *as between himself and the mortgagee*, he might have it taxed under the 38th section of the Act. See, too, *Re Baker*, 32 Beav. 526; 11 W. R. 792, and *Re Jessop*, 32 Beav. 406, where the bill having been paid, the Master of the Rolls directed the mortgagees to be served with a petition to tax. But the Act itself gives the mortgagor no right whatever against any person other than the solicitor, and in *Re Massey*, 34 Beav. 463; 11 Jur. N. S. 594; 13 W. R. 797; 12 L. T. 519, the Master of the Rolls himself said that these cases went too far. The liability of the mortgagee, it is submitted, is one which can only be enforced by action.

Where the parties to an arbitration under the Lands Clauses Consolidation Act, 1869, had contracted themselves out of the application of that Act, the costs of and incident to the taking of the lands were held to be taxable in Chancery under this section (*Wombwell v. Corporation of Barnsley*, 36 L. T. 708).

Additional special circumstances may be taken into account.

The 38th section further provides "that in case such application is made when, under the provisions herein contained, a reference is not authorised to be made except under special circumstances, it shall be lawful for the Court or Judge to whom such application shall be made to take into consideration any additional special circumstances applicable to the person making such application, although such circumstances might not be applicable to the party so chargeable with the said bill as aforesaid if he was the party making the application." As to the force of these words, see *Re Vardy*, 20 L. J. Ch. 325.

Where trustee, &c. is chargeable. S. 39.

The case of a bill with which a trustee, executor, or administrator has become chargeable, is provided for by the 39th section of the Act, which enacts "that it shall be lawful, in any case in which a trustee, executor, or administrator has become chargeable with any such bill as aforesaid, for the Lord High Chancellor or the Master of the Rolls, if in his discretion he shall think fit, upon the application of a party interested in the property out of which such trustee, executor, or administrator may have paid or be entitled to pay such bill, to refer the same, and such attorney's or solicitor's, or executor's, administrator's, or assignee's demand thereupon, to be taxed and settled by the proper officer of the High Court of Chancery, with such directions and subject to such conditions as such Judge shall think fit, and to make such order as such Judge shall think fit for the payment of what may be found due, and of the costs of such reference, to or by such attorney or solicitor, or the executor, administrator, or assignee of such attorney or solicitor, by or to the party making such application, having regard to the provisions herein contained relative to applications for the like purpose by the party chargeable with such bill, so far as the same shall be applicable to such cases, and in exercising such discretion as aforesaid, the said judge may take into consideration the extent and nature of the interest of the party making the application: provided always, that where any

money shall be so directed to be paid by such attorney or solicitor, or the executor, administrator, or assignee of such attorney or solicitor, it shall be lawful for such judge, if he shall think fit, to order the same, or any part thereof, to be paid to such trustee, executor, or administrator so chargeable with such bill instead of being paid to the party making such application; and when the party making such application shall pay any money to such attorney or solicitor, or executor, administrator, or assignee of such attorney or solicitor, in respect of such bill, he shall have the same right to be paid by such trustee, executor, or administrator so chargeable with such bill as such attorney or solicitor, or executor, or administrator, or assignee of such attorney or solicitor had."

It would seem that the proceedings under this section must always be by special application (*Re Straford*, 16 Beav. 27), *i.e.*, by summons in chambers (Gen. Ord., 17th April, 1867, r. 1).

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

It was said by the Master of the Rolls in *Re Drake*, 22 Beav. 438, 443, that the rule which required a party seeking to open a paid bill to show overcharges amounting to fraud (see *ante*, p. 449, *seq.*) did not apply to an application under this section. See, too, *Re Blackmore*, 13 Beav. 154; *Re Dawson*, 28 Beav. 605; 8 W. R. 554. But a contrary doctrine was laid down by L. J. Turner in *Re Dickson*, 8 De G. M. & G. 660, 661.

In *Re Hallett*, 21 Beav. 250, taxation was ordered under this section of a bill incurred in respect of a trust estate by deceased trustees, but the balance due from the solicitor was ordered to be paid to a separate account, so as to form

Whether
over-
charges
amounting
to fraud
must be
shown.

an indemnity to the solicitor against a possible breach of trust; and see *Allen v. Jarvis*, 4 Ch. 616, where the trustee was also solicitor, and had retained the amount of his bill.

Where executors have given mortgage.

Taxation of a bill of costs due from executors for the amount of which they had given a mortgage, may be ordered at the instance of a legatee (*Re Drake*, 22 Beav. 438).

Whether taxation as between trustee and cestui-que-trust.

It was said by the Master of the Rolls in *Re Story, ex parte Marwick*, 8 W. R. 15, that the taxation under this section was as between the trustee and the *cestui-que-trust* (see, too, observations in *Re Drake*, 22 Beav. 443), and that consequently the latter had no right to question the trustees' retainer of a solicitor as between himself and the solicitor, or to obtain an order for a separate taxation of the solicitor's bill, but only a right to attend the taxation of the trustees, and to raise the question of retainer as between himself and the trustees. The rule, however, is that the taxation must be as between the solicitor and the immediate client; but it is subject to this qualification, that a solicitor cannot charge against a trust estate anything not necessary for the administration thereof, although expressly directed by the trustee; for payment of such charges he must look to the trustee personally (*Re Brown*, 4 Eq. 464; 15 W. R. 1030; 16 L. T. 729); and see *In re Davison & Torrens*, 17 Ir. Ch. R. 7. In most of the cases reported, taxation was ordered as between the *cestui-que-trust* and the solicitor, the trustee or executor never having been served or appearing (see, however, *Re Downes*, 5 Beav. 425).

The 40th section of the Act provides "that for the purpose of any such reference upon the application of the person not being the party chargeable within the meaning of the provisions of this Act as aforesaid, or of a party interested as aforesaid, it shall be lawful for such Court or Judge to order any such attorney or solicitor, or the executor, administrator, or assignee of any such attorney

or solicitor, to deliver to the party making such application a copy of such bill, upon payment of the costs of such copy: Provided always that no bill which shall have been previously taxed and settled shall be again referred unless, under special circumstances, the Court or Judge to whom such application is made shall think fit to direct a re-taxation thereof." See as to proceedings under this section *Re Blackmore*, 13 Beav. 154.

The following is the form of an order of course to tax a bill on the application of a third party given in Seton, 4th ed. p. 621:—

"Upon the petition of B. of &c. [*state the circumstances, as, that the petitioner some time since agreed to take a lease of certain premises of one C., who employed the above-named A. as his solicitor, to prepare such lease, and the petitioner is liable to pay the said A.'s bill for preparing the same*]; that the said solicitor on or about the — day of — delivered unto the petitioner his bill of fees and disbursements, which as the petitioner is advised, contains many improper charges, [*if so, and charges for work not done on his retainer, and which the petitioner is not liable to pay, and the same does not contain any item for business done in any court*], that the petitioner submits to pay what shall appear to be due to the said solicitor on the taxation of his bill; It was, therefore, prayed, and it is accordingly ordered that it is referred, &c., to tax and settle the said bill; And that the petitioner, and also the said solicitor do produce, &c.; And that they be examined, &c.; And it is ordered that if such bill, when taxed, be less by a sixth part, &c.; And it is ordered that the amount so to be certified be paid by the party from whom to the party to whom the same shall be certified to be due within, &c., unless the Court shall, upon special circumstances to be certified by the said Master, otherwise order, upon application to be made within one week after the date of the said Master's certificate by the party liable to pay such amount; And it is ordered, that no proceedings

Order of
course to
tax on
applica-
tion of
third
party.

be commenced against the petitioner in respect of the said bill pending such reference, but the said Master is to make his certificate in a month, unless the said Master shall certify that further time is necessary to enable him to make his certificate; or this order is to be of no effect."

Order on
special ap-
plication
by party
interested.

The form of an order made on a special application by a legatee under the 39th section of the Act is as follows:—

"The applicant B. (*legatee*), by his solicitor submitting to pay what, if anything, shall appear to be due to A. (*solicitor*), upon the taxation of his bill of fees and disbursements, and for business done, as hereinafter mentioned, Let the said A. deliver to the applicant a bill of all such fees, charges, and disbursements over and above those included in the bills hereinafter mentioned, which are now claimed by the said A. against C. and D., as executors of the will of E. deceased, the testator in the petition named, and payable out of the residuary or general estate of the testator; And refer, &c., to tax and settle the bill of fees and disbursements, amounting to the sum £—, delivered by the said A. to the said C. and D. as such executors, and also the bill to be delivered to the applicant as aforesaid; And let the applicant B., and the said C. and D., and the said A. produce, &c., and be examined, &c.; (And let the said A. give credit for all sums of money by him received of or on account of the said executors in respect of the said bills of costs, or either of them); And if the amount of the said bills so taxed shall be less by a sixth part, &c. (exclusive of the costs of the application); And let the said Master certify the amount due from the said executor and the applicant to the said A., or from the said A. to the said executors and the applicant, or either of them, as the case may be, having regard to the costs of such reference (exclusive of the costs of this application); And let such amount be paid, &c., unless, &c. No costs of this application on either side. See *Re Downes*, M. R., 19 Feb. 1844, 581, S. C. 5 Beav. 425."—*Seton*, 4th ed. pp. 621, 622.

SECT. VI.—*Proceedings on Taxation generally.*

Costs in the Chancery Division are taxed by Taxing Masters, appointed under 5 & 6 Vict. c. 103, s. 4. The Taxing Masters attend daily at their offices in the Royal Courts; except in vacation, when one Master only attends and taxes costs in urgent cases.

Taxation of costs in the Chancery Division.

R. S. C. (Costs) Sched. r. 23 thus defines the powers and duties of the Taxing Masters:—

Powers of Taxing Master.

“The taxing officers of the Supreme Court, or of any division thereof, shall, for the purpose of any proceeding before them, have power and authority to administer oaths, and shall, in relation to the taxation of costs, perform all such duties as have heretofore been performed by any of the masters, taxing masters, registrars, or other officers of any of the courts whose jurisdiction is by the [Judicature] Act transferred to the High Court of Justice or Court of Appeal, and shall, in respect thereof, have such powers and authorities as, previous to the commencement of the Act, were vested in any of such officers, including examining witnesses, directing production of books, papers, and documents, making separate certificates or allocaturs, requiring any party to be represented by a separate solicitor, and to direct and adopt all such other proceedings as could be directed and adopted by any such officer on references for the taxation of costs, and taking accounts of what is due in respect of such costs and such other accounts connected therewith as may be directed by the Court or a judge.”

This rule is substantially identical with Cons. Ord. XL. r. 1.

By R. S. C. (Costs) Sched. r. 28, the rules, orders, and practice as to costs existing before the Judicature Act are to remain in force, so far as not inconsistent with the Act and rules. All the old rules, therefore, of the Court of

Former practice still in force unless specially altered.

Chancery, except so far as they are altered by the new rules, are still binding upon the judges of the Chancery Division (*Pringle v. Gloag*, 10 Ch. D. 676 ; 48 L. J. Ch. 380 ; 27 W. R. 574 ; 40 L. T. 512). By r. 27 as to any work and labour properly performed, and not specially provided for, and in respect of which fees have heretofore been allowed, the same or similar fees are to be allowed as have been allowed hitherto.

Discretion-
ary fees
and allow-
ances.

By r. 29 all discretionary fees or allowances are, unless otherwise provided, to be allowed at the discretion of the taxing officer, who is to take into consideration the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances.

Matters unconnected with bills of costs cannot be referred to the Taxing Master (*King v. Savery*, 8 De G. M. & G. 311, and see *ante*, pp. 441, 442). By R. S. C. (Costs) Sched. r. 24, the taxing officer is authorised to direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance he may consider unnecessary in consequence of the interest of such party in such fund or estate being small or remote or sufficiently protected by other parties interested. Where the Taxing Master had excluded a party on the ground of want of a separate interest, the Court would not disturb the decision (*Stahlschmidt v. Lett*, 9 W. R. 830).

Reference
to be made
to what
Taxing
Master.

All references for the taxation of costs are to be made to the Taxing Master in rotation ; or if there shall have been any former taxation of costs in the same cause or matter, then to the Taxing Master before whom such former taxation shall have taken place (Cons. Ord. XL. r. 2 ; and see Cons. Ord. XXIII. r. 1).

The Taxing Masters are to be respectively assistant to each other; and in the discharge of their duties, and for the better dispatch of the business of their respective offices, any Taxing Master may tax or assist in the taxation of a bill of costs which has been referred to any other Taxing Master for taxation, and for ascertaining what is due in respect of such costs, and in such case shall certify accordingly (Cons. Ord. XL. r. 3).

Taxing Masters to assist each other.

Where a bill of costs includes charges for business done in any other Court, the Taxing Master sometimes sends the bill to the proper officer of such Court, with a request to such officer to assist him in the taxation thereof; and on receiving back the bill, with the opinion of the officer thereon as to how much ought to be allowed or disallowed, the Taxing Master makes his certificate of the taxation or otherwise disposes of the proceedings before him (Dav. Ch. Pr. 5th ed. p. 1134).

Where bill includes charges for business done in another Court.

Where a suit or petition is dismissed with costs, or a motion is refused with costs, or any costs are by any general or special order ordered or decreed to be paid, the Taxing Master in rotation, or if there has been any former taxation of costs in the same cause or matter, then the Taxing Master before whom such former taxation has taken place, may tax such costs without any order referring the same for taxation, unless the Court, upon the application of the party alleging himself to be aggrieved, prohibits the taxation of such costs (Cons. Ord. XL. r. 38). As this rule is only permissive, the Taxing Masters do not generally act upon it, and it is still the practice to insert the direction for taxation.

Costs may be taxed without an order.

Where final judgment is entered in a district registry, costs are to be taxed in such registry, unless the Court or a judge shall otherwise order (R. S. C. Ord. XXXV. r. 3). The Court will not, however, except under very special circumstances, direct costs to be taxed in a district registry (*Day v. Whittaker*, 6 Ch. D. 734; 46 L. J. Ch. 680; 25 W. R. 767; 36 L. T. 683; *Irlam v. Irlam*, 2

Taxation in District Registry.

Ch. D. 608; 24 W. R. 949). The costs of actions commenced or proceeding in district registries are the same as in London (R. S. C. (Costs) Sched. r. 34).

Judge may require assistance of Taxing Master in certain cases.

“Where an account consists in part of any bill of costs, or where the judge is authorised to fix the amount of costs under the 24th rule of 40th Consolidated Order (*a*), the judge may direct the Taxing Master to assist him in settling such costs, not being the ordinary costs of passing the account of a receiver; and the Taxing Master, on receiving such direction, shall proceed to tax such costs and shall have the same powers, and the same fees shall be payable in respect thereof, as if the same had been referred to the Taxing Master by an order, and he shall return the same, with his opinion thereon, to the judge by whose direction the same were taxed” (Cons. Ord. XL. r. 25).

Bill of costs to be brought into Taxing Master's office, and notice to be given to other side.

“Where it is directed that costs shall be taxed in case the parties differ about the same, the party claiming the costs shall bring the bill of costs into the Taxing Master's office, and give notice of his having so done to the other party; and at any time within eight days after such notice, such other party shall have liberty to inspect the same without fee, if he thinks fit. And at or before the expiration of the eight days, or such further time as the Taxing Master shall in his discretion allow, such other party shall either agree to pay the costs or signify his dissent therefrom, and shall thereupon be at liberty to tender a sum of money for the costs. But where he makes no such tender, or where the party claiming the costs refuses to accept the sum so tendered, the Taxing Master shall proceed to tax the costs. And where the taxed costs shall not exceed the sum tendered, the costs of the taxation shall be borne by the party claiming the costs” (Cons. Ord. XL. r. 39). See before the rule *Aubrey*

(*a*) Rule enabling the judge to fix the sum to be allowed to a creditor establishing his debt in Judges' Chambers.

v. *Hoper*, 5 Russ. 1; and as to costs of taxation generally, see *post*, Sect. VIII.

The practical course of proceeding for the taxation of a bill of costs is as follows:—The bill is first prepared and copied bookwise, on foolscap paper, with a clear margin on the left-hand side, in order that the taxed-off amounts may be there placed by the Master in taxing the bill; and is then left, together with a full copy of the judgment or order, at the office of the proper Taxing Master. The copy of the judgment or order is also written on foolscap paper; and in the margin should be written a certificate, by the solicitor procuring the taxation, that it is a true copy of the original as passed and entered, though this is not always insisted on. If there has been a previous taxation in the action or matter, the bill and the copy of the judgment or order are taken at once to the office of the Master before whom the previous taxation took place. If there has been no previous taxation, the solicitor must write a certificate to that effect in the margin of the original judgment or order, and of the copy; and must take the judgment or order to the office of the sitting Master, who will insert the name of the Master in rotation, in a certificate prepared for him by the solicitor in the margin of the judgment or order, and will sign such certificate. A copy of this certificate must be added to the copy of the judgment or order, which is then left with the clerk of the Master in rotation. On leaving the bill, a warrant, which is underwritten to that effect, is taken out, and must be served on the several parties entitled to attend the taxation; and an appointment to proceed with the taxation must also be obtained; but previously to doing so, the several papers and vouchers in respect whereof charges are contained in the bill must be left with the Master's clerk. A warrant, stating the time of the appointment, and underwritten with the object thereof, must be issued and served on the parties: see Dan. Ch. Pr. 5th ed., p. 1312.

Proceedings for procuring a bill of costs to be taxed.

Where previous taxation.

Where no previous taxation.

The parties served may obtain copies of the bill, which

Copies of the bill,

how obtained.

must be furnished by the party by whom or on whose behalf the bill was prepared. The party requiring the copy must make a written application for it, with an undertaking to pay the proper charges. The copy must then be ready for delivery within twenty-four hours or such other time as the Court or judge may direct, and must be furnished accordingly upon demand and payment of the proper charges (R. S. C. (Costs) Ord. V. rr. 8, 9). No costs will be allowed in respect of any copy unless the same shall appear to the Taxing Master to have been requisite, and to have been made with due care, both as regards the contents and the writing thereof (Cons. Ord. XXXVI. r. 13).

The name and address of the party or solicitor by whom any copy is furnished must be endorsed thereon in the same manner as upon proceedings in court, and such party or solicitor is answerable for the same being a true copy of the original, of which it purports to be a copy (R. S. C. (Costs) Ord. V. r. 12).

The folios of all copies delivered or furnished to a party must be numbered consecutively in the margin thereof, and written copies must be written in a neat and legible manner on the same paper as in the case of printed copies (*ib.* r. 13).

These last two rules are taken from Cons. Ord. XXXVI. r. 8.

Default in bringing in costs for taxation.

If any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer may certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect (R. S. C. (Costs) Sched. r. 25).

Non-attendance of either party in Master's office.

The 6th & 7th Vict. c. 73, s. 37, provides that, "upon every reference, if either the attorney, or solicitor, or executor, administrator, or assignee of the attorney or solicitor, whose bill shall have been delivered, sent, or

left, or the party chargeable with such bill, having due notice shall refuse or neglect to attend such taxation, the officer to whom such reference shall be made may proceed to tax and settle such bill and demand *ex parte*." The party neglecting to attend will not, however, necessarily be liable to the costs of the attendance (*Re Woollett*, 12 M. & W. 506).

As to service on solicitors generally, see Cons. Ord. III. r. 4, and Morgan's Chan. Acts and Ord. p. 436. In one case, the Court, under peculiar circumstances, allowed service of the Master's certificate to be effected on the solicitor by placing it under the door of his chambers (*Re Templeman*, 20 Beav. 574).

After the bill has once been referred for taxation, no alteration can be made therein (see *Davis v. Earl of Dysart*, 21 Beav. 124; 1 Jur. N. S. 1153; on appeal 8 De G. M. & G. 33), except on a special application for leave to amend (*Re Andrews*, 17 Beav. 510, 514; and see *ante*, p. 432). Thus where by mistake some items were omitted from, and others undercharged and overcharged in a bill of costs referred for taxation, liberty was given, on a petition by the executor of the solicitor, to insert the omitted items and increase those undercharged, but he was not allowed to decrease the overcharges; and the costs of the application were ordered to be paid by the petitioner (*Re Whalley*, 20 Beav. 576. See, too, *Re Walters*, 9 Beav. 299). In general, however, leave to withdraw a non-taxable item will not be given (*Re Blakesley*, 32 Beav. 379. See, too *Re Tilleard*, 32 Beav. 476; 3 De G. J. & S. 519; 32 L. J. Ch. 765; 9 Jur. N. S. 1217; 11 W. R. 476). The foregoing rule does not apply in cases of taxation as between party and party, in which the bill may be amended in any way and at any time before the taxation is concluded (*Davis v. Earl of Dysart*).

A solicitor, who has included in his bill a lump or gross sum may, on taxation, supply a detailed statement showing how the sum is made up, and the Master may allow such

Service of
proceed-
ings.

No altera-
tion in bill
permitted
after refer-
ence, ex-
cept in
special
cases.

of the items contained in the detailed statement as are proper, not exceeding in the aggregate the gross sum originally charged; but the Master can in no case allow more than the original amount (*Re Tilleard*).

What payments to be allowed as professional disbursements.

Those payments *only* which are made in pursuance of the professional duty undertaken by the solicitor, and which he is bound to perform or which are sanctioned as professional payments by the general and established custom and practice of the profession, ought to be entered and allowed as professional disbursements in the bill of costs (*Re Remnant*, 11 Beav. 603; 18 L. J. Ch. 374). Other disbursements ought to be included in a separate cash account (*ibid.*). See, too, *ante*, pp. 441, 442, and *post*, Section VIII., as to costs of taxation.

It is not the practice to require an affidavit of increase on taxations in the Chancery Division (*Smith v. Day*, 16 Ch. D. 726).

“When the taxation of the bill of costs has been completed, the Taxing Master proceeds to take an account of the sums received by the solicitor from the client or otherwise, on account of his bill of costs. If the solicitor does not bring in his account, however small the sum received may be, there appears no mode of procuring the account, except by examining the solicitor” (Smith’s Chancery Practice, 156, 7th ed.). See further as to cash accounts, *ante*, p. 441.

We have already seen what items can be taken into consideration by the Taxing Master under the common order to tax, *ante*, pp. 441, 442. As to charging the solicitor with interest or profits, see *ante*, p. 442; *Re Savery*, 13 Beav. 424.

Inspection of documents for purposes of taxation.

The twenty-sixth rule of Cons. Ord. XL provides that, where, upon the taxation of any bill of costs, it appears to the Taxing Master that, for the purpose of duly taxing the same, it is necessary to inspect any books, papers, or documents relating to the cause or matter in the chambers of any judge, the Taxing Master shall be at liberty to

request the chief clerk of such judge to cause the same to be transmitted to the office of the Taxing Master; and also to request such chief clerk to certify any proceedings in the said chambers which may be comprised in the bill of costs under taxation; and in such cases the chief clerk when and so soon and at and for such times as the due transaction of the business at the said chambers will permit, shall direct such books, papers, and documents to be transmitted to the office of the Taxing Master for his use during the taxation, and shall certify the proceedings which have taken place in the said chambers according to the request of the Taxing Master; and after the costs in respect of which such request of the Taxing Master was made shall have been certified, the Taxing Master shall cause the same books, papers, and documents which have been so transmitted to his office, if then remaining there to be returned to the chambers of the judge.

Transmission of such documents to Taxing Master's office.

The twenty-seventh rule of the same Order provides that, when any book, paper, or document shall be transmitted from the chambers of a judge to the office of a Taxing Master, a memorandum of such transmission shall be made and signed by the Taxing Master or the clerk of the Taxing Master at whose request such book, paper, or document, may be transmitted, and shall be delivered to the chief clerk of such judge; and when any such book, paper, or document shall be returned from the office of the Taxing Master to the judges' chambers, a memorandum of such return shall be made and signed by such chief clerk, or by one of his clerks, and shall be delivered to the Taxing Master.

Where it turned out that the person employed by the client as a solicitor was not a solicitor of the Court, all his costs were disallowed, except disbursements actually made to the clerk in Court (*Prebble v. Boghurst*, 1 R. & M. 744; *Coates v. Hawkyard*, *ibid.* 746; and see *post*, p. 566).

Where it turns out that person employed is not a solicitor of the Court.

A decree directing the costs of a suit to be taxed, warrants, unless further consideration is adjourned, the taxation of the costs of working out the directions of the

decree; and this it has been held to do, notwithstanding a reservation of subsequent costs not provided for by the decree: there being other costs by which these words might be satisfied (*Quarrell v. Beckford*, 1 Mad. 285, 286). Where the subsequent costs are not intended to be taxed, the direction should be confined to costs up to the decree, or the further consideration of the cause should be reserved (*Daniell's Chancery Practice*, 5th ed. 1316). And see *Krehl v. Park*, 10 Ch. 334; 44 L. J. Ch. 286; 23 W. R. 475; 33 L. T. 83.

"Where an order is made for taxation of costs, if it is intended that any costs are not to be taxed, it should be so stated, otherwise a general direction to tax is implied, the meaning of which is to ascertain what, if anything, is due for costs. If it turns out that the proceedings in respect of which the costs were incurred were improper, then no costs ought to be allowed:" *per* Jessel, M. R., *Simmons v. Storey*, 14 Ch. D. p. 156; 49 L. J. Ch. 121; 28 W. R. 408; 42 L. T. 291.

Costs directed to be paid by the Court of Appeal. An order of the Court of Appeal, directing payment of costs, without any intimation that the taxation and payment are to be postponed, means that the costs are to be taxed and paid forthwith (*Philippus v. Philippus*, 5 Q. B. D. 60; 28 W. R. 376).

Order is joint and several. Where an order directs the taxation or payment of costs by two or more parties, each party is jointly and severally liable (*Poole v. Francis*, 1 Mol. 78; *Meredyth v. Hughes*, 3 Y. & J. 188); and if one of them dies, the costs may nevertheless be taxed and recovered against the survivors (*Meredyth v. Hughes*; *Asplen v. Seddon*, W. N. (1877), 207). See *post*, Ch. IX.

Costs of several defendants. But where several defendants retain the same solicitor, each of them can only be charged with his proportion of the general costs of proceedings taken on behalf of all (*Re Colquhoun*, 5 De G. M. & G. 35, affirming S. C. 1 Sm. & G. app. 1; *Davies v. Chatwood*, 11 Ch. D. 244; 48 L. J. Ch. 358; 27 W. R. 485; 40 L. T. 181).

As to higher and lower scales of costs, see App. No. I., *post*, and notes thereto.

Different scales of costs.

Where any costs are by any decree or order directed to be taxed, and to be paid out of any money in court, the Taxing Master in his certificate of taxation shall state the total amount of all such costs as taxed, without any direction for that purpose in such decree or order (Cons. Ord. XL. r. 40). The Master is at liberty to certify specially any circumstances relating to the bill or taxation (6 & 7 Vict. c. 73, s. 37).

Total amount as taxed to be stated.

Where a party entitled to receive costs is liable to pay costs to any other party, the Taxing Master may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such Master may allow or certify the costs to be paid, and the same may be recovered by the party entitled thereto, in the same manner as costs ordered to be paid may be recovered (R. S. C. (Costs) Sched. r. 19; *Pringle v. Glouag*, 10 Ch. D. 676; and see *ante*, p. 133).

Adjustment of costs by deduction or set off.

Where the solicitor (*Re Waugh*, 29 Beav. 666) or the client (*Re Nicholson*, 29 Beav. 665; 30 L. J. Ch. 796) dies pending the taxation, the proceedings may be revived on an *ex parte* application. Where both the client and solicitor died the taxation was ordered to be continued between the representatives (*Re Whalley*, 20 Beav. 576). As to taxation pending an abatement and revivor for the purposes of taxation, see *post*, Ch. IX. By the Attorneys and Solicitors Act, 1870, s. 19, "any person interested under a decree or order" for payment of costs in any suit, may obtain an order to revive such suit, and thereupon to prosecute and enforce such decree or order, see *post*, p. 540.

Revivor in case of death pending taxation.

"When the taxation is completed, the Master signs the bill. If it is intended to enforce payment of the costs by

any further proceedings, or evidence of the amount is required, the items taxed are added up, and the result of the taxation ascertained by the solicitors, and checked by the Taxing Master's clerk ; and a certificate of the taxation must be obtained from the Taxing Master, and filed in the Report Office, and an office copy taken " (Daniell's Chancery Practice, p. 1314, 5th ed.). As to the filing of the Taxing Master's certificate when a cause in the Chancery Division is proceeding in a District Registry, see R. S. C. Ord. XIX. r. 29a. (March, 1879). An action commenced by the solicitor on his bill after taxation was restrained, although the certificate had not been filed (*Re Campbell*, 3 De G. M. & G. 585).

Objections
to allow-
ance or
disallow-
ance by
Taxing
Master.

" Any party who may be dissatisfied with the allowance or disallowance, by the taxing officer, in any bill of costs taxed by him, of the whole or any part of any item or items, may, at any time before the certificate or allocatur is signed, deliver to the other party interested therein, and carry in before the taxing officer an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the item or items, or parts or part thereof objected to, and may thereupon apply to the taxing officer to review the taxation in respect of the same " (R. S. C. (Costs) Sched. r. 30). This rule, which is taken from Cons. Ord. XL r. 33, does not oblige the party who carries in the objection to state the reasons of his objection ; he is only required to state the items he objects to (*Simmons v. Storer*, 14 Ch. D. 154 ; 49 L. J. Ch. 121 ; 28 W. R. 408 ; 42 L. T. 291).

What
sufficient
answer to
objection.

In a modern case the Taxing Master disallowed a general objection to a bill of costs as not properly chargeable under a trust deed on the ground that the words of the trust deed covered all expenses incurred by the trustee in the matters of the trust, and that the majority of the items of costs were incurred with the plaintiff's consent, and that some of them were admitted by the plaintiff's bill. The Master also disallowed an objection to particular items as

having been unnecessarily and improperly incurred on the ground that such costs had been proved before him to have been properly incurred. It was held that both answers were sufficient (*Maw v. Pearson*, 3 N. R. 99). On an objection to a solicitor's charge for journeys his affidavit that they "were necessarily and properly taken for the benefit of the trusts estate" was in the absence of evidence to the contrary, held to be sufficient (*ibid.*). Evidence.

"Upon such application, the taxing officer shall re-consider and review his taxation upon such objections, and he may, if he shall think fit, receive further evidence in respect thereof, and, if so required by either party, he shall state either in his certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto" (R. S. C. (Costs) Sched. r. 31). Review of taxation.

This rule is taken from Cons. Ord. XL. r. 34.

Any party who may be dissatisfied with the certificate or allocatur of the taxing officer, as to any item or part of an item which may have been objected to, may apply to a judge at chambers for an order to review the taxation as to the same item or part of an item, and the judge may thereupon make such order as to the judge may seem just; but the certificate or allocatur of the taxing officer shall be final and conclusive, as to all matters which shall not have been objected to in manner aforesaid (R. S. C. (Costs) Sched. r. 32). Application for order to review taxation.

The application to review was directed to be made in chambers by r. 3 of the Ord. of April 17th, 1867; see *Webster v. Manby*, 4 Ch. 372.

Where costs are by statute directed to be taxed by "a taxing master," he acts as a *persona designata*, and not as an officer of the Court, and his taxation is consequently not subject to reviewal, whatever remedy there may be by certiorari or mandamus (*Re Sheffield Waterworks Act*, L. R. 1 Ex. 54; *Owen v. L. & N. W. Ry. Co.*, L. R. 3 Q. B. 54, and cases there cited; *Sandback Charity*

Trustees v. North Staffordshire Ry. Co., 3 Q. B. D. 1; 47 L. J. Q. B. 10; 26 W. R. 229; 37 L. T. 391).

A re-taxation will in no case be directed if the items alleged to be overcharged do not amount to forty shillings (*Newton & Wife v. Boodle*, 4 C. B. 359); and on an application to review, the amount must be stated (*Re Dearden*, 9 Exch. 210); and the items alleged to have been improperly allowed or disallowed must be specified (*Re Congreve*, 4 Beav. 87). A taxation of costs cannot be reviewed on a point not raised before the Taxing Master (*Scorfield v. Jones*, 18 S. J. 86). Unless there has been some very gross overcharge (*Smith v. Buller*, 19 Eq. 473), the Court, on an application to review, will only determine questions which involve some principle, and not those relating to *quantum* only, which will be left to the discretion of the Taxing Master (*Re Cutlin*, 18 Beav. 508; *Friend v. Solly*, 10 Beav. 329; *Re Congreve*, 4 Beav. 87; *Turner v. Turner*, 7 W. R. 573; *Re Hubbard*, 23 Beav. 481; *Attorney-General v. Lord Carrington*, 6 Beav. 454; *Alsop v. Lord Orford*, 1 M. & K. 564; *Attorney-General v. Drapers' Company*, 9 Eq. 69; *Re Mortimer*, Ir. R. 4 Eq. 96; 18 W. R. 367). And the discretion of the Taxing Master applies not only to the *quantum* but to the *quoties*, e.g., in the case of interviews, to the number of interviews as well as to the amount to be allowed for each (*Re Brown*, 4 Eq. 464). Where, however, there had been some irregularity in the proceedings before the Taxing Master (*Fenton v. Crickett*, 3 Mad. 496), or where costs had been wrongly omitted from taxation (*Greenwood v. Churchill*, 14 Beav. 160), or taxed on the higher instead of on the lower scale (*Paddon v. Winch*, 20 Eq. 449), or where the Master refused to allow any costs in respect of a particular proceeding (*Heming v. Leifchild*, 8 W. R. 352, affirmed on appeal 9 W. R. 174), the taxation was ordered to be reviewed; see also *R. v. L. C. & D. Ry. Co.*, 12 Jur. N. S. 230. And the rule does not apply to counsel's fees on an appeal, as the Judge of the Court below is better able to

What questions entertained on application to review taxation.

decide the question of *quantum* in such a case (*Gilbert v. Guignon*, 21 W. R. 745). Where the objections were carried in before the certificate was filed, but were not proceeded with, it was held that the Court in exercise of its general jurisdiction over its officers could order the taxation to be reviewed (*Kenrick v. Wood*, W. N. (1870) 216).

Where, in taxing costs at law, the Common Law Master referred equity matters to a Chancery Taxing Master, an application to review such taxation was refused (*Re Lett*, 10 W. R. 6).

It is not the province of the Taxing Master to deal with any but ordinary costs: any other question which arises must be dealt with by the Judge in Chambers (*Turner v. Turner*, 7 W. R. 573; *King v. Savery*, 8 De G. M. & G. 311). Thus the Master has no jurisdiction to enter into the propriety of a compromise entered into between the solicitor and the client which the client has not sought to impeach (*Re Catlin*, 18 Beav. 511), and his doing so will be a ground for reviewing the taxation (*ibid.*). In *Graham v. Wickham*, 34 L. J. Ch. 220; 11 Jur. N. S. 168; 13 W. R. 396; 12 L. T. 39, it was held that the Taxing Master might allow executors their costs of litigation, though no direction was given in the suits in which such costs were incurred that they should be so allowed.

Where the petitioner had not taken proper steps to satisfy the Master when the matter was in his office, he was, though successful on his application to review, ordered to pay the costs of the petition (*Sturge v. Dimsdale*, 9 Beav. 170). Where the taxation was upheld in some respects, and ordered to be reviewed in others, no costs were given (*Re Catlin*, 18 Beav. 508). See, too, *Re Whalley*, 20 Beav. 578; *Re Colquhoun*, 5 De G. M. & G. 35; 1 Sm. & Giff. App. 1; *Re London, Birmingham, & Bucks Ry. Act*, 6 W. R. 141.

An application to review a taxation must be heard and determined by the judge upon the evidence brought in

Where reference is from Common Law Master.

What matters within province of Taxing Master.

Costs of application to review.

Evidence on application to review.

before the taxing officer; and no further evidence can be received unless the judge otherwise directs (R. S. C. (Costs) Sched. r. 33).

Taxation of costs in the House of Lords.

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

SECT. VII.—*Proceedings on Taxation with Reference to Particular Matters.*

General rules.

The general costs of proceedings in the Supreme Court are regulated by R. S. C. (Costs), Ord. VI., and the Schedule thereto; see App. I., *post*.

Writs, pleadings, &c.

By R. S. C. (Costs) Sched. r. 1, as to writs of summons requiring special indorsement, pleadings and affidavits in answer to interrogatories, and other special affidavits, when the higher scale is applicable, the Taxing Officer may in lieu of the allowances for instructions and preparing or drawing, make such allowance for work, labour, and

expenses, in or about the preparation of such documents as in his discretion he may think proper. As to drawing any pleading or other document the fees allowed are to include any copy made for the use of the solicitor, agent, or client, or for counsel to settle (r. 2).

As to instructions to sue or defend, when the higher scale is applicable : if, in consequence of the instructions being taken separately from more than three persons (not being co-partners), the Taxing Officer shall consider the fee provided inadequate, he may make such further allowance as he shall in his discretion consider reasonable (r. 3).

Instructions to sue or defend.

In the case of costs to be paid or borne by another party no costs are to be allowed which do not appear to the Taxing Officer to have been necessary or proper for the attainment of justice or defending the rights of the party, or which appear to the Taxing Officer to have been incurred through over-caution, negligence, or mistake, or merely at the desire of the party (R. S. C. (Costs) Sched. r. 26 ; see *Warner v. Mosses*, 19 Ch. D. 72). This rule is similar to Cons. Ord. XL. r. 32, but is more general.

Only necessary costs to be allowed as between party and party.

The costs of issuing process of contempt will not be allowed unless specially applied for (*Attorney-General v. Lord Carrington*, 6 Beav. 460). And charges incurred merely for conducting litigation more conveniently are considered "luxuries," and must be paid by the party incurring them ; see *Smith v. Buller*, 19 Eq. 473 ; 45 L. J. Ch. 69 ; 23 W. R. 332 ; 31 L. T. 473.

The Court or Judge may, at the hearing of any cause or matter, or upon any application or procedure in any cause or matter in Court or at Chambers, and whether the same is objected to or not, direct the costs of any pleading, affidavits, evidence, notice to cross-examine witnesses, account, statement or other proceeding, or any part thereof, which is improper, unnecessary, or contains unnecessary matter, or is of unnecessary length, to be disallowed, or may direct the Taxing Officer to look into the same and to disallow

Court may direct Master to ascertain costs of unnecessary matter.

the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, or to contain unnecessary matter, or to be of unnecessary length; and in such case the party whose costs are so disallowed shall pay the costs occasioned to the other parties by such unnecessary proceeding, matter, or length; and in any case where such question shall not have been raised before and dealt with by the Court or Judge, the Taxing Officer may look into the same (and, as to evidence, although the same may be entered as read in any decree or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so (R. S. C. (Costs) Sched. r. 18).

This rule takes the place of Cons. Ord. XL. rr. 9, 10. The Taxing Master must exercise the jurisdiction conferred on him by this rule as to inquiring into the propriety of proceedings in an action, though no special directions have been given for that purpose (*Re Wormsley, Baines v. Wormsley*, 47 L. J. Ch. 844; 27 W. R. 36; 39 L. T. 85). Under the old rule (Cons. Ord. XL. r. 9) the Taxing Master did not act without the direction of the Court (*Re Farington*, 33 Beav. 346). By Rule 19 of the same Order (Aug. 1875), costs ordered to be paid under r. 18 may be taxed, and then deducted or set off, see *ante*, p. 132; and by r. 20, where in the Chancery Division any question as to any costs is under the preceding rule 18 dealt with at Chambers, the chief clerk is to make a note thereof, and state the same on his allowance of the fees for attendances at Chambers, or otherwise, as may be convenient for the information of the Taxing Officer. See also R. S. C. Ord. II. r. 2, Ord. XIX. r. 2, and Ord. XXXI. r. 2, as to the costs of unnecessary and improper matter.

Effect of
direction.

It seems that the direction operates as an intimation that the Court considers the affidavit or pleading referred to be of improper length (*Re Skidmore*, 24 L. J. Ch. 711; 1 Jur. N. S. 696; but see *contra*, *Moore v. Smith*, 14 Beav. 396). The usual direction to the Taxing Master is

Form of
direction.

to look into the pleadings, &c., and disallow the costs of such parts thereof as he shall find to be improper or unnecessary, and to ascertain the costs occasioned thereby, and such costs are ordered to be deducted from the costs payable by the other side (*Burchell v. Giles*, 11 Beav. 34; and see *Woods v. Woods*, 5 Hare, 229; *Re Bedminster Charities*, 12 Jur. 665; *Cracknall v. Janson*, 11 Ch. D. 1, 14; *Seton*, 4th ed., 120).

The setting-out of the material sections of a public statute (as, for instance, the Lands Clauses Consolidation Act) constitutes improper prolixity (*Re Manchester & Leeds Ry. Co.*, 8 Hare, 31; but see *contra*, *Re Lilley's Trusts*, 17 Sim. 110). Where a petition contained personal and irrelevant charges against the respondent, being the husband of the petitioner, the next friend was ordered to pay so much of the costs on both sides as were properly occasioned by the introduction of such charges into the petition (*Re Wills' Trusts*, 3 N. R. 107; 12 W. R. 97; and see *ante*, p. 36). Instances of improper length.

Where, in an interpleader suit, the plaintiff filed an affidavit of some length as to the merits, the Taxing Master was directed to have regard to any prolixity in the plaintiffs' affidavits (*Scottish Union Insurance Co.*, v. *Steele*, 9 L. T. 677). See further as to unnecessary length in pleadings, &c., *Tench v. Cheese*, 1 Beav. 571; *Byde v. Masterman*, Cr. & Ph. 265; *Attorney-General v. Foster*, 2 Hare, 81; *Davis v. Cripps*, 2 Y. & C. C. C. 435; *Norway v. Rowe*, 1 Mer. 347; *Hanslip v. Kitton*, 8 Jur. N. S. 808, 1113; and *ante*, p. 304. In *Cory v. Thames Ironworks & Shipbuilding Co.*, 16 W. R. 476, the plaintiffs were disallowed the extra costs occasioned by an excessive claim for damages.

In taxing the costs of an abandoned motion, or on the discontinuance of an action, the costs of all work relating to affidavits or pleadings reasonably and properly and not prematurely done, down to the time of any notice which stops the work, will be allowed (*Harrison v. Leutner*, 16 Taxation of costs of abandoned motion, or on discontinuance.

Ch. D. 559; 29 W. R. 393; 50 L. J. Ch. 264; 44 L. T. 331).

Evidence. "As to evidence such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence and the attendance of witnesses are to be allowed" (R. S. C. (Costs) Sched. r. 8).

The costs of all necessary evidence will of course be allowed; see *Stimpson v. Jepson*, 18 W. R. 962. As to the costs of unnecessary evidence, see *Booth v. Booth*, 1 Beav. 130; *Farrow v. Rees*, 4 Beav. 24. If the Court can clearly distinguish the evidence, &c., which has been unnecessarily entered into, it will dispose of the costs thereof at once. See *Farrow v. Rees*; and as to costs of unnecessary matter generally, *ante*, p. 483.

Costs of affidavits. The costs of affidavits filed, but not entered in the order, will not be allowed even on a taxation as between solicitor and client (*Stevens v. Lord Newborough*, 11 Beav. 403; *Stuart v. Greenall*, 13 Price, 755; and see further as to costs of affidavits, *Camille v. Donato*, 13 W. R. 358. A solicitor is entitled to the costs of an affidavit made on delivering up papers under an order (*Re Cutlin*, 18 Beav. 514; see *Rawlinson v. Moss*, 9 W. R. 733).

Witnesses brought up for cross-examination at hearing. Where notice was given to cross-examine witnesses at the hearing, and they were brought up accordingly, but were not, in fact, cross-examined, it was held that the costs of bringing them up ought to be allowed in taxation, as between party and party (*Clark v. Malpas*, 31 Beav. 554; 1 N. R. 221). Where interrogatories, though prepared, were not filed in order to save expense, the costs of preparing them were allowed on taxation as between party and party (*Davies v. Marshall* (No. 2), 1 Dr. & Sm. 564; 9 W. R. 756). But where a demurrer was allowed, the costs of perusing interrogatories, served before the demurrer was filed, were disallowed (*Ernest v. Partridge*, 2 N. R. 232). The costs of taking depositions which became useless were disallowed (*Ridley v. Sutton*, 1 H. & C. 741; but see *Duke of Beaufort v. Lord Ashburnham*,

cited below). A solicitor will be allowed a reasonable sum for reading depositions taken abroad (*Wentworth v. Lloyd*, 2 Eq. 607). Where a similar affidavit has been filed in each of several suits, a solicitor is not entitled to charge for perusing, when he has simply taken an office copy of the affidavit in one suit and examined the affidavits in the other suits at the Record Office (*Betts v. Cleaver*, 7 Ch. 513). Where there are several deponents to be sworn, or they are at a distance, the Taxing Master may make such reasonable allowance as he thinks fit; the allowances for affidavits include all attendances to settle and read over (R. S. C. (Costs) Sched., rr. 4, 5).

The above rule as to evidence (R. S. C. (Costs) Sched., r. 8) gives the Taxing Master power to allow so much for the attendance of scientific witnesses at the trial as shall appear to him to be "just and reasonable" (*Turnbull v. Janson*, 3 C. P. D. 264; 26 W. R. 815; see, however, *McLaren v. Home*, 7 Q. B. D. 477; 30 W. R. 85).

A reasonable sum will ordinarily be allowed for a scientific witness to get up a case for the purpose of giving evidence; see *Smith v. Buller*, 19 Eq. 473; 23 W. R. 332; 31 L. T. 473, where seven guineas a day were allowed to a scientific witness for reading up a case; *Churton v. Frewen*, 15 W. R. 559; W. N. (1867), 101; *Duke of Beaufort v. Lord Ashburnham*, 13 C. B. N. S. 598; 11 W. R. 267; 32 L. J. C. P. 97; 7 L. T. 710, where charges of an expert for searching for and translating ancient records and documents, previously known to exist, were allowed; *In re Charles Laffitte & Co.*, 20 Eq. 650; 44 L. J. Ch. 633; 24 W. R. 7; 33 L. T. 91, where an accountant employed as a skilled witness to give evidence in support of a claim though entitled to a reasonable allowance (five guineas a day for himself and two and a half guineas a day for a clerk) for his time and expenses in preparing his evidence by examination of the books, was held *not* entitled upon party and party taxation to his charges for balancing and putting the books into shape for the purpose of supporting

Several deponents.

Attendance of scientific witnesses at the trial.

Expenses of witnesses qualifying.

the claim; *Batley v. Kynock*, 20 Eq. 632; but great care is necessary in dealing with such charges in party costs (*Batley v. Kynock*). See also *Murphy v. Nolan*, I. R. 7 Eq. 598. The same practice in this respect now prevails in the Queen's Bench Division (*Mackley v. Chillingworth*, 2 C. P. D. 273; 46 L. J. C. P. 484; 25 W. R. 650; 36 L. T. 514; *Turnbull v. Janson*, 3 C. P. D. 264; 26 W. R. 815), that is to say, a reasonable sum will be allowed; and the Taxing Master must exercise his discretion in each case as to what will be a reasonable allowance under the circumstances. In *Stanger Leathes v. Stanger Leathes*, W. N. (1879), 86, the Court would not allow the costs of more than three experts to prove a county custom.

The 15th & 16th Vict. c. 80, s. 43, provides that the fees to conveyancing counsel, accountants, merchants, engineers, actuaries, and other scientific persons, employed to assist the Court under sections 40, 41, and 42 of the same Act, are to be regulated by the Taxing Master, subject to an appeal to the Judge to whom the cause is attached, whose decision is to be final. See *Meymott v. Meymott* (No. 2), 33 Beav. 590, where an accountant was employed, and the Court adopted the scale of charges allowed by the Gen. Ord. in bankruptcy.

Costs of
commission
abroad.

The expenses of sending a barrister as commissioner to examine witnesses abroad may be allowed in a proper case (*Yglesias v. Royal Exchange Corporation*, L. R. 5 C. P. 141). In *Potter v. Rankin*, L. R. 4 C. P. 76, the expenses incurred in legal assistance to commissioners in Calcutta in examining witnesses *vivá voce*, were disallowed by the Master, and the Court declined to interfere with his discretion; but see *Mann v. Harbord*, L. R. 5 Ex. 17; 39 L. J. Ex. 27; 21 L. T. 641, where the costs of a letter of instructions to the commissioners were allowed.

Costs in a
colony
must be
taxed here.

The costs incurred in a colony under a commission to examine witnesses must be taxed in this country upon the scale that would be allowed in the colony; and if the

Taxing Master feel any difficulty, he should refer to the colony for information (*Wentworth v. Lloyd*, 34 L. J. Ch. 81; 13 W. R. 486; 12 L. T. 226).

By R. S. C. (Costs) Sched. r. 13, such costs of procur-^{Fees to}ing the advice of counsel on the pleadings, evidence, and ^{counsel} proceedings in any cause or matter as the Taxing Officer shall, in his discretion, think just and reasonable, and of procuring counsel to settle such pleadings and special affidavits as the Taxing Officer shall, in his discretion, think proper to be settled by counsel, are to be allowed; but as to affidavits, a separate fee is not to be allowed for each affidavit, but one fee for all the affidavits proper to be so settled, which are or ought to be filed at the same time.

This rule supersedes Cons. Ord. XL. r. 17; the fees for ^{are in the} counsel settling affidavits are generally allowed; see *Davies* ^{discretion} *v. Marshall* (No. 2), 1 Dr. & Sm. 564. Fees to counsel ^{of the} are almost invariably left to the discretion of the Taxing ^{Taxing} Master ^{Master.} (*Attorney-General v. Lord Carrington*, 6 Beav. 454; *Parkinson v. Hanbury*, 13 W. R. 1056; 11 Jur. N. S. 475; 12 L. T. 624; *Smith v. Daniell*, 34 L. T. 899; *Stanton v. Baring*, W. N. (1875), 188); including the conveyancing counsel of the Court (*Rumsey v. Rumsey*, 21 Beav. 40); see also r. 29, R. S. C. (Costs) Sched., *ante*, p. 468. The Court, in fact, will not interfere unless a gross mistake has been made (*Brown v. Sewell*, 16 Ch. D. 517; 29 W. R. 295; *Hargreaves v. Scott*, 4 C. P. D. 21; 27 W. R. 323; 40 L. T. 35; *Kidstone v. Empire Insurance Co.*, 16 L. T. 286).

The rule as to allowing more than one counsel is provided for by the 20th rule of the 40th Cons. Ord., which directs that, where two counsel appear for the same party ^{Costs} upon the hearing of any cause or matter, and it appears ^{of two} to the Taxing Master to have been necessary or proper ^{counsel.} for such party to retain two counsel to appear, the costs occasioned thereby shall be allowed, although both of such counsel may have been selected from the outer bar.

The costs of two counsel appearing on an unopposed motion (*Stevens v. Lord Newborough*, 11 Beav. 403); and on an unopposed petition (*Sturge v. Dimsdale*, 9 Beav. 170), have been allowed on taxation as between solicitor and client; see, too, observations in *Cooke v. Turner*, 12 Sim. 649; *Ex parte Musgrave*, 17 L. T. 313; but of course there were special circumstances in these cases. As a general rule, in the case of unopposed applications, only the costs of one counsel will be allowed; see *Friend v. Solly*, 10 Beav. 329. So in the case of a motion involving some short or simple point of practice (*Yearsley v. Yearsley*, 19 Beav. 1; and see *Cargill v. Bower*, 4 Ch. D. 78). Whether the costs of two counsel retained on behalf of parties having liberty to attend the proceedings and being in the same interest as the plaintiff, should be allowed or not, is a question for the discretion of the Taxing Master. The mere fact of such parties appearing by the same solicitor as the plaintiff, is not of itself a sufficient reason for allowing them the costs of a junior only (*Re Webb's Estate*, 21 W. R. 745; 28 L. T. 726; W. N. (1873), 127). The fee to the junior counsel is about two-thirds of that marked on the leader's brief.

Reference. In taxing the costs of a reference, it is usual to allow the costs of one counsel only on each side, but the rule is not inflexible; see *Sinclair v. Great Eastern Ry. Co.*, L. R. 5 C. P. 135.

On taxation, as between party and party, the costs of two junior counsel employed to settle a defendant's answer were disallowed (*Davis v. Earl of Dysart*, 21 Beav. 124; 25 L. J. Ch. 122; on appeal, 8 De G. M. & G. 33; 25 L. J. Ch. 322). But in another case it was held that under an order for taxation of costs as between solicitor and client, the costs of a consultation between the junior counsel and a Queen's Counsel as to the frame of a bill in equity were properly allowed, without reference to the result of the suit, or the fact whether or not the advice of the Queen's Counsel was acted upon (*Forster v. Davies*, 32

Beav. 624; 9 Jur. N. S. 741; 11 W. R. 813; 2 N. R. 350; see, too, *Lucas v. Peacock*, 8 Beav. 1). The costs of a second counsel attending the examination of witnesses before an examiner were refused in *Hallows v. Fernie*, 16 W. R. 175.

It does not follow from the 20th rule of the 40th Consolidated Order that the costs of a third counsel will never be allowed. On the contrary, such costs may properly be allowed where there is a great deal of evidence, or the proceedings are voluminous, or the question to be decided is a nice and difficult one; *per* V. C. of England, in *Wastell v. Leslie*, 12 Sim. 84, 87, where the taxation was as between solicitor and client; see, too, *Nichols v. Haslam*, 15 Sim. 49, and *Sharp v. Ashley*, 12 M. & W. 732. As a general rule, however, on a taxation *as between party and party*, very special circumstances are necessary to justify the allowance of a third counsel (*Att.-Gen. v. Munro*, 1 Mac. & G. 213; *Smith v. Earl of Effingham*, 10 Beav. 378). "Before the costs of three are allowed, it should, in each case, be clearly shown to have been essentially necessary, for the purpose of doing justice between the parties at the hearing of the case, that three counsel should be employed;" *per* Turner, L.J., in *Pearce v. Lindsay*, 1 De G. F. & J., 577. And even in the case of a taxation as between solicitor and client, the general rule is that the costs of only two counsel will be allowed (*Friend v. Solly*, 10 Beav. 329; *Downing College Case*, 3 M. & Cr. 474).

In the following cases the costs of a third counsel were allowed on taxation as between party and party:—*Pearce v. Lindsay*, Johns. 705 n., 1 De G. F. & J. 573, on the hearing of a very heavy appeal; *Kirkwood v. Webster*, 9 Ch. D. 239; 47 L. J. Ch. 880; 26 W. R. 812, where the questions of fact and the questions of character involved were of a very complicated nature; *Wentworth v. Lloyd*, 2 Eq. 607; 14 L. T. 751, where the hearing occupied six days, and the bill, answers, and evidence contained up-

Costs of
more than
two coun-
sel.

Costs
of third
counsel
allowed :

wards of 6,000 folios; *Re Charles Laffitte & Co.*, 20 Eq. 650; 44 L. J. Ch. 633; 24 W. R. 7; 33 L. T. 91, a very long and complicated case; *N. E. Ry. Co. v. Jackson*, 22 W. R. 629, where the costs of a second junior were allowed; *Robb v. Connor*, Ir. R. 9 Eq. 373, though only two counsel could be heard; *Millard v. Burroughes*, W. N. (1880), 4, where there were a great many witnesses; *Fenwick v. Begbie*, 6 Ch. 869, a case of great complexity.

disallowed. They were disallowed in *Smith v. Buller*, 19 Eq. 473; 45 L. J. Ch. 69; 23 W. R. 332; 31 L. T. 873; *Midland Ry. Co. v. Brown*, 10 Ha. App. xlv.; *Haslam v. O'Connor*, Ir. R. 6 Eq. 615; *Mason v. Brentini*, 42 L. T. 726, where, after a motion for an injunction before V. C. Malins, the action was transferred to Fry, J.; *Wegmann v. Coreoran*, 41 L. T. 792, where the third counsel had been retained for the hearing of an appeal. In *Carter v. Barnard*, 16 Sim. 157, where the counsel who had drawn the pleadings had been called within the bar before the hearing, the costs of a third counsel were allowed. And this rule was followed in *Horsley v. Cox*, 7 Eq. 464; and see *Cousens v. Cousens*, 7 Ch. 48; 41 L. J. Ch. 166; 20 W. R. 48; 25 L. T. 719. But in *Green v. Briggs*, 7 Hare, 279, the costs of two counsel only were allowed; and see *Lucas v. Peacock*, 8 Beav. 1. In *Betts v. Cleaver*, 7 Ch. 513; 41 L. J. Ch. 613; 20 W. R. 732; 27 L. T. 85, the Court considered that they had gone too far in *Cousens v. Cousens*, and they accordingly held that where a leader has been employed in a suit but not retained, the costs of employing him as third counsel at the hearing could not be allowed as between party and party, although the junior counsel, who drew the pleadings, had been called within the bar. And the rule has since been laid down that the mere fact of a junior having been appointed a Queen's Counsel is not a sufficient reason for allowing the costs of three counsel (*Memorandum, per James, L.J.*, 10 Ch. 540; and see *France v. Curver*, W. N. (1875), 171). See, however, *Rayment v. Dimpleby*, W. N. (1877), 67.

Where junior called within the bar before the hearing.

An arrangement by which the leading counsel of one of the defendants has been transferred to the co-defendants to argue the case for them as their leading counsel, does not justify the allowance of three counsel on party and party taxation, although the defendants only employed four counsel between them (*Merchant Banking Co. v. Maul*, 20 Eq. 452; 44 L. J. Ch. 581; 23 W. R. 788).

The costs of a third counsel belonging to the common law bar were allowed in *Betts v. Clifford*, 1 J. & H. 74, and *Stanton v. Baring*, W. N. (1875), 188; and disallowed in *Flockton v. Peake*, 4 N. R. 456; 12 W. R. 1203.

The costs of a brief to the Attorney-General on the hearing of an information will be allowed in addition to the costs of two other counsel (*Attorney-General v. Drapers' Company*, 4 Beav. 305).

There is no rule which, on the taxation of costs as between party and party, forbids the allowance of a further fee to counsel on the occasion of delivering a further brief, although such further brief contains no new matter, but only a new arrangement in a more compendious form of matter which was in the first brief; see *Wakefield v. Brown*, L. R. 9 C. P. 410; 43 L. J. C. P. 222; 30 L. T. 428.

On an appeal the general rule is that the same fees will be allowed as were allowed in the Court below; see *Weymann v. Corcoran*, 41 L. T. 792. But where a new leader had to be retained, and the Taxing Master in his discretion allowed larger fees than were given in the Court below, the Court declined to interfere (*Brown v. Sewell*, 16 Ch. D. 517; 29 W. R. 295).

Where a Chancery action is tried on oral evidence, refreshers to counsel will be allowed for every day occupied by a trial beyond one day's time (six hours); where the action is tried on affidavit evidence no refreshers should be allowed. The amount of the refreshers is in the discretion of the Taxing Master, and depends on the fee originally marked on the brief and the nature of the case (*Harrison v. Wearing* (M. R.), 11 Ch. D. 206; 48 L. J.

Ch. 365 ; 27 W. R. 526 ; 41 L. T. 376 ; *Brown v. Sewell*, (C. A.), 16 Ch. D. 517 ; 29 W. R. 295). See also *Hill v. Hibbit*, 14 Eq. 221 ; *The Neera*, 5 P. D. 118 ; 28 W. R. 816 ; 42 L. T. 743 ; *Stanton v. Baring*, W. N. (1875), 188. In *Smith v. Buller*, 19 Eq. 473, followed in *Smith v. Daniell*, 34 L. T. 899, the criterion for allowing refreshers was said to be the length of time the trial occupied, irrespective of the mode in which the evidence was taken ; but the practice is now settled as above stated. Where the case *may* be called on, refreshers are allowable ; but not where the case has been ordered to stand over to await the decision of another case, and so cannot possibly come on ; see *Hughes v. Birkenhead Commissioners*, 16 L. T. 350. Refreshers were formerly not allowed in the Common Pleas (*Laurie v. Wilson*, L. R. 10 C. P. 152 ; 44 L. J. C. P. 87 ; 23 W. R. 139 ; 31 L. T. 688).

Retaining fees.

The common retaining fee to counsel will not be allowed on a taxation as between party and party (*Green v. Briggs*, 7 Hare, 279), nor a special retaining fee (*Smith v. Earl of Effingham*, 10 Beav. 378 ; *Underwood v. Secretary of State in Council*, W. N. (1868), 136) ; but see *contra*, *Nichols v. Haslam*, 15 Sim. 49, where a special retaining fee to the Attorney-General, who did not usually practise in the Court of Chancery, was allowed, although there were no special circumstances in the case which rendered the employment of the Attorney-General necessary. Counsel's fees on brief to fix a day for the hearing, were allowed on a taxation as between party and party (*Clark v. Malpas*, 31 Beav. 554 ; 1 N. R. 221 ; 11 W. R. 251). In the Probate Division retainers for both leading and junior counsel are allowed (*The Neera*, 5 P. D. 118 ; 42 L. T. 743 ; 28 W. R. 816 ; 48 L. J. P. D. & A. 69).

Fees on cross-examination.

The charge to be allowed for counsel's fees for cross-examination, whether before the public or a special examiner, will generally be five guineas a day for every day after the first, for which a larger fee may be allowed in heavy cases ; where the case is long and complicated, as much

as seven guineas a day may be allowed for the subsequent days (*Smith v. Buller*, 19 Eq. 473; 45 L. J. Ch. 69; 31 L. T. 873).

The costs of employing counsel on a foreign commission will only be allowed under special circumstances; the fact that the other side employed counsel is not of itself sufficient (*Lecoq v. S. E. Ry. Co.*, 14 W. R. 649; 14 L. T. 402; W. N. (1866), 158). Foreign
commis-
sion.

In the absence of sufficient reason only one consultation fee ought to be allowed on taxation as between party and party (*Smith v. Earl of Effingham*, 10 Beav. 378). In *Lucas v. Peacock*, 8 Beav. 1, the costs of a consultation between a new and a former junior who had been promoted were allowed on a taxation as between solicitor and client; but see *Davis v. Earl of Dysart*, 21 Beav. 124; 25 L. J. Ch. 122; 8 De G. M. & G. 33; 25 L. J. Ch. 322, where the taxation was between party and party. In *Smith v. Baker*, 28 L. T. 669, a case at law, the Master disallowed the consultation fees, and the Court declined to interfere. In *Wegmann v. Corcoran*, 41 L. T. 792, the fees paid on a second consultation held pending the hearing of an appeal were disallowed. Where no fee is paid to counsel on a consultation, no charge can be allowed to the solicitor for his attendance (*Re Cutlin*, 18 Beav. 516; and see *Wyman v. Bockett*, W. N. (1866), 318). See further as to consultations, *Hill v. Peel*, L. R. 5 C. P. 172; *Tillett v. Stracey*, *ib.*, 185. Fees on
consulta-
tions.

Where a demurrer was allowed with costs, the costs of the solicitor's conferences with counsel to advise as to demurring were allowed (*Ernest v. Partridge*, 2 N. R. 232; 11 W. R. 715). If a conference has been charged for, the Master is bound, it seems, to allow it; but he may disallow a second conference on the same point, unless it has been held at the request of counsel (*Re Braund*, 39 L. J. Ch. 384).

The costs of drawing observations for counsel where the cause stood over, were allowed in *Davies v. Marshall* (No. Costs of
observa-
tions.

2), 1 Drew. & Sm. 564. But in another case, *Ernest v. Partridge*, 2 N. R. 232; 11 W. R. 715, cited above, the costs of preparing such observations, which included marginal notes and an index to the bill, which was very long, were disallowed.

In *Smith v. Buller*, 19 Eq. 473, which was a suit to restrain the infringement of a patent, the costs of drawings of exhibits to be affixed to counsels' briefs were disallowed, on the ground that they were luxuries and not necessities. But in *Batley v. Kynock*, 20 Eq. 632, also a patent suit, the Court considered the expense of having a model made to be justifiable. All these were cases of taxation as between party and party.

Briefs of pleadings prepared for counsel after publication and before the cause had been set down, and which became useless in consequence of a compromise before hearing, were disallowed on taxation as between solicitor and client (*Friend v. Solly*, 10 Beav. 329; see, too, *Re Pender*, 10 Beav. 390; *Davenport v. Stafford*, 9 Beav. 106). See, however, *Hughes v. Meyrick*, L. R. 5 C. P. 407; *Haslum v. O'Connor*, Ir. R. 6 Eq. 615. The costs of an abstract of a deed prepared to accompany a case submitted to counsel (*Re Pender*), and of a copy of correspondence furnished to counsel as instructions for a bill, and partially inserted therein, were disallowed (*Stevens v. Lord Newborough*, 10 Beav. 403). The costs of copies of pleadings for the use of counsel and judges on an interlocutory application will be allowed if the copies are really necessary; see *Warner v. Mosses*, 19 Ch. D. 72, where the Court of Appeal had ordered part of an affidavit to be expunged as scandalous, with costs as between solicitor and client.

Costs of
counsel
attending
at Cham-
bers.

“As to counsel attending at Judges' Chambers no costs thereof shall in any case be allowed, unless the Judge certifies it to be a proper case for counsel to attend” (R. S. C. (Costs) Sched., r. 14). See *ante*, p. 138.

Costs of

Where, in pursuance of any direction by the Court or

a Judge in Chambers, drafts are settled by any of the conveyancing counsel of the Court, the expense of procuring such drafts to be previously or subsequently settled by other counsel on behalf of the same parties on whose behalf such drafts are settled by the conveyancing counsel of the Court, shall not be allowed on taxation as between party and party, or as between solicitor and client, unless the Court or the Judge in Chambers shall otherwise direct (Cons. Ord. XL. r. 30). See before the rule, *Re Jones' Settled Estates*, 4 Jur. N. S. 887; 6 W. R. 762; *Nicholson v. Jeyes*, 1 Sm. & G. app. xiii.

Fees to counsels' clerks are mere gratuities, for which they have no legal demand (*Ex parte Cotton*, 9 Beav. 107). The sum allowed on taxation for such fees does not limit the sum which may be spontaneously given; but it does limit the sum which the solicitor can safely pay without special directions (*ibid.*).

The costs of employing an interpreter to prepare the answer of a foreign defendant were allowed on taxation as between party and party (*Earl of Shrewsbury v. Trappes*, 10 W. R. 663); but not the hotel and travelling charges occasioned by bringing him to town (*ibid.*).

In the absence of any special agreement with an accountant, the Court will, on taxation, adopt the scale of charges fixed for accountants and their clerks by the general order in bankruptcy (*Meymott v. Meymott*, 33 Beav. 590; 4 N. R. 390; 12 W. R. 996; see W. N. (1870) Pt. ii. 43).

As to auctioneers' costs and charges, see *Re Page* (No. 3), 32 Beav. 487.

The costs of shorthand notes of the evidence and proceedings, including both the sum paid to the shorthand writer and the costs of copies, will not be allowed on taxation without a special direction from the Judge at the time of giving judgment (*Ashworth v. Outram*, 9 Ch. D. 483; 27 W. R. 98; 39 L. T. 441; *Kirkwood v. Webster*, 9 Ch. D. 239; 26 W. R. 812; 47 L. J. Ch. 880; *Wells v. Mitcham Gas Co.*, 4 Ex. D. 1; 48 L. J. Ex. 75; 27 W. R.

112 ; 39 L. T. 667 ; and see also *Smith v. Earl of Effingham*, 10 Beav. 378 ; *Flockton v. Peake*, 4 N. R. 456 ; 12 W. R. 1023.) Where, however, shorthand notes of evidence are essential to the proper hearing of the case, the costs of such notes will be allowed (*Lee Conservancy Board v. Button*, 12 Ch. D. 383 ; 41 L. T. 500 ; *Clark v. Malpas*, 31 Beav. 554 ; 1 N. R. 221 ; 11 W. R. 251 ; and see *Re London and Birmingham Ry. Co.*, 6 W. R. 141 ; *Malins v. Price*, 1 Ph. 590 ; *Twinberrow v. Braid*, W. N. (1878) 169.) In *Thorley's Cattle Food Co. v. Massam*, 41 L. T. 543, the Court declined to give the successful plaintiff the costs of the shorthand writer's notes of the proceedings, which had been taken by each side, as the Court had not required them for its own use. The Court of Appeal, of course, has power to allow the costs of all shorthand notes properly used in the appeal, whether taken for the purposes of the appeal or not ; but an application to be allowed such costs should be made when judgment is delivered (*Hill v. Metropolitan Asylums Board*, 49 L. J. Q. B. 668 ; 28 W. R. 664 ; W. N. (1880) 98). In *Crawford v. Hornsea Brick Co.*, W. N. (1876) 215, an order allowing the costs of shorthand notes was made at Chambers by V. C. Malins. As a general rule, however, the costs of shorthand notes of evidence in the Court below will not be allowed ; the Judge's notes of the evidence, supplemented by those of counsel, ought in all ordinary cases to be sufficient for the purposes of the appeal (*Kelly v. Byles*, 13 Ch. D. 682 ; 28 W. R. 585 ; 42 L. T. 338 ; 49 L. J. Ch. 181 ; *In re Duchess of Westminster Co.*, 10 Ch. D. 307 ; 27 W. R. 539 ; 40 L. T. 300 ; *Vernon v. Vestry of St. James, Westminster*, 16 Ch. D. 449, 473 ; 50 L. J. Ch. 81 ; 44 L. T. 229 ; *Earl de la Warr v. Miles*, 19 Ch. D. 80 ; 30 W. R. 35 ; W. N. (1881) 140.) Where the *vivâ voce* evidence was voluminous and the appeal could not have been properly argued without referring to all parts of it, the costs of printing and transcribing, but not the costs of taking, the notes, were allowed (*Bigsby v. Dickinson*,

4 Ch. D. 24; 46 L. J. Ch. 280; 25 W. R. 89, 122; 35 L. T. 679); and see *Orr Ewing & Co. v. Johnston & Co.*, 13 Ch. D. 465. In *Ex parte Sawyer, In re Bowden*, 1 Ch. D. 698, *Smith & Chadwick* 20 Ch. D. 81 the charge for a copy of a shorthand writer's notes of the proceedings in a County Court was allowed as part of the costs of an appeal to the Chief Judge; see also *Watson v. Great Western Ry. Co.*, 6 Q. B. D. 163; 50 L. J. C. P. 302; in *Re Albazette, Ex parte Smith*, 8 Ch. D. 599. In *Re Beetlestone*, W. N. (1876) 1 (C. A.), which was heard in private, the costs of shorthand notes of *vivá voce* evidence were ordered to be paid out of the estate.

When the Court of Appeal makes use of shorthand notes of the judgment below it allows the costs of the notes (*Collyer v. Isaacs*, 45 L. T. 567). Shorthand notes of judgment.

In *Marcus v. General Steam Navigation Co.*, 35 L. T. 353, it was held that the costs of shorthand notes were in the Master's discretion, and that the Court would not interfere, except in cases of gross abuse. The costs of a shorthand writer's notes of the argument will never, it seems, be allowed (*Re London and Birmingham Ry. Co.*, 6 W. R. 141). In *Wegmann v. Corcoran*, 41 L. T. 592, the costs of copies of the transcript of the notes of the judgment below, furnished to the defendant's counsel, were allowed.

As to surveyors' charges, see *Attorney-General v. Surveyors. Drapers' Co.*, 9 Eq. 69, where a sum of £73 was allowed, being the amount of commission on purchase money paid into Court calculated according to "Ryde's Scale," which is a scale prepared by an eminent surveyor, the commission varying from five to one-half per cent., according to the amount of the purchase money.

The expense of employing nautical assessors in Admiralty Appeals, under s. 56 of the Judicature Act, 1873, is recoverable as part of the costs to be paid by the unsuccessful party (*The Dunkeld*, W. N. (1876) 66). Assessors.

It has been held that an objection to allowance of profit costs to mortgagees acting as their own solicitors in a re-

demption suit must be taken at the hearing, and cannot be entered into before the Taxing Master where the decree directs taxation of the mortgagees' costs in the usual form (*Price v. McBeth*, 12 W. R. 818); but see *ante*, p. 390.

[187]2 et 366.
Copies and
production
of docu-
ments.

As to copies, see generally R. S. C. (Costs) Ord. V. By r. 5 no party entitled to be furnished with a print will be allowed any charge in respect of a written copy unless the Court or Judge otherwise directs.

If a party or solicitor omits to furnish a written copy when properly required to do so, the person applying may procure a copy from the office where the original was filed, and in such case no costs shall be due or payable to the solicitor so making default in respect of the copy or copies so applied for (R. S. C. (Costs) Ord. V., r. 14; Cons. Ord. XXXVI., r. 12). "The Taxing Master shall not allow any costs in respect of any copy so taken as aforesaid, unless the same shall appear to him to have been requisite, and to have been made with due care, both as regards the contents and the writing thereof" (Cons. Ord. XXXVI., r. 13). By R. S. C. (Costs) Ord. V., r. 15, the Judge may give special directions as to the expense of printing and furnishing copies.

As to the costs of copies of pleadings on an interlocutory application, see *Warner v. Mosses*, 19 Ch. D. 72; if the copies are necessary or proper for the attainment of justice they must be allowed.

Documents previously existing in print cannot be charged for as copies (*Underwood v. Secretary of State in Council*, 16 W. R. 752, 926; 18 L. T. 351).

Solicitor
concerned
for several
parties.

A solicitor concerned for two or more parties is not allowed to charge for supplying to himself copies of documents which he has himself prepared; see *Sharp v. Wright*, 1 Eq. 634; and see also R. S. C. (Costs) Sched. rr. 6 and 7. Where there is a voluminous correspondence which the Court must read, the expense of having copies made by a law stationer will be allowed; see *Hayne v. Cavell*, W. N. (1875), 141. In *Re Beamish's Trusts*, 19

W. R. 740, the Master of the Rolls in Ireland said, that in instructing counsel to prepare pleadings, &c., a solicitor should only send copies and not original deeds, and that the costs of such copies would be allowed on taxation, and the deeds should be briefed independent of such copies. See further as to the costs of copies, *Millard v. Burroughes*, W. N. (1880), 4; *Murphy v. Nolan*, Ir. R. 7 Eq. 498; *Wyman v. Bockett*, W. N. (1866), 318. As to defendant's costs of taking copies of and perusing answer of co-defendants, see *Great Eastern Ry. Co. v. Norwich and Spalding Ry. Co.*, W. N. (1881), 92.

The costs of an inspection of documents and the notice to produce, under R. S. C. Ord. XXXI., r. 14, will not be allowed when the inspection was unnecessary; see R. S. C. (Costs) Sched. r. 15. A party entitled to take copies or extracts of documents, in the possession of another party, must pay the solicitor of the party producing for such copy or extract at the rate of 4*l.* per folio; if the latter refuses or neglects to supply such copies or extracts, the solicitor of the party requiring the same may make them, and the solicitor for the party producing will not be entitled to any fee in respect thereof (R. S. C. (Costs) Sched. r. 16).

Inspection
of docu-
ments.

Where an order is made in an action in the Chancery Division for the production of documents at the office of the producing party's solicitor, that party, if ultimately successful in the action, is not entitled, as between party and party, to his solicitor's costs of the production, nor to his own costs of inspecting the documents of the other party (*Brown v. Sewell*, 16 Ch. D. 517; 29 W. R. 295; 44 L. T. 41).

A solicitor is entitled to charge a fee for every sittings in which a proceeding by or affecting the party, other than the issuing and serving the writ of summons, takes place (R. S. C. (Costs) Sched.). Where the only proceeding was the laying before the taxing master a copy of the decree and of the bill for taxation, it was held that a

Sittings
fee.

term fee was properly chargeable (*Davies v. Marshall* (No. 2), 1 Drew. & Sm. 567).

Solicitor attending examination, &c.

The costs of a London attorney attending the execution of a commission for examination of witnesses in the country were, under special circumstances, allowed on a taxation as between party and party (*Howell v. Tyler*, 2 Y. & C. C. C. 284).

The costs of the attendance of the country solicitor, as well as the town agent, at the trial of a cause in London, may be allowed, in a proper case; it is a question for the taxing master's discretion (*Bell v. Aitkin*, L. R. 3 C. P. 320). In *Potter v. Rankin*, L. R. 4 C. P. 76, the costs of the attendance of a managing clerk in such a case were disallowed. So were the travelling expenses of a country solicitor who came up to attend the cross-examination of witnesses at the hearing (*Clark v. Malpas*, 31 Beav. 554; 1 N. R. 221). Where a country solicitor personally attends an appeal instead of employing his London agent, he will be allowed the additional charges and expenses thereby occasioned (*Re Foster, Ex parte Dickens*, 8 Ch. D. 598); but see *Ex parte Snow, Re Sherwell*, W. N. (1879), 22. Charges for the attendance of a solicitor's clerk, in addition to the solicitor on cross-examination before the examiner, will not be allowed (*Smith v. Buller*, 19 Eq. 473; 45 L. J. Ch. 69; 31 L. T. 873).

Travelling expenses.

A solicitor has no right to make journeys, either in England or elsewhere, at the expense of his client, without specific instructions; and, except under very special circumstances, the costs of such journeys will not be allowed (*Re Snell*, 5 Ch. D. 815; 25 W. R. 736; 36 L. T. 534; *Re Price*, 9 Beav. 234; *Alsop v. Lord Oxford*, 1 My. & K. 564; *Horlock v. Smith*, 2 My. & Cr. 523; *Crossley v. Parker*, 1 J. & W. 460; *Re Bevan*, 20 Beav. 146). In *Re Snell* a solicitor had a retainer to act generally for a company, and also a special retainer to conduct a Chancery suit on their behalf. Being employed by another client

Re Snell.

to go to America, he collected information on behalf of the company in furtherance of their suit, but without special instructions. On his return to England he reported to the company what he had done, and they made use of the information he had obtained. He also took three journeys to Paris to conduct negotiations for a compromise of the suit, without instructions from the company, but with the knowledge of some of the directors. The Court of Appeal held that, under the special circumstances of the case, he was entitled to charge the company for his professional services in America, and also for his professional services and expenses on his journeys to Paris. As to a solicitor attending on a client in the country, where correspondence would have sufficed, see *Re Mortimer*, Ir. R. 4 Eq. 96; 18 W. R. 367. The travelling expenses of experts were allowed in *Churton v. Frewen*, 15 W. R. 559.

As to agency correspondence, in country agency causes and matters, if it be shown to the satisfaction of the taxing officer that such correspondence has been special and extensive, he is to be at liberty to make such special allowance in respect thereof as in his discretion he may think proper (R. S. C. (Costs) Sched., r. 9). Agency
correspon-
dence.

Solicitors are entitled to charge for settling minutes of orders though no minutes are issued (*Gould v. Dummatt*, 2 Eq. 609). Settling
minutes.

By s. 41 of the Parliamentary Elections Act, 1868, 31 & 32 Vict., c. 125, continued by 43 Vict., c. 18, s. 4, the costs of a petition under the Act are to be taxed according to the same principles as costs between solicitor and client are taxed in a suit in Chancery; see *Hill v. Peel*, L. R. 5 C. P. 172; *Hughes v. Meyrick*, *ib.* 407; *McLaren v. Home*, 7 Q. B. D. 477; 30 W. R. 85. Election
petitions.

SECT. VIII.—*Costs of Taxation.*

Provisions
of 6 & 7
Vict. c. 73,
as to costs
of taxa-
tion.

By the 37th section of the 6 & 7 Vict. c. 73, it is enacted that in case any such reference as aforesaid shall be made upon the application of the party chargeable with such bill, or upon the application of such attorney or solicitor, or the executor, administrator, or assignee of such attorney or solicitor, and the party chargeable with such bill shall attend upon such taxation, the costs of such reference shall, except as hereinafter provided for, be paid according to the event of such taxation ; that is to say, if such bill when taxed be less by a sixth part than the bill delivered, sent, or left, then such attorney or solicitor, or executor, administrator or assignee of such attorney or solicitor, shall pay such costs ; and if such bill when taxed shall not be less by a sixth part than the bill delivered, sent, or left, then the party chargeable with such bill, making such application or so attending, shall pay such costs ; and every order to be made for such reference as aforesaid shall direct the officer to whom such reference shall be made to tax such costs of such reference to be so paid as aforesaid, and to certify what, upon such reference, shall be found to be due to or from such attorney or solicitor, or executor, administrator, or assignee of such attorney or solicitor, in respect of such bill and demand, and of the costs of such reference, if payable : Provided also, that such officer shall in all cases be at liberty to certify specially any circumstances relating to such bill or taxation, and the Court or judge shall be at liberty to make thereupon any such order as such Court or judge may think right respecting the payment of the costs of such taxation : Provided also, that where such reference as aforesaid shall be made when the same is not authorised to be made except under special circumstances, as hereinbefore provided, then the said Court or judge shall be at liberty, if it shall be thought fit, to give any special

directions relative to the costs of such reference. As to costs of taxation before the Act, see *Toghill v. Grant*, 6 Beav. 348.

Since the passing of this Act, it has been held that items struck out of a solicitor's bill on taxation, *as chargeable against another person*, must be taken into account in determining the costs of the taxation (*Re Clark*, 13 Beav. 173; 1 De G. M. & G. 43). See the Taxing Master's certificate in that case (13 Beav. 181-3).

Items dis-allowed as chargeable against another person to be taken into account.

In determining the amount taken off, only strictly professional charges and disbursements ought to be taken into consideration (*Re Remnant*, 11 Beav. 603). Thus, where the client had in a legal proceeding become liable to pay a sum of money which was paid by his solicitor, who, however, had not acted for him in the action, it was held that the money, although properly included in a cash account, was not properly included in the solicitor's bill, for the purpose of determining whether one-sixth had been taxed off (*ibid.*; followed in *Re Haigh*, 12 Beav. 307, where the payment had been made for legacy duty). This case seems to overrule *Re Bedson*, 9 Beav. 5. See observations of Lord Langdale on the latter case, in 12 Beav. 308, and *ante*, p. 474.

Charges not strictly professional.

In a modern case it was held that monies paid by a client to his solicitor for specific purposes, *ex. gr.* for counsels' fees and stamps as they were required, were properly included in the solicitor's bill, for the purpose of calculating the one-sixth on a taxation (*Re Metcalfe*, 30 Beav. 406).

Monies paid by client for specific purposes.

In a case in bankruptcy (*ex parte Barrett*, 3 Dea. & Ch. 731) an order had been made for the taxation of four several bills of a solicitor for various businesses done for the same assignee, under which more than a sixth part was taken off the gross amount of the four bills, but not off the amount of every one of the bills. It was held that as all the bills were incurred by the same person in the same right, there was no need of a separate order of

Where several bills.

taxation for each bill, and that, as more than a sixth was taken off from the whole amount, the solicitor must pay the costs of taxation.

In a case at law (*Beardsall v. Cheetham*, 31 L. T. (O. S.) 115, reported on another point, E. B. & E. 243) four separate bills for four distinct matters had been delivered to the client, and the client refusing to pay two actions had been brought thereon. The Master having made two separate allocaturs, the Court made an order to consolidate the two actions, and for the Master to review his taxation by giving one allocatur only on the four bills. The consequence being that more than one-sixth was deducted from the whole, the Court held the client entitled under the statute to the costs of the whole taxation.

Principle when items added and disallowed.

Where the Master disallows some items and adds others, the bill delivered is to be treated as increased by the sum added, and then reduced by the sum disallowed (*Re Hartley*, 2 Jur. N. S. 448. See, too, *Reg. v. Eastwood*, 6 Ell. & Bl. 285).

New items cannot be introduced.

The solicitor will not be allowed to introduce new items with a view to affect the costs of taxation (*Hays v. Trotter*, 5 Bar. & Ad. 1106; *Re Blakeley*, 12 Beav. 379; *Re Tilleard*, 32 Beav. 476; and *ante*, pp. 432, 473).

Where question as to liability reserved.

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

Where suit for account.

A suit having been instituted by the client against the solicitor for a general account, more than one-sixth was taken off in the suit, but less than one-sixth on the taxation. The court allowed the solicitor the costs of the taxation (*May v. Biggenden*, 24 Beav. 207). Where taxation was ordered pending an action for the costs, and more than one-sixth was taken off, the court ordered the costs of the reference to be paid by the solicitor, and the costs of the action by the client (*Re Hair*, 11 Beav. 96).

Where action brought.

See *contra*, before the Act, *Toghill v. Grant*, 6 Beav. 348.

Where more than a sixth was taken off the bill, the assignees of a bankrupt (*Re Peers*, 21 Beav. 520), or insolvent solicitor (*Shea v. Boschetti, re Peile*, 25 Beav. 561), were personally liable for the costs of the taxation of a bill delivered by them. In *Re Cole*, 2 Sim. & St. 463 (decided under the old statute), it was held that the personal representative of a deceased solicitor was not liable for the costs of taxation. In this case the bill had been delivered by the solicitor himself.

Liability of assignees of solicitor for costs of taxation.

Where pending the taxation, the solicitor petitioned for and obtained his discharge under the Insolvent Debtors' Acts, he was held personally liable for the costs of the taxation, more than one-sixth having been taken off (*Whalley v. Williamson*, 6 Q. B. 269).

Of insolvent solicitor.

In an ordinary taxation between party and party the costs of the taxation are borne by the person taking the taxation; but, *semble*, the Court would have discretion in a proper case to depart from this rule (*In re Grundy, Kershaw & Co.*, 17 Ch. D. 108; 29 W. R. 581; 44 L. T. 541; 50 L. J. Ch. 467).

Costs of taxation between party and party.

CHAPTER IX.

MODES OF ENFORCING THE PAYMENT OF COSTS.

SECT. I.—*Where costs are ordered to be paid by one party to another personally.*

Enforcing judgment for money.

By R. S. C. Ord. XLII. r. 1, a judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money of any Court, whose jurisdiction is transferred by the Judicature Act, might have been enforced at the time of the passing of that Act.

Modes of recovering costs.

Accordingly, where costs are ordered to be paid by one party to another personally, they may be recovered in the following different ways:—

(1) *Fieri facias*; (2) *Elegit*, and proceedings under Judgment Law Acts; (3) Sequestration; (4) Attachment of debts; (5) Charging order on stocks and shares; (6) Arrest and imprisonment; (7) Indirectly in some cases, by staying any further proceedings by the party by whom the costs are to be paid. Subpœnas for costs are abolished (R. S. C. (Ap. 1880), Ord. XLVII., r. 2). The subjects of interest on costs, and revivor for costs, are treated of in paragraphs 8 and 9 of this section.

Enforcement of orders.

By R. S. C. Ord. XLII., r. 20, every order of the Court or a judge may be enforced in the same manner as a judgment to the same effect. Notwithstanding this rule, however, it was held in *Cremetti v. Crom*, 4 Q. B. D. 225; 48 L. J. Q. B. 337; 27 W. R. 411, that an order dismissing an action with costs, for want of prosecution

could not be enforced by attachment of debts under Ord. XLV. r. 2.

Upon any judgments drawn up by the Chancery registrars for the recovery of a sum of money or costs, there may continue to be, at the election of the claimant, either one writ or separate writs of execution for the recovery of the sum and for the recovery of the costs, but a second writ can only be for costs, and must be issued not less than eight days after the first writ (R. S. C. (April, 1880), Ord. XLII., r. 15 a).

Judgments for money or costs in the Chancery Division.

A judgment of the Chancery Division for the payment of costs may be enforced in Ireland or Scotland, according to the provisions of the "Judgment Extension Act, 1868," 31 & 32 Vict., c. 54. For the method of enforcing such a judgment, see Dan. Ch. Pr., 6th ed., p. 846.

Enforcing judgment for costs under Judgment Extension Act, 1868.

The execution of a writ of attachment does not deprive the party issuing it of any lien or right of set-off he may have for the costs (*Bawtree v. Watson*, 2 K. 713; and see *Roberts v. Ball*, 3 Sm. & G. 168; 24 L. J. Ch. 471; 1 Jur. N. S. 585; 3 W. R. 466).

Where several persons are ordered to pay costs, process against them may be either joint or several (*Sangar v. Gardiner*, C. P. C. 262; *Purcell v. Woodley*, 5 Ir. Eq. R. 376; and *Land Credit Co. v. Lord Fermoy*, 5 Ch. 323; 39 L. J. Ch. 477; 18 W. R. 393, and the cases cited *ante*, p. 121).

Process may be joint or several.

The Court will not stay proceedings for the recovery of costs pending an appeal; the practice is to order the costs to be paid at once, the solicitors who receive the costs undertaking to refund in case the decision is reversed (*Grant v. Banque Franco-Egyptienne*, 3 C. P. D. 202; 47 L. J. Ch. 455; 26 W. R. 669; 38 L. T. 622; *Morgan v. Elford*, 4 Ch. D. 388; 25 W. R. 136; *Merry v. Nickalls*, 8 Ch. 205; 21 W. R. 305; 28 L. T. 296; *Beattie v. Lord Ebury*, 28 L. T. 458; *Gibbs v. Daniel*, 4 Giff. 41, n.); and see also *Wilson v. Church*, 12 Ch. D. 454; 48 L. J. Ch. 690; 28 W. R. 284; 41 L. T. 50; *Atherton v. British*

No stay of execution for costs pending an appeal.

Nation Assurance Co., 5 Ch. 720; *Polini v. Gray*, 28 W. R. 360. In *Cooper v. Cooper*, 2 Ch. D. 492; 45 L. J. Ch. 667; 24 W. R. 628, proceedings were stayed, pending an appeal, on the appellant paying into Court the costs ordered to be paid, and paying to the respondents the costs of the application. The application must be made in the first instance to the Court below, although the action has been dismissed (*Otto v. Lindford*, 18 Ch. D. 394).

If the costs are paid to the solicitor, he must give satisfactory security for their repayment (*Burdick v. Garrick*, 5 Ch. 453; 39 L. J. Ch. 661; 18 W. R. 530; 22 L. T. 502). The payment of costs will not be stayed on the ground that another proceeding is pending in the same action under which costs may become payable to the applicant (*Grant v. Banque Franco-Egyptienne*, 3 C. P. D. 202). In *Bauer v. Mitford*, 9 W. R. 135, a fund out of which costs were ordered to be paid was retained pending the appeal; but see *Wilson v. Church*. In *Elborough v. Ayres*, 39 L. J. Ch. 601; 18 W. R. 913; 23 L. T. 68, V. C. James held that the Court of Chancery had no jurisdiction to restrain a plaintiff at law who had recovered a verdict from proceeding to tax and recover payment of the costs, on the ground that the circumstances under which the action was brought amounted to maintenance.

Proof in
bank-
ruptcy.

A claim for the costs of an action founded on contract, is, after verdict, a debt provable in bankruptcy, although the costs have not been taxed at the date of the adjudication. And, *semble*, even though judgment may not have been signed (*Ex parte Peacock, re Duffield*, 8 Ch. 682; 42 L. J. Bank. 78; 21 W. R. 756; 28 L. T. 830); but costs recovered in an action of tort are not provable unless judgment is signed before the adjudication (*Re Newman, ex parte Brooke*, 3 Ch. D. 494; 46 L. J. Bank. 57; 25 W. R. 261). It is not sufficient, in a liquidation by arrangement, for a creditor in respect of untaxed costs to

make a mere estimate of their amount; he must either swear to such a sum as will cover the costs when taxed, or else apply for leave to sign judgment, and tax his costs (*Ex parte Ruffle, re Dummelow*, 8 Ch. 997; 42 L. J. Bank. 82; 21 W. R. 932; 29 L. T. 384).

For the general practice as to execution, see Dan. Ch. Pr., 6th ed., p. 823. By R. S. C. Ord. XLII., r. 6, the term "writ of execution," includes writs of *ieri facias, capias, elegit*, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the term "issuing execution against any party" means the issuing of any such process against his person or property, as shall be applicable according to the preceding rules of the Order.

As to execution generally. "Writ of execution."

"Issuing execution."

No writ of execution can be issued without the production to the officer by whom it should be issued of the judgment upon which the writ of execution is to issue, or an office copy thereof, showing the date of entry; and the officer must be satisfied that the proper time has elapsed to entitle the judgment creditor to execution (*ib.*, r. 9). No writ of execution can be issued without the party issuing it, or his solicitor, filing a *præcipe* for that purpose, containing the title of the action, the reference to the record, the date of the judgment, and of the order, if any, directing the execution to be issued, and the names of the parties against whom, or of the firms against whose goods, the execution is to be issued. The *præcipe* must be signed by or on behalf of the solicitor of the party issuing it, or by the party issuing it, if he do so in person (*ib.*, r. 10, as varied by Ord. of June, 1876).

Judgment must be produced.

Præcipe.

The writ must be indorsed with the name and address of the solicitor who sues it out; and when the solicitor actually suing out the writ does so as agent for another solicitor, the name and address of such other solicitor must also be indorsed upon the writ. If no solicitor be employed to issue the writ, then it must be indorsed with a memorandum expressing that it has been sued out by

Writ must be properly indorsed;

the plaintiff or defendant in person, as the case may be, and giving his address (*ib.*, r. 11). Every writ of execution for the recovery of money must be indorsed with a direction to the sheriff or other person to whom the writ is directed to levy the money sought to be recovered under the judgment, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of £4 per cent. per annum from the time when the judgment was entered up. If there is an agreement between the parties that more than £4 per cent. interest shall be secured by the judgment, then the indorsement may be accordingly to levy the amount of interest so agreed (*ib.*, r. 14).

dated ; Every writ of execution must also bear date of the day on which it is issued. The forms in the Appendix to the Rules may be used with such variations as circumstances and tested. may require* (*ib.*, r. 12). The writ must be tested in the name of the Lord Chancellor; or of the Lord Chief Justice, if the Chancellorship is vacant (R. S. C. Ord. II., r. 8).

Poundage. The party entitled to execution may also levy the poundage, fees, and expenses of execution, over and above the sum recovered (R. S. C. Ord. XLII., r. 13).

Writ of execution to remain in force one year only unless renewed. A writ if unexecuted only remains in force for one year from its issue; but it may be renewed before its expiration, for one year from the date of renewal, and so on from time to time, either by being marked with the seal of the Court bearing the date of renewal, or by written notice of renewal being given to the sheriff, signed by the party or his attorney, and bearing the seal of the Court. A writ so renewed takes effect, and has priority according to the time of the original delivery thereof (*ib.*, r. 16).

Evidence of renewal. The production of the writ or of the notice renewing it, properly sealed, is sufficient evidence of renewal (*ib.*, r. 17).

Execution within six years. As between the original parties to a judgment, execu-

* See *post*, Appendix II., Forms.

tion may issue at any time within six years from the recovery of the judgment (*ib.* r. 18).

Where six years have elapsed since the judgment, or any change has taken place in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the Court or a judge for leave to issue execution accordingly. The Court or judge may thereupon make an order to that effect; or may order that any issue or question necessary to determine the rights of the parties, be tried in any of the ways in which any question in an action may be tried. And in either case the Court or judge may impose such terms as to costs or otherwise, as shall seem just (*ib.* r. 19). Where a plaintiff obtained judgment with costs and died, his executors obtained leave to issue execution on an *ex parte* application, but without costs (*Mercer v. Lawrence*, 26 W. R. 506; W. N. (1878), 103).

Leave to issue after six years or after change of parties.

Nothing in any of the rules of Ord. XLII. is to take away or curtail any right formerly existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever (*ib.* r. 23), or to affect the order in which writs of execution may be issued (*ib.* r. 24).

Saving as to process.

Issue of several writs.

In cases other than those mentioned in r. 18, any person not being a party in an action, in whose favour or against whom any order is made, may enforce obedience to the order, and is liable to the same process for enforcing obedience to the order, as if he were a party to the action (*ib.* r. 21).

Process by or against persons not parties.

Where a judgment is against partners in the name of the firm, execution may issue against (1) any property of the partners as such; (2) any person admitted on the pleadings or adjudged to be a partner; (3) any person who has been served as a partner with the writ of summons and has failed to appear. If the party who has obtained judgment claims to be entitled to issue execution against any other person as being a member of the firm, he may

Partners.

apply to the Court or a judge for leave so to do; and the Court or judge may give such leave if the liability be not disputed; or if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined. As to the effect of an execution levied on property belonging to a firm of which one member is a foreigner domiciled abroad, see *Ex parte Blain, re Sawers*, 12 Ch. D. 522; 41 L. T. 46.

Bodies corporate and privileged persons.

Writs of sequestration, and writs of *fi. fa.* and *elegit* and the writs in aid, may now be issued against bodies corporate or politic, and against peers, members of parliament, and other privileged persons in the same manner as against ordinary private individuals.

Leave to issue execution—when necessary.

Leave to issue execution is necessary in all cases of attachment (R. S. C. Ord. XLIV. r. 2, *post*, p. 527); or where it is desired to issue execution against a shareholder in a company incorporated under 8 & 9 Vict. c. 16, s. 36; or against past members of banking corporations, where a judgment has been recovered against the public officer (7 Geo. IV. c. 46, s. 13); and in cases coming within rules 7, 8, 18, and 19 of Ord. XLII.

Action in District Registry.

When an action proceeds in a district registry all writs of execution for enforcing any judgment or order therein, are to issue from the district registry unless the Court or a judge shall otherwise direct (R. S. C. Ord. XXXV. r. 3).

1 & 2.—*Fi. Fa. and Elegit, and Proceedings under Judgment Law Acts.*

Fi. fa. and *elegit*.

A judgment for payment of costs may be enforced immediately after the entry of the judgment by the issue of one or more writs of *fi. fa.* or *elegit*; provided that (1) if the judgment is for payment within a specified period, no such writ can be issued till after the expiration of such period; and (2) the Court or judge, either at the time of

giving judgment, or afterwards, may give leave to issue execution before, or may stay execution until any time after, the expiration of the prescribed periods (Ord. XLII. r. 15).

For form of *fi. fa.* on order for costs, see Rules of April, 1880; and see *post*, App. II.

By R. S. C. Ord. XLIII. rr. 1 & 2, writs of *fi. fa.* and *elegit* are to have the same force and effect and to be executed in the same manner as formerly; and writs of *venditioni exponas*, *distringas nuper vice-comitem*, *ferri facias de bonis ecclesiasticis*, *sequestrari facias de bonis ecclesiasticis*, and all other writs in aid, may be issued and executed in the same cases and in the same manner as before.

Service of a decree or order directing payment of costs is not requisite as a preliminary to issuing a *fi. fa.*; see *Land Credit Co. v. Fermoy*, 5 Ch. 323; *Streeten v. Whitmore*, 5 Beav. 228; unless the decree or order expressly limits a time after service within which payment must be made. The order must be for payment to a person, not to his account at a bank (*Re Leeds Banking Co.*, 1 Ch. 150). The writ must be so moulded as to follow the substance of the judgment or order; see Form I in App. F., R. S. C., note. Where a *fi. fa.* or *elegit* is issued for recovery of a balance of a sum of money or of costs remaining due, the full sum mentioned in the order, or the full amount of costs, as taxed, may be inserted in the body of the writ, but in the indorsement of the sum to be levied, so much only as remains due should be mentioned (Br. Pr., p. 195).

Where a writ of *fi. fa.* in one county has failed to satisfy the demand, another writ may issue into another county (*Spencer v. Allen*, 2 Ph. 215; and see *Hodgson v. Hodyson*, 23 Beav. 604). A sequestration was directed after a return of *nulla bona* to a writ of *fi. fa.* (*Westby v. Westby*, 5 De G. & Sm. 516).

By Cons. Ord. XXIX. r. 7, the date of the entry must be marked on the decree or order; and no *fi. fa.* or *elegit* may be sued out on such decree or order unless the date

How writs
are to be
executed.

of such entry is so marked. By r. 8 of the same order, writs of *fi. fa.* and *elegit* when sealed are to be delivered for execution to the sheriff or other officer to whom the execution of the like writs issuing out of the superior courts belongs. The writs when returned must be delivered to the parties or solicitors by whom respectively they were sued out, and are thereupon filed as of record (Cons. Ord. XXIX. r. 8).

Writ of
*venditioni
exponas*,
in what
case to be
issued.

Where it appears upon the return of any writ of *fi. ri. facias*, that the sheriff or other officer has by virtue of such writ seized but not sold any goods of the person against whom the execution is issued, the person to whom the costs are payable may immediately after such writ with such return shall have been filed as of record, sue out a writ of *venditioni exponas* (Cons. Ord. XXIX. r. 9). If after the issue of the writ the sheriff goes out of office he may be compelled to proceed by the writ of *distingas nuper vice-comitem*.

Sheriff
entitled to
poundage
though no
actual sale,
provided
he has
seized.

A sheriff who has seized the goods under a *fi. fa.* and is then paid out is entitled to poundage, although no actual sale may have taken place: it is sufficient that he has recovered by compulsion of the writ; see *Bissicks v. Bath Colliery Company*, 2 Ex. D. 459; 3 Ex. D. 174; 26 W. R. 365; *Mortimore v. Cragg*, 3 C. P. D. 216; 47 L. J. C. P. 348; 26 W. R. 363; 38 L. T. 46, overruling *Roe v. Hammond*, 2 C. P. D. 300. *Secus*, where he obtains payment (under protest) by the mere production of the warrant and demand of the amount due without actual seizure (*Nash v. Dickenson*, L. R. 2 C. P. 252).

In *Re Commonwealth Land Co.*, 43 L. J. Ch. 99; 29 L. T. 502; W. N. (1873), 209; 22 W. R. 106, a winding-up petition was dismissed with costs, but through a misunderstanding as to the authority to receive the costs, payment was not made until a *fi. fa.* had been issued and executed for the amount. The Court on motion declined to set aside the writ, but considering it ought never to have been issued ordered the solicitor who had issued it to pay

the costs of the execution and of the motion. See *Smith v. Smith*, L. R. 9 Ex. 121. As to execution by *fi. fa.* generally, see Archbold's Practice by Prentice, 13th ed., p. 550; Churchill and Bruce on Sheriff Law, p. 168; and *Sneary v. Abdy*, 1 Ex. D. 299; 34 L. T. 801; *Re Craycroft, ex parte Browning*, 8 Ch. D. 596; 38 L. T. 364; *Ex parte Lithgow, re Fenton*, 10 Ch. D. 169; 26 W. R. 834; *Re Heiron's Estate, Hall v. Ley*, 12 Ch. D. 795; *Evans v. Davies*, 7 Beav. 81; *Jupp v. Cooper*, 5 C. P. D. 26; *Angell v. Baddeley*, 3 Ex. D. 49.

The writ of *elegit* is the means employed for obtaining *Elegit.* execution against real estate. By 1 & 2 Vict. c. 110, s. 11, the whole of the debtor's lands are to be delivered under the writ, instead of as formerly only the half of such lands. For the mode of proceeding under an *elegit*, see Prentice's Archbold, p. 588, *et seq.*

A remedy is also given against real estate by the Judgment Law Acts. *Judgment Law Acts.* By 1 & 2 Vict. c. 110, s. 13, a judgment created a charge upon real estate, but it was provided that such charge should not be enforced until after the expiration of a year from entering up the judgment. By the Judgment Law Amendment Act, 1864, 27 & 28 Vict. c. 112, s. 1, no judgment is to affect any land of whatever tenure until such land shall have been *actually delivered in execution* by virtue of a writ of *elegit* or other lawful authority in pursuance of such judgment. When this has been done the judgment creditor can perfect his remedy by obtaining an order, upon petition in a summary way, for sale of the debtor's interest in the land (s. 4). The return of the sheriff to the writ is the actual delivery mentioned in sect. 1 (*Re Duke of Newcastle*, 8 Eq. 700); and if the interest of the debtor be an equitable life estate, or a partial equitable interest only, or an equity of redemption, or an interest in remainder only, or if it has been already extended under a prior *elegit*, so that it cannot be actually delivered in execution, then the judgment creditor, though he has sued out and delivered his writ of

Equitable
execution.

elegit to the sheriff, has not acquired any charge upon the land under this section, and is not entitled to apply by petition in a summary way for a sale of the debtor's land under sect. 4 of the Act; see Seton, p. 1144. His remedy in such a case is to obtain what is called "equitable execution" by the appointment of a receiver. And this being such a delivery as the subject-matter is capable of is equivalent to an actual delivery in execution by the sheriff; see *Hatton v. Haywood*, 9 Ch. 229; *Anglo-Italian Bank v. Davies*, 9 Ch. D. 275; 47 L. J. Ch. 833; 27 W. R. 3; 39 L. T. 244, and cases there cited. Such a receiver may be appointed on motion in the original action after final judgment (*Salt v. Cooper*, 16 Ch. D. 544; 50 L. J. Ch. 529; 29 W. R. 553; 43 L. T. 682); or by a judge at Chambers (*Smith v. Cornell*, 6 Q. B. D. 75; 29 W. R. 227; 43 L. T. 528). And in fact a creditor seeking equitable execution need not now sue out an *elegit* at all (*Ex parte Evans*, 13 Ch. D. 252). A widow entitled for her life to the dividends of stock standing in the names of trustees was ordered to pay costs to A. A. was held entitled to a receiver (*Bryant v. Bull*, 10 Ch. D. 153; 48 L. J. Ch. 325; 27 W. R. 246; 39 L. T. 470).

Writs of
*fi. fa. de
bonis
ecclesiasticis*, and
*sequestrari
facias*.

By Cons. Ord. XXIX. r. 11, whenever it appears, upon the return of any writ of *fi. fa. de bonis ecclesiasticis* or *elegit*, that the person against whom the writ was issued is a beneficed clerk, and has no goods or chattels, nor any lay fee, in the bailiwick of the sheriff to whom the writ was directed, the person to whom the costs are payable, may, immediately after such writ with such return shall have been filed as of record, sue out a writ of *fi. fa. de bonis ecclesiasticis*, or a writ of *sequestrari facias*.

How to be
executed.

By r. 13 the writs when sealed are to be delivered to the bishop for execution; and when returned by him must be delivered to the parties or solicitors by whom respectively they were sued out, and are then filed as of record. In practice the writs are always delivered to the Registrar of the Diocese, who will thereupon issue sequestration.

Before a *feri facias de bonis ecclesiasticis* can issue it must be shown that the beneficed clerk has *no* goods or chattels, not only that they are insufficient (*Rabbits v. Woodward*, 20 L. T. 693, 778; W. N. (1869), 152, 179). As to the mode of proceeding under these writs, see Archbold, p. 1062, *seq.*

3.—*Sequestration.*

A writ of sequestration is a means of enforcing a judgment for the payment of costs within a limited time. It is a process of contempt. Writ of
sequestra-
tion.

By R. S. C. Ord. XLVII. r. 1, after due service of the judgment and default in obeying it, the person prosecuting the judgment may at the expiration of the time limited for performing it issue a writ of sequestration against the estate and effects of the disobedient person. The writ has the same effect as a writ of sequestration in the Court of Chancery formerly had; and the proceeds of the sequestration may be dealt with in the same manner as formerly in Chancery. By Gen. Ord. 7th January, 1870, r. 3, where any person is directed to pay costs in a limited time and after due service of the decree or order refuses or neglects to make such payment according to the exigency of such decree or order, the person prosecuting such decree or order shall at the expiration of the time limited for such payment be entitled to a commission of sequestration; and see r. 7 of the same Order, *post*, 529. By r. 2 (Ord. XLVII. Ap. 1880) no writ of sequestration to enforce payment of costs can be issued without leave. As to sequestration generally, see Dan. Ch. Pr., 6th ed., p. 908, *et seq.*

The following different kinds of property have been held liable to sequestration: the accrued dividend on a fund in Court payable to a married woman for her separate use without power of anticipation (*Claydon v. Finch*, 15 Eq. 266; and see *Slade v. Hulme*, 30 W. R. 28; *Miller v.* What pro-
perty liable
to seques-
tration.

Miller, L. R. 2 P. & D. 54); a deposit on appeal (*Conn v. Garland*, 9 Ch. 101); pensions for *past* services (*Willcock v. Terrell*, 3 Ex. D. 323; 39 L. T. 84; *Sansom v. Sansom*, 4 P. D. 69; 48 L. J. P. D. & A. 25; 27 W. R. 692; 39 L. T. 642; *Dent v. Dent*, L. R. 1 P. & D. 366; *McCarthy v. Gould*, 1 Ba. & B. 387); a rent charge (*Wilson v. Malculfe*, 1 Beav. 263; and see *Clinton v. Clinton*, L. R. 1 P. & M. 215). The Court has no jurisdiction to order the Lords of the Treasury or the Paymaster-General to pay a pension charged on the Consolidated Fund to sequestrators; but an order will be made restraining the pensioner from receiving and empowering the sequestrators to receive the pension (*Willcock v. Terrell*; and see also *Crispin v. Cumano*, L. R. 1 P. & D. 622). Where sequestration could not be obtained a receiver was appointed (*Bryant v. Bull*, 10 Ch. D. 153; 48 L. J. Ch. 325; 27 W. R. 246; 39 L. T. 470). Where the party ordered to pay the costs had no goods, and his only property was an army pension, the Court made a four-day order for payment, and that in default sequestration might issue (*Snow v. Bolton*, 17 Ch. D. 433; 29 W. R. 583; 44 L. T. 571). The costs of a sequestration, when discharged, are taxed as between party and party (*Re Shupland*, 23 W. R. 40; W. N. (1874), 202).

Costs of
sequestra-
tion.

4.—Attachment of Debts.

Attach-
ment of
debts.

The mode of enforcing a judgment for payment of costs by attachment of debts owing to the judgment debtor from a third party, is laid down by R. S. C., Ord. XLV.; the second rule of which provides that on affidavit of an unsatisfied judgment and that a third party within the jurisdiction is indebted to the judgment debtor, the Court or a judge may order that all debts owing or accruing from such third person, called the garnishee, to the judgment debtor shall be attached to answer the judgment debt; and the garnishee may be required to show cause

why he should not pay the debt, or a sufficient part of it to satisfy the judgment debt, to the judgment creditor.

This Order is taken from the C. L. P. Acts, 1854 and 1860; as to the debts which may be attached and the mode of procedure under the Order and under these Acts, see Seton, p. 311; Archbold's Practice, p. 628, *et seq.*

An order dismissing an action with costs for want of prosecution is not enforceable by attachment of debts under r. 2 (*Cremetti v. Crom*, 4 Q. B. D. 225; 48 L. J. Q. B. 337; 27 W. R. 411). Order not enforceable by attachment of debts.

A garnishee order *nisi* does not create a charge until after service on the garnishee (*Hamer v. Giles*, 11 Ch. D. 942; *Re Stanhope Co.*, *ib.* 160). Garnishee order *nisi*.

The attachment of a judgment debt overrides the general lien of a solicitor over the judgment in respect of general costs due to him from the garnishee (*Hough v. Edwards*, 1 H. & N. 171); see, however, *Shippey v. Grey*, 49 L. J. 524; 28 W. R. 877; 42 L. T. 673; W. N. (1880), 99; and the other cases cited, *post*, p. 569. Solicitor's lien.

A judgment creditor of the defendant in a partnership action obtained a garnishee order *nisi* to attach all moneys in the hands of the receiver in the action appearing to be due to the defendant on taking the accounts. On the following day and before service of the order *nisi* the defendant's solicitors obtained, on a summons served on the receiver, a charging order intitled in the action declaring that they were entitled to a charge for their costs upon all moneys coming to the defendant under the action. On the next day the garnishee order *nisi* was served on the receiver and was subsequently made absolute; and it was held that the solicitors were entitled to their costs in priority to the claim of the creditor under the garnishee order both under the Act and independently of it (*Hamer v. Giles* (M. R.) 11 Ch. D. 942; 48 L. J. Ch. 508; 27 W. R. 834; 41 L. T. 270). *Hamer v. Giles.*

The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such Costs of application for attach-

ment of debts. application, are in the discretion of the Court or a judge (Ord. XLV. r. 10).

5.—*Charging Order on Stocks and Shares.*

A charging order on stock may be obtained for costs.

A person to whom costs are ordered to be paid may also obtain a charging order on any Government stock, funds, or annuities, or any stock or shares of or in any public companies standing in the name of the person by whom the costs are payable, or of a trustee for him (Statute 1 & 2 Vict. c. 110, ss. 14, 15; and see *Blake v. White*, 3 Y. & C. 434; and the form of the order in *Stanley v. Bond*, 7 Beav. 386); or on any interest to which the debtor may be entitled in any such stocks or shares, or in stocks or shares standing in the name of the Paymaster-General, or the dividends, interest, or annual produce thereof (Statute 3 & 4 Vict. c. 82, s. 1). In *Wells v. Gibbs*, 22 Beav. 204, a charging order was obtained on stock standing to the credit of one suit, in which defendants in another suit, who had been ordered to pay costs, were interested, with an interim stop order. No proceedings can be taken to have the benefit of the charge until the expiration of six calendar months from the date of the order (1 & 2 Vict. c. 110, s. 14); but this does not prevent the creditor from obtaining a stop order (*Watts v. Jefferyes*, 3 Mac. & G. 372; 15 Jur. 435; and see *Wells v. Gibbs*); and where a charging order has been made in respect of a fund in Court, a stop order should always be obtained as well.

With an interim stop order.

By R. S. C. Ord. XLVI. r. 1, an order charging stock or shares may be made by any Divisional Court or by any judge (see *Hopewell v. Barnes*, 1 Ch. D. 630; 24 W. R. 629; 33 L. T. 777); and the proceedings for obtaining such order shall be such as are directed, and the effect shall be such as is provided by 1 & 2 Vict. c. 110, ss. 14 & 15, and 3 & 4 Vict. c. 82, s. 1. As to charging orders and stop orders generally, see Dan. Ch. Pr. p. 934, *et seq.*; Morg. Ch. Acts and Ord., p. 582. An application for a charging order is usually made by summons.

A charging order for costs cannot be obtained until the costs have been taxed (*Widgery v. Tepper* (C. A.), 6 Ch. D. 364; 25 W. R. 872; 37 L. T. 297; *Jones v. Williams*, 8 M. & W. 349; *Burns v. Irving*, 3 Ch. D. 291, has not been followed). A charging order cannot be made absolute where it appears that the judgment debtor was dead when the order *nisi* was obtained (*Finney v. Hinde*, 4 Q. B. D. 102; 48 L. J. Q. B. 275; 27 W. R. 413; 40 L. T. 193). Costs must be taxed.

A stop order may be obtained on a cheque of the Paymaster-General in favour of the debtor, if it has not been delivered out, but it cannot be taken in execution (*Courtoy v. Vincent*, 15 Beav. 486). Defendants dismissed with costs cannot obtain a stop order on funds afterwards realised by the plaintiff in the suit (*Miller v. Pridlin*, 5 W. R. 171; and see *Flockton v. Peake*, 10 L. T. 368). But trustees dismissed have been allowed costs out of the funds in the suit (*D'Oechsner v. Scott*, 24 Beav. 239, where the next friend of a married woman was insolvent); and so a receiver (*ante*, p. 384). Defendants dismissed have no lien on funds in the suit.

Where costs are ordered to be paid by a corporation, the order or decree is a claim or demand upon their property within the saving of the 92nd section of the Municipal Corporation Act (5 & 6 Wm. IV. c. 76), although they are sued as trustees of a navigation; and a charging order for such costs on stock belonging to them was granted (*Attorney-General v. Corporation of Thetford*, 8 W. R. 467). Charging order for costs on property of corporation.

6.—*Arrest and Imprisonment.*

(i.) *Committal.*

By the Debtors Act, 1869, 32 & 33 Vict. c. 62, s. 5, the Court may commit to prison, for a term not exceeding six weeks or until payment, any person who makes default in payment of any debt or instalment of any debt due from Committal under the Debtors Act, 1869, for six weeks on

him in pursuance of any order or judgment. But it must be proved to the satisfaction of the Court that the person making default either has, or has had since the date of the order or judgment, the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects to pay the same.

The application to commit is by motion on notice, according to the practice applicable to motions to commit for breach of an injunction (Gen. Ord., 7 Jan., 1870, r. 10).

Fry, J., has held that the order may be made in Chambers (*Burrows v. Burrows*, 10th March, 1879, Seton, p. 1570).

Proof of the means of the person making default may be given in such manner as the Court thinks fit (s. 5). As to proof of means, see *Harper v. Scrimgeour*, 5 C. P. D. 366; 29 W. R. 264. When the judge of first instance is satisfied that the debtor is able to pay the Court of Appeal will not generally interfere (*Eschale v. Visser*, 13 Ch. D. 421; 28 W. R. 281; 41 L. T. 745).

The Court on hearing the motion may adjourn it and either give leave to adduce further evidence or direct an inquiry in chambers as to the means of the person making default, or require the production and oral examination before itself of the person making default and of any persons who have given evidence against or in support of the application (Gen. Ord., 7th January, 1870, r. 11). By r. 13 of the same Order the Court in making an order for committal may either make the imprisonment determinable on payment of the whole sum, together with such costs as the Court shall think fit, or may order the debt to be paid by instalments and make the imprisonment determinable on payment of such costs and such of the instalments as the Court shall think fit, and in either case may direct payment of a sum in gross in lieu of taxed costs. No application or order under s. 5 will vary or suspend any of the remedies to which the person prosecuting the decree or order which has been disobeyed would have been en-

proof of
means.

Applica-
tion, how
made.

Proof of
means.

Order.

titled as against the property of the disobedient person (r. 14).

By r. 15 an office copy of the order of committal must be delivered to the sheriff, or other officer required to execute it, and copies may be delivered concurrently to different sheriffs. Every office copy must be endorsed by the Master, with the direction to the officer by whom the same is to be executed. The sheriff must endorse the date of the arrest upon the office copy of the order, and return the same so endorsed to the solicitor of the party prosecuting, or to the party himself if he acts in person (r. 16).

Delivery of office copy of order to the sheriff.

Upon payment of the sum mentioned in the order, and the fees and the costs, the person committed will be entitled to a certificate of payment, and will be discharged (r. 17 ; Debtors Act, 1869, s. 5).

Discharge.

By r. 18 in case any order is made under s. 5 of the Act for payment by instalments and the person imprisoned shall after his discharge from prison neglect or refuse to pay the subsequent instalments, the person prosecuting the decree or order for disobedience to which the committal was ordered, shall, in addition to his remedies against the property of the person making default be entitled to enforce payment of such subsequent instalments by attachment as in case of disobedience to an order directing the performance of some act other than the payment of money. As to enforcing orders by attachment, see *post*, p. 527.

Attachment for non-payment of instalments.

An order for payment of costs constitutes a debt within s. 5 capable of being enforced by committal for six weeks ; see *Hewitson v. Sherwin*, 10 Eq. 53 ; 18 W. R. 802 ; 22 L. T. 576 ; *R. v. Pratt*, L. R. 5 Q. B. 176 ; 39 L. J. M. C. 73 ; 18 W. R. 626 ; *S. C. sub nom. Ex parte Cole*, 21 L. T. 750. An order may be made on a married woman (*Dillon v. Cunningham*, L. R. 8 Ex. 23).

Costs are within s. 5.

Where the order is for payment by instalments each instalment constitutes a separate debt, for default in pay-

Order for payment

by instalments.

ment of which the debtor may be committed for six weeks (*Evans v. Wills*, 1 C. P. D. 229; 45 L. J. C. P. 420; 24 W. R. 883; 34 L. T. 679; *Horsnail v. Bruce*, L. R. 8 C. P. 378); but a second warrant of commitment cannot issue in respect of the same debt (*Evans v. Wills*).

Execution of order.

Every order of committal must be issued, obeyed, and executed in the like manner as a writ of *ca. sa.* (s. 5); but the power to commit under this section is not as in writs of *ca. sa.* limited to one year from the date of the judgment, and the order may be executed so long as the judgment remains in force (*Hermitage v. Kilpin*, L. R. 9 Ex. 205; 43 L. J. Ex. 127; 22 W. R. 661; 30 L. T. 873). As to the writ of *ca. sa.*, see Arch. Practice, 13th ed. p. 602.

Order must be for immediate committal.

The order must be for an immediate committal and should fix a gross sum to be paid for the costs, otherwise the person committed would have to remain in prison until the costs were taxed; see *Rogers v. Rogers*, 19 W. R. 317, 374; 23 L. T. 796; Seton, p. 1566.

Where a trustee in liquidation was ordered to pay the taxed costs of the solicitor and the costs of the motion on which the order was made, and on default was committed for six weeks, it was held that the order was wrong, so far as it related to the costs of the motion, and must be discharged (*Ex parte Sharp, re Hind*, 37 L. T. 168; W. N. (1877), 212).

Policy of the Debtors Acts.

As to the policy and effect of the Debtors Acts, 1869 and 1878, and how far they are vindictive, see *Marris v. Ingram*, (M. R.) 13 Ch. D. 338; 49 L. J. Ch. 123; 28 W. R. 434; 41 L. T. 613; *Burrett v. Hammond*, (V. C. B.) 10 Ch. D. 285; 48 L. J. Ch. 249; 27 W. R. 471; *Street v. Hope*, (V. C. M.) 10 Ch. D. 286, n.; 27 W. R. 470.

Solicitors' charges and fees of Court.

The charges to be allowed to solicitors for duties performed in respect of the proceedings and the fees of Court in respect of the same proceedings are the same as those allowable and payable in respect of other proceedings of the same nature in the causes or matters in which such

proceedings respectively are taken (Gen. Ord., 7th January, 1870, r. 20).

(ii.) *Attachment.*

Formerly if any party or person refused or neglected to obey a decree or order of the Court he was liable to "process of contempt." The process was originally by writ of attachment, attachment with proclamations, commission of rebellion, serjeant-at-arms and sequestration. But the writ of attachment with proclamations and the commission of rebellion are for these purposes abolished, and process of contempt is reduced to 1st, writ of attachment; 2nd, serjeant-at-arms; and 3rd, sequestration.

An attachment can only be issued for non-payment of costs in cases within the Debtors Act, 1869; see *Esdaile v. Visser*, 13 Ch. D. 421; 28 W. R. 281; 41 L. T. 745; *Hewitson v. Sherwin*, 10 Eq. 53; 18 W. R. 802; 22 L. T. 576. Those cases are: (1) Where a person is ordered to pay by instalments under s. 5 of the Debtors Act and after his discharge makes default in payment of any subsequent instalment (Gen. Ord., 7th January, 1870, r. 18). (2) Where a solicitor fails to pay costs which he has been ordered to pay for misconduct as solicitor (s. 4, sub-s. 4).

(1.) As to the first of these, see *ante*, p. 525.

(2.) Section 4 of the Debtors Act, 1869, provides as follows:—"With the exceptions hereinafter mentioned no person shall after the commencement of this Act be arrested or imprisoned for making default in payment of a sum of money. There shall be excepted from the operation of the above enactment. . . . (4.) Default by an attorney or solicitor in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the Court making the order;" provided that no person shall be imprisoned in any ex-

Writ of attachment.

When issued.

Solicitor ordered to pay costs for misconduct as such.

cepted case for a longer period than one year, and that nothing in the section is to alter the effect of any judgment or order of any Court for payment of money except as regards the arrest and imprisonment of the person making default.

Effect of attachment.
Cannot be issued without leave.

By R. S. C. Ord. XLIV. r. 1, a writ of attachment is to have the same effect as a writ issued out of the Court of Chancery formerly had. By r. 2 of the same Order no writ of attachment may be issued without the leave of the Court or a judge to be applied for on notice to the party against whom the attachment is to be issued.

Debtors Act, 1878.

By the Debtors Act, 1878 (41 & 42 Vict. c. 54), s. 1, in any case coming within exception 4 of the 4th section of the Debtors Act, 1869, the Court or judge making the order for payment, or having jurisdiction in the act or proceeding in which the order for payment is made, may inquire into the case, and (subject to the provisoes contained in s. 4) may grant or refuse, either absolutely or upon terms, any application for a writ of attachment or other process or order for arrest and imprisonment, and any application to stay the operation of any such writ or process or order, or for discharge from arrest or imprisonment thereunder. See before this Act *Ewens v. Bear*, 10 Ch. 76.

Privileged persons.

No attachment can be issued against a peer, member of parliament, or other privileged person; the proper mode of recovering the costs in such a case is by sequestration, as in the case of costs ordered to be paid by a corporation aggregate.

Privilege of bankrupt.

A person who is excepted from the operation of s. 4, and therefore liable to be attached will nevertheless if he become bankrupt be protected pending the bankruptcy proceedings (*Cobham v. Dalton*, 10 Ch. 655; *Phosphate Sewage Co. v. Hartmont*, 25 W. R. 743); *secus* where the attachment is not for payment of a sum of money, but for punishment (*Re Deere*, 10 Ch. 658), or the bankruptcy takes place *after* the attachment (*Earl of Lewes v.*

Barnett, 6 Ch. D. 252). A compounding debtor has no such protection (*Pushler v. Vincent*, 8 Ch. D. 825).

Service of the notice of motion on the solicitor on the record of the party to be attached is sufficient (*Browning v. Sabin*, 5 Ch. D. 511; *Richards v. Kitchen*, 25 W. R. 602; but see *Mann v. Perry*, W. N. (1881) 4; 70 L. T. 186); or the notice may be served by leaving it at the residence of the party (*Re a Solicitor*, 14 Ch. D. 152; 28 L. T. 310; S. C. *sub nom. Re Ryan*, 28 W. R. 529). An order for attachment obtained without notice will be discharged (*Dallas v. Glyn*, 3 Ch. D. 190; 46 L. J. Ch. 51; 24 W. R. 881; 34 L. T. 897; *Re a Solicitor*, 1 Ch. D. 445; 24 W. R. 103). As to service when the residence of the party is not known, see *Tilney v. Stansfeld*, 28 W. R. 582; W. N. (1880), 77. No date need be specified for the return of the writ by the sheriff (*Owen v. Pritchard*, W. N. (1876), 147).

Service of notice of motion.

A writ of attachment may be ordered to issue on a notice of motion to commit for contempt (*Piper v. Piper*, W. N. (1876), 202); but where leave has been given to issue a writ of attachment an order for committal will not be made instead without serving a fresh notice of motion (*Buist v. Bridge*, 29 W. R. 117; 43 L. T. 432; W. N. (1880), 176). An exact copy of the order, for non-compliance with which the attachment was issued, must be served; otherwise the attachment will be set aside (*In re Holt*, 11 Ch. D. 168; 27 W. R. 485; 40 L. T. 207; and see Seton, p. 1597).

By r. 7 of the Gen. Ord., 7 Jan., 1870, where by any decree or order a solicitor is ordered to pay, in a limited time, costs for misconduct as such solicitor, and neglects or refuses to pay the same according to the exigency of such decree or order, the person prosecuting the decree or order shall at the expiration of the time limited thereby for the performance thereof be entitled, at his option, either to a commission of sequestration, or to a writ of attachment.

Solicitor ordered to pay costs for misconduct.

For an order for attachment against a solicitor who had failed to pay costs which he had been ordered to pay for

Attachment of solicitor.

misconduct, see *Tilney v. Stansfeld*, 28 W. R. 582; W. N. (1880) 77.

A solicitor may be attached for default in payment of a balance found due from him upon taxation of his bill of costs under the common order (*Re Rush*, 9 Eq. 147; 18 W. R. 331; *Re White*, 19 W. R. 39; 23 L. T. 387; and see *Re V—*, Ir. R. 8 Eq. 355). But he cannot be attached for non-payment of costs incurred simply as an unsuccessful litigant (*Re Hope*, 7 Ch. 523; overruling *Re Baeffield and Rush*, 19 W. R. 466; 24 L. T. 248).

The right to an attachment may be lost by making terms with the solicitor (*Harvey v. Hall*, 16 Eq. 324).

There are two returns which the sheriff may make to a writ of attachment: 1st. If he arrests the person in contempt and sends him to prison, or finding him in custody detains him, he returns "attached and imprisoned." 2nd. If he is unable to find him, he returns *non est inventus*.

The attachment is not bailable, and if the sheriff lets out on bail a party attached for non-payment of costs, he is responsible; see the cases cited *ante*, p. 59, and *post*, p. 535.

If the sheriff returns "attached and imprisoned," the disobedient person remains in prison until he clears his contempt and obtains an order for his discharge, or is discharged in due course of law. In addition to this, the person prosecuting the judgment or order is entitled to a commission of sequestration against the estate and effects of the prisoner (Gen. Ord., 7 Jan., 1870, r. 6). As to the mode of obtaining a sequestration, see *ante*, p. 519. Since the Debtors Act, 1869, sequestration may be issued as if the debtor had been actually arrested (s. 8, Debtors Act, 1869; *Sykes v. Dyson*, 9 Eq. 228; 39 L. J. Ch. 288).

If the sheriff returns *non est inventus*, the person prosecuting the contempt is entitled at his option, either to a commission of sequestration in the first instance, or to an order for the serjeant-at-arms, and to such other process

Returns
to a writ of
attach-
ment.

1. Impri-
sonment or
detention.

2. *Non est
inventus*.

as he was formerly entitled to upon a return *non est inventus* made by the commissioners named in a commission of rebellion issued for the non-performance of a decree or order (G. O., 1870, r. 6).

An order for sequestration in the first instance, or an order for the serjeant-at-arms, may be obtained by motion of course, supported by the production of the attachment and the sheriff's return (Dan. Ch. Pr. 6th ed., p. 889). Order for sequestration or serjeant-at-arms

After an order has been made for a serjeant-at-arms, the registrar will on request draw up the order, and deliver it to the serjeant-at-arms, or his deputy, who thereupon endeavours to apprehend the party prosecuted, and bring him into Court to answer his contempt, if he can. But if he cannot, the order for a serjeant-at-arms will not be discharged, nor the contempt thereupon, without a certificate, under the hand of the serjeant-at-arms, that his fees have been paid; and after the order has been drawn up and passed, no private or other agreement can be made between the party prosecuting the contempt and the person standing in contempt, or on their behalf, for a compromise of the suit or discharge of the contempt, unless satisfaction be made to the serjeant-at-arms, and a certificate thereof be produced to the Court (Cons. Ord. XXX., r. 2).

If the serjeant-at-arms apprehends the disobedient person, he brings him to the bar of the Court, and the person prosecuting the contempt moves that the person in contempt may be turned over to Holloway Prison, and an order may be made accordingly; thereupon a writ of sequestration may be issued. If the serjeant-at-arms finds the disobedient person in custody, he lodges a detainer against him, and returns the writ accordingly. If he returns *non est inventus*, the next step is the writ of sequestration. Turn over.

If the serjeant-at-arms, after taking the prisoner, suffers him to escape, there may be a second order for a serjeant-at-arms (*Morris v. Smith*, 8 Sim. 33). Second order for serjeant-at-arms.

Attach-
ment may
be dis-
pensed
with.

Where the party was proved to be abroad, the Court dispensed with the attachment *pro formâ* as a foundation for subsequent process (*Hodgson v. Hodgson*, 23 Beav. 604; *Re East of England Bank*, 2 Dr. & Sm. 284; 10 Jur. N. S. 1093; 13 W. R. 128). In *Westby v. Westby*, 5 De G. & S. 516, where the party was abroad there does not appear to have been either an attachment or an order for a serjeant-at-arms before issuing the sequestration; and see *ante*, p. 530.

Costs of
interlocu-
tory appli-
cations.

Where a plaintiff is in contempt for non-payment of the costs of an interlocutory application, the defendant to whom the costs are payable, or some of the defendants, if more than one, may obtain an order on motion that all proceedings be stayed until the plaintiff has cleared his contempt (*Bradbury v. Shawe*, 14 Jur. 1042; and see *Wilson v. Bates*, 3 My. & C. 197, 203); and if the plaintiffs are husband and wife suing jointly, a motion against the husband alone is not informal (*Bradbury v. Shawe*). But this is as far as the Court will go; and if the plaintiff continues to make default, no order can be obtained that he clear his contempt within a limited time, or in default the action be dismissed with costs; see *Gould v. Twine*, 43 L. J. Ch. 381; 22 W. R. 398; 30 L. T. 243; W. N. (1874) 68. As to what proceedings in the cause may be taken by a party in contempt, see Dan. Ch. Pr. 6th ed. 904; and see also *Newton v. Ricketts*, 11 Beav. 67, where it was held that a person to whom costs are awarded may proceed with the taxation though he is in contempt; and *Story v. Official Manager of National Insurance Co.*, 2 N. R. 351, where it was held that the plaintiff, though in contempt, might file replication in answer to a motion to dismiss for want of prosecution. A person in contempt for non-payment of costs may move to set off costs (*Cattell v. Simons*, 6 Beav. 306); but he cannot apply for the costs of an abandoned motion (*Ellis v. Walmesley*, 4 L. J. Ch. 461; C. P. C. temp. *Cottenham*, 207).

As to staying a fresh suit by parties in default for non-payment of costs, see *post*, p. 536.

The costs of an attachment are no longer fixed, but are in the discretion of the Court (*Abud v. Riches*, 2 Ch. D. 528; 45 L. J. Ch. 649; 24 W. R. 637; 34 L. T. 713); they should be applied for at the same time as the writ (*ibid.*; and see *Tilney v. Stansfeld*, 28 W. R. 582; W. N. (1880) 77).

A person who has cleared his contempt cannot be detained in prison for non-payment of the costs of his contempt; but the Court in ordering his discharge will make it part of the order that he pay the costs of his contempt and of the motion to discharge him (*Jackson v. Mawby*, 1 Ch. D. 86; 45 L. J. Ch. 53; 24 W. R. 92; *Mickelthwaite v. Fletcher*, 27 W. R. 793; *Baker v. Baker*, W. N. (1876) 256). There is no difference, in fact, between the costs of clearing a contempt and any other costs in an action. But where an order had been made that on payment of certain costs a prisoner committed for contempt should be released and he failed to pay the costs, Bacon, V. C., held that inasmuch as the prisoner had not purged his contempt he was not in prison for debt, or entitled to be released; and the Court of Appeal declined to interfere (*In re M.*, 46 L. J. Ch. 24; S. C. *sub nom.* *S. v. L.*, W. N. (1876) 220).

When the person arrested has cleared his contempt by paying the amount due, or has been imprisoned for twelve months for non-payment (unless indeed the Court releases him sooner under the Debtors Act, 1878), he is entitled to his discharge.

The application to discharge is made on notice in the usual way, and must be supported by an affidavit showing the grounds of the claim for discharge. The prisoner cannot be discharged, even after the twelve months have expired, without an order of the Court (*Re Thompson, Nally v. Aylett*, 43 L. J. Ch. 721; 30 L. T. 783; 22 W. R. 857; W. N. (1874), 182; but see *Re Byrne*, 6 L. R. Ir. 455).

See addenda anti p 101

Until the order for discharge has been obtained, the gaoler, whose duty it is to obey the warrant, is not liable in damages for detaining a prisoner who is in custody under the ordinary writ of attachment (*Greaves v. Keene*, 4 Ex. D. 73; *secus*, if the time of detention is expressed in the warrant of committal (*Moone v. Rose*, L. R. 4 Q. B. 416).

As to discharge on the ground of irregularity in process, see Daniell's Chancery Practice, 6th ed., p. 907; and as to discharge under statute 11 Geo. IV. and 1 Wm. IV., c. 36, s. 15, in the case of a pauper, see *ibid.*, p. 902; *ante*, p. 376. In *De Combe v. De Combe*, 3 Jur. N. S. 712, the Court allowed a small sum out of the corpus of the estate to the executrix and tenant for life, for payment of the costs of a contempt committed by her.

Where the plaintiff waived the contempt, the defendant was always entitled to be discharged without paying the costs of it; *ex. gr.* where the plaintiff under the old practice replied to the defendant's answer (*Haynes v. Ball*, 5 Beav. 140; *Oldfield v. Cobbett*, 1 Ph. 559); or amended his bill after the defendant had filed his answer (*Gray v. Campbell*, 1 R. & M. 323), or before (*Ball v. Etches*, *ibid.* 324); but not if he only obtained an order to amend without filing the amendments (*Livingstone v. Cooke*, 9 Sim. 468); or neglected to bring the plaintiff up to the bar of the Court within the time limited by Cons. Ord. XII. rr. 2, 3 (*Fortescue v. Hallett*, 5 W. R. 747; and see now *ante*, p. 533). A prisoner once entitled to be discharged cannot waive that right (*Haynes v. Ball*, 4 Beav. 101; *Greening v. Greening*, 1 Beav. 121). But where the party is not in custody, and seeks to set aside proceedings founded on the attachment, waiver of irregularities on the attachment is a valid objection to his motion (*Needham v. Needham*, 1 Ph. 640).

If a person has been once legally taken under a writ of attachment, he cannot after being once discharged be again taken under the same process; but *secus*, where the

Discharge of prisoner without payment of costs of contempt by waiver of other party.

A person once discharged cannot be retaken.

first taking was only irregular (*ex. gr.* effected in a privileged place) and therefore nugatory (*Andrewes v. Walton*, 1 Mac. & G. 380).

If the sheriff let the prisoner go, he may be committed by orders *nisi* and absolute (*Kendal v. Baron*, 1 Dick. 89); and he may be ordered on motion to compensate the party at whose instance the writ was issued in damages (as to which and the measure of the sheriff's liability, see *Moore v. Moore*, 25 Beav. 8; 4 Jur. N. S. 250; 27 L. J. Ch. 385, and the other cases cited *ante*, p. 59). So the marshall of the King's Bench, to whose custody a prisoner in the custody of the sheriff under an attachment by the Court of Chancery had been turned over by *habeas*, was made answerable in damages for letting his prisoner go (*Dewes v. Beresford*, 5 Sim. 531). Obedience to a writ of *habeas corpus* may be enforced by the process of contempt (*Crowley's case*, 2 Swans. 73). If the sheriff makes no return to the writ, the practice is to obtain an order that he return the writ within a given time or stand committed, and in default to obtain a final order for his committal (*Clough v. Cross*, 2 Dick. 555). He may also be amerced by the Court. Where the sheriff let the prisoners out on bail and made no return, they having performed the act for default in which they were attached and tendered the costs of contempt, a motion that he should return the writ was granted with costs; and it was held, that it was not competent for him to show that the plaintiff had sustained no damage (*Sugden v. Hull*, 28 Beav. 263): but no order was made on a subsequent motion for the sheriff to pay the costs of a messenger to bring up the defendants and other costs (*ibid.*). In *Collard v. Hare*, 5 Sim. 10, where the sheriff re-took the prisoners before he made a return to the writ, no order was made upon him to pay costs. If the sheriff improperly returns that he has taken bail, a messenger will be ordered to go (*Cowdray v. Cross*, 24 Beav. 445).

Liability of sheriff, &c., improperly discharging prisoner.

Sheriff, &c., disobeying writ of *habeas*; or making no return.

A messenger having a defendant in custody under an

attachment and having afterwards let him go upon an undertaking to pay the costs, cannot use the process of the Court to enforce payment (*Jenkins v. Sandys*, Jac. 233).

7.—*Staying a second action by persons in default for non-payment of costs.*

If a plaintiff whose action has been dismissed with costs institutes a fresh suit relating to the same matters, proceedings in it will be stayed until the costs of the first action are paid (*Pickett v. Loggion*, 5 Ves. 702; *Holbrooke v. Cracraft*, *ibid.*, 706, n. ; *Baldwyn v. Malo*, 3 Anstr. 835; *Loutour v. Holcombe*, 11 Beav. 624; *Budge v. Budge*, 12 Beav. 385); but the second statement of claim must be such that it could have been produced by a fair amendment from the first (*Budge v. Budge*; and see *Taylor v. Taylor*, 12 Beav. 221). So where the plaintiff abandoned proceedings in a matter and instituted a suit (*Foley v. Smith*, 12 Beav. 154); or where a person makes successive claims in a winding-up for substantially the same matter (*Re United Kingdom Electric Telegraph Co.*, 45 L. J. Ch. 366; 24 W. R. 546, 593; and see *Re Orrell Colliery Co.*, 28 W. R. 145); but where an action in the Chancery Division for the administration of the estate of an intestate was dismissed for want of prosecution, and the plaintiff then commenced a fresh action in the Probate Division for revocation of the letters of administration, the Court refused to order a stay of proceedings until the costs of the administration action had been paid (*Hankin v. Turner*, 48 L. J. P. D. & A. 38; 27 W. R. 232; 39 L. T. 611). Where a bill was dismissed by consent and the plaintiff then filed a fresh one, which was virtually a copy of the former bill, proceedings in the second suit were stayed (*Parker v. Simpson*, 18 W. R. 204). The rule applies to the representatives of a deceased

Parties in default for non-payment of costs cannot institute further proceedings for the same matters.

plaintiff instituting a fresh suit, after the first suit has abated (*Altree v. Hordern*, 5 Beav. 623; *Long v. Storie*, 13 Jur. 1091); or to the original plaintiff instituting fresh proceedings against the representatives of a deceased defendant (*Spires v. Sewell*, 5 Sim. 193); but not to a married woman instituting a second suit by a new next friend, after the death of the next friend in the first suit insolvent (*Hind v. Whitmore*, 2 K. & J. 458). But no order will be made if the defendant has taken any proceedings in the suit before applying for it (*Onge v. Truelock*, 2 Mol. 41). And it has been held at law that the Court may, in its discretion, interfere to stay proceedings if the second action appear from the circumstances of the case to have been brought vexatiously and oppressively (*Prowse v. Locdale*, 11 W. R. 643). The motion cannot be made until the costs in the first suit have been taxed (*Anon.* 6 Mad. 68, n.; *Ernest v. Partridge*, 8 L. T. 683). But where a summons for the purpose was taken out before, but not heard till after taxation, the Court made the order, but made the applicants pay the costs (*Ernest v. Partridge*). A defendant, to whose cross bill a general demurrer had been allowed with costs, was allowed to file interrogatories for the examination of the plaintiff without paying the costs of the cross suit (*Fry v. Ernest*, 3 N. R. 63).

After great delay the Court will order that unless the costs are paid in a limited time the second suit be dismissed (*Lautour v. Holcombe*, 11 Beav. 624; *Ernest v. Govett*, 2 N. R. 486). If a suit which has been dismissed with costs is restored on terms of the plaintiff paying the costs of the dismissal, and the defendant allows the cause to come to a hearing without those costs having been paid, it is then too late for him to object to the cause being heard (*Lorimer v. Lorimer*, 2 L. J. Ch. 13).

So a motion cannot be made until the costs of a previous motion refused with costs (*Oldfield v. Cobbett*, 12 Beav. 91), or abandoned (*Bellchamber v. Gianni*, 3 Mad.

Hearing of a dismissed cause restored not stayed for non-payment of costs.

Further proceedings in same suit stayed,

550), have been paid. If the costs of the motion have not been taxed they must be secured by a payment into Court (*Burdell v. Hay*, 33 Beav. 189). And an order *nisi* made absolute for want of cause shown was set aside on the ground of non-payment of the costs of a previous motion refused (*Killing v. Killing*, 6 Mad. 68). And as to paying the costs of the first trial before proceeding to a new one, see *Standen v. Edwards*, Beames, App. 15.

But where the defendant has obtained a stay of proceedings for non-payment by the plaintiff of the costs of an interlocutory application, he is not entitled to ask, in addition, that if the costs are not paid the suit itself may be dismissed; and a motion for this purpose will be refused with costs (*Gould v. Twine*, 43 L. J. Ch. 381; W. N. (1874), 68; 22 W. R. 398; 30 L. T. 243). In *White v. Bramige*, 26 W. R. 312; W. N. (1878), 28, however, where the plaintiff had failed to pay the costs of a demurrer, allowed with costs, with liberty to amend on payment of the costs, and proceedings had been stayed in consequence, the action was ordered to be dismissed with costs, unless the costs of the demurrer were paid within a month. Where a plaintiff who had been ordered to pay the costs of a petition in the suit became bankrupt, and the suit was revived by his assignee, proceedings were stayed until payment of the costs which the plaintiff had been ordered to pay (*Cook v. Hallway*, 8 Eq. 612).

S.—Interest on Costs.

Interest
on costs
under
1 & 2 Vict.
c. 110.

Under Statute 1 & 2 Vict., c. 110, ss. 17 & 18, interest at 4 per cent. is recoverable on costs which one party is ordered to pay to another. It was held, however, that this did not apply to the case of costs payable out of a fund (*Attorney-General v. Nethercote*, 10 L. J. Ch. 162; 11 Sim. 529). An alteration was made in this respect

by Statute 23 & 24 Vict. c. 127, the 27th section of which is as follows :—

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

Under
23 & 24
Vict. c. 127.

Where costs were ordered to be raised by sale of an estate, and there had been delay in effecting the sale, the Court made an order for payment of interest under this section (*Carter v. Carter*, 2 N. R. 512 ; 8 L. T. 692 ; and see *Fox v. Charlton*, 6 N. R. 352 ; *Re Campbell*, 19 W. R. 427). See also *Twynum v. Porter*, W. N. (1872), 111. It seems, however, that this Act only enables the solicitor, and not a party to the suit, to claim interest (*Jenner v. Morris*, 11 W. R. 943 ; 2 N. R. 479).

Where a mortgagee's costs are ordered to be added to his security, and to be a charge on the mortgaged estate, they will carry interest at 4 per cent., irrespective of the Act (*Lippard v. Ricketts*, 14 Eq. 291 ; 41 L. J. Ch. 595 ; 20 W. R. 898). Where the time for payment fixed by a foreclosure decree is enlarged, interest is payable on the amount of the costs, but not on the interest due when the time is enlarged (*Whitfield v. Roberts*, 9 W. R. 844 ; 7 Jur. N. S. 1268). Interest on a judgment for costs runs from the date of the taxing-master's certificate, and not

Costs made
a charge
will carry
interest.

from the time of entering up the judgment (*Schroeder v. Cleugh*, 46 L. J. C. P. 365).

9.—*Revivor for Costs.*

Revival of
suit for
payment
of costs.

The 19th section of the Attornies' and Solicitors' Act, 1870 (33 & 34 Vict. c. 28) provides, that whenever any decree or order shall have been made for payment of costs in any suit, and such suit shall afterwards become abated, it shall be lawful for any person interested under such decree or order to revive such suit, and thereupon to prosecute and enforce such decree or order, and so on from time to time as often as any such abatement shall happen.

Solicitors to whom by name costs have been ordered to be paid are not "persons interested" within the meaning of this section (*Hunter v. Wortley*, W. N. (1873), 4). The section is not retrospective (*Doggett v. Eastern Counties Ry.*, 6 Ch. 474; 19 W. R. 497).

Where a decree absolute had been made for a dissolution of the petitioner's marriage with the respondent, together with an order for costs against the co-respondent, but the petitioner died before the costs were taxed, his representative was held entitled under this section to enforce the order for costs against the co-respondent (*Hawks v. Hawks*, 1 P. D. 137; 45 L. J. P. D. & A. 41; 24 W. R. 489; 34 L. T. 659). A defendant whose interest has ceased pending the suit cannot obtain an order for his costs (*Wymer v. Dodds*, 11 Ch. D. 436; 48 L. J. Ch. 568; 27 W. R. 675; 40 L. T. 420).

Former
rule.

Before this Act the rule was that there could be no revivor for costs, except in certain special cases.

Where the party to whom the costs were payable died before taxation, the Court (the suit not having been revived) refused with costs a motion that the Master might proceed with the taxation (*Robertson v. Southgate*, 7 Hare,

109). And see *Malins v. Greenway*, 7 Ha. 391. See, however, *Hunter v. Daniel*, 7 Ha. 281.

Where one of several plaintiffs who have been ordered to pay costs dies, the defendants are entitled to proceed with the taxation in the absence of a legal personal representative of the deceased plaintiff (*Aspden v. Seddon*, W. N. (1877), 207).

SECT. II.—*Where Costs are payable out of a Fund or Estate.*

Where costs are payable out of a fund in Court, they are ordered to be paid to the solicitors of the parties. If payable to a partnership firm, they may be directed to be paid to the members of the firm, as co-partners, naming them in the order by their christian and surnames. Any member of the firm can then receive them. Costs out of a fund in Court.

When money in Court is to be paid out, the Chancery Paymaster issues a cheque for the amount. The cheque must state the title of the cause or matter in the books at the Chancery Pay Office to which the money paid is to be debited, the date of the order or other authority in pursuance of which and the name of the person to whom the payment is to be made; or so much of the particulars of such payment as the Chancery Paymaster may deem necessary. The cheque when endorsed by the payee may then be cashed in the ordinary way (Ch. Funds Rules, 1874, r. 38).

Where payment has to be made to the National Debt or Ecclesiastical Commissioners, the official liquidator of any company, or any other official person for whom an account is kept at the Bank, it is effected by a simple transfer at the Bank.

When costs are directed to be paid out of money in Court, or out of the proceeds of securities in Court, the

Taxing Master certifies the amount of the fees of taxation payable in respect of such costs, unless he certifies that such fees are included in the costs as taxed. The Chancery Paymaster carries over the amount so certified to be payable from the account to which such money or proceeds are placed to a separate account in the books at the Chancery Pay Office for fees of taxation; and the amount so carried over will, from time to time, be paid to the account of Her Majesty's Exchequer (Ch. Funds Rules, 1874, r. 58).

Cheques must be cashed within a month after date.

The Chancery Paymaster's cheques must be cashed within a month after date, otherwise payment will be refused. Where a cheque a year old was lost, a new one was ordered to be issued (*Taylor v. Scrivens*, 1 Beav. 571).

Where costs are charged on an estate, Court will direct a sale.

Where a *cestui-que-trust* having a life interest only is declared entitled to his costs out of the trust property, the Court will not give him a mere lien upon it to be enforced by subsequent proceedings, but will direct an immediate sale for the purpose of defraying them (*Burkett v. Spray*, 1 R. & M. 113). So, as to the costs of infants in an administration suit, see *ante*, p. 177. Where an order had been made for the payment of the costs of all parties out of an estate vested in trustees, they having settled with the plaintiff and conveyed the estate to him, an order was made for payment of the other defendants' costs by the plaintiff personally, or in default for a sale of the estate (*Cannell v. Beby*, Beames, app. 7; S. C. *sub nom.* *Cannon v. Beby*, 1 Dick. 115).

Interest.

As to interest allowed on costs payable out of a fund or charged upon an estate, see *ante*, p. 538.

SECT. III.—*Recovery of Costs in the House of Lords.*

“ In all cases where the appellant has paid in the sum of £200 as directed by Standing Order, No. IV., and where the House shall make any order for payment of costs by the appellant to the respondent, the Clerk of the Parliaments or Clerk Assistant shall pay over to the respondent or his agent the said sum of £200, or so much thereof as will liquidate the amount reported to the Clerk of the Parliaments or Clerk Assistant by the Taxing Officer, as being due from the appellant to the respondent in respect of the appeal. And in all cases where the amount so reported by the Taxing Officer shall exceed £200, the Clerk of the Parliaments or Clerk Assistant shall in his certificate credit the appellant with the £200 so paid over to the respondent. And where there be two or more respondents entitled to their separate costs, the said £200 shall be divided between the respondents in proportion to the amount of costs reported by the Taxing Officer to be due to each respondent. And where, after satisfying the order of the House, there be any sum remaining part of the said £200, the same shall be paid back to the appellant or his agent upon a proper receipt for the same being given to the Clerk of the Parliaments or Clerk Assistant” (Directions for Agents, August, 1876).

In a recent case £2,000 was paid into the Fee Fund as security for costs. Upon the appeal being dismissed, the Lord Chancellor said that the House could not then make an order for payment of the costs out of this sum, but the fund must remain *in statu quo* till the costs were paid. If the costs should not be otherwise paid, or if both parties should agree in an application to the Appeal Committee to deal with the fund, that would be the proper mode of doing it. A petition was subsequently presented by the respondents, praying that the £2,000, and also the £200, might be paid to their solicitors in part satisfaction

Where the
appeal is
dismissed.
The £200
to be
applied
towards
payment
of costs.

of their costs; and the appellants consenting, an order was made accordingly (*Sturle v. Freecia*, 5 App. Cas. p. 650).

By estreat-
ing recog-
nizances of
appellant.

The recovery of costs from the appellant in the House of Lords may also be effected by estreating his recognizances. The certificate of costs should be served upon him personally, and a personal demand made for them; but if the party absents himself to avoid service, the House will, on petition, order substituted service on his agent (*Carter v. Palmer*, 8 Cl. & F. 708). Upon the party making default, the House will, on the petition of the party entitled to the costs, on two clear days' notice (Macq. Jur. of Ho. of Lds. 270), order the appellant's recognizances to be estreated for payment of the costs, together with the costs of the petition (*Callaghan v. Callaghan*, 8 Cl. & F. 709). If a substitute has entered into recognizance on behalf of the appellant, the proceedings are the same, and proof of the default of the appellant only is sufficient (Macq. *loc. cit.*).

How
carried
out.

"The estreat of the recognizance is prepared and certified upon oath by the clerk of the Parliaments, in pursuance of the order of the House; and the same being delivered in at the office of the Queen's Remembrancer, in the Exchequer, is filed as of record; and thenceforth becomes the foundation of the prerogative process issuing for the full penal sum in the recognizance*; the payment of which, being thus enforced as a Crown debt, is placed at the disposal of the Lords of the Treasury, to whom the respondent must apply, by petition, praying that he may be allowed his costs" (Macq. Jur. of Ho. of Lds. 271).

In *Re Smith*, 2 Ex. D. 47; 46 L. J. Ex. 73; 35 L. T. 858, the recognizance of an unsuccessful appellant, who failed to pay the respondent's costs, was estreated by the Court of Exchequer, and the appellant himself arrested.

* By 3 & 4 Wm. IV. c. 99. s. 12, the Queen's Remembrancer is required to issue process for enforcing forfeited recognizances once every term, or oftener if required by the Court of Exchequer.

It was held that the recognisance constituted the appellant a Crown debtor, and consequently, that the Debtors Act, 1869, did not apply, and the appellant was not entitled to be discharged. An order was subsequently made to vacate the recognisance and discharge the debtor upon his giving a promissory note for the sum due (S. C. *sub nom. Ex parte A. H. Smith*, 25 W. R. 184; 35 L. T. 858). See also *Attorney-General v. Edmunds*, 22 L. T. 667.

The House will on the respondent's petition, stating the appellant's default, remit the matter to the Court below, with directions that process be issued out of that Court for levying the costs (*Jenkins v. Blake*, and *Bath v. Conly*, cited from the journals of the House, Macq. 272).

"In all cases in which the appellant is not ordered to pay the costs of the appeal, the Clerk of the Parliaments or Clerk Assistant shall, on receiving a proper receipt for the same, pay back to the appellant or his agent the said sum of £200" (Directions for Agents).

If the party ordered to pay the costs fails to do so after service of the certificate of costs and demand for payment, the costs are to be recovered by making the order of the House an order of the Court of first instance; see *L., falsely called H., v. H.*, L. R. 1 P. & M. 294. The order is obtained on an *ex parte* application to the Court of first instance, where the decree appealed from was originally made (*British Dynamite Co. v. Krebs*, 11 Ch. D. 448; 27 W. R. 575; 40 L. T. 514; *Man v. Ricketts*, 3 De G. & Sm. 446; *Wentworth v. Lloyd*, 10 Jur. N. S. 1113). When the order has been made an order of the Court of first instance, payment of the costs may be enforced by the process of that Court for recovery of costs (*Wentworth v. Lloyd*; *Man v. Ricketts*).

Costs ordered to be paid by the House of Lords may also be recovered by an action, which it has been held will lie on an order of the House directing an unsuccessful appellant to pay the respondent's costs (*Marbella Iron Co. v. Allen*, 38 L. T. 815).

Ordering
defaulter
into cus-
tody.

Another method of enforcing the payment of costs, was by ordering the defaulting party into the custody of the Gentleman Usher of the Black Rod, from which he would not be released without payment of the costs and the fees of the officers of the House [Macq. 271, and *Carey v. White*, there cited from the journals of the House). But quere whether this power of committal has not been abolished by the Debtors Act, 1869, *ante*, p. 527. In *Smith's case*, cited *ante*, p. 544, the House refused to commit an unsuccessful appellant for non-payment of costs (see *Ex parte A. H. Smith*, 25 W. R. 184; 35 L. T. 858).

Appeals
dismissed
for want
of prose-
cution.

“ In cases in which an appeal is dismissed for want of prosecution, the appellant shall be at liberty to serve a notice of such dismissal [according to the form set forth in Appendix D.] upon the agent of the respondents (such service to be verified, if necessary, by affidavit), and unless the respondent shall within four weeks from the date of such service, if the House be then sitting, or not later than the third sitting day after the expiration of the said four weeks, lodge in the office of the taxing officer of the House a copy of his bill of costs, the Clerk of the Parliaments or clerk assistant shall, upon a proper receipt for the same being given, repay to the appellant or his agent the said sum of £200. In the event of the respondent so lodging his bill of costs as aforesaid, the taxing officer may, if the sum demanded by the respondent be less than £200, tax the same; and the Clerk of the Parliaments or clerk assistant shall pay over to the respondent or his agent so much of the said sum of £200 as will liquidate the amount reported to the Clerk of the Parliaments or clerk assistant as being due from the appellant to the respondent in respect of the appeal, and the remaining portion of the said sum of £200 shall be paid back to the appellant or his agent upon a proper receipt for the same being given to the Clerk of the Parliaments or clerk assistant ” (Directions for Agents).

The House will refuse to hear a further appeal until the

costs of a previous appeal are paid (*Knox v. Knox*, cited from the journals, Macq. 274).

Where the House makes no order as to costs, the Court below has no power subsequently to make any such order (*L., falsely called H., v. H.*, L. R. 1 P. & M. 294, and see *Gann v. Johnson*, L. R. 6 C. P. 461).

The Court below has no jurisdiction to make any order as to interest upon the costs of an appeal to the House; see *Lancashire & Yorkshire Ry. Co. v. Gidlow*, L. R. 9 Ex. 35; 7 H. L. 517.

SECT. IV.—*Recovery of Costs by Solicitor from his Client.*

1. *By Action.*

A solicitor cannot, as a general rule, maintain an action against his client for the amount of his bill until one month after delivery of it (6 & 7 Vict. c. 73, s. 37); but a judge has power to authorise an action within the month on proof that there is probable cause for believing that the party chargeable is about to quit England or become a bankrupt or a liquidating or compounding debtor, or to take any other steps or do any other act which in the opinion of the judge would tend to defeat or delay the solicitor in obtaining payment (38 & 39 Vict. c. 79, s. 2). The existence of an order of course for taxation is no bar to an action on any security for the costs, as a promissory note (*Jeffreys v. Evans*, 14 M. & W. 210), or to a suit to foreclose a mortgage for them (*Thomas v. Cross*, 5 N. R. 148; 10 Jur. N. S. 1163; but see *Waugh v. Waddell*, 16 Beav. 521).

Solicitor cannot sue until one month after delivery of his bill without leave.

Where a guarantee is given to a solicitor for payment, within a limited time, of all costs for business done for a particular client, the delivery of a bill of such costs to the client, before the end of the time, is not a condition precedent to an action by the solicitor on the guarantee (*Reece v. Cox*, 16 L. T. 327).

A solicitor cannot maintain a suit against his client for an account (*Allison v. Herring*, 9 Sim. 583; 8 L. J. Ch. 223); though payments have been made to him on account (*ibid.*). But where the solicitor seeks to enforce his rights against the separate property of a married woman, he must institute a suit; as to which and the cases where a married woman's separate property has been held liable, or the contrary, see *ante*, p. 367.

A solicitor may prove under liquidation proceedings for the amount of his bill of costs due from the debtor, although the bill has never been taxed (*Ex parte Nicholl*, 18 S. J. 264; and see *Re Bull*, *ib.* 531).

2. By Process of the Court.

The common order for taxation of a solicitor's bill of costs contains a submission by the client to pay what may be found due, and an order for payment of the amount to be certified by the Taxing Master within twenty-one days after service of the order and the certificate (Seton, p. 604).

This order may be enforced in the same way as a similar order for payment of costs by one party to another, as to which see *ante*, p. 508.

No demand of the amount found due is necessary, but service of the order and certificate is sufficient (Cons. Ord. XXIX. r. 1). The copy of the certificate served must be a true one (*Re Reynolds*, 10 W. R. 709).

The mere allocatur of the Taxing Master does not create a judgment under 1 & 2 Vict. c. 110, s. 18 (*Shaw v. Neale*, 6 H. L. C. 581). But an action at law by the solicitor for the recovery of his bill after taxation was held a contempt, and was restrained (*Re Campbell*, 3 De G. M. & G. 585), although the certificate had not been filed within the proper time (*ibid.*). The order directing taxation and restraining the commencement of proceedings must of

Under common order for taxation, on client's application.

No demand necessary.

A contempt to bring an action at law after taxation.

course be properly served on the solicitor (*Re Norvall*, W. N. (1869), 255). In *Re Curling*, 9 L. T. 659, it was held that a judgment debtor summons would not lie for costs alone.

Where one of the parties in whose name the order for taxation was obtained disputed the authority to use his name for that purpose, it was held that while the order for taxation stood he could not avoid his liability for payment (*Re Thompson & Debenham*, 25 Beav. 245).

If the order for taxation is obtained after action brought, the usual direction is for payment generally, and that in default of such payment the solicitor is to be at liberty, at any time after two days from the filing of the Master's certificate, without service of the order or of such certificate, to sue out execution against the petitioner by *fi. fa.*, writ of *elegit*, or otherwise for the amount certified (Seton, p. 616). Since the Judicature Act the Court has no jurisdiction to restrain proceedings already commenced in another Division. The order now runs "that no proceedings be commenced against the petitioner in respect of the said bill," and the application to stay proceedings in the action must be made to the Court where the action is pending. See *Re Field*, 12 L. J. Notes of Cases, 191; W. N. (1877), 244.

The common order for taxation on the solicitor's petition also contains an order for payment within twenty-one days after service of the order and certificate; a copy of the order must be personally served on the client one week at least before any warrant is taken out for taxation of the bill; see Seton, p. 606. The forms of orders for taxation given in the Schedule to the Rules of April, 1880, do not contain any order for payment. A subsequent order for payment by the client within a limited time would therefore seem to be necessary before the order could be enforced.

Interest is recoverable by the solicitor on his bills of costs, under 1 & 2 Vict. c. 110, s. 18, if payable by the client personally; an order for that purpose may be obtained

Petitioner for taxation cannot dispute his liability without setting aside the order.

Where order for taxation is obtained after action brought.

Under common order for taxation on solicitor's application.

Interest on costs.

on a special application under 23 & 24 Viet. c. 127, s. 27, if payable out of a fund in court (see *ante*, p. 539). Where taxation has been ordered on the terms of the client paying a sum of money into court which has been invested and accumulated, the solicitor is not entitled to the accumulations, but only to be paid out of the fund (*Re Smith*, 9 Beav. 342). In *Lyddon v. Moss*, 4 De G. & J. 104, it was held that an agreement by the client to allow interest on his solicitor's untaxed bills of costs, could not be supported in the absence of independent professional advice, or correct information from the solicitor as to the law; and see *Shannon v. Casey*, Ir. R. 8 Eq. 307.

Section 17 of the Attorneys and Solicitors Act, 1870, 33 & 34 Viet. c. 28, provides as follows:—

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

This section only applies as between a solicitor and his own client, and has no application to a case of taxation where the costs are payable to a party out of a fund belonging to others, in which interest is not claimed for the solicitor personally, but by or on behalf of the client; see *Hartland v. Murrell*, 16 Eq. 285; 43 L. J. Ch. 94; 21 W. R. 781; 28 L. T. 725.

The Act is not retrospective, and therefore interest cannot be allowed under this section on disbursements made prior to the passing of the Act (*Ward v. Eyre*, 15 Ch. D. 130; 49 L. J. Ch. 657; 28 W. R. 712; 43 L. T. 525). The Act does not apply to accounts between a country solicitor and his town agent (*ibid.*).

Interest may be allowed on taxations in respect of disbursements and advances.

3.—*Solicitor's Lien and Charge.*

- A.—*Lien on his Client's Papers.*
 B.—*Lien on Funds Recovered in the Action.*
 C.—*Charge under 23 & 24 Vict. c. 127, s. 23.*

A.—*Lien on his Client's Papers.*

A solicitor has a lien on the papers of his client in his hands for the amount of his costs. This lien is a passive one, and merely enables the solicitor to withhold the papers from his client, and cannot be enforced by action (*Blunden v. Désart*, 2 Dr. & W. 405; *Stedman v. Webb*, 4 My. & C. 346; *Bozon v. Bolland*, *ibid.* 354; *Molesworth v. Robbins*, 2 J. & L. 358). It extends, moreover, only to the papers themselves, and does not give the solicitor any right against a fund which may have been recovered by means of any of the documents (*Stedman v. Webb*; *West of England Banking Co. v. Batchelor*, W. N. (1882) 11; *Bozon v. Bolland*; overruling *Worrall v. Johnson*, 2 J. & W. 214). It is a general lien, and operates as a security not merely for the costs incurred in the particular suit or matter to which the papers relate, but for all the costs due or to become due from the client (*Bozon v. Bolland*; and see *Clutton v. Pardon*, T. & R. 301, 304). A solicitor cannot, however, refuse on account of his lien to produce a document when called as a witness on behalf of strangers (*Re Cameron's Coalbrook, &c. Co.*, 25 Beav. 1; *Fowler v. Fowler*, 50 L. J. Ch. 686; 29 W. R. 800; *Hope v. Liddell*, 7 De G. M. & G. 331; *Brassington v. Brassington*, 1 S. & S. 455); even when the party requiring production claims under his client (*Lockett v. Cary*, 10 Jur. N. S. 144; 3 N. R. 405).

The lien extends to papers deposited with the solicitor for a particular purpose, if he received them in his professional character and they are allowed to remain with him (*Ex parte Nesbitt*, 2 Sch. & L. 279; *Ex parte Sterling*, 16 Ves. 258; *Ex parte Pemberton*, 18 Ves. 282; *Re Leah*, 6 Jur. N. S. 687; and see *Stevenson v. Blakelock*, 1 M. &

Nature of
lien.

[1891] 112 590
64 1 17 1 56

On what
papers.

S. 535). It can only be excluded by a special agreement (*Colmer v. Ede*, 40 L. J. Ch. 185; 19 W. R. 318; 23 L. T. 884; *In re Messenger, Ex parte Calvert*, 3 Ch. D. 317). But it does not extend to papers delivered to a solicitor as steward of a manor (*Chimpernown v. Scott*, 6 Mad. 93); or as mortgagee (*Pelly v. Wathen*, 7 Ha. 351; *Vaughan v. Vanderstegen*, 2 Drew. 409, 412; and see *Stafford v. Eden*, 10 Ch. D. 291); or as next friend (Beames, 327); and not to the original will of the client (*Georges v. Georges*, 18 Ves. 294; *Balch v. Symes*, T. & R. 92; *Redjean v. Sowerby*, 1 Swans. 84); nor to a deed executed by the client in the solicitor's favour, reserving a life interest and power of revocation to the client (*Balch v. Symes*); nor to a document deposited on an express contract (*Gibson v. May*, 4 De G. M. & G. 512). The solicitor of an infant plaintiff's next friend has no lien on title-deeds to an estate deposited in Court, where the plaintiff on coming of age repudiates the suit, although the defendant has admitted the plaintiff's title to the estate (*Dunn v. Dunn*, 7 De G. M. & G. 25; 1 Jur. N. S. 122; *affd.* S. C. 3 Drew. 17). Solicitors have a lien on a settlement against the trustees of it for the costs of preparing it (*Re Greyson*, 26 Beav. 87). The lien extends not only to papers but to other articles, such as books delivered to the solicitor for the purpose of being shown to witnesses (*Friswell v. King*, 15 Sim. 191). And the lien is not destroyed by the character of the document being changed, as by an engrossment becoming a deed by execution, if the holder has agreed to hold it subject to the lien (*Watson v. Lyon*, 7 De G. M. & G. 288). A town clerk has a lien on papers of the corporation with respect to which he has done work as solicitor, but not on such as he holds merely as town clerk (*Ree v. Sankoy*, 5 A. & E. 423; and see *Newington Local Board v. Eldridge*, 12 Ch. D. 349). Where the deeds represented property of much greater value than the amount of his costs, the solicitor was only allowed to retain possession of a portion of

them, sufficient to cover the amount due to him (*Du Boison v. Maxwell*, W. N. (1876) 146). On payment of the costs the lien ceases, and the solicitor cannot refuse to deliver up his client's documents on the ground that third parties claim an interest in them (*Re Emma Silver Mining Co., Re Turner*, 24 W. R. 54).

But if the documents are deposited with the solicitor for the purpose of being used in a particular suit only, and he has no lien on them for prior costs, he cannot resist their production in the suit (*Baker v. Henderson*, 4 Sim. 27; *Bell v. Taylor*, 8 Sim. 216); *secus* where the papers were in the solicitor's hands for other purposes as well, and he claimed a lien for the costs of the suit and other costs (*Warburton v. Edge*, 9 Sim. 508). Where the carriage of a creditor's suit was taken from the plaintiff and given to another creditor, the plaintiff's solicitor could not withhold production of the papers for the purpose of the suit, but the order was made without prejudice to his lien (*Bennett v. Baxter*, 10 Sim. 417; and see *Simmonds v. Great Eastern Ry. Co.*, 3 Ch. 797). Production by the client may be ordered though his solicitor claims a lien (*Rodick v. Gandell*, 10 Beav. 270, where the order was made with liberty to apply in case of difficulty; *Vale v. Oppert*, 10 Ch. 340; 23 W. R. 780, where the client had changed his solicitors; *Ex parte Shaw*, Jac. 270); see, however, *Kettlewell v. Barstow*, 20 W. R. 621. A solicitor cannot set up a lien acquired in a cause as against the right of other parties in the cause to production (*Vale v. Oppert*).

A solicitor may assign the costs due to him and transfer his lien on the papers to his assignee (*Bull v. Faulkner*, 2 De G. & S. 772). But a solicitor who redeems his client's papers by payment of the amount claimed by a former solicitor, does not necessarily acquire a lien against his client for the amount so paid (*Christian v. Field*, 2 Ha. 177; but see *Gibson v. May*, 4 De G. M. & G. 512, 517).

The client, however, cannot give the solicitor a lien on the deeds more extensive than he could give on the estate

Papers deposited with solicitor for the purpose of being used in a particular suit.

Lien may be assigned; but new solicitor paying off former acquires no lien.

Extent of lien.

to which the deeds relate (*Pelly v. Wathen*, 7 Ha. 351, S. C. *aff'd*, 1 De G. M. & G. 16). Therefore the lien is subject to the rights of prior incumbrancers on the client's interest, whether legal or equitable (*ibid.*; *Molesworth v. Robbins*, 2 J. & L. 358), including judgments from the date of their being entered up (*Blunden v. Desart*, 2 Dr. & W. 405). An existing lien, though good for costs already due, will not prevail for future costs against a purchaser or incumbrancer (*ibid.*); but where the property is transferred with notice of the lien and the solicitor continues the proceedings upon the retainer of the transferees, he has as against them a lien for the costs (*General Share Trust Co. v. Chapman*, 1 C. P. D. 771; 46 L. J. C. P. 79; 36 L. T. 179). So, the mortgagee's solicitor cannot acquire as against the mortgagor any lien on the deeds relating to the mortgaged property for an amount exceeding the sum due to the mortgagee (*Blunden v. Desart*; *Rider v. Jones*, 2 Y. & C. C. C. 328; *Larson v. Dickenson*, 12 Mod. 306; *Re Mosely*, 15 W. R. 975; and see *Oyle v. Story*, 4 B. & Ad. 737; *Wakefield v. Newbon*, 6 Q. B. 276). On the other hand, the mortgagor's solicitor can acquire no lien on deeds relating to the mortgaged property allowed to remain in his hands, as against the mortgagee (*Smith v. Chichester*, 2 Dr. & War. 393); but where the mortgagee lent the deeds to the mortgagor, who, with the former's acquiescence, placed them in his solicitor's hands for a particular purpose, the solicitor acquired a lien for the costs of that particular transaction (*Young v. English*, 7 Beav. 10).

A solicitor who acts for both mortgagor and mortgagee in the preparation of a mortgage, thereby loses his lien on the title deeds in his possession for costs due to him from the mortgagor, unless such lien is expressly reserved, even though the mortgagee may have known that the solicitor had such a lien against the mortgagor. It is his duty, as solicitor for the mortgagee, to see that his client gets a good security, including possession of the deeds; and he

As against incumbrancers.

As between mortgagee's solicitor and mortgagor;

or mortgagor's solicitor and mortgagee.

Where same solicitor acts both for mortgagor and mortgagee.

cannot say to him : " I have been guilty of negligence ; I do not hold the deeds on your account." He must be taken to have performed his duty, and to hold the deeds for his mortgagee client ; see *In re Snell*, 6 Ch. D. 105 ; 46 L. J. Ch. 627 ; 25 W. R. 823 ; *In re Mason and Taylor*, 10 Ch. D. 729 ; and see also *Re Sadd*, 13 W. R. 1009 ; 34 Beav. 650. But a solicitor who acts for both parties does not thereby lose his lien as against the mortgagor ; and where the mortgagor became bankrupt, and the equity of redemption was sold, the solicitor was allowed to retain out of the purchase money the amount of costs due to him from the mortgagor (*In re Messenger, Ex parte Culvert*, 3 Ch. D. 317). Where, however, mortgagees deposited the title deeds of the mortgaged property with their solicitors for safe custody, and the mortgagor subsequently employed them in an attempt to sell, and then became bankrupt, the solicitors had no lien on the deeds as against the trustee in bankruptcy for their costs of the attempted sale (*Ex parte Fuller, re Long*, 16 Ch. D. 617 ; 50 L. J. Ch. 448 ; 29 W. R. 448 ; 44 L. T. 63).

Again, the solicitor for the tenant for life acquired no lien upon the trust deed, which had been lent by the trustee to the tenant for life (*Re Mayhew*, 7 W. R. 351). And where money had been lent on mortgage in breach of trust, it was held that the right of the *cestuis-que-trust* to follow the fund prevailed over the lien of the trustees' solicitor on the mortgage deed (*Francis v. Francis*, 5 De G. M. & G. 108) ; if there had been a surplus after replacing the fund, the lien would have attached (*ibid.*). The solicitors of a company have no lien on the company's papers for costs incurred in relation to business *ultravires* (*Re Phoenix Life Assurance Co.*, 1 H. & M. 433). The solicitor of a trustee or executor has a lien on the papers relating to the trust, but only to the extent of his client's lien on the trust funds or estate (*Turner v. Letts*, 7 De G. M. & G. 243, overruling on this point S. C. 20 Beav. 185, 192 ; but see *Horne v. Shepherd*, 3 Jur. N. S. 806).

As between
solicitor
of *cestuis-
que-trust*
and
trustee ;
or trustee's
solicitor
and *cestui-
que-trust*.

Under
Companies
Act, 1862.

The solicitor of an official liquidator has no lien for his costs on the file of proceedings in the winding-up and the documents relating thereto (*Re Union Cement Co., Ex parte Pullbrook*, 4 Ch. 627). As against a deceased client's executors, the lien of course prevails; and it has been held that where a solicitor delivered up papers to an executor, which were of great use in several suits then pending, such delivery up was sufficient consideration to make the executor personally liable for the solicitor's whole demand, whether there were or were not assets (*Duke of Hamilton v. Ingleton*, 4 Bro. P. C. 4).

As against
deceased
client's
executors.

A solicitor employed by a trustee in bankruptcy has a lien upon all documents not belonging to the estate, but the fruits of his own labour and expense (*Ex parte Yalden, re Austin*, 4 Ch. D. 129; 46 L. J. Pkey. 59; 25 W. R. 134; 35 L. T. 720); but not, it seems, on the proceedings in the bankruptcy (*Ex parte Tilley*, 2 Rose 83). The solicitor of a compounding debtor has no lien for his costs on moneys of which he has become trustee for the creditors (*Re Clark, Ex parte Newland*, 4 Ch. D. 515).

Discharge
of solicitor
by client.

The lien will not cease on the termination of the relation of solicitor and client. Where a client discharges a solicitor in the course of a suit, he applies for an order to change the solicitors on the record. Such an order will be made as of course, but without any provision as to the payment of the former solicitor's costs (*Grant v. Holland*, 3 C. P. D. 180). The discharged solicitor, if unpaid, is in such circumstances in no way bound to give his former client any facilities for prosecuting the suit (*Bozon v. Bolland*, 4 My. & Cr. 354; *Griffiths v. Griffiths*, 2 Hare 587); in fact, he may, to some extent, "embarrass the client in order to force him to pay what is due to him" (*In re Faithfull*, 6 Eq. 325; *Pilcher v. Arden, Re Brook*, 7 Ch. D. 318). No order will be made for the delivery of the papers to the new solicitor, or even for their production for his inspection, until some adequate provision

is made for discharging the lien (*Lord v. Wormleighton*, Jac. 580, approved 3 Ch. 797).

On payment into court of the amount claimed to be due to the solicitor, an order may be obtained for delivery (*Republic of Costa Rica v. Erlanger*, W. N. (1879), 7; *Newington Local Board v. Eldridge*, 12 Ch. D. 349; *Re Beran & Whitting*, 33 Beav. 439; see, however, *Richards v. Platel*, Cr. & Ph. 79). So, if the solicitor dies, his personal representative is entitled to insist upon the lien (*Redfearn v. Sowerby*, 1 Swans. 84). The former solicitor cannot, however, stop the proceedings in the action till his costs are paid otherwise than by keeping any papers, &c., he may happen to have in his possession (*Merrewether v. Mellish*, 13 Ves. 161; *Twort v. Dayrell*, *ibid.* 195; *O'Dea v. O'Dea*, 1 Sch. & L. 315). And he will not be allowed to obstruct the course of the Court by reason of his lien; thus he cannot embarrass a suit by detaining papers belonging to an estate which is being administered by the Court, and which are required by a receiver (*Belaney v. French*, 8 Ch. 918; 43 L. J. Ch. 312); nor can he intercept the completion of an order which has been passed but not entered (*Clifford v. Turrill*, 2 De G. & S. 1, where he was ordered to attend with it for the purpose of its being entered, the new solicitor paying his expenses); nor prevent a decree being drawn up (*Simmonds v. Great Eastern Ry. Co.*, 3 Ch. 797); nor withhold a decree, when wanted for the purpose of correcting a clerical error in it (*Bird v. Heath*, 6 Ha. 236).

If the client becomes bankrupt and the trustee in bankruptcy does not employ the same solicitor, that is a discharge by the client (*In re Moss*, 2 Eq. 345; 35 Beav. 521; 12 Jur. N. S. 526). The lien of the solicitor on papers received by him before the bankruptcy is good as against the trustee in bankruptcy (*Lambert v. Buckmaster*, 2 B. & C. 616; *In re Messenger*, *Ex parte Culvert*, 3 Ch. D. 317; *Ex parte Underwood*, De G. 190; *Ross v. Laughton*, 1 V. & B. 349); *secus* as to

Where
client
becomes
bankrupt.

papers delivered after the bankruptcy (*Ex parte Lee*, 2 Ves. Junr. 285). But no lien can be claimed on the books of account of the bankrupt (Bankruptcy Rules, 1870, r. 110); and, though the solicitor is entitled to a lien, he is nevertheless bound to produce for inspection by the trustee all documents in his possession which the latter may require to enable him to administer the bankrupt's estate (*In re Tolman & England, Ex parte Bramble*, 13 Ch. D. 885; *Simmonds v. Great Eastern Ry. Co.*, 3 Ch. 797; *Ross v. Laughton*, 1 V. & B. 349); for the trustee in bankruptcy is not a person who comes in under the bankrupt, but an officer of the Court who comes in by a title adverse to the bankrupt (*Simmonds v. Great Eastern Ry. Co.*). So, where a company is being wound up, the official liquidator is entitled to inspect all the company's documents in the possession of their late solicitors, and can compel the production to the Court of such documents on any application to which they are material, though the effect of such production must often be to render the lien practically worthless (*Re South Essex Co., Ex parte Paine & Layton*, 4 Ch. 215).

Winding
up a com-
pany.

Where the
solicitor
discharges
himself.

If the solicitor discharges himself *pendente lite*, an order may be obtained, not merely for production and inspection (as was held in *Commerell v. Poynton*, 1 Swans. 1; *Mayne v. Hawkey*, 3 Swans. 93; *Moir v. Mudie*, 1 S. & S. 282, which are overruled); but that the former solicitor deliver up to the new solicitor the necessary papers without prejudice to the lien, the latter undertaking to return them within a limited time after the conclusion of the suit (*Robins v. Goldingham*, 13 Eq. 440; *Heslop v. Metcalfe*, 3 My. & C. 183; 7 L. J. Ch. 49); and see *Colegrave v. Manley*, T. & R. 400; *Wilson v. Enmet*, 19 Beav. 233; *Webster v. Le Hunt*, 9 W. R. 804; *Re H—*, 15 W. R. 168. In *Cune v. Martin*, 2 Beav. 584, the words "or after he shall at any time cease or decline diligently to prosecute the suit" were added to the new solicitor's undertaking. Where there was no suit pending

an order was made that papers relating to any business actually in progress be lent to the new solicitor for that particular business, and then returned (*Rawlinson v. Moss*, 7 Jur. N. S. 1053; 9 W. R. 733). If a schedule is required, the parties who ask for it must bear the expenses of it (*ibid.*).

A solicitor in custody for debt, and therefore incapable of practising (under 6 & 7 Vict. c. 73, s. 31), is considered as having discharged himself (*Re Williams*, 28 Beav. 465); and so is a solicitor who refuses to proceed because his client declines to supply him with funds to carry on the suit (*Robins v. Goldingham*, 13 Eq. 440); or simply neglects to prosecute the suit (*Hannaford v. Hannaford*, 19 W. R. 429; 24 L. T. 86). But if a client's conduct renders it impossible for the solicitor to conduct his business any longer, it will be considered the client's discharge (*Steele v. Scott*, 2 Hog. 141). A dissolution of partnership is a discharge of the client by the solicitors (*Cholmondeley v. Clinton*, 19 Ves. 273; *Griffiths v. Griffiths*, 2 Ha. 587; 12 L. J. Ch. 397; *Scott v. Fleming*, 9 Jur. 1085; *Rawlinson v. Moss*, 7 Jur. N. S. 1053). A lien once acquired is not affected by other partners being taken in, but deeds which first come into the possession of the joint firm will not be subject to a lien for costs due to some of the members before the constitution of the firm (*Pelly v. Wathen*, 7 Ha. 351; 18 L. J. Ch. 285; 14 Jur. 9; *In re Forshaw*, 16 Sim. 121). A solicitor has no lien on papers which come into his possession for a bill of costs due to a firm of which he was formerly a member (*Vaughan v. Vanderstegen*, 2 Drew. 409, 412).

What is a discharge of the solicitor by himself.

Effect on lien of dissolution of partnership; or alterations in a firm.

Where A. entered into partnership with the solicitor of a company, and they acted as joint solicitors for the company until it was wound up, when they acted for the liquidators, and after the dissolution of the partnership A. acted separately for the liquidators, it was held that he had no lien on the documents of the company in his

possession (*Re County Life Assurance Co.*, 38 L. J. Ch. 231; W. N. (1869) 24). If a solicitor, who has been discharged, omits to deliver his bill within a month under the common order, the client may obtain the same order for delivery of the necessary papers, &c., as if the solicitor had discharged himself (*Cooper v. Hewson*, 2 Y. & C. C. C. 515).

Lien superseded by taking security.

The lien is superseded by the solicitor taking security for the amount of his bill (*Covell v. Simpson*, 16 Ves. 275); but only to the extent covered by the security (*Balch v. Syms*, T. & R. 92; *Watson v. Lyon*, 7 De G. M. & G. 288). The case of *Covell v. Simpson*, it may be remarked, was questioned at law in *Stevenson v. Blaklock*, 1 M. & S. 535; but see *Chase v. Westmore*, 5 M. & S. 180.

Lien of the town agent.

The town agent has a lien on the client's papers for the amount due to him from the country solicitor, but only to the extent of the amount due to the latter from the client (*Ward v. Hepple*, 15 Ves. 297; *Ex parte Steele*, 16 Ves. 164; *Anon.* 2 Dick. 802; *Bray v. Hine*, 6 Pr. 203; and see *Farewell v. Coker*, 2 P. W. 460). If the client pays the country solicitor without notice of the town agent's claim, the lien of the latter is gone, and it is immaterial how the accounts between the client and country solicitor are settled, whether by set-off or otherwise (*Waller v. Holmes*, 1 J. & H. 239; *Peatfield v. Earlow*, 8 Eq. 61; 38 L. J. Ch. 310; 20 L. T. 217; *Cockayne v. Harrison*, 15 Eq. 298; 42 L. J. Ch. 660; *Vyse v. Foster*, 32 L. T. 219; affirmed on appeal, 23 W. R. 413). If the town agent gives the client notice not to settle with the country solicitor, the client paying the country solicitor will become liable to the town agent (*Waller v. Holmes*). And in *Bray v. Hine*, the assignees in bankruptcy of the country solicitor were restrained from proceeding against the client to recover the amount paid by him to the town agent.

B.—*Lien on Funds Recovered in the Action.*

The solicitor has also a lien on any funds or sum of money recovered for, or which become payable to, his client in the suit (*Anon.* 12 Ves. 25); but not on real estate recovered by him for his client (*Shaw v. Neale*, 6 H. L. C. 581, affirming S. C. 20 Beav. 163, and overruling *Barnsley v. Powell*, Amb. 102, but see *post*, p. 567); nor on chattels personal recovered in the suit, where they are neither under the control of the Court, nor in the possession of the solicitor himself (*Savage v. James*, Ir. R. 9 Eq. 357). The lien is for taxed costs only (*De Bay v. Griffin*, 10 Ch. 291; 23 W. R. 737). This lien, unlike that on the papers, may be actively enforced by obtaining a stop order on the funds, if in Court (*Lucas v. Peacock*, 9 Beav. 177; *Hobson v. Shearwood*, 8 Beav. 487; *Hughes v. Rogers*, *ibid.* n.; *Smith v. Winter*, 18 W. R. 447; and see *Verity v. Wylde*, 4 Drew. 427), or by an action (*Sympson v. Prothero*, 5 W. R. 814; 3 Jur. N. S. 711; 26 L. J. Ch. 671), but extends only to the costs of the particular suit (*Lann v. Church*, 4 Mad. 391; *Bozon v. Bolland*, 4 My. & C. 354; *Hall v. Laver*, 1 Ha. 571), and to costs incurred by the solicitor in protecting his right to his costs in the suit (*Lucas v. Peacock*, 9 Beav. 177). The costs of proceedings under the Declaration of Titles Act, 25 & 26 Vict. c. 67, on behalf of an infant, together with the costs of a partition suit and of a suit to obtain a declaration of lien, are costs for which a solicitor has a lien on the fund recovered (*Pritchard v. Roberts*, 17 Eq. 222).

The lien is allowed on monies (*Sympson v. Prothero*; *Cowell v. Simpson*, 16 Ves. 281, 282; *White v. Pearce*, 7 Ha. 276), or costs (*Ex parte Bryant*, 1 Mad. 49), payable to the client personally. If the money come to the solicitor's hands he may retain it to the amount of his bill (Beames, 316, 317). If the person liable to pay pays the

Solicitor's
lien on
funds
recovered
in the
action.

May be
enforced
by notice
where
money is
payable to
client.

Priority of
lien.

client after notice of the solicitor's claim, he remains liable to the solicitor (*White v. Pearce*, 7 Ha. 276). And the solicitor's lien has priority over a garnishee order obtained after notice to the person liable (*Simpson v. Prothero*, 3 Jur. N. S. 711; 5 W. R. 814; and see *The Jeff Davis*, L. R. 2 A. & E. 1; *The Leader*, *ibid.* 314; and see also *post*, p. 569): or a judgment creditor's rights though he has obtained a charging order before the solicitor (*Haynes v. Cooper*, 33 Beav. 431; 3 N. R. 627; 10 L. T. 87); or over bond debts in administration of assets (*Turwin v. Gibson*, 3 Atk. 719).

But a claim for costs does not justify a solicitor in retaining trust moneys which happen to be in his hands and which the trustees have been ordered to pay into Court in a suit; the solicitor must pay the whole fund into Court, but it will not be paid out without notice to him (*Bibby v. Thompson* (2), 32 Beav. 647). Nor can the solicitor of an official liquidator retain money recovered in the liquidation by his exertions without an order of the Court (*Re Union Cement Co.*, 26 L. T. 240; 20 W. R. 361).

Where a cheque had been drawn for payment out to the client of his share of a fund in Court, the delivery of it to the client was restrained until a charging order could be obtained under the Act (*Gerrard v. Dawes*, W. N. (1869), 221; 18 W. R. 32; 21 L. T. 322).

Lien
confined to
ultimate
balance
coming to
the client;
and does
not inter-
fere with a
bonâ fide
comprom-
mise;

The solicitor, however, has no lien on funds in court the subject of the suit generally, but only on the ultimate balance which may be coming to his client (*Ex parte Rhodes*, 15 Ves. 541; *Verity v. Wylde*, 4 Drew. 427, 430; 7 W. R. 270); and if there is nothing coming to the client, there is no lien (*Chick v. Nicholls*, 26 W. R. 231). And the lien is not allowed to interfere with any *bonâ fide* compromise or arrangement entered into by the client (*Brunsdon v. Allard*, 5 Jur. N. S. 596; 28 L. J. Q. B. 306; *Mornington v. Wellesley*, 4 Jur. N. S. 6; *Ex parte Morrison*, L. R. 4 Q. B. 153; 38 L. J. Q. B. 65;

but see *Ex parte Bryant*, 1 Mad. 49). But a voluntary release by the client of his debtor will not destroy the lien (*Anon.* 2 Ves. 25; and see *Fairland v. Enever*, 1 Dick. 114). While the sum agreed upon as a compromise remains unpaid the Court, though not otherwise disturbing the arrangement between the parties, may direct the defendants to pay to the plaintiff's solicitor so much of the sum as is necessary to satisfy his charge (*Slater v. Mayor of Sunderland*, 33 L. J. Q. B. 37; *Lowndes v. Davies*, 3 C. B. 808).

Again, the lien of the solicitor being confined to the ultimate balance coming to his client, it is not allowed to interfere with any right of set-off which any other party may have against the client (*Cattell v. Simons*, 6 Beav. 304; *Taylor v. Popham*, 15 Ves. 72; *Holworthy v. Mortlock*, 1 Cox 202; 2 Bro. C. C. 17; *Taylor v. Cook*, Yo. 201; *Nicholson v. Norton*, 7 Beav. 67; *Bawtree v. Watson*, 2 Ke. 713; *Robarts v. Buèe*, 8 Ch. D. 198). "I have a strong notion," says Lord Eldon, in *Taylor v. Popham*, "that the doctrine of this Court has always been that, where different demands arise in a cause, the costs should be arranged as the equities between the parties require, without considering the lien of the solicitor;" and see the remarks of Jessel, M. R., in *Pringle v. Glogag*, 10 Ch. D., p. 679. This rule, however, does not apply to the set-off of costs of separate and distinct proceedings; see *Robarts v. Buèe*, 8 Ch. D. 198; *Collett v. Preston*, 15 Beav. 458; *Wright v. Mudie*, 1 S. & S. 266; *Throckmorton v. Crowley*, 3 Eq. 196; *Re Bank of Hindustan, Ex parte Smith*, 3 Ch. 125; *Ex parte Cleland*, 2 Ch. 808, where costs ordered to be paid by a petitioning creditor to a debtor, were not allowed to be set off against the debt due to the petitioning creditor; *Heiron v. Hobson*, 47 L. J. Ch. 574. In *Ex parte Cleland*, Lord Cairns, L. J., said that the costs were not paid to the client for his own benefit, but were paid to him, subject to the lien of the solicitor, for whom the client was no more

or with a
right of
set-off.

than a trustee; but see *Mercer v. Graves*, L. R. 7 Q. B. 499, where this case is criticised. Where a legatee appeared to be indebted to the estate to an amount greater than her share, payment of her costs was, after decree, ordered to be stayed for a month (*Nicholson v. Norton*, 7 Beav. 67). In *Hanson v. Rocco*, 3 Jur. N. S. 1204, the solicitor of one of the parties was allowed a lien on a fund placed in his hands by arrangement to abide the result of the litigation.

Solicitor may have a lien though not retained.

On the principle that it is inequitable for a party to take the benefit of a suit without bearing the expenses of it, a solicitor may have a lien for his costs on a fund recovered, though he acts officiously without a retainer (*Hull v. Laver*, 1 Ha. 571; *Burge v. Brutton*, 2 Ha. 373).

Lien not discharged by taking client in execution.

A solicitor does not lose his lien on the funds by taking his client in execution under an attachment (*Davies v. Bush*, Yo. 358; *Bartree v. Watson*, 2 K. 713; *Lloyd v. Mason*, 4 Ha. 132); or under a *ca. sa.* (*O'Brien v. Lewis*, 2 N. R. 536, 11 W. R. 973, *affy.* S. C., 2 N. R. 156); notwithstanding the Statute 1 & 2 Vict. c. 110, s. 16 (*Lloyd v. Mason*). But the lien will not extend to the costs of the attachment (*Davies v. Bush*), and the satisfaction of the lien will discharge the attachment *pro tanto* (*ibid.*).

Effect of discharge or retirement of solicitor on lien.

A solicitor refusing to act any longer for his client has no lien on the funds recovered (*Cresswell v. Byron*, 14 Ves. 271). But he does not altogether lose his lien if he is discharged by the client, or retires by arrangement (*Cormack v. Beisley*, 3 De G. & J. 157); although he is changed in consequence of his becoming embarrassed, if there is no proof of misconduct (*Re Smith*, 9 W. R. 396); but as between the discharged or retiring solicitor and the substituted one, it seems that the latter has the priority of lien (*Cormack v. Beisley*; and see V.C. Wood's judgment, 3 De G. & J. 162). Where a party had changed his solicitor three times, it was held that the lien of the former ones did not prevent the then present solicitors from

accepting a gross sum for their client's costs (*Mornington v. Wellesley*, 4 Jur. N. S. 6). Where a firm of solicitors had ceased to act for certain parties, though they remained the solicitors on the record, and the fund had been distributed without providing for their costs, they obtained on petition an order for the payment of them by the beneficiaries (*Armstrong v. Storer*, 27 Beav. 471). The substituted solicitor acquires a lien, although an order has already been made for payment of the client's costs, with the costs of taxation, to the former one (*In re Barnard*, 14 Beav. 18). The new solicitor paying the costs of the discharged one acquires no lien on the funds recovered for the amount so paid by him (*Irving v. Viana*, 2 Y. & J. 70; and see *ante*, p. 553). But the lien may be assigned, and where a notice of the assignment had been given to the plaintiff in the suit and the testator's executors, it was upheld against the solicitor's assignees in bankruptcy (*Day v. Day*, 1 De G. & J. 144).

New solicitor paying off former one has no lien for amount so paid.

The solicitor does not lose his lien on the funds by the death of his client (*Lloyd v. Mason*, 4 Ha. 132; and see *ante*, p. 556).

Lien not lost by client's death.

A solicitor retained by a married woman in a matrimonial suit has a lien for costs incurred on her account, including costs disallowed on taxation as between her and her husband, but allowed as between solicitor and client, upon all moneys received by him on her account in the course of the suit. This lien extends to alimony in the hands of the solicitor (*Bremner v. Bremner*, L. R. 1 P. & M. 254).

The lien of the London agent upon the property recovered is, as against the country solicitor, a general one, and extends to all costs and disbursements due to him from the country solicitor; but as between the London solicitor and the client, the lien extends only to the costs of the particular action (*Lawrence v. Fletcher*, 12 Ch. D. 858; 27 W. R. 937; 41 L. T. 207). An agent has a right as against the executor of the country solicitor, to

Lien of town agent.

retain taxed costs paid to him as the solicitor on the record in respect of the sums due to him from the country solicitor in the account current between them (*Jeyes v. Jeyes*, 45 L. J. Ch. 245; 34 L. T. 167). In *Ex parte Edwards*, 7 Q. B. D. 155; 30 W. R. 14; 50 L. J. Ch. 541; 8 Q. B. D. 262 (C. A.), where the town agent refused to pay over to the client the amount recovered in the action, claiming to retain it against a debt of an equal amount due to him from the country solicitor, the Queen's Bench Division, on the application of the client, made a summary order for payment.

Unqualified solicitor cannot recover costs ;

By s. 12 of the Solicitors Act, 1874, 37 & 38 Vict. c. 68, no costs, fee, reward, or disbursement, on account of or in relation to any act or proceeding done or taken by any person who acts as a solicitor, without being duly qualified so to act, shall be recoverable in any action, suit, or matter by any person or persons whomsoever. A person shall be deemed to be duly qualified to act as a solicitor if he shall have in force at the time at which he acts as a solicitor a duly stamped certificate, authorising him so to do, pursuant to the provisions of the Stamp Laws and the laws for the time being relating to solicitors, or shall have been appointed to be solicitor of the Treasury, Customs, Inland Revenue, Post Office, or any other branch of her Majesty's revenues, or of any public department, including the department of the Ecclesiastical Commissioners, and of the Governors of Queen Anne's Bounty, or if he be a clerk or officer appointed to act for the solicitor for any public department, as above described.

nor can his client.

Under this section the *client*, though otherwise entitled to costs, cannot recover them if his solicitor was uncertificated (*Fowler v. Monmouthshire Canal Co.*, 4 Q. B. D. 334; 48 L. J. Q. B. 457; 27 W. R. 659; 41 L. T. 159; over-ruling *Re Hope*, 7 Ch. 766). And of course a person who acts as solicitor without being properly qualified cannot recover his expenses and fees from those for whom he acts (*Verlunder v. Eddolls*, 30 W. R. 104).

C.—Charge under 23 & 24 Vict. c. 127, s. 28.

The solicitor's rights against property recovered for his client in a suit have been extended by Statute 23 & 24 Vict. c. 127, the 28th section of which is as follows:—

Charge
under Stat.
23 & 24
Vict.
c. 127,
s. 28.

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

This Act was passed to meet the decision in *Shaw v. Neale*, 6 H. L. C. 581, denying the right of a solicitor to a lien for his costs on real estate recovered by him for his client. It is to be construed liberally (*Scholefield v.* Act to be construed liberally.)

Lockwood, 7 Eq. 83; *Berrie v. Howitt*, 9 Eq. 1; 39 L. J. Ch. 119; *Baile v. Baile*, 13 Eq. 497).

London agent is within the section.

The claim of a London agent is within the section to the extent of the balance due from the client to the country solicitor (*Tardrew v. Howell*, 3 Giff. 381; 7 Jur. N. S. 1120; 10 W. R. 32); although the balance due from the country solicitor to the town agent is unascertained (*ibid.*). The lien is not personal to the solicitor, but extends to his personal representatives (*Baile v. Baile*, 13 Eq. 497).

Infant.

The word "employed" applies to the case of a solicitor employed in good faith by the next friend of an infant, who, when he comes of age, adopts the proceedings (*Baile v. Baile*); but where an infant plaintiff recovered property, Stuart, V. C., refused to charge the real estate with the next friend's solicitors' costs on a petition under the Act (*Bonser v. Bradshaw*, 30 L. J. Ch. 159); and, on appeal, the Court refused to hear the application, as it was not substantially opposed on behalf of the infant (S. C. 10 W. R. 481); subsequently, when the infant had attained twenty-one, the order was made (S. C. 4 Giff. 260). In a suit, however, an infant's costs can be made a charge (*Pritchard v. Roberts*, 17 Eq. 222).

Married woman.

A married woman's property is chargeable under the Act with the costs of her suit (*Re Keane; Lumley v. Desborough*, 12 Eq. 115; 40 L. J. Ch. 617). The charge under the Act extends only to the costs of the particular matter or suit in which the property has been recovered or preserved (*Ex parte Thompson*, 3 L. T. 317).

Priority of the lien.

The solicitor's lien under this section has priority over all charges created by the client (*Haynes v. Cooper*, 33 Beav. 431; and see *Baile v. Baile*, 13 Eq. 497, 509; *Twynnam v. Porter*, 11 Eq. 181; *The Heinrich*, L. R. 3 A. & E. 505); even though the client may have assigned his interest with the knowledge of the solicitor (*Pilcher v. Arden, Re Brook*, 7 Ch. D. 318; 47 L. J. Ch. 479; 26 W. R. 273; 38 L. T. 111). In a recent case the plaintiffs,

with the knowledge and sanction of their solicitor, mortgaged their interests in the subject-matter of the suit to two of the defendants, nothing being said about the solicitor's costs. The solicitor afterwards obtained a charging order, and the Court of Appeal decided that, as the mortgagees had notice of the suit, they must be presumed to have known the rights of the solicitor, and that the charge must take precedence of the mortgage (*Faithfull v. Ewen*, 7 Ch. D. 495 ; 47 L. J. Ch. 457 ; 26 W. R. 270 ; 37 L. T. 805). The same principle, it would seem, applies as between the solicitor and a judgment creditor who has obtained a garnishee order ; and unless the fund in dispute has been actually disposed of in some way so as to be beyond the power of the Court before the solicitor has taken any steps in the matter, his right will not be interfered with. "Until the execution creditor's position is perfect, I think the Court is bound to prefer the attorney without whose services there would, by the hypothesis, have been no fund on which either party could have claimed" (*Birchall v. Pugin*, L. R. 10 C. P. 397, *per* Brett, J. ; and see *Shippey v. Grey*, 49 L. J. 524 ; 28 W. R. 877 ; 42 L. T. 673 ; *The Leader*, L. R. 2 A. & E. 314 ; *Hamer v. Giles, Giles v. Hamer*, 11 Ch. D. 942 ; 48 L. J. Ch. 508 ; 27 W. R. 834 ; 41 L. T. 270).

The Court has restrained payment of the Accountant-General's cheque in order to give the solicitor time to apply for a charging order under the Act (*Gerrard v. Dawes*, 18 W. R. 32 ; 21 L. T. 322 ; W. N. (1869) 221).

A discharged solicitor will be entitled to the order notwithstanding a previous order in the suit for taxation and payment of the costs out of a specific fund (*Pilcher v. Arden, Re Brook*, 7 Ch. D. 318). In *Re Viney's Trusts*, W. N. (1868), 243 ; 18 L. T. 851, where the same solicitor continued to act, V.-C. Giffard refused to make a charging order.

Where an order for payment has been made.

The solicitor is entitled to a charge for his costs upon the whole of the property recovered or preserved, and his

Charge extends to the whole

of the
property
recovered
or pre-
served.

right is not necessarily limited by the extent of his client's interest; his right is, in fact, that of a salvor: see *Bulley v. Bulley*, 8 Ch. D. 479; 26 W. R. 310, 638; *Bailey v. Birchall*, 2 H. & M. 371; 11 Jur. N. S. 57, where a solicitor was allowed a lien on the estate of a deceased person, though the executors had such a right of set-off against the client as prevented him from taking any actual interest in the fund; *Porter v. West*, 50 L. J. Ch. 231; 43 L. T. 569; 29 W. R. 236; W. N. (1880) 195; *Emden v. Carre*, 19 Ch. D. 311; 30 W. R. 17; 45 L. T. 328; where a bankrupt having commenced an action, his trustee in bankruptcy intervened and took the conduct of the action out of his hands, and the solicitor of the bankrupt was held entitled to a charge for his costs, up to the time of the intervention of the trustee, on money paid into Court by the defendant in the action. On the other hand, Lord Romilly, M. R., held, in *Berrie v. Howitt*, 9 Eq. 1; 39 L. J. Ch. 119, that the charge extended only to the property of the client, but the soundness of this decision has been doubted (*Bulley v. Bulley*, 8 Ch. D. p. 488).

By the decree in a partition action the plaintiffs were declared entitled to one-third of the hereditaments in question, and to an account and payment by the defendants of one-third of the rents and profits from a certain date; the premises were ordered to be sold, and the plaintiff's costs up to and including the hearing were made costs in the action. Before the account was completed or the property sold, the plaintiffs threatened to change their solicitors and compromise the action. On a petition by the plaintiff's solicitors, asking for a charge on the whole property, it was held that as no order had been made for payment of the costs of the action out of the proceeds of sale, the Court could not anticipate such order, and that the solicitors could only be treated as having a lien on the plaintiff's one-third share of the hereditaments and the rents and profits; but the plaintiffs

were restrained from receiving any money in the action or by way of compromise without notice to the solicitors (*Lloyd v. Jones*, 27 W. R. 655; 40 L. T. 514, Fry, J.). And see *Kirby v. Carter*, *Hayton v. Kirby*, W. N. (1871), 162.

As to the meaning of "property recovered or preserved," see the remarks of Jessel, M. R., in *Foxon v. Gascoigne*, 9 Ch., p. 657; 43 L. J. Ch. 729. "No doubt it [the section] applies to property of all kinds: personal property and real property, corporeal and incorporeal property, property in possession, and property in remainder or reversion. Whenever any property has been recovered or preserved, there the Act may be said to apply," *per* Mellish, L. J., in *Foxon v. Gascoigne*, 9 Ch., p. 660; 43 L. J. Ch. 729. The section extends to a chose in action (*Birchall v. Pugin*, L. R. 10 C. P. 397). Property has been held to be recovered or preserved in the following cases: Where a *cestui que trust* obtained the appointment of a receiver in a suit against a trustee, though the suit was subsequently compromised (*Twynam v. Porter*, 11 Eq. 181; 40 L. J. Ch. 617; and see *Baile v. Baile*, 13 Eq. 507); where a mortgagee obtained a foreclosure decree (*Wilson v. Round*, 4 Giff. 416; 10 Jur. N. S. 34); where land was recovered in ejectment (*Wilson v. Hood*, 33 L. J. Ex. 204; 3 H. & C. 148; 10 Jur. N. S. 592); where the client was defendant in a foreclosure suit, the result of which was that the chance of foreclosure was lessened (*Scholefield v. Lockwood*, 7 Eq. 83); where a suit was successfully conducted against an incumbrancer, whose incumbrance, though valueless, was a cloud upon the title (*Jones v. Frost, re Fiddley*, 7 Ch. 773); where judgment was recovered in an action of detinue, and the proceeds of the goods were subsequently paid into Court in an administration suit (*Catlow v. Catlow*, 2 C. P. D. 362; 25 W. R. 866); where the defendant paid money into Court in the action (*Clover v. Adams*, 6 Q. B. D. 622; *Emden v. Carte*, 19 Ch. D. 311; 30 W. R. 17; where

What is
recovery or
preserva-
tion.

an order was made under the Declaration of Titles Act (*Pritchard v. Roberts*, 17 Eq. 222); and see also *Smith v. Winter*, 18 W. R. 447; *Re Keane, Lumley v. Desborough*, 12 Eq. 115; 40 L. J. Ch. 617; *Morris v. Francis*, cited 12 Sol. J. 718; *The Phillipine*, L. R. 1 A. & E. 309; 15 W. R. 462.

Where, however, in an administration suit by a residuary legatee an ordinary decree for administration and the appointment of a new trustee was made, and the decree was carried into chambers, and the accounts brought in but all further proceedings were then stopped by the plaintiff, Lord Selborne, L. C., held that no property had been recovered or preserved (*Pinkerton v. Euston*, 16 Eq. 490; 42 L. J. Ch. 878). And a suit which only relates to an easement is not one in which property can be said to be recovered or preserved, even though a mandatory injunction for pulling down buildings is refused (*Foxon v. Gascoigne*, 9 Ch. 654; 43 L. J. Ch. 729); the action, in fact, must be one for the recovery of property, or for the administration of property, or otherwise dealing with the ownership of property (*ibid.*).

Order,
how made.

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

362, following *Wilson v. Hood*, 3 H. & C. 148; 33 L. J. Ex. 204). The Court in which the action was brought may make the order notwithstanding a decree for administration (*Wilson v. Hood*; *Cutlow v. Catlow*). The order is properly made on petition, but the other parties to the action should not be served with the petition (*Brown v. Trotman*, 12 Ch. D. 880; 48 L. J. Ch. 862; 41 L. T. 179; 28 W. R. 164). The order may also be obtained on summons (*Clover v. Adams*, 6 Q. B. D. 622; *Hamer v. Giles*, *Giles v. Hamer* (M. R.), 11 Ch. D. 942; 48 L. J. Ch. 508; 41 L. T. 270; 27 W. R. 834); and is sufficient if intituled in the action, it need not be intituled either in the matter of the Act or of the solicitor (*ibid.*). A solicitor who has properly discharged himself is entitled to an order (*Clover v. Adams*).

By petition;

or summons.

How intituled.

For form of order see *Seton*, p. 643; R. S. C., April, 1880, Sched. H. 27. In making the order it is the duty of the Court to limit it to costs properly incurred (*Emden v. Carle*, 19 Ch. D. 311; 30 W. R. 17; 45 L. T. 328).

Form of order.

In *Pitcher v. Arden, re Brook*, 7 Ch. D. 318; 26 W. R. 273, the Court of Appeal varied the order of the Court below by striking out a direction that the amount should be raised by sale with the approbation of the judge, and inserting in its place a direction that either party should be at liberty to apply to the judge with reference to enforcing the charge by sale or otherwise.

The Statute of Limitations does not begin to run against the solicitor in respect of his claim for costs, while the proceedings are going on and his name is still on the record as solicitor (*Baile v. Baile*, 13 Eq. 497).

Statute of Limitations.

The fact of a solicitor having obtained a charging order under this section and afterwards a stop order, and having been subsequently served with proposed minutes of order on further consideration, does not entitle him to his costs of obtaining the stop order or the costs of his appearance on further consideration (*Mildmay v. Quicke*, 6 Ch. D. 553; 25 W. R. 788).

APPENDIX I.

ADDITIONAL RULES OF COURT UNDER THE SUPREME COURT OF JUDICATURE ACT, 1875.

ORDER VI.

The following regulations as to costs of proceedings in the Supreme Court of Judicature shall regulate such costs from the commencement of the Supreme Court of Judicature Acts, 1873 and 1875 :

Scales of costs.
" Lower scale."

1. Solicitors shall be entitled to charge and be allowed the fees set forth in the column headed "lower scale" in the schedule hereto—

In all actions for purposes to which any of the forms of indorsement of claim on writs of summons in Sections II., IV., and VII. in Part II. of Appendix A., referred to in the 3rd rule of Order III. in the Schedule to the Supreme Court of Judicature Act, 1875, or other similar forms, are applicable (except as after provided in actions for injunctions) ;

In all causes and matters by the 34th section of the Supreme Court of Judicature Act, 1873, assigned to the Queen's Bench Division of the Court ;

In all causes and matters by the 34th section of the said Act assigned to the Common Pleas Division of the Court ;

In all causes and matters by the 34th section of the said Act assigned to the Exchequer Division of the Court ;

In all causes and matters by the 34th section of the said Act assigned to the Probate, Divorce, and Admiralty Division of the Court ;

And also in causes and matters by the 34th section of the said Act assigned to the Chancery Division of the Court in the following cases; (that is to say,)

1. By creditors, legatees (whether specific, pecuniary, or residuary), devisees (whether in trust or otherwise), heirs-at-law or next-of-kin, in which the personal or real or personal and real estate for or against or in respect of which or for an account or administration of which the demand may be made shall be under the amount or value of £1,000.
2. For the execution of trusts or appointment of new trustees in which the trust estate or fund shall be under the amount or value of £1,000.
3. For dissolution of partnership or the taking of partnership or any other accounts in which the partnership assets or the estate or fund shall be under the amount or value of £1,000.

4. For foreclosure or redemption, or for enforcing any charge or lien in which the mortgage whereon the suit is founded, or the charge or lien sought to be enforced, shall be under the amount or value of £1,000.
5. And for specific performance in which the purchase money or consideration shall be under the amount or value of £1,000.
6. In all proceedings under the Trustees Relief Acts, or under the Trustee Acts, or under any of such Acts, in which the trust estate or fund to which the proceeding relates shall be under the amount or value of £1,000.
7. In all proceedings relating to the guardianship or maintenance of infants, in which the property of the infant shall be under the amount or value of £1,000.
8. In all proceedings by original special case, and in all proceedings relating to funds carried to separate accounts, and in all proceedings under any Railway or Private Act of Parliament, or under any other statutory or summary jurisdiction, and generally in all other cases where the estate or fund to be dealt with shall be under the amount or value of £1,000.

“ Higher scale.”

2. Solicitors shall be entitled to charge and be allowed the fees set forth in the column headed “higher scale” in the schedule hereto; in all actions for special injunctions to restrain the commission or continuance of waste, nuisances, breaches of covenant, injuries to property, and infringement of rights, easements, patents, and copyrights, and other similar cases where the procuring such injunction is the principal relief sought to be obtained, and in all cases other than those to which the fees in the column headed “lower scale” are hereby made applicable.

Discretion of the Court.

3. Notwithstanding these Rules, the Court or Judge may in any case direct the fees set forth in either of the said two columns to be allowed to all or either or any of the parties, and as to all or any part of the costs.

4. The provisions of Order LXIII. in the first schedule to the Supreme Court of Judicature Act, 1875, shall apply to these Rules.

Costs may be taxed on higher scale though Court fees have been paid on the lower.

The costs may be taxed on the higher scale although the Court fees have been paid, on the certificate of the plaintiff's solicitor during the progress of the suit, on the lower scale (*Flockton v. Peake*, 4 N. R. 456; 12 W. R. 1023).

Actions for administration.

In administration actions where the gross value of the estate to be administered amounts to £1,000 at the time the action is commenced the higher scale applies; and in estimating such value where the estate to be administered comprises an equity of redemption the value of the equity of redemption only, and not of the entire mortgaged estate, is to be regarded. If, however, in such a case the equity of redemption has been valued at the time of the institution of the action at such a sum as, with the rest of the estate to be administered, amounts to £1,000 or upwards, but it afterwards turns out on a sale by the mortgagees that the proceeds of such sale, together with the rest of the estate to be administered, amount to less than £1,000, the lower scale applies (*In re Sanderson*, 7 Ch. D. 176; 26 W. R. 309; 38 L. T. 379; *In re Reece's Estate*, *Gould v. Dummett*, 2 Eq. 609; 14 W. R. 1008; *Steward v. Nurse*, W. N. (1874), 38; 43 L. J. Ch. 384). But if the estate has been reduced

to below £1,000 before action brought, the lower scale applies (*Judd v. Plum*, 29 Beav. 21). Where the action was in substance merely an action for damages, although there was also a claim for administration "if necessary," the lower scale was held to apply, the action not being one of those assigned to the Chancery Division (*Rogers v. Jones*, 7 Ch. D. 345; 38 L. T. 17).

In a redemption action, where the amount due at the time the action is commenced is under £1,000, the lower scale applies, although the mortgage was made to secure a larger sum (*Cotterell v. Stratton*, 17 Eq. 543). And the lower scale also applies to interpleader suits where the amount in dispute is under the value of £1,000 (*Gibbs v. Gibbs*, 6 W. R. 415). Mortgages.
Interpleader suits.

Where the suit in addition to the recovery of money sought other relief, such as the appointment of new trustees, or the winding up of a benefit building society, it was held that though only £800 was recovered, the costs were properly taxed on the higher scale (*Grimes v. Harrison* (No. 2), 27 Beav. 198; 28 L. J. Ch. 828; and see *Earl of Stamford v. Dawson*, 4 Eq. 352; 15 W. R. 896). So, where an action on a bill of exchange was properly brought in the Chancery Division, the higher scale was allowed (*Pooley v. Driver*, 5 Ch. D. 458). Where higher scale allowed.

Where in an action for trespass to land the plaintiff claimed and obtained an injunction in addition to damages for the trespass, but the nature of the trespass did not involve any assertion of title, or any injury of a permanent irreparable character, it was held that this was not such an action for an injunction as to render the higher scale applicable (*Chapman v. Midland Ry. Co.*, 5 Q. B. D. 431; and see *Duke of Norfolk v. Arbutnot*, 6 Q. B. D. 279; 50 L. J. Q. B. 384; 29 W. R. 337). Where, however, the injunction was the principal relief sought and the action was brought to establish a right, the plaintiff was allowed costs on the higher scale (*Horner v. Oyley*, 49 L. J. C. P. 655; and see *Reade v. Bentley*, 3 K. & J. 271). Injunction.

It seems that r. 3 of this Order is not limited to costs in actions brought in the Chancery Division, but gives the Queen's Bench Division a discretionary power to order costs to be taxed on the higher scale, even though the cause of action involves no equitable element (*Duke of Norfolk v. Arbutnot*, 6 Q. B. D. 279). Discretion given by r. 3.

A judge has no power to delegate to a master the discretionary authority given him by r. 3 (*Corticene Floor Covering Co. v. Tull*, 27 W. R. 373).

As to the scale of costs on taxation of a solicitor's bill, see *In re Foster*, W. N. (1877), 175; 63 L. T. 192; the taxation is dealt with with reference to the value of the property in dispute, and does not depend on the amount of the bill. Scale of costs on taxation.

The general discretion of a judge of the Chancery Division over the costs of an action tried before him is limited by the provisions of the County Courts Act, 1867, s. 5, which, by the express words of s. 67 of the Judicature Act, 1873, now apply to all actions commenced in the High Court of Justice, in which any relief is sought of a kind which can be given in a County Court. Hence, if in any action founded on contract, commenced in the Chancery Division, the plaintiff shall recover a sum not exceeding £20, or if in any action founded on tort, he shall recover a sum not exceeding £10, whether by verdict, judgment, or default, or on demurrer or otherwise, he Where only costs on the County Court scale allowed.

will not be entitled to any costs of suit unless the judge certify on the record that there was sufficient reason for bringing such action in a Superior Court, or unless the Court or a Judge at Chambers shall by rule or order allow such costs. For cases on section 5, see Wilson's *Jud. Acts*, 2nd ed., p. 61.

But many actions are brought in the Chancery Division which cannot be said to be founded either on tort or on contract, yet in which relief is sought which can be given in a County Court, *e.g.*, actions for administration, actions for the execution of trusts, actions for partition, in which the estate to be administered or the trust fund does not exceed £500.

Now in all these cases any Judge of the Chancery Division is empowered by s. 8 of the County Courts Acts of 1867 (which also is expressly re-enacted by s. 67 of the Judicature Act, 1873) to transfer the action to the County Court, or one of the County Courts in which the same might have been commenced, either upon the application of any party to the suit, or without any such application if he shall see fit; and the action will then proceed in the same manner as if commenced in the County Court. Transfer under this section is a matter for the discretion of the Judge of the Chancery Division, with which the Court of Appeal will not interfere (*Linford v. Gudgeon*, 6 Ch. 359; 40 L. J. Ch. 514; 19 W. R. 577).

But if the Judge does not exercise the power conferred on him by s. 8 of the County Court Acts, 1867, then if the action be founded neither on tort nor on contract, there is no statutory provision applicable, and it follows that the costs are in the discretion of the Court in the ordinary way. But in exercising that discretion the Judge will of course have regard to the nature of the action and to the amount in dispute, and if he be *clearly* of opinion that the action ought to have been brought in a County Court, he will allow the plaintiff only the costs of a County Court suit. Thus, in *Simmons v. McAdam*, 6 Eq. 324; 16 W. R. 963, which was a suit to foreclose a mortgage for £40, and in *Ali v. Forrester*, 21 L. T. 819, which was a suit against trustees where the trust fund had been reduced to £500 before the filing of the bill, only County Court costs were allowed. But, on the other hand, in *Browne v. Rye*, 17 Eq. 343, and *Scotto v. Heritage*, 3 Eq. 212, which were both suits to foreclose mortgages for £50, the plaintiff in each case obtained his usual costs.

So in *Cholmondeley v. Phelps*, 16 Sol. J. 27, which was a suit to secure an annuity of £30, the M. R. thought the suit might have been brought in the County Court, but the question was not so clear as to disentitle the plaintiff to his ordinary costs. And see *Grandin v. Haines*, W. N. (1873), 12, 92.

SCHEDULE OF FEES TO SOLICITORS REFERRED TO IN THE
 ADDITIONAL RULES OF COURT UNDER THE SUPREME
 COURT OF JUDICATURE ACT, 1875.

WRITS, SUMMONSES, AND WARRANTS.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Writ of summons for the commencement of any action	0	6	8	0	13	4
And for endorsement of claims, if special	0	5	0	0	5	0
Concurrent writ of summons	0	6	8	0	6	8
Renewal of a writ of summons	0	6	8	0	6	8
Notice of a writ for service in lieu of writ out of juris- diction	0	4	0	0	5	0
Writ of inquiry	1	1	0	1	1	0
Writ of mandamus or injunction	0	10	0	1	1	0
By the rules of 6th April, 1880, writs of injunction are abolished.						
Or per folio	0	1	4	0	1	4
Writ of subpoena <i>ad testificandum duces tecum</i>	0	6	8	0	6	8
And if more than four folios, for each folio beyond four	0	1	4	0	1	4
Writ or writs of subpoena <i>ad testificandum</i> for any number of persons not exceeding three, and the same for every additional number not exceeding three	0	6	8	0	6	8
Writ of distringas, pursuant to statute 5 Vict. c. 8	0	13	4	0	13	4
By the rules of the 6th April, 1880, writs of distringas are abolished.						
Writ of execution, or other writ to enforce any judgment or order	0	7	0	0	10	0
And if more than four folios, for each folio beyond four	0	1	4	0	1	4
Procuring a writ of execution, of notice to the sheriff, marked ^{with} as a seal of renewal	0	6	8	0	6	8
Notice thereof to serve on sheriff	0	4	0	0	5	0
Any writ not included in the above	0	7	0	0	10	0
These fees include all endorsements and copies, præcipes, for the officer sealing them, and atten- dances to issue or seal, but not the court fees.						
*Summons to attend at Judge's Chambers	0	3	0	0	6	8
Or if special, at Taxing Officer's discretion, not exceeding	0	6	8	1	1	0
Copy for the judge, when required	0	2	0	0	2	0
Or per folio	0	0	0	0	0	4
Original summons for proceeding in Chambers in the Chancery Division	0	13	4	1	1	0
And attending to get same and duplicate sealed, and at the proper office to file duplicate and get copies for service stamped	0	13	4	0	13	4
Copy for the Judge	0	2	0	0	2	0
Or per folio	0	0	0	0	0	4
Endorsing same, and copies under 8th rule of the 35th of the Consolidated General Orders of the Court of Chancery	0	6	8	0	6	8

* See W. N. (1876), 22.

SERVICES, NOTICES, AND DEMANDS.

	Lower Scale.			Higher Scale.		
	s.	d.	c.	s.	d.	c.
Service of any writ, summons, warrants, interrogatories, petition, order, notice, or demand on a party who has not entered an appearance, and if not authorized to be served by post	0	5	0	0	5	0
If served at a distance of more than two miles from the nearest place of business or office of the solicitor serving the same, for each mile beyond such two miles therefrom	0	1	0	0	1	0
Where, in consequence of the distance of the party to be served, it is proper to effect such service through an agent (other than the London agent, for correspondence in addition	0	7	0	0	7	0
Where more than one attendance is necessary to effect service, or to ground an application for substituted service, such farther allowance may be made as the Taxing Officer thinks fit.						
For service out of the jurisdiction such allowance is to be made as the Taxing Officer shall think fit.						
Service where an appearance has been entered on the solicitor or party	0	2	6	0	2	6
Or if authorized to be served by post	0	1	6	0	1	6
Where any writ, order, and notice, or any two of them, have to be served together, one fee only for service is to be allowed.						
In addition to the above fees, the following allowances are to be made:—						
As to writs if exceeding two folios, for copy for service, 1pc folio beyond such two	0	0	4	0	0	4
*As to summons to attend at the Judge's Chambers for each copy to serve	0	1	0	0	2	0
Or per folio	0	0	4	0	0	4
As to notice in proceedings to wind up companies, for preparing or filling up such notice to creditors to attend and receive debts, and to contributories with list of contributories	0	1	0	0	1	0
And for preparing or filling up such notice to contributories to be served with a general order for a bill, or an order for payment of a bill	0	1	0	0	1	0
And for drawing notice to be served on contributories or creditors of a meeting, per folio	0	1	0	0	1	0
For each copy of the last mentioned notice to serve, per folio	0	0	4	0	0	4
For preparing or filling up for service in any other name or manner, such notice to creditors to prove claims, and such notice that dividends may be received, and from the amount to be received for principal and interest, and costs if any	0	1	0	0	1	0
For preparing notice to produce or admit, and one copy	0	5	0	0	7	6

SCHEDULE OF FEES UNDER ADDITIONAL RULES OF 1906. 281

	Lower Court	Higher Court
	d	c
If special or necessarily long, such allowance as the Taxing Officer shall think proper, not exceeding per folio	0 0 8	0 1 4
And for each copy beyond the first, such allowance as the Taxing Master shall think proper, not exceeding per folio	0 0 4	0 0 4
For preparing notice of motion	0 2 0	0 2 0
Or per folio	0 1 0	0 1 0
Copy for service	0 1 0	0 1 0
Or per folio	0 0 0	0 0 4
For preparing any necessary or proper notice, not otherwise provided for, and demand	0 1 0	0 1 0
Or, if special and necessarily exceeding three folios for preparing same, for each folio beyond three	0 1 0	0 1 0
And for each copy for service, per folio beyond such three folios for service of intercommissions and petitions, and of orders with necessary notices (if any), to accompany, per folio	0 0 4	0 0 4
Except as otherwise provided, the allowance for service includes copies for service.		
Where notice of filing affidavits is required, only one notice is to be allowed for a set of affidavits filed, or which ought to be filed together.		
In proceedings to wind up a company, the usual charges relating to printing shall be allowed in lieu of copies for service, where the fee for copies would exceed the charges for printing and amount to more than 2s.		
Where any appointment is or ought to be adjourned, service of a notice of the adjournment, or of such appointment, is not to be allowed.		

APPEARANCES.

Entering any appearance	0 6 8	0 6 8
If entered at one time, for more than one person, for every defendant beyond the first	0 1 0	0 4 0
If a person appearing for a set of witnesses to support his claim for defence by his nomination of appearance in addition to the above	0 6 8	0 6 8

PROCEEDINGS.

To sue or defend	0 6 8	0 12 4
For statement of complaint	0 12 4	2 2 0
For statement or further statement of defence	0 6 8	0 12 4
For counterclaims	0 0 8	0 12 4
For reply by plaintiff when defendant sets up a counterclaim	0 12 4	1 1 0
For reply, or further reply in any other case by plaintiff or other person, with or without notice of issue	0 6 8	0 12 4
For confession of defence	0 6 8	0 12 4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
For joinder of issue without other matter, and for demurrer	0	6	8	0	13	4
For special case, special petition, any other pleading (not being a summons), and interrogatories for examination of a party or witness	0	6	8	0	13	4
To amend any pleading	0	6	8	0	13	4
For affidavit in answer to interrogatories, and other special affidavits	0	6	8	0	6	8
To appeal	0	13	4	1	1	0
To add parties by order of Court or Judge	0	6	8	0	13	4
For counsel to advise on evidence when the evidence in chief is to be taken orally	0	6	8	0	6	8
Or not to exceed	0	13	4	1	1	0
For counsel to make any application to a Court or Judge where no other brief	0	6	8	0	10	0
For brief on motion for special injunction	0	13	4	1	1	0
For brief on hearing or trial of action upon notice of trial given, whether such trial be before a Judge or with or without a jury, or before an official or special referee, or on trial of an issue of fact before a Judge, commissioner, or referee, or on assessment of damages	1	1	0	2	2	0
For such brief, and for brief on the hearing of an appeal when witnesses are to be examined or cross-examined, such fee may be allowed as the Taxing Officer shall think fit, having regard to all the circumstances of the case, and to other allowances, if any, for attendances on witnesses and procuring evidence	0	0	0	0	0	0
The fees for instructions for brief are not to apply to a hearing on further consideration.						

DRAWING PLEADINGS AND OTHER DOCUMENTS.

Statement of claim	0	10	0	1	1	0
Or per folio	0	1	0	0	1	0
Statement of defence	0	5	0	0	10	0
Or per folio	0	1	0	0	1	0
Statement of defence or counter-claim	0	5	0	1	1	0
Or per folio	0	1	0	0	1	0
Reply, with or without joinder of issue, confession of defence, joinder of issue without other matter, demurrer, and any other pleading (not being a petition or summons), and amendments of any pleading	0	5	0	0	10	0
Or per folio	0	1	0	0	1	0
Particulars, breaches, and objections, when required, and one copy to deliver	0	5	0	0	6	8
Or such amount as the Taxing Officer shall think fit, not exceeding per folio	0	0	8	0	1	4
If more than one copy to be delivered, for each, other copy per folio	0	0	4	0	0	4
Special case, whether original or in action, affidavits in answer to interrogatories and other special affidavits, special petitions and interrogatories, per folio	0	1	0	0	1	0

SCHEDULE OF FEES UNDER ADDITIONAL RULES OF COURT. 583

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Brief, on trial or hearing of cause, issue of fact, assessment of damages, examination of witnesses, demurrer, special case, and petition before a Court or Judge, sheriff, commissioner, referee, examiner, or officer of the Court, when necessary and proper addition to pleadings, including necessary and proper observations, per folio	0	1	0	0	1	0
Brief on application to add parties	0	6	8	0	10	0
Or per folio	0	1	0	0	1	0
Brief on further consideration, per sheet of 10 folios	0	6	8	0	6	8
Accounts, statements, and other documents for the Judge's Chambers, when required, and fair copy to leave, per folio	0	0	8	0	1	4
Advertisements to be signed by Judge's clerk, including attendance therefor	0	6	8	0	13	4
Bill of costs for taxation, including copy for the Taxing Officer	0	0	8	0	0	8

COPIES.

Of pleadings, briefs, and other documents where no other provision is made, at per folio	0	0	4	0	0	4
Where, pursuant to Rules of Court, any pleading, special case or petition of right, or evidence is printed, the solicitor of the party printing shall be allowed for a copy for the printer (except when made by the officer of the Court), at per folio	0	0	4	0	0	4
And for examining the proof print, at per folio	0	0	2	0	0	2
And for printing the amount actually and properly paid to the printer, not exceeding per folio	0	1	0	0	1	0
And in addition for every 20 beyond the first 20 copies, at per folio	0	0	1	0	0	1
And where any part shall properly be printed in a foreign language, or as a facsimile, or in any unusual or special manner, or where any alteration in the document being printed becomes necessary after the first proof, such further allowance shall be made as the Taxing Officer shall think reasonable.						
These allowances are to include all attendances on the printer.						
The solicitor for a party entitled to take printed copies shall be allowed, for such number of copies as he shall necessarily or properly take, the amount he shall pay therefor.						
In addition to the allowances for printing and taking printed copies, there shall be allowed for such printed copies as may be necessary or proper for the following, but for no other purposes (videlicet) :—						
Of any pleading for delivery to the opposite party, or filing in default of appearance						
Of any special case for filing						

	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.
Of any petition of right for presentation, if presented in print, and for the Solicitor of the Treasury, and service on any party		
Of any pleading, special case, or petition of right, for the use of the Court or Judge		
Of any affidavit to be sworn to in print		
And of any pleading, special case, petition of right, or evidence for the use of counsel in Court, and in country agency causes, when proper to be sent as a close copy for the use of the country solicitor, at per folio	0 0 2	0 0 3
Such additional allowances for printed copies for the Court or Judge, and for counsel, are not to be made where written copies have been made previously to printing, and are not in any case to be made more than once in the progress of the cause.		
Close copies, whether printed or written, are not to be allowed as of course, but the allowance is to depend on the propriety of making or sending the copies, which in each case is to be shown and considered by the Taxing Officer.		
Inserting amendments in a printed copy of any pleading, special case, or petition of right, when not reprinted	0 1 0	0 5 0
Or per folio	0 0 4	0 0 4

PERUSALS.

Of statement of complaint, statement of defence, reply, joinder of issue, demurrer, and other pleading (not being a petition or summons), by the solicitor of the party to whom the same are delivered	0 6 8	0 13 4
Or per folio	0 0 0	0 0 4
Of amendment of any such pleading in writing	0 6 8	0 6 8
Or per folio	0 0 0	0 0 4
If same reprinted	0 6 8	0 13 4
Or per folio of amendment	0 0 0	0 0 4
Of interrogatories to be answered by a party by his solicitor	0 6 8	0 13 4
Or per folio	0 0 0	0 0 4
Of special case by the solicitor of any party, except the one by whom it is prepared	0 6 8	0 13 4
Or per folio	0 0 0	0 0 4
Of copy order to add parties, notice of defendant's claim against any person not a party to the action under Order 16, Rule 18, and of defendant's statement of defence and counter-claim, served on a person not a party under Order 22, Rule 6, by the solicitor of the party served therewith, and in these several cases the perusal of the plaintiff's statement of complaint is also to be allowed, unless the solicitor has been previously allowed such perusal	0 6 8	0 13 4
Or per folio	0 0 0	0 0 4

SCALE OF FEES UNDER ADDITIONAL RULES OF COURT. 585

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Of notice to produce and notice to admit by the solicitor of the party served	0	6	8	0	13	4
Of affidavit in answer to interrogatories by the solicitor of the party interrogating, and of other special affidavits by the solicitor of the party against whom the same can be read, per folio.	0	0	4	0	0	4

ATTENDANCES.

To obtain consent of next friend to sue in his name	0	6	8	0	13	4
To deliver or file any pleading (not being a petition or summons) and a special case	0	3	4	0	6	8
To inspect, or produce for inspection, documents pursuant to a notice to admit	0	6	8	0	13	4
Or per hour	0	6	8	0	6	8
To examine and sign admissions	0	6	8	0	13	4
To inspect, or produce for inspection, documents referred to in any pleading or affidavit, pursuant to notice under Order 31, Rule 14	0	6	8	0	6	8
Or per hour	0	6	8	0	6	8
To obtain or give any necessary or proper consent	0	6	8	0	6	8
To obtain an appointment to examine witnesses	0	6	8	0	6	8
On examination of witnesses before any examiner, commissioner, officer, or other person	0	13	4	0	13	4
Or according to circumstances, not to exceed	2	2	0	2	2	0
Or if without counsel, not to exceed	0	0	0	3	3	0
On deponents being sworn, or by a solicitor, or his clerk to be sworn, to an affidavit in answer to interrogatories or other special affidavit	0	6	8	0	6	8
On a summons at Judges' Chambers	0	6	8	0	6	8
Or according to circumstances, not to exceed	1	1	0	1	1	0
In the Chancery Division all allowances for attending at the Judges' Chambers are to be by the Judge or Chief Clerk as heretofore.						
To file Chief Clerk's and Taxing Master's certificates, and get copy marked as an office copy	0	6	8	0	6	8
On counsel with brief and other papers :—						
If counsel's fee one guinea	0	3	4	0	6	8
If more and under five guineas	0	6	8	0	6	8
If five guineas and under 20 guineas	0	6	8	0	13	4
If 20 guineas	0	13	4	1	1	0
If 40 guineas, or more	0	0	0	2	2	0
On consultation or conference with counsel	0	13	4	0	13	4
To enter or set down action, demurrer, special case, or appeal, for hearing or trial	0	6	8	0	6	8
In Court on motion of course, and on counsel, and for order	0	10	0	0	13	4
To present petition for order of course and for order	0	6	8	0	13	4
In Court on every special motion, each day	0	6	8	0	13	4
On same when heard each day	0	13	4	0	13	4
Or according to circumstances	1	1	0	2	2	0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
On demurrer, special case, or special petition, or application adjourned from the Judge's Chambers, when in the special paper for the day, or likely to be heard	0	6	8	0	10	0
On same when heard	0	13	4	1	1	0
Or according to circumstances not to exceed	1	1	0	2	2	0
On hearing or trial of any cause, or matter, or issue of fact, in London or Middlesex, or the town where the solicitor resides or carries on business, whether before a Judge with or without a jury, or commissioner, or referee, or on assessment of damages, when in the paper	0	10	0	0	10	0
When heard or tried	0	13	4	1	1	0
Or according to circumstances	2	2	0	2	2	0
When not in London or Middlesex, nor in the town where the solicitor resides or carries on business, for each day (except Sundays) he is necessarily absent	2	2	0	3	3	0
And expenses (besides actual reasonable travelling expenses) each day, including Sundays	1	1	0	1	1	0
Or if the solicitor has to attend on more than one trial or assessment at the same time and place, in each case	1	1	0	1	11	6
The expenses in such case to be rateably divided.						
To hear judgment when same adjourned	0	6	8	0	13	4
Or according to circumstances	0	13	4	1	1	0
To deliver papers (when required) for the use of a Judge prior to a hearing	0	6	8	0	6	8
If more than one Judge	0	13	4	0	13	4
On taxation of a bill of costs	0	6	8	0	6	8
Or according to circumstances not to exceed	2	2	0	2	2	0
In causes for purposes within the cognizance of the Court of Chancery before the Act passed, such further fee as the Taxing Officer may think fit, not exceeding the allowances heretofore made.						
To obtain or give an undertaking to appear	0	6	8	0	6	8
To present a special petition, and for same answered	0	6	8	0	6	8
On printer to insert advertisement in <i>Gazette</i>	0	6	8	0	6	8
On printer to insert same in other papers, each printer	0	0	0	0	6	8
Or every two	0	6	8	0	0	0
On registrar to certify that a cause set down is settled, or for any reason not to come into the paper for hearing	0	6	8	0	6	8
For an order drawn up by chief clerk, and to get same entered	0	6	8	0	6	8
On counsel to procure certificate that cause proper to be heard as a short cause, and on registrar to mark same	0	6	8	0	6	8
To mark conveyancing counsel or Taxing Master	0	6	8	0	6	8
For preparing and drawing up an order made at chambers in proceedings to wind up a company, and attending for same, and to get same entered	0	13	4	0	13	4
And for engrossing every such order, per folio	0	0	4	0	0	4

NOTE.—An order of course means an order made on an *ex parte* application, and to which a party is entitled as of right on his own statement and at his own risk.

OATHS AND EXHIBITS.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Commissioners to take oaths or affidavits—For every oath, declaration, affirmation, or attestation upon honour, in London or the country	0	1	6	0	1	6
The solicitor for preparing each exhibit, in town or country	0	1	0	0	1	0
The commissioner for marking each exhibit	0	1	0	0	1	0

TERM FEES.

For every term commencing on the day the sittings in London and Middlesex of the High Court of Justice commence, and terminating on the day preceding the next such sittings, in which a proceeding in the cause or matter by or affecting the party, other than the issuing and serving the writ of summons, shall take place	0	15	0	0	15	0
And further in country agency causes or matters, for letters	0	6	0	0	6	0

Where no proceeding in the cause or matter is taken which carries a term fee, a charge for letters may be allowed, if the circumstances require it.

In addition to the above, an allowance is to be made for the necessary expense of postages, carriage, and transmission of documents.

PAYMASTER-GENERAL.

For attending the Paymaster-General, to bespeak and afterwards to procure his directions for payment in of money into Court, attending at the Bank of England paying money in, and at the report office for office copy receipt	0	13	4	0	13	4
Where the sum paid in shall amount to £100	1	1	0	1	1	0
And where the sum shall amount to £1,000	0	0	0	2	2	0
And where the sum shall amount to £5,000	0	0	0	3	3	0
Paid for office copy receipt, per folio	0	0	6	0	0	6
Drawing request to invest cash	0	2	6	0	2	6
Attending the Paymaster-General with same	0	6	8	0	6	8
Attending the Registrar, and bespeaking his direction for the sale or transfer of stock	0	6	8	0	6	8
Attending the Paymaster-General with same	0	6	8	0	6	8
Attending and identifying the party on his receiving cheque	0	6	8	0	6	8

COST OF PROCEEDINGS IN THE PAYMASTER-GENERAL'S OFFICE.

Attending bespeaking certificate of fund in Court	0	6	8	0	6	8
Attending bespeaking manuscript of accounts	0	6	8	0	6	8
Paid for office copy, certificate of payment in, at per folio	0	0	6	0	0	6
Drawing request to Paymaster-General to lay out cash	0	2	6	0	2	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending the Paymaster-General with request to lay out cash	0	6	8	0	6	8
Drawing request to carry over cash or stock to separate the account of A. B. in his books, each	0	2	6	0	2	6
Attending the Paymaster-General with request to carry over cash or stock to account in his books	0	6	8	0	6	8
Drawing request to place cash on deposit	0	2	6	0	2	6
Attending Paymaster-General with same	0	6	8	0	6	8
Drawing request to Paymaster-General to withdraw cash on deposit	0	2	6	0	2	6
Attending him with same	0	6	8	0	6	8
Attending the Registrar for directions to the Paymaster-General to sell or transfer stock, each	0	6	8	0	6	8
Attending Paymaster-General with same	0	6	8	0	6	8

ALLOWANCES TO WITNESSES.

	Per Day.		
	£	s.	d.
Accountants, auctioneers, clerks to solicitors	0	10	6 to 1 1 0
Artisans, journeymen, and labourers	0	5	0 „ 0 7 6
Bankers, clergymen, esquires, merchants, notaries, and gentlemen			1 1 0
Engineers and surveyors	1	1	0 „ 3 3 0
Farmers, tradesmen (masters and yeomen)	0	7	6 „ 0 15 0
Females, according to station of life	0	5	0 „ 1 0 0
Governors of gaols to bring up prisoners	0	10	0 „ 1 1 0
Police inspectors	0	5	0 „ 0 10 0
Police constables	0	3	0 „ 0 7 6
Solicitors	1	1	0 „ 3 3 0
Travelling expenses not exceeding per mile, one way			0 1 0

SPECIAL EXAMINERS' FEES AND CHARGES.

(8th May, 1845; Ord. 110. Stat. 15 & 16 Vict. c. 86, s. 31.)

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
For every day in which he is necessarily, and without any default of his own, detained in the performance of his duty, as special examiner, for his expenses the sum of	2	2	0			
For every day in which he is <i>bonâ fide</i> employed in the examination of witnesses, the further sum of	3	3	0			
For every mile he travels from his place of residence to the place of examination, and from place to place where the examination is adjourned, and from the place where he last acts in the examination of witnesses, to his place of residence, the sum of	0	1	6			

The sum of £2 2s. a day allowed for expenses is a fixed sum, payable in every case, without reference to the amount of expenses actually incurred by the examiner, and does not include the expense of hiring a room for the purpose of the examination (*Wright v. Larmuth*, 10 Eq. 139).

SCHEDULE REFERRED TO IN THE 13TH RULE OF THE
GENERAL ORDER OF FEBRUARY 5, 1861.

Showing the expenses to be allowed to an examiner of the Court when acting under any such order as mentioned in the 12th Rule of that Order (the rule requiring the examiner to attend the examination or cross-examination of witnesses who are old, infirm, or out of the jurisdiction).

	£	s.	d.
For every day in which he is necessarily, and without any default of his own, detained in the performance of such duty, for his expenses the sum of	1	1	0
For every mile he travels from the examiner's office to the place of examination and from one of the places of examination or cross-examination (if more than one) to another of them, and from the place where he last acts in such examination or cross-examination to the examiner's office, the sum of	0	1	6

ORDER AS TO COURT FEES UNDER THE SUPREME COURT
OF JUDICATURE ACT, 1875.

October 28, 1875.

I.

The fees and percentages contained in the schedule hereto are fixed and appointed to be, and shall be taken in the High Court of Justice, and in the Court of Appeal, and in any Court to be created by any commission, and in any office which is connected with any of those Courts, or in which any business connected with any of those Courts is conducted, and by any officer paid wholly or partly out of public moneys who is attached to any of those Courts or the Supreme Court, or any Judge of those Courts, or any of them; and the said fees and percentages shall be taken by stamps, except those taken in the District Registries, which shall, until further order, be taken in money, and applied and accounted for in such manner as the Treasury may from time to time direct.

II.

The fees and percentages set forth in the column headed Lower Scale in the schedule hereto are to be taken and paid in all cases in which the lower scale of fees is to be charged and allowed to solicitors under the provisions of the Additional Rules of Court under the Supreme Court of Judicature Act, 1875, issued by Order in Council, dated the 12th day of August, 1875, and the fees and percentages set forth in the column headed Higher Scale in the schedule hereto are to be taken and paid in all other cases.

III.

In causes and matters by the 34th section of the Supreme Court of Judicature Act, 1873, assigned to the Chancery Division :

The solicitor or party acting in person shall, on any proceeding in which he

claims to pay fees according to the Lower Scale, file with the proper officer a certificate in the form hereunder set forth, of which certificate the officer is at the request of any solicitor or any party acting in person in the cause or matter to mark a copy without a fee.

On production of such copy of the certificate all officers of the Court are to receive and file all proceedings in the cause or matter bearing stamps according to the Lower Scale.

In any case certified for the Lower Scale of Court fees, in which it shall happen that the solicitor shall become entitled to charge and be allowed according to the High Scale of solicitor's fees, the deficiency in the fees of Court is to be made good.

In any case in which the fees have been paid upon the Higher Scale, and in which it shall happen that the solicitor shall become entitled to charge and be allowed only according to the Lower Scale of solicitors' fees, the excess of fees so paid may be allowed upon the taxation of costs, if the circumstances of the case shall, in the judgment of the taxing officer, justify such allowance.

IV.

The provisions in this Order shall not apply to or affect any of the matter following (that is to say):—

The existing fees and percentages in respect of any of the jurisdictions which are not, by the Supreme Court of Judicature Act, 1873 and 1875, transferred to the High Court of Justice or the Court of Appeal;

The existing fees and percentages in respect of any matter at the time of the passing of the Supreme Court of Judicature Act, 1875, within the jurisdiction of the Court of Probate, the Court for Divorce and Matrimonial Causes, or the Admiralty Court, or relating to any appeal from the Chief Judge in Bankruptcy, except so far as the procedure in any such matter, or the fees or percentages to be taken in respect thereof, is or are expressly varied by the schedule to the said Act, or by this Order, or by any Rules of Court made or to be made by Order in Council before the commencement of the said Act;

The existing fees and percentages in respect of any criminal proceedings, other than such proceedings on the Crown side of the Queen's Bench Division as the scale contained in the schedule hereto may be applicable to;

The existing fees and percentages in respect of matters on the Revenue side of the Exchequer Division and proceedings and business in the Office of the Queen's Remembrancer other than such matters, proceedings, and business as the scale contained in the schedule hereto may be applicable to;

The existing fees and percentages authorised to be taken by any sheriffs, under sheriffs, deputy sheriffs, bailiffs, or other officers or ministers of sheriffs;

The existing fees and percentages directed to be taken or paid by any Act of Parliament, and in respect of which no fee or percentage is hereby provided;

The existing fees and percentages which shall have become due or payable before the commencement of the Judicature Acts, 1873 and 1875;

The existing fees and percentages in respect of any proceedings in any cause or matter pending at the commencement of the said Acts, and in respect of which no fee or percentage is hereby provided.

V.

The existing rules and practice, applicable to proceedings by persons suing in formâ pauperis, shall continue and be applicable to proceedings to which this Order relates.

VI.

Save as otherwise provided by this Order all existing fees and percentages which may be taken in any of the Courts whose jurisdiction is, by the Judicature Acts, 1873 and 1875, transferred to the High Court of Justice or Court of Appeal, or in any office which is connected with any of those Courts, or in which any business connected with any of those Courts is conducted, or by any officer paid wholly or partly out of public moneys who is attached to any of those Courts or the Supreme Court, or any judge of those Courts, or any of them, shall be and are hereby abolished.

VII.

A folio is to comprise 72 words, every figure comprised in a column being counted as one word.

VIII.

The provisions of Order LXIII. in the first Schedule to the Supreme Court of Judicature Act, 1875, shall apply to this Order.

IX.

This Order shall come into operation at the time of the commencement of the Supreme Court of Judicature Acts, 1873 and 1875.

Form of Certificate for paying Lower Scale of Court Fees above referred to.

(Title of cause or matter.)

I hereby certify that to the best of my judgment and belief the Lower Scale of Fees of Court is applicable to this case.

Dated, &c.

A. B.
Solicitor for Plaintiff or Defendant.

SCHEDULE AS TO COURT FEES REFERRED TO IN THE
ORDER OF 28TH OCTOBER, 1875.

SUMMONSES, WRITS, COMMISSIONS, AND WARRANTS.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
On sealing a writ of summons for commencement of an action	0	5	0	0	10	0
On sealing a concurrent, renewed or amended writ of summons for commencement of an action	0	2	6	0	2	6
On sealing a notice for service under Order 16, Rule 18	0	2	6	0	2	6
On sealing a writ of mandamus or injunction	0	10	0	1	0	0
By the Rules of 6th April, 1880, writs of injunction are abolished.						
On sealing a writ of subpoena not exceeding three persons	0	2	6	0	5	0
On sealing every other writ	0	5	0	0	10	0
On sealing a summons to originate proceedings in the Chancery Division	0	5	0	0	10	0
On sealing a duplicate thereof	0	1	0	0	5	0
On sealing a copy of same for service	0	1	0	0	5	0
On sealing or issuing any other summons or warrant	0	2	0	0	3	0
On sealing or issuing a commission to take oaths or affidavits in the Supreme Court	5	0	0	5	0	0
Every other commission	1	0	0	1	0	0
On marking a copy of a petition of right for service	0	1	0	0	5	0

APPEARANCES.

On entering an appearance for each person	0	2	0	0	2	0
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COPIES.

For a copy of a written deposition of a witness to enable a party to print the same, for each folio	0	0	4	0	0	4
For examining a written or printed copy, and marking same as an office copy, for each folio	0	0	2	0	0	2
For making a copy and marking same as an office copy, for each folio	0	0	6	0	0	6
For a copy in a foreign language, the actual cost.						
For a copy of a plan, map, section, drawing, photograph, or diagram, the actual cost.						
For a printed copy of an order, not being an office or certified order, for each folio	0	0	1	0	0	1

ATTENDANCES.

On an application, with or without a subpoena, for any officer to attend as a witness, or to produce any record or document to be given in evidence (in addition to the reasonable expenses of the officer) for each day or part of a day he shall necessarily be absent from his office	1	0	0	1	0	0
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Lower Scale. Higher Scale.
 £ s. d. £ s. d.

The officer may require a deposit of stamps on account of any further fees, and a deposit of money on account of any further expenses which may probably become payable beyond the amount paid for fees and expenses on the application, and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof on the application.

The officer may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amounts so paid and deposited.

OATHS, &c.

For taking an affidavit, or an affirmation, or attestation upon honour in lieu of an affidavit or a declaration, except for the purpose of receipt of dividends from the Paymaster-General, for each person making the same	0	1	6	0	1	6
And in addition thereto for each exhibit therein referred to and required to be marked, whether annexed or not	0	1	0	0	1	0

FILING.

On filing a special case or petition of right	0	10	0	1	0	0
On filing an affidavit with exhibits (if any) annexed, submission to arbitration, award, bill of sale, warrant of attorney, cognovit, bail, satisfaction piece, and writ of execution with return	0	2	0	0	2	0
On filing a scheme pursuant to the statute 30 & 31 Vict., c. 127, or the Liquidation Act, 1868	1	0	0	1	0	0
On filing a caveat	0	5	0	0	5	0

CERTIFICATES.

For a certificate of appearance, or of a pleading, affidavit, or proceeding having been entered, filed or taken, or of the negative thereof	0	1	0	0	4	0
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SEARCHES AND INSPECTIONS.

On an application to search for an appearance or an affidavit, and inspecting the same	0	1	0	0	1	0
On an application to search an index, and inspect a pleading, decree, order, or other record, unless otherwise expressly provided for by any Act of Parliament or this Order, and to inspect documents deposited for safe custody or production pursuant to an order, for each hour or part of an hour occupied	0	2	6	0	2	6
Not exceeding one day	0	10	0	0	10	0

EXAMINATION OF WITNESSES.

For every witness sworn and examined by an examiner or other officer in his office, including oath, for each hour	0	10	0	0	10	0
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	Lower Scale.			Higher Scale		
	£	s.	d.	£	s.	d.
For an examination of witnesses by any such officer away from the office (in addition to reasonable travelling and other expenses) per day	3	0	0	3	0	0
The officer may require a deposit of stamps on account of fees, and a deposit of money on account of expenses, which may probably become payable beyond any amount paid for fees and expenses upon the examination, and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof, and deliver the same to the party making the deposit.						
The officer may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amount so paid and deposited.						
These fees are not to apply to the examination of witnesses for the purpose of any inquiry, taxation of costs, or other proceeding before the officer.						

HEARING.

For entering or setting down, or re-entering or resetting down an appeal to the Court of Appeal, or a cause for trial or hearing in any Court in London and Middlesex, or at any assizes, including a demurrer, special case, and petition of right, but not any other petition, nor a summons adjourned from Chambers	1	0	0	2	0	0
For a certificate of an associate of the result of trial	1	0	0	1	0	0

JUDGMENTS, DECREES, AND ORDERS.

For drawing up and entering a judgment, or a decree, or decretal order, whether on the original hearing of a cause or on further consideration, including a cause commenced by summons at Chambers, and an order on the hearing of a special case or petition, and any order by the Court of Appeal	0	10	0	1	0	0
For drawing up and entering any other order, whether made in Court or at Chambers	0	3	0	0	5	0
For a copy of a plan, map, section, drawing, photograph, or diagram, required to accompany any order, the actual cost.						

TAKING ACCOUNTS.

On taking an account of a receiver, guardian, consignee, bailee, manager, provisional, official, or voluntary, liquidator, or sequestrator, or of an executor, administrator, trustee, agent, solicitor, mortgagee, co-tenant, co-partner, execution creditor, or other person liable to account, when the amount found to have been received without deducting any payment shall not exceed £200	0	2	0	0	2	0
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	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.
Where such amount shall exceed £200, for every £50 or fraction of £50	0 0 6	0 0 6
<p>In the case of any such receiver, guardian, consignee, bailee, manager, liquidator, sequestrator, or execution creditor, the fees shall, upon payment, be allowed in the account unless the Court or Judge shall otherwise direct, and in the case of taking the accounts of such other accounting parties the fees shall be paid by the party having the conduct of the order under which such account is taken, as part of his costs of the cause or matter (unless the Court or Judge shall otherwise direct), and in such case shall be taken upon the certificate of the result of any such account; but the fees shall be due and payable, although no certificate is required, on the account taken, or on such part thereof as may be taken, and the solicitor or party suing in person shall in such case cause the proper stamps (the amount thereof to be fixed by the officer) to be impressed on or affixed to the account.</p> <p>The officer taking the account may require a deposit of stamps on account of fees before taking the account, not exceeding the fees on the full amount appearing by the account to have been received, and the officer or his clerk taking such deposit shall make a memorandum thereof on the account.</p>		

TAXATION OF COSTS.

For taxing a bill of costs where the amount allowed does not exceed £8	0 2 0	0 4 0
Where the amount exceeds £8, for every £2 allowed, or a fraction thereof	0 0 6	0 1 0
<p>These fees, except where otherwise provided, shall be taken on signing the certificate or on the allowance of the bill of costs, as taxed, but the fees shall be due and payable if no certificate or allocatur is required on the amount of the bill as taxed, or on the amount of such part thereof as may be taxed, and the solicitor or party suing in person shall in such case cause the proper stamps (the amount thereof to be fixed by the officer) to be impressed on or affixed to the bill of costs.</p> <p>The Taxing Officer may require a deposit of stamps on account of fees before taxation not exceeding the fees on the full amount of the costs as submitted for taxation, and the officer or his clerk on taking such deposit shall make a memorandum thereof on the bill of costs.</p>		
For a certificate or allocatur of the result, not being a judgment	0 0 0	1 0 0
<p>The 58th Rule of Order 5 of the Chancery Funds Consolidated Rules, 1874, shall continue in force and be acted on in cases to which it is applicable.</p>		

PETITIONS.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
For answering a petition for hearing in Court, and setting down	0	5	0	1	0	0
For answering a non-attendable petition, not being a petition for an order of course	0	5	0	0	10	0
On a matter of course order, on a petition of right	0	10	0	0	10	0
On an order for a commission on a petition of right	1	0	0	1	0	0

REGISTER OF JUDGMENTS AND LIS PENDENS.

For registering a judgment or lis pendens, although more than one name may have to be registered	0	2	6	0	2	6
For re-registering same	0	1	0	0	1	0
For a search for each name	0	1	0	0	1	0
For a certificate of entry of satisfaction	0	1	0	0	1	0
For certificate of a judgment for registration in Ireland or Scotland under the Judgments Extension Act, 1868, including affidavit	0	2	0	0	2	0
On filing for registration a certificate issued out of Courts of Dublin or Court of Session in Scotland under the same Act, although more than one name may have to be registered under the same Act	0	7	0	0	7	0
On every certificate of the entry of a satisfaction under the same Act	0	1	0	0	1	0
For a search made in one or both of the registers of Irish and Scotch judgments for each name	0	1	0	0	1	0

MISCELLANEOUS.

On a report of a Private Bill in Parliament	5	0	0	5	0	0
On an allowance of bye-laws or table of fees	1	0	0	1	0	0
On a fiat of a Judge	0	5	0	0	5	0
On signing an advertisement	0	0	0	1	0	0
Upon a reference to a Master of the Queen's Bench, Common Pleas, or Exchequer Divisions, or a District Registrar, for the purpose of any investigation or inquiry other than the taking of an account for which another fee is herein provided, for every hour or part of an hour the Master or Registrar is occupied	0	10	0	0	10	0
A deposit on account of fees before proceeding with such reference, or at any time during the course thereof, may be required, and a memorandum thereof shall be delivered to the party making the deposit.						
On taking acknowledgment of a deed by a married woman	1	0	0	1	0	0
On taking a recognizance or bond	0	10	0	0	10	0
On taking bail, and taking same off the file and delivering	0	2	0	0	2	0
On a commitment	0	5	0	0	5	0
On an application to produce Judge's notes	0	5	0	0	5	0
On appointment of commissioners inderglebe exchange	1	0	0	1	0	0
On examining and signing inrolments of decrees and orders	3	0	0	3	0	0

SCHEDULE TO ORDER AS TO COURT FEES.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
On admission or readmission of a solicitor	5	0	0	5	0	0
On a written request for information at the Chancery Pay Office	0	2	6	0	2	6
For preparing a power of attorney at the Chancery Pay Office	0	3	0	0	3	0
For transcript of an account in the books at the Chan- cery Pay Office, for each opening	0	2	0	0	2	0

APPENDIX II.

Forms of Writs of Execution.

1. *Writ of Fieri Facias on a judgment or order for the payment of money, interest and costs.*

VICTORIA, &c.

To the Sheriff of —, greeting.

WE command you, that of the goods and chattels of C. D., in your bailiwick, you cause to be made the sum of £—, and also interest thereon, at the rate of £— per centum per annum, from the — day of 18—*, which said sum of money and interest were lately before us in our High Court of Justice, in a certain action [or certain actions, as the case may be] wherein A. B. is plaintiff and C. D. and others are defendants, [or in a certain matter there depending, intituled, “In the matter of E. F.,” as the case may be], by a judgment [or order, as the case may be] of our said Court, bearing date the — day of —, 18—, adjudged [or ordered, as the case may be] to be paid by the said C. D. to A. B., together with certain costs in the said judgment [or order, as the case may be] mentioned, and which costs have been taxed and allowed by one of the Taxing Masters of our said Court at the sum of £—, as appears by the certificate of the said Taxing Master, dated the — day of —, 18—. And that of the goods and chattels of the said C. D. in your bailiwick, you further cause to be made the sum of £— [costs], together with interest thereon, at the rate of £4 per centum per annum, from the — day of —, 18— [date of the certificate of taxation], and that you have that money and interest before us in our said Court immediately after the execution hereof to be paid to the said A. B. in pursuance of the said judgment [or order, as the case may be]. And in what manner you shall have executed this our writ make appear to us in our said Court, immediately after the execution thereof: And have there then this writ.

Witness, ROUNDELL BARON SELBORNE, Lord High Chancellor of Great Britain, the — day of —, in the year of our Lord one thousand eight hundred and eighty-

2. *Writ of Elegit on a judgment or order for payment of money, interest, and costs.*

VICTORIA, &c.

To the Sheriff of —, greeting.

WHEREAS lately in our High Court of Justice in a certain action [or matter there depending, intituled “In the matter of” &c., or as the case may be], wherein — is plaintiff, and — is defendant, by a judgment [or order] of our said Court, made in the said action [or matter, as the case may be], and bearing date the — day of —, it was adjudged [or awarded or ordered, as the case may be] that — should pay to — the sum of £—, with interest thereon after the rate of — pounds per centum per annum, from the — day of —, and with certain costs as in the said judgment [or order] mentioned, and which costs have been taxed and allowed by one of the Taxing Masters of our said Court, at the sum of £—, as appears by a certificate dated the — day

* Day of the judgment or order, or day on which money directed to be paid, or day from which interest is directed by the order to run, or as the case may be. The writ must be so moulded as to follow the substance of the judgment or order.

of —. And afterwards the said — came into our said Court, and chose to be delivered to him all the goods and chattels of the said — in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said — or any one in trust for him was seised or possessed of on the — day of —, in the year of our Lord one thousand eight hundred and — [date of judgment or order], or at any time afterwards, or over which the said — on the said — day of —, or at any time afterwards, had any disposing power which he might without the assent of any other person exercise for his own benefit; to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £— and £— [the costs] with interest on the said sum of £— at the rate of — per centum per annum, from the said — day of —, and on the said sum of £— [the costs] at the rate of four pounds per centum per annum, from the — day of — [the date of the certificate] shall have been levied. Therefore we command you, that without delay you cause to be delivered to the said — by a reasonable price and extent, all the goods and chattels of the said — in your bailiwick, except his oxen and beasts of the plough, and also all such lands, and tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said — or any person or persons in trust for him was or were seised or possessed of on the said — day of — [date of judgment or order] or at any time afterwards, or over which the said — on the said — day of — or at any time afterwards, had any disposing power which he might without the assent of any other person, exercise for his own benefit; to hold the said goods and chattels to the said — as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and his assigns, until the said two several sums of £— and £—, together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us in our Court aforesaid, immediately after the execution thereof, under your seals and the seals of those by whose oath you shall make the said extent and appraisement; and have there then this writ.

Witness, &c.

3. Writ of Venditioni Exponas.

VICTORIA, &c.

To the Sheriff of —, greeting.

WHEREAS by our writ we lately commanded you that of the goods and chattels of C. D. [here recite the fieri facias to the end]. And on the — day of — you returned to us — that by virtue of the said writ to you directed you had taken goods and chattels of the said C. D. to the value of the money and interest aforesaid, which said goods and chattels remained in your hands unsold for want of buyers. Therefore, we being desirous that the said A. B. should be satisfied his money and interest aforesaid, command you that you expose to sale and sell, or cause to be sold, the goods and chattels of the said C. D. by you in form aforesaid taken and every part thereof for the best price that can be gotten for the same, and have the money arising from such sale before us in our said Court of Justice immediately after the execution hereof to be paid to the said A. B. And have there then this writ.

Witness, &c.

4. *Writ of Fieri Facias de Bonis Ecclesiasticis.*

VICTORIA, &c.

To the Right Reverend Father in God [*John*] by Divine permission Lord Bishop of —, greeting.

WE command you, that of the ecclesiastical goods of C. D., clerk in your diocese, you cause to be made £—, which lately before us in our High Court of Justice in a certain action [*or certain actions, as the case may be*] wherein A. B. is plaintiff and C. D. is defendant [*or in a certain matter there depending, intituled "In the matter of E. F.," as the case may be*], by a judgment [*or order, as the case may be*] of our said Court bearing date the — day of —, was adjudged [*or ordered, as the case may be*] to be paid by the said C. D. to the said A. B., together with interest on the said sum of —, at the rate of £— per centum per annum, from the — day of — and have that money, together with such interest as aforesaid before us in our said Court immediately after the execution hereof, to be rendered to the said A. B., for that our Sheriff of — returned to us in our said Court on — [*or "at a day now past"*] that the said C. D. had not any goods or chattels or any lay fee in his bailiwick whereof he could cause to be made the said £— and interest aforesaid or any part thereof, and that the said C. D. was a beneficed clerk (to wit) rector of the rectory [*or vicar of the vicarage*] and parish church of —, in the said Sheriff's county, and within your diocese [*as in the return*], and in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution hereof, and have you there then this writ.

Witness, &c.

5. *Writ of Fieri Facias to the Archbishop de Bonis Ecclesiasticis during the Vacaney of a Bishop's See.*

VICTORIA, &c.

To the Right Reverend Father in God [*John*] by Divine Providence Lord Archbishop of Canterbury, Primate of all England and Metropolitan, greeting.

WE command you, that of the ecclesiastical goods of C. D. clerk in the diocese of —, which is in the province of Canterbury, as ordinary of that church, the episcopal see of — now being made vacant, you cause to be made [*&c., conclude as in the preceding form*].

6. *Writ of Sequestrari Facias de Bonis Ecclesiasticis.*

VICTORIA, &c.

To the Right Reverend Father in God [*John*], by Divine permission, Lord Bishop of —, greeting.

WHEREAS we lately commanded our Sheriff of — that he should omit not by reason of any liberty of his county, but that he should enter the same, and cause [to be made, *if after the return to a fi. fa., or delivered, if after the return*

to an elegit, &c., and in either case recite the former writ]. And whereupon our said Sherill of — on the — day of — one thousand eight hundred and — [or “at a day past”] returned to us in the — division of our said High Court of Justice, that the said — was a beneficed clerk, that is to say, rector of the rectory [or vicar of the vicarage] of the — and parish church of — in the county of — and within your diocese, and that he had not any goods or chattels or any lay fee in his bailiwick [*here follow the words of the Sheriff's return*]. Therefore we command you that you enter into the said rectory [or vicarage] and parish church of —, and take and sequester the same into your possession, and that you hold the same in your possession, until you shall have levied the said — and interest aforesaid, of the rents, tithes, rent-charges in lieu of tithes, oblations, obventions, fruits, issues, and profits thereof, and other ecclesiastical goods in your diocese of and belonging to the said rectory [or vicarage] and parish church of — and to the said — as rector [or vicar] thereof to be rendered to the said —, and what you shall do therein make appear to us in our said Court immediately after the execution thereof, and have you there then this writ.

Witness, &c.

7. Writ of Sequestration.

VICTORIA, &c.

To [*names of not less than four Commissioners*], greeting.

WHEREAS lately in the — Division of our High Court of Justice in a certain action there depending wherein A. B. is plaintiff and C. D. and others are defendants [or in a certain matter there depending, intituled “In the matter of” *as the case may be*] by a judgment [or order, *as the case may be*] of our said Court made in the said action [or matter], and bearing date the — day of — one thousand eight hundred and — it was ordered that the said C. D. should pay into Court to the credit of the said action the sum of £— [*or, as the case may be*]. Know ye therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give to you, or any three or two of you, full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said C. D., and to collect, receive, and sequester into your hands not only all the rents and profits of his said messuages, lands, tenements, and real estate, but also all his goods, chattels, and personal estates whatsoever; and therefore we command you, any three or two of you, that you do, at certain proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements, and real estates of the said C. D., and that you do collect, take, and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said C. D. shall pay into Court to the credit of the said action the sum of — [*or, as the case may be*], clear his contempt, and our said Court make other order to the contrary.

Witness, &c.

APPENDIX III.

PRECEDENTS OF BILLS OF COSTS.

Costs of Plaintiffs and Defendants in Action in which issue is joined; including Charges for Examination and Cross-Examination of Witnesses on Hearing of Action, and Notices to Admit and Produce.

IN THE HIGH COURT OF JUSTICE, 187 .

No.

CHANCERY DIVISION.

BETWEEN

AND

and others, Plaintiffs,

and others, Defendants.

*The Bill of Costs of the Plaintiffs to be taxed as between and , in
pursuance of Order made on the day of , 187 .*

Michaelmas Sitting, 1876.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
1876, November.						
Instructions to sue	0	6	8	0	13	4
Certificate of lower scale	0	5	0	0	0	0
(If an infant or married woman is plaintiff, charge).						
Drawing authority, and attending and obtaining consent of Mr. to sue in his name as next friend	0	6	8	0	13	4
Special indorsement	0	5	0	0	5	0
Attending Mr. with same to settle	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Paid issuing writ	0	5	0	0	10	0
Copy writ for service	0	0	8	0	0	8
If beyond two folios, at per folio	0	0	4	0	0	4
Service of same on each defendant	0	5	0	0	5	0
Mileage for each mile beyond two	0	1	0	0	1	0
(If served by agent.)						
Writing to agent with writ for service	0	3	6	0	3	6
On receipt of fee from agent returning writ duly served, writing him with charges for serving same	0	3	6	0	3	6
Paid his charges						
If undertaking is given to appear						
Attending Mr. on his giving undertaking to appear for defendant	0	6	8	0	6	8
Drawing and engrossing affidavit of service, at per folio	0	1	0	0	1	0
Paid Commissioner taking deponent's oath	0	1	6	0	1	6
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid, for office copy at per folio	0	0	2	0	0	2
(No charge for searching appearance is allowed now).						

PLAINTIFF'S BILL OF COSTS IN ACTION IN WHICH ISSUE IS JOINED. 603

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Instructions for statement of claim (In higher scale actions, the Taxing Master has the power to increase the allowance).	0	13	4	2	2	0
Drawing same	0	10	0	1	1	0
Or per folio	0	1	0	0	1	0
Charge for making copies of the necessary documents to enable counsel to settle same, at per folio	0	0	4	0	0	4
Attending Mr. with same.	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Summons for time to deliver statement of claim (In higher scale actions may be increased 21s., and in lower scale 6s. 8d.)	0	3	0	0	6	8
Paid sealing same	0	2	0	0	3	0
Making copy to leave at Chambers	0	2	0	0	2	0
Or per folio	0	0	0	0	0	4
Copy for service, each	0	1	0	0	2	0
Or per folio, each	0	0	4	0	0	4
Service of same on each solicitor	0	2	6	0	2	6
Attending summons when order made	0	6	8	0	6	8
Paid for order	0	3	0	0	5	0
Attending for order and entering same (If it is necessary to amend writ, charge.)	0	6	8	0	6	8
Preparing summons to amend writ, and attending at Chambers to get same sealed	0	3	0	0	6	8
Paid sealing same	0	2	0	0	3	0
Making copy to leave at Chambers	0	2	0	0	2	0
Or per folio	0	0	0	0	0	4
Copy for service	0	1	0	0	2	0
Or per folio	0	0	4	0	0	4
Service on each solicitor.	0	2	6	0	3	6
Attending summons when order made	0	3	0	0	5	0
Paid for order	0	6	8	0	6	8
Attending for order, and to get same entered	0	6	8	0	13	4
Attending amending writ at Record Office	0	6	8	0	13	4
Paid amending same	0	2	6	0	2	6
Copy amended writ for service, beyond 2 folios, at per folio	0	0	4	0	0	4
Service of same on solicitors for the defendants who had appeared, each (If some of the defendants have not appeared, charge the same for service as before.)	0	2	6	0	2	6
Engrossing statement of claim fo. 10	0	3	4	0	3	4
Making copies of statement of claim for delivery, at per folio each	0	0	4	0	0	4
If the statement of claim is above ten folios, charge making copy statement of claim for the printer at per folio	0	0	4	0	0	4
Examining and correcting proof at per folio	0	0	2	0	0	2
Paid printer's charges (minus £ . . . the amount received for copies)						
Copy statement of claim to deliver at per folio	0	0	2	0	0	3
Attending to deliver, each copy at	0	3	4	0	6	8
Attending summons for time, to deliver statement of defence when order made	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Perusing statement of defence	0	6	8	0	13	4
Or per folio	0	0	0	0	0	4
If agency, close copy print	0	0	2	0	0	3
If written	0	0	4	0	0	4
Paid defendant's solicitors for copies : 1 copy 1d., others at $\frac{1}{2}d.$						
Instructions to amend statement of claim	0	6	8	0	13	4
(In the higher scale actions this allowance may be increased by the Taxing Master.)						
Drawing amendments	0	5	0	0	10	0
Or per folio	0	1	0	0	1	0
Attending Mr. with same to settle	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending counsel for same when it appeared by his opinion on settling amendments he required further information. If agency, charge making close copy opinion, at per folio	0	0	4	0	0	4
On obtaining the information counsel required, attend- ing appointing conference with him to finally settle amendments	0	3	4	0	6	8
Paid conference fee to him and clerk	1	6	0	1	6	0
Attending conference when amendments were finally settled	0	13	4	0	13	4
Inserting amendments in original	0	1	0	0	5	0
Or per folio	0	0	4	0	0	4
Copy amendments for printer at per folio	0	0	4	0	0	4
Examining and correcting proof of the whole print, at per folio	0	0	2	0	0	2
Paid printer's bill (minus £ received for copies)						
Copy amended statement of claim for delivery, at per folio of amendments	0	0	2	0	0	3
(If amended in writing charge.)						
Inserting amendments	0	1	0	0	5	0
Or per folio	0	0	4	0	0	4
Attending to deliver each copy	0	3	4	0	6	8
Defendant having amended his statement of defence, perusing reprint	0	6	8	0	13	4
Or per folio of amendment, at per folio	0	0	4	0	0	4
If amended in writing, perusing same	0	6	8	0	6	8
Or per folio	0	0	0	0	0	4
Instructions for reply	0	6	8	0	13	4
If defendant sets up a counter-claim, instructions for reply	0	13	4	1	1	0
Drawing reply	0	5	0	0	10	0
Or per folio	0	1	0	0	1	0
Attending Mr. with same to settle	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
If written making copies of reply for delivery, at per folio	0	0	4	0	0	4
Attending to deliver each copy	0	3	4	0	6	8
If printed, making copy of reply for the printer, at per folio	0	0	4	0	0	4
Examining and correcting proof, at per folio	0	0	2	0	0	2
Paid printer's charges (minus £ received for copies)						

PLAINTIFF'S BILL OF COSTS IN ACTION IN WHICH ISSUE IS JOINED. 605

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Hilary Sittings, 1877.

1877, *January.*

Perusing joinder of issue	0	6	8	0	13	4
Notice of trial copy and service	0	4	0	0	4	0
Copy and service of same on the other solicitors, each	0	2	6	0	2	6
Instructions for counsel to advise on evidence	0	6	8	0	6	8
Or not to exceed	0	13	4	1	1	0
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending defendant's solicitors, obtaining consent to take evidence by affidavit, each solicitor	0	6	8	0	6	8
Preparing notice to produce and one copy	0	5	0	0	7	6
Or per folio	0	0	8	0	1	4
Each other copy beyond the first, such allowance as the Taxing Master shall think proper, not exceeding, per folio	0	0	4	0	0	4
Service of same upon each solicitor	0	2	6	0	2	6
Preparing notice to admit and one copy	0	5	0	0	7	6
Or per folio	0	0	8	0	1	4
Each other copy beyond the first, such allowance as the Taxing Master shall think proper, not exceeding, per folio	0	0	4	0	0	4
Service of same upon each solicitor	0	2	6	0	2	6
Attending, giving inspection of documents proposed to be admitted	0	6	8	0	13	4
Or per hour	0	6	8	0	6	8
Fair copy plaintiff's notice to admit, per folio	0	0	4	0	0	4
Attending defendant's solicitors on their examining and signing <i>administrations admissions</i>	0	6	8	0	13	4
Perusing defendant's notice to inspect	0	6	8	0	13	4
The like notice to admit	0	6	8	0	13	4
Attending, inspecting defendant's documents proposed to be admitted	0	6	8	0	13	4
Or per hour	0	6	8	0	6	8
Attending defendant's solicitor, examining and signing their <i>administrations admissions</i>	0	6	8	0	13	4
Instructions of affidavit of plaintiff, verifying the statement of complaint	0	6	8	0	6	8
(The Taxing Master is authorised to increase this allowance if he thinks fit.)						
Drawing same folio, at per folio	0	1	0	0	1	0
(Charge for any further affidavits that are necessary to prove the plaintiff's claim)						
Attending Mr. with same to settle	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Engrossing affidavit at per folio	0	0	4	0	0	4
If exhibits, preparing exhibits, each	0	1	0	0	1	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid Commissioner taking deponent's oath	0	1	6	0	1	6
Paid him marking exhibits, each	0	1	0	0	1	0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Making copies of affidavit for the printer, at per folio	0	0	4	0	0	4
Examining and correcting proof	0	0	2	0	0	2
Paid printer's charges (minus £ received for copies)						
Notice of filing same, copy and service	0	4	0	0	4	0
The like on solicitors for the other defendants, each	0	2	6	0	2	6
(If there are, however, three deponents to an affidavit, and they reside at different places and cannot be sworn to at the same time, charge for attending to be sworn, preparing exhibits and paid Commissioner for taking their oaths, and marking exhibits, as above.)						
(If the solicitor has to go a long distance for getting the affidavit sworn to, the fee for attending to get deponents sworn may be increased, and if sent to agents for same to be sworn to, charge for writing to agents and paying their charges.)						
Paid for copy affidavit of defendant filed in reply, at per folio	0	0	4	0	0	4
Perusing same	0	0	4	0	0	4
If agency, close copy, if written	0	0	4	0	0	4
If printed	0	0	2	0	0	3
Making brief copy of defendant's affidavit for counsel to advise on, at per folio	0	0	4	0	0	4
Attending Mr. with same	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
(Charge for any further affidavits filed on behalf of plaintiff in answer to defendant's affidavit.)						
(When evidence is taken orally, or parties who had made affidavits had received notice to cross-examine them on same on the hearing of the action, charge attending upon the different witnesses, and these attendances will be, according to circumstances, considered by the Master as to the allowance for instructions for brief.)						
Preparing <i>subpoena duces tecum</i> for	0	6	8	0	6	8
If more than four folios, for each folio beyond four	0	1	4	0	1	4
Paid sealing same	0	2	6	0	5	0
Making copy of same for service	0	1	0	0	2	0
If more than four folios, for each folio beyond four	0	1	4	0	1	4
Service of same	0	5	0	0	5	0
Preparing <i>subpoena ad testificandum</i> for and others	0	6	8	0	6	8
If more than four folios, for each folio beyond four	0	1	4	0	1	4
Paid sealing, not exceeding three persons	0	2	6	0	5	0
Making copy for same for service	0	1	0	0	2	0
If more than four folios, for each folio beyond four	0	1	4	0	1	4
Service of same	0	5	0	0	5	0
If the parties who are subpoenaed reside beyond two miles from the solicitor's place of business, serving same for each mile beyond the two miles therefrom	0	1	0	0	1	0

PLAINTIFF'S BILL OF COSTS IN ACTION IN WHICH ISSUE IS JOINED. 607

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
If the subpoena is sent to an agent to serve same, writing to agent with same for service	0	3	6	0	3	6
Writing to agent with his charges for service of copy of subpoena	0	3	6	0	3	6
Paid his charges (Post Office Order).						
Attending defendant's solicitor, obtaining his consent to set down action as short, each solicitor	0	6	8	0	6	8
Drawing minutes of decree, at per folio	0	1	0	0	1	0
Attending Mr. with same to settle	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Making copies of proposed minutes for defendant's solicitors, at per folio each	0	0	4	0	0	4
Writing to them with same, each solicitor	0	3	6	0	3	6
Perusing defendant's solicitors' alterations in the minutes, and considering same	0	6	8	0	6	8
Subsequently attending and conferring with them thereon, and agreeing thereto, each solicitor	0	6	8	0	6	8
Making 2 copies of minutes, as agreed, for the Judge, at per folio	0	0	4	0	0	4
Making 2 copies of writ for the Judge, at per folio	0	0	4	0	0	4
The like 2 copies of statement of claim	0	0	2	0	0	3
If amended in writing, charge inserting amendments, in each print	0	1	0	0	5	0
Or per folio	0	0	4	0	0	4
If statement not printed, at per folio	0	0	4	0	0	4
The like 2 copies statement of defence, if printed, at per folio	0	0	2	0	0	3
If amended in writing, charge inserting amendment, in each print	0	1	0	0	5	0
Or per folio	0	0	4	0	0	4
If statement of defence not printed, at per folio	0	0	4	0	0	4
The like 2 copies of reply, at per folio	0	0	4	0	0	4
If printed, at per folio	0	0	2	0	0	3
The like 2 copies of joinder of issue, per folio	0	0	4	0	0	4
If printed, at per folio	0	0	2	0	0	3
Copy notice of trial, per folio	0	0	4	0	0	4
Attending setting down action	0	6	8	0	6	8
Paid on setting same down	1	0	0	2	0	0
Attending Judge's secretary with papers	0	6	8	0	6	8
Attending counsel to procure certificate that action proper to be heard as a short action, and on the Registrar to mark same	0	6	8	0	6	8
Instructions for brief	1	1	0	2	2	0
(If witnesses are examined or cross-examined, the Taxing Master has power to increase this charge according to the number of witnesses to be examined or cross-examined.)						
Drawing brief, at per folio	0	1	0	0	1	0
Making 2 copies of same for counsel, at per folio each	0	0	4	0	0	4
Making 2 copies of writ of summons for counsel, at per folio each	0	0	4	0	0	4
The like 2 copies of statements of claim and defence for counsel, at per folio each	0	0	2	0	0	3

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
If amended in writing, charge inserting amendments, in each print	0	1	0	0	5	0
Or per folio each	0	0	4	0	0	4
If statement not printed, at per folio each	0	0	4	0	0	4
The like 2 copies of printed evidence filed on behalf of plaintiffs and defendants for counsel, at per folio	0	0	2	0	0	3
The like 2 copies of reply for counsel, if printed, at per folio each	0	0	2	0	0	3
If written, at per folio each	0	0	4	0	0	4
The like 2 copies of joinder of issue for counsel, if printed, at per folio each	0	0	2	0	0	3
If written, at per folio each	0	0	4	0	0	4
The like 2 copies of notice of trial for counsel, at per folio each	0	0	4	0	0	4
The like 2 copies of plaintiff's notices to admit and produce for counsel, at per folio each	0	0	4	0	0	4
The like 2 copies of defendant's notices to admit and produce for counsel, at per folio each	0	0	4	0	0	4
The like 2 copies of documents and correspondence referred to in the pleadings for counsel, at per folio each	0	0	4	0	0	4
The like 2 copies of proposed minutes for counsel, at per folio each	0	0	4	0	0	4
Attending Mr., Q.C., with brief and papers	0	6	8	0	13	4
Paid fee to him and clerk	11	0	0	11	0	0
Attending Mr. with brief and papers	0	6	8	0	13	4
Paid fee to him and clerk	7	12	0	7	12	0
Attending Mr., Q.C., appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr., appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending consultation	0	13	4	0	13	4
Having been served with notice to produce certain documents on the hearing of this action, writing to Mr., requesting him to have them ready in Court to be produced	0	3	6	0	3	6
Writing to Mr., a witness, and informing him that the action was not in the Judge's list for to-morrow	0	3	6	0	3	6
Similar letters to the other witnesses	0	2	0	0	2	0
Writing to Mr., informing him the action would be tried to-morrow, and requesting him to attend Court on his subpoena	0	3	6	0	3	6
Similar letters to the other witnesses	0	2	0	0	2	0
Attending Court, action in list, but not reached, each day	0	10	0	0	10	0
Attending Court, when action in list and partly heard	0	13	4	1	1	0
Or according to circumstances, not exceeding	2	2	0	2	2	0
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Easter Sittings, 1877.

Attending to refresh Mr., Q.C.	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6

PLAINTIFF'S BILL OF COSTS IN ACTION IN WHICH ISSUE IS JOINED. 609

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending to refresh Mr.	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending Court, action in paper and order, made for inquiries at Chambers	0	13	4	1	1	0
Or according to circumstances, not exceeding	2	2	0	2	2	0
Attending Registrar with brief and papers, and be- speaking draft order	0	6	8	0	6	8
Close copy draft order, at per folio	0	0	4	0	0	4
Notice to settle, copy and service	0	4	0	0	4	0
The like to other solicitors, each	0	2	6	0	2	6
Attending settling same	0	6	8	0	13	4
Or at Taxing Master's discretion, not to exceed	1	1	0	3	3	0
(In case the Registrar shall certify that a special allowance ought to be made, the Taxing Master is to make such allowance to all or any of the parties as to him seems just.)						
Attending to file a print or copy of all proceedings	0	3	4	0	6	8
Notice to pass same, copy and service	0	4	0	0	4	0
The like to other solicitors, each	0	2	6	0	2	6
If order printed to solicitor having carriage of order, attending examining proof	0	6	8	0	6	8
Paid for order	0	10	0	1	0	0
Attending passing same	0	6	8	0	13	4
Copy orders for the Taxing Master, at per folio	0	0	4	0	0	4
Attending to certify and to get Master in rotation marked	0	6	8	0	6	8
Drawing bill of costs and copy, folio, and summary folio, together folio, at per folio	0	0	8	0	0	8
Warrant on leaving copy and service	0	4	6	0	5	6
The like on the other solicitors	0	2	6	0	2	6
Warrant to tax, copy and service	0	4	6	0	5	6
The like on the other solicitors entitled to attend the taxation of bill, each	0	2	6	0	2	6
If the costs are paid out of the fund in Court, services of warrants on leaving and to tax, on each solicitor	0	2	6	0	2	6
Attending taxing plaintiff's costs, at per 25 folios or fractional part	0	6	8	0	6	8
(If entitled to attend the taxation of other costs.)						
Paid for copy defendant costs, at per folio	0	0	4	0	0	4
Attending taxing same, at per 35 folios or fractional part	0	6	8	0	6	8
(Charge in like manner for any other costs.)						
Transcribing certificate	0	2	0	0	2	0
Paid stamping same	0	0	0	1	0	0
(If costs paid out of fund in Court, leave out the £1.)						
Attending to file and get office copy marked	0	6	8	0	6	8
Paid for office copy	0	3	0	0	3	0
Sittings fee	0	15	0	0	15	0
If agency	0	6	0	0	6	0
Letters, messengers, posts, &c., from 187 to 18						
(If witnesses are examined or cross-examined on their affidavits, and the examination was commenced and adjourned, charge)						

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Drawing observations for counsel on the result of the examination, at per folio	0	1	0	0	1	0
Making 2 copies of same for counsel, at per folio	0	0	4	0	0	4
Attending Mr., Q.C., with same	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Attending Mr., Q.C., appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending consultation	0	13	4	0	13	4
Paid the following witnesses :—						
A. B., of, accountant, absent days						
Plaintiff, residing at, travelling and hotel expenses						
Defendants, residing at, the like						

Summary of Bill.

	Page.	Taxed off.	Amount of bill.
	1		
	2		
	3		
Taxed off		_____	_____
If costs not paid out of fund			_____
Paid <i>ad-valorem</i> duty			_____
		£	_____

IN THE HIGH COURT OF JUSTICE, 187 No.

CHANCERY DIVISION.

BETWEEN and others, Plaintiffs,
AND and others, Defendants.

The Bill of Costs of the defendant, to be taxed as between
and, in pursuance of Order made on the day of 187

Hilary Sittings, 1877.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
1877, March.						
Instructions to defend	0	6	8	0	13	4
Certificate of lower scale	0	5	0			
If writ not personally served, charge						
Attending plaintiff's solicitor, accepting service of writ and giving him an undertaking to appear	0	6	8	0	6	8
Attending entering appearance	0	6	8	0	6	8
(If entered at one time for more than one person, for every defendant beyond the first)	0	1	0	0	2	0
Paid entering, each defendant	0	2	0	0	2	0
Notice thereof, copy and service	0	4	0	0	4	0
If defendants Infants						
Attending Mr., obtaining authority to act as guardian on behalf of the infant or infants, A. B. and	0	6	8	0	13	4
Drawing and engrossing petition to appoint guardian	0	4	0	0	4	0
Attending to present and for order	0	6	8	0	13	4
Paid for order	0	3	0	0	5	0
Instructions for affidavit of in support of guardian	0	6	8	0	6	8
Drawing same, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Making copy of this affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Copy and service of order on plaintiff's solicitors	0	3	6	0	3	6
If the plaintiff take out a summons for leave to amend writ, or for time to deliver statement of claim, charge						
Attending plaintiff's summons for leave to amend writ when order made	0	6	8	0	13	4
Attending plaintiff's summons for time to deliver state- ment of claim when order made	0	6	8	0	6	8
Perusing statement of claim	0	6	8	0	13	4
Or per folio				0	0	4
If agency, close copy, at per folio	0	0	2	0	0	3

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
If statement of claim is under 10 folios and not printed, charge close copy, at per folio	0	0	4	0	0	4
If printed, paid for copies, 1 <i>d.</i> per folio for first copy, $\frac{1}{2}$ <i>d.</i> per folio for each other copy.						
Summons for time to deliver statement of defence	0	3	0	0	6	8
Paid sealing	0	2	0	0	3	0
Making copy for Chambers	0	2	0	0	2	0
The like for service	0	1	0	0	2	0
Service on plaintiff's solicitor	0	2	6	0	2	6
Attending summons when order made	0	6	8	0	6	8
Paid for order	0	3	0	0	5	0
Attending for order, and attending to enter same	0	6	8	0	6	8
Instruction for statement of defence	0	6	8	0	13	4
Drawing same	0	5	0	0	10	0
Or per folio	0	1	0	0	1	0
Drawing statement of defence and counter claim	0	5	0	1	1	0
Or per folio	0	1	0	0	1	0
Making copy of writ of summons for counsel, at per folio	0	0	4	0	0	4
Copy statement of claim for counsel, if printed, at per folio	0	0	2	0	0	3
If written, at per folio	0	0	4	0	0	4
Making copies of will of testator and other documents to accompany instructions to counsel to settle statement of defence, at per folio	0	0	4	0	0	4
Attending Mr. with same to settle	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Making copy statement for the printer, at per folio	0	0	4	0	0	4
Examining and correcting proof, at per folio	0	0	2	0	0	2
Paid printer's charges (minus £ received for copies)						
If statement does not exceed 10 folios, charge instead for copy for printer, &c.						
Engrossing statement of defence, at per folio.	0	0	4	0	0	4
Copy to deliver, at per folio	0	0	4	0	0	4
Attending to deliver same	0	3	4	0	6	8
If the plaintiff amend his statement of claim, charge perusing same, if in writing	0	6	8	0	6	8
Or per folio				0	0	4
If reprinted	0	6	8	0	13	4
Or per folio of amendments				0	0	4
Inserting amendments in printed copies, at per folio	0	1	0	0	5	0
Or per folio	0	0	4	0	0	4
If agency, charge for close copy	0	1	0	0	5	0
Or per folio	0	0	4	0	0	4
If defence amended charge.						
Instructions to amend same	0	6	8	0	13	4
Drawing amendments	0	5	0	0	10	0
Or per folio	0	1	0	0	1	0
Attending Mr. with same to settle	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
If agency, charge making close copy of counsel's opinion on amendments, at per folio	0	0	4	0	0	4

DEFENDANT'S BILL OF COSTS IN ACTION IN WHICH ISSUE IS JOINED. 613

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Making copy of further correspondence for counsel to finally settle amended statement of defence, at per folio	0	0	4	0	0	4
Attending Mr. with same	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Inserting amendments in original	0	1	0	0	5	0
Or per folio	0	0	4	0	0	4
Copy amendments for printer, at per folio	0	0	4	0	0	4
Examining and correcting proof of the whole print, at per folio	0	0	2	0	0	2
Paid printer's bill (minus £ received for copies)						
Copy amended statement for service, at per folio of amendments	0	0	2	0	0	3
If amended in writing, instead for copy for printer, &c., charge						
Inserting amendments	0	1	0	0	5	0
Or per folio	0	0	4	0	0	4
Attending to deliver same	0	3	4	0	6	8
Perusing reply	0	6	8	0	13	4
Instructions for joinder of issue	0	6	8	0	13	4
Drawing same	0	5	0	0	10	0
Or per folio	0	1	0	0	1	0
Attending Mr. with same to settle	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Engrossing rejoinder, per folio	0	0	4	0	0	4
Making copy to deliver, per folio	0	0	4	0	0	4
Attending to deliver same	0	3	4	0	6	8
Instructions for counsel to advise on evidence	0	6	8	0	6	8
Or not to exceed	0	13	4	1	1	0
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Attending plaintiff's solicitors, obtaining their consent to take evidence by affidavit	0	6	8	0	6	8
Preparing notice to produce and copy	0	5	0	0	7	6
Or per folio	0	0	8	0	1	4
Any other copy for service, as the Taxing Master shall think proper, not exceeding per folio	0	0	4	0	0	4
Service of same on each solicitor	0	2	6	0	2	6
Preparing notice to admit and copy	0	5	0	0	7	6
Or per folio	0	0	8	0	1	4
Any other copy for service, as the Taxing Master shall think proper, not exceeding, per folio	0	0	4	0	0	4
Service of same upon each solicitor	0	2	6	0	2	6
Attending and giving inspection of documents proposed to be admitted	0	6	8	0	13	4
Or per hour	0	6	8	0	6	8
Perusing plaintiff's notice to admit	0	6	8	0	13	4
The like notice to produce	0	6	8	0	13	4
Attending plaintiff's solicitors, inspecting plaintiff's documents proposed to be admitted	0	6	8	0	13	4
Or per hour	0	6	8	0	6	8
Attending to examine and sign plaintiff's admissions	0	6	8	0	13	4
Fair copy defendant's notice to inspect and admit for admissions, at per folio	0	0	4	0	0	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending plaintiff's solicitors on their examining and signing defendant's admissions	0	6	8	0	13	4
Instructions for affidavit of defendant verifying his statement of defence	0	6	8	0	6	8
(In the higher scale the Taxing Master may increase the amount of this charge.)						
Drawing same folio , at per folio	0	1	0	0	1	0
Instructions for affidavit of , verifying certain documents and correspondence which were not admitted	0	6	8	0	6	8
Drawing same folio , at per folio	0	1	0	0	1	0
Attending Mr. with same to settle	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Engrossing affidavit of defendant, verifying his statement of defence, at per folio	0	1	0	0	1	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Making copy of this affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Engrossing affidavit of , verifying certain documents and correspondence, at per folio	0	0	4	0	0	4
Preparing exhibits, each	0	1	0	0	1	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Paid commissioner marking exhibits, each	0	1	0	0	1	0
Making copy of this affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
If the affidavits are printed, charge						
Making copy affidavits for the printer, at per folio each	0	0	4	0	0	4
Examining and correcting proof, at per folio each	0	0	2	0	0	2
Paid printer's charges (minus £ received for copies)						
Paid filing each affidavit at	0	2	0	0	2	0
Copies of same to be marked as office copies, each	0	0	2	0	0	2
Notice of filing copy and service of these affidavits on plaintiff's solicitors	0	4	0	0	4	0
The like on the other solicitors each	0	2	6	0	2	6
Paid for print of copy affidavits filed on behalf of plaintiff in reply folio , at folio each	0	0	1	0	0	1
If written, paid for copies of same, at per folio each	0	0	4	0	0	4
Perusing same, at per folio each	0	0	4	0	0	4
If agency, close copy, at per folio each	0	0	2	0	0	3
If written, close copy, at per folio each	0	0	4	0	0	4
Brief copy thereof for counsel folio , at per folio each	0	0	2	0	0	3
If written, making brief thereof for counsel, at per folio	0	0	4	0	0	4
Attending Mr. with same to advise as to further evidence in answer	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
(Charge for any affidavits filed by defendants in answer to further affidavits filed on behalf of plaintiff.)						

DEFENDANT'S BILL OF COSTS IN ACTION IN WHICH ISSUE IS JOINED. 615

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
(When evidence is taken orally, or parties had received notice to be cross-examined on the evidence they had filed on the hearing of the action, charge for attendances made upon the different witnesses. These attendances will be according to circumstances considered by the Master as instructions for the brief.)						
Preparing <i>spa duces tecum</i> for Mr.	0	6	8	0	6	8
If more than 4 folios, for each folio beyond 4	0	1	4	0	1	4
Paid sealing same	0	2	6	0	5	0
Making copy of same for service	0	1	0	0	2	0
If more than 4 folios, for each folio beyond 4	0	1	4	0	1	4
Service of same	0	5	0	0	5	0
Preparing <i>spa ad test</i> for Mr., and others	0	6	8	0	6	8
If more than 4 folios, for each folio beyond 4	0	1	4	0	1	4
Paid sealing, not exceeding three persons	0	2	6	0	5	0
Making copy of same for service	0	1	0	0	2	0
If more than 4 folios, for each folio beyond 4	0	1	4	0	1	4
Service of same	0	5	0	0	5	0
If the parties who are subpoenaed reside beyond two miles from the solicitor's place of business, serving same for each mile beyond two miles therefrom	0	1	0	0	1	0
If the <i>spa</i> is sent to an agent to serve same, charge writing to agent with same for service	0	3	6	0	3	6
Writing to agent with his charges for serving copy <i>spa</i> . .	0	3	6	0	3	6
Paid his charges.						
Writing to Mr. and informing him that his attendance would be required in Court before the inst . .	0	3	6	0	3	6
A similar fee to other witnesses, each at	0	2	0	0	2	0
Having been served with notice for the defendant, produce on the hearing of the action certain documents in his possession, writing and informing him thereof . . .	0	3	6	0	3	6

If Action Tried Short.

Attending plaintiff's solicitor, giving consent to set down action as short	0	6	8	0	6	8
Having received copy minutes of decree from plaintiff's solicitor, perusing same	0	6	8	0	6	8
Or at per folio	0	0	4	0	0	4
Making copy of proposed minutes for counsel to settle folio, at per folio	0	0	4	0	0	4
Attending Mr. with same	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Copy minutes as altered and settled for plaintiff's solicitor folio, at per folio	0	0	4	0	0	4
Writing him with same	0	3	6	0	3	6
Subsequently attending plaintiff's solicitor and conferring with him as to the alterations in the minutes, and finally settling same	0	6	8	0	6	8
Instructions for brief	1	1	0	2	2	0
Drawing brief, at per folio each	0	1	0	0	1	0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Making 2 fair copies of same, at per folio each	0	0	4	0	0	4
Making one copy of writ for senior counsel, at per folio	0	0	4	0	0	4
Making 2 copies of (amended) statement of claim (if amended in writing) for counsel, at per folio each	0	1	0	0	5	0
Or per folio each at	0	0	4	0	0	4
If amendments printed, at per folio each	0	0	2	0	0	3
Making 2 copies of (amended) statement of defence if printed, at per folio	0	0	2	0	0	3
If amended in writing, inserting amendments in each print	0	1	0	0	5	0
Or per folio each	0	0	4	0	0	4
Making 2 copies of reply for counsel, if printed, at per folio each	0	0	2	0	0	3
If written at per folio each	0	0	4	0	0	4
Making 2 copies of joinder of issue for counsel, if printed, at per folio each	0	0	2	0	0	3
If written, at per folio each	0	0	4	0	0	4
Making 2 copies of plaintiff's notices to admit and produce for counsel, at per folio each	0	0	4	0	0	4
Making 2 copies of defendant's notices to admit and produce for counsel, at per folio each	0	0	4	0	0	4
Making 2 copies of proposed minutes for counsel, at per folio each	0	0	4	0	0	4
Making copy will and other documents and correspondence for senior counsel, at per folio	0	0	4	0	0	4
Attending Mr., Q.C., with same	0	6	8	0	13	4
Paid fee to him and clerk	7	12	0	7	12	0
Attending Mr. with same	0	6	8	0	13	4
Paid fee to him and clerk	5	10	0	5	10	0
Attending Mr., Q.C., appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr., appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending consultation	0	13	4	0	13	4
Attending Court, action in list but not reached	0	10	0	0	10	0
Attending Court when action heard and order made	0	13	4	1	1	0
Or according to circumstances	2	2	0	2	2	0
(If an action is in the Judge's list and not heard, or partly heard and adjourned till next Sitting or Term, charge)						
Attending to refresh Mr., Q.C.	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Attending to refresh Mr.	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
(When witnesses are examined, charge for further briefs to counsel as charged in plaintiff's costs.)						
If action partly heard, charge						
Attending Mr., Q.C., appointing further consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr., appointing further consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending further consultation	0	13	4	0	13	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Close copy minutes of order, at per folio	0	0	4	0	0	4
Attending settling same	0	6	8	0	13	4
Or at the Taxing Master's discretion, not to exceed	1	1	0	3	3	0
Attending passing same	0	6	8	0	13	4
Subsequent charges for drawing bill of costs, &c., see <i>plaintiff's Costs.</i>						

PLAINTIFFS' AND DEFENDANTS' COSTS AFTER DECREE—PRELIMINARY ENQUIRIES AS TO NEXT-OF-KIN, ADVERTISEMENTS FOR CREDITORS, ETC., CERTIFICATE AND FURTHER CONSIDERATION, AND COSTS OF PARTIES SERVED WITH NOTICE OF DECREE.

Plaintiff's Costs of Action after Decree.

Easter Sittings, 1878.

1878, April.	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Making copy decree for the chief clerk fo. at per folio	0	0	4	0	0	4
Summons to proceed thereon	0	3	0	0	6	8
Paid sealing	0	2	0	0	3	0
Making copy summons for chambers	0	2	0	0	2	0
Copy and service of each solicitor	0	3	6	0	4	6
Attending summons when directions given as to the parties who were to attend, and who were to answer the enquiries and advertisements were directed to be issued						
If preliminary enquiries as to next of kin						
Attending at Somerset House searching for and bespeaking certificate of marriage of and	0	6	8	0	6	8
Paid for search and copy certificate	0	3	7	0	3	7
Attending at searching for and bespeaking certificates of births or baptisms of and and certificates of deaths of and	0	13	4	0	13	4
Paid for search and copy certificates	0	7	2	0	7	2
(When certificates are obtained from Somerset House the Taxing Master only allows generally 13s. 4d. for searching for three certificates, excepting the solicitors can show that in consequence of not being able to obtain exact dates of marriages, baptisms and deaths, and then that would depend upon the time occupied.)						
Attending at other places in London searching for certificates of marriages, baptisms and deaths, and obtaining same						
(The charge for this will depend upon the number of places you have to search, and the distance you have to go.)						

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Paid for searches and certificates, each at	0	3	7	0	3	7
Writing to the rector of for certain certificates of marriages, baptisms or deaths of and	0	3	6	0	3	6
Paid for searches and certificates, each at	0	3	7	0	3	7
On receipt of claims attending on the defendants and conferring with them, and investigating the claims and taking their instruction thereon	0	13	4	1	1	0
Writing to the rector of with post-office orders for his charge or charges for same	0	3	6	0	3	6
Paid for post-office order						
Instructions for affidavit of identifying the cer- tificates of marriages or baptisms or deaths of	0	6	8	0	6	8
(This charge under special circumstances may be allowed, as very often one person cannot identify all the certificates.)						
Drawing same fo. at per folio	0	1	0	0	1	0
Engrossing same at per folio	0	0	4	0	0	4
Preparing exhibits, each	0	1	0	0	1	0
Writing to Mr. with affidavit accordingly, giving him full directions to be sworn to same and inclosing the amount of commissioners' fees	0	5	0	0	5	0
Paid commissioners for taking deponent's oath	0	1	6	0	1	6
Paid for marking exhibits, each	0	1	0	0	1	0
If the affidavit is sworn in London, instead of charging writing to the deponent, charge						
Attending deponent reading over affidavit and attending with him before a commissioner to be sworn to same	0	6	8	0	6	8
Making copy of this affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Notice of filing same copy and service	0	4	0	0	4	0
The like on other solicitors for the parties entitled to attend, each at	0	2	6	0	2	6
(In some cases there is a great difficulty of getting persons who could identify the certificates, in such cases charge for the necessary attendances on the persons who can prove same.)						
Drawing pedigree, at per ring	0	1	0	0	1	0
(Sometimes this charge will be allowed to be in- creased by the Judge.)						
Making fair copy for the chief clerk, at per ring	0	0	4	0	0	4
Attending adjourned summons before the chief clerk as to the enquiry as to the next of kin when he gave directions for decree to be served on parties benefi- cially interested						
(If the chief clerk is not satisfied with the evidence in support of the pedigree charge for the neces- sary attendances to obtain further information respecting same and also for further evidence.)						
Drawing notice of decree, at per folio	0	1	0	0	1	0
Endorsing same, at per folio	0	0	4	0	0	4

PRECEDENT OF PLAINTIFF'S BILL OF COSTS AFTER DECREE. 619

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Service thereof	0	5	0	0	5	0
If sent to an agent in the country charge						
Writing to Mr. with same, and with instructions as to service of same	0	3	6	0	3	6
Writing to Mr. with his charges for serving same	0	3	6	0	3	6
Paid his charges						
(The same charges for writing to other agents.)						
Drawing and engrossing affidavit of service, at per folio	0	1	0	0	1	0
Preparing exhibit	0	1	0	0	1	0
Making copy notice to exhibit, at per folio	0	0	4	0	0	4
Paid commissioner taking deponent's oath and marking exhibit	0	2	6	0	2	6
Paid filing affidavit	0	2	0	0	2	0
Making copy to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid for office copy, at per folio	0	0	2	0	0	2
Preparing advertisement for creditors and attending to get same approved and signed	0	6	8	0	13	4
Paid stamping same				1	0	0
Making copies of same for insertion together fo., at per folio each						
Attending office inserting same	0	6	8	0	6	8
Paid for insertion and copy Gazette						
Attending to insert same in other papers, each at				0	6	8
Every two when it is the lower scale	0	6	8			
Paid for insertions and copies of papers						
Paid for copy affidavit of defendant C. D. and account fo., at per folio	0	0	4	0	0	4
Perusing same, at per folio	0	0	4	0	0	4
If agency, at per folio	0	0	4	0	0	4
Notice of appointment obtained to proceed on defen- dant's accounts, copy and service upon his solicitors	0	4	0	0	4	0
The like for every notice on solicitors after the first,, each	0	2	6	0	2	6
Attending plaintiff going through account and taking down his observations on same and his instructions to oppose certain allowances	0	6	8	0	13	4
Paid for copy affidavit of, in support of claim for £, folio, at per folio	0	0	4	0	0	4
Perusing same, folio, at per folio	0	0	4	0	0	4
If agency close copy, folio, at per folio	0	0	4	0	0	4
(Here charge for any affidavits or other evidence in opposition which may be used.)						
Attending before chief clerk on accounts and enquiries when all parties were found to have been served with notice of decree, and taking appointment to proceed on accounts						
Term fee for Easter	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Trinity Sittings, 1878.

Paid defendant's solicitor for copy affidavit of defen- dant as to real estate, folio, at per folio	0	0	4	0	0	4
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	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Perusing same, at per folio	0	0	4	0	0	4
Paid for copy account fo. at per folio	0	0	4	0	0	4
Perusing same at per folio	0	0	4	0	0	4
If agency, close copy at per folio	0	0	4	0	0	4
Attending junior clerk proceeding on accounts when same partly proceeded with						
Attending further appointment when accounts settled						
Copy draft general certificate, at per folio	0	0	4	0	0	4
Close copy, at per folio	0	0	4	0	0	4
Attending settling draft certificate						
Attending further appointment finally settling certificate						
Transcribing same, folio, at per folio						
Paid ad valorum fee on taking accounts (when the amount found to have been received without deducting any payment shall not exceed £200)	0	2	0	0	2	0
Where such amount shall exceed £200 for every £50 or fraction of £50	0	0	6	0	0	6
Attending to sign certificate	0	6	8	0	6	8
Attending, filing, and to get copy marked as office copy	0	6	8	0	6	8
Making copy to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid for office copy, at per folio	0	0	2	0	0	2
Summons to vary certificate and attending at Chambers to get same sealed	0	6	8	0	13	4
Paid sealing	0	2	0	0	3	0
Copy summons for chambers	0	2	0	0	2	0
The like for service, each	0	1	0	0	2	0
Or per folio, each	0	0	4	0	0	4
Service thereof on each party entitled to attend	0	2	6	0	2	6
Attending summons to vary certificate; here state shortly the result of the application						
Sittings' fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Michaelmas Sittings, 187 .

187 , *November.*

Drawing request to set down action on further consideration	0	2	6	0	2	6
Attending to set same down	0	6	8	0	6	8
Paid on setting down	1	0	0	2	0	0
Notice of setting down, copy and service on defendant's solicitor	0	4	0	0	4	0
The like on solicitors after the first each	0	2	6	0	2	6
If an action heard short charge for.						
Drawing proposed minutes of order, at per folio	0	1	0	0	1	0
Any counsel with same to settle	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Making copy of proposed minutes for the defendant's solicitor, at per folio	0	0	4	0	0	4
Attending them with same	0	6	8	0	6	8
Attending them afterwards and finally settling defendant's minutes with them	0	6	8	0	6	8
(This charge can be increased according to the length of the attendance.)						

PRECEDENT OF PLAINTIFF'S BILL OF COSTS AFTER DECREE. 621

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
The like on each of the solicitors of the other defendants						
Making copy decree and certificate for Judge, folio, at per folio	0	0	4	0	0	4
The like summons to vary certificate	0	2	0	0	2	0
(If this is directed to come on at hearing.)						
Or per folio	0	0	4	0	0	4
Attending Judge's secretary with papers	0	6	8	0	6	8
Making two brief copies of decree folio and chief clerk's certificate folio together, folios each for counsel, at per folio each copy	0	0	4	0	0	4
Copies for counsel, including copies of the schedules to chief clerk's certificate, folio at per folio each	0	0	4	0	0	4
(This should only be charged when any question arises as to the schedule being correct.)						
Drawing observations for use of counsel, on hearing on further consideration, folio at per folio	0	1	0	0	1	0
Two fair copies, at per folio, each copy	0	0	4	0	0	4
Paid fee to Mr. Q.C., with brief on further consideration, and clerk	5	10	0	5	10	0
Attending him	0	13	4	0	13	4
Paid consultation fee to Mr. Q.C., on further consideration, and clerk	2	9	6	2	9	6
Attending him	0	6	8	0	6	8
Paid fee to Mr. on further consideration, and clerk	3	5	6	3	5	6
Attending him	0	6	8	0	6	8
Paid consultation fee to Mr.	1	3	6	1	3	6
Attending him	0	3	4	0	6	8
Attending consultation	0	13	4	0	13	4
Drawing observations or questions to be argued on summons to vary certificate, relating to the allowance of items in the account folio at per folio	0	1	0	0	1	0
Fair copies, at per folio, each copy	0	0	4	0	0	4
Fair copies of the account to enable counsel to understand the objections to certificate, folio, at per folio each	0	0	4	0	0	4
Paid fee to Mr. Q.C., with brief on summons to vary certificate, and clerk	3	5	6	3	5	6
Attending him	0	6	8	0	6	8
Paid fee to Mr., with brief on summons to vary certificate, and clerk	2	4	6	2	4	6
Attending him	0	6	8	0	6	8
Paid consultation fee to Mr. Q.C., on summons to vary, and clerk	2	9	6	2	9	6
Attending him	0	6	8	0	6	8
Paid consultation fee to Mr. on summons to vary, and clerk	1	3	6	1	3	6
Attending him	0	3	4	0	6	8
Attending consultation	0	13	4	0	13	4
Attending court, action in list not reached	0	10	0	0	10	0
The like on summons to vary certificate	0	6	8	0	10	0
The like this day certificate not varied						
(This attendance will depend upon what decision may make as to the costs of this application.)						

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending court action heard, and order on further consideration made	0	13	4	1	1	0
Or according to circumstances not to exceed	1	1	0	2	2	0
Attending Registrar with brief and papers bespeaking order	0	6	8	0	6	8
Close copy, draft order, per folio	0	0	4	0	0	4
Notice of settling minutes, copy and service on defendant's solicitor	0	4	0	0	4	0
The like upon solicitors after the first, each	0	2	6	0	2	6
Attending settling order	0	6	8	0	13	4
Or at Taxing Master's discretion not to exceed	1	1	0	3	3	0
Notice of passing copy and service on defendant's solicitor	0	4	0	0	4	0
The like on solicitors for other parties who are entitled to attend, each	0	2	6	0	2	6
If printed to the solicitor having carriage of order attending to examine proof	0	6	8	0	6	8
Paid for order	0	10	0	1	0	0
Attending passing same	0	6	8	0	13	4
Making copy order for the Taxing Master, at per folio	0	0	4	0	0	4
Drawing bill of costs and copy, folio , and summary folio together folios , at per folio	0	0	8	0	0	8
Warrant on leaving copies and services, each at	0	4	6	0	5	6
Warrant to tax copies and services, each at	0	4	6	0	5	6
(If the costs have to be paid out of fund in court copy and service of each warrant will be 2s. 6d.)						
Attending taxing costs—at per 25 folios or a fractional part	0	6	8	0	6	8
Paid for copy of costs of, parties entitled to attend, each, at per folio	0	0	4	0	0	4
Attending taking same at per 25 folios or a fractional part	0	6	8	0	6	8
Transcribing certificate	0	2	0	0	2	0
Paid stamping same				1	0	0
(If costs to be paid out of fund in court leave out this item.)						
Attending to file same and bespeak office copy	0	6	8	0	6	8
Paid for office copy	0	3	0	0	3	0
If the costs are to be paid out of fund in Court charge for						
Attending the Registrar bespeaking direction for sale of fund	0	6	8	0	6	8
Attending the Paymaster-General with direction for sale of the fund	0	6	8	0	6	8
Attending at the Paymaster-General's bespeaking cheques for payment to creditors or parties entitled to the residue of the fund of payment of costs.	0	6	8	0	6	8
Attending Mr. and identifying him on his receiving his cheque	0	6	8	0	6	8
(The like charges for other creditors, &c., but if they receive their cheques on the same day the charges according to the number may be increased.)						
Sittings' fee	0	15	0	0	15	0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
If agency, letters, &c.	0	6	0	0	6	0
Letters, messengers, &c.						

Defendant's costs of Action after Decree.

Easter Sittings, 1877.

1877,						
Attending summons before the chief clerk to proceed under decree when he gave directions for advertisement to be issued for creditors to send in their clients and the defendants, the trustees were to bring in their accounts						
(No attendance before the chief clerk will be allowed unless certified by him.)						
Several attendances on the defendants and conferring with them as to the accounts which they would have to carry in	1	1	0	2	2	0
Drawing account as to personal estate of the deceased, and fair copy, at per folio	0	0	8	0	1	4
Instructions for affidavit of defendants verifying same	0	6	8	0	6	8
(The Taxing Master in higher scale actions may make such allowance as he thinks fit.)						
Drawing same, at per folio	0	1	0	0	1	0
Engrossing same	0	0	4	0	0	4
Making copy account to be marked as an exhibit, at per folio	0	0	4	0	0	4
Marking exhibits, each	0	1	0	0	1	0
Attending deponent to be sworn to same	0	6	8	0	6	8
(If deponents cannot be sworn at the same time and they live at a distance this may be increased.)						
Paid oath	0	1	6	0	1	6
Paid exhibits, each	0	1	0	0	1	0
Making copy of this affidavit to be marked as an office copy, folio at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Notice of filing same and copy and service on plaintiff's solicitors	0	4	0	0	4	0
The like upon solicitors for parties entitled to attend, each	0	2	6	0	2	6
On receipt of notice of claims from creditors, writing to Mr. a creditor that his claim would be allowed	0	3	6	0	3	6
The like to creditors, each at	0	2	0	0	2	0
Notice to Mr. a creditor that his claim would be allowed at £ only	0	3	6	0	3	6
The like to creditors, each at	0	2	0	0	2	0
Notice to Mr. a creditor informing his claim was disputed and requiring him to prove same	0	3	6	0	3	6
The like to creditors, each at	0	2	0	0	2	0
Paid for copy affidavit of in support of his claim for £ folio, at per folio	0	0	4	0	0	4
Perusing same at per folio	0	0	4	0	0	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
If agency, close copy, at per folio	0	0	4	0	0	4
(The like charges for other affidavits received in support of claims.)						
(If any of them are still disputed charge for any affidavits in opposition and attendances on the defendants' and plaintiffs' solicitors respecting same.)						
(If the defendants are directed to answer the enquiry as to the next kin insert the items as charge in plaintiffs' bill of costs.)						
Attending adjourned summons before the chief clerk, proceedings on account and enquiries when he directed the accounts to be verified						
Attending chief clerk when the evidence as to the next-of-kin was completed and direction given for notice of decree to be served on the parties beneficially interested						
(If the chief clerk is not satisfied with the evidence in support of pedigree charge for further attendances and getting up further evidence in support of same.)						
Term fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Trinity Sittings, 1877.

<i>1877, May.</i>						
Drawing account as to real estate and fair copy at per folio	0	0	8	0	1	4
Instructions for affidavit in support of account	0	6	8	0	6	8
(In the higher scale the Master may increase this amount.)						
Drawing same, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Making copy account to be marked as an exhibit, at per folio	0	0	4	0	0	4
Marking exhibit	0	1	0	0	1	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6	0	2	6
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Attending before the junior clerk vouching accounts when same fully proceeded with						
Attending further appointment when accounts were settled						
Paid plaintiffs' solicitor for copy draft general certificate, at per folio	0	0	4	0	0	4
Close copy, at per folio	0	0	4	0	0	4
Attending settling draft certificate						
Attending further appointment finally settling certificate						
Attending to sign	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending plaintiffs' summons to vary certificate when same directed to come with hearing on further consideration						
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Michaelmas Sittings, 1877.

For drawing brief, settling order, and for taxation of costs (see pages 607, 608, and 609).

Costs of Parties served with Notice of Decree.

Trinity Sittings, 1877.

Instructions to defend	0	6	8	0	13	4
(The charges for instructions according to circumstances in higher scale actions may be increased by the Taxing-Master.)						
Drawing petition for liberty to attend proceedings.	0	4	0	0	4	0
Attending to present and for order	0	6	8	0	13	4
Paid for order	0	3	0	0	5	0
Copy of same for the chief clerk, at per folio	0	0	4	0	0	4
Copy for service, at per folio each	0	0	4	0	0	4
Service upon each solicitor	0	2	6	0	2	6
Perusing statements of complaint	0	6	8	0	13	4
Or per folio	0	0	4	0	0	4
If agency close copy at per folio, if printed 2d. and 3d. per folio, if written 4d. per folio.						
Perusing statement of defence	0	6	8	0	13	4
Or per folio	0	0	4	0	0	4
If agency close copy if printed, at per folio	0	0	2	0	0	3
If written at per folio	0	0	4	0	0	4
Paid for copies of affidavits and accounts, at per folio each	0	0	4	0	0	4
Perusing same, at per folio each	0	0	4	0	0	4
If agency close copy, at per folio each	0	0	4	0	0	4
(Charge for any other affidavits and necessary papers at per folio, perusing same and close copies if agency.)						
Attending before chief clerk proceeding on accounts						
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Michaelmas Sittings, 1877.

(Charge for attendances and correspondence and affidavits which may be made on behalf of party obtaining the order to attend proceedings.)

Attending before the chief clerk proceeding on accounts and enquiries when same adjourned						
Attending adjourned before the chief clerk when accounts and enquiries were answered						

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Paid for copy of chief clerk's certificate folios at per folio	0	0	4	0	0	4
Close copy	0	0	4	0	0	4
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Hilary Sittings, 1878.

Attending settling chief clerk's certificate	
Attending passing same	
Attending plaintiffs' or defendants' summons to vary the chief clerks' certificate when same directed to come on with the hearing on further consideration	
For drawing brief, settling order, and for taxation of costs (see pages 607, 608, and 609).	

PLAINTIFFS' AND DEFENDANTS' COSTS OF SALE UNDER
THE DIRECTION OF THE JUDGE.

*Plaintiff's Costs of Sale under Direction of Judge.**Hilary Sitting, 187 .*

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Copy order or further consideration dated, 187 , for chief clerk, folio, at per folio	0	0	4	0	0	4
Summons to proceed under order on further consideration	0	3	0	0	6	8
Paid sealing	0	2	0	0	3	0
Copy for Chambers	0	2	0	0	2	0
Copy and service on each solicitor entitled to attend	0	3	6	0	4	6
Attending summons to proceed when sale directed, and abstract and particulars of property to be brought in						
Writing auctioneers in reference to proposed sale, for the purpose of learning terms upon which they would undertake sale, and for appointment to see them	0	3	6	0	3	6
Attending auctioneers, conferring and instructing them to view the property and report	0	6	8	0	6	8
Drawing particulars of property, folio, at per folio	0	1	0	0	1	0
Making copy for auctioneers, at per folio	0	0	4	0	0	4
Attending adjourned appointment before chief clerk, when evidence as to fitness and remuneration of auctioneers, to be brought in						
Instructions for affidavit of Mr., auctioneer, as to lotting, &c.	0	6	8	0	6	8
Drawing same, folio, at per folio	0	1	0	0	1	0
Engrossing, at per folio	0	0	4	0	0	4
Making copy of the particulars of the property for exhibit, at per folio	0	0	4	0	0	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Preparing exhibits, each	0	1	0	0	1	0
Attending deponent to be sworn	0	6	8	0	6	8
Paid oath	0	1	6	0	1	6
Paid exhibits, each	0	1	0	0	1	0
Paid filing affidavit	0	2	0	0	2	0
Notice of filing copy and service to defendant's solicitor	0	4	0	0	4	0
The like to solicitor after the first, each	0	2	6	0	2	6
Making copy for office copy and paid marking, folio , at per folio	0	0	6	0	0	6
Attending summons, lotting approved, auctioneer's remuneration fixed, and abstract referred to conveyancing counsel.						
Perusing, examining, and correcting posting bill	0	6	8	0	6	8
Writing auctioneers thereon and returning same	0	3	6	0	3	6
Attending Registrar for reference to conveyancing counsel	0	6	8	0	6	8
Perusing old abstracts and examining them with title deeds.						
Drawing supplemental abstract of title, to lot 1, at per folio	0	1	0	0	1	0
Fair copy of same, and old abstract	0	0	4	0	0	4
Paid fee to Mr. , the conveyancing counsel, with abstracts, to advise on title, and clerk	16	10	0	16	10	0
Attending him	0	6	8	0	13	4
Drawing conditions of sale, folio , at per folio	0	1	0	0	1	0
Paid fee to Mr. , to settle, and clerk	3	5	6	3	5	6
Attending him	0	6	8	0	6	8
Making copy opinion of counsel on title, at per folio	0	0	4	0	0	4
Attending appointing conference with counsel (Mr.) on questions raised by him on title	0	3	4	0	6	8
Paid his fee and clerk	1	6	0	1	6	0
Attending conference	0	13	4	0	13	4
On receipt of counsel's queries on the title perusing old abstracts and title deeds, to enable us to answer counsel's queries on title, engaged hours, at per hour	0	6	8	0	6	8
Drawing and fair copy replies to counsel's requisitions on title, at per folio	0	1	4	0	1	4
Paid fee to Mr. , to advise further on title, and clerk	2	4	6	2	4	6
Attending him	0	6	8	0	6	8
Paid fee to Mr. to resettle conditions of sale, and clerk	2	4	6	2	4	6
Attending him	0	6	8	0	6	8
Instructions for affidavit of Mr. , auctioneer, as to value of property and reserved biddings	0	6	8	0	6	8
Drawing same, folio , at per folio	0	1	0	0	1	0
Engrossing, at per folio	0	0	4	0	0	4
Making copy of valuation for reserved bid to be marked as exhibit, folio , at per folio	0	0	4	0	0	4
Attending deponent to be sworn	0	6	8	0	6	8
Preparing exhibits, each	0	1	0	0	1	0
Paid oath	0	1	6	0	1	6
Paid exhibits, each	0	1	0	0	1	0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Paid filing affidavit	0	2	0	0	2	0
Notice of filing copy and service on defendant's solicitor	0	4	0	0	4	0
The like upon solicitors after the first, each	0	2	6	0	2	6
Making copy for office copy, and paid marking, folio , at per folio	0	0	6	0	0	6
Making copy, particulars and conditions of sale for chief clerk, folio , at per folio	0	0	4	0	0	4
Notice of appointment before chief clerk to proceed on directions as to sale, copy and service on defendant's solicitor	0	4	0	0	4	0
The like on solicitors after the first, each	0	2	6	0	2	6
Attending before chief clerk, settling particulars and conditions of sale.						
Copy particulars and conditions for printer, folio , at per folio	0	0	4	0	0	4
Attending the printer, instructing him	0	6	8	0	6	8
Revising the print, folio , at per folio	0	0	2	0	0	2
Paid the printer's charges.						
Preparing advertisement for sale, and attending to get same approved and signed	0	6	8	0	13	4
Paid signing				1	0	0
<i>March, 1879.</i>						
Attending to insert in the <i>Gazette</i>	0	6	8	0	6	8
Paid for insertion and for copy <i>Gazette</i> .						
Copies advertisements for London papers, at per folio	0	0	4	0	0	4
Attending to insert same in papers other than <i>Gazette</i> , each printer				0	6	8
Or every two	0	6	8			
Paid insertion in						
The like in						
Attending chief clerk on appointment, reserved bid- dings and amount of security for deposits fixed.						
Instructions for drawing and engrossing recognizance ; attending settling, and paid parchment	1	15	0	2	12	6
Instructions for affidavit of two sureties	0	6	8	0	6	8
Drawing same, folio , at per folio	0	1	0	0	1	0
Engrossing, at per folio	0	0	4	0	0	4
Attending deponents to be sworn	0	6	8	0	6	8
Paid oath, each	0	1	6	0	1	6
Paid filing	0	2	0	0	2	0
Notice of filing copy and service on the defendant's solicitor	0	4	0	0	4	0
The like upon solicitors after the first, each	0	2	6	0	2	6
Making copy for office copy, and paid marking, folio , at per folio	0	0	6	0	0	6
Attending auctioneer and sureties, reading over and on their entering into recognizance	0	13	4	0	13	4
Paid commissioner, each name	0	10	0	0	10	0
Sitting fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Easter Sittings, 1879.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Numerous attendances in London on parties applying for particulars and information as to property	0	13	4	1	1	0
The like in the country.						
The charges for these depend upon the number of attendances respecting same, each attendance and giving information at	0	6	8	0	6	8
Attending sale at, lot 1 sold for £, and lot 2 for £; and the other lots remained unsold	1	1	0	1	1	0
Journey to attending the auction when only two lots sold	3	3	0	3	3	0
Paid railway fare and expenses.						
Instructions for affidavit of result of sale	0	6	8	0	6	8
Drawing same, folio, at per folio	0	1	0	0	1	0
Engrossing, at per folio	0	0	4	0	0	4
Preparing exhibits, each	0	1	0	0	1	0
Attending deponent to be sworn	0	6	8	0	6	8
Paid oath	0	1	6	0	1	6
Paid exhibits, each	0	1	0	0	1	0
Paid filing affidavit	0	2	0	0	2	0
Making copy for office copy and paid marking, at per folio	0	0	6	0	0	6
Notice of filing copy and service on the defendant's solicitor	0	4	0	0	4	0
The like to solicitors after the first, each	0	2	6	0	2	6
Copy certificate of result of sale, folio, at per folio	0	0	4	0	0	4
Close copy	0	0	4	0	0	4
Attending settling same.						
Offers having been made for the purchase of the unsold lots, attending and conferring with the auctioneer as to whether he considered the amounts offered were sufficient	0	6	8	0	6	8
Transcribing certificate of result of sale, folio, at per folio	0	0	4	0	0	4
Attending adjourned summons when certificate signed.	0	6	8	0	6	8
Attending to file certificate, and to bespeak, and for office copy	0	6	8	0	6	8
Making copy certificate for office copy, and paid marking folio, at per folio	0	0	6	0	0	6
Writing auctioneers, requesting them to send us a cheque for payment of the amount of deposits, and which had to be paid into Court	0	3	6	0	3	6
Attending Paymaster-General bespeaking directions to pay in £ amount of deposit, and attending at Bank of England paying in same, and at report	0	13	4	0	13	4
Paid for office copy receipt, at per folio	0	0	6	0	0	6
Where the sum paid in amounts to £100	1	1	0	1	1	0
Where the sum amounts to £1,000	1	1	0	2	2	0
And where the sum amounts to £5,000	1	1	0	3	3	0
Writing auctioneers acknowledging receipt of cheque for deposits and informing them the amount was paid in	0	3	6	0	3	6

Lower Scale. Higher Scale.
 £ s. d. £ s. d.

Charges relating to lot 1—

Perusing and arranging and marking out abstract for this lot, according to circumstances.

The fair copy laid before conveyancing counsel should be used for purchaser if the conveyancing counsel has not written his queries in the margin of the abstract, but if he has, charge for.

Making copy abstract for purchaser, lot 1, at per folio	0 0 4	0 0 4
Writing and attending purchaser of lot 1 therewith	0 3 6	0 3 6
Writing to Mr., solicitor, for purchaser of lot 1, approving of time named for examining abstract	0 3 6	0 3 6
Attending Mr., purchaser's solicitor, examining the title deeds with abstract, at per hour	0 6 8	0 6 8
Perusing requisitions on title, lot 1	0 6 8	0 6 8
(If the requisitions are very lengthy this charge may be increased.)		
Drawing answers, at per folio	0 1 0	0 1 0
Copy thereof and of requisitions, at per folio	0 0 4	0 0 4
Writing Mr., solicitor, for purchaser of lot 1, therewith	0 3 6	0 3 6
Perusing draft conveyance of lot 1, skins, at per skin	0 5 0	0 5 0
Copy to keep, folio, at per folio	0 0 4	0 0 4
Perusals and copies of drafts, deeds, and examination of engrossments, allowed only to solicitors whose clients are parties to the deeds, and the same charges are not allowed when the same solicitor acts for purchaser.		
Writing defendant's solicitor therewith for approval	0 3 6	0 3 6
Attending summons for leave to pay in purchase money of lot 1, order made	0 13 4	0 13 4
Close copy of the order, folio, at per folio	0 0 4	0 0 4
Attending settling order	0 6 8	0 13 4
Attending to pass	0 6 8	0 13 4
Attending Mr., purchaser's solicitor, borrowing order, and subsequently to return same	0 6 8	0 6 8
Drawing request to invest purchase money of lot 1	0 2 6	0 2 6
Attending bespeaking investment	0 6 8	0 6 8
Perusing further requisitions.		
Drawing and copy answers involving minute investigation of title, and perusing and considering documents in action, engaged hours.		
Attending Mr., purchaser's solicitor, lot 1, discussing matters outstanding on title, and arranging same	0 6 8	0 6 8
Perusing alterations made in draft conveyance by defendant's solicitor and copying same	0 6 8	0 6 8
Writing to Mr., purchaser's solicitor, returning draft approved	0 3 6	0 3 6
Having received engrossment, examining same, with draft, skins, at per skin	0 3 4	0 3 4
Writing defendant's solicitor therewith for examination and clerk attending with same	0 6 8	0 6 8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Writing Mr. , purchaser's solicitor, agreeing to appointment made to complete	0	3	6	0	3	6
The purchaser's solicitor having required memorandum of his client's conveyance to be endorsed on two of the title deeds, perusing notices, and endorsing same accordingly	0	6	8	0	6	8
Writing to the plaintiff making appointment for him to attend and execute conveyance	0	3	6	0	3	6
The like to the defendant's solicitor	0	3	6	0	3	6
Attending plaintiff, defendant's, and purchaser's solicitors, when deed executed by vendors, and arranging as to completion	0	6	8	0	6	8
Preparing list of deeds to be handed to purchaser of lot 1, and two copies thereof, at per folio	0	1	8	0	1	8
Preparing authority to deal with purchase-money and fair copy for purchaser's signature	0	6	8	0	6	8
Attending completion, obtaining signature to authority to deal with purchase-money, handing over deeds, and obtaining receipt for same	0	13	4	1	1	0
Charges relating to the other lots are similar to lot 1. (Perusing and arranging and marking out abstracts for this lot, according to circumstances.)						
The fair copy laid before conveyancing counsel should be used, if the conveyancing counsel have not written his queries in the margin of the abstract, and if he has, charge for.						
Making copy abstract for purchaser of lot , at per folio	0	0	4	0	0	4
Attending the auctioneers when they informed us that Mr. had made an offer of £ for lot , and informing them that offer would be accepted on a provisional contract being entered into	0	6	8	0	6	8
Instructions for conditional contract	0	6	8	0	6	8
Drawing same, at per folio	0	1	0	0	1	0
Making copy for approval, at per folio	0	0	4	0	0	4
Writing to Mr. , purchaser's solicitor, therewith	0	3	6	0	3	6
Having received contract altered, perusing and considering same	0	6	8	0	6	8
Engrossing contract in duplicate, at per folio each	0	0	8	0	0	8
Paid stamping each engrossment	0	0	6	0	0	6
Writing Mr. , purchaser's solicitor, therewith to be signed	0	3	6	0	3	6
Attending plaintiff, obtaining his execution of the contract	0	6	8	0	6	8
Having received one part of contract signed by purchaser, preparing summons to confirm conditional contract and attending at chambers to get same sealed	0	6	8	0	13	4
Paid stamping same	0	2	0	0	3	0
Making copy of summons to leave at chambers	0	2	0	0	2	0
Copy and service of same on purchaser's solicitor	0	3	6	0	4	6
Copy and service of same upon the solicitors for the defendants, each	0	3	6	0	4	6
Instructions for affidavit of in support of summons	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Drawing same, folio , at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Preparing exhibits, each	0	1	0	0	1	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Paid commissioner marking exhibits, each	0	1	0	0	1	0
Making copy of this affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Notice of filing this affidavit and copy and service on the purchaser's solicitor	0	4	0	0	4	0
The like upon the solicitors for the defendants, each	0	2	6	0	2	6
Attending summons to confirm contract for sale of lot when order made	0	6	8	0	13	4
Close copy draft order approving of contract, at per folio	0	0	4	0	0	4
Notice to settle same, copy and service on purchaser's solicitor	0	4	0	0	4	0
The like on the solicitors for the defendant, each	0	2	6	0	2	6
Attending before the registrar settling same	0	6	8	0	13	4
Notice to pass same, copy and service on purchaser's solicitor	0	4	0	0	4	0
The like on the defendant's solicitors, each	0	2	6	0	2	6
Paid for order	0	3	0	0	5	0
Attending passing same	0	6	8	0	13	4
Attending purchaser's solicitor and lending him order to pay in his purchase moneys						
If the purchaser is satisfied with the title the order approving of contract is then made directing the purchaser to pay in his purchase-money, and in that case the following charge would have to be made by the party having the carriage of the order						
Attending before the registrar and settling proof of order	0	6	8	0	6	8
Making copy abstract for purchaser of lot , folio , at per folio	0	0	4	0	0	4
Writing and attending purchaser's solicitor therewith	0	3	4	0	6	8
(The same charges as for lot 1, unless the letters and attendances there charged applied to both lots when no additional charges are allowed unless additional trouble given and time consumed, the charges should be increased accordingly.)						
When all the lots are not sold the chief clerk directs another advertisement to be issued for the sale of these lots without reserve, charge for drawing particulars and conditions of sale, &c., and as to attending the sale, as charged in pages 628 and 629, with the exception of attending the chief clerk settling the reserved bidding and the charges for the auctioneer's recognizance, &c.						
Charge for completing the sale of these lots as charged in sale of lot 1.						

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
When an order is made for the sale of property in some cases the plaintiffs or defendants have requested to be allowed to bid for some of the lots, in such case charge.						
Preparing summons for A. B. to be at liberty to bid at the sale for lot or lots, and attending at chambers to get same sealed	0	3	0	0	6	8
Paid stamping same	0	2	0	0	3	0
Making copy of same for the chief clerk	0	2	0	0	2	0
Copy and service of same on defendant's solicitors, each	0	3	6	0	4	6
Attending summons when order made	0	6	8	0	13	4
Close copy order, folio, at per folio	0	0	4	0	0	4
Notice to settle same and copy and service on defendant's solicitors	0	4	0	0	4	0
The like to the other solicitors, each	0	2	6	0	2	6
Attending settling same	0	6	8	0	13	4
Notice to pass same copy and service on defendant's solicitors	0	4	0	0	4	0
The like to the other solicitors	0	2	6	0	2	6
Paid for order	0	3	0	0	5	0
Attending settling same	0	6	8	0	13	4
Making copy of order for the chief clerk, folio, at per folio	0	0	4	0	0	4

General Costs of Suit after Sales are Completed.

Attending at the Paymaster-General's office bespeaking certificate of fund in Court and afterwards for same	0	6	8	0	6	8
Drawing request to set down action for second further consideration, and attending setting down.	0	9	2	0	9	2
Paid on setting down	1	0	0	2	0	0
Notice thereof, copy and service of defendant's solicitor	0	4	0	0	4	0
The like upon solicitors after the first, each	0	2	6	0	2	6
If action heard short, charge for preparing minutes, as at the first hearing of the action, see page 615.						
When residuary account has to be passed add the following charges.						
Instructions for and drawing residuary account of the testator, perusing the accounts as passed and preparing the necessary schedules to form part of the residuary account.						
The charge for this will be allowed according to the time occupied.						
Two fair copies of the account and schedules together, folios, at per folio	0	0	4	0	0	4
Attending the plaintiff or defendant, explaining the account and obtaining his signature to original and duplicate to be filed	0	13	4	0	13	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending at the Inland Revenue Office to pass same. The charge for this will depend upon the time occupied in passing same.						
Attending again at Inland Revenue Office, producing certificate, account was finally passed, and assessing the duty thereon, and explaining it would be carried to Receiver-General's account, and obtaining certificate of assessment	0	13	4	0	13	4
Attending Paymaster-General with certificate of assessment, and bespeaking transfer of amount of duty to account of Receiver-General, when he requested an affidavit verifying the amount to be filed	0	6	8	0	6	8
Instructions for affidavit accordingly	0	6	8	0	6	8
Drawing same, folio , at per folio	0	1	0	0	1	0
Engrossing, at per folio	0	0	4	0	0	4
Marking exhibit	0	1	0	0	1	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid oath	0	1	6	0	1	6
Paid exhibit	0	1	0	0	1	0
Paid filing	0	2	0	0	2	0
Making copy for office, and paid marking, folio , at per folio	0	0	6	0	0	6
The duty having been paid to Receiver-General, attending at Inland Revenue Office obtaining residuary account duly received and stamped	0	6	8	0	13	4
(When the order directs the chief clerk to certify proportion of fund in Court payable to different parties, charge for.)						
Making copy of the Order on second further consideration, dated June, 187 , for chief clerk, folio , at per folio	0	0	4	0	0	4
Preparing summons to proceed under Order	0	3	0	0	6	8
Paid stamping same	0	2	0	0	3	0
Copy for chief clerk	0	2	0	0	2	0
Making copy for service and service upon defendant's solicitors	0	3	6	0	4	6
The like upon each other solicitor entitled to attend	0	3	6	0	4	6
Attending summons when chief clerk gave directions for plaintiff and defendant only to attend on certificate, and directed plaintiff to bring in a copy of the schedule and statement showing persons entitled to the fund, with amounts payable to each, together with an affidavit verifying the statement.						
Making copy of the schedule for chief clerk's certificate, folio , at per folio	0	0	4	0	0	4
Preparing statement and making calculations showing division of the fund, from to 18 (The allowance for this has to be certified by the chief clerk.)						
Instructions for affidavit verifying statement	0	6	8	0	6	8
Drawing same, folio , at per folio	0	1	0	0	1	0
Engrossing, at per folio	0	0	4	0	0	4
Copy of the statement to exhibit, at per folio	0	0	4	0	0	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Preparing exhibit	0	1	0	0	1	0
Attending to deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6	0	2	6
Paid filing affidavit	0	2	0	0	2	0
Making copy for office copy, and paid marking, at per folio	0	0	6	0	0	6
Attending the chief clerk when he approved of the statement, and directed certificate to be prepared, and adjourning same to the day of , 188						
Paid copy chief clerk's certificate, folio , at per folio	0	0	4	0	0	4
Close copy, at per folio	0	0	4	0	0	4
Attending appointment to settle chief clerk's certificate, and same settled in part and adjourned to the day of 188						
Attending adjourned appointment before chief clerk, when certificate settled.						
Engrossing certificate, folio , at per folio	0	0	4	0	0	4
Attending on same being signed	0	6	8	0	6	8
Attending to file and to get office copy marked	0	6	8	0	6	8
Making copy for office copy, and paid marking, folio , at per folio	0	0	6	0	0	6
(When any creditors have to be paid out of court, charge.)						
Attending the Paymaster bespeaking cheques for sums payable to creditors	0	6	8	0	6	8
Preparing notice to creditor that cheques may be received, with amount due for principal, interest, and costs, for each creditor	0	1	0	0	1	0
Copy and service thereof, each	0	2	6	0	2	6
Attending Taxing-Master, certifying that action not previously referred, and obtaining reference	0	6	8	0	6	8
Copy Order for Taxing-Master, folio , at per folio	0	0	4	0	0	4
The charge of 4d. per folio includes the amount paid when it is a printed order.						
Attending Registrar bespeaking directions for sale of £ £3 per cent. Annuities standing to credit of action, "Real Estate Account"	0	6	8	0	6	8
Attending the Paymaster-General bespeaking the sale	0	6	8	0	6	8
The like charges for sale of £ £3½ per cent. standing to general credit of cause	0	13	4	0	13	4
(The like charges for other sales directed by the Order as above.)						
Attending the Paymaster-General when he found that the dividends had been invested, which altered the amount of stock mentioned in the Order, and rendered it necessary to get Order altered. Attending Registrar accordingly getting necessary alterations made, and at the entering seat to get Order entered, and subsequently attending Paymaster-General with Order altered	0	6	8	0	6	8
Drawing request to place £ on deposit, and attending Paymaster-General therewith	0	9	2	0	9	2
Drawing request to take £ cash off deposit, and attending Paymaster-General therewith	0	9	2	0	9	2

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Drawing request to carry over £ cash to account of, and attending Paymaster-General to bespeak carrying over	0	9	2	0	9	2
Drawing request to carry over £, and attending to bespeak carrying over, each	0	9	2	0	9	2
Drawing request to invest, and attending to bespeak same, each	0	9	2	0	9	2
Attending Registrar bespeaking and afterwards to obtain directions to transfer £ consols to	0	6	8	0	6	8
Attending Paymaster-General with same and bespeaking transfer	0	6	8	0	6	8
(The like charges are allowed for obtaining directions and bespeaking each transfer, carrying over, and investment respectively.)						
Attending to identify plaintiff on his receiving £ cash due to him	0	6	8	0	6	8
If any party receives any amount out of Court as mortgagee or trustee of the testator and lives out of London he is entitled to a power of attorney, for which charge.						
Attending Paymaster-General bespeaking power of attorney from to his attorney to obtain £ out of Court	0	6	8	0	6	8
Paid for power.						
Writing to therewith fully instructing him to execute same	0	5	0	0	5	0
Attending at the Paymaster-General receiving the amount	0	6	8	0	6	8
Writing to therewith and requesting an acknowledgment of the amount	0	3	6	0	3	6
Attending the Paymaster-General bespeaking transcript of the account	0	6	8	0	6	8
Paid for same	0	15	0	0	15	0
Sittings fee	0	6	0	0	6	0
If agency, letters, &c.						
Postages, carriage, and transmission of documents and correspondence not hereto charged will be allowed according to circumstances, and also when the work to carry out the Order cannot be completed for a term or two, after the Taxing-Master's certificate is issued, further sittings fees will be allowed in anticipation.						

Summary of Bill.

Page.	Taxed off.	Amount.
	£ s.	£ s. d.
1	1 1	10 9 6
2	0 5	60 10 6
	<hr/>	<hr/>
	1 6	71 0 0
	<hr/>	<hr/>
	Taxed off	1 6 0
		<hr/>
		69 14 0
		<hr/>
		£

Paid ad valorem (but this is not to be added when costs are ordered to be paid out of fund in Court) . . .

	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.
The ad valorem fees of taxation are—		
Where amount taxed does not exceed £8	0 2 0	0 4 0
Where the amount exceeds £8, for every £2 additional allowed or fractional part	0 0 6	0 1 0
Fieri facias are now issued against a person ordered to pay costs, &c., instead of subpœnas.		
Paymaster-General's charges for powers of attorney as follows—		
Power of attorney for capital money exceeding £20	0 13 3	0 13 3
Power of attorney, not exceeding £20	0 8 3	0 8 3
Power of attorney for annual dividend or interest upon stock and securities	0 8 3	0 8 3
Power of attorney if under £3	0 3 3	0 3 3
Power of attorney for a single payment	0 4 3	0 4 3
Power of attorney for periodical payments not exceeding £10 a year	0 8 3	0 8 3
Power of attorney to be executed abroad	0 3 2	0 3 2

DEFENDANTS' COSTS OF SALE UNDER DIRECTION OF JUDGE.

Hilary Sittings, 187 .

187 , January.

Attending summons to proceed when sale directed, and abstract and particulars of property to be brought in by the plaintiff's solicitors,

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending adjourned appointment before chief clerk when evidence as to fitness and remuneration of auctioneers to be brought in.						
Paid for copy affidavit of , folio , at per folio .	0	0	4	0	0	4
Perusing, at per folio	0	0	4	0	0	4
If agency, close copy, at per folio	0	0	4	0	0	4
Paid for copy exhibits, at per folio.	0	0	4	0	0	4
Attending summons, lotting approved, auctioneer's remuneration fixed, and abstract referred to conveyancing counsel.						
If the defendant's solicitor has the conduct of sale, charge for perusing old abstracts, drawing abstracts, see Bill of Plaintiff relating to the charges as to completion of the sales, commencing at p.						
Attending before chief clerk settling particulars and conditions of sale.						
1879, <i>March</i> .						
Attending chief clerk on appointment, reserve biddings and amount of security for deposits fixed.						
Paid for copy recognizance, folio , at per folio .	0	0	4	0	0	4
Attending chief clerk to settle recognizance.						
Paid for copy affidavit of sureties, at per folio	0	0	4	0	0	4
Perusing	0	0	4	0	0	4
If agency, close copy	0	0	4	0	0	4
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Easter Sittings, 1879.

1879, *April*.

Numerous attendances in London on parties applying for particulars and information as to property	0	6	8	0	13	4
The like in the country	0	13	4	1	1	0
Paid for copy affidavit of result of sale, folio , at per folio	0	0	4	0	0	4
Perusing same, at per folio	0	0	4	0	0	4
If agency, close copy, at per folio	0	0	4	0	0	4
Paid for copy certificate of result of sale, folio , at per folio	0	0	4	0	0	4
Close copy	0	0	4	0	0	4
Attending settling same.						
Attending adjourned summons when certificate signed .	0	6	8	0	6	8
Writing to Mr. , plaintiff's solicitor, approving of time named for examining abstract of title deeds in our client's possession	0	3	6	0	3	6
Attending Mr. , purchaser's solicitor, examining the title deeds with abstracts, per hour	0	6	8	0	6	8
Perusing draft conveyance of lot 1, skins, at per skin (This is allowed to solicitors whose clients are parties to the deeds.)	0	5	0	0	5	0
Copy to keep, folio , at per folio	0	0	4	0	0	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Writing plaintiff's solicitor therewith approved on behalf of defendant	0	3	6	0	3	6
Perusing alterations made in draft conveyance by plaintiff's solicitor, and copying same	0	6	8	0	6	8
Writing to the plaintiff's solicitor, Mr., returning draft approved as altered	0	3	6	0	3	6
Having received engrossment, examining same with draft, skins, at per skin	0	3	4	0	3	4
Writing Mr., plaintiff's solicitor, agreeing to appointment made to complete	0	3	6	0	3	6
Writing to the defendant making appointment for him to attend and execute conveyance	0	3	6	0	3	6
Attending defendant obtaining his execution of the conveyance	0	6	8	0	6	8
The charges relating to the other lots will be similar to lot 1.						
If the defendant solicitor's client is a party to this deed the same charges as to lot 1, but if additional trouble given and time consumed, the charge should be increased accordingly.						
General costs of suit, see Plaintiff's Bill.						
When an order directs the chief clerk to certify proportion of fund in Court payable to different parties, charge as follows—						
Attending summons when chief clerk gave directions for plaintiff and defendant only to attend on certificate, and directed plaintiff to bring in a copy of the schedule and statement showing persons entitled to the fund with amounts payable to each, together with an affidavit verifying the statement.						
Paid for copy statement, folio, at per folio	0	0	4	0	0	4
Paid for copy affidavit of in support, folio, at per folio	0	0	4	0	0	4
Perusing, at per folio	0	0	4	0	0	4
If agency, close copy, at per folio	0	0	4	0	0	4
Attending the chief clerk when he approved of the statement, and directed certificate to be prepared, and adjourned same to the day of, 188						
Paid for copy chief clerk's certificate, folio, at per folio	0	0	4	0	0	4
Close copy	0	0	4	0	0	4
Attending appointment to settle chief clerk's certificate, and same settled in part and adjourned to to proceed further, adjourned to the day of, 188						
Attending adjourned appointment before chief clerk, when certificate settled.						
Attending on same being signed	0	6	8	0	6	8
Attending to identify the defendant on his receiving £, cash due to him.						
Attending Paymaster bespeaking power of attorney from defendant to his attorney to obtain £ out of Court						
Paid for power. (See p. 637).	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Writing to the defendant therewith, fully instructing him to execute same, and requesting him to go to a solicitor to witness the execution	0	5	0	0	5	0
Paid the solicitor's, Mr., charges.						
Attending obtaining P.O.O. for the amount, and writing to him therewith	0	3	6	0	3	6
Attending afterwards receiving the amount	0	6	8	0	6	8
Writing to the defendant therewith and requesting an acknowledgment of the amount	0	3	6	0	3	6
Sittings fee	0	15	0	0	15	0
If agency	0	6	0	0	6	0
Drawing bill of costs and copy, folio, at per folio	0	0	8	0	0	8
*Warrant on leaving same, 2 copies and service	0	8	6	0	8	6
*Warrant to take same, 2 copies and service	0	8	6	0	8	6
Paid for copy costs of defendant, folio, at per folio	0	0	4	0	0	4
Attending taxing same						
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0
When an order cannot be properly worked out after the certificate of taxation is issued, the Taxmaster will allow an extra sittings fee or two.						
Postages, carriage and transmission, and also correspondence not charged	3	3	0	3	3	0

COSTS OF PLAINTIFF AND DEFENDANT AS TO INJUNCTION.

Chancery Division.—Plaintiff's Costs of Injunction.

By the Rules which came in force on the 6th April, 1880, writs of injunction are abolished; an injunction is now by judgment or order, which has the same effect as a writ of injunction formerly had.

Michaelmas Sittings, 1879.

Brief for counsel for leave to serve notice of motion for to-morrow for injunction to restrain the defendants	0	6	8	0	10	0
Paid fee to him and clerk	1	3	6	1	3	6
Attending counsel with same	0	3	4	0	6	8
Attending counsel when leave given	0	6	8	0	13	4
Drawing notice of motion, folios 3	0	3	0	0	3	0
Making copy for service on defendant	0	1	0	0	1	0
Service of same on defendant's solicitors	0	5	0	0	5	0
If the defendant had not appeared the following items to be inserted.						
Attending at defendant's house serving notice	0	5	0	0	5	0

* If the costs are to be paid out of funds in Court these charges will only be 5s. each.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Paid for each mile beyond two from solicitor's office	0	1	0	0	1	0
If the defendant is residing in the country, writing to agents therewith	0	3	6	0	3	6
Paid his charges	0	3	6	0	3	6
Writing him with same	0	3	6	0	3	6
Instructions for affidavit of plaintiff in support of same. (The Taxing Masters have in their discretion to increase this fee if they think fit)	0	6	8	0	6	8
Drawing same, folios 10	0	10	0	0	10	0
Attending counsel with same to settle	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Instructions for affidavit of Mr.	0	6	8	0	6	8
Drawing of same, folios 30	1	10	0	1	10	0
Attending counsel with same to settle	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Engrossing affidavit of plaintiff, folios 10	0	3	4	0	3	4
Preparing two exhibits	0	2	0	0	2	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid Commissioner taking deponent's oath and marking exhibits	0	3	6	0	3	6
Making copy affidavit to be marked as an office copy	0	3	4	0	3	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy	0	1	8	0	1	8
Engrossing affidavits of Mr., folios 30	0	10	0	0	10	0
Preparing five exhibits	0	5	0	0	5	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid Commissioner taking deponent's oath and marking exhibits	0	6	6	0	6	6
Making copy of same to be marked as an office copy	0	10	0	0	10	0
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy	0	5	0	0	5	0
Notice of filing these affidavits copy and service	0	4	0	0	4	0
Drawing and engrossing affidavit of service of notice of motion, folios 5	0	5	0	0	5	0
Making copy notice to exhibit, folios 3	0	1	0	0	1	0
Preparing exhibit	0	1	0	0	1	0
Paid Commissioner taking deponent's oath and marking exhibit	0	2	6	0	2	6
Making copy of affidavit to be marked as an office copy	0	1	8	0	1	8
Paid filing affidavits	0	2	0	0	2	0
Paid for office copy	0	0	10	0	0	10
Instructions for brief on motion for injunction	0	13	4	1	1	0
Drawing same for counsel, folios 10	0	10	0	0	10	0
Making two briefs of same, folios 10, notice of motion 3, and affidavits in support, folios 40, together 53 folios each for counsel	1	15	4	1	15	4
Making three brief copies of exhibits for counsel, folios 30 each	1	0	0	1	0	0
The like two copies of writ, folios 5 each, for counsel	0	3	4	0	3	4
Attending Mr. Q.C., with same	0	6	8	0	13	4
Paid fee to him and clerk	6	11	0	6	11	0
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	4	6	6	4	6	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending Mr. , Q.C., appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation	0	3	4	0	3	4
Paid fee to him and clerk	1	3	6	1	3	6
Attending consultation	0	13	4	0	13	4
Attending Court, motion heard and dismissed with costs	1	1	0	2	2	0
Sittings fee	0	15	0	0	15	0

Defendant's Costs of opposing Motion for an Injunction.

Michaelmas Sittings, 1879.

December, 1879.

Having been served with copy notice of motion for to-morrow for an injunction to restrain defendants, paid for copy affidavit of plaintiff in support, folios 10	0	3	4	0	3	4
Perusing same	0	3	4	0	3	4
Paid for copy affidavit of Mr. , folios 30	0	10	0	0	10	0
Perusing same	0	10	0	0	10	0
Instructions for brief	0	13	4	1	1	0
Drawing same, folios 8	0	8	0	0	8	0
Making two brief copies of same for counsel	0	5	4	0	5	4
The like of writ of summons, folios 8 each	0	3	4	0	3	4
The like of notice of motion, folios 3 each	0	2	0	0	2	0
The like of affidavit filed in support of motion, folios 40 each	1	6	8	1	6	8
The like of certain documents referred to in plaintiff's affidavits in support of motion, folios 119 each	3	19	4	3	19	4
Attending Mr. , Q.C., with brief and papers	0	6	8	0	13	4
Paid fee to him and clerk	7	12	0	7	12	0
Attending Mr. with brief and papers	0	6	8	0	13	4
Paid fee to him and clerk	5	10	0	5	10	0
Attending Mr. , Q.C., appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending consultation	0	13	4	0	13	4
Attending Court, plaintiff's motion heard and dismissed with costs	1	1	0	2	2	0
Attending the Registrar with brief and papers, and bespeaking order	0	6	8	0	6	8
1880, January, close copy draft order, folios 6	0	2	0	0	2	0
Notice to settle same, counsel and solicitor	0	4	0	0	4	0
Sittings fee	0	15	0	0	15	0

Hilary Sittings, 1880.

Attending settling draft order	0	6	8	0	13	4
Notice to pass same, copy and service	0	4	0	0	4	0
Paid for order	0	3	0	0	5	0
Attending passing same	0	6	8	0	13	4
Making copy order for the Taxing Master, folios 5	0	1	8	0	1	8
Attending to get Master in rotation marked	0	6	8	0	6	8

DEFENDANT'S COSTS OF OPPOSING MOTION FOR INJUNCTION. 643

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Drawing bill of costs and copy, folios 20, and summary folios 3, together 23 folios	1	3	0	1	3	0
Warrant on leaving same, copy and service	0	5	6	0	5	6
Warrant to taxing same, copy and service	0	5	6	0	5	6
Attending taking same	0	6	8	0	6	8
Certificate and transcribing	1	2	0	1	2	0
Attending to file same and bespeaking office copy	0	6	8	0	6	8
Paid for office copy	0	3	0	0	3	0
Sittings fee	0	15	0	0	15	0
<p>In this action the plaintiff did not succeed in getting an injunction, and he afterwards served the defendant with notice of discontinuance of same; but if the plaintiff had succeeded in his application he would be entitled to the following charges:—</p>						
Attending Court when the defendant's counsel applied to the Judge for the motion to stand over, as his client had not had time to answer the plaintiff's affidavits in consequence of only being served the day before with copy notice of motion when motion was adjourned	0	6	8	0	13	4
Paid for copy affidavit of C. D. in opposition, folios at per folio	0	0	4	0	0	4
Perusing same, per folio	0	0	4	0	0	4
Instructions for affidavit of in reply, folios	0	6	8	0	6	8
Drawing same, folios, at per folio	0	0	4	0	0	4
Attending counsel with same to settle	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Making copies of affidavits filed in opposition, folio at per folio each	0	0	4	0	0	4
The like of the affidavits filed on behalf of the plaintiff in reply, folios, at per folio	0	0	4	0	0	4
The like of exhibits therein referred to, folios, at per folio	0	0	4	0	0	4
Attending Mr., Q.C., with same	0	6	8	0	13	4
Paid fee to him and clerk	5	10	0	5	10	0
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Mr., Q.C., appointing further consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing further consultation	0	3	4	0	3	4
Paid fee to him and clerk	1	3	6	1	3	6
Attending Court adjourned motion in paper when order made	0	6	8	0	13	4
Attending Registrar with brief and papers and bespeaking draft order	0	6	8	0	6	8
Close copy draft order, folios, at per folio	0	0	4	0	0	4
Notice to settle same, copy and service	0	4	0	0	4	0
Attending settling same	0	6	8	0	13	4
Paid for order	0	5	0	0	10	0
Notice to pass same, copy and service	0	4	0	0	4	0
Attending passing same	0	6	8	0	13	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Drawing warning of order, folios, at per folio	0	1	0	0	1	0
Making copies of notice and order for service, at per folio	0	0	4	0	0	4
Service of same on defendants	0	5	0	0	5	0
The like on defendants' agents	0	5	0	0	5	0
If it is served beyond two miles from the nearest place of business or office of the solicitor, for each mile beyond such two miles therefrom, charge for each mile	0	1	0	0	1	0
Similar charges for drawing bill of costs, &c., as charged at p. 643.						

PLAINTIFF'S COSTS OF MOTION FOR AND APPOINTMENT OF RECEIVER.

Michaelmas Sittings, 1879.

Costs of plaintiffs and defendants on appointment of Receiver, when the appointment was adjourned to Chambers; costs of plaintiff and defendants when Receiver was appointed by the Court, but subject to his giving security in Chambers: costs of passing Receiver's accounts.

Drawing notice of motion for the appointment of Mr. as receiver to receive the rents of testator's estates and to collect and get in the outstanding assets	0	2	0	0	5	0
Or per folio	0	1	0	0	1	0
Copy for service thereof upon the defendants' solicitors, at per folio, each	0	0	4	0	0	4
Service thereof, each	0	2	6	0	2	6
Instructions for affidavit of giving particulars of the estates and assets	0	6	8	0	6	8
Drawing same, folios, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
If any exhibits, charge preparing exhibits, each at	0	1	0	0	1	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid Commissioner taking deponent's oath	0	1	6	0	1	6
Paid him marking exhibits, each	0	1	0	0	1	0
Paid filing affidavit	0	2	0	0	2	0
Making copy of same to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid for office copy, at per folio	0	0	2	0	0	2
Instructions for affidavits of fitness of the proposed Receiver	0	6	8	0	6	8
Drawing same, folios, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid Commissioner taking deponent's oath	0	1	6	0	1	6
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0

PLAINTIFF'S COSTS OF MOTION FOR APPOINTMENT OF RECEIVER. 645

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Paid for office copy, at per folio	0	0	2	0	0	2
(It may be necessary to have two or three affidavits of fitness, particularly if the proposals be contested.)						
Instructions for affidavit of proposed Receiver as to his willingness to act as a Receiver	0	6	8	0	6	8
Drawing same, folios, at per folio	0	1	0	0	1	0
Engrossing same, folios, at per folio	0	0	4	0	0	4
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid Commissioner taking deponent's oath	0	1	6	0	1	6
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Notice of filing these affidavits, copy and service on solicitors for defendants	0	4	0	0	4	0
The like on the solicitors for the other defendants, each	0	2	6	0	2	6
If any affidavit is filed in opposition, charge :—						
Paid for office copy, affidavit of, at per folio	0	0	4	0	0	4
Perusing same, at per folio	0	0	4	0	0	4
If agency, close copy, at per folio	0	0	4	0	0	4
If any affidavits filed in reply charge for same.						
Drawing brief for counsel in support of motion, at per folio	0	1	0	0	1	0
Making copy thereof, folios, notice of motion, folios, affidavits in support of motion, folios, and affidavits in opposition, folios, together folios for counsel, at per folio	0	0	4	0	0	4
Making copy of writ of summons for counsel, at per folio	0	0	4	0	0	4
Copy statement of claim, if printed	0	0	2	0	0	3
If written	0	0	4	0	0	4
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending appointing conference with counsel	0	3	4	0	6	8
Paid conference to him and clerk	1	6	0	1	6	0
Attending conference	0	13	4	0	13	4
(If two counsel are briefed charge for making another copy for consultation and consultation fee.)						
Attending Court, motion brought on and an order made directing a Receiver to be appointed at Chambers	0	13	4	0	13	4
Or according to circumstances	1	1	0	2	2	0
Attending Registrar with brief and papers and bespeaking draft order	0	6	8	0	6	8
Close copy draft order, folios, at per folio	0	0	4	0	0	4
Notice to settle same copy and service on solicitors for defendant	0	4	0	0	4	0
The like on the solicitors for the other defendants, each	0	2	6	0	2	6
Attending settling same	0	6	8	0	13	4
Or at Taxing Master's discretion not to exceed	1	1	0	3	3	0
Notice to pass same copy and service	0	4	0	0	4	0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
The like on the solicitors for the other defendants, each	0	2	6	0	2	6
Paid for order	0	3	0	0	5	0
Attending passing same	0	6	8	0	13	4
Making copy of same for the chief clerk, folios, at per folio	0	0	4	0	0	4
Preparing summons to proceed thereon and attending at Chambers to get same sealed	0	3	0	0	6	8
Paid stamping same	0	2	0	0	3	0
Making copy for Chambers	0	2	0	0	2	0
Copy and service on same on each solicitor	0	3	6	0	4	6
Attending summons to proceed on order when on one of the defendants proposing Mr. as Receiver the chief clerk adjourned the appointment and directed the evidence in support of same to be filed within days of the adjourned appointment	0	6	8	0	13	4
Paid for copy affidavit of filed in support of the defendant's proposed Receiver, folios, at per folio	0	0	4	0	0	4
Perusing same, at per folio	0	0	4	0	0	4
If agency, close copy, at per folio	0	0	4	0	0	4
If plaintiff file further affidavits in support of his proposed Receiver charge for same, folios, at per folio	0	0	4	0	0	4
Attending the adjourned appointment when the chief clerk appointed Mr. the plaintiff's or defendant's nominee as Receiver upon security being given	0	6	8	0	13	4
Close copy order, folios, at per folio	0	0	4	0	0	4
If the plaintiff has succeeded in getting his nominee appointed charge						
Notice to settle order copy and service on solicitor for defendant	0	4	0	0	4	0
The like on the solicitors for the other defendants, each	0	2	6	0	2	6
Attending settling same	0	6	8	0	13	4
Or at the Taxing Master's discretion not to exceed	1	1	0	3	3	0
Examining and correcting proof of order	0	6	8	0	6	8
Paid for order	0	3	0	0	5	0
Notice to pass same copy and service of same on solicitor for defendant	0	4	0	0	4	0
The like on the solicitors for the other defendants, each	0	2	6	0	2	6
Attending passing same	0	6	8	0	13	4
Copy plain print of order for Chambers, folios, at per folio	0	0	1	0	0	1
Preparing summons to proceed thereon and attending at Chambers to get same sealed.	0	3	0	0	6	8
Paid stamping same	0	2	0	0	3	0
Making copy to leave at Chambers	0	2	0	0	2	0
Copy and service of same on each solicitor	0	3	6	0	4	6
Attending summons when chief clerk directed Receiver to enter into recognizance	0	6	8	0	13	4
If defendant's nominee appointed						
Paid for copy recognizance, at per folio	0	0	4	0	0	4
Paid for copy affidavits of Receiver's sureties, folios, at per folio	0	0	4	0	0	4
Perusing same, at per folio	0	0	4	0	0	4
If agency, close copy, at per folio	0	0	4	0	0	4

PLAINTIFF'S COSTS OF MOTION FOR APPOINTMENT OF RECEIVER. 647

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending adjourned summons when adjourned for the chief clerk's certificate as the Receiver had given security	0	6	8	0	13	4
Copy certificate, at per folio	0	0	4	0	0	4
Close copy, at per folio	0	0	4	0	0	4
Attending appointment settling same	0	6	8	0	13	4
Engrossing same, at per folio	0	0	4	0	0	4
Attending on same being signed	0	6	8	0	6	8
Making copy of same to file to be marked as an office copy, at per folio	0	0	4	0	0	4
Attending to file certificate and for office copy	0	6	8	0	6	8
Paid for office copy, at per folio	0	0	2	0	0	2

*Defendant's Costs on Plaintiff's Motion for Appointment of a Receiver,
Michaelmas Sittings, 1879.*

November, 1879.

On being served with copy notice of motion on behalf of the plaintiff paid for copies of affidavits filed in support of notice of motion, folios , at per folio each	0	0	4	0	0	4
Perusing same, at per folio	0	0	4	0	0	4
If agency, close copy, at per folio	0	0	4	0	0	4
Instructions for affidavit of in opposition to motion	0	6	8	0	6	8
Drawing same, folios , at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid Commissioner taking deponent's oath	0	1	6	0	1	6
Making copy of this affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Notice of filing copy and service of same on plaintiff's solicitors	0	4	0	0	4	0
Drawing brief for counsel to appear on behalf of defendant in opposition to notice of motion, folios , at per folio	0	1	0	0	1	0
Making copy thereof, folios , notice of motion, folios , affidavits filed in support of motion, folios , and affidavits in opposition, folios , together folios for counsel, at per folio	0	0	4	0	0	4
Making copy writ of summons for counsel, at per folio	0	0	4	0	0	4
Copy printed statement of claim for counsel, at per folio	0	0	2	0	0	3
If written, at per folio	0	0	4	0	0	4
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	4	6	6	4	6	6
Attending appointing conference with counsel	0	3	4	0	6	8
Paid conference fee to him and clerk	1	6	0	1	6	0
Attending conference	0	13	4	0	13	4

(If two counsel are briefed charge for making another copy of brief, &c., and consultation fee).

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending Court, motion heard and order made directing Receiver to be appointed at Chambers	0	13	4	0	13	4
Or according to circumstances	1	1	0	2	2	0
Close copy minutes of order, folios , at per folio	0	0	4	0	0	4
Attending settling same	0	6	8	0	13	4
Or at Taxing Master's discretion not to exceed	1	1	0	3	3	0
Attending passing order	0	6	8	0	13	4
Attending summons to proceed under order when as the defendant proposed Mr. as Receiver, the chief clerk adjourned the appointment and directed the evidence to be filed within days prior to the adjourned appointment	0	6	8	0	13	4
(If plaintiff files any further affidavits in support of his nomination charge for same as before.)						
Attending adjourned appointment when the chief clerk appointed the plaintiff's nominee upon his giving security	0	6	8	0	13	4
Close copy minutes of order, folios , at per folio	0	0	4	0	0	4
Attending settling same	0	6	8	0	13	4
Attending passing same	0	6	8	0	13	4
Attending summons to proceed on order when chief clerk directed Receiver to enter into recognizance and further proceeding adjourned	0	6	8	0	13	4
Paid for copy recognizance, folios , at per folio	0	0	4	0	0	4
The like affidavits of the Receiver's sureties, folios , at per folio	0	0	4	0	0	4
If agency, close copy , at per folio	0	0	4	0	0	4
Attending adjourned summons when Receiver's security having been completed the chief clerk directed certificate to issue	0	6	8	0	13	4
Copy certificate, folios , at per folio	0	0	4	0	0	4
Close copy, folios , at per folio	0	0	4	0	0	4
Attending to settle same	0	6	8	0	13	4
Attending on same being signed	0	6	8	0	6	8

Receiver's Costs of Appointment and Passing his Accounts.

Michaelmas Sittings, 187 .

Instructions for drawing and engrossing recognizance.						
Attending summons when same settled, and attending at Judge's Chambers for allowance thereof	1	15	0	2	12	6
Copies of draft recognizance for parties to whom copies are directed to be handed, at per folio each	0	0	4	0	0	4
Paid for parchment	0	5	0	0	5	0
Instructions for affidavit of sureties	0	6	8	0	6	8
Drawing same, 5 folios	0	5	0	0	5	0
Engrossing same	0	1	8	0	1	8
Attending sureties on their being sworn thereto	0	6	8	0	6	8
Paid commissioner taking deponent's oaths, each	0	1	6	0	1	6
Paid filing affidavit	0	2	0	0	2	0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Making copy to be marked an office copy	0	1	8	0	1	8
Paid for office copy.	0	0	10	0	0	10
Making appointment with Receiver and his sureties, and attending them on acknowledging recognizance	0	13	4	0	13	4
Paid thereon	0	7	6	0	7	6
Attending to enrol recognizance	0	6	8	0	6	8
Paid enrolling	0	7	6	0	7	6
Attending at Judge's Chambers when order appointing Receiver made	0	6	8	0	13	4
Close copy draft order, at per folio	0	0	4	0	0	4
Notice to settle same copy and service	0	4	0	0	4	0
Attending to settle same	0	6	8	0	13	4
Paid for order	0	3	0	0	5	0
Notice to pass same copy and service	0	4	0	0	4	0
Attending passing and to enter same	0	6	8	0	13	4
Making copy order for the Judge, at per folio	0	0	4	0	0	4
Letters, &c.	0	5	0	0	5	0
If the order appoints the Receiver subject to his giving security, the following will be the charges in lieu of the above :—						
Copy order for the Judge, at per folio	0	0	4	0	0	4
Preparing summons to proceed, and attending at Chambers to get same sealed	0	3	0	0	6	8
Paid stamping same	0	2	0	0	3	0
Making copy summons to leave at Chambers	0	2	0	0	2	0
Copies and services thereof on parties having leave to attend, each	0	3	6	0	4	6
Attending thereon	0	6	8	0	13	4
The same charges as above relating to recognizance.						
Making copy certificate, 6 folios	0	2	0	0	2	0
Copies for the parties to whom copies are directed to be handed, at per folio each	0	0	4	0	0	4
Attending adjourned summons when certificate settled.	0	6	8	0	13	4
Transcribing certificate	0	2	0	0	2	0
Attending appointment to sign	0	6	8	0	6	8
Attending to bespeak and for office copy certificate	0	6	8	0	6	8
Making copy of same to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid for office copy, at per folio	0	0	2	0	0	2
Letters, &c.	0	5	0	0	5	0

Hilary Sittings, 187

Drawing Receiver's first account and copy, at per folio	0	0	8	0	1	4
Preparing summons to proceed thereon, and attending at Chambers to get same sealed	0	3	0	0	6	8
Paid stamping same	0	2	0	0	3	0
Making copy summons to leave at Chambers	0	2	0	0	2	0
Copy and service of same on plaintiff's and defendant's solicitors having leave to attend, each	0	3	6	0	4	6
Copies of accounts for parties to whom copies are directed to be handed, at per folio each	0	0	4	0	0	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending summons when account passed and costs settled	0	6	8	0	13	4
Entering account and duplicate in books, at per folio each	0	0	4	0	0	4
Paid for books						
Instructions for affidavit verifying account and duplicate	0	6	8	0	6	8
Drawing same, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Preparing exhibits	0	2	0	0	2	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath and marking exhibits	0	3	6	0	3	6
Paid filing affidavit	0	2	0	0	2	0
Making copy for office copy, and paid marking, at per folio	0	0	6	0	0	6
Making copy draft certificate of passing account, at per folio	0	0	4	0	0	4
Copies for the parties to whom copies are directed to be handed, at per folio	0	0	4	0	0	4
Attending settling draft certificate	0	6	8	0	6	8
Transcribing certificate, at per folio	0	0	4	0	0	4
Paid per centage on £						
Attending appointment to sign certificate	0	6	8	0	6	8
Attending to bespeak and for office copy certificate	0	6	8	0	6	8
Making copy for office copy, and paid marking, at per folio	0	0	6	0	0	6
Drawing this bill of costs and copy, at per folio	0	0	8	0	0	8
Copies for parties to whom copies are directed to be handed, at per folio	0	0	4	0	0	4
Attending taxing same						
Attending to procure balance to be paid into Court	0	6	8	0	6	8
Attending Paymaster-General for directions to pay balance into the bank, and attending to pay same in and to obtain cashier's receipt, see p. 587.						
Paid for office copy of certificate of payment, at per folio	0	0	6	0	0	6
Letters, &c.	0	5	0	0	10	0

Plaintiff's or Defendant's Costs of Passing Receiver's Accounts.

Hilary Sittings, 187 .

Attending summons when account passed and costs settled	0	6	8	0	13	4
Close copy certificate, at per folio	0	0	4	0	0	4
Drawing this bill of costs and copy, at per folio	0	0	8	0	0	8
Copies for parties to whom copies are directed to be handed, at per folio	0	0	4	0	0	4
Attending appointment to sign certificate	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending taxing costs at per 25 folios, or fractional part	0	6	8	0	6	8
Attending taxing receiver's costs Ditto	0	6	8	0	6	8
Letters, &c.	0	5	0	0	5	0

Receiver's Costs on Passing his final Account.

Easter Sittings, 1879.

The same charges as in the preceding bill for drawing and fair copy account, summons to proceed thereon, and attendances, as the case may be, and then the following items:—

Attending depositing Receiver's books at the office of the Masters in the Royal Court of Justice	0	6	8	0	6	8
Attending the plaintiff's solicitors and paying them the amount due to plaintiff on passing final account and obtaining receipt	0	6	8	0	6	8
If the balance is invested:—						
Attending Paymaster-General for directions to pay in balance, and at the Bank to pay same in and obtain cashier's receipt, see p. 587.						
Pay for office copy certificate of payment in, at per folio	0	0	4	0	0	4
Attending for and bespeaking office copy recognizance . Paid for same	0	6	8	0	6	8
Attending the Masters of Rolls' secretary with same, and obtaining his certificate that final account passed, and afterwards attending at the Public Record Office with same	0	13	4	0	13	4
Paid vacating recognizance	1	1	0	1	1	0
If the Receiver was appointed to receive rents:—						
Copy authority to tenants to pay rents to	0	1	0	0	1	0
Attending the Receiver on his signing same, and afterwards on plaintiff's solicitors therewith	0	6	8	0	6	8
Drawing this bill of costs and copy, at per folio	0	0	8	0	0	8
Copies for parties to whom copies are directed to be handed, folios , at per folio	0	0	4	0	0	4
Attending serving same, each	0	5	0	0	5	0
Plaintiff's or defendant's costs for passing the final will be similar to their costs for passing the first account.						
Paid for office copy	0	1	8	0	1	8
Instructions for affidavit of fitness of the proposed Receiver	0	6	8	0	6	8
Drawing same, 5 folios	0	5	0	0	5	0
Engrossing same	0	1	8	0	1	8
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Making copy affidavit to be marked as an office copy	0	1	8	0	1	8
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy	0	0	10	0	0	10
Notice of filing of these affidavits and copy, and serving on Mr. , solicitor, folios	0	4	0	0	4	0
The like solicitors for other parties, each	0	2	6	0	2	6

	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.
(It may be necessary to have two such affidavits of fitness, particularly if the proposal be contested, and there should also be an affidavit by the person proposed stating his willingness to act as Receiver.)		
Instructions for affidavit of proposed Receiver as to willingness to act as Receiver	0 6 8	0 6 8
Drawing same, 6 folios	0 6 0	0 6 0
Engrossing same	0 2 0	0 2 0
Attending deponent to be sworn to same	0 6 8	0 6 8
Paid commissioner taking deponent's oath	0 1 6	0 1 6
Making copy affidavit to be marked as an office copy	0 2 0	0 2 0
Paid filing affidavit	0 2 0	0 2 0
Paid for office copy	0 1 0	0 1 0
Notice of filing same and copy and service on Mr. solicitor	0 4 0	0 4 0
If any affidavit is filed in opposition, charge		
Paid for office copy affidavit of folios, at per folio	0 0 4	0 0 4
Perusing same, at per folio	0 0 4	0 0 4
Attending summons when was appointed on his giving security	0 6 8	0 13 4
If the summons is adjourned for further affidavits, charge for drawing or perusing same, and charge		
Attending adjourned summons when Mr. was appointed on giving security	0 6 8	0 13 4
Close copy draft order, at per folio	0 0 4	0 0 4
Notice to settle same copy and service on Mr. solicitor	0 4 0	0 4 0
The like on solicitors for the other parties, each	0 2 6	0 2 6
Attending settling same	0 6 8	0 13 4
Paid for order	0 3 0	0 5 0
Notice to pass same copy and service on Mr. solicitor	0 4 0	0 4 0
The like on solicitors for other parties, each	0 2 6	0 2 6
Attending passing same	0 6 8	0 13 4
Attending to settle draft recognizance	0 6 8	0 13 4
Sittings fee	0 15 0	0 15 0
(If no other proceedings going on in this Sittings in this action.)		

Trinity Sittings, 1879.

Similar for passing Receiver's account as charged in p. 650.

RECEIVER'S COSTS ON PASSING THEIR FIRST ACCOUNT WHO WERE APPOINTED AT THE HEARING OF THE ACTION AND WHO HAD NOT TO GIVE SECURITY OR RECEIVE ANY COMMISSION.

Hilary Sittings, 1880.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Making copy order for the chief clerk, at per folio	0	0	4	0	0	4
Drawing receiver's first account and copy, at per folio	0	0	8	0	1	4
Preparing summonses to proceed thereon and attending at Chambers to get same sealed	0	3	0	0	6	8
Paid stamping same	0	2	0	0	3	0
Making copy to leave at Chambers	0	2	0	0	2	0
Copy and service of same on plaintiff's solicitor	0	3	6	0	4	6
Making account for plaintiff's solicitor, at per folio	0	0	4	0	0	4
Attending summonses when account proceeded and adjudged						
Attending adjourned appointment when account passed						
Entering account in duplicate in books, at per folio each	0	0	4	0	0	4
Instructions for affidavit verifying account and duplicate	0	6	8	0	6	8
Drawing same, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Preparing exhibits, each	0	1	0	0	1	0
Attending receiver on his being sworn to same	0	6	8	0	13	4
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Paid commissioner marking exhibits, each	0	1	0	0	1	0
(When there is more than one receiver appointed, and they cannot be sworn to at the same time, charge for preparing exhibits and getting them sworn to affidavit has been allowed.)						
Paid filing affidavit	0	2	0	0	2	0
Making copy of same to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid for office copy, at per folio	0	0	2	0	0	2
Paid for copy certificate passing account, at per folio	0	0	4	0	0	4
Close copy, at per folio	0	0	4	0	0	4
Making copy of same for plaintiff's solicitor, at per folio	0	0	4	0	0	4
Attending settling chief clerk's certificate	0	6	8	0	13	4
Transcribing certificate, at per folio	0	0	4	0	0	4
Paid per centage on £						
Attending appointment to sign certificate	0	6	8	0	6	8
Attending to bespeak and for office copy	0	6	8	0	6	8
Making copy certificate to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid for office copy, at per folio	0	0	2	0	0	2
Drawing bill of costs and copy, at per folio	0	0	8	0	0	8
Making copy for plaintiff's solicitor, at per folio	0	0	4	0	0	4
Attending to procure balance to pay into Court	0	6	8	0	6	8
Attending at the Paymaster General's for directions for balance to pay into the bank, attending to pay same, and obtaining copy cashier's receipt						
Paid for office copy certificate of payment in, at per folio	0	0	6	0	0	6
Letters, &c.	0	5	0	0	10	6

Plaintiff's Costs of Summons for Discovery and his Costs of Defendants' Summons for Discovery.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
1878, <i>November.</i>						
Preparing summons for defendants to make an affidavit of documents in their possession and attending at Chambers to get same sealed	0	6	8	0	13	4
Paid stamping same	0	2	0	0	3	0
Making copy to leave at Chambers	0	2	0	0	2	0
Or per folio	0	0	4	0	0	4
Copy and service of same upon defendants' solicitors, each	0	3	6	0	4	6
Or per folio	0	0	4	0	0	4
Attending summons when order made	0	0	4	0	0	4
Close copy order, at per folio	0	0	4	0	0	4
Notice to settle draft order and copy and service upon defendants' solicitors, each	0	4	0	0	4	0
Attending settling draft order	0	6	8	0	13	4
Paid for order	0	3	0	0	5	0
Notice to pass same and copy and service upon defendants' solicitors, each	0	4	0	0	4	0
Attending to pass same	0	6	8	0	13	4
Making copy order for service, at per folio	0	0	4	0	0	4
Indorsing warning on original and copy	0	1	0	0	1	0
Service thereof on defendants' solicitors who undertook to accept service, each	0	2	6	0	2	6
If the solicitors will not accept service, charge attending the defendant, and serving him personally with same	0	5	0	0	5	0
If served upon two miles from the office of the solicitor serving same, for each mile beyond the two miles	0	1	0	0	1	0
If sent to agent to be served, charge						
Writing to agent with original and copy for service	0	3	6	0	3	6
On receipt of original duly indorsed writing to agent with his charges for service	0	3	6	0	3	6
Paid his charges (Post-office Order)						
Paid for copying affidavit of documents in defendants' possession, folios, at per folio	0	0	4	0	0	4
Perusing same, at per folio	0	0	4	0	0	4
If agency close copy	0	0	4	0	0	4
Notice to inspect documents mentioned in defendants' affidavit, copy and service	0	4	0	0	4	0
Attending inspecting same in pursuance of notice	0	6	8	0	6	8
Or per hour	0	6	8	0	6	8
1878, <i>December.</i>						
Attending summons taken out by defendant for plaintiff to make an affidavit of documents when order made						
Close copy draft order, at per folio	0	0	4	0	0	4
Attending to settle same	0	6	8	0	13	4
Attending to pass same	0	6	8	0	13	4
Making copy order for service, at per folio	0	0	4	0	0	4
Attending plaintiff's solicitors when they accepted service on behalf of the plaintiff	0	6	8	0	6	8

	Lower Scale. £ s. d.	Higher Scale. £ s. d.
Instructions for affidavits of plaintiff as documents in his possession	0 6 8	0 6 8
(In higher scale actions the Taxing Master has the power to increase the charge for instructions.)		
Drawing same, folios , at per folio	0 1 0	0 1 0
Engrossing same, at per folio	0 0 4	0 0 4
Attending deponent to be sworn to same	0 6 8	0 6 8
(If the solicitor has to go a long distance this may be increased.)		
Paid commissioner taking plaintiff's oath	0 1 6	0 1 6
Making copy affidavit to be marked as an office copy, at per folio	0 0 4	0 0 4
Paid filing affidavit	0 2 0	0 2 0
Paid for office copy, at per folio	0 0 2	0 0 2
Notice of filing same, copy and service	0 4 0	0 4 0
Attending defendants' solicitors on their inspecting documents mentioned in plaintiff's affidavit	0 6 8	0 6 8
Or per hour	0 6 8	0 6 8
(This precedent can be used for defendant's costs of summons for discovery, and his costs of plaintiff's summons for discovery.)		

Plaintiff's Costs of Interrogatories and his Costs of Answering Defendant's Interrogatories.

1878.

Instructions for interrogatories to be answered by defendants	0 6 8	0 13 4
Drawing same, folios , at per folio	0 1 0	0 1 0
Attending Mr. with same to settle	0 3 4	0 6 8
Paid fee to him and clerk	1 3 6	1 3 6
If printed, making copy of same for the printer, at per folio	0 0 4	0 0 4
Examining and correcting proof, at per folio each	0 0 2	0 0 2
Paid printer's charges (minus £ received for copies).		
If written engrossing interrogatories, at per folio each	0 0 4	0 0 4
Attending to deliver same, each	0 3 4	0 6 8
Attending defendants' summons to file answer to interrogatories when order made	0 6 8	0 6 8
Paid for copy affidavit of defendants in answer to interrogatories, if printed, at per folio	0 0 1	0 0 1
If written, at per folio	0 0 4	0 0 4
Perusing same, at per folio	0 0 4	0 0 4
If printed, perusing same at per folio	0 0 2	0 0 3
If agency close copy, if printed, at per folio	0 0 2	0 0 3
Close copy, if written, at per folio	0 0 4	0 0 4
If the interrogatories are not satisfactorily answered, charge for preparing summons for further answer to interrogatories and attending at Chambers to get same sealed	0 6 8	0 13 4
Paid sealing same	0 2 0	0 3 0
Making copy to leave at Chambers	0 2 0	0 2 0
Or per folio	0 0 4	0 0 4
Copy and service of same on defendants' solicitor, each	0 3 6	0 4 6
Or per folio	0 0 4	0 0 4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending summons for further answers to interrogatories when same adjourned at defendants' request	0	6	8	0	6	8
Attending the adjourned summons when the chief clerk referred it to the Judge						
If the adjourned summons is to be attended by counsel, charge						
Notice to defendants' solicitor that adjourned summons would be attended by counsel, copy and service	0	4	0	0	4	0
The like to the solicitors for the other defendants, each	0	2	6	0	2	6
Drawing brief for counsel to attend in support of application, at per folio	0	1	0	0	1	0
Making fair copy of same for counsel, at per folio	0	0	4	0	0	4
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Attending Mr. appointing conference	0	3	4	0	6	8
Paid fee to him and clerk	1	6	0	1	6	0
Attending conference	0	13	4	0	13	4
Attending adjourned summons before the Judge when he decided (state shortly the Judge's decision), and if he decided that the defendant should further answer interrogatories, and put him under terms as to time to answer, and the action is set down for hearing, charge.						
Attending at the order of course seat having action marked in book not to come into paper accordingly	0	6	8	0	6	8
(If the Judge makes an order for defendant to further answer, charge.)						
Attending the registrar with brief and bespeaking draft order	0	6	8	0	6	8
Close copy draft order, at per folio	0	0	4	0	0	4
Notice to settle same, copy and service on defendant's solicitors each	0	4	0	0	4	0
Attending settling same	0	6	8	0	13	4
Notice to pass same copy and service	0	4	0	0	4	0
Paid for order	0	3	0	0	5	0
Attending passing same	0	6	8	0	13	4
Paid for copy further affidavit, if printed, at per folio	0	0	1	0	0	1
If written, at per folio	0	0	4	0	0	4
Perusing same, at per folio	0	0	4	0	0	4
If printed, perusing same at per folio	0	0	2	0	0	3
If agency close copy, if printed, at per folio	0	0	2	0	0	3
If written, at per folio	0	0	4	0	0	4
1878.						
Having been served with copy interrogatories to be answered by plaintiffs, perusing same	0	6	8	0	13	4
Or per folio				0	0	4
If printed, perusing same at per folio	0	0	2	0	0	3
If agency close copy, if printed, at per folio	0	0	2	0	0	3
If written, at per folio	0	0	4	0	0	4
Preparing summons for time to file affidavit in answer to defendants' interrogatories	0	3	0	0	6	8
Paid stamping same	0	2	0	0	3	0
Making copy to leave at Chambers	0	2	0	0	2	0
Or per folio				0	0	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Copying service of same on defendant's solicitors	0	3	6	0	4	6
Or per folio	0	0	4	0	0	4
Attending summons when order made	0	6	8	0	6	8
Paid stamping order	0	3	0	0	5	0
Attending for order and attending to get same entered	0	6	8	0	6	8
Instructions for affidavit in answer to defendant's inter- rogatories	0	6	8	0	6	8
(In higher scale of actions this allowance can be in- creased by the Taxing-Master.)						
Drawing same folio at per folio	0	1	0	0	1	0
If printed charge for making copy of same for the printer, at per folio	0	0	4	0	0	4
Examining and correcting proof, at per folio	0	0	2	0	0	3
Paid printer's charges (minus £ received for copies)						
If written charge engrossing affidavit, at per folio	0	0	4	0	0	4
If exhibits charge preparing same, each	0	1	0	0	1	0
Attending deponent to be sworn to same	0	6	8	0	6	8
(This can be increased according to the distance the solicitors have to go.)						
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Paid him for marking exhibits, each	0	1	0	0	1	0
If sent to agent charge writing to agent with same to be sworn to	0	3	6	0	3	6
On receipt of affidavit duly sworn to writing to agent with his charges	0	3	6	0	3	6
Paid his charges (post-office order)						
Paid filing affidavit	0	2	0	0	2	0
If printed paid for office copy, at per folio	0	0	2	0	0	3
If written making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid for office copy, at per folio	0	0	2	0	0	2
(If the interrogatories are not satisfactorily answered charge for summons, &c., as charged in the inter- rogatories of plaintiff.)						

Plaintiff's Costs of Administration Order commenced by Original Summons.

Easter Sittings, 1878.

1878, April.

Instructions for summons at Chambers for administra- tion of the estate of the deceased	0	13	4	0	13	4
Certificate of proceeding under lower scale	0	5	0			
(If plaintiff is an infant or married woman charge.)						
Drawing and fair copy authority to sue as next friend and attending to get same signed	0	6	8	0	13	4
Preparing original summons and fair copy and attend- ing to issue same.	0	13	4	1	1	0
Paid stamping same	0	5	0	0	10	0
Making copy of summons to leave at Chambers	0	2	0	0	2	0
Or per folio	0	0	4	0	0	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Making duplicate to file at Record and Writ Clerks' Office	0	2	0	0	2	0
Or per folio	0	0	4	0	0	4
Attending to seal duplicate and copy for service	0	1	4	0	1	4
Paid sealing duplicate	0	1	0	0	5	0
Making copy of summons for service each	0	1	0	0	2	0
Or per folio	0	0	4	0	0	4
Paid sealing same	0	1	0	0	5	0
Service of same on defendant	0	5	0	0	5	0
(If served at a distance of more than two miles from solicitor's office for each mile beyond such two miles extra.)	0	1	0	0	1	0
If sent to agent for service						
Writing to agent therewith	0	3	6	0	3	6
On receipt of letter from him with summons duly indorsed writing to agent with his charges for service	0	3	6	0	3	6
Paid same (post-office order)						
If it is known who is the solicitor for the defendants, attending defendant's solicitor and obtaining his undertaking to appear and leaving copy summons	0	6	8	0	6	8
(No charge is allowed for searching appearance as the defendants are now bound to serve notice of their entering an appearance.)						
If being unable to serve copy summons charge for attending, obtaining a new time for the defendants to attend at the Judge's chambers, and indorsing the summons and getting it sealed	0	6	8	0	6	8
(Charges for service of same see previous items as to this.)						
Instructions for affidavit of plaintiff in support of summons	0	6	8	0	6	8
Drawing same, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Notice of filing same, copy and service	0	4	0	0	4	0
Preparing notice for the defendant to produce probate of deceased's will or letters of administration folio at per folio	0	1	0	0	1	0
Making copy for service, at per folio	0	0	4	0	0	4
Service of same on defendant's solicitor	0	2	6	0	2	6
Preparing notice to admit copy and service	0	5	0	0	7	6
Or per folio	0	0	8	0	1	4
Attending defendant's solicitor on his inspection of documents pursuant of notice to admit	0	6	8	0	13	4
Or per hour	0	6	8	0	6	8
Attending defendant's solicitors, examining and signing admissions	0	6	8	0	13	4
Attending summons when the chief clerk adjourned same at defendant's request						

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending adjourned summons when order made						
Close copy draft order, folio at per folio	0	0	4	0	0	4
Notice to settle same, copy and service	0	4	0	0	4	0
Attending settling same	0	6	8	0	13	4
Or at Taxing-Master's discretion not to exceed	1	1	0	3	3	0
Paid for order	0	10	0	1	0	0
Notice to pass same, copy and service	0	4	0	0	4	0
Attending passing same	0	6	8	0	13	4
(The subsequent charges and proceedings will be similar to those in plaintiff's costs of action after decree—preliminary as to next-of-kin—Advertisement for creditors until further consideration) page 617, and then charge						
Preparing summons for further consideration of order and attending at Chambers to get same sealed	0	3	0	0	6	8
Or if special, at the Taxing-Master's discretion, not exceeding	0	6	8	1	1	0
Paid stamping same	0	2	0	0	3	0
Making copy summons to leave at Chambers	0	2	0	0	2	0
Copy and service of same	0	3	6	0	4	6
Drawing minutes of proposed order, at per folio	0	1	0	0	1	0
Making copy of administration order folio and chief clerk's certificate folio together folios						
to enable counsel to settle same, at per folio	0	0	4	0	0	4
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Making copy of proposed minutes of order for defendant's solicitor, fo., at per folio	0	0	4	0	0	4
Writing him therewith	0	3	6	0	3	6
Subsequently attending defendant's solicitor and conferring with him and arranging terms of minutes of order	0	6	8	0	6	8
Attending summons before chief clerk when order made in accordance with terms of minutes of proposed order						
Or attending summons for further consideration before the chief clerk when on the request of solicitor summons adjourned into court						
If adjourned into court charge for						
Making two copies administration summons and chief clerk's certificate for the Judge, fo. at per folio	0	0	4	0	0	4
Attending the Judge's secretary with same	0	6	8	0	6	8
Drawing brief for counsel to appear on adjourned summons, fo. at per folio	0	1	0	0	1	0
Making two copies of same for counsel at per folio each	0	0	4	0	0	4
Making one copy of administration order, fo. and chief clerk's certificate, fo. together, folios for senior counsel, at per folio	0	0	4	0	0	4
Attending Mr. Q.C. with same	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Attending Mr. appointing consultation	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Paid fee to him and clerk	0	3	4	0	6	8
Attending Mr. appointing consultation	1	3	6	1	3	6
Paid fee to him and clerk	0	15	0	0	15	0
Sittings fee	0	6	0	0	6	0
If agency, letters, &c.						

Trinity Sittings, 1878.

Attending consultation	0	13	4	0	13	4
Attending court adjourned summons in paper but not reached, each day until heard	0	6	8	0	10	0
Attending court when adjourned summons heard and order made.	0	13	4	1	1	0
Or according to circumstances not to exceed	1	1	0	2	2	0
Attending the registrar with brief and papers and bespeaking draft order	0	6	8	0	6	8
Close copy draft order fo. at per folio	0	0	4	0	0	4
Notice to settle same, copy and service	0	4	0	0	4	0
Attending settling same	0	6	8	0	13	4
Or at Taxing Master's discretion, not to exceed	1	1	0	3	3	4
Paid for order	0	10	0	1	0	0
Notice to pass same, copy and service	0	4	0	0	4	0
Attending passing same.	0	6	8	0	13	4
Drawing request to the Paymaster-General to invest cash	0	2	6	0	2	6
Attending the Paymaster-General with same	0	6	8	0	6	8
Attending certifying that matter not already referred to any Taxing-Master and attending to get Master in rotation marked	0	6	8	0	6	8
Making copy order for the Taxing-Master, at per folio	0	0	4	0	0	4
Drawing bill of costs and copy, at per folio	0	0	8	0	0	8
Warrant on leaving same, copy and service	0	4	6	0	5	0
Warrant to tax same, copy and service	0	4	6	0	5	0
If costs to be paid out of fund in court	0	2	6	0	2	6
Service of warrants on leaving and to tax, each at						
Attending taxing same at per twenty-five folios, or fractional part.	0	6	8	0	6	
Paid for copy of defendant's bill of costs, at per folio	0	0	4	0	0	
Attending taxing same	0	2	0	1	2	
Certificate and transcribing						
(If costs paid out of fund in court do not charge the £1.)						
Attending to file same and bespeaking office copy	0	6	8	0	6	
Paid for office copy certificate	0	3	0	0	3	
Sittings fee	0	15	0	0	15	
If agency, letters, &c.	0	6	0	0	6	
Letters, messengers, &c.						

DEFENDANT'S COSTS OF ADMINISTRATION ORDER, COMMENCED BY ORIGINAL SUMMONS.

Easter Sittings, 1878.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
1878, <i>April.</i>						
Instructions to defend	0	6	8	0	13	4
Attending plaintiff's solicitor and accepting service of copy summons on behalf of the defendants	0	6	8	0	6	8
Certificate of proceedings under lower scale	0	5	0			
Attending entering appearance	0	6	8	0	6	8
Paid entering same	0	2	0	0	2	0
(If entered at one time, for more than one person, for every defendant beyond the first.)	0	1	0	0	2	0
Notice of appearance copy and service	0	4	0	0	4	0
(If defendants are infants, charge for obtaining order for guardian as charged in defendant's costs on trial of action in which issue is joined.)						
Paid for copy affidavit of plaintiff in support of summons fo. at per folio	0	0	4	0	0	4
Perusing same, at per folio	0	0	4	0	0	4
If agency, close copy	0	0	4	0	0	4
Having been served with copy notice to produce probate of the testator, perusing same	0	6	8	0	13	4
Having been served with copy notice to admit, perusing same	0	6	8	0	13	4
Attending to inspect plaintiff's documents pursuant of notice to produce	0	6	8	0	13	4
Or per hour	0	6	8	0	6	8
Attending to examine and sign admissions	0	6	8	0	13	4
Attending summons when chief clerk adjourned same						
Attending adjourned summons when the usual administration order was made						
Close copy minutes of order, at per folio	0	0	4	0	0	4
Attending settling same	0	6	8	0	13	4
Or according to circumstances	1	1	0	3	3	0
Attending passing same	0	6	8	0	13	4
(The subsequent charges and proceedings will be similar to those in defendant's costs of action after decree—Preliminary as to next-of-kin—Advertisements for creditors until further consideration) page 617, and then charge						
Having received copy of proposed minutes of order on further consideration perusing same, at per folio	0	0	4	0	0	4
Making copy of same for counsel to settle on behalf of the defendant, at per folio	0	0	4	0	0	4
Attending Mr. with same to settle	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Making copy of minutes of proposed order as settled by counsel for the plaintiff's solicitor, at per folio	0	0	4	0	0	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Writing to plaintiff's solicitor with same	0	3	6	0	3	6
Subsequently attending plaintiff's solicitor and con- ferring with him on same and ultimately arranging same	0	6	8	0	6	8
Attending summons for further consideration before the chief clerk when order made in accordance with terms of minutes of proposed order						
Or attending summons for further consideration before the chief clerk when on the request of solicitor summons adjourned into court						
If adjourned into court, charge for						
Drawing brief for counsel to appear on adjourned sum- mons, fo. at per folio	0	1	0	0	1	0
Making two copies of same for counsel at per folio each	0	0	4	0	0	4
Making two copies of administration order, fo. and chief clerk's certificate, fo. together, folio for counsel, at per folio each	0	0	4	0	0	4
Attending Mr. Q.C., with same	0	6	8	0	6	8
Paid fee to him and clerk	4	6	6	4	6	6
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Mr. appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation.	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Trinity Sittings, 1878.

Attending consultation	0	13	4	0	13	4
Attending court adjourned summons in paper but not reached, each day until heard	0	6	8	0	10	0
Attending court when adjourned summons heard and order made	0	13	4	1	1	0
Or according to circumstances not to exceed	1	1	0	2	2	0
Close copy draft order fo. at per folio	0	0	4	0	0	4
Attending settling same	0	6	8	0	13	4
Or at the Taxing Master's discretion not to exceed	1	1	0	3	3	0
Attending passing order	0	6	8	0	13	4
Drawing bill of costs and copy, at per folio	0	0	8	0	0	8
Warrant on leaving same copy and service	0	4	6	0	5	6
Warrant to take same, copy and service	0	4	6	0	5	6
If costs to be paid out of fund in court						
Service of warrants on leaving and to tax, each at	0	2	6	0	2	6
Attending taxing same at per twenty-five folios or fractional part	0	6	8	0	6	8
Paid for copy of plaintiff's bill of costs, at per folio	0	0	4	0	0	4
Attending taxing same						
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0
Letters, messengers, &c.						

PLAINTIFF'S BILL OF COSTS OF ACTION FOR APPOINTMENT OF RECEIVER AND FOR AN INJUNCTION, IN WHICH STATEMENT OF CLAIM AND DEMURRER TO SAME WAS FILED, AND ON THE LATTER BEING DISALLOWED THE COURT DIRECTED THE ACTION TO BE HEARD AS A SHORT ACTION.

IN THE HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

BETWEEN

AND

Plaintiff,

Defendant.

Bill of Costs of the Plaintiff in this Action to be taxed as between Solicitor and Client, pursuant to Judgment dated the day of 187 .

Hilary Sittings, 187 .

	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.
187 , February.		
Instructions to sue	0 6 8	0 13 4
Certificate of lower scale	0 5 0	0 0 0
Writ of summons	0 6 8	0 13 4
If the plaintiff is a married woman or an infant, charge Drawing authority and attending and obtaining consent of Mr. to sue in his name as next friend	0 5 0	0 5 0
Special indorsement	0 3 4	0 6 8
Attending Mr. with same to settle	1 3 6	1 3 6
Paid fee to him and clerk	0 5 0	0 10 0
Paid issuing writ		
Making four copies of writ for service, folio , at per folio beyond 2	0 12 0	0 12 0
Service of same on the four defendants, at 5s. each	1 0 0	1 0 0
Further allowances may be made.		
Mileage for each mile beyond two	0 1 0	0 1 0
If writ sent to agent to be served		
Writing to agent with same, and afterwards with his charges	0 7 0	0 7 0
Paid agent's charges		
If undertaking is given to appear		
Attending Mr. on his accepting service of writ and giving undertaking to appear	0 6 8	0 6 8
Drawing and engrossing affidavit of service, at per folio	0 1 0	0 1 0
Preparing exhibit	0 1 0	0 1 0
Paid commissioner taking defendant's oath and marking exhibit	0 2 6	0 2 6
Making copy affidavit to be marked as an office copy, at per folio	0 0 4	0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Attending plaintiff on his calling, conferring with him fully thereon in reference to this action, when he desired that immediate application should be made for an appointment of a receiver, and for injunction to restrain the defendants from selling the property	0	6	8	0	13	4
Attending appointing conference with counsel	0	3	4	0	6	8
Paid conference fee to him and clerk	1	6	0	1	6	0
Attending conference when counsel advised that an application should be made for appointment of a receiver and injunction	0	13	4	0	13	4
Drawing brief for counsel to move for leave to give short notice of motion and fair copy	0	6	8	0	6	8
Attending counsel with same	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending court on application when leave given to serve notice for	0	6	8	0	13	4
Drawing notice of motion for appointment of receiver and injunction, folio, at per folio	0	1	0	0	1	0
Making copy for service, at per folio	0	0	4	0	0	4
Service of same	0	2	6	0	2	6
Attending to retain Mr.	0	3	4	0	6	8
Paid retainer to him and clerk	1	3	6	1	3	6
Instructions for affidavit of plaintiff in support of motion	0	6	8	0	6	8
Drawing same, folio, at per folio	0	1	0	0	1	0
Attending counsel with same to settle	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Instructions for statement of claim	0	13	4	2	2	0
Drawing same	0	10	0	1	1	0
Or per folio	0	1	0	0	1	0
Making copy of will, &c., to accompany instructions to counsel to settle same, at per folio	0	0	4	0	0	4
Attending counsel with same to settle	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Engrossing affidavit of plaintiff in support of notice of motion for appointment of receiver and injunction, at per folio	0	0	4	0	0	4
Preparing exhibits, each	0	1	0	0	1	0
Attending plaintiff on his being sworn to same before a commissioner	0	6	8	0	6	8
Paid commissioner taking defendant's oath and marking exhibits						
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Notice of filing same, copy and service on solicitors for defendant	0	4	0	0	4	0
Service on the solicitors for the other defendants, each	0	2	6	0	2	6
Attending defendant's solicitors on their calling, and conferring with them thereon	0	6	8	0	6	8

PLAINTIFF'S COSTS OF ACTION FOR APPOINTMENT OF RECEIVER. 665

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Instructions for further affidavit of plaintiff in support of notice of motion for appointment of a receiver and injunction	0	6	8	0	6	8
Drawing same, folio, at per folio	0	1	0	0	1	0
Attending counsel with same to settle	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Engrossing affidavit, at per folio	0	0	4	0	0	4
Preparing exhibit	0	1	0	0	1	0
Attending plaintiff before a commissioner on his being sworn to same	0	6	8	0	6	8
Paid commissioner taking defendant's oath and marking exhibit	0	2	6	0	2	6
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Notice of filing same, copies and services on defendant's solicitors	0	4	0	0	4	0
Service on the solicitors for other defendants, each at	0	2	6	0	2	6
Paid for copy affidavit of, folio, at per folio	0	0	4	0	0	4
Perusing same, at per folio	0	0	4	0	0	4
If agency close copy	0	0	4	0	0	4
The like charges for further affidavit filed in opposition to motion.						
Instructions for brief for appointment of receiver and writ of injunction	0	13	4	1	1	0
Drawing same, folio, at per folio	0	1	0	0	1	0
Making two copies of same for counsel, at per folio, each	0	0	4	0	0	4
The like two copies of notice of motion for counsel, at per folio each	0	0	4	0	0	4
The like for copies of writ of summons for counsel, at per folio each	0	0	4	0	0	4
The like for copies of affidavit of plaintiff in support of motion and exhibits therein referred to for counsel, at per folio each	0	0	4	0	0	4
The like for copies of affidavits filed in opposition to motion for counsel, at per folio each	0	0	4	0	0	4
The like for copies of will, &c., for counsel, at per folio each	0	0	4	0	0	4
Attending Mr., Q.C., with same	0	6	8	0	13	4
Paid fee to him and clerk	5	10	0	5	10	0
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Mr., Q.C., appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending consultation with counsel	0	13	4	0	13	4
Attending court when motion made, and the Judge appointed the plaintiff and some of the defendants to be receivers without giving security, they undertaking to act without salary, and granted the injunction	0	13	4	1	1	0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending the registrar with brief and papers and be- speaking draft order	0	6	8	0	6	8
Close copy draft order, at per folio	0	0	4	0	0	4
Notice of settling same, copy and service	0	4	0	0	4	0
Every notice on solicitors after the first, each	0	2	6	0	2	6
Attending plaintiff on his calling and conferring with him very fully on the result of the motion	0	6	8	0	6	8
Attending Mr. with draft statement of claim for his perusal and for him to settle same in consultation with Mr.	0	6	8	0	6	8
Paid fee to him and clerk with same	2	4	6	2	4	6
Attending Mr. appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending consultation	0	13	4	0	13	4
Making fair copy statement of claim for the printer, at per folio	0	0	4	0	0	4
Examining and correcting proof statement of claim, at per folio	0	0	2	0	0	2
Paid printer's bill (minus £ amount received for copies)	0	0	2	0	0	3
Copy statement to deliver, at per folio if printed	0	0	4	0	0	4
If written, at per folio	0	3	4	0	6	8
Attending to deliver same	0	6	8	0	13	4
Attending before the registrar to settle the draft order of the instant, when after considerable discus- sion same settled	1	1	0	3	3	0
At the Taxing-Master's discretion not to exceed	0	3	6	0	3	6
Writing to Messrs. the bankers for the de- fendants the trustees and informing them of the order made appointing receivers	0	4	0	0	4	0
Notice to pass order of instant, copy and service	0	2	6	0	2	6
Every notice on solicitors after the first, each	0	3	0	0	5	0
Paid for order of the instant	0	6	8	0	13	4
Attending passing same	0	0	4	0	0	4
Making copy of order appointing receivers for service on the bankers of the defendants the trustees, at per folio	0	5	0	0	5	0
Service of same	0	6	8	0	6	8
Attending defendant's summons for leave to plead or demur and for further time when order made	0	6	8	0	6	8
Attending defendant's summons for further time to plead or demur when order made	0	6	8	0	6	8
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0
<i>Easter Sittings, 187</i>						
Attending defendant's summons for further time to plead or demur when order made	0	6	8	0	6	8
Having been served with copy demurrer, perusing same	0	6	8	0	13	4
Paid for copies of demurrer	0	0	4	0	0	4
If agency, close copy, if written, at per folio	0	0	4	0	0	4

PLAINTIFF'S COSTS OF ACTION FOR APPOINTMENT OF RECEIVER. 667

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
If printed, at per folio	0	0	2	0	0	3
Instructions to amend statement of claim	0	6	8	0	13	4
Drawing amendments	0	5	0	0	10	0
Or per folio	0	1	0	0	1	0
Attending Mr. with same to settle	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Inserting amendments in original	0	1	0	0	5	0
Or per folio	0	0	4	0	0	4
Copy amendments for printer, at per folio	0	0	4	0	0	4
Examining and correcting proof of the whole print, at per folio	0	0	2	0	0	3
Paid printer's bill	0	0	2	0	0	3
Copy of amendments of statement of claim, at per folio	0	0	2	0	0	3
If the amendments in writing, inserting amendments	0	1	0	0	5	0
Or per folio	0	0	4	0	0	4
Engrossing amendments, at per folio	0	0	4	0	0	4
Attending to deliver each copy	0	3	4	0	6	8
Attending defendant's solicitors on their calling and informing us that they had just set down the demurrer and had arranged that their counsel should apply to the court to-morrow for leave to advance it in Monday's paper, and requesting us to instruct counsel to appear and consent	0	6	8	0	6	8
Drawing brief for counsel to consent and fair copy	0	6	8	0	6	8
Attending Mr. with same	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending court when application made for leave to advance demurrer when leave given	0	6	8	0	13	4
Drawing brief for counsel to appear on behalf of plaintiff on hearing of the demurrer, at per folio	0	1	0	0	1	0
Making two brief copies of same for counsel, at per folio	0	0	4	0	0	4
Making brief copy of will and other documents for the senior counsel, at per folio	0	0	4	0	0	4
Making two copies of statement of complaint for counsel if written, at per folio each	0	0	4	0	0	4
If printed, at per folio each	0	0	2	0	0	3
Two copies of demurrer for counsel, if written, at per folio	0	0	4	0	0	4
If printed, at per folio each	0	0	2	0	0	3
Attending Mr. Q.C., with brief and papers	0	6	8	0	13	4
Paid fee to him and clerk	5	10	0	5	10	0
Attending Mr. with brief and papers	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Mr. Q.C., appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending consultation	0	13	4	0	13	4
Attending shorthand writer instructing him to take notes	0	6	8	0	6	8
Attending court, demurrer in paper but not reached	0	6	8	0	10	0
Attending court all day when demurrer partly argued	0	13	4	1	1	0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Paid shorthand writer for his attendance, taking notes and transcript of same						
Attending plaintiff on his calling, and conferring with him at great length respecting the delay of the further hearing of the demurrer	0	6	8	0	13	4
Sitting fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0
<i>Trinity Sittings, 187</i>						
Drawing brief for counsel to apply for an early day to continue the argument on the demurrer and fair copy	0	6	8	0	6	8
Attending Mr. with same	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending court when application made, and same ordered to be in Monday's paper	0	6	8	0	13	4
Notice thereof to solicitors for defendants, copy and service	0	4	0	0	4	0
The like to the solicitors for the other defendants, each	0	2	6	0	2	6
Drawing further brief for counsel on hearing of the demurrer, folio	0	7	0	0	7	0
Making two copies of same for counsel	0	5	4	0	5	4
Making two brief copies of shorthand writer's notes of argument on demurrer for counsel, at per folio each	0	0	4	0	0	4
Attending Mr. Q.C., with same	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Attending Mr. Q.C., appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending court all day when demurrer further argued and overruled, and it was ordered that the action to be heard as a short action on next	0	13	4	1	1	0
Or according to circumstances not to exceed	1	1	0	2	2	0
Attending plaintiff conferring with him very fully as to the course to be adopted having regard to the decision of the Judge	0	6	8	0	13	
Attending defendant's solicitors on their calling, conferring and arranging with them as to setting this action down as short, and also conferring with them in reference to the proposed minutes of orders	0	6	8	0	6	
Paid shorthand writer for taking notes and transcript of same	0	10	0	0	10	
Drawing minutes of order for judgment, folios 10.	0	3	4	0	6	
Attending counsel with same to settle	1	3	6	1	3	
Paid fee to him and clerk	0	3	4	0	3	
Making copy of proposed minutes of judgment for solicitors for defendant	0	3	4	0	3	
The like for the solicitors for the other defendants, each at	0	3	4	0	3	
Writing to each with same	0	3	6	0	3	

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending to set down action to be heard	0	6	8	0	6	8
Paid setting same down	1	0	0	2	0	0
Notice of setting same down, copy and service	0	4	0	0	4	0
The like notice to the other defendants' solicitors	0	2	6	0	2	6
Close copy draft order of the instant, folio 4	0	1	4	0	1	4
Notice to settle same, copy and service	0	4	0	0	4	0
Attending settling same	0	6	8	0	13	4
Paid for order	0	3	0	0	5	0
Notice to pass same copy and service	0	4	0	0	4	0
Attending passing same	0	6	8	0	13	4
Making 2 copies of writ for the Judge, at per folio each	0	0	4	0	0	4
The like statement of claim, fo., at per folio each	0	0	4	0	0	4
If printed, folio, at per folio each	0	0	2	0	0	3
The like demurrer, folio, at per folio each	0	0	4	0	0	4
If printed, folio, at per folio each	0	0	2	0	0	3
The like copy proposed minutes of judgment, folio	0	3	4	0	3	4
Attending the Judge's secretary with same	0	6	8	0	6	8
Instructions for brief	1	1	0	2	2	0
Drawing same, folio, at per folio	0	1	0	0	1	0
Making two copies of same for counsel, at per folio each	0	0	4	0	0	4
Making two brief copies of proposed minutes of judgments for counsel, folio 10, each	0	6	8	0	6	8
Attending Mr., Q.C., with same	0	6	8	0	13	4
Paid fee to him and clerk	5	10	0	5	10	0
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Mr., Q.C., appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending consultation	0	13	4	0	13	4
Attending court when action heard as short, and judgment according to minutes with certain suggested alterations made by the Judge, giving the defendants their costs of demurrer, and as to enquiries to be referred to chambers	0	6	8	0	13	4
Or according to circumstances not to exceed	1	1	0	2	2	0
Attending defendant's solicitors on their calling, and conferring with them in reference to the form of the minutes, and as to getting them signed by the junior counsel, and conferring with them fully on the matter	0	6	8	0	13	4
Making fair copy of draft minutes as altered by the Judge, for counsel to sign	0	3	4	0	3	4
Attending Mr. with same	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending plaintiff in long interview with reference to the hearing of this action, and as to the form of the judgment, and conferring with him thereon	0	6	8	0	6	8
Attending the registrar with brief and papers, and bespeaking draft judgment	0	6	8	0	6	8
Close copy draft judgment, folio, at per folio	0	0	4	0	0	4
Notice to settle same, copy and service	0	4	0	0	4	0
Every notice on the solicitors after the first, each	0	2	6	0	2	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending before the registrar settling draft judgment	0	6	8	0	13	4
Or at the Taxing-Master's discretion not to exceed	1	1	0	3	3	0
Notice to pass judgment, copy and service	0	4	0	0	4	0
The like notice to solicitors for the other defendants	0	2	6	0	2	6
Paid for judgment	0	10	0	1	0	0
Attending passing same	0	6	8	0	13	4
If no other proceedings in this sitting	0	15	0	0	15	0
Sittings fee	0	6	0	0	6	0
If agency, letters, &c.	0	5	0	0	10	0
Letters, messengers, &c.						
(As to the costs of the reference to chambers and hearing action on further consideration, add similar items as charged in p. 617.)						
If the demurrer dismissed with costs, charge for—						
Making copy order for the Taxing-Master, folio at per folio	0	0	4	0	0	4
If action not previously referred						
Attending the Sitting Master with original order to get same referred	0	6	8	0	6	8
Drawing bill of costs and copy, folio at per folio	0	0	8	0	0	8
Warrant on leaving same, copy and service	0	4	6	0	5	6
Warrant to tax same, copy and service	0	4	6	0	5	6
Attending taxing same, at per 25 folios or fractional part	0	6	8	0	6	8
Certificate and transcribing	0	2	0	1	2	0
Attending to file same and bespeaking office copy	0	6	8	0	6	8
Paid for office copy	0	3	0	0	3	0
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Defendant's Costs of Demurrer.

Trinity Sittings, 187

Instructions for demurrer	0	6	8	0	13	4
(In higher scale actions the Taxing-Master has the power to increase this allowance.)						
Drawing same	0	5	0	0	10	0
Or per folio	0	1	0	0	1	0
Making copy of will and other documents for counsel to settle draft demurrer, at per folio	0	0	4	0	0	4
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Preparing summons for leave to plead or demur, and attending at chambers to get same sealed	0	3	0	0	6	0
Paid stamping same	0	2	0	0	3	0
Making copy to leave at chambers	0	2	0	0	2	0
Or per folio	0	2	6	0	2	6
Service of same	0	6	8	0	6	8
Attending summons when order made	0	3	0	0	5	0
Paid for order	0	6	8	0	6	8
Attending for order and to get same entered	0	6	8	0	6	8
Making copy draft demurrer for the printer, at per folio	0	0	4	0	0	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Examining and correcting proof	0	0	2	0	0	2
Paid printer's charges (minus £ received for copies)						
Copy demurrer to deliver, at per folio	0	0	2	0	0	3
If written, at per folio	0	0	4	0	0	4
If agency, close copy, if printed	0	0	2	0	0	3
If agency, if written	0	0	4	0	0	4
Attending to deliver same	0	3	4	0	6	8
Attending to set down demurrer	0	6	8	0	6	8
Paid on setting same down	1	0	0	2	0	0
Notice thereof copy and service	0	4	0	0	4	0
Two copies of pleadings and demurrer for the court, if printed, at per folio	0	0	2	0	0	3
If written, at per folio	0	0	4	0	0	4
Attending the Judge's secretary with same	0	6	8	0	6	8
Drawing observations, at per folio	0	1	0	0	1	0
Making two copies of same for counsel, at per folio each	0	0	4	0	0	4
Making two copies of will and other documents for counsel, at per folio each	0	0	4	0	0	4
Attending Mr., Q.C., with same	0	6	8	0	6	8
Paid fee to him and clerk	5	10	0	5	10	0
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Mr. appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending consultation	0	13	4	0	13	4
Attending court, demurrer in paper but not reached	0	6	8	0	10	0
If no other proceedings in this sitting						
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Michaelmas Sittings, 187 .

187 , November.

Attending court, demurrer in paper but not reached	0	6	8	0	10	0
Attending court, demurrer argued when same overruled with costs (or allowed)	0	13	4	1	1	0
Or according to circumstances	1	1	0	2	2	0
Close copy minutes of order, at per folio	0	0	4	0	0	4
Attending settling same	0	6	8	0	13	4
Or at the Taxing-Master's discretion not to exceed	1	1	0	3	3	0
Attending passing order	0	6	8	0	13	4
If demurrer allowed, charge						
Attending the registrar with brief and papers, and be- speaking draft order	0	6	8	0	6	8
Notice to settle draft order, copy and service	0	4	0	0	4	0
Close copy, draft order, at per folio	0	0	4	0	0	4
Attending settling same	0	6	8	0	13	4
Notice to pass same, copy and service	0	4	0	0	4	0
Paid for order	0	3	0	0	5	0
Attending passing same	0	6	8	0	13	4
Drawing bill of costs and copy, at per folio	0	0	8	0	0	8
Warrant on leaving same, copy and service	0	4	6	0	5	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Warrant to take same, copy and service	0	4	6	0	5	6
If costs ordered to be paid out of fund in Court, copy and service of these warrants would be each	0	2	6	0	2	6
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0
Letters, messengers, &c.	0	5	0	0	10	0
If no order proceeding in this sitting, charge						
Similar charges as in the plaintiff's costs for hearing action as a short action as charged in pp. 668—670.						

COSTS OF PLAINTIFF'S CREDITORS WHERE NO PLEADINGS
BUT THE WRIT OF SUMMONS, AND UPON MOTION MADE
FOR AN APPOINTMENT OF A RECEIVER, THE ORDER
WAS MADE, AND ALSO ORDER FOR ADMINISTRATION OF
THE ESTATE.

IN THE HIGH COURT OF JUSTICE, 1876.

No.

CHANCERY DIVISION.

In the matter of the Estate of, deceased.

BETWEEN, Plaintiffs,

AND

., Defendant.

*The Bill of Costs of Plaintiff's Creditors of the Deceased Estate to be taxed as
between Solicitor and Client, under an Order dated the day of,
1878, and to be paid out of Fund in Court.*

Trinity Sittings, 1876.

1876, July.

Instructions to sue	0	6	8	0	13	4
Certificate of lower scale	0	5	0			
Writ of summons and copy to file and attending	0	6	8	0	13	4
In case an infant or married woman, charge						
Drawing and obtaining consent of next friend to sue in his name	0	6	8	0	13	4
Special indorsement	0	5	0	0	5	0
Attending counsel with same to settle	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Paid issuing writ	0	5	0	0	10	0
Making copy of same for service	0	2	0	0	2	0
If beyond 2 folios, charge per folio	0	0	4	0	0	4
Attending plaintiff's solicitors and obtaining their undertaking to appear	0	6	8	0	6	8
Writing to defendant's solicitors as to proving the will and appointing receiver in this estate	0	3	6	0	3	6
13. Attending Mr. as to appointment of receiver herein, conferring fully thereon and on his suggestions	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
14. Writing to Messrs. with the result of the appointment, and thereon	0	3	6	0	3	6
Attending Messrs., obtaining address of Mr., the person to be appointed receiver, and we were to let them know whether we should bring on the motion on Thursday next	0	6	8	0	6	8
Writing to Messrs. and informing them that we should move for an appointment of receiver to the estate on Thursday next	0	3	6	0	3	6
Attending plaintiffs, conferring on the position of this matter, and advising on course to be pursued	0	6	8	0	6	8
Drawing notice of motion, 5 folios	0	5	0	0	5	0
Copy and service of same	0	4	2	0	4	2
Paid for copy affidavit of in support of application to appoint receiver, folios 12	0	4	0	0	4	0
Perusing same	0	4	0	0	4	0
Instructions for affidavit of fitness of proposed receiver	0	6	8	0	6	8
Drawing same, folios 4	0	4	0	0	4	0
Attending deponent, reading over draft and on his agreeing to same	0	6	8	0	6	8
Engrossing affidavit	0	1	4	0	1	4
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Making copy to be marked as an office copy	0	1	4	0	1	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy	0	0	8	0	0	8
Notice thereof copy and service	0	4	0	0	4	0
Instructions for brief	1	1	0	2	2	0
Drawing same and fair copy	0	6	8	0	13	4
Making copy affidavit and copy probate for counsel, folios 12	0	4	0	0	4	0
The like of writ	0	2	0	0	2	0
The like of notice of motion	0	1	8	0	1	8
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Attending defendant's solicitors arranging that motion should not be taken before Monday, and attending counsel arranging with him	0	6	8	0	6	8
Attending counsel, motion to appoint receiver heard and order made, and also order for administration of the estate subject to action being set down as of to-day	0	13	4	1	1	6
Writing to Mr. informing him of his having been appointed receiver, and as to his taking necessary steps to protect the estate	0	3	6	0	3	6
Writing plaintiffs informing them of the order made to-day	0	3	6	0	3	6
Attending at registrar's (Mr.), leaving brief and affidavits for order to be drawn up	0	6	8	0	6	8
Attending defendant's solicitors, conferring with them hereon, and as to the completing the appointment of receiver and arranging	0	6	8	0	6	8
Close copy draft order, folios 8	0	2	8	0	2	8
Notice to settle same copy and service	0	4	0	0	4	0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending settling same	0	6	8	0	13	4
Preparing summonses to proceed on order, and attending to get same sealed	0	3	0	0	6	8
Paid stamp	0	2	0	0	3	0
Making copy to leave at Chambers	0	2	0	0	2	0
Copy and service of same	0	3	6	0	4	0
Attending defendant's solicitors, conferring on the business and arranging for them to press forward the completion of the receiver's security	0	6	8	0	6	8
Making copy order for Chambers	0	2	8	0	2	8
Attending appointment to pass order, same adjourned till to-morrow, print not received from printers, though promised to-day	0	6	8	0	6	8
Attending setting down cause <i>pro formâ</i>	0	6	8	0	6	8
Paid setting same down	1	0	0	2	0	0
Correcting proof of order	0	1	4	0	1	4
Paid for order	0	10	0	1	0	0
Notice to pass same, copy and service	0	4	0	0	4	0
Attending passing same	0	6	8	0	13	4
Paid for copy draft receiver's recognizance, folios 10	0	3	4	0	3	4
Paid for copy affidavit of receiver as to fitness of agent at Colombo	0	2	4	0	2	4
Perusing same	0	2	4	0	2	4
Paid for copy affidavit of as to outstanding estate, folios 7	0	2	4	0	2	4
Perusing same	0	2	4	0	2	4
Attending appointment when amount of receiver's recognizance settled at £ sureties approved, subject to the usual affidavits of justification, draft recognizance settled, and ordered to be engrossed and executed to-morrow, and appointment adjourned to inst. at, to complete and certify the recognizance; directions given on the several enquiries under the decree, advertisement ordered to be prepared and enquiries to be answered by the, and number of advertisements and papers to be settled and adjourned appointment to, we in the meantime to ascertain what papers circulated in Ceylon in which the advertisement could appear	0	13	4	1	6	0
Attending appointment on chief clerk settling receiver's recognizance	0	6	8	0	13	4
Engrossing advertisement, folios 6	0	2	0	0	2	0
Paid stamping same				1	0	0
Attending to get same signed	0	6	8	0	6	8
Attending before the chief clerk on his settling his certificate as to security being given	0	6	8	0	13	4
Engrossing certificate	0	3	4	0	3	4
Attending on same being signed	0	6	8	0	6	8
Making copy so be marked as an office copy	0	3	4	0	3	4
Attending to file same and bespeak office copy	0	6	8	0	6	8
Paid for office copy	0	1	8	0	1	8
Attending to insert advertisement in London Gazette	0	6	8	0	6	8
Paid for insertion and copy Gazette						

COSTS OF PLAINTIFFS ON MOTION FOR APPOINTMENT OF RECEIVER. 675

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Making 3 copies of advertisement to insert in other papers, folios 6	0	6	0	0	6	0
Attending to insert same in				0	6	8
Paid for insertions and copies of papers						
Attending to insert same in	0	6	8	0	6	8
Paid for insertions and copies of papers						
Attending to insert same in				0	6	8
Paid for insertions and copies of papers						
Writing to defendant's solicitors with information asked by them as to the advertisement	0	3	6	0	3	6
Attending summons before the chief clerk taken out by the defendant on behalf of the receiver to appoint an agent at Colombo to investigate the accounts of the firm of, and to ascertain whether anything was due to the deceased estate when order made	0	6	8	0	13	4
Close copy draft order, folios 5	0	1	8	0	1	8
Attending settling same.	0	6	8	0	13	4
Attending passing same	0	6	8	0	13	4
Writing to defendant's solicitors in answer to theirs, that all the advertisements had appeared except those ordered to be inserted in the, of which paper we had no copy	0	3	6	0	3	6
Writing to defendant's solicitors with explanation and in answer to theirs, as to Mr. intended to sell some of the furniture in the house at, under a post-nuptial settlement, dated years ago, and requesting to know whether they would object to our seeing the deed of settlement and counsel's opinion referred to in their letter	0	3	6	0	5	0
Writing to defendant's solicitors and informing them we would attend the appointment to-morrow	0	3	6	0	3	6
Attending defendant's solicitors when they lent us a copy of the settlement, and informed us that they had put off the sale for a few days in order that plaintiffs might consider what steps they would take	0	6	8	0	6	8
Making copy settlement to keep, folios, at 4d. per folio						
Instructions for counsel to advise as to whether the settlement would be valid against the plaintiffs as creditors of the deceased, and whether steps ought to be taken to obtain an injunction to stay the sale	0	6	8	0	6	8
Drawing same and fair copy, folios 6	0	8	0	0	8	0
Attending counsel therewith	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Attending defendant's solicitors, conferring very fully as to counsel's opinion and the steps plaintiffs would take, and returning them copy settlement	0	6	8	0	6	8
Writing to the receiver, requesting to know if he could inform the plaintiffs if there were any creditors against the estate who existed at the date of settlement	0	3	6	0	3	6
Attending the receiver, conferring with him as to what steps should be taken with regard to the property in question	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Writing to defendant's solicitors as to the steps plaintiffs intended to take	0	3	6	0	3	6
Preparing summons for directions as to course to be adopted with regard to the marriage settlement, and attending at Chambers to get same sealed	0	6	8	0	13	4
Paid stamp	0	2	0	0	3	0
Making copy, leave at Chambers	0	1	0	0	2	0
Copy and service on defendant's solicitors	0	3	6	0	4	6
Drawing affidavit in support of same, folios 4	0	4	0	0	4	0
Engrossing same	0	1	4	0	1	4
Preparing 3 exhibits	0	3	0	0	3	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner's fee taking deponent's oath, and marking 3 exhibits	0	4	6	0	4	6
Making copy affidavit to be marked as an office copy	0	1	4	0	1	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy	0	0	8	0	0	8
Notice of filing same, copy and service	0	4	0	0	4	0
Attending appointment before the chief clerk for directions, when he gave plaintiffs leave to amend summons, if they were so advised, that the defendant might be ordered to deliver up the settlement property to the receiver in order that he might sell, but in order to do that the plaintiffs would have to upset the settlement.	0	6	8	0	13	4
Attending defendant's solicitors informing them that plaintiffs were not in a position to impeach the settlement at present, but that in the event of anything occurring thereafter, to enable plaintiffs to do so, they should have to surcharge the defendant	0	6	8	0	6	8
Sittings fee	0	15	0	0	15	0

Michaelmas Sittings, 1876.

Attending appointment on adjudication of claims, when same was adjourned, and also the time for bringing in the accounts	0	6	8	0	13	4
Attending the receiver as to the £ held by the Bank when he promised us a full statement in order to take immediate proceedings for the recovery thereof	0	6	8	0	6	8
Writing to the plaintiffs for a statement of their account with the deceased	0	3	6	0	3	6
Writing to defendant's solicitors with plaintiff's statement of claim	0	3	6	0	3	6
Attending plaintiffs, conferring on the position of the business, and advising them fully on the course to be pursued	0	6	8	0	6	8
Attending adjourned appointment on adjudication when all claims in list allowed except plaintiffs and others, and as to the plaintiffs' claim the chief clerk directed a						

COSTS OF PLAINTIFFS-ON MOTION FOR APPOINTMENT OF RECEIVER. 677

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
formal demand to be made upon the bank to refund £ , and, if they refused, a case should be laid before counsel to advise plaintiffs, and in meantime securities not to be realized and appointment adjourned . . .	1	1	0	2	2	0
Writing to plaintiffs' solicitors as to the result of appointment for adjudication of claims, they not having attended the appointment	0	3	6	0	3	6
Paid for copy list of claims, folios 32	0	12	8	0	12	8
Paid for copy list B., folios 20	0	6	8	0	6	8
Paid for copy affidavit of folios 16	0	5	4	0	5	4
Perusing same	0	5	4	0	5	4
Paid for copy affidavit of , answering enquiries, and verifying accounts folios 14	0	4	8	0	4	8
Perusing same	0	4	8	0	4	8
Attending appointment before the chief clerk on summons for receiver to give a power of attorney to agent in Colombo, when same adjourned for affidavit verifying correspondence	0	6	8	0	13	4
Writing to defendant's solicitors in answer to their letter relative to the £ bill	0	3	6	0	3	6
Attending adjourned appointment before the chief clerk on behalf of the receiver for leave to give power of attorney to agent in Colombo, when further evidence as to assets was directed to be brought in	0	6	8	0	6	8
Attending adjourned appointment before chief clerk, further evidence gone through, and order made for receiver to grant power of attorney to , at Colombo	0	6	8	0	13	4
Attending appointment settling draft order	0	6	8	0	13	4
1877. Instructions for assignment of & Co.'s bill of exchange to Messrs.	0	6	8	0	6	8
Drawing same, folios 20	1	0	0	1	0	0
Making fair copy	0	6	8	0	6	8
Writing to the receiver therewith for his approval	0	3	6	0	3	6
Close copy draft order for receiver to grant power of attorney, folios 6	0	2	0	0	2	0
Attending before the registrar settling same	0	6	8	0	13	4
Writing to defendant's solicitors in answer to theirs and informing them that we would attend to-morrow to see case and opinion	0	3	6	0	3	6
Attending defendant's solicitors, inspecting case, and opinion relative to £ advanced on & Co.'s bill, and conferring with them thereon	0	6	8	0	6	8
Sittings fee	0	15	0	0	15	0

Hilary Sittings, 1877.

Instructions for case to counsel to advise as to the necessary steps to be taken with regard to the £ paid to the Bank	0	6	8	0	6	8
Drawing same, folios 9	0	9	0	0	9	0
Making fair copy of same for counsel	0	3	0	0	3	0
Attending counsel with same	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Paid fee to him and clerk	2	4	6	2	4	6
Attending adjourned appointment before the chief clerk on adjudication of claims, same proceeded with, and directions given, and the adjudication was further adjourned	1	1	0	2	2	0
Attending appointment before the chief clerk, proceeding in enquiries directed by the order	0	6	8	0	13	4
Writing to defendant's solicitors informing them that we had got counsel's opinion as to the money paid to the bank	0	3	6	0	3	6
Writing to plaintiffs fully explaining position of this matter and counsel's opinion in reference to the £ loan and pointing out the necessity of giving the precise particulars of what transpired at the time the advance was made	0	3	6	0	5	0
Afterwards attending them on their giving the information required, showing distinctly that the son of the deceased was clearly acting for the defendant, and plaintiffs requested the further facts to be placed before counsel forthwith	0	6	8	0	6	8
Writing to defendant's solicitors that plaintiffs would communicate with them on counsel's opinion in a few days, and generally on the matter	0	3	6	0	5	0
Instructions for case for counsel to further advise	0	6	8	0	6	8
Drawing same and fair copy, folios 5	0	6	8	0	6	8
Attending counsel with same	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending defendant's solicitors, conferring very fully as to plaintiffs' claim to Messrs. & Co.'s bill of _____, and arranging to write them thereon and on counsel's opinion	0	6	8	0	6	8
Making copy of counsel's opinion on the subject of the advance of £ _____ on Messrs. & Co.'s bill, folios 6	0	2	0	0	2	0
Writing to defendant's solicitors therewith and thereon	0	3	6	0	3	6
Attending defendant's solicitors on the course to pursue, as counsel respectively advising differently in the matter, and arranging to appoint consultation with counsel	0	6	8	0	6	8
Writing to defendant's solicitors for copy of their counsel's opinion	0	3	6	0	3	6
Perusing and considering same	0	6	8	0	6	8
Attending both counsel, appointing consultation as arranged	0	6	8	0	6	8
Paid consultation fee to counsel	2	9	6	2	9	6
Making copy of defendant's counsel's opinion for counsel, folios 6	0	2	0	0	2	0
Attending consultation with counsel	0	13	4	0	13	4
Having received letter from defendant's solicitors suggesting that it was impossible to bring the bank to terms in the present action and obtain any order against them, and asking the plaintiffs' views on the matter, writing them fully in reply	0	3	6	0	5	0
Attending defendant's solicitors, conferring and advising						

COSTS OF PLAINTIFFS ON MOTION FOR APPOINTMENT OF RECEIVER. 679

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
on question of jurisdiction of the Court, and as to the course to be pursued	0	6	8	0	6	8
Attending adjourned appointment before the chief clerk on adjudication of claims, same further proceeded with and adjourned	0	6	8	0	13	4
Attending defendant's solicitors on their informing us that the bank had declined to recognise any jurisdiction of the Court over them in this action, and we were therefore to consider what course we would adopt in reference thereto	0	6	8	0	6	8
Attending plaintiffs and obtaining bill on Messrs. & Co., making copy thereof for defendant's solicitors as requested	0	6	8	0	6	8
Writing to defendant's solicitors therewith	0	3	6	0	3	6
Attending defendant's solicitors as to the opinion they had taken of their common law counsel regarding their right of action against the bank for the recovery of £, and conferring with them thereon, and arranging to appoint consultation between our and their counsel	0	6	8	0	6	8
Attending adjourned appointment before the chief clerk on adjudication of claims, when same was further adjourned for counsel to further consider what course should be adopted with reference to £ retained by the bank	0	6	8	0	13	4
Attending counsel appointing consultation with defendant's counsel	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Writing to defendant's solicitors with notice of appointment for consultation	0	3	6	0	3	6
Attending consultation with counsel when it was agreed to adopt the course advised by defendant's counsel in his written opinion	0	13	4	0	13	4
Attending plaintiffs in long conference on the mode of settling the account which they were to render to firm from whom the goods were received, conferring also as to some of the items for insurance, &c., and advising them fully thereon				0	13	4
Attending on summons taken out by defendant for an order against the bank for payment to the receiver of certain monies due from the bank at the time of the death of the testator, when same was adjourned to the judge	0	6	8	0	13	4
Paid for copy affidavit of, folios 16.	0	5	4	0	5	4
Perusing same	0	5	4	0	5	4
Paid for copy affidavit of, folios 18.	0	6	0	0	6	0
Perusing same	0	6	0	0	6	0
Paid for copy affidavit of the receiver, folios 6	0	2	0	0	2	0
Perusing same	0	2	0	0	2	0
Drawing brief and fair copy for counsel to attend on adjourned summons before the Judge in Chambers	0	10	0	0	10	0
Attending counsel with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending and appointing conference with counsel	0	3	4	0	6	8
Paid fee to him and clerk	1	6	0	1	6	0
Attending conference	0	13	4	0	13	4
Attending adjourned summons by counsel before the Judge in Chambers when the Judge directed that the bank and all parties should be in the same position as to evidence and otherwise as if an action had been brought, the summons to stand over	0	6	8	0	13	4
Sittings fee	0	15	0	0	15	0

Easter Sittings, 1877.

Attending adjourned appointment before the chief clerk to appoint time for filing evidence by the bank in reply on the claim of the defendant for the payment by the bank of cash standing to the credit of testator's account at the time of his decease, and the £ subsequently paid in, and to fix time for replying thereto and for appointment on questions at issue, time appointed.	0	6	8	0	6	8
Attending appointment before the chief clerk on summons taken out on behalf of the receiver as to the offer made by the bank to pay the sum of £ to the receiver in settlement when order made	0	6	8	0	13	4
Writing to defendant's solicitors as to drawing up the order	0	3	6	0	3	6
Close copy draft order, folios 3	0	1	0	0	1	0
Attending appointment before the registrar settling same	0	6	8	0	13	4
Attending passing same	0	6	8	0	13	4
Attending defendant's solicitors to ascertain if the receiver intended to pay plaintiffs the £ when received from the bank, and take Messrs. & Co.'s bills from them, or if plaintiffs were to receive the dividends, if they became due upon the bills, and pay themselves, and conferring thereon, when they ultimately promised to write to the receiver on the matter	0	6	8	0	6	8
Writing plaintiffs and informing them that the receiver had obtained the £ from the bank and with full explanations on the action generally	0	3	6	0	5	0
Sittings fee	0	15	0	0	15	0

Trinity Sittings, 1877.

Writing to defendant's solicitors that we did not think the Receiver was entitled to retain the £ received from the bank, and suggesting the matter should be brought before the chief clerk	0	3	6	0	3	6
On receiving notice of appointment to proceed on plaintiffs' claim, attending and informing them thereof and conferring with them generally on the position of the action	0	6	8	0	6	8
Attending appointment on adjourned adjudication, when same was adjourned for a week at defendant's request	0	6	8	0	6	8

COSTS OF PLAINTIFFS ON MOTION FOR APPOINTMENT OF RECEIVER. 681

	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.
Writing to defendant's solicitors very fully in answer to theirs of the inst. and relative to the £ received from the bank	0 3 6	0 5 0
Attending adjourned appointment before the chief clerk on adjudication upon the plaintiffs' claim when same was allowed at £ , plaintiffs retaining the bills of Messrs. & Co. to meet the £ advanced after the death of the testator	0 6 8	0 6 8
Instructions for counsel to advise in conference as to the £ paid to the receiver by the bank and fair copy	0 6 8	0 6 8
Attending him with same	0 3 4	0 6 8
Paid fee to him and clerk	1 3 6	1 3 6
Attending to appoint conference	0 3 4	0 6 8
Paid fee to him and clerk	1 6 0	1 6 0
Attending conference	0 13 4	0 13 4
Sittings fee	0 15 0	0 15 0

Hilary Sittings, 1878.

Writing to plaintiffs very fully in reference to their claim of £ herein, the same having been transferred by the bank to the receiver, and now strenuously resisted by him, and requesting to see them as to the steps to be taken to obtain same	0 3 6	0 5 0
Writing to plaintiffs for an answer to our letter of the inst.	0 3 6	0 3 6
Attending plaintiffs, conferring and advising at great length on the question as to the £ and arranging for them to make enquiries as to the probable dividend payable in Messrs. & Co.'s estate before deciding on the course to be pursued	0 6 8	0 6 8
10. Writing to plaintiffs enquiring if they had obtained the information as to the probable dividend in Messrs. & Co.'s estate, as the Court was pressing to have the question respecting the £ settled	0 3 6	0 3 6
Attending defendant's solicitors as to the chief clerk's certificate, and arranging to write them	0 6 8	0 6 8
Attending plaintiffs and consulting with them as to the position of the action, and as to the £ received from the bank, and advising them very fully, and arranging for them to let us have their decision tomorrow	0 6 8	0 6 8
Perusing letter from plaintiffs deciding to give up their claim in the action, and to take the dividend on the bills in Messrs. & Co.'s estate. Afterwards attending them on their having learned that the receiver had proved in Messrs. & Co.'s estate, and claimed to receive all surplus beyond the £ , conferring with them and going fully into the question of their position and rights, and we were to see defendant's solicitors and endeavour to make some arrangement	0 6 8	0 13 4

	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.
Attending defendant's solicitors in conference on this action when they claimed surplus after plaintiffs had received the £ received by the receiver from the bank, and interest out of the dividends, and ultimately we arranged on behalf of plaintiffs to withdraw claim to the £ in the receiver's hands, and look to the dividends received on Messrs. & Co.'s estate, only so that the certificate of the chief clerk might go at once, and arranging to write them to that effect	0 6 8	0 13 4
Writing to defendant's solicitors that we consented to their having the conduct of the chief clerk's certificate, as arranged with them	0 3 6	0 3 6
Writing to defendant's solicitors for copy of the chief clerk's certificate	0 3 6	0 3 6
Paid for copy draft certificate, folios 11	0 3 8	0 3 8
Perusing same	0 3 8	0 3 8
Attending appointment before the chief clerk, settling in part his general certificate and appointment adjourned to	1 1 0	3 3 0
Attending appointment before the chief clerk further proceeding with his certificate	0 6 8	0 13 4
Writing to defendant's solicitors with information as to foreign advertisements as requested by them	0 3 6	0 3 6
Attending appointment before the chief clerk proceeding with his draft certificate	0 13 4	1 6 8
Attending defendant's solicitors, handing them papers containing advertisements	0 6 8	0 6 8
Paid for additions to chief clerk's draft certificate, folios 5	0 1 8	0 1 8
Perusing same	0 1 8	0 1 8
Sittings fee	0 15 0	0 15 0

Easter Sittings, 1878.

Preparing summons for order on further consideration and attending at Chambers to get same sealed	0 6 8	1 1 0
Paid stamping same	0 2 0	0 3 0
Making copy for Chambers	0 1 0	0 2 0
Copy and service of same on defendant's solicitors	0 3 6	0 4 6
Drawing minutes of order on further consideration, folios 7	0 7 0	0 7 0
Making fair copy for defendant's solicitors	0 2 4	0 2 4
Making copy of same for chief clerk	0 2 4	0 2 4
Attending summons on further consideration before the chief clerk, order made and further consideration adjourned	0 6 8	0 13 4
Attending at the Paymaster-General's office, bespeaking certificate of fund in Court and afterwards for same	0 6 8	0 6 8
Close copy draft order, folios 8	0 2 8	0 2 8
Writing to defendant's solicitors as to settling draft order, and requesting them to see them thereon	0 3 6	0 3 6

COSTS OF PLAINTIFFS ON MOTION FOR APPOINTMENT OF RECEIVER. 683

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending defendant's solicitors and arranging and settling same with them	0	6	8	0	6	8
Attending the chief clerk on queries on draft order	0	6	8	0	6	8
Notice of appointment to settle draft order, copy and service	0	4	0	0	4	0
Attending appointment before the registrar settling draft order	0	6	8	1	1	0
Notice to pass same, copy and service	0	4	0	0	4	0
Attending examining proof	0	6	8	0	6	8
Paid stamping order	0	10	0	1	0	0
Attending passing order	0	6	8	0	13	4
Copy order for the Taxing Master, folios 8	0	2	8	0	2	8
Attending to get Master in rotation marked, and afterwards for same	0	6	8	0	6	8
Drawing bill of costs and copy, folios , and summary, folios , together folios, at per folio	0	0	8	0	0	8
Warrant on leaving same, copy and service	0	2	6	0	2	6
Warrant to take same, copy and service	0	2	6	0	2	6
Attending taxing same, at per 25 folios or fractional parts	0	6	8	0	6	8
Paid for copy costs of defendant, at per folio	0	0	4	0	0	4
Attending taxing same, at per 25 folios and fractional parts	0	6	8	0	6	8
Transcribing certificate	0	2	0	1	2	0
Attending to file certificate bespeaking office copy	0	6	8	0	6	8
Paid for office copy.	0	3	0	0	3	0
Attending the registrar and bespeaking directions for sale of stock	0	6	8	0	6	8
Attending subsequently at the Paymaster-General's with directions for sale of stock	0	6	8	0	6	8
Sittings fee	0	15	0	0	15	0
Letters, messengers, and incidental expenses	3	3	0	4	4	0

The Bill of Costs, Charges, and Expenses of the Defendant in an Action in which no Statement of Claim was delivered, or any other Pleadings beyond the Writ of Summons, to be taxed under an Order dated the day of , and to be paid out of Fund in Court.

Trinity Sittings, 1876.

June, 1876.

Attending the testator's son, conferring at very considerable length as to this matter, and as to the position of his mother the executrix, and advising and arranging to see the executrix at her residence at	0	6	8	0	13	4
Journey to and attending the executrix, the defendant, at, conferring and advising with her at considerable length and generally as to the testator's estate, and journey home	2	2	0	2	2	0
Paid expenses	0	10	6	0	10	6
Attending testator's son on his calling again this day as to the claim of the plaintiffs and advising him thereon	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending Mr. on his calling, conferring with him as to the claim of the plaintiffs, and as to the sum of £ which was in the bank, and he promised to write us fully thereon	0	6	8	0	6	8
Writing to the testator's son requesting him to call upon us to-morrow morning	0	3	6	0	3	6
Writing to Mr. (who was subsequently appointed receiver) on the business, and as to an appointment to see him to-day	0	3	6	0	3	6
Attending by appointment, conferring with him with reference to the communication from the plaintiffs' solicitors, and as to the return of £ which he considered should be returned having regard to the statement made when the money was advanced	0	6	8	0	6	8
Attending testator's son by appointment, further conferring and advising with him thereon	0	6	8	0	6	8
<i>July.</i>						
Writing to testator's son that it appeared to us that the £ ought to be returned to the plaintiffs, and as to an appointment to see him on Monday morning	0	3	6	0	3	6
Attending him by appointment, conferring with him in reference to the £ which he agreed with Mr. (subsequently receiver) should be returned, and arranging to see plaintiffs' solicitors on the subject, and in long conference on an important matter, and advising him, long engaged	0	6	8	0	13	0
Attending plaintiffs' solicitors at their office, conferring at considerable length with their junior partner thereon, and arranging for him to see us on the matter to-morrow morning	0	6	8	0	13	0
4. Writing to plaintiffs' solicitors with reference to our suggestion to their junior partner on Saturday, and requesting them to see us forthwith as promised	0	3	6	0	3	6
5. Attending plaintiffs' solicitors and very carefully conferring with them as to the matter and arranging the course to pursue	0	6	8	0	6	8
Writing to Mr. (subsequently receiver) with reference to our interview with plaintiffs' solicitors, and as they were about to commence an action for the administration of the estate, and suggesting making an application to the Court for his appointment as receiver and manager, and as to the information we should require for that purpose	0	3	6	0	3	6
Attending plaintiffs' solicitors on their bringing writ of summons and copy, and giving them an undertaking to appear for the defendant, the executrix of the testator	0	6	8	0	6	8
Writing to Mr. fully on the business	0	3	6	0	3	6
Writing to , a creditor, informing him of the position of the matter as requested	0	3	6	0	3	6
Instructions to defend	0	6	8	0	13	0
8. Writing to plaintiffs' solicitors in reply to their letter						

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
of this day, and as to their proposed motion for the appointment of Mr. . . . as receiver and manager . . .	0	3	6	0	3	6
Attending to enter appearance for defendant	0	6	8	0	6	8
Paid entering same	0	2	0	0	2	0
Notice thereof to plaintiffs' solicitors, and informing them that no statement of claim required	0	4	0	0	4	0
Attending Mr. . . . on his calling, and advising with him on the business, and as to his proposed appointment of receiver and manager, and arranging to communicate with plaintiffs' solicitors thereon	0	6	8	0	6	8
Writing to plaintiffs' solicitors as to our interview, and with reference to the proposed motion for Mr. . . . 's appointment as receiver and manager	0	3	6	0	3	6
Attending the testator's son on his calling with reference to this matter and advising him fully as to his mother's (the defendant) responsibilities as executrix	0	6	8	0	6	8
Writing to the defendant in reply to her letter and as to the Gas Company's claims	0	3	6	0	3	6
13. Writing to Mr. . . . , a creditor, as to his claim in this matter as requested.	0	3	6	0	3	6
If other creditors write for letters information charge for each	0	2	0	0	2	0
18. Writing to plaintiffs' solicitors as to the position of the matter, and urging expedition in the appointment of receiver and manager	0	3	6	0	3	6
Attending plaintiffs' solicitors as to this matter, when they informed us that the motion for appointment of receiver and manager would be made at once	0	6	8	0	6	8
Attending Mr. . . . on his calling and conferring with him in reference to proposal of appointing him as receiver and manager, and as to the position of the action and advising him thereon	0	6	8	0	6	8
21. Writing to plaintiffs' solicitors in reply to their letter of this day and suggesting that in addition to applying for a receiver and manager, an order should be obtained for administration and requesting to have copy of proposed minutes	0	3	6	0	3	6
Attending plaintiffs' solicitors on their calling, conferring with them on this matter, and arranging that we should obtain an affidavit from the defendant in support of motion for appointment of receiver and manager	0	6	8	0	6	8
Writing to defendant accordingly, informing her that we should require an affidavit to be sworn by her	0	3	6	0	3	6
Instructions for affidavit of defendant in support of motion for appointment of receiver and manager	0	6	8	0	6	8
Drawing same, folios 6	0	6	0	0	6	0
Engrossing same	0	2	0	0	2	0
Attending defendant's son therewith and conferring and advising him thereon	0	6	8	0	6	8
25. Attending defendant on her calling, conferring and advising her, and with her to be sworn before a commissioner	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Paid commissioner taking defendant's oath	0	1	6	0	1	6
Making copy affidavit to be marked as an office copy	0	2	0	0	2	0
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy	0	1	0	0	1	0
Notice of filing same, copy and service	0	4	0	0	4	0
Writing to plaintiffs' solicitors on the business, and requesting them to send us copies of any evidence they might file, and also to send us copies of minutes of proposed order	0	3	6	0	3	6
26. Paid for copy affidavit of as to fitness of receiver, folios 5	0	1	8	0	1	8
Perusing same	0	1	8	0	1	8
Instructions for brief for counsel	1	1	0	2	2	0
Drawing same and fair copy	0	6	8	0	6	8
Making copy notice of motion for counsel	0	2	0	0	2	0
The like copy writ	0	1	8	0	1	8
The like of defendant's affidavit, folios 6	0	2	0	0	2	0
The like affidavit of as to fitness of receiver, folios 5	0	1	8	0	1	8
The like of testator's will, folios 6	0	2	0	0	2	0
Attending counsel with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Attending appointing conference with counsel	0	3	4	0	3	4
Paid conference fee to him and clerk	1	6	0	1	6	0
Writing to plaintiffs' solicitors and informing them we had instructed counsel, and as to when motion should be made	0	3	6	0	3	6
27. Attending conference with counsel	0	13	4	0	13	4
Attending Court when (by consent) administration order made and Mr. appointed receiver and manager, action to be set down for hearing as for to-day	0	13	4	1	1	1
Writing to receiver and informing him of his appointment and requesting him to give us a call	0	3	6	0	3	6
29. Attending the receiver on his appointment of receiver and manager in very long and special interview as to the position of the testator's affairs, and discussing the course to be pursued at considerable length and advising him thereon	0	13	4	1	1	1
30. Attending plaintiffs' solicitors on their calling, conferring with them as to this action and pointing out that the receiver's appointment could not be completed before the vacation unless same is pressed on at once	0	6	8	0	6	8
<i>August 2.</i> Attending Messrs. & Co., on their calling, when they informed us they were large creditors to the testator's estate, when we informed them the position of the action and that they had better send in their claim	0	6	8	0	6	8
Writing to plaintiffs' solicitors as to the position of the action and as to completing the appointment of receiver before the vacation	0	3	6	0	3	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Close copy draft order, folios 8	0	2	8	0	2	8
Attending settling same	0	6	8	0	13	4
Attending plaintiffs' solicitors on their calling and conferring with them on this action and arranging that we should complete receiver's security	0	6	8	0	6	8
Writing to the receiver for particulars of outstanding personal estate and with reference to the affidavit as to value and for names of his sureties	0	3	6	0	3	6
4. Attending appointment to pass order, same adjourned till to-morrow as print of it had not been received from the printer	0	6	8	0	6	8
5. Attending passing same	0	6	8	0	13	4
Attending defendant's son and making an appointment for him to see the receiver this afternoon	0	6	8	0	6	8
Attending the receiver and defendant's son by appointment this afternoon, and in very long interview conferring as to the testator's estate	0	6	8	0	13	4
Perusing statement of testator's account to the 31st May, 1876	0	6	8	0	13	4
Instructions for affidavit of testator's son as to outstanding estate of the testator	0	6	8	0	6	8
Drawing same, folios 7	0	7	0	0	7	0
Engrossing same	0	2	4	0	2	4
Attending defendant before a commissioner to be sworn to same	0	6	8	0	6	8
Paid commissioner taking defendant's oath	0	1	6	0	1	6
Making copy affidavit to be marked as an office copy	0	2	4	0	2	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy	0	1	2	0	1	2
Instructions for affidavit of receiver as to outstanding estate of testator	0	6	8	0	6	8
Drawing same, folios 7	0	7	0	0	7	0
Engrossing same	0	2	4	0	2	4
Attending defendant before a commissioner to be sworn to same	0	6	8	0	6	8
Paid commissioner taking defendant's oath	0	1	6	0	1	6
Making copy affidavit to be marked as an office copy	0	2	4	0	2	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy	0	1	2	0	1	2
Notice filing these two affidavits, copy and service	0	4	0	0	4	0
7. Attending plaintiffs' summons to proceed on the order of 27th July last, when security of receiver fixed at £2,000 and directions given as to answering enquiries	0	6	8	0	13	4
Attending the receiver on his calling, conferring and advising him as to the reply to the lessor of business premises of the testator	0	6	8	0	6	8
Attending plaintiffs' solicitors, conferring with them on the position of this action, when they promised to let us have draft advertisement to morrow	0	6	8	0	6	8
8. Making copy advertisement to keep	0	3	4	0	3	4
Writing to plaintiffs' solicitors returning same approved	0	3	6	0	3	6
Attending before the chief clerk on his settling receiver's draft recognizance	0	6	8	0	13	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Paid for copy of chief clerk's certificate, folios , at	0	0	4	0	0	4
per folio	0	6	8	0	13	
Attending settling certificate of receiver's recognizance						
Writing to plaintiffs' solicitors hereon and as to the form of advertisement they had sent and to which we saw no objection, and as to their being prepared with the name of a paper in Colombo to insert advertisement for the chief clerk to-morrow	0	3	6	0	3	6
9. Attending before the chief clerk on his settling his certificate as to security having been given	0	6	8	0	13	4
Attending on same being signed	0	6	8	0	6	8
Writing to the receiver informing him his appointment as receiver was completed and as to the sale of the furniture belonging to the testator	0	3	6	0	3	6
10. Writing to the receiver in answer to his letter requesting us to act as his solicitors in his receivership business	0	3	6	0	3	
Paid for print of order of 27th July last, folios 8	0	2	0	0	2	
12. On receipt of a letter from a Mr. , of , informing us that he held a bill of exchange for £ of testator and would take proceedings, writing him fully explaining position of testator's estate and that he must send in his claim	0	3	6	0	3	
18. Attending Messrs. with reference to a claim that they had, and as to the sale of the goodwill of testator's business	0	6	8	0	6	
Writing to the receiver as to the sale of goodwill of testator's business and as to an appointment to see him thereon	0	3	6	0	3	
The receiver having received a letter from the landlord's solicitors with reference to the rent of the testator's city offices, attending, conferring and advising him thereon	0	6	8	0	6	
Attending defendant on her calling, conferring and advising with her as to the appointment of an agent in Ceylon, and also as to the administration generally	0	6	8	0	6	
Attending at the report office, searching for certificate of security having been given, an office copy being wanted by the receiver to open an account at the bank but could not find same	0	6	8	0	6	
25. Making copy order of the 27th July last appointing the receiver, folios 8	0	2	8	0	2	8
Writing to the receiver with same and on the matter as requested	0	3	6	0	3	6
Attending the receiver on his calling, and in very long and special interview with him, and discussing the various matters connected with the estate at considerable length, receiving his views and advising him thereon	0	6	8	0	6	8
Instructions for ease for counsel to advise the receiver as to his position having regard to action for the administration of the trust funds, and with reference to the property the subject of the post-nuptial settlement	0	6	8	0		

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Drawing same, folios 9	0	9	0	0	9	0
Making fair copy of same for counsel	0	3	0	0	3	0
The like of post-nuptial settlement, folios 72	1	4	0	1	4	0
Attending counsel with same	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending, appointing conference with counsel	0	3	4	0	6	8
Paid fee to him and clerk	1	6	0	1	6	0
Attending conference	0	13	4	0	13	4
Writing to defendant in reply to her letter hereon as to the sale of the testator's furniture	0	3	6	0	3	6
Preparing special summons to appoint an agent at to go into the accounts of the firm of & Co., and attending at Chambers to get same sealed	0	6	8	1	1	0
Paid stamping same	0	2	0	0	3	0
Making copy of same for Chambers	0	2	0	0	2	0
Copy and service of same on plaintiffs' solicitors	0	3	6	0	4	6

September.

Writing to the receiver informing him of summons having been issued, and on the business	0	3	6	0	3	6
Making copy of counsel's opinion on case laid before him, folios 6	0	2	0	0	2	0
Attending the receiver on his calling, and in very long interview with him, going through lease and counsel's opinion thereon, and discussing the position of matters at considerable length, and advising him	0	6	8	0	6	8
Attending Mr. on his calling, he being a creditor, and giving him information as to the position of matters as requested	0	6	8	0	6	8
Attending summons to appoint agent at to go into accounts, when leave given to receiver to appoint (Mr.)	0	6	8	0	6	8
Writing to receiver informing him thereof and thereon	0	3	6	0	3	6
Attending Mr. on his claim against estate and conferring with him thereon, and he was to send us a formal claim	0	6	8	0	6	8
3. Writing to Mr. in reply to his letter, and acknowledging receipt of his claim which we had sent to the receiver	0	3	6	0	3	6
Writing the receiver with and upon the claim of	0	3	6	0	3	6
4. Attending Messrs. & Co., solicitors for Messrs. on their calling, as to their client's claim, and giving them information	0	6	8	0	6	8
Attending the receiver, informing him the order would be drawn up appointing agent at about days, and arranging to send him an office copy	0	6	8	0	6	8
Close copy order appointing agent at , folios 3	0	1	0	0	1	0
Notice to settle same, copy and service	0	4	0	0	4	0
0. Attending the receiver on his calling, conferring with him in reference to various matters, and in						

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
very long interview discussing same, receiving his views and advising him thereon	0	6	8	0	13	4
22. Attending appointment, settling draft order	0	6	8	0	13	4
Writing to Mr., a creditor, in reply to his letter of the inst., and informing him the position of this estate	0	3	6	0	3	6
25. Attending defendant on her calling, conferring and advising her as to the position of matters	0	6	8	0	6	8
Notice to pass order appointing agent at, copy and service	0	4	0	0	4	0
26. On receipt of letter from defendant of this date inclosing one received by her from the Secretary of the Gas Works as to his claim, writing him thereon, and requesting him not to trouble defendant further	0	3	6	0	3	6
Writing to defendant in reply to her letter of this day, and fully thereon	0	3	6	0	3	6
Paid for order appointing agent at	0	3	0	0	5	0
Attending appointment before the registrar, passing same.	0	6	8	0	13	4
29. Writing to plaintiff's solicitors hereon, and inquiring whether all the advertisements had been inserted in pursuance of the order	0	3	6	0	3	6
Attending Messrs., creditors, as to their claim on the estate, giving them information as to the position thereof, and they were to send us their claim	0	6	8	0	6	8
30. Writing to Messrs. in reply to their letter, and acknowledging receipt of claim	0	3	6	0	3	6
Writing to the receiver therewith and thereon	0	3	6	0	3	6

October 1st.

Writing to Messrs. in reply to their letter, and acknowledging receipt of their claim	0	3	6	0	3	6
Writing to the receiver therewith and thereon	0	3	6	0	3	6
2. Writing to Messrs. in reply to their letter of the 30th ultimo making their claim according to advertisement as creditors against the estate for £, the amount of a bill of exchange, and requesting him to send us the bill	0	3	6	0	3	6
Making copy of letter received from Messrs. & Co., writing the receiver therewith and thereon	0	3	6	0	5	0
3. Having received a letter from Mr., enclosing one from Mr. on behalf of Mr., as to some trust securities, writing him in reply that we would write to Mr. thereon	0	3	6	0	3	6
Writing to Mr. that his letter to the defendant had been forwarded to us, and that we would see the receiver thereon and communicate with him further thereon	0	3	6	0	3	6
Attending the receiver in long and special interview as to Mr. 's letter and the trust securities referred to, and it appeared they were in the hands of the bank, who claimed a lien upon them, and advising, long engaged	0	6	8	0	13	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
4. Writing to Mr. , informing him thereof and thereon	0	3	6	0	3	6
Writing Messrs. in reply to their letter of the 3rd instant, inclosing bill of exchange to us for £	0	3	6	0	3	6
Writing to the receiver therewith and thereon	0	3	6	0	3	6
Writing to defendant long letter in reply to hers, as to the furniture which she proposed to sell	0	3	6	0	3	6
The defendant having stated that she was about to sell some of the furniture, instructions for case for counsel to advise the receiver the course he should pursue	0	6	8	0	6	8
Drawing same and fair copy, folios 5	0	6	8	0	6	8
Attending counsel with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Writing to plaintiff's solicitors special letter, and giving them notice in pursuance of counsel's opinion that the defendant claimed the house and furniture at , recently occupied by the testator by virtue of a post-nuptial settlement, dated the , 1867, and that she proposed to sell some portion of the furniture in settlement	0	3	6	0	5	0
Making copy opinion of counsel	0	1	0	0	1	0
Writing to the receiver with same and thereon	0	3	6	0	3	6
6. Writing to Mr. in reply to his letter of the 5th instant, and as to an appointment to see him thereon	0	3	6	0	3	6
Making copy of Mr. 's letter, and writing to the receiver with same and thereon	0	3	6	0	5	0
Writing to plaintiff's solicitors in reply to their letter of the 5th instant, requesting to see the deed of settlement, counsel's opinion referred to in our letters, and informing them we would produce them at any time on their making an appointment for that purpose	0	3	6	0	3	6
7. Attending plaintiff's solicitors on their calling as to taking the opinion of counsel, and lending them copy settlement for that purpose	0	6	8	0	6	8
Writing to the receiver in reply to his letter of yesterday, and acknowledging receipt of Mr. 's account	0	3	6	0	3	6
Pernsing account, folios 10	0	3	4	0	3	4
9. Attending plaintiff's solicitors on their calling, and in very long interview with them, fully explaining to them the nature of the fresh application which had arisen with regard to Mr. 's claim, and advising, engaged a very long time	0	6	8	0	13	4
Writing to defendant very fully on the result of our interview with plaintiff's solicitors to-day	0	3	6	0	3	6
Writing to Messrs. and giving them information they desired respecting this estate	0	3	6	0	3	6
10. Writing to Mr. in reply to his letter, and acknowledging receipt of his claim	0	3	6	0	3	6
Writing to the receiver therewith and thereon	0	3	6	0	3	6
Writing to plaintiff's solicitors for copy of settlement lent to them	0	3	6	0	3	6
11. Attending plaintiff's solicitors on their calling, and conferring with them on this matter, and as to the						

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
possible defect in the claims made by persons claiming to be <i>cestuis-que-trust</i> of the testator's estate	0	6	8	0	6	8
12. Attending the receiver in long interview with regard to the claims made by persons claiming to be <i>cestuis-que-trust</i> , and advising, also conferring and advising him generally, and receiving his instructions, long engaged	0	6	8	0	13	4
Writing to the receiver with and upon letter received from Messrs. with their client's claim, and making copy letter to enclose	0	5	0	0	5	0
Writing to Messrs. in reply to their letter of yesterday's date containing their client's claim	0	3	6	0	3	6
13. Writing to Mr. in reply to his letter of the 12th instant, enclosing his claim	0	3	6	0	3	6
Writing to the receiver with and thereon	0	3	6	0	3	6
Writing to the receiver in reply to his letter as to claim of Mr. for salary, and informing him he was not entitled to the amount claimed	0	3	6	0	3	6
14. Attending the receiver, conferring with him on the business and advising him thereon, and obtaining Mr. 's address	0	6	8	0	6	8
17. Attending plaintiff's solicitors on their calling, with reference to the settlement, and very fully on the matter, and as to counsel's opinion, and we advised them same could not be impeached	0	6	8	0	6	8
Writing to plaintiff's solicitors with reference to the present position of affairs, and the necessity of immediate action being taken	0	3	6	0	3	6
18. In consequence of the notice which we had given of the intention of the defendant to sell the furniture, attending the receiver on his calling, and conferring with him thereon	0	6	8	0	6	8
Attending the auctioneer on his calling, with reference to the proposed sale of the furniture, and advising him thereon	0	6	8	0	6	8
Writing to the defendant as to the auctioneer coming down as to the sale of the furniture	0	3	6	0	3	6
21. Writing to plaintiff's solicitors in reply to their letter of the 20th instant, requesting them to expedite matters as much as possible	0	3	6	0	3	6
Writing to the defendant as to the extent of the furniture she could sell, and thereon	0	3	6	0	3	6
23. Attending Mr., a creditor, on his calling, and informing him the position of matters, and conferring with him thereon	0	6	8	0	6	8
Writing to Mr., acknowledging the receipt of his claim, and thereon	0	3	6	0	3	6
The like to Messrs. & Co.	0	3	6	0	3	6
Writing to the receiver with these two claims, and thereon	0	3	6	0	3	6
24. Attending Mr., a creditor, on his calling for information as to the position of this estate, and informing him thereof	0	6	8	0	6	8

	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.
Writing to the receiver with and upon a bundle of claims	0 3 6	0 3 6
25. Writing to the receiver in reference to the securities at the Bank	0 3 6	0 3 6
Attending Mr. on his calling with reference to his claim, and conferring as to the position of this matter	0 6 8	0 6 8
Writing to defendant a long letter in reply to hers, in reference to the sale of the furniture, &c.	0 3 6	0 3 6
Writing to the auctioneer on the subject	0 3 6	0 3 6
26. Writing to three creditors, acknowledging receipt of their claims, and thereon	0 10 6	0 10 6
Writing to the receiver with and upon the three claims	0 3 6	0 3 6
27. Writing to the receiver in reply to his letter, as to the claim of Mrs.	0 3 6	0 3 6
Attending summons taken out on behalf of the plaintiffs and the receiver for directions as to proceeding with reference to the furniture comprised in the post-nuptial settlement, when the chief clerk refused to give any	0 6 8	0 6 8
Paid for copy affidavit of in support of summons, folios 4	0 1 4	0 1 4
Perusing same	0 1 4	0 1 4
28. Attending plaintiff's solicitors on their calling, conferring further as to the furniture when they decided not to take any further steps in the measure at present	0 6 8	0 6 8
Writing Mr. acknowledging receipt of his claim for £, and thereon	0 3 6	0 3 6
Writing to the receiver with same and thereon	0 3 6	0 3 6
31. Writing to three creditors acknowledging receipt of their claims, and thereon	0 10 6	0 10 6
Writing to the receiver with and upon these three claims	0 3 6	0 3 6

November 1st.

Writing to the receiver in reply to his letter forwarding us schedule of deeds	0 3 6	0 3 6
Sittings fee	0 15 0	0 15 0

Michaelmas Sittings, 1876.

2. Attending Mr. a creditor with reference to his claim and giving him information and conferring very fully as to the position of the estate	0 6 8	0 6 8
Writing to defendant in reply to her letter of the 1st inst. as to the claim made by Mr.	0 3 6	0 3 6
Writing to Mr. upon the subject	0 3 6	0 3 6
Writing to the receiver enclosing Mr. 's claim and explaining to him the state of the account	0 3 6	0 3 6
4. Attending Messrs. , creditors, and informing them the position of this matter	0 6 8	0 6 8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending the auctioneer, conferring with him and advising him hereon	0	6	8	0	6	8
Writing to Mr. the collector of poor rates in reply to his of the 2nd inst.	0	3	6	0	3	6
Writing to the receiver with and upon the notices received from the collector	0	3	6	0	3	6
6. Writing to two creditors acknowledging receipt of their claims, and thereon	0	7	0	0	7	0
Writing to the receiver with and upon the two claims	0	3	6	0	3	6
7. Attending receiver on his calling on his having received the three bills of exchange from Ceylon, and as to the proof to be made by him and for what amount	0	6	8	0	6	8
Attending at the office of the trustee of & Co.'s estate, in respect of the three bills of exchange held by the receiver chargeable thereon, and obtaining information from him as to the position thereof	0	6	8	0	6	8
Writing to Messrs. & Co. on the business and as to the dividends to be received in respect of claim on the estate of Messrs. & Co.	0	3	6	0	3	6
Writing to the receiver in reply to his letter as to the position of the estate of Messrs. & Co.	0	3	6	0	3	6
Writing to the auctioneer requesting him to send particulars of property to Mr.	0	3	6	0	3	6
8. Attending Mr. a creditor, on his calling and handing us his claim and conferring with him thereon	0	6	8	0	6	8
9. Attending the auctioneer on his calling with reference to the sale and conferring and advising him and thereon	0	6	8	0	6	8
Writing to the receiver with a detailed account of claim, and thereon	0	3	6	0	3	6
10. Attending the receiver, conferring and advising him as to the claim against the estate of & Co.	0	6	8	0	6	8
11. Writing to the receiver with and upon copy letter received from the trustee of & Co. as to the receiver's claim and admitting proof for £, but not for notarial charges since the date of liquidation and returning him the three bills	0	5	0	0	5	0
Writing to the trustee in reply to his letter of the 10th inst.	0	3	6	0	3	6
Writing to plaintiff's solicitors as to the £ loan advanced by their client to Mr. and paid by him into the Bank	0	3	6	0	3	6
14. Writing to the receiver and informing him that the day for adjudication on claims was close at hand and that we had not received from him the list of claims to carry into Chambers	0	3	6	0	3	6
15. Attending the receiver on his calling and in very long interview with him as to the adjudication on claims when he promised to send us a list thereof	0	6	8	0	13	
17. Having received list of claims from the receiver that had been received by him in connexion with the estate, writing receiver in reply to his letter of this day						

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
and that we should not be prepared to complete the adjudication at the appointment and must ask the chief clerk for an adjournment	0	3	6	0	3	6
18. Attending the receiver for a list of the personal estate of the testator at his decease and for a list of outstanding personal estate and undertaker's account to enable the defendant to answer accounts and enquiries directed by the administration order, also conferring as to the list of claims sent in, and as to their investigation, when it appeared that a great number of debts from the testator to underwriters and others who had not sent in their claims pursuant to the advertisement, when it was decided to take the chief clerk's directions as to same at appointment to adjudicate on claims	0	6	8	0	13	4
20. Attending appointment to adjudicate on claims, same adjourned until 11th December, some of Ceylon papers not having arrived, and explaining to the chief clerk that it appeared from the testator's books debts were owing to underwriters who had not sent in their claims, when he directed same should be set out in a schedule to the affidavit verifying receipt, &c., of claims	0	6	8	0	13	4
Writing to Mr. 's solicitor for a creditor, informing him of the adjournment	0	3	6	0	3	6
Writing to the plaintiff's solicitors as to their client's claim and as to the adjourned appointment to adjudicate thereon for the 11th proximo	0	3	6	0	3	6
Attending the auctioneer on his calling this day as to the sale of the furniture and advising him thereon	0	6	8	0	6	8
21. Writing to Mr. in reply to his letter and acknowledging receipt of his client's claim	0	3	6	0	3	6
Writing to the receiver therewith, and thereon	0	3	6	0	3	6
22. Writing to Mr. in reply to his letter of yesterday's date and informing him that the appointment for adjudication on claims was adjourned till the 11th proximo	0	3	6	0	3	6
23. Attending Mr., conferring with him in reference to his client's claim and as to necessity of proof	0	6	8	0	6	8
Writing to three creditors acknowledging receipt of their claims, and thereon	0	10	6	0	10	6
24. Attending the receiver on his calling with reference to the adjudication of certain debts of which he had received no notice, and conferring and advising with him	0	6	8	0	6	8
Writing to the receiver in reply to his letter and acknowledging receipt of claims	0	3	6	0	3	6
On receipt of list of claims not sent in, perusing same, fo. 26	0	8	8	0	8	8
The like of assets still outstanding, fo. 20	0	6	8	0	6	8
Writing to defendant with and upon list of claims for her perusal	0	3	6	0	5	0
28. Writing to defendant acknowledging receipt of claims, and thereon	0	3	6	0	3	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
<i>December 6th.</i>						
Attending the receiver for information as to various claims and discussing the action generally	0	6	8	0	6	8
Writing to plaintiff's solicitors acknowledging receipt of their client's claim and requesting to see them thereon	0	3	6	0	3	6
7. Attending the receiver again this day, conferring with him as to various claims, receiving explanations and advising him thereon	0	6	8	0	6	8
8. Drawing list of claims sent in pursuant to advertisement and arranging same in schedule and fair copy, fo. 54	1	16	0	3	12	0
Drawing account of debts appearing to be due by testator's books but of which no claims had been sent in and fair copy, fo. 26	0	17	4	1	14	8
Attending plaintiff's solicitors on their calling with reference to their client's claim for £ and conferring with them as to the course they intended to pursue	0	6	8	0	6	8
Writing to the receiver in reply to his letter as to the defendant making affidavit	0	3	6	0	3	6
Drawing and fair copy notice to Mr. to produce probate of will of at appointment on Monday under which he claimed to be a creditor to the testator's estate	0	5	0	0	5	0
Service thereof	0	4	0	0	4	0
Writing to the receiver as to granting a power of attorney to Mr. and with a copy of the chief clerk's note made on summons to appoint Mr. receiver's agent at Colombo	0	3	6	0	3	6
Instructions for affidavit of defendant answering accounts on enquiry directed by administration summons.	0	6	8	0	6	8
Drawing same, fo. 14	0	14	0	0	14	0
Engrossing same	0	4	8	0	4	8
Writing to defendant at as to making affidavit	0	3	6	0	3	6
9. Attending deponent before a commissioner to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Making copy of same to be marked as an office copy	0	4	8	0	4	8
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy	0	2	4	0	2	4
Notice of filing same, copy and service	0	4	0	0	4	0
Instructions for joint affidavit of defendant and others as receipt of claims	0	6	8	0	6	8
Drawing same, fo. 16	0	16	0	0	16	0
Engrossing same	0	5	4	0	5	4
Making copy list of claims as exhibit A., fo. 54	0	18	0	0	18	0
The like exhibit B., fo. 26	0	8	8	0	8	8
Preparing four exhibits	0	4	0	0	4	0
Attending defendant before a commissioner to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath and marking exhibits	0	2	6	0	2	6
Attending deponent (defendant's solicitor) before a commissioner to be sworn to same	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Paid commissioner taking deponent's oath and marking exhibit	0	2	6	0	2	6
Attending the receiver before a commissioner to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath and marking two exhibits	0	3	6	0	3	6
11. Making copy of affidavit to be marked as an office copy, fo. 16	0	5	4	0	5	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy	0	2	8	0	2	8
Notice of filing same, copy and service	0	4	0	0	4	0
Attending the receiver on his calling in very long conference as to the present position of matters and as to the proceedings to be taken against the Bank or the plaintiffs' and advising him thereon	0	6	8	0	13	4
Writing to Mr. as to the sale of the furniture	0	3	6	0	3	6
The like letter to the defendant	0	3	6	0	3	6
Attending adjourned appointment to adjudicate on claims when the chief clerk allowed all claims in first account, and also in the second part except the plaintiff's and nine others, and directed notice to be sent to them informing them the amount allowed, and that if they claimed a larger sum to send an explanation as to amount in dispute. As to plaintiff's claim a formal demand to be made to the Bank to refund the £ , and, if they declined to return same, a case to be laid before counsel to advise, the plaintiff in the meantime not to realize security. And as to the debts in list B., the chief clerk directed a notice to be sent to each creditor directing him to send in any claim by the next appointment, and the chief clerk also gave directions that the creditors holding securities were to produce same at the next appointment, and we were to give notice to them of adjourned appointment	1	1	0	2	2	0
Writing to plaintiff's solicitors informing thereof and thereon	0	3	6	0	3	6
The like to the receiver.	0	3	6	0	3	6
12. Writing to Mr. , returning him probate of will of , and informing him the chief clerk had allowed £1 1s. for production of same, which would be added to the debt	0	3	6	0	3	6
Writing to the receiver on the business and as to an appointment to see him on the result of the appointment yesterday before the chief clerk	0	3	6	0	3	6
Writing to Messrs. , creditors, informing them that their claim had been allowed at a reduced amount to that claimed, and, if they claimed a larger sum, to communicate with us and send us explanations as to amount in dispute	0	3	6	0	3	6
Writing nine similar letters to other creditors	1	11	6	1	11	6
Writing to Messrs. & Co. in reply to their letter of this day as to the position of the action as requested	0	3	6	0	3	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Writing to Mr. _____, solicitor to Messrs. _____, requesting him to produce at the next appointment to adjudicate on claims, his client's security	0	3	6	0	3	6
Preparing summons that the receiver might be at liberty to grant power of attorney to _____, to receive money, &c., and attending at Chambers to get same sealed	0	3	0	0	6	8
Paid stamping same	0	2	0	0	3	0
Making copy of same for Chambers	0	2	0	0	2	0
Copy and service of same on plaintiff's solicitors	0	3	6	0	4	6
13. Drawing notice to creditors of allowance for claim	0	5	0	0	5	0
Making 71 copies for service, folding, addressing, and attending posting same at 1s. 6d. each	5	6	6	5	6	6
Paid postage	0	5	11	0	5	11
14. Writing to the receiver on the business and as to taking the opinion of counsel as to his rights against the _____ Bank	0	3	6	0	3	6
Attending Mr. _____, a creditor, on his calling, and giving him information as to the position of the estate as requested	0	6	8	0	6	8
The like on Messrs. _____, creditors	0	6	8	0	6	8
15. Drawing notice to creditors in list B. to be sent to them to send particulars of their claims before the next, the date of the adjourned appointment, to adjudicate on claims, and fair copy	0	5	0	0	5	0
Making 55 copies for service, addressing, making up, and attending to post same at 1s. 6d. each	4	2	6	4	2	6
Paid postages	0	4	7	0	4	7
Writing to Mr. _____ in reply to his letter as to the admission of his claim	0	3	6	0	3	6
Attending Mr. _____ with reference to Mr. _____'s claim, who claimed to be paid in full _____ months' salary, and conferring with him thereon	0	6	8	0	6	8
Attending the receiver in long interview with reference to the claim that had been made against the _____ Bank for the £ _____ paid into the _____ Bank by the testator's son after the decease of his father, which had been received from the plaintiffs, who paid it in not knowing of the testator's death, and advising him thereon, and we were to write first of all to the plaintiff's solicitors; also conferring with him to the proposed power of attorney to _____ as his agent at _____, to receive assets and generally in the business, and advising him thereon	0	6	8	0	13	4
Writing to plaintiff's solicitors on the business and for information as to the course their clients intended to take with reference to receipt for £ _____, handed by the testator's son to their clients	0	3	6	0	3	6
Making copy of letter received from Mr. _____, and writing to the auctioneer with and upon same in reference to the _____ property	0	3	6	0	5	0
Writing to Messrs. _____ & Co. requesting them to produce to the chief clerk at the adjourned appoint-						

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
ment to adjudicate on claims the security held by their clients	0	3	6	0	3	6
Attending summons for leave to receiver to grant power of attorney to agent (.), at, to receive money and give receipts, when the chief clerk required an affidavit verifying correspondence between the agent and Messrs. & Co., and summons adjourned	0	6	8	0	13	4
Making copy of letter received from plaintiff's solicitors in reply to ours, and writing to the receiver with same	0	4	6	0	5	0
Writing to the plaintiff's solicitors in reply to their letter of the 16th inst., and as to the communication we were about to make to the Bank	0	3	6	0	3	6
18. Attending at the Bank in very long interview explaining the terms upon which the £ had been received and paid into the bank, but the manager claimed a lien thereon, and referred us to their solicitors	0	6	8	0	13	4
Writing to the bank solicitors a special letter on the business and as to the decision of the bank with reference to the £, and form of receipt that the directors would require	0	3	6	0	5	0
Writing to Messrs. in reply to their letter of the 16th inst., as to their claim as requested	0	3	6	0	3	6
Attending Messrs., underwriters, on their calling with reference to their claim, and giving them full explanations as to the position of matters as requested	0	6	8	0	6	8
Instructions for affidavit of receiver as to the correspondence between his agent and Messrs. & Co., at, in support of adjourned summons for receiver to give a power of attorney to his agent at	0	6	8	0	6	8
Drawing same, folios 8	0	8	0	0	8	0
Attending deponent, going through draft affidavit, and settling same	0	6	8	0	6	8
Engrossing same	0	2	8	0	2	8
Marking exhibit	0	1	0	0	1	0
Attending deponent before a commissioner to be sworn to affidavit	0	6	8	0	6	8
Paid commissioner, taking deponent's oath, and marking exhibit	0	2	6	0	2	6
Making copy, affidavit to be marked as an office copy	0	2	8	0	2	8
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy	0	1	4	0	1	4
Notice of filing same, copy and service.	0	4	0	0	4	0
19. Writing to the receiver reporting result of our interview with the manager of the bank	0	3	6	0	3	6
Attending Mr., representative, on his calling, and conferring with him in reference to his claim	0	6	8	0	6	8
Attending Mr., an underwriter, on his calling						

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
and conferring on his claim, and giving him information as to the position of the testator's estate as requested	0	6	8	0	6	8
Attending adjourned summons to grant power of attorney to the receiver's agent when the chief clerk required further evidence, and directed us to attend before him to-morrow with same	0	6	8	0	6	8
Subsequently attending the receiver, conferring with him thereon, and as to obtaining a guarantee for Mr. _____, his agent, for £ _____ for due performance of power of attorney, and advising him thereon	0	6	8	0	6	8
Attending Messrs. _____ & Co. to ascertain if they would guarantee Mr. _____ for £ _____, when they consented to do so	0	6	8	0	6	8
Instructions for guarantee	0	6	8	0	6	8
Drawing same and fair copy, folios 5	0	6	8	0	6	8
Paid stamping same	0	0	6	0	0	6
Attending Messrs. _____ & Co. with guarantee and obtaining their signature	0	6	8	0	6	8
Instructions for affidavit of the receiver by the direction of the chief clerk, stating the amount to be received by agent, and that the matter pressed, and in justification of guarantors	0	6	8	0	6	8
Drawing same, folios 7	0	7	0	0	7	0
Engrossing same	0	2	4	0	2	4
Preparing exhibit	0	1	0	0	1	0
Attending deponent before a commissioner to be sworn to same	0	6	8	0	6	8
Paid commissioner, taking deponent's oath, and exhibit	0	2	6	0	2	6
Making copy, affidavit to be marked as an office copy	0	2	4	0	2	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy	0	1	2	0	1	2
Notice of filing same, copy and service	0	4	0	0	4	0
20. Attending adjourned appointment on summons before the chief clerk, when order made to grant power of attorney to _____, as agent, at _____	0	6	8	0	13	4
Attending Messrs. _____, creditors, on their calling, giving them information respecting the testator's estate as requested, and conferring with them thereon	0	6	8	0	6	8
Writing to Messrs. _____ & Co. acknowledging receipt of their claim, and thereon	0	3	6	0	3	6
Writing to the receiver therewith, and thereon	0	3	6	0	3	6
Writing to Messrs. _____, creditors, in reply to their letter as to the position of this matter as requested	0	3	6	0	3	6
Writing to Messrs. _____, and informing them that the _____ property was still in the market	0	3	6	0	3	6
Drawing notice to creditors in B. list to send in their claims (if they had any)	0	5	0	0	5	0
Twelve copies and services of same at 1s. 6d. each	0	18	0	0	18	0
Paid postage	0	1	0	0	1	0
21. Attending Messrs. _____ & Co. with reference to their account, and thereon	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending Mr., a creditor, on his calling, and conferring with him as to the position of the testator's estate	0	6	8	0	6	8
Instructions for power of attorney from the receiver to	0	6	8	0	6	8
Drawing same, folios 13	0	13	0	0	13	0
Writing to the receiver requesting to call upon us to finally settle same	0	3	6	0	3	6
Subsequently attending the receiver on his calling upon us, and going through and settling draft power of attorney	0	6	8	0	6	8
Engrossing same, folios 13	0	4	4	0	4	4
Attending at the receiver's office for and obtaining his execution of power of attorney and attesting same	0	6	8	0	6	8
Instructions for statutory declaration of execution of power of attorney	0	6	8	0	6	8
Drawing and engrossing same	0	10	0	0	10	0
Preparing exhibit	0	1	0	0	1	0
Attending at the Mansion House to be declared thereto	0	6	8	0	6	8
Paid fee thereon	0	2	0	0	2	0
Subsequently attending at the Lord Mayor's Court leaving power of attorney to be sealed with the City seal, and subsequently attending for and obtaining same	0	6	8	0	13	4
Paid fees	0	9	6	0	9	6
Writing to the receiver with power of attorney completed	0	3	6	0	3	6
Close copy order of the 20th inst., folios 6	0	2	0	0	2	0
Notice to settle same, copy and service	0	4	0	0	4	0
22. Attending Messrs. & Co., creditors, and conferring with them in reference to the position of this estate	0	6	8	0	6	8
Writing to the defendant fully as to the sale of the furniture	0	3	6	0	3	6
23. Attending before the registrar settling draft order of the 20th inst.	0	6	8	0	13	4
Notice to pass same, copy and service	0	4	0	0	4	0
Attending Messrs. & Co., conferring with them in reference to their client's claim, and informing them of the position of matters	0	6	8	0	6	8
Making copy of letter received from the solicitor of the Bank, and writing to the receiver with same, and thereon	0	3	6	0	5	0
27. Paid stamp for order of the 20th inst.	0	3	0	0	5	0
Attending passing same	0	6	8	0	13	4
Attending Messrs. & Co. with reference to their claim, and conferring with them and informing them the position of this estate	0	6	8	0	6	8
28. Writing to the defendant as to the position of matters	0	3	6	0	3	6
29. Attending Mr., a creditor, on his calling with reference to his claim, and conferring with him thereon	0	6	8	0	6	8

	Lower Seale.			Higher Seale.		
	£	s.	d.	£	s.	d.
Writing to the receiver as to the position of the banking account, and as to an appointment to see him thereon	0	3	6	0	3	6
30. Attending Mr., a creditor, on his calling, giving him information as to this estate as requested, and conferring with him thereon	0	6	8	0	6	8

January 1st, 1877.

Attending Mr., a creditor, on his calling as to his claim, and giving him information as to respecting this estate	0	6	8	0	6	8
Writing to the receiver on the business and requesting to see him	0	3	6	0	3	6
2. Attending the receiver by appointment, and in long interview on the business, and especially with reference to the claim against Bank, receiving his views and advising him thereon	0	6	8	0	6	8
Attending searching through the file of the <i>Times</i> to ascertain the date when the death of the testator was advertised, but could not find same	0	6	8	0	6	8
Paid search	0	1	0	0	1	0
Writing the receiver with further claims we had received, and as to whether he had Messrs. 's bill of exchange for £	0	3	6	0	3	6
Writing to the testator's son on the business, and requesting him to call upon us to-morrow	0	3	6	0	3	6
3. Attending testator's son by appointment, conferring and advising him on the business, and obtaining information from him respecting the transaction with the Bank	0	6	8	0	6	8
Instructions for case on behalf of the receiver for counsel's opinion as to whether he had any right to proceed against the Bank for the recovery of the £ or against the plaintiffs for the recovery of the bill of exchange for £, and generally to advise him as to the course to be pursued	0	6	8	0	6	8
Drawing same and fair copy, folios 10	0	13	4	0	13	4
Attending counsel with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
5. Writing to two creditors in reply to their letters as to their claims	0	7	0	0	7	0
Making copy of counsel's opinion, folios 10	0	3	4	0	3	4
Writing to the receiver with same, and thereon	0	3	6	0	3	6
Writing to plaintiff's solicitors stating the opinion of our counsel as to the return of the £ by the Bank, and requesting their attention	0	3	6	0	3	6
6. Writing to receiver acknowledging receipt of draft assignment, prepared by plaintiff's solicitors, of Messrs. & Co.'s bill of exchange to the plaintiff	0	3	6	0	3	6
Perusing same, folios 20	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Making copy to keep	0	6	8	0	6	8
Having received letter from the defendant as to the sale of the furniture, attending the auctioneer at his office, conferring with him thereon	0	6	8	0	6	8
8. Writing to Mr. informing him that we had no funds out of which to pay his client's interest	0	3	6	0	3	6
Writing to defendant in reply to her letter as to the sale of the furniture	0	3	6	0	3	6
Writing to Mr. on the business, and requesting him to produce his client's security at the next appointment to adjudicate on claims	0	3	6	0	3	6
9. Writing to plaintiff's solicitors in reply to their letter, and appointing for them to see our counsel's opinion to-morrow	0	3	6	0	3	6
10. Attending plaintiff's solicitors by appointment on their calling, and perusing case and opinion of our counsel on the subject of the claim of plaintiffs, and conferring with them thereon	0	6	8	0	6	8
Sittings fee	0	15	0	0	15	0

Hilary Sittings, 1877.

11. Writing to Messrs., solicitors of the Bank, in reply to their letter withdrawing their claim	0	3	6	0	3	6
Writing to the receiver on the business, and requesting him to bring with him to the appointment this afternoon on claims, letters received from creditors explaining the disputed amounts	0	3	6	0	3	6
Making copy of letter received from the defendant, and writing to the auctioneer with same	0	5	0	0	5	0
Attending Mr., a creditor, on his calling and giving him information he required as to the position of the estate	0	6	8	0	6	8
Attending adjourned appointment to further adjudicate on claims when same proceeded with, when the chief clerk gave directions for us to go to Lloyds and inspect their books, when all claims were adjudicated except two or three	1	1	0	2	2	0
Attending appointment to answer inquiries directed by the order	0	6	8	0	13	4
12. Writing to the receiver on the business, and instructing him to go to the offices of the creditors from Lloyds and inspect their books with a view of checking their claims, as suggested by the chief clerk, and with reference to the affidavit that would have to be made as to the investigation	0	3	6	0	3	6
Writing to Mr. in reply to his letter, and informing him that his claim had been allowed, and returning his bill of exchange	0	3	6	0	3	6
13. Writing to the plaintiff's solicitors requesting to know what course they intended to pursue as to £	0	3	6	0	3	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
16. Writing to Mr. in reply to his letter, offering to accept £ in satisfaction of his client's claim	0	3	6	0	3	6
Making copy of Mr. 's letter, and writing to the receiver with same, and thereon	0	5	0	0	5	0
Attending plaintiff's solicitors on their calling, and conferring with them as to the position of matters	0	6	8	0	6	8
18. Writing to plaintiff's solicitors as to their letter, stating they were going to take their counsel's opinion as to the £ , and requesting to know whether they had obtained same	0	3	6	0	3	6
22. Making copy of letter received from the receiver, folios 7	0	2	4	0	2	4
Writing to Mr. with same, and in reply to his letter of the 16th instant	0	3	6	0	3	6
23. Attending plaintiff's solicitors, conferring with them as to the claim of the plaintiffs to Messrs. & Co.'s bill of exchange, when they promised to write us on the subject	0	6	8	0	6	8
24. Writing to plaintiff's solicitors as to the course they intended to pursue with reference to the bill of exchange of Messrs. & Co.	0	3	6	0	3	6
Subsequently attending plaintiff's solicitors on their calling, as to the opinion which they had received from their counsel, and agreeing to a consultation with ours and their counsel	0	6	8	0	6	8
Writing to the receiver with reference to the claim of the Bank on estate	0	3	6	0	3	6
Having received copy of plaintiff's counsel's opinion, perusing same	0	6	8	0	6	8
25. Making copy of plaintiff's counsel's opinion for the receiver	0	2	0	0	2	0
Writing to the receiver with same, and thereon	0	3	6	0	3	6
Making copy of our counsel's opinion	0	2	0	0	2	0
Writing to plaintiff's solicitors with same as requested	0	3	6	0	3	6
Preparing instructions to our counsel on behalf of defendant to consult with plaintiff's counsel, and endeavour, if possible, to come to some determination as to the respective rights of the parties, and as to the course to be pursued with a view of obtaining the money from Bank, and fair copy	0	10	0	0	10	0
Making copy of plaintiff's counsel's opinion for our counsel	0	2	0	0	2	0
Attending counsel with same	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending counsel appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending plaintiff's solicitors on their calling, with reference to the consultation with the respective counsel, and fixing same	0	6	8	0	6	8
26. Attending consultation with plaintiff's and our counsel as to the right to proceed against the Bank	0	13	4	0	13	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending Mr. on his calling, with reference to his claim, and giving him the information respecting the position of the estate	0	6	8	0	6	8
Writing to the receiver requesting him to let us have necessary particulars to enable us to prepare affidavit as to investigation of books, Lloyd's creditors	0	3	6	0	3	6
30. Attending Mr., a creditor, on his calling, conferring with him and informing him the position of the estate	0	6	8	0	6	8
Writing to Messrs., the solicitors for the Bank, and informing them we proposed to issue a summons in this action, calling upon the Bank to refund the £, and as to the question of jurisdiction, and requesting to hear from them	0	3	6	0	3	6
Writing to plaintiffs' solicitors very fully with reference to the jurisdiction of the Court in this action to make the order against the Bank	0	3	6	0	3	6

February 1.

Attending plaintiffs' solicitors, and conferring with them in reference to the question of the jurisdiction of the Court	0	6	8	0	6	8
Attending appointment before the chief clerk to further adjudicate on claims, same proceeded with and adjourned	0	6	8	0	13	4
Writing to the plaintiffs' solicitors on the business, and for copy of the bill of exchange, <i>re</i> & Co. in their possession	0	3	6	0	3	6
2. Writing to the receiver informing him of the adjournment, and requesting him to let us have the necessary particulars to enable us to draw affidavit as to the investigation of claims of Lloyd's creditors	0	3	6	0	3	6
3. Writing to the solicitors of the Bank for a reply to our last letter as to submitting to jurisdiction of the Court	0	3	6	0	3	6
5. Writing to testator's son, requesting him to call upon us	0	3	6	0	3	6
Writing to the plaintiffs' solicitors informing them that the Bank refused to submit to the jurisdiction of the Court	0	3	6	0	3	6
Writing to the solicitors of the Bank thereon, and requesting them to reconsider their determination	0	3	6	0	3	6
Writing to the receiver, informing him that the Bank refused to submit to the jurisdiction of the Court	0	3	6	0	3	6
Attending the testator's son, and conferring with him as to the evidence he could give as to the notices to the Bank	0	6	8	0	6	8
Writing to Mr. in reply to his letter, as to his claim	0	3	6	0	3	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
8. Attending the receiver at his office, conferring with him as to the proceedings against the Bank	0	6	8	0	6	8
Subsequently writing to the receiver, requesting him to inform us what the claim of was for	0	3	6	0	3	6
Attending searching for, and obtaining particulars of Messrs. & Co.'s liquidation	0	6	8	0	6	8
Paid search	0	1	0	0	1	0
Attending at Deacon's News Rooms in Leadenhall Street, searching for death of the testator	0	6	8	0	6	8
Paid search fee	0	2	0	0	2	0
Writing to the receiver for particulars as to bankruptcy	0	3	6	0	3	6
Writing to plaintiffs' solicitors as to the course we intended to adopt	0	3	6	0	3	6
12. Writing to plaintiffs' solicitors in reply to their letter of the instant, and acknowledging receipt of copy bill of exchange	0	3	6	0	3	6
Instructions for case for the opinion of counsel of the Common Law Bar to advise on behalf of the defendant whether she had a good right of action against the Bank for the recovery of the £	0	6	8	0	6	8
Drawing same, folios 24.	1	4	0	1	4	0
Making fair copy of same	0	8	0	0	8	0
Attending counsel with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Attending counsel appointing conference	0	3	4	0	6	0
Paid conference fee to him and clerk	1	6	0	1	6	0
14. Attending conference	0	13	4	0	13	4
Writing to the receiver on the business, and requesting him to let us have the necessary particulars to enable us to prepare affidavit of investigation of Lloyd's creditors' claims	0	3	6	0	3	6
Writing to plaintiffs' solicitors as to the result of conference with our counsel, and proposing consultation of our counsel with theirs thereon	0	3	6	0	3	6
20. Instructions for affidavit of verifying examination of Lloyd's creditors' claims	0	6	8	0	6	8
Drawing same, folios 5	0	5	0	0	5	0
Engrossing same	0	1	8	0	1	8
Making copy list of these claims as an exhibit, folios 16	0	5	4	0	5	4
Preparing exhibit	0	1	0	0	1	0
Attending defendant before a commissioner to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6	0	2	6
Paid filing affidavit	0	2	0	0	2	0
Making copy of affidavit to be marked as an office copy	0	1	8	0	1	8
Paid for office copy	0	0	10	0	0	10
Notice of filing same, copy and service	0	4	0	0	4	0
Making copy list of these claims for the chief clerk, folios 10	0	3	4	0	3	4
Attending plaintiffs' solicitors on their calling as to the claim against the Bank, and conferring with						

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
them on the course to be adopted as to the suggestion of a further meeting of counsel in consultation	0	6	8	0	6	8
28. Attending Messrs. and Co., solicitors, for Messrs. creditors on their calling and conferring with them as to the position of this action, and explaining same to them	0	6	8	0	6	8
Making copy of our counsel's opinion of case laid before him for the plaintiffs' solicitors, folios 10	0	3	4	0	3	4
Writing to plaintiffs' solicitors with same	0	3	6	0	3	6
Writing to Messrs. with reference to the case against their clients the Bank	0	3	6	0	3	6
Making copy of our counsel's opinion, folios 10	0	3	4	0	3	4
Writing to the receiver with same and thereon	0	3	6	0	3	6
Attending appointment before the chief clerk further adjudicating on claims when same disposed of, except the plaintiffs' claim, and appointment was further adjourned	0	6	8	0	13	4
22. Writing Mr. a creditor, in reply to his letter as to payment of dividend	0	3	6	0	3	6
Writing to plaintiffs' solicitors in reply to their letter informing us that they had obtained an appointment for a consultation for their counsel with ours for tomorrow, and that we would fix the appointment with our counsel	0	3	6	0	3	6
Attending our counsel, appointing consultation between him and plaintiffs' counsel	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Writing to the receiver informing him of the result of the appointment before the chief clerk yesterday, and date of the adjournment	0	3	6	0	3	6
23. Attending consultation with our counsel and plaintiffs' when they advised that a claim against the Bank should be made for the whole sum standing at the Bank to the credit of the estate at the time of death of the testator	0	13	4	0	13	4
Attending the receiver, informing him thereof, and conferring and advising him thereon	0	6	8	0	6	8
28. Instructions for case for the opinion of another counsel on behalf of the defendant as to whether she had any right to claim the return of the £ from the Bank, or to claim the balance standing to the credit of testator at the time of his decease	0	6	8	0	6	8
Drawing same	0	6	8	0	6	8
Making fair copy of same, including copies of documents, folios 30	0	10	0	0	10	0
Attending counsel with same.	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending counsel appointing conference	0	6	8	0	6	8
Paid conference fee to him and clerk	2	7	0	2	7	0
Attending conference with counsel when he was write his opinion	0	13	4	0	13	4
Writing to Messrs. and Co. in reply to their letter as to their claim	0	3	6	0	3	6

Lower Scale. Higher Scale.
 £ s. d. £ s. d.

March 2.

In consequence of a point of law having arisen in the case relative to the claim against the bank attending Messrs. who had been concerned in an action similar to the proposed one, and conferring with them as to the course of the arguments and fully thereon, when they lent us a copy of the demurrer in their action	0 6 8	0 6 8
Perusing demurrer book	0 6 8	0 6 8
6. Writing to the receiver with reference to the counsel's opinion and thereon	0 3 6	0 3 6
8. Writing to the receiver with reference to the claim against the bank, and as to an appointment to see him thereon	0 3 6	0 3 6
9. Attending the receiver on his calling conferring with him hereon and informing him the course we intended to pursue, and with reference to the bank and fully thereon	0 6 8	0 6 8
Preparing special summons for bank to hand over money standing to the testator's credit at the time of his death, and £ subsequently paid in, and attending to get same sealed	0 6 8	0 13 4
Paid stamping same	0 2 0	0 3 0
Making copy to leave at Chambers	0 2 0	0 2 0
Copy and service of same on plaintiffs' solicitors	0 3 6	0 4 6
The like on solicitors for the bank	0 3 6	0 4 6
Writing to the testator's son on the business and as to his making an application in support of summons	0 3 6	0 3 6
Attending Mr. a creditor, on his calling, informing him of the position of the matter, and conferring with him thereon	0 6 8	0 6 8
10. Writing to the receiver informing him the date of the return of the summons and thereon	0 3 6	0 3 6
Instructions for affidavit of testator's son in support of summons against the bank to hand over money, &c.	0 6 8	0 6 8
Drawing same, folios 16	0 16 0	0 16 0
12. Attending testator's son on his calling with reference to his affidavit, reading over and settling it	0 6 8	0 6 8
Instructions for affidavit of the receiver further in support of summons	0 6 8	0 6 8
Drawing same, folios 6	0 6 0	0 6 0
Making copy of same for his perusal as requested	0 2 0	0 2 0
Writing to the receiver therewith and thereon	0 3 6	0 3 6
13. Engrossing affidavit of testator's son	0 5 4	0 5 4
Preparing exhibit	0 1 0	0 1 0
Attending the testator's son on his being sworn to his affidavit	0 6 8	0 13 4
Paid commissioner taking deponent's oath and marking exhibit	0 2 6	0 2 6
Paid the testator's son his fee for attending and making the affidavit	1 1 0	1 1 0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Making copy affidavit to be marked as an office copy, folios 16	0	5	4	0	5	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy	0	2	8	0	2	8
Notice of filing this affidavit, 2 copies and services	0	6	6	0	6	6
Attending the receiver settling his affidavit and conferring and arranging appointment for him to be sworn thereto to-morrow	0	6	8	0	6	8
14. Engrossing affidavit of receiver, folios 6	0	2	0	0	2	0
Preparing exhibit	0	1	0	0	1	0
Attending deponent before a commissioner to be sworn to affidavit	0	6	8	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6	0	2	6
Making copy affidavit to be marked as an office copy	0	2	0	0	2	0
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy	0	1	0	0	1	0
Drawing affidavit of (defendant's solicitor), folios 6	0	6	0	0	6	0
Engrossing same, including copy of correspondence, &c., folios 18	0	6	0	0	6	0
Marking 4 exhibits	0	4	0	0	4	0
Attending deponent before a commissioner to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath and marking exhibits	0	5	6	0	5	6
Making copy affidavit to be marked as an office copy	0	6	0	0	6	0
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy	0	3	0	0	3	0
Notice of filing these affidavits, 2 copies and services	0	6	6	0	6	6
17. Attending the receiver on his calling, conferring with him as to the position of this matter, and as to the summons that had been taken out against the Bank and advising him thereon	0	6	8	0	6	8
21. Attending summons against the bank when after long discussion on the question of jurisdiction the same was adjourned to the Judge at the request of both parties	0	6	8	0	13	4
23. Writing to the solicitors of the bank with reference to their consenting to the jurisdiction of the Court with a view of saving expense	0	3	6	0	3	6
26. Having received a letter from Mr. as to Mr. claim of the 23rd inst. writing him in reply	0	3	6	0	3	6
Writing to the receiver with and upon copy of Mr. letter and of one previously received, and requesting his instructions	0	3	6	0	3	6
Making copies of the two letters to enclose	0	3	0	0	3	0
27. Writing to the receiver as to whether he had received any news from his agent at	0	3	6	0	3	6
Attending Messrs. creditors on their calling, informing them the position of this matter, and generally conferring with them thereon	0	6	8	0	6	8
Writing to the receiver as to whether Mr. should						

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
receive the amount claimed and as to other matters requiring attention	0	3	6	0	3	6
29. Writing to the receiver in reply to his letter of the 27th inst. as to Mr. claim, and that we would write to Mr. accordingly	0	3	6	0	3	6
Writing to Mr. and informing him that the receiver would carry out the terms of arrangement as soon as he had funds in hand	0	3	6	0	3	6
<i>April 4.</i>						
Attending the auctioneer with reference to the settlement of this matter	0	6	8	0	6	8
5. Writing to the defendant in reply to her letter as to the progress being made in the settlement of the business and as to writing to the testator's son at	0	3	6	0	3	6
Writing to the receiver in reference to defendant's letter	0	3	6	0	3	6
6. Writing Mr., a creditor, in reply to his letter, and informing him that the receiver had no funds at present to pay his account	0	3	6	0	3	6
10. Writing to testator's son at a long and explanatory letter as to the position of the estate, as required	0	3	6	0	5	0
Paid postage	0	0	8	0	0	8
Drawing brief for counsel to support argument in favour of jurisdiction under the summons against the bank adjourned into Court, folios 20	1	0	0	1	0	0
Making fair copy for counsel	0	6	8	0	6	8
The like of summons, affidavit in support, and correspondence, folios 46	0	15	4	0	15	4
Attending counsel with same	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending appointing conference with counsel	0	6	8	0	6	8
Paid fee to him and clerk	1	6	0	1	6	0
12. Attending conference	0	13	4	0	13	4
Attending the receiver on his calling, as to the hearing of the summons by the Judge in Court against the bank to-morrow conferring and advising him, and as to the necessity of his attendance	0	6	8	0	6	8
Writing to the solicitors of the Bank and informing them the summons would be first in the list for to-morrow	0	3	6	0	3	6
The like letter to the solicitors for the plaintiffs	0	3	6	0	3	6
13. Attending adjourned summons for payment by the Bank to the defendant of amount standing to the testator's credit at his death, and £ subsequently paid in when Vice-Chancellor directed the Bank to come in and submit to the jurisdiction of the Court in this action, and have all questions between the defendant and the Bank tried as if a separate action for that purpose had been obtained, the Bank undertaking not to pay the £ and the £ to any one in the meantime, summons to stand over for evidence on both sides	0	13	4	1	1	0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
14. Writing to the receiver informing him of the result of the application to the Vice-Chancellor yesterday	0	3	6	0	3	6
Sittings fee	0	15	0	0	15	0

Easter Sittings, 1877.

16. Writing to the solicitors for the bank informing them of appointment for Thursday next at . . . o'clock to fix time for filing evidence on claim of defendant against the . . . Bank.	0	3	6	0	3	6
The like letter to the solicitors for the plaintiffs	0	3	6	0	3	6
18. Writing to the receiver on the business and with notice of the appointment as to the . . . Bank	0	3	6	0	3	6
19. Attend appointment before the chief clerk to limit the time for the . . . Bank to file evidence in answer to defendant's evidence in support of summons for payment by the bank of cash standing to the credit of the testator at the time of his death, and £ . . . subsequently paid in, and to fix time to reply thereto and obtain appointment on questions at issue when time appointed	0	6	8	0	6	8
23. Writing to the receiver fully as to the letter received from the bank, and requesting to see him thereon and on other matters relating to the testator's estate	0	3	6	0	3	6
30. Attending Messrs. creditors on their calling with reference to their claim and conferring with them as to position of matters	0	6	8	0	6	8

May 2.

Having received suggestion from the bank solicitors to give up the £ . . . in dispute upon our withdrawing the claim for payment of the balance to the credit at the time of testator's death writing them in reply thereto, and that we would write to the receiver thereon	0	3	6	0	3	6
Making copy of letter received from the solicitors of the bank, writing to the receiver with same and with copy of our letter in reply to the solicitors of the bank	0	5	0	0	5	0
The like to the plaintiffs' solicitors	0	5	0	0	5	0
3. Attending the receiver on his calling with reference to this matter, conferring and advising him thereon and as to the offer which had been made by the bank solicitors, which he requested us to accept	0	6	8	0	6	8
Attending the solicitors for the bank on their calling as to the evidence and as to the summons	0	6	8	0	6	8
Attending plaintiff's solicitors on their calling with reference to the acceptance of the offer of the . . . Bank and conferring with them thereon	0	6	8	0	6	8
Subsequently writing to the solicitors for the bank and accepting their offer of £	0	3	6	0	3	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
4. Having obtained an appointment to dispose of the claim against the Bank, writing to the solicitors for the bank with notice thereof	0	3	6	0	3	6
The like to the plaintiff's solicitors	0	3	6	0	3	6
9. Attending appointment before the chief clerk on claim of defendant against the Bank when order made for the bank to pay the receiver £ paid in after the death of the testator on or before the inst.	0	6	8	0	13	4
The solicitors for the bank not being present, writing and informing them thereof	0	3	6	0	3	6
The like to plaintiffs' solicitors	0	3	6	0	3	6
10. Writing and informing the receiver that an order had been made by the chief clerk for the Bank to pay the £ before the inst.	0	3	6	0	3	6
14. Attending Mr. , a creditor, on his calling, giving him information respecting the position of the estate as requested	0	6	8	0	6	8
16. Attending Messrs. creditors on their calling with reference to their claim against the estate and conferring with them as to position of matters	0	6	8	0	6	8
18. Having received a letter from the solicitors of the bank of this day's date stating that this was the day on which the £ was to be paid but they had not received a copy of the order, writing them in reply as to the cause of the delay being with the registrar	0	3	6	0	3	6
19. Attending at the registrar-general's office searching for the certificates of death of and bespeaking office copy and afterwards for and obtaining office copy Paid for search and office copy certificate	0	6	8	0	6	8
22. Close copy order of the 9th inst., folios 3	0	3	7	0	3	7
Notice to settle copy and service of same on plaintiffs' solicitors	0	1	0	0	1	0
The like on the solicitors for the Bank	0	4	0	0	4	0
Attending Messrs. creditors on their calling as to the payment of dividends and informing them the position of the action	0	2	6	0	2	6
Writing to the receiver in reply to his letter of the inst., and informing him that the Bank would pay the amount herein as soon as the order was passed	0	6	8	0	6	8
24. Attending before the registrar and settling draft order of the 9th inst.	0	3	6	0	3	6
25. Notice to pass same and copy and service on plaintiffs' solicitors	0	6	8	0	13	4
The like on the solicitors for the Bank	0	4	0	0	4	0
Paid for order	0	2	6	0	2	6
26. Attending passing order	0	3	0	0	5	0
29. Making copy of order for service, folios 4	0	6	8	0	13	4
Service of same on the solicitors for the Bank	0	1	4	0	1	4
Writing to defendant in reply to his letter hereon	0	2	6	0	2	6
Writing to the receiver as to the state of affairs at	0	3	6	0	3	6
31. Writing to the solicitors of the Bank on the business and for cheque for the £	0	3	6	0	3	6

	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.
Attending the solicitors of the Bank subsequently on their handing us a cheque for the payment of £ and giving receipt	0 6 8	0 6 8
<i>June 1.</i>		
Writing to the receiver with cheque for the £	0 3 6	0 3 6
12. Having received letter from Mr. as to Mr. claim writing to the receiver with and upon copy letter and making copy letter to enclose	0 3 6	0 5 0
13. Attending plaintiffs' solicitors on their calling with reference to the £ received by us from the Bank and as to whether it was the receiver's intention to hand them over that sum or to allow them to receive the dividends from & Co.'s estate	0 6 8	0 6 8
Writing to the receiver as to the interview this day with plaintiffs' solicitors and as to the course he intended to pursue with the £ received from Bank	0 3 6	0 3 6
14. Having received a cheque from the receiver in payment of Mr. claim writing him thereon and acknowledging receipt of same	0 3 6	0 3 6
Writing to Mr. with cheque for £ in payment of Mr. claim as arranged, and for receipt	0 3 6	0 3 6
15. Writing to plaintiffs' solicitors with reference to their enquiry as to the retention of the £ and thereon	0 3 6	0 3 6
Writing to the receiver with reference to the settlement of the loan account with the Bank	0 3 6	0 3 6
16. Writing to Mr. in reply to his letter and requesting him to let us have a stamped formal receipt	0 3 6	0 3 6
Preparing telegram to defendant on the business and as to an appointment to see her on Monday as requested and attending to transmit same	0 6 8	0 6 8
Paid telegram	0 1 0	0 1 0
Sittings fee	0 15 0	0 15 0

Trinity Sittings, 1877.

18. Attending defendant on her calling by appointment and in very long interview on various matters conferring and advising with her, long engaged	0 6 8	0 13 4
19. Writing to defendant's son at in reply to his letter and very fully in explanation of the liabilities	0 3 6	0 5 0
Making copy of letter received from the defendant's son, and writing to the receiver with same	0 3 6	0 5 0
23. Having received letter from plaintiffs' solicitors of		

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
the 20th inst. with reference to handing over of the £ received from the Bank, writing them thereon and informing them that we would communicate with the receiver thereon	0	3	6	0	3	6
Making copy of letter received from plaintiff's solicitors and writing to the receiver fully thereon	0	3	6	0	5	0
25. Writing Mr. a creditor in answer to his letter asking payment of his claim	0	3	6	0	3	6
26. Having received notice of meeting of the Spring Water Co. addressed to the testator, writing to the secretary to know if the testator's estate was now entitled to any shares therein	0	3	6	0	3	6
Writing to plaintiffs' solicitors in reply to their letter as to the £ and informing them that we should act upon any directions the chief clerk might give	0	3	6	0	3	6
Writing a similar letter to the receiver	0	3	6	0	3	6
28. Writing to Messrs. creditors in reply to their letter as to payment of their account	0	3	6	0	3	6
Having received a letter from the secretary of the Spring Water Co. informing us that the intestate was entitled to shares therein, writing him in reply thereto and as to the production of the letters of administration	0	3	6	0	3	6
Writing to the receiver informing him thereof and thereon	0	3	6	0	3	6
30. Writing to the receiver that a Mr. was a probable purchaser of the Spring Water Co. shares of the intestate	0	3	6	0	3	6
Writing to the secretary of the Spring Water-works Co. in reply to his letter of yesterday and informing him that we would forward the necessary direction of transmission of interest in the shares lately held by the testator	0	3	6	0	3	6
<i>July.</i>						
Attending Mr. of on his calling in long interview fully explaining to him the position of the action and very fully conferring with him thereon	0	6	8	0	6	6
Writing to Mr. in reply to his letter of the 30th inst. to the defendant and with the information he required	0	3	6	0	3	6
Writing to the defendant in reply to her letter of yesterday's date and informing her that we had written to Mr. thereon	0	3	6	0	3	6
Drawing declaration of transmission of interest in shares lately held by the testator in the Spring Water Co., folios 7	0	7	0	0	7	0
Engrossing same	0	2	4	0	2	4
Attending to be declared thereto	0	6	8	0	6	8
Paid commissioner's fee	0	1	6	0	1	6
Paid stamping declaration	0	2	6	0	2	6
Writing to the secretary of the Spring Water						

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Co. with same and requesting him to register the defendant on list of shareholders as the party entitled to the shares	0	3	6	0	3	6
Writing to the plaintiffs' solicitors informing them that the chief clerk had allowed the receiver £ for his remuneration subject to anything they might have to say, and with dates of two appointments to proceed	0	3	6	0	3	6
Having received letter from Messrs. & Co., creditors to the estate, in reference to their claim and enclosing copy invoice writing to them explaining the position of the action	0	3	6	0	3	6
Making copy of letter received from Messrs. and writing to the receiver with same and the invoice	0	3	6	0	5	0
Writing the receiver in reply to his letter of this day, and informing him that we did not consider Messrs. & Co. had any claim on the firm	0	3	6	0	3	6
Writing to the plaintiffs' solicitors with reference to their making an application to the chief clerk at once as to the £ if they intended to do so at all	0	3	6	0	3	6
Writing to the secretary of the Spring Waterworks Company with further particulars as requested	0	3	6	0	3	6
Attending appointment before the chief clerk to further proceed on plaintiffs' claim, when same adjourned for a week	0	6	8	0	6	8
Writing to the receiver requesting him to call and see us with reference to the plaintiff's claim	0	3	6	0	3	6
Attending receiver on his calling by appointment, and in very long interview with him thereon and as to the position of matters, receiving his views, and advising him generally on the business	0	6	8	0	13	4
Writing to plaintiff's solicitors and requesting to know as to what course they intended to pursue on the adjourned appointment before the chief clerk as to the admission of plaintiff's claim	0	3	6	0	3	6
Not having a reply to our letter to plaintiff's solicitors, writing them again with reference to the admission of plaintiffs' claim and the appointment to-morrow	0	3	6	0	3	6
Attending appointment before the chief clerk on adjudication of plaintiffs' claim, when, after long discussion, the chief clerk decided he had no power to order the defendant to hand over the £ received from the Bank, and allowed the plaintiffs' claim at £ , they to retain the securities, and, should there be any balance after they had so recouped themselves, they were to hand it over to the receiver	0	6	8	0	6	8
Writing to the receiver informing him of the result of the appointment	0	3	6	0	3	6
The like letter to the defendant	0	3	6	0	3	6
Having received notice of claim from the Waterworks Company, writing to the receiver therewith and thereon, and as to the advices he had received from	0	3	6	0	3	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
<i>August.</i>						
Writing to Mr., a creditor, in reply to his enquiry as to the position of this action as requested.	0	3	6	0	3	6
Writing to the receiver on the business, and requesting information	0	3	6	0	3	6
Writing to the secretary of the Waterworks Company, returning accounts and thereon.	0	3	6	0	3	6
Writing to the receiver on the business, and as to the accounts	0	3	6	0	3	6
Writing to the defendant in reply to her letter of the inst., and generally as to the position of the action	0	3	6	0	3	6
Writing to Mr., auctioneer, as to his claim, and returning his account	0	3	6	0	3	6
Writing to Mr. in reply to his letter of the inst., enclosing us his revised account, and in reply to his enquiry	0	3	6	0	3	6
<i>September.</i>						
Writing to the defendant with a post-office order sent by the Secretary of the Waterworks Company, and requesting her signature to same and return it to us	0	3	6	0	3	6
Writing to the secretary of the Waterworks, returning receipt for payment of dividend	0	3	6	0	3	6
<i>October.</i>						
Writing to the receiver on the business, and as to an appointment to see him	0	3	6	0	3	6
Attending the receiver on his calling by appointment, conferring with him at great length as to the report he had received from, perusing same, and as to the necessity of further investigation of the agency accounts, and also conferring on various other matters requiring attention	0	6	8	0	13	4
Writing to the receiver in reply to his letter and as to his not entering into a contract as to the shares, without the sanction of the chief clerk	0	3	6	0	3	6
Writing to Messrs., brokers, and enquiring as to whether there was any sale of ordinary shares of the Spring Waterworks Company	0	3	6	0	3	6
Writing to Mr. of, in reply to his letter of inst., on behalf of Messrs. . . . & Co.'s accounts, and informing him that the testator's estate was being administered by the Court of Chancery	0	3	6	0	3	6
Writing to Mr., a creditor, in reply to his letter, and informing him that a dividend was not yet declared and would be small	0	3	6	0	3	6
Writing to Messrs. & Co. in reply to their letter of the inst., as to the Spring Waterworks Company's shares	0	3	6	0	3	6

	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.
Attending Messrs. & Co., creditors, on their calling and enquiring as to the position of this action, and giving them information respecting same	0 6 8	0 6 8
Writing to Messrs. & Co., creditors, in reply to their letter, and informing them as to the prospect of a dividend	0 3 6	0 3 6
Making copy of letter from Messrs. & Co., and writing to the receiver with same and thereon	0 3 6	0 5 0
Writing to Messrs. , auctioneers, as to the reduction of their charges	0 3 6	0 3 6
Writing to the secretary of the Waterworks Company as to the value of the shares	0 3 6	0 3 6
Attending Messrs. , creditors, on their calling, and informing them the position of the affairs, and conferring very fully with them thereon	0 6 8	0 6 8
Writing to Messrs. & Co. as to the debts against the testator's estate	0 3 6	0 3 6
Writing to the secretary of the Spring Waterworks Company enclosing his fee for entry of transfer of shares to the defendant	0 3 6	0 3 6
Paid his fee		
Writing to Mr. , of , in reply to his letter of the inst., as to his client's charges for the funeral of the testator	0 3 6	0 3 6
Sittings fee	0 15 0	0 15 0

Michaelmas Sittings, 1877.

November.

Writing to Messrs. & Co. in reply to their letter of this day, with extract from the receiver's letter as to the accounts	0 3 6	0 3 6
Making copy of letter received from Messrs. & Co., and writing to the receiver with same and thereon	0 3 6	0 5 0
Writing to Messrs. & Co., and informing them that we had sent a copy of their letter to the receiver	0 3 6	0 3 6
Preparing statement and fair copy of accounts	0 6 8	0 6 8
Writing to the defendant with same	0 3 6	0 3 6
Writing to the receiver in reply to his letter of this date as to the case of Messrs. & Co., who, he contended, gave credit to the London firm of Messrs.	0 3 6	0 3 6
Writing to Messrs. & Co. thereon	0 3 6	0 3 6
Writing to Mr. in reply to his letter as to the position of this action	0 3 6	0 3 6
Writing to Messrs. & Co. in reply to their further letter, and informing them as to the position of this action	0 3 6	0 3 6
Attending the receiver on his calling with reference to the outstanding matters, and as to communications from , and conferring with him thereon	0 6 8	0 6 8
Writing to Messrs. & Co. in reply to their letter of the inst. in reference to the firm	0 3 6	0 3 6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Making copy of letter received from Messrs. & Co., and writing to the receiver with same and thereon	0	3	6	0	5	0
Writing to the receiver requesting to know if he could pay Messrs. , the undertakers, for the funeral of the testator	0	3	6	0	3	6
Writing to the receiver as to Messrs. & Co.'s case, and in reply to his letter of this day and thereon	0	3	6	0	3	6
Writing to Mr. , the Surveyor of Taxes at , as to the payment of the amount claimed.	0	3	6	0	3	6
Writing to Mr. , the Surveyor of Taxes, in reply to his further letter as to his claim against the defendant	0	3	6	0	3	6
Writing to the receiver in reply to his letter of the inst., as to the undertaker's account being paid.	0	3	6	0	3	6
Writing to the secretary of the Spring Water-works Company as to his claim for supply of water.	0	3	6	0	3	6
Writing to Messrs. , creditors, in reply to their letter of the inst., as to the dividend and probable amount thereof.	0	3	6	0	3	6
29. Writing to Messrs. , creditors, in reply to their letter of the inst., as to prospect of dividend.	0	3	6	0	3	6
<i>December.</i>						
Attending Mr. , conferring and advising him with reference to the communication received by the defendant as to the alleged indebtedness of the firm at	0	6	8	0	6	8
Preparing list of creditors to be appended to chief clerk's certificate, folios 42	2	2	0	2	2	0
Making copy list of claims for the chief clerk	0	14	0	0	14	0
Writing to Messrs. , creditors, in reply to their letter of the inst., and as to probable dividend	0	3	6	0	3	6
Attending Mr. , and conferring and advising him on the communications received from the testator's son	0	6	8	0	6	8
Writing to the receiver with reference to the communication we had received yesterday from Mr. , and as to the letters communicated by the testator's son	0	3	6	0	3	6
Attending Messrs. , creditors, on their calling and conferring with them as to their claim	0	6	8	0	6	8
Making copy of letter received from Messrs. & Co., creditors, and writing to the receiver with same and thereon	0	3	6	0	3	6
Writing to Messrs. & Co. in reply to their letter, and referring them to the receiver for further information	0	3	6	0	3	6
Writing to Messrs. & Co. in reply to their letter and as to the payment of the funeral expenses of the testator	0	3	6	0	3	6
Attending the receiver on his calling, with reference to						

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Mess. s. claim, and fully conferring and advising as to the course to be adopted	0	6	8	0	6	8
Attending Messrs., creditors, on their calling with reference to this action, and as to the probability of a dividend	0	6	8	0	6	8
Writing Messrs., creditors, with reference to the payment of a dividend and thereon	0	3	6	0	3	6
Writing to plaintiffs' solicitors, informing them that we had bespoken the chief clerk's general certificate, and requesting them to give us a call	0	3	6	0	3	6
<i>1878. January.</i>						
Writing to plaintiffs' solicitors as to an appointment to see us to discuss who was to have the carriage of the chief clerk's general certificate, so that the schedule might be prepared and left at Chambers	0	3	6	0	3	6
Engaged all day finally settling schedule to be appended to the chief clerk's general certificate	2	2	0	3	3	0
Writing to plaintiffs' solicitors with notice of appointment for the inst., and as to the carriage of draft general certificate, and that the same was now ready at the Court stationer's, and as to whether they wished to have the conduct of the certificate, so that it might be taken up by them or ourselves without delay	0	3	6	0	3	6
Attending plaintiff's solicitors on their calling, and as to taking the carriage of the certificate, and very fully thereon	0	6	8	0	6	8
Sittings fee	0	15	0	0	15	0
<i>1878. Hilary Sittings, 1878.</i>						
Writing to Mr. in reply to his further letter, and informing him the receiver had no funds to pay the creditor's claims	0	3	6	0	3	6
Attending plaintiffs' solicitors on their calling, and arranging with them as to the form of the chief clerk's certificate, and very fully on the matter	0	6	8	0	6	8
Paid for copy draft general certificate of the chief clerk, folios 10	0	1	8	0	1	8
Perusing same	0	3	4	0	3	4
Making copy draft certificate	0	3	4	0	3	4
Writing to the receiver requesting him to let us know the exact position of affairs at	0	3	6	0	3	6
Writing to the receiver requesting him to call upon us to go through the chief clerk's general certificate before we attended the appointment to settle same	0	3	6	0	3	6
Attending the receiver by appointment in long conference, going through the chief clerk's general certificate	0	6	8	0	13	4
Attending appointment before the chief clerk, partly settling his draft general certificate, when appointment was adjourned	2	2	0	3	3	0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending Mr. , informing him the position of matters, and as to the probability of there being no dividend	0	6	8	0	6	8
Attending the receiver on his calling, conferring with him fully on the business, and as to the assets realized	0	6	8	0	6	8
<i>February.</i>						
Writing to the plaintiffs' solicitors and informing them that we had obtained a further appointment before the chief clerk to settle his draft general certificate	0	3	6	0	3	6
Attending the receiver for further information to enable us to answer queries raised by the chief clerk fully discussing position of business, and perusing the bills payable, and the receivable book for Information to the drafts which the estate was liable to pay, but in respect of which no claims had been made, engaged two hours and upwards	0	13	4	0	13	4
Attending appointment before the junior clerk, examining schedules of debts, and disposing of one query	0	6	8	0	13	4
Writing to plaintiffs' solicitors for names of the papers in which advertisements were inserted for creditors, the information being required by the chief clerk	0	3	6	0	3	6
The list of claims having been carried into Chambers and verified in three parts, each arranged in alphabetical order in consequence of the peculiar nature of the claims, and being verified by three different persons, and it now being unnecessary to make any distinct, but include them all in one list so as not to cause any complications in the certificate, by the direction of the junior clerk. Preparing list of claims by arranging all the names included in the three lists in alphabetical order, and making one schedule of the same to append to the chief clerk's draft certificate	1	1	0	1	1	0
Making fair copy of same, folios 36	0	12	0	0	12	0
Attending appointment before the chief clerk finally settling his draft general certificate	0	6	8	0	13	4
Writing to the receiver as to the Spring Water-works Company's shares	0	3	6	0	3	6
Writing to the Secretary of the Spring Water-works Company acknowledging receipt of his letter informing us if defendant wished to dispose of the shares held by the testator, the gentlemen whose names he enclosed would be likely purchasers	0	3	6	0	3	6
Making copy of the secretary's letter and writing to the receiver therewith and for his instructions	0	3	6	0	5	0
Writing to Mr. , a creditor, in reply to his letter of the inst., and informing him that there were no assets for distribution among the creditors	0	3	6	0	3	6
Attending Messrs. on their calling with reference to the dividend and giving them information with reference to the estate	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Writing to Mr. _____ in reply to his letter of the inst., as to his client's claim	0	3	6	0	3	6
Attending the receiver on his calling, and conferring and advising him with reference to the interviews we had had with various creditors	0	6	8	0	6	8
Attending Mr. _____, a creditor, on his calling, with reference to the prospects of a dividend, and explaining matters to him as requested	0	6	8	0	6	8
Attending Messrs. _____ on their calling, and giving them information respecting the realization of the estate	0	6	8	0	6	8
Attending plaintiff's solicitors for and obtaining newspapers containing advertisements for creditors as required by the junior clerk before filing certificate	0	6	8	0	6	8
Attending Messrs. _____, creditors, on their calling, as to the payment of their debt, and explaining the position of matters	0	6	8	0	6	8
Attending the receiver on his calling with reference to the further enquiries on the part of the creditors, and as to the amount coming from	0	6	8	0	6	8
Engrossing general certificate of the chief clerk, folios 55	0	18	4	0	18	4
Attending the chief clerk on his signing same	0	6	8	0	6	8
Making copy certificate to be marked as an office copy	0	18	4	0	18	4
Attending to file same and to get office copy marked as an office copy	0	6	8	0	6	8
Paid for office copy	0	9	2	0	9	2
Writing to Messrs. _____ & Co., creditors, in reply to theirs as to payment of dividend	0	3	6	0	3	6
<i>March.</i>						
Writing to plaintiff's solicitors, requesting them to issue summons for order on further consideration	0	6	8	0	6	8
Writing to the defendant in reply to her letter, and as to an appointment to see her	0	3	6	0	3	6
Attending the receiver with reference to the communications he had received from _____, and conferring and advising him thereon	0	6	8	0	6	8
Attending defendant, conferring and advising with her on the business, and with reference to communications from	0	6	8	0	6	8
Writing to plaintiff's solicitors with reference to the application for order in further consideration	0	3	6	0	3	6
<i>April 1.</i>						
Attending plaintiff's summons for order on further consideration when order made, and subsequent further consideration adjourned	0	6	8	0	13	4
Paid for copy minutes of proposed order, folios 7	0	2	4	0	2	4
Perusing same	0	2	4	0	2	4
Attending the receiver on his calling with reference to order made on further consideration, and also as to payment for the rates	0	6	8	0	6	8
Writing to the receiver in reply to his letter, and reminding him his next account was due on the _____, and requesting him to let us have same by that date	0	3	6	0	3	6

	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.
Writing to the plaintiff's solicitors on the business, and as to an appointment to settle the order on further consideration	0 3 6	0 3 6
Sittings fee	0 15 0	0 15 0
1878. <i>Easter Sittings, 1878.</i>		
Attending settling draft order on further consideration	0 13 4	1 1 0
Close copy, folios 7	0 2 4	0 2 4
Attending passing same	0 6 8	0 13 4
Drawing bill of costs and copy, folios , and summary, folios , together, folios , at per folio	0 0 8	0 0 8
Warrant on leaving same, copy and service	0 2 6	0 2 6
Warrant to tax, copy and service	0 2 6	0 2 6
Attending taxing same, at 25 folios, or fractional part	0 6 8	0 6 8
Paid for copy costs of plaintiff, at per folio	0 0 4	0 0 4
Attending taxing same	0 15 0	0 15 0
Sittings fee	0 15 0	0 15 0
Letters, messengers, &c.	3 3 0	5 5 0

BILL OF COSTS OF PLAINTIFFS IN ACTION BROUGHT FOR THE PURPOSE OF OBTAINING AN ORDER TO JUSTIFY THE TRUSTEES OF A MARRIAGE SETTLEMENT TO ADVANCE A PART OF THE PRESUMPTIVE SHARE TO ONE OF THE SETTLOR'S CHILDREN IN CONSEQUENCE OF THE DEED OF SETTLEMENT NOT GIVING THE TRUSTEES THE POWER TO DO SO, TO BE TAXED AS BETWEEN SOLICITOR AND CLIENT IN PURSUANCE OF THE ORDER MADE ON THE DAY OF , 1878, (SAME SOLICITORS ENGAGED FOR THE DEFENDANTS).

Michaelmas Sittings, 1877.

1877. <i>November.</i>		
Writing to Mr. , one of the plaintiffs in this action, in reply to his of instant, and informing him if he could let us have a copy of the settlement we would then advise him thereon	0 3 6	0 3 6
27. Perusing and considering marriage settlement and deed of appointment of new trustees to see if the trustees would be justified in advancing to settlor's daughter a part of her presumptive share when it appeared they could not, as the settlement granting power was not in the usual form	0 6 8	0 13 4
Writing to Mr. very fully as to his desire to raise part of his daughter's share and advising him it was impossible in consequence of his wife not being able to bind her life estate	0 3 6	0 5 0
29. Writing to Mr. in reply to his letter of the instant and with our view as to the steps to be taken	0 3 6	0 3 6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
<i>December.</i>						
Drawing case for counsel to advise, at per folio	0	1	0	0	1	0
Making copy of same for counsel, at per folio	0	0	4	0	0	4
Making copy of marriage settlement and appointment of new trustees to accompany same, at per folio	0	0	4	0	0	4
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
4. Writing Mr. in reply to his letter as to the assent of the trustees to the application	0	3	6	0	3	6
14. Making copy of counsel's opinion, folios 2, and writ- ing to Mr. very fully with same and as to the course to be pursued having regard to the difficulty raised by counsel	0	5	8	0	5	8
17. Attending appointing conference with counsel	0	3	4	0	6	8
Paid conference fee to him and clerk	1	6	0	1	6	0
Attending conference with reference to the commence- ment of an action to rectify the settlement when counsel advised that was the only course open unless the trustees would risk the liability to repay the amount to be advanced	0	13	4	0	13	4
Drawing authority to act as next friend for infant and fair copy and attending to get same signed	0	6	8	0	13	4
Instructions to sue	0	6	8	0	13	4
Writ of summons and special indorsement	0	11	8	0	18	4
Certificate of lower scale	0	5	0			
Attending counsel with same to settle special indorse- ment	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Paid stamping writ of summons	0	5	0	0	10	0
24. Instructions for statement of claim	0	13	4	2	2	0
Drawing same, at per folio	0	1	0	0	1	0
Attending counsel with same to settle	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
27. Making copy of counsel's opinion on evidence, at per folio	0	0	4	0	0	4
Writing to Mr. therewith and thereon	0	3	6	0	3	6
 <i>1878. January.</i>						
Instructions for affidavit of and	0	6	8	0	6	8
Drawing same, at per folio	0	1	0	0	1	0
Drawing affidavit of, at per folio	0	1	0	0	1	0
Writing to Mr. therewith and thereon, and re- questing him to return same corrected and approved	0	3	6	0	3	6
Drawing affidavit of, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Making fair copy draft statement of claim for the printer, at per folio	0	0	4	0	0	4
Correcting proof, at per folio	0	0	2	0	0	2
Paid printer's charges						
Attending to file statement of claim	0	3	4	0	6	8
Attending Somerset House searching for and bespeaking certificates of deaths of three parties	0	13	4	0	13	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Paid for searching and for certificates	0	10	9	0	10	9
8. Writing to Mr. acknowledging receipt of his letter and his draft affidavit approved of	0	3	6	0	3	6
Engrossing affidavit of at per folio	0	0	4	0	0	4
Preparing exhibits, each at	0	1	0	0	1	0
Engrossing affidavit of at per folio	0	0	4	0	0	4
Preparing 1 exhibit	0	1	0	0	1	0
Drawing and fair copy certificate of counsel of fitness of action to be heard short and attending counsel and obtaining his signature to same	0	6	8	0	6	8
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Hilary Sittings, 1878.

11. Engrossing affidavit of and at per folio	0	0	4	0	0	4
14. Attending Mr. conferring with him hereon and obtaining copy draft settlement to be exhibited to the affidavit of and being sworn to same	0	6	8	0	6	8
Preparing 3 exhibits	0	3	0	0	3	0
Writing to Mr. with engrossment of affidavit and exhibits to be sworn to by him and his wife	0	3	6	0	3	6
Paid commissioner for taking deponents' oaths and marking exhibits	0	6	0	0	6	0
Writing to Mr. with engrossment of his affidavit and exhibits for him to be sworn to	0	3	6	0	3	6
Paid Mr. charges for his attendances and making this affidavit	0	6	8	0	6	8
Attending deponent on his being sworn to his affidavit	0	2	6	0	2	6
Paid commissioner taking deponent's oath and marking exhibit	0	2	6	0	2	6
Making copy affidavits of &c., &c., for printer, at per folio	0	0	4	0	0	4
18. Drawing notice of motion for judgment, at per folio	0	1	0	0	1	0
Making copies of same for the registrar and Judge, at per folio each	0	0	4	0	0	4
21. Examining and correcting proof of affidavits, at per folio	0	0	2	0	0	2
Paid printer's charges	0	6	0	0	6	0
22. Paid filing 3 affidavits	0	0	2	0	0	2
Paid for office copy (print), at per folio	0	6	8	0	6	8
Attending to set down action for trial	1	0	0	2	0	0
Paid setting same down	0	6	8	0	6	8
Attending to get action marked to be heard as short						
Writing and informing Mr. that his action would be heard on Saturday next and requesting him to produce the exhibit "G," being his father's journal	0	3	6	0	3	6
24. Instructions for brief	1	1	0	2	2	0
Drawing same, folio at per folio	0	1	0	0	1	0
Making copy of same, folio notice of motion, folio and exhibits marked folio for counsel, together folios, at per folio	0	0	4	0	0	4

COST OF PLAINTIFF FOR ADVANCE ON HIS PRESUMPTIVE SHARE. 725

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Copy statement of claim for counsel (print), at per folio	0	0	2	0	0	3
Copy affidavits filed on behalf of plaintiffs for counsel (print), at per folio	0	0	2	0	0	3
Attending Mr. with brief	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Mr. appointing conference	0	6	8	0	6	8
Paid fee to him and clerk	1	6	0	1	6	0
26. Attending conference	0	13	4	0	13	4
Attending Court when motion heard and order made	0	13	4	1	1	0
Writing to Mr informing him of the result of the application to the Court	0	3	6	0	3	6
Attending the registrar with brief and papers, and bespeaking draft order	0	6	8	0	6	8
Close copy draft order, folios 6	0	2	0	0	2	0
Attending settling same	0	6	8	0	13	4
Paid for order	0	10	0	1	0	0
Attending passing same	0	6	8	0	13	4
Engrossing copy of the order on the deed of settlement, folios 6	0	3	0	0	3	0
Attending with order and getting taxing master in rotation marked	0	6	8	0	6	8
Making copy order for the taxing, folios 6	0	2	0	0	2	0
Drawing bill of costs and copy, folio , at per folio	0	0	8	0	0	8
Warrant on leaving same	0	3	0	0	3	0
Warrant to tax same	0	3	0	0	3	0
Attending taxing same, at per 25 folios or fractional part	0	6	8	0	6	8
Certificate and transcribing	0	2	0	1	2	0
Attending to file same and get office copy marked	0	6	8	0	6	8
Paid for office copy	0	3	0	0	3	0
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0
Taxed off				<hr/>		
Paid administration duty				<hr/>		
				£ <hr/>		

Bill of Costs and Costs Charges and Expenses of the Defendants to be Taxed in pursuance of Order made on the day of 1878.

1874. February.

Writing to Mr. requesting him to invest £			
in the purchase of stock in the names of Mr.			
and Mr.	0	3	6
24. Writing to Mr. with cheque for payment of	0	3	6
£ for the purchase of this stock	0	3	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
<i>March.</i>						
Writing to Mr. with certified transfer of stock to be executed by him	0	3	6	0	3	6
4. Attending at Mr. office getting his execution to the certified transfer of stock and attesting same	0	6	8	0	6	8
Writing to Mr. with the certified transfer duly executed by Mr. and Mr.	0	3	6	0	3	6
30. Drawing schedule of deeds and documents relating to the settlement herein to be sent to Mr. at his request, at per folio	0	1	0	0	1	0
Making two fair copies of same, at per folio each	0	0	4	0	0	4
31. Writing to Mr. and informing him that Mr. his co-trustee with him under the settlement had written and requested us to send him the papers, and requesting him to let us have his consent to their being sent accordingly	0	3	6	0	3	6
<i>April.</i>						
Having received Mr. consent, writing to Mr. with the deeds and documents relating to the settle- ment herein and enclosing 2 copy schedules of same, and requesting him to return to us one copy schedule duly received by him	0	3	6	0	3	6
1877. <i>December 13.</i>						
Writing to Messrs. and for draft settlement and papers herein	0	3	6	0	3	6
Messrs. and having written to us that it appeared the papers had been taken away by Mr. attending Mr. at conferring with him hereon when he promised to have the papers looked out and sent to us	0	6	8	0	6	8
14. Attending Mr. for and obtaining copy settle- ment and draft appointment of new trustees together with some copy entries of attendances	0	6	8	0	6	8
Paid Mr. charges						
Subsequently writing to Mr. and informing him that it was the original draft we required as drawn by Mr. and requesting him to make a further search	0	3	6	0	3	6
15. Attending Mr. as to the delivery to us of the papers recently in his father's possession when he pro- mised to make a further search	0	6	8	0	6	8
Having received draft from Mr. writing him again for the instructions laid before the conveyancing counsel and for further information respecting that gentleman's successors	0	3	6	0	3	6
17. Writing to Mr. in reply to his letter of the 16th instant and informing him we would not trouble him any further in the matter at present	0	3	6	0	3	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
27. Writing to Mr. in reply to his of the 20th and informing him that he was mistaken, as when the new trustees were appointed his father's claim against Mr. was settled by Mr.	0	3	6	0	3	6
28. Attending Mr. at his office inspecting all books and papers which he possessed relating to the preparation of the settlement and conferring with him thereon: engaged nearly 4 hours	1	0	0	1	0	0

1878. *January.*

3. Attending making enquiries at the chambers of the late Mr. as to who had his papers and business, and subsequently on the steward of Lincoln's Inn, conferring with him, when he referred us to the steward of Gray's Inn of which the deceased had been a member, and attending and conferring with the steward of that Inn, but we could not obtain any information	0	6	8	0	6	8
10. Instructions to defend	0	6	8	0	13	4
Attending entering appearance	0	7	8	0	8	8
Paid entering same	0	4	0	0	4	0
Drawing and fair copy instructions for counsel to advise on defence	0	6	8	0	6	8
Attending Mr. with same	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Hilary Sittings, 1878.

24. Instructions for brief	1	1	0	2	2	0
Making copy of brief, folio, notice of motion, folio, and exhibits marked and, folio, for counsel, together folios, at per folio	0	0	4	0	0	4
Copy statement of claim for counsel (print), at per folio	0	0	2	0	0	3
Copy of affidavits filed on behalf of plaintiffs for counsel, folio (print), at per folio	0	0	2	0	0	3
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Court when motion heard and order made, the costs to be paid by the defendants by the sale of part of the trust funds	0	13	4	1	1	0
Attending before registrar settling draft order	0	6	8	0	13	4
Attending passing same	0	6	8	0	13	4
Attending stockbroker with instructions to sell part of the trust funds sufficient to pay the costs of this application, &c.	0	6	8	0	6	8
Drawing bill of cost and copy, folio, at per folio	0	0	8	0	0	8
Attending taxing same, at per 25 folios or fractional part	0	6	8	0	6	8
Sittings fee	0	15	0	0	15	0
If agency	0	6	0	0	6	0

*Chancery Division.**Costs of Application to restrain Transfer, &c., of Stock or Payment of Dividends.*

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
1880. <i>April.</i>						
Instructions for affidavit to restrain transfer, &c., of stock or payment of dividends in support	0	6	8	0	6	8
If the plaintiff is a married woman or infant charge						
Drawing authority and attending, obtaining consent of to sue in his name as next friend	0	6	8	0	13	4
Drawing same, folio, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Drawing notice to the bank and fair copy, at per folio	0	1	4	0	1	4
Attending the solicitors for the bank and with them to the Bank of England when notice was entered in the books and the stock or dividends were restrained	0	13	4	0	13	4
Paid the Bank solicitors' charges	0	13	4	0	13	4
Sittings fee	0	15	0	0	15	0
If agency	1	1	0	1	1	0
As the rule of the Court dated the 6th April, 1880, does not allow the transfer, &c., without the order of Court, it is presumed the following charges to get the restraint removed will be allowed--						
Having been served with notice from the Bank that an application had been made for the transfer of the stock or for the payment of the dividends.						
Drawing and engrossing petition to remove the restraint	0	4	0	0	4	0
Attending to present petition and for order	0	6	8	0	13	4
Paid for order	0	3	0	0	5	0
Copy for service on solicitors to the Bank, at per folio	0	0	4	0	0	4
Service of same	0	2	6	0	2	6
Sittings fee	0	15	0	0	15	0
If agency	1	1	0	1	1	0
In agency charge for close copy notice, at per folio	0	0	4	0	0	4

Plaintiff's Costs on Special Case.

Michaelmas Sittings, 187 .

	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.
November, 187 .		
Instructions to sue	0 6 8	0 13 4
(When taken separately from more than 3 persons not being co-partners), the Taxing Officer may make such further allowance as he shall consider reasonable. See Special Allowance and General Provisions of Additional Rules of Court, dated 12th August, 1875.)		
Certificate of lower scale	0 5 0	0 0 0
Writ of summons	0 6 8	0 13 4
Special indorsement	0 5 0	0 5 0
Paid issuing writ	0 5 0	0 10 0
Copy writ for service	0 0 8	0 0 8
At per folio beyond 2 folios	0 0 4	0 0 4
Service on each defendant	0 5 0	0 5 0
Search appearance and paid	0 4 4	0 7 8
Instructions for special case	0 6 8	0 13 4
(In higher scale actions the Taxing Officer may make such allowance as in his discretion he may think fit.)		
Drawing same, folios 40	2 0 0	2 0 0
Making copies of testator's will, and other document, to enable counsel to settle same, folio 60	1 0 0	1 0 0
Fee to counsel to settle	3 5 6	3 5 6
Attending him	0 6 8	0 6 8
Making two copies for defendants	1 6 8	1 6 8
Attending Mr. with same for defendants	0 6 8	0 6 8
The like, Mr. , for other defendants	0 6 8	0 6 8
Attending , explaining the nature and duties of guardian in order to have a proper person appointed	0 6 8	0 6 8
(Charge for attendances on alteration of special case, if any.)		
Attending producing documents set out in special case for examination of Mr. on behalf of defendants	0 6 8	0 6 8
The like to Mr. on behalf of other defendants	0 6 8	0 6 8
Paid fee to counsel on re-settling case	1 3 6	1 3 6
Attending him	0 3 4	0 6 8
Having received alterations on behalf of defendants, perusing and considering same	0 6 8	0 6 8
Attending counsel with special case as altered by the counsel of the defendants	0 3 4	0 6 8
Paid fee to him and clerk	1 3 6	1 3 6
(If the alterations made by the defendant's counsel are not approved of, plaintiff's counsel charge for further attendances on defendant's solicitor in settling case.)		

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Instructions for affidavit of point special guardian to upon which to appoint the infant plaintiffs	0	6	8	0	13	4
Drawing same, folios 5	0	5	0	0	5	0
Engrossing same	0	1	8	0	1	8
Attending deponent on his being sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Making copy affidavit to be marked as an office copy	0	1	8	0	1	8
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy	0	0	10	0	0	10
Drawing and engrossing petition for appointment of guardian to infant plaintiffs	0	4	0	0	4	0
Attending and presenting same	0	6	8	0	13	4
Paid for order	0	3	0	0	5	0
Making copy special case as settled for the printer, folios 40	0	13	4	0	13	4
Examining and correcting proof	0	6	8	0	6	8
Paid printer's charges	0	6	8	0	6	8
Print of special case for filing	0	6	8	0	10	0
Attending to file same	0	3	4	0	6	8
Paid filing same	0	10	0	1	0	0
Print of special case for each service	0	6	8	0	10	0
Service of same on each defendant	0	3	4	0	6	8
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Hilary Sittings, 187 .

Instructions for affidavit of case, verifying special	0	6	8	0	6	8
Drawing and engrossing same, folios 5	0	6	8	0	6	8
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid oath and filing	0	3	6	0	3	6
Making copy affidavit to be marked as an office copy	0	1	8	0	1	8
Paid for office copy	0	0	10	0	0	10
Drawing and engrossing affidavit verifying the death of tenant for life, 2 folios	0	2	8	0	2	8
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid oath and filing	0	3	6	0	3	6
Making copy to be marked as an office copy	0	0	8	0	0	8
Paid for office copy	0	0	4	0	0	4
Notice of filing copy and service	0	4	0	0	4	0
The like upon solicitors after the first, each	0	2	6	0	2	6
Drawing notice of motion for leave to set down case for argument	0	2	0	0	5	0
Copy and service of same on solicitor for the defendants, at each	0	3	6	0	3	6
Brief copy affidavit of verifying special case	0	1	8	0	1	8
Copy notice of motion to annex	0	1	0	0	1	0
Print of special case for counsel	0	6	8	0	10	0
Copy writ for counsel, at per folio	0	0	4	0	0	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Fee to counsel and clerk	1	3	6	1	3	6
Attending him	0	3	4	0	6	8
Copy special case for the Court	0	6	8	0	10	0
Attending Court, order made	0	6	8	0	13	4
Attending to bespeak order	0	6	8	0	6	8
Close copy minutes of order, folios , at per folio	0	0	4	0	0	4
Notice to settle copy and service	0	4	0	0	4	0
The like on the other defendant's solicitors, each at	0	2	6	0	2	6
Attending to settle same	0	6	8	0	13	4
Paid for order	0	3	0	0	5	0
Notice to pass same, copy and service	0	4	0	0	4	0
The like on other defendant's solicitors, each at	0	2	6	0	2	6
Attending passing same.	0	6	8	0	13	4
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Trinity Term, 187 .

Attending setting down special case	0	6	8	0	6	8
Paid setting same down	1	0	0	2	0	0
Notice thereof, copy and service	0	4	0	0	4	0
The like on the other defendant's solicitors, each at	0	2	6	0	2	6
One copy case for counsel, folios 40, each	0	6	8	0	6	8
Drawing observations and 2 fair copies, folios 14, each	1	3	4	1	3	4
Making 1 fair copy of testator's will and other documents for counsel, folios 60	1	0	0	1	0	0
Fee to Mr. , Q.C., and clerk	11	0	0	11	0	0
Attending him	0	6	8	0	13	4
Attending Mr. with same.	0	6	8	0	13	4
Paid fee to him and clerk	7	12	0	7	12	0
Attending Mr. , Q.C., appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending consultation	0	13	4	0	13	4
Two prints of special case for the use of the judge and the registrar	0	13	4	1	0	2
Attending the Judge's secretary therewith	0	6	8	0	6	8
Attending Court, special case in paper but not reached	0	6	8	0	10	0
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Michaelmas Sittings, 187 .

Refresher to Mr. , Q.C., and clerk	2	4	6	2	4	6
Attending him	0	6	8	0	6	8
The like to Mr. and clerk	1	3	6	1	3	6
Attending him	0	3	4	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
<i>November.</i>						
Attending Court, case in paper but not reached	0	6	8	0	10	0
The like	0	6	8	0	10	0
Attending Court, case heard	0	13	4	1	1	0
Or according to circumstances not to exceed	1	1	0	2	2	0
Attending Registrar with papers, bespeaking draft order	0	6	8	0	6	8
Copy draft order at per folio	0	0	4	0	0	4
Notice to settle same, 2 copies and services	0	6	6	0	6	6
Attending settling same	0	6	8	0	13	4
Or at the Taxing Master's discretion not to exceed	1	1	0	3	3	0
Preparing list of evidence read (if required by registrar)	0	6	8	0	6	8
Or per folio				0	1	0
Paid for order	0	10	0	1	0	0
Notice to pass same, 2 copies and services	0	6	6	0	6	6
Attending passing same	0	6	8	0	13	4
Making copy order for Taxing Master, per folio at	0	0	4	0	0	4
Attending to get Taxing Master in rotation marked	0	6	8	0	6	8
Drawing bill of costs and copy, 18 folios	0	12	0	0	12	0
Warrant on leaving, 2 copies and services	0	7	0	0	11	0
Warrant to tax, 2 copies and services	0	7	0	0	11	0
Attending taxing	0	6	8	0	6	8
Paid for costs of defendants, folios, at per folio	0	0	4	0	0	4
Attending taxing same, 6s. 8d. every 25 folios, or frac- tion.						
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Defendant's Costs of Special Case.

Michaelmas Sittings, 187 .

(Here insert any fair and reasonable attendances upon any of the parties interested, or the executors, in order to arrive at the stating of the case, or agreeing to its being the form of proceedings.)

Instructions to defend	0	6	8	0	13	4
Attending entering appearance	0	6	8	0	6	8
Paid entering same	0	2	0	0	2	0
If entered at any one time for more than 1 person, for every defendant beyond the first	0	1	0	0	2	0
If a person appearing to a writ of summons to recover land, limits his defence by his memorandum of appearance in addition to the above	0	6	8	0	6	8
Notice of appearance, copy and service	0	4	0	0	4	0
Perusing special case, folios 40	0	13	4	0	13	4
Attending Mr. thereon, when he requested copy thereof to be forwarded to him, together with copy will, and documents, together, folios 100	1	13	4	1	13	4
Fee to Mr. to peruse and settle same on behalf of defendants	3	5	6	3	5	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending him	0	6	8	0	6	8
The parties requesting a conference, in order more fully to instruct counsel to settle draft case, attending appointing same	0	3	4	0	6	8
Paid his fee and clerk	1	6	0	1	6	0
Attending conference	0	13	4	0	13	4
Making copy opinion of counsel	0	2	0	0	2	0
Writing with same and advising thereon, and clerk's attendance	0	5	0	0	5	0
23. Having received draft case somewhat altered, making alterations, and attending Mr. thereon	0	6	8	0	6	8
Adding his alterations, and attending returning case	0	6	8	0	6	8

April.

7. Attending plaintiff's solicitor on his returning same with his counsel's further alterations	0	6	8	0	6	8
Making the necessary additions to copy special case	0	3	4	0	6	8
Attending counsel with same to approve of	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending plaintiff's solicitors, returning draft case approved	0	6	8	0	6	8
On being served with print of special case, folios 40, perusing same	0	6	8	0	13	4
Copy notice of motion to set down special case, folios 2, at per folio	0	0	8	0	0	8
Paid for copy affidavit in support of same, folios 5	0	1	8	0	1	8
Perusing same, at per folio	0	1	8	0	1	8
If agency, close copy	0	1	8	0	1	8
Drawing observations, on motion for counsel, folios 10	0	10	0	0	10	0
Copy of same for counsel	0	3	4	0	3	4
Making copy writ, folios 10, notice of motion, folios 2, affidavit of verifying special case, folios 5, together, 17 folios for counsel	0	5	4	0	5	4
Print of special case for counsel	0	6	8	0	10	0
Fee to Mr. and clerk, with brief and papers	1	3	6	1	3	6
Attending him	0	3	4	0	6	8
Attending Court on motion when order made	0	6	8	0	13	4
Close copy draft order, at per folio	0	0	4	0	0	4
Attending settling same	0	6	8	0	13	4
Attending to pass same	0	6	8	0	13	4
Drawing retainer, and attending Mr. therewith	0	3	4	0	6	8
Paid his fee and clerk	1	3	6	1	3	6
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Trinity Term, 187 .

One brief copy of special case for counsel, folios 40	0	6	8	0	13	4
Two brief copies of will and other documents for counsel, folios 60, each	2	0	0	2	0	0
One copy of writ for counsel, folios 10	0	3	4	0	3	4
Drawing observations, folios 20	1	0	0	1	0	0
Two fair copies for counsel	0	13	4	0	13	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending Mr., Q.C., with brief	0	6	8	0	6	8
Paid his fee and clerk	4	6	6	4	6	6
Paid him consultation fee and clerk	2	9	6	2	9	6
Attending him	0	6	8	0	6	8
Paid Mr. brief	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Paid him consultation fee and clerk	1	3	6	1	3	6
Attending him	0	3	4	0	6	8
Attending consultation	0	13	4	0	13	4
Attending Court, special case in paper but not reached	0	6	8	0	10	0
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Michaelmas Sittings, 187 .

Refresher to Mr., Q.C., and clerk	2	4	6	2	4	6
Attending him	0	6	8	0	6	8
The like to Mr. and clerk	1	3	6	1	3	6
Attending him	0	3	4	0	6	8

November.

Attending Court, case in the paper	0	6	8	0	10	0
The like	0	6	8	0	10	0
Attending Court, case heard, when order made	0	13	4	1	1	0
Or according to circumstances, not to exceed	1	1	0	2	2	0
Attending the different members of the family, informing them the result	0	6	8	0	6	8
Attending settling minutes	0	6	8	0	13	4
Copy minutes, at per folio	0	0	4	0	0	4
Attending passing order	0	6	8	0	13	4
Drawing this bill of costs and copy, 20 folios	0	13	4	0	13	4
Warrant on leaving, copy and service	0	3	6	0	5	6
Warrant to tax, copy and service	0	3	6	0	5	6
Attending taxing	0	6	8	0	6	8
Paid for copy costs of plaintiffs, at per folio	0	0	4	0	0	4
Attending taxing same	0	6	8	0	6	8
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

COSTS OF INFANT PLAINTIFF ON HIS COMING OF AGE FOR PAYMENT OF HIS SHARE OF THE FUNDS IN COURT WHICH HAD NOT BEEN CARRIED OVER TO A SEPARATE ACCOUNT—ALSO COSTS OF THE TRUSTEES OF THIS APPLICATION; COSTS OF STOP ORDER AND FOR PAYMENT OF THE MORTGAGEE'S CLAIM; COSTS OF INFANT PLAINTIFF AND HIS GUARDIAN ON APPLICATION TO ARTICLE THE INFANT.

IN THE HIGH COURT OF JUSTICE, 187

No.

CHANCERY DIVISION.

BETWEEN

AND

Plaintiffs,

Defendants.

Bill of Costs of one of the Plaintiffs or Defendants on his coming of age for payment of his share of the fund in Court which had not been carried over to a separate account.

Trinity Sittings, 1878.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending plaintiff when he stated he was of age and wished his share of fund in court to be paid to him	0	6	8	0	6	8
Certificate of lower scale and signing same	0	5	0			
Attending searching for his birth certificate	0	6	8	0	6	8
Paid for same and search	0	3	7	0	3	7
Attending at the Paymaster-General's office bespeaking certificate of fund in court and afterwards for same	0	6	8	0	6	8
Preparing summons on behalf of plaintiff for payment of his share out of court and attending at chambers to get same sealed	0	3	0	0	6	8
If special at Taxing Master's discretion not exceeding	0	6	8	1	1	0
Paid stamp	0	2	0	0	3	0
Making copy to leave at chambers	0	2	0	0	2	0
Or per folio				0	0	4
Copy and service of same on solicitors for defendants the trustees	0	3	6	0	4	6
Or per folio	0	0	4	0	0	4
Instructions for affidavit of verifying certificate of birth	0	6	8	0	6	8
Drawing same, folios 5	0	5	0	0	2	6
Engrossing same	0	1	8	0	1	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Preparing exhibit	0	1	0	0	1	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6	0	2	6
Paid filing affidavit	0	2	0	0	2	0
Making copy to be marked as an office copy	0	1	8	0	1	8
Paid for office copy	0	0	10	0	0	10
Notice of filing same, copy and service	0	4	0	0	4	0
Attending summons wherein order made	0	6	8	0	13	4
Close copy draft order, folios 6	0	2	0	0	2	0
Notice to settle same, copy and service	0	4	0	0	4	0
Attending settling same	0	6	8	0	13	4
Paid for order	0	5	0	0	5	0
Notice to pass same, copy and service	0	4	0	0	4	0
Attending passing same	0	6	8	0	13	4
Drawing bill of costs and copy, folios 8	0	5	4	0	5	4
Attending assessing same	0	6	8	0	6	8
Paid for copy costs of the defendants the trustees, folios 5	0	1	8	0	1	8
Attending taxing same	0	6	8	0	6	8
Paid ad valorem duty						
Attending the registrar for direction to sell out so much of the stock as would raise £	0	6	8	0	6	8
Attending the Paymaster-General therewith	0	6	8	0	6	8
Attending plaintiff and identifying him on his receiving cheque	0	6	8	0	6	8
Sittings fee	0	15	0	0	15	0
If agency, sittings fee	1	1	0	1	1	0

Bill of Costs of the Defendants.

the Trustees.

Instructions to defend	0	6	8	0	6	8
Paid for copy affidavit in support of application, folios 5	0	1	8	0	1	8
Perusing same	0	1	8	0	1	8
Attending summons when order made	0	6	8	0	13	4
Close copy draft order, folios 6	0	2	0	0	2	0
Attending settling same	0	6	8	0	13	4
Attending passing same	0	6	8	0	13	4
Drawing bill of costs and copy, folios 5	0	3	4	0	3	4
Attending assessing same	0	6	8	0	6	8
Paid for copy costs of plaintiff, folios 8	0	2	8	0	2	8
Attending taxing same	0	6	8	0	6	8
Sittings fee	0	15	0	0	15	0
Paid ad valorem duty						
If agency, sittings fee	1	1	0	1	1	0

IN THE HIGH COURT OF JUSTICE, 1877

No.

CHANCERY DIVISION.

BETWEEN

AND

Plaintiffs,

Defendants.

Bill of Costs of a Mortgagee on his application that the one-seventh Share of Plaintiff in the sum of £ stock might be sold to raise sufficient for payment of £ and interest, and his costs of the application and also his costs of obtaining a stop order. When this summons was taken out other proceedings were then going on in the action.

	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.
Preparing summons for an order that no part of the one-seventh share of plaintiff in the sum of £ stock should be sold without notice to the said and attending at chambers to get same sealed	0 3 0	0 6 8
If special at Taxing-Master's discretion	0 6 8	1 1 0
Paid stamp	0 2 0	0 3 0
Copy to leave at chambers	0 2 0	0 2 0
Or per folio	0 0 4	0 0 4
Copy and service of same on plaintiff	0 3 6	0 3 6
Or per folio	0 0 4	0 0 4
Instructions for affidavit of verifying execution of mortgage	0 6 8	0 6 8
Drawing same, folios 7	0 7 0	0 7 0
Engrossing same	0 2 4	0 2 4
Preparing exhibit	0 1 0	0 1 0
Attending deponent to be sworn to same	0 6 8	0 6 8
Paid commissioner taking deponent's oath and marking exhibit	0 2 6	0 2 6
Paid filing affidavit	0 2 0	0 2 0
Making copy to be marked as an office copy	0 2 4	0 2 4
Paid for office copy	0 1 2	0 1 2
Notice of filing same, copy and service	0 4 0	0 4 0
Attending at the Paymaster-General's office, bespeaking certificate of fund in court and afterwards for same	0 6 8	0 6 8
Attending summons when order made	0 6 8	0 13 4
Close copy draft order, at per folio	0 0 4	0 0 4
Notice to settle same, copy and service	0 4 0	0 4 0
Attending settling same	0 6 8	0 13 4
Notice to pass same, copy and service	0 4 0	0 4 0
Paid for order	0 3 0	0 5 0
Notice to pass same, copy and service	0 4 0	0 4 0
Attending passing same	0 6 8	0 13 4
Attending at the Paymaster-General's with order for same to be entered in his books and afterwards for same entered	0 6 8	0 6 8

Lower Scale. Higher Scale.
 £ s. d. £ s. d.

Hilary Sittings, 1877.

Preparing summons for payment of £ and interest thereon at the rate of £ per cent. per annum to the applicant on the mortgage executed by plaintiff and that so much of the £ stock might be sold to raise that amount, and the costs incurred of and incidental to the application obtaining the stop order on the one-seventh share of the plaintiff in the trust funds and also the costs of all parties of and incidental to that application and attending at chambers to get same sealed	0 6 8	0 13 4
Paid stamping same	0 2 0	0 3 0
Making copy to leave at chambers	0 2 0	0 2 0
Copy and service of same on plaintiff mortgagor	0 4 6	0 5 6
Copy and service of same on the first mortgagor on plaintiff's security	0 4 6	0 5 6
Copy and service of same on defendants the trustees	0 4 6	0 5 6
Attending at the Paymaster-General's office and bespeaking certificate of fund in court and afterwards for same	0 6 8	0 6 8
Attending at the report office and bespeaking office copies of four orders, and afterwards for same	0 6 8	0 6 8
Paid for office copy of order dated the 187, folios 6	0 0 6	0 0 6
" " dated the 187, folios 7	0 3 6	0 3 6
" " dated the 187, folios 5	0 5 0	0 5 0
" " dated the 187, folios 6	0 3 0	0 3 0
This was necessary as these stop orders referred to other parties' shares.		
Attending summons before the chief clerk for order for payment of amount due to applicant when same adjourned to the 6th inst.	0 6 8	0 6 8
Attending adjourned summons when the chief clerk allowed the applicant to amend the summons by asking the first mortgage to be paid off also	0 6 8	0 6 8
Having been informed by mortgagor that the amount of £ for which the stop order dated the 187, had been paid off, writing to the mortgagee requesting to know whether this sum had been repaid to him	0 3 6	0 3 6
On receipt of letter received from this mortgagee referring us to his solicitor, writing according to his solicitors, requesting to know whether the judgment signed by him against the plaintiff and for which he had obtained a stop order had not been paid off	0 3 6	0 3 6
Amending adjourned summons, folios 2	0 2 0	0 2 0
Making copy of amended summons for chambers	0 1 0	0 2 0
Making copy amended summons for plaintiff	0 1 0	0 2 0
The like for the first mortgagor on plaintiff's share	0 1 0	0 2 0
The like on defendants the trustees	0 1 0	0 2 0
Copy and service of same on the solicitor for mortgagee who had obtained a judgment, folios 7.	0 5 2	0 6 2
Attending adjourned summons as amended when the chief clerk stated that he could not make an order to		

	Lower Scale. £ s. d.	Higher Scale. £ s. d.
pay off these two mortgages until the trustees the defendants had filed an affidavit as to incumbrances and the chief clerk ordered the trustees to file an affidavit within ten days	0 6 8	0 13 4

Easter Sittings, 1877.

Having obtained an appointment to proceed on the adjourned amended summons before the chief clerk on the day of next notice thereof to the solicitor for the first mortgagee and copy and service of same	0 4 0	0 4 0
The like to the plaintiff	0 2 6	0 2 6
The like to the defendants the trustees	0 2 6	0 2 6
The like to the solicitor for judgment mortgagee	0 2 6	0 2 6
Attending adjourned amended summons for payment of these two mortgagees when the chief clerk stated he would make the order subject to his seeing the other stop orders did not refer the share of the plaintiff	0 6 8	0 13 4
Attending at the report office and bespeaking copies of three more stop orders	0 6 8	0 6 8
Paid for copy orders dated 187, folios 8	0 0 8	0 0 8
" " " 187, folios 5	0 0 5	0 0 5
" " " 187, folios 6	0 0 6	0 0 6
Attending adjudged summons for payment off of these mortgagees when same was adjourned because the solicitor for judgment mortgagee would not consent until the chief clerk's certificate was settled	0 6 8	0 6 8

Trinity Sittings, 1877.

Attending appointment on adjourned summons when the chief clerk enquired whether his general certificate was completed and on his being informed it was expected to be completed by the 14th inst. he directed this application to stand over until then, and if there was any hitch in settling his certificate on that day applicant might again apply for an appointment to attend before him on the adjudged summons, but if his certificate was completed on that day the applicant could apply when he (the chief clerk) had signed his certificate	0 6 8	0 6 8
21. Attending adjourned summons to pay off these mortgages when the chief clerk adjourned same to the Judge	0 6 8	0 13 4
Attending at the report office bespeaking print of stop order of the day of 1877, and afterwards for same	0 6 8	0 6 8
Paid for same	0 0 9	0 0 9

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending appointment on adjourned summons before the Judge when order made	0	13	4	1	1	0
Drawing succession duty and making fair copy and attending to get same signed	0	7	6	0	7	6
Attending at Somerset House, passing same and paying succession duty	0	6	8	0	13	4
Paid succession duty						
Close copy draft order, folios 10	0	3	4	0	3	4
Notice to settle same, 3 copies and services	0	9	0	0	9	0
Attending settling same	0	6	8	0	13	4
Examining and correcting proof	0	1	8	0	1	8
Paid for order	0	3	0	0	5	0
Notice to pass same, 3 copies and services	0	9	0	0	9	0
Attending passing same	0	6	8	0	13	4
Drawing bill of costs and copy, folios 30	1	0	0	1	0	0
Attending assessing same	0	13	4	0	13	4
Attending the registrar and bespeaking his directions for sale of stock	0	6	8	0	6	8
Attending subsequently at the Paymaster-General's with directions for sale of stock	0	6	8	0	6	8
Attending and identifying applicant on his receiving cheque for payment of his mortgage debt and interest	0	6	8	0	6	8
Letters, &c.	0	10	6	1	1	0
Paid <i>ad valorem</i> duty						

Bill of Costs of an Infant Plaintiff and his Guardian on the application of an Infant to be articed to a Solicitor.

Paid for certificate as to infant plaintiff having passed a satisfactory preliminary examination	1	0	0	1	0	0
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Trinity Sittings, 1877.

Attending infant's guardian, conferring with him as to the proposition to article his son to Mr., advising him thereon	0	6	8	0	13	4
Attending Mr. on his calling and conferring with him as to the terms he would take the infant as indoor articed clerk	0	6	8	0	6	8
Attending infant's guardian afterwards and conferring with him as to the premium of guineas which Mr. required	0	6	8	0	6	8
Preparing summons to article the infant with Mr. for five years, and attending at chambers to get same sealed	0	6	8	1	1	0
Paid stamp	0	2	0	0	3	0
Copy and service of same on the defendants the trustees	0	3	6	0	4	6
Or per folio	0	0	4	0	0	4
Instructions for affidavit of	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Drawing same, folios 4	0	4	0	0	4	0
Engrossing same	0	1	4	0	1	4
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Paid filing affidavit	0	2	0	0	2	0
Making copy of same to be marked as an office copy	0	1	4	0	1	4
Paid for office copy	0	0	8	0	0	8
Notice of filing same, copy and service	0	4	0	0	4	0
Instructions for affidavit of infant's guardian	0	6	8	0	6	8
Drawing same, folios 4	0	4	0	0	4	0
Engrossing same	0	1	4	0	1	4
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Paid filing affidavit	0	2	0	0	2	0
Making copy to be marked as an office copy	0	1	4	0	1	4
Paid for office copy	0	0	8	0	0	8
Instructions for affidavit of verifying respectability of the solicitor	0	6	8	0	6	8
Drawing same, folios 4	0	4	0	0	4	0
Engrossing same	0	1	4	0	1	4
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Paid filing affidavit	0	2	0	0	2	0
Making copy to be marked as an office copy	0	1	4	0	1	4
Paid for office copy	0	0	8	0	0	8
Notice of filing these two affidavits, copy and service	0	4	0	0	4	0
Attending appointment before the chief clerk on summons to article the infant plaintiff, when same was gone into and adjourned to, to settle articles of clerkship	0	6	8	0	13	4
Instructions for further affidavit of	0	6	8	0	6	8
Drawing same, folios 6	0	6	0	0	6	0
Engrossing same	0	2	0	0	2	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Paid filing affidavit	0	2	0	0	2	0
Making copy to be marked as an office copy	0	2	0	0	2	0
Paid for office copy	0	1	0	0	1	0
Notice of filing same, copy and service	0	4	0	0	4	0
Instructions for articles of clerkship	0	6	8	0	6	8
Drawing same, folios 18	0	18	0	0	18	0
Making copy of same for perusal by Mr.	0	6	0	0	6	0
Writing him with same	0	3	6	0	3	6
Making copy of articles of clerkship for the chief clerk	0	6	0	0	6	0
Attending adjudged appointment before the chief clerk, and proceeding on same when he adjourned it to Judge	0	6	8	0	13	4
Notice of appointment before the Judge, copy and service	0	4	0	0	4	0
Attending appointment before the Judge when he sanctioned the application	0	13	4	1	1	0
Attending before the chief clerk when he settled the articles of clerkship	0	6	8	0	13	4
Engrossing articles of clerkship in duplicate	1	4	0	1	4	0
Attending to stamp same	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Paid stamp and parchment						
Attending reading over articles of clerkship to the infant plaintiff, his guardian, and Mr., and attesting their execution of same in duplicate	0	6	8	0	13	4
Drawing and engrossing affidavit verifying execution of same, folios 4	0	5	4	0	5	4
Preparing two exhibits	0	2	0	0	2	0
Paid commissioner taking deponent's oath and marking two exhibits	0	3	6	0	3	6
Paid filing affidavit	0	2	0	0	2	0
Making copy of same to be marked as an office copy	0	1	4	0	1	4
Paid for office copy	0	0	8	0	0	8
Attending before the chief clerk on his making the order	0	6	8	0	13	4
Close copy draft order, folios 8	0	2	8	0	2	8
Notice to settle same, copy and service	0	4	0	0	4	0
Attending settling same	0	13	4	0	13	4
Correcting proof	0	1	4	0	1	4
Paid for order	0	3	0	0	5	0
Notice to pass same, copy and service	0	4	0	0	4	0
Attending passing same	0	6	8	0	13	4
Drawing and engrossing affidavit verifying execution of articles of clerkship for the Queen's Bench, folios 4	0	5	4	0	5	4
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Attending to register same in the Queen's Bench and afterwards for same registered	0	6	8	0	6	8
Paid registering same	0	5	0	0	5	0
Attending at the Law Institution with same to be registered and afterwards for same	0	6	8	0	6	8
Paid registering same	0	5	0	0	5	0
Drawing bill of costs and copy, folios 16	0	12	0	0	12	0
Attending assessing same at chambers	0	6	8	0	6	8
Paid for copy costs of the defendants the trustees, folios 5	0	1	8	0	1	8
Attending assessing same	0	6	8	0	6	8
Attending the registrar for directions to the Paymaster-General to sell so much of £ stock as would raise the sum of £, and the costs of the application	0	6	8	0	6	8
Attending the Paymaster-General with same	0	6	8	0	6	8
Attending and identifying Mr. on his receiving cheque for £	0	6	8	0	6	8
Term fee	0	15	0	0	15	0
Letters, &c.	0	10	6	1	1	0
Paid <i>ad valorem</i> duty						

Bill of Costs of Plaintiff on the Defendants giving notice to withdraw their disclaimer as to Materials and for leave to use Plant.

1878.

Paid for copy affidavit, folios 29	0	9	8	0	9	8
Perusing same	0	9	8	0	9	8
Paid for copy affidavit of and answer, folios 25	0	8	4	0	8	4
Perusing same	0	8	4	0	8	4
Paid for copy affidavit of folios 9	0	3	0	0	3	0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Perusing same	0	3	0	0	3	0
Making two brief copies of notice, folios 4, affidavit of folios 29, affidavit of , folios 25, affidavit of folios 9, and order on motion for injunction, folios 5, for counsel, together 72 folios	2	8	0	2	8	0
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Attending counsel when defendant's motion was ordered to stand over for affidavits in answer until next motion day	0	6	8	0	13	4
Making brief copy writ of summons for senior counsel, folios 7	0	2	4	0	2	4
Drawing affidavit of clerk to plaintiff's solicitor, folios 7	0	7	0	0	7	0
Engrossing same	0	2	4	0	2	4
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Paid filing affidavit	0	2	0	0	2	0
Making copy of same to be marked as an office copy	0	2	4	0	2	4
Paid for office copy	0	1	2	0	1	2
Instructions for affidavit of	0	6	8	0	6	8
Drawing same, folios 13	0	13	0	0	13	0
Engrossing same	0	4	4	0	4	4
Preparing exhibit	0	1	0	0	1	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6	0	2	6
Marking copy affidavit to be marked as an office copy	0	4	4	0	4	4
Paid for office copy	0	2	2	0	2	2
Paid witness for making affidavit and his expenses						
Instructions for affidavit of	0	6	8	0	6	8
Drawing same, folios 21	1	1	0	1	1	0
Engrossing same	0	7	0	0	7	0
Preparing four exhibits	0	4	0	0	4	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath and marking exhibits	0	5	6	0	5	6
Paid filing affidavit	0	2	0	0	2	0
Making copy to be marked as an office copy	0	7	0	0	7	0
Paid for office copy	0	3	6	0	3	6
Instructions for affidavit of plaintiff	0	6	8	0	6	8
Drawing same, folios 23	1	3	0	1	3	0
Engrossing same	0	7	8	0	7	8
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Paid filing affidavit	0	2	0	0	2	0
Making copy of same to be marked as an office copy	0	7	8	0	7	8
Paid for office copy	0	3	10	0	3	10
Drawing affidavit of , folios 3	0	3	0	0	3	0
Engrossing same	0	1	0	0	1	0
Attending deponent to be sworn to same	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Making copy affidavit to be marked as an office copy	0	1	0	0	1	0
Paid for office copy	0	0	6	0	0	6
Notice of filing these affidavits, copy and service	0	4	0	0	4	0
Drawing notice for defendants to produce documents on the hearing of action, folios 3	0	3	0	0	3	0
Copy and service of same on defendants' solicitors	0	3	6	0	3	6
Drawing further brief for counsel, folios 11	0	11	0	0	11	0
Making two copies of same, folios 11, affidavit of plaintiff, folios 23, affidavit of , folios 21, affidavit of , folios 13, affidavit of , folios 7, affidavit of , folios 3, and notice to produce documents, folios 3, for counsel, together 81 folios	2	14	0	2	14	0
Attending Mr. with same	0	13	4	0	13	4
Paid fee to him and clerk	5	10	0	5	10	0
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Mr. appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending consultation	0	13	4	0	13	4
Attending Court, motion made and arranged to stand over until next Friday for evidence in reply	0	6	8	0	13	4
Paid for copy affidavit of , folios 10.	0	3	4	0	3	4
Perusing same	0	3	4	0	3	4
Paid for copy affidavit of , folios 19	0	6	4	0	6	4
Perusing same	0	6	4	0	6	4
Drawing further brief for counsel, folios 8	0	8	0	0	8	0
Making two brief copies of same, folios 8, affidavit of , folios 10, and affidavit of , folios 19, for counsel, together 37 folios each	1	4	8	1	4	8
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Attending Mr. with same	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending counsel, motion not made and saved until next Wednesday	0	6	8	0	13	4
Attending counsel, motion made and order made for defendants to withdraw their disclaimer as to materials and to use materials on payment into court £ and to pay costs of motion, they disclaiming any interest in the plant which plaintiff could take possession	0	13	4	0	13	4
Or according to circumstances	1	1	0	2	2	0

Easter Sittings, 1878.

Close copy draft order, folios 8	0	2	8	0	2	8
Notice to settle same, copy and service	0	4	0	0	4	0
Attending settling same	0	6	8	0	13	4
Or at Taxing-Master's discretion not to exceed	1	1	0	3	3	0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Notice to pass same, copy and service	0	4	0	0	4	0
Attending passing same	0	6	8	0	13	4
Drawing bill of costs and copy, folios 20	0	13	4	0	13	4
Warrant on leaving same, copy and service	0	4	6	0	5	6
Warrant to tax same, copy and service	0	4	6	0	5	6
Attending taxing same	0	6	8	0	6	8
Paid for certificate and transcribing	0	2	0	1	2	0
Attending to file same and afterwards for office copy	0	6	8	0	6	8
Paid for office copy	0	3	0	0	3	0
Letters, messengers	0	10	6	1	1	0
Paid <i>ad valorem</i> duty						

Memorandum sittings fees are not allowed in interlocutory applications when proceedings in the action were still going on during the sittings in which application was made.

Costs of appearing on application in Chambers for Stop Order.

1877.

Paid for copy affidavit filed in support application of stop order on plaintiff's share of fund in court, at per folio	0	0	4	0	0	4
Perusing same, at per folio	0	0	4	0	0	4
If agency close copy	0	0	4	0	0	4
If notice to produce served charge—						
Perusing same	0	6	8	0	13	4
Attending summons when order made						
Close copy order, folios , at per folio	0	0	4	0	0	4
Attending to settle same	0	6	8	0	13	4
Attending to pass same	0	6	8	0	13	4
Letters, postages, &c.	0	5	0	0	10	0
If application refused with costs—						
Drawing bill of costs and copy, at per folio	0	0	8	0	0	8
Attending at chambers when same assessed, folio						
Paid <i>ad valorem</i> duty						

Bill of Costs of an Infant, on his coming of age, for payment of his share out of Court which had been carried over to his separate account.

In Trust Re A. B.

Attending A. B. on his informing us that he was of age, and instructing us to apply for the payment out of his share of the fund in Court to him	0	6	8	0	6	8
Drawing request for the Paymaster-General to issue his voluntary certificate of fund in Court	0	2	6	0	2	6
Attending Paymaster-General with same, and afterwards for same	0	6	8	0	6	8
Attending at Somerset House searching for certificate of birth A. B., and bespeaking copy of same	0	6	8	0	6	8
Paid for search and copy certificate	0	3	7	0	3	7

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Preparing certificate of lower scale	0	5	0			
Preparing summons for the sale of £ bank per cent. annuities, entitled "The separate account of" and for payment of dividends to applicant and attending at Chambers to get same sealed	0	3	0	0	13	4
Paid stamping same	0	2	0	0	3	0
Making copy of same to leave at Chambers	0	2	0	0	2	0
Instructions for affidavit of verifying certificate of birth of the applicant	0	6	8	0	6	8
Drawing same, folios, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Preparing exhibit	0	1	0	0	1	0
Attending deponent before a commissioner to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6	0	2	6
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Attending summons when order made	0	6	8	0	13	4
Close copy draft order, folios 5	0	1	8	0	1	8
Attending settling order	0	6	8	0	13	4
Correcting proof	0	6	8	0	6	8
Paid for order	0	3	0	0	5	0
Attending passing same	0	6	8	0	13	4
Attending the registrar and bespeaking direction for sale of stock	0	6	8	0	6	8
Attending the Paymaster-General with same	0	6	8	0	6	8
Drawing bill of costs and copy, folios, at per folio	0	0	8	0	0	8
Attending assessing same at Chambers						
Paid <i>ad valorem</i> duty						
Attending and identifying at the Paymaster-General's office on his receiving his cheque	0	6	8	0	6	8
Term fee	0	15	0	0	15	0
If agency	0	6	0	0	6	0

COSTS OF PLAINTIFF ON DISALLOWING DEFENDANT'S COUNTERCLAIM.

BETWEEN A. B. *and others, Plaintiffs,*
 AND
 C. D. *Defendant.*
(By Original Action.)
 AND
 C. D. *Plaintiff,*
 AND
 A. B. *and others, Defendants.*

Bill of Costs of the Plaintiffs, in the first above-mentioned Action, to be taxed in pursuance of Order dated the day of 1880, which ordered the counterclaim to be disallowed.

Sittings, 1880.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
1880. <i>May.</i>						
On being served with counterclaim perusing same	0	6	8	0	13	4
Paid for 9 copies of same, folios 8 each (printed)	0	3	4	0	3	4
If agency, close copy, at per folio	0	0	2	0	0	3
<i>June.</i>						
Drawing notice of motion to exclude counterclaim, folios 3	0	3	0	0	3	0
Copy and service of same	0	3	6	0	3	6
Drawing brief for counsel, folios 12	0	12	0	0	12	0
Making two copies of same and notice of motion for counsel, folios 15, each	0	10	0	0	10	0
Two copies of counterclaim for counsel, folios 8 each, at per folio	0	0	2	0	0	3
Making 2 copies of writ of summons for counsel, folio 4 each	0	2	8	0	2	8
Attending Mr. with brief	0	13	4	0	13	4
Paid fee to him and clerk	5	10	0	5	10	0
Attending Mr. with brief	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Mr. appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending consultation	0	13	4	0	13	4
Attending Court on every special motion each day	0	6	8	0	13	4
Attending Court on motion when order made to strike out counter-claim, and for the payment of costs thereof and of the motion	0	6	8	0	13	4
Or according to circumstances	1	1	0	2	2	0
Attending the registrar with brief, and bespeaking draft order	0	6	8	0	6	8
Close copy draft order, folios 3	0	1	0	0	1	0
Notice to settle same, copy and service	0	4	0	0	4	0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
<i>July.</i>						
Attending before the registrar settling draft order	0	6	8	0	13	4
Notice to pass same, copy and service	0	4	0	0	4	0
Paid for order	0	3	0	0	5	0
Attending passing same	0	6	8	0	13	4
Attending with order to get master in rotation marked, and afterwards for same	0	6	8	0	6	8
Making copy order for the Taxing-Master (folios printed, at per folio)	0	0	2	0	0	3
If written, at per folio	0	0	4	0	0	4
Drawing bill of costs and copy, folios, at per folio	0	0	8	0	0	8
Warrant on leaving same, copy and service	0	4	6	0	5	6
Warrant to take same, copy and service	0	4	6	0	5	6
Attending taxing same (for every 25 folios or fractional part) each	0	6	8	0	6	8
Certificate and transcribing	0	2	0	1	2	0
Attending to file same and bespeaking office copy	0	6	8	0	6	8
Paid for office copy	0	3	0	0	3	0
Letters, messengers, &c.	0	10	0	0	10	0
Paid <i>ad valorem</i> duty						
(In this action proceedings were going on at the same time as this motion was made, and therefore a sittings fee could not be charged)						
If not sittings fee	0	15	0	0	15	0
If agency	1	1	0	1	1	0

COSTS OF PLAINTIFF ON DEFENDANT'S APPLICATION FOR
THE TAXING-MASTER TO REVIEW THE TAXATION OF
DEFENDANT'S COSTS.

Bill of Costs of Plaintiff, on the Application of a Defendant, for the Taxing-Master to be Ordered to Review his Taxation of the Defendant's Costs, Taxed in pursuance of Order dated the day of 1878.

Easter Term, 1878.

<i>May.</i>						
Attending before the Taxing-Master on the objections lodged by the defendant to the taxation of his costs, when the defendant's solicitors produced the office copy of an affidavit of the defendant, and another which we objected to being read, as it was not neces- sary to make one until the Taxing-Master required it. The Taxing-Master, however, after reading it, said he should disallow all the objections, and would state in his certificate his ground for doing so	0	6	8	0	6	8
8. Paid for copy affidavit of, folios, at per folio	0	0	4	0	0	4
Perusing same, at per folio	0	0	4	0	0	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Paid for copy answers of the Master to the defendant's objections, at per folio	0	0	4	0	0	4
18. Attending before the Taxing-Master and settling his answers to the defendant's objections to his taxation	0	6	8	0	6	8
Sittings fee (agency)	1	1	0	1	1	0

Trinity Sittings, 1878.

June.

Attending appointment before the chief clerk on defendant's summons for an order for the Master to review his certificate, when same adjourned to the Judge	0	6	8	0	13	4
24. Attending defendant's adjourned summons for the Master to review his taxation, when the Vice Chancellor adjourned the same into Court	0	6	8	0	13	4
29. Drawing brief for counsel, folios , at per folio	0	1	0	0	1	0
Making fair copy of same, folios , copy summons, folios , copy orders, of , 1877, folios , copy of defendant's objections, folio , copy affidavit of defendant and answer, folios , copy of Taxing-Master's certificate, folios , and copy of defendant's bill of costs as taxed, folios , together folios , for counsel, at per folio	0	0	4	0	0	4

July.

Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Mr. appointing conference	0	3	4	0	6	8
Paid fee to him and clerk	1	6	0	1	6	0
5. Attending conference	0	13	4	0	13	4
6 and 13. Attending Court, adjourned summons in paper, but not reached	0	13	4	1	0	0
Sittings fee (agency)	1	1	0	1	1	0

Michaelmas Term, 1878.

November.

Attending Court when adjourned summons heard and dismissed with costs	0	13	4	1	1	0
11. Attending at the order of course seat with brief and papers, and bespeaking draft order	0	6	8	0	6	8
Close copy draft order, folios 5	0	1	8	0	1	8
Notice to settle same, copy and service	0	4	0	0	4	0
Attending settling same	0	6	8	0	13	4
Paid for order	0	3	0	0	5	0
Notice to pass same, copy and service	0	4	0	0	4	0
Attending passing same	0	6	8	0	13	4
Drawing bill of costs and copy, folios 15	0	10	0	0	10	0
Warrant on leaving same, copy and service	0	4	6	0	5	6
Warrant to tax same, copy and service	0	4	6	0	5	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending taxing same	0	6	8	0	6	8
Transcribing certificate	0	2	0	1	2	0
Attending to file same and bespeak office copy	0	6	8	0	6	8
Paid for office copy	0	3	0	0	3	0
Sittings fee (agency)	1	1	0	1	1	0
Paid <i>ad valorem</i> duty						

IN THE HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

Costs of a Defendant in an Action of and Incidental to his obtaining an order for taking off of the file of the Court Affidavits filed on behalf of the Plaintiff in consequence of same being scandalous and impertinent, and taxed as between Solicitor and Client.

Michaelmas Sittings, 1879.

1879, November 5.

Paid for copy affidavit, folios, at per folio	0	0	4	0	0	4
Perusing same	0	0	4	0	0	4
If agency, close copy	0	0	4	0	0	4
Attending shorthand writer, bespeaking transcript of his notes taken in the hearing of the plaintiffs for an injunction, and subsequently for and obtaining same	0	6	8	0	6	8
Paid shorthand writer's charges for same, at per folio	0	0	8	0	0	8
Drawing notice of motion for the plaintiff to show cause why his affidavit should not be taken off of the file of the Court, or that certain paragraphs in same, No., should not be struck out, folios 6	0	6	0	0	6	0
Attending counsel with same to settle	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Making copy of notice for service	0	2	0	0	2	0
Service thereof	0	4	0	0	4	0
Instructions for affidavit of shorthand writer verifying transcript of his notes	0	6	8	0	6	8
Drawing same, folios, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Preparing exhibit	0	1	0	0	1	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6	0	2	6
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Notice of filing same, copy and service	0	4	0	0	4	0
Paid for copy of further affidavit filed by plaintiff, folios, at per folio	0	0	4	0	0	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Perusing, at per folio	0	0	4	0	0	4
If agency, close copy, at per folio	0	0	4	0	0	4
Instructions for affidavit of defendant in support of notice of motion	0	6	8	0	6	8
Drawing same, folios, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Making copy affidavit to be marked as an office copy, folios, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, folios, at per folio	0	0	2	0	0	2
Notice of filing same, copy and service	0	4	0	0	4	0
Drawing brief for counsel to appear in support of notice of motion, folios 60	3	0	0	3	0	0
Making two copies of same for counsel	2	0	0	2	0	0
The like of notice of motion	0	4	0	0	4	0
The like of the affidavit filed on behalf of plaintiff, folios, at per folio each	0	0	4	0	0	4
The like affidavit of defendant in support of notice of motion, folios, at per folio each	0	0	4	0	0	4
The like affidavit of shorthand writer, folios, at per folio	0	0	4	0	0	4
The like of shorthand writer's notes on the hearing of the plaintiffs' motion on the ultimo for counsel, folios, at per folio each	0	0	4	0	0	4

December.

9. Making copy notice of motion for the Court	0	2	0	0	2	0
Attending lodging same	0	6	8	0	6	8
Attending Mr., Q.C., with brief and papers	0	6	8	0	13	4
Paid fee to him and clerk	5	10	0	5	10	0
Attending Mr. with brief and papers	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Mr., Q.C., appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending consultation	0	13	4	0	13	4
Attending shorthand writer instructing him to take notes	0	6	8	0	6	8
12. Attending Court when motion heard and order made for, not only the affidavits which were mentioned in the notice, but further affidavits which had been filed since the service of notice of motion, and which were scandalous and impertinent were directed to be taken off of the file of Court, and the plaintiff was ordered to pay the defendant's costs, and which were to be taxed as between solicitor and client	1	1	0	2	2	0
Attending the defendant, informing him the result of the application in Court this day	0	6	8	0	6	8
Paid shorthand writer for taking notes	1	1	0	1	1	0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending the registrar with brief and papers, and bespeaking draft order	0	6	8	0	6	8
Close copy draft order, folios 7	0	2	4	0	2	4
Notice to settle same, copy and service	0	4	0	0	4	0
26. Attending settling same	0	6	8	0	13	4
Writing to plaintiff's solicitors in pursuance of the order, and requesting them to take the affidavits off the file, and requesting an appointment to receive all copies of the affidavits in their possession	0	3	6	0	3	6
Notice to pass order, copy and service	0	4	0	0	4	0
Paid for order	0	3	0	0	5	0
Attending passing same	0	6	8	0	13	4

1880, February.

Attending plaintiff's solicitors, by appointment, at their office, when the affidavits were destroyed	0	6	8	0	13	4
Making copy order for the Taxing-Master, folios 7	0	2	4	0	2	4
If action not already referred charge as follows :—						
Attending to get Master in rotation marked	0	6	8	0	6	8
Drawing bill of costs and copy, folios, at per folio	0	0	8	0	0	8
Warrant on leaving, copy and service	0	4	6	0	5	6
Warrant to tax, copy and service	0	4	6	0	5	6
Attending taxing same (for every 25 folios or fractional part) at	0	6	8	0	6	8
Certificate and transcribing	0	2	0	1	2	0
Attending to file same and bespeaking office copy	0	6	8	0	6	8
Paid for office copy	0	3	0	0	3	0
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0
<i>Memorandum.</i> —Sittings fee is not allowed if other proceedings are going on in the same sittings in interlocutory applications.						
Letters, &c.	0	10	6	1	1	0

COSTS OF PETITIONER FOR PAYMENT OUT OF HIS SHARE OF THE FUND IN COURT AFTER THE DEATH OF THE TENANT FOR LIFE—COSTS OF TRUSTEE ON THE FUNDS BEING TRANSFERRED, AND COSTS OF THE RESPONDENTS.

In the matter of an Act of Parliament made and passed in the Sessions holden in the 10th and 11th years of the Reign of Her present Majesty, intituled, "An Act for the better securing Trust Funds and for the Relief of Trustees,"

and

In the matter of the Trusts of a Settlement dated the day of 184 , and made between A. B. of in the County of of the first part, C. D. of the second part, and E. F. and G. H. of the third part.

The Bill of Costs of , the Petitioner, one of the Children, on the death of the Tenant for life, taxed as between Solicitor and Client, pursuant to the order made on the day of , 1879. (In this application the same solicitors were engaged for the surviving Trustee of the fund transferred into Court.)

Hilary Sittings, 1879.

1879. *March.*

	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.
In consequence of the death of the tenant for life, attending petitioner, her son by her former husband, conferring with him thereon, and taking his directions to prepare a petition for payment out of the fund in Court to him and his sister	0 6 8	1 1 0
Drawing same, folios 30, at per folio 1s.	1 10 0	1 10 0
Attending Mr. with same, to settle	0 6 8	0 6 8
Paid fee to him and clerk	2 4 6	2 4 6
Writing to petitioner with reference to our interview with him to-day and as to the further information we required	0 3 6	0 3 6
Attending at the Paymaster-General's office bespeaking voluntary certificate of fund in Court, and afterwards for same	0 6 8	0 6 8
10. Engrossing petition, folios 30, at per folio 4d.	0 10 0	0 10 0
Paid stamping same	0 5 0	1 0 0
Making copy petition for the Judge	0 10 0	0 10 0
Attending to present same, and afterwards for fiat	0 6 8	0 6 8
Writing to petitioner in reply to his letter, and informing him that we had presented the petition	0 3 6	0 3 6
Writing to Mr. , one of the trustees of the marriage settlement of the petitioner's sister, and informing him of the application to the Court, and requesting to know if he wished us to act for him	0 3 6	0 3 6
11. Attending the petitioner on his calling and giving us further information as to the various certificates of marriages, baptisms, &c., and requesting him to see Mr. , the late husband of his mother, as to		

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
his taking out letters of administration to his late wife	0	6	8	0	6	8
Making copy petition for service on the surviving trustee of the marriage settlement of petitioner's mother	0	10	0	0	10	0
Writing to the surviving trustee with same, and requesting him to acknowledge the receipt same	0	3	6	0	3	6
Attending at Somerset House searching for two certificates of births, two certificates of marriage, and two certificates of deaths, and could only find four registered	1	6	8	1	6	8
Paid searching, and for four certificates	0	14	4	0	14	4
Paid searching for two other certificates	0	2	0	0	2	0
Writing to the petitioner informing him that his sister's birth was not registered, and requesting him to obtain from her where she was baptized	0	3	6	0	3	6
12. Attending at Somerset House further searching for certificate of death of, and bespeaking office copy	0	6	8	0	6	8
Paid for search and certificate	0	3	7	0	3	7
13. Writing to petitioner's sister in reply to her letter stating where she was baptized	0	3	6	0	3	6
Paid for office copy order of the April, 1876	0	0	11	0	0	11
Attending at St. George's Church, Bloomsbury, to bespeak certificate of baptism of, when we found that the church was closed, but as it was necessary we should get it to-day attending at Bedford Place, the residence of the curate, and explaining to him the urgency of the case, when he returned to the church and we obtained certificate of baptism	0	13	4	0	13	4
Paid for search and certificate	0	3	7	0	3	7
Attending at Somerset House searching for and bespeaking certificate of marriage of Mr. and Mrs.	0	6	8	0	6	8
Paid for searching and certificate	0	3	7	0	3	7
Instructions for affidavit of in support of petition	0	6	8	0	6	8
Drawing same, folios 17, at per folio 1s.	0	17	0	0	17	0
Engrossing same, at per folio 4d.	0	5	8	0	5	8
Preparing 7 exhibits, at per exhibit 1s.	0	7	0	0	7	0
Attending deponent on his being sworn to his affidavit	0	6	8	0	6	8
Paid commissioner taking deponent's oath and marking exhibits	0	8	6	0	8	6
Making copy of this affidavit to be marked as an office copy, at per folio 4d.	0	5	8	0	5	8
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio 2d.	0	2	10	0	2	10
Drawing brief for counsel to appear on behalf of petitioner, folios 3	0	3	0	0	3	0
Making fair copy of same, folios 3, copy petition, folios 30, and copy affidavit in support, folios 17, together folios 50, at per folio 4d.	0	16	8	0	16	8
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Attending Mr. appointing conference	0	3	4	0	6	8

	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.
Paid fee to him and clerk	1 6 0	1 6 0
Attending conference	0 13 4	0 13 4
15. Attending Court when petition heard and ordered to be amended by filling in blanks and, stating the title of Mr. and Mrs. and their trustees to their share, and making them co-petitioners, order to be made on amended petition	0 13 4	1 1 0
17. Writing to the petitioner and informing him of the result of the application	0 3 6	0 3 6
Writing to Mr. 's solicitor for Mr., one of the trustees of the settlement made on the marriage of Mr. and Mrs., in reply to his letter, and sending him the address of Mr., the other trustee of the said settlement	0 3 6	0 3 6
18. Attending Mr., solicitor for the trustees of Mrs. 's settlement, and informing him what had taken place on the 15th instant, and conferring with him thereon	0 6 8	0 6 8
19. Writing to Mr. informing him of the position of this matter, and as to the difficulty of proving the death of Mr., his co-trustee of the defendant of settlement, dated the day of, 1874	0 3 6	0 3 6
Writing to the parish clerk of for the certificate of death of Mr.	0 3 6	0 3 6
21. Writing again to the parish clerk of for the certificate of death or burial of Mr.	0 3 6	0 3 6
Attending the petitioner on his calling, and conferring with him in reference to this matter, and informing him at present we had not got a copy of the marriage settlement of Mr. and Mrs.	0 6 8	0 6 8
Writing to Mr. acknowledging receipt of his letter, and requesting him to send us a copy of the marriage settlement of Mr. and Mrs., to enable us to amend the petition according to the leave given	0 3 6	0 3 6
24. Writing to Mr. in reply to his letter, and informing him that before another trustee was appointed instead of Mr., we thought the application for the division of the fund had better be completed.	0 3 6	0 3 6
25. Writing to the parish clerk of with his charge for searching for the certificate of death or burial of Mr.	0 3 6	0 3 6
Paid his charges	0 2 0	0 2 0
Writing to the parish clerk of for the certificate of death or burial of Mr.	0 3 6	0 3 6
28. As the certificate of death or burial of Mr. had not been received, writing again to the parish clerk of for same	0 3 6	0 3 6
Writing to the petitioner with reference to the difficulty of obtaining evidence of the death of	0 3 6	0 3 6
Writing to Mr. again as to the appointment of trustees to Mrs. 's settlement	0 3 6	0 3 6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
29. Writing to the Rev. with his charges for the certificate of burial of Mr.	0	3	6	0	3	6
Paid his charges	0	3	6	0	3	6
31. Instructions for affidavit of identifying burial certificate of Mr.	0	6	8	0	6	8
Drawing same, folios 4	0	4	0	0	4	0
Engrossing same, at per folio 4 <i>d.</i>	0	1	4	0	1	4
Preparing exhibit	0	1	0	0	1	0
Writing to Mr. with same to be sworn to.	0	3	6	0	3	6
Paid commissioner's fee for taking deponent's oath and marking exhibit.	0	2	6	0	2	6
On receipt of copy settlement on the marriage of Mrs., perusing same	0	6	8	0	6	8
Drawing amendments to petition, folios 10	0	10	0	0	10	0
Attending Mr. with same to settle	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6

April 2.

Writing to the petitioner for the present address of Mr., as he attended the execution of the mar- riage settlement of Mr. and Mrs.	0	3	6	0	3	6
Writing to Mr., requesting him to deliver to the bearer the original marriage settlement of Mr. and Mrs.	0	3	6	0	3	6
Attending Mr. with letter, and conferring with him hereon, when he intimated he would not lend us the marriage settlement until a new trustee was appointed instead of Mr., because Mr. had never acted in the trust, and in fact, on account of the petitioner being under age at the time of his sister's marriage, Mr. was appointed instead of him, and he also informed us he was solici- tor for Mr. and Mrs. and the other trustee	0	6	8	0	6	8
Attending appointing conference with counsel to confer with him as to whether the leave given to amend the petition we could in the amendment recite the ap- pointment of new trustee	0	6	8	0	6	8
Paid conference fee to Mr. and clerk	1	6	0	1	6	0
Attending conference, when counsel stated that he could, on the appointment of a new trustee, re-amend without applying to the Court	0	13	4	0	13	4
Making copy affidavit of to be marked as an office copy, folios 4, at per folio 4 <i>d.</i>	0	1	4	0	1	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio 2 <i>d.</i>	0	0	8	0	0	8
Writing to Mrs. and informing her, on our call- ing on Mr., he informed us that Mr. wished to be discharged from being one of her trustees, and that Mr. was only appointed trustee on account of her brother then being under age	0	3	6	0	3	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
16. Attending the petitioner, conferring with him in reference to the appointment of new trustee for his sister, when he consented to act as one	0	6	8	0	6	8
Sittings fee	0	15	0	0	15	0

Easter Sittings, 1879.

22. Writing to the petitioner in reply to his letter, as to the delay of obtaining an order, and with reference to the appointment of new trustees of Mrs. 's settlement	0	3	6	0	3	6
24. Having received a letter from the petitioner as to Mr. , one of Mrs. 's trustees, employing a separate solicitor, writing him in reply thereto	0	3	6	0	3	6
25. Attending Mr. , solicitor for Mr. , on his calling hereon, as to the preparation of the appointment of a new trustee, and conferring with him thereon	0	6	8	0	6	8
30. Writing to Mr. , requesting to know whether the appointment of new trustees to Mrs. 's settlement had been completed	0	3	6	0	3	6

May 7.

Writing to Mr. hereon, and requesting to know what was the cause of delay in completing the appointment of new trustees	0	3	6	0	3	6
9. Attending Mr. with reference to this matter, and conferring with him hereon	0	6	8	0	6	8
15. Writing to the petitioner in reply to his letter, complaining of the delay, and suggesting that he should see Mr. thereon	0	3	6	0	3	6
22. Writing to the petitioner hereon, and informing him, in consequence of the delay in getting new trustees appointed, we should apply for leave to re-amend his petition	0	3	6	0	3	6
23. Drawing brief for counsel to apply for leave to re-amend petition, folios 5	0	5	0	0	5	0
Making fair copy of same for counsel	0	1	8	0	1	8
Attending Mr. with same	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending Court when order made to re-amend petition, by making Mr. and Mrs. respondents, and all necessary consequent amendments copy petition to be served upon them, and to be in the paper for next petition day	0	6	8	0	13	4
Drawing re-amendments, folios 10	0	10	0	0	10	0
Attending Mr. with same to settle	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
26. Making 3 copies of amended and re-amended petition for service in red and blue ink, folios 40	2	0	0	2	0	0
Making copy of amended and re-amended petition for the Judge	0	13	4	0	13	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending at Plumstead and serving amended and re-amended petition on Mrs.	0	5	0	0	5	0
Paid railway fare and back	0	1	8	0	1	8
27. Attending on Mr. , when he accepted service of copy amended and re-amended petition on behalf of Mr.	0	6	8	0	6	8
Attending Mr. , when he accepted service of copy of same petition on behalf of Mr.	0	6	8	0	6	8
Attending the Judge's secretary, lodging amended and re-amended petition with him	0	6	8	0	6	8
28. Drawing and engrossing joint affidavit verifying service of copies of amended and re-amended petition, folios 15	0	15	0	0	15	0
Paid commissioner taking deponent's oaths	0	3	0	0	3	0
Making copy of this affidavit to be marked as an office copy	0	5	0	0	5	0
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy	0	2	6	0	2	6
Drawing further brief for counsel, folios 6	0	6	0	0	6	0
Making copy of same, folios 6, copy amended and re-amended petition in red and blue ink, folios 10, and copy affidavit of , folios 4, altogether 20 folios for counsel	0	6	8	0	6	8
Attending Mr. with same	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
30. Attending Court on the amended and re-amended petition being heard, when order was made as prayed, Mrs. 's trustees to have only one set of costs	0	13	4	1	1	0
Attending the Lord Chancellor's secretary on his sealing the amendments and re-amendments in original petition	0	6	8	0	6	8
Subsequently attending the registrar with brief and papers, and bespeaking draft order	0	6	8	0	6	8
Writing to the petitioner and informing him that an order had been made as prayed	0	3	6	0	3	6
Sittings fee	0	15	0	0	15	0

Trinity Sittings, 1879.

June 9.						
Close copy draft order of the 30th ultimo, folios 12	0	4	0	0	4	0
10. Writing to the petitioner and informing him the registrar required an affidavit to be made by some old friend of his father and mother to corroborate his affidavit	0	3	6	0	3	6
Notice to settle draft order, copy and service	0	4	0	0	4	0
12. Attending the petitioner, conferring with him hereon, when he stated a sister of his father could corroborate his affidavit	0	6	8	0	6	8
13. Instructions for affidavit of A. B. corroborating petitioner's affidavit as to the births of himself and sister, marriages of his mother, and deaths of his father and mother	0	6	8	0	6	8
Drawing same, folios 7	0	7	0	0	7	0
Engrossing same	0	2	4	0	2	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Making copy of this affidavit to be marked as an office copy	0	2	4	0	2	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy	0	1	2	0	1	2
14. Attending settling draft order of the 30th ultimo, when same post-dated of to-day	0	6	8	0	13	4
Attending at the Paymaster-General's office for certificate of the fund to be post-dated	0	6	8	0	6	8
23. Attending before the registrar settling draft proof of order of the 14th inst., when revised proof was directed to be made	0	6	8	0	13	4
24. Correcting revised proof	0	6	8	0	6	8
25. Paid for order	0	10	0	1	0	0
Notice to pass same, copy and service	0	4	0	0	4	0
Attending passing same	0	6	8	0	13	4
Preparing succession duty on petitioner's share, and also on respondent's share of fund in Court in duplicate	0	13	4	1	0	0
Attending at Somerset House to get same assessed	0	6	8	0	13	4
Drawing affidavit verifying amount of succession duly assessed, folios 6	0	6	0	0	6	0
Engrossing same	0	2	0	0	2	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Paid filing affidavit	0	2	0	0	2	0
Making copy of same to be marked as an office copy	0	2	0	0	2	0
Paid for office copy	0	1	0	0	1	0
Attending at the registrar's office to bespeak sale of so much of £ reduced £ per cent. annuities as with the £ cash would raise the amount to pay the taxed costs and succession duty	0	6	8	0	6	8
Attending at the Paymaster-General's office with direction for sale	0	6	8	0	6	8
Drawing affidavit verifying the amount of the residue £ reduced £ per cent. annuities, to be divided in two parts, one part to be transferred to the petitioner, and the other to be carried over to a separate account, folios 7	0	7	0	0	7	0
Engrossing same	0	2	4	0	2	4
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Paid filing affidavit	0	2	0	0	2	0
Making copy of same to be marked as an office copy	0	2	4	0	2	4
Paid for office copy	0	1	2	0	1	2
Drawing request to the Paymaster-General to carry over Mrs. 's share to an account to be entitled "The Trustees of Mrs. 's share"	0	2	6	0	2	6
Attending at the Paymaster-General's office bespeaking same	0	6	8	0	6	8
Attending and identifying Mr. on his receiving cheque for payment of due to him	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Copy order of _____, 1879, for the Taxing Master, folios 12	0	4	0	0	4	0
Drawing bill of costs and copy, folios _____, and summary, folios _____, together folios _____, at per folio	0	0	8	0	0	8
Warrant on leaving same, copy and service	0	2	6	0	2	6
Warrant to take same, copy and service.	0	2	6	0	2	6
Attending taxing same, at per 25 folios or fractional part	0	6	8	0	6	8
Paid for copy costs of _____ and others, at per folio	0	0	4	0	0	4
Attending taking same						
Paid for certificate and transcribing	0	2	0	0	2	0
Attending to file same and bespeaking office copy	0	6	8	0	6	8
Paid for office copy	0	3	0	0	3	0
Sittings fee	0	15	0	0	15	0
Letters, messengers, &c.	0	10	6	1	1	0

*Bill of Costs of the Surviving Trustee to be taxed as between Solicitor and Client,
pursuant to the Order made on the _____ day of _____, 1879.*

1879. March.

Attending Mr. _____, the surviving trustee, when he instructed us to appear on his behalf	0	6	8	0	13	4
Drawing brief for counsel, folios 5	0	5	0	0	5	0
Making fair copy of same, folios 5, copy petition, folios 30, and affidavit of petition in support, folios 17, to- gether 52 folios	0	17	4	0	17	4
Attending Mr. _____ with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
15. Attending Court when petition heard and ordered to be amended, and when amended order to be made on the amended petition	0	6	8	0	13	4

April.

Writing to the surviving trustee in reply to his letter hereon	0	3	6	0	3	6
Sittings fee	0	15	0	0	15	0

Easter Sittings, 1879.

May.

Making copy of amended and re-amended petition, folios 20	0	6	8	0	13	4
Attending Mr. _____ with same	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
30. Attending Court when order made as prayed, Mrs. _____’s trustees to have only one set of costs	0	6	8	0	13	4
Sittings fee	0	15	0	0	15	0

Trinity Sittings, 1879.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
<i>June.</i>						
Attending settling draft order of the 30th ultimo . . .	0	6	8	0	13	4
25. Attending passing order	0	6	8	0	13	4
Drawing bill of costs and copy, folios . . . , at per folio . . .	0	0	8	0	0	8
Attending taxing same, at per 25 folios or fractional part	0	6	8	0	6	8
Sittings fee	0	15	0	0	15	0
Letters, messengers, &c.	0	10	6	0	10	6

*Bill of Costs of the Trustees of Mr. and Mrs. . . . 's Settlement, and of
and his wife to be taxed as between Solicitor and Client, in
pursuance of the Order made on the . . . day of . . . , 1879.*

Easter Sittings, 1879.

1879. *May.*

Attending taking instructions to appear on petition . . .	0	6	8	0	13	4
Attending Mr. . . . , one of the trustees, respecting this petition, and conferring with him thereon, when it was arranged that I should see Mr. . . . , soli- citor for the other trustee	0	6	8	0	6	8
28. Attending Mr. . . . accordingly, the solicitor for Mr. . . . , the other trustee, and conferring with him hereon, when he handed me marriage settle- ment, and arranging that I should appear on the petition for both the trustees, and the <i>cestui que trust</i>	0	6	8	0	6	8
Perusing marriage settlement, folios 60	1	0	0	1	0	0
Making copy of same for use	1	0	0	1	0	0

Trinity Sittings, 1879.

June.

Attending Mr. . . . in . . . Street, Paddington, one of the trustees, and again going through settle- ment with him, conferring with him on his position, and taking his instructions to appear for him and the <i>cestui que trusts</i>	0	6	8	0	6	8
Paid for copy affidavit of . . . , folios 4	0	1	4	0	1	4
Perusing same	0	1	4	0	1	4
Paid for copy affidavit of . . . , folios 17	0	5	8	0	5	8
Perusing same	0	5	8	0	5	8
Brief copy petition for counsel	0	10	0	0	10	0
The like of affidavits	0	7	0	0	7	0
Drawing observations and copy for counsel	0	6	8	0	6	8
Attending Mr. . . . with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
30. Attending Court when petition heard, and order made as prayed, the share under settlement to be carried over to the separate account of Mr. and Mrs. and their trustees, with liberty to apply at Chambers for payment out of them	0	13	4	1	1	0
Sittings fee	0	15	0	0	15	0

Trinity Sittings, 1879.

July 14.

Close copy minutes of order, 7 sides	0	3	6	0	3	6
Attending settling same	0	6	8	0	13	4
23. Attending passing same	0	6	8	0	13	4
Paid for costs of petitioner, folios , at per folio	0	0	4	0	0	4
Attending taxing same, at per 25 folios or fractional part	0	6	8	0	6	8
Paid for copy costs of respondent, the surviving trustee, folios , at per folio	0	0	4	0	0	4
Attending taxing same, at per 25 folios or fractional part	0	6	8	0	6	8
Drawing bill of costs and copy, folios , at per folio	0	0	8	0	0	8
Warrant on leaving same, copy and service	0	2	6	0	2	6
Warrant to tax same, copy and service	0	2	6	0	2	6
Attending taxing same						
Sittings fee	0	15	0	0	15	0
Letters, &c.	0	10	6	1	1	0

PLAINTIFF'S AND DEFENDANT'S COSTS OF APPEAL TO THE COURT OF APPEAL.

Appellant's Costs of Appeal.

Easter Sittings, 187 .

Instructions to appeal	0	13	4	1	1	0
Drawing notice to appeal	0	2	0	0	5	0
Or per folio	0	1	0	0	1	0
Copy for service, at per folio	0	0	4	0	0	4
Service thereof of each	0	2	6	0	2	6
Attending to enter and set down appeal	0	6	8	0	6	8
Paid setting down same	1	0	0	2	0	0
Copies of pleadings, order, and notice of appeal for the Lords Justices, together folios at per folio printed	0	0	2	0	0	3
If written, at per folio	0	0	4	0	0	4
Copy notice of appeal for the Registrar, folios , at per folio	0	0	4	0	0	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending to deliver papers for use of the Lords Justices	0	6	8	0	13	4
Drawing brief for counsel on appeal, at per folio	0	1	0	0	1	0
Making 2 copies of same for counsel, at per folio each	0	0	4	0	0	4
Making 2 copies of notice of appeal for counsel, at per folio each	0	0	4	0	0	4
Making 2 copies of the order appealed from for counsel, at per folio each	0	0	4	0	0	4
Making 2 copies of shorthand writer's notes of judgment taken on order appealed against for counsel, at per folio each	0	0	4	0	0	4
Attending Mr., Q.C., with brief and papers	0	6	8	0	13	4
Paid fee to him and clerk	8	13	0	8	13	0
Attending Mr. with brief and papers	0	6	8	0	13	4
Paid fee to him and clerk	5	10	0	5	10	0
Attending Mr. appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending consultation	0	13	4	0	13	4
Attending Court appeal in paper, but not reached	0	10	0	0	10	0
Attending Court when appeal heard (when allowed), costs to be paid by respondent (or dismissed with costs)	0	13	4	1	1	0
Or, according to the circumstances, not to exceed	2	2	0	2	2	0
If appellants have carriage of order charge						
Attending the Registrar with brief and papers bespeaking draft order	0	6	8	0	6	8
Close copy draft order, at per folio	0	0	4	0	0	4
Notice to settle same, copy and service	0	4	0	0	4	0
The like on the other solicitors, each	0	2	6	0	2	6
Attending settling same	0	6	8	0	13	4
Or, at the Taxing Master's discretion, not to exceed	1	1	0	3	3	0
If order printed, charge						
Attending to examine and correcting proof	0	6	8	0	6	8
Paid for order	0	10	0	1	0	0
If the appeal is against an order made on adjourned summons, the charge for order will be	0	3	0	0	5	0
Notice to pass same, copy and service	0	4	0	0	4	0
The like on the other solicitors, each	0	2	6	0	2	6
Attending passing same	0	6	8	0	13	4
Making copy order for the Taxing Master, at per folio	0	0	4	0	0	4
If action not already referred, charge						
Attending Sitting Master with order to be referred, and afterwards for same	0	6	8	0	6	8
Drawing bill of costs and copy, at per folio	0	0	8	0	0	8
Warrant on leaving same, copy and service	0	4	6	0	5	6
Warrant to tax, copy and service	0	4	6	0	5	6
If costs paid out of fund in Court—						
Services of these warrants on each solicitor will be each	0	2	6	0	2	6
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0
If other proceedings in this sitting are going on, instead of sitting fee charge for letters	0	10	6	1	1	0

*Respondent's Costs on Appeal from Order of the Judge on Adjourned Summons.
Easter Sitzings, 187 .*

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
<i>May.</i>						
Having been served with copy notice of appeal, drawing brief for counsel to appear on behalf of plaintiff and oppose order being made, folios 28	1	8	0	1	8	0
Making 2 copies of same, folios 28, and notice of appeal, folios 3, together 31 folios for counsel	1	0	8	1	0	8
Making 2 brief copies of shorthand writer's notes of judgment taken on order appealed against, folios 40 for counsel	1	6	8	1	6	8
Attending Mr., Q.C., with same	0	6	8	0	13	4
Paid fee to him and clerk	7	12	0	7	12	0
Attending Mr. with same	0	6	8	0	13	4
Paid fee to him and clerk	5	10	0	5	10	0
Attending Mr., Q.C., appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr., appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending consultation	0	13	4	0	13	4
Attending Court appeal in paper, but not reached	0	10	0	0	10	0
Attending Court when the appeal was heard and order of the judge confirmed, and appeal dismissed with costs	0	13	4	1	1	0
Attending the Registrar with brief and bespeaking draft order	0	6	8	0	6	8
Close copy draft order, folios 4	0	1	4	0	1	4
Notice to settle same, copy and service	0	4	0	0	4	0
Attending settling same	0	6	8	0	13	4
Notice to pass same, copy and service	0	4	0	0	4	0
Paid for order	0	3	0	0	5	0
Attending passing same	0	6	8	0	13	4
Making copy order for the Taxing Master, folios 4	0	1	4	0	1	4
Drawing bill of costs and copy, folios 10	0	6	8	0	6	8
Warrant on leaving same, copy and service	0	4	6	0	5	6
Warrant to tax, copy and service	0	4	6	0	5	6
Certificate and transcribing	0	2	0	0	2	0
Attending to file same, and afterwards for office copy	0	6	8	0	6	8
Paid for office copy	0	3	0	0	3	0
Letters, messengers, &c.	0	10	6	0	10	6

COSTS OF APPELLANT AND RESPONDENT ON APPEAL TO THE HOUSE OF LORDS TAXED PREVIOUS TO APPELLATE JURISDICTION, 1876.

IN THE HOUSE OF LORDS.

ON APPEAL FROM HER MAJESTY'S COURT OF APPEAL.

BETWEEN *C. D.*, Appellant, taxed, AND *D. G.*, etat, Respondents.

Appellant's Costs taxed previous to the Appellate Jurisdiction Act, 1876.
Session, 18 .

187 . February 17.

	£	s.	d.
Instructions for appeal to House of Lords against the judgment of Lords Justices of Appeal of, 187	2	2	0
Drawing notice of appeal, copy and service	0	10	0
Instructions for petition of appeal	0	12	4
Drawing same, folios 22, at 2s. per folio	2	4	0
Making copy of same for counsel to settle and sign, at 8d. per folio	0	14	8
The like of judgment of the Lords Justices of, 187 , folios 27	0	18	0
The like of order of the Lords Justices of, 187 , appealed from, folios 6	0	4	0
Attending counsel with same to settle	0	13	4
Paid fee to him and clerk	5	15	6
Drawing certificate of service of notice of appeal to set forth at end of petition and copy	0	5	0
Making copy of petition on appeal for Mr. to settle and sign	0	14	8
Attending counsel with same	0	13	4
Paid fee to him and clerk	5	15	6
Engrossing petition for presentation	1	2	0
Paid for parchment	0	5	0
Instructions for case of appellant, and going through voluminous documents, &c.	2	2	0
Drawing same, folios 80, at 2s. per folio	8	0	0
Making copy of same for counsel to peruse and settle, at 8d. per folio	2	13	4
Attending counsel with same to settle	0	13	4
Paid fee to him and clerk	11	0	6
Paid for copy petition of respondent's against allowance of appeal, folios 9	0	3	0
Perusing same	0	6	8

August.

Attending House of Lords on presentation of petition for order for respondents to answer	1	1	0
Paid for order for service	1	1	0
Copy and service of order	0	5	0
Attending at the House of Lords when prayer of petition heard, and order made	1	1	0

	£	s.	d.
Paid for order	1	1	0
Paid for report and order for appeal committee	2	2	0
Copy and service of order	0	7	6
Attending the appellants and arranging as to the recognizance to be entered to on appeal	0	13	4
Drawing notice of intention to apply for leave to enter into recognizance on behalf of appellants, and copy	0	5	0
Attending at the House of Lords therewith, and to obtain an appointment to enter into recognizance	0	13	4
Writing to appellants with an appointment to attend	0	3	6
Attending appointment at the House of Lords when recognizance entered into	1	11	6
Paid fees thereon	1	11	6
Attending respondents' solicitors, arranging to have joint appendix	0	13	4
Drawing and engrossing affidavit of service of order on respondents' solicitors	0	13	4
Attending swearing	0	6	8
Paid oath and exhibit	0	2	6
Attending at the office of Judicial Committee for and obtaining copy minutes of meeting of appeal committee	0	6	8
Copy minutes for respondents' solicitors	0	3	4
Service thereof	0	5	0
Drawing list of documents to be included in joint appendix for respondents' solicitors and copy, folios 10	0	13	4
Attending them therewith	0	6	8
Attending respondents' solicitors, subsequently going through documents, and arranging for joint appendix	0	13	4
Drawing joint appendix, folios 300 (half charge)	7	10	0
Making copy of appellants' case for printer	2	13	4
Attending printer therewith, instructing him	0	13	4
Examining and correcting proof	0	13	4
Making copy joint appendix for printer, folios 300 (half charge)	5	0	0
Attending printer, instructing him (half charge)	0	6	8
Examining and correcting proof	2	10	0
Attending respondent's solicitors with proof for their examination	0	6	8

November.

Writing to Messrs. & Co., requesting them return of appendix and as to finally settling same	0	3	6
Attending Messrs. & Co., conferring as to the appeal and the appendix, and final settlement thereof, and generally advising	0	13	4
Writing to Messrs. & Co., requesting them to return appendix in order to finally settle same	0	3	6

December.

Writing to Messrs. & Co. again this day to urge their immediate return of the appendix, and the final settlement thereof	0	3	6
Attending Messrs. & Co., in conference as to the joint appendix, and as to the documents included, giving explanations, and requesting an appointment to go through and finally settle same	0	6	8

	£	s.	d.
Attending Messrs. & Co. on their suggesting additions they had made to appendix, considering documents required to be added, and arranging and advising them	0	6	8
Messrs. & Co., having requested to be furnished with additional copies of appendix as printed, attending them therewith and thereon	0	6	8
Attending Messrs. & Co. in conference as to further documents which they suggested should be added to the appendix, taking particulars thereof in order to see the appellant thereon, and as to final settlement thereof	0	6	8

187 . January,

Attending at appellant's office and long conference with him as to the requirements of Messrs. & Co., going through books and accounts and documents, and advising as to their being added to the appendix when the appellant suggesting that as to additions made to the appendix in 's case, it was considered advisable to withhold any assent until he ascertained what documents in particular would be required	0	13	4
Attending Messrs. & Co. on their calling as to additional documents required to be added to the appendix, explaining our interview with the appellant and the instructions we had received from him in the matter	0	6	8
Attending the appellant in long conference as to extracts required to be added to appendix by Messrs. & Co., and advising, as they had declined to allow the requisite additions to be made to the appendix in 's case, that he should decline to do so in this appeal unless concessions were made on both sides	0	13	4
Writing to Messrs. & Co. accordingly	0	5	0
Writing to Messrs. & Co. requesting to hear from them definitely as to completion of joint appendix	0	3	6
Attending appellant in conference as to letter received from Messrs. & Co., suggesting the proposed extracts from Co.'s books should not be inserted in the appendix, and taking his instructions	0	6	8
Writing to Messrs. & Co. as to the withdrawal of their requisitions as to insertion of additional documents in the appendix, and that we had the assent of the appellant to concur in their suggestions	0	5	0
Attending appointment with Messrs. & Co., going through the joint appendix, and examining documents and finally settling the same for printer	3	3	0
Attending printer with proof joint appendix finally settled and instructing copies	0	6	8
Making up sets of cases to be bound for the use of the Law Lords and counsel, and attending binder therewith and instructing him	0	13	4
Paid printer's bill for printing cases and appendix with alterations and binding cases	0	6	8
Attending paying same	5	5	0
Sessions fee	3	3	0
Letters, messengers, cab hire, &c.	3	3	0

*Sessions 187 .*187 . *February.*

	£	s.	d.
Attending Messrs. & Co. in conference as to the position of the respondents' case, and the further time required which they arranged to petition for and advising	0	6	8
The respondents not having answered appeal, attending Messrs. & Co. thereon, and they arranged to have same lodged	0	6	8
Attending at the House of Lords, searching if respondents had answered appeal, and to bespeak copy answer	0	6	8

June.

Attending Messrs. & Co., conferring as to the pending appeal, and handing them copies of joint case and appendix	0	13	4
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July.

Attending Messrs. & Co. in long conference, going through joint appendix with them, and as to amendments they required, and considering same	0	13	4
Attending Messrs. & Co., consenting to petition for further time to lodge respondents' case	0	13	4
Attending thereon when prayer of petition complied with and order made	1	1	0
Attending Messrs. & Co., conferring as to the amendment to be made in the joint appendix and making same	0	13	4
Making amendments in printed joint appendix for printer	0	13	4
Attending him therewith	0	6	8
Paid his charges for amending copies			
The like for printing copies, binding, &c.			
Instructions for petition for appellant and respondent to lodge joint appendix	0	13	4
Drawing petition and copy	1	1	0
Attending Messrs. & Co. on their signing same	0	6	8
Attending lodging petition	0	13	4
Attending at the House of Lords, lodging joint appendix	1	1	0
Attending Messrs. & Co., handing them printed copies of joint appendix	0	13	4
Sessions fee	5	5	0
Letters, messengers, cab hire, &c.	3	3	0

*Session 187 .*187 . *February.*

Drawing notice to set down appeal for hearing	0	10	0
Attending House when motion made	1	1	0
Paid thereon	1	1	0

March.

Making up of sets of cases and appendixes to be bound for the use of the Law Lords and for counsel, and attending binder therewith and instructing him	0	13	0
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	£	s.	d.
Paid binder's account			
Attending paying same	0	6	8

May.

Attending Messrs. & Co. on their making application for copies of bound cases for counsel, handing them and conferring as to appeal	0	6	8
Attending at the House of Lords to ascertain as to the probable hearing of the appeal, when found same would be heard on Monday next	0	13	4
Writing to the appellant informing him thereof	0	3	6
Attending the clerk of the table with bound cases for the use of the Law Lords	0	13	4
Drawing retainer to Mr.	0	6	8
Paid retainer fee and clerk	2	7	0
Attending him	0	13	4
Brief to Mr. to attend and argue appeal	0	13	4
Paid fee to him and clerk	55	2	6
Attending him	2	2	0
Paid consultation fee and clerk	5	15	6
Attending to fix same	0	13	4
Brief to Mr. to attend and argue appeal	0	13	4
Paid fee to him and clerk	33	0	0
Attending him	1	1	0
Paid consultation fee and clerk	5	15	6
Attending to fix same	0	13	4
Brief to Mr. to attend and argue appeal	0	13	4
Paid fee to him and clerk	22	1	0
Attending him	1	1	0
Paid consultation fee and clerk	5	15	6
Attending to fix same	0	13	4
Mr. Parrott having requested to be furnished with a note explanatory of the nature of the case, drawing same and copy	1	1	0
Attending at the Judicial Office of the House of Lords therewith	0	6	8
Having received a request from Mr. Parrott to attend at the House of Lords to give certain required information respecting the appeal, attending appointment according and answering his enquiries	0	13	4
Writing to the appellant informing him that appeal appointed to be heard for Thursday next	0	5	0
Having made appointment for consultation with counsel, letter to the appellant informing him thereof	0	3	6
Attending respondents for copy cases and obtaining same	0	6	8
Attending consultation	2	2	0
Attending at the bar of the House, when appeal part heard and adjourned until to-morrow	5	5	0
Paid refresher to Mr. and clerk on further hearing of adjourned appeal to-morrow	11	0	6
Attending him	0	13	4
Paid refresher to Mr. and clerk	11	0	6
Attending him	0	13	4
Paid refresher to Mr. and clerk	11	0	6
Attending him	0	13	4

	£	s.	d.
Attending at the bar of the House when appeal further heard and dismissed with costs	5	5	0
Paid bar fee and attendance	8	15	0
Paid laying case on the table	1	1	0
Paid cause list	1	1	0
Having received draft judgment from the Judicial Office of the House, perusing and altering same	0	13	4
Attending respondent's solicitors with same	0	13	4
Attending returning draft judgment, approved and signed	0	13	4
Paid sessions fee	5	5	0
Drawing this bill of costs and copy for the Taxing Officer, folios, at 1s. 6d. per folio			
Attending him therewith	0	10	0
Making copy of bill of costs for respondent's solicitors, at 6d. per folio			
Attending him therewith	0	10	0
Attending taxing			
Paid fees for taxing			
Attending settling costs			
Letters, messengers, &c.	3	3	0

Respondent's Bill of Costs.

1870.			
Instructions to oppose appeal	2	2	0
Having been served with notice of presentation of appeal and with copy order made thereon, attending at Parliament office and speaking copy petition of appeal	0	13	4
Attending for and examining copy with original	0	13	4
Paid for office copy, folios 25	2	0	6
Instructions for answer	0	13	4
Drawing and engrossing same	1	1	0
Paid for parchment	0	5	0
Attending at Parliament Office filing same	0	13	4
Paid filing	0	5	0
Attending at the Judicial Office, House of Lords, searching if recognizance duly entered into by appellant	0	13	4
Instructions for case (very special)	2	2	0
Drawing same, folios 130	13	0	0
Making copy for counsel to settle and sign	4	6	8
The like petition of appeal, folios 25	0	17	4
The like notice of intention to present petition, folios 4	0	2	8
The like order of appeal, folios 8	0	5	4
The like order of Vice Chancellor, dated 187 , folios 8.	0	5	4
The like of transcript of shorthand writer's notes of Vice Chancellor's judgment of like date, folios 5	0	3	4
The like order of the Lords Justices of Appeal of , 187 , folios 6	0	4	0
The like of shorthand writer's notes of judgment of like date, folios 3	0	2	0
Paid fee to Mr. , to settle same	27	10	0
Attending him	1	1	0

	£	s.	d.
Attending appellant's solicitors on their serving notice of intention to present petition for further time to lodge case, perusing petition, and assenting	0	13	4
Attending the House when prayer of petition complied with and order made	1	1	0
Counsel having made several queries in the draft case, attending appointing consultation with him to settle draft case	0	13	4
Paid consultation fee to him and clerk	5	15	6
Attending consultation	2	2	0
Attending appellant's solicitors, conferring as to the desirability of having a joint appendix, and we were to prepare a list of documents for their perusal	0	13	4
Drawing list of documents on behalf of respondent and copy, folios 12	0	16	0
Attending appellant's solicitors therewith, and finally arranging for joint appendix	0	13	4
Attending appellant's solicitors subsequently arranging meeting to finally settle list on both sides	0	13	4
Attending appointment with appellant's solicitors, arranging documents to be inserted in joint appendix	2	2	0
Drawing joint appendix, folios 2,819, at 1s. per folio	140	19	0
Making fair copy for the printer	70	9	6
Attending printer instructing him	0	6	8
Examining and correcting proof	23	9	10
Attending appellant's solicitors with proof of joint appendix for their perusal, and requesting to know whether there were any documents omitted, which they desired to be added thereto	0	6	8
On receipt of letter from appellant's solicitors as to suggested alterations in appendix, and requesting to be furnished with further proof, writing them in reply, and attending with proof as requested	0	6	8
Writing to appellant's solicitors requesting the return of joint appendix approved	0	3	6
Having received letter from appellant's solicitors as to documents included in the appendix, and to which they objected, writing them in reply and in explanation	0	5	0

January, 187 .

Perusing and examining various papers and documents required by appellant's solicitors to be included in the joint appendix, and going through various orders of the Court below to ascertain their admission in evidence—a long time engaged	1	1	0
Writing to appellant's solicitors specially thereon, and requesting them to furnish us with the further documents they required to be added to appendix	0	5	0

February.

Having been served with petition on the part of appellant to extend time for lodging case, perusing same, and attending assenting thereto	0	13	4
Attending House, when prayer of petition complied with and order made	1	1	0

	£	s	d
Attendances upon appellant's solicitors, going through joint appendix, examining and checking same, making additions thereto, and finally settling same for printer	5	5	0
Attending printer with proof joint appendix settled, and instructing copies thereof to be struck off	0	13	4
Paid printer's charges for printing joint appendix and very heavy corrections thereon	0	6	8
Attending him	0	6	8
Attending appellant's solicitors with printed joint appendix for final approval	0	6	8
Making copy of respondent's case as settled for printer	4	6	8
Attending him therewith and instructing proof	0	13	4
Having received proof case from printer, examining and correcting same	1	1	8
Attending printer with corrected proof and instructing further printed copies	0	13	4
Paid printer's charges	5	5	0
Session fee	3	3	0
Letters and messengers	3	3	0

Session, 187 .

March, 187 .

Attending appellant's solicitors in long conference with reference to the joint appendix and the alterations required, discussing same, going through appendix, and requesting them to return same approved	0	13	4
Attending appellant's solicitors on their serving us with notice of intention to present petition for an extension of two months' further time to lodge appellant's case, perusing petition, and assenting	0	13	4
Copy petition to keep	0	5	0
Attending House of Lords when prayer of petition complied with and order made	1	1	0
Attending respondent, conferring with him very fully upon the present position of appeal, and the difficulty we had with the appellant's solicitors in finally settling the joint appendix, giving him explanations thereon and as to the probable hearing of the appeal, and advising him hereon	0	13	4

April.

Attending appellant's solicitors in very long conference upon the joint appendix, and as to the documentary evidence and the various alterations suggested therein, and generally advising and arranging	1	1	0
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May.

Attending appellant's solicitors, further conferring as to the appendix, which they stated appellant's case was now before counsel, and fully discussing suggested alterations	0	13	4
Attending appellant's solicitors on their returning proof of joint ap-			

RESPONDENT'S COSTS OF APPEAL (HOUSE OF LORDS). 773

	£	s.	d.
pendix, and conferring with them upon the material alterations required therein, and arranging to go through joint appendix to see how far their requirements could be complied with	0	13	4
Going through joint appendix as to the alterations suggested by appellant's solicitors, and also as to the additional documents which they required to be added thereto, &c., very long engaged	2	2	0

July.

Attending appellant's solicitors on their serving us with notice of intention to present petition for further extension of time to lodge appellant's case, and perusing petition, and assenting	0	13	4
Copy petition to keep	0	5	0
Attending the House of Lords when prayer of petition complied with and order made	1	1	0
Attending appellant's solicitors in long conference as to further alterations to be made in joint appendix, and fully in explanation of our proposed amendments.	0	13	4

August.

Attending appellant's solicitors in conference on the final settlement of joint appendix, discussing and explaining the course we intended to adopt with regard to the re-arrangement thereof	0	13	4
Attending appellant's solicitors on their serving notice of intention to present petition for further time to lodge appellant's case until the 3rd day of next session of Parliament, perusing petition, and assenting thereto and signing, &c.	0	13	4
Making copy petition to keep	0	5	0
Attending House of Lords when prayer of petition not complied with and no order made	1	1	0

September.

Going through joint appendix and documents to be added thereto, and finally arranging same for the printer	1	1	0
Drawing additions to joint appendix, being exhibits to, and exhibits, affidavit of, filed, 187, and exhibit, together, folios 170 (half charge)	4	5	0
Making copy thereof for printer	2	16	8
Drawing index to joint appendix in chronological order, referring to the documentary evidence, folios 25 (half charge).	0	12	6
Making copy thereof for printer	0	8	4
Attending printer, instructing proof, and corrections and additions	0	13	4
Examining proof joint appendix as altered with the new matter introduced therein, folios 195	1	12	6
Paid printer's charges	0	6	8
Attending paying same	0	6	8
Attending appellant's solicitors with revised appendix for approval	0	6	8

December.

Attending appellant's solicitors as to the revised joint appendix, long discussion with them thereon, and requesting them to return same approved	0	13	4
Writing to appellant's solicitors requesting return of revised proof	0	3	6

£ s. d.

January, 187 .

Attending appellant's solicitors as to further petition to extend time to lodge appellant's case, perusing petition and assenting . . .	0	13	4
Attending House of Lords when petition presented and order made .	1	1	0

February.

Writing appellant's solicitors requesting them to return joint appendix completed	0	3	6
Session fee	5	5	0
Letters and messengers	3	3	0

Session, 187 .

Attending appellant's solicitors on their returning joint appendix approved, subject to alterations going through same and finally settling	0	13	4
Revising proof of respondent's case and altering same with reference to rearranged appendix	1	1	0
Fee to Mr. to resettle same and clerk	5	15	6
Attending him	0	13	4

March.

Attending appellant's solicitors on their giving us notice of application for further extension of time to lodge appellant's case, perusing petition, and assenting	0	13	4
Attending House of Lords on presentation of petition when same rejected on the ground of the same being dated anterior to the expiring of the time already granted.	1	1	0
Attending appellant's solicitors, conferring with reference to the last consent we had given to extend time for lodging appellant's case, and the ground on which the order had been refused when they handed us further petition, perusing same and assenting thereto	0	13	4
Attending House of Lords on presentation of petition when order made	1	1	0

April.

Attending appellant's solicitors on their informing us of their having lodged their printer cases, and as to joint appendix and arranging to let them have revised proof	0	6	8
Attending printer with case as resettled by counsel and bespeaking proof	0	13	4
Paid printer's charges			
Having received proof of respondent's case from printer, examining and correcting same	0	6	8
Attending printer with revised proof joint appendix and instructing him as to copies to be printed	0	13	4
Paid printer's charges			
Attending printer with revised case of respondent and instructing him	0	13	4

	£	s.	d.
Paid printer's charges			
Attending paying same	0	6	8
Writing to appellant's solicitors in reply to their letter as to remodelling joint appendix and declining to do so	0	3	6
Instructions for petition of respondent to lodge case	0	13	4
Drawing same and copies	1	1	0
Attending appellant's solicitors thereon and obtaining their signature thereto	0	13	4
Attending House of Lords on presentation of petition when order made	1	1	0
Paid fee thereon	1	1	0
Attending Parliament Office, lodging cases	1	1	0
Paid thereon	2	2	0
Writing appellant's solicitors informing them thereof and for an appointment to exchange cases	0	3	6
Attending them subsequently, exchanging cases	0	13	4

May.

Attending the appellant's solicitors as to the final completion of joint appendix, and as to lodging same, and arranging as to presentation of joint petition for leave to deposit same, &c.	0	13	4
Instructions for joint petition for leave to lodge joint appendix	0	13	4
Drawing same and copies	1	1	0
Attending appellant's solicitors therewith for perusal and to obtain their signature thereto	0	13	4
Attending at the House of Lords on presentation of petition, order made	1	1	0
Paid for order on joint petition	0	10	6
Attending at Parliament Office, lodging joint appendix	1	1	0
Making up sets of cases and joint appendixes for binder for use of Law Lords and counsel, and attending binder therewith	0	13	4
Paid binding same			

July.

Attending lodging bound cases for use of the Law Lords	0	13	4
Session fee	5	5	0
Letters and messengers	3	3	0

Session 187 .

May, 187 .

An intimation having been received as to the appeal being argued, but great doubt existing thereon, and the respondent having been in negotiation with the appellant with a view to compromise same, and consequently determined to brief one counsel only.

Drawing retainer to Mr.	0	6	8
Paid his fee and clerk	2	7	0
Attending him	0	13	4
Brief to counsel, to accompany papers to attend and argue appeal on behalf of the respondent	0	13	4

	£	s.	d.
Paid fee to Mr. . . . therewith and clerk	55	2	6
Attending him	2	2	0
Attending to appoint conference	0	13	4
Paid him conference fee and clerk	5	15	6
Attending conference	2	2	0

July.

Having received notice from the principal clerk of the Judicial Department that the Appeal Committee would meet on Monday next writing to respondent informing him thereof	0	3	6
Attending him afterwards in long conference as to the course the appellant was adopting to obtain liberty to continue the appeal <i>in formâ pauperis</i> , and advising him as to the course that should be taken	0	13	4
Attending appellant's solicitors thereon, and conferring and obtaining particulars and information required	0	6	8
Brief to Mr. . . . to attend Appeal Committee	0	13	4
Fee to him and clerk	11	0	0
Attending him	0	13	4
Attending appointing conference	0	13	4
Paid him conference fee and clerk	5	15	6
Attending conference	2	2	0
Attending Appeal Committee order made for appellant to appear <i>in formâ pauperis</i>	5	5	0
Session fee	5	5	0
Letters and messengers	3	3	0

*Session, 187 .**January, 187 .*

Having received letter from the Judicial Office as to hearing of appeal, attending at the House of Lords, when we ascertained that same would probably be heard about the 8th proximo	0	13	4
Attending the appellant's solicitors in conference, as to proceeding with the appeal when they informed us that the appellant would argue the case in person	0	6	8

February.

Writing to the respondent fully in explanation	0	5	0
Having received a further information from the House of Lords, as to the probable hearing of appeal on Monday next, writing to the respondent thereof	0	3	6
The appellant's solicitors having intimated that the appellant had prepared and printed a statement to which he intended to refer to on hearing of appeal, attending them in conference, and to obtain prints for use of our counsel, and they were to forward same	0	6	8
Attending respondent in long and special conference thereon, and fully considering and discussing same, and advising generally, as well as retaining a leading counsel and taking his instructions	1	1	0
Drawing retainer to Mr.	0	6	8

	£	s.	d.
Paid him retainer fee and clerk	2	7	0
Attending him	0	13	4
Drawing brief to Mr. to attend	0	13	4
Paid fee to him and clerk	110	0	0
Attending him	2	2	0
Paid him consultation fee and clerk	5	15	6
Attending to appoint same	0	13	4
Refresher to Mr.	11	0	0
Attending him	0	13	4
Paid him consultation fee and clerk	5	15	6
Attending to appoint same	0	13	4
Attending consultation	2	2	0
Paid for room	0	6	0
Attending House of Lords, appeal called on, and the Law Lords requested to be informed by appellant if he wished the statement he had prepared to be read in lieu of his appeal, or to address them, when appellant requiring time to consider, their Lordships adjourned case until to-morrow, engaged all day	5	5	0
Paid refresher Mr. in further hearing of appeal to-morrow	11	0	0
Attending him	0	13	4
Paid him consultation fee and clerk	5	15	6
Attending to fix same	0	13	4
Paid refresher to Mr.	11	0	0
Attending him	0	13	4
Paid him consultation fee and clerk	5	15	6
Attending him	0	13	4
Attending consultation	2	2	0
Attending at House of Lords on further hearing of appeal, when appeal part heard adjourned, and adjourned until next	5	5	0
Paid refresher to Mr. to attend further hearing of appeal on the inst.	11	0	0
Attending him	0	13	4
Paid him consultation fee and clerk	5	15	6
Attending to fix same	0	13	4
Paid refresher to Mr.	11	0	0
Attending him	0	13	4
Paid him consultation fee and clerk	5	15	6
Attending to fix same	0	13	4
Attending consultation	2	2	0
Attending at the bar of the House of Lords, when appeal further argued and judgment given dismissing appeal with costs	5	5	0
Paid bar fee	8	15	0
Paid general fees of the House	5	5	0
Writing to the respondent informing him the result of the appeal	0	5	0
Having received draft judgment from the Judicial Office of the House, perusing and approving of same	0	13	4
Attending appellants, settling same, and signing	0	13	4
Attending returning draft, judgment approved and signed	0	13	4
Sessions fee	5	5	0
Drawing this bill of costs and copy for the Taxing Officer, folios, at 1s. 6d. per folio			
Attending him therewith	0	10	0
Making copy of bill of costs for appellant's solicitors, at 6d. per folio			
Attending them with same	0	10	0

	£	s.	d.
Attending taxing			
Paid fees for taxing			
Attending settling costs			
Letters, messengers, &c.	3	3	0

FORMS OF BILLS OF COSTS REVISED IN CONFORMITY WITH THE APPELLATE JURISDICTION ACT, 1876, AND WHICH ARE APPLICABLE TO ALL APPEALS, &c., PRESENTED TO THE HOUSE OF LORDS ON AND AFTER THE 7TH DAY OF AUGUST, 1877.

IN THE HOUSE OF LORDS.

On Appeal from Her Majesty's Court of Appeal (England).

BETWEEN *A. B., Appellants, C. D., et al., Respondents.*

The Appellants' Bill of Costs.

Session, 18

18, *January.*

	£	s.	d.
Attending the appellants and discussing with them the effect of the judgment of the Court below, and taking their instructions to appeal to the House of Lords, and taking instructions as to recognizance and bond, agent's retaining fee	0	13	4
Instructions for petition of appeal	0	13	4
Drawing same, folios, at 2s. per folio			
Fair copy for Mr. A. (counsel) to settle and sign, folios at 8d.	0	10	0
Attending him therewith	5	15	6
Paid his fee for settling and signing	0	10	0
Fair copy of appeal for Mr. B. (counsel) to settle and sign	0	10	0
Attending him therewith	5	15	6
Paid his fee for settling and signing	0	10	0
Attending serving respondents' agents with printed copy of appeal and with notice of intention to present the same, and also with certificates with regard to recognizance and bond	0	10	0
Paid printer's account			
Attending at Parliament Office with appeal, and lodging same for presentation	1	1	0
Attending Parliament Office and intimating to officers of the House the appellants' intention with regard to recognizance and bond, and lodging certificates relating thereto	0	10	0
Paid fee on presentation of appeal	1	1	0
Attending at Parliament Office and obtaining order for service on respondents and perusing same	0	10	0
Paid fee on order of service	1	1	0

	£	s	d
Serving copy of order on respondents' agent, at the same time showing the original order	0	10	0
Drawing and engrossing affidavit of service of order upon the respondents' agent	0	10	0
Attending swearing	0	10	0
Paid oath			
Attending at Parliament Office and filing order and affidavit thereon	0	10	0
Attending at the Parliament Office and obtaining the recognizance and bond for execution by the appellants, and sureties before a commissioner	0	10	0
Attending appellant and sureties therewith, or forwarding same for execution if the parties reside in the country	0	10	0
Attending at Parliament Office to return recognizance and bond	0	10	0
Drawing retainer and copy for Mr. A. (counsel)	0	10	0
Attending him	0	10	0
Paid his fee and clerk	2	7	0
Drawing retainer and copy for Mr. B. (counsel)	0	10	0
Attending him	0	10	0
Paid his fee and clerk	2	7	0
Drawing and copy for junior counsel of the list of documents to be printed as an appendix, folios , at 1s. 4d. per folio			
Attending counsel therewith and settling same	1	0	0
Paid fee to counsel and clerk	3	6	0
Drawing appendix in accordance with list as settled by counsel, folios , 1s. per folio			
Fair copy for the printer, folios , 6d. per folio			
Attending him therewith	0	10	0
Having received proofs of the appendix from printer, attending respondents' agents with a copy for his perusal	0	10	0
Attending respondents' agent, when we arranged an appointment to examine proof of appendix with the original documents	0	10	0
Examining and correcting proof with respondents' agents, folios, at 2d. per folio			
Attending printer therewith and instructing him to print same	0	10	0
Paid printer's account			
Attending paying same	0	10	0
Attending respondents' agents, when we supplied them with copies for their use and for the use of counsel	0	10	0
Instructions for appellants' case	1	0	0
Drawing same, folios, at 2s. per folio			
Copy thereof for Mr. A. (counsel) to peruse and settle, folios, at 6d.			
Attending him therewith	0	10	0
Paid his fee (according to the length and importance of the case)			
Copy of case for Mr. B. (counsel) to peruse and settle, folios at 6d.			
Attending him therewith	0	10	0
Paid his fee			
It being considered advisable that case should be finally settled and signed in consultation, attending counsel severally fixing consultation	1	0	0
Paid Mr. A.'s consultation fee and clerk	5	15	6
The like Mr. B.	5	15	6
Attending consultation when case finally settled and signed	1	0	0
Making copy of case as finally settled for the printer, folios at 6d.			

	£	s.	d.
Attending the printer therewith and giving him instructions to print the same	0	10	0
Having received proof of appellants' case from the printer, examining and correcting same, folios, at 2d. per folio			
Attending printer with revised proof, and instructing him to print off the usual number of copies	0	10	0
Paid printer's account			
Attending paying same	0	10	0
Attending respondents' agents exchanging cases	0	10	0
Attending Parliament Office, lodging case and appendix	1	1	0
Paid fee thereon	1	1	0
Drawing motion to set down cause for hearing	0	10	0
Attending House of Lords when motion made	1	1	0
Paid fee thereon	1	1	0
Making up copies of appeal, sets of cases of appellants' and respondents', and appendix for both appellants and respondents to be bound for the use of the Law Lords and for counsel, and attending binder therewith and instructing him	0	10	0
Paid binder's account			
Attending paying same	0	6	8
Attending respondents' agent and supplying him with copies of bound cases for his use and for the use of counsel	0	10	0
Attending clerk of the table with bound cases for the use of the Law Lords	0	10	0
Attending Mr. A. with brief *			
Paid his fee and clerk			
NOTE.—(This fee is regulated according to the magnitude and importance of the case, and in all cases includes the first day's attendance.)			
Attending Mr. B. with brief *			
Paid his fee and clerk			
Attending the Parliament Office, when we received notice that this cause would be in the paper for hearing on next	0	10	0
Attending Mr. A. fixing consultation	0	10	0
Paid his fee and clerk	5	15	6
Attending Mr. B. fixing consultation	0	10	0
Paid his fee and clerk	5	15	6
Attending consultation	1	0	0
Attending at the bar of the House this day, when cause in part heard and adjourned to next	3	6	8
Paid refresher fee to Mr. A. and clerk	11	0	6
Attending paying same	0	10	0
Paid refresher fee to Mr. B. and clerk	7	14	6
Attending paying same	0	10	0
Attending at the bar of the House this day, when cause fully heard, and further consideration put off <i>sine die</i>	3	6	8
Paid bar fee and attendance	8	15	0
Paid cause list	1	1	0
Paid shorthand writer, attendance fee			
Attending at the Parliament Office, when we received notice that this cause would be in the paper for judgment on next	0	10	0
Attending Mr. A. informing him thereof	0	10	0

* Where the brief fee is under 30 guineas, the attendance is 10s.; above 30 guineas and not exceeding 40 guineas, £1; above 40 guineas, £2 2s.

	£	s.	d.
Paid refresher fee to hear judgment	11	0	6
Attending at the bar of the House this day, cause considered, and judgment of the Court below reversed	1	6	8
Having received draft judgment from the chief clerk, perusing same, and making certain alterations therein	0	10	0
Attending respondents' agent with draft judgment as altered	0	10	0
Attending the chief clerk with draft of judgment settled and signed by the agents for both parties	0	10	0
Paid fee on judgment	3	3	0
Session fee	3	3	0
Cab hire, letters, and messengers	1	11	6
Drawing this bill of costs, and copy for taxing officer, folios, at 1s. 6d. per folio			
Attending him therewith	0	10	0
Making copy of bill of costs for the respondents' agent, folios at 6d.			
Attending him therewith	0	10	0
Attending taxing			
Paid fees for taxing			
Attending settling costs			

IN THE HOUSE OF LORDS.

On Appeal from Her Majesty's Court of Appeal (England).

BETWEEN *A. and B., Appellants, C. D., et al., Respondents.*

The Respondents' Bill of Costs.

Session, 18

18 , *March.*

Having received instructions from the respondents to attend to their interests in this appeal, agents' retaining fee	0	13	4
Attendance at the Parliament Office, entering appearance	0	10	0
Attending to ascertain if recognizance or bond duly entered into, and inspecting same	0	10	0
Drawing retainer for Mr. A. (counsel)	0	10	0
Attending retaining him	0	10	0
Paid his retaining fee and clerk	2	7	0
Drawing retainer for Mr. B. (counsel)	0	10	0
Attending retaining him	0	10	0
Paid his retaining fee and clerk	2	7	0
Instructions for case	1	0	0
Drawing same, folios, at 2s. per folio			
Copy of case for Mr. A. to peruse and settle folios at 8d.			
Paid his fee and clerk (regulated according to the magnitude and importance of the case)			
Attending paying same			
Copy of case for Mr. B. to peruse and settle			
Paid his fee and clerk			

	£	s	d
Attending paying same			
Attending the appellants' agent when he served me with notice of his intention to present a petition for further time to lodge his case, perusing petition, and signing same as assenting thereto or refusing assent	0	10	0
Attending the House, when prayer of petition complied with, and order made	1	1	0
(Or if attending before the appeal committee)	1	6	8
It being desired by counsel that the case should be settled and signed in consultation, attending Mr. A. fixing consultation	0	10	0
Paid his consultation fee and clerk	5	15	6
The like attendance on Mr. B.	0	10	0
Paid his consultation fee and clerk	5	15	6
Attending consultation with counsel when case settled and signed	1	0	0
Making copy of case as finally settled for the printer, folios at 6 <i>d</i> . Attending him therewith, and instructing him as to printing	0	10	0
Having received proof case from the printer examining and correcting same, folios, at 2 <i>d</i> . per folio			
Attending printer with corrected proof, and instructing him to print copies	0	10	0
Attending appellants' agent, when he served me with proof copy of the appendix	0	10	0
Perusing and considering same, and found that all the documents necessary for our case were set out in it			
Writing to appellants' agent and appointing next to examine proof with original documents	0	5	0
Examining and correcting same, folios, at 2 <i>d</i> . per folio	0	10	0
Attending appellants' agent, exchanging cases	1	1	0
Attending Parliament Office, lodging cases	1	1	0
Paid fee on lodging same			
Attending Mr. A. with brief*			
Paid his fee and clerk			
NOTE.—(This fee is regulated according to the magnitude and importance of the case, and in all cases covers the first day's attendance.)			
The like attendance on Mr. B.			
Paid his fee and clerk			
Attending the Parliament Office, when we ascertained that this appeal would be in the paper for hearing on next	0	10	0
Attending Mr. A. fixing consultation	0	10	0
Paid his consultation fee and clerk	5	15	6
The like attendance on Mr. B.	0	10	0
Paid his consultation fee and clerk	5	15	6
Attending consultation	1	0	0
Attending at the bar of the House this day, when counsel were fully heard for the appellants, and the further hearing was adjourned until next	3	6	8
Paid Mr. A. refresher fee	11	0	6
Attending him	0	10	0
The like Mr. B.	7	14	6
Attending him	0	10	0
Attending at the bar of the House this day, when counsel were fully			

* Where the brief fee is under 20 guineas, the attendance is 10*s*.; and above 20 guineas and not exceeding 40 guineas, 4*l*.; above 40 guineas, 4*l*. 2*s*.

	£	s.	d.
heard for the respondents and the further consideration of the cause adjourned <i>sine die</i>	3	6	8
Attending at the Parliament Office, when he received notice that this appeal would be in the paper for judgment on next	0	10	0
Attending Mr. A. informing him thereof	0	10	0
Paid refresher fee to hear judgment	11	0	6
Attending at the bar of the House this day, when judgment given affirming the judgment of the Court below, and dismissing this appeal with costs	1	6	8
Having received the draft judgment from the chief clerk, perusing and considering same, and making certain alterations therein	0	10	0
Attending the appellants' agent with draft judgment as settled and signed by the agents for both parties	0	10	0
Paid the following House fees :—			
Bar and attendance fees	£		
Cause list			
Judgment			
<hr/>			
Session fee	3	3	0
Cab hire, letters, and messengers	1	11	6
Drawing this bill of costs, and copy for Taxing Officer at 1s. 6d. per folio			
Attending him therewith	0	10	0
Making copy of bill of costs for the appellant's agent, folios at 6d.			
Attending him therewith	0	10	0
Attending taxing			
Paid fees for taxing			
Attending settling costs			

Plaintiff's Costs of Hearing on Motion for Judgment in consequence of no Defence being delivered.

Michaelmas Sittings, 1879.

November, 1879.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Drawing notice of motion for judgment, at per folio	0	2	0	0	5	0
Copy for service, at per folio, , each	0	0	4	0	0	4
Service of same on defendant's solicitors, each	0	2	6	0	2	6
Making two copies of writ of summons for the Judge, at per folio, each	0	0	4	0	0	4
The like copies of notice of motion at per folio each	0	0	4	0	0	4
The like copies of printed statement of claim, at per folio each	0	0	2	0	0	3
If written, at per folio each	0	0	4	0	0	4
Attending the Judge's secretary with same	0	6	8	0	6	8
Attending to set down action	0	6	8	0	6	8
Paid setting same down	1	0	0	2	0	0
Attending obtaining consent of defendant's solicitor to mark action short, each solicitor	0	6	8	0	6	8
Attending on counsel for certificate that action was fit to be heard as short, and on registrar to mark same	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Notice of same being set down, copy and service	0	4	0	0	4	0
The like to the solicitors for other defendants	0	2	6	0	2	6
Instructions for brief	1	1	0	2	2	0
Drawing same, at per folio	0	1	0	0	1	0
Making 2 copies of same, folios , and notice of motion, folios, together folios, at per folio, each	0	0	4	0	0	4
The like writ of summons, folios , at per folio each	0	0	4	0	0	4
The like of printed statement of claim, together, folios, at per folio each	0	0	2	0	0	3
If printed, at per folio each	0	0	4	0	0	4
The like of necessary documents and correspondence referred to in the pleadings, at per folio each	0	0	4	0	0	4
Attending Mr. , Q.C., with brief and papers	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Mr. with brief and papers	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Attending Mr. appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending consultation	0	13	4	0	13	4
Attending Court, action in paper but not reached	0	10	0	0	10	0
Attending Court, motion heard and judgment given	0	13	4	1	1	0
Or according to circumstances	2	2	0	2	2	0
For the subsequent charges for drawing up order, &c., see page 609.						

Defendant's Costs of Hearing of Motion for Judgment.

Michaelmas Sittings, 1879.

November, 1879.

Attending to give consent to action being marked to be heard as short	0	6	8	0	6	8
Instructions for brief	1	1	0	2	2	0
Drawing same, at per folio	0	1	0	0	1	0
Making 2 copies of same, folios, and notice of mo- tion, folios, together, folios each, at per folio each	0	0	4	0	0	4
The like writ of summons, at per folio each	0	0	4	0	0	4
The like printed statement of claim, at per folio each	0	0	2	0	0	3
If printed, at per folio each	0	0	4	0	0	4
The like of necessary documents and correspondence referred to in the pleadings, at per folio each	0	0	4	0	0	4
Attending Mr. , Q.C., with brief and papers	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Mr. with brief and papers	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Attending Mr. appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending consultation	0	13	4	0	13	4
Attending Court, action in paper but not reached	0	10	0	0	10	0
Attending Court, motion heard and judgment given	0	13	4	1	1	0
Or according to circumstances	2	2	0	2	2	0

For the subsequent charges, for drawing up order,
&c., see page 609.

Costs of Plaintiff on Trial before an Official Referee.

Trinity Sittings, 1879.

June, 1879.

Drawing notice of motion for trial	0	2	0	0	5	0
Or per folio	0	1	0	0	1	0
Copy for service, at per folio	0	0	4	0	0	4
Service thereof on defendant's solicitors, each	0	2	6	0	2	6
Instructions for affidavit of in support of same	0	6	8	0	6	8
Drawing same, at per folio	0	1	0	0	1	0
If necessary, charge for—						
Attending counsel with same to settle	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Engrossing same, at per folio	0	0	4	0	0	4
Preparing exhibit (if any), each	0	1	0	0	1	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
If exhibit, paid him marking exhibit, each	0	1	0	0	1	0
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Notice of filing same, copy and service	0	4	0	0	4	0
The like on solicitors for the other defendants, each	0	2	6	0	2	6
If affidavit filed in opposition, charge for—						
Paid for copy affidavit filed in opposition, at per folio	0	0	4	0	0	4
Perusing same, at per folio	0	0	4	0	0	4
If agency, close copy, at per folio	0	0	4	0	0	4
Drawing brief for counsel to appear in support of motion, at per folio	0	1	0	0	1	0
Making two copies of same for counsel, at per folio each	0	0	4	0	0	4
The like copies of notice of motion for counsel, at per folio each	0	0	4	0	0	4
*The like writ of summons, at per folio each	0	0	4	0	0	4
*The like of printed statement of claim and pleadings, at per folio each	0	0	2	0	0	3
*If written, at per folio each	0	0	4	0	0	4
(If items marked * have been charged before, they will not be allowed.)						
Attending Mr., Q.C., with brief and papers	0	6	8	0	13	4
Paid fee to him and clerk	6	11	0	6	11	0
Attending Mr. with brief and papers	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Paid fee to him and clerk	4	6	6	4	6	6
Attending Mr. appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending consultation	0	13	4	0	13	4
Drawing and engrossing affidavit verifying service of notice of motion, at per folio each	0	1	0	0	1	0
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Making copy of affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Attending Court on motion when order made	0	13	4	1	1	0
Or according to circumstances	2	2	0	2	2	0
Attending the registrar with brief and papers, and bespeaking draft order	0	6	8	0	6	8
Close copy draft order, at per folio	0	0	4	0	0	4
Notice to settle same, copy and service	0	4	0	0	4	0
The like on solicitors for the other defendants, each	0	2	6	0	2	6
Attending to settle same	0	6	8	0	13	4
Or at the Taxing Master's discretion, not to exceed	1	1	0	3	3	0
Paid for order	0	3	0	0	5	0
Notice to pass same, copy and service	0	4	0	0	4	0
The like on solicitors for the other defendants, each	0	2	6	0	2	6
Attending passing same	0	6	8	0	13	4
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Michaelmas Sittings, 1879.

Attending the registrar with order when action was referred to Mr. , official referee.	0	6	8	0	6	8
Making copy order and reference for the official referee, at per folio	0	0	4	0	0	4
Attending the official referee with copy order, and obtaining an appointment to proceed	0	6	8	0	6	8
Paid the official referee's fees	5	0	0	5	0	0
Notice of appointment to proceed, and service thereof upon the defendant's solicitors	0	4	0	0	4	0
The like on the solicitors for the other defendants, each	0	2	6	0	2	6
<i>Subpœna ad testificandum</i> to attend before the special referee	0	6	8	0	6	8
If more than 4 folios, for each folio beyond 4	0	0	4	0	0	4
Paid sealing same	0	2	6	0	5	0
Copies of subpœna for service, folios , at per folio each	0	0	4	0	0	4
Service of same on Mr. , in Cornhill	0	5	0	0	5	0
Service of same on Mr. , at , four miles from office of the solicitor	0	7	0	0	7	0

PLAINTIFF'S COSTS ON TRIAL BEFORE OFFICIAL REFEREE. 787

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Service of same on _____, at _____, six miles from office of the solicitor	0	9	0	0	9	0
If sent to agent for service, charge—						
Writing to agent with same for service	0	3	6	0	3	6
On receipt of subpoena duly served, writing to agent with amount of his charges for service	0	3	6	0	3	6
Paid his charges (post office order)						
If plaintiff has to give evidence, charge—						
Writing to plaintiff informing him of the appointment to proceed	0	3	6	0	3	6
Preparing notice of appointment before the official referee	0	1	6	0	1	6
Services thereof on witnesses, each at	0	2	6	0	2	6
If there are any documents or correspondence which had not been admitted or produced during the proceedings in the action, and will be neces- sary to prove on this reference, charge for—						
Notice to admit	0	5	0	0	7	6
Or per folio	0	0	8	0	1	4
For each other copy such allowance as the Taxing Master shall think proper, not exceeding per folio	0	0	4	0	0	4
Service of same upon each solicitor	0	2	6	0	2	6
Drawing notice to produce	0	5	0	0	7	6
Or per folio	0	0	8	0	1	4
For each other copy, such allowance as the Taxing Master shall think proper, not exceeding per folio	0	0	4	0	0	4
Service of same upon each solicitor	0	2	6	0	2	6
Attending given inspection of documents proposed to be admitted	0	6	8	0	13	4
Or per hour	0	6	8	0	6	8
Making fair copy notice to admit, at per folio	0	0	4	0	0	4
Attending defendant's solicitors on their examining and signing admissions	0	6	8	0	13	4
Perusing defendant's notice to admit	0	6	8	0	13	4
Perusing defendant's notice to produce	0	6	8	0	13	4
Notice to defendant's solicitors of intention to inspect documents, copy and service	0	4	0	0	4	0
Attending and inspecting defendant's documents pro- posed to be admitted	0	6	8	0	13	4
Or per hour	0	6	8	0	6	8
Attending defendant's solicitor, examining and signing their admissions	0	6	8	0	13	4
Instructions for brief, including attendances upon the plaintiff and different witnesses, and taking notes of their evidence and perusing documents. In some actions £1 1s. for taking notes of each witness has been allowed, and in other actions more	9	9	0	10	10	0
Drawing brief and proofs of witnesses, at per folio	0	1	0	0	1	0
Making copy of same for counsel, at per folio	0	0	4	0	0	4
Making copy of documents necessary for counsel on his examination and cross-examination of witnesses, if written, at per folio	0	0	4	0	0	4
If printed, at per folio	0	0	2	0	0	3

	Lower Scale.			Higher Scale		
	£	s.	d.	£	s.	d.
Attending Mr. with same	0	6	8	0	13	4
Paid fee to him and clerk	5	10	0	5	10	0
Attending Mr. appointing conference with him	0	3	4	0	6	8
Paid conference fee to him and clerk	1	6	0	1	6	0
Attending conference	0	13	4	0	13	4
Attending official referee, when plaintiffs' witnesses were partly examined, engaged 3 hours	1	1	0	1	1	0
Drawing further brief for counsel, at per folio	0	1	0	0	1	0
Making fair copy of same, at per folio	0	0	4	0	0	4
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending before the official referee, when plaintiffs' witnesses examined and cross-examined, and defendant's case partly opened, when same adjourned, engaged 3 hours	1	1	0	1	1	0
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Hilary Sittings, 1880.

Drawing further brief for counsel, at per folio	0	1	0	0	1	0
Making fair copy of same, at per folio	0	0	4	0	0	4
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending before official referee, when defendant's witnesses were examined and partly cross-examined, when same adjourned, engaged 2 hours	0	13	4	0	13	4
Drawing further brief for counsel, at per folio	0	1	0	0	1	0
Making fair copy of same, at per folio	0	0	4	0	0	4
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Attending appointment before the official referee, when the cross-examination of defendant's witnesses was completed, engaged 3 hours	1	1	0	1	1	0
Attending appointment before the official referee, when his report was settled						
On receipt of the report of the official referee, perusing same, at per folio	0	0	4	0	0	4
Making copy of the official referee's report, to be marked as an office copy, at per folio	0	0	4	0	0	4
Attending filing report, and for office copy	0	6	8	0	6	8
Paid for office copy, at per folio	0	0	2	0	0	2
Notice of filing same, copy and service	0	4	0	0	4	0
The like on solicitors for other defendants, each	0	2	6	0	2	6
Drawing notice of judgment	0	2	0	0	5	0
Or per folio	0	1	0	0	1	0
Making copies of same for service, at per folio each	0	0	4	0	0	4
Service on defendant's solicitors, each	0	2	6	0	2	6
Making 2 copies of notice of motion for counsel, at per folio each	0	0	4	0	0	4
The like of report for counsel, at per folio each	0	0	4	0	0	4
Drawing brief for counsel, at per folio	0	1	0	0	1	0
Making 2 copies of same for counsel, at per folio each	0	0	4	0	0	4

PLAINTIFF'S COSTS ON TRIAL BEFORE OFFICIAL REFEREE. 789

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending Mr., Q.C., with brief and papers	0	6	8	0	13	4
Paid fee to him and clerk	5	10	0	5	10	0
Attending Mr. with brief and papers	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Mr. appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Making 2 copies of notice of motion for the Judge and registrar, at per folio each	0	0	4	0	0	4
The like of official referee's report, at per folio each	0	0	4	0	0	4
The like of the printed statement of claim and pleadings (if not charged before), at per folio each	0	0	2	0	0	3
If printed (if not charged before), at per folio each	0	0	4	0	0	4
Attending the Judge's secretary with same	0	6	8	0	6	8
Attending at order of course seat, setting down action on motion for judgment	0	6	8	0	6	8
Paid fee on setting same down	1	0	0	2	0	0
Notice of setting same down, copy and service	0	4	0	0	4	0
The like on solicitors for the other defendants, each	0	2	6	0	2	6
Drawing and engrossing affidavit, verifying service of notice of motion, and notice of having set down action, at per folio	0	1	0	0	1	0
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Attending consultation	0	13	4	0	13	4
Attending Court on motion for judgment, same in paper but not reached	0	10	0	0	10	0
Attending Court on motion for judgment, when order made	0	13	4	1	1	0
Or according to circumstances	2	2	0	2	2	0

As to subsequent charges for drawing up order, taxing costs, paying witnesses, &c., see pages 588 and 609.

If there is a view of the premises necessary—

Attending view of the premises at, with the official referee, surveyors, and defendant's solicitor, and also counsel, if considered necessary	
Paid railway fares	
Paid official referee's fee	
Paid his railway expenses	
Paid counsel's fee for attending view	

Defendant's Costs of Trial before an Official Referee.

Trinity Sittings, 1879.

June, 1879.

Paid for copy affidavit of filed in support of motion, at per folio	0	0	4	0	0	4
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	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Perusing same, at per folio	0	0	4	0	0	4
If agency, close copy, at per folio	0	0	4	0	0	4
If any affidavit in reply, charge—						
Instructions for affidavit of	0	6	8	0	6	8
Drawing same at per folio	0	1	0	0	1	0
If necessary, charge—						
Attending counsel with same to settle	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Engrossing affidavit, at per folio	0	0	4	0	0	4
Preparing exhibit (if any), each	0	1	0	0	1	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
If exhibit, paid him marking exhibit, each	0	1	0	0	1	0
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Notice of filing same, copy and service	0	4	0	0	4	0
The like on solicitors for other defendants, each	0	2	6	0	2	6
Drawing brief for counsel in opposition to notice of motion, at per folio.	0	1	0	0	1	0
Making 2 copies of same for counsel, at per folio each	0	0	4	0	0	4
The like copies of notice of motion for counsel, at per folio each	0	0	4	0	0	4
The like writ of summons, at per folio each (if not charged before)	0	0	4	0	0	4
The like printed statement of claim and pleadings (if not charged before), at per folio	0	0	2	0	0	3
The like (if written and not charged before) at per folio	0	0	4	0	0	4
Attending Mr., Q.C., with brief and papers	0	6	8	0	13	4
Paid fee to him and clerk	5	10	0	5	10	0
Attending Mr. with brief and papers	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Mr. appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending consultation	0	13	4	0	13	4
Attending Court on motion when order made	0	13	4	1	1	0
Or according to circumstances	2	2	0	2	2	0
Close copy draft order, at per folio	0	0	4	0	0	4
Attending to settle same	0	6	8	0	13	4
Or at the Taxing Master's discretion not to exceed	1	1	0	3	3	0
Attending passing same	0	6	8	0	13	4
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Michaelmas Sittings, 1879.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Having been served with notice of appointment to proceed before the official referee, attending issuing <i>subpœna ad testificandum</i>	0	6	8	0	6	8
If more than 4 folios, for each folio beyond 4	0	0	4	0	0	4
Paid sealing same	0	2	6	0	5	0
Copies of subpœna for service, folios , at per folio each	0	0	4	0	0	4
Service of same on Mr. , in Fleet Street	0	5	0	0	5	0
Service of same on Mr. at (4 miles from the solicitor's office)	0	7	0	0	7	0
Service of same on Mr. at (5 miles from the solicitor's office)	0	8	0	0	8	0
Attending issuing <i>subpœna duces tecum</i>	0	6	8	0	6	8
If more than 4 folios, for each folio beyond 4	0	0	4	0	0	4
Copy <i>subpœna duces tecum</i> , for service, folios , at per folio	0	0	4	0	0	4
Service of same on Mr. in Chancery Lane	0	5	0	0	5	0
If defendant has to give evidence, charge—						
Writing to defendant informing of the appointment to proceed	0	3	6	0	3	6
Notice to admit and copy	0	5	0	0	7	6
Or per folio	0	0	8	0	1	4
For each other copy, such allowance as the Taxing Master shall think proper, not exceeding per folio	0	0	4	0	0	4
Service of same on each solicitor	0	2	6	0	2	6
Drawing notice to produce and copy	0	5	0	0	7	6
Or per folio	0	0	8	0	1	4
For each other copy such allowance as the Taxing Master shall think proper, not exceeding per folio	0	0	4	0	0	4
Service of same on each solicitor	0	2	6	0	2	6
Attending plaintiff's solicitors, giving them inspection of documents proposed to be admitted	0	6	8	0	13	4
Or per hour	0	6	8	0	6	8
Making copy notice to admit, at per folio	0	0	4	0	0	4
Attending plaintiff's solicitors on their examining and signing admissions	0	6	8	0	13	4
Notice to plaintiff's solicitors of intention to inspect documents in pursuance of notice to admit copy and service	0	4	0	0	4	0
Attending inspecting plaintiff's documents proposed to be admitted	0	6	8	0	13	4
Or per folio	0	6	8	0	6	8
Attending plaintiff's solicitors, examining and signing admissions	0	6	8	0	13	4
Instructions for brief, including attendance on the defendants and 7 different witnesses, taking notes of their evidence, and perusing several deeds and documents	8	8	0	9	9	0
Drawing brief and proofs of witnesses, at per folio	0	1	0	0	1	0
Making fair copy of same for counsel, at per folio	0	0	4	0	0	4
Making copy of documents necessary for counsel on his examination and cross-examination of witnesses, if written, at per folio	0	0	4	0	0	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
If printed, at per folio	0	0	2	0	0	3
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	5	10	0	5	10	0
Attending Mr. appointing conference	0	3	4	0	6	8
Paid conference fee to him and clerk	1	6	0	1	6	0
Attending conference	0	13	4	0	13	4
Attending before the official referee when plaintiff's witnesses were partly examined, engaged 3 hours	1	1	0	1	1	0
Drawing further brief for counsel, at per folio	0	1	0	0	1	0
Making fair copy of same, at per folio	0	0	4	0	0	4
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Attending before the official referee, when the examination and cross-examination of plaintiff's witnesses was completed and defendant's witnesses were partly examined, engaged 3 hours	1	1	0	1	1	0
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Hilary Sittings, 1880.

Drawing further brief for counsel, at per folio	0	1	0	0	1	0
Making fair copy of same, at per folio	0	0	4	0	0	4
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Attending before official referee, when defendant's witnesses were examined and partly cross-examined, engaged 2 hours	0	13	4	0	13	4
Drawing further brief for counsel, at per folio	0	1	0	0	1	0
Making fair copy of same, at per folio	0	0	4	0	0	4
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Attending appointment before the official referee, when the cross-examination of defendant's witnesses was completed, engaged 3 hours	1	1	0	1	1	0
Paid for copy report of the official referee, at per folio	0	0	4	0	0	4
Perusing same, at per folio	0	0	4	0	0	4
Close copy, at per folio	0	0	4	0	0	4
Making 2 copies of notice of motion for counsel, at per folio each	0	0	4	0	0	4
The like of report for counsel, at per folio each	0	0	4	0	0	4
Drawing brief for counsel, at per folio	0	1	0	0	1	0
Making 2 copies for counsel, at per folio	0	0	4	0	0	4
Attending Mr. , Q.C., with brief and papers	0	6	8	0	13	4
Paid fee to him and clerk	5	10	0	5	10	0
Attending Mr. with brief and papers	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Mr. appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6

	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.
Attending consultation	0 13 4	0 13 4
Attending Court on motion for judgment, same in paper, but not reached	0 10 0	0 10 0
Attending Court on motion for judgment, when order made	0 13 4	1 1 0
Or according to circumstances	2 2 0	2 2 0
As to subsequent charges for drawing up order, taxing costs, paying witnesses, &c., see pages 588 and 609.		

COSTS OF OBTAINING ORDER OF COURSE AT THE ROLLS AND COSTS OF AMENDMENTS OF PLEADINGS.

Costs of Obtaining Order of Course at the Rolls.

Drawing and engrossing petition for order appointing Mr. as guardian <i>ad litem</i> for infant defendant	0 4 0	0 4 0
Drawing and engrossing consent of Mr. and obtaining his signature thereto	0 6 8	0 6 8
Instructions for affidavit in support of the application	0 6 8	0 6 8
Drawing same, at per folio	0 1 0	0 1 0
Engrossing same, at per folio	0 0 4	0 0 4
Preparing exhibit	0 1 0	0 1 0
Attending deponent to be sworn to same	0 6 8	0 6 8
Paid commissioner taking deponent's oath and marking exhibit	0 2 6	0 2 6
Making copy affidavit to be marked as an office copy, at per folio	0 0 4	0 0 4
Paid filing affidavit	0 2 0	0 2 0
Paid for office copy, at per folio	0 0 2	0 0 2
Attending presenting petition and afterwards for order	0 6 8	0 13 4
Paid for order	0 3 0	0 5 0
Making copy for service, at per folio	0 0 4	0 0 4
Service of same on each solicitor	0 2 6	0 2 6
Making copy order for chambers, at per folio	0 0 4	0 0 4

Costs of Amendment of Writ.

Instructions to amend writ by adding C. D. as a party	0 6 8	0 13 4
Drawing and engrossing petition for leave to amend	0 4 0	0 4 0
Attending defendant's solicitors, obtaining their consent thereto, each	0 6 8	0 6 8
Attending to present petition and for order	0 6 8	0 13 4
Paid for order	0 3 0	0 5 0
Attending amending writ at the Record and Writ Clerks Office	0 6 8	0 13 4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Paid sealing same	0	2	6	0	2	6
Copy amended writ for service, at per folio	0	0	4	0	0	4
Service thereof on new defendant	0	5	0	0	5	0
If served more than two miles from the office of the solicitor for each mile beyond the two	0	1	0	0	1	0
If sent to an agent, charge—						
Writing to agent with same for service	0	3	6	0	3	6
Paid his charges for service of same, post-office order	0	3	6	0	3	6
Writing him with same	0	3	6	0	3	6

Costs of Amendments of Statements of Claims.

Preparing summons to amend statement of claim and attending at chambers to get same sealed	0	3	0	0	6	8
Paid stamping same	0	2	0	0	3	0
Making copy to leave at chambers	0	2	0	0	2	0
Or per folio	0	0	4	0	0	4
Copy for service	0	1	0	0	2	0
Or per folio				0	0	4
Service on defendant's solicitors, each service	0	2	6	0	2	6
Attending summons before chief clerk, when order made for amendment of statement of claim						
Or same at the defendant's request adjourned to the Judge, if adjourned to the Judge charge—						
Attending adjourned summons before the Judge when order made						
(If the application to amend statement of claim is made after the defendant has delivered his statement of defence, the order for amendment is generally made with liberty for defendant to deliver his amended statement of defence within a certain time.)						
Paid for order	0	3	0	0	5	0
Attending to enter same, and afterwards for same entered	0	6	8	0	6	8
Instructions to amend statement of claim	0	6	8	0	13	4
Drawing amendment	0	5	0	0	10	0
Or per folio	0	1	0	0	1	0
Attending Mr. with same to settle	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Inserting amendments in printed copies statement to serve, each	0	1	0	0	5	0
Or per folio	0	0	4	0	0	4
If printed, making copy of amendments for the printer, at per folio	0	0	4	0	0	4
Correcting proof of the whole, at per folio	0	0	2	0	0	2
Paid printer's charges (minus £ received for copies)						
Copies print for delivery, at per folio each	0	0	2	0	0	3
Attending to deliver amended statement to solicitors, each	0	3	4	0	6	8
Copy statement of claim if written for service on new defendant, at per folio	0	0	4	0	0	4
If printed, at per folio	0	0	2	0	0	3

COSTS OF APPLICATION FOR NAMES OF PARTNERS.

Costs of Application for Names of Partners who are (Plaintiffs or Defendants) Co-partners.

Hilary Sittings, 1879.

	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.
Preparing summons for plaintiffs or defendants to show cause why they should not upon oath state their christian and surnames, and attending at chambers to get same sealed	0 3 0	0 6 8
Paid sealing same	0 2 0	0 3 0
Making copy for chambers	0 2 0	0 2 0
Copy and service on each solicitor	0 3 6	0 4 6
Or per folio		0 0 4
Attending summons when order made		
Close copy minutes of order, at per folio	0 0 4	0 0 4
Notice to settle same, copy and service	0 4 0	0 4 0
The like on the solicitors for other parties, each	0 2 6	0 2 6
Attending to settle order	0 6 8	0 13 4
Paid for order	0 3 0	0 5 0
Notice to pass same, copy and service	0 4 0	0 4 0
The like on the solicitors for other parties, each	0 2 6	0 2 6
Attending to pass same	0 6 8	0 13 4
Copy for service, at per folio each	0 0 4	0 0 4
Indorsing warning, each	0 1 0	0 1 0
Service thereof on each solicitor	0 2 6	0 2 6
Paid for copy affidavit, at per folio	0 0 4	0 0 4
Perusing same, at per folio	0 0 4	0 0 4
If agency close copy, at per folio	0 0 4	0 0 4
If no other proceedings in the action during the sittings in which this order is made, charge—		
Sittings fee	0 15 0	0 15 0
If agency, letters, &c.	0 6 0	0 6 0

COSTS OF A CREDITOR OF PROVING CLAIM WHEN HIS CLAIM IS OPPOSED.—COSTS OF PROVING CLAIM WHEN TIME FOR CARRYING IN CLAIM HAS EXPIRED.—COSTS OF PROCEEDINGS TO DISMISS ACTION FOR WANT OF PROSECUTION.

Costs of proving a Claim of a Creditor when his Claim is opposed.

Instructions for affidavit of Mr.	in support of his		
claim			
Drawing same, at per folio		0 6 8	0 6 8
Engrossing same, at per folio		0 1 0	0 1 0
		0 0 4	0 0 4

	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.

If any exhibit, charge—

Making copy of exhibit, at per folio	0 0 4	0 0 4
Preparing exhibit	0 1 0	0 1 0
Attending deponent to be sworn to same	0 6 8	0 6 8
Paid commissioner taking deponent's oath, and marking exhibit	0 2 6	0 2 6
Paid filing affidavit	0 2 0	0 2 0
Notice of filing same, copy and service on plaintiffs' solicitor	0 4 0	0 4 0
Attending appointment before the chief clerk, when claim allowed	0 5 0	0 5 0
Letters, &c.	0 5 0	0 5 0

(As the creditor's claim after he has made an affidavit in support of it is still objected to, and has sometimes to answer affidavits filed in opposition to it, the chief clerk will either assess the costs in chambers or give a request to the Taxing Master to tax them.)

Costs of proving a Claim in an Action where time expired.

Preparing summons for liberty to prove claim and attending at chambers to get same sealed	0 3 0	0 6 8
Or at Taxing Master's discretion	0 6 8	1 1 0
Paid stamping same	0 2 0	0 3 0
Making copy to leave at chambers	0 2 0	0 2 0
Or per folio	0 0 4	0 0 4
Copy and service on each solicitor	0 3 6	0 4 6
Or per folio	0 0 4	0 0 4
Instructions for affidavit in support of claim	0 6 8	0 6 8
Drawing same, at per folio	0 1 0	0 1 0
Engrossing same, at per folio	0 0 4	0 0 4
If exhibits, preparing exhibit, each	0 1 0	0 1 0
Attending deponent to be sworn to same	0 6 8	0 6 8
Paid commissioner taking deponent's oath	0 1 6	0 1 6
Paid him marking exhibit, each	0 1 0	0 1 0
Making copy affidavit to be marked as an office copy, at per folio	0 0 4	0 0 4
Paid filing affidavit	0 2 0	0 2 0
Paid for office copy, at per folio	0 0 2	0 0 2
Notice of filing same, copy and service	0 4 0	0 4 0
The like on the other solicitors, each	0 2 6	0 2 6
Attending summons, when order made for claim to be allowed	0 0 4	0 0 4
If order drawn up, charge—		
Close copy draft order, at per folio	0 0 4	0 0 4
Notice to settle same, copy and service	0 4 0	0 4 0
The like on the other solicitors, each	0 2 6	0 2 6
Attending settling same	0 6 8	0 13 4
Paid for order	0 3 0	0 5 0
Notice to pass same, copy and service	0 4 0	0 4 0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
The like to the other solicitors, each	0	2	6	0	2	6
Attending passing same	0	6	8	0	13	4
Letters, &c.	0	5	0	0	10	0

Costs of Proceedings to dismiss Action for want of Proceedings.

Preparing summons for plaintiff to show cause why his action should not be dismissed with costs, he not having served replication, or for not obeying any order made against him	0	3	0	0	6	8
Or not to exceed	0	6	8	1	1	0
Paid stamping same	0	2	0	0	3	0
Making copy to leave at chambers	0	2	0	0	2	0
Or per folio				0	0	4
Copy and service of same on plaintiffs' solicitors	0	3	6	0	4	6
Or per folio				0	0	4
Instructions for affidavit in support of same	0	6	8	0	6	8
Drawing same, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Notice of filing same, copy and service	0	4	0	0	4	0
Attending summons, when order made dismissing action with costs						
Close copy draft order, at per folio	0	0	4	0	0	4
Notice to settle same, copy and service	0	4	0	0	4	0
Attending to settle same	0	6	8	0	13	4
Or at the Taxing Master's discretion not to exceed	1	1	0	3	3	0
Paid for order	0	3	0	0	5	0
Notice to pass same, copy and service	0	4	0	0	4	0
Attending passing same	0	6	8	0	13	4
Making copy order for Taxing Master, at per folio	0	0	4	0	0	4
If action not already referred, charge —						
Attending to get Taxing Master in rotation marked	0	6	8	0	6	8

As to taxation of costs, see p. 609.

COSTS OF OBTAINING ORDER TO TAX SOLICITOR'S BILL OF
COSTS AND APPLICANT'S COSTS OF THE REFERENCE.

IN THE HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

In the matter of A. B. & C. D., two Solicitors of the Supreme Court.

£ s. d.

June, 1878.

Attending Mr. _____, conferring with him respecting the bill of costs of Messrs. A. B. and C. D., which he had received, and advising him fully thereon, when he requested us to obtain an order to tax same under the Solicitors' Act	0	13	4
If applicant an infant or married woman, charge for Drawing authority and attending to obtain consent of Mr. _____, to sue in his name as next friend	0	13	4
Drawing petition, folios 5	0	5	0
Engrossing same	0	1	8
Attending at the Rolls Secretary's office to present same and for order	0	13	4
Paid for order	0	5	0
Making copy order for service, at per folio	0	0	4
Service of same	0	5	0
Or, if served beyond two miles from solicitor's office, for each mile beyond such two extra	0	1	0
If sent to an agent, charge—			
Writing to agent with same for service	0	3	6
Writing to agent subsequently with amount of his charges	0	3	6
Paid his charges (post-office order)			
Attending to get Master in rotation marked	0	6	8
Making copy order for the Taxing Master, at per folio	0	0	4
Making copy of bill of costs directed to be taxed for use, at per folio	0	0	4
Warrant on leaving bill of costs, copy and service	0	5	6
Warrant to tax copy, and service	0	5	6
Or if sent to agent for service—			
Writing to agent with same	0	3	6
Subsequently writing to agent with his charges	0	3	6
Paid agent's charges (post-office order)			
Paid for copy affidavit of Mr. _____, verifying account of receipts and payments, at per folio	0	0	4
The like of account, at per folio	0	0	4
Perusing affidavit and account, at per folio	0	0	4
If agency, close copy	0	0	4
Attending before the Master taxing Messrs. A. B. and C. D.'s bill of costs, and proceeding on their account, when same settled, at per hour each	0	6	8
If a sixth has been taxed off, charge—			
Drawing this bill of costs and copy, at per folio	0	0	8
Warrant on leaving copy and service	0	5	6
Warrant to tax copy and service	0	5	6
Attending taxing same for every 25 folios, or fractional part	0	6	8

	£	s.	d.
Certificate and transcribing	1	2	0
Attending to file same and bespeaking office copy	0	6	8
Paid for office copy	0	3	0
Sittings fee	0	15	0
If agency, letters, &c.	0	6	0
Paid per-centage on £, amount of bill of costs, Messrs. A. B. and C. D.			
The like upon £, amount of this bill			
The like upon taxing amount of receipts and pay- ments, £			

Costs of obtaining an order for Taxation of Solicitor's Bill of Costs which had been delivered twelve months or which had been paid.

June, 1878.

Attending Mr., and conferring with him on Mr. 's bill of costs, when he stated it had been delivered to him beyond twelve months, or had been paid, and perusing bill, and advising him that it would be necessary to apply to have same taxed, as several of the charges were excessive, and taking his instructions to do so	1	1	0
If applicant an infant or married woman, charge—			
Drawing authority and attending and obtaining consent of Mr., to sue in his name as next friend	0	13	4
Preparing original summons and fair copy, and attending at chambers to get same sealed	1	1	0
Paid sealing same	0	10	0
Making copy of summons for chambers	0	2	0
Or per folio	0	0	4
Attending to seal duplicate and original summons, and attending to get copy marked for service	0	13	4
Making duplicate to file at Record and Writ Clerk's Office	0	2	0
Or at per folio	0	0	4
Paid sealing duplicate	0	5	0
Making copy summons to serve	0	2	0
Or at per folio	0	0	4
Paid sealing copy to serve	0	5	0
Service of same	0	5	0
If served at a distance of more than two miles from solicitor's office for each mile beyond such two miles extra	0	1	0
If sent to an agent, charge—			
Writing to agent with same for service	0	3	6
Subsequently writing to agent with his charges	0	3	6
Paid his charges (post-office order)			
Drawing and engrossing affidavit, verifying service of copy summons, at per folio	0	1	0
Paid commissioner taking deponent's oath	0	1	6
Making copy affidavit to be marked as an office copy, at per folio	0	0	4
Paid filing affidavit	0	2	0
Paid for office copy, at per folio	0	0	2
Instructions for affidavit of, in support of summons	0	6	8

(The Taxing Master has the power to increase this allowance.)

	£	s.	d.
Drawing same, at per folio	0	1	0
Engrossing same, at per folio	0	0	4
Preparing exhibits (if any), each	0	1	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath	0	1	6
Paid him marking exhibits (if any), each	0	1	0
Making copy of affidavit to be marked as an office copy, at per folio	0	0	4
Paid filing affidavit	0	2	0
Paid for office copy, at per folio	0	0	2
Notice of filing same, copy and service	0	4	0
If affidavit filed in opposition, charge—			
Paid for copy affidavit of, at per folio	0	0	4
Perusing same	0	0	4
If agency, close copy	0	0	4
Attending summons, when order made			
Close copy draft order, at per folio	0	0	4
Notice to settle same, copy and service	0	4	0
Attending settling same	0	13	4
Or at Taxing Master's discretion	3	3	0
Paid for order	0	5	0
Notice to pass same, copy and service	0	4	0
Attending passing same	0	13	4
(For making copy and taxing solicitor's costs, see previous bill.)			

Solicitor's Bill for Appearing on an Original Summons to tax his Bill of Costs and the Costs of the Reference when a sixth has not been Taxed off.

May, 1878.

Instructions to defend	0	13	4
Attending entering an appearance	0	6	8
Paid entering same	0	2	0
For every person beyond the first	0	2	0
Notice thereof, copy and service	0	4	0
Paid for copy affidavit filed in support of summons, at per folio	0	0	4
Perusing same	0	0	4
If agency, close copy	0	0	4
(If any affidavit filed in opposition charge for same)			
Attending summons, when order made			
Close copy draft order, at per folio	0	0	4
Notice to settle same, copy and service	0	4	0
Attending settling same	0	13	4
Or, at the Taxing Master's discretion, not to exceed	3	3	0
Paid for order	0	5	0
Notice to pass same, copy and service	0	4	0
Attending passing same	0	13	4
Attending solicitor's bill of costs and proceeding upon accounts when same settled, at per hour each	0	6	8
Drawing this bill of costs and copy, at per folio	0	0	8
Warrant on leaving same, copy and service	0	5	6
Warrant to tax same, copy and service	0	5	6
Attending taxing same, for every 25 folios or fractional part	0	6	8

	£	s.	d.
Sittings fee	0	15	0
If agency, letters, &c.	0	6	0
Paid per centage on £, amount of costs as taxed			
Paid per centage upon £, amount of this bill			
Paid per centage on taking accounts (£)			
	£		

Costs of Motion to Commit for non-delivery of Costs and Account in Pursuance of Order.

In the matter of, a solicitor of the Supreme Court.

Michaelmas Sittings, 1879.

1879. November.

Drawing notice of motion to commit	0	5	0
Or per folio	0	0	4
Making copy for service, at per folio	0	0	4
Service of same	0	5	0
Or if beyond 2 miles from the solicitors, for each mile beyond such two miles, extra	0	1	0
If sent to an agent for service, charge			
Writing to agent with same	0	3	6
Subsequently writing to agent with his charges	0	3	6
Paid his charges (post-office order)			
Drawing and engrossing affidavit of service of order for delivery and taxation of bill, at per folio	0	1	0
Preparing exhibits (if any), each	0	1	0
Paid Commissioner taking deponent's oath	0	1	6
Paid him marking exhibits (if any) each	0	1	0
Making copy affidavit to be marked as an office copy, at per folio	0	0	4
Paid filing affidavit	0	2	0
Paid for office copy, at per folio	0	0	2
Drawing and engrossing affidavit, verifying service of copy notice of motion, at per folio	0	1	0
Paid Commissioner taking deponent's oath	0	1	6
Making copy affidavit to be marked as an office copy, at per folio	0	0	4
Paid filing affidavit	0	2	0
Paid for office copy, at per folio	0	0	2
Instructions for affidavit of, in support of notice of motion	0	6	8
Drawing same, at per folio	0	1	0
Engrossing same, at per folio	0	0	4
Preparing exhibits (if any), each	0	1	0
Attending deponent to be sworn to same	0	6	8
Paid Commissioner taking deponent's oath	0	1	6
Paid him marking exhibits (if any), each	0	1	0
Making copy affidavit to be marked as an office copy, at per folio	0	0	4
Paid filing affidavit	0	2	0

	£	s.	d.
Paid for office copy, at per folio	0	0	2
Notice of filing same, copy and service	0	4	0
Drawing brief for counsel to appear in support of notice of motion, at per folio	0	1	0
Making copy thereof, folios, notice, folios, affidavit in support, folios; exhibits (if any), folios; and order for delivery of bill of costs, folios; together folios for counsel, at per folio	0	0	4
Attending Mr. with same	0	6	8
Paid fee to him and clerk	3	5	6
Attending Court when, on motion being called on, Mr., counsel for Mr., requesting further time to answer applicant's affidavit, when motion was ordered to stand over until next motion day	0	13	4

December.

Paid for copy affidavit of, at per folio	0	0	4
Perusing same, at per folio	0	0	4
If agency, close copy	0	0	4
Making brief of the affidavit for counsel, at per folio	0	0	4
Attending Mr. with same	0	6	8
Paid fee to him and clerk	2	4	6
Attending him with same	0	6	8
Attending Court on adjourned motion, when order made for an attachment order not to be drawn up for days	1	1	0
30. Attending the Registrar with brief and papers bespeaking draft order	0	6	8
Close copy draft order, at per folio	0	0	4
Notice to settle same, copy and service	0	4	0
Attending settling same	0	13	4
Paid for order	0	5	0
Notice to pass same, copy and service	0	4	0
Attending passing same	0	13	4
Preparing writ of attachment, and attending to get same sealed	0	10	0
Paid sealing same	0	10	0
Attending lodging same with Mr., the undersheriff	0	6	8
Paid for warrant			
Making copy order for the Taxing Master, at per folio	0	0	4
Attending to get Master in rotation marked	0	6	8
Charges for taxation, &c., as in page 798.			

PETITIONERS' COSTS OF APPOINTMENT OF NEW TRUSTEES.

IN THE HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

In the matter of the Trusts of the Will of deceased,

AND

In the matter of the Trustee Act, 1850, and of the Act 15 & 16 Viet. c. 55,
entitled "An Act to Extend the Provisions of the Trustee Act, 1850."

The Bill of Costs and Expenses of the Petitioners of and relating to the ap-
plication to be taxed in pursuance made in the above-named matters on the
day of 1879.

Hilary Sittings, 1879.

Lower Scale. Higher Scale.
£ s. d. £ s. d.

1879. January.

Attending Mr. A. B., when he informed us the nature of this case, by which it appeared the trustees under deceased's will had renounced, and in consequence the trusts for sale of the house at could not be carried out, and that the deeds of the property and the will of testator were in the hands of Mr. C. D., who had refused to move in the matter, and receiving instructions to see Mr. on same	0	6	8	0	6	8
Subsequently, Mr. C. D., and conferring with him thereon	0	6	8	0	6	8
30. Attending Mr. C. D. on his handing over the deeds of the property, and giving him a receipt for same, and consulting with him as to the position of the estate	0	6	8	0	6	8
Attending Mr. A. B., informing him that we had received the deeds from Mr. C. D., and requesting him to send the other parties entitled under the will to sign a retainer, and instruct us in the matter	0	6	8	0	6	8
31. Attending Mr. and Mrs. G. F., Mr. and Mrs. G. H., and Mrs. J., on their signing retainer, and requesting the trusts of the will should be carried out	0	6	8	0	6	8

February.

Attending Mr. J., the husband of one of the parties entitled under the will, as to his consenting to a sale being made, and on his signing the retainer	0	6	8	0	6	8
Drawing case for counsel to advise on, at per folio	0	1	0	0	1	0
Making fair copy of same for counsel, at per folio	0	0	4	0	0	4
Making copy of will of testator to accompany same, at per folio	0	0	4	0	0	4

March.

Attending Mr. with same	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
23. Making close copy of counsel's opinion, at per folio	0	0	4	0	0	4
24. Attending Mr. A. B., reading over to him counsel's opinion, and conferring with him as to the steps that should be taken	0	6	8	0	13	4

1879. *March 25.*

Instructions for petition	0	6	8	0	13	4
If petitioner is an infant or married woman charge						
Drawing consent of next friend to act, and attending to get same signed	0	6	8	0	13	4
Drawing same, at per folio	0	1	0	0	1	0
Attending Mr. with same, to settle draft petition	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
On receipt of draft petition settled by counsel with his opinion on same, making close copy of his opinion, at per folio	0	0	4	0	0	4

April.

Attending Mr. on his calling and stating that he purchased the share of the testator's widow, and that he was willing to concur in the petition for the appointment of new trustees, and requesting him to produce the deed assigning the share, which he promised to do	0	6	8	0	6	8
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May.

1. Mr. having failed to produce the deed, writing and informing him he was delaying the matter	0	3	6	0	3	6
Subsequently attending Mr. on his calling and producing the deed assigning the share of the testator's widow to him—Perusing assignment and conferring with him on his giving us the further information we required	0	6	8	0	13	4
On receipt of further instructions in answer to counsel's opinion, attending Mr. with same to revise draft petition	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Engrossing petition, at per folio	0	0	4	0	0	4
Making copy petition for the Judge, at per folio	0	0	4	0	0	4

July.

Preparing certificate of lower scale, attending filing same, and for office copy	0	5	0			
Paid stamping petition	0	5	0	1	0	0
Attending to present same and afterwards for same answered	0	6	8	0	6	8
Copy petition for service, at per folio	0	0	4	0	0	4
Service of same	0	5	0	0	5	0
Or if beyond 2 miles from the solicitor's office, for each mile beyond the 2	0	1	0	0	1	0

PETITIONERS' COSTS OF APPOINTMENT OF NEW TRUSTEES. 805

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
If sent to agent for service, charge						
Writing to agent with original petition and copy for service	0	3	6	0	3	6
On receipt of original petition duly endorsed as to service of same, writing to agent with his charges for service of same	0	3	6	0	3	6
Paid his charges (post office order)						
Drawing and engrossing affidavit verifying service of petition, at per folio	0	1	0	0	1	0
Preparing exhibit	0	1	0	0	1	0
Paid commissioner taking deponent's oath and marking exhibit	0	2	6	0	2	6
Drawing consents of new trustees to act, at per folio	0	0	4	0	0	4
Attending Mr., one of the proposed trustees, obtaining and attesting his signature thereto	0	6	8	0	6	8
The like on Mr.	0	6	8	0	6	8
Instructions for affidavit verifying fitness of the proposed trustees	0	6	8	0	6	8
Drawing same, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Drawing affidavit of verifying signature to consent, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Preparing exhibit	0	1	0	0	1	0
Attending deponent sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6	0	2	6
Making copy of affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Instructions for affidavit verifying petition	0	6	8	0	6	8
Drawing same, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Preparing exhibits (if any), each	0	1	0	0	1	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Paid him marking exhibits (if any), each	0	1	0	0	1	0
Notice of filing these affidavits, copy and service of same	0	4	0	0	4	0
The like on solicitors for other parties, each	0	2	6	0	2	6
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Easter Sittings, 1879.

	Lower Scale.			Higher Scale		
	£	s.	d.	£	s.	d.
Attending at Somerset House searching for and bespeaking certificates of death of the trustees engaged one hour	0	6	8	0	6	8
Paid for searching and 2 certificates	0	7	2	0	7	2
Instructions for affidavit identifying certificates of deaths of trustees	0	6	8	0	6	8
Drawing same, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Preparing 2 exhibits	0	2	0	0	2	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath and marking exhibits	0	3	6	0	3	6
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
The deed poll executed by and, who were the executors of deceased (who was the surviving trustee of the testator), having been prepared by Mr., of, solicitor, and attested by one of his clients attending him for the present address of the attesting witnesses when he undertook to obtain an affidavit from his client, Mr., who was one of the witnesses as to the execution of the deed by, and on his giving us information as to the other attesting witness	0	6	8	0	6	8
Drawing affidavit of verifying execution of disclaimer by, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Preparing exhibit	0	1	0	0	1	0
Attending Mr. on his handing us affidavit duly sworn by his client, and on his giving us the address of the other witness	0	6	8	0	6	8
Paid his charges						
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy affidavit, at per folio				0	0	2
Writing to Mr. at the address given us by Mr., to know if he was the attesting witness to the deed of disclaimer	0	3	6	0	3	6
On receipt of letter from Mr. stating that he was willing to make the required affidavit, drawing same, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Preparing exhibit	0	1	0	0	1	0
Clerk's journey to going through the affidavit with Mr., and afterwards with him before a commissioner to be sworn to same						

PETITIONERS' COSTS OF APPOINTMENT OF NEW TRUSTEES. 807

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Paid commissioner taking deponent's oath and marking exhibit	0	2	6	0	2	6
Paid railway fare and expenses to and from						
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Notice of filing same copy and service	0	4	0	0	4	0
The like on solicitors for other parties, each	0	2	6	0	2	6
(If any affidavits filed in opposition) charge						
Paid for copy affidavit of, filed on behalf of respondent, at per folio	0	0	4	0	0	4
Perusing same	0	0	4	0	0	4
If agency, close copy	0	0	4	0	0	4
Drawing brief for counsel to appear in support of petition, at per folio	0	1	0	0	1	0
Making 2 brief copies of same, folio, petition, folio, affidavit in support of same, folio, affidavits in opposition, folio, and exhibits, folio, for counsel together, folios each, at per folio each	0	0	4	0	0	4
Attending Mr., Q.C., with same	0	6	8	0	13	4
Paid fee to him and clerk	8	13	0	8	13	0
Attending Mr. with same	0	6	8	0	13	4
Paid fee to him and clerk	6	11	0	6	11	0
Attending Mr. appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending respondents on their calling, conferring with them as to the amendments which they required in the petition	0	6	8	0	6	8
Attending consultation with counsel, when it was arranged that on the hearing of the petition that an order should be made subject to petition being amended as required by the respondents' solicitors	0	13	4	0	13	4
Attending Court, petition in paper, but not reached	0	6	8	0	10	0
Attending Court this day, when petition heard and order made subject to petition being amended as requested	0	13	4	1	1	0
Or according to circumstances, not to exceed	1	1	0	2	2	0
Drawing amendments to petition, at per folio	0	1	0	0	1	0
Attending Mr. with same to settle same	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending the Master of Rolls' Secretary on his amending petition	0	6	8	0	6	8
Attending the Registrar with brief and papers, and bespeaking draft order	0	6	8	0	6	8
Close copy draft order, at per folio	0	0	4	0	0	4
Notice to settle same, copy and service	0	4	0	0	4	0
The like upon solicitors after the first, each	0	2	6	0	2	6
Attending settling same	0	6	8	0	13	4
Or at Taxing Master's discretion, not to exceed	1	1	0	3	3	0
Paid for order	0	10	0	1	0	0
If order printed, charge						

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending, examining, and correcting proof	0	6	8	0	6	8
Notice to pass same, copy and service	0	4	0	0	4	0
The like upon solicitors after the first, each	0	2	6	0	2	6
Attending at Somerset House with order for two denoting stamps of 10s. each to be impressed	0	6	8	0	6	8
Paid stamping same	1	0	0	1	0	0
Attending to pass order	0	6	8	0	13	4
If some of the assets are invested in stock, charge						
Attending to bespeak, and for office copy, order to lodge at the Bank of England						
Paid for same, at per folio	0	0	6	0	0	6
Attending at the Bank of England with order and office copy, and lodging same for examination	0	6	8	0	6	8
Attending at the Bank bespeaking power of attorney for transfer of stock, and afterwards for same	0	6	8	0	6	8
Paid for power						
Attending Mr., attesting and witnessing his execution of same	0	6	8	0	6	8
The like Mr.	0	6	8	0	6	8
Attending at the Bank, lodging power	0	6	8	0	6	8
Attending the broker instructing him to transfer stock	0	6	8	0	6	8
Writing to the broker with amount of his charges	0	3	6	0	3	6
Paid him						
Attending with order for Taxing Master in rotation to be marked	0	6	8	0	6	8
Making copy order for the Taxing Master, at per folio	0	0	4	0	0	4
Drawing bill of costs and copy, at per folio	0	0	8	0	0	8
Warrant on leaving copy and service	0	4	6	0	5	6
Warrant to tax copy and service	0	4	6	0	5	6
Attending taxing same, at per 25 folios or fractional part	0	6	8	0	6	8
Paid for copy costs of respondent, at per folio	0	0	4	0	0	4
Attending taxing same						
Certificate and transcribing	0	2	0	1	2	0
Attending to file same, and getting office copy marked	0	6	8	0	6	8
Paid for office copy	0	3	0	0	3	0
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0
Letters, messengers, &c.	1	1	0	2	2	0

Respondents' Costs of appearing on Petition for Appointment of New Trustees.

Hilary Sittings, 1879.

1879. *January.*

Instructions to defend	0	6	8	0	13	4
If the respondent is an infant or married woman, charge						
Drawing consent of next friend to act, and attending to get same signed	0	6	8	0	13	4
Paid for copies of affidavits filed on behalf of the petitioners, at per folio, each	0	0	4	0	0	4

RESPONDENTS' COSTS OF APPOINTMENT OF NEW TRUSTEES. 809

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Perusing same, at per folio each	0	0	4	0	0	4
Paid for copy exhibits (if any), at per folio each	0	0	4	0	0	4
If agency close copy affidavits and exhibits, at per folio each	0	0	4	0	0	4
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Easter Sittings, 1879.

If any affidavits filed in opposition, charge						
Instructions for affidavit of	0	6	8	0	6	8
Drawing same, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Preparing exhibits (if any), each	0	1	0	0	1	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Paid him marking exhibits, each	0	1	0	0	1	0
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Notice of filing same copy and service	0	4	0	0	4	0
The like upon solicitors after the first, each	0	2	6	0	2	6
Drawing brief for counsel to appear in support of petition, at per folio	0	1	0	0	1	0
Making 2 brief copies of same, folio, petition, folio, affidavits in support of same, folio, affidavits in opposition, folio, and exhibits, folio, for counsel together folios each, at per folio each	0	0	4	0	0	4
Attending Mr., Q.C., with same	0	6	8	0	13	4
Paid fee to him and clerk	7	12	0	7	12	0
Attending Mr. with same	0	6	8	0	13	4
Paid fee to him and clerk	5	10	0	5	10	0
Attending Mr. appointing consultation	0	6	8	0	6	8
Paid fee to him and clerk	2	9	6	2	9	6
Attending Mr. appointing consultation	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
Attending petitioners' solicitors, and conferring with them as to the alterations the respondent required to be made in the petition when they arranged that their counsel on hearing of the petition should consent to same	0	6	8	0	6	8
Attending consultation	0	13	4	0	13	4
Attending Court petition in paper, but not reached	0	6	8	0	10	0
Attending Court this day when petition heard and order made subject to the petition being amended	0	13	4	1	1	0
Or according to circumstances, not to exceed	1	1	0	2	2	0
Close copy draft order, at per folio	0	0	4	0	0	4
Attending settling same	0	6	8	0	13	4
Or at Taxing Master's discretion, not to exceed	1	1	0	3	3	0
Attending passing same	0	6	8	0	13	4

(As to draft of bill of costs and taxation of same, see Applicant's Bill of Costs.)

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0
Letters, messengers, &c.	0	10	6	1	1	0

Costs of payment in of Cash and Transfer of Stock into Court under the Trustee Relief Act.

Instructions for affidavit for payment in cash and for transfer of stock in Court	0	6	8	0	6	8
(In higher scale the Taxing Master may, at his discretion, increase this allowance).						
Drawing same, at per folio	0	1	0	0	1	0
Attending Mr. with same to settle	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Engrossing same, at per folio	0	0	4	0	0	4
Preparing exhibit (if any), each	0	1	0	0	1	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Paid him marking exhibits (if any), each	0	1	0	0	1	0
Making fair copy affidavit for the printer, at per folio	0	0	4	0	0	4
Examining and correcting proof	0	0	2	0	0	2
Paid printer's charges	0	2	0	0	2	0
Paid filing affidavit	0	0	6	0	0	6
Paid for office copy, at per folio	0	0	6	0	0	6
Attending at the Paymaster-General's office bespeaking directions for transfer into Court £1000 £3 per cent. annuities to an account, to be entitled "The bequest to the churchwardens of the parish of"	0	6	8	0	6	8
Attending the Paymaster-General bespeaking directions to pay in £30 to the credit of the like account, and attending at the Bank of England paying in same, and at the Report Office for office copy, receipt.	0	13	4	0	13	4
Paid for office copy receipt, at per folio	0	0	6	0	0	6
Attending at the Paymaster-General's office bespeaking directions for transfer into Court £500 £3½ per cent. annuities to an account to be entitled ""	0	6	8	0	6	8
Attending Paymaster-General bespeaking directions for payment in £15 to the credit of the like account, and attending at the bank paying in same, and at the Report Office for office copy receipt	0	13	4	0	13	4
Paid for office copy receipt, at per folio	0	0	6	0	0	6
Attending at the Bank of England bespeaking power of attorney to transfer £1000 £3 per cent annuities into Court, and afterwards attending and obtaining same	0	13	4	0	13	4
Paid for power						
Attending at the Bank of England bespeaking power of attorney to transfer £500 £3½ per cent. annuities into Court, and afterwards attending and obtaining same	0	13	4	0	13	4
Paid for power						
Writing to Mr. with these powers for execution	0	3	6	0	3	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Or attending him obtaining his execution of both powers	0	13	4	0	13	4
Writing to broker with an appointment to transfer	0	3	6	0	3	6
Attending with broker making transfer of the £1000 £3 per cent. annuities, and attending and bespeaking office copy certificate of transfer	0	13	4	0	13	4
Paid for office copy certificate, at per folio	0	0	6	0	0	6
Attending with broker making transfer of the £500 £3½ per cent. annuities, and attending and bespeaking office copy certificate of transfer	0	13	4	0	13	4
Paid for office copy certificate, at per folio	0	0	6	0	0	6
Drawing notice of payment and transfer into Court, at per folio	0	1	0	0	1	0
Making fair copy thereof, at per folio	0	0	4	0	0	4
Service thereof, each	0	5	0	0	5	0
Letters, &c.	0	5	0	0	10	0

COSTS OF VENDORS UNDER THE LANDS CLAUSES ACT, 1845,
FOR PAYMENT OUT OF PART OF THE CASH AND FOR
INVESTMENT OF THE BALANCE.

IN THE HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

In the matter of

Railway Act, 18 ,

AND

In the Matter of the Lands Clauses Consolidation Act, 1845.

The Bill of Costs, Charges, and Expenses of the Petitioner to be taxed under Order, dated the day of , 1879, *for payment out of part of the Purchase-money, and to invest the Balance in purchase of £3 10s. per cent. annuities.*

Hilary Sittings, 1879.

January, 1879.

Writing to the railway solicitors as to the payment of purchase-money into Court	0	3	6	0	3	6
Writing them in reply to theirs with computation of interest to be paid by them into Court	0	3	6	0	3	6
(Insert here proper charges for attendances and letters that may have been necessary in order to bring the purchase to a completion.)						

<i>February.</i>	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.
Instructions for petition for payment out of Court of part of purchase-money to petitioner, for investment of residue and payment of dividends to petitioner	0 6 8	0 13 4
Drawing same, at per folio	0 1 0	0 1 0
Attending Mr. with same	0 6 8	0 6 8
Paid fee to him and clerk	2 4 6	2 4 6
Engrossing petition, at per folio	0 0 4	0 0 4
Making copy petition for the judge, at per folio	0 0 4	0 0 4
Paid stamping petition	0 5 0	1 0 0
Making copy petition for service, at per folio	0 0 4	0 0 4
Service of same on company's solicitors	0 2 6	0 2 6
Drawing and engrossing affidavit, verifying service of copy petition, at per folio	0 1 0	0 1 0
Preparing exhibit	0 1 0	0 1 0
Paid commissioner taking deponent's oath and marking exhibit	0 2 6	0 2 6
Making copy affidavit to be marked as an office copy, at per folio	0 0 4	0 0 4
Paid filing affidavit	0 2 0	0 2 0
Paid for office copy, at per folio	0 0 2	0 0 2
Instructions for affidavit in support of petition	0 6 8	0 6 8
(In higher scale the Taxing Master is authorized to increase this allowance if he thinks fit).		
Drawing same, at per folio	0 1 0	0 1 0
Engrossing same, at per folio	0 0 4	0 0 4
Preparing exhibits (if any) each	0 1 0	0 1 0
Attending deponent to be sworn to same	0 6 8	0 6 8
(If the solicitor has to go beyond 2 miles from his office, for every other mile beyond the 2 miles)	0 1 0	0 1 0
Paid commissioner taking deponent's oath	0 1 6	0 1 6
Paid him for marking exhibits (if any), each	0 1 0	0 1 0
If affidavit sent to an agent to be sworn to, charge		
Writing to agent with same	0 3 6	0 3 6
Writing him subsequently with his charges	0 3 6	0 3 6
Paid his charges (post-office order)		
Making copy affidavit to be marked as an office copy, at per folio	0 0 4	0 0 4
Paid filing affidavit	0 2 0	0 2 0
Paid for office copy, at per folio	0 0 2	0 0 2
Notice of filing same, copy and service	0 4 0	0 4 0
Attending the Paymaster-General bespeaking certificate of fund in Court, and afterwards for same	0 6 8	0 6 8
Drawing brief for counsel, at per folio	0 1 0	0 1 0
Making fair copy of same, folios ; petition, folios ; affidavit, folios ; and exhibit, folios ; together, folios , for counsel, at per folio	0 0 4	0 0 4
Attending Mr. with same	0 6 8	0 6 8
Paid fee to him and clerk	2 4 6	2 4 6
Attending Mr. , appointing conference	0 3 4	0 6 8
Paid fee to him and clerk	1 6 0	1 6 0
Attending conference	0 13 4	0 13 4
Attending Court petition in paper, but not reached	0 6 8	0 10 0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
<i>February.</i>						
Attending Court petition heard and order made	0	13	4	1	1	0
Or, according to circumstances, not to exceed	1	1	0	2	2	0
Attending registrar with brief and papers, and bespeak- ing draft order	0	6	8	0	6	8
Close copy draft order, at per folio	0	0	4	0	0	4
Notice to settle same, copy and service	0	4	0	0	4	0
Attending settling same	0	6	8	0	13	4
Or, at Taxing Master's discretion, not to exceed	1	1	0	3	3	0
Paid for order	0	10	0	1	0	0
Notice to pass same, copy and service	0	4	0	0	4	0
Attending passing same	0	6	8	0	13	4
Sittings fee	0	15	0	0	15	0
If agency	0	6	0	0	6	0

Easter Sittings, 1879.

Attending the Paymaster-General with order and bespeaking cheque	0	6	8	0	6	8
Attending the Paymaster-General to bespeak power of attorney to receive £ payable to the petitioner	0	6	8	0	6	8
Paid for stamp and paper (as paid)						
Attending the petitioner upon his signing power and attesting his execution of same	0	6	8	0	6	8
*Filling up and completing affidavit of execution, and attending to depose thereto	0	13	4	0	13	4
*Preparing exhibit	0	1	0	0	1	0
*Paid commissioner taking deponent's oath, and mark- ing exhibit	0	2	6	0	2	6
If sent to agent, charge						
Writing to agent with power of attorney for execution	0	3	6	0	3	6
On receipt of power duly executed, writing to agent with his charges	0	3	6	0	3	6
Paid his charges (post-office order)						
Attending lodging power, and afterwards attending to receive cheque	0	6	8	0	6	8
Drawing request to the Paymaster-General to invest the balance	0	2	6	0	2	6
Attending him with same	0	6	8	0	6	8
Paid broker's charges						
Attending the Paymaster-General to bespeak power of attorney for receipt of dividends	0	6	8	0	6	8
Paid for power	0	8	3	0	8	3
Attending the petitioner on his executing power, and attesting his execution thereof	0	6	8	0	6	8
*Filling up and completing affidavit of execution, and attending to depose thereto	0	13	4	0	13	4
*Preparing exhibit	0	1	0	0	1	0
*Paid commissioner taking deponent's oath and mark- ing exhibit	0	2	6	0	2	6
(If sent to agent for execution, charge as before).						

* No affidavit is required now to verify executions of powers of attorney.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending lodging power, and afterwards attending to receive cheque	0	6	8	0	6	8
If no power, charge for						
Attending to identify petitioner on his receiving cheque	0	6	8	0	6	8
Attending to get Master in rotation marked, if not already referred	0	6	8	0	6	8
Making copy order for the Taxing Master, at per folio	0	0	4	0	0	4
Drawing bill of costs and copy, at per folio	0	0	8	0	0	8
Warrant on leaving same, copy and service	0	4	6	0	5	6
Warrant to tax, copy and service	0	4	6	0	5	6
Attending taxing same, at 25 folios or fractional part	0	6	8	0	6	8
Certificate and transcribing	0	2	0	1	2	0
Attending to file and bespeak office copy	0	6	8	0	6	8
Paid for office copy	0	3	0	0	3	0
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0
Letters, messengers, &c.	1	1	0	2	2	0

COSTS OF OBTAINING CHARGING ORDERS *NISI* AND
ABSOLUTE ON STOCK IN A COMPANY.

IN THE HIGH COURT OF JUSTICE, 1876.

B. 111.

CHANCERY DIVISION.

BETWEEN A. B., *Plaintiff*, and C. D., and others, *Defendants*.

In the matter of the Act 1 & 2 Vict. c. 110, and of the Act 3 & 4 Vict. c. 82.

Taxed

The Bill of Costs of the Defendants of obtaining Charging Orders Nisi and Absolute on Plaintiff's Stock in the Company, to be paid by the Plaintiff, pursuant to the Order dated day of , 1877.

Easter Sittings, 1876.

May 27, 1876.

Attending at the offices of the Company searching registrar of shareholders and making inquiries as to the amount of stock held by plaintiff, and obtaining all the necessary particulars	0	6	8	0	13	4
Drawing affidavit in support of same, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Paid for office copy, at per folio	0	0	2	0	0	2
Instructions for counsel to move	0	6	8	0	10	0
Making copy affidavit to accompany, at per folio	0	0	4	0	0	4
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Attending Court motion made, and order <i>nisi</i> for charging order granted	0	10	0	0	13	4
Attending the registrar with brief and papers and bespeaking draft order	0	6	8	0	6	8
Drawing notice to the Company of order having been granted not to allow stock and shares to be dealt with by plaintiff, at per folio	0	1	0	0	1	0
Fair copy thereof for service, at per folio	0	0	4	0	0	4
Attending at the office of the Company, and serving the secretary with same	0	5	0	0	5	0
Close copy draft order <i>nisi</i> , folios, at per folio	0	0	4	0	0	4
Attending settling same	0	6	8	0	13	4
Paid for order	0	3	0	0	5	0
Attending passing same	0	6	8	0	13	4
Making fair copy order for service on the Com-pany, at per folio	0	0	4	0	0	4

June.

Attending serving same on the secretary of the com-pany, and producing original order	0	5	0	0	5	0
Making fair copy for service on plaintiff, at per folio	0	0	4	0	0	4
Attending the plaintiff's residence in the Road, and serving him with same, 4 miles from plaintiff's solicitor's office	0	7	0	0	7	0

Trinity Sittings.

20. Drawing and engrossing affidavit of service of charging order <i>nisi</i> , at per folio	0	1	0	0	1	0
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Instructions for counsel to move to make order <i>nisi</i> absolute	0	6	8	0	10	0
Making copy order for him, at per folio	0	0	4	0	0	4
The like affidavit of service to accompany, at per folio	0	0	4	0	0	4
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6

July.

Attending Court motion heard and order <i>nisi</i> made absolute	0	6	8	0	13	4
Attending the registrar with brief and papers and bespeaking draft order	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Close copy draft order, at per folio	0	0	4	0	0	4
Attending the registrar settling same	0	6	8	0	13	4
Paid for order	0	3	0	0	5	0
Attending passing same	0	6	8	0	13	4
Making copy order for service on Company, at per folio	0	0	4	0	0	4
Attending serving the same on the secretary of the com- pany	0	5	0	0	5	0

(During these two sittings further proceedings were going on in the action, and, therefore, the defendants were not entitled to sittings fees.)

Trinity Sittings, 1877.

July.

Attending plaintiff's summons to discharge charging order (the costs of the defendants having been taxed and paid), when the chief clerk made an order upon payment by the plaintiff to the defendants of their costs, consequent upon the application, and of the orders <i>nisi</i> and absolute, but the plaintiff's solicitors, being dissatisfied with this decision, at their request summons adjourned to the Judge in Chambers on the day of next	0	6	8	0	13	4
12. Drawing and fair copy brief to counsel upon ad- journed summons	0	6	8	0	10	0
Copy summons to accompany, at per folio	0	0	4	0	0	4
The like order absolute, at per folio	0	0	4	0	0	4
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Mr. appointing conference	0	3	4	0	6	8
Paid fee to him and clerk	1	6	0	1	6	0
Attending at the Chambers of the Judge getting summons placed in the list for counsel	0	6	8	0	6	8
Notice thereof, copy and service on plaintiff's solicitors	0	4	0	0	4	0
Attending adjourned summons before the Judge, when he approved the order made by the chief clerk and directed the plaintiff to pay costs, including costs of obtaining orders <i>nisi</i> and absolute	0	6	8	0	13	4
Close copy draft order to discharge charging orders, at per folio	0	0	4	0	0	4
Attending before the registrar settling same	0	6	8	0	13	4
Attending passing same	0	6	8	0	13	4
Sittings fee agency	1	1	0	1	1	0

Michaelmas Sittings, 1877.

Drawing this bill of costs and copy for the Master, at per folio	0	0	8	0	0	8
Warrant on leaving copy and service	0	4	6	0	5	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Warrant to tax copy and service	0	4	6	0	5	6
Attending taxing same, at per 25 folios or fractional part	0	6	8	0	6	8
Certificate and transcribing	0	2	0	1	2	0
Attending to file same and bespeaking office copy	0	6	8	0	6	8
Paid for office copy	0	3	0	0	3	0
Sittings fee agency	1	1	0	1	1	0
				<hr/>		
Taxed off				<hr/>		
Paid <i>ad valorem</i> duty				<hr/>		
				<hr/>		
				£		
				<hr/>		

COSTS OF PETITION OF TRUSTEES UNDER WILL, BEING VENDORS UPON A PURCHASE MADE UNDER LAND CLAUSE CONSOLIDATION ACT WHERE MONEY PAID INTO COURT THEREUNDER AND ON PETITION TO GET SAME OUT OF COURT.

Costs of Petition of Trustees under Will, being Vendors upon a Purchase made under Land Clauses Consolidation Act where Money Paid into Court under Petition to get same out of Court.

IN THE HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

In the matter of *Railway Act, 18 . . .*
The Bill of Costs of the Petitioners to be taxed under Order dated the
day of , 1876.

November, 1876.

Attending the petitioners receiving instructions from them to go through deeds and prepare abstracts of title	0	6	8	0	6	8
Drawing abstract of title, at per folio	0	1	0	0	1	0
Making fair copy, at per folio	0	0	4	0	0	4
Attending to deliver same	0	6	8	0	6	8
21. Attending examination of deeds, at per hour	0	6	8	0	6	8
Having received copy requisitions on title, perusing same	0	6	8	0	6	8
(If requisitions very long and voluminous this charge can be increased by the Master according to circumstances.)						
Attending Mr. (one of the petitioners) conferring with him upon the requisitions when he stated that						

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
having collected the rents for the last years, he could depose as to the identity of the premises	0	6	8	0	6	8
Drawing answers to requisitions, at per folio	0	1	0	0	1	0
Making fair copy of same, at per folio	0	0	4	0	0	4
Instructions for declaration of identity of premises	0	6	8	0	6	8
Drawing same, at per folio	0	1	0	0	1	0
Making copy of same for approval of purchaser's solicitor, at per folio	0	0	4	0	0	4
Writing to him with same and answers to the requi- sitions	0	3	6	0	3	6
Having received draft conveyance, perusing same at per skin	0	5	0	0	5	0
Perusing copy plan attached	0	0	4	0	0	4
Making copy to keep, at per folio	0	0	4	0	0	4
Making copy contract and agreement entered into for purchase for counsel on his perusing and settling draft conveyance, at per folio	0	0	4	0	0	4
Attending Mr. with same and draft conveyance for him to peruse settlement on behalf of the purchaser	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending purchasers' solicitor, returning him draft conveyance as settled by counsel and conferring with him as to the proposed declaration of identity, which he said was perfectly satisfactory	0	6	8	0	6	8
Engrossing declaration, at per folio	0	0	4	0	0	4
Attending deponent to be declared to same	0	6	8	0	6	8
Paid commissioner's fee	0	1	6	0	1	6
Instructions for petition to obtain money out of Court	0	6	8	0	6	8
Drawing same, at per folio	0	1	0	0	1	0
Attending Mr. with same to settle	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Engrossing petition, at per folio	0	0	4	0	0	4
Attending to present same	0	6	8	0	6	8
Paid stamping same	0	5	0	1	0	0
Making copy of petition for the Judge, at per folio	0	0	4	0	0	4
Making copy of petition for service on respondents, at per folio	0	0	4	0	0	4
Service thereof	0	5	0	0	5	0
Instructions for affidavit in support of petition	0	6	8	0	6	8
Drawing same, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
If exhibits, preparing exhibits, each	0	1	0	0	1	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Paid him marking exhibits (if any), each	0	1	0	0	1	0
Making copy of affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Attending at searching for and obtaining certi- ficate of death of testator, and examining same with registry	0	6	8	0	6	8
Paid for search and certificate	0	3	7	0	3	7

COSTS OF PETITIONERS UNDER LAND CONSOLIDATION ACT. 819

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Attending at Church searching for and obtaining certificate of burial of one of the trustees of testator's will	0	13	4	0	13	4
Paid for search and certificate	0	3	7	0	3	7
(If the certificates can be obtained at the Registrar-General's office the charges for searching would be according to the time occupied in searching and also for searching at different churches.)						
Instructions for affidavit of identifying of the certificates	0	6	8	0	6	8
Drawing same, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Preparing two exhibits	0	2	0	0	2	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath and marking exhibits	0	3	6	0	3	6
Making copy affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Notice of filing these affidavits, copy and service	0	4	0	0	4	0
Drawing brief for counsel, at per folio	0	1	0	0	1	0
Making brief copy of same, folio, petition folio and affidavit folio together folios for counsel, at per folio	0	0	4	0	0	4
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Attending Mr. appointing conference	0	3	4	0	6	8
Paid conference fee to him and clerk	1	6	0	1	6	0
Attending conference	0	13	4	0	13	4
Attending the Paymaster-General bespeaking and for certificate of fund in Court	0	6	8	0	6	8
10. Attending Court order made as prayed	0	13	4	1	1	0
Or according to circumstances not to exceed	1	1	0	2	2	0
Attending the Registrar with brief and papers and bespeaking draft order	0	6	8	0	6	8
Close copy draft order, at per folio	0	0	4	0	0	4
Notice to settle same, copy and service	0	4	0	0	4	0
Attending settling same	0	6	8	0	13	4
Or at Taxing Master's discretion, not to exceed	1	1	0	3	3	0
Preparing list of evidence (if required by registrar)	0	6	8	0	6	8
Paid for order	0	10	0	1	0	0
Notice to pass same, copy and service	0	4	0	0	4	0
Attending passing same	0	6	8	0	13	4
Attending bespeaking office copy of Paymaster-General's certificate and afterwards for same	0	6	8	0	6	8
Paid for same, at per folio	0	0	6	0	0	6
27. Attending discussing our alterations in the draft deed of conveyance and finally settling same for engrossment	0	6	8	0	6	8

March 1st.

Attending with trustee receiving amount of interest due in addition to cash paid into Court	0	6	8	0	6	8
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	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Examining engrossment of deed, at per skin	0	3	4	0	3	4
Attending the trustees and arranging an appointment to complete, and informing purchaser's solicitors thereof	0	6	8	0	6	8
If any one of the trustees live in the country, charge	0	2	6	0	2	6
Drawing request for power of attorney	0	6	8	0	6	8
Attending at the Paymaster-General's office with same	0	6	8	0	6	8
Paid for power of attorney						
Clerk attending at Lewes, obtaining execution of power and of conveyances	1	11	6	1	11	6
Paid railway fare and expenses						
*Attending filling up affidavit, verifying execution, and attending to swear same	0	6	8	0	6	8
*Paid commissioner taking deponent's oath and marking exhibit	0	2	6	0	2	6
Attending at the Paymaster-General's leaving power to be examined and bespeaking cheque	0	6	8	0	6	8
Preparing schedule of title deeds and documents to be given up to purchaser on completion of the purchase, at per folio	0	1	0	0	1	0
Making two copies of same, at per folio each	0	0	4	0	0	4
Attending appointment completing purchase, when conveyance signed and title deeds documents given on schedule of same being signed	0	13	4	0	13	4
Attending the Sitting Master with order for to get Taxing Master in rotation marked	0	6	8	0	6	8
Making copy order for the Taxing Master, at per folio	0	0	4	0	0	4
Drawing this bill of costs and copy, at per folio	0	0	8	0	0	8
Warrant on leaving same, copy and service	0	4	6	0	5	6
Warrant to tax same, copy and service	0	4	6	0	5	6
Attending taxing same, at per 25 folios or fractional part	0	6	8	0	6	8
Certificate and transcribing	0	2	0	1	2	0
Attending to file and bespeaking office copy	0	6	8	0	6	8
Paid for office copy	0	3	0	0	3	0
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0
Letters, messengers, &c.	1	1	0	2	2	0
Taxed off						
Paid <i>ad valorem</i> duty						
				£		

* No affidavit is ne required verifying execution of powers of attorneys.

In the matter of the Trusts of the sum of £ , representing Shares of the Residuary Estate of A. B.

And in the Matter of the Act 10 & 11 Vic^t. c. 96, intituled "An Act for Better Securing Trust Funds, and for the Relief of Trustees."

The Bill of Costs of C. D., Widow, E. F., Widow, and G. H., to be taxed as between Solicitor and Client, in pursuance of Order made on the day of , 1881.

Hilary Sittings, 1881.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
<i>January 29, 1881.</i>						
Instructions for petition for payment of money out of Court	0	6	8	0	13	4
Drawing petition, at per folio	0	1	0	0	1	0
Attending Mr. with same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Drawing instructions for counsel to advise on evidence in support of same, at per folio	0	1	0	0	1	0
Making fair copy of same for counsel, at per folio	0	0	4	0	0	4
Attending Mr. with same	0	3	4	0	6	8
Paid fee to him and clerk	1	3	6	1	3	6
<i>March 1.</i>						
Instructions for affidavit of C. D.	0	6	8	0	13	4
Drawing same, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Making copy of this affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
16. Drawing affidavit of (solicitor in the matter), at per folio	0	1	0	0	1	0
Making copies of letters, &c., for counsel, to enable him to settle affidavit, at per folio	0	0	4	0	0	4
Making fair copy of statutory declaration of counsel, at per folio	0	0	4	0	0	4
Attending Mr. to settle same	0	6	8	0	6	8
Paid fee to him and clerk	2	4	6	2	4	6
Attending Mr. appointing conference	0	3	4	0	3	4
Paid conference fee to him and clerk	1	6	0	1	6	0
Attending conference	0	13	4	0	13	4
17. Attending at the Registrar-General's office, searching for certificates of baptisms of and , and certificate of death of	0	13	4	0	13	4
Paid searches and certificates, each	0	3	7	0	3	7
21. Attending at the Paymaster-General's office, and ascertaining the amount of dividends received for January last on fund in Court, to enable us to insert amount of same in draft petition	0	6	8	0	6	8
Attending at the Registrar-General's office, searching for marriage certificate of and	0	6	8	0	6	8
Paid search and for certificate	0	3	7	0	3	7

	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.
22 and 23. It being necessary for a member of our firm personally to see T. S. (who had refused to write further letters, and required a personal interview; and whose evidence might not be forthcoming if not seen by us personally.) Journey to London, conferring with _____, when he consented to make the necessary affidavit. Engrossing affidavit and marking exhibit, and attending upon a commissioner to attend at the deponent's house, he being very old and infirm	6 6 0	6 6 0
Paid commissioner his fee for his attendance and taking oath of deponent, and marking exhibit	0 10 0	0 10 0
Paid railway fare and expenses		
24. Writing to the widow of _____ to know when her husband died, and where he was buried, to enable us to make use of the declaration made by him when alive	0 3 6	0 3 6
<i>June 30.</i>		
Attending at the Registrar-General's office, searching for certificate of death of _____ and bespeaking office copy	0 6 8	0 6 8
Paid for search and copy certificate	0 3 7	0 3 7
<i>July 11.</i>		
Making copy petition to present, per folio	0 0 4	0 0 4
Making copy of same for the Judge, at per folio	0 0 4	0 0 4
Preparing certificate of lower scale and office copy	0 5 0	
Attending to present petition, and afterwards same answered	0 6 8	0 6 8
Paid stamping same	0 5 0	0 10 0
Engrossing affidavit of _____ (solicitor in the matter), at per folio	0 0 4	0 0 4
Preparing exhibits, each at	0 1 0	0 1 0
Attending deponent to be sworn to same	0 6 8	0 6 8
Paid commissioner taking deponent's oath and marking exhibits		
Making copy of this affidavit to be marked as an office copy, at per folio	0 0 4	0 0 4
Paid filing affidavit	0 2 0	0 2 0
Paid for office copy, at per folio	0 0 2	0 0 2
The like charges in the same proportion for further affidavits		
Making copy petition for service on respondent's solicitors, at per folio	0 0 4	0 0 4
Attending on Messrs. _____, solicitors, when they accepted service of same on behalf of the respondents	0 6 8	0 6 8
13. Having received instructions to enquire as to the proper place where _____'s (brother of testator) children would have been baptized, attending on the parish clerk of St. James, Piccadilly, when he informed us that Poland Street, Oxford Street, was situate in the parish of St. James, and that a person		

APPLICANT'S COSTS FOR PAYMENT OF MONEY OUT OF COURT. 823

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
of the persuasion of the Established Church, resident in Poland Street, would most likely have his children baptized in the Parish Church, or the District Parish Church	0	6	8	0	6	8
14. Drawing affidavit of as to the result of this attendance, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Making copy of this affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Notice of filing these affidavits, copy and service	0	4	0	0	4	0
Attending at the Paymaster-General's, bespeaking certificate of fund in Court, and afterwards for same	0	6	8	0	6	8
(Charge for payments of any affidavits filed in opposition, perusing same, and if agency, for close copies of same.)						
Drawing brief for counsel to appear on behalf of petitioners, at per folio	0	1	0	0	1	0
Making brief copy of same, folios, copy petition, folios, and copies of affidavits and exhibits, folios, (and if any affidavits filed in opposition, copies of same) for counsel, together, folios, at per folio	0	0	4	0	0	4
Printed copy of affidavit of H. L. and others, filed the day of, 1880, for counsel, at per folio	0	0	2	0	0	3
Attending Mr., Q.C., with same	0	13	4	0	13	4
Paid fee to him and clerk	5	10	0	5	10	0
Attending Mr. appointing conference	0	6	8	0	6	8
Paid conference fee to him and clerk	2	7	0	2	7	0
15. Attending conference	0	13	4	0	13	4
16. Attending Court when petition heard and order made as prayed, but the Judge would not dispense with the usual affidavit as to settlement	1	1	0	1	1	0
18. Writing to petitioner, C. D., fully explaining the order made, and what steps would now have to be taken, and requesting her to send us her marriage settlement	0	3	6	0	3	6
Writing a similar letter to the petitioner, E. F.	0	3	6	0	3	6
19. Attending the registrar with brief and papers, and bespeaking draft order	0	6	8	0	6	8
Attending petitioner, C. D., on her wishing to know if it was really necessary to have the settlement produced, especially as by the release the shares under the testator's will were released in her favour, when we informed her a special application was made to the Judge on the matter, who declined to dispense with the usual course.	0	6	8	0	6	8
28. Close copy draft order, at per folio	0	0	4	0	0	4
August 9.						
Attending at Somerset House, searching for and obtaining certificates of death of J. T., R. P., and S. H.	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Paid searches and for office copies certificates	0	10	9	0	10	9
Perusing marriage settlement, &c., of C. D., at per folio	0	0	4	0	0	4
10. Writing to petitioner, E. F., for date and place of her marriage with her late husband	0	3	6	0	3	6
13. Writing to the clerk of Church for certificate of marriage of E. F. and	0	3	6	0	3	6
Subsequently writing to him with his fee for the certificate	0	3	6	0	3	6
Paid him	0	3	7	0	3	7
16. Writing to the Rev. for certificate of marriage of C. D. with her first husband	0	3	6	0	3	6
18. Writing to the Rev. with his fee for the certificate of this marriage	0	3	6	0	3	6
Paid his fee	0	3	7	0	3	7
19. Attending on the Rev. for the certificate of marriage of C. D. with her second husband	0	6	8	0	6	8
Paid his fee	0	3	7	0	3	7
Instructions for affidavit of E. F., verifying the certificates of her marriage and death of her husband	0	6	8	0	6	8
Drawing same, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Preparing 2 exhibits	0	2	0	0	2	0
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner for taking deponent's oath, and for his attendance at her house, she being very old and in an infirm state of health	0	10	0	0	10	0
Making copy of this affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Instructions for joint affidavit of C. D. as to the marriages and deaths of her husbands, and as to the settlement made on her marriage with F. D., and release therefrom, and of H. L. as to having perused settlement and release	0	6	8	0	6	8
Drawing same, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Preparing 7 exhibits	0	7	0	0	7	0
Writing to C. D. making an appointment to call upon her to make the affidavit	0	3	6	0	3	6
Writing to commissioner making an appointment to swear C. D. to affidavit	0	3	6	0	3	6
23. Attending deponents C. D. and H. L. on their being sworn to their joint affidavits	0	6	8	0	6	8
Paid commissioner for taking the oaths of deponents, and marking exhibits, and for his attendance at in consequence of deponent C. D. being old and infirm	1	3	4	1	3	4
26. Making copy of this affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2

APPLICANT'S COSTS FOR PAYMENT OF MONEY OUT OF COURT. 825

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Notice of filing these affidavits, copy and service	0	4	0	0	4	0
29. Attending the Paymaster-General and bespeaking further certificate of fund in Court, and afterwards for same	0	6	8	0	6	8

September.

2. Making calculations of dividend for order	0	6	8	0	6	8
Drawing amendment to petition, at per folio	0	1	0	0	1	0
Amending petition	0	13	4	0	13	4
Attending the Rolls Secretary's office and getting amendments to petition sealed	0	6	8	0	6	8
Attending amending respondent's copy petition	0	6	8	0	6	8
3. Having received letter from agents requesting probate of the will of to be sent at once to enable them to produce it to the registrar on settling draft order, journey to, 8 miles distant, attending on Mrs. , one of the executors, and obtaining same and giving a receipt for same	1	1	0	1	1	0
Paid chaise hire	0	10	0	0	10	0
5. Attending registrar discussing this matter with him, when he consented to settle this draft order for registrar, and settled same subject to counsel's certificate as to petitioner's C. D. settlement	0	6	8	0	13	4
6. Making brief copy affidavit of C. D. and another, filed the day of last, and copies of indentures of settlement and release together, folio, for counsel to peruse and give certificate, at per folio	0	0	4	0	0	4
13. Attending counsel with same	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Notice to settle order, copy and service	0	4	0	0	4	0
23. Attending appointment before the registrar finally settling draft order	0	6	8	0	13	4
27. Attending before the registrar settling proof of order	0	6	8	0	6	8

October.

19. Paid for order	0	10	0	1	0	0
Notice to pass same, copy and service	0	4	0	0	4	0
20. Attending passing same	0	6	8	0	13	4
25. Drawing affidavit verifying the Bank average price on the day of, 1881, as would be equivalent to £ s. d. cash, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Making copy of affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Michaelmas Term, 1881.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Making copy order for the Taxing Master, folios 15	0	5	0	0	5	0
Attending at the Taxing Master's office with order to be referred and afterwards for same	0	6	8	0	6	8
Drawing bill of costs and copy, folio, and summary, folio, together folios, at per folio	0	0	8	0	0	8
Warrant on leaving same copy and service	0	2	6	0	2	6
Warrant to tax same copy and service	0	2	6	0	2	6
Attending taxing same, for every 25 folios or fractional part	0	6	8	0	6	8
Paid for copy costs of respondents, folio						
Attending taxing same, for every 25 folios or fractional part	0	6	8	0	6	8
Paid for certificate and transcribing	0	2	0	0	2	0
Attending to file same and bespeaking office	0	6	8	0	6	8
Paid for office copy	0	3	0	0	3	0
Attending the registrar for directions to sell so much of the stock as would raise amount to be paid for costs of this application and for payment of shares to the petitioners	0	6	8	0	6	8
Attending the Paymaster-General with same	0	6	8	0	6	8
Writing to petitioner, Mr., informing him a cheque was ready for him to receive out of Court of his share of the fund	0	3	6	0	3	6
The like, petitioner Mrs. C. D.	0	3	6	0	3	6
The like, to petitioner Mr. G. F.	0	3	6	0	3	6
Writing to Mrs. returning her probate of her husband's will	0	3	6	0	3	6
Attending Mr. returning him settlement and release for petitioner C. D., and taking his receipt for same	0	6	8	0	6	8
Attending and identifying petitioner C. D. on her receiving cheque for payment of her share	0	6	8	0	6	8
The like attendance on petitioner G. F. on her receiving cheque for payment of her share	0	6	8	0	6	8
The like attendance on petitioner Mr. on his receiving cheque for payment of his share	0	6	8	0	6	8
Attending the registrar for directions to transfer stock to the account of	0	6	8	0	6	8
Attending the Paymaster-General with same	0	6	8	0	6	8
Paid for office copy certificate of transfer	0	1	6	0	1	6
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0
Letters, messengers, &c.	1	1	0	1	1	0

*Respondent's Costs.*1881. *July.*

11. On being served with copy petition, attending and giving undertaking to appear for the respondents	0	6	8	0	6	8
Paid for copies of affidavits in support of same, at per folio each	0	0	4	0	0	4

RESPONDENT'S COSTS FOR PAYMENT OF MONEY OUT OF COURT. 827

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Instructions for affidavit of in reply	0	6	8	0	6	8
Drawing same, folio, at per folio	0	1	0	0	1	0
Engrossing same, at per folio	0	0	4	0	0	4
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath	0	1	6	0	1	6
Making copy of this affidavit to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
(Charge for any further affidavits and exhibits, if any, as in applicant's bill of costs.)						
12. Drawing brief, at per folio	0	1	0	0	1	0
Making brief copy of same, folio, copy petition, folio, and copies of affidavits and exhibits, folio, (and if any affidavits filed in opposition, copies of same) for counsel, together folios, at per folio	0	0	4	0	0	4
Printed copy of affidavit of H. L. and others, filed the day of, 1880, for counsel, at per folio	0	0	2	0	0	3
Attending Mr. with brief and papers	0	6	8	0	6	8
Paid fee to him and clerk	3	5	6	3	5	6
Attending Mr. appointing conference	0	3	4	0	6	8
Paid fee to him and clerk	1	6	0	1	6	0
Attending conference	0	13	4	0	13	4
16. Attending Court when petition heard, and order made as prayed subject to affidavits as to no settlements	0	13	4	0	13	4
19. Paid for copy affidavit of G. F., at per folio	0	0	4	0	0	4
Perusing same, at per folio	0	0	4	0	0	4
23. Paid for copy affidavit of C. D. and H. L., at per folio	0	0	4	0	0	4
Perusing same, at per folio	0	0	4	0	0	4
Paid for copy exhibits referred to in this affidavit, at per folio	0	0	4	0	0	4
Perusing same, at per folio	0	0	4	0	0	4

September.

2. Attending petitioner's solicitors on their amending petition	0	6	8	0	6	8
23. Close copy draft order of, 1881, folios 15	0	5	0	0	5	0
Attending before registrar settling draft order	0	6	8	0	13	4

October.

20. Attending passing same	0	6	8	0	13	4
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0

Michaelmas Sittings, 1881.

Drawing bill of costs and copy, at per folio	0	0	8	0	0	8
Warrant on leaving same copy and service	0	2	6	0	2	6

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Perusing same	0	0	4	0	0	4
Warrant to tax same copy and service	0	2	6	0	2	6
Attending taxing same, for every 25 folios or a fractional part	0	6	8	0	6	8
Paid for copy bill of costs of petitioners, at per folio	0	0	8	0	0	8
Attending taxing same, for every 25 folios or fractional part	0	6	8	0	6	8
Sittings fee	0	15	0	0	15	0
If agency, letters, &c.	0	6	0	0	6	0
Letters, messengers, &c.	1	1	0	1	1	0

MEMORANDUM.—If the same solicitors are engaged for the petitioners and respondents no close copies, perusing, notices of filing affidavits, &c., will be allowed.

If the applicants obtain an order for the whole of the fund to be transferred and paid over to them, the respondents are not entitled to take copy of applicants' bill of costs, or to tax same.

Costs of Notice to restrain transfer of Stock and Payment of Dividends.

Instructions to sue	0	6	8	0	13	4
Drawing notice, at per folio	0	1	0	0	1	0
Instructions for affidavit of	0	6	8	0	6	8
Drawing same, folios, at per folio	0	1	0	0	1	0
Engrossing affidavit and notice annexed to same, at per folio	0	0	4	0	0	4
Attending deponent to be sworn to same	0	6	8	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6	0	2	6
Making copy affidavit and notice to be marked as an office copy, at per folio	0	0	4	0	0	4
Paid filing affidavit	0	2	0	0	2	0
Paid for office copy, at per folio	0	0	2	0	0	2
Paid stamping notice	0	10	0	0	10	0
Attending the solicitors to the bank and with them to the Bank of England, when notice was entered in the books and stock, and payment of dividends restrained	0	13	4	0	13	4
Paid the charges of the solicitor to the bank	0	13	4	0	13	4
Sittings fee	0	15	0	0	15	0
If agency, sittings fee	1	1	0	1	1	0
If the application is made on behalf of an infant or married woman, charge						
Drawing authority and attending obtaining consent of Mr. to sue in his name as next friend	0	6	8	0	13	4

WINDING UP.—PETITIONER'S COSTS FOR WINDING UP A COMPANY.

IN THE HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

In the matter of the *Company, Limited,*

AND

In the matter of the Companies Acts, 1862 and 1867.

Taxed.

Bill of Costs of *creditors to be taxed in pursuance of the Orders made in*
these matters on the *day of* *187 . . .*

Hilary Sittings, 187 . . .

187 . *March.*

	£	s.	d.
Attending Messrs. and receiving their instructions to present a petition to wind up this company	0	13	4
Drawing petition, folios 22	1	2	0
Attending counsel with same to settle	0	6	8
Paid fee to him and clerk	2	4	6
Attending at the Joint Stock Registry Office searching if this com- pany registered and found same was	0	6	8
Paid search	0	1	0
Making fair copy petition to present	0	7	8
Making fair copy of same for the Judge	0	7	8
Attending to present same and afterwards for fiat	0	6	8
Paid stamping petition	1	0	0
Drawing advertisement of petition being presented to wind up the company, folios 4	0	4	0
Making fair copy of same to be inserted in Gazette	0	1	4
Attending to insert same in the Gazette	0	6	8
Paid for insertion and copy Gazette	0	1	4
Making copy of same to be inserted in the paper	0	1	4
Attending to insert same	0	6	8
Paid for insertion and copy paper	0	1	4
Making copy of same to be inserted in the paper	0	1	4
Attending to insert same	0	6	8
Paid for insertion and copy paper	0	1	4
Instructions for affidavit of verifying statement in petition	0	6	8
Drawing same, folios 3	0	3	0
Engrossing same	0	1	0
Preparing exhibit	0	1	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6
Making copy affidavit to be marked as an office copy	0	1	0
Paid filing affidavit	0	2	0

	£	s.	d.
Paid for office copy	0	0	6
Copy and service of petition on a clerk of the company	0	12	8
Preparing summons for appointment of provisional official liquidator and attending at Chambers to get same sealed	0	6	8
Paid stamping same	0	3	0
Making copy of summons to leave at Chambers	0	2	0
Copy and service of same on clerk to the company	0	4	6
Instructions for affidavit of verifying the fitness of to be appointed provisional official liquidator	0	6	8
Drawing same, folios 4	0	4	0
Engrossing same	0	1	4
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath	0	1	6
Making copy of same to be marked as an office copy	0	1	4
Paid filing affidavit	0	2	0
Paid for office copy	0	0	8
Instructions for affidavit of verifying fitness of to be appointed provisional official liquidator	0	6	8
Drawing same, folios 3	0	3	0
Engrossing same	0	1	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath	0	1	6
Making copy affidavit to be marked as an office copy	0	1	0
Paid filing affidavit	0	2	0
Paid for office copy	0	0	6
Notice of filing these affidavits, copy and service	0	2	6
20. Preparing summons for appointment of provisional official liqui- dator on the petition of and attending at Chambers to get same sealed	0	6	8
Paid stamping same	0	3	0
Making copy of summons to leave at Chambers	0	2	0
Copy and service of same on a clerk of the company	0	4	6
Copy and service of same on the solicitors for the petitioner, Mr.	0	4	6
Paid for copy petition of to wind up the company, folios 12	0	4	0
Instructions for further affidavit of	0	6	8
Drawing same (exclusive of correspondence), folios 8	0	8	0
Engrossing same, including correspondence, folios 10	0	3	4
Preparing 3 exhibits	0	3	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibits	0	4	6
Making copy affidavit to be marked as an office copy	0	3	4
Paid filing affidavit	0	2	0
Paid for office copy	0	1	8
Drawing affidavit of (solicitor's clerk), folios 4	0	4	0
Engrossing same	0	1	4
Preparing 2 exhibits	0	2	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibits	0	3	6
Making copy affidavit to be marked as an office copy	0	1	4
Paid filing affidavit	0	2	0
Paid for office copy	0	0	8
Notice of filing these affidavits, copy and service	0	2	6
Paid for copy affidavit of, folios 11	0	3	8

	£	s.	d.
Perusing same	0	3	8
Paid for copy affidavit of, folios 6	0	2	0
Perusing same	0	2	0
Attending summons for an appointment of a provisional official liquidator, when same adjourned to the Judge, as the chief clerk declined to make an order, the company not consenting	0	13	4
Drawing brief for counsel (exclusive of correspondence), folios 10	0	10	0
Making 2 brief copies of same, including correspondence for counsel, folios 16 each	0	10	8
Making 2 brief copies of petition and affidavits of, the petitioner, and for counsel, folios 39 each	1	6	0
Making 2 brief copies of exhibits referred to in the affidavits of, the petitioner, and for counsel, folios 10 each	0	6	8
Making 2 brief copies of petition of for counsel, folios 12 each	0	8	0
Making 2 brief copies of affidavits of for counsel, folios 17 each	0	11	4
Attending Mr. with brief and papers	0	13	4
Paid fee to him and clerk	5	10	0
Attending Mr. with brief and papers	0	6	8
Paid fee to him and clerk	3	5	6
Attending Mr. appointing consultation	0	6	8
Paid fee to him and clerk	2	9	6
Attending Mr. appointing consultation	0	6	8
Paid fee to him and clerk	1	3	6
24. Attending consultation	0	13	4
Attending Court petition in paper, when order made to wind up Mr., petition to be transferred from Vice-Chancellor's Court and carriage of order given to us	2	2	0
Attending the registrar with brief and papers and bespeaking draft order	0	6	8
Attending adjourned summons for appointment of provisional official liquidator at Vice-Chancellor's Chambers, when no order made, an order to wind up having been made	0	6	8
27. Close copy draft order of 24th inst., folios 7	0	2	4
Notice to settle same, copy and service	0	4	0
28. Attending appointment to settle draft order, when objections were taken that the advertisements were not regular	0	6	8
Drawing brief and copy for counsel to apply for leave, drawing up order on petitions, notwithstanding the advertisement in some of the newspapers had not been inserted seven days before petition was heard	0	6	
Attending counsel with same	0	6	8
Paid fee to him and clerk	1	3	6
Attending Court when order directed to be drawn up	0	13	4
Subsequently attending before the registrar settling draft order	0	13	4
Notice to pass order, copy and service	0	4	0
Paid for order	1	0	0
Attending passing same	0	13	4
Drawing advertisement of order and copy for the Gazette, folios 3	0	4	0
Attending to insert same in Gazette	0	6	8
Paid for insertion and copy Gazette			
Making copy order for the chief clerk, folios 7	0	2	4
Preparing summons to proceed on same, and attending at Chambers to get same sealed	0	6	8
Paid stamping same	0	3	0

	£	s.	d.
Making copy of summons to leave at Chambers	0	2	0
Copy and service of same on respondent's solicitors	0	4	6
Sittings fee	0	15	0
If agency, letters, &c.	0	6	0

Easter Sittings, 187 .

April.

Making copy order to wind up the company for the Joint Stock Company Registry	0	2	4
Attending at Somerset House stamping same	0	6	8
Paid stamp	0	5	0
Attending at the Joint Stock Company's Registration Office, filing copy order, and filling up and obtaining memorandum of filing	0	6	8
12. Attending adjourned summons for appointment of provisional official liquidator, when as the order to wind up the company had been made since summons adjourned, and the assets not sufficient, requiring protection until the appointment of the official liquidator, no order was made, excepting the costs of the application should be costs in the winding up	1	1	0
13. Attending summons to proceed on the order of the 24th ultimo, when directions were given to advertise the day and hour appointed to appoint an official liquidator	0	13	4
Drawing advertisement accordingly, folios 2	0	2	0
Making fair copy of same for the signature of the chief clerk	0	1	0
Paid stamping same	1	0	0
Attending the chief clerk on his signing same	0	6	8
Attending to insert same in Gazette	0	6	8
Paid for insertion and copy paper			
Making copy of same to insert in the newspaper	0	1	0
Attending to insert same	0	6	8
Paid for insertion and copy paper			
Making copy of same to insert in the newspaper	0	1	0
Attending to insert same	0	6	8
Paid for insertion and copy paper			
Attending appointment before the chief clerk to appoint an official liquidator, when he appointed Mr. as official liquidator, and same was adjourned at the request of the respondents to the Judge	0	6	8
Attending to get Master in rotation marked	0	6	8

May.

Attending before the Judge, on adjourned summons, to appoint an official liquidator, when after much discussion same was adjourned	1	1	0
8. Attending adjourned appointment before the Judge, when he confirmed the appointment made by the chief clerk	1	1	0
Preparing order and attending to get same settled, signed, and entered	0	13	4
Engrossing order, folios 5	0	1	8
Paid stamping same	0	5	0
Drawing bill of costs and copy, folios 31, summary, folios 2, together 33	1	2	0

	£	s.	d.
Warrant on leaving copy and service	0	5	6
Warrant to tax, copy and service	0	5	6
Attending taxing same	0	13	4
Certificate and transcribing	1	2	0
Attending to file same, and afterwards for office copy	0	6	8
Paid for office copy	0	3	0
Sittings fee	0	15	0
Letters, &c.	1	1	0
If agency, letters, &c.	0	6	0
Paid <i>ad valorem</i> duty			

WINDING UP.—COSTS OF THE COMPANY.

IN THE HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

In the Matter of the Companies Acts, 1862 and 1867,

AND

In the Matter of , *Company, Limited.*

Bill of Costs of the Respondents (the Company) to be taxed in pursuance of the Order made on the *day of* , 187 .

Hilary Sittings, 187 .

187 . *March.*

Attending the secretary of the company on being served with copy of petition to wind up the company, and taking his instructions to defend same	0	13	4
Paid for copy affidavit of Mr. in support of summons to appoint provisional liquidator, folios , at per folio	0	0	4
Perusing same, at per folio	0	0	4
If agency close copy, at per folio	0	0	4
Attending summons, order made to appoint provisional liquidator, Mr. , upon security being given	0	0	4
Paid for copy affidavit of sureties, folios , at per folio	0	0	4
Perusing, at per folio	0	0	4
If agency, close copy, at per folio	0	0	4
Paid for copy recognizance folio, at per folio	0	0	4
If a guarantee society's bond taken	0	0	4
Paid for copy bond and affidavit, at per folio	0	0	4
Perusing affidavit, at per folio	0	0	4
If agency, close copy, at per folio	0	0	4
Attending appointment before the chief clerk, when security was approved, and the certificate of approval directed to issue	0	0	4
Paid for copy draft certificate, at per folio	0	0	4
Close copy, at per folio	0	0	4
Attending appointment settling draft certificate	0	6	8
Attending on same being signed	0	6	8

	£	s.	d.
Paid for copy further affidavit of petitioner in support of his petition, folios , at per folio	0	0	4
Perusing same, at per folio	0	0	4
If agency close copy, at per folio	0	0	4
If the company really oppose the application, then charge for the necessary evidence in support of the opposition and for notices, &c.			
Drawing brief for counsel to appear on the hearing of the petition, folios , at per folio	0	1	0
Two copies thereof, folios , at per folio each	0	0	4
The like of petition, folios , at per folio each	0	0	4
The like of the affidavits in support, folios , at per folio each	0	0	4
The like of the affidavits in reply (if any), folios , at per folio each	0	0	4
The like of the exhibits (if any), folios , at per folio each	0	0	4
Attending Mr. , Q.C., with brief and papers.	0	6	8
Paid fee to him and clerk	3	5	6
Attending Mr. with brief and papers	0	6	8
Paid fee to him and clerk	2	4	6
Attending Mr. , Q.C., appointing consultation	0	6	8
Paid fee to him and clerk	2	9	6
Attending Mr. , appointing consultation	0	6	8
Paid fee to him and clerk	1	3	6
Attending consultation	0	13	4
Attending Court petition in paper, but not reached	0	10	0
Attending Court petition heard, when order made	1	1	0
Or not to exceed	2	2	0
Close copy order, folios , at per folio	0	0	4
Attending settling same	0	13	4
Or not to exceed	3	3	0
Attending passing same	0	13	4
Attending summons to proceed under order to wind up, when directions were given to advertise the day and hour appointed to appoint an official liquidator			
Attending appointment before the chief clerk to appoint an official liquidator, when he appointed Mr. , who had been previously appointed provisional official liquidator, when same was adjourned at the request of the respondents to the judge			

May.

Attending before the judge on adjourned summons to appoint an official liquidator, when, after much discussion, same was adjourned			
Attending adjourned appointment before the judge, when he confirmed the appointment made by the chief clerk			
Drawing bill of costs and copy, folios ; and summary, folios ; together, folios ; at per folio	0	0	8
Warrant on leaving, and copy and service of same on the solicitors for the official liquidator	0	5	6
Warrant to tax, and copy and service on the same solicitors	0	5	6
Attending taxing, at per 25 folios or fractional part	0	6	8
Sittings fee	0	15	0
If agency, letters, &c.	0	6	0
Letters, messengers, &c.	1	1	0

WINDING UP. — COSTS OF THE OFFICIAL LIQUIDATOR ON HIS APPLICATION FOR LIBERTY TO PAY IN UNCLAIMED DIVIDENDS, AND COSTS OF A SHAREHOLDER'S APPLICATION TO VARY THE CHIEF CLERK'S CERTIFICATE.

Costs of the Official Liquidator on his Application for Liberty to pay into Court
£ for Unclaimed Dividends.

Trinity Sittings.

	£	s.	d.
On receipt of letter from the official liquidator requesting us to apply for an order for him to be at liberty to pay into Court £ , the amount of unclaimed dividends, and for order to dissolve the company, attending and conferring with him thereon	0	6	8
Drawing special summons for him to be at liberty to pay into Court £ , and for order to dissolve the company, and attending at Chambers to get same sealed	1	1	0
Paid stamping same	0	3	0
Making copy of order to leave at Chambers	0	2	0
Instructions for affidavit of official liquidator in support of same	0	6	8
Drawing same, folios 4, 1s. per folio	0	4	0
Engrossing same, 4d. per folio	0	1	4
Preparing two exhibits	0	2	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibits	0	3	6
Making copy affidavit to be marked as an office copy	0	1	4
Paid filing affidavit	0	2	0
Paid for office copy	0	0	8
Attending summons when, as the official liquidator's remuneration, amounting to £ , had not been paid to him, the summons was adjourned to the judge	0	13	4
Attending adjourned summons before the judge, when he ordered all unpaid dividends to be paid into Court, but the dividends on claims which exceeded £ , and dividends on claims which exceeded £ , but did not exceed £ , were to be scheduled, and the others were not to be	1	1	0
Drawing order accordingly, folios 30	1	10	0
Attending settling same	0	13	4
Making fair copy to leave at Chambers	0	10	0
Close copy of registrar's draft order	0	10	0
Attending settling same	1	1	0
Examining and correcting proof	0	6	8
Paid for order	0	5	0
Attending passing same	0	13	4
Attending at the Paymaster-General's office with same, and bespeaking his directions for payment in of the money, and afterwards for same	0	6	8
Attending at the Bank of England paying in money, and bespeaking office copy receipt, and afterwards for same	0	1	6
Paid for office copy receipt	0	1	6
Drawing bill of costs and copy, folios 11, at 8d. per folio	0	7	4

	£	s.	d.
Attending taxing same	0	6	8
Paid <i>ad valorem</i> duty			
Sittings fee	0	15	0

Costs of Executrix of a Shareholder on her Application to vary the Chief Clerk's Certificate.

Michaelmas Sittings, 1877.

November, 1877.

Attending Mrs., conferring with her as to her claim as executrix of, the holder of shares of the company, and taking her instructions to enforce the claim	0	13	4
Paid for copy chief clerk's certificate, folios 26, at 4 <i>d.</i> per folio	0	8	8
Perusing same ditto	0	8	8
Paid for copy notice ditto	0	1	0
Perusing same ditto	0	1	0
Preparing summons to vary the chief clerk's certificate, and attending at Chambers to get same sealed	0	13	4
Paid stamping same	0	3	0
Making copy to leave at Chambers	0	2	0
Copy and service of same on official liquidator's solicitors	0	4	6
Instructions for affidavit of in support of summons	0	6	8
Drawing same, folios 14, at 1 <i>s.</i> per folio	0	14	0
Engrossing same	0	4	8
Preparing two exhibits	0	2	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibits	0	3	6
Paid filing affidavit	0	2	0
Making copy to be marked as an office copy	0	4	8
Paid for office copy	0	2	4
Notice of filing same, and copy and service	0	4	0
Attending summons to vary the chief clerk's certificate, when the solicitors for the official liquidator required an adjournment to enable them to confer with their clients upon applications affidavit, when same adjourned	0	6	8
Paid for copy affidavit of, folios 7	0	2	4
Perusing same	0	2	4
Attending appointment before the chief clerk on adjourned summons to vary his certificate, when same was disallowed, and, at applicant's request, same was adjourned to the judge	0	13	4
Notice to the official liquidator's solicitors that we should attend the adjourned summons before the judge by counsel	0	4	0
Instructions for affidavit of	0	6	8
Drawing same, folios 6	0	6	0
Engrossing same	0	2	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath	0	1	6
Paid his expenses for journey to and from Oxford and London to make affidavit	1	10	0
Paid filing affidavit	0	2	0

	£	s.	d.
Making copy of same to be marked as an office copy	0	2	0
Paid for office copy	0	1	0
Notice of filing same, copy and service	0	4	0

1878, *January.*

Instructions for affidavit of	0	6	8
Drawing same, folios 9	0	9	0
Engrossing same	0	3	0
Attending deponent before a commissioner to be sworn to same	0	6	8
Paid commissioner taking deponent's oath	0	1	6
Paid deponent for his expenses for making affidavit	0	10	6
Making copy of this affidavit to be marked as an office copy	0	3	0
Paid filing affidavit	0	2	0
Paid for office copy	0	1	6
Instructions for affidavit of	0	6	8
Drawing same, folios 7	0	7	0
Engrossing same	0	2	4
Attending deponent before a commissioner to be sworn to same	0	6	8
Paid commissioner taking deponent's oath	0	1	6
Paid deponent for his expenses to make affidavit	0	10	6
Making copy affidavit of this affidavit to be marked as an office copy	0	2	4
Paid filing affidavit	0	2	0
Paid for office copy	0	1	2
Notice of filing these two affidavits, copy and service	0	4	0

Hilary Sittings, 1878.

14. Having received notice from the official liquidator that he intended to read portions of the examination of on the hearing of adjourned summons: Attending and perusing same and bespeaking extract	0	6	8
Paid for copy extract, folios 6	0	2	0
Attending adjourned summons for allowance of this claim, when same further adjourned for a week to enable the chief clerk to read the further evidence	0	13	4
22. Attending adjourned summons, when the chief clerk said he was of opinion that notice had been given of withdrawal as alleged, and at the official liquidator's request, summons was adjourned to the judge	0	13	4
Drawing brief for counsel, folios 12	0	12	0
Making fair copy of same, folios 12; copy summons, folios 4; copy affidavit of, folios 14; copy affidavit of, folios 7; copy extracts, folios 6; copy affidavit of, folios 6; copy affidavit of, folios 9; and copy affidavit of, folios 7, for counsel, together 63 folios	1	1	0
Attending Mr. with same	0	6	8
Paid fee to him and clerk	2	4	6
Attending Mr. appointing conference	0	6	8
Paid fee to him and clerk	1	6	8
Attending conference	0	13	4
Attending adjourned summons before the judge, when claim allowed	0	13	4
Drawing order, folios 8	0	8	0

	£	s.	d.
Notice to settle same, copy and service	0	4	0
Attending appointment settling draft order to vary the chief clerk's certificate	0	13	4
Engrossing order	0	2	8
Paid stamp	0	5	0
Attending chambers obtaining an appointment to make alterations in chief clerk's certificate, and attending at the Report Office arranging for the report clerk to attend to-morrow at the chief clerk's chambers with original certificate for alterations to be made therein	0	6	8
Writing to official liquidator's solicitors acknowledging receipt of their letter, and informing them of the appointment to-morrow, and requesting them to attend and produce the office copy certificate of the chief clerk	0	3	6
Attending appointment before the chief clerk, when alterations directed by the order were made in original certificate, and producing order, passed and entered	0	13	4
Making copy order for the Taxing Master, folios 8	0	2	8
Drawing bill of costs and copy, folios 25	0	16	8
Warrant on leaving same, copy and service	0	5	6
Warrant to tax, copy and service	0	5	6
Attending taxing same	0	6	8
Certificate and transcribing	1	2	0
Attending to file same and bespeak office copy	0	6	8
Paid for office copy	0	3	0
Letters, messengers, &c.	1	1	0
Paid <i>ad valorem</i> duty.			

In the matter of the Companies Acts, 1862 and 1867.

AND

In the matter of the £ Company, Limited.

Bill of Costs of the Liquidator to be taxed, in pursuance to order dated day of 1880, on the application of a Creditor of the Company for leave to prove his Claim, notwithstanding the time had expired for Adjudication on Claims, and which was dismissed with Costs.

Michaelmas Sittings, 1879.

November, 1879.

Having been served with copy of summons issued on behalf of for liberty to prove his claim, notwithstanding the time had expired for adjudication of claims: Paid for office copy affidavit of in support of same, at per folio	0	0	6
Perusing same, at per folio	0	0	4
Paid for five more office copies of affidavits filed in support of same, at per folio each	0	0	6
Perusing same, at per folio each	0	0	4

December 5th.

	£	s.	d.
Attending summons taken out on behalf of _____ for leave to come and prove his claim, when leave given and the question of costs reserved and time limited for filing evidence	0	13	4
15. Managing clerk's journey from London to _____ in Montgomeryshire, engaged in travelling from 8 a.m. until 5 p.m.; on reaching at _____, attending Mr. _____ fully discussing the evidence filed on behalf of the claimant, and the evidence required by the liquidator to meet the claim, when he informed us he had arranged for Mr. _____ to meet us at his office to-morrow morning. Engaged from 8 a.m. until 9 p.m., equal to one day and a half			
16. Attending appointment at Mr. _____'s office, but neither Mr. _____ or Mr. _____ attended; journey from _____ to _____ the nearest station to _____, and from thence to _____, the residence of Mr. _____, when finding him from home we awaited his return, conferring very fully with and explaining the position of the matter to him—perusing his visiting book for the year 1877, and taking note of the information he could give as instructions for affidavit, and arranging to meet in _____ to-morrow, to swear affidavit—Journey from _____ to _____ and from thence to _____			
Drawing affidavit of Mr. _____, engrossing same. Engaged from 9.30 a.m. to 9.45 p.m., equal to one day and a half			
17. Journey from _____ to _____, attending upon Mr. _____, reading over engrossment of affidavit to him and attending with him on commissioner for him to be sworn to same—Journey from _____ to the _____, where Mr. _____ employed, about 3 miles from _____ . Attending Mr. _____, when he informed us he had attended the _____, but could give us more information if we were accompanying him to his residence, attending with him to his residence, when he referred to his notes and informed us what he was prepared to state in an affidavit, drawing affidavit and reading over same to him, when he promised to call upon us on at _____, to swear to same. Journey to _____ engrossing affidavit, attending _____, subsequently reading over engrossment to him, and journey by trap to _____, distance 5 miles to house of Mr. _____, he being the nearest commissioner. Journey from _____ to _____ . Engaged from 10 a.m. to 9.30 p.m.			
18. Attending Mr. _____, taking his instructions for his affidavit, drawing same, engrossing same, preparing exhibit, and attending with him before a commissioner to be sworn to same. Journey from _____ to London by 2 o'clock train,—owing to a fog did not reach London until 12 o'clock midnight. Engaged altogether, as shown, upwards of 6 days, of 8 hours per day	9	9	0
Paid railway fares, hotel expenses, and fly hire, &c.			
Paid commissioner taking oath of _____ to his affidavit, and marking exhibit	0	2	6
Paid Mr. _____ for his loss of time	1	1	0
Paid commissioner taking oath of _____ to his affidavit	0	1	6
Paid Mr. _____ for his loss of time	0	10	6
Paid commissioner taking the oath of Mr. _____ to his affidavit	0	1	6
Paid Mr. _____ for his loss of time	0	10	6
23. Making copy affidavit of Mr. _____ to be marked as an office copy, at per folio	0	0	4
Paid filing affidavit	0	2	0

	£	s.	d.
Paid for office copy, at per folio	0	0	2
Making copy affidavit of Mr. to be marked as an office copy, at per folio	0	0	4
Paid filing affidavit	0	2	0
Paid for office copy, at per folio	0	0	2
Making copy affidavit of Mr. to be marked as an office copy, at per folio	0	0	4
Paid filing affidavit	0	2	0
Paid for office copy, at per folio	0	0	2
Notice of filing these affidavits, copy and service	0	4	0
30, Instructions for affidavit of the liquidator	0	6	8
Drawing same, at per folio	0	1	0
Engrossing same, at per folio	0	0	4
Preparing exhibits, each at	0	1	0
Attending deponent before a commissioner to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibits			
Making copy of this affidavit to be marked as an office copy, at per folio	0	0	4
Paid filing affidavit	0	2	0
Paid for office copy, at per folio	0	0	2
Notice of filing this affidavit, copy and service	0	4	0

January, 1880.

Instructions for affidavit of	0	6	8
Drawing same, at per folio	0	1	0
Engrossing same, at per folio	0	0	4
Attending deponent before a commissioner to be sworn to same	0	6	8
Paid commissioner taking deponent's oath	0	1	6
Making copy of this affidavit to be marked as an office copy, at per folio	0	0	4
Paid filing affidavit	0	2	0
Paid for office copy, at per folio	0	0	2
Notice of filing same, copy and service	0	4	0
Sittings fee	0	15	0

Hilary Sittings, 1880.

28. Paid for office copy affidavit of, folios 7	0	3	6
Perusing same	0	2	4
Paid for five more office copies of affidavits, at per folio each	0	0	6
Perusing same, at per folio each	0	0	4
30. Attending at the examiners' office for and obtaining an appointment for the cross-examination of and upon their affidavits	0	6	8
Making copies of affidavits of and for the examiner, at per folio each	0	0	4
Drawing notice of intention to cross-examine and upon their affidavits, and for production of documents, at per folio	0	1	0
Making fair copy of same for service, at per folio	0	0	4
Service of same	0	2	6

March.

	£	s.	d.
Paid for copy exhibits	0	1	8
Drawing brief for counsel in cross-examination of and folio at per folio	0	1	0
Making fair copy of same for counsel, folio, copy summons, folio copy of affidavits of; together, folios, at per folio	0	0	4
15. Attending Mr. with same	0	6	8
Paid fee to him and clerk	3	5	6
Attending Mr. appointing conference	0	6	8
Paid conference fee to him and clerk	1	6	0
Attending conference	0	13	4
17. Attending appointment before the examiner, when and were cross-examined on their affidavit—Engaged three hours	1	0	0
Paid Mr. for his expenses from			
Paid Mr. for his expenses from			
18. Having obtained an appointment to adjudicate upon this claim, notice thereof to claimants' solicitors, and copy and service	0	4	0
Paid examiner's fee for taking the examination (examiners fee is 10s. per hour)	1	10	0
Paid for office copy depositions, at per folio	0	0	6
Sittings fee	0	15	0

Easter Sittings, 1880.

April.

Writing to claimants' solicitors requesting them to produce at the appointment on Friday, before the chief clerk, the diary referred to in the depositions of	0	3	6
Attending appointment before the chief clerk when the merits of this claim were gone into and evidence read, when the chief clerk was of opinion that claimant had proved his claim, and at our request appointment adjourned to the judge	1	11	6

May.

Notice to claimants' solicitor that we should attend adjourned summons by counsel, copy and service	0	4	0
Drawing brief for counsel, at per folio	0	1	0
Making fair copy of same for counsel, at per folio	0	0	4
Making copy of depositions for counsel, at per folio	0	0	4
Attending Mr. with same	0	6	8
Paid fee to him and clerk	3	5	6
Attending Mr. appointing conference	0	6	8
Paid conference fee to him and clerk	1	6	0
Sittings fee	0	15	0

Trinity Sittings, 1880.

26. Attending conference on the adjourned summons, when it appeared that the counsel for the claimant had seen Mr., and asked that the summons might be adjourned into Court, when it was arranged summons should be adjourned as wished	0	13	4
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	£	s.	d.
27. The attendance in Court on the application for the summons to be adjudged in Court, was not allowed on the taxation of liquidator's costs			
<i>July 3rd.</i>			
Attending Court adjourned summons in paper, but not reached	0	10	0
10. Attending Court adjourned summons in paper but not reached	0	10	0
17. Attending Court all day adjourned summons in paper, and reached the merits of the summons, fully discussed, and evidence read, when the Judge directed the liquidator's solicitors to obtain the visiting book referred to in the affidavit of one of liquidator's witnesses, and adjourned the summons until Thursday morning for that purpose	1	1	0
The charge for the journey to Montgomery was disallowed but the Master allowed the railway fare, &c., as he considered that if an agent had been employed his charges would amount to about the same amount charged for railway, &c.			
Paid railway fare and expenses			
Paid Mr. for his loss of time in producing book	0	5	0
21. Paid for office copy affidavit of, at per folio	0	0	6
Perusing same, at per folio	0	0	4
Paid for office copy affidavit of, at per folio	0	0	6
Perusing same, at per folio	0	0	4
On receipt of the above affidavits at o'clock in the afternoon, the adjourned summons at the head of the Judges' list for the next day, drawing telegram to Mr., the former agent of the company, asking whether he had written and received the letters referred to in the affidavits and attending to dispatch (allowed as a letter)	0	3	6
Paid telegram	0	1	9
Paid Mr. charges and for money out of pocket	3	3	0
Drawing further brief for counsel, at per folio	0	1	0
Making fair copy of same, copy letters and copies of affidavits of and for counsel, at per folio	0	0	4
Attending Mr. with same	0	6	8
Paid fee to him and clerk	2	4	6
Attending Mr. appointing conference	0	6	8
Paid conference fee to him and clerk	1	6	0
22. Attending conference	0	13	4
Attending Court when adjourned summons further heard, and application dismissed with costs	1	1	0
Attending the registrar with brief and papers, and bespeaking draft order	0	6	8
Writing to Mr. returning his diary	0	3	6
Writing to Mr. returning his book	0	3	6
Close copy draft order, folios 8	0	2	8
Notice to settle same, copy and service	0	4	0
26. Attending settling same	0	13	4
Notice to pass same, copy and service	0	4	0
Paid for order	0	5	0
Attending passing same	0	13	4
Making copy order for the Taxing Master, folios 8	0	2	8
Drawing bill of costs and copy, folios, and summary, folios together, folios, at per folio	0	0	8

	£	s.	d.
Warrant on leaving same, copy and service	0	5	6
Warrant to tax same, copy and service	0	5	6
Attending taxing same, at per 25 folios or fractional part	0	6	8
Certificate and transcribing	1	2	0
Attending to file same and bespeaking office copy	0	6	8
Paid for office copy	0	3	0
Sittings fee	0	15	0
Letters, messengers, &c.	1	1	0
Paid <i>ad valorem</i> duty			

(Memo.—If there had been proceedings relating to this winding up during these sittings, the sitting fees would not have been allowed.)

WINDING-UP OFFICIAL LIQUIDATOR'S COSTS.

In the matter of the *Company, Limited,*
AND

In the matter of the Companies Acts, 1862 and 1867.

The Bill of Costs of *,* *the official Liquidator of the above-named Company, to be taxed as between solicitor and client, from the date of his appointment as such official Liquidator, to the* *day of* 187 *, in pursuance of the order made on the* *day of* 187 *.*

Easter Sittings, 187 .

187 . *May.*

Attending the official liquidator in very long conference this day on his appointment, and generally discussing the position of the company, and the course that should be taken with reference to the several matters requiring immediate attention	1	11	6
(This amount has been generally allowed, and in some cases more.)			
Attending at Somerset House to obtain information as to the members and liability of the company, &c.	0	6	8
Paid search	0	1	0
Instructions for affidavit of official liquidator verifying the assets of the company	0	6	8
Drawing same, folios 12	0	12	0
Engrossing same	0	4	0
Preparing exhibit	0	1	0
Attending deponent on his being sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6
Paid filing affidavit	0	2	0
Making copy of same to be marked as an office copy	0	4	0
Paid for office copy	0	2	0

	£	s.	d
Instructions for bond to be given by the Society as security for the official liquidator	0	6	8
Drawing same, folios 23	1	3	0
Instructions for recognizance of the official liquidator, folios 10	0	10	0
Making fair copy of draft bond for the chief clerk, folios 23	0	7	8
Making fair copy of draft recognizance for the chief clerk, folios 10	0	3	4
Attending the official liquidator prior to the appointment to-day in reference to the amount he desired to offer as security, and generally as to the question of the probable amount of assets	0	6	8
Attending appointment before the chief clerk to-day upon the summons to proceed generally upon the order appointing the official liquidator, when the chief clerk fixed same at £	0	13	4
Attending subsequently and obtaining an appointment to settle draft bond and recognizance, when same fixed for next at o'clock	0	6	8
Attending the official liquidator, conferring with him with reference to his interview with Mr. , and as to the course the manager had taken with reference to the goodwill, also conferring with him in reference to the liability of the directors under the £ memorandum, and advising him fully thereon	0	13	4
Attending appointment before the junior clerk settling draft bond and recognizance	0	13	4
Engrossing recognizance, folios 10	0	6	8
Parchment	0	5	0
Engrossing bond	0	15	4
Parchment	0	5	0
Attending the official liquidator and the secretary of Society, and making an appointment for them to attend to-morrow to execute bond and recognizance	0	6	8
Making copy order appointing official liquidator for the chief clerk, folios 5	0	1	8
Making copy of same order for the official liquidator	0	1	8
Writing him with same	0	3	6
Instructions for affidavit of secretary of Society	0	6	8
Drawing same, folios 15	0	15	0
Engrossing same	0	5	0
Preparing 2 exhibits	0	2	0
Attending at on execution of bond by the official liquidator and the directors of the Society	0	6	8
Paid commissioner attesting same	0	1	6
Attending the official liquidator executing his recognizance	0	6	8
Paid commissioner attesting same	0	1	6
Attending the secretary of the Society on his being sworn to his affidavit	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	3	6
Paid filing affidavit	0	2	0
Making copy affidavit to be marked as an office copy	0	5	0
Paid for office copy	0	2	6
Paid stamping bond			
Attending the chief clerk with recognizance and bond for his approval, allowance, and signature	0	6	8
Attending to enrol same	0	6	8
Paid enrolling same	0	15	0
Writing to the official liquidator with notice of appointment before			

	£	s.	d.
the chief clerk on the proximo, and requesting to see him to-morrow as to taking possession of the books, &c.	0	2	6
Attending the official liquidator on his calling upon us, and conferring with him as to his taking possession of the offices and books of the company, and advising him fully thereon	0	6	8
Attending the official liquidator later in the day as to the distress, which it appeared had been levied upon the premises of the company after the winding-up petition had been presented, and as to the intimation of the manager that the papers of the company were in the hands of the company's solicitors, and taking instructions to apply to them thereon, also conferring with him relating to the £ security, which the manager informed the official liquidator he would not give up, inasmuch as it had not been perfected, and advising him on the letter which ought to be written to the manager on the subject	0	13	4
Drawing advertisement of appointment of official liquidator and fair copy, and attending settling same	0	13	4
Paid stamping same	1	0	0
Attending to insert same in the <i>Gazette</i>	0	6	8
Paid for insertion and copy <i>Gazette</i>			
Making copy of advertisement to insert in the paper, folio			
Attending to insert same	0	6	8
Paid for insertion and copy paper			
Making copy of advertisement to insert in the paper, folio			
Attending to insert same	0	6	8
Paid for insertion and copy paper			
Drawing memorandum sanctioning the official liquidator appointing a solicitor to assist him in his duties, for signature of the chief clerk and copy	0	3	4
Drawing appointment of solicitor, and copy	0	3	4
Attending the official liquidator on his signing same	0	6	8
Writing to Messrs. , requesting them to let us have the papers relating to the distress which had been levied by 2 days after the order to wind up had been made, in order that we might advise the official liquidator on same, and clerk attending with same	0	5	0
Sittings fee	0	15	0

Trinity Sittings, 187 .

Having received letter from the official liquidator enclosing account and copy correspondence relating to the illegal distress, perusing same	0	6	8
Writing to the official liquidator thereon, and with our views as to the illegal distress, and that we would take the necessary steps in the matter	0	3	6
Writing to Messrs. & Co. again, for the papers relative to the illegal distress	0	3	6
Close copy draft certificate of chief clerk as to security given by the official liquidator, folios 5	0	1	8
Writing to Messrs. & Co., acknowledging receipt of their letter	0	3	6

	£	s.	d.
Making copy of Messrs. & Co.'s letter and copy of their letter to , agents, and writing to the official liquidator with same, and our views as to the course to be pursued, and with an appointment to see him to-morrow respecting same	0	5	6
Attending at the official liquidator's office by appointment, and conferring with him at great length as to the difficulty he had with the company in obtaining the papers, &c., and as to the course to be pursued in reference to refunding the amount levied by and making a further appointment to see him to-morrow, engaged a very long time	1	1	0

June.

Attending the official liquidator, conferring with him at great length with reference to the various questions as to the liability of the policy-holders to contribute to the assets, and the amount due under the directors' first guarantee, also as to the arrangement which had been made by Mr. with reference to the rent of the premises, and advising an application should be made to Mr. on the subject	2	2	0
Drawing advertisement for creditors to send in their claims, and attending at chambers settling same	0	13	4
Attending the official liquidator, conferring with him at very great length with reference to the questions with regard to the distress for rent, and the jugglery which had taken place thereon, and the information which was kept back, also as to the stock, certificates, and debentures, and other matters, and advising him generally on the statement which he had left with us, and as to the necessity for an appointment for an examiner, in order that Mr. might at once be examined as to the affairs of the company, and advising him thereon, and conferring with him as to any of the policy-holders residing in Ireland	2	2	0
Attending appointment before the chief clerk, when directions as to advertising for creditors in the local branches of the company were duly given	0	13	4
Engrossing advertisement, folios 3	0	1	0
Paid stamping same	1	0	0
Attending the official liquidator in long conference as to the steps to be taken in reference to the hostility exhibited by Mr. , and advising him as to obtaining an order to appoint a special examiner to take his examination	0	6	8
Attending the official liquidator, conferring with him with reference to a letter he had received from the late manager, when we requested him to send us a copy of same	0	6	8
Engrossing certificate as to official liquidator having given security, folios 5	0	1	8
Paid stamping same	0	5	0
Attending on same being signed	0	6	8
Instructions for affidavit of official liquidator in support of application for an appointment of a special examiner	0	6	8
Drawing same (exclusive of correspondence), folios 16	0	16	0
Engrossing same, folios 26	0	8	8

	£	s.	d.
Preparing 6 exhibits	0	6	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking 6 exhibits	0	7	6
Paid filing affidavit	0	2	0
Making copy to be marked as an office copy	0	8	8
Paid for office copy	0	4	4
Drawing brief for counsel to move for an order appointing a special examiner, folios 10	0	10	0
Making brief copy of same, folios 10, and affidavit of official liquidator, folios 26 ; together 36 folios, for counsel	0	12	0
Attending counsel with same	0	6	8
Paid fee to him and clerk	1	3	6
Attending Court on application, when the Judge expressed an opinion in favour of the appointment, but that his chief clerk should hear the same on Thursday next	0	13	4
Writing to the official liquidator informing him the result of the application	0	3	6
Preparing summons for Mr. to be appointed special examiner to take the examination of, and attending at Chambers to get same sealed	0	6	8
Paid stamping same	0	3	0
Making copy of same to leave at Chambers	0	2	0
Attending the official liquidator on his calling with reference to a further letter he had received from Mr. this morning, but giving us no information with reference to the stock certificates of the funded property of the company, and advising him thereon	0	6	8
Attending at the <i>Gazette</i> office with advertisement for creditors to come in and prove their debts	0	6	8
Paid for insertion and copy <i>Gazette</i>			
Making 9 copies of this advertisement in the different newspapers	0	9	0
Attending to insert one copy in the paper	0	6	8
Paid insertions			
Attending to insert copy in the paper	0	6	8
Paid for insertions and copy paper			
The like charges for attending to insert in the other papers, and payments for instructions and copy papers			
Paid for copy of costs of Mr., folios 20	0	6	8
Attending taxing same	0	6	8
Paid for copy of costs of the company, folios 18	0	6	0
Attending taxing the same	0	6	8
Attending the official liquidator, conferring with him with reference to the sale of the goodwill, and advising him on the necessity of having a formal agreement that the company were prepared to carry out on the terms of his letters, about which he was to see them and write us in order that the agreement might be confirmed by the chief clerk	0	13	4
It having become necessary to obtain possession of the reserve fund, writing the official liquidator specially in reference to the stock standing in the names of the trustees, and for exact particulars, so that we might obtain an order for the transfer to the official liquidator	0	5	0
Writing to to acknowledge receipt of theirs of yesterday's date, inclosing the notice of distress herein	0	3	6
Attending summons before the chief clerk for leave to appoint a			

	£	s.	d.
special examiner, when he adjourned the application on the ground of the decision in the case of Smith, Knight & Co., and he thought we should see counsel before adjourning the summons to the Judge, and after seeing counsel the chief clerk made the order	0	13	4
Drawing up order attending settling same, and attending at the registrar's office to get same entered	0	13	4
Engrossing same, folios 3	0	1	0
Paid stamping same	0	5	0
Writing to the official liquidator informing him the result of the application	0	3	6
Making copy of order for special examiner	0	1	0
Attending Mr. the special examiner for, and obtaining an appointment to proceed with the examination	0	13	4
Paid fee to him and clerk	5	10	0
Preparing summons to examine Mr. before the special examiner, and attending at Chambers to get same sealed	0	6	8
Paid stamping same	0	3	0
Making copy order to leave at Chambers	0	2	0
Making copy of same for service on Mr.	0	2	0
Attending to serve copy of summons and notice on Mr., but he was not within	0	3	4
Attending the official liquidator in long conference in reference to the points to be raised on the examination of Mr.	0	13	4
Attending twice to-day to serve Mr. with copy summons and notice, but was not able to see him	0	6	8
Attending the official liquidator's clerk, who knew Mr. personally, and requesting him to point him out to us	0	3	4
Subsequently attending at the chambers of Mr., serving him with copy summons, and notice to attend before the special examiner	0	5	0
The official liquidator having been in communication with the Society as to the sale of the goodwill, attending him thereon, and he produced the correspondence and considering same, when it appeared that the new company had in fact injured the goodwill by issuing a circular offering to novate the policies, and conferring with him as to whether the new company were liable to an action for damages, and examining the paper connected with the matter, when it was ultimately determined to accept the offer of the Society, subject to the approval of the Court engaged a very long time	1	1	0
Instructions for memorandum of agreement between this company and the Company for the sale to the latter of the goodwill of the business	0	6	8
Drawing same, folios 12	0	12	0
Making further alterations on the draft agreement in accordance with the suggestions of the official liquidator	0	6	8
Making fair copy agreement for approval of Mr.	0	4	0
Writing to Mr., the secretary of the Society, with same for his approval	0	3	6
Writing to the official liquidator in reply to his letter as to the terms of agreement forwarded to Mr.	0	3	6
Writing to the official liquidator in reply to his letter, and informing him as Mr. was at present out of England and as he had no			

	£	s.	d.
reply from Mr. we thought under the circumstances that no steps could be taken in the matter, at all events for a few days	0	3	6
Making copy of official liquidator's affidavit filed on the 5th inst. for the special examiner, folios 26	0	8	8
Making copy order of the 8th May, 187 , to be marked as an office copy, folios 5	0	1	8
Paid office copy	0	0	10
Attending appointment before the chief clerk	0	6	8
Attending appointments before the chief clerk	0	6	8
Drawing brief for counsel to attend on behalf of the official liquidator on the examination of Mr. , folios 8	0	8	0
Making fair copy of same for counsel	0	2	8
Attending counsel with same	0	6	8
Paid fee to him and clerk	3	5	6
Attending appointing conference with him	0	6	8
Paid conference fee to him and clerk	1	6	0
Writing to the official liquidator with notice of appointment of conference	0	3	6
Making copy notice of distress for special examiner, folios 3	0	1	0
Attending the official liquidator this morning, in very long conference, perusing various documents in connection with the company's affairs, and upon which we desired to obtain information from Mr.	0	13	4
Having subsequently received letter from the official liquidator enclosing copy extracts from the minute book in reference to the election of Mr. as a director, perusing same, folios 22	0	7	
Making brief copy of minute of correspondence for counsel, folios 22, in order to examine Mr. upon same	0	7	
Writing to the official liquidator acknowledging receipt of his letter and correspondence, &c.	0	3	6
Attending the official liquidator prior to the conference, and conferring and advising him as to the points to be discussed	0	6	8
Attending conference with counsel	0	13	4
Attending appointment before the special examiner, and after waiting an hour the witness, Mr. , did not attend	0	13	4
Attending the official liquidator and his clerk, in long conference as to the course we should now pursue, and we were to obtain a further appointment, inasmuch as the furniture would probably be seized for rent, or we should hasten the time as much as possible.	0	6	8
Preparing further summons for to attend and be examined before the special examiner, at the same time to produce all books and papers in his possession, and attending Chambers to issue same	0	6	8
Paid stamping same	0	3	0
Making copy of same to leave at Chambers	0	2	0
Making copy of summons for service on	0	2	0
Drawing notice for to attend in pursuance of summons, folio 1	0	1	0
Copy and service of same, and copy summons on Mr.	0	5	0
Attending special examiner and obtaining another appointment to examine on the 18th inst.	0	13	4
Paid fee to him and clerk	5	10	0

	£	s.	d.
Writing to official liquidator with notice of further appointment to examine Mr.	0	3	6
Having received draft agreement from the Society, perusing alterations	0	3	4
Perusing 2 draft circulars proposed to be sent by the Society to the policy holders	0	6	8
Writing to the official liquidator acknowledging receipt of draft agreement and proposed circulars, and informing him we saw no objection to the proposed circular to be sent out by the Company, but the document accompanying it, and which we presumed it was proposed that he should sign, would be entirely in the discretion of the chief clerk	0	3	6
Writing to Mr. in reply to his letter addressed to the official liquidator, informing him we should require his attendance before the special examiner on Monday next at 3 o'clock, and clerk attending with same, and paying Mr.	0	6	8
Paid Mr.	1	1	0
Writing to the official liquidator in reply to his letters, and informing him that we had served Mr. with copy of summons and notice	0	3	6
Having read letter from the official liquidator enclosing certain documents, writing him in reply acknowledging receipt of same	0	3	6
Perusing the original guarantee between the company's directors and policy holders, which was known as the special guarantee, folios 15	0	5	0
Making fair copy of same for counsel	0	5	0
Making extracts from reports of the proceedings of a meeting of directors for counsel, upon the examination of Mr. , folios 8	0	2	8
Perusing deed of guarantee given for supplementing the funds of the company for the benefit of policy holders, folios 25—2 skins	0	10	0
Making copy of same for counsel	0	8	4
Perusing extracts from minute book in reference to the election of directors, and making same for counsel	0	6	8
Attending the official liquidator's partner, in long conference this morning fully as to the effect of certain documents giving us further particulars, and advising as to putting further questions to Mr. in reference to the guarantee, &c.	0	6	8
Drawing further brief for counsel, folios 42	2	2	0
Making fair copy of same for counsel	0	14	0
Attending counsel with same	0	6	8
Paid fee to him and clerk	2	4	6
Writing to the official liquidator requesting him to produce the letter books herein on the examination of Mr.	0	3	6
Engrossment of the agreement for the sale of the goodwill, in duplicate, folios 11 each	0	7	4
Paid stamping same	0	1	0
Attending the official liquidator in reference to the examination of Mr. to-day, and as to the further points to be gone into, conferring and advising him fully thereon	0	6	8
Preparing summons to confirm the conditional contract with the Company for the sale of the business of this company	0	6	8
Paid stamping same	0	3	0
Making copy of same to leave at Chambers	0	2	0

	£	s.	d.
Attending before the special examiner on the examination of Mr. _____, when he attended, this examination was proceeded with and adjourned	1	1	0
Writing to Mr. _____, the secretary of the _____ Company, with copy agreement of the goodwill of this company for execution by the board of directors, and for an appointment to complete same	0	3	6
Writing to Messrs. _____ & Co., requesting them to let us have the original lease of the premises occupied by the company, and clerk's attendance with same	0	5	0
Subsequently attending the official liquidator in reference to producing the notice of distress delivered by the sheriff, in order that he might check articles which were enumerated therein, and conferring with him as to the course to be adopted	0	6	8
Perusing documents received from the official liquidator, especially with reference to the £ _____ guarantee	0	13	4
Attending the official liquidator, and witnessing and attesting his execution of agreement of the sale of the goodwill	0	6	8
Attending the official liquidator, conferring with him at great length with reference to his statement as to the directors' liability under the £ _____ guarantee, also as to other points, advising him thereon, and ultimately taking his instructions to submit a case to counsel on the subject	1	11	6
Instructions for case to advise upon various questions connected with the liquidation, which were not only very numerous, but involved considerable time and trouble in distinguishing the intricate liabilities of various classes of the company	2	2	0
Drawing same, folios 74	3	14	0
Making brief copy of same, including documents, folios 125	2	1	8
Attending counsel with same	0	13	4
Paid fee to him and clerk	11	0	0
Attending counsel appointing conference	0	6	8
Paid conference fee to him and clerk	1	6	0
Writing to the official liquidator, and giving notice of the time appointed for the conference	0	3	6
Having received letter from Mr. _____ in reference to the sale of the goodwill, writing and requesting him to forward us his part of agreement executed	0	3	6
Attending the official liquidator in reference as to whether he had mentioned the circular issued by Mr. _____ to the secretary of the _____ Company, when he informed us the secretary was aware of it	0	6	8
Instructions for affidavit of the official liquidator in support of summons to confirm the contract for the sale of the goodwill to the _____ Company	0	6	8
Drawing same, folios 9	0	9	0
Writing to the official liquidator with same for his approval, and as to some of the exhibits	0	3	6
Drawing further brief for counsel, folios 16	0	16	0
Making copy of same, including further documents, folios 54	0	18	0
Attending counsel with same	0	6	8
Paid fee to him and clerk	3	5	6
Writing to Mr. _____ reminding him of the appointment for tomorrow for his further examination	0	3	6

	£	s.	d.
Attending the special examiner, and paying his fee for the examination of Mr. to-morrow	0	13	4
Paid fee to him and clerk	5	10	0
Attending Messrs. & Co. on their calling, and bringing the lease of the premises formerly occupied by the company, and they requesting us before leaving the lease, that we should give them the official liquidator's receipt	0	6	8
Attending Messrs. & Co., handing them the receipt signed by the official liquidator, and paying their charges	0	6	8
Paid same			
Attending to file chief clerk's certificate certifying that the official liquidator had given security	0	6	8
Making copy of same to be marked as an office copy, folios 5	0	1	8
Paid for office copy	0	0	10
Attending at the office on the directors executing the agreement for the sale of the goodwill of the business of this company	0	6	8
Having received lease of No., perusing same, 2 skins	0	10	0
Writing to the official liquidator inclosing him this lease, and informing him that there was a provision that in case the company should remove the partition, the sum of £ was to be paid to the lessor, and all damages, &c., in the floors or ceilings to be made good	0	3	6
Attending appointment before the special examiner on Mr. being further examined	1	1	0
Attending with the official liquidator in conference with counsel on the case laid before him	0	13	4
Engrossing affidavit of official liquidator in support of summons for the sale of the goodwill to Company, folios 9	0	3	0
Preparing 6 exhibits	0	6	0
Attending the official liquidator on his being sworn to same	0	6	8
Paid commissioner taking deponent's oath, and marking 6 exhibits	0	7	6
Paid filing same	0	2	0
Making copy of same to be marked as an office copy	0	3	0
Paid for office copy	0	1	6
Attending summons to confirm agreement for sale of goodwill of the company, when order made subject to purchasing company accepting the time	0	13	4
Attending upon the secretary of the purchasing company, explaining to him the requirements of the chief clerk, when signed memorandum as desired	0	6	8
Having obtained an appointment to attend before the chief clerk on the next, to obtain his directions as to list of contributions, notice thereof to the official liquidator	0	3	6
Preparing draft order of instant, and attending to get same settled, signed, and entered	0	13	4
<i>July.</i>			
Attending the official liquidator, and conferring with him as to the further instructions to be given to counsel upon the resumed examination of Mr.	0	6	8
Drawing further brief for counsel, folios 10	0	10	0
Making fair copy of same	0	3	4
Attending counsel with same	0	6	8
Paid fee to him and clerk	3	5	6

	£	s.	d.
Attending a clerk from the Company in reference to the issue of the circular which we had settled, and requested us to make a final communication to his office	0	6	8
Attending the special examiner and paying his fee for the further examination of Mr. on the instant	0	13	4
Paid fee to him and clerk	5	10	0
Writing to the secretary of the Company and informing him that the agreement had been approved of by the chief clerk, and that the circulars could be issued	0	3	6
Attending the official liquidator, conferring with him with reference to the refusal of Mr. on his last examination to produce the letters which he had received, and which he alleged were private communications from the directors, none of which letters appeared to be entered on the minutes, and affected Mr. responsibility as a guarantor; also conferring with reference to the arrangement with Mr., the lessor of the company's premises, and advising him thereon	0	13	4
Engrossing order of ultimo, folios 4	0	1	4
Paid stamping same	0	5	0
Attending appointment before the special examiner for the further examination of Mr., when same adjourned till next at o'clock	0	13	4
Writing to Mr. with formal notice of the appointment to examine him on next	0	3	6
Having received a letter from Messrs. in reference to the position of the policy-holders, writing them in reply, and informing them we would confer with the official liquidator on same, and then would write them again	0	3	6
Making copy of Messrs. & Co.'s letter, and writing to the official liquidator with same	0	4	6
Perusing copy correspondence received from the official liquidator with reference to the refusal of the trustees of the company to transfer the stock except under the order of the Court	0	6	8
Preparing summons for the trustees of the company to show cause why they should not transfer in the name of the official liquidator the sum of £ consols, and attending at Chambers to get same sealed	0	13	4
Paid stamping same	0	3	0
Making copy of summons to leave at Chambers	0	2	0
Copy and service of same on Mr.	0	4	6
The like on Mr.	0	4	6
The like on Mr.	0	4	6
Notice of return of this summons to the official liquidator	0	2	6

July.

Having received statement of letters received from the directors referred to in the minute book, perusing and making copy of same for counsel	0	13	4
Attending counsel with same	0	6	8
Paid fee to him and clerk	3	5	6
Writing to the secretary of the Company with the agreement for the sale of the goodwill signed by the official liquidator	0	3	6

	£	s.	d.
Writing to the official liquidator with the other part of this agreement, signed by the directors of the Company	0	3	6
Attending the special examiner and paying his fee	0	13	4
Paid fee to him and clerk	5	10	0
Writing to Mr., requesting him to produce at the appointment before the special examiner to-day all letters addressed to him or the company by the directors between, 187 and, 187, relating to the affairs of the company	0	3	6
Writing to Mr. in reply to his letter as to the power of attorney, which he would forward to the official liquidator in respect of the £ consols	0	3	6
Writing to the official liquidator in reply to his, as to the letters from the directors	0	3	6
Attending on further examination of Mr., when same proceeded with and completed	2	2	0
Paid Mr. for his attendances as a witness			
Attending Mr., one of the trustees of the company, on his calling on the copy summons which had been served upon him, when he stated he did not desire to attend, and drawing form of letter consenting to an order for his signature, which he signed	0	6	8
Making copy opinion of counsel on case, together with the questions submitted to him for the official liquidator, folios 40	0	13	4
Writing to the official liquidator with same and thereon	0	3	6
Writing to the official liquidator acknowledging receipt of his letter, inclosing power of attorney from Mr. in favour of Mr., and informing him when the order was made Mr. could transfer same	0	3	6
Attending at the report office, bespeaking office copy depositions of, and afterwards for same	0	6	8
Paid for same, folios at per folio	0	0	6
Instructions for affidavit of official liquidator in support of application for transfer of stock	0	6	8
Drawing same, folios 16	0	16	0
Writing to the official liquidator with same for his approval	0	3	6
Engrossing affidavit	0	5	4
Preparing 9 exhibits	0	9	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath, and marking 9 exhibits	0	10	6
Making copy of this affidavit to be marked as an office copy	0	5	4
Paid filing same	0	2	0
Paid for office copy	0	2	8
Attending before the chief clerk, when he made an order to transfer the £ consols subject to the production of the written consent of Mr., or an affidavit of service	0	13	4
Writing to the official liquidator informing him of the result of summons	0	3	6
Writing to Mr. informing him of the difficulty in the absence of Mr., and requesting him to see his solicitors and get their endorsement and consent to transfer stock	0	3	6
Drawing list of claims, folios 110	5	10	0
Drawing and engrossing affidavit, verifying service of copy summons on, folios 6	0	6	0
Preparing exhibit	0	1	0
Paid commissioner taking deponent's oath and marking exhibit	0	2	6

	£	s.	d.
Making copy of this affidavit to be marked as an office copy	0	2	0
Paid filing affidavit	0	2	0
Paid for office copy	0	1	0
Attending Mr., the official liquidator's partner, in very long conference as to the result of Mr. examination, especially with reference to damages by the improper use of the company's books subsequent to the liquidation, and as to the goodwill, and advising him generally thereon, also perusing list of further claims which had come in, and arranging as to the parts of the schedule they should be inserted	1	1	0
Making copy of order of the inst., to be marked as an office copy, folios 5	0	1	8
Paid for office copy	0	0	10
Writing to Mr., enclosing original summons with consent endorsed for signature by his solicitor	0	3	6
Instructions for affidavit of official liquidator verifying list of debts and claims	0	6	8
Drawing same, folios 5	0	5	0
Engrossing same	0	1	8
Making copy of list of debts and claims to be marked as an exhibit, folios 110	1	16	8
Preparing exhibit	0	1	0
Attending appointment of claims, when the same adjourned to the	0	6	8
Writing to the official liquidator thereof, and requesting him to call upon us as to claims upon the policies	0	3	6
Drawing directions to open an account at the Bank of England	0	3	0
Making 3 copies of same	0	3	0
The official liquidator being very ill, attending on him with commissioner, when he was sworn to his affidavit	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6
Paid filing affidavit	0	2	0
Making copy to be marked as an office copy	0	1	8
Paid for office copy	0	0	10
Attending on the official liquidator on his signing directions for opening an account at Bank of England	0	6	8
Attending on the solicitors for the Bank of England in reference to the form of order necessary to proceed with the transfer of the fund	0	6	8
Subsequently attending at the Bank of England and ascertained the form of order to be obtained and was informed it would not be transferred to the cash account	0	6	8
Writing to Mr. with notice of appointment to settle the order to transfer the stock	0	4	0
The like to Mr.	0	2	6
On receipt of letter from Messrs., the solicitors of Mr making copy of same, and writing to the official liquidator with same	0	4	6
Attending at Mr. in pursuance of the letter we had read from Messrs., when after considerable discussion he agreed and endorsed the summons consenting to the order, engaged a very long time	0	6	8
Writing to Messrs. with notice of appointment to settle the order to transfer the trust fund	0	2	6

	£	s.	d.
Attending at the Judge's Chambers, when the request to open an account of official liquidator at the Bank of England was duly signed by the chief clerk	0	6	8
Attending the official liquidator's clerk on his calling in reference to the appointment this morning with regard to the order to transfer of this stock and conferring with him thereon	0	6	8
Preparing, settling, and entering order of the inst.	0	13	4
Engrossing same, folios 4	0	1	4
Paid stamping same	0	5	0
Attending Mr. with reference to the transfer of the fund and the deposit of the power of attorney and arranging same	0	6	8
Making copy of order of 187 to be marked as an office copy, folios 6			
Paid for office copy	0	1	0
Attending at the Bank of England lodging request to open the account of the official liquidator, when same accepted	0	6	8
Writing to the official liquidator informing the account was formally opened	0	3	6
Writing to Messrs. informing them that the order for transfer of stock was completed and requesting them to send us an account of their charges	0	3	6
Attending Mr. conferring with him with reference to the transfer of the stock, and the objections which it appeared had been filed by thereto, and advising him thereon	0	6	8
Attending at Leadenhall Street upon Mr. and informing him that he had stopped the transfer, when he stated it was a stoppage of long standing, and he accompanied us to Messrs. & Co.	0	6	8
Subsequently attending with Mr. and Messrs. & Co. at the Bank of England and getting the transfer completed	0	6	8
Attending appointment before the chief clerk in reference to the steps to be taken in the liquidation, chiefly in reference to members, and he directed us to serve a summons for leave to apply to the members for the £ due from each	0	13	4
Preparing summons for order that the members of the company should pay each, and that failing payment of such amount the official liquidator might bring in a list of members so making default, and attending at Chambers to get same sealed	0	13	4
Paid stamping same	0	3	0
Making copy of same to leave at Chambers	0	2	0
Writing to the official liquidator with certificate of transfer of trust fund in his name, and also reporting to him generally the results of the appointment before the chief clerk this morning	0	3	6
Writing to Messrs. & Co. with amount of their charges as brokers	0	3	6
Paid same			
Writing to the official liquidator for an appointment to consider with him the terms of the application to be made to the policy holders	0	3	6
Making copy order to transfer stock to be marked as an office copy, folios 4	0	1	4
Paid for office copy	0	0	8
Attending at the Bank of England and lodging same at the transfer office	0	6	8
Drawing directions from the chief clerk to sell the £ consols and fair copy	0	2	8
Attending the official liquidator with same to get same signed	0	3	4

	£	s.	d.
Attending Mr. at his office (the official liquidator being ill) engaged going through the list of directors and contributories and discussing same, giving instructions and advising him as to the form of proposed list of contributories and arranging the course to be taken, engaged a very long time	2	2	0
Subsequently writing the official liquidator requesting him to return us the certificate of the transfer of the £ consols in order to produce same to chief clerk	0	3	6
Writing to Messrs. in reply to their letter, and sending them the amount of their charges for attendance on behalf of their client, Mr., in reference to the order as to the transfer of the £ consols	0	3	6
Paid same			
Subsequently attending the official liquidator in very long conference as to the mode of dealing with the claims made by policy holders, and whether we should bring the question before the chief clerk, and conferring with him at great length	1	11	6
Attending at Rolls Chambers with form of request to the Bank of England to sell the stock, when they required a further special form to be prepared requesting the bank to accept the transfer	0	6	8
Drawing same and fair copy, folios 2	0	2	8
Attending the official liquidator obtaining his signature thereto	0	6	8
Drawing form of request to sell so much of the £ consols as would realise £ and fair copy	0	2	8
Attending the official liquidator, in long conference in reference to the opinion of Mr. with regard to the basis upon which the claims of policy holders should be treated, engaged a long time	1	11	6
Attending the official liquidator prior to the appointment to-day, going through various questions which had been raised, and advising him thereon	0	13	4
Attending at the Bank of England with letter from the official liquidator requesting certificate of transfer to be given to us that the stock was standing in his name as official liquidator of the company	0	6	8
Attending adjourned appointment before the chief clerk upon the list of debts and claims, when no person appearing, same proceeded with and adjourned, the official liquidator to be at liberty to select a policy holder's case as a representative one, which would operate as a guide in fixing all claims of policy holders	0	13	4
Attending summons before the chief clerk in reference to the members of this company and their liabilities under the 4th clause of the memorandum of association to contribute, and for directions, when the chief clerk directed that we should apply for the amount by letter, and failing that we could bring in a list of contributories	0	13	4
<i>August.</i>			
Attending the official liquidator as to the form of the letter to be sent to the policy holders, and finally settling same, engaged discussing several questions as to the liability of members without profits, and the form of the list to be furnished, and giving necessary directions for same, engaged a long time	1	1	0
Attending the official liquidator in long conference as to the various matters to be brought to the attention of the Court, engaged a long time	0	13	4

	£	s.	d.
Making copy of letter to policy holders, folios 4, and fair copy clause of members of association to accompany, for the printer, folios 2, together 6 folios	0	2	0
Examining and correcting proof	0	1	0
Paid printer's charges			
Drawing form of receipt, folio 1	0	1	0
Examining and correcting proof	0	0	4
Paid printer's charges			
Attending at the printer's, giving further instructions as to reference being made to the number of policies, the official liquidator not being able to furnish the names alphabetically	0	6	8
Engaged filling up and directing circulars and envelopes to policy holders at 1s. 6d. each			
Paid postage of same			
Numerous attendances on the official liquidator, on replies to the circular, and also numerous attendances on and letters to the policy holders giving them the information they requested to know how they became liable, were charged and allowed.			
Drawing statement of result of circulars and amount received, also statement of circulars returned through the Dead-letter Office, folios 40	2	0	0
Making fair copy for the official liquidator	0	13	4
Attending Mr. on his calling, giving him information herein and receiving the amount due from him in discharge of his liability as a member of the company	0	6	8
Several attendances of the like nature as this were allowed.			

October.

Attending the official liquidator in long interview in reference to the question which he thought should be raised as to the liability of the directors to contribute £ each so long as they were members, the liability having arisen only on the order to wind up of the company, engaged a very long time	1	1	0
Attending Mr. (the official liquidator's partner), conferring with him in reference as to selecting certain cases against the directors as test cases, and advising him fully thereon	0	13	4
Having received amended copy of corrected addresses of contributories from the official liquidator, perusing same and making notes	0	6	8
Writing to the official liquidator in reply to his letter in reference to the directors to be placed upon the list of contributories and making special appointment for to-morrow to consider the matter fully	0	3	6
Attending the official liquidator, conferring with him at great length with reference to the liability of the directors, and as to the classes of the cases in which it would be necessary to take the opinion of the Court in the event of the directors questioning their liability and arranging the course to be taken, also conferring with him in reference to the classes of the creditors which would have to be considered, engaged a long time	0	13	4
Attending the official liquidator in long conference as to the question of set off, which would probably be brought forward by Messrs. & Co., and conferring with him at great length, engaged above an hour	0	13	4

	£	s.	d.
Perusing draft proposed list of contributories as far as the directors were concerned and memorandum of the official liquidator on same	0	13	4
Having obtained an appointment before the chief clerk on the ultimo in 2 representative cases, and for the ultimo to proceed upon disputed claims, writing to the official liquidator informing him of same	0	3	6
Notice of these appointments and 7 copies and service (1st 4s. and the others 2s. 6d. each)	0	19	0
Drawing case for counsel to advise in reference to the position of all the directors, both past and present, folios 20	1	0	0
Making fair copy of same for counsel	0	6	8
Attending counsel with same	0	6	8
Paid fee to him and clerk	2	4	6
Attending counsel appointing conference	0	6	8
Paid conference fee to him and clerk	1	6	0
Sittings fee	0	15	0

Michaelmas Sitting, 187

November.

Attending conference with counsel in reference to the position of the directors past and present, and particularly as to the liability of those who resigned more than 12 months, when he advised that all the directors were liable	0	13	4
Subsequently attending the official liquidator as to the result of counsel's opinion, when he directed us to carry into Chambers a list of all the directors	0	6	8
Attending at Somerset House searching for will or letters of administration to the estate of (one of the contributories), when we found we had not been proved or administration granted	0	6	8
Paid search	0	1	0
Instructions for affidavit of official liquidator in support of list of contributories	0	6	8
Drawing same, folios 4	0	4	0
Engrossing same	0	1	4
Making further copy list of contributories to be marked as an exhibit, folios 10	0	3	4
Preparing exhibit	0	1	0
Attending the official liquidator on his being sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6
Making copy affidavit to be marked as an office copy	0	1	4
Paid filing affidavit	0	2	0
Paid for office copy	0	0	8
Paid for office copy affidavit of, folios 10	0	5	0
Perusing same	0	3	4
Paid for office copy affidavit of, folios 6	0	3	0
Perusing same	0	2	0
Copy and service of notice of appointment of the inst. on Messrs. & Co., solicitors for contributories	0	2	6
Making copy of letter received from Messrs. as to the repre-			

	£	s.	d.
representative cases in which they desired to act, and writing to the official liquidator with same	0	4	6
Attending appointment before the chief clerk upon the representative cases (Policies, Nos. 72 and 173) when after considerable discussion same adjourned to the Judge and chief clerk directed us to obtain appointment in reference to a case of set-off which Messrs. desired to set up	0	13	4
Having obtained an appointment to attend before the chief clerk on the 17th inst., notice thereof to the official liquidator copy and service	0	2	6
The like on Messrs.	0	2	6
Making copy opinion of counsel in reference to the settlement of the list of directors for the official liquidator, folios 10	0	3	4
Paid for office copy affidavit of, folios 16	0	8	0
Perusing same	0	5	4
On receipt of affidavit from Mr. in support of Mr. claim, perusing same, folios 6	0	2	0
On receipt of letter from the official liquidator in reference to the position of the directors, and upon the necessary evidence upon the list writing him in reply with our views thereon	0	3	6
Paid for office copy affidavit of, folios 3	0	1	6
Perusing same	0	1	0
Paid for office copy affidavit of, folios 13	0	6	6
Perusing same	0	4	4
Attending appointment before the chief clerk to proceed on claims when same proceeded with, but owing to the evidence not being filed in all the cases same adjourned	1	1	0
Having obtained a further appointment to proceed to settle list of claims, eighteen copies and services of same	1	9	0
Attending the official liquidator conferring with him as to the settlement of the directors upon the list in respect of their liability of £ membership, and also as to the questions on the list of policy holders, members and non-members, and advising him fully thereon, engaged above an hour	0	13	4
Having received an appointment to settle list of contributories on the 27th inst. notice thereof to official liquidator, copy and service	0	2	6
Attending the official liquidator's clerk in reference to the preparation of the list of members and giving him the necessary information	0	6	8
Attending appointment before the chief clerk in reference to the case of set-off, &c. when same adjourned to the Judge	0	6	8
Writing to the official liquidator and informing him that the three questions on policies and set-off would be argued before the Judge this afternoon	0	3	6
Having received from official liquidator two special reports of Mr. the actuary, perusing same prior to the appointment before the Judge	0	6	8
Attending before the Judge in case in reference to the amount claimed by the policy holders, and after hearing Messrs. the Judge decided that the claim should be allowed on Mr. basis, also decided case. The Judge also decided a non-member case should be settled on the basis fixed by Mr. although he was a non-member, and the Judge decided that no contributory could set off his contribution against a debt owing to him as a creditor of the company, notwithstanding the 10th section			

	£	s.	d.
of the Judicature Act, which he held did not apply, costs to be allowed to Messrs. on the three cases	1	1	0
Writing to Messrs. solicitors for Mr. a contributory, in reply to their letter to the official liquidator and informing them that they could inspect the books at his office	0	3	6
Paid Messrs. & Co. for copy exhibit, folios 18	0	6	0
Writing to the official liquidator with same	0	3	6
The notice sent to Mr. one of the directors, having subsequently been returned through the post-office marked "gone away," writing to the official liquidator informing him of same and requesting to know whether he could give us any better address	0	3	6
Perusing notes of the official liquidator prior to appointment as to claims	0	6	8
Attending appointment before the chief clerk engaged from when Mr. claim was proceeded upon and allowed, and other claims partly proceeded with	1	1	0
Paid for copy exhibits to affidavit of, folios 18	0	6	0
Writing to Messrs. solicitors for Mr. one of the directors, in reply to their letter, and informing them that Mr. claim would be dealt with in due course, but in the meantime we should be obliged to call upon him for payment of £	0	3	6
Paid for copy of affidavit of, folios 21	0	10	6
Perusing same	0	7	0
Writing to Messrs. in reply to their letter and informing them that we wrote to the official liquidator for an appointment to them to inspect the books of the company	0	3	6
Writing to the official liquidator for an appointment to enable Messrs. to inspect the books of the company	0	3	6
Attending Messrs. conferring with them as to the position of one of the directors of the company	0	6	8
Writing to Messrs. with appointment for Monday next to inspect documents on behalf of their client	0	3	6
Making fair copy of official liquidator's first account of receipts and payments to be marked as an exhibit, folios 130	2	3	4
Drawing and engrossing affidavit of verifying service of notice to settle list of contributories, folio 6	0	6	0
Preparing two exhibits	0	2	0
Paid commissioner taking deponent's oath and marking two exhibits	0	3	6
Making copy of affidavit to be marked as an office copy	0	2	0
Paid filing affidavit	0	2	0
Paid for office copy	0	1	0
Attending the official liquidator this morning in long conference upon the claims and discussing same fully, also conferring as to the settlement of the list of directors contributories, and examining contributories' minutes and attendance books, engaged a very long time, and advising him generally as to the course to be pursued to-day	1	1	0
Attending appointment before the chief clerk to settle the lists of contributories when same settled with the exception of those cases for whom solicitors had entered appearances, and same adjourned in order to enable them to file evidence and official liquidator to verify books	0	13	4
Attending Messrs. as to Mr. case on their calling,			

	£	s.	d.
when they alleged that we had no case against their client as regards the books of the company	0	6	8
Subsequently attending the official liquidator thereon and as to obtaining letters from Mr. which that gentleman held back and which the official liquidator believed would prove Mr. had accepted a directorial in this company and advising him thereon	0	6	8
It being necessary to file an affidavit of the official liquidator within seven days verifying the books of the company, writing to the official liquidator for a list of same to enable us to prepare the affidavit	0	3	6
Writing to Mr. informing him that the official liquidator would admit Mr. claim upon his filing an amended affidavit	0	3	6
Writing to the official liquidator with office copy depositions of Mr. as requested and clerk attending with same	0	6	8
Writing to Mr. in reply to his letter as to the claim of Mr. being one for damages	0	3	6
Instructions for affidavit of the official liquidator, verifying all the books of the company	0	6	8
Drawing same, folios 9	0	9	0
Attending the official liquidator going through the books of the company and making list of same to be included in the schedule to his affidavit as to the directors	0	6	8
Instructions for affidavit of official liquidator as to claim against Mr.	0	6	8
Drawing same, folios 8	0	8	0
Writing to the official liquidator with same for his approval	0	3	6
Engrossing affidavit of official liquidator verifying books and documents in his possession, folios 9	0	3	0
Preparing forty-two exhibits	2	2	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibits	2	3	6
Making copy of this affidavit to be marked as an office copy	0	3	0
Paid filing affidavit	0	2	0
Paid for office copy	0	1	6
Notice of filing this affidavit, five copies and services (first 4s. and the others 2s. 6d. each)	0	14	0
Attending the official liquidator in long conference, going through the books of the company to ascertain which related to the election of Mr. as a director	0	13	4
Writing to Mr. informing him as the official liquidator had now verified the books of the company he must file his evidence in fourteen days in support of his objection to being put on the list of contributerics as a director	0	3	6
Writing to Messrs. in reply to their letter as to the case of Mr. and requesting to enter an appearance for him	0	3	6
Writing to Messrs. in reply to their letter as to the case of their client Mr. a director, and informing them under the circumstances mentioned by them we would consent to their client's case standing upon the same footing as the other contested cases, but they must file their evidence in opposition within fourteen days	0	3	6
Instructions for affidavit of official liquidator verifying his first account of receipt of payment	0	6	8

	£	s.	d.
Drawing same, folios 5	0	5	0
Engrossing same	0	1	8
Preparing exhibit	0	1	0
Writing to official liquidator with same and account, and requesting him to return same to us when completed	0	3	6
Attending at the office of the official liquidator and further searching for documents in possession of the company relating to the claim against, and perusing minute book and other documents, engaged a long time	0	13	4
Engrossing affidavit of official liquidator in support of company's claim against Mr., including correspondence, folios 25	0	8	4
Preparing 7 exhibits	0	7	0
Writing to the official liquidator and informing him that the solicitors engaged for Mr. had requested an appointment to inspect the documents in his possession, and requesting him to let us know on what day and hour it would be convenient for him to produce same	0	3	6
Attending the official liquidator on his being sworn to his affidavit verifying his first account of receipt of payments	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6
Making copy of this affidavit to be marked as an office copy, folios 5	0	1	8
Paid filing affidavit	0	2	0
Paid for office copy	0	0	10
Attending the official liquidator on his being sworn to his affidavit in support of company's claim against Mr.	0	6	8
Paid commissioner taking deponent's oath and marking 7 exhibits	0	8	6
Making copy of this affidavit to be marked as an office copy	0	8	4
Paid filing affidavit	0	2	0
Paid for office copy	0	4	2
Notice of filing this affidavit and copy and service on Messrs. & Co.	0	4	0
Writing to the official liquidator and requesting to know, having regard to the decision of the judge in the cases of Messrs. whether it would not be advisable to take the directions of the chief clerk as to formally intimating to all policy claimants that he was prepared to allow their claims at a fixed amount taken upon the principle allowed by the judge	0	3	6
Writing to Messrs., solicitors for and others, informing them they could inspect the books and papers at the official liquidator's office any day between the hours of 12 and 2	0	3	6
Attending appointment taxing costs of Mr.	0	6	8
Attending appointment taxing costs of Mr.	0	6	8
Attending official liquidator conferring with him as to the letter which was referred to by Mr. as having been received by him from Mr., when he requested us to write to Mr. for same	0	6	8
Writing to Mr. accordingly for the same	0	3	6
Instructions for affidavit of the official liquidator in opposition to Mr. claim	0	6	8
Drawing same, folios 24	1	4	0
Writing to official liquidator with same for his perusal, and to furnish us with any suggestions that might occur to him upon it	0	3	6
Preparing summons for leave to proceed on official liquidator's first			

	£	s.	d.
account of receipts and payments and attending at Chambers to get same sealed	0	6	8
Paid stamping same	0	3	0
Making copy of summons to leave at Chambers	0	2	0
Writing to Messrs. in reply to their letter as to Mr. and others' cases, and informing them that it was necessary for the official liquidator to verify the whole of the books and papers of the company, and amongst the books and papers we found those which related to their clients, such as the minute book, attendance book, &c., and that we could not see how we could follow out their suggestion as to the statement of facts as affecting the directors' cases	0	5	0
Writing to official liquidator with notice of appointment to vouch his first account of receipts and payments	0	2	6
Writing to Messrs. & Co. in reply to their letter of the inst., and informing them that the books and papers referred to in the affidavit of the official liquidator referring to Mr. case were those upon which he relied in support of his contention that their client was liable as a director	0	3	6
Attending the official liquidator and conferring with him in reference to a letter received from Messrs. as to the books we relied upon to show the dates of resignation, &c., of the directors, and advising him thereon, engaged upwards of 1 hour	0	13	4
Writing to Messrs. & Co. in reply to their letter, and informing them that we had conferred with the official liquidator on same, that we could not see from the books of the company with respect to what particular we could agree upon in reference to the respective positions of their clients, and that we found that their clients were all directors of the company at the date of the petition to wind up same, and, if they admitted this, then there would be no dates either to agree or dispute upon as far as we were aware	0	5	0
Writing to Messrs., solicitors for Mr., in reply to their letter, and informing them that they could inspect the minute book at the official liquidator's office any day between 12 and 2	0	3	6
Writing to Messrs. in reply to their letter as to Mr. claim	0	3	6
Attending the official liquidator's office with regard to Mr. claim, finally settling his affidavit in opposition to this claim, and conferring fully as to the mode of dealing with the claims of the policy holders, when he promised to prepare a list showing the amount at which he was prepared to admit their claims	0	6	8
Subsequently writing to official liquidator requesting him to let us have a copy of this list as soon as possible to enable us to obtain an appointment before the chief clerk, when notice would be given to all persons whose claims were admitted, and also to those whose claims were to be proved in addition to the claims on the policies	0	3	6
Attending Messrs. on their calling, and inspecting the documents referred to in the affidavit of the official liquidator in reference to the position of Mr., and they requested to be furnished with copy, memorandums, &c., engaged above 2 hours	1	1	0
Subsequently writing to the official liquidator accordingly for copy of the minutes of, and copy letter referred to therein, and copy minute of, and copy of the entry numbered	0	3	6

	£	s.	d.
Attending Mr. _____'s clerk, on his calling with reference to Mr. _____'s case, and conferring with him as to the evidence, and giving him information as to the time for his client's evidence to be brought in	0	6	8
Engrossing affidavit of official liquidator, folios 24	0	8	0
Preparing exhibit	0	1	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6
Making copy of this affidavit to be marked as an office copy	0	8	0
Paid filing affidavit	0	2	0
Paid for office copy	0	4	0
Notice of filing same, copy and service	0	4	0
Writing to Messrs. _____ & Co. acknowledging the receipt of their notice of their appearing for Mr. _____, and requesting to know whether they were aware that their client was settled on the list of contributors on the _____ last in respect of his liability as a director for £	0	3	6
Paid for office copy affidavit of _____, folios 6	0	3	0
Perusing same	0	2	0
Writing to Messrs. _____ & Co. acknowledging receipt of their letter, and informing them to let us have the names of the persons for whom they had now entered appearances, as we were informed by the official liquidator that he had supplied information to the advisers of some of the directors, and that the official liquidator had always been ready to give them any information they might desire in reference to the dates of election, resignation, &c., of any of their clients, and with regard to their suggestion as to our agreeing upon a statement comprising the dates of election and resignation of their clients, we would confer with the official liquidator upon it and communicate with them further thereon	0	5	0
Making copy of letter received from Messrs. _____ & Co., folios 5, and writing to the official liquidator with same, and our views thereon	0	5	2
Writing to Messrs. _____ & Co. in reply to their letter of the _____ inst., informing them that we would get a copy of the minute of _____ made for them—that no meeting was recorded in the minute book as having been held on the _____, and the circular of _____ did not in the least apply to their client	0	3	6
Writing to the official liquidator and informing him Mr. _____ bill of costs was taxed at £ _____, and Mr. _____'s at £ _____, and requesting him to get cheques signed by the chief clerk for payment of same	0	3	6
Having received further copy summons from Messrs. _____ & Co., writing them and requesting them to inform us whether they intended to abandon the former summons	0	3	6
Attending Messrs. _____ & Co. on their calling, and giving them information as to the date of the petition, and conferring with them on other matters relating to the liquidation, engaged above an hour	0	13	4
Attending summons taken out on behalf of _____ and others for further time to file evidence in opposition, when order made	0	6	8
Writing to the official liquidator reporting to him the substance of the defence of _____, and as to the dates, and whether he should not file an affidavit in opposition	0	3	6

	£	s.	d.
Making out list of dates of appointments and resignations of Messrs. & Co.'s clients, writing them with same and in reply to their letter and informing them with reference to the cases of their clients, we declined their suggestion as to the preparation of a case upon which the questions could be decided	0	5	0
Writing to the official liquidator requesting him to forward us copies of all proposals made by the directors for assurance, in order for us to ascertain the position they were in as regarded membership	0	3	6
Writing to Mr. requesting to know whether he was prepared to admit that his client signed a form of proposal as a member	0	3	6
Paid for office copy affidavit of, folios 6	0	3	0
Perusing same	0	2	0
Paid for office copy affidavit of, folios 14	0	7	0
Perusing same	0	4	8
Writing to Messrs. in reply to their letter, and informing them that we agreed with them that their case possessed features entirely distinct from that of his co-directors, and that the matter should receive our attention in due course	0	3	6
Making copy of letter received from Messrs., and writing to the official liquidator with same and thereon	0	4	6
Writing to Messrs. in reply to their letter as to the case of, and informing them we would give them notice of the further appointment to proceed when obtained	0	3	6
Writing to Mr., requesting to know if he had found the letter referred to in the minute of the of December	0	3	6
Writing a similar letter to Messrs.	0	3	6
Writing to Mr. and informing him that his time for filing evidence in opposition to his being put on the list of contributors had expired, and, unless he made an application to the chief clerk, he would be precluded from producing evidence	0	3	6
Attending official liquidator in very long conference to the preparation of the list of claims of policy holders which required to be verified, and conferring with him as to his calculations, and also conferring and advising him as to the supplemental list of creditors, engaged about 1 hour	0	13	4
Attending the official liquidator's clerk prior to the appointment to-day to pass the official liquidator's first account in reference to certain memorandum which required to be vouched	0	6	8
Attending appointment before the chief clerk, and producing vouchers in support of the official liquidator's first account	0	13	4
On receipt of letter from Mr. in reply to ours of the inst., making copy of same, and writing to the official liquidator with same	0	4	6
Attending and retaining Mr. on behalf of the official liquidator	0	6	8
Paid fee to him and clerk	1	3	6
Writing to the official liquidator and informing him that had stated on his affidavit that he resigned his seat at the Board on the, and that Mr. in his affidavit alleged that he never accepted the office of director, and that, although he consented to be nominated, he reserved the right to refuse the appointment, and that the decision of the case would practically resolve itself into the question whether as a director of			

	s.	d.
the company he was not liable by reason of his never having exercised the rights of a director	0	5 0
Writing to Messrs. & Co. informing them that, as we were now given to understand that they were now acting on behalf of Mr. , reminding them that the time for filing the evidence on his behalf expired on the inst.	0	3 6
Perusing proposals made by each director with a view to ascertain the position of each as regarded liability as members	1	1 0
Attending summons taken out on behalf of for further time to file his evidence in opposition to his name being included in list of contributors, when order made to the January next	0	6 8
The like attendance on summons taken out on behalf of	0	6 8
Writing to the official liquidator informing him the result of these two applications	0	3 6
Paid for office copy affidavit of , folios 8	0	4 0
Perusing same	0	2 8
Writing to Mr. acknowledging receipt of his letter of the inst., and informing him we should address future communications to Messrs.	0	3 6
Attending upon the official liquidator at his office and conferring with him in reference to preparation of the list of policy holders' claims, and advising him as to the proper amount to be allowed	0	13 4
Writing to Messrs. & Co. in reply to their letter, as to the case of Mr. , one of the directors, and suggesting that they should take out a summons for us to show cause why their client's name should not be struck out of the list of contributors which they would have supported by an affidavit stating the facts	0	3 6
Writing to the official liquidator and informing him that we should be glad to receive the list of the claims of the policy holders with the amount proper to be allowed upon the basis fixed by the judge	0	3 6
Drawing special list of claims, folios 24	1	4 0
Perusing statement of the official liquidator explaining the proposal upon which the same was prepared	0	6 8
Perusing memorandum of the notes made by the official liquidator on affidavit	0	6 8
Writing to the official liquidator in reply to his letter acknowledging receipt of his memorandum, and informing him we did not consider it was necessary for him to answer affidavit	0	3 6
Attending summons taken out on behalf of and others for an order upon the official liquidator that he should point out certain portions of books affecting their cases, same dismissed with costs in the absence of Messrs. & Co., their solicitors.	0	13 4
Writing to Messrs. & Co. informing them the result of their summons	0	2 6
Having obtained an appointment before the chief clerk to proceed further with policy holders, writing to the official liquidator informing him of same, and also as to result of the summons taken out on behalf of and others	0	3 6
Attending Mr. solicitor for , conferring with him in reference to his client's liability, and as to the evidence which it was proposed to put in generally as to this case	0	6 8

	£	s.	d.
Attending Messrs. on their calling in reference to the dismissal of the summons they had taken out on behalf of and others and explaining same to them	0	6	8
Attending the official liquidator in long conference in reference to the claim of and advising him generally as to the further course to be pursued, engaged above an hour	0	13	4
Instructions for affidavit of the official liquidator verifying the calculations upon which he based the claims of the policy holders	0	6	8
Drawing same, folios 37	1	17	0
Perusing memorandum of the official liquidator in reference to the policy holders' claims, excepting those who had not paid the full amount of premium	0	1	8
Perusing 4 letters written by Mr. after the winding-up order was made to policy holders advising them not to pay the amount claimed by the official liquidator	0	6	8
Subsequently writing to the official liquidator with our views thereon, and as to the claim of Mr. for payment of his charges	0	3	6
Writing to Mr. thereon and as to the amount of fees he claimed as consulting actuary of the company	0	3	6
Attending summons issued on behalf of Mr. and consenting to extension of time for him to bring in his evidence	0	6	8
Making copy first account of receipts and payments of the official liquidator in duplicate, folios 130 each	4	6	8
Paid for books	1	4	0
Instructions for affidavit of official liquidator, verifying same	0	6	8
Drawing same, folios 6	0	6	0
Engrossing same	0	2	0
Preparing 2 exhibits	0	2	0
Writing to Messrs. & Co. in reply to their letter and informing them we could not consent to the latter part of their summons, otherwise we should be admitting they had a right to the order of the character they asked for	0	3	6
Writing to the official liquidator that the solicitors for had issued a summons asking that the list of contributors might be altered by limiting their clients to £ and requesting him to inform us the number of board meetings attended by	0	3	6
Writing to Messrs. & Co., solicitors, in reply to their letter informing them directly the evidence was complete we would then give them notice of appointment to settle the list of contributors	0	3	6
Sittings fee	0	15	0

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Paid for office copy affidavit of , folios 12	0	6	0
Perusing same	0	4	0
Paid for office copy affidavit of , folios 10	0	5	0
Perusing same	0	3	4
Attending at the official liquidator's office, in long conference with him, going through his affidavit in reference to the claims of policy holders, and advising him as to those claims, which were less than , and finally settling his affidavit, engaged above an hour	0	13	4

	£	s.	d.
Perusing list of those policy holders who were under age at the time their policies were effected, to advise the official liquidator as to the advisability of settling them on the list of contributors	0	6	8
Perusing letters in the letter book of the company affecting the retirements of as directors of the company	0	6	8
Attending summons taken out on behalf of for further time to file evidence in opposition to be placed upon the list of contributors, when order made for 10 days	0	6	8
Attending official liquidator on his being sworn to his affidavit, verifying his account of receipts and payments in duplicate	0	6	8
Paid commissioner taking deponent's oath and marking exhibits	0	3	6
Making copy of this affidavit to be marked as an office copy, folios 6	0	2	0
Paid filing affidavit	0	2	0
Paid office copy	0	1	0
Writing to Messrs. in reply to their letter and informing them as they did not attend to the summons to-day taken out by them on behalf of we consented only to their having 10 days	0	3	6
Attending Messrs., solicitors for on their calling in reference to his case, replying to their enquiries and going through the articles of association with them and writing to the official liquidator to allow them the bearers full inspection of the books, engaged above an hour	0	13	4
Writing to Mr. acknowledging receipt of his letter of the instant and informing him we would submit it to the official liquidator for his direction	0	3	6
Making copy of letter received from Mr. for the official liquidator and writing him with same	0	4	6
Writing to Messrs. in reply to their letter of instant and stating that there could be no objection on our part to the extension of time named in their summons, but without prejudice to that part of it in reference to the books of the company	0	3	6
Writing to Messrs. in reply to their further letter herein and informing them that there was no reason why the case of their client, Mr., should be treated in any manner different to that of the directors	0	3	6
Engrossing affidavit of the official liquidator as to policy holders' claims, folios 37	0	12	4
Preparing 2 exhibits	0	2	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibits	0	3	6
Making copy of affidavit to be marked as an office copy	0	12	4
Paid filing affidavit	0	2	0
Paid for office copy	0	6	2
Attending the official liquidator and conferring with him as to the examination of and advising him thereon	0	6	8
Writing to the official liquidator in reference to the facts to be put in evidence as to cases and inclosing him office copies affidavits of for his perusal	0	3	6
Preparing summons for leave to extend time to give notice for the cross examination of and attending at Chambers to get same sealed	0	6	8
Paid stamping same	0	3	0

	£	s.	d.
Making copy of same to leave at Chambers	0	2	0
Copy and service of same on solicitors for	0	4	6
Attending the office of the official liquidator and in long interview with the official liquidator's partner upon case, going through the minute book, cash book, ledger, and proposal to ascertain the exact position of this director	0	6	8
Instructions for affidavit of official liquidator in reply to the one filed on behalf of showing the exact state of members	0	6	8
Drawing same, folios 22	1	2	0
Writing to the official liquidator therewith and for his approval	0	3	6
Writing to Messrs. in reply to theirs of the instant and informing them that we did not think we should be called to treat case in the way they desired	0	3	6
Having received letter from the official liquidator on the subject of Mr. , making copy of same for Mr. , writing him with same and informing him if he desired to proceed further he must proceed by affidavit	0	4	6
Perusing a list of minors and others in order to advise the official liquidator as to the course to be pursued and as to fixing the parents of the minor with the liability	0	6	8
Perusing 48 forms of proposals by minors and infant members in order to advise the official liquidator thereon	0	13	4
Writing to the official liquidator informing him that we had perused the list enclosed in his of to-day's date, together with the forms of proposals, and that we thought in those cases in which we could fix the heads of families with knowledge (personally) of insurance effected by junior members of their families, the names of the parents should be included in a distinct list to the list of contributors, and also writing to the official liquidator acknowledging receipt of his letter in reference to the claim and account rendered by Mr. to Mr.	0	5	0
Attending at the office of the official liquidator, finally settling with him his affidavit relating to case and conferring with him at considerable length as to the various measures connected with this liquidation	0	6	8
Having received letter from Messrs. & Co., solicitors for Mr. , in reply of the instant, and informing them we could not accept their statement that there was no issue upon the facts, and that our instructions lead us to the conclusion that the whole of the facts in relation to this case were not properly stated before the Court.	0	3	6
Writing to Messrs. in reply, special letter with reference to the delay they desired, and fully explaining to them that we considered they had no ground for seeking delay	0	5	0
Attending the official liquidator and conferring with him on his certain further explanations as to the case of and advising him thereon	0	6	8
Having obtained an appointment before the chief clerk, notice thereof to official liquidator, copy and service	0	4	0
The like to Messrs solicitors for	0	2	6
Engrossing affidavit of official liquidator, folios 22	0	7	4
Preparing 4 exhibits	0	4	0
Paid commissioner taking deponent's oath and marking exhibits	0	5	6
Making copy of this affidavit to be marked as an office copy	0	7	4

	£	s.	d.
Paid filing affidavit	0	2	0
Paid for office copy	0	3	8
Paid for copy exhibits and affidavit of, folios 16	0	5	4
Writing to the official liquidator requesting him to furnish us with particulars as to the directorship and membership of the late Mr.	0	3	6
Writing to the official liquidator requesting him to send particulars of the resignation of, the minutes accordingly, and confirming same, copies of letters connected therewith, and also particulars of the application for policy, and premium paid	0	3	6
Writing to Messrs. & Co., solicitors for Mr., in reply to theirs of instant, and informing them we must insist on their taking out a summons for extension of time for their client to file his evidence in opposition	0	3	6
Preparing summons on behalf of the official liquidator that he might have until the instant, in which to file his affidavit or affidavits in answer to the evidence filed on behalf of, and attending at chambers to get same sealed	0	6	8
Paid stamping same	0	3	0
Making copy to leave at chambers	0	2	0
Copy and service of same on Mr., solicitor for	0	4	6
2 copies and services for Mr. and Mr., solicitors	0	9	0
Paid for office copy affidavit of, folios 10	0	5	0
Perusing same	0	3	4
Attending summons for further time, within which to give notice to cross-examine, when order made as asked	0	6	8
Writing to the official liquidator with notice of return of summons to extend the time of filing evidence herein	0	2	6
Writing to Messrs. & Co., giving them notice of our intention to cross-examine their client on his affidavit, and requesting to know whether they would undertake to produce him, as we did not wish to serve him personally with the summons	0	3	6
Attending at the request of the official liquidator at his office, going through the minute book and other books affecting the late, and in reference to the abandonment of the salaries of the directors, perusing documents, going through the proposal book, in order to answer the statements in affidavits, engaged a very long time	1	1	0
Attending summons issued on behalf of, that his name should be included in the list of contributors in respect of a member's contribution only, when same adjourned to the instant	0	6	8
Subsequently attending clerk of Messrs. & Co., and giving him information in reply to his enquiries as to the class of insurance, &c., effected by, and conferring with him as to amended summons	0	6	8
Attending appointment before the chief clerk upon policy holders' claims, when same proceeded with and adjourned to the instant	0	6	8
Writing to the official liquidator informing him the result of the hearing of the summons issued on behalf of, and also the chief clerk's adjournment as to the policy holders' claims	0	3	6
Attending at the examiner's office for and obtaining an appointment for the, to cross-examine on his affidavit	0	6	8

	£	s.	d.
Drawing and fair copy statement to be left with the chief clerk for leave to examine	0	6	8
Drawing and fair copy notice to accompany	0	4	0
Having received special letter from Messrs. & Co., writing them very fully in reply as to the delay they were creating, and complaining of same and that we should insist on their summons being dismissed with costs	0	3	6
Perusing statement from the official liquidator in reference to the late . The like proposal. The like case, book obtaining particulars as to the payment of premiums in respect of his policy. The proposal book and the like minute book and copy minutes as to , his co-directors having abandoned their salaries up to , engaged 4 hours	1	6	8
Attending summons for leave to file evidence after time had expired in cases, when order made to the instant	0	6	8
Instructions for affidavit of official liquidator in answer to affidavit	0	6	8
Drawing same, folios 20	1	0	0
Attending summons issued by Messrs. before the chief clerk, explaining the matter in the absence of Messrs. , when the chief clerk agreed to dismiss the summons	0	6	8
Subsequently writing to the official liquidator with draft of his affidavit in answer to affidavit for perusal and approval	0	3	6
Instructions for affidavit of official liquidator in answer to affidavit filed on behalf of	0	6	8
Drawing same, folios 10	0	10	0
Writing to Messrs. & Co. very fully in reply to their letter, and informing them the reason why the official liquidator declined their summons being adjourned to the Judge	0	3	6
Attending summons taken out on behalf of for further time to file evidence in opposition to his being placed upon the list of contributors, when order made for 14 days	0	6	8
Instructions for affidavit of official liquidator in answer to the affidavit filed on behalf of , perusing minutes passed by the directors, the like cash book, the proposal book and various other documents connected with this case	0	13	4
Drawing same, folios 20	1	0	0
Writing to Messrs. for an appointment to inspect the exhibits referred to in affidavit, and also to inspect the probate of the will of	0	3	6
Having received from the official liquidator the draft of his affidavit in answer to that filed on behalf of with suggested alterations, perusing and finally settling same	0	6	8
Attending the official liquidator in long conference upon several matters and particularly as to directors' claims, when he requested us to write our opinion thereon	0	6	8
Writing him accordingly fully thereon and requesting him to send us list to prepare his affidavit	0	3	6
Engrossing affidavit of official liquidator, folios 10	0	3	4
Preparing 4 exhibits	0	4	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibits	0	5	6
Making copy of this affidavit to be marked as an office copy	0	3	4
Paid filing affidavit	0	2	0

	£	s.	d.
Paid for office copy	0	1	8
Notice of filing same and copy and service of same on Messrs. & Co.	0	4	0
Attending Messrs., solicitors for, signing consent to their having 14 days' further time to bring in their client's evidence	0	6	8
Writing to Messrs. in reply to theirs of yesterday's date, and informing them we wished, if it was possible, that no misunder- standing should arise upon the subject of evidence to be relied upon by the liquidator, and that we distinctly pointed out in our letter that the liquidator would not consent to be bound to rely on any particular book, and that the liquidator was willing, as we had before intimated to them, to afford them every information desired	0	3	6
Writing to Messrs. requesting to know if they were willing to agree to the costs for their dismissed summons, or should we proceed to draw up the order and get the costs assessed at chambers	0	3	6
Writing to Messrs. in reply to their letter just received and informing them that we regretted that we were forced to conclude from the tone of their communication, that they felt it necessary to put a construction upon our correspondence, which was never intended, and we beg therefore to repeat that the official liquida- tor reserves to himself liberty of action as regarded their clients, and refused to be bound down or confined to any particular document	0	3	6
Engrossing affidavit of official liquidator in answer to affidavit of, folios 20	0	6	8
Preparing 3 exhibits	0	3	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking 3 exhibits	0	4	6
Making copy of this affidavit to be marked as an office copy	0	6	8
Paid filing affidavit	0	2	0
Paid for office copy	0	3	4
Notice of filing this affidavit, copy and service of same on Mr.	0	4	0
Attending the official liquidator's clerk on his calling and conferring a long time with reference to the class of persons he desired to ex- clude from the list of contributors on the ground of minority, and advising him thereon	0	6	8
Drawing form of notice of appointment before the examiner to cross- examine, and fair copy	0	4	0
Writing to Messrs. with same, and as they had undertaken to produce their client, requesting them to let us know whether they would also undertake to produce all letters which had passed between their client and the company or Mr., or any books of account showing any payments made by their client to the com- pany	0	3	6
Attending the official liquidator in very long conference, and espe- cially with regard to the evidence to be adduced on a final settle- ment of the list of directors	1	1	0
Writing to the official liquidator requesting him to return us his draft affidavit in answer to affidavit of approved, and also requesting him to send list of contributors at his earliest con- venience	0	3	6

	£	s	d
Attending appointment before the chief clerk on claim, when same adjourned to be considered with other claims of policy holders	0	6	8
Attending adjourned summons taken out on behalf of ; when same proceeded with and adjourned to the Judge	0	13	4
Writing to Messrs. and informing them we would attend this adjourned summons by counsel	0	3	6
Instructions for affidavit of official liquidator in answer to affidavit filed by	0	6	8
Drawing same, folios 7	0	7	0
Having obtained an appointment to proceed on claims on the next, notice of to & Co., solicitors for, copy and service	0	4	0
The like to Messrs., solicitors for	0	2	6
Attending the official liquidator on his calling with draft of his affidavit in answer to affidavit, conferring with him as to the alterations suggested, and drawing further clauses in same	0	6	8
Paid for office copy affidavit of, folios 4	0	2	0
Perusing same	0	1	4
Paid for office copies of 6 further affidavits, together 25	0	10	6
Perusing same	0	8	4
Engrossing official liquidator's affidavit, folios 20	0	6	8
Preparing 6 exhibits	0	6	0
Attending deponent on his being sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibits	0	7	6
Making copy of his affidavit to be marked as an office copy	0	6	8
Paid filing this affidavit	0	2	0
Paid for office copy	0	3	4
Notice of filing this affidavit and copy and service on Messrs. & Co., solicitors for	0	4	0
Attending the office at Messrs. & Co. inspecting documents exhibited in affidavit and probate of will of	0	6	8
Drawing supplemental list of contributors, folios 340	17	0	0
Making fair copy of same to be sworn to and left at chambers	5	13	4
Instructions for affidavit of official liquidator, verifying same	0	6	8
Drawing same, folio 5	0	5	0
Engrossing same	0	1	8
Preparing exhibit	0	1	0
Attending the official liquidator at his request with reference to his affidavit in answer to affidavit, conferring with him thereon, perusing minutes, making alterations in draft, and settling same	0	6	8
Writing to the official liquidator requesting him to inform us whether there was anything due to for commission, &c.	0	3	6
Paid for draft certificate allowing official liquidator first account, folios 7	0	2	4
Close copy	0	2	4
Attending Mr., a contributory, on his calling, and conferring with him as to the position of this matter	0	6	8
Attending official liquidator on his swearing to his affidavit verifying supplemental list of contributors	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6
Making copy of same to be marked as an office copy	0	1	8
Paid filing this affidavit	0	2	0
Paid for office copy	0	0	10

	£	s.	d.
Writing to Messrs. & Co. in reply to theirs of the instant and informing them that we had no authority to treat case as a representative case as there were other directors placed in a similar position as their client and we could not take upon ourselves to select any one of them to represent all	0	3	6
Having received letter from Messrs. , solicitors for Mr. as to agreeing to the date of resignation of directors and making copy thereof and writing to the official liquidator with same	0	4	6
Writing the official liquidator with notice of the appointment to settle list of contributors, copy and service	0	1	6
Drawing brief for counsel to appear and oppose an order being made on the adjourned summons taken out on behalf of the folios 40	2	0	0
Making fair copy of same for counsel	0	13	4
Making fair copy of adjourned summons for counsel	0	1	0
Making brief copy affidavit of for counsel, folios 10	0	3	4
Making brief copy of affidavit of official liquidator for counsel, folio 22	0	7	4
Attending counsel with same	0	6	8
Paid fee to him and clerk	3	5	6
Attending Mr. appointing conference	0	6	8
Paid conference fee to him and clerk	1	6	0
Writing to official liquidator in reply to his letter and sending him office copy affidavit of Mr. as requested	0	3	6
Attending Messrs. & Co., solicitors for Mr. , on their calling in reference to the dates of registration, &c., and we promised to communicate to them by letter after we heard from the official liquidator	0	6	8
Subsequently on receipt of letter from the official liquidator, writing to Messrs. & Co. that their client tendered his resignation on and his resignation was accepted at a meeting of the board on the	0	3	6
Attending the official liquidator in long conference in reference to the affidavits filed on behalf of and conferring and advising with him thereon, engaged above an hour	0	13	4
Notice of appointment to settle list of contributors, seven copies and services.	0	19	0
Writing to the official liquidator with notice of this appointment	0	1	6
Instructions for affidavit of official liquidator in reply to the affidavit filed on behalf of	0	6	8
Drawing same, folios 6	0	6	0
Instructions for affidavit of official liquidator in reply to the affidavit filed on behalf of	0	6	8
Drawing same, folios 5	0	5	0
Instructions for affidavit of official liquidator in reply to the affidavit filed on behalf of	0	6	8
Drawing same, folios 5	0	5	0
Instructions for affidavit of official liquidator in reply to the affidavit filed on behalf of	0	6	8
Drawing same, folios 4	0	4	0
Instructions for affidavit of official liquidator in reply to the affidavit filed on behalf of	0	6	8
Drawing same, folios 5	0	5	0
Instructions for affidavit of official liquidator in reply to the affidavit filed on behalf of	0	6	8
Drawing same, folios 5	0	5	0

	£	s.	d.
Instructions for affidavit of official liquidator in reply to the affidavit filed on behalf of	0	6	8
Drawing same, folios 10	0	10	0
Attending the official liquidator in long interview as to the amount obtained by the Company from this company	0	6	8
Engrossing affidavit of official liquidator in reply to the affidavit of, folios 7	0	2	4
Preparing four exhibits	0	4	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibits	0	5	6
Making copy affidavit to be marked as an office copy	0	2	4
Paid filing this affidavit	0	2	0
Paid for office copy	0	1	2
Engrossing affidavit of official liquidator in reply to affidavit of, folios 6	0	2	0
Preparing exhibit	0	1	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6
Making copy affidavit to be marked as an office copy	0	2	0
Paid filing this affidavit	0	2	0
Paid for office copy	0	1	0
Engrossing affidavit of official liquidator in reply to affidavit of, folios 5	0	1	8
Preparing exhibit	0	1	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6
Making copy affidavit to be marked as an office copy	0	1	8
Attending filing this affidavit	0	2	0
Paid for office copy	0	0	10
Engrossing affidavit of official liquidator in reply to affidavit of, folios 5	0	1	8
Preparing exhibit	0	1	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6
Making copy affidavit to be marked as an office copy	0	1	8
Paid filing this affidavit	0	2	0
Paid for office copy	0	0	10
Engrossing affidavit of official liquidator in reply to affidavit of, folios 4	0	1	4
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath	0	1	6
Making copy affidavit to be marked as an office copy	0	1	4
Paid filing this affidavit	0	2	0
Paid for office copy	0	0	8
Engrossing affidavit of official liquidator in reply to affidavit of, folios 5	0	1	8
Preparing exhibit	0	1	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6
Making copy affidavit to be marked as an office copy	0	1	8
Paid filing this affidavit	0	2	0
Paid for office copy	0	0	10
Engrossing affidavit of official liquidator in reply to affidavit of, folios 5	0	1	8

	£	s.	d.
Preparing exhibit	0	1	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6
Making copy of affidavit to be marked as an office copy	0	1	8
Paid filing this affidavit	0	2	0
Paid for office copy	0	0	10
Writing to Messrs. informing them that our counsel suggested that their client's case had better be adjourned into Court instead to be heard in chambers and requesting to know whether they would consent to same	0	3	6
Notice to Messrs. and informing them that we had to-day filed the official liquidator's affidavits in reply to the affidavits filed by them on behalf of, copy and service of same	0	4	0
Notice of filing official liquidator's affidavit in reply to affidavit of, and copy and service of same on Messrs. & Co. his solicitors	0	2	6
Paid for office copy affidavit of, folios 3	0	1	6
Perusing same	0	1	0
Engrossing affidavit of official liquidator in reply to affidavit of folios 10	0	3	4
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath	0	1	6
Making copy affidavit to be marked as an office copy	0	3	4
Paid filing this affidavit	0	2	0
Paid for office copy	0	1	8
Notice of filing this affidavit and copy and service on Messrs. & Co., solicitors for	0	4	0
Writing to Messrs. solicitors for, in reply to theirs of yesterday's date, and informing them that we should not require a copy of their client's affidavit as we take an office copy of same	0	3	6
Writing to Messrs. solicitors for, in reply to their letter of yesterday's date, with appointment to examine directors' minute book, &c.	0	3	6
Perusing statements as to directors' claims received from the official liquidator	0	6	8
Attending summons taken out on behalf of and others, which Messrs. had again got restored to the chief clerk's paper, when the chief clerk declined to make any order as to the books they desired us to produce, and chief clerk stated that the application was of an unusual character	0	6	8
Writing to the official liquidator informing him the result of the application	0	3	6
Drawing notice of appointment to settle supplemental list of contributors	0	4	0
Attending the official liquidator's clerk in reference to the appointment upon claims for this afternoon, and conferring with him as to the course to be pursued	0	6	8
Examining list of contributors and extracting the names of those contributors out of the jurisdiction of the Court	0	6	8
Preparing summons on behalf of the official liquidator for leave to serve all notices and other proceedings not requiring personal service upon such of the contributors of the company whose respective known addresses were out of the jurisdiction of the Court and on whose behalf no appearance had been entered might be effected			

	£	s.	d.
by putting such notices, &c., with a copy of the order to be made as a prepaid letter into any post-office receiving house, and attending at chambers to get same sealed	0	13	4
Paid stamping same	0	3	0
Making copy summons to leave at chambers	0	2	0
Drawing affidavit of in support of summons for order to serve contributors in the supplemental list of contributors out of the jurisdiction of the Court, folios 25	1	5	0
Engrossing same	0	8	4
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath	0	1	6
Making copy affidavit to be marked as an office copy	0	8	4
Paid filing this affidavit	0	2	0
Paid for office copy	0	4	2
Attending the official liquidator, conferring with him as to the claims of Messrs. creditors, and advising him thereon, when he promised to prepare statement respecting same	0	6	8
Attending summons for leave to serve order on contributors out of the jurisdiction of the Court, when order made	0	13	4
Preparing order accordingly, attending to get same settled, signed, and entered, and afterwards for same entered	0	13	4
Engrossing order, folios 4	0	1	4
Paid stamping same	0	5	0
Making copy order of the inst. for the printer	0	1	4
Revising and correcting proof	0	6	8
Paid printer's charges	0	12	0
Having received letter from Messrs. & Co. as to Mr. claim and informing them that there could be no objection to proceed separately with this claim	0	3	6
Attending the official liquidator, conferring with him upon the subject of claim, and the extent to which he was prepared to admit same, and advising him thereon	0	6	8
Writing to the official liquidator requesting him to send us the stock certificate as we could not settle the chief clerk's certificate of passing his first account without it being produced	0	3	6
Attending Court on adjourned summons for being called on, when same was ordered to stand over for a week	0	10	0
Attending adjourned appointment to proceed upon the settlement of the (directors') lists of contributors, when, after considerable discussion, the case of was selected and adjourned to the judge	1	1	0
Writing to Messrs. & Co. and informing them we should instruct counsel to appear on behalf of the official liquidator, on 's case being heard before the judge in chambers	0	3	6
Drawing notice of appointment to settle list of contributors, folios 3	0	3	0
Making fair copy of same for the printer	0	1	0
Revising and correcting proof	0	6	8
Paid printer's charges	0	6	8
Drawing further brief for counsel in case with reference to the new points which had arisen from the reports, folios 8	0	8	0
Making fair copy of same, folios 8 ; list of directors, folios 3 ; and exhibit marked, folios 5 ; together 16 folios, for counsel	0	5	4
Making brief copy of guarantee to accompany same, folios 25	0	8	4
Attending counsel with same	0	6	8

	£	s.	d.
Paid fee to him and clerk	1	3	6
Instructions for brief upon cross-examination of, it being alleged that he never was a director	2	2	0
Drawing brief for counsel to attend on the cross-examination of, folios 38	1	18	0
Making fair copy of same for counsel	0	12	8
Making brief copy affidavit of, folios 14, for counsel	0	4	8
The like affidavit of official liquidator, folios 25, for counsel	0	8	4
The like depositions of, folios 13, for counsel	0	4	4
Attending counsel with same	0	6	8
Paid fee to him and clerk	3	5	6
Writing to the official liquidator requesting him to have in Court to-morrow the minute book and any other papers which related to 's case	0	3	6
Attending Court all day on 's adjourned summons in paper, but not reached	0	10	0
Attending the official liquidator's clerk, conferring with him in reference to the examination of to take place this day, and advising him as to the books to be produced at the appointment	0	6	8
Attending appointment before the examiner of the Court, when examination of was proceeded with and re-examination concluded, engaged above two hours	1	1	0
Attending at the examiner's office paying his fees and requesting depositions to be filed	0	6	8
Paid his fee	1	0	0
Filling up and addressing and copy and service of notices of appointment to settle list of contributors, at 1s. 6d. each			
Paid postage of same			
Writing to the official liquidator for his statement in reference to the claims undisposed of	0	3	6
Attending at the record and writ clerk's office and bespeaking office copy depositions of, and afterwards for same	0	6	8
Having obtained an appointment to proceed with 's claim for the next, notice thereof to Messrs. & Co., his solicitors	0	2	6
Attending the official liquidator to-day in very long conference on the question as to members who had only paid instalments, perusing policies, &c., and advising him thereon, engaged a long time	2	2	0
Writing to Mr., and informing him we had sent a copy of his letter to the official liquidator, and regretted he had been troubled in the matter	0	3	6
Drawing and engrossing affidavit of verifying serving of notices, &c., to settle list of contributors, folios 30	1	10	0
Preparing 3 exhibits	0	3	0
Paid commissioner taking deponent's oath and marking exhibits	0	4	6
Making copy affidavit to be marked as an office copy	0	10	0
Paid filing this affidavit	0	2	0
Paid for office copy	0	5	0
Paid for office copy depositions of, folios 19	0	9	6
Paid for office copy affidavit of, folios 7	0	3	6
Perusing same	0	2	4
Drawing brief for counsel to attend before the judge at chambers to support the official liquidator's claim against, folios 24	1	4	0

	£	s.	d.
Making brief copy of same, folios 24 ; affidavit of _____, filed _____, folios 5 ; affidavit of official liquidator, filed _____, folios 5 ; and copy questions submitted to counsel on case, and copy of his opinion, folios 25 ; together 59 folios for counsel	0	19	8
Making brief copy of affidavit of official liquidator filed _____, folios 4 ; and exhibits A., folios 13 ; together 17 folios for counsel	0	5	8
Attending counsel with same	0	6	8
Paid fee to him and clerk	2	4	6
Attending counsel appointing conference	0	6	8
Paid conference fee to him and clerk	1	6	0
Attending appointment before the chief clerk and settling his draft certificate, allowing the official liquidator's first account	0	13	4
Transcribing same	0	2	4
Attending on same being signed	0	6	8
Paid per centage on same	0	2	4
Making copy of this certificate to be marked as an office copy	0	1	2
Paid for office copy	0	1	2
Attending Court all day _____ adjourned summons in paper, but not reached	0	10	0
Attending the official liquidator, conferring with him with reference to the effect of the draft deed indemnity, which recited a great many facts to the prejudice of _____, and others of the directors, and advising him fully thereon	0	6	8
Writing to Messrs. _____ & Co., solicitors for _____, in reply to their letter, and requesting them to proceed with their client's case now that his examination was completed	0	3	6
Writing to _____ requesting them to make and file an affidavit in support of their client's claim within a fortnight, otherwise the official liquidator would admit the claim for £ _____ only	0	3	6
Attending the official liquidator in very long conference upon the question raised by contributors whose premiums were paid by instalments, and as to letters which were sent by Mr. _____, requesting the contributors not to pay, and fully discussing the questions raised, engaged a very long time	1	1	0
Having received special memorandum from the official liquidator upon the subject of the claims, perusing same	0	6	8
Writing to Messrs. _____ & Co. informing that Mr. _____'s claim would be admitted with the exception of the item of £ _____ for interest, which should be £ _____, and requesting to know whether they objected to same	0	3	6
Writing to Mr. _____, informing him Mr. _____'s claim was correct, with the exception of the item for interest, which should be £ _____ instead of £ _____	0	3	6
Attending Mr. _____ on his calling, in reference to the decision of the case of _____, which was on all fours with his client _____, and discussing the question of the special guarantee with him, engaged a very long time	0	13	4
Having obtained an appointment to proceed with the case against _____, notice thereof to MESSRS. _____ & Co., copy and service	0	2	6
The like notice to the official liquidator, copy and service	0	1	6
Attending appointment before the chief clerk to settle supplemental list, engaged from _____, when same settled, and list to be prepared of persons who had paid since the notices were issued, and adjourned to the _____ inst.	1	1	0

	£	s.	d.
Making copy of list accordingly for the chief clerk, folios 13	0	4	4
Writing to the official liquidator informing that the solicitors for Mr. and Mr. consented to the deductions he required in their client's claims	0	3	6
Writing to Messrs. informing that their client Mr. 's claim had been allowed with the exception of the item of interest, which had been allowed at £ instead of £	0	3	6
Attending the official liquidator in long conference as to the exclusion of policy-holders who had only paid a portion of their premiums, and advising him fully thereon	1	1	0
Attending the official liquidator prior to the appointment before the Judge to proceed on Mr. 's case and conferring and advising him thereon	0	13	4
Attending conference with counsel	0	13	4
Attending at Chambers before the Judge, when he ordered that this case should be heard in Court, having regard to the importance of the question	0	13	4
Making copy of brief and evidence for Mr. to appear in support of the official liquidator's claim against	0	19	8
Making brief copy of affidavit of official liquidator filed folios 4 ; and exhibit A., folios 13 ; together, 17 folios, for counsel	0	5	8
Making brief copy of cases submitted to counsel, and his opinions of same for Mr., folios 130	2	3	4
Attending Mr. with same	0	13	4
Paid fee to him and clerk	5	10	0
Attending Mr., appointing consultation	0	6	8
Paid fee to him and clerk	2	9	6
Attending Mr., appointing consultation	0	6	8
Paid fee to him and clerk	1	3	6
Writing to Mr. in reply to his letter of the inst., and informing him if he filed an affidavit showing that the rate charged was higher by way of damages for non-completion of contract, his claim would then be admitted	0	3	6
Attending appointment before the chief clerk to proceed with Mr. 's claim, reading evidence of Mr., claimed an annuity in respect of a life appointment under the articles of association which we opposed, and he quoted 's case in support, when the chief clerk stated he was in favour of Mr. then, but he directed us to get another appointment if we could produce evidence as to the present salary of Mr.	1	1	0
Attending the official liquidator subsequently as to the mode of obtaining evidence as to the salary of Mr. in the new company, and advising him thereon	0	6	8
Attending consultation with counsel	0	13	4
Attending instructing shorthand writer to take notes	0	6	8
Writing to the official liquidator for the copy of memorandum and articles of the new company	0	3	6
Attending Court all day, when the cases of Mr. and Mr. were reached, when they were ordered to pay into Court to a special account £ each, to be applied according to the 4th clause of the memorandum of association, not as contributories, but under special contract, the question of set-off being reserved	2	2	0
Paid shorthand writer taking notes of transcript			

	£	s.	d
Attending registrar with brief and papers, and bespeaking draft order made on adjourned summons of	0	6	8
Writing to the official liquidator as to the course to be pursued respecting Mr. 's case and as to the advisability of taking counsel's opinion on same	0	3	6
Writing to Messrs. & Co., the solicitors of Mr. , as desired, informing them the result of the decision of the Judge in 's case	0	3	6
The like letters to Messrs. and Messrs. , solicitors for other directors	0	7	0
Attending Mr. , solicitor for Mr. , again this day on his calling, and conferring with him with reference to the different points decided by the Judge, and giving him full information thereon, when he requested to be allowed to inspect the shorthand writer's notes, engaged a long time	0	6	8
Attending the official liquidator in long conference, and conferring with him with reference to the decision of the Judge and as to the communication he had received from Messrs. & Co., also as to the reply to be made to the communication with them, also as to Mr. 's case, and result of his examination, and advising him thereon	1	1	0
Writing to Messrs in reply to theirs of the inst., and informing them that we gave them the information contained in ours of the inst., to enable them to consider whether or not they would contest the liability of their client	0	3	6
Writing to Messrs. & Co. in reply to theirs of the inst., and informing them no order had been made against their client, Mr. , but we should apply for an order against him in accordance with the decision of the Judge, and, if they thought proper to contest it, we should be obliged to ask for costs against him	0	3	6
Attending the official liquidator, conferring with him with reference to the further letter he had received from Messrs. & Co., and advising him as to the reply which should be given them, and arranging for him to send us letter for approval	0	6	8
On receipt of proposed letter to be written by the official liquidator to Messrs. & Co., perusing same, and writing him thereon	0	5	0
Attending appointment before the chief clerk on 's case, when, after stating of the Judge's decision in cases, and reading the shorthand notes of the proceedings, the chief clerk requested us to obtain another appointment, and to proceed upon the question as to whether Mr. was a director	0	6	8
Subsequently attending Messrs. & Co. thereon, and arranging the bases upon which we would now treat the matters, and making an appointment for them to inspect the shorthand writer's notes of the proceedings before the Judge, and his decision	0	6	8
Having obtained a further appointment to proceed on Mr. 's case on the inst., notice, copy and service thereof on Messrs. & Co.	0	2	6
The like on the official liquidator, and requesting him to have the minute book and the original proposal for membership	0	1	6
Subsequently attending the official liquidator on his calling, conferring and carefully considering with him his position in reference to the policy-holders who had not made any claim, long engaged	0	6	8

	£	s.	d.
Paid for office copy affidavit of, folios 5	0	2	6
Perusing same	0	1	8
Writing to Messrs. & Co., giving them notice unless they proved their claim by an affidavit, we should at the next appointment ask the chief clerk to disallow the claim	0	3	6
Close copy draft order of inst., in 's case, folios 5	0	1	8
Notice to settle same, copy and service, on Messrs. & Co.	0	4	0
Close copy draft order of inst., in 's case, folios 5	0	1	8
Notice to settle same, copy and service on Messrs. & Co.	0	4	0
Writing to the official liquidator in reference to his claim against the policy-holders, and the result of our interview with Messrs., solicitors, thereon	0	3	6
Attending Messrs. & Co., solicitors for, on their calling, and conferring with them in reference to the decision of the Judge, and also on the course they intended to take, and particularly as to the question of set-off	0	6	8
Attending Messrs. & Co., solicitors for, in very long interview as to the means of their client, and in reference to the decision of the Judge, and they stated their client would not be able to pay the full amount of his liability of £	0	6	8
Writing to the official liquidator informing him of our interview with Messrs., and requesting to know whether he had any knowledge of means, as the statements made to us were most unsatisfactory	0	3	6
Writing to the official liquidator for particulars of those cases of directors in which the member's subscription had been paid	0	3	6
Attending Messrs., solicitors for, again to-day on their calling in reference to the decision of the Judge, and pointing out to them certain points which were taken, discussing same, and lending them shorthand writer's notes, engaged a very long time	0	13	4
Writing to Mr., solicitor for, in reply to his inquiry, and informing him we should be happy to produce to him the shorthand writer's notes of the Judge's decision on the instant at any time he might call	0	3	6
Writing to Messrs. & Co. fully, in reply to their letter received from them as to the course pursued by them on the settlement of the list of contributories	0	3	6
Attending the official liquidator's clerk in reference to the payments made by the directors, and obtaining information thereon	0	6	8
Paid for office copy affidavit, folios 9	0	4	6
Perusing same	0	3	0
Attending appointment to settle minutes of order of instant in case, when same proceeded with, but as the registrar could not agree with us he desired to inspect the shorthand writer's notes, same adjourned	0	6	8
The like attendance as to settling minutes of order of instant in case	0	6	8
Attending appointment before the chief clerk, going very fully into the facts of the case against in reference to the question as to whether he had accepted office, and arguing that the contract to become a director was complete, but the chief clerk dissented, and thought had not contracted with competent parties	1	1	0
Writing to the official liquidator informing him of the result of the chief clerk's decision this day	0	3	6

	£	s.	d.
Preparing summonses on behalf of the official liquidator for to show cause why he should not be ordered to pay into Court £ , and attending at Chambers to get same sealed	0	13	4
Paid stamping same	0	3	0
Making copy of summonses to leave at Chambers	0	2	0
Copy and service of same on & Co.	0	4	6
Drawing list of policy-holders whose notices had been returned through the Dead Letter Office, folios 30	1	10	0
Making fair copy of same	0	10	0
Writing to the official liquidator with shorthand writer's notes of the Judge's decision in cases, and also giving him notice of the return of summonses for to pay £	0	3	6
Writing to the official liquidator with office copy affidavit of for his perusal	0	3	6
Attending appointment before the chief clerk to settle the supplemental list of contributories, and submitting to him the lists of persons who had paid since the notices were issued, and those whose notices were returned from the Dead Letter Office	0	13	4
Attending appointment before the chief clerk on summons for to show cause why he should not pay £ into Court, and on the chief clerk declining to make an order same was adjourned to the Judge	0	13	4
Writing to the official liquidator informing the result of our application to-day against , and that the supplemental list of contributories had been settled to-day, excluding the persons who had paid only, and also those whose notices were returned from the Dead Letter Office, and also informing him that we had obtained an appointment to proceed on case on next	0	3	6
Notice of appointment to proceed on case, and copy and service of same on Messrs. & Co., his solicitors	0	2	6
Attending appointment before the registrar and settling draft order of instant in case	0	13	4
Attending appointment before the registrar and settling draft order of instant in case	0	13	4
Writing to the official liquidator, and informing him that the orders against and had been settled to-day, and also writing him fully in reply to his letter as to the supplemental list, excluding those persons whose notices were returned through the Dead Letter Office	0	3	6
Drawing brief for counsel to attend in support of official liquidator's adjourned summons against , folios 9	0	9	0
Making fair copy of same for counsel	0	3	0
Making brief copy of depositions of for counsel, folios 19	0	6	4
Making copy of adjourned summons to accompany same	0	1	0
Attending counsel with same	0	6	8
Paid fee to him and clerk	2	4	6
Attending him appointing conference	0	6	8
Paid fee to him and clerk	1	6	0
Attending conference	0	13	4
Writing to the official liquidator requesting him to produce the minute books, &c., at the appointment before the Judge this afternoon	0	2	6
Attending Messrs. , solicitors for conferring with			

	£	s.	d.
them and producing to them the draft orders obtained in and cases	0	6	8
Attending before the Judge in Chambers upon the adjourned sum- mons calling upon Mr. to pay the £ into Court, when order made for him to pay the amount, official liquidator's costs, to be paid out of the assets of the company	0	13	4
Subsequently writing to the official liquidator, and informing him the Judge had decided that Mr. had agreed to be a director, and he was ordered to pay the £	0	3	6
Having received notice of the filing of further affidavit of , writing to official liquidator in reference thereto, and requesting to know whether he could furnish us with the information required in this case	0	3	6
Attending the official liquidator in reference to the evidence to be adduced against the claim of , and conferring with him thereon, and as to the production of the articles of association of the Company, and advising him thereon, and also advis- ing him as to taking out a summons against all the directors of the company (excepting) to show cause why they should not each pay £ into Court, engaged a very long time	1	0	0
Correcting proof of order of instant made against , folios 5	0	0	10
Paid for order	0	5	0
Notice to pass same, copy and service	0	4	0
Correcting proof of order of instant, made against , folios 5	0	0	10
Paid for order	0	5	0
Notice to pass same, copy and service	0	4	0
Paid for office copy of further affidavit of , folios 4	0	2	0
Perusing same	0	1	4
Preparing summons for all the directors of the company (excepting) to show cause why each of them should not pay £ into Court, and attending at Chambers to get same sealed	1	1	0
Paid stamping same	0	3	0
Making copy summons to leave at Chambers	0	2	0
Making 7 copies of this summons for service, folios 7 each	0	16	4
Service of same	0	17	6
Writing to the official liquidator in reply to his of the instant, and informing him we did not at present admit the decision of the chief clerk that Mr. had been deprived of a life appoint- ment	0	3	6
Writing to the official liquidator requesting him to obtain for us a copy of the articles of association of the Company, and also informing him the day and time the summons for the directors to show cause why they should not pay into Court £ was returnable	0	3	6

April.

Attending the official liquidator in very long conference as to the appointment this day before the chief clerk on Mr. 's claim, and obtaining from him information as to certain portions and his present salary, and it was ultimately arranged we should have same adjourned to the Judge	0	13	4
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	£	s.	d.
Attending Messrs. , solicitors for , on their calling and stating that, having regard to the decision of the Judge, their client would not oppose order being made against him, and conferring with them generally as to the course the liquidator would adopt .	0	6	8
Attending appointment before the chief clerk on claim for loss of office as managing director for £ , when we opposed same, and the chief clerk adjourned it to the Judge .	0	6	8
Writing to the official liquidator and informing him the result of Mr. 's application, and that the chief clerk had decided it was not at all clear that he was entitled to prove as for a life appointment, same adjourned to the Judge .	0	3	6
Writing to the official liquidator requesting him to make application to the directors for payment of their contributions of each, and for copy of the resolution increasing Mr. 's salary to £	0	3	6
Close copy of draft certificate of chief clerk settling supplemental list of contributories, folios 9	0	3	0
Preparing list of contributories to be appended to the chief clerk's certificate, folios 250	12	10	0
Making fair copy of same for the chief clerk .	4	3	4
Drawing brief for counsel to appear on behalf of the official liquidator on the adjourned application of , folios 20 .	1	0	0
Making copy of same, folios 20, affidavit of filed , folios 16, ditto, filed , folios 8, affidavit of official liquidator filed , folios 24, ditto, filed , folios 10, and affidavit of filed , folios 4; together 82 folios, for counsel .	1	7	4
Attending counsel with same .	0	6	8
Paid fee to him and clerk .	2	4	6
Attending counsel appointing conference .	0	6	8
Paid fee to him and clerk .	1	6	0
Attending conference .	0	13	4
Attending at Chambers marking case to be heard by counsel .	0	6	8
Writing to Messrs. with further appointment to pass order of ultimo made against .	0	2	6
The like to Messrs. to pass order of the ultimo, made against .	0	2	6
Attending the official liquidator in very long conference on the result of the chief clerk's decision as to Mr. 's claim, and further particulars as to the salary he was earning, and conferring at length as to the course to be taken to obtain contributions from members of the company .	0	13	4
Engaged above two hours this morning with the official liquidator going through the list of claims of the various creditors of the company, including those of the directors' claims, and generally analysing same for the purpose of the summons for a call on the directors .	0	13	4
Instructions for affidavit of official liquidator, stating in detail the various classes of creditors and the progress of the adjudication on claims, &c., in support of the summons against the directors .	0	6	8
Drawing same, folios 10 .	0	10	0
Engrossing same .	0	3	4
Attending the official liquidator on his being sworn to his affidavit .	0	6	8
Paid commissioner taking deponent's oath .	0	1	6
Making copy affidavit to be marked as an office copy .	0	3	4
Paid filing affidavit .	0	2	0

	£	s.	d.
Paid for office copy	0	1	8
Seven copies and services, first 4s. and the others 2s. 6d. each	0	19	0
Writing to the official liquidator informing him as to the information we had received as to means of paying the £	0	3	6
Writing to Messrs., solicitors for, in reply to their letter, and informing them that we had communicated to them the decision of the Judge in cases, and that we could not include their client (or at least the directors upon the list) in respect of the £ without applying for an order to do so, and which we had done by our summons	0	3	6
Attending, solicitor for, on his calling with reference to the decision of the Judge in case, and conferring with him as to the points which he thought would not affect his client, and giving him full information thereon	0	6	8
Attending Messrs. on their calling in reference to the decision of the Judge, and conferring with them thereon	0	6	8
Attending before the registrar, and passing order made on the ultimo against	0	13	4
Attending the registrar with brief and papers, and bespeaking draft order made against on the ultimo	0	6	8
Drawing and engrossing affidavit of verifying copies of service of summons herein, folios 10	0	10	0
Preparing exhibit	0	1	0
Paid commissioner taking deponent's oath and marking exhibit	0	2	6
Making copy of affidavit to be marked as an office copy	0	3	4
Paid filing affidavit	0	2	0
Paid for office copy	0	1	8
Attending the official liquidator requesting him to produce the minute books at the appointment to-day, conferring with him generally, and receiving information as to the manner in which money was advanced to the company, and conferring and advising him at very great length thereon, engaged above an hour	0	10	0
Attending appointing conference with counsel	0	6	8
Paid fee to him and clerk	1	6	0
Attending conference with counsel on Mr. 's claim	0	13	4
Attending Messrs. & Co., Mr., solicitors, in reference to this case, when they stated they would not attend by counsel	0	6	8
Attending summons before the chief clerk, when the cases of, and those of Messrs. & Co.'s clients were gone into, when the chief clerk made an order, on the terms of the orders, against and, and at Messrs. & Co.'s request he granted their clients time to answer the official liquidator's affidavit, to which we objected, when he adjourned the summons to the Judge	0	13	4
Attending the adjourned summons of before the Judge, when claim of £ was disallowed, but by consent he was allowed to prove for three months' salary in lieu of notice, the official liquidator to have his costs out of the estate	0	13	4
Writing to the official liquidator informing him of the result of this application	0	3	6
Attending Messrs. & Co., solicitors for, on their calling, and conferring with them as to the course they intended to pursue herein	0	6	8
Writing to the official liquidator, reporting to him the result of our interview with Messrs. to-day	0	3	6

	£	s.	d.
Writing to Mr., informing him, having regard to what passed before the chief clerk, we should be obliged by his giving us an early intimation as to whether he desired his client's case to be taken before the Judge	0	3	6
Attending the official liquidator, on his calling, with reference to the payments by the directors, and conferring with him thereon	0	6	8
On receipt of letter from Messrs. & Co. in reference to the inability of their client to pay his liability, writing them in reply for a distinct proposal	0	3	6
Making copy of letter received Messrs. & Co., and writing to the official liquidator with same, and with our views thereon	0	4	6
Close copy minutes of order of the ultimo, folios 5	0	1	8
Notice to settle same, copy and service	0	4	0
Writing to the official liquidator, requesting him to send us a statement of the claims outstanding, and which he wished to be disposed of	0	3	6
Writing to & Co., solicitors for, and requesting to know as to whether they were prepared to contest the making of an order against their client in the terms of that made against	0	3	6
Having received an appointment to settle chief clerk's draft certificate as to the supplemental list of contributories, writing to official liquidator informing him the day and hour to settle same, and generally on the matter	0	2	6
Writing to Mr. and informing him, as we understood that it was not intended on the part of to take any step towards disputing the judgment of the Judge, we should be glad to receive an early intimation from him as to the course intended to pursue on behalf of his client,, and informing him also if he disputed we should be compelled to ask the Judge to allow costs against his client	0	3	6
Writing to & Co., solicitors for, requesting them to state whether or not they should take the case before the Judge, and pointing out that we should ask for costs against their client	0	3	6
Paid for order	0	5	0
Attending passing order of the 9th ultimo made against	0	13	4
Writing to Mr., requesting to know whether he still appeared for Mr., as he had not attended any recent appointment herein	0	3	6
Writing to Mr. in reply to his letter, as to his having withdrawn before the Judge in 's case	0	3	6
Writing to Messrs., solicitors for, as to their decision, and offering to allow them to inspect the notes of the Judge's judgment	0	3	6
Attending Messrs. & Co. on their calling, and inspecting the shorthand writer's notes of the judgment of the Judge, and conferring with them at considerable length thereon, engaged a long time	0	6	8
Attending Mr. on his calling, and conferring with him in long conference as to the course he intended to pursue in 's case	0	6	8
Writing to Messrs. & Co., solicitors for, in reply to their letter, and informing them that they could inspect the books of the company to-morrow at the official liquidator's office between and o'clock	0	3	6

	£	s.	d.
Writing to official liquidator with notice of the appointment at his office to-morrow accordingly	0	1	6
Writing to the official liquidator upon the subject of the notice of appeal of served on us by Messrs. & Co., and as to the course to be pursued	0	3	6
Attending at the Paymaster-General's office with order of the ultimo, and bespeaking directions for to pay £ into Court, and afterwards for same	0	6	8
The like attendance with order of the, and bespeaking directions for to pay into Court £, and afterwards for same	0	6	8
Attending before the registrar and settling draft order of the ultimo	0	13	4
Writing to Messrs. & Co. in reply to their letter, and informing them if they referred to the affidavit recently filed by the official liquidator, they would find it simply showed how far the adjudication on claims had proceeded, and we could not conceive upon what ground an affidavit could be filed in reply	0	3	6
Attending the official liquidator's clerk on his calling, with reference to the names to be excluded from the supplemental list, conferring with him thereon, and advising that it was not necessary to exclude any	0	6	8
Writing to the official liquidator as to producing books on the appointment on Tuesday, in order to check the schedule to the chief clerk's certificate	0	2	6
Writing to Messrs., solicitors for, in reply to their letter, and informing them we could not understand the order in the amended form, as the order had not been amended or abridged in any way, and that we had no intention on the part of the official liquidator of waiving that portion which referred to the application of the fund	0	3	6
Having received further letter from Messrs. as to the particular defence they raised on behalf of making copy thereof, and writing to the official liquidator therewith and thereon	0	4	6
Writing to Messrs. with directions for to pay £ into Court	0	3	6
The like to Messrs. with directions for to pay £ into Court	0	3	6
Sittings fee	0	15	0

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Correcting proof of order of the ultimo, folios 5	0	1	8
Paid stamp for this order	0	5	0
Notice to pass same, and copy and service of same on Messrs.	0	4	0
Attending appointment to settle chief clerk's certificate as to supplemental list of contributories, and proceeding thereon, when same was adjourned	2	2	0
Writing to official liquidator in reply to his letter of to-day's date, and informing him we thought that the past members' liability could not be questioned, as it was clear the whole of the			

	£	s.	d.
liabilities of members and directors would not be sufficient to discharge a moiety of the claims	0	3	6
Attending passing order dated of last	0	13	4
Paid for office copy affidavit of , folios 9	0	4	6
Perusing same	0	3	0
Attending the official liquidator's clerk on his calling, in reference to the power of attorney to be obtained in order to collect dividends on stock, and taking his instructions	0	6	8
Subsequently writing to the official liquidator, and requesting him to bespeak and obtain a certificate of stock	0	3	6
Having been served with notice of appeal on behalf of writing official liquidator informing him thereof, that this appeal would not be heard until 's appeal had been heard	0	3	6
Attending Mr. at his request, conferring with him at considerable length, as to the case made out by in affidavit, and advising him thereon	0	6	8
Attending at the Paymaster-General's office, leaving order dated the last, and bespeaking directions for payment into Court of £ by , and afterwards for same	0	6	8
Attending before the Judge in Chambers upon our objection to Messrs. filing evidence in reply to the official liquidator's affidavit as to state of adjudication on claims, when the Judge gave them a week to file affidavit, and the official liquidator to reply thereto. Costs to be costs in the matter	1	1	0
Writing to Messrs. in reply to theirs of the instant, and informing them that the appeal they referred to did not affect the payment of the money in Court, but we had not drawn up the order against their client as we had been expecting, in pursuance of their promise, a formal proposal of compromise	0	3	6
Attending Messrs. , solicitors for , on their calling, in reference to the case before the Judge this afternoon, and giving them information thereon	0	6	8
Attending appointment to settle chief clerk's draft certificate, and proceeding thereon, when same adjourned for transcribing	1	1	0
Transcribing chief clerk's certificate, folios 259, at per folio	0	0	4
Writing to Messrs. & Co., and informing them after we had the interview with them yesterday, the Judge gave leave to the directors to reply to the affidavit of the official liquidator within a week, and official liquidator to have a week to answer any affidavit, and requesting to know whether it was their intention to file an affidavit	0	3	6
Writing to Messrs. & Co., solicitors for , and informing them the result of their application yesterday before the Judge, and requesting to know whether it was their intention to file any affidavit	0	1	6
Writing to the official liquidator informing him of the result of our application to the Judge yesterday	0	3	6
Writing to Messrs. , solicitors for , in reply to their letter, and informing them, as the Judge had given the directors a week's time to make affidavit, we should take office copy of their affidavit	0	2	0
Paid for office copy affidavit of , folios 5	0	2	6
Perusing same	0	1	8
Writing to Mr. , solicitor for Mr. , and requesting a reply to our previous letters to him	0	3	6

	£	s.	d.
Writing to Messrs. & Co. in reply to their further letter, and reporting to them the decision of the Judge giving leave to the directors to file affidavit in reply within a week	0	3	6
Writing to Mr. , solicitor for , informing him that time had been granted to Messrs. 's client to answer official liquidator's affidavit, and that he could do so if he desired	0	3	6
Writing to official liquidator with notice of further appointment to settle chief clerk's certificate as to supplemental list of creditors, and also in reply to his letter as to the cheques for payment of Messrs. 's costs	0	3	6
Drawing directions to be signed by the chief clerk to enable official liquidator to give a power of attorney to the cashiers of the Bank of England to receive dividends on stock, folios 3	0	3	0
Making fair copy of same	0	1	0
Writing to the official liquidator with same, and requesting him to fill in the dates of the dividends	0	3	6
Writing to the official liquidator requesting him to send us a further statement as to the unadjudicated claims	0	3	6
Having subsequently received from the official liquidator Bank of England certificate and directions of chief clerk approved, writing him acknowledging receipt of same	0	3	6
Writing to the official liquidator, and informing him that 's appeal would be in to-morrow's paper, and informing him the time for the consultation with counsel	0	2	6
Having received special letter from Messrs. & Co. as to their proposal of compromise with their client , writing in reply with our views thereon	0	3	6
Paid for office copy affidavit of , folios 12	0	6	0
Perusing same	0	4	0
Drawing and engrossing affidavit of , folios 5	0	5	0
Paid commissioner taking deponent's oath	0	1	6
Making copy affidavit to be marked as an office copy	0	1	8
Paid filing affidavit	0	2	0
Paid for office copy	0	0	10
Writing to Messrs. & Co., solicitors for , requesting to know whether they desired to have the £ claim in priority adjudicated upon, or whether they abandoned it	0	3	6
Writing to the official liquidator informing him that we had received a letter from Messrs. & Co., an offer of £ compromise on behalf of , and requesting to know whether we should get an appointment to dispose of 's claim	0	3	6
Instructions for affidavit of	0	6	8
Drawing same, folios 6	0	6	0
Having received a letter from Messrs. in reply to our suggestion, making copy thereof, and writing to the official liquidator with same, and also informing him that 's appeal would be heard on	0	4	6
Engrossing affidavit of	0	2	0
Preparing exhibit	0	1	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6
Making copy affidavit to be marked as an office copy	0	2	0
Paid filing affidavit	0	2	0
Paid for office copy	0	1	0

	£	s.	d.
Notice of filing same, copy and service, on Messrs., solicitors for	0	4	0
Attending further appointment to settle the chief clerk's certificate, when same proceeded with and adjourned till	2	2	0
It being considered probable that the question of the basis upon which the claims were admitted would arise in the Appeal Court on Mr. 's appeal coming on, writing to the official liquidator for Mr. 's opinion, upon which the Court acted	0	3	6
Attending the official liquidator's partner and clerk, conferring with them as to the probable figures which would be gone into on the hearing of Mr. 's appeal and would require explanation, also the points which might arise upon the liquidation generally, when they promised to attend the Court with the necessary documents	0	6	8
Attending the shorthand writer, and instructing him to take notes. Paid him for taking notes and transcript of same, folios 48, at per folio	0	6	8
Attending further appointment to settle the chief clerk's certificate, when same proceeded with and completed	0	13	4
Writing to the official liquidator with office copy affidavit of and informing him our impression was the offer of £ was wholly inadequate	0	3	6
Writing to Messrs., solicitors for, thereon, and for explanations as to certain paragraphs in the affidavits dealing with their client's property	0	3	6
Writing to Messrs., solicitors for, and informing them that 's appeal had been withdrawn	0	3	6
Having obtained directions signed by the chief clerk to be lodged at the Bank of England, writing to the official liquidator with same	0	3	6
Writing to Messrs. & Co. in reply to their letter, as to the explanation of the charges referred to in 's affidavit	0	3	6
Making copy of Messrs. & Co.'s letter, and writing to the official liquidator with same, and also as to the preparation of his second account of receipts and payments	0	4	6
Drawing notice of the evidence we should read on the hearing of the adjourned summons against, folios 4	0	4	0
Copy and service of same on Messrs. & Co., their solicitors	0	3	10
Drawing notice of the evidence we should read on the hearing of adjourned summons against, folio 3	0	3	0
Copy and service of same on Messrs. & Co., his solicitors	0	3	6
Drawing 5 similar notices for service on different solicitors, folios 2 each	0	10	0
Copy and service of same on different solicitors	0	15	10
Having received appointment to proceed on summons against directors, 6 copies and services	0	16	6
Having ascertained by inquiry at the Paymaster-General's office that the £ which had been ordered to pay into Court was not paid in, writing to Messrs. & Co. thereon, and informing them unless the same was paid into Court in the course of the present week, we should be compelled to enforce the order	0	3	6
Writing a similar letter to Messrs. & Co., as their client, not having paid his £ into Court	0	3	6
Writing to Messrs. in reply to their letter of the instant,			

	£	s.	d.
and informing them that we thought the only way in which they could raise their points in opposition to our summons after the decision in 's case, would be to take their client's case at once before the Judge in Court	0	3	6
Writing to Messrs. & Co. with the Paymaster-General's direction for to pay into Court £	0	3	6
Making copy of judgment of the Lords Justices on the instant, folios 9, for the official liquidator	0	3	0
Writing to Messrs. & Co. acknowledging receipt of their letter of to-day's date, and as they desired information thereon their client's case could be taken before the chief clerk on the proximo	0	3	6
Writing to the official liquidator, requesting to know as to the basis upon which claim should be admitted	0	3	6
Writing to Messrs. & Co. upon the subject of the special defence they intended to raise on behalf of their client	0	3	6
Writing to official liquidator requesting to know whether had any claim against the company	0	3	6
Writing to Messrs. & Co. in reply to their letter as to the time allowed for their client to pay the £ into Court	0	3	6
Attending at the Paymaster-General's office ascertaining that neither or had paid their moneys into Court	0	6	8
Writing to Messrs. & Co. and informing that unless their client pays the £ in pursuance of the order made on last, in the course to-morrow we should apply to the Court with a view to enforce the order, in which case their client would have to pay additional costs	0	3	6
Writing a similar letter to Messrs. & Co., solicitors for 	0	3	6
Instructions for affidavit of official liquidator, verifying his second account of receipts and payments	0	6	8
Drawing same, folios 5	0	5	0
Engrossing same	0	1	8
Preparing exhibit	0	1	0
Making copy of account to be marked as an exhibit, at per folio	0	0	4
Writing to the official liquidator with affidavit and account to be sworn to	0	3	6
Attending Messrs. , the solicitors for , with reference to his position, when it appeared he was quite unable to discharge the obligation in this matter, and arranging for them to send us the necessary statement	0	6	8
Attending the official liquidator in long conference and conferring with him as to the cases of and not having paid their £ into Court, and advising him as to the course to be pursued	0	6	8
Instructions for counsel to advise in conference in reference to the course to be pursued to enforce the order for payment of £ by , who had not complied with same, and fair copy	0	6	8
Attending counsel appointing conference	0	6	8
Paid conference fee to him and clerk	1	6	0
Attending conference, when counsel advised we should apply for a 4-day order	0	13	4
Attending official liquidator's clerk this morning in reference to the claims outstanding, and making an appointment to go through same in the afternoon	0	6	8

	£	s.	d.
Writing to Messrs. & Co. in reply to theirs of the and informing them that we should issue a summons to enforce the order of the made against their client unless we heard from them to-morrow that they would give us their assurance that the amount would be paid within a week	0	3	6
Making copy of Messrs. & Co.'s letter of the and writing to the official liquidator with same, and informing him we had written to them that we should apply to the Court if the amount was not paid within a week	0	4	6
Attending Messrs. , solicitors for , on their calling, and conferring with them in long conference, and giving them information in reference to the position of this matter	0	6	8
Instructions for affidavit of the official liquidator in reference to the appointment and retirement of as a director of the company	0	6	8
Drawing same, folios 4	0	4	0
Writing to the official liquidator with same for his approval and for information as to the dates and particulars in reference thereto	0	3	6
Attending by appointment on the official liquidator's clerk, going through the list of claims seriatim, and settling as to the course to be pursued in reference to claims for policies in respect of which only half premiums had been paid, and conferring with him on other matters	0	6	8
Attending the official liquidator before a commissioner on his being sworn to his affidavit, verifying his second account of receipts and payments	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6
Making copy affidavit to be marked as an office copy	0	1	8
Paid filing affidavit	0	2	0
Paid for office copy	0	0	10
Having received copy affidavit of made by him in another assurance company, folios 23, perusing same	0	7	8
Having received copy, interrogatories for the examination of in the same assurance company, folios 8, perusing same	0	2	8
Having received copy affidavit of in answer to these interrogatories, folios 77, perusing same	1	5	8
Writing to Messrs. & Co. solicitors for , in reply to their letter of yesterday's date, and informing them we would confer with liquidator on the documents they sent in relation to the offer of compromise with their client	0	3	6
Writing to the official liquidator requesting to know whether he had been able to get any further information from beyond that enclosed from his affidavit, and if not whether we should have him examined on his affidavit	0	3	6
Making copy of chief clerk's certificate as to settlement of supplemental list of contributories to be marked as an office copy, folios , at per folio	0	0	4
Paid for office copy, at per folio	0	0	2
Attending the official liquidator again to-day, in very long conference as to the course we were pursuing against , also as to Mr. claim to be paid in priority, and also the ground upon which we should disallow claims by persons who had paid only a portion of the premiums, and upon various other matters relating to the liquidation	0	6	8

	£	s.	d.
Making copy order of the liquidator as requested, folios 5	0	1	8
Writing him with same	0	3	6
Preparing summons for a 4-day order against to compel him to pay into Court the £ and attending at Chambers to get same sealed	0	13	4
Paid stamping same	0	3	0
Making copy of same to leave at Chambers	0	2	0
Subsequently attending at the Paymaster-General's office, when we were informed that he just received notice of this sum being paid	0	6	8
Writing to Messrs. & Co. informing him that we had conferred with the official liquidator on Mr. claim, and that he was willing to allow the claim at £, but if they persisted that his claim was to be paid in priority to other creditors, that question must be submitted to the chief clerk	0	3	6
Preparing summons to pass the official liquidator's second account of receipts and payments, and attending at Chambers to get same sealed	0	6	8
Paid stamping same	0	3	0
Making copy to leave at Chambers	0	2	0
Writing to the official liquidator with notice of the return of this summons, and also the day the adjourned summons against the directors would be heard	0	2	6
Writing to Messrs. & Co. reminding them that the time had expired for their client Mr. to pay in the £ and requesting them to have it paid without further delay	0	3	6
Writing to the official liquidator informing him that Mr. had paid £ into Court and that we should now take the necessary steps for raising the question of set-off, and also writing to him with copy interrogatories administered to and his affidavit in reply, and copy affidavit generally as to his means for his perusal	0	3	6
Engrossing affidavit of official liquidator, folios 4	0	1	4
Preparing exhibit	0	1	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6
Making copy affidavit to be marked as an office copy	0	1	4
Paid filing affidavit	0	2	0
Paid for office copy	0	0	8
Notice of filing this affidavit and copy and service on Mr. solicitor for Mr.	0	4	0
Preparing summons for to show cause why the £ paid into Court by him to the credit "In the matter of the Company, Limited," and In the matter of the Company's Acts, 1862 & 1867, Contribution Account," should not be transferred to and stand to the credit of the official liquidator of the said company in the books of the Governor and Company of the Bank of England, freed and discharged from the alleged set-off, and attending at Chambers to get same sealed	0	13	4
Paid stamping same	0	3	0
Making copy of same to leave at Chambers	0	2	0
Copy and service of same on Messrs. his solicitors	0	4	6
Writing to Messrs & Co., solicitors for Mr in reply to theirs of instant	0	3	6

	£	s.	d.
Preparing summons for _____ to show cause why the £ paid into Court by him should not be transferred to the credit of the official liquidator in the books of the Governor and Company of the Bank of England, and attending at Chambers to get same sealed	0	13	4
Paid stamping same	0	3	0
Making copy of same to leave at Chambers	0	2	0
Copy and service of same, Messrs. _____ & Co., his solicitors	0	4	6
Writing to the official liquidator with notice of the returns of these two summonses	0	2	6
Attending the official liquidator, conferring with him in reference to the claim of which he had had notice, although no formal claims had been brought on the subject, and as to the affidavit which he had made respecting same, with the view of fixing the liability of the directors, advising him that under the circumstances the best course to adopt would be to defer considering the course to be adopted until the directors' liability had been disposed of and the money paid, and then to take the opinion of the Judge on same, engaged a very long time, and also conferring with him in reference to the claim made by the _____ Company, perusing items in the account shown to us, and advising as to taking steps to proceed with the settlement of a supplemental list	1	1	0
Writing to Messrs. _____, solicitors for _____, and informing them that we had appointment to dispose of outstanding claims on the _____ proximo at 2.30, when we proposed to deal with the £ _____ in respect of the loan alleged to be transferred to their client by _____, and requesting to know whether they were going to file any further evidence	0	3	6
Writing to the official liquidator with notice of appointment to pro- ceed on _____ proximo, and informing him we would write to Mr. _____, and request him to file an affidavit	0	2	6
Subsequently having received further a letter from Messrs. _____ as to Mr. _____'s claim, writing them in reply as to the amount at which this claim was admitted, and as to the part disputed	0	3	6
Writing to the official liquidator informing him that Messrs. _____ had written to us and stated that Mr. _____ was admitted at £ _____, and requesting to know whether that was the least amount	0	3	6
Writing to Mr. _____ informing him that we had an appointment to settle the outstanding claims on the _____ proximo, and if he was not prepared to accept the amount the official liquidator was willing to allow him to prove against the company, he must file an affidavit within 7 days	0	3	6
Writing to Mr. _____, the liquidator of the _____ Company, requesting to know what arrangement he had made with _____	0	3	6
Writing to the official liquidator as to the chief clerk's certificate settling the list of contributories had now been filed, and request- ing to know whether we should proceed for a call order before the vacation	0	3	6
Writing to Messrs. _____ & Co. requesting to know in the course of to-morrow whether their client, Mr. _____ had paid the £ _____ into Court, as when we applied to-day to bespeak office copy certificate of same, we were informed the same was not yet filed	0	2	6

	£	s.	d.
Having received a letter from Mr. the liquidator of the Company as to any arrangement made by him with , making copy of same and writing to the official liquidator with same and thereon	0	4	6
Subsequently attending Mr. , when he stated that had offered 5s. in the £, but as he considered it was insufficient at present no compromise with him had been made with his company, and he also informed us it would not be possible to get to attend any examination as he was an invalid	0	6	8
Attending at the Report Office searching for and bespeaking certificate of the payment in of £ by Mr. and afterwards for same	0	6	8
Paid for office copy	0	1	6
Writing to the official liquidator in reply to his letter as to the call to be applied for	0	3	6
Writing to Mr. in reply to his letter and informing him the official liquidator would be glad to adopt same course in confirmation with himself with a view of settling matters with	0	3	6
Writing to the official liquidator in reply to his letter and that we agreed with him that could attend at Dublin to give his evidence, and as we had not had a reply from Mr. to our letter we had better take independent action	0	3	6
Attending the official liquidator's partner conferring with him in reference to the propriety of making a call, and considering the matter very fully with him, and we suggested that as the contributories were already on the list in respect of we ought to apply for a balance order without giving them notice, when he agreed that it was under the circumstances the proper course; engaged a very long time	1	1	0
Sittings fee	0	15	0

Trinity Sittings, 1878.

Writing to Messrs. & Co. informing them before any compromise with could be considered it was necessary for him to file the usual affidavit verifying his means	0	3	6
Having received a letter from Messrs. & Co. claiming to be paid on behalf of their client as a director, making copy of same and writing to the official liquidator with same and thereon	0	4	6
Writing to Messrs. acknowledging the receipt of their letter and informing them it would be for the official liquidator to decide whether they should take out the ordinary summons to prove, notwithstanding the time had expired	0	3	6
Subsequently writing to the official liquidator requesting him to send us a list of the names of those persons who had paid their contribution since the chief clerk's certificate was settled	0	3	6
Having received letter from Messrs. & Co. solicitors for, writing them in reply and insisting on affidavit being filed on behalf of their client	0	3	6
Preparing summons for balance order against all the contributories set forth in the 1st and 2nd columns of the schedule thereto annexed who had been settled on the list of the contributories, attending at Chambers to get same sealed	0	13	4

	£	s.	d.
Making copy of schedule to annex to same, folios 236	3	14	8
Paid stamping same	0	3	0
Making copy of same, including copy schedule to leave at Chambers, and summons, folios 4, and schedule 236, together folios 240	4	0	0
Writing to the official liquidator with notice of the return of this summons	0	2	6
Having received letter from Messrs. & Co. suggesting the adjournment of the summons in Mr. and Mr. cases to the judge, writing and reminding them that the question involved in the summons had already been decided by the judge, and ratified by the Court of Appeal, and declining to same being adjourned	0	3	6
Attending by desire of the official liquidator at his office conferring with him as to the course to be pursued as to the service of the balance order if granted, and other items of expense, and we were to consider the matter, and state what charge we should make	0	6	8
Attending subsequently the official liquidator's clerk on his calling and handing him time book	0	6	8
Attending before chief clerk on summons for to show cause why the £ paid in by him into Court should not be trans- ferred to the official liquidator's account at the Bank of England, when the chief clerk required to see the memorandum of associa- tion which we were to produce to him	0	13	4
Writing to the official liquidator and informing him that this £ would be transferred to his account in due course	0	3	6
Attending at the Paymaster-General's office and bespeaking certificate of fund in Court, and afterwards for same	0	6	8
Writing to Messrs. & Co. in reply to their letter as to their client's position	0	3	6
Attending summons for to show cause why £ paid into Court by him should not be transferred to the credit of the official liquidator in the books of the Governor and Company of the Bank of England, when Messrs. & Co. his solicitors claimed a set- off and the summons was adjourned to the judge	0	13	4
Writing to the official liquidator reporting the result of the appoint- ment	0	3	6
Attending the official liquidator conferring with him with reference to the summons as to the enforcement of the call, and as to the acceptance of service, and he intimated that the service had better be by post, and the question of charges could be disposed of there- after, and we intimated that we should be prepared to make any reasonable arrangement as to that	0	6	8
Attending at the judge's chambers marking summons in Mr. case for attendance by counsel	0	6	8
Paid for office copy affidavit of, folios 6	0	3	0
Perusing same	0	2	0
Writing to the official liquidator with original summons and schedule for balance order for his examination in order that he might make an affidavit as to contributories who had paid	0	3	6
Writing to Messrs. and informing them we should attend by counsel before the judge on the adjourned summons	0	3	6
Attending appointment before the chief clerk and producing vouchers in support of the official liquidator's second account of receipts and payments	0	13	4

	£	s	d
Attending the official liquidator and conferring with him in reference to the request we should make to the judge as to the enforcement of the calls by means of a balance order	0	6	8
Drawing brief for counsel to appear on behalf of the official liquidator on Mr. claim of set-off exclusive of copies of documents, folios , at per folio	0	1	0
Making copy of same for counsel including copies of documents, folios , at per folio	0	0	4
Making brief copy of affidavit of filed 187 , for counsel, folios 5	0	1	8
Making brief copy affidavit of official liquidator, filed day of 187 , folios 4, and exhibit A. folios 10, together 14 folios	0	4	8
Making brief copy affidavit of official liquidator, filed , folios 4, and exhibit folios 9, together 13 folios	0	4	4
Attending counsel with same	0	6	8
Paid fee to him and clerk	2	4	6
Attending counsel appointing conference	0	6	8
Paid conference fee to him and clerk	1	6	0
Instructions for affidavit of official liquidator in support of summons for the balance order	0	6	8
Drawing same, folios 9	0	9	0
Engrossing same	0	3	0
Preparing two exhibits	0	2	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibits	0	3	6
Making copy affidavit to be marked as an office copy	0	3	0
Paid filing affidavit	0	2	0
Paid for office copy	0	1	6
Writing to Messrs. & Co. solicitors for , that the official liquidator could not accept in the £ as the facts disclosed by their client's evidence tend to show that the claim of this company ought to be satisfied in full, and he would accept £ down, the remainder by instalments payable at three, six, and nine months	0	3	6
Writing to the official liquidator in reply to his letter and informing him we entirely agreed with him that the offer of compromise of was wholly inadequate, and we had informed his solicitors the only terms that could be accepted	0	3	6
Attending before the chief clerk on summons for balance order when he considered that we should prove by affidavit the service of the circular sent out last , and he could treat same as a call order, and adjourned same to the inst.	0	6	8
Writing to the official liquidator informing him the result of this application	0	2	6
On receipt of telegram from counsel's clerk in reference to the claim of set-off of Mr. , attending counsel thereon, and it was arranged we should instruct another counsel on the case	0	6	8
Attending conference	0	13	4
Attending adjourned summons before the judge in chambers when same was adjourned into Court	0	13	4
Attending the official liquidator subsequently conferring with him on same at considerable length and as to the expenses connected with service of balance order, &c.	0	13	4

	£	s.	d.
Writing to the liquidator informing him that the appointment for the had been postponed till the inst., at o'clock	0	2	6
The like to Messrs. & Co.	0	1	6
The like to Messrs. & Co.	0	1	6
Having received instructions from the official liquidator writing to Messrs. & Co., and informing them that the official liquidator was prepared to admit their client's claim at the sum of £	0	3	6
Attending the official liquidator in reference to the progress we were making towards getting the balance order, also conferring with him as to the offer made by and receiving his instructions; engaged a long time	0	13	4
Writing to Messrs. & Co., in reply to their letter and informing them under the circumstances we should claim the right if we thought it advisable of filing an affidavit in reply to their clients although the evidence was really closed	0	3	6
Making fair copy of brief for Mr. , at per folio	0	0	4
Making brief copy of affidavit of filed , folios 5, for Mr.	0	1	8
Making brief copy affidavit of the official liquidator, filed folios 5, for Mr.	0	1	8
Making two brief copies of shorthand writer's notes of proceedings on the , 187 , each for counsel, at per folio each	0	0	4
Making brief copy affidavit of the official liquidator, filed , 187 , folios 4, and exhibit A, folios 10, together 14 folios, for Mr.	0	4	8
Attending Mr. Q.C., with brief	0	13	4
Paid to him and clerk	7	12	0
Attending Mr. with brief	0	6	8
Paid fee to him and clerk	4	6	6
Attending Mr. appointing consultation	0	6	8
Paid fee to him and clerk	2	9	6
Attending Mr. appointing consultation	0	6	8
Paid fee to him and clerk	1	3	6
Writing to the official liquidator informing him the consultation was to take place to-morrow morning	0	3	6
Attending consultation when counsel advised that there was no case of set-off by Mr. as he was in the position of the debtor to the company	0	13	4
Attending Court adjourned summons in paper but not reached	0	10	0
Paid for office copy affidavit of , folios 4	0	2	0
Perusing same	0	1	4
In consequence of suggestion of the chief clerk that he would treat the circular issued in last as a call order if we proved service of same, drawing and engrossing affidavit of and and , folios 8	0	8	0
Preparing three exhibits	0	3	0
Paid commissioner taking three deponents' oaths and marking exhibits	0	7	6
Making copy affidavit to be marked as an office copy	0	2	8
Paid filing affidavit	0	2	0
Paid for office copy	0	1	4
Attending adjourned summons for a balance order when the chief clerk desired to consider the evidence, and we were to see him in a day or two	0	13	4
Writing to the official liquidator with a list of the documents required to be produced before the chief clerk to-day	0	2	6

	£	s	d.
Attending the adjourned summons against the directors and proceeded when an order was made against , but the application for the same order against was adjourned to the judge upon a preliminary objection that the Court had no jurisdiction to make the order	0	13	4
Writing to Mr. informing him of the withdrawal of appeal, and that an order was made to-day against his client	0	3	6
Writing a similar letter to & Co., informing them that an order was made to-day against their client	0	1	6
Writing to the official liquidator requesting him to let us have by bearer copies of receipts if any for contributions by , and also copy of the minutes in the book produced before the chief clerk yesterday relating to the managing director and clerk, attending with same	0	5	0
Drawing brief for counsel to appear on behalf of the official liquidator in support of his claim against , folios 70	3	10	0
Making fair copy of same, folios 70, copy summons, folios 5, affidavit of filed , 1878, folios 4, affidavit of official liquidator filed the , 1878, folios 6, and affidavit of official liquidator filed the 1878, folios 10, together 95 folios for counsel	1	11	8
Attending counsel with same	0	6	8
Paid fee to him and clerk	2	4	6
*Making fair copy of brief, folios 70, copy summons, folios 5, affidavit of filed , 1878, folios 3, affidavit of official liquidator filed , 1878, folios 4, and affidavit of official liquidator filed , 1878, folios 10, together 92 folios for counsel	1	10	8
Attending counsel with same	0	6	8
Paid fee to him and clerk	2	4	6
*Making fair copy of brief, folios 70, summons folios 10, affidavit of filed , folios 16, affidavit of official liquidator, filed 187 , folios 24, affidavit of filed , 1877, folios 8, affidavit of filed 1878, folios 5, affidavit of the official liquidator filed , 1878, folios 10, affidavit of filed , 187 , folios 4, and affidavit of the official liquidator filed , 187 , folios 10, together 157 folios for counsel	2	12	4
Attending counsel with same	0	6	8
Paid fee to him and clerk	2	4	6
Attending counsel appointing conference	0	6	8
Paid fee to him and clerk	1	6	0
Attending Messrs. , solicitors for , on their calling and wishing us not to proceed with the order in their client's case until the question of jurisdiction had been decided, and conferring with them thereon	0	6	8
Writing to Messrs. & Co. in reply to their letter, and informing them we should not object to their reading affidavit in opposition to our summons, although it was filed after the evidence was closed	0	3	6
Writing to the official liquidator with office copy affidavit of for his perusal	0	3	6
Attending Messrs. & Co., solicitors for accordingly in reference to the suggestion of the chief clerk, and they fully ex-			

MEMORANDUM.—The items marked with a * were against other parties who had filed in opposition, and in some cases the fair copy briefs were not so many folios in length.

	£	s.	d.
plained to us the nature of their further objections and agreed to attend any appointment for the purpose	0	3	6
Attending Court all day on adjourned summons of, same in paper but not reached	0	10	0
Writing to the official liquidator and informing him that the chief clerk had now decided that he could not make the balance order and that we had obtained an appointment for inst. in order to adjourn same to the judge	0	2	6
Attending the official liquidator conferring with him fully as to the points raised by as to the alleged claim of set-off and informing him generally as to the amount of the claims against the company which would render the right of set-off nugatory even if established	0	6	8
Attending Court all day on adjourned summons of, same in paper but not reached	0	10	0
Writing to Messrs. & Co., solicitors for, requesting to know whether their client was prepared to submit an amended offer of compromise for consideration of the official liquidator	0	3	6
Writing to the official liquidator requesting him to make an early appointment to go through with him the outstanding claims	0	3	6
Writing to Messrs. & Co. requesting to know whether they now appeared for Mr.	0	3	6
Having obtained an appointment to attend before the chief clerk to proceed on the objections of to an order being made on our adjourned summons, notice thereof to Messrs. & Co., copy and service	0	4	0
Writing to Messrs. & Co., solicitors for, and informing them that the chief clerk had suggested the propriety of dealing with all the directors' cases at the same time, and that he required that the further objections which they stated it was their intention to urge should be stated before him, and giving them notice of the appointment before the chief clerk for that purpose	0	3	6
Notice of this appointment to the official liquidator, copy and service of same	0	1	6
Drawing order against, folios 4	0	4	0
Making copy of same for Messrs. & Co., his solicitors	0	1	4
Having obtained an appointment to settle this order, copy and service of same on Messrs.	0	4	0
Drawing order against, folios 3	0	3	0
Notice to settle same, copy and service on Messrs. his solicitors	0	4	0
Attending the official liquidator by appointment going through the entire list of on-standing claims and advising as to what part should be admitted on next, engaged a very long time	1	11	6
Writing to Messrs., solicitors for, in reply to their letter of the inst., and informing them we trusted they would be able to settle this before taxation	0	3	6
Making copy of letter received from Messrs. & Co., and writing to the official liquidator with same	0	4	6
Paid for office copy affidavit of, folios 9	0	4	6
Perusing same	0	3	0
Attending Court all day on adjourned summons of same, in paper but not reached	0	10	0
Attending the official liquidator prior to attending the Court this morning and conferring with him as to the papers required to be produced	0	6	8

	£	s	d.
Writing to Messrs. solicitors for acknowledging receipt of their letter containing further proposal and informing them we would submit it to the official liquidator	0	3	6
Making copy of Messrs. & Co.'s letter, and writing to the official liquidator with same	0	4	6
Attending Court all day on adjourned summons of same, in paper but not reached	0	10	0
Attending appointment before the chief clerk when after much discussion same was adjourned	1	1	0
Writing to the official liquidator with office copy affidavit of for his perusal	0	2	6
Attending Messrs. , solicitors for , on their calling in long conference as to the proposed order to be made herein	0	6	8
Attending the official liquidator in very long interview as to the proposed application for a balance order	0	6	8
Attending before the judge upon the adjourned summons for a balance order, and his lordship decided that we ought to serve the summons and we were directed to do so	0	13	4
Drawing order against , folios 3	0	3	0
Notice to settle same, copy and service on & Co., their solicitors	0	4	0
Attending adjourned appointment before the chief clerk when after hearing and the objections advanced by them respectively on behalf of and against an order being made on the adjourned summons for the directors to pay £ cash into Court we referred the chief clerk to the shorthand writer's notes of the proceedings before the judge in the case of , when the chief clerk referred these cases to the judge	0	13	4
Writing to the official liquidator and informing him that the chief clerk had adjourned and cases to the judge, and requesting him to send us a statement showing who were the directors of the company and the number existing from the commencement of the company to the 187	0	3	6
Writing to Messrs. & Co., informing them we should appear by counsel in support of the adjourned summons	0	3	6
Writing a similar letter to Messrs. & Co.	0	3	6
Writing to Messrs. & Co. with notice to settle draft order on the	0	4	0
Writing to Messrs. in reply to their letter as to the payment of their client Mr. claims and informing them at present the chief clerk's certificate as to the claims had not been settled	0	3	6
Making copy of Messrs. letter as to their client's claim being paid in full, and writing to the official liquidator with same and thereon	0	4	6
*Making copy of brief, folios 61, copy summons, folios 4, affidavit of filed 187 , folios 6, affidavit of official liquidator filed 187 , folios 10, affidavit of official liquidator filed 187 , folios 10, affidavit of filed 187 , folios 5, and affidavit of filed 187 , folios 6, together 102 folios for counsel	1	13	4
Attending counsel with same	0	6	8
Paid fee to him and clerk	2	4	6
*Making fair copy of brief, folios 52, copy summons, folios 4, affidavit			

* The memorandum at the foot of page 901 refers also to the items marked

	£	s.	d.
of _____, filed _____, 187____, folios 12, exhibits marked A., B., C. and D., folios 16, and affidavit of official liquidator filed _____, 187____, folios 20, together 102 folios for counsel	1	13	4
Attending counsel with same	0	6	8
Paid fee to him and clerk	2	4	6
Attending Court all day on adjourned summons of _____, same in paper but not reached	0	10	0
Attending Court all day on adjourned summons of _____, same in paper but not reached	0	10	0
Attending Court all day on adjourned summons of _____, same in paper but not reached	0	10	0
Attending before the judge in chambers in support of official liquidator's claim against _____, when it was argued on behalf of _____ that the Court had no jurisdiction to make the order upon every director who acted as such, inas-much as other directors had been appointed in the place of _____, but his lordship settled that according to the articles of association _____ was liable, and he was ordered to pay the £ _____, and also pay the costs of this application			
Attending before the judge at chambers in support of official liquidator's claims against Mr. _____, Mr. _____, Mr. _____, and Mrs. _____, when the judge made an order for all of them to pay £ _____ each	0	13	4
Attending shorthand writer and requesting him to take notes	0	6	8
Attending Court on adjourned summons of _____ when order made upon the summons setting aside his claim in respect of set-off and ordering the fund to be transferred to the official liquidator's account at the Bank of England, and Mr. _____ was ordered to pay the official liquidator's costs of the application	2	2	0
Paid shorthand writer taking notes	1	1	0
Attending at the Paymaster-General's office bespeaking certificate of fund in Court to account entitled Directors' Contributories Account, and afterwards for same	0	6	8
Attending the registrar with brief and papers and bespeaking draft order of _____ inst.	0	6	8
Attending Mr. _____ this morning in reference to drawing up the orders made in the cases of _____, when he stated that one order would be sufficient, which we thought would occasion a difficulty, and subsequently attending with Mr. _____ before chief clerk upon the subject and urging that in those cases which the directors, had opposed and the judge ordered them to pay costs there should be a distinct order so that no difficulty would arise with the Paymaster-General the order requiring that the amount should be paid into Court, but the chief clerk stated he thought although the orders upon several directors were not made at the same time and some were ordered to pay costs there should be but one order for those directors whose names appeared on his notes	0	13	4
Drawing order of the _____ instant, folios 12	0	12	0
Attending before the chief clerk settling same	0	13	4
Writing to the official liquidator informing him we had settled the draft order against the directors, and the time for them to pay in was fixed for the _____ proximo	0	3	6
Attending the registrar with draft order settled, and bespeaking his draft of same	0	6	8

	£	s.	d.
Writing to the official liquidator acknowledging receipt of his of yesterday's date, and informing him we would intimate to Messrs. that the terms he was prepared to compromise with, and must be accepted within a week	0	3	6
Writing to Messrs. & Co., intimating to them the terms the official liquidator was prepared to accede to	0	3	6
Preparing summons for balance against all the contributories set forth in the first and second columns of the schedule thereto annexed, who had been settled on the list of contributories, and attending at Chambers to get same sealed	0	13	4
Making copy of schedule to annex, folios 236	3	18	8
Paid stamping same	0	3	0
Close copy draft order of instant, folios 12	0	4	0
Notice to settle same, 6 copies and service	0	16	6
Attending before the registrar settling draft order	1	1	0
Notice to pass same, 6 copies and service	0	16	6
Making copy of letter received from Messrs. & Co., solicitors for, and writing to the official liquidator with same	0	4	6
Close copy of draft order of the instant, folios 6	0	2	0
Notice to settle same, copy and service of same on Messrs. & Co.	0	4	0
Writing to Messrs. & Co. in reply to theirs of yesterday's date, and informing them we quite agreed with them that two orders should be drawn up against their client, and it was ultimately decided that, after the five contested cases had been dealt with by the judge, one order only should be drawn up	0	3	6
Attending before the registrar and settling draft order of the instant	0	13	4
Correcting proof of order of instant, folios 12	0	2	0
Paid for order	0	5	0
Attending passing same	0	13	4
Attending the Paymaster-General with this order and bespeaking his directions for payment of money into Court, and afterwards for same	0	6	8
Attending before the registrar and settling draft order of instant	0	13	4
Notice to pass same, copy and service	0	4	0
Correcting proof of this order, folios 6	0	1	0
Paid for same order	0	5	0
Attending to pass same	0	13	4
Attending at the Paymaster-General's office for his directions to pay in £, when he required the christian names to be inserted in the order before the directions could issue	0	6	8
Writing to Messrs. & Co., for the christian name of their client	0	3	6
Writing to Messrs. in reply to theirs of the instant, and informing them unless the £ was forthwith paid, and the remaining £ paid within the period already stated to them, we should have no alternative but continue the proceedings against their client	0	3	6
Writing to the official liquidator in reply to his two letters, and informing him we had written again to Messrs.	0	3	6
Drawing and fair copy request for £ to be transferred to the official liquidator's account at the Bank of England	0	2	6

	£	s.	d.
Writing to the official liquidator therewith, and requesting him to sign and return same	0	3	6
Having obtained the order of instant altered and entered, attending at the Paymaster-General's office for the directions to pay in	0	6	8
Writing to Messrs. & Co. and informing them that we had obtained the directions for payment into Court by their clients of £ each, and requesting them to inform us if they would be prepared to pay same into Court within a week, in which case their clients need not be served with the order	0	3	6
The like to Messrs., solicitors for	0	1	6
The like to Messrs., solicitors for	0	1	6
The like to Messrs., solicitors for	0	1	6
The like to Messrs., solicitors for	0	1	6
The like to Mr., solicitor for	0	1	6
Attending Messrs. & Co. on their calling with reference to our letter to them of yesterday's date, and explaining that terms of arrangement had been proposed, and we were to write them thereon	0	6	8
Writing to Messrs. & Co. in reply to their letter, and informing them that we should proceed to enforce the order against their clients which we had hoped to avoid incurring the expense of	0	3	6
Writing to Messrs. & Co. in reply to theirs, and enclosing them the directions for their client to pay £ into Court	0	3	6
The like letter to Messrs. and Messrs.	0	7	0
Writing to the official liquidator in reply to his letter, and acknowledging the receipt of request to transfer £ duly signed and thereon	0	3	6
Attending the Paymaster-General with same and order of instant, and bespeaking transfer	0	6	8
Paid for same	0	4	0
Preparing endorsement for personal service on four prints of order, together 3 folios	0	1	0
Copy and service of same on, at	0	5	0
Writing to Messrs., requesting to know if they would accept service of order on behalf of, so that we need not serve him personally	0	3	6
Not having received any reply to our letter of ultimo from Mr., writing him again and requesting him to let us know whether he would accept service of order for his client	0	3	6
Writing to Messrs. & Co., informing them that we had obtained directions for their client to pay in £, and requesting to know what definite proposal they had to make on his behalf	0	3	6
Having received a letter from Messrs. & Co., solicitors for, as to the receipt of £ to their client, which they proposed to retain, writing them in reply and informing them that the arrangement should be carried out at once by paying the £ down and the balance within 3 months	0	3	6
Making copy of Messrs. & Co.'s letter, and writing to the official liquidator thereon, and informing him we had written to them to carry out the arrangement without further delay	0	4	6
Copy and service of order of the ultimo on, at	0	5	0
Making copy order of last, for the printer, folios 4	0	1	4
Revising and correcting proof	0	0	8

	£	s.	d.
Paid printer's charges	0	9	0
Making copy summons of the last for the printer, folios 4	0	1	4
Revising and correcting proof	0	0	8
Paid printer's charges	2	12	6
Making copy of letter from Messrs. & Co., and writing to the official liquidator with same and thereon	0	4	6
Attending filling up request for £ paid into Court by to be taken off deposit	0	2	6
Attending the Paymaster-General with same	0	6	8
Writing to Messrs., solicitors for, in reply to theirs of the instant, and informing them we would communicate with the official liquidator on same	0	3	6
Making copy of Messrs. & Co.'s letter, and writing to the official liquidator with same, and requesting to know whether he had any objection to give till the to pay in her £	0	4	6
Attending at to serve with copy order of ultimo, when we were informed he was out of town	0	10	0
Attending at the to serve with copy order of the ultimo, when we were informed he was abroad	0	5	0
Attending at the official liquidator's in very long conference in reference to outstanding matters, and particularly case, and receiving his instructions	0	6	8
Writing to Messrs. in reply to their letter, and informing them that we were instructed to state that their client could have the time extended, provided she undertook to pay interest on same	0	3	6
Writing to Mr. and informing him, unless we heard from him in the course of to-morrow that his client had paid the £ into Court, we should be compelled to serve him personally with copy order	0	3	6
Attending summons taken out on behalf of for further time to pay in £, same allowed upon her undertaking to pay at the rate of 5 per cent. for interest	0	6	8
Making copy of letter received from Messrs. & Co., and writing the official liquidator with same	0	4	6
Attending at the Report Office and bespeaking 6 plain copies of order of the ultimo, and afterwards for same	0	6	8
Paid for same	0	6	0
Attending at the Paymaster-General's Office and obtaining order directing transfer of 's £, with note thereon that transfer had taken place	0	6	8
Engaged filling up and directing 1130 copy summons for balance orders, and addressing envelopes to the contributories at 1s. 6d. each	84	15	0
Paid posting same	4	11	2
Attending the official liquidator in very long conference in reference to the directors' £ guaranteed particularly as to whether the the policy holders should enforce the guarantee as against the directors, and advising him very fully thereon	1	1	0
Drawing list of persons who had paid their contributions up to this date, folios 40	2	0	0
Attending the official liquidator in very long conference in reference to the amount now received from the contributories, and also as to the necessary materials we should be furnished as to the directors' liability in respect of the £ guarantee	1	1	0

	£	s.	d.
Attending the official liquidator conferring with him again at great length with reference to the £ guarantee, and as to the points affecting the liability of the directors, and conferring with him thereon, and taking his instructions	1	1	0
Making fair copy of official liquidator's second account in duplicate, folios 65 each	2	3	4
Drawing and engrossing affidavit of , verifying service of copies of summons for balance order, folios 28	1	8	0
Preparing 2 exhibits	0	2	0
Preparing summons for to show cause why he should not be ordered to pay £ into Court, and attending at Chambers to get same sealed	0	13	4
Paid stamping same	0	3	0
Making copy of same to leave at Chambers	0	2	0
Copy and service of same on & Co.	0	4	6
Preparing summons for to show cause why he should not be ordered to pay £ into Court, and attending at Chambers to get same sealed	0	13	4
Paid stamping same	0	3	0
Making copy of same to leave at Chambers	0	2	0
Copy and service of same on & Co.	0	4	6
Preparing summons for to show cause why he should not be ordered to pay £ into Court, and attending at Chambers to get same sealed	0	13	4
Paid stamping same	0	3	0
Making copy of same to leave at Chambers	0	2	0
Copy and service of same on & Co.	0	4	6
Attending the official liquidator and conferring with him in reference to case, and upon the subject of the payment by the directors of £ guarantee, which he desired should be enforced if possible, and advising him generally upon the matter, engaged a long time, and we were to consider the matter in reference to the steps to be taken	1	1	0
Copy and service of order of last on 	0	5	0
Instructions for affidavit of official liquidator verifying his second account of receipts and payments	0	6	8
Drawing same, folios 6	0	6	0
Engrossing same	0	2	0
Preparing 2 exhibits	0	2	0
Making copy of letter received from the representative of , deceased contributory, and writing to the official liquidator with same	0	4	6
Attending Mr. , solicitor for , on his calling, conferring with him at considerable length as to the position of , this director, who, it appeared, had been involved to the extent of £ , but we declined to allow the summons to stand over	0	6	8
Instructions for affidavit of the official liquidator proving position occupied by Mr. in this company	0	6	8
Drawing same, folios 5	0	5	0
Preparing 2 exhibits	0	2	0
Writing to the official liquidator with same for his approval	0	3	6
Paid commissioner taking deponent's oath to his affidavit, and marking exhibits	0	3	6
Making copy of this affidavit to be marked as an office copy	0	1	8

	£	s.	d.
Paid filing affidavit	0	2	0
Paid for office copy	0	0	10
Making copy of affidavit verifying service of copies of summons for balance order to be marked as an office copy, folios 28	0	9	4
Paid filing affidavit	0	2	0
Paid for office copy	0	4	8
Attending the official liquidator on his being sworn to this affidavit verifying his second account of receipts and payments	0	6	8
Paid commissioner taking deponent's oath and marking exhibits	0	3	6
Making copy of this affidavit to be marked as an office copy, folios 6	0	2	0
Paid filing affidavit	0	2	0
Paid for office copy	0	1	0
Writing to Mr., the solicitor for, in reply to his letter, and informing him that we declined to allow the summons to stand over, as the circumstances referred to in his letter could not affect the order to be made	0	3	6
Attending Mr., official liquidator's partner, in very long interview in reference to the directors' special guarantee, and particularly as to the clauses on the policies issued subsequently to, 187, whereby the directors bound themselves in respect of the guarantee, perusing and considering both forms of policies, and we were to draw counsel's attention to this matter in the case to be laid before him	1	1	0
Sittings fee	0	15	0

Michaelmas Sittings, 1878.

Drawing notice of intention of reading on the hearing of the summons against, his affidavit, filed the, 187, two affidavits of the official liquidator filed respectively the, 187, and the two orders dated respectively, 187, and copy and service of same on Messrs. & Co., his solicitors	0	4	0
Attending the official liquidator this morning and conferring with him a long time in reference to the amounts paid by the directors and the necessity of making out a perfect list, &c.	0	6	8
Preparing summons for the taxation of the official liquidator's bill of costs from the date of his appointment as such official liquidator to the day of, and attending at chambers to get same sealed	0	13	4
Paid stamping same	0	3	0
Making copy of same to leave at chambers	0	2	0
Instructions for affidavit of official liquidator verifying second account as entered in books in duplicate	0	6	8
Drawing same, folios 5	0	5	0
Engrossing same	0	1	8
Preparing 2 exhibits	0	2	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibits	0	3	6
Making copy of this affidavit to be marked as an office copy	0	1	8

	£	s.	d.
Paid filing affidavit	0	2	0
Paid for office copy	0	0	10
Attending the official liquidator in long conference this morning prior to the appointments fixed for to-morrow, and conferring with him generally as to the probability of obtaining costs against the defaulters, and arranging as to the books and exhibits to be produced, and the formal evidence to be gone through	1	1	0
On receipt of letter from Messrs. for, writing them in reply that we should take the official liquidator's instructions as to the offer for compromise made	0	3	6
Making copy of letter received from Messrs. & Co., and writing to the official liquidator with same and thereon	0	4	6
Writing to Mr., solicitor for, a contributory, in reply to his letter, and informing him that the order could be made, and debt proved against his client's estate	0	3	6
Attending summons for further time for to pay £ into Court, when same adjourned until the instant to enable Messrs., her solicitors, to satisfy the official liquidator that delay would in no way prejudice the payment, as the money was perfectly safe	0	6	8
Attending summons for an order against for payment of £, amount of contribution as a director, when order made as asked by summons payable before the instant, or subsequently within four days after service of order, costs of application to be paid by; attending summons for like order against, when order made upon production of consent upon the original summons, costs to be paid by	0	13	4
Attending summons for balance order, when several contributories and their solicitors attended, but, as no cause being shown against the order, the chief clerk made the order subject to affidavit of service, and we were to bring in a list of the persons who had paid in the interval between the issuing and the return of the summons	1	1	0
Writing to Messrs., solicitors for, informing them that, as they had not attended the summons issued against their client, they were required to endorse a consent on same	0	3	6
Attending Mr. on his calling in reference to the order in case, and conferring with him as to his desire that the time should be extended, and he endorsed a consent on the summons	0	6	8
Having received letter from the official liquidator in reference to the offer made by, making copy of same and writing & Co. with same, and requesting a better offer to be submitted to the official liquidator	0	4	6
Attending summons for order against for payment of his contribution as a director of the company, when order made as asked subject to production of affidavit of service	0	13	4
Drawing and engrossing affidavit of, verifying service of summons on, folios 4	0	4	0
Preparing exhibit	0	1	0
Paid commissioner taking deponent's oath and marking exhibits	0	2	6
Making copy affidavit to be marked as an office copy	0	1	4
Paid filing affidavit	0	2	0
Paid for office copy	0	0	8

	£	s.	d.
Drawing order for to pay in £, folios 6	0	6	0
Notice of appointment to settle same, copy and service of same on, solicitors	0	4	0
Drawing order for to pay in £, folios 5	0	5	0
Notice of appointment to settle same, copy and service	0	4	0
Attending the official liquidator in reference to the instructions we expected to have received from him as to case, when he stated that Messrs. had not sent him the promised particulars, and requested us to oppose the summons	0	6	8
Attending adjourned summons on behalf of, when same adjourned to Monday next, and Messrs. were to pay the costs of same	0	6	8
Writing subsequently to the official liquidator, informing him of the result of the application, and that intended to pay him £ on account	0	2	6
Subsequently having received a further letter from Messrs. solicitors for, making copy of same, and writing official liquidator with same	0	4	6
On receipt of letter from Messrs. & Co., solicitors for, writing to the official liquidator thereon and requesting to know whether he had consented to the summons to stand over	0	3	6
Attending the official liquidator on his calling in reply to our letter before the hearing of the summons to-day taken out on behalf of, when he instructed us to oppose same	0	6	8
Attending summons for further time for to pay the amount due from her as executrix, when same adjourned till the instant	0	6	8
Subsequently attending the official liquidator on his calling, and giving him explanations as requested in reference to the case of, a contributory	0	6	8
Attending appointment before the judge's junior clerk settling draft orders against and	0	13	4
Drawing balance order and schedule, folios, at per folio	0	1	0
Close copy registrar's order against, folios 5	0	1	8
Notice to settle same, copy and service	0	4	0
Close copy registrar's order against, folios 6	0	2	0
Notice to settle same, and copy and service of same on Messrs., his solicitors	0	4	0
Attending at the Paymaster-General's office and bespeaking transcript of account in Court, and afterwards for same	0	6	8
Paid for book and stamp	0	2	9
Attending summons for taxation of the official liquidator's costs, when order made	0	13	4
Drawing order, attending settling, and signing and entering same	0	13	4
Engrossing order, folios 4	0	1	4
Paid stamping same	0	5	0
Making copy order for the Taxing Master, folios 4	0	1	4
Drawing affidavit verifying amount received on account of costs, folios, at per folio	0	1	0
Engrossing same, at per folio	0	0	4
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath	0	1	6
Making copy of this affidavit to be marked as an office copy, folios, at per folio	0	0	4

	£	s.	d.
Paid filing affidavit	0	2	0
Paid for office copy, at per folio	0	0	2
Drawing this bill of costs, folio, summary, folio ; together folios, at per folio	0	0	8
Warrant on leaving	0	3	0
Warrant to tax	0	3	0
Attending taxing same, at per 25 folios or a fractional part	0	6	8
Certificate and transcript	1	2	0
Attending to file same, and bespeaking office copy	0	6	8
Paid for office copy	0	3	0
Term fee	0	15	0
Letters, messengers, &c.			

Page.	Summary.	Taxed off.	Amount of Bill.
1			
2			
3			
4			
5			
6			
	Taxed off		_____
	Paid <i>ad valorem</i> duty		_____
	Received on account of compromises with contributories or otherwise		_____
			£ _____

In some of the Judges' Chambers, when an application is made for the taxation of the official liquidator's costs, the chief clerks only direct the costs to be taxed; in consequence of this a summons has to be taken out for an order for payment of the costs as taxed. On the hearing of same the chief clerks generally sign the cheques for payment of same, without having an order drawn up.

If not properly concerned close copy of affidavits, &c., excepting affidavits verifying service of proceedings are generally allowed, and for every sitting 6s. allowed beyond 15s., sittings fee.

When an order or judgment is made in any action or matter for the taxation of costs, the solicitor who has the carriage of the order or judgment is required to make out a list of attendances before the chief clerk (if any), to enable him to prepare his certificate of attendances, and, unless that is done, on the taxation of costs all those attendances would be queried or disallowed.

When a summons is adjourned to be heard before the Judge in Chambers, if attended by counsel, the fee is only 13s. 4d., and if not attended by counsel, the fee generally allowed is £1 1s.

The Bill of Costs of _____, *the Official Liquidator in the above-named Company, to be Taxed as between Solicitor and Client from the foot of the last Taxation to the complete winding-up of the Company.*

Hilary Sittings, 1881.

	£	s.	d.
Preparing summons for leave for official liquidator to pay his solicitors' costs as taxed out of the assets of the company, and attending at Chambers to get same sealed	0	13	4
Paid stamping same	0	3	0
Making copy to leave at Chambers	0	2	0
Attending summons when leave given	0	6	8
Making copy of supplemental list of contributors as prepared by the official liquidator, folios _____, at per folio	0	0	4
Instructions for affidavit in support	0	6	8
Drawing same, at per folio	0	1	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6
Making copy affidavit to be marked as an office copy, at per folio	0	0	4
Paid filing same	0	2	0
Paid for office copy, at per folio	0	0	2
Preparing summons to settle supplemental list of contributors, and attending at Chambers to get same sealed	0	6	8
Paid sealing same	0	3	0
Making copy summons for Chambers	0	2	0
Copies for service on _____, each	0	2	0
<i>(In proceedings to wind up a company the usual charges relating to printing shall be allowed in lieu of copies for service, where the fee for copies would exceed the charges for printing and amount to more than £3.)</i>			
Service thereof upon _____ contributors, each	0	1	6
Preparing summons for leave to serve summons to settle list of contributors through the post, on contributors living out of the jurisdiction of the Court	0	6	8
Paid sealing same	0	3	0
Making copy summons for chambers	0	2	0
Instructions for affidavit of official liquidator in support of same	0	6	8
Drawing same, at per folio	0	1	0
Engrossing same, at per folio	0	0	4
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath	0	1	6
Making copy affidavit to be marked as an office copy, at per folio	0	0	4
Paid filing affidavit	0	2	0
Paid for office copy, at per folio	0	0	2
Drawing up order and attending to get same settled, signed, and entered	0	13	4
Engrossing same, at per folio	0	0	4
Paid for order	0	5	0
copies for service, at per folio	0	0	4
Drawing and engrossing affidavit verifying service, at per folio	0	1	0
Marking exhibits, each	0	1	0

	£	s.	d.
Paid commissioner taking deponent's oath and marking exhibits			
Making copy affidavit to be marked as an office copy, at per folio	0	0	4
Paid filing affidavit	0	2	0
Paid for office copy, at per folio	0	0	2
Attending before the chief clerk to settle supplemental list of contributories			
Making copy schedule with names of contributories for chief clerk for his draft certificate, folios, at per folio	0	0	4
Copy certificate settling supplemental list of contributories, folios, at per folio	0	0	4
Close copy, at per folio	0	0	4
Attending to settle same			
Engrossing same, at per folio	0	0	4
Attending on same being signed	0	6	8
Making copy of same to be marked as an office copy, at per folio	0	0	4
Attending to file same and bespeaking office copy	0	6	8
Paid for office copy, at per folio	0	0	2
Preparing summonses for a call of £ per share, and attending to get same sealed	0	13	4
Paid stamping same	0	3	0
Making copy summonses to leave at chambers	0	2	0
copies for service, each	0	2	0
(See previous notice about printing.)			
Services of same on contributories, each	0	1	6
Drawing and engrossing affidavit verifying service of summonses, folios, at per folio	0	1	0
Paid commissioner taking deponent's oath	0	1	6
Paid filing affidavit	0	2	0
Making copy affidavit to be marked as an office copy, and paid for office copy, at per folio	0	0	6
Instructions for affidavit of official liquidator in support of summonses	0	6	8
Drawing same, folios, at per folio	0	1	0
Engrossing same, at per folio	0	0	4
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath	0	1	6
Making copy affidavit to be marked as an office copy, at per folio	0	0	4
Paid filing affidavit	0	2	0
Paid for office copy, at per folio	0	0	2
Attending summons when order made			
Drawing up order and attending to get same settled, signed, and entered	0	13	4
Engrossing same, at per folio	0	0	4
Paid for order	0	5	0
copies of the order for service, at per folio	0	0	4
(See above respecting printing.)			
Preparing and filling up notices of the order for a call, each	0	1	0
Services thereof and of the orders upon contributories, each	0	1	6
Preparing receipt of amount payable by contributories for the Bank of England and copy, and lodging same at Bank, each	0	1	4
Drawing notice to be served on contributories of a meeting at, per folio	0	1	0
Copy to serve, at per folio each	0	0	4
Preparing summonses for order for payment of call against contributories, viz.,, and attending at Chambers to get same sealed	0	13	4

	£	s.	d.
Paid stamping same	0	3	0
Making copy summons to leave at Chambers	0	2	0
copies for service, each	0	2	0
(See previous notice about printing.)			
Service of same upon contributories, each	0	1	6
Drawing and engrossing affidavit verifying service of same, folio , at per folio	0	1	0
Paid commissioner taking deponent's oath	0	1	6
Paid filing affidavit	0	2	0
Making copy affidavit to be marked as an office copy, and paid for office copy, folios , at per folio	0	0	6
Instructions for affidavit of the official liquidator verifying the amounts due from contributories	0	6	8
Drawing same, folios , at per folio	0	1	0
Engrossing same, at per folio	0	0	4
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath	0	1	6
Paid filing affidavit	0	2	0
Making copy affidavit to be marked as for an office, and paid for office copy, at per folio	0	0	6
Attending summons when order made			
Drawing up order and attending to get same settled, signed, and entered	0	13	4
Engrossing same, folios , at per folio	0	0	4
Paid stamping same	0	5	0
copies of the order for service, at per folio			
(See above as to printing.)			
Preparing and filing up notices of the order for payment of a call, each	0	1	0
Service, each	0	5	0
Mileage for each mile beyond two, each	0	1	0
(Further allowance may be made.)			
If served by agent—			
Writing to agent instructing him with same to be served, and after- wards with his charges	0	7	0
Paid his charges			
Attending Mr. , one of the contributories, on his calling and stating that he was not in a position to pay the amount of the call, but offered to pay £ in full discharge, when we requested him to make an affidavit stating fully his position, and upon re- ceiving that we would confer with the official liquidator thereon	0	6	8
Paid copy affidavit of , one of the contributories, in support of proposal to compromise, folios , at per folio	0	0	4
Perusing same, at per folio	0	0	4
If agency, close copy, at per folio	0	0	4
Attending the official liquidator thereon, and arranging for him to investigate the statements made	0	6	8
Instructions for affidavit of the official liquidator verifying that he investigated the debtor's statements, and that he considered that it would be for the benefit of the creditors to take amount offered	0	6	8
Drawing same, folios , at per folio	0	1	0
Engrossing same, folios , at per folio	0	0	4
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath	0	1	6

	£	s.	d.
Making copy affidavit to be marked as an office copy, folios, at per folio	0	0	4
Paid filing affidavit	0	2	0
Paid for office copy, folios, at per folio	0	0	2
Preparing summons to approve of proposed compromise with a contributory, and attending at Chambers to get same sealed	0	6	8
Paid stamping same	0	3	0
Making copy of same to leave at Chambers	0	2	0
Instructions for agreement for compromise	0	6	8
Drawing same, at per folio	0	1	0
Making copy thereof for perusal of contributory's solicitor, at per folio	0	0	4
Writing to the solicitor therewith for his approval	0	3	6
Attending summons, order made, and chief clerk settled draft agreement			
Engrossing agreement in duplicate, at per folio each	0	0	8
Paid stamping same and duplicate	0	1	0
Attending the official liquidator obtaining his execution thereof	0	6	8
Writing to the contributory's solicitor with duplicate agreement for execution	0	3	6
Attending the chief clerk, obtaining his approval of the agreement marked in the margin			
Writing to contributory's solicitor with appointment to complete	0	3	6
Drawing order approving of compromise, and attending to get same settled, signed and entered	0	13	4
Engrossing same, folios, at per folio	0	0	4
Paid stamping same	0	5	0
Attending appointment, exchanging agreements and receiving the amount agreed to be paid to the official liquidator	0	6	8
Writing to the official liquidator with cheque for payment of the amount received from the contributory	0	3	6
(In some cases of compromises it has been necessary to obtain an appointment to cross-examine the contributory on his affidavit, and also make several inquiries as to his means, and correspondence respecting same. In such cases further charges for same would be allowed, and the contributory in many cases has not only been ordered to pay the amount he proposed to compromise but also the costs of the application.)			
Preparing summons for the official liquidator to be at liberty to pay a dividend of in the pound to creditors	0	13	4
Paid stamping same	0	3	0
Making copy of same to leave at Chambers	0	2	0
Instructions for affidavit of the official liquidator in support of same	0	6	8
Drawing same, folio, at per folio	0	1	0
Engrossing same, at per folio	0	0	4
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath	0	1	6
Paid filing affidavit	0	2	0
Making copy of affidavit to be marked as an office copy, and paid for office copy, at per folio	0	0	6
Attending summons when order made			
Drawing order, attending to get same settled, signed and entered	0	13	4
Engrossing same, folios, at per folio	0	0	4
Paid stamp	0	5	0

	£	s.	d.
Preparing summons for taxation of the official liquidator's costs, passing his final account, payment of final dividend, assessing his remuneration to vacate the recognizance and bond (if any), and to finally wind up and to dissolve his company	0	13	4
Paid stamp	0	3	0
Making copy to leave at Chambers	0	2	0
Attending thereon when order made			
Drawing order, attending to get same settled, signed and entered	0	13	4
Engrossing same, folios , at per folio	0	0	4
Paid stamp	0	5	0
Making copy order for Taxing Master, folios , at per folio	0	0	4
Drawing bill of costs and copy, folios , and summary, folios , together, folios , at per folio	0	0	8
Warrant on leaving	0	3	0
Warrant to tax	0	3	0
Attending to tax, for every 25 folios or a fractional part	0	6	8
Certificate and transcript	1	2	0
Attending to file, and for office copy	0	6	8
Paid for office copy	0	3	0
Attending and bespeaking office copy, recognizance and bond (if any) and afterwards for same	0	6	8
Paid for office copy recognizance, folios , at per folio	0	0	6
Paid for office copy bond, folios , at per folio	0	0	6
Preparing summons for the official liquidator to be at liberty to pay a final dividend of in the pound to creditors	0	13	4
Paid stamp	0	3	0
Making copy of same to leave at Chambers	0	2	0
Instructions for affidavit of the official liquidator in support of same	0	6	8
Drawing same, folios , at per folio	0	1	0
Engrossing same, folios , at per folio	0	0	4
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath	0	1	6
Paid filing affidavit	0	2	0
Making copy of same to be marked as an office copy, and paid marking office copy, folios , at per folio	0	0	6
Instructions for affidavit in support of his application for his remuneration, and verifying that the assets of the company had been all got in	0	6	8
Drawing same, folios , at per folio	0	1	0
Engrossing same, folios , at per folio	0	0	4
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath	0	1	6
Paid filing affidavit	0	2	0
Making copy of affidavit to be marked as an office copy, and paid marking office copy, folios , at per folio	0	0	6
Instructions for affidavit of official liquidator's clerk verifying the statement of time of official liquidator, this clerk being engaged relating to the winding-up of this company	0	6	8
Drawing same, folios , at per folio	0	1	0
Engrossing same, at per folio	0	0	4
Preparing exhibit	0	1	0
Attending deponent before a commissioner on his being sworn to same	0	6	8

	£	s.	d.
Paid commissioner taking deponent's oath and marking exhibit	0	2	6
Paid filing affidavit	0	2	0
Making copy of affidavit to be marked as an office copy, and paid for office copy, at per folio	0	0	6
Attending appointment before the chief clerk, when he assessed the official liquidator's remuneration and order for payment of a final dividend			
Preparing summons to pass the final account of the official liquidator of receipts and payments, and attending at Chambers to get same sealed	0	6	8
Paid stamp	0	3	0
Making copy to leave at Chambers	0	2	0
Instructions for affidavit of the official liquidator verifying his final account	0	6	8
Drawing same, folios, at per folio	0	1	0
Engrossing same, at per folio	0	0	4
Making copy of official liquidator's account of receipts and payments to be marked as an office copy, folios, at per folio	0	0	4
Preparing exhibit	0	1	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibit	0	2	6
Paid filing affidavit	0	2	0
Making copy affidavit to be marked as an office copy, and paid for office copy, folios, at per folio	0	0	6
Making copy of official liquidator's accounts of receipts and payments for the chief clerk, folios, at per folio	0	0	4
Attending appointment before chief clerk, when the official liquidator's account was passed			
Entering official liquidator's account in two books, folios, at per folio, each	0	0	4
Instructions for affidavit of the official liquidator verifying same	0	6	8
Drawing same, at per folio	0	1	0
Engrossing same, at per folio	0	0	4
Preparing two exhibits	0	2	0
Attending deponent to be sworn to same	0	6	8
Paid commissioner taking deponent's oath and marking exhibits	0	3	6
Paid filing affidavit	0	2	0
Making copy affidavit to be marked as an office copy, and paid for office copy, at per folio	0	0	6
Paid for copy certificate approving the account, at per folio	0	0	4
Close copy, at per folio	0	0	4
Attending settling same			
Engrossing certificate, at per folio	0	0	4
Attending on same being signed	0	6	8
Paid <i>ad-valorem</i> duty			
Making copy certificate to be marked as an office copy, and paid for office copy, at per folio	0	0	6
Attending to file certificate and for office copy	0	6	8
Drawing order for the complete winding-up of the company, and attending at Chambers to get same settled, signed, and entered	0	13	4
Engrossing same, folios, at per folio	0	0	4
Paid stamp for same	0	5	0
Making copy of same to file at the Registrar-General's office of the Joint Stock Company's office, folios, at per folio	0	0	4

	£	s.	d.
Paid stamping same	0	5	0
Attending afterwards at the Joint Stock Company's office with same for registration	0	6	8
Attending the Master of Rolls' secretary's office with the order to dissolve the company for the Master of Rolls' fiat, and afterwards with same at the Public Record Office	0	13	4
Paid for vacating the official liquidator's recognizance	1	1	0
Paid for vacating bond	1	1	0
Attending at the Record and Writ Clerk's office, depositing the proceedings	0	6	8
Sittings fee	0	15	0
Letters, messengers, postages, &c.			

Memorandum.—If the official liquidator requires any action or proceedings in bankruptcy against any of the contributories, before he can do so he must take out a summons for leave to commence same.

If there are Hindustan or foreign contributories, charge as following—

Drawing schedule to draft chief clerk's certificate in Hindustan and foreign names, folios , at per folio	0	1	6
Making fair copy of same, folios , at per folio	0	0	6

See observations as to agency on the previous bill.

WINDING - UP. — COSTS OF OFFICIAL LIQUIDATOR FOR TRANSFER OF FUND OUT OF COURT TO THE CREDIT OF HIS ACCOUNT AT THE BANK OF ENGLAND.

IN THE HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

In the matter of the *Company, Limited,*
AND

In the matter of the Companies Acts, 1862 and 1867.
The Bill of Costs of the Official Liquidator of the above-named Company to be taxed in pursuance of the Order made in the above-named matters on the day of *, 1878.*

Easter Sittings, 1878.

June, 1878.

Preparing summons for A. B. to show cause why the £ paid into Court by him to the credit " In the matter of Company, Limited, and in the matter of the Companies Acts, 1862 and 1867 Account," should not be transferred and stand to the credit of the account of the official liquidator of the said company in the books of the Governor and Company of the Bank of England, and freed and discharged from his alleged set-off, and attending at Chambers to get same sealed	0	13	4
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	£	s.	d.
Paid stamping same	0	3	0
Making copy to leave at Chambers	0	2	0
Copy and service of same on A. B.'s solicitors	0	4	6

July.

Attending summons before the chief clerk, when A. B.'s solicitors claimed a set-off, and the chief clerk adjourned the summons to the Judge	0	13	4
2. Notice to A. B.'s solicitors that we should attend the adjourned summons by counsel, copy and service	0	4	0
Drawing brief for counsel to appear on behalf of the official liquidator (exclusive of documents), at per folio	0	1	0
Making brief copy of same, including documents, for counsel, at per folio	0	0	4
Making brief copy affidavit of A. B., filed on the, 1878, for counsel, at per folio	0	0	4
Making brief copy affidavit of official liquidator, filed on the, 1878, for counsel, at per folio	0	0	4
Attending Mr. with same	0	6	8
Paid fee to him and clerk	2	4	6
Attending Mr. appointing conference	0	6	8
Paid conference fee to him and clerk	1	6	0
Attending conference	0	13	4
Attending adjourned summons before the Judge, when same was adjourned into Court	0	13	4
12. Making fair copy of brief for the senior counsel, at per folio	0	0	4
The like copy affidavit of A. B., at per folio	0	0	4
The like copy affidavit of the official liquidator, at per folio	0	0	4
Attending Mr., Q.C., with same	0	13	4
Paid fee to him and clerk	7	12	0
Attending Mr. with same	0	6	8
Paid fee to him and clerk	4	6	6
Attending Mr. appointing consultation	0	6	8
Paid fee to him and clerk	2	9	6
Attending Mr. appointing consultation	0	6	8
Paid fee to him and clerk	1	3	6
13. Attending consultation	0	13	4
Attending Court, adjourned summons on paper but not reached	0	10	0
Attending Court seven days, adjourned summons in paper but not reached	3	10	0

August.

Attending Court, adjourned summons in paper, and order made upon the summons setting aside A. B.'s claim in respect of set-off, and ordering the fund to be transferred to the official liquidator's account at the Bank of England, and A. B. was ordered to pay the official liquidator's costs of the application	1	1	0
Attending at the Paymaster-General's office bespeaking certificate of fund in Court to account entitled "," and afterwards for same	0	6	8
Attending the registrar with brief and papers, and bespeaking draft order	0	6	8
15. Close copy draft order of the instant, at per folio	0	0	4
Notice to sell same, copy and service	0	4	0

	£	s.	d.
Attending before the registrar settling same	0	13	4
Notice to pass same, copy and service	0	4	0
20. Correcting and examining proof	0	6	8
Paid for order	0	5	0
Attending passing same	0	13	4

Michaelmas Sittings, 1878.

Making copy order for the Taxing Master, at per folio	0	0	4
Drawing this bill of costs and copy, at per folio	0	0	8
Warrant on leaving same, copy and service	0	5	6
Warrant to tax same, copy and service	0	5	6
Attending taxing same, for every 25 folios or a fractional part	0	6	8
Certificate and transcribing	1	2	0
Attending to file same and for office copy	0	6	8
Paid for office copy	0	3	0
Letters, &c.	1	1	0

ORDINARY CONVEYANCING CHARGES IN COMMON CASES.

(All special Attendances relating to each matter must be introduced as they occur; these Precedents are framed more as a guide to the ordinary and general and common Charges.)

Ordinary Vendor's Solicitor's Charges on Agreement and Conveyance.

Attending you when you informed me that you had agreed with Mr. for sale of your house at for the sum of and advising agreement to be entered into between you	0	6	8
Attending you subsequently and taking instructions for agreement to be sent to Mr. , solicitor	0	6	8
Drawing agreement, per folio	0	1	0
Fair copy for perusal of purchaser's solicitor, per folio	0	0	4
Writing him therewith and clerk's attendance	0	5	0
Attending him on his returning same, going through his various alterations and in part explaining title to his satisfaction, and draft agreement approved	0	6	8
Two fair copies of agreement for signature, per folio, each	0	0	4
Attending attesting execution thereof	0	6	8
Drawing abstract of your title to the premises, at per folio	0	1	0
Fair copy, at per folio	0	0	4
Attending purchaser's solicitor therewith, and afterwards attending him, making an appointment to compare same with deeds	0	6	8
Attending examination of abstract with deeds (each hour)	0	6	8
Perusing and considering requisitions upon title			
This must entirely depend upon the length and the special nature thereof, having reference to the abstract and the time engaged; if short requisitions, the usual charge would be	0	6	8
If special and extending to any length, 13s. 4d. or £1 1s. as the circumstances of each case would disclose.			

	£	s.	d.
Attending you conferring on the requisitions and taking down full instructions to answer same	0	6	8
Drawing replies thereto, folios, at per folio	0	1	0
Fair copy, at per folio	0	0	4
Purchaser's solicitor having required to be furnished with an abstract of the deeds recited in a former purchase deed and covenanted to be produced, drawing abstract accordingly, at per folio	0	1	0
Fair copy, at per folio	0	0	4
Writing him therewith, and where he could see the deeds, and clerk's attendance	0	5	0
Writing the solicitor of Mr. to produce same pursuant to his covenant, and that I would pay his charges	0	3	6
Attending purchaser's solicitor after inspection of further deeds, and conferring upon the requisitions, and satisfying him thereon by reference to documents in my possession	0	6	8
Writing Mr. for amount of his charges, and clerk's attendance paying same	0	5	0
Paid his charges	0	5	0
Perusing draft conveyance, for every 15 folios	0	5	0
Fair copy to keep, per folio	0	0	4
Instructions to Mr. to settle same	0	6	8
Attending him	0	6	8
Paid his fee and clerk	0	6	8
Attending returning draft approved	0	6	8
Attending him on his calling, discussing my alterations therein, when draft finally settled	0	6	8
Examining engrossment, each skin of 15 folios	0	3	4
Attending purchaser's solicitor, when he informed me his client was ready to complete, and making appointment accordingly	0	6	8
Drawing schedule of deeds and documents to be given on completion, at per folio	0	1	0
Making fair copy of same in duplicate, at per folio each	0	0	4
Writing and informing you of the time appointed to complete sale	0	3	6
Attending completion	0	13	4
Letters, &c.	0	5	0

Ordinary Vendor's Solicitor's Charges—Sales by Auction.

Attending you upon your bringing me deeds, and taking instructions to prepare abstract of title, in order to sell your interest in property at by public auction	0	6	8
Drawing abstract accordingly, at per folio	0	1	0
Attending you conferring thereon, and taking down full particulars of tenancy, and as to the taxes, &c., &c., for particulars and conditions of sale	0	6	8
Drawing particulars and conditions of sale, per folio	0	1	0
Fair copy for auctioneer, each folio	0	0	4
Attending auctioneer thereon, and fully instructing him	0	6	8
Attending counsel therewith, to settle	0	6	8
Paid his fee and clerk	0	6	8
Fair copy for the printer, per folio	0	0	4

ORDINARY VENDOR'S SOLICITOR'S CHARGES. AUCTIONS. 923

	£	s.	d.
Examining proof sheet, 2d. per folio ; and attending auctioneer therewith and thereon	0	6	8
Attending auctioneer previous to sale, fully instructing him, and arranging reserved bidding	0	6	8
Attending sale	1	1	0
Fair copy abstract for purchaser's solicitor, at per folio	0	0	4
Attending delivering same	0	6	8

(See further charges as at pages 921, 922.)

Ordinary Purchaser's Costs, on Agreement to Purchase and Conveyance.

Attending you, when you informed me that you had agreed with Mr. for the purchase of, and taking instructions to peruse and settle agreement on your behalf	0	6	8
Perusing agreement accordingly, every 15 folios	0	5	0
Fair copy thereof, per folio	0	0	4
Attending you, reading same over, and giving you full explanation as to certain conditions imposed upon you ; you agreed thereto, subject to my alterations made therein	0	6	8
Writing returning agreement, and of your determination, and clerk's attendance	0	5	0
Having received duplicate copy agreement for your signature, examining same, for every 15 folios	0	3	4
Attending you on your signing same	0	6	8
Appointment to exchange and attending exchanging	0	6	8
Writing vendor's solicitor that I should attend to examine abstract	0	3	6
Attending comparing abstract with deeds. Self and clerk, each hour	0	10	0
Perusing abstract of title, for every 3 sheets	0	6	8
Drawing and fair copy instructions for counsel to advise on abstract (included in perusal)			
Attending him therewith	0	6	8
Paid his fee and clerk			
Drawing requisitions upon title and fair copy, per sheet	0	10	0
Writing to vendor's solicitor therewith and clerk's attendance	0	5	0
Perusing replies to requisitions, and making observations thereon, according to length of requisitions			
Attending Mr. to advise on sufficiency thereof	0	6	8
Paid his fee and clerk			
Instructions for conveyance	0	6	8
Drawing same, per folio	0	1	0

(If settled by Counsel.)

Attending Mr. therewith to settle	0	6	8
Paid his fee			
Fair copy for perusal of vendor's solicitor, folios, at per folio	0	0	4
Perusing and considering his alterations in draft, and attending him thereon, same finally settled	0	6	8

	£	s.	d.
Ingrossing conveyance, per folio	0	0	8
Paid stamps (amount paid) and parchment (5s. per skin)			
Attending stamping	0	6	8
Attending vendor's solicitor therewith for examination	0	6	8
Attending him informing him of my readiness to complete, and making appointment to pay over purchase money	0	6	8
Searching for judgments, crown debts, lis pendens, annuities, &c., each hour engaged	0	6	8
Paid search			
Searching incumbrances (if at Middlesex Registry), each hour engaged	0	6	8
Paid search			
Attending inspecting memorials (according to time occupied, as above)			
Paid			
Attending searching for bankruptcy proceedings and deeds of compromise with creditors	0	13	4
Paid search	0	2	0
Attending completion	0	13	4
Letters, messengers, &c.	0	5	0

Ordinary Mortgagor's Solicitor's Charges.

Attending you when you desired me to obtain for you the loan of £1000 upon your property at, when you requested me to insert advertisement for the loan, and taking down full particulars for that purpose	0	6	8
Drawing advertisement accordingly and fair copy	0	6	8
Copy for insertion in the <i>Times</i>	0	1	0
Attending with same and bespeaking insertion	0	6	8
Paid			
Writing Mr. in answer to his application as to advertisement, and giving him full and general particulars of the property proposed to be mortgaged	0	5	0
The like to Mr.	0	5	0
Attending you, when you informed me Mr. had agreed to advance you the required amount, and taking instructions to communicate with his solicitor, and you handed me the whole of the deeds	0	6	8
Drawing abstract and fair copy, at per folio	0	1	4
Attending delivering same to mortgagee's solicitor, and making appointment to compare same with deeds	0	6	8
Attending examination of abstract (each hour engaged)	0	6	8
Perusing and considering requisitions upon title	0	6	8

(If special, 13s. 4d.)

Drawing replies thereto and fair copy, folios, at per folio	0	1	4
Writing therewith and clerk's attendance	0	5	0
Fair copy draft mortgage to keep, 40 folios	0	13	4
Perusing and making alterations in same, equal to 3 skins	0	15	0
Attending conferring as to my alterations and finally settling draft	0	6	8

	£	s.	d.
Writing mortgagee's solicitor that proposed appointment to complete would suit	0	3	6
Examining engrossment of mortgage (3s. 4d. per skin of 15 folios)	0	10	0
Attending completion of mortgage money paid over	0	13	4
Drawing schedule of deeds to be handed over and signed by mortgagee, per folio	0	1	0
Fair copy, in duplicate folio, at per folio	0	0	8
Letters, &c.	0	5	0

Ordinary Mortgagee's Solicitor's Charges.

Attending you on your informing me of your consent to advance Mr. the sum of , by way of mortgage on , and that his solicitor would communicate with me on the subject, and taking your instructions thereon	0	6	8
Writing mortgagor's solicitor that I was ready to proceed with the matter and requesting to be furnished with abstract of title as early as convenient	0	3	6
Having received abstract of title, writing making appointment to inspect deeds	0	3	6
Attending, pursuant to appointment, and comparing abstract with deeds produced—self and clerk engaged two hours (10s. per hour)	1	0	0
Perusing abstract, folios (for every 3 sheets, 6s. 8d.)	1	13	4
Instructions for Mr. to advise on abstract and attending him	0	6	8
Paid his fee and clerk	2	4	6
Drawing requisitions upon title and fair copy, folios , at per folio	0	1	4
Writing mortgagor's solicitor therewith and clerk's attendance	0	5	0
Perusing and considering replies to requisitions	0	6	8
Instructions for mortgage	0	6	8
Drawing same, 40 folios (1s. per folio)	2	0	0
Fair copy for mortgagor's solicitor's approval (4d. per folio)	0	13	4
Attending him therewith	0	6	8
Perusing and considering his alterations in draft, and attending him thereon, finally settling same	0	6	8
<i>Insert here such other and general attendances as may have become necessary by the alterations in draft, or agreeing upon final terms upon mortgage money advanced.</i>			
Engrossing mortgage, 8d. per folio	1	6	8
Paid for stamps (as paid)			
Parchment (5s. per skin)			
Attending stamping	0	6	8
Writing mortgagor's solicitor with engrossment for examination and clerk's attendance therewith	0	5	0
Searching for judgments, annuities, and crown debts (each hour engaged)	0	6	8
Paid search (as paid)			
Searching bankruptcy and deeds of compromise with creditors (same charge).			
Paid			
Attending execution of mortgage	0	13	4
Letters, &c.	0	5	0

Lease and Counterpart.

	£	s.	d.
Instructions for lease	0	6	8
Drawing same, each folio	0	1	0
Fair copy for perusal of lessee's solicitor, per folio	0	0	4
Attending him therewith	0	6	8
Perusing and considering alterations in draft and consenting thereto	0	6	8
Engrossing lease and counterpart, each per folio	0	0	8
Paid for stamp (as paid) and parchment (5s. each skin)			
Attending to stamp	0	6	8
Attending execution of lease	0	13	4
Attending making appointment and exchanging lease for counter- part	0	6	8
Letters, &c.	0	5	0

Of Memorial of Deed Registered.

Drawing and fair copy memorial, per folio	0	1	0
Engrossing, per folio	0	0	8
Paid for stamp and parchment	0	5	0
Attending execution of memorial	0	6	8
Attending to register memorial and afterwards for same	0	6	8
Paid			

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