

No. XIII.

EQUITY CLAIMS.

An Act to provide a more summary and expeditious mode of obtaining equitable relief in the Supreme Court in certain cases. [19th August, 1852.]

WHEREAS it is expedient to provide a more summary and expeditious mode of obtaining equitable relief in certain cases Be it therefore enacted by His Excellency the Governor of New South Wales by and with the advice and consent of the Legislative Council thereof as follows:—

Parties may commence proceedings by filing claims with Master in Equity in certain cases.

1. Any person seeking equitable relief may without special leave of the Court and instead of proceeding by bill of complaint file a claim in the office of the Master in Equity of the Supreme Court in any of the following cases that is to say in any case where the plaintiff claims to be—

Creditor of deceased.

1. A creditor upon the estate of any deceased person seeking payment of his debt out of the deceased's personal assets

Legatee.

2. A legatee (including any person interested in a legacy) under the will of any deceased person seeking payment or delivery of his legacy (including an annuity and a specific as well as a pecuniary legacy) out of the deceased's personal assets

Residuary legatee.

3. A residuary legatee or one of the residuary legatees of any deceased person (including any person interested in the residue) seeking an account of the residue and payment or appropriation of his share in the personal estate of the deceased person

Next of kin.

4. The person or any of the persons entitled to the personal estate of any person who may have died intestate and seeking an account of such personal estate and payment of his share thereof

Executor or administrator.

5. An executor or administrator of any deceased person seeking to have the personal estate of such deceased person administered under the directions of the Court

Mortgagee.

6. A legal or equitable mortgagee or person entitled to a lien as security for a debt seeking foreclosure or sale or otherwise to enforce his security

Mortgagor.

7. A person entitled to redeem any legal or equitable mortgage or any lien seeking to redeem the same

Vendor or purchaser.

8. A person entitled to the specific performance of an agreement for the sale or purchase of any property seeking such specific performance

Partner.

9. A person entitled to an account of the dealings and transactions of a partnership dissolved or expired seeking such account

Cestui que trust
To use name of trustee.

10. A person entitled to an equitable estate or interest and seeking to use the name of his trustee in prosecuting an action for his own sole benefit

Party entitled to have new trustee appointed.

11. A person entitled to have a new trustee appointed in a case where there is no power in the instrument creating the trusts to appoint new trustees or where the power cannot be exercised and seeking to appoint a new trustee.

Form of claim.

2. Such claim in the several cases enumerated in the first clause of this Act is to be in the form and to the effect set forth in Schedule

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A hereunder written as applicable to the particular case and the filing of such claim is in all cases not otherwise provided for to have the same force and effect as filing a bill. To have effect of bill.

3. Every such claim and all matters and questions arising out of the same shall be heard and determined (subject as hereinafter provided) by the Primary Judge of the Supreme Court in Equity or during his absence or illness by one other of the Judges of the said Court in the same manner as the ordinary equitable jurisdiction of the said Court is now exercised in cases where bills have been filed. Claims &c. to be heard before Primary Judge in Equity.

4. Upon filing such claim the plaintiff thereby claiming may sue out a writ of summons against the defendant to the claim requiring him to cause an appearance to be entered to such writ and also requiring him on a day or time to be therein named to shew cause if he can why such relief as is claimed by the plaintiff should not be had or why such order as shall be just with reference to the claim should not be made. Writ of summons to appear and shew cause.

5. Such writ of summons is to be in the form and to the effect in that behalf set forth in No. 1 of Schedule B hereunder written with such variations as circumstances may require and is to be sealed with the seal of the office of the Master in Equity. Form of writ of summons.

6. In any case other than those enumerated in the first clause of this Act or in any case to which the forms set forth in Schedule A are not applicable the Court (if it shall so think fit) may upon the *ex parte* application of any person seeking equitable relief and upon reading the claim proposed to be filed give leave to file such claim and sue out a writ of summons thereon under this Act and if such leave be given an indorsement thereof by the Master in Equity upon the proposed claim shall be made and he shall at the plaintiff's request forthwith file the same. By special leave a claim may be filed in cases not enumerated.

7. In the case provided for by the fifth article of the first clause of this Act any one person who under the third or fourth article of the said clause might have claimed relief against the executor or administrator of the deceased person whose personal estate is sought to be administered and the co-executor or co-administrator (if any) of the plaintiff may be named in the writ of summons as defendants to the suit and in the first instance no other person need be therein named. Who to be defendant where executor or administrator is plaintiff.

8. In other cases the only person who need be named in the writ of summons as defendant to the suit in the first instance is the person against whom the relief is directly claimed. The person only against whom direct relief claimed to be defendant.

9. All claims and all writs caveats proceedings directions and orders consequent thereon either before the Court or in the Master's Office are to be deemed proceedings writs and orders subject to the general rules orders and practice of the Court so far as the same are or may be applicable to each particular case and consistent with this Act and all orders of the Court made in such proceedings are to be enforced in the same manner and by the same process as orders of the Court made in a cause upon bill filed. Proceedings to be subject to the general orders and practice. Orders to be similarly enforced.

10. Writs of summons are as to the number of defendants to be named therein as to the mode of service thereof and as to the time and mode of entering appearances thereto to be subject to the same rules as writs of subpoena to appear to and answer bills. Writs of summons assimilated to subpoena.

11. The time for shewing cause named in any writ of summons (except a writ of summons to revive or carry on proceedings) is to be fourteen days at least after service of the writ but by consent of the parties and with the leave of the Court cause may be shewn on an earlier day. Fourteen days after service allowed to shew cause.

12. At the time for shewing cause named in the writ or as soon after as the case can be heard the defendant having previously appeared is personally or by counsel to shew cause in Court if he can (and if necessary

Defendant is then to shew cause why relief should not be had.

necessary

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necessary by affidavit) why such relief as is claimed by the claim should not be had against him.

Court may grant or refuse relief.

13. At the time appointed for shewing cause upon the motion of the plaintiff and on hearing the claim and what may be alleged on the part of the defendant or upon reading a certificate of the appearance being entered by the defendant or on affidavit of the writ of summons being duly served the Court may if it shall think fit make an order granting or refusing the relief claimed or directing any accounts or inquiries to be taken or made or other proceedings to be had for the purpose of ascertaining the plaintiff's title to the relief claimed and further the Court may direct such (if any) persons or classes of persons as it shall think necessary or fit to be summoned or ordered to appear as parties to the claim or on any proceedings before the Master with reference to any accounts or inquiries directed to be taken or made or otherwise.

or direct accounts &c.

and may direct any other persons to be summoned.

Order to have the effect of decree.

14. Every order to be so made is to have the effect of and may be enforced as a decree or decretal order made in a suit commenced by bill and duly prosecuted to a hearing according to the present course of the Court.

Court may at any time direct bill to be filed.

15. If upon the application for any such order or during any proceedings under any such order when made it shall appear to the Court that for the purposes of justice between the parties it is necessary or expedient that a bill should be filed the Court may direct or authorize such bill to be filed subject to such terms as to costs or otherwise as may be thought proper.

Form of orders.

16. The orders made for granting relief in the several cases to which the forms set forth in Schedule A are applicable may if the Court think fit be in the form and to the effect set forth in Schedule C as applicable to the particular case with such variations as circumstances may require.

Master's authority as to examination production accounts and inquiries.

17. Under every order of reference to the Master under this Act the Master is unless the Court otherwise orders to be at liberty to cause the parties to be examined on interrogatories or *vivá voce* and to produce deeds books papers and writings as he shall think fit and to cause advertisements for creditors and if he shall think it necessary but not otherwise for heirs and next of kin or other unascertained persons and the representatives of such as may be dead to be published in the usual forms or otherwise as the circumstances of the case may require and in such advertisement to appoint a time within which such persons are to come in and prove their claims and within which time unless they so come in they are to be excluded the benefit of the order and in taking any account of a deceased's personal estate under any such order of reference the Master is to inquire and state to the Court what part if any of the deceased's personal estate is outstanding or undisposed of and is also to compute interest on the deceased's debts as to such of them as carry interest after the rate they respectively carry and as to all others after the rate of six per cent. per annum from the date of the order and to compute interest on legacies after the rate of six per cent. per annum from the end of one year after the deceased's death unless any other time of payment or rate of interest is directed by the will and under every order whereby any property is ordered to be sold with the approbation of the Master the same is to be sold to the best purchaser that can be got for the same to be allowed by the Master wherein all proper parties are to join as the Master shall direct.

Upon Master's certificate additional parties may be summoned.

18. If upon the proceedings before the Master under any such order it shall appear to the Master that some persons not already parties ought to attend or to be enabled to attend the proceedings before him he is to be at liberty to certify the same and upon the production

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duction of such certificate at the Master's Office the plaintiff may sue out a writ of summons requiring the persons named in such certificate to appear to the writ and such persons are thereupon to be named and treated as defendants to the suit.

19. Such writ of summons under an order or Master's certificate is to be in the form and to the effect in that behalf set forth in No. 2 of Schedule B to this Act annexed with such variations as circumstances may require.

Form of additional summons.

20. The persons so summoned having appeared are to be at liberty to attend and to be entitled to notice of the proceedings before the Master under the order of reference subject to such directions as the Master may make in respect thereof.

Such persons may intervene in proceedings before Master.

21. Where any proceedings originally commenced by claim and writ of summons shall by the death of parties or otherwise have become abated or defective for want of parties and no new relief is sought a claim to revive or carry on the suit may be filed and such claim is to be in the form set forth in No. 12 of Schedule A to this Act annexed.

On abatement &c. claim to revive may be filed.

22. The party claiming simply to revive or carry on proceedings may sue out a writ of summons requiring the defendant thereto to appear to the writ and to shew cause if he can why the proceedings should not be revived or carried on.

And summons to revive sued out.

23. Such writ of summons is to be in the form and to the effect in that behalf set forth in No. 3 of Schedule B to this Act annexed with such variations as circumstances may require.

Form of summons to revive.

24. If any defendant to any such writ is desirous of shewing cause why the proceedings should not be revived or carried on he is to appear and file a caveat against such revivor or carrying on in the Master's Office in the form set forth in No. 4 of Schedule B to this Act annexed and to give notice thereof in writing to the opposite party if no such caveat be filed within eight days from the time limited for his appearance to the writ then at the expiration of such eight days the proceedings are to be revived and may be carried on without any order for the purpose but if any such caveat be filed the proceedings are not to be revived or carried on without an order to be obtained on motion of which due notice is to be given.

Defendant may file caveat against revivor

otherwise revivor in eight days.

If caveat filed an order to revive necessary.

25. Where any further or supplemental relief is sought and such supplemental relief is such as is provided for in any of the cases enumerated under the first clause of this Act a supplemental claim may be filed in such of the forms set forth in Schedule A to this Act annexed as is applicable to the case.

A supplemental claim may be filed.

26. If such supplemental relief is not such as is provided for by the twenty-fifth clause of this Act a supplemental claim may be filed stating shortly the nature of the plaintiff's case and the supplemental relief claimed but the leave of the Court is to be obtained previously to the filing thereof upon an *ex parte* application for the purpose in the manner specified in the sixth clause of this Act.

But in special cases leave of Court necessary.

27. A writ of summons may be sued out and other proceedings may be taken upon a supplemental claim in like manner as upon an original claim.

Summons &c. on supplemental claim.

28. Guardians ad litem to defend may be appointed for infants or persons of weak or unsound mind against whom any writ of summons may have issued under this Act in like manner as guardians ad litem to answer and defend are now appointed in suits on bill filed.

Guardian ad litem.

29. Any order or proceeding made or purporting to be made in pursuance of this Act may be discharged varied or set aside on motion and any order for accelerating proceedings may be made by consent.

Orders may be discharged &c. on motion.

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Appeal from Primary Judge.

30. Any order of the Primary Judge in Equity made under the authority of this Act may be discharged or varied by the Supreme Court sitting in Banco on motion within twenty-one days or upon re-hearing appeal or review in the same manner as orders and decrees of the said Primary Judge made in suits instituted by bill.

In special cases plaintiff may still proceed by bill.

31. If any of the cases enumerated in the first clause of this Act involve or are attended by such special circumstances affecting either the estate or personal conduct of the defendant as to require special relief the plaintiff is at liberty to seek his relief by bill as if this Act had not been passed.

Plaintiff proceeding by bill instead of by summons subjected to extra costs.

32. If at any time after this Act comes into operation any suit for any of the purposes to which the forms set forth in Schedule A to this Act annexed are applicable shall be commenced by bill and prosecuted to a hearing in the usual course and upon the hearing it shall appear to the Court that an order to the effect of the decree then made or an order equally beneficial to the plaintiff might have been obtained upon a proceeding by summons in the manner authorized by this Act the Court may order that the increased costs which have been occasioned by the proceeding by bill beyond the amount of costs which would have been sustained in the proceeding by summons shall be borne and paid by the plaintiff.

Fees to Master.

33. The Master is directed to take the fees mentioned in No. 1 of Schedule D to this Act annexed which said fees shall be by him paid to Her Majesty at the Colonial Treasury at Sydney for the public uses of the Colony and in support of the Government thereof Solicitors shall be entitled to charge and shall be allowed the fees mentioned in No. 2 of Schedule D to this Act annexed.

To Solicitors.

34. This Act shall come into force on the first day of September in the present year.

SCHEDULE A.

Form of Claim.

Form of claim by creditor.

1.—By a creditor upon the estate of a deceased person seeking payment of his debt out of the deceased's personal assets.

In the Supreme Court }
In Equity.)

Between A. B. plaintiff
and
E. F. defendant.

THE claim of A. B. of the above-named plaintiff The said A. B. states that C. D. late of deceased was at the time of his death and that his estate still is justly indebted to him the said A. B. in the sum of £ for goods sold and delivered by the said A. B. to the said C. D. (or otherwise as the case may be or if the debt is secured by any written instrument state the date and nature thereof) And that the said C. D. died in or about the month of and that the above-named defendant E. F. is the executor (or administrator) of the said C. D. and that the said debt hath not been paid and therefore the said A. B. claims to be paid the said debt or sum of £ with his costs of this suit and in default thereof he claims to have the personal estate of the said C. D. administered in this Court on behalf of himself and all other the unsatisfied creditors of the said C. D. and for that purpose that all proper directions may be given and accounts taken.

NOTE—This form may be varied according to the circumstances of the case where the claimant is not the original creditor but has become interested in or entitled to the debt in which case the character on which he claimed is to be stated.

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2.—By a legatee under the will of any deceased person seeking payment or delivery of his Claim by legatee. legacy out of the testator's personal assets.

In the Supreme Court }
In Equity. }

Between A. B. plaintiff
C. D. defendant.

THE claim of A. B. of the above-named plaintiff The said A. B. states that he is a legatee to the amount of £ under the will dated the day of of late of deceased who died on the day of and that the above-named C. D. is the executor of the said and that the said legacy of £ together with interest thereon at the rate of £ per cent. per annum from the day of (the day mentioned in the will for the payment of the legacy or the expiration of twelve calendar months after the said testator's death) is now due and owing to him the said A. B. (or still unpaid or unsatisfied) (or unappropriated or unsecured) and the said A. B. therefore claims to be paid (or satisfied) the said legacy and interest (or to have the said legacy and interest appropriated and secured) and in default thereof he claims to have the personal estate of the said administered in this Court on behalf of himself and all other the legatees of the said and for that purpose that all proper directions may be given and accounts taken.

NOTE—This form may be varied according to the circumstances of the case where the legacy is an annuity or specific or where the plaintiff is not the legatee but has become entitled to or interested in the legacy in which case the character in which the plaintiff claims is to be stated.

3.—By a residuary legatee or any of several residuary legatees of any deceased person Claim by residuary seeking an account of the residue and payment or appropriation of his share legatee. therein.

In the Supreme Court }
In Equity. }

Between A. B. plaintiff
C. D. defendant.

THE claim of A. B. of the above-named plaintiff The said A. B. states that he is the residuary legatee (or one of the residuary legatees) under the will dated the day of of late of who died on the day of and that the above-named defendant C. D. is the executor of the said and that the said C. D. hath not paid to the said A. B. the (or his share of the) residuary personal estate of the said testator The said A. B. therefore claims to have the personal estate of the said administered in this Court and to have his costs of this suit and for that purpose that all proper directions may be given and accounts taken.

NOTE—This form may be varied according to the circumstances of the case—where the plaintiff is not the residuary legatee but has become entitled to or interested in the residue in which case the character in which he claims is to be stated.

4.—By the person or any of the persons entitled to the personal estate of any person who Claim by next of may have died intestate and seeking an account of such personal estate and payment kin. of his share thereof.

In the Supreme Court }
In Equity. }

Between A. B. plaintiff
C. D. defendant.

THE claim of A. B. of the above-named plaintiff The said A. B. states that he is the next of kin (or one of the next of kin) according to the Statutes for the distribution of the personal estates of intestates of late of who died on the day of intestate and that the said A. B. is entitled to (or to a share of) the personal estate of the said deceased and that the said defendant C. D. is the administrator of the personal estate of the said and that the said C. D. has not accounted for or paid to the said A. B. the (or the said A. B.'s share of the) personal estate of the said intestate The said A. B. therefore claims to have the personal estate of the said administered in this Court and to have his costs of this suit and for that purpose that all proper directions may be given and accounts taken.

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Claim by executor or administrator. 5.—By the executor or administrator of a deceased person claiming to have the personal estate of the testator administered under the direction of the Court.

In the Supreme Court }
In Equity. }

Between A. B. plaintiff
C. D. defendant.

THE claim of A. B. of
excutor (or administrator) of E. F. late of
departed this life on or about

The said A. B. states that he is the
but now deceased who
and that he hath possessed the per-

(This form may be varied according to circumstances when the plaintiff's co-executor or co-administrator is a defendant.)

personal estate of the said E. F. to some amount and that he is willing and desirous to account for the same and that the whole of the personal estate of the said E. F. should be duly administered in this Court for the benefit of all persons interested therein or entitled thereto and that C. D. is interested in the said personal estate as one of the next of kin (or residuary legatee) of the said E. F. And the said A. B. claims to have the personal estate of the said E. F. applied in a due course of administration under the direction of this Court and in the presence of the said C. D. and such other persons interested in the said estate as this Court may be pleased to direct or that the said C. D. may shew good cause to the contrary and that the costs of this suit may be provided for and for these purposes that all proper directions may be given and accounts taken.

Claim by mortgagee. 6.—By a legal or equitable mortgagee or person entitled to a lien as security for a debt seeking foreclosure or sale or otherwise to enforce his security.

In the Supreme Court }
In Equity. }

Between A. B. plaintiff
C. D. defendant.

(The names only of the parties are to be set out not the substance or effect of the document.)

THE claim of A. B. of the above-named plaintiff The said A. B. states that under or by virtue of an indenture (or other document) dated the day of and made between (parties) (and a transfer thereof made by indenture dated the day of and made between [parties]) the said A. B. is a mortgagee (or an equitable mortgagee) of (or is entitled to a lien upon) certain freehold property (or copyhold or leasehold or other property as the case may be) therein comprised for securing the sum of pounds and interest and that the time for the payment thereof has elapsed and that the above-named C. D. is entitled to the equity of redemption of the said mortgaged premises (or the premises subject to such lien) And the said A. B. therefore claims to be paid the said sum of pounds and interest and the costs of this suit and in default thereof he claims to foreclose the equity of redemption of the said mortgaged premises (or to have the said mortgaged premises sold or to have the premises subject to such lien sold as the case may be and the produce thereof applied in or towards payment of his said debt and costs) and for that purpose to have all proper directions given and accounts taken.

(If there is no written security to be referred to the property is to be described generally.)

Claim by mortgagor. 7.—By a person entitled to the redemption of any legal or equitable mortgage or any lien seeking to redeem the same.

In the Supreme Court }
In Equity. }

Between A. B. plaintiff
C. D. defendant.

THE claim of A. B. of the above-named plaintiff The said A. B. states that under or by virtue of an indenture (or other document) dated the day of and made between (parties) (and the assurances hereinafter mentioned that is to say an indenture dated the day of the will of dated the day of) the said A. B. is entitled to the equity of redemption of certain freehold property (or copyhold or leasehold or other property as the case may be) therein comprised which was originally mortgaged (or pledged) for securing the sum of pounds and interest and that the above-named defendant C. D. is now by virtue of the said indenture dated the day of (and of subsequent assurances) the mortgagee of the said property (or holder of the said lien) and entitled to the principal money and interest remaining due upon the said mortgage (or lien) and he believes that the amount of principal money and interest now due upon the said mortgage (or lien) is the sum of pounds or thereabouts and that the said A. B. hath made or caused to be made an application to the said C. D. to recover the said sum of pounds and any costs justly payable to him and to re-convey to the said A. B. the said mortgaged property (or property subject to the said lien) upon payment thereof and of any costs due to him in respect of the said security but

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but that the said C. D. has not so done And therefore the said A. B. claims to be entitled to redeem the said mortgaged property (*or property subject to the said lien*) and to have the same re-conveyed (*or delivered up*) to him upon payment of the principal money and interest and costs due and owing upon the said mortgage (*or lien*) and for that purpose to have all proper directions given and accounts taken.

8.—By a person entitled to the specific performance of an agreement for the sale or purchase of any property seeking such specific performance. Claim by vendor or purchaser.

In the Supreme Court }
In Equity. }

Between A. B. plaintiff
C. D. defendant.

THE claim of A. B. of the above-named plaintiff The said A. B. states that by an agreement dated the day of and signed by the above-named defendant C. D. he the said C. D. contracted to buy of him (*or to sell to him*) certain freehold property (*or copyhold leasehold or other property as the case may be*) therein described or referred to for the sum of pounds and that he has made or caused to be made an application to the said C. D. specifically to perform the said agreement on his part but that he has not done so and the said A. B. therefore claims to be entitled to a specific performance of the said agreement and to have his costs of this suit and for that purpose to have all proper directions given and he hereby offers specifically to perform the same on his part.

9.—By a person entitled to an account of the dealings and transactions of a partnership dissolved or expired seeking such account. Claim by partners.

In the Supreme Court }
In Equity. }

Between A. B. plaintiff
C. D. defendant.

THE claim of A. B. of the above-named plaintiff The said A. B. states that from the day of down to the day of he and the above-named C. D. carried on the business of in co-partnership under certain articles of co-partnership dated the day of and made between (*parties*) (*or without articles as the case may be*) and he saith that the said partnership was dissolved (*or expired as the case may be*) on the day of and he claims an account of the partnership dealings and transactions between him and the said C. D. and to have the affairs and business of the said partnership wound up and settled under the direction of this Court and for that purpose that all proper directions may be given and accounts taken.

10.—By a person entitled to an equitable estate or interest and claiming to use the name of his trustee in prosecuting an action for his own sole benefit. Claim by cesti que trust to use Trustee's name.

In the Supreme Court }
In Equity. }

Between A. B. plaintiff.
C. D. defendant.

THE claim of A. B. of the above-named plaintiff The said A. B. states that under an indenture dated the day of and made between (*parties*) he is entitled to an equitable estate or interest in certain property therein described or referred to and that the above-named defendant is a trustee for him of such property and that being desirous to prosecute an action at law against in respect of such property he has made or caused to be made an application to the said defendant to allow him to bring such action in his name and has offered to indemnify him against the costs of such action but that the said defendant has refused or neglected to allow his name to be used for that purpose and the said A. B. therefore claims to be allowed to prosecute the said action in the name of the said defendant and hereby offers to indemnify him against the costs of such action.

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Claim to appoint new trustee. 11.—By a person entitled to have a new trustee appointed in case where there is no power in the instrument creating the trust to appoint new trustees or when the power cannot be exercised and seeking to appoint a new trustee.

In the Supreme Court }
In Equity. }

Between A. B. plaintiff.
C. D. defendant.

THE claim of A. B. of the above-named plaintiff The said A. B. states that under an indenture dated the day of and made between (*parties*) (*or will of*) *or other document as the case may be*) he the said A. B. is interested in certain trust property therein mentioned or referred to and that the above-named defendant C. D. is the present trustee of such property (*or is the real or personal representative of the last surviving trustee of such property as the case may be*) and that there is no power in the said indenture (*or will or other document*) to appoint new trustees (*or that the power in the said indenture [or other document] to appoint new trustees cannot be executed*) and the said A. B. therefore claims to have new trustees appointed of the said trust property in the place of (*or to act in conjunction with*) the said C. D.

Claim to revive. 12.—By a party entitled to revive or to carry on a suit and seeking to revive or carry on the suit.

In the Supreme Court }
In Equity. }

Between A. B. plaintiff
and
C. D. defendant
and
Between G. H. plaintiff
and
K. L. defendant.

THE claim of G. H. of the above-named plaintiff The said G. H. states that the said A. B. filed his claim in this suit on or about that on or about the said A. B. died (*or became bankrupt or insolvent*) that the said suit and all proceedings thereunder have thereby become abated (*or defective*) that the said G. H. has become and is the executor (*or administrator or the assignee of the estate and effects*) of the said A. B. and he claims to be entitled to revive the said suit and proceedings (*or to be entitled to carry on the said suit and proceedings*) and to have all such relief as the said A. B. would have been entitled to if he had lived (*or had not become bankrupt or insolvent*) or that the said C. D. ought to shew good cause to the contrary.

NOTE—*This form may be varied according to the circumstances of each case.*

SCHEDULE B.

Form of writ of summons on claim.

Form of writ of summons.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith to C. D. Greeting—

WHEREAS A. B. hath caused to be filed with the Master of Our Supreme Court a claim as follows (*claim to be set forth verbatim*) therefore We command you (*and every of you where there is more than one defendant*) that within eight days after the service of this writ on you exclusive of the day of such service laying all excuses and other matters aside you do cause an appearance to this writ to be entered for you in Our Supreme Court And further that on the fourteenth day after the service of this writ you do personally or by your Counsel appear in the Supreme Court at ten of the clock in the forenoon and then and there shew cause if you can why the said A. B. should not have such relief against you as is claimed by the said claim or why such order as shall be just with reference to the claim should not be made and hereof fail not at your peril Witness &c. the day of in the year of Our reign.

(*The following Memorandum to be placed at the foot.*)

Appearance to be entered at the Master's Office in the Supreme Court House Sydney and if you neglect to enter your appearance and either personally or by your Counsel appear in the Supreme Court at the place and on the day and hour above mentioned you will be subject to such order as the Court may think fit to make against you in your absence for payment or satisfaction of the said claim or as the nature and circumstances of the case may require.

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SCHEDULE B No. 2.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith to C. D. Greeting— Summons on Master's certificate.

WHEREAS A. B. hath caused to be filed a claim against (D) claiming &c. (*set forth only the claim without the introductory statement*) And whereas by an order made in the said cause dated the _____ day of _____ it was ordered

And whereas _____ the Master in Equity of this Court hath by his certificate dated the _____ day of _____ certified to us that you ought to be a party to the said cause and to be served with a writ of summons therein therefore We command you that within eight days after the service of this writ on you exclusive of the day of such service you do cause an appearance to be entered for you in Our Supreme Court and that you do attend the proceedings in the said Court as a party defendant thereto and do and observe such things as are by Our said Court ordered and directed in the said cause and herein fail not.

Witness &c.

(*The following Memorandum to be placed at the foot.*)

Appearance to be entered at the Master's Office in the Supreme Court House Sydney and if you neglect to appear the proceedings will be carried on without further notice to you.

SCHEDULE B No. 3.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith to _____ Greeting— Summons to revive.

WHEREAS A. B. hath caused to be filed a claim against C. D. claiming &c. (*set forth the claim verbatim*)

And whereas the said A. B. hath departed this life (*or become bankrupt or as the case may be*) whereby the said suit hath become abated (*or defective*) and G. H. is now the legal personal representative (*or assignee*) of the said A. B. and as such claims to be entitled to revive (*or carry on*) the said suit therefore We command you the said C. D. that within eight days after the service of this writ on you exclusive of the day of such service you do cause an appearance to be entered for you in Our Supreme Court and further that within sixteen days after such service you do shew good cause if you can why the suit and all proceedings thereunder should not be revived against you and be in the same plight and condition as the same were in at the time of the said abatement thereof (*or why the suit and proceedings should not be carried on against you as claimed*) Witness &c.

(*The following Memorandum to be placed at the foot.*)

Appearance to be entered at the Master's Office in the Supreme Court House Sydney and if you desire to shew cause you are to enter a caveat at the same Office within the time limited otherwise the suit will stand revived or may be carried on without further notice.

SCHEDULE B No. 4.

Form of caveat against revivor.

Between A. B. plaintiff
C. D. defendant.
And between G. H. plaintiff
K. L. defendant.

Caveat against revivor.

The said K. L. objects to the suit in the plaintiff's claim mentioned being revived (*or carried on*) against him in the manner claimed by the plaintiff.

Equity Claims.

SCHEDULE C.

Form of order to pay
debt or legacy on
admission of assets.

1.—Form of order for payment of a debt or legacy.

In the Supreme Court }
In Equity. }

The day of A.D.
Between A. B. plaintiff
and
C. D. defendant.

UPON motion this day made unto the Court by Mr. of Counsel for the plaintiff and upon hearing Mr. of Counsel for the defendant (*or upon reading a certificate of an appearance having been entered by the defendant*) (*or upon hearing an affidavit of service upon the defendant of the writ of summons issued in this cause*) and upon reading the claim filed in this cause on the day of (*and an affidavit of filed in this cause*) (*or the defendant by his Counsel admitting assets of the testator or intestate in the said claim named*) this Court doth order that the defendant do within a month after service upon him of this order pay to the plaintiff the sum of £ together with interest thereon at the rate of £ per cent. per annum from the day of to the time of such payment together with the costs of this suit to be taxed by the Master in Equity of the Court.

Order to take ad-
ministration of ac-
counts.

2.—Form of order on executor or administrator to account on claim by a creditor of testator or intestate.

In the Supreme Court }
In Equity. }

The day of A.D.
Between A. B. plaintiff
and
C. D. defendant.

UPON motion this day made &c. (*as in form No. 1*) this Court doth declare that all persons who are creditors of the said testator or intestate are entitled to the benefit of this order And it is ordered that it be referred to the Master in Equity of this Court to take an account of what is due to the plaintiff and all other the creditors of deceased the testator (*or intestate*) in the plaintiff's claim named and of his funeral expenses And it is ordered that the Master do take an account of the personal estate of the said testator (*or intestate*) come to the hands of the said defendant his executor (*or administrator*) or to the hands of any other person or persons by his order or for his use And it is ordered that the said testator's (*or intestate's*) personal estates be applied in payment of his debts and funeral expenses in a due course of administration And this Court doth reserve the consideration of all further directions and of the costs of this suit until after the said Master shall have made his report.

Order to account in
legatees suit.

3.—Form of order to account on claim by a legatee.

In the Supreme Court }
In Equity. }

The day of A.D.
Between A. B. a legatee of deceased } plaintiff
and
C. D. defendant.

UPON motion &c. (*as in form No. 1*) this Court doth declare that all persons who are legatees of the said testator are entitled to the benefit of this order And it is ordered that it be referred to the Master in Equity of this Court to take an account of the personal estate not specifically bequeathed of deceased the testator in the plaintiff's claim named come to the hands of the defendant or to the hands of any other person or persons by his order or for his use And it is ordered that the said Master do take an account of the said testator's debt funeral expenses and of the legacies given by his will And it is ordered that the said testator's said personal estate be applied in payment of his funeral expenses and debts in a due course of administration and then in payment of his legacies And this Court doth reserve the consideration of all further directions and of the costs of the suit until after the said Master shall have made his report.

Equity Claims.

4.—Form of order to account on claims by residuary legatee or one of several residuary legatees. Order to account on suit by residuary legatee.

In the Supreme Court }
In Equity. }

The day of A.D.
Between A. B. a residuary }
legatee of deceased } plaintiff
and
C. D. defendant.

UPON motion &c. (*as in Form No. 1*) this Court doth declare that all the residuary legatees named or described in the will of deceased the testator named in the plaintiff's claim are entitled to the benefit of this order and to attend the proceedings under the same before the Master in Equity and it is referred to the Master to inquire and state to the Court who were the residuary legatees of the testator living at the time of his death and whether any of them are since dead and if dead who is or are their legal personal representative or representatives and if the Master shall find that all such residuary legatees or their legal personal representatives have been duly served with writs of summons he is to proceed to take an account &c. (*as in No. 3 to the end*).

5.—Form of order to account on claim by the next of kin or one of the next of kin of an intestate. Order to account on suit by next of kin.

In the Supreme Court }
In Equity. }

The day of A.D.
Between A. B. plaintiff
and
C. D. defendant.

UPON motion &c. (*as in Form No. 1*) this Court doth declare that all the next of kin according to the Statutes of distribution of the intestate named in the plaintiff's claim are entitled to the benefit of this order and to attend the proceedings before the Master under the same And it is referred to the Master in Equity of this Court to inquire and state to the Court who were the next of kin according to the Statute of distribution of the said living at the time of his decease and whether any of them are since dead and if dead who is or are their legal personal representative or representatives and if the said Master shall find that such next of kin have been duly served with writs of summons to attend the proceedings before him under this order then it is ordered that it be referred to the said Master to take an account of the said intestate's personal estate (*usual accounts of personal estate debts and funeral expenses &c. as in Form No. 3*).

6.—Form of order for account of personal estate of a deceased person on the claims of the executor or administrator. Order to account in suit by executors.

In the Supreme Court }
In Equity. }

The day of A.D.
Between A. B. plaintiff
and
C. D. defendant.

UPON motion &c. (*as in Form No. 1*) this Court doth declare that all persons interested in the personal estate of the said testator (*or intestate*) are entitled to the benefit of this order And it is ordered that it be referred to the Master to take an account of the testator's (*or intestate's*) personal estate possessed by the plaintiff or by any other person by his order or for his use and also to take an account of the testator's (*or intestate's*) funeral expenses debts and legacies and it is ordered that such personal estate be applied in a due course of administration in payment of such funeral expenses debts and legacies and any further directions which may be necessary are hereby reserved &c.

Equity Claims.

Order of foreclosure. 7.—Form of order of foreclosure or claim by a legal or equitable mortgagee.

In the Supreme Court }
In Equity. }

The day of A.D.
Between A. B. plaintiff
and
C. D. defendant.

UPON motion &c. (*as in Form No. 1*) this Court doth order that it be referred to the Master in Equity of this Court to take an account of what is due to the plaintiff for principal and interest on the mortgage (*or equitable mortgage*) in the plaintiff's claim mentioned. And it is ordered that it be referred to the Master in Equity of this Court to tax the plaintiff his costs of this suit and upon the defendant paying to the plaintiff what shall be reported due to him for principal and interest as aforesaid together with the said costs when taxed within six months after the said Master shall have made his report at such time and place as the said Master shall appoint it is ordered that the plaintiff (*do re-convey the mortgaged premises in the plaintiff's affidavit of claim mentioned free and clear of all incumbrances done by him or any claiming by from or under him*) and do deliver up all deeds and writings in his custody or power relating thereto upon oath to the said defendant or to whom he shall appoint but in default of the defendant paying unto the plaintiff such principal interest and costs as aforesaid by the time aforesaid it is ordered that the defendant (*do stand absolutely debarred and foreclosed of and from all equity of redemption of in and to the said mortgaged premises*) do convey to the plaintiff the premises comprised in the equitable mortgage in the plaintiff's affidavit of claim mentioned free and clear of all right title interest and equity of redemption of in and to the said premises and the Master is to settle the conveyance if the parties differ about the same.

Order of sale. 8.—Form of order of sale on claim of a legal or equitable mortgagee or person entitled to a lien.

In the Supreme Court }
In Equity. }

The day of A.D.
Between A. B. plaintiff
and
C. D. defendant.

UPON motion &c. (*as in Form No. 1*) this Court doth order that it be referred to the Master in Equity of this Court to take an account of what is due to the plaintiff for principal and interest on the mortgage (*or equitable mortgage or lien*) in the plaintiff's claim mentioned and it is ordered that it be referred to the said Master in Equity of this Court to tax the plaintiff his costs of this suit and upon the defendant paying to the plaintiff what shall be reported due to him for principal and interest as aforesaid together with the said costs within six months after the said Master shall have made his report at such time and place as the said Master shall appoint it is ordered that the plaintiff (*do re-convey the mortgaged premises in the plaintiff's affidavit of claim mentioned free and clear of all incumbrances done by him or any claiming by from or under him*) and do deliver up all deeds and writings in his custody or power relating thereto upon oath to the defendant or to whom he shall appoint but in default of the defendant paying to the plaintiff such principal interest and costs as aforesaid by the time aforesaid then it is ordered that the said mortgaged premises (*or the premises subject to the said equitable mortgage or lien*) be sold with the approbation of the said Master and it is ordered that the money to arise by such sale be paid into Court to the end that the same may be duly applied in payment of what shall be found due to the plaintiff for principal interest and costs as aforesaid and this Court doth reserve the consideration of all further directions until after the said Master shall have made his report.

Order for redemption. 9.—Form of an order for redemption on claim by person entitled to redeem.

In the Supreme Court }
In Equity. }

The day of A.D.
Between A. B. plaintiff
C. D. defendant.

UPON motion &c. (*as in Form No. 1*) this Court doth order that it be referred to the Master in Equity of the Court to take an account of what is due to the defendant for principal and interest on his mortgage (*or equitable mortgage or lien*) in the plaintiff's claim mentioned. And it is ordered that it be referred to the said Master to tax the defendant his costs of this suit. And upon the plaintiff paying to the defendant what shall be reported due to him for principal and interest together with such costs when taxed within six

Equity Claims.

six months after the said Master shall have made his report at such time and place as the said Master shall appoint this Court doth order that the defendant do re-convey the mortgaged premises (or deliver up possession of the property subject to the equitable mortgage or lien) in the plaintiff's claim mentioned free and clear from all incumbrances done by him or any claiming by from or under him and do deliver up all deeds and writings in his custody or power relating thereto upon oath to the plaintiff or to whom he shall appoint but in default thereof the plaintiff's said claim is to stand dismissed out of this Court with costs to be taxed by the said Master and to be paid by the plaintiff to the defendant.

10.—Form of order of reference of title or claim of person seeking specific performance.

Order for specific performance.

In the Supreme Court }
In Equity. }

The day of A.D.
Between A. B. plaintiff
and
C. D. defendant.

UPON motion &c. (as in Form No. 1) this Court doth order that it be referred to the Master in Equity of this Court to inquire whether a good title can be made to the property comprised in the agreement in the said plaintiff's claim mentioned And in case the said Master shall be of opinion that a good title can be made it is ordered that he do state at what time it was first shewn that such good title could be made and this Court doth reserve the consideration of all further directions and of the costs of this suit until after the said Master shall have made his report.

11.—Forms of order for an account of partnership dealings and transactions on claim of person entitled to the account.

Order to take partnership accounts.

In the Supreme Court }
In Equity. }

The day of A.D.
Between A. B. plaintiff
and
C. D. defendant.

UPON motion &c. (as in the Form No. 1) this Court doth order that it be referred to the Master in Equity of this Court to take an account of the partnership dealings and transactions between the plaintiff and the defendant from the day of

And it is ordered that what upon taking the said account shall be found due from either of the said parties to the other of them be paid by the party from whom to the party to whom the same shall be found due (and this Court doth reserve the consideration of all further directions and of the costs of this suit until after the said Master shall have made his report).

12.—Form of an order on claim by a person claiming to use the name of his trustee.

Order that cestui que trust may use trustee's name.

In the Supreme Court }
In Equity. }

The day of A.D.
Between A. B. plaintiff
and
C. D. defendant.

UPON motion &c. (as in Form No. 1) this Court doth order that the plaintiff be at liberty to use the name of the defendant in prosecuting the action at law in the plaintiff's claims mentioned on indemnifying the defendant against the costs of such action And it is ordered that it be referred to the Master in Equity in this Court to settle the indemnity to be given by the plaintiff to the defendant in case the parties differ about the same.

Equity Claims.

Order to appoint new trustees.

13.—Form of order or claim for the appointment of new trustees.

In the Supreme Court }
In Equity. }

The day of A.D.

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

To be omitted in the case of infants or charities.

To be omitted where the defendant is continued a trustee.

UPON motion &c. (as in Form No. 1) this Court doth order that it be referred to the Master in Equity in this Court to appoint proper persons to be new trustees under the indenture (or will or other instrument) in the plaintiff's claim mentioned in the place of (or to act in conjunction with) the defendant And it is ordered that the defendant do convey (assign or transfer) the trust found in property (referring to it) to such new trustees (or so as to vest the same on such new trustees jointly with himself) upon the trusts of the said indenture (or will or other document) or such of them as are now subsisting and capable of taking effect And they are to declare the trusts thereof accordingly such conveyance (or assignment) to be settled by the said Master in case the parties differ about the same (And it is ordered that the defendant do deliver over to such new trustees all deeds and writings in his custody or power relating to the said trust property.)

SCHEDULE D.

No. 1.

Fees to be taken by the Master.

	£	s.	d.
For filing a claim	0	5	0
For sealing every writ of summons	0	5	0
For filing a caveat	0	2	6
For every order on the hearing of a claim or on further directions	1	0	0
For every office copy thereof	0	10	0
For every order on hearing exceptions	0	10	0
For every office copy thereof	0	5	0

For appearances certificates &c. and for other orders and office copies the same fees as are now received by the Master in Equity.

No. 2.

Fees to be taken by Solicitors.

	£	s.	d.
Instructions to sue or defend	0	6	8
Instructions for every claim	0	6	8
For preparing and filing a claim	1	7	8
For preparing a writ of summons	0	6	8
For each writ after the first	0	6	8
For engrossing claims and writs per folio	0	0	6
For parchment as paid.			
For all copies 4d. per folio.			
For brief to Counsel for leave to file claim exclusive of a copy of the claim for Counsel and the Court	0	10	0
For the brief and instructions for Counsel on the hearing exclusive of any necessary copies	1	0	0
For taking instructions to appear and for entering appearance			
For one or more defendants if not exceeding three	0	13	4
If exceeding three and not more than six an additional sum of	0	6	8
If exceeding six for every number not exceeding three an additional sum of	0	6	8
For settling minute and entering order on hearing the same charges as on a decretal order.			
For entering a caveat	0	6	8
For procuring a certificate of no caveat	0	6	8
For term fees	0	15	0

And also all such fees as by the present practice of the Court they are entitled to save such as are varied or rendered unnecessary by this Act.