



1853.

No. 14.

An Act to amend the practice and proceeding in the Equitable Jurisdiction of the Supreme Court of South Australia.

[Assented to, December 9, 1853.]

WHEREAS it is expedient to amend the practice and course of proceeding in the equitable jurisdiction of the Supreme Court of South Australia—Be it Enacted, by the Governor of South Australia, with the advice and consent of the Legislative Council thereof, as follows:

1. The mode of proceeding in the Supreme Court, in its equitable jurisdiction, in cases where it is not otherwise provided, shall be by bill of complaint or information, which shall be filed in the office of the said Court, and shall be endorsed in the form, or to the effect, set forth in the Schedule A to this Act, and shall be marked by the Master, or other officer of the Court, to be appointed in that behalf, with the date of the filing thereof.

2. The filing of a bill of complaint in the said Court, with such endorsement thereon, and marked as aforesaid, shall have the same effect as the filing of a bill of complaint and the issuing of a subpoena now have and the service upon the defendant of a copy of such bill of complaint so filed, with such endorsement thereon so marked as aforesaid, shall be effected in the same manner, and shall have the same effect as the service upon him of a writ of subpoena now has, and shall entitle a plaintiff in the suit to such remedies for default of appearance and otherwise as he is now entitled to in case of due and proper service of a subpoena to appear to and answer a bill of complaint, that is to say—shall render the defendant liable to be arrested by virtue of a writ of attachment to be issued to the

*Assented to by the Governor
1853-12-9*

Preamble.

Proceedings to be commenced by bill, when not otherwise provided.

The filing and service of a bill of complaint to have the same effect as the filing and issuing of a writ of subpoena.

Sheriff for that purpose, and to have an appearance entered for him on the application of the plaintiff: Provided that, in serving a copy of the bill, it shall not be necessary to produce the original bill to the defendant.

Court to have power to direct substituted service of bill.

3. Provided also, that the Court shall be at liberty to direct substituted service of a bill of complaint in such cases and in such manner as it shall think fit.

Bills of complaint to contain concise narratives of material facts, and to be divided into numbered paragraphs, but not to contain interrogatories.

4. Every bill of complaint to be filed in the said Court, after the time hereinafter appointed for the commencement of this Act, shall contain, as concisely as may be, a narrative of the material facts, matters, and circumstances, on which the plaintiff relies, such narrative being divided into paragraphs numbered consecutively, and each paragraph containing, as nearly as may be, a separate and distinct statement or allegation, and shall pray specifically for the relief which the plaintiff may conceive himself entitled to, and also for general relief; but such bill of complaint shall not contain any interrogatories for the examination of a defendant; and every such bill of complaint may be according to the form provided in Schedule A to this Act.

Person whose name is used as next friend of any infant, &c., in any suit, &c., to sign a written authority.

5. Before the name of any person shall be used in any suit to be instituted in the said Court, as the next friend of any infant, married woman, or other party, or as relator in any information, such person shall sign a written authority, to the solicitor, for that purpose, and such authority shall be filed with the bill, information, or claim.

Interrogatories to be filed in Supreme Court Office by plaintiff within time prescribed.

6. Within a time to be limited by a general order of the said Judge or Judges in that behalf, the plaintiff in any suit in the said Court commenced by bill may, if he requires an answer from any defendant thereto, file in the office of the said Court, interrogatories for the examination of the defendant or defendants, or such of them from whom he shall require an answer; and deliver to the defendant or defendants so required to answer, or to his or their solicitor a copy of such interrogatories, or of such of them as shall be applicable to the particular defendant or defendants; and no defendant shall be called upon or required to put in any answer to a bill unless interrogatories shall have been so filed, and a copy thereof delivered to him or his solicitor within the time so to be limited, or within such further time as the Court shall think fit to direct: And be it Enacted, That such interrogatories may be according to the form provided in Schedule B, and that the defendant's answer thereto may be in the form provided in Schedule C to this Act.

Defendants may answer without leave within the time now allowed, though not required so to do by plaintiff; but after that time, defendant must have leave.

7. Whether the plaintiff in any suit in the said Court commenced by bill does or does not require any answer from the defendant or any one or more of the defendants to the bill, such defendant or defendants may, without any leave of the Court, put in a plea, answer, or demurrer to the plaintiff's bill within the time now allowed to the defendant for demurring alone to a bill, or within such

such other time as shall be fixed by any general order of the said Judge or Judges of the said Court in that behalf; but after that time a defendant or defendants, not required to answer the plaintiff's bill, shall not be at liberty to put in a plea, answer, or demurrer to the bill without the leave of the Court: Provided that the power of the Court to grant further time for pleading, answering, or demurring to any bill, upon the application of any defendant or defendants thereto, whether required to answer the bill or not, shall remain in full force, and shall not be in anywise prejudiced or affected: Provided also, that if the Court shall grant any further time to any defendant for pleading, answering, or demurring to the bill, the plaintiff's right to move for a decree under the provisions hereinafter contained shall in the meantime be suspended.

8. The answer of the defendant to any bill of complaint in the said Court may contain, not only the answer of the defendant to the interrogatories so filed as aforesaid, but such statements material to the case as the defendant may think it necessary or advisable to set forth therein; and such answer shall also be divided into paragraphs, numbered consecutively, each paragraph containing as nearly as may be a separate and distinct statement or allegation.

Defendant's answer may contain not only answer to interrogatories, but statements material to his case. 11

9. The plaintiff in any suit commenced by bill shall be at liberty, at any time after the time allowed to the defendant for answering the same shall have expired (but before replication), to move the Court, upon such notice as shall in that behalf be prescribed by any general order of the Judge or Judges of the said Court, for such decree or decretal order as he may think himself entitled to; and the plaintiff and defendant, respectively, shall be at liberty to file affidavits in support of and in opposition to the motion so to be made, and to use the same on the hearing of such motion; and if such motion shall be made after an answer filed in the cause, the answer shall, for the purposes of the motion, be treated as an affidavit.

Plaintiff may on expiry of time for answering, but before replication, move for a decree or decretal order. Affidavits may be filed.

10. Upon any such motion for a decree or decretal order, it shall be discretionary with the Court to grant or refuse the motion, or to make an order giving such directions for or with respect to the further prosecution of the suit as the circumstances of the case may require, and to make such order as to costs as it may think right.

Court may refuse or grant such motion or make order for further prosecution, &c.

11. The practice of excepting to bills, answers, and other proceedings in the said Court for impertinence, shall be and the same is hereby abolished: Provided always, that it shall be lawful for the Court to direct the costs occasioned by any impertinent matter introduced into any proceeding in the said Court to be paid by the party introducing the same, upon application being made to the Court for that purpose.

Practice of excepting to bills, answers, &c., for impertinence abolished. Proviso as to costs.

12. When a defendant is out of the jurisdiction of the Court, the Court, upon application, supported by such evidence as shall satisfy the

Service of bill may be ordered to be made upon defendant out of the jurisdiction.

the Court in what place or country such defendant is, or may probably be found, may order that the bill of complaint may be served on such defendant in such place or country, or within such limits as the Court thinks fit to direct.

Time to be limited within which the defendant is to appear, &c.

13. Such order as last aforesaid shall limit a time (depending on the place or country where the bill is to be served), after service of the bill, within which the defendant is to appear to the bill, and also (if an answer be required) a time within which such defendant is to plead, answer, or demur, or obtain from the Court further time to make his defence to the bill.

Service of bill to be made as in ordinary cases; and on default of defendants, appearance may be entered for him by plaintiff.

14. The bill is to be served, by serving a copy thereof, as in ordinary cases, together with a copy of the order giving the plaintiff leave to make such service, and if, upon the expiration of the time for appearing, it shall appear to the satisfaction of the Court that such defendant was duly served with a copy of the bill and order, the Court may, upon the application of the plaintiff, order an appearance to be entered for the defendant.

Persons may seek relief by filing a claim instead of a bill, in certain cases.

15. 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 Supreme Court Office in any of the following cases, that is to say—In any case where the plaintiff is or claims to be:

- 1st. A creditor upon the estate of any deceased person, seeking payment of his debt out of the deceased's personal assets.
- 2nd. A legatee under the will of any deceased person, seeking payment or delivery of his legacy out of the deceased's personal assets.
- 3rd. A residuary legatee, or one of the residuary legatees of any deceased person seeking an account of the residue and payment or appropriation of his share therein.
- 4th. 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.
- 5th. An executor or administrator of any deceased person, seeking to have the personal estate of such deceased person administered under the direction of the Court.
- 6th. A legal or equitable mortgagee, or person entitled to a lien as a security for a debt, seeking foreclosure, or sale, or otherwise, to enforce his security.
- 7th. A person entitled to redeem any legal or equitable mortgage or any lien, seeking to redeem the same.
- 8th. A person entitled to the specific performance of an agreement for the sale or purchase of any property, seeking such specific performance.

9th. A

- 9th. A person entitled to an account of the dealings and transactions of a partnership dissolved or expired, seeking such account.
- 10th. 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.
- 11th. A person entitled to have a new trustee appointed in a case where there is no power in the instrument creating the trust to appoint new trustees, or where the power cannot be exercised, and seeking to appoint a new trustee.

Such claim, in the several cases above enumerated in this section, is to be in the form and to the effect set forth in Schedule D to this Act annexed, as applicable to the particular case, and the filing of such claim is, in all cases not otherwise provided for, to have the force and effect of filing a bill.

Forms of claims.

16. In any case other than those enumerated in the preceding section, or in any case to which the forms set forth in Schedule D 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 if such leave be given, an endorsement by a Judge upon the proposed claim shall be a sufficient authority for filing the same.

In other cases, claims may be filed by leave of the Court.

17. Every such claim as aforesaid shall be endorsed in the form or to the effect set forth in the Schedule D to this Act, and shall be marked by the Master, or other officer of the Court to be appointed in that behalf, with the date of the filing thereof.

Endorsement to be made on claim.

18. The service upon a defendant of a copy of a claim with such endorsement thereon as aforesaid, shall be effected in the same manner as the service of a writ of subpoena; and the service of such copy, the same being certified by the Master or other officer as aforesaid to be a true copy of the original claim filed in the said office, shall entitle the plaintiff, in case of a default of appearance by the defendant, at the place and time mentioned in such endorsement to such order against the defendant, as the Court may think fit to make against him in his absence, for payment or satisfaction of the claim, or as the nature and circumstances of the case may require.

Service of claim to be in same manner as subpoena, &c.; on default, appearance may be entered for defendant by plaintiff.

19. In the case provided for by the fifth article of section 15, any one person who, under the third or fourth article of that section, 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 endorsement on the claim as defendants to the suit and in the first instance no other person need be named therein; in other cases the only person who need be named in the endorsement,

Persons who may be named as defendants in the endorsement on claim.

on the claim as the defendant to the suit in the first instance, is the person against whom the relief is directly claimed.

Orders of Court on claims, to be enforced in the same manner as orders made on bill filed.

20. All orders of the Court, made in proceedings upon claims, are to be enforced in the same manner and by the same process as orders of the Court made upon a bill filed, that is to say—by attachment, sequestration, and execution against the lands and goods of the party in default, as the nature of the case may require.

Time for shewing cause on claim.

21. The time for shewing cause named in any endorsement on a claim, is to be fourteen days at the least after service thereof, but by consent of parties and with the leave of the Court, cause may be shewn at an earlier day.

Defendant to shew cause at the time appointed.

22. At the time for shewing cause named in the endorsement, or so soon after as the case may be heard, the defendant, having previously appeared, is personally or by counsel to shew cause in Court if he can, and if necessary by affidavit, why such relief as is claimed by the claim should not be had against him.

At the time of shewing cause, the Court may make such order as it shall think fit.

23. 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 an affidavit of the claim or endorsement 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 enquiries 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 cause such persons or classes of persons, if any, as it shall think necessary or fit, to be summoned or ordered to appear as parties to the claim, or on any proceedings with reference to any accounts or enquiries directed to be taken or made, or otherwise.

Order to have the effect of a decree.

24. 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 practice of the Court.

Court may authorize bill to be filed.

25. 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.

Forms of orders as in Schedule D.

26. The orders made for granting relief in the several cases to which the forms set forth in Schedule D are applicable, may be in such forms as may be provided by any general rule of the Supreme Court, or with such variations as circumstances may require.

27. Any

27. Any further or supplemental relief may be sought by claim, and may be sought either with or without the previous leave of the Court, according as such relief may or may not be provided for in any of the cases enumerated under section 15.

Supplemental relief may be sought by claim.

28. If any of the cases enumerated in section 15 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.

Bill may be filed in special cases.

29. If any suit for any of the purposes to which the forms set forth in Schedule D 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 claim, 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 claim, shall be borne and paid by the plaintiff.

Costs to be given against plaintiff in cases when bill filed unnecessarily.

30. It shall be lawful for the Court, upon the application of the plaintiff in any suit in the said Court, whether commenced by bill or by claim, and as to a suit commenced by bill, whether the defendant may or may not have been required to answer the bill, or may or may not have been interrogated as to the possession of documents, to make an order for the production by any defendant, upon oath of such of the documents in his possession, or power, relating to matters in question in the suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

Court or Judge may order defendant to produce documents, &c., on oath.

31. It shall be lawful for any defendant in any suit, whether commenced by bill or by claim, but in suits commenced by bill which the defendant is required to answer, not until after he shall have put in a sufficient answer to the bill, and without filing any cross bill of discovery, to file, in the Master's office of the said Court, interrogatories for the examination of the plaintiff, to which shall be prefixed a concise statement of the subjects on which a discovery is sought, and to deliver a copy of such interrogatories to the plaintiff or his solicitor; and the plaintiff shall be bound to answer such interrogatories, in like manner as if the same had been contained in a bill of discovery filed by the defendant against him on the day when such interrogatories shall have been filed; and as if the defendant to such bill of discovery had on the same day duly appeared; and the practice of the Court with reference to excepting to answers for insufficiency, or for scandal, shall extend and be applicable to answers put in to such interrogatories: Provided that, in determining the materiality or relevancy of any such answer, or of any exception thereto, the Court is to have regard, in suits commenced by bill, to the statements contained in the original bill, and in the answer which

In certain cases, defendant after answer, may file interrogatories for examination of plaintiff. Defendant may exhibit a cross bill, instead of filing interrogatories.

which may have been put in thereto by the defendant, exhibiting such interrogatories for the examination of the plaintiff; and in suits commenced by claim, to the statements therein, and in any affidavits which may have been filed either in support thereof or in opposition thereto: Provided also, that a defendant, if he shall think fit so to do, may exhibit a cross bill of discovery against the plaintiff, instead of filing interrogatories for his examination.

Upon application of defendant after answer, plaintiff may be required to produce documents on oath.

32. It shall be lawful for the Court, upon the application of any defendant in any suit, whether commenced by bill or by claim, but as to suits commenced by bill where the defendant is required to answer the plaintiff's bill, not until after he has put in a full and sufficient answer to the bill, unless the Court shall make any order to the contrary, to make an order for the production by the plaintiff in such suit, on oath, of such of the documents in his possession, or power, relating to the matters in question in the suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

Mode of taking pleas, answers, &c.

33. Pleas, answers, disclaimers, and examinations upon oath, taken within the jurisdiction of the Court, may be taken in open Court, or before a Judge, or the Master, or some Commissioner of the Court, authorized to take affidavits, and may be filed without any further or other formality than is required in the swearing and filing of an affidavit.

Pleas, declarations, &c., in equity—how to be sworn and taken in Scotland, Ireland, the Channel Islands, &c.

34. All pleas, answers, disclaimers, examinations, affidavits, declarations, affirmations, and attestations of honor, in causes depending in Equity in the Supreme Court of this Province, may be sworn and taken in any place under the dominion of Her Majesty in foreign parts, before any Judge, notary public, or person lawfully authorized to administer oaths in such place, or before any of Her Majesty's Consuls or Vice-Consuls in any foreign parts out of Her Majesty's dominions, and the Judges of the Supreme Court shall take judicial notice of the seal or signature, as the case may be, of any such Court, Judge, notary public, person, Consul, or Vice-Consul, attached, appended, or subscribed to any such pleas, answers, disclaimers, examinations, affidavits, affirmations, attestations of honor, declarations, acknowledgments, or other documents to be used in the said Court.

Penalty for falsely swearing, &c.

35. All persons swearing, declaring, affirming, or attesting before any person authorized by this Act to administer oaths and take declarations, affirmations, or attestations of honor, shall be liable to all such penalties, punishments, and consequences for any wilful and corrupt false swearing, declaring, affirming, or attesting contained therein, as if the matter sworn, declared, affirmed, or attested had been sworn, declared, affirmed, or attested before any Court, or persons now by law authorized to administer oaths and take declarations, affirmations, or attestations upon honor, and any person wilfully

wilfully and corruptly tendering in evidence, or causing to be made use of in any proceeding under this Act, any plea, answer, examination, affidavit, or other writing which shall purport to be taken on oath, affirmation, or attestation of honor, knowing the same to be false in some material part, shall be liable to the like penalties, punishment, and consequences.

36. If any person shall forge the signature or the official seal of any Judge, notary public, or other person lawfully authorized to administer oaths, or take declarations, affirmations, or attestations under this Act, or shall tender in evidence any plea, answer, disclaimer, examination, affidavit, or other judicial or official documents, with a false or counterfeit signature or seal of any such Judge, Court, notary public, or other person authorized as aforesaid attached or appended thereto, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall be liable to the same punishment as any offender under an Act passed in the eighth and ninth years of the reign of Her present Majesty, intituled "An Act to facilitate the admission in evidence of certain official and other documents."

Penalty for forging signature or seal of Judge, &c., empowered to administer oaths under this Act.

37. Pleas, answers, disclaimers, or examinations, whether taken by commission out of the jurisdiction of the said Court or otherwise, may be filed without the oath of a messenger, and any alterations made therein previously to the taking thereof, shall be authenticated according to the practice now in use with respect to affidavits.

Answers, &c., to be filed without oath of messenger, &c.

38. In suits in the said Court commenced by bill, where notice of motion for a decree or decretal order shall not have been given, or, having been given, where a decree or decretal order shall not have been made thereon, issue shall be joined by filing a replication in the form or to the effect of the replication now in use in the said Court; and where a defendant shall not have been required to answer, and shall not have answered the plaintiff's bill, he shall be considered to have traversed the case made by the bill.

Issue may be joined by filing replication, as at present.

39. Where a defendant to a suit in the said Court commenced by bill shall not have been required to answer the bill, and shall not have answered the same, such defendant shall be at liberty to move to dismiss the bill for want of prosecution, at such times, and under such circumstances, and subject to such restrictions, as shall be in that behalf prescribed by any general order of the Judge or Judges of the said Court.

Defendant not having been required to answer, and not answering, may move for dismissal of bill, for want of prosecution.

40. The mode of examining witnesses in causes in the said Court, and all the practice of the said Court in relation thereto, so far as such practice shall be inconsistent with the mode hereinafter prescribed of examining such witnesses, and the practice in relation thereto, shall, from and after the time appointed for the commencement of this Act, be abolished: Provided always, that the Court may, if it shall think fit, order any particular witness or witnesses

Practice of Court as to, and mode of, examining witnesses, abolished. Court may order particular witnesses to be examined upon interrogatories as now practised.

within the jurisdiction of the said Court, or any witness or witnesses out of the jurisdiction of the said Court, to be examined upon interrogatories in the mode now practised in the said Court, and that with respect to such witness or witnesses, the practice of the said Court in relation to the examination of witnesses shall continue in full force, save only so far as the same may be varied by any general order of the Judge or Judges of the said Court in that behalf, or by any order of the Court with reference to any particular case.

Plaintiff, where suits by bill at issue, may give notice to defendant to adduce evidence orally, or by affidavit.

41. When any suit commenced by bill shall be at issue, the plaintiff shall, within such time thereafter as shall be prescribed in that behalf by any general order of the Judge or Judges of the said Court, give notice to the defendant that he desires that the evidence to be adduced in the cause shall be taken orally, or upon affidavit, as the case may be; and if the plaintiff shall desire the evidence to be adduced upon affidavit, and the defendant or some or one of the defendants, if more than one, shall not, within such time as shall be prescribed in that behalf by any general order of the Judge or Judges of the said Court, give notice to the plaintiff, or his solicitor, that he or they desire the evidence to be oral, the plaintiff and defendants respectively shall be at liberty to verify their respective cases by affidavit.

Evidence may be taken orally, if required; but the Court may in certain cases make an order, &c.

42. When any of the parties to any suit, commenced by bill, desires that the evidence should be adduced orally, and gives notice thereof to the opposite party, as hereinbefore provided, the same shall be taken orally in the manner hereinafter provided: Provided that if the evidence be required to be oral merely by a party without a sufficient interest in the matters in question, the Court may upon application, in a summary way, make such order as shall be just.

Witnesses to be examined by an examiner, in the presence of the parties.

43. All witnesses to be examined orally under the provisions of this Act, shall be so examined by or before an Officer of the Court, who shall be furnished by the plaintiff with a copy of the bill, and of the answer, if any, in the cause; and such examination shall take place in the presence of the parties, their counsel, solicitors, or agents, and the witnesses so examined orally shall be subject to cross-examination and re-examination; and such examination, cross-examination, and re-examination shall be conducted as nearly as may be, in the mode now in use in Courts of Common Law with respect to a witness about to go abroad, and not expected to be present at the trial of a cause.

Depositions to be taken down in writing and read over to the witness, who shall sign the same in presence of parties; but if he refuse to sign, examiner may, and state any special matter he may think fit.

44. The depositions taken upon such oral examination as aforesaid shall be taken down in writing by the examiner, not ordinarily by question and answer, but in the form of a narrative, and when completed shall be read over to the witness, and signed by him in the presence of the parties, or such of them as may think fit to attend: Provided always, that in case the witness shall refuse to sign the said depositions, then the examiner shall sign the same, and

and such examiner may, upon all examinations, state any special matter to the Court, as he shall think fit: Provided also, that it shall be in the discretion of the examiner to put down any particular question or answer, if there should appear any special reason for doing so, and any question or questions which may be objected to shall be noticed or referred to by the examiner in or upon the depositions, and he shall state his opinion thereon to the counsel, solicitors, or parties, and shall refer to such statement on the face of the depositions; but he shall not have power to decide upon the materiality or relevancy of any question or questions, and the Court shall have power to deal with the costs of immaterial or irrelevant depositions according to its discretion.

45. If any person produced before any such examiner as a witness, shall refuse to be sworn, or to answer any lawful question put to him by the examiner, or by either of the parties, or by his or their counsel, solicitor, or agent, the same course shall be adopted with respect to such witness as may now be pursued in the case of a witness produced for examination before an examiner of the said Court, upon written interrogatories, and refusing to be sworn, or to answer some lawful question: Provided always, that if any witness shall demur or object to any question or questions which may be put to him, the question or questions so put, and the demurrer or objection of the witness thereto, shall be taken down by the examiner and transmitted by him to the office of the said Court, to be there filed; and the validity of such demurrer or objection shall be decided by the Court; and the costs of and occasioned by such demurrer or objection shall be in the discretion of the Court.

If parties refuse to be sworn, or to answer any lawful questions, the same course to be pursued as is now adopted. Proviso as to witness demurring to questions.

46. When the examination of witnesses shall have been concluded, the original depositions, authenticated by the signature of the examiner, shall be by him filed in the Court, and any party to the suit may have a copy thereof, or of any part or portion thereof, upon payment for the same in such manner as shall be provided by any general order of the Judge or Judges of the said Court in that behalf.

Original depositions to be transmitted to the Master's office and filed.

47. It shall not be necessary to sue out any commission for the examination of any witness within the jurisdiction of the Court; and any person appointed to act as examiner, by any order of the Court, shall have the like power of administering oaths as Commissioners now have under commissions issued by the Court for the examination of witnesses.

Commission for examination of witnesses dispensed with, and examiner empowered to administer oaths.

48. Notwithstanding that the plaintiff or the defendant in any suit, in the said Court, may have elected that the evidence in the case should be taken orally, affidavits by particular witnesses, or affidavits as to particular facts and circumstances, may, by consent, or by leave of the Court obtained upon notice, be used on the hearing of any cause, and such consent, with the approbation of the Court,

Affidavits as to particular facts, &c., may be used.

Court, may be given by or on the part of married women or infants, or other persons under disability.

Affidavits to be divided into paragraphs, numbered.

49. Every affidavit to be used in the Court shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and, as nearly as may be, shall be confined to a distinct portion of the subject.

Evidence, oral, or by affidavit on both sides, to be closed within time prescribed by general order: witnesses by affidavit to be subject to oral cross-examination, and afterwards to re-examination: Witnesses bound to attend: As to expenses attending cross examination, &c.

50. The evidence on both sides in any suit in the said Court, whether taken orally or upon affidavit, shall be closed within such time or respective times after issue joined as shall in that behalf be prescribed by any general order of the Judge or Judges of the said Court, but with power to the Court to enlarge the same as it may see fit; and after the time fixed for closing the evidence, no further evidence, whether oral or by affidavit, shall be receivable, without special leave of the Court previously obtained for that purpose: Provided always, that any witness who has made an affidavit filed by any party to a cause shall be subject to oral cross-examination, within such time after the time fixed for closing the evidence as shall be prescribed in that behalf by any order of a Judge or Judges of the said Court, by or before an examiner, in the same manner as if the evidence given by him in his affidavit had been given by him orally before the examiner, and after such cross-examination, may be re-examined orally, by or on the part of the party by whom such affidavit was filed; and such witness shall be bound to attend before such examiner to be so cross-examined and re-examined, upon receiving due and proper notice, and payment of his reasonable expenses in like manner as if he had been duly served with a writ of subpœna, *ad testificandum*, before such examiner; and the expenses attending such cross-examination and re-examination shall be paid by the parties respectively, in like manner as if the witness so to be cross-examined were the witness of the party cross-examining, and shall be deemed costs in the cause of such parties respectively, unless the Court shall think fit otherwise to direct.

Court may require the production and oral examination before itself of any witness, &c., and determine payment of the costs.

51. Upon the hearing of any cause depending in the said Court, whether commenced by bill or by claim, the Court, if it shall see fit so to do, may require the production and oral examination before itself of any witness or party in the cause, and may direct the costs of and attending the production and examination of such witness or party to be paid by such of the parties to the suit, or in such manner as it may think fit.

Any party in a cause, may by subpœna, require attendance of any witness before an examiner.

52. Any party in any cause or matter depending in the said Court may, by a writ of subpœna, *ad testificandum* or *duces tecum*, require the attendance of any witness before an examiner of the said Court, and examine such witness orally for the purpose of using his evidence upon any claim, motion, petition, or other proceeding before the Court, in like manner as such witness would be bound to attend and be examined with a view

view to the hearing of a cause: and any party having made an affidavit to be used or which shall be used on any claim, motion, petition, or other proceeding before the Court, shall be bound, on being served with such writ, to attend before an examiner; for the purpose of being cross-examined: Provided always, that the Court shall always have a discretionary power of acting upon such evidence as may be before it at the time, and of making such interim orders, or otherwise, as may appear necessary to meet the justice of the case.

53. In cases where it shall be necessary for any party to any cause depending in the said Court, to go into evidence subsequently to the hearing of such cause, such evidence shall be taken, as nearly as may be, in the manner hereinbefore provided with reference to the taking of evidence with a view to such hearing.

Evidence subsequent to hearing, to be taken the same as prior to hearing.

54. It shall not be competent to any defendant, in any suit, in the said Court, to take any objection for want of parties to such suit, in any case to which the rules next hereinafter set forth extend; and such rules shall be deemed and taken as part of the law and practice of the said Court, and any law or practice of the said Court inconsistent therewith shall be, and is hereby, abrogated and annulled.

Defendant not to take objection for want of parties in any case to which rules herein set forth shall extend.

Rule 1. Any residuary legatee, or next of kin, may, without serving the remaining residuary legatees or next of kin, have a decree for the administration of the personal estate of a deceased person.

Rule 2. Any legatee interested in a legacy charged upon real estate, and any person interested in the proceeds of real estate directed to be sold, may without serving any other legatee or person interested in the proceeds of the estate, have a decree for the administration of the estate of a deceased person.

Rule 3. Any residuary devisee, or heir, may, without serving any co-residuary devisee or co-heir, have the like decree.

Rule 4. Any one of several *cestius que* trust under any deed or instrument, may, without serving any other of such *cestius que* trust, have a decree for the execution of the trusts of the deed or instrument.

Rule 5. In all cases of suits for the protection of property pending litigation, and in all cases in the nature of waste, one person may sue on behalf of himself and of all persons having the same interest.

Rule 6. Any executor, administrator, or trustee, may obtain a decree against any one legatee, next of kin, or *cestius que* trust for the administration of the estate, or the execution of the trusts.

Rule 7. In all the above cases the Court, if it shall see fit, may require any other person or persons to be made a party or parties to the suit, and may, if it shall see fit, give the conduct of the suit to such person as it may deem proper, and may make such order in any particular case as it may deem just, for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question.

Parties to have notice of the decree, and to be bound by proceedings.

Rule 8. In all the above cases the persons who, according to the present practice of the Court, would be necessary parties to the suit, shall be served with notice of the decree, and after such notice they shall be bound by the proceedings in the same manner as if they had been originally made parties to the suit, and they may, by an order of course, have liberty to attend the proceedings under the decree; and any party so served may, within such time as shall in that behalf be prescribed by the general order of the Judge or Judges of the said Court, apply to the Court to add to the decree.

Trustees to represent persons beneficially interested.

Rule 9. In all suits concerning real or personal estate which is vested in trustees under a will, settlement, or otherwise, such trustees shall represent the persons beneficially interested under the trust, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested under the trusts parties to the suit, but the Court may, upon consideration of the matter, on the hearing, if it shall so think fit, order such persons, or any of them, to be made parties.

Practice of setting down a cause or objection for want of parties, abolished.

55. The practice of the said Court of setting down a cause merely on an objection for want of parties to the suit, shall be abolished.

Court may proceed in any suit, &c., without representative of deceased person, or may appoint one.

56. If in any suit or other proceeding before the Court it shall appear to the Court that any deceased person who was interested in the matters in question, has no legal personal representative, it shall be lawful for the Court either to proceed in the absence of any person representing the estate of such deceased person, or to appoint some person to represent such estate for all the purposes of the suit or other proceeding, on such notice to such person or persons, if any, as the Court shall think fit, either specially or generally by public advertisements; and the order so made by the said Court, and any orders consequent thereon, shall bind the estate of such deceased person in the same manner in every respect as if there had been a duly constituted legal personal representative of such deceased person, and such legal personal representative had been a party to the suit or proceeding, and had duly appeared and submitted his rights and interests to the protection of the Court.

Creditor, &c., may summon executor, &c., to show cause why an

57. It shall be lawful for any person claiming to be a creditor, or a specific pecuniary or residuary legatee, or the next of kin, or some
or

or one of the next of kin of a deceased person, to apply for and obtain as of course, without bill or claim filed, or any other preliminary proceedings, a summons from the Judge or Judges of the said Court, requiring the executor or administrator, as the case may be, of such deceased person, to attend before him at Chambers, for the purpose of shewing cause why an order for the administration of the personal estate of the deceased should not be granted; and upon proof by affidavit of the due service of such summons, or on the appearance in person, or by his solicitor or counsel, of such executor or administrator, and upon proof by affidavit of such other matters, if any, as such Judge shall require, it shall be lawful for such Judge, if in his discretion he shall think fit so to do, to make the usual order for the administration of the estate of the deceased, with such variations, if any, as the circumstances of the case may require; and the order so made shall have the force and effect of a decree to the like effect made on the hearing of a cause or claim between the same parties: Provided that such Judge shall have full discretionary power to grant or refuse such order, or to give any special directions touching the carriage or execution of such order, and in the case of applications for any such order by two or more different persons or classes of persons, to grant the same to such one or more of the claimants, or of the classes of claimants, as he may think fit; and if the Judge shall think proper, the carriage of the order may subsequently be given to such party interested, and upon such terms as the Judge may direct.

order for administration of personal estate should not be granted. Power to Judge to order administration of such estate.

58. A duplicate or copy of such summons shall, previously to the service thereof, be filed in the office of the Court; and no service thereof upon any executor or administrator shall be of any validity unless the date of filing the summons shall be marked on the copy so served and verified by the signature of the Master or other officer of the Court, and the filing of such summons shall have the same effect with respect to *lis pendens* as the filing of a bill or claim.

Copy of summons to be filed in Master's Office of said Court.

59. It shall be lawful for any person claiming to be a creditor of any deceased person, or interested under his will, to apply for and obtain in a summary way, in the manner hereinbefore provided with respect to the personal estate of a deceased person, an order for the administration of the real estate of a deceased person where the whole of such real estate is by devise vested in trustees who are by the will empowered to sell such real estate and authorized to give receipts for the rents and profits thereof, and for the produce of the sale of such real estate; and all the provisions hereinbefore contained with respect to the application for such order in relation to the personal estate of a deceased person, and consequent thereon, shall extend and be applicable to an application for such order as last hereinbefore mentioned with respect to real estate.

Creditor, &c., may obtain an order for administration of real estate.

60. It shall be lawful for the Court in any suit for the foreclosure of the equity of redemption in any mortgaged property, upon the request of the mortgagee, or of any subsequent incumbrancer, or of the

Court may direct sale of mortgaged property instead of a foreclosure, on such terms as it may think fit.

the mortgagor, or any person claiming under them respectively, to direct a sale of such property, instead of a foreclosure of such equity of redemption, on such terms as the Court may think fit to direct, and, if the Court shall so think fit, without previously determining the priorities of incumbrances, or giving the usual or any time to redeem; provided that if such request shall be made by any such subsequent incumbrancer, or by the mortgagor, or by any person claiming under them respectively, the Court shall not direct any such sale, without the consent of the mortgagee or the persons claiming under him, unless the party making such request shall deposit in Court a reasonable sum of money to be fixed by the Court, for the purpose of securing the performance of such terms as the Court may think fit to impose on the party making such request.

Suit not to be dismissed for misjoinder of plaintiffs, but Court may modify its decree according to special circumstances.

61. No suit in the said Court shall be dismissed by reason only of the misjoinder of persons as plaintiffs therein, but wherever it shall appear to the Court that—notwithstanding the conflict of interest in the coplaintiffs, or the want of interest in some of the plaintiffs, or the existence of some ground of defence affecting some or one of the plaintiffs—the plaintiffs, some or one of them, are or is entitled to relief, the Court shall have power to grant such relief, and to modify its decree, according to the special circumstances of the case, and for that purpose to direct such amendments, if any, as may be necessary, and at the hearing before such amendments are made, to treat any one or more of the plaintiffs as if he or they was or were a defendant or defendants in the suit, and the remaining or other plaintiff or plaintiffs was or were the only plaintiff or plaintiffs on the record; and where there is a misjoinder of plaintiffs, and the plaintiff having an interest shall have died, leaving a plaintiff on the record without an interest, the Court may, at the hearing of the cause, order the cause to stand revived, as may appear just, and proceed to a decision of the cause, if it shall see fit, and give such directions as to costs or otherwise as may appear just and expedient.

No suit to be objected to because only declaratory order sought.

62. No suit in the said Court shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Court to make binding declarations of right without granting consequential relief.

Court may decide between some of the parties, without making others interested parties to the suit.

63. It shall be lawful for the Court to adjudicate on questions arising between parties, notwithstanding that they may be some only of the parties interested in the property respecting which the question may have arisen, or that the property in question is comprised with other property in the same settlement, will, or other instrument, without making the other parties interested in the property, respecting which the question may have arisen, or interested under the same settlement, will, or other instrument, parties to the suit, and without requiring the whole trusts and purposes of the settlement, will, or other instrument to be executed under the direction of the Court, and without taking the accounts of the trustees

trustees or other accounting parties, or ascertaining the particulars or amount of the property, touching which the question or questions may have arisen: Provided, always, that if the Court shall be of opinion that the application is fraudulent or collusive, or for some other reason ought not to be entertained, it shall have power to refuse to make the order prayed. Proviso.

64. Upon any suit in the said Court becoming abated by death, marriage, or otherwise, or defective by reason of some change or transmission of interest or liability, it shall not be necessary to exhibit any bill of revivor, or supplemental bill, in order to obtain the usual order to revive such suit, or the usual or necessary decree or order to carry on the proceedings; but, an order to the effect of the usual order to revive, or of the usual supplemental decree, may be obtained as of course upon an allegation of the abatement of such suit, or of the same having become defective, and of the change or transmission of interest or liability; and an order so obtained, when served upon the party or parties, who, according to the present practice of the said Court, would be defendant or defendants to the bill of revivor or supplemental bill, shall, from the time of such service, be binding on such party or parties in the same manner in every respect as if such order had been regularly obtained according to the existing practice of the said Court; and such party or parties shall thenceforth become a party or parties to the suit, and shall be bound to enter an appearance thereto in the office of the said Court, within such time, and in like manner, as if he or they had been duly served with process to appear to a bill of revivor or supplemental bill filed against him: Provided, that it shall be open to the party or parties so served, within such time after service as shall be in that behalf prescribed by any general order of the Judge or Judges of the said Court, to apply to the Court, by motion or petition, to discharge such order on any ground which would have been open to him on a bill of revivor or supplemental bill, stating the previous proceedings in the suit, and the alleged change or transmission of interest or liability, and praying the usual relief consequent thereon: Provided, also, that if any party so served shall be under any disability other than coverture, such order shall be of no force or effect as against such party until a guardian or guardians *ad litem* shall have been duly appointed for such party, and such time shall have elapsed thereafter as shall be prescribed by any general order of the Judge or Judges of the said Court. In case of abatement of suit, an order may be made, which shall have the same effect as a bill of revivor.

65. It shall not be necessary to exhibit any supplemental bill in the said Court for the purpose only of stating or putting in issue facts, or circumstances, which may have occurred after the institution of any suit, but such facts or circumstances may be introduced by way of amendment into the original bill of complaint in the suit, if the cause is otherwise in such a state as to allow of an amendment being made in the bill, and, if not, the plaintiff shall be at liberty to state such facts or circumstances on the record, in such New facts, &c., after commencement of suit, to be introduced as amendments to bill, &c.

such manner and subject to such rules and regulations with respect to the proof thereof, and the affording the defendant leave and opportunity of answering and meeting the same, as shall in that behalf be prescribed by any general order of the Judge or Judges of the said Court.

Where account required to be taken, Court may give special directions as to mode of taking same.

66. It shall be lawful for the Court, in any case where any account is required to be taken, to give such special directions, if any, as it may think fit, with respect to the mode in which the account should be taken or vouched, and such special directions may be given either by the decree or order directing such account, or by any subsequent order or orders, upon its appearing to the Court that the circumstances of the case are such as to require such special directions; and, particularly, it shall be lawful for the Court, in cases where it shall think fit so to do, to direct that in taking the account, the books of account in which the accounts required to be taken have been kept, or any of them, shall be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised.

Court may order real estate to be sold, if required.

67. If, after a suit shall have been instituted in the said Court, in relation to any real estate, it appear to the Court that it will be necessary or expedient that the said real estate, or any part thereof, should be sold for the purposes of said suit, it shall be lawful for the said Court to direct the same to be sold at any time after the institution thereof, and such sale shall be as valid, to all intents and purposes, as if directed to be made by a decree or decretal order on the hearing of such cause; and any party to the suit in possession of such estate, or in receipt of the rents and profits thereof, shall be compelled to deliver up such possession or receipt to the purchaser, or such other person, as the Court shall direct.

When real or personal property is the subject of proceedings, Court may allow to parties, part or the whole of the annual income.

68. When any real or personal property shall form the subject of any proceedings in the equitable jurisdiction of the Supreme Court, and the Court shall be satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such suit, it shall be lawful for the said Court, at any time after the commencement of such proceedings, to allow to the parties interested therein, or any one or more of them, the whole or part of the annual income of such real property, or a part of such personal property, or a part or the whole of the income thereof, up to such time as the said Court shall direct, and for that purpose to make such orders as may appear to the said Court necessary or expedient.

Practice as to injunctions to stay proceedings at law, to be assimilated to practice as to special injunctions.

69. The practice of the equitable jurisdiction of the Supreme Court with respect to injunctions for the stay of proceedings at law shall, so far as the nature of the case will admit, be assimilated to the practice of such Court with respect to special injunctions generally, and such injunctions may be granted upon interlocutory applications

applications supported by affidavit, in like manner as other special injunctions are granted by the said Court: Provided that no injunction for the stay of proceedings at law shall issue or be granted in any case, unless it shall be made to appear to the satisfaction of the said Supreme Court, or of some Judge thereof, that the grounds upon which such injunction is prayed could not be made fully available as a defence to proceedings at law under the Act passed in the present Session of this Council, intituled "An Act for the more effectual administration of justice by means of the Supreme Court."

This provision is not in the English Act.

70. Upon application by motion or petition to the Court, in any suit depending therein, for an injunction or a receiver, or to dissolve an injunction, or discharge an order appointing a receiver, the answer of the defendant, shall, for the purpose of evidence on such motion or petition, be regarded merely as an affidavit of the defendant, and affidavits may be received and read in opposition thereto.

Answer of defendant on motion for injunction, or receiver, &c., to be regarded as an affidavit.

71. In taking the accounts necessary for the administration of any deceased person, debts due from the estate of the deceased may be proved by the executor or administrator of the deceased's estate, and in case any creditor, after notice shall have been given to him of such proof having been made, shall attempt to establish any larger amount, the same shall be at the peril of costs to be awarded against him.

In taking accounts for the administration of estate, executors, &c., may prove debts due from the estate.

72. And be it Enacted, That after the Court has made any order under this Act with respect to the administration of the real and personal estate, or of the personal estate of any deceased person, or after a decree or order has been made by the Court in any suit referring the matter of such administration to a Judge, or to the Master, or other person, it shall not be lawful for any creditor or other person, so long as any such order remains in force, to commence or proceed with any action against the executor or administrator of such deceased person, or against his heir or devisee, in the case of real estate to be so administered, for any debt or demand claimed against the estate of such deceased person, without the leave of the Court, or a Judge, in writing, first obtained in that behalf; and it shall be lawful for any Judge of the Court to order that all proceedings in such action be stayed, until after such leave as aforesaid has been obtained, and to make such order as to the costs of any such action, as to such Judge appears just.

After order made with respect to administration, or after decree, or order of reference, no creditor to sue without leave of the Court.

73. All proceedings, accounts, and other matters, except the taxation of costs, which, under the provisions of this Act, or which according to the ordinary course of proceeding in the Court, would or might be taken or done before the Master, may be taken or done before the Court, or one of the Judges thereof, in all cases where the Court shall not otherwise order; and in taking such proceedings and accounts, and doing such other matters, the Court, or Judge, or the

The Court or a Judge may act instead of Master.

Parties interested may apply to attend the proceedings.

Warrants dispensed with.

Proceedings to be adjourned from time to time.

the Master, in cases where any matter shall be specially referred to him, may proceed on the order of the Court, without any statement of facts, charge, or proposal in writing, unless the same shall be specially ordered by the Court or a Judge, and any person interested in the matter may apply to the Court or a Judge, or to the Master, to attend upon the same, and may so attend, if the Court, or Judge, or Master, as the case may be, shall think fit to accede to such application; and in order to the taking any such proceedings, accounts, and other matters, no warrant shall be necessary to be taken out, but all parties whose attendance is deemed necessary, shall, in all cases except the taxation of costs, be required to do so by summons, to be signed by the Judge, or the Master, as the case may require; and the proceedings under such summons may be adjourned from day to day, or from time to time, as occasion may require, and in order to the taxation of costs, it shall be sufficient for the Master to fix the time for taxation by a note in writing, under his hand, the service of a copy whereof upon the parties entitled to attend the taxation, shall in all cases be sufficient.

In case directions as to practice, &c., not followed, Court may make order and award costs.

74. In case any of the directions herein contained with respect to the practice and course of proceedings in the equitable jurisdiction of the said Supreme Court shall by mistake of parties fail to be followed in any suit or proceeding in the said Court, it shall be lawful for the said Court, if it shall think fit, upon payment of such costs as such Court shall direct, to make such order, giving effect to, and rectifying, such proceedings, as may be justified by the merits of the case.

Supreme Court to have the power of the Lord Chancellor and of the Court of Chancery, under "The Trustee Act, 1850."

75. All the jurisdiction, power, and authority which by an Act of Parliament, "The Trustee Act of 1850," are given to and vested in the Lord High Chancellor of England and the Court of Chancery of England respectively, with respect to lands, choses in action, personal estate, and persons in England, shall be, and are hereby vested in the said Supreme Court, with respect to lands, choses in action, personal estate, and persons in South Australia, and such power, jurisdiction, and authority may be exercised by the said Court or either of the Judges thereof, as occasion may require; and every order made by the said Supreme Court or either of the Judges thereof, with respect to the vesting of lands, or any chose in action, or personal estate in South Australia under the authority of the said Act, shall have the same effect with respect to such lands, choses in action, or personal estate, as any similar order made by the said Lord High Chancellor or Court of Chancery would have, with respect to lands, or any chose in action, or personal estate in England; and all the provisions of the said Act with respect to lands, choses in action, personal estate, and persons in England, and with respect to proceedings relative thereto, shall, so far as circumstances will permit, be applicable to lands, choses in action, personal estate, and persons in South Australia, and to proceedings relative thereto, in the same manner as if such provisions were specifically herein enacted.

76. The Judge and Judges of the said Court may, and they are hereby required, from time to time to make general rules and orders for carrying the purposes of this Act into effect, and for regulating the times and form and mode of procedure, and for enabling the provisions of this Act to be applied to proceedings commenced before this Act shall have come into operation, and, generally, the practice of the said Court in respect of the matters to which this Act relates; and for regulating the fees and allowances to all officers of the said Court and solicitors thereof in respect to such matters; and, so far as may be found expedient, for altering the course of proceeding hereinbefore prescribed in respect to the matters to which this Act relates, or any of them; and such rules and orders may from time to time be rescinded or altered by the like authority: and all rules and orders shall take effect as general orders of the said Court: Provided that all such general rules and orders shall be made and published in the manner prescribed by, and shall be subject to, the provisions of the Ordinance No. 2 of the year 1850, "For the confirmation of the General Rules and Orders of the Supreme Court of South Australia, and to amend the Laws relating to such General Rules and Orders."

Judges to make general rules and orders for carrying purposes of this Act into effect.

77. In the construction of this Act the words "bill of complaint" shall mean also and include information; the word "affidavit" shall mean also and include affirmation.

Construction of terms

78. This Act shall commence and take effect from and after the first day of March next: Provided that it shall be lawful for the Judge and Judges of the said Court to make and issue any such general rules or orders as aforesaid at any time after the passing this Act, so as the same be not made to take effect before the time appointed for the commencement of this Act.

Commencement of Act.

1st March 1854.

SCHEDULES REFERRED TO IN THE FOREGOING ACT.

A

FORM OF BILL.

South Australia—In the Supreme Court. In Equity. John Lee, plaintiff.
James Styles and Henry Jones, defendants.

Bill of Complaint.

To the Honorable
the Judges of the Supreme Court. Humbly complaining, showeth unto
their Honors. John Lee, of Port Adelaide, in the Province of South Australia,
merchant, the above-named plaintiff, as follows :

1. The defendant, James Styles, being seised in fee simple of a certain section of land, being section No. one hundred and fifty, in the Provincial survey marked with the letter B, with the appurtenances, did by an indenture dated the first day of May, 1850, and made between the defendant, James Styles, of the one part, and the plaintiff of the other part, bargain, sell, release, and convey the said section of land, with the appurtenances, unto and to the use of the plaintiff, his heirs and assigns, subject to a proviso for redemption thereof in case the defendant, James Styles, his heirs, executors, administrators, or assigns, should, on the first of May, 1851, pay to the plaintiff, his executors, administrators, or assigns, the sum of one hundred pounds, with interest thereon at the rate of eight per cent. per annum, as by the said indenture will appear.

2. The whole of the said one hundred pounds, together with interest thereon at the rate aforesaid, is now due to the plaintiff.

3. The defendant, Henry Jones, claims to have some charge upon the said land comprised in the said indenture of mortgage of the first of May, 1850, which charge is subsequent to the plaintiff's said mortgage.

4. The plaintiff has frequently applied to the defendants and required them either to pay the said debt or else to release the equity of redemption of the premises, but they have refused to do so.

5. The defendants, James Styles and Henry Jones, pretend that there are some other mortgages, charges, or incumbrances affecting the premises, but they have refused so to do.

6. There are divers timber-like trees growing and standing on the farm and lands comprised in the said indenture of mortgage, which trees are a material part of the plaintiff's said security, and if the same, or any of them, were felled and taken away the said mortgaged premises would be an insufficient security to the plaintiff for the money due thereon.

7. The defendant, James Styles, who is in possession of the said farm, has marked for felling a large quantity of the said trees; and he threatens and intends forthwith to cut down and dispose of a considerable quantity of the said trees on the said farm.

Prayer.

The plaintiff prays as follows :—

1. That an account may be taken of what is due for principal and interest on the said mortgage.

2. That the defendants, James Styles and Henry Jones, may be decreed to pay to the plaintiff the amount which shall be so found due, together with the costs of this suit, by a day to be appointed for that purpose; or in default thereof, that the said defendants and all persons claiming under them, may be absolutely foreclosed of all right and equity of redemption in or to the said mortgaged premises.

3. That the defendant, James Styles, may be restrained by the injunction of this Honorable Court from felling, cutting, or disposing of any of the trees now standing or growing in or upon the said land or mortgaged premises comprised in the said indenture of mortgage, or any part thereof.

4. That the plaintiff may have such further or other relief as the nature of the case may require.

NOTE.—This bill is filed by Messrs. A. & B., of King William-street, Adelaide, solicitors for the above-named plaintiff.

Form of endorsement on Bill of Complaint.

VICTORIA R.—To the within-named defendant, C. D., greeting.—We command you (and every of you, where there is more than one defendant) that within eight days after service hereof on you, exclusive of the day of such service, you cause an appearance to be entered for you to the within bill of complaint of the within-named A. B., and that you observe what our said Court shall direct.

Witness, Charles Cooper, Esquire, &c.

NOTE—If you fail to comply with the above directions you will be liable to be arrested and imprisoned.

Appearances to be entered at the Supreme Court Office.

B

FORM OF INTERROGATORIES.

South Australia—In the Supreme Court. In Equity. John Lee, plaintiff.
James Styles and Henry Jones, defendants.

Interrogatories for the examination of the above-named defendants in answer to the plaintiff's bill of complaint.

1. Does not the defendant, Henry Jones, claim to have some charge upon the land and premises comprised in the indenture of mortgage of the first of May, 1850, in the plaintiff's bill mentioned?

2. What are the particulars of such charge, if any, state the date, nature, and short effect of the security, and what is due thereon?

3. Are there or is there any other mortgages or mortgage charges, or charge incumbrances or incumbrance, in any and what manner affecting the aforesaid premises or any part thereof?

4. Set forth the particulars of such mortgages or mortgage charges, or charge incumbrances or incumbrance; the date, nature, and short effect of the security, what is now due thereon and who is or are entitled thereto respectively, and when and by whom and in what manner, every such mortgage charge or incumbrance was created?

The defendant, James Styles, is required to answer all the interrogatories.

The defendant, Henry Jones, is required to answer the interrogatories numbered 1 and 2.

A. B., Plaintiff's Solicitor.

C

FORM OF ANSWER.

South Australia—In the Supreme Court. In Equity. John Lee, plaintiff.
James Styles and Henry Jones, defendants.

The answer of James Styles, one of the above-named defendants, to the bill of complaint of the above-named plaintiff.

In answer to the above bill, I, James Styles, say as follows:—

1. I believe that the defendant, Henry Jones, does claim to have a charge upon the land and premises comprised in the indenture of the first of May, 1850, in the plaintiff's bill mentioned.

2. Such charge was created by an indenture, dated the first of November, 1850, made between myself of the one part, and the said defendant, Henry Jones, of the other part, whereby I granted and conveyed the said land and premises, subject to the mortgage made by the said indenture of the first of May, 1850, unto the defendant, Henry Jones, for securing the sum of two hundred pounds and interest at the rate of eight pounds per cent. per annum; and the amount due thereon is the said sum of two hundred pounds, with interest thereon to the date of such mortgage.

3. To the best of my knowledge, remembrance, and belief, there is not any other mortgage charge or incumbrance affecting the aforesaid premises.

J. S.

D.

D

FORMS OF CLAIMS.

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

South Australia—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 in this suit; and in default thereof, he claims to have the personal estate of the said C. D. administered in this Court, but 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 petitioner is not the original creditor, but has become interested in or entitled to the debt, in which case, the character in which he claims is to be stated.

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

South Australia.—In the Supreme Court. In Equity. Between A. B., plaintiff, and 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 said legacy of _____ together with interest thereon after 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, seeking an account of the residue, and payment or appropriation of his share therein.*

South Australia—In the Supreme Court. In Equity. Between A. B., plaintiff, and 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 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 a 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.*

South Australia—In the Supreme Court. In Equity. Between A. B., plaintiff, and 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 estate 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 effects 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.

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.*

South Australia—In the Supreme Court. In Equity. Between A. B., plaintiff, and C. D., defendant. The claim of A. B., of the above-named plaintiff.

The said A. B. states that he is the executor [or administrator] of E. F., late of but now deceased, who departed this life on or about the day of and that he hath possessed the 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 show 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.

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

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.*

South Australia—In the Supreme Court. In Equity. Between A. B. plaintiff, and 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 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 leasehold, or other property, as the case may be], therein comprised, for securing the sum of pounds and interest, and that the time for payment thereof has elapsed; and that the above-named C. D. is entitled to the equity 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.

NOTE.—The names only of the parties are to be set out, not the substance or effect of the document. If there is no written security to be referred to, the property is to be described generally, and this form varied according to the circumstances of the case.

*CD. not of
Immediate
Court & Sheriff
then to be done*

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

South Australia—In the Supreme Court. In Equity. Between A. B., plaintiff, and 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 of ; or, the will of dated the day of], the said A. B. is entitled to the equity of redemption of certain freehold property [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 [or other document], 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 receive the said sum of pounds, and any costs justly payable to him, and to reconvey 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 the said C. D. has not so done; and, therefore, the said A. B. claims that he may be declared entitled to redeem the said mortgaged property [or property subject to the said lien], and to have the same reconveyed [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 a lease or sale or purchase of any property, seeking such specific performance.*

South Australia—In the Supreme Court. In Equity. Between A. B., plaintiff, and 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., [or by E. F., the attorney or agent, of the said C. D.] he, the said C. D. [or the said E. F. on behalf of the said C. D.] contracted, to grant to him a lease of [with right of purchase, or to buy of him, or to sell to him, as the case may be] certain freehold property, [or 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 declared 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.*

South Australia—In the Supreme Court. In Equity. Between A. B., plaintiff, and 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 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.*

South Australia—In the Supreme Court. In Equity. Between A. B., plaintiff, and 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 C. D. 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.

11.—*By a person entitled to have a new Trustee appointed, in a case where there is no power in the Instrument creating the Trust to appoint new Trustees, and where the power cannot be exercised, and seeking to appoint new Trustees.*

South Australia—In the Supreme Court. In Equity. Between, &c. 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 the 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.]

Form of Endorsement on Claim.

VICTORIA R. -To the within-named C. D., greeting :

We command you, [and every of you, where there is more than one defendant], that within eight days after service hereof on you, exclusive of the day of such service, you cause an appearance to be entered for you in our Supreme Court to the within claim of the within-named A. B.; and further, that on the fourteenth day after the service hereof, or on such subsequent day as shall be appointed by the said Court, you do personally, or by counsel, appear in the Court at ten of the clock in the forenoon, and then and there show cause, if you can, why the said A. B. should not have such relief against you, as is within claimed, or why such order as shall be just with reference to the claim should not be made.

Witness, Charles Cooper, Esq., &c.

Dated at _____

NOTE.—Appearances are to be entered at the Office of the Supreme Court, Adelaide; and if you neglect to enter your appearance, and either personally, or by your counsel, to appear in the Supreme Court, at the place, and at the hour and day 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.

*I do have any thing more in
this act than in the English
and is then not much more than
from local
circumstances*