

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. A.D. 1875.

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

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

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

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

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

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

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

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

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

27. Wherever any contract or any relation between any persons does not arise from an express agreement, but is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

28. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied.

[E.g.—Consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.]

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

30. In actions for damage by collision between vessels, unless the Court or a Judge shall otherwise order, each solicitor shall, before any pleading is delivered, file with the proper officer a document to be called a Preliminary Act, which shall be sealed up and shall not be opened until ordered by the Court or a Judge, and which shall contain a statement of the following particulars:—

(a.) The names of the vessels which came into collision and the names of their masters.

(b.) The time of the collision.

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(c.) The place of the collision.
(d.) The direction of the wind.
(e.) The state of the weather.
(f.) The state and force of the tide.
(g.) The course and speed of the vessel when the other was first
seen.

(h.) The lights, if any, carried by her.
(i.) The distance and bearing of the other vessel when first
seen.

(k.) The lights, if any, of the other vessel which were first
seen.

(l.) Whether any lights of the other vessel, other than those
first seen, came into view before the collision.

(m.) What measures were taken, and when, to avoid the
collision.

(n.) The parts of each vessel which first came into contact.

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

ORDER XX.

PLEADING MATTERS ARISING PENDING THE ACTION.

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

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

3. Whenever any defendant, in his statement of defence, or in
any further statement of defence as in the last Rule mentioned,

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ORDER XXI.

STATEMENT OF CLAIM.

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

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

(b.) The plaintiff may, if he think fit, at any time after the issue of the writ of summons, deliver a statement of claim, with the writ of summons or notice in lieu of writ of summons, or at any time afterwards, either before or after appearance, and although the defendant may have appeared and stated that he does not require the delivery of a statement of claim: Provided that in no case where a defendant has appeared shall a statement be delivered more than six weeks after the appearance has been entered unless otherwise ordered by the Court or a Judge.

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

2. In Probate actions the plaintiff shall, unless otherwise ordered by the Court or a Judge, deliver his statement of claim within six weeks from the entry of appearance by the defendant, or from the time limited for his appearance, in case he has made default; but where the defendant has appeared the plaintiff shall not be compelled to deliver it until the expiration of eight days after the defendant has filed his affidavit as to scripts.

3. In Admiralty actions in rem the plaintiff shall, within twelve days from the appearance of the defendant, deliver his statement of claim.

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

ORDER XXII.

DEFENCE.

1. Where a statement of claim is delivered to a defendant he shall deliver his defence within eight days from the delivery of the statement of claim, or from the time limited for appearance, whichever shall be last, unless such time is extended by the Court or a Judge.

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

3. Where leave has been given to a defendant to defend under Order XIV., Rule 1, he shall deliver his defence, if any, within such time as shall be limited by the order giving him leave to defend, or if no time is thereby limited, then within eight days after the order.

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

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

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forth the names of all the persons who, if such counter-claim were to be enforced by cross action, would be defendants to such cross action, and shall deliver his defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff.

6. Where any such person as in the last preceding Rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same Rules as are herein-before contained with respect to the service of a writ of summons, and every defence so served shall be indorsed in the Form No. 4 in Appendix (B.) hereto, or to the like effect.

7. Any person not a defendant to the action, who is served with a defence and counter-claim as aforesaid, must appear thereto as if he had been served with a writ of summons to appear in an action.

8. Any person named in a defence as a party to a counter-claim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim.

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

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

11. In Probate actions the party opposing a will may, with his defence, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall be subject to the same liabilities in respect of costs as he would have been under similar circumstances according to the practice of the Court of Probate.

ORDER XXIII.

DISCONTINUANCE.

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

ORDER XXIV.

REPLY AND SUBSEQUENT PLEADINGS.

1. A plaintiff shall deliver his reply, if any, within three weeks after the defence or the last of the defences shall have been delivered, unless the time shall be extended by the Court or a Judge.

2. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the Court or a Judge, and then upon such terms as the Court or Judge shall think fit.

3. Subject to the last preceding Rule, every pleading subsequent to reply shall be delivered within four days after the delivery of the previous pleading, unless the time shall be extended by the Court or a Judge.

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ORDER XXV.

CLOSE OF PLEADINGS.

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

ORDER XXVI.

ISSUES.

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

ORDER XXVII.

AMENDMENT OF PLEADINGS.

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

2. The plaintiff may, without any leave, amend his statement of claim once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time before the expiration of four weeks from the appearance of the defendant who shall have last appeared.

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

4. Where any party has amended his pleading under either of the last two preceding Rules, the opposite party may, within eight

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days after the delivery to him of the amended pleading, apply to the Court, or a Judge, to disallow the amendment, or any part thereof, and the Court or Judge, may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as may seem just.

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

6. In all cases not provided for by the preceding Rules of this Order, application for leave to amend any pleading may be made by either party to the Court or a Judge in Chambers, or to the Judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may seem just,

7. If a party who has obtained an order for leave to amend a pleading delivered by him does not amend the same within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case may be, become ipso facto void, unless the time is extended by the Court or a Judge.

8. A pleading may be amended by written alterations in the pleading which has been delivered, and by additions on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than 144 words in any one place, or are so numerous or of such a nature that the making them in writing would render the pleading difficult or inconvenient to read, in either of which cases the amendment must be made by delivering a print of the pleading as amended.

9. Whenever any pleading is amended, such pleading when amended shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz. : " Amended
day of ."

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

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ORDER XXVIII.

DEMURRER.

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDER XXIX.

DEFAULT OF PLEADING.

1. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the Court or a Judge to dismiss the action with costs, for want of prosecution; and on the hearing of such application the Court or Judge may, if no statement of claim have been delivered, order the action to be dismissed accordingly, or may make such other order on such terms as to the Court or Judge shall seem just.

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

A.D. 1875. — that purpose, deliver a defence or demurrer, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed, with costs.

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

4. If the plaintiff's claim be for detention of goods and pecuniary damages, or either of them, and the defendant makes default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant, and a writ of inquiry shall issue to assess the value of the goods, and the damages, or the damages only, as the case may be. But the Court or a Judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way in which any question arising in an action may be tried.

5. When in any such action as in Rule 4 mentioned there are several defendants, if one of them make default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant so making default, and proceed with his action against the others. And in such case, damages against the defendant making default shall be assessed at the same time with the trial of the action or issues therein against the other defendants, unless the Court or a Judge shall otherwise direct.

6. If the plaintiff's claim be for a debt or liquidated demand, and also for detention of goods and pecuniary damages, or pecuniary damages only, and the defendant makes default as mentioned in Rule 2, the plaintiff may enter final judgment for the debt or liquidated demand, and also enter interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in Rule 4.

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

8. Where the plaintiff has endorsed a claim for mesne profits, arrears of rent, or damages for breach of contract upon a writ for the recovery of land, if the defendant makes default as mentioned in Rule 2, or if there be more than one defendant, some or one of the defendants make such default, the plaintiff may enter judgment

against the defaulting defendant or defendants and proceed as mentioned in Rules 4 and 5. A.D. 1875.

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

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

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

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

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

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

ORDER XXX.

PAYMENT INTO COURT IN SATISFACTION.

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

A.D. 1875. money by way of satisfaction or amends. Payment into Court shall be pleaded in the defence, and the claim or cause of action in respect of which such payment shall be made shall be specified therein.

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

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

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

ORDER XXXI.

DISCOVERY AND INSPECTION.

1. The plaintiff may, at the time of delivering his statement of claim, or at any subsequent time not later than the close of the pleadings, and a defendant may, at the time of delivering his defence, or at any subsequent time not later than the close of the pleadings, without any order for that purpose, and either party may at any time, by leave of the Court or a Judge, deliver interrogatories in writing for the examination of the opposite party or parties, or any one or more of such parties, with a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose.

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

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

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

4. If any party to an action be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply at chambers for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.

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

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

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

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

9. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court or a Judge on motion or summons.

10. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court or a Judge for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further either by affidavit or by viva voce examination, as the Judge may direct.

11. It shall be lawful for the Court or a Judge at any time during the pendency therein of any action or proceeding, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in

A.D. 1875. — question in such action or proceeding, as the Court or Judge shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

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

13. The affidavit to be made by a party against whom such order as is mentioned in the last preceding Rule has been made, shall specify which, if any, of the documents therein mentioned, he objects to produce, and it may be in the Form No. 9 in Appendix (B.) hereto, with such variations as circumstances may require.

14. Every party to an action or other proceeding shall be entitled, at any time before or at the hearing thereof, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such action or proceeding, unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the action, or that he had some other sufficient cause for not complying with such notice.

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

16. The party to whom such notice is given shall, within two days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in Rule 13, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice may be in the Form No. 11 in Appendix (B.) hereto, with such variations as circumstances may require.

17. If the party served with notice under Rule 15 omits to give such notice of a time for inspection, or objects to give inspection, the party desiring it may apply to a Judge for an order for inspection. A.D. 1875.

18. Every application for an order for inspection of documents shall be to a Judge. And except in the case of documents referred to in the pleadings or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party.

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

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

21. Service of an order for discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

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

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

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ORDER XXXII.

ADMISSIONS.

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

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

3. A notice to admit documents may be in the Form No. 12 in Appendix (B.) hereto.

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

ORDER XXXIII.

INQUIRIES AND ACCOUNTS.

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

ORDER XXXIV.

QUESTIONS OF LAW.

1. The parties may, after the writ of summons has been issued, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court. Every such

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

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

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

4. No special case in an action to which a married woman, infant, or person of unsound mind is a party shall be set down for argument without leave of the Court or a Judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true.

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

ORDER XXXV.

PROCEEDINGS IN DISTRICT REGISTRIES.

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

A.D. 1875. The Court or a Judge shall otherwise order, shall be taken in the district registry, down to and including the entry for trial of the action or issues therein; or if the plaintiff is entitled to enter final judgment or to obtain an order for an account by reason of the default of the defendant, then down to and including such judgment or order; and such judgment or order as last aforesaid shall be entered in the district registry in the proper book, in the same manner as a like judgment or order in an action proceeding in London would be entered in London. Where the writ of summons is issued out of a district registry and the plaintiff is entitled to enter interlocutory judgment under Order XIII., Rule 6, or where the action proceeds in the district registry and the plaintiff is entitled to enter interlocutory judgment under Order XXIX., Rule 4 or 5, in either case such interlocutory judgment, and, when damages shall have been assessed, final judgment shall be entered in the district registry, unless the Court or a Judge shall otherwise order.

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

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

3. Where an action proceeds in the district registry all writs of execution for enforcing any judgment or order therein shall issue from the district registry, unless the Court or a Judge shall otherwise direct. Where final judgment is entered in the district registry costs shall be taxed in such registry unless the Court or a Judge shall otherwise order.

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

5. Every application to a district registrar shall be made in the same manner in which applications at chambers are directed to be made by these Rules.

6. If any matter appears to the district registrar proper for the decision of a Judge, the registrar may refer the same to a Judge, and

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

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

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

9. Every district registrar and other officer of a district registry shall be subject to the orders and directions of the Court or a Judge as fully as any other officer of the Court, and every proceeding in a district registry shall be subject to the control of the Court or a Judge, as fully as a like proceeding in London.

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

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

Where the writ is specially indorsed under Order III., Rule 6, and the plaintiff does not within four days after the appearance of such defendant give notice of an application for an order against him under Order XIV.; then such defendant may remove the action as of right at any time after the expiration of such four days, and before delivering a defence, and before the expiration of the time for doing so:

Where the writ is specially indorsed and the plaintiff has made such application as in the last paragraph mentioned, and the defendant has obtained leave to defend in manner provided by Order XIV.; then such defendant may remove the action as of right at any time after the order giving him leave to defend, and before delivering a defence and before the expiration of the time for doing so:

Where the writ is not specially indorsed any defendant may remove the action as of right at any time after appearance, and before delivering a defence, and before the expiration of the time for doing so.

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

13. In any case not provided for by the last two preceding Rules, any party to an action proceeding in a district registry may apply to the Court or a Judge, or to the district registrar, for an order to remove the action from the district registry to London, and such Court, Judge, or registrar, may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall seem just.

Any party to an action proceeding in London may apply to the Court or a Judge for an order to remove the action from London to any district registry, and such Court or Judge may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall seem just.

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

ORDER XXXVI.

TRIAL.

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

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

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

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

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

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

6. Subject to the provisions of the preceding Rules, the Court or a Judge may, in any action at any time or from time to time, order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the place or places for such trial or trials, and in all cases may order that one or more issues of fact be tried before any other or others.

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

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

A.D. 1875. which it is entered for trial. It may be in the Form No. 14 in Appendix (B.), with such variations as circumstances may require.

9. Ten days notice of trial shall be given, unless the party to whom it is given has consented to take short notice of trial; and shall be sufficient in all cases, unless otherwise ordered by the Court or a Judge. Short notice of trial shall be four days notice.

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

11. Notice of trial for London or Middlesex shall not be or operate as for any particular sittings; but shall be deemed to be for any day after the expiration of the notice on which the action may come on for trial in its order upon the list.

12. Notice of trial elsewhere than in London or Middlesex shall be deemed to be for the first day of the then next assizes at the place for which notice of trial is given.

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

14. If the party giving notice of trial for London or Middlesex omits to enter the action for trial on the day or day after giving notice of trial, the party to whom notice has been given may, unless the notice has been countermanded under the last Rule, within four days enter the action for trial.

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

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

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

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

19. If, when an action is called on for trial, the defendant appears, and the plaintiff does not appear, the defendant, if he has

no counter-claim, shall be entitled to judgment dismissing the action, but if he has a counter-claim, then he may prove such claim so far as the burden of proof lies upon him. A.D. 1875.

20. Any verdict or judgment obtained where one party does not appear at the trial, may be set aside by the Court or a Judge upon such terms as may seem fit, upon an application made within six days after the trial; such application may be made either at the assizes or in Middlesex.

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

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

23. Upon every trial at the assizes, or at the London and Middlesex sitting of the Queen's Bench, Common Pleas, or Exchequer Division, where the officer present at the trial is not the officer by whom judgments ought to be entered, the associate shall enter all such findings of fact as the Judge may direct to be entered, and the directions, if any, of the Judge as to judgment, and the certificates, if any, granted by the Judge, in a book to be kept for the purpose.

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

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

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

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

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

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

30. Where any cause or matter, or any question in any cause or matter, is referred to a Referee, he may, subject to the order of the Court or a Judge, hold the trial at or adjourn it to any place which he may deem most convenient, and have any inspection or view, either by himself or with his assessors (if any), which he may deem expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the Court or a Judge, proceed with the trial *de die in diem*, in a similar manner as in actions tried by a jury.

31. Subject to any order to be made by the Court or Judge ordering the same, evidence shall be taken at any trial before a Referee, and the attendance of witnesses may be enforced by subpoena, and every such trial shall be conducted in the same manner, as nearly as circumstances will admit, as trials before a Judge of the High Court, but not so as to make the tribunal of the Referee a public court of justice.

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

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

34. The Referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the Court, or state any facts specially, with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the Court may direct; and the Court

shall have power to require any explanation or reasons from the Referee, and to remit the cause or matter, or any part thereof, for re-trial or further consideration to the same or any other Referee. A.D. 1875.

ORDER XXXVII.

EVIDENCE GENERALLY.

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

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

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

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

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ORDER XXXVIII.

EVIDENCE BY AFFIDAVIT.

1. Within fourteen days after a consent for taking evidence by affidavit as between the plaintiff and the defendant has been given, or within such time as the parties may agree upon, or a Judge in Chambers may allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor a list thereof.
2. The defendant within fourteen days after delivery of such list, or within such time as the parties may agree upon, or a Judge in Chambers may allow, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof.
3. Within seven days after the expiration of the said fourteen days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor a list thereof.
4. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party, may serve upon the party by whom such affidavit has been filed, a notice in writing, requiring the production of the deponent for cross-examination before the Court at the trial, such notice to be served at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a Judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.
5. The party to whom such notice as is mentioned in the last preceding Rule is given, shall be entitled to compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined.
6. When the evidence in any action is under this order taken by affidavit, such evidence shall be printed, and the notice of trial shall be given at the same time or times after the close of the evidence as in other cases is by these Rules provided after the close of the pleadings.

ORDER XXXIX.

MOTION FOR NEW TRIAL.

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

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

3. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, unless in the opinion of the Court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial of the action; and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy, the Court may give final judgment as to part thereof, and direct a new trial as to the other part only.

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

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

ORDER XL.

MOTION FOR JUDGMENT.

1. Except where by the Act or by these Rules it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained by motion for judgment.

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

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

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

5. Where at the trial of an action the Judge or a Referee has directed that any judgment be entered, any party may, without any leave reserved, move to set aside such judgment, and to enter any other judgment, on the ground that upon the finding as entered the judgment so directed is wrong.

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

7. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down the action on motion for judgment as soon as such issues or questions have been determined. If he does not so set it down, and give notice thereof to the other parties within ten days after his right so to do has arisen, then after the expiration of such ten days any defendant may set down the action on motion for judgment, and give notice thereof to the other parties.

8. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders

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it desirable that the trial or determination thereof should be postponed, may apply to the Court or a Judge for leave to set down the action on motion for judgment, without waiting for such trial or determination. And the Court or Judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other questions of fact.

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

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

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

ORDER XLI.

ENTRY OF JUDGMENT.

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

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

2. Where any judgment is pronounced by the Court or a Judge in Court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, and the judgment shall take effect from that date.

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

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

5. Where by the Act or these Rules, or otherwise, any judgment may be entered pursuant to any order or certificate, or return to any writ, the production of such order or certificate sealed with the seal of the Court, or of such return, shall be a sufficient authority to the officer to enter judgment accordingly.

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

ORDER XLII.

EXECUTION.

1. A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money of any Court whose jurisdiction is transferred by the said Act might have been enforced at the time of the passing thereof.

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

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

4. A judgment for the recovery of any property other than A.D. 1875.
land or money may be enforced :

By writ for delivery of the property :

By writ of attachment :

By writ of sequestration.

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

6. In these Rules the term "writ of execution" shall include writs of fieri facias, capias, elegit, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the term "issuing execution against any party" shall mean the issuing of any such process against his person or property as under the preceding Rules of this Order shall be applicable to the case.

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

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

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

(b.) Against any person who has admitted on the pleadings that he is, or has been adjudged to be a partner :

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

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

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

A.D. 1875. ment upon which the writ of execution is to issue, or an office copy thereof, showing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the judgment creditor to execution.

10. No writ of execution shall be issued without the party issuing it, or his solicitor, filing a præcipe for that purpose. The præcipe shall contain the title of the action, the reference to the record, the date of the judgment, and of the order, if any, directing the execution to be issued, the names of the parties against whom, or of the firms against whose goods, the execution is to be issued; and shall be signed by the solicitor of the party issuing it, or by the party issuing it, if he do so in person. The forms in Appendix (E.) hereto may be used, with such variations as circumstances may require.

11. Every writ of execution shall be indorsed with the name and place of abode or office of business of the solicitor actually suing out the same, and when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor, the name and place of abode of such other solicitor shall also be indorsed upon the writ; and in case no solicitor shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's or defendant's residence, if any such there be.

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

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

14. Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of 4*l.* per cent. per annum from the time when the judgment was entered up, provided that in cases where there is an agreement between the parties that more than 4*l.* per cent. interest shall be secured by the judgment, then the indorsement may be accordingly to levy the amount of interest so agreed.

15. Every person to whom any sum of money or any costs shall be payable under a judgment, shall immediately after the time when the judgment was duly entered, be entitled to sue out one or more writ or writs of fieri facias or one or more writ or writs of elegit to enforce payment thereof, subject nevertheless as follows :

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

(b.) The Court or Judge at the time of giving judgment, or the Court or a Judge afterwards, may give leave to issue execution before, or may stay execution until any time after the expiration of the periods herein-before prescribed.

16. A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner herein-after provided ; but such writ may, at any time before its expiration, by leave of the Court or a Judge, be renewed, by the party issuing it, for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the Court bearing the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his attorney, and bearing the like seal of the court; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof.

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

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

19. Where six years have elapsed since the judgment, or any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the Court or a Judge for leave to issue execution accordingly. And such Court or Judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary

A.D. 1875. to determine the rights of the parties, shall be tried in any of the ways in which any question in an action may be tried. And in either case such Court or Judge may impose such terms as to costs or otherwise, as shall seem just.

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

21. In cases other than those mentioned in Rule 18 any person not being a party in an action, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to the action; and any person not being a party in an action, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to the action.

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

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

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

ORDER XLIII.

WRITS OF FIERI FACIAS AND ELEGIT.

1. Writs of *fieri facias* and of *elegit* shall have the same force and effect as the like writs have heretofore had, and shall be executed in the same manner in which the like writs have heretofore been executed.

2. Writs of *venditioni exponas*, *distringas nuper vice comitem*, *fieri facias de bonis ecclesiasticis*, *sequestrari facias de bonis ecclesiasticis*, and all other writs in aid of a writ of *fieri facias* or of *elegit*, may be issued and executed in the same cases and in the same manner as heretofore.

ORDER XLIV.

ATTACHMENT.

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

2. No writ of attachment shall be issued without the leave of the Court or a Judge, to be applied for on notice to the party against whom the attachment is to be issued.

ORDER XLV.

ATTACHMENT OF DEBTS.

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

2. The Court or a Judge may, upon the ex parte application of such judgment creditor, either before or after such oral examination, and upon affidavit by himself or his solicitor stating that judgment has been recovered, and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, order that all debts owing or accruing from such third person (herein-after called the garnishee) to the judgment debtor shall be attached to answer the judgment debt; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Court or a Judge or an officer of the Court, as such Court or Judge shall appoint, to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt.

3. Service of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee, in such manner as the Court or Judge shall direct, shall bind such debts in his hands.

A.D. 1875.

4. If the garnishee does not forthwith pay into Court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the Court or Judge may order execution to issue, and it may issue accordingly, without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment debt.

5. If the garnishee disputes his liability, the Court or Judge, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined.

6. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or Judge may order such third person to appear, and state the nature and particulars of his claim upon such debt.

7. After hearing the allegations of such third person under such order, and of any other person whom by the same or any subsequent order the Court or Judge may order to appear, or in case of such third person not appearing when ordered, the Court or Judge may order execution to issue to levy the amount due from such garnishee, or any issue or question to be tried or determined according to the preceding Rules of this Order, and may bar the claim of such third person, or make such other order as such Court or Judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Court or Judge shall think just and reasonable.

8. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the judgment debtor, to the amount paid or levied, although such proceeding may be set aside, or the judgment reversed.

9. There shall be kept by the proper officer a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise; and copies of any entries made

therein may be taken by any person upon application to the proper officer. A.D. 1875.

10. The costs of any application for an attachment of debts and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or a Judge.

ORDER XLVI.

CHARGING OF STOCK OR SHARES AND DISTINGAS.

1. An order charging stock or shares may be made by any Divisional Court or by any Judge, and the proceedings for obtaining such order shall be such as are directed, and the effect shall be such as is provided by 1 & 2 Vict. c. 110. ss. 14 and 15., and 3 & 4 Vict. c. 82. s. 1.

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

ORDER XLVII.

WRIT OF SEQUESTRATION.

Where any person is by any judgment directed to pay money into Court or to do any other act in a limited time, and after due service of such judgment refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment shall at the expiration of the time limited for the performance thereof, be entitled, without obtaining any order for that purpose, to issue a writ of sequestration against the estate and effects of such disobedient person. Such writ of sequestration shall have the same effect as a writ of sequestration in Chancery has heretofore had, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration have heretofore been dealt with by the Court of Chancery.

A.D. 1875.

ORDER XLVIII.

WRIT OF POSSESSION.

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

2. Where by any judgment any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting such judgment shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit showing due service of such judgment and that the same has not been obeyed.

ORDER XLIX.

WRIT OF DELIVERY.

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

ORDER L.

CHANGE OF PARTIES BY DEATH, &c.

1. An action shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title pendente lite.

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

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

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

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

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

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

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

A.D. 1875.

ORDER LI.

TRANSFERS AND CONSOLIDATION.

1. Any action or actions may be transferred from one division to another of the High Court or from one Judge to another of the Chancery Division by an order of the Lord Chancellor, provided that no transfer shall be made from or to any division without the consent of the President of the Division.

2. Any action may, at any stage, be transferred from one division to another by an order made by the Court or any Judge of the Division to which the action is assigned : Provided that no such transfer shall be made without the consent of the President of the Division to which the action is proposed to be transferred.

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

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

ORDER LII.

INTERLOCUTORY ORDERS AS TO MANDAMUS INJUNCTIONS OR INTERIM PRESERVATION OF PROPERTY, &c.

1. When by any contract a *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 any action, to make any order for the sale, by any person or persons named in such order, and in such manner, and on such terms as to the Court or Judge may seem desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.

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

4. An application for an order under section 25, sub-section 8, of the Act, or under Rules 2 or 3 of this Order, may be made to the Court or a Judge by any party. If the application be by the plaintiff for an order under the said sub-section 8 it may be made either *ex parte* or with notice, and if for an order under the said Rules 2 or 3 of this Order it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it be by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application.

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

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

MOTIONS AND OTHER APPLICATIONS.

1. Where by these Rules any application is authorised to be made to the Court or a Judge in an action, such application, if made to a Divisional Court or to a Judge in Court, shall be made by motion.
2. No rule or order to show cause shall be granted in any action, except in the cases in which an application for such rule or order is expressly authorised by these Rules.
3. Except where by the practice existing at the time of the passing of the said Act any order or rule has heretofore been made *ex parte* absolute in the first instance, and except where by these Rules it is otherwise provided, and except where the motion is for a rule to show cause only, no motion shall be made without previous notice to the parties affected thereby. But the Court or Judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or Judge may think just; and any party affected by such order may move to set it aside.
4. Unless the Court or Judge give special leave to the contrary there must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion.
5. If on the hearing of a motion or other application the Court or Judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court or Judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court or Judge may think fit to impose.
6. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court or Judge shall think fit.
7. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice, or any petition or summons upon any defendant, who, having been duly served with a writ of summons to appear in the action, has not appeared within the time limited for that purpose.

8. The plaintiff may, by leave of the Court or a Judge to be obtained *ex parte*, serve any notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons and before the time limited for the appearance of such defendant. A.D. 1875.

ORDER LIV.

APPLICATIONS AT CHAMBERS.

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

2. In the Queen's Bench, Common Pleas, and Exchequer Divisions a master, and in the Probate, Divorce, and Admiralty Division a registrar, may transact all such business and exercise all such authority and jurisdiction in respect of the same as under the Act, or the Schedule thereto, or these Rules, may be transacted or exercised by a Judge at chambers, except in respect of the following proceedings and matters; that is to say,—

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

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

The settlement of issues, except by consent :

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

Appeals from district registrars :

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

Prohibitions :

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

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

Reviewing taxation of costs :

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

Acknowledgments of married women.

3. If any matter appears to the master proper for the decision of a Judge the master may refer the same to a Judge, and the Judge

A.D. 1875. may either dispose of the matter or refer the same back to the master with such directions as he may think fit.

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

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

6. In the Queen's Bench, Common Pleas, and Exchequer Division every appeal to the Court from any decision at chambers shall be by motion, and shall be made within eight days after the decision appealed against.

ORDER LV.

COSTS.

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

ORDER LVI.

NOTICES AND PAPER, &c.

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

2. Proceedings required to be printed shall be printed on cream wove machine drawing foolscap folio paper, 19 lbs. per mill ream, or thereabouts, in pica type leaded, with an inner margin about three quarters of an inch wide, and an outer margin about two inches and a half wide.

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

ORDER LVII.

A.D. 1875.

TIME.

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

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

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

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

5. The time of the long vacation shall not be reckoned in the computation of the times appointed or allowed by these Rules for filing, amending, or delivering any pleading, unless otherwise directed by a Court or a Judge.

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

ORDER LVIII.

APPEALS.

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

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

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3. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may seem just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as to the Court of Appeal may seem fit.

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

5. The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court of First Instance, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the Court. The Court of Appeal shall have power to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said Court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may seem just.

6. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied, he shall,

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within the time specified in the next Rule, or such time as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers conferred by the Act upon the Court of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs.

7. Subject to any special order which may be made, notice by a respondent under the last preceding Rule shall in the case of any appeal from a final judgment be an eight days notice, and in the case of an appeal from an interlocutory order a two days notice.

8. The party appealing from a judgment or order shall produce to the proper officer of the Court of Appeal the judgment or order or an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed, and such officer shall thereupon set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Court of Appeal or a Judge thereof shall otherwise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal.

9. The time for appealing from any order or decision made or given in the matter of the winding up of a company under the provisions of the Companies Act, 1862, or any Act amending the same, or any order or decision made in the matter of any bankruptcy, or in any other matter not being an action, shall be the same as the time limited for appeal from an interlocutory order under Rule 15.

10. Where an ex parte application has been refused by the Court below, an application for a similar purpose may be made to the Court of Appeal ex parte within four days from the date of such refusal, or within such enlarged time as a Judge of the Court below or of the Appeal Court may allow.

11. When any question of fact is involved in an appeal, the evidence taken in the Court below bearing on such question shall, subject to any special order, be brought before the Court of Appeal as follows :

(a.) As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed.

(b.) As to any evidence given orally, by the production of a copy of the Judge's notes, or such other materials as the Court may deem expedient.

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12. Where evidence has not been printed in the Court below, the Court below or a Judge thereof, or the Court of Appeal or a Judge thereof, may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the purpose of an appeal without such order shall bear the costs thereof, unless the Court of Appeal or a Judge thereof shall otherwise order.
13. If, upon the hearing of an appeal, a question arise as to the ruling or direction of the Judge to a jury or assessors, the Court shall have regard to verified notes or other evidence, and to such other materials as the Court may deem expedient.
14. No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Court of Appeal from giving such decision upon the appeal as may seem just.
15. No appeal from any interlocutory order shall, except by special leave of the Court of Appeal, be brought after the expiration of twenty-one days, and no other appeal shall, except by such leave, be brought after the expiration of one year. The said respective periods shall be calculated from the time at which the judgment or order is signed, entered, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal. Such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be directed under special circumstances by the Court of Appeal.
16. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court appealed from, or any Judge thereof, or the Court of Appeal, may so order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct.
17. Wherever under these Rules an application may be made either to the Court below or to the Court of Appeal, or to a Judge of the Court below or of the Court of Appeal, it shall be made in the first instance to the Court or Judge below.
18. Every application to a Judge of the Court of Appeal shall be by motion, and the provisions of Order LIII. shall apply thereto.