

expense of witnesses' attendance to prove the same, they shall be received in evidence on satisfactory proof by affidavit at such hearing, that copies thereof have been served on the Solicitor of the opposite party fourteen days before the day noticed for hearing, and that no notice has been received seven days before that day that such writings will be required to be proved.

23. Whenever the plaintiff shall be required to take any step in the cause, a Judge on application by any defendant, whether required to answer the Bill or not, for a dismissal of the cause, after fourteen days notice, may order the same, unless good cause be shewn by affidavit to the contrary; and any mistake by a party in following the course of practice in any proceeding of the said Court may be rectified by order of a Judge on payment of costs, if in his opinion it shall advance the justice of the case.

24. No suit in the said Court shall be dismissed by reason only of the misjoinder of persons as plaintiffs therein, but whenever it shall appear to a Judge, that notwithstanding the conflict of interest in co-plaintiffs, or the want of interest in some of them, or the existence of some ground of defence affecting any of them, they or any of them may be entitled to relief, the Judge shall have power to grant such relief, and to modify his decree according to the special circumstances of the case, and for that purpose to direct such amendments 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 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 may be a misjoinder of plaintiffs, and the plaintiff having an interest shall have died leaving a plaintiff on the record without an interest, the Judge may at the hearing order the cause to stand revived, and proceed to a decision of the cause, if he shall see fit, and give such directions as to costs or otherwise as may appear just.

25. Any Judge may adjudicate on questions arising between parties interested in the property respecting which the questions may have arisen, or where the property in question is comprised with other property in the same settlement, will, or other instrument, without making the other parties 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 Judge, and without taking the accounts of the Trustees or other accounting parties, or ascertaining the particulars or amount of the property touching which the question may have arisen; but if the application be fraudulent, or for any other reason ought not to be entertained, no such adjudication shall be had.

26. Whenever a demurrer will lie to a Bill for want of equity, the Judge on the argument may, if the facts warrant, instead of dismissing the Bill, order the remedy as at common law; or he may make such other order as to proceeding therein on the common law side of the Supreme Court, and for the trial of the same, on such terms as to payment of costs or otherwise, as may appear to him just.

27. Every affidavit to be used in the said Court shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be confined to a distinct portion of the subject, and shall in every case be filed after being used in the Court. Copies of all affidavits and other writings used on any motion or petition, except in cases of injunction or petitions *ex parte*, shall be served on the opposite party six days before being used, those in answer three days, and any in reply, which shall be confined to new matter alleged in such answer, one day; beyond which none shall be allowed.

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

29. No suit shall abate where the cause of action shall survive by the death of one or more of the plaintiffs, or defendants; but, upon suggestion of such death, to be entered by the

Solicitor on the Bill filed, the suit shall be allowed to proceed without further change, in favour of or against the surviving party, as the case may be; and on the death of one or more plaintiffs or defendants in any suit, where the cause of action shall not survive, it shall only abate as to the person so dying.

30. Whenever it may be necessary to revive a suit by or against the representatives of a deceased party, or on transmission of interest or liability, no Bill of revivor, or supplemental Bill shall be used, but the Judge may, on motion or petition, order that the same stand revived on such terms as may be just.

31. Any person claiming to be a creditor, or the next of kin, or interested in the Will of a deceased person, may obtain as of course a Summons (F) from any Judge, requiring the Executor of such deceased person to shew cause why an order should not be granted for the administration of the personal estate, or the real estate, when the whole thereof is by devise vested in Trustees for sale and for receipt of the rents and produce thereof; and upon affidavit of the due service of such summons, or on appearance of such executor, and affidavit of such other matters, if any, as such Judge shall require, he may make the usual order for the administration of the estate, with such variations as may be necessary, which order on being filed with the Clerk along with the summons and affidavits, shall have the force of a decree to the like effect made on the hearing of a cause between the parties; and the same may be granted to such one or more of the claimants, or classes of claimants, in case of application by different persons or classes, and upon such terms as the Judge shall think fit.

32. On making any decree the Clerk shall draw up and submit minutes of the same to the Solicitors on both sides, who may attend the Clerk upon an appointment to be made by him, to settle the same. If any dispute shall arise as to the matter of such decree, the Judge who heard the cause shall on application of either party finally determine such dispute. Instead of enrolment of such decree the Clerk shall keep a Book, in which he shall enter an abstract of the pleadings, and a reference to the evidence, together with the decree in full. But this entry shall not be made until after decision in any case of appeal, and such appeal, as well as an appeal from any order, shall be made within twenty days after the decision of the cause, unless a Term intervene, and then at such Term. No re-hearing, Bill of review, or supplemental Bill in the nature of such Bill, shall be permitted; but newly discovered facts, or matters allowed on such Bill of review, if stated in the notice of appeal, may be heard and determined on the appeal as in cases of new trial. A certified copy of the entry, or of any part thereof, or a memorial thereof, shall be evidence of such decree, or of the part thereof required, either in Court, or for Registry in any County Registry of Deeds and Wills.

33. Every appeal from any decree or order shall be by notice as in cases of new trial, to be served on the opposite party as well as on the Judge who made the same, and shall be heard at the next Term in the same manner, except that no previous rule shall be necessary.

34. In every case of appeal the pleadings, evidence, and all papers used in any stage of the cause, together with the notes of the Judge who heard the same, or tried any issue therein, shall be produced to the Court on the hearing of the appeal; from the decision of which no writ of error or appeal shall lie, except to the Queen in Council.

35. Any appeal from a decision of any Judge of Probates shall be to the said Court, and such appeal, together with any now pending, shall be conducted in the same manner, and on the like principles, as if the case had originated in Equity, subject only to the directions of the Act of Assembly relating to appeals from Probate Courts.

36. All sales of real estate ordered by the Judge, shall be conducted by any officer to whom the same may be referred by the Judge, in the same manner as in sales on Bills of foreclosure of mortgages.

37. All moneys subject to the control of the Court, shall be paid into the hands of such person or body corporate, or be