SCHEDULE E.

THE RULES OF THE SUPREME COURT, 1889.

ORDER I.

Form and Commencement of Action.

1. All actions which have hitherto been commenced by writ in the Supreme Court, and all suits which have hitherto been commenced by bill, petition, or information in equity, or by citation, or otherwise, in probate matters, shall be instituted by a proceeding to be called an action.

2 Subject to rules of Court, proceedings in interpleader shall be such as those now used at law, and proceedings and applications in other matters shall be the same as they would have been if this Act had not passsed.

ORDER II.

Writ of Summons and Procedure, &c.

1. Every action in the Court shall be commenced by a writ of summons, attachment or capias, as the case may be, which shall be indorsed with, or have attached thereto, a statement of the claim made, or of the relief or remedy required, in the action.

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

3. The writ for the commencement of an action shall, except in the cases in which any different form is hereinafter provided, be in the forms in the appendix A hereto, with such variations as circumstances may require.

4. No writ for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of a Court or Judge.

5. A writ to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be in the form in appendix A, with such variations as circumstances may require Such notice shall be in form No. 4, in appendix A, with such variations as circumstances may require.

6. Every writ (unless it shall be otherwise provided) shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Chief Justice or of the presiding Judge.

ORDER III.

STATEMENT OF CLAIM.

1. The statement of claim shall be made with every writ before it is issued.

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

3. The statement of claim shall be concise and to the effect of such of the forms in appendix C hereto as shall be applicable to the case, or if none be found applicable then such other similarly concise form as the nature of the case may require.

4. If the plaintiff sues or the defendant or any of the defendants is sued in a representative capacity, the statement shall show in what capacity the plaintiff or defendant sues or is sued.

5. In probate actions the statement shall show whether the plaintiff claims as creditor, executor, administrator, residuary legatee, next of kin, or in any and what other character.

6. In all actions where the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising (*a*) upon a contract, express or implied, (as for instance, on a bill of exchange, promissory note, or cheque, or other simple contract debt); or (*b*) on a bond or contract under seal; or (*c*) on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or (*d*) on a guaranty, whether under seal

or not, where the claim against the principal is in respect of a debt or liquidated demand only; or (*e*) on a trust; or (*f*) in actions for the recovery of land with or without a claim for rent or mesne profits; the plaintiff shall in default of appearance and plea, or if the defendant be not allowed to defend, be entitled to enter final judgment.

7. Wherever the plaintiff's claim is for a debt or liquidated demand only, the claim, besides stating the nature of the demand, shall state the amount claimed for debt or in respect of such demand and interest, (if any), and for costs respectively, and, in case of writs returnable in St. John's, shall further state that upon payment thereof within four days after service, or where the defendant or person to be served resides beyond or outside the limits of the Central District, then within eight days after service, or in case of a writ not for service within the jurisdiction within the time allowed for appearance, further proceedings will be stayed. Such statement shall be in the form in appendix C. The defendant may, notwithstanding such payment, have the costs taxed, and, if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation.

8. In all cases in which the plaintiff, in the first instance, desires to have an account taken, the statement shall contain a claim that such account be taken.

ORDER IV.

Indorsement of Address.

1. The solicitor of a plaintiff suing by a solicitor shall indorse upon every writ and notice in lieu of service of a writ the address of the plaintiff, and also, his own name or firm and place of business, and also, if his place of business shall be more than two miles from the Court House at St. John's, another proper place, to be called his address for service, which shall not be more than two miles from the place at which the writ has been issued, or from that at which it is returnable, where writs, notices, pleadings, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him.

2. A plaintiff suing in person shall indorse upon every writ, and notice in lieu of service of writ, his place of residence and occupation, and also, if his place of residence shall be more than two miles from the place at which the writ has been issued or at which it is returnable, another proper place, to be called his address for service, which shall not be more than such two miles distant as aforesaid, where writs, notices, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him.

3. In all cases where proceedings are commenced otherwise than by writ, the rules of this order shall apply to the document by which such proceedings shall be originated, as if it were a writ.

ORDER V.

ISSUE OF WRIT.

I.—Place of Issue.

1. In any action the plaintiff, wherever resident, may issue a writ at any place for which a Commissioner of the Supreme Court for the issue of writs is appointed.

II.—Manner.

2. Writs shall be written or printed, or partly written and partly printed, on forms to be supplied by the officers of the Court.

3. Writs issued in St. John's shall be sealed with the seal of the Supreme Court; in the case of writs issued in other places than St. John's a seal shall not be necessary.

4. The officer issuing such writ in St. John's shall make an entry thereof in a book, to be called the cause book, with the names of the parties, amount and cause of action, and date and number.

ORDER VI.

CONCURRENT WRITS.

1. The plaintiff in any action may, at the time of or at any time during twelve months after the issuing of the original writ, issue one or more concurrent writ or writs, each concurrent writ to bear teste of the same day as the original writ, and to be marked "concurrent," with date of issue; provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force.

2. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service, or whereof notice in lieu of service is to be given, out of the jurisdiction; and a writ for service, or whereof notice in lieu of service is to be given, out of the jurisdiction, may be issued and marked as a concurrent writ with one for service within the jurisdiction.

ORDER VII.

DISCLOSURE BY SOLICITORS AND PLAINTIFFS.

1. Every solicitor whose names shall be indorsed on any writ shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith in writing whether such writ has been issued by him or with his authority or

privity; and if such solicitor shall declare that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or a Judge.

2. When a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand in writing by or on behalf of any defendant, declare forthwith the names and places of residence of all the persons constituting the firm. And if the plaintiffs or their solicitor shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the Court or a Judge may direct. And when the names of the partners are so declared, the action shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the writ. But all proceedings shall, nevertheless, continue in the name of the firm.

Change of Solicitors.

3 A party suing or defending by a solicitor shall be at liberty to change his solicitor in any cause or matter without an order for that purpose, upon notice of such change being filed with the proper officer, but until such notice is filed and a copy thereof served the former solicitor shall be considered the solicitor of the party.

ORDER VIII.

Renewal of Writ.

1. No original writ shall be in force for more than twelve months from the day of the date thereof, including the day of such date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the twelve months, apply to a Commissioner for leave to renew the writ; and the Commissioner, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may renew the original or concurrent writ for six months from the date of such renewal, inclusive, and so from time to time during the currency of the renewed writ. And the writ shall in such case be renewed by being marked "renewed," and the date of the day, month, and the year of such renewal; and a writ so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ.

If a Commissioner shall decline to renew a writ a Judge may, upon application, direct it to be renewed.

2. The production of a writ purporting to have been renewed in manner aforesaid, shall be sufficient evidence of its having been so re-

newed, and of the commencement of the action as of the first date of such renewed writ for all purposes.

3. Where a writ, of which the production is necessary, has been lost, the Court or a Judge, upon being satisfied of the loss and of the correctness of a copy thereof, may order that such copy shall be used in lieu of the original writ.

ORDER IX.

SERVICE OF WRIT.

Mode of Service.

1. No service of writ shall be required when the defendant, by his solicitor, agrees in writing to accept service.

2. When service is required the writ shall, wherever it is practicable, be served in the manner in which personal service is now made, but if it be made to appear to the Court or to a Judge that the plaintiff is from any cause unable to effect prompt personal service, the Court or Judge may make such order for substituted or other service, or for the substitution of service of notice by advertisement or otherwise, as may seem just.

On Particular Defendants.

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

4. When an infant is a defendant to an action, service on his or her father or guardian, or, if none, then upon the person with whom the infant resides or under whose care he or she is, shall, unless the Court or Judge otherwise orders, be deemed good service on the infant; provided that the Court or Judge may order that service made or to be made on the infant shall be deemed good service.

5. When a lunatic or person of unsound mind, not so found by inquisition, is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides or under whose care he or she is, shall, unless the Court or Judge otherwise orders, be deemed good service on such defendant.

On Partners, Firms and other Bodies.

6. Where partners are sued in the name of their firm, or a person, company, or firm carrying on business or having a house of business in this Colony, is sued, the writ shall be served either upon the person sued or upon any one or more of the partners, or at the principal place within the jurisdiction of the business of the defendants, upon any person having

at the time of service the control or management of the business there; and, subject to the rules herein contained, such service shall be deemed good service.

7. Whenever, by any statute, provision is made for service of any writ, bill, petition, or other process, upon any corporation, official or the inhabitants of any place, or any society or fellowship, or any body or number of persons, whether corporate or otherwise, every writ may be served in the manner as provided. In the absence of statutory provision the writ shall be served upon either the head officer, secretary, clerk, or treasurer of any corporation, company, or society, or upon such person, or in such manner as the Court or Judge may direct

In Actions to Recover Lands.

8. Service of a writ of summons in an action to recover land may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of a writ upon the door of the dwelling-house or other conspicuous part of the property.

Generally.

9. The person serving a writ shall, before returning the writ, indorse on it the day of the month of the service thereof, and, in case of non-appearance, an affidavit of service of such writ shall be filed before a plaintiff can proceed to default.

ORDER X.

SUBSTITUTED SERVICE.

Every application to the Court or a Judge for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made.

ORDER XI.

SERVICE OUT OF THE JURISDICTION.

1. Service out of the jurisdiction of a writ or notice of a writ, may be allowed by the Court or a Judge whenever (*a*) the whole subject matter of the action is land situate within the jurisdiction (with or without rents or profits), or stock or other property within the jurisdiction; or (*b*) any act, deed, will, contract, obligation or liability, affecting land or hereditaments, or stock or property, situate within the jurisdiction, is sought to be construed, rectified, set aside, or enforced, or otherwise affected in the action, or for the breach whereof damages or other relief are or is demanded; or (*c*) any relief is sought against any person domiciled or

ordinarily resident with the jurisdiction; or (*d*) in probate actions and where the action is for the administration of the personal estate of any deceased person, who at the time of his death was domiciled or resident within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of this Colony; or (*e*) the action is founded on any breach or alleged breach (1) of a contract made within the jurisdiction; or (2) of a breach within the jurisdiction of any contract wherever made, which according to the terms thereof ought to be performed within the jurisdiction; or (*f*) any injunction is sought as to anything to be done within the jurisdiction, or any nuisance within the jurisdiction is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or (*g*) any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction.

2. Every application for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by affidavit or other evidence, stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the ground upon which the application is made; and no such leave shall be granted unless it shall be made sufficiently to appear to the Court or Judge that the case is a proper one for service out of the jurisdiction under this order.

3. Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to enter an appearance, such time to depend on the place or country, where or within which the writ is to be served or the notice given.

4. When the defendant is neither a British subject nor in British dominions, notice of the writ, and not the writ itself, is to be served upon him.

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

ORDER XII.

APPEARANCE.

1. A defendant shall enter his appearance to a writ returnable in St. John's by delivering to the proper officer for filing and entry, a memorandum in writing similar to the form in appendix A, dated on the day of delivering the same, and containing the name of the defendant's solicitor or stating that defendant defends in person.

2. The solicitor of a defendant appearing in St. John's by a solicitor, shall state in such memorandum his place of business or his address for

service, which shall not be more than two miles from the Court House in St. John's.

3. A defendant appearing in person in St. John's shall state in such memorandum his address, and a place to be called his address for service, which shall not be more than two miles from the Court House, St John's.

4 If the memoradum does not contain such address it shall not be received; and if any such address shall be illusory or fictitious, the appearance may be set aside by the Court or a Judge, on the application of the plaintiff.

5. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names; but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

6. Where any person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the name of the firm, he shall appear in his own name; but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

7. If two or more defendants in the same action shall appear by the same solicitor and at the same time the names of all defendants so appearing shall be inserted in one memorandum.

8. A solicitor not entering an appearance or putting in bail, or paying money into Court in lieu of bail, in pursuance of his written undertaking so to do, shall be liable to an attachment.

9. A defendant may appear at any time before judgment.

10. In Probate actions any person not named in the writ may intervene and appear in the action as heretofore, on filing an affidavit showing how he is interested in the estate of the deceased

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

12. Any person appearing to defend an action for the recovery of land as landlord, in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord.

13. Where a person not named as defendant in any writ for the recovery of land has obtained leave of the Court or a Judge to appear and defend, he shall enter an appearance, according to the foregoing rules of this order, intituled in the action against the party named in the writ as defendant, and shall forthwith give notice of such appearance to the plaintiff's solicitor, or to the plaintiff if he sues in person and shall in all subsequent proceedings be named as a party defendant to the action.

14. Any person appearing to a writ for the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance, or in a notice therewith intituled in the action and signed by him or his solicitor; and an appearance, where the defence is not limited as above-mentioned, shall be deemed an appearance to defend for the whole.

15. A defendant before appearing shall be at liberty, without obtaining an order to enter or entering conditional appearance, to serve notice of motion to set aside the service upon him of the writ or notice of the writ or to discharge the order authorizing such service.

ORDER XIII.

Default of Appearance.

1. Where a defendant fails to appear to a writ, and the plaintiff is desirous of proceeding, upon default of appearance he shall, before taking such proceedings, file an affidavit of service or of notice in lieu of service, or of service upon a defendant's solicitor who has undertaken to appear in writing, as the case may be.

2. In case of non-appearance by the defendant, the plaintiff may sign final or interlocutory judgment, as the case may be, in manner hereinafter provided by Order XXVI in default of pleading.

3. In case no appearance shall be entered in an action for the recovery of land, within the time limited for appearance, or if an appearance be entered but the defence be limited to part only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the writ shall recover possession of the land or of the part thereof to which the defence does not apply.

4. In all actions not by the rules of this Order otherwise specially provided for in case the party served with the writ and statement of claim, does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service, the action may proceed as if such party had appeared, subject, as to actions where an account is claimed, to the provisions of Order XV.

5. Where no appearance has been entered to a writ for a defendant who is an infant or a person of unsound mind, not so found by inquisition, the plaintiff may apply to the Court or a Judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ was duly served, and that notice of such application was, after the expiration of the time allowed for appearance, and at least three clear days before the day in such notice named for hearing the application, served upon or left at the

dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the Court or Judge, at the time of hearing such application, shall dispense with such last-mentioned service.

6. No final judgment by default shall be entered upon a writ issued outside the Central District, or against any defendant resident outside the said district, upon process returnable in St. John's, except by leave of the Court or a Judge, and upon such proof of the indebtedness of the defendant as the Court or Judge may require; and it shall be competent for the Court or Judge to make any order for the further notification of the defendant as may appear just.

7. Where judgment is entered pursuant to any of the preceding rules of this order, it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms as may be just.

ORDER XIV.

Leave to Sign Judgment and Defend where Writ for Liquidated Demand, &c.

1. Where the defendant appears and pleads to a writ with a claim for a debt or a liquidated demand or for recovery of land, the plaintiff may, on affidavit made by himself or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed, (if any), and stating that in his belief there is no defence to the action, apply to a judge for liberty to enter final judgment for the amount claimed, together with interest, if any, or for recovery of the land, (with or without rent or mesne profits), as the case may be, and costs. The Judge may thereupon, unless the defendant by affidavit or otherwise shall satisfy him that he has a good defence to the action on the merits, or disclose such facts as may be deemed sufficient to entitle him to defend, make an order empowering the plaintiff to enter judgment accordingly.

2. The application by the plaintiff for leave to enter final judgment under the last preceding rule shall be made by order returnable not less than two clear days after service, accompanied by a copy of the affidavit and exhibits referred to therein.

3. The defendant may show cause against such application by affidavit, or (except in actions for the recovery of land) by offering to bring into Court the sum claimed with the writ. Such affidavit shall state whether the defence alleged goes to the whole or to part only, and (if so) to what part, of the plaintiff's claim. And the Judge may, if he think fit, order the defendant or his agent, or, in the case of a company or corporation, any officer thereof, to attend and be examined upon oath, or to produce any leases, deeds, books, or documents, or copies of or extracts therefrom.

4. If it appear that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that any part of his claim is admitted, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted, subject to such terms (if any) as to suspending execution, or the payment of the amount levied or any part thereof into Court by the Sheriff, the taxation of costs, or otherwise, as the Judge may think fit. And the defendant may be allowed to defend as to the residue of the plaintiff's claim.

5. If it appear to the Judge that any defendant has a good defence to or ought to be permitted to defend the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter, and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former.

6. Leave to defend may be given unconditionally or subject to such terms as to giving security, or time and mode of trial, or otherwise, as the Judge may think fit.

7. The Court or Judge may, with consent of all parties, dispose of the action finally in a summary manner, on such terms as to costs, or otherwise, as the Court or Judge may think fit.

ORDER XV.

Application for an Account.

1. Where the claim with a writ is for an account, or involves taking an account, if the defendant either fails to appear, or does not after appearance, by affidavit or otherwise, satisfy the Court or a Judge that there is some preliminary question to be tried, an order for the proper accounts, with all necessary inquiries and directions heretofore used in equity in similar cases, shall be forthwith made.

2. An application for such order as mentioned in the last preceding rule shall be made by motion, and be supported by an affidavit, when necessary, filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired.

ORDER XVI.

Parties.

I.—Generally.

1. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist whether jointly, severally, or in the alternative. And judgment may be given for such one or more of the

plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs, occasioned by so joining any person who shall not be found entitled to relief, unless the Court or a Judge in disposing of the costs shall otherwise direct.

2. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the Court or Judge may, if satisfied that it has been so commenced through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute, so to do, order any other person to be substituted or added as plaintiff upon such terms as may be just.

3. Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a counter-claim or set-off, he may obtain the benefit thereof by establishing his set-off or counter-claim as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon.

4. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. Any judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

5. It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the Court or a Judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.

6. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally liable on any one contract, including parties to bills of exchange and promissory notes.

7. Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that the question as to which (if any) of the defendants is liable, and to what extent, may be determined as between all parties.

8. Trustees, executors and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the Court or a Judge may, at any stage of the proceedings, order any of such persons to be made parties either in addition to or in lieu of the previously existing parties.

9. Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorized by the Court or a Judge to defend in such cause or matter on behalf or for the benefit of all persons so interested.

10. Subject to the provisions of the Act and these rules, in all probate actions, the rules as to parties, in use on the probate side previously to the commencement of this Act, shall continue to be in force.

11. No cause or matter shall be defeated by reason of the mis-joinder or non-joinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a Judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a Judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of the plaintiff under any disability, without his own consent in writing thereto. Every party whose name is to be added as defendant shall be served with a writ or notice in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings as against such party shall be deemed to have begun only on the service of such writ or notice.

12. Any application to add or strike out or substitute a plaintiff or defendant may be made to the Court or a Judge at any time before trial by motion, or at the trial of the action in a summary manner.

13. Where a defendant is added or substituted, the plaintiff shall, unless otherwise ordered by the Court or a Judge, file an amended copy of and sue out a writ, and serve such new defendant with such writ or notice in lieu of service thereof in the same manner as original defendants are served.

II—Partners.

14. Any two or more persons claiming or being liable as co-partners may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action; and any party to an action may in such case apply by motion to a Judge for a statement of the names of the persons who were, at the time of the accruing of the cause of action, co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the Judge may direct. Provided that, in the case of a co-partnership which has been dissolved, to the knowledge of the plaintiff, before the commence-

ment of the action, the writ shall be served upon every person sought to be made liable.

15. Any person carrying on business in the name of a firm apparently consisting of more than one person may be sued in the name of such firm.

III.—Persons under Disability.

16. Infants where they are required to sue by their next friends, may sue as plaintiffs by their next friends, in the manner heretofore practised in equity, and may, in like manner, defend by their guardians appointed for that purpose. Married women may sue and be sued as provided by the Married Women's Property Acts.

17. Where lunatics and persons of unsound mind not so found by inquisition might respectively, before the passing of this Act, have sued as plaintiffs, or would have been liable to be sued as defendants in any action or suit, they may respectively sue as plaintiffs in any action by their committee or next friend according to the practice in equity, and may in like manner defend any action by their committees or guardians appointed for that purpose.

18. An infant shall not (except where expressly allowed by law) enter an appearance except by his guardian *ad litem*. No order for the appointment of such guardian shall be necessary, but the solicitor applying to enter such appearance, shall make and file an affidavit in the form in appendix A, with such variations as circumstances may require.

19. Every infant served with a petition or notice of motion, or order in a matter, shall appear on the hearing thereof by a guardian *ad litem* in all cases in which the appointment of a special guardian is not provided for. No order for the appointment of such guardian shall be necessary, but the solicitor by whom he appears shall previously make and file an affidavit as in the last rule mentioned.

20. Before the name of any person shall be used in any action as next friend of any infant, or other party, or as relator, such person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed in the Clerk's office.

21. In all causes or matters to which any infant or person of unsound mind, whether so found by inquisition or not, or person under any other disability, is a party, any consent as to the mode of taking evidence or as to any other procedure, shall, if given with the consent of the Court or a Judge by the next friend, guardian, committee, or other person acting on behalf of the person under disability, have the same force and effect as if such party were under no disability and had given such consent.

IV.—Proceedings by or against Paupers.

22. Any person may be admitted in the manner heretofore accustomed to sue or defend as a pauper on proof that he is not worth $40,

his wearing apparel and the subject-matter of the cause or matter only excepted.

23. No person shall be permitted to sue as a pauper unless a petition (verified by affidavit) setting out a full and true statement of all the material facts to the best of the deponent's knowledge and belief, shall be produced before the Court or Judge to whom the application is made, and the Court or Judge may require the opinion, in writing, of counsel or solicitor upon such petition.

24. A person admitted to sue or defend as a pauper shall not be liable to any Court fee.

25. Where a person is admitted to sue or defend as a pauper the Court or a Judge may, if necessary, assign a counsel or solicitor, or both, to assist him, and a counsel or solicitor so assigned shall not be at liberty to refuse his assistance unless he satisfies the Court or Judge that he has some good reason for refusing.

26. Whilst a person sues or defends as a pauper no person shall take or agree to take, or seek to obtain from him any fee, profit, or reward, for the conduct of his business in the Court, and any person who takes, or agrees to take, or seeks to obtain any such fee, profit, or reward, shall be guilty of a contempt of Court.

27. If any person admitted to sue or defend as a pauper gives, or agrees to give, any such fee, profit, or reward, he shall be forthwith dispaupered, and shall not be afterwards admitted again in the same cause to sue or defend as a pauper.

28. It shall be the duty of the solicitor assigned to a person admitted to sue or defend as a pauper to take care that no notice is served, or order issued, or petition presented, without good cause.

29. Costs ordered to be paid to a person admitted to sue or defend as a pauper shall, unless the Court or a Judge shall otherwise direct, be taxed as in other cases.

V.—Administration and Execution of Trusts.

30. In any case in which the right of the next of kin or a class shall depend upon the construction which the Court or a Judge may put upon an instrument, and it shall not be known or shall be difficult to ascertain who is or are such next of kin or class, and the Court or Judge shall consider that in order to save expense or for some other reason it will be convenient to have the questions of construction determined before such next of kin or class shall have been ascertained by means of inquiry or otherwise, the Court or Judge may appoint some one or more persons to represent such next of kin or class, and the judgment of the Court or Judge in the presence of such persons shall be binding upon the next of kin, or class so represented.

31. Any residuary legatee or next of kin entitled to a judgment or order for the administration of the estate of a deceased person, may have the same without serving the remaining residuary legatees or next of kin.

32. Any legatee interested in a legacy charged upon chattels real, and any person interested in the proceeds of such property directed to be sold, and who may be entitled to a judgment or order for the administration of the estate of a deceased person, may have the same without serving any other legatee or person interested in the proceeds of the estate.

33. Any one of several *cestuis que trust* under any deed or instrument entitled to a judgment or order for the execution of the trusts of the deed or instrument, may have the same without serving any other *cestui que trust.*

34. In all cases of actions for the prevention of waste or otherwise for the protection of property, one person may sue on behalf of himself and all persons having the same interest.

35. Any executor, administrator, or trustee entitled thereto may have a judgment or order against any one legatee, next of kin, or *cestui que trust* for the administration of the estate or the execution of the trusts.

36 The Court or a Judge may require any person to be made a party to any action or proceeding, and may give the conduct of the action or proceeding to such person as he may think fit, and may make such order in any particular case as he may think just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question.

37. Wherever, in any action for the administration of the estate of a deceased person or the execution of the trusts of any deed or instrument, or for the partition or sale of any property, a judgment or an order has been pronounced or made—

(*a.*) Under Order XV.;

(*b.*) Under Order XXX.;

(*c.*) Affecting the rights or interests of persons not parties to the action;

the Court or a Judge may direct that any persons interested in the estate or under the trust or in the property, shall be served with notice of the judgment or order; and after such notice such persons shall be bound by the proceedings, in the same manner as if they had originally been made parties, and shall be at liberty to attend the proceedings under the judgment or order. Any person so served may, within one month after such service, apply to the Court or Judge to discharge, vary, or add to the judgment or order.

38. It shall not be necessary for any person served with notice of any judgment or order, to obtain an order for liberty to attend the pro-

ceedings under such judgment or order, but such person shall be at liberty to attend the proceedings upon entering an appearance in the same manner, and subject to the same provisions, as a defendant entering an appearance.

39. A memorandum of the service upon any person of notice of the judgment or order in any action under rule 37 shall be entered in the Clerk's office upon due proof by affidavit of such service.

40. Notice of a judgment or order served pursuant to rule 37 shall be entitled in the action, and there shall be endorsed thereon a memorandum in the form in appendix F.

41. Notice of a judgment or order on an infant or person of unsound mind not so found by inquisition shall be served in the same manner as a writ in an action.

42. If, in any cause, matter, or other proceeding it shall appear to the Court or a Judge that any deceased person who was interested in the matter in question has no legal personal representative, the Court or Judge may proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent his estate for all the purposes of the cause, matter, or other proceeding, on such notice to such persons (if any) as the Court or Judge shall think fit, either specially or generally by public advertisement, and the order so made, and any order consequent thereon, shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party to the cause, matter, or proceeding.

43. In any cause or matter for the administration of the estate of a deceased person, no party other than the executor or administrator shall, unless by leave of the Court or Judge, be entitled to appear either in Court or in chambers on the claim of any person not a party to the cause or matter against the estate of the deceased person in respect of any debt or liability. The Court or a Judge may direct or give liberty to any other party to the cause or matter to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as they or he shall think fit.

VI.—Third Party Procedure.

44. Where a defendant claims to be entitled to contribution, or indemnity over against any person not a party to the action, he may, by leave of the Court or a Judge, issue a notice (hereinafter called the third-party notice) to that effect stamped with the seal of the Court, or countersigned by a clerk of the Court. A copy of such notice shall be filed with the proper officer and served on such person according to the rules relating to the service of writs. The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the Court or

a Judge, be served within the time limited for delivering his defence. Such notice may be in the form or to the effect of the form in appendix B, with such variations as circumstances may require, and therewith shall be served a copy of the statement of claim, and copy of the writ in the action.

45. If a person not a party to the action, who is served as mentioned in foregoing rule (hereinafter called the third party), desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, the third party must enter an appearance and defence in the action within four days from the service of the notice. In default of his so doing, he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise, and his own liability to contribute or indemnify, as the case may be, to the extent claimed in the third-party notice. Provided always, that a person so served and failing to appear and defend within the said period may apply to the Court or a Judge for leave to appear and defend, and such leave may be given upon such terms, if any, as the Court or Judge shall think fit.

46. Where a third party makes default in entering an appearance and defence in the action, in case the defendant giving the notice suffer judgment by default, he shall be entitled at any time, after satisfaction of the judgment against himself, or before such satisfaction by leave of the Court or a Judge, to enter judgment against the third party to the extent of the contribution or indemnity claimed in the third party notice; provided that it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms as may seem just.

47. Where a third party makes default in entering an appearance and defence in the action, in case the action is tried and results in favor of the plaintiff, the Judge who tries the action may, at or after the trial, enter such judgment as the nature of the case may require for the defendant giving the notice against the third party; provided that execution thereof be not issued without leave of the Judge until after satisfaction by such defendant of the verdict or judgment against him. And if the action is finally decided in the plaintiff's favour, otherwise than by trial, the Court or a Judge may, on application by motion, order such judgment as the nature of the case may require to be entered for the defendant, giving the notice against the third party at any time after satisfaction by the defendant of the amount recovered by the plaintiff against him.

48 If a third party appears and defends, pursuant to the third-party notice, the defendant giving the notice may apply to the Court or a Judge for directions, and the Court or Judge, upon the hearing of such application, may, if satisfied that there is a question proper to be tried as to the liability of the third party to make the contribution or indemnity claimed, in whole or in part, order the question of such liability, as between the third party and the defendant giving the notice, to be tried in such man-

ner, at or after the trial of the action, as the Court or Judge may direct; and, if not so satisfied, may order such judgment as the nature of the case may require to be entered in favour of the defendant giving the notice against the third party.

49. The Court or a Judge upon the hearing of the application mentioned in preceding rule, may, if it shall appear desirable to do so, give the third party liberty to defend the action, upon such terms as may be just, or to appear at the trial and take such part therein as may be just, and generally may order such proceedings to be taken, documents to be delivered, or amendments to be made, and give such directions as to the Court or Judge shall appear proper for having the question most conveniently determined, and as to the mode and extent in or to which the third party shall be bound or made liable by the judgment in the action.

50. The Court or a Judge may decide all questions of costs, as between a third party and the other parties to the action, and may order any one or more to pay the costs of any other, or others, or give such direction as to costs as the justice of the case may require.

51. Where a defendant claims to be entitled to contribution or indemnity against any other defendant to the action, a notice may be issued and the same procedure shall be adopted, for the determination of such questions between the defendants, as would be issued and taken against such other defendant, if such last-mentioned defendant were a third party; but nothing herein contained shall prejudice the rights of the plaintiff against any defendant in the action.

ORDER XVII.

CHANGE OF PARTIES BY DEATH, &C.

1. A cause or matter shall not become abated by reason of the marriage, death, bankruptcy, or insolvency, of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite*; and, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered, notwithstanding the death.

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

3. In case of an assignment, creation, or devolution of any estate or title *pendente lite*, the cause or matter may be continued by or against the person to or upon whom such estate or title has come or devolved.

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

5. An order obtained as in the last preceding rule mentioned, shall, unless the Court or Judge shall otherwise direct, be served upon the continuing party or parties, or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following rules, be binding on the persons served therewith, and every person served therewith who is not already a party to the cause or matter shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons.

6. Where any person who is under no disability or under no disability other than coverture, or being under any disability other than coverture, but having a guardian *ad litem* in the cause or matter, shall be served with such order as in rule 4 mentioned, such person may apply to the Court or a Judge to discharge or vary such order at any time within four days from the service thereof.

7. Where any person being under any disability other than coverture, and not having a guardian *ad litem* in the cause or matter, is served with any order as in rule 4 mentioned, such person may apply to the Court or a Judge to discharge or vary such order at any time within four days from the appointment of a guardian *ad litem* for such party, and until such period shall have expired such order shall have no force or effect as against such last-mentioned person.

8. When the plaintiff or defendant in a cause or matter dies, and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the person against whom the cause or matter may be continued) may apply by motion to compel the plaintiff (or the person entitled to proceed) to proceed within such time as may be ordered; and in default of such proceeding, judgment may be entered for the defendant, or, as the case may be, for the person against whom the cause or matter might have been continued; and in such case, if the plaintiff has died

execution may issue as in the case provided for by Order XXXVIII., Rule 17.

9. Where any cause or matter becomes abated, or in the case of any such change of interest as is by this order provided for, the solicitor for the plaintiff or person having the conduct of the cause or matter, as the case may be, shall certify the fact to the proper officer, who shall cause an entry thereof to be made in the Cause Book opposite to the name of such cause or matter.

10. Where any cause or matter shall have been standing for one year in the Cause Book marked as "abated," or standing over generally, such cause or matter at the expiration of the year shall be struck out of the Cause Book.

ORDER XVIII.

JOINDER OF CAUSES OF ACTION.

1. Subject to the following rules of this order, the plaintiff may unite in the same action several causes of action, but if it appear to the Court or a Judge that any such causes of action cannot be conveniently tried or disposed of together, the Court or Judge may order separate trials of any of such causes of action to be had, or may make such order as may be necessary or expedient for the separate disposal thereof.

2. No cause of action shall, unless by leave of a Court or a Judge, be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears of rent or double value in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are held or for any wrong or injury to the premises claimed: Provided that nothing in this order contained shall prevent any plaintiff in any action for foreclosure or redemption from asking for or obtaining an order against the defendant for delivery of the possession of the mortgaged property to the plaintiff on or after the order absolute for foreclosure or redemption, as the case may be, and such an action for foreclosure or redemption and for such delivery of possession shall not be deemed an action for the recovery of land within the meaning of these rules: Provided also, that in case any mortgage security shall be foreclosed by reason of the default to redeem by any plaintiff in a redemption action, the defendant in whose favour such foreclosure has taken place may, by motion or summons, apply to the Court or a Judge for an order for delivery to him of possession of the mortgaged property, and such order may be made thereupon as the justice of the case shall aequire.

3. Claims by a trustee in bankruptcy or insolvency, as such, shall not, unless by leave of the Court or a Judge, be joined with any claim by him in any other capacity.

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

5. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

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

7. The last three preceding rules shall be subject to rules one, eight and nine of this order.

8. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of together, may at any time apply to the Court or a Judge for an order confining the action to such of the causes of action as may be conveniently disposed of together.

9. If on the hearing of such application as in the last preceding rule mentioned, it shall appear to the Court or a Judge that the causes of action are such as cannot all be conveniently disposed of together, the Court or Judge may order any of such causes of action to be excluded, and consequential amendments to be made, and may make such order as to costs as may be just.

ORDER XIX.

Pleading Generally.

1. The plaintiff shall, with the copy of the writ, serve upon the defendant a statement of his claim and of the relief or remedy to which he claims to be entitled, being a copy of that accompanying the original writ.

2. The defendant shall file with his appearance his defence, set-off or counter-claim, if any, and within the time limited for appearing and pleading (unless the time be extended), deliver to the plaintiff a copy thereof.

3. The plaintiff shall (unless the time be extended) within two days after receiving the defence, set-off or counter-claim, file and deliver his reply (if any) thereto.

4. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the Court or Judge, and then only upon such terms as the Court or Judge shall think fit, and within two days after delivery of the previous pleading, unless the time shall be shortened or extended by the Court or Judge. No new assignment shall be necessary or used, but everything which was formerly alleged by way of new assignment may hereafter be introduced by amendment of the statement of claim or by way of reply.

5. As soon as any party has joined issue upon the preceding pleading of the opposite party simply, without adding any further or other

pleading thereto, or if the plaintiff does not deliver a reply to the defence, or any party does not deliver any subsequent pleading within the period allowed for that purpose, the pleadings between such parties shall be deemed to be closed, and all the material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue.

6. The statement of claim and all subsequent pleadings shall be concise and as brief as the nature of the case will admit, and shall contain only a statement in summary form similar to or in effect such as the examples in appendix C and D, of the material facts on which the party pleading relies for his claim or defence, but not the evidence upon which they are to be proved, and shall, when necessary, be divided into paragraphs numbered consecutively. Dates, sums, and numbers shall be expressed in figures. The pleadings shall be signed by the solicitor, or by the party if he sues or defends in person In common actions, set-off or counter-claims for debt, such as for goods sold, money paid, money received, wages, work and labour, use and occupation, etc., an account or bill of particulars shall be a sufficient statement of claim, set-off or counter-claim, (subject to application for better particulars); provided such statement of claim, set-off or counter-claim be marked as such, (as the case may be), and be entitled in the cause, and signed by the solicitor or by the party pleading if not acting by a solicitor.

7. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading; provided that, if the particulars be of debt, expenses or damages, the fact must be so stated, with a reference to full particulars already delivered or to be delivered with the pleading.

8. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice, or written proceeding requiring particulars, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just.

9. The party at whose instance particulars have been delivered under a Judge's order, shall, unless the order otherwise provides, have the same length of time for pleading after the delivery of the particulars that he had at the return of the order. Save as in this rule provided, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings, or give any extension of time.

10. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered in the manner now in use to the solicitor of every party who appears by a solicitor, or to the party if he does not appear by a solicitor, but if no appearance has been entered

for any party, or no address for service given in manner hereinbefore prescribed, then such pleading or document shall be delivered by being filed with the proper officer.

11. Every pleading shall be filed and shall be delivered between parties, and shall be marked on the face with the date, the title of the action, and the description of the pleading, and shall be endorsed with the name and address for service of the solicitor, or of the party pleading if not acting by a solicitor.

12. Every allegation of fact in any pleading in an action, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind, not so found by inquisition.

13. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant (as the case may be); and subject thereto an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

14 The defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counter-claim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, (as the case may be), as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings as for instance, fraud, statute of limitations, release, payment, performance, facts shewing illegality, either by statute or common law, or statute of frauds.

15. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the parties pleading the same.

16. It shall not be sufficient for a defendant in his statement of defence to deny generally the grounds alleged by the statement of claim, or for a plaintiff in his reply to deny generally the grounds alleged in a defence by way of counter-claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

17 Subject to the last preceding rule, the plaintiff by his reply may join issue upon the defence, and each party in his pleading (if any) subsequent to reply may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of facts in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted.

18. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances.

19. When a contract, promise, or agreement is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise, or agreement alleged, or of the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of such contract, promise, or agreement, whether with reference to the statute of frauds or otherwise.

20. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material.

21. Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

22. Wherever it is material to allege notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, be material.

23. Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

24. Neither party need in any pleading allege any matter of fact which the law presumes in his favour, or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied: (*e. g*, consideration for a bill of exchange, where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.)

25. No technical objection shall be raised to any pleading on the ground of any alleged want of form.

26 The Court or a Judge may at any stage of the proceedings order to be struck out or amended any matter in any statement, indorsement, or pleading which may be unnecessary or scandalous, or which may tend to prejudice, embarrass or delay the fair trial of the action; and may in any such case if they or he shall think fit, order the costs of the application to be paid as between solicitor and client.

ORDER XX.

Statement of Claim.

1. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for general or other relief, which may always be given as the Court or a Judge may think just, to the same extent as if it had been asked for.

2. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly.

8 In every case in which the cause of action is a stated or settled account, the same shall be alleged with particulars, but in every case in which a statement of account is relied on by way of evidence or admission of any other cause of action which is pleaded, the same shall not be alleged in the pleadings

4. In probate actions where the plaintiff disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest.

ORDER XXI.

Defence and Counter-claim.

1. In actions for debt or unliquidated demand in money, comprised in Order III., Rule 6, a mere denial of the debt shall be inadmissible

2. In actions upon bills of exchange, promissory notes, or cheques, a defence in denial must deny some matter of fact: *e. g.*, the drawing, making, endorsing, accepting, presenting, or notice of dishonour of the bill or note.

3. In actions comprised in Order III, Rule 6, classes (A) and (B), a defence in denial must deny such matters of fact, from which the liability of the defendant is alleged to arise, as are disputed: *e. g*, in actions for goods bargained and sold or sold and delivered, the defence must deny the order or contract, the delivery, or the amount claimed; in an action for money had and received, it must deny the receipt of the money, or the

existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the plaintiff.

4. No denial or defence shall be necessary as to damages claimed or their amount; but they shall be deemed to be put in issue in all cases, unless expressly admitted.

5. If either party wishes to deny the right of any other party to claim as executor, or as trustee whether in bankruptcy or otherwise, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically.

6. Where the Court or a Judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the Court or Judge may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted.

7. A defendant in an action may set off, or set up, by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter claim shall have the same effect as a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the Court or a Judge may, on the application of the plaintiff before trial, if in the opinion of the Court or Judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof. Rules 1, 2, and 3 of Order XX., with regard to statements of claim, shall apply to counter-claims, and a reply to a counter-claim shall be subject to the rules applicable to statements of defence.

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

9. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other person, he shall add to the title of his defence a further title similar to the title in a statement of claim, setting forth the names of all the persons who, if such counter-claim were to be enforced by cross-action, would be defendants to such cross-action, and shall file and deliver his statement of defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff.

10. Where any such person as in the last preceding rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same rules as are hereinbefore contained with respect to the service of a writ, and every defence so served shall be indorsed in the form No 2 in appendix B, or to the like effect.

11. Any person not a defendant to the action, who is served with a defence and counter-claim, as aforesaid, must appear and plead thereto as if he had been served with a writ to appear in an action, in default of which the defence and counter-claim shall be taken to be admitted.

12. Where a defendant sets up a counter-claim, if the plaintiff or any other person named in manner aforesaid as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he may at any time before trial apply to the Court or a Judge for an order that such counter-claim may be excluded, and the Court or a Judge may, on the hearing of such application, make such order as shall be just.

13. If, in any case in which the defendant sets up a counter-claim, the action of the plaintiff is stayed, discontinued, or dismissed, the counter-claim may nevertheless be proceeded with.

14. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court or a Judge may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

15. In probate actions the party opposing a will may with his defence, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, subject in respect of costs to the probate practice before this Act came into operation

16. Nothing in these rules contained shall affect the right of any defendant to plead not guilty by statute, and every defence of not guilty by statute shall have the same effect as the plea of not guilty by statute has heretofore had. But if the defendant so plead he shall not plead any other defence to the same cause of action without the leave of the Court or Judge.

17. In every case in which a party shall plead the general issue, intending to give the special matter in evidence by virtue of a statute, he shall insert in the margin of his pleading the words "by statute," together with the year of the reign in which the Act on which he relies was passed, and also the chapter and section of such Act, and shall specify whether such Act is public or otherwise; otherwise such defence shall be taken not to have been pleaded by virtue of any statute.

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

19. No defendant in an action for the recovery of land who is in possession by himself or his tenant need plead his title, unless his defence depends on an equitable estate or right or he claims relief upon any

equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinafter mentioned, it shall be sufficient to state by way of defence that he is so in possession, and it shall be taken to be implied in such statement that he denies, or does not admit, the allegations of fact contained in the plaintiff's statement of claim. He may nevertheless rely upon any ground of defence which he can prove except as hereinbefore mentioned.

ORDER XXII.

PAYMENT INTO AND OUT OF COURT AND TENDER.

1. Where any action is brought to recover a debt or damages, any defendant may, before or at the time of delivering his defence, or at any later time by leave of the Court or a Judge, pay into Court a sum of money by way of satisfaction, which shall be taken to admit the claim or cause of action in respect of which the payment is made; or he may, with a defence denying liability, (except in actions or counter-claims for libel or slander), pay money into Court which shall be subject to the provisions of rule 6: Provided that in an action on a bond under the Statute 8 and 9 Will. III, c 11, payment into Court shall be admissible to particular breaches only, and not to the whole action.

2. Payment into Court shall be signified in the defence, and the claim or cause of action in satisfaction of which such payment is made shall be specified therein.

3. With a defence setting up a tender before action, the sum of money alleged to have been tendered must be brought into Court.

4. If the defendant pays money into Court without defending, he shall serve upon the plaintiff a notice specifying both the fact that he has paid in such money, and also the claim or cause of action in respect of which such payment has been made. Such notice shall be in the form in appendix B, with such variations as circumstances may require.

5. In the following cases of payment into Court under this order viz :—

(*a.*) When payment into Court is made without defending;

(*b.*) When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into Court is made, is not denied in the defence;

(*c.*) When payment into Court is made with a defence setting up a tender of the sum paid;

the money paid into Court shall be paid out to the plaintiff on his request, or to his solicitor, unless the Court or a Judge shall otherwise order

6. When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into Court has been made, is denied in the defence, the following rules shall apply :—

(*a.*) The plaintiff may accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, in which case he shall be entitled to have the money paid out to him as hereinafter provided, notwithstanding the defendant's denial of liability, whereupon all further proceedings, in respect of such claim or cause of action, except as to costs, shall be stayed; or the plaintiff may refuse to accept the money in satisfaction and reply accordingly, in which case the money shall remain in Court subject to the provisions hereinafter mentioned;

(*b.*) If the plaintiff accepts the money so paid in, he shall, after service of such notice in the form in appendix B, as is in rule 7 mentioned, or after delivery of a reply accepting the money, be entitled to have the money paid out to himself on request, or to his solicitor, unless the Court or a Judge shall otherwise order

(*c.*) If the plaintiff does not accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, but proceeds with the action in respect of such claim or cause of action, or any part thereof, the money shall remain in Court and be subject to the order of the Court or a Judge, and shall not be paid out of Court except in pursuance of an order. If the plaintiff proceeds with the action in respect of such claim or cause of action, or any part thereof, and recovers less than the amount paid into Court, the amount paid in shall be applied, so far as is necessary, in satisfaction of the plaintiff's claim, and the balance (if any) shall, under such order, be repaid to the defendant. If the defendant succeeds in respect of such claim or cause of action, the whole amount shall, under such order, be repaid to him

7. The plaintiff, when payment into Court is made without defending, may, within four days after the receipt of notice of such payment, or when such payment is first signified in a defence, may, before reply, accept in satisfaction of the claim or cause of action in respect of which such payment has been made the sum so paid in, in which case he shall give notice to the defendant in the form in appendix B, and shall be at liberty, in case the entire claim or cause of action is thereby satisfied, to tax his costs after the expiration of two days from the service of such notice, unless the Court or a Judge shall otherwise order, and in case of non-payment of the costs within forty-eight hours after such taxation, to sign judgment for his costs so taxed.

8. Where money is paid into Court in two or more actions which are consolidated, and the plaintiff proceeds to trial in one, and fails, the money paid in and the costs in all the actions shall be dealt with under this order in the same manner as in the action tried.

9. A plaintiff may, in answer to a counter-claim, pay money into Court in satisfaction thereof, subject to the like conditions as to costs and otherwise as upon payment into Court by a defendant.

10. Money paid into Court under an order of the Court or a Judge shall not be paid out of Court except in pursuance of an order of the Court or Judge: Provided that, where before the delivery of defence money has been paid into Court by the defendant pursuant to an order under the provisions of Order XIV., or under an order upon a garnishee in an action commenced by writ of attachment, he may, (unless the Court or a Judge shall otherwise order) by his pleading appropriate the whole or any part of such money, and any additional payment if necessary, to the whole or any specified portion of the plaintiff's claim; and the money so appropriated shall thereupon be deemed to be money paid into Court pursuant to the preceding rules of this order relating to money paid into Court, and shall be subject in all respects thereto.

11. In any cause or matter in which a sum of money has been awarded to or recovered by an infant, or person of unsound mind not so found by inquisition, the Court or a Judge may, at or after the trial, order that the whole or any part of such sum shall be paid into Court to the credit of an account intituled in the cause or matter; and any sum so paid into Court, and any dividends or interest thereon, shall be subject to such orders as may from time to time be made by the Court or a Judge concerning the same, and may either be invested, or be paid out of Court, or transferred to such persons, to be held and applied upon and for such trusts and in such manner as the Court or Judge shall direct.

12. Money paid into Court or securities purchased under the provisions of the last preceding rule, and the dividends or interest thereon, shall be sold, transferred, or paid out to the party entitled thereto, pursuant to the order of the Court or Judge.

ORDER XXIII.

Matters arising pending the Action.

1. Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, and before the time limited for his doing so has expired, may be raised by the defendant in his statement of defence, either alone or together with other grounds of defence. And if, after a statement of defence has been delivered, any ground of defence arises to any set-off or counter-claim alleged therein by the defendant, it may be raised by the plaintiff in his reply, either alone or together with any other ground of reply.

2. Where any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counter-claim arises after reply, or after the time limited for delivering a reply, has expired, the plaintiff may, within four days after such ground of defence has arisen, or at any subsequent time by leave of the Court or a Judge, deliver a further defence or further reply, as the case may be, setting forth the same.

3. Whenever any defendant, in his statement of defence, or in any further statement of defence as in the last rule mentioned, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence (which confession may be in the form in appendix B, with such variations as circumstances may require), and may thereupon sign judgment for his costs up to the time of the pleading of such defence, unless the Court or a Judge shall, either before or after the delivery of such confession, otherwise order.

ORDER XXIV.

Proceedings in lieu of Demurrer.

1. No demurrer shall be allowed.

2. Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the Judge who tries the cause at or after the trial, provided that by consent of the parties, or by order of the Court or a Judge on the application of either party, the same may be set down for hearing and disposed of at any time before the trial.

3. If, in the opinion of the Court or a Judge, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counter-claim, or reply therein, the Court or Judge may thereupon dismiss the action or make such other order therein as may be just.

4. The Court or a Judge may at any time before judgment order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a Judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just.

5 No action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed, or not.

ORDER XXV.

DISCONTINUANCE.

1 The plaintiff may, at any time before receipt of the defendant's defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, wholly discontinue his action against all or any of the defendants, or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay such defendant's costs of the action, or, if the action be not wholly discontinued, the costs occasioned by the matter so withdrawn. Such costs shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this rule otherwise provided, it shall not be competent for the plaintiff to withdraw the record or discontinue the action without leave of the Court or a Judge, but the Court or a Judge may before, or at, or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise, as may be just, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The Court or a Judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counter-claim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave.

2. When a cause has been entered for trial, it may be withdrawn by either plaintiff or defendant, upon producing to the proper officer a consent in writing, signed by the parties, or by consent in open Court.

3. Any defendant may enter judgment for the costs of the action, if it is wholly discontinued against him, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued, in case such respective costs are not paid within two days after taxation.

4. If any subsequent action shall be brought before payment of the costs of a discontinued action, for the same, or substantially the same, cause of action, the Court or a Judge may, if they or he think fit, order a stay of such subsequent action until such costs shall have been paid.

ORDER XXVI.

DEFAULT OF PLEADING.

1. If a writ shall be issued or copy thereof served without a statement of claim therewith the defendant may apply to the Court or a Judge to dismiss the action with costs, and on the hearing of such application the Court or Judge may order the action to be dismissed accordingly, or may make such other order on such terms as the Court or Judge shall think just.

2. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, with his appearance or within the time allowed for defending, file and deliver a defence, the plaintiff may enter final judgment for the amount claimed, with interest to the date of judgment and costs. For this purpose if a defence be on file it shall be necessary that an affidavit be filed on behalf of the plaintiff that no defence has been served.

3. When in any such action as in the last preceding rule mentioned there are several defendants, if one or more of them make default as mentioned in the last preceding rule, the plaintiff may enter final judgment against the defendant or defendants so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants.

4. If the plaintiff's claim be for detention of goods and pecuniary damages, or either of them, and the defendant, or all the defendants, if more than one, make default as mentioned in rule 2, the plaintiff may enter an interlocutory judgment against the defendant or defendants, (filing an affidavit, where such is required by rule 2), and the value of the goods, and the damages, or the damages only, as the case may be, shall be ascertained in any way which the Court or Judge may direct, and without the necessity of notice of assessment unless the Court or Judge shall otherwise order.

5. When in any such action as in rule 4 mentioned there are several defendants, if one or more of them make default as mentioned in rule 2, the plaintiff may, in manner aforesaid, enter an interlocutory judgment against the defendant or defendants so making default, and proceed with his action against the others. And in such case the value and amount of damages against the defendant making default shall be assessed, (without the necessity of notice, unless otherwise ordered), at the same time with the trial of the action or issues therein against the other defendants, unless the Court or a Judge shall otherwise direct.

6. If the plaintiff's claim be for a debt or liquidated demand, and also for detention of goods and pecuniary damages, or pecuniary damages only, and any defendant make default as mentioned in rule 2, the plaintiff may, in manner aforesaid, enter final judgment for the debt or liquidated demand, interest and costs, and also enter interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in rules 4 and 5.

7. In an action for the recovery of land, if the defendant makes default as mentioned in rule 2, the plaintiff may enter a judgment that the person whose title is asserted in the writ shall recover possession of the land.

8. Where the plaintiff has preferred with the writ a claim for mesne profits, arrears of rent, or double value in respect of the premises claimed

or any part of them, or damages for breach of contract, or wrong, or injury to the premises claimed by a writ for the recovery of land, if the defendant makes default as mentioned in rule 2, or if there be more than one defendant some or one of the defendants make such default the plaintiff may enter judgment against the defaulting defendant or defendants and proceed as mentioned in rules 4 and 5.

9. If the plaintiff's claim be for a debt or liquidated demand, the detention of goods and pecuniary damages, or for any of such matters, or for the recovery of land, and the defendant delivers a defence, which purports to offer an answer to part only of the plaintiff's alleged cause of action, the plaintiff may, by leave of the Court or a Judge, enter judgment, final or interlocutory, as the case may be, for the part unanswered; provided that the unanswered part consists of a separate cause of action, or is severable from the rest, as in the case of part of a debt or liquidated demand; provided also that, where there is a counter-claim, execution on any such judgment as above mentioned in respect of the plaintiff's claim shall not issue without leave of the Court or a Judge.

10. In probate actions, if any defendant make default in filing and delivering a defence, the action may proceed, notwithstanding such default.

11. In all other actions than those in the preceding rules of this order mentioned, if the defendant makes default in delivering a defence, the plaintiff may set down the action on motion for judgment and such judgment shall be given as upon the statement of claim the Court or a Judge shall consider the plaintiff to be entitled to.

12. Where, in any such action as mentioned in the last preceding rule, there are several defendants, then, if one of such defendants make such default as aforesaid, the plaintiff may either (if the cause of action is severable) set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants.

13. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the Court or a Judge for such judgment, if any, as upon the pleadings he may appear to be entitled to. And the Court or Judge may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties.

14. Any judgment by default, whether under this order or under any other of these rules, may be set aside by the Court or Judge, upon such terms as to costs or otherwise as such Court or Judge may think fit.

ORDER XXVII.

AMENDMENT.

1. The Court or a Judge may, at any stage of the proceedings, allow either party to alter or amend his statements or pleadings, in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

2. The plaintiff may, without any leave, amend his statement of claim, once at any time before the expiration of the time limited for reply and before replying, or before entering a default.

3. A defendant who has set up any counter-claim or set-off may, without any leave, amend such counter-claim or set-off at any time before the expiration of the time allowed him for answering the reply and before such answer.

4. Where any party has amended his pleading under either of the last two preceding rules, the opposite party may, within four days after the delivery to him of the amended pleading, apply to the Court or a Judge to disallow the amendment, or any part thereof, and the Court or Judge may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as may be just.

5. Where any party has amended his pleading under rule 2 or 3, the opposite party shall plead to the amended pleading, or amend his pleading, within the time he then has to plead or within two days from the delivery of the amendment, whichever shall last expire; and in case the opposite party has pleaded before the delivery of the amendment, and does not plead again or amend within the time above-mentioned, he shall be deemed to rely on his original pleading in answer to such amendment.

6. In all cases not provided for by the preceding rules of this order, application for leave to amend may be made by either party to the Court or Judge before or at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may be just.

7. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or otherwise, such order to amend shall, on the expiration of such limited time as aforesaid, become *ipso facto* void, unless the time is extended by the Court or a Judge.

8. Whenever any statement or pleading is amended, the same, when amended, shall be marked with the date of the order (if any) under which the same is so amended, and of the day on which such amendment is made.

9. Whenever any statement or pleading is amended, such amended document shall be filed and shall be delivered to the opposite party within he time allowed for amending the same.

10. Clerical mistakes in judgments or orders, or errors arising therein om any accidental slip or omission, may at any time be corrected by the ourt or a Judge

11. The Court or a Judge may at any time, and on such terms as to costs or otherwise as the Court or Judge may think just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings.

12. The costs of, and occasioned by, any amendment made pursuant to rules 2 and 3 of this order, shall be borne by the party making the same, unless the Court or Judge shall otherwise order.

ORDER XXVIII.

Discovery and Inspection.

1. Any party to an action or cause may deliver interrogatories in writing for the examination of the opposite parties, or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also, that interrogatories which do not relate to any matters in question in the cause or matter shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

2 In adjusting the costs of the cause or matter inquiry shall, at the instance of any party, be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court or Judge, either with or without an application for inquiry, that such interrogatories, or any of them, have been exhibited unreasonably, vexatiously, or at improper length, the costs so occasioned by such interrogatories and the answers thereto shall be paid in any event by the party in fault.

3. Interrogatories shall be in the form in appendix B, with such variations as circumstances may require.

4. If any party to a cause or matter be a body corporate, or a joint stock company, whether incorporated or not, or any other body of persons, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, or be a member of a company such as an insurance club, any opposite party may apply for an order allowing

him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.

5. Any objection to answering any one or more of several interrogatories on the ground that it or they is or are scandalous or irrelevant, or not *bona fide* for the purpose of the cause or matter, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

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

7. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court or a Judge for an order requiring him to answer, or to answer further, as the case may be. And an order may be made disallowing the interrogatories in whole or in part, and with costs or otherwise, or requiring the party interrogated to answer or answer further, either by affidavit or by *viva voce* examination, as the Judge may direct.

8. Any party may, without filing any affidavit, apply to any other party to any cause or matter to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. In default of his so doing to the satisfaction of the applicant, application may be made to the Court or Judge for an order. On the hearing of such application the Court or Judge may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the cause or matter, or make such order, either generally or limited to certain classes of documents, as may, in their or his discretion, be thought fit.

9. The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which, if any, of the documents therein mentioned he objects to produce, and it shall be in the form in appendix B, with such variations as circumstances may require.

10. It shall be lawful for the Court or a Judge, at any time during the pendency of any cause or matter, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such cause or matter, as the Court or Judge shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

11. Every party to a cause or matter shall be entitled, at any time, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such

document in evidence on his behalf in such cause or matter, unless he shall satisfy the Court or a Judge that such document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the Court or Judge shall deem sufficient for not complying with such notice; in which case the Court or Judge may allow the same to be put in evidence on such terms as to costs and otherwise as the Court or Judge shall think fit.

12. The party to whom such notice is given shall, within two days from the receipt of such notice, deliver to the party giving the same a notice stating a time within two days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, or in the case of bankers' books or other books of account, or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground.

13. If the party served with notice under the preceding rule omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his solicitor, the Judge may, on the application of the party desiring it, make an order for inspection in such place and in such manner as he may think fit; and, except in the case of documents referred to in the pleadings or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party.

14. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court or a Judge may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the cause or matter, or that for any other reason it is desirable that any issue or question in dispute in the cause or matter should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

15. If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence (if any) struck out, and to be placed in the same position as if he had not defended, and the party interrogating may apply to the Court or a Judge for an order to that effect, and an order may be made accordingly.

16. Service of an order for interrogatories or discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order. But the

party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

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

18 Any party may, at the trial of a cause, matter, or issue, use in evidence any one or more of the answers, or any part of an answer, of the opposite party to interrogatories without putting in the others or the whole of such answer: Provided always, that in such case the Judge may look at the whole of the answers, and if he shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, he may direct them to be put in.

19. In every cause or matter the costs of discovery, by interrogatories or otherwise, shall be allowed by the Court or a Judge as part of the costs of the party seeking them where, and only where, such discovery shall appear to the Judge at the trial, or, if there is no trial, to the Court or Judge, or shall appear to the taxing officer to have been reasonably asked for. The Court or Judge may in the first instance order the party seeking discovery to pay any costs and expenses to the opposite party attending the order or discovery, subject to their allowance or disallowance afterwards to the party seeking discovery.

ORDER XXIX.

Admissions.

1. Any party to a cause or matter may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

2 Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the cause or matter may be, unless the Court or a Judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

3. Any party may, by notice in writing, at any time not later than two days before the day of trial, call on any other party to admit, for the purposes of the cause, matter, or issue only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the

same within two days after service of such notice, or within such further time as may be allowed by the Court or a Judge, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the cause, matter, or issue may be, unless at the trial or hearing the Court or a Judge certify that the refusal to admit was reasonable, or unless the Court or a Judge shall at any time otherwise order or direct Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular cause, matter, or issue, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice; provided also, that the Court or a Judge may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

4. Any party may at any stage of a cause or matter, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court or a Judge for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the Court or a Judge may, upon such application, make such order, or give such judgment, as the Court or Judge may think just.

5. An affidavit of the solicitor or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof be required.

6. Notice to produce documents shall be in the form in appendix B, with such variations as circumstances may require. An affidavit of the solicitor, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served

7. If a notice to admit or produce comprises documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

ORDER XXX.

Issues, Inquiries and Accounts.

1. When in any cause or matter it appears to the Court or a Judge that the issues of fact in dispute are not sufficiently defined, the parties may be directed to prepare issues, and such issues shall, if the parties differ, be settled by the Court or a Judge.

2. The Court or a Judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried, as to which

it may be proper that the cause or matter should proceed in the ordinary manner.

3. The Court or a Judge may, either by the judgment or order directing an account to be taken, or by any subsequent order give special directions with regard to the mode in which the account is to be taken or vouched, and in particular may direct that in taking the account, the books of account in which the accounts in question have been kept, shall be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised.

4. When any account is directed to be taken, the accounting party, unless the Court or Judge shall otherwise direct, shall make out his account and verify the same by affidavit. The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit and be filed or left in the Judge's chambers, or with the master or referee, as the case may be.

5. Any party seeking to charge any accounting party beyond what he has by his account admitted to have received shall give notice thereof to the accounting party, stating, so far as he is able, the amount sought to be charged and the particulars thereof in a short and succinct manner.

6. Every judgment or order for a general account of the personal estate of a testator or intestate shall contain a direction for an inquiry what parts (if any) of such personal estate are outstanding or undisposed of unless the Court or a Judge shall otherwise direct

7. Where by any judgment or order, whether made in Court or in Chambers, any accounts are directed to be taken or inquiries to be made, each such direction shall be numbered so that, as far as may be, each distinct account and inquiry may be designated by a number, and such judgment or order shall be in the form in appendix K, with such variations as the circumstances of the case may require.

8. In taking any account directed by any judgment or order, all just allowances shall be made without any direction for that purpose.

9. If it shall be made to appear to the Court or a Judge that there is any undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgment or order, the Court or Judge may require the party having the conduct of the proceedings, or any other party, to explain the delay, and may thereupon make such order with regard to expediting the proceedings, or the conduct thereof, or the stay thereof, and the summoning of persons whose attendance is required, and as to the costs of the proceedings, as the circumstances of the case may require.

ORDER XXXI.

I.—SPECIAL CASE.

1. The parties to any cause or matter may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial.

2. If it appear to the Court or a Judge that there is in any cause or matter a question of law, which it would be convenient to have decided before any evidence is given on any question or issue of fact is tried, or before any reference is made to a master, referee, or an arbitrator, the Court or Judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court or Judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

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

4. No special case in any cause or matter to which a married woman (not being a party thereto in respect of her separate property or of any separate right of action by or against her), infant, or person of unsound mind, not so found by inquisition, is a party, shall be set down for argument without leave of the Court or a Judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true.

5. Either party may, by motion, have a special case set down for argument.

6. The parties to a special case may, if they think fit, enter into an agreement in writing, that, on the judgment of the Court being given in the affirmative or negative of the questions of law raised by the special case, a sum of money, fixed by the parties, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, either with or without costs of the cause or matter; and the judgment of the Court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal.

7. This order shall apply to every special case stated in a cause or matter, or in any proceeding incidental thereto.

8. Any special case may hereafter be stated, for the same purposes and in the same manner as heretofore, and the same shall be deemed to be a special case stated in a matter within the meaning of this order.

II.—Issues of Fact without Pleadings.

9. When the parties to a cause or matter are agreed as to the questions of fact to be decided between them, they may, after writ issued and before judgment, by consent and order of the Court or a Judge, proceed to the trial of any such questions of fact without formal pleadings; and such questions may be stated for trial in an issue in the form No. 15 in appendix B, with such variations as circumstances may require, and such issue may be entered for trial and tried in the same manner as any issue joined in an ordinary action, and the proceedings shall be under the control and jurisdiction of the Court or Judge, in the same way as the proceedings in an action.

10. The Court or a Judge may by consent of the parties order that, upon the finding in the affirmative or negative of such issue as in the last preceding rule mentioned, a sum of money, fixed by the parties, or to be ascertained upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other of them either with or without the costs of the cause or matter.

11. Upon the finding on any such issue, as in rule 9 mentioned, judgment may be entered for the sum so agreed or ascertained as aforesaid, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless the Court or a Judge shall otherwise order for the purpose of giving either party an opportunity for moving to set aside the finding or for a new trial.

12. The proceedings upon such issue, as in rule 9 mentioned, may be recorded at the instance of either party, and the judgment, whether actually recorded or not, shall have the same effect as any other judgment in a contested action.

ORDER XXXII.

TRIAL.

I.—Place.

1. Every action shall, unless the Court or a Judge otherwise orders, be tried in the place where the writ is returnable. The Court or Judge may transfer a cause to some other place for trial at any time after the return of the writ.

2. The Court or a Judge may, in any cause or matter, at any time or from time to time, order that different questions of fact arising therein be

tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the places for such trials, and in all cases may order that one or more issues of fact be tried before any other or others.

II.—Notice and Entry of Trial.

3. Notice of trial may be given in any cause or a matter by the plaintiff or other party in the position of plaintiff. Such notice may be given with the reply (if any) whether it closes the pleadings or not, or at any time after the issues of fact are ready for trial.

4. If the plaintiff does not proceed to trial in the term in which the pleadings are closed, or, if they are closed out of term, in the next succeeding regular term, or within such extended time as the Court or a Judge may allow, the defendant may give notice of trial, or may apply to the Court or Judge to dismiss the action for want of prosecution; and on the hearing of such application, the Court or a Judge may order the action to be dismissed accordingly, or may make such other order, and on such terms, as to the Court or Judge may seem just.

5. At least two days' notice of trial shall be given in the term in which pleadings are closed, and eight days' notice in any subsequent term, unless the party to whom it is given has otherwise consented, or is under other terms or has been otherwise ordered.

6 Notice of trial shall be given before entering the case on the cause-list for trial, and notice may be given notwithstanding that the pleadings are not closed.

7. No notice of trial shall be countermanded except by consent, or by leave of the Court or a Judge, which leave may be given subject to such terms as to costs, or otherwise, as may be just.

8. If the party giving notice of trial omits to enter the case on the day or day after giving notice of trial, the party to whom notice has been given may, unless the notice has been countermanded under the last preceding rule, enter the case for trial.

III.—Papers for Judge.

9. The party entering the trial shall file a copy of the whole of the pleadings for the use of the Judge at the trial.

IV.—Proceedings at Trial.

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

11. If, when a trial is called on, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be

entitled to judgment dismissing the action, but if he has a counter-claim, then he may prove such counter-claim so far as the burden of proof lies upon him.

12. 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.

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

14. Where the party is brought up to attend the trial or hearing of a cause or matter by virtue of any writ of *habeas corpus*, and by reason of the pressure of other business, or from any other cause, the trial or hearing of the cause or matter in which such party is concerned is postponed to a future day, a new writ of *habeas corpus*, or an order for bringing in the body, may be issued for such future day.

15. Upon a trial with a jury, the addresses to the jury shall be regulated as follows: the party who begins, or his counsel, shall be allowed at the close of his case, if his opponent does not announce any intention to adduce evidence, to address the jury a second time for the purpose of summing up the evidence, and the opposite party, or his counsel, shall be allowed to open his cause, and also to sum up the evidence, if any, and the right to reply shall be the same as heretofore.

16. In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the Judge, unless two days, at least, before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

17. The Judge may in all cases disallow any questions put in cross-examination of any party or other witness which may appear to him to be vexatious, and not relevant to any matter proper to be inquired into in the cause or matter.

18. The Judge may, at or after a trial, direct that judgment be entered for any or either party, or adjourn the case for further consideration, or leave any party to move for judgment. No judgment shall be entered after a trial without the order of the Court or Judge.

V.—Inquiry as to Damages.

19.—In every action or proceeding in which it shall appear to the Court or a Judge that the amount of damages sought to be recovered is

substantially a matter of calculation, the Court or Judge may direct that the amount for which final judgment is to be entered shall be ascertained by an officer of the Court, or some other person, and the attendance of witnesses and the production of documents, before such officer, or other person, may be compelled by *subpœna*, and such officer or person may adjourn the inquiry from time to time, and shall indorse upon the order for referring the amount of damages to him the amount found by him, and shall deliver the order with such indorsement to the person entitled to the damages, and such and the like proceedings may thereupon be had as to taxation of costs, entering judgment, and otherwise, as upon an assessment of damages.

20. Where damages are to be assessed, in respect of any continuing cause of action, they shall be assessed down to the time of the assessment.

ORDER XXXIII.

I.—Evidence Generally.

1. In the absence of any agreement in writing between the parties or their solicitors, and subject to these rules, the witnesses at the trial of any action or at any assessment of damages shall be examined *viva voce* and in open Court, but the Court or a Judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the Court or Judge may think reasonable, or that any witness whose attendance in Court ought for some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a commissioner or examiner; provided that, where it appears to the Court or Judge that the other party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

2. An order to read evidence taken in another cause or matter shall not be necessary, but such evidence may, saving all just exceptions, be read on *ex parte* applications by leave of the Court or a Judge, to be obtained at the time of making any such application, and in any other case upon the party desiring to use such evidence giving two days' previous notice to the other parties of his intention to read such evidence.

3. Office copies of all writs, records, pleadings and documents filed in the Supreme Court shall be admissible in evidence in all causes and matters and between all persons or parties, to the same extent as the original would be admissible

II.—Examination of Witnesses.

4. The Court or a Judge may in any cause or matter where it shall appear necessary for the purposes of justice, make any order for the

examination upon oath before the Court or Judge, or any officer of the Court, or any other person and at any place, of any witness or person, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms (if any) as the Court or a Judge may direct.

5. An order for a commission to examine witnesses shall be in the form in appendix J, with such variations as circumstances may require.

6. The Court or a Judge may, in any cause or matter, at any stage of the proceedings, order the attendance of any person for the purpose of producing any writings or other documents named in the order which the Court or Judge may think fit to be produced: Provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial.

7. Any person wilfully disobeying any order requiring his attendance for the purpose of being examined or producing any document, shall be deemed guilty of contempt of Court, and may be dealt with accordingly.

8. Any person required to attend for the purpose of being examined or of producing any document, shall be entitled to the like conduct money and payment for expenses and loss of time, as upon attendance at a trial in Court.

9. Where any witness or person is ordered to be examined before any officer of the Court, or before any person appointed for the purpose, the person taking the examination shall be furnished by the party on whose application the order was made with a copy of the writ and pleadings, if any, or with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties.

10. The examination shall take place in the presence of the parties, their counsel, solicitors, or agents, and the witnesses shall be subject to cross-examination and re-examination.

11. The deposition taken before an officer of the Court, or before any other person appointed to take the examination, shall be taken down in writing by or in the presence of the examiner, not ordinarily by question and answer, but so as to represent as nearly as may be the statement of the witness, and when completed shall be read over to the witness and signed by him in the presence of the parties, or such of them as may think fit to attend. If the witness shall refuse to sign the depositions, the examiner shall sign the same. The examiner may put down any particular question or answer if there should appear any special reason for doing so, and may put any question to the witness as to the meaning of any answer, or as to any matter arising in the course of the examination. Any questions which may be objected to shall be taken down by the examiner in the depositions, and he shall state his opinion thereon to the

counsel, solicitors or parties, and shall refer to such statement in the depositions, but he shall not have power to decide upon the materiality or relevancy of any question,

12. If any person duly summoned by *subpœna* to attend for examination shall refuse to attend, or if, having attended, he shall refuse to be sworn or to answer any lawful question, a certificate of such refusal, signed by the examiner, shall be filed at the Clerk's office, and thereupon the party requiring the attendance of the witness may apply to the Court or a Judge *ex parte* or on notice for an order directing the witness to attend, or to be sworn, or to answer any question, as the case may be.

13. If any witness shall object to any question which may be put to him before an examiner, the question so put, and the objection of the witness thereto, shall be taken down by the examiner, and transmitted by him to the Clerk's office to be there filed, and the validity of the objection shall be decided by the Court or a Judge.

14. In any case under the last two preceding rules, the Court or a Judge shall have power to order the witness to pay any costs occasioned by his refusal or objection.

15. When the examination of any witness before any examiner shall have been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the Clerk's office, and there filed.

16. The person taking the examination of a witness under these rules may, and if need be shall, make a special report to the Court touching such examination and the conduct or absence of any witness or other person thereon, and the Court or a Judge may direct such proceedings and make such order as upon the report they or he may think just.

17. Except where by this order otherwise provided, or directed by the Court or a Judge, no deposition shall be given in evidence at the hearing or trial of the cause or matter without the consent of the party against whom the same may be offered, unless the Court or Judge is satisfied that the deponent is dead, or beyond the judicial district in which the Court is held, or at such a distance as, in the opinion of the Court or Judge, shall justify the admission of the deposition instead of the attendance of the witness, or is unable from sickness or other infirmity to attend the hearing or trial, in any of which cases the depositions certified under the hand of the person taking the examination shall be admissible in evidence saving all just exceptions without proof of the signature to such certificate.

18. Any officer of the Court, or other person directed to take the examination of any witness or person, may administer oaths.

19. Any party in any cause or matter may by *subpœna ad testificandum* or *duces tecum* require the attendance of any witness before an officer

of the Court, or other person appointed to take the examination for the purpose of using his evidence upon any proceeding in the cause or matter in like manner as such witness would be bound to attend and be examined at the hearing or trial; and any party or witness having made an affidavit to be used or which shall be used on any proceeding in the cause or matter shall be bound on being served with such *subpœna* to attend before such officer or person for cross-examination.

20. Evidence taken subsequently to the hearing or trial of any cause or matter shall be taken as nearly as may be in the same manner as evidence taken at or with a view to a trial.

21. The practice with reference to the examination, cross-examination and re-examination of witnesses at a trial shall extend and be applicable to evidence taken in any cause or matter at any stage.

22. The practice of the Court with respect to evidence at a trial, when applied to evidence to be taken before an officer of the Court or other person in any cause or matter after the hearing or trial, shall be subject to any special directions which may be given in any case.

23. No affidavit or deposition filed or made before issue joined in any cause or matter shall, without special leave of the Court or a Judge, be received at the hearing or trial thereof, except such as were filed or made under an order or agreement for their use at the hearing or trial.

24. All evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same cause or matter.

III.—SUBPŒNA.

25. A writ of *subpœna* shall be in one of the forms in appendix H, with such variations as circumstances may require.

26. Where a *subpœna* is required for the attendance of a witness for the purpose of proceedings in chambers, such *subpœna* shall issue from the Clerk's office upon a note from the Judge.

27. Every *subpœna* other than a *subpœna duces tecum* shall contain three names where necessary or required, but may contain any larger number of names.

28. No more than three persons shall be included in one *subpœna duces tecum*, and the party suing out the same shall be at liberty to sue out a *subpœna* for each person if it shall be deemed necessary or desirable.

29. In the interval between the suing out and service of any *subpœna* the party suing out the same may correct any error in the names of parties or witnesses, and may have the writ marked "altered," with the initials of the proper officer.

30. The service of a *subpœna* shall be effected by delivering a copy of the writ, and of the endorsement thereon, and at the same time producing the original writ, if required by the person served.

31. Affidavits filed for the purpose of proving the service of a *subpœna* upon any defendant must state when, where and how, and by whom, such service was effected.

32. The service of any *subpœna* shall be of no validity if not made within twelve weeks after the *teste* of the writ.

IV.—Perpetuating Testimony.

33. Any person who would under the circumstances alleged by him to exist become entitled, upon the happening of any future event, to any honour, title, dignity, or office, or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such event, may commence an action to perpetuate any testimony which may be material for establishing such right or claim.

34. In all actions to perpetuate testimony touching any honour, title, dignity, or office, or any other matter or thing in which the Crown may have any estate or interest, the Attorney General may be made a defendant, and in all proceedings in which the depositions taken in any such action, in which the Attorney General was so made a defendant, may be offered in evidence, such depositions shall be admissible notwithstanding any objection to such depositions upon the ground that the Crown was not a party to the action in which such depositions were taken.

35. Witnesses shall not be examined to perpetuate testimony unless an action has been commenced for the purpose.

36. No action to perpetuate the testimony of witnesses shall be set down for trial.

ORDER XXXIV.

I.—Affidavits and Depositions.

1. Upon any motion, petition, or order, evidence may be given by affidavit; but the Court or a Judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.

2. Every affidavit shall be intituled in the cause or matter in which it is sworn; but in every case in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant respectively, and that there are other plaintiffs or defendants, as the case may be.

3. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

4. Affidavits sworn in Newfoundland and its dependencies shall be sworn before a Judge, the Chief Clerk and Registrar, Clerk, Commissioner to administer oaths, or other officer empowered under these rules or otherwise to administer oaths.

5. Every Commissioner to administer oaths, or other officer, shall express the time when and the place where he shall take any affidavit, or the acknowledgement of any deed, or recognizance; otherwise the same shall not be held authentic, nor be admitted to be filed or enrolled without leave of the Court or a Judge; and every such Commissioner or other officer shall express the time when, and the place where, he shall do any other act incident to his office.

6. All examinations, affidavits, acknowledgments, declarations, affirmations, and attestations in causes or matters depending in the Supreme Court, may be sworn and taken in Great Britain and Ireland, or the Channel Islands, or in any colony, island, plantation, or place under the dominion of Her Majesty in foreign parts, before any Judge, Court, notary public, or person lawfully authorised to administer oaths in such country, colony, island, plantation, or place respectively, or before any of Her Majesty's consuls or vice-consuls in any foreign parts out of Her Majesty's dominions; and the Judges and other officers of the Supreme Court shall take judicial notice of the seal or signature, as the case may be, of any such Court, Judge, notary public, person, consul, or vice-consul, attached, appended, or subscribed to any such examinations, affidavits, affirmations, attestations of honour, declarations, acknowledgments, or to any other deed or document.

7. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule.

8. Every affidavit shall state the description and true place of abode of the deponent.

9. In every affidavit made by two or more deponents, the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the "above named" deponents.

10. The Court or a Judge may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between solicitor and client.

11. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure, shall, without leave of the Court or a Judge, be read or made use of in any matter depending in Court unless the interlineation, or alteration, or erasure, is authenticated by the initials of the officer taking the affidavit.

12. When an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent; that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court or a Judge is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.

13. The Court or a Judge may receive any affidavit sworn for the purpose of being used in any cause or matter notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.

14 An office copy of an affidavit may in all cases be used, the original affidavit having been previously filed and the copy authenticated by the officer.

15. No affidavit shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent or correspondent of such solicitor, or before the party himself.

16. Any affidavit which would be insufficient if sworn before the solicitor himself shall be insufficient if sworn before his clerk, or partner.

17. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used unless by leave of the Court or a Judge.

18. Except by leave of the Court or a Judge no order made *ex parte* in Court founded on any affidavit shall be of any force unless the affidavit on which the application was made was actually made before the order was applied for, and produced or filed at the time of making the motion.

II.—Affidavits and Evidence in Chambers.

19 All affidavits which have been previously made and read in Court upon any proceeding in a cause or matter may be used before the Judge in chambers,

20. Every alteration or erasure in an account verified by affidavit to be left at chambers shall be marked with the initials of the Commissioner or officer before whom the affidavit is sworn.

III.—Trial on Affidavit.

21. Within four days after a consent for taking evidence by affidavit as between the parties has been given, or within such time as the parties may agree upon, or the Court or a Judge may order or allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor copies thereof.

22. The defendant, within four days after delivery of the copies, or within such time as the parties may agree upon, or the Court or a Judge may allow or order, shall file his affidavits and deliver to the plaintiff or his solicitor copies thereof.

23. Within two days after the expiration of the last-mentioned four days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor copies thereof.

24. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party may serve upon the party by whom such affidavit has been filed a notice in writing, requiring the production of the deponent for cross-examination at the trial, such notice to be served at any time before the expiration of four days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a Judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court or a Judge. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.

25. The party to whom such notice as is mentioned in the last preceding rule is given, shall be entitled to compel the attendance of the deponent for cross-examination in the same way that he might compel the attendance of a witness to be examined.

26. When the evidence under this order is taken by affidavit, the notice of trial shall be given at the same time after the close of the evidence as in other cases is by these rules provided after the close of the pleadings; provided that other affidavits may be allowed if all the parties interested consent thereto, or the Court or a Judge so order.

ORDER XXXV.

Motion for New Trial.

1. If on a motion made to two Judges for a new trial, or to set aside a verdict, finding, or judgment, they differ in opinion, the motion may be

renewed before the three Judges at their next sitting, or at such time as the Court or two of the Judges may order or allow; provided that, with consent of parties, the Judge by or before whom the trial was had may alone hear and determine such motion.

2. Every application for a new trial shall be by notice of motion, and no *rule nisi*, order to show cause, or formal proceeding other than such notice of motion, shall be made or taken. The notice shall state the grounds of the application, and whether all or part only of the verdict or findings is complained of.

3. The notice of motion shall be a two days' notice, and shall be served within two days after the trial, unless the Court or Judge shall extend the time.

4. The notice may be amended at any time by leave of the Court or a Judge on such terms as the Court or Judge may think just.

5. A new trial shall not be granted on the ground of mis-direction or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the Judge at the trial was not asked to leave to them, unless in the opinion of the Court some substantial wrong or miscarriage has been thereby occasioned in trial; and if it appear to the Court that such wrong or miscarriage affects part only of the matter in controversy, or some or one only of the parties, the Court may give final judgment as to part thereof, or some or one only of the parties, and direct a new trial as to the other part only, or as to the other party or parties.

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

7. Application for a new trial shall not operate as a stay of execution or proceeding except so far as the Judge who tried the case or the Court constituted of two or more Judges may order, and no intermediate act or proceeding shall be invalidated except so far as the Judge or Court as aforesaid may direct.

ORDER XXXVI.

MOTION FOR JUDGMENT.

1. Where at the trial the Judge abstains from directing any judgment to be entered, any party may move for judgment.

2. Where at or after a trial with a jury the Judge has directed that any judgment be entered, any party may in the manner directed for motions for new trials apply to set aside such judgment and enter any other judgment, on the ground that the judgment directed to be entered

is wrong by reason that the finding of the jury upon the questions submitted to them has not been properly entered.

3. Where at or after a trial by a Judge, either with or without a jury, or upon the report of a referee, the Judge has directed that any judgment be entered, any party may apply, in the manner directed for motions for new trials, to set aside such judgment and to enter any other judgment, upon the ground that, upon the finding as entered, the judgment so directed is wrong.

4. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, any party may set down a motion for judgment as soon as such issues or questions have been determined.

5. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court or a Judge for leave to set down a motion for judgment, without waiting for such trial or determination. And the Court or Judge may, if satisfied of the expediency thereof, give such leave, upon such terms (if any) as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other issues of fact.

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

7. Upon a motion for judgment, or upon an application for a new trial, the Court may draw all inferences of fact, not inconsistent with the finding, and if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, as it may think fit

---

ORDER XXXVII.

Entry of Judgment.

1. A memorandum of every judgment shall be entered by the proper officer in the book to be kept for the purpose, and the judgment shall be entered up and filed with the whole of the pleadings and other essential proceedings in the cause, and shall be signed by the proper officer. The forms of judgment in appendix F shall be used, with such variations as circumstances may require.

2. Where any judgment is pronounced by the Court or a Judge, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, unless the Court or Judge shall otherwise order, and the judgment shall take effect from that date; provided, that by special leave of the Court or Judge a judgment may be ante-dated or post-dated.

3. In all cases not within the last preceding rule, the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date.

4. Every judgment or order made in any cause or matter requiring any person to do an act thereby ordered shall state the time, or the time after service of the judgment or order, within which the act is to be done, and upon the copy of the judgment or order, which shall be served upon the person required to obey the same, there shall be endorsed a memorandum in the words or to the effect following, viz.:—

"If you, the within-named A B., neglect to obey this judgment [or order] by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same judgment [or order]."

5. Where under the Act or these rules, or otherwise, it is provided that any judgment may be entered upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced, and if the same be regular and contain all that is by law required, he shall enter judgment accordingly.

6. Where by the Act or these rules, or otherwise, any judgment may be entered pursuant to any order or certificate, or return to any writ, the production of such order or certificate, or of such return, shall be a sufficient authority to the officer to enter judgment accordingly.

7. Where reference is made to a master or other person to ascertain the amount for which final judgment is to be entered, the certificate of the master or other person shall be filed in the office when judgment is entered.

8. In any cause or matter where the defendant has appeared by solicitor, no order for entering judgment shall be made by consent unless the consent of the defendant is given by his solicitor.

9. Where the defendant has not appeared, or has appeared in person, no such order shall be made unless the defendant attends before a Judge and gives his consent in person, or unless his written consent is attested by a clerk or commissioner of the Court or by a solicitor acting on his behalf, except in cases where the defendant is a barrister or solicitor.

ORDER XXXVIII.

EXECUTION.

1. Where any person is by any judgment or order enforceable by process for contempt, directed to pay any money, or to deliver up or transfer any property, real or personal, to another, it shall not be necessary to make any demand thereof, but the person so directed shall be bound to obey such judgment or order upon being duly served with the same without demand.

2. Where any person who has obtained any judgment or order upon condition does not perform or comply with such condition, he shall be considered to have waived or abandoned such judgment or order so far as the same is beneficial to himself, and any other person interested in the matter may, on breach or non-performance of the condition, take either such proceedings as the judgment or order may in such case warrant, or such proceedings as might have been taken if no such judgment or order had been made, unless the Court or a Judge shall otherwise direct.

3. A judgment for the recovery by or payment to any person of money or for the recovery or delivery of the possession of land or of any property other than land or money may be enforced by any of the modes by which a judgment or decree might have been enforced at the time of the passing of this Act.

4. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal.

5. Where a judgment or order is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the Court or a Judge for leave to issue execution against such party. And the Court or Judge may, if satisfied that the right to relief has arisen according to the terms of the judgment or order, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried.

6. Where a judgment or order is against a firm, execution may issue—

(*a.*) Against any property of the partnership;

(*b.*) Against any person who has appeared in his own name under Order XII., or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(*c.*) Against any person who has been served, as a partner, with the writ, and has failed to appear.

If the party who has obtained judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a Judge for leave so to do; and the Court or Judge may give such leave if the liability be not disputed, or if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

7. Every writ of execution shall be endorsed with the name and place of abode or office of business of the party or solicitor actually suing out the same.

8. Every writ of execution shall bear date of the day on which it is issued. The forms in appendix G shall be used, with such variations as circumstances may require.

9. In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution, over and above the sum recovered.

10. Every writ of execution for the recovery of money shall be indorsed with a direction to the Sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment or order, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of $5 per cent. per annum from the time when the judgment or order was entered or made, provided that in cases where there is an agreement between the parties that more than $5 per cent. interest shall be secured by the judgment or order, then the indorsement may be accordingly to levy the amount of interest so agreed.

11. Every person to whom any sum of money or any costs shall be payable under a judgment or order shall, so soon as the money or costs shall be payable, be entitled to sue out one or more writ or writs of *fieri facias* to enforce payment thereof, subject nevertheless as follows:

(*a.*) If the judgment or order is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period:

(*b.*) The Court or a Judge may, at or after the time of giving judgment or making an order, stay execution until such time as they or he shall think fit.

12. Upon any judgment or order for the recovery or payment of a sum of money and costs, if the costs have not been finally taxed, there may be, at the election of the party entitled thereto, either one writ or separate writs of execution for the recovery of the sum and for the recovery of the costs, but a second writ shall only be for costs.

13. A party who has obtained judgment or an order, not being a judgment for payment of money or costs, or for the recovery of land, may issue execution in fourteen days, unless the Court or a Judge shall order execution to issue at an earlier or later date with or without terms.

14. A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided; but such writ may, at any time before its expiration, by leave of the Court or a Judge, be renewed by the party issuing it for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, by being marked for that purpose by the proper officer with his name and the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the Sheriff, so marked by such officer; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof.

15. The production of a writ of execution, or of the notice renewing the same, purporting to be marked as in the last preceding rule mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed.

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

17. In the following cases, viz.:

(*a*) Where six years have elapsed since the judgment or date of the order, or any change has taken place by death or otherwise in the parties entitled or liable to execution;

(*b.*) Where a husband is entitled or liable to execution upon a judgment or order for or against a wife;

(*c.*) Where a party is entitled to execution upon a judgment of assets *in futuro;*

(*d.*) Where a party is entitled to execution against any of the shareholders of a joint stock company upon a judgment recorded against such company, or against a public officer or other person representing such company;

the party alleging himself to be entitled to execution may apply to the Court or a Judge for leave to issue execution accordingly. And such Court or Judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried. And in either case such Court or Judge may impose such terms as to costs or otherwise as shall be just.

18. Every order of the Court or a Judge in any cause or matter may be enforced against all persons bound thereby in the same manner as a judgment to the same effect.

19. Any person not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to such cause or matter; and any person not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to such cause or matter.

20. No proceeding by *audita querela* shall hereafter be used; but any party against whom judgment has been given may apply to the Court or a Judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the Court or Judge may give such relief and upon such terms as may be just.

21. Nothing in this order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever.

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

23. If a mandamus, granted in an action or otherwise, or a mandatory order, injunction or judgment for the specific performance of any contract be not complied with, the Court or a Judge, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment or order has been obtained, or some other person appointed by the Court or Judge, at the cost of the disobedient party, and thereupon the expenses incurred may be ascertained in such manner as the Court or a Judge may direct, and execution may issue for the amount so ascertained and costs. In case of the neglect or refusal of a person, or his inability, or the difficulty of enforcing him, from absence or other cause, to comply with a judgment or order directing him to execute any conveyance, contract, or other document, or to indorse any negotiable instrument, the Court or Judge may order that such conveyance, contract, or other document, shall be executed, or such negotiable instrument indorsed, by such person as the Court or Judge may nominate; and the conveyance, contract, document, or instrument so executed or indorsed, shall operate and be for all purposes available as if it had been executed or indorsed by the person originally directed to execute or indorse it.

24. Any judgment or order against a corporation wilfully disobeyed, may, by leave of the Court or a Judge, be enforced by execution against

the corporate property, or by attachment against the directors or other officers thereof, or by writ of execution against their property.

II.—Discovery in Aid of Execution.

25. When a judgment or order is for the recovery or payment of money, the party entitled to enforce it may apply to the Court or a Judge for an order that the debtor liable under such judgment or order, or his agent, or in the case of a corporation or company, that any officer thereof be orally examined, as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the judgment or order, before a Judge or an officer of the Court as the Judge or Court shall appoint; and the Court or Judge may make an order for the attendance and the examination of such debtor, or of any other person, and for the production of any books or documents.

26. In case of any judgment or order other than for the recovery or payment of money, if any difficulty shall arise in or about the execution or enforcement thereof, any party interested may apply to the Court or a Judge, and the Court or Judge may make such order thereon for the attendance and examination of any party or otherwise as may be just.

27. The costs of any application under the last two preceding rules, or either of them, and of any proceedings arising from or incidental thereto, shall be in the discretion of the Court or a Judge, or in the discretion of such officer as in rule 25 mentioned, if the Court or a Judge shall so direct, and may be recovered with and in the same manner as the judgment or otherwise.

III.—Execution.

28. Where it appears, upon the return of any writ of *fieri facias*, that the sheriff or other officer has by virtue of such writ seized, but not sold, any goods of the person directed to pay a sum of money or costs, the person to whom such sum of money or costs is payable shall, immediately after such writ with such return shall have been filed as of record, be at liberty to sue out a writ of *venditioni exponas*.

ORDER XXXIX.

Writ of Possession.

1. A judgment or order that a party do recover possession of any land may be enforced by writ of possession, in manner before the commencement of the principal act used in actions of ejectment.

2. Upon any judgment or order for the recovery of any land and costs, there may be either one writ or separate writs of execution for the recovery of possession and for the costs, at the election of the successful party.

ORDER XL.

WRIT OF DELIVERY.

1. Where it is sought to enforce a judgment or order for the recovery of any property other than land or money by writ of delivery, the Court or a Judge may, upon the application of the plaintiff, order that execution shall issue for the delivery of the property, without giving the defendant the option of retaining the property, upon paying the value assessed (if any), and that if the property cannot be found, and unless the Court or Judge shall otherwise order, the sheriff shall distrain the defendant by all his lands and chattels in the sheriff's bailiwick, till the defendant deliver the property; or, at the option of the plaintiff, that the sheriff cause to be made of the defendant's goods the assessed value (if any) of the property.

2. A writ of delivery shall be in the form in appendix G, and when a writ of delivery is issued, the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods the damages and costs awarded, and interest.

ORDER XLI.

I.—INTERLOCUTORY ORDERS AS TO MANDAMUS, INJUNCTIONS, OR INTERIM PRESERVATION OF PROPERTY, &C.

1. When by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a Judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured.

2. It shall be lawful for the Court or a Judge, on the application of any party, to make any order for the sale, by any person or persons named in such order, and in such manner and on such terms as the Court or Judge may think desirable, of any goods, wares or merchandize, which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.

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

4. It shall be lawful for any Judge, by whom any cause or matter may be heard or tried with or without a jury, or before whom any cause or matter may be brought by way of appeal, to inspect any property or thing concerning which any question may arise therein

5. The provisions of rule 3 of this order shall apply to inspection by a jury, and in such cases the Court or a Judge may make all such orders upon the sheriff or other person as may be necessary to procure the attendance of a special or common jury at such time and place, and in such manner as they or he may think fit

6. An application for an order for mandamus, injunction or receiver may be made to the Court or a Judge by any party. If the application be by the plaintiff for an order under the sub-section 14, section 13, of the principal Act, it may be made either *ex parte* or with notice, and if for an order under rule 2 or 3 of this order it may be made after notice to the defendant at any time after the issue of the writ, and if it be by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application.

7. An application for an order under rule 1 of this order may be made by the plaintiff at any time after his right thereto appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court or a Judge.

8. Where an action is brought to recover, or a defendant in his defence seeks by way of counter-claim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court or a Judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such Court or Judge, order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such Court or Judge may direct; and that, upon such payment into Court being made, the property claimed be given up to the party claiming it,

9. Where any real or personal estate forms the subject of any proceedings in equity, and the Judge is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceedings, the Judge may, at any time after the commencement of the proceedings, allow to the parties interested therein, or any one or more of them, the whole or part of the annual income of the real estate or a part of the personal estate, or the whole or part of the income thereof, up to such time as the Judge shall direct.

10. Whenever in an action for the administration of the estate of a deceased person, or execution of the trusts of a written instrument, a sale is ordered of any property vested in any executor, administrator, or trustee, the conduct of such sale shall be given to such executor, administrator, or trustee, unless the Court or a Judge shall otherwise direct.

11. No writ of injunction shall be issued An injunction shall be by a judgment or order, and any such judgment or order shall have the same effect which a writ of injunction previously had.

12. In any cause or matter in which an injunction has been, or might have been claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the Court or a Judge may grant the injunction, either upon or without terms, as may be just.

13. Leave to compound a penal action shall not be given in cases where part of the penalty goes to the Crown, unless notice shall first have been given to the proper officer; but in other cases it may be given without notice to any officer.

14. The order to compound a penal action shall expressly state that the defendant undertakes to pay the sum for which the Court has given him leave to compound the action.

15. When leave is given to compound a penal action, where part of the penalty goes to the Crown, the Queen's half of the composition shall be paid into the hands of the Chief Clerk and Registrar, or other proper officer of the Court, for the use of Her Majesty.

II.—Receivers.

16. Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be allowed by the Court or a Judge and taken before a person authorized to administer oaths, duly to account for what he shall receive as such receiver, and to pay the same as the Court or Judge shall direct; and the person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance. Such security shall be by recognizance in the form in appendix K, unless the Court or a Judge shall otherwise order.

17. When a receiver is appointed with a direction that he shall pass accounts, the Court or Judge may fix the days upon which he shall (annually, or at longer or shorter periods), file and pass such accounts, and also the days upon which he shall pay the balances appearing due on the accounts so left, or such part thereof as shall be certified as proper to

be paid by him. And with respect to any such receiver as shall neglect to file and pass his accounts and pay the balances thereof at the times so to be fixed, or to be otherwise ordered, for that purpose as aforesaid, the Judge before whom any such receiver is to account may from time to time disallow the salary claimed by such receiver, and may also, if he shall think fit, charge him with interest at the rate of five per cent per annum upon the balances neglected to be paid by him during the time the same shall appear to have remained in the hands of any such receiver.

18. Receivers' books and accounts shall be filed and deposited in the Clerk's office.

ORDER XLII.

MOTIONS AND OTHER APPLICATIONS.

1. Where by these rules any application is authorized to be made to the Court or a Judge, such application shall be made by motion.

2. No motion or application for a rule *nisi* or order to show cause shall hereafter be made in any action, or (*a*) to set aside, remit, or enforce an award, or (*b*) for attachment, or (*c*) to answer the matters in an affidavit, or (*d*) to strike off the rolls, or (*e*) against a sheriff to pay money levied under an execution.

3. Except where according to the practice existing at the time of the passing of the principal Act any order or rule might be made absolute *ex parte* in the first instance, and except where notwithstanding rule 2 a motion or application may be made for an order to show cause only, no motion shall be made without previous notice to the parties affected thereby. But the Court or a Judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or Judge may think just; and any party affected by such order may move to set it aside.

4. Every notice of motion to set aside, remit, or enforce an award, or for attachment, or to strike off the rolls, shall state in general terms the grounds of the application; and, where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion.

5. Unless the Court or a Judge give special leave to the contrary there must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion: provided that, in applications to answer the matters in an affidavit or to strike off the rolls, the notice of motion shall be served on the parties not less than four clear days before the time fixed by the notice for making the motion.

6. If on the hearing of a motion or other application the Court or a Judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court or Judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court or a Judge may think fit to impose.

7. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court or Judge shall think fit.

8. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice or any petition or order upon any defendant, who, having been duly served with a writ to appear, has not appeared within the time limited for that purpose.

9. The plaintiff may, by leave of the Court or a Judge to be obtained *ex parte*, serve any notice of motion upon any defendant along with the writ, or at any time after service of the writ and before the time limited for the appearance of such defendant.

10. No order shall issue for the return of any writ, or to bring in the body of a person ordered to be attached or committed; but a notice from the person issuing the writ or obtaining the order for attachment or committal, (if not represented by a solicitor), or by his solicitor, calling upon the Sheriff to return such writ or to bring in the body within a given time, if not complied with, shall entitle such person to apply for an order for the committal of such Sheriff.

11. Every order, if and when drawn up, shall be dated the day of the week, month, and year, on which the same was made, unless the Court or a Judge shall otherwise direct, and shall take effect accordingly.

12. Unless the Court or a Judge gives leave to the contrary, there must be at least two clear days between the service and the day appointed for hearing a petition.

13. All petitions, orders, statements, affidavits, and other written proceedings for the opinion, advice, or direction of a Judge, under the 13th section of chapter 84 of these Consolidated Statutes, shall be intituled in the matter of that chapter, and in the matter of the particular trust, will, or administration, and every such petition or statement shall state the facts concisely, and shall be divided into paragraphs numbered consecutively.

14. The opinion, advice, or direction of the Judge, shall be passed and entered and remain as of record in the same manner as any order made by the Court or a Judge, and the same shall be termed "a judicial opinion," or "judicial advice," or "judicial direction," as the case may be.

ORDER XLIII.

I.—Action of Mandamus.

1. The plaintiff, in any action in which he shall claim a mandamus to command the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested, shall indorse such claim upon or attach it to the writ.

2. If judgment be given for the plaintiff, the Court or Judge may by the judgment command the defendant either forthwith, or on the expiration of such time and upon such terms as may appear to the Court or a Judge to be just, to perform the duty in question. The Court or a Judge may also extend the time for the performance of the duty.

3. No writ of mandamus shall hereafter be issued in an action, but a mandamus shall be by judgment or order, which shall have the same effect as a writ of mandamus formerly had.

II.—Prerogative Mandamus.

4 Application for a prerogative writ of mandamus shall be made according to the practice heretofore in use.

5. The Court or a Judge may, if they or he think fit, order that any writ of mandamus shall be peremptory in the first instance.

6. Every writ of mandamus shall bear date on the day when it is issued, and shall be tested in like manner with other writs. The writ may be made returnable forthwith, or time may be allowed to return it, either with or without terms, as the Court thinks fit.

7. Any person by law compellable to make any return to a writ of mandamus shall make his return to the first writ.

8. When any return is made to a writ of mandamus, other than an unconditional compliance therewith, the applicant may plead to the return within such time and in like manner as if the return were a statement of defence delivered in an action; and, subject to these rules, this pleading and all subsequent proceedings, including pleadings, trial, judgment and execution, shall proceed and may be had and taken as if in an action.

9. Where a point of law is raised in answer to a return or any other pleading in a mandamus, and there is no issue of fact to be decided, the Court shall, on the argument of the point of law, give judgment for the successful party without any motion for judgment being made or required.

10. Where, under rules 8 and 9, the applicant obtains judgment, he shall be entitled forthwith to a peremptory writ of mandamus to enforce the command contained in the original writ, and the judgment shall direct that a peremptory writ do issue.

11. No action or proceeding shall be commenced or prosecuted against any person in respect of anything done in obedience to a writ of mandamus issued by the Supreme Court or any Judge thereof.

12. When it appears to the Court that the respondent claims no right or interest in the subject-matter of the application, or that his functions are merely ministerial, the return to the writ, and all subsequent proceedings down to judgment, shall still be made and proceed in the name of the person to whom the writ is directed; but if the Court thinks fit so to order, may be expressed to be made on behalf of the persons really interested therein. In that case the persons interested shall be permitted to frame the return and conduct the subsequent proceedings at their own expense; and if judgment is given for or against the applicant it shall likewise be given for or against the persons on whose behalf the return is expressed to be made; and, if judgment is given for them, they shall have the same remedies for enforcing it as the person to whom the writ is directed would have in other cases.

13. Where, under the last preceding rule, the return to a writ of mandamus is expressed to be made on behalf of some persons other than the person to whom the writ is directed, the proceedings on the writ shall not abate by reason of the death, resignation, or removal from office of that person, but they may be continued and carried on in his name; and if a peremptory writ is awarded it shall be directed to the successor in office or right of that person.

14. The provisions of Order XXXVIII, Rule 18, and those relating to the practice of amendment, special case, affidavits, motions, interpleader, appeals, time, costs, notices, non-compliance, &c, shall apply to mandamus so far as the nature of the case will admit.

ORDER XLIV.

Applications and Proceedings at Chambers.

1. Every application at Chambers shall be made by summons.

2. An originating summons, when service is necessary, shall be served four clear days before the return thereof. Every other summons shall be served two clear days before the return thereof, unless in any case it may be otherwise ordered.

3. An originating or other summons shall be signed by the Judge granting the same, and no seal shall be necessary, and when issued shall be entered in a book to be called "The Summons Book."

4 Where any of the parties to a summons fail to attend, whether upon the return or at any time appointed for the consideration or further consideration of the matter, the Judge may proceed *ex parte*, if, consider-

ing the nature of the case, he thinks it expedient so to do; no affidavit of non-attendance shall be required or allowed, but the Judge may require such evidence of service as he may think just.

5. Where the Judge has proceeded *ex parte*, such proceeding shall not in any manner be reconsidered in the Judge's Chambers, unless the Judge shall be satisfied that the party failing to attend was not guilty of wilful delay or negligence; and in such case the costs occasioned by his non-attendance shall be in the discretion of the Judge, who may fix the same at the time, and direct them to be paid by the party or his solicitor before he shall be permitted to have such proceeding reconsidered, or make such other order as to such costs as he may think just.

6. Where a proceeding in chambers fails by reason of the non-attendance of any party, and the Judge does not think it expedient to proceed *ex parte*, the Judge may order such an amount of costs (if any) as he shall think reasonable, to be paid to the party attending, by the absent party or by his solicitor personally.

7. Where matters in respect of which summonses have been issued are not disposed of upon the return, the parties shall attend from time to time without further summons at such time or times as may be appointed for the consideration or further consideration of the matter.

8. In every cause or matter where any party thereto makes any application at chambers, either by way of summons or otherwise, he shall be at liberty to include in one and the same application all matters upon which he then desires the order or directions of the Court or Judge; and upon the hearing of such application it shall be lawful for the Court or Judge to make any order and give any directions relative to or consequential on the matter of such application as may be just; any such application may, if the Judge thinks fit, be adjourned from Chambers into Court, or from Court into Chambers.

9. Any Judge attending in chambers at the return of a summons, may hear it in the absence of the Judge issuing the summons.

10. A summons, other than an originating summons shall be in the form hereinafter provided in appendix J, with such variations as circumstances may require, and shall be addressed to all the persons on whom it is to be served.

ORDER XLV.

INTERPLEADER.

1. Relief by way of interpleader may be granted—

(*a.*) Where the person seeking relief (in this order called the applicant) is under liability for any debt, money, goods, or

chattels, for or in respect of which he is, or expects to be, sued by two or more parties (in this order called the claimants) making adverse claims thereto;

(*b*) Where the applicant is a sheriff or other officer charged with the execution of process, and claim is made to any money, goods, or chattels taken or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process issued.

2. The applicant must satisfy the Court or a Judge by affidavit or otherwise—

(*a.*) That the applicant claims no interest in the subject-matter in dispute, other than for charges or costs; and

(*b.*) That the applicant does not collude with any of the claimants; and

(*c.*) That the applicant is willing to pay or transfer the subject-matter into Court or to dispose of it as the Court or a Judge may direct.

3. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin but are adverse to and independent of one another.

4. Where the applicant is a defendant, application for relief may be made at any time after service of the writ.

5. The applicant may take out an order calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them.

6. If the application is made by a defendant in an action the Court or a Judge may stay all further proceedings in the action.

7. If the claimants appear in pursuance of the order, the Court or a Judge may order either that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff, and which defendant.

8. The Court or a Judge may, if, having any regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and decide the same in a summary manner and on such terms as may be just.

9. Where the question is a question of law, and the facts are not in dispute, the Court or a Judge may either decide the question without

directing the trial of an issue, or order that a special case be stated for the opinion of the Court. If a special case is stated, Order XXXI. shall, as far as applicable, apply thereto.

10. If a claimant, having been duly served with an order calling on him to appear and maintain or relinquish his claim, does not appear in pursuance thereof, or, having appeared, neglects or refuses to comply with any order made after his appearance, the Court or a Judge may make an order declaring him, and all persons claiming under him, for ever barred against the applicant and persons claiming under him; but the order shall not affect the rights of the claimants as between themselves.

11. Except where otherwise provided by statute, the judgment in any action or on any issue ordered to be tried or stated in an interpleader proceeding, and the decision of the Court or a Judge in a summary way, under rule 8 of this order, shall be final and conclusive against the claimants and all persons claiming under them, unless by special leave of the Court or Judge, as the case may be.

12. When goods or chattels have been seized by a sheriff or other officer charged with the execution of process, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the Court or Judge may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just.

13. Orders XXVIII and XXXII. shall, with the necessary modifications, apply to an interpleader issue; and the Court or Judge who tries the issue may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise provided for.

14. Where in any interpleader proceeding it is necessary or expedient to make one order in several causes or matters pending, such order may be made by the Court or Judge before whom the interpleader proceeding may be taken, and shall be intituled in all such causes or matters; and any such order (subject to the right of application for a new trial as in other cases) shall be binding on the parties in all such causes or matters.

15. The Court or a Judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just and reasonable.

ORDER XLVI.

Probates, Administration, Trusts, &c.

1. Letters of administration or probates of will in common form may be granted by the Supreme Court or a Judge thereof, in St. John's or on Circuit, upon petition and affidavit, notice of application therefor having been put up in the Clerk's office three days before making the same, where

the application is made in St. John's, and if and as long as may be required by the Judge on Circuit.

2. Where a caveat to such application shall be entered before rule or fiat shall be made, or when, in the opinion of the Court or Judge, sufficient objection shall appear against a grant of letters of administration or probate, before granting the same all parties concerned therein (or so many of them as the Court or Judge may consider necessary) shall be cited by writ of summons to appear and plead to the claim for administration or probate, and the said Court or Judge, after default or trial, as the case may be, shall make such order touching the premises as to justice shall appertain.

3. A will may be required to be proved in solemn form on the petition, verified by affidavit, of one claiming as executor, or having, or desiring to have execution of the alleged will, or by any person interested in the will or in the estate of the alleged testator, for a writ of summons upon such parties as the Court or Judge may direct to appear and plead to the claim for such proof.

4. The respective clerks or commissioners on circuit shall, at the close of each term, return to the office of the Chief Clerk and Registrar of the Supreme Court in St. John's, a list of probates and letters of administration granted on circuit during such time, together with the original wills of which probate or administration *cum testamento annexo* may have been granted, and the several administration bonds which may have been taken during such terms—the said clerks or commissioners having taken and filed correct copies of said original wills—which returns shall be entered in the book of acts of the Supreme Court of this island by the said Chief Clerk and Registrar, and when so entered shall be as effectual in evidence, and for all other purposes, as if the probate or administration had been granted by the said Supreme Court in St. John's; and in case of the loss of any original will in course of transmission to the Chief Clerk aud Registrar at St. John's, or otherwise, the copy of such will, to be taken and filed in manner aforesaid, shall be of equal avail for entering in the books of acts, and for all other purposes as the original.

5. The Supreme Court or Judge may on motion or petition, or otherwise in a summary way, whether any suit or other proceedings shall or shall not be pending with respect to any probate or administration, order any person to produce and bring into Court or into the Clerk's office, or otherwise as the Court or Judge may direct, any paper or writing being or purporting to be testamentary, which may be shewn to be in the possession or under the control of such person; and if it be not shewn that any such paper or writing is in the possession or under the control of such person, but it shall appear that there are reasonable grounds for believing that he has the knowledge of any such paper or writing, the Court or Judge may direct such person to attend for the purpose of being examined in open Court, or upon interrogatories respecting the same, and such person shall

be bound to answer such questions or interrogatories, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions or interrogatories, or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit in the Court and had made such default; and the costs of any such motion, petition or other proceeding, shall be in discretion of the Court or Judge.

6. Application may be made to the Court or Judge for any of the following purposes, that is to say: for an account of an estate or for the administration or distribution of an estate or of a trust, or for the payment or delivery of a legacy, or for the appointment of a receiver or of a guardian to the person or property of an infant or of a natural fool, or of such as are or shall be deprived of their reason or understanding, or for any matter or thing concerning the execution of the trusts or provisions of any will, deed, or instrument, or for the removal of any executor, administrator, receiver, guardian or trustee, or for the appointment of a trustee to the property of a married woman, or of new trustees in the place of trustees appointed by any will, conveyance or otherwise, in the event of the death or absence of such former trustees, or their refusal to act, or being desirous of being relieved of such trust, or acting improperly, or becoming disqualified for any cause. Such application shall be made by petition, filed in the Clerk's office, verified by affidavit and supported by such other affidavits as may be thought necessary, setting forth succinctly the facts and circumstances of the case; and thereupon the said Court may grant an order on any party or parties interested, returnable on a day to be specified therein, to answer such petition, and on hearing said parties or their counsel, and the affidavits, depositions, or evidence by them respectively produced, shall grant or refuse the prayer of such petition, or make such other order or orders in the premises as justice shall require.

7. When an executor or administrator, to whom probate or administration has been or may be granted, shall depart from and remain absent from this colony for the period of one year without having appointed a responsible attorney to act for and represent him, in either case the Supreme Court or a Judge may, on petition verified by oath, shewing to the satisfaction of the said Court or Judge that the interests of parties concerned in the estate are or will be prejudiced by the absence of such executor or administrator, appoint an administrator with the will annexed, or administrator *de bonis non*, as the case may be, who shall respectively, during the absence of such executor or administrator, on giving sufficient security, have, possess, and exercise, all and singular the same power and authority as the executor or administrator so absent as aforesaid, if personally present. And in case of contest proceedings shall and may be similar to those provided under the second rule of this order.

8. Under special circumstances, where it may appear to the Court or Judge to be just or expedient, administration or probate may be granted

to some person other than the person ordinarily or by law entitled to such administration or probate.

9. No administration shall be issued, or guardian or receiver of property appointed, until security to the satisfaction of the Court or Judge shall be given by such administrator, guardian, or receiver, for the faithful discharge of his duties, unless the Court or a Judge shall otherwise order.

10. Pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling, or revoking any probate or any grant of administration, the Court or Judge of probate may appoint an administrator of the estate of such deceased person, and the administrator so appointed shall have all the rights and powers of a general administrator other than the right of distributing the residue of such estate, and every such administrator shall be subject to the immediate control of the Court or Judge, and act under its or his direction.

11. After any grant of administration no person shall have power to sue or prosecute any suit, or otherwise act as executor of the deceased, as to the estate comprised in or affected by such grant of administration, until such administration shall have been recalled or revoked.

12. Where, before the revocation of any temporary administration, any proceedings have been commenced by or against any administrator so appointed, the Court in which such proceedings are pending may order that a suggestion be made upon the record of the revocation of such administration and of the grant of probate or administration which shall have been made consequent thereupon, and that the proceedings shall be continued in the name of the new executor or administrator in like manner as if the proceedings had been originally commenced by or against such new executor or administrator, but subject to such conditions and variations, if any, as such Court may direct.

13. Where any probate or administration is revoked, all payments *bona fide* made to any executor or administrator under such probate or administration before the revocation thereof, shall be a legal discharge to the person making the same, and the executor or administrator who shall have acted under any such revoked probate or administration, may retain and reimburse himself in respect of any payments made by him, which the person to whom probate or administration shall be afterwards granted, might have lawfully made.

14. All persons and corporations making, or permitting to be made, any payment or transfer, *bona fide*, upon any probate or letters of administration granted in respect of the estate of any deceased person, under the authority of this order, shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of such probate or letters of administration.

15. Where any person renounces probate of the will, of which he is appointed executor, or one of the executors, the rights of such person in respect of the executorship shall wholly cease, and the representation to the testator, and the administration of his effects shall, and may, without any further renunciation, go, devolve, and be committed in like manner, as if such person had not been appointed executor.

ORDER XLVII.

TIME.

1. Where by these rules, or by any judgment or order given or made after the commencement of the principal Act, time for doing any act or taking any proceeding is limited by months, and where the word "month" occurs in any document which is part of any legal procedure under these rules, such time shall be computed by calendar months, unless otherwise expressed.

2. Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day, and Good Friday, shall not be reckoned in the computation of such limited time.

3. Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

4. The day on which an order for security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be reckoned in the computation of time allowed to plead, answer interrogatories, or take any other proceeding in the cause or matter.

5. The Court or a Judge shall have power to enlarge or abridge the time appointed by these rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

6. The time for delivering, amending, or filing any pleading, answer or other document may be enlarged by consent in writing, without application to the Court or a Judge.

7. Service of pleadings, notices, orders, rules, and other proceedings, shall be effected before the hour of five in the afternoon, except on Satur-

days, when it shall be effected before the hour of two in the afternoon. Service effected after five in the afternoon on any week-day except Saturday, shall, for the purpose of computing any period of time subsequent to such service, be deemed to have been effected on the following day. Service effected after two in the afternoon on Saturday shall, for the like purpose, be deemed to have been effected on the following Monday.

8. In any case in which any particular number of days, not expressed to be clear days, is prescribed by these rules, the same shall be reckoned exclusively of the first day and inclusively of the last day.

9. In any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed. An application on which no order has been made shall not, but notice of trial, although countermanded, shall be deemed a proceeding within this rule.

10. An application to set aside an award must be made either in Court or to a Judge within ten days next after such award has been made and published to the parties, unless the Court or Judge before or after the expiration of such time shall otherwise order.

ORDER XLVIII.

ORIGINATING SUMMONSES.

1. An originating summons is one by which proceedings are originated without writ, or which now is or hereafter by law or orders may be preceded only by *ex parte* petition or affidavit at the commencement of the proceedings, and in which the Court or Judge may order that persons not parties to the petition should be summoned.

2. An originating summons shall be in the form hereinafter prescribed in appendix J, No. 32, with such variations as circumstances may require.

3. Executors and administrators, trustees under any deed or instrument, trustees under insolvency, creditors, legatees, and next-of-kin, *cestuis que trust*, and persons claiming by assignment or otherwise under such person, may take out, as of course, an originating summons returnable in chambers for such relief of the nature or kind following, as may by the summons be specified and as the circumstances of the case may require, (that is to say) the determination, without an administration of the estate or trust, of any of the following questions or matters:—

(*a.*) Any question affecting the rights or interests of the person claiming to be creditor, legatee, next-of-kin, or *cestui que trust* and the proof and payment of his claim;

(*b.*) The ascertainment of any class of creditors, legatees, next-of-kin, or others;

(*c.*) The furnishing of any particular accounts by the executors, or administrators, or trustees, and the vouching (when necessary) of such accounts;

(*d.*) The payment into Court, or to the parties, or otherwise, of any money in the hands of the executors, or administrators, or trustees;

(*e.*) Directing the executors, or administrators, or trustees, to do or abstain from doing any particular act in their character as such executors, or administrators, or trustees;

(*f.*) The approval of any sale, purchase, compromise, or other transaction;

(*g.*) The determination of any question arising in the administration of the estate or trust.

4. Any of the persons named in the last preceding rule may, in like manner, apply for and obtain an order for—

(*a.*) The administration of the estate of the deceased;

(*b.*) The administration of the trust.

5. The persons to be served with the summons under the last two preceding rules in the first instance, shall be the following, that is to say:

A. Where the summons is taken out by an executor, or administrator, or trustee—

(*a.*) For the determination of any question, under sub-sections (*a*), (*e*), (*f*) or (*g*), of rule 3, the persons, or one of the persons, whose rights or interests are sought to be affected;

(*b.*) For the determination of any question, under sub-section (*b*) of rule 3, any member, or alleged member, of the class;

(*c.*) For the determination of any question, under sub-section (*c*) of rule 3, any person interested in taking such accounts;

(*d.*) For the determination of any question, under sub-section (*d*) of rule 3, any person interested in such money;

(*e.*) For relief under sub-section (*a*) of rule 4, the residuary legatees, or next of kin, or some of them;

(*f.*) For relief under sub-section (*b*) of rule 4, the *cestuis que trust*, or some of them;

(*g.*) If there are more than one executor, or administrator, or trustee, and they do not all concur in taking out the summons, those who do not concur,

B. Where the summons is taken out by any person other than the executors, administrators, or trustees, the said executors, administrators, or trustees.

6. Any mortgagee, mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out, as of course, an originating summons returnable in Chambers, for such relief of the nature or kind following as may by the summons be specified, and as the circumstances of the case may require; that is to say:—

(*a.*) Sale, foreclosure, delivery of possession by the mortgagor, redemption, re-conveyance, delivery of possession by the mortgagee.

7. The persons to be served with the summons, under the last preceding rule, shall be such persons as under the existing practice in equity would be the proper defendants to an action for the like relief as that specified by the summons.

8. The Court or a Judge may direct such other persons to be served with the summons as they or he may think fit.

9. The application shall be supported by such evidence as the Court or a Judge may require, and directions may be given as they or he may think just for the trial of any questions arising thereout.

10. It shall be lawful for the Court or a Judge, upon such summons, to pronounce such judgment, as the nature of the case may require.

11. The Court or a Judge may give any special directions touching the carriage or execution of the judgment, or the service thereof upon persons not parties, as they or he may think just.

12. It shall not be obligatory on the Court or a Judge to pronounce or make a judgment or order for the administration of any trust or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment or order.

13. The issue of a summons under rule 3 of this order, shall not interfere with or control any power or discretion vested in any executor, administrator, or trustee, except so far as such interference or control may necessarily be involved in the particular relief sought.

14. Parties served with an originating summons must enter an appearance in the Chief Clerk's office before they are heard.

ASSISTANCE OF EXPERTS.

15. The Court or a Judge may, in such way as may be thought fit, obtain the assistance of accountants, merchants, engineers, actuaries, and

other scientific persons, the better to enable any matter to be determined, and the certificate of any such person may be acted upon.

ATTENDANCES

16. Where, upon the hearing of the summons to proceed, or at any time during the prosecution of the judgment or order, it appears to the Court or Judge, with respect to the whole or any portion of the proceedings, that the interests of the parties can be classified, he may require the parties constituting each or any class to be represented by the same solicitor, and may direct what parties may attend all or any part of the proceedings; and where the parties constituting any class cannot agree upon the solicitor to represent them, the Court or Judge may nominate such solicitor for the purpose of the proceedings before him; and where any one of the parties constituting such class declines to authorize the solicitor so nominated to act for him, and insists upon being represented by a different solicitor, such party shall personally pay the costs of his own solicitor of and relating to the proceedings before the Court or Judge, with respect to which such nomination shall have been made, and all such further costs as shall be occasioned to any of the parties by his being represented by a different solicitor from the solicitor so to be nominated.

17. Whenever in any proceeding before a Court or Judge the same solicitor is employed for two or more parties, such Court or Judge may at his discretion require that any of the said parties shall be represented before him by a distinct solicitor, and adjourn such proceedings until such party is so represented.

18. Any parties other than those who shall have been directed to attend may attend at their own expense and upon paying the costs, if any, occasioned by such attendance, or, if they think fit, they may apply by summons for liberty to attend at the expense of the estate, or to have the conduct of the action either in addition to or in substitution for any of the parties who shall have been directed to attend.

ADVERTISEMENTS FOR CREDITORS AND CLAIMANTS.

19. Where a judgment or order is given or made, whether in Court or in Chambers, directing an account of debts, claims, or liabilities, or an inquiry for next of kin, or other unascertained persons, unless otherwise ordered, all persons who do not come in and prove their claims within the time which may be fixed for that purpose by advertisement, shall be excluded from the benefit of the judgment or order.

INTEREST.

20 Where a judgment or order is made directing an account of the debts of a deceased person, unless otherwise ordered, interest shall be computed on such debts, to such of them as carry interest after the rate they respectively carry, and as to all others after the rate of five per cent. per annum from the date of the judgment or order.

MASTER'S REPORTS.

21. A master's report (subject to further directions) shall be confirmed as of course, unless within four days, or such further time as may be allowed by the Court or Sudge, after filing the report of the master, (notice to the parties having been given of the report being made), any party concerned shall give notice to the other parties of and file and serve exceptions. Such exceptions shall be heard at a time to be appointed on motion of any party to the proceedings, when the report may be confirmed, varied, or remitted for further consideration to the same or any other master. The report and proceedings therein, or so much as shall be necessary, shall be entered up with the judgment.

ORDER XLIX.

NOTICES, PRINTING, PAPER, COPIES, OFFICE COPIES, MINUTES, &c.

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

2. All accounts, copies and papers shall be written upon uniform foolscap paper, bookwise, unless the nature of the document renders it impracticable.

3. Proceedings required to be printed shall be printed on folio paper, with an inner margin about three-quarters os an inch wide, and an outer margin about two inches wide.

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

5. Where, pursuant to these rules, any pleading, notice, special case, petition, deposition, affidavit, or other document is to be printed, and where any printed or other office copy of any such document is to be taken, the following regulations shall be observed :—

(*a.*) The party on whose behalf the deposition or affidavit is taken and filed is to print the same in the manner provided by rule 3 of this order;

(*b.*) To enable the party printing to print any deposition or affidavit, the officer with whom it is filed shall, on demand, permit such party to take a copy;

(*c.*) The party printing shall, on demand in writing, furnish to any other party any number of printed copies, not exceeding ten, upon payment therefor at the rate of two cents per folio for one copy, and one cent per folio for every other copy;

(*d.*) As between a solicitor delivering any printed copies and his client, credit shall be given by the solicitor for the whole amount payable by any other party for such printed copies;

(*e*) The party entitled to be furnished with a print shall not be allowed any charge in respect of a written copy, unless the Court or Judge shall otherwise direct;

(*f*.) The party by or on whose behalf any deposition, affidavit or certificate is filed shall leave a copy with the officer with whom the same is filed, who shall examine it with the original and mark it as an office copy: such copy shall be a copy printed as above provided, where such deposition or affidavit is to be printed;

(*g*.) The party or solicitor who has taken any printed or written office copy of any deposition or affidavit is to produce the same upon every proceeding to which the same relates;

(*h*.) Where any party is entitled, on notice or demand, to a copy of any deposition, affidavit, proceeding or document filed or prepared by or on behalf of another party, which is not required to be served with the original proceedings, or which is not required to be printed, such copy shall be furnished by the party by whom or on whose behalf the same has been filed or prepared;

(*i*.) The party requiring any such copy, or his solicitor, is to make a written application to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges, and thereupon such copy is to be made and ready to be delivered at the expiration of twenty-four hours after the receipt of such request and undertaking, or within such other time as the Court or a Judge may in any case direct, and is to be furnished accordingly upon demand and pay of the proper charges;

(*j*.) It shall be stated in a note at the foot of every affidavit filed on whose behalf it is so filed, and such note shall be printed on every printed copy of an affidavit or set of affidavits, and copied on every office copy and copy furnished to a party;

(*k*.) The name and address of the party or solicitor by whom any copy is furnished is to be indorsed thereon in like manner as upon proceedings in Court, and such party or solicitor is to be answerable for the same being a true copy of the original, or of an office copy of the original, of which it purports to be a copy, as the case may be;

(*l*.) The folios of all printed and written office copies, and copies delivered or furnished to a party, shall be numbered consecutively in the margin thereof, and such written copies shall be written in a neat and legible manner, and paged uniformly with the printed copies;

(*m*.) In case any party or solicitor who shall be required to furnish any such written copy as aforesaid, shall either refuse, or, for twenty-four hours from the time when the application for such copy has been made, neglect to furnish the same, the

person by whom such application shall be made shall be at liberty to procure an office copy from the office in which the original shall have been filed, and in such case no costs shall be payable to the solicitor so making default in respect of the copy so applied for;

(*n.*) Where proceedings are important or voluminous the Court or Judge may order documents to be printed, and where, by any order of the Court or a Judge, any pleading, evidence, or other document is ordered to be printed, the Court or Judge may order the expense of printing to be borne and allowed, and printed copies to be furnished by and to such parties and upon such terms as shall be thought fit.

ORDER L.

I.—Orders, Services, &c.

1. When an order of which service is to be effected is made, either the original or an office copy shall be filed.

2. It shall not be necessary to the regular service of an order that the original order be shown if an office copy of it be exhibited, and then only if required by the party served.

3. All writs, notices, pleadings, warrants and other documents, proceedings, and written communications in respect of which personal service is not requisite shall be sufficiently served if left within the prescribed hours, at the address for service of the person to be served.

4. Notices sent from any office of the Supreme Court may be sent by post; and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof, and the posting thereof shall be a sufficient service.

5. Where no appearance has been entered for a party, or where a party or his solicitor as the case may be, has omitted to give an address for service as required by Orders IV. and XII., all writs, notices, pleadings, orders, warrants, and other documents, proceedings and written communications in respect of which personal service is not requisite may be served by filing them with the proper officer.

6. Where personal service of any writ, notice, pleading, order, warrant, or other document, proceeding, or written communication is required by these rules or otherwise, the service shall be effected as nearly as may be in the manner prescribed for the personal service of a writ of summons.

7. Where personal service of any writ, notice, pleading, order, warrant, or other document, proceeding or written communication is required by these rules or otherwise, and it is made to appear to the Court or a

Judge that prompt personal service cannot be effected, the Court or Judge may make such order for substituted or other service, or for the substitution of notice for service by letter, public advertisement, or otherwise, as may be just.

8. Where a party after having sued or appeared in person has given notice in writing to the opposite party, or his solicitor, through a solicitor, that such solicitor is authorised to act in the cause or matter on his behalf, all writs, notices, pleadings, orders, warrants, and other documents, proceedings, and written communications, which ought to be delivered to or served upon the party on whose behalf the notice is given shall thereafter be delivered to or served upon such solicitor.

9. Affidavits of service shall state when, where and how, and by whom, such service was effected.

ORDER LI.

Application of Rules in Crown and Revenue Cases.

1. Subject to the provisions of this order, nothing in these rules, save as expressly provided, shall affect the procedure or practice in any of the following causes or matters.

(*a.*) Criminal proceedings;

(*b.*) Proceedings on the Crown side of the Court;

(*c.*) Proceedings on the Revenue side of the Court.

2. The following orders shall, as far as they are applicable, apply to all civil proceedings on the Crown side of the Court, including mandamus and prohibition, and also to *quo warranto*, and to all proceedings in revenue matters, namely:—

(*a.*) Order XXVII. (Amendment);

(*b.*) Order XXXI. (Special case);

(*c.*) Order XXXIV. (Affidavits);

(*d.*) Order XLII. (Motions);

(*e.*) Order XLVII. (Time);

(*f.*) Order XLIX. (Notices, &c.);

(*g.*) Order LII. (Non-compliance).

3. Where pleadings in prohibition are ordered, the pleadings and subsequent proceedings, including judgment and assesssment of damages, if any, shall be, as nearly as may be, the same as in an ordinary action for damages.

ORDER LII.

EFFECT OF NON-COMPLIANCE.

1. Non-compliance with any of these rules, or with any rule of practice for the time being in force, shall not render any proceedings void unless the Court or a Judge shall so direct; but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or Judge shall think fit.

2. No application to set aside any proceedings for irregularity shall be allowed unless made within reasonable time, nor if the party applying has taken any fresh step after knowledge of the irregularity.

3. Where an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the notice of motion or order.

4. When an order is taken out to set aside any process or proceeding for irregularity with costs, and the order or application is dismissed generally without any special direction as to costs, it is to be understood as dismissed with costs.

ORDER LIII.

MISCELLANEOUS RULES.

1. Consolidation of causes or matters may take place by order of the Court or Judge as in manner heretofore in use.

2. Writs, causes, and matters may at any time be transferred to or from the circuits, and from one place to another, or from one judicial district to another, by order of the Court or Judge.

3. Proceedings in actions of replevin shall be commenced by writ of summons and statement of claim instead of declaration, and the action shall be pleaded to and proceeded with to final judgment as in other cases.

4. In actions upon written instruments, in which any of the parties are designated by the initial letter or letters, or some contraction of the christian or first name or names, or in cases in which the party's name is only known by such initial or contraction, it shall be sufficient in all proceedings to designate such person by such initials or contraction.

ORDER LIV.

PRACTICE OF THE SUPREME COURT ON CIRCUIT.

1. The foregoing orders and rules shall, so far as they are applicable, be the practice of the Supreme Court on circuit, subject to the provisions of this order, and to particular orders and directions of the Court or Judge in any action or matter.

2. The writs shall be returnable out of Saint John's "on the first day of next term" in any given place, or upon a named day in term.

3. The appearance need not be filed, and may be made by the Clerk of the Court making an entry on the writ and in his record book, of the defendant's appearance either in person or by his solicitor, with his address.

4 The defence (where no solicitor appears) shall be entered in short terms or by the known title and effect of a defence, by a clerk upon the writ or upon a paper annexed thereto, and a memorandum thereof shall be made in his record book. Where a solicitor appears he shall enter the defence in manner aforesaid or more fully if he so desires. Where an account is involved in the defence it shall be furnished by the defendant and annexed to the proceeding.

5. All other pleadings, after statement of claim, shall be entered as nearly as may be according to the preceding rule.

6. The verdict or [and] judgment shall be entered upon or with the writ and pleadings, and be noted in the record book.

7. Actions shall be tried on the return day of the writ unless otherwise allowed or ordered by the Judge.

8. The defendant must be distinctly called upon in open Court to appear, and in cases of default an affidavit of service of the writ and claim must be filed before judgment. The Judge may, or may not on default require evidence of the amount due in actions of debt, or liquidated demand, or of title in actions of ejectment. Where it shall appear to the Court that from remoteness of residence or other cause a defendant has not had sufficient time to appear, the trial shall be postponed for such time as the Judge may direct.

9. In applications for probate or letters of administration, the Court or Judge may dispense with notice of application.

10. A seal shall be unnecessary on probate and letters of administration granted on circuit. The signature of a Judge or of a clerk or commissioner shall be sufficient.

11. An action on circuit not wholly concluded there may, although not transferred, be proceeded with by the Court or Judge in St. John's to final judgment as if on circuit.

12. New trials, and reviews of judgments, findings or orders on circuit may be had in cases similar to those in which the same may be had in St. John's. When it is intended to make an application (where it is allowable by the foregoing rules) to two or more Judges, a notice of application setting out the grounds thereof must be filed with the officer of the Court on circuit and brought to the notice of the Judge on circuit within two days from the time of the decision sought to be reviewed unless the time be extended.