

No. XXI.

COMMON LAW
PROCEDURE.

An Act to amend the process practice and mode of Pleading at Law in the Supreme Court. [19th September, 1853.]

Commencement of
Act.

WHEREAS the process practice and mode of pleading in the Supreme Court at Common Law may be rendered more simple and speedy Be it enacted by the Governor of New South Wales with the advice and consent of the Legislative Council thereof as follows :—

1. The provisions of this Act shall come into operation on the first day of January in the year of our Lord one thousand eight hundred and fifty-four.

Commencement of
Actions.

Commencement of Personal Actions against defendants whether in or out of the jurisdiction of the Court.

Personal actions
when defendant
resides within the
jurisdiction to be
commenced by writ
of summons in form
No. 1 of Schedule A.

2. All personal actions brought in the Supreme Court where the defendant is residing or supposed to reside within the jurisdiction of the said Court shall be commenced by writ of summons in the form contained in the Schedule A to this Act annexed marked No. 1 and in every such writ and copy thereof the place of the residence or supposed residence

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residence of the party defendant or wherein the defendant shall be or shall be supposed to be shall be mentioned and such writ shall be issued by the Prothonotary or such other officer as the Court shall direct.

3. It shall not be necessary to mention any form or cause of action in any writ of summons or in any notice of writ of summons issued under the authority of this Act. No form or cause of action to be mentioned in writ.

4. Every writ of summons shall contain the names of all the defendants and shall not contain the name or names of any defendant or defendants in more actions than one. Writ to state names of all defendants and for only one action.

5. Every writ of summons shall bear date on the day on which the same shall be issued and shall be tested in the name of the Chief Justice or in case of a vacancy of such office then in the name of the Senior Puisne Judge of the Court. Writ to be dated on day of issuing and tested in name of Chief or Senior Judge.

6. Every writ of summons shall be indorsed with the name and place of abode of the attorney actually suing out the same and when the attorney actually suing out any writ shall sue out the same as agent for an attorney in the country the name and place of abode of such attorney in the country shall also be indorsed upon the said writ and in case no attorney shall be employed to issue the writ then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff in person mentioning the city town or parish and also the name of the hamlet street and number of the house of such plaintiff's residence if any such there be. Writ to be indorsed with name and abode of attorney or a memorandum that writ has been sued by plaintiff in person.

7. Every attorney whose name shall be indorsed on any writ issued by authority of this Act shall on demand in writing made by or on behalf of any defendant declare forthwith whether such writ has been issued by him or with his authority or privity and if he shall answer in the affirmative then he shall also in case the Court or a Judge shall so order and direct declare in writing within a time to be allowed by such Court or Judge the profession occupation or quality and place of abode of the plaintiff on pain of being guilty of a contempt of the Court from which such writ shall appear to have been issued and if such attorney shall declare that the writ was not issued by him or with his authority or privity all proceedings upon the same shall be stayed and no further proceedings shall be taken thereupon without leave of the Court or a Judge. Attorney on demand to declare whether writ issued by his authority and to declare name and abode of his client if ordered.

8. Upon the writ and copy of any writ served for the payment of any debt the amount of the debt shall be stated and the amount of what the plaintiff's attorney claims for the costs of such writ copy and service and attendance to receive debt and costs and it shall be further stated that upon payment thereof within days to the plaintiff or his attorney further proceedings will be stayed which indorsement shall be written or printed in the following form or to the like effect— If writ issued without authority of attorney proceedings to be stayed.

“The plaintiff claims £ for debt and
 “ £ for costs and if the amount thereof be
 “ paid to the plaintiff or to his attorney within
 “ days from the service hereof further proceedings will
 “ be stayed”

But the defendant shall be at liberty notwithstanding such payment to have the costs taxed and if more than one-sixth shall be disallowed the plaintiff's attorney shall pay the costs of taxation.

9. The plaintiff in any such action may at any time during six months from the issuing of the original writ of summons issue one or more concurrent writ or writs each concurrent writ to bear teste of the same day as the original writ and to be marked by the Prothonotary with the word “concurrent” and the date of issuing the concurrent writ Provided that such concurrent writ or writs shall only be Concurrent writs may be issued.

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be in force for the period during which the original writ in such action shall be in force.

Renewal of writs of summons to save the Statute of Limitation and for other purposes.

10. No original writ of summons shall be in force for more than six months from the day of the date thereof including the day of such date but if any defendant therein named shall not have been served therewith the original or concurrent writ of summons may be renewed at any time before its expiration for six months from the date of such renewal and so from time to time during the currency of the renewed writ by being marked by the proper officer with the date of such renewal upon delivery to him by the plaintiff or his attorney of a præcipe in such form as has heretofore been required to be delivered upon the obtaining of an alias writ and a writ of summons so renewed shall remain in force and be available to prevent the operation of any Statute whereby the time for the commencement of the Act may be limited and for all other purposes from the date of the issuing of the original writ of summons.

Renewal of writs issued before this Act.

11. Where any writ of summons in any such action shall have been issued before and shall be in force at the commencement of this Act such writ may at any time before the expiration thereof be renewed under the provisions of and in the manner directed by this Act and where any writ issued in continuation of a preceding writ shall be in force and unexpired or where one month next after the expiration thereof shall not have elapsed at the commencement of this Act such continuing writ may be filed in the office of the Court within one month next after the expiration of such writ or within twenty days after the commencement of this Act and the original writ of summons in such action may thereupon but within the same period of one month next after the expiration of the continuing writ or within twenty days after the commencement of this Act be renewed under the provisions of and in the manner directed by this Act and every such writ shall after such renewal have the same duration and effect for all purposes and shall if necessary be subsequently renewed in the same manner as if it had originally issued under the authority of this Act.

Production of renewed writ evidence of commencement of action.

12. The production of a writ of summons purporting to be marked as aforesaid by the proper officer shewing the same to have been renewed according to this Act shall be sufficient evidence of its having been so renewed and of the commencement of the action as of the first date of such renewed writ for all purposes.

Indorsement of service to be made.

13. The person serving the writ of summons shall within three days after such service indorse on the writ the day of the month and week of the service thereof otherwise the plaintiff shall not be at liberty in case of nonappearance to proceed under this Act and every affidavit of service of such writ shall mention the day on which such indorsement was made.

As to service of writ on Corporation.

14. Every such writ of summons issued against a Corporation aggregate may be served on the Mayor or other head officer or on the Town Clerk Treasurer Clerk or Secretary of such Corporation.

Proceedings where personal service cannot be effected.

15. The service of the writ of summons wherever it may be practicable shall be personal but where reasonable efforts have been made without success to effect personal service a true copy of the writ may be left at the defendant's then usual place of abode with some competent person there then residing to be named or otherwise sufficiently described in the affidavit of service hereinafter mentioned.

As to actions against British subjects residing out of the jurisdiction of Supreme Court.

16. In case any defendant being a British subject is residing out of the jurisdiction of the said Supreme Court it shall be lawful for the plaintiff to issue a writ of summons in the form contained in the said Schedule A No. 2 which writ shall bear the indorsement contained

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tained in the said form purporting that such writ is for service out of the jurisdiction of the said Supreme Court and the time for appearance by the defendant to such writ shall be regulated by the distance from Sydney of the place where the defendant is residing and it shall be lawful for the Court or Judge upon being satisfied by affidavit that there is a cause of action which arose within the jurisdiction or in respect of the breach of a contract made within the jurisdiction and that the writ was personally served upon the defendant or that reasonable efforts were made to effect personal service thereof upon the defendant and that it came to his knowledge and either that the defendant wilfully neglects to appear to such writ or that he is living out of the jurisdiction of the said Court in order to defeat and delay his creditors to direct from time to time that the plaintiff shall be at liberty to proceed in the action in such manner and subject to such conditions as to such Court or Judge may seem fit having regard to the time allowed for the defendant to appear being reasonable and to the other circumstances of the case Provided always that the plaintiff shall and he is hereby required to prove the amount of the debt or damages claimed by him in such action either before a jury upon a writ of inquiry or before the Prothonotary of the said Supreme Court in the manner hereinafter provided according to the nature of the case as such Court or Judge may direct and the making such proof shall be a condition precedent to his obtaining judgment.

17. In any action against a person residing out of the jurisdiction of the said Court and not being a British subject the like proceedings may be taken as against a British subject resident out of the jurisdiction save that in lieu of the form of writ of summons in Schedule A No. 2 the plaintiff shall issue a writ of summons according to the form contained in the said Schedule No. 3 and shall in manner aforesaid serve a notice of such last-mentioned writ upon the defendant therein mentioned which notice shall be in the form contained in the said Schedule also marked No. 3 and such service shall be of the same force and effect as the service of the writ of summons in any action against a British subject resident abroad and by leave of the Court or a Judge upon their or his being satisfied by affidavit as aforesaid the like proceedings may be had and taken thereupon.

As to actions against foreigners residing out of the jurisdiction of Supreme Court.

18. If the plaintiff or his attorney shall omit to insert in or indorse on any writ or copy thereof any of the matters required by this Act to be inserted therein or indorsed thereon such writ or copy thereof shall not on that account be held void but it may be set aside as irregular or amended upon application to be made to the Court or to a Judge and such amendment may be made upon any application to set aside the writ upon such terms as to the Court or Judge may seem fit.

Omission to insert or indorse matters in or on writ not to nullify it.

19. If either of the forms of writ of summons contained in the said Schedule A marked respectively Nos. 1 2 and 3 shall by mistake or inadvertence be substituted for any other of them such mistake or inadvertence shall not be an objection to the writ or any other proceeding in such action but the writ may upon an *ex parte* application to a Judge whether before or after any application to set aside such writ or any proceeding thereon and whether the same or notice thereof shall have been served or not be amended by such Judge with or without costs.

Substitution by mistake or inadvertence of one form of writ for another may be amended by Judge with or without costs.

20. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service out of the jurisdiction and a writ for service out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction.

Writs for service within and without jurisdiction may be concurrent and *vice versa*.

21. Any affidavit for the purpose of enabling the Court or a Judge to direct proceedings to be taken against a defendant residing out of the jurisdiction of the said Court may be sworn before any

Affidavits in certain cases may be sworn before a Consul.

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Consul General Consul Vice Consul or Consular Agent for the time being appointed by Her Majesty at any foreign port or place and every affidavit so sworn by virtue of this Act may be used and shall be admitted in evidence saving all just exceptions provided it purport to be signed by such Consul General Consul Vice Consul or Consular Agent upon proof of the official character and signature of the person appearing to have signed the same Provided always that if any person shall forge the signature of any such affidavit or shall use or tender in evidence any such affidavit with a false or counterfeit signature thereto knowing the same to be false or counterfeit he shall be guilty of felony and shall upon conviction be liable to transportation for seven years or to imprisonment for any term not exceeding three years nor less than one year with hard labor and every person who shall be charged with committing any felony under this Act may be dealt with indicted tried and if convicted sentenced and his offence may be laid and charged to have been committed in the place in which he shall be apprehended or be in custody and every accessory before or after the fact to any such offence may be dealt with indicted tried and if convicted sentenced and his offence may be laid and charged to have been committed in any place in which the principal offender may be tried Provided also that if any person shall wilfully and corruptly make a false affidavit before such Consul General Consul Vice Consul or Consular Agent every person so offending shall be deemed guilty of perjury in like manner as if such false affidavit had been made in New South Wales before competent authority and shall and may be dealt with indicted tried and if convicted sentenced and his offence may be laid and charged to have been committed in any place in which he shall be apprehended or be in custody as if his offence had been actually committed in that place.

Special indorsement of the particulars of debts or liquidated demands may be made on the writ.

22. In all cases where the defendant resides within the jurisdiction of the Court and the claim is for a debt or liquidated demand in money with or without interest arising upon a contract express or implied as for instance on a bill of exchange promissory note or cheque or other simple contract debt or on a bond or contract under seal for payment of a liquidated amount of money or on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt or on a guarantee whether under seal or not where the claim against the principal is in respect of such debt or liquidated demand bill cheque or note the plaintiff shall be at liberty to make upon the writ of summons and copy thereof a special indorsement of the particulars of his claim in the form contained in the said Schedule A No. 4 or to the like effect and when a writ of summons has been indorsed in the special form hereinbefore mentioned the indorsement shall be considered as particulars of demand and no further or other particulars of demand need be delivered unless ordered by the Court or a Judge.

Special indorsement to stand for particulars of demand.

Appearance and proceedings in default of appearance.

Appearance of the defendant and proceedings of the plaintiff in default of appearance.

Final judgment upon writ specially indorsed in default of appearance.

23. In case of nonappearance by the defendant where the writ of summons is indorsed in the special form hereinbefore provided it shall be lawful for the plaintiff on filing an affidavit of due service of the writ of summons in accordance with the provisions of this Act and a copy of such writ at once to sign final judgment in the form contained in the Schedule A No. 5 for any sum not exceeding the sum indorsed on the writ together with interest at the rate specified if any to the date of the judgment and a sum for costs (to be fixed by the Judges of the said Supreme Court) unless the plaintiff claim more than such fixed sum in which case the costs shall be taxed in the ordinary way and the plaintiff

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another or others of them shall not appear it shall and may be lawful for the plaintiff to sign judgment against such defendant or defendants only as shall not have appeared and before declaration against the other defendant or defendants to issue execution thereupon in which case he shall be taken to have abandoned his action against the defendant or defendants who shall have appeared or the plaintiff may before issuing such execution declare against such defendant or defendants as shall have appeared stating by way of suggestion the judgment obtained against the other defendant or defendants who shall not have appeared in which case the judgment so obtained against the defendant or defendants who shall not have appeared shall operate and take effect in like manner as a judgment by default obtained before the commencement of this Act against one or more of the several defendants in an action of debt before the commencement of this Act.

Joinder of parties.

Nonjoinder and misjoinder of plaintiffs may be amended before trial.

Joinder of parties to actions.

30. It shall and may be lawful for the Court or a Judge at any time before the trial of any cause to order that any person or persons not joined as plaintiff or plaintiffs in such cause shall be so joined or that any person or persons originally joined as plaintiff or plaintiffs shall be struck out from such cause if it shall appear to such Court or Judge that injustice will not be done by such amendment and that the person or persons to be added as aforesaid consent either in person or by writing under his her or their hands to be so joined or that the person or persons to be struck out as aforesaid were originally introduced without his her or their consent or that such person or persons consent in manner aforesaid to be so struck out and such amendment shall be made upon such terms as to the amendment of the pleadings (if any) postponement of the trial and otherwise as the Court or Judge by whom such amendment is made shall think proper and when any such amendment shall have been made the liability of any person or persons who shall have been added as co-plaintiff or co-plaintiffs shall subject to any terms imposed as aforesaid be the same as if such person or persons had been originally joined in such cause.

Nonjoinder and misjoinder of plaintiffs may be amended at the trial as in cases of amendments of variances under 3 & 4 W. IV. c. 42.

31. In case it shall appear at the trial of any action that there has been a misjoinder of plaintiffs or that some person or persons not joined as plaintiff or plaintiffs ought to have been so joined and the defendant shall not at or before the time of pleading have given notice in writing that he objects to such nonjoinder specifying therein the name or names of such person or persons such misjoinder or nonjoinder may be amended as a variance at the trial by the Court or a Judge in like manner as to the mode of amendment and proceedings consequent thereon or as near thereto as the circumstances of the case will admit as in the case of amendments of variances if it shall appear to such Court or Judge that such misjoinder or nonjoinder was not for the purpose of obtaining an undue advantage and that injustice will not be done by such amendment and that the person or persons to be added as aforesaid consent either in person or by writing under his her or their hands to be so joined or that the person or persons to be struck out as aforesaid were originally introduced without his her or their consent or that such person or persons consent in manner aforesaid to be so struck out and such amendment shall be made upon such terms as the Court or Judge by whom such amendment is made shall think proper and when any such amendment shall have been made the liability of any person or persons who shall have been added as co-plaintiff or co-plaintiffs shall subject to any terms imposed as aforesaid be the same as if such person or persons had been originally joined in such action and every Circuit Court or Officer presiding at any trial shall be deemed a Court or Judge within the meaning of this section.

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32. In case such notice be given or any plea in abatement of nonjoinder of a person or persons as co-plaintiff or co-plaintiffs in cases where such plea in abatement may be pleaded by the defendant the plaintiff shall be at liberty without any order to amend the writ and other proceedings before plea by adding the name or names of the person or persons named in such notice or plea in abatement and to proceed in the action without any further appearance on payment of the costs of and occasioned by such amendment only and in such case the defendant shall be at liberty to plead *de novo*.

Upon notice or plea of nonjoinder of plaintiffs proceedings may be amended.

33. It shall and may be lawful for the Court or a Judge in the case of the joinder of too many defendants in any action on contract at any time before the trial of such cause to order that the name or names of one or more of such defendants be struck out if it shall appear to such Court or Judge that injustice will not be done by such amendment and the amendment shall be made upon such terms as the Court or Judge by whom such amendment is made shall think proper and in case it shall appear at the trial of any action on contract that there has been a misjoinder of defendants such misjoinder may be amended as a variance at the trial in like manner as the misjoinder of plaintiffs has been hereinbefore directed to be amended and upon such terms as the Court or Judge or other presiding officer by whom such amendment is made shall think proper.

Misjoinder of defendants may be amended before or at trial.

34. In any action on contract where the nonjoinder of any person or persons as a co-defendant or co-defendants has been pleaded in abatement the plaintiff shall be at liberty without any order to amend the writ of summons and the declaration by adding the name or names of the person or persons named in such plea in abatement as joint contractors and to serve the amended writ upon the person or persons so named in such plea in abatement and to proceed against the original defendant or defendants and the person or persons so named in such plea in abatement. Provided that the date of such amendment shall as between the person or persons so named in such plea in abatement and the plaintiff be considered for all purposes as the commencement of the action.

Upon plea in abatement for nonjoinder of defendants proceedings may be amended.

35. In all cases after such plea in abatement and amendment if it shall appear upon the trial of the action that the person or persons so named in such plea in abatement was or were jointly liable with the original defendant or defendants the original defendant or defendants shall be entitled as against the plaintiff to the costs of such plea in abatement and amendment but if at such trial it shall appear that the original defendant or any of the original defendants is or are liable but that one or more of the persons named in such plea in abatement is or are not liable as a contracting party or parties the plaintiff shall nevertheless be entitled to judgment against the other defendant or defendants who shall appear to be liable and every defendant who is not so liable shall have judgment and shall be entitled to his costs as against the plaintiff who shall be allowed the same together with the costs of the plea in abatement and amendment as costs in the cause against the original defendant or defendants who shall have so pleaded in abatement the nonjoinder of such person. Provided that any such defendant who shall have so pleaded in abatement shall be at liberty on the trial to adduce evidence of the liability of the defendants named by him in such plea in abatement.

Provision in the case of subsequent proceedings against the persons named in a plea in abatement for nonjoinder of defendants.

36. In any action brought by a man and his wife for an injury done to the wife in respect of which she is necessarily joined as co-plaintiff it shall be lawful for the husband to add thereto claims in his own right and separate actions brought in respect of such claims may be consolidated if the Court or a Judge shall think fit. Provided that in the case

Joinder of claims by husband and wife with claims in right of husband.

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case of the death of either plaintiff such suit so far only as relates to the causes of action if any which do not survive shall abate.

Joinder of causes of action.

Different causes of action may be joined but separate trials may be ordered.

Joinder of causes of action.

37. Causes of action of whatever kind provided they be by and against the same parties and in the same rights may be joined in the same suit but this shall not extend to replevin or ejectment and where two or more of the causes of action so joined are local and arise in different districts the venue may be laid in either of such districts but the Court or a Judge shall have power to prevent the trial of different causes of action together if such trial would be inexpedient and in such case such Court or Judge may order separate records to be made up and separate trials to be had.

Questions by consent without pleading.

Questions of fact may after writ issued by consent and leave of a Judge be raised without pleadings.

Determination of questions raised by consent of the parties without pleading.

38. Where the parties to an action are agreed as to the questions of fact to be decided between them they may after writ issued and before judgment by consent and order of a Judge (which order any Judge shall have power to make upon being satisfied that the parties have a *boná fide* interest in the decision of such questions and that the same are fit to be tried) proceed to the trial of any questions of fact without formal pleadings and such questions may be stated for trial in an issue in the form contained in the said Schedule A No. 6 and such issue may be entered for trial and tried accordingly in the same manner as any issue joined in an ordinary action and the proceedings in such action and issue shall be under and subject to the ordinary control and jurisdiction of the Court as in other actions.

Agreement may be entered into for the payment of money and costs according to the result of the issue.

39. The parties may if they think fit enter into an agreement in writing which shall be embodied in the said or any subsequent order that upon the finding of the jury in the affirmative or negative of such issue a sum of money fixed by the parties or to be ascertained by the jury upon a question inserted in the issue for that purpose shall be paid by one of such parties to the other of them either with or without the costs of the action.

Judgment to be entered according to the agreement and execution issued forthwith unless stayed.

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

Proceedings upon issue may be recorded.

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

Questions of law may be raised after writ issued by consent &c. without pleading.

42. The parties may after writ issued and before judgment by consent and order of a Judge state any question or questions of law in a special case for the opinion of the Court without any pleadings.

Agreement as to payment of money and costs according to judgment upon special case.

43. The parties may if they think fit enter into an agreement in writing which shall be embodied in the said or any subsequent order that upon the judgment of the Court being given in the affirmative or negative of the question or questions of law raised by such special case a sum of money fixed by the parties or to be ascertained by the Court or in such manner as the Court may direct shall be paid by one of such parties to the other of them either with or without costs of the action and the judgment of the Court may be entered for such sum as shall be so agreed or ascertained with or without

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without costs as the case may be and execution may issue upon such judgment forthwith unless otherwise agreed.

44. In case no agreement shall be entered into as to the costs of such action the costs shall follow the event and be recovered by the successful party.

Costs to follow the event unless otherwise agreed.

*Language and form of pleadings in general.**Pleadings in general.*

45. All statements which need not be proved such as the statement of time quantity quality and value where these are immaterial the statement of losing and finding and bailment in actions for goods or their value the statement of acts of trespass having been committed with force and arms and against the peace of our Lady the Queen the statement of promises which need not be proved as promises in indubitatus counts and mutual promises to perform agreements and all statements of a like kind shall be omitted.

Fictitious and needless averments not to be made.

46. Either party may object by demurrer to the pleading of the opposite party on the ground that such pleading does not set forth sufficient ground of action defence or reply as the case may be and where issue is joined on such demurrer the Court shall proceed and give judgment according as the very right of the cause and matter in law shall appear unto them without regarding any imperfection omission defect in or lack of form and no judgment shall be arrested stayed or reversed for any such imperfection omission defect in or lack of form.

Judgment upon demurrer to be given according to the very right of the cause.

47. No pleading shall be deemed insufficient for any defect which could heretofore only be objected to by special demurrer.

Objections by way of special demurrer taken away.

48. If any pleading be so framed as to prejudice embarrass or delay the fair trial of the action the opposite party may apply to the Court or a Judge to strike out or amend such pleading and the Court or any Judge shall make such order respecting the same and also respecting the costs of the application as such Court or Judge shall see fit.

Pleadings framed to embarrass may be struck out or amended.

49. Every declaration and other pleading shall be entitled of the Supreme Court and of the day of the month and the year when the same was pleaded and shall bear no other time or date and every declaration and other pleading shall also be entered on the record under the date of the day of the month and year when the same respectively took place and without reference to any other time or date unless otherwise specially ordered by the Court or a Judge.

Pleadings to be dated and entered as of time of pleading unless order to the contrary.

50. It shall not be necessary to make profert of any deed or other document mentioned or relied on in any pleading and if profert shall be made it shall not entitle the opposite party to craveoyer of or set out uponoyer such deed or other document.

Profert and oyer abolished.

51. A party pleading in answer to any pleading in which any document is mentioned or referred to shall be at liberty to set out the whole or such part thereof as may be material and the matter so set out shall be deemed and taken to be part of the pleading in which it is set out.

Document may be set forth and be considered a part of the pleading in which it is set forth.

52. It shall be lawful for the plaintiff or defendant in any action to aver performance of conditions precedent generally and the opposite party shall not deny such averment generally but shall specify in his pleading the condition or conditions precedent the performance of which he intends to contest.

Performance of conditions precedent may be averred generally.

*Time and manner of declaring and particulars of demand.**Declaration.*

53. A plaintiff shall be deemed out of Court unless he declare within one year after the writ of summons is returnable.

Plaintiff to declare within a year.

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Forms of commencement &c. of declaration.

54. Every declaration shall commence as follows or to the like effect—

[Venue] “ *A. B.* by *E. F.* his attorney [*or in person as the case may be*] sues *C. D.* for [*here state the cause of action*]” and shall conclude as follows or to the like effect—

“ And the plaintiff claims £ [*or if the action is brought to recover specific goods the plaintiff claims a return of the said goods or their value and £ for their detention.*]”

Commencement of declaration after plea of nonjoinder.

55. In all cases in which after a plea in abatement of the nonjoinder of another person as defendant the plaintiff shall without having proceeded to trial on an issue thereon commence another action against the defendant in the action in which such plea in abatement shall have been pleaded and the person named in such plea in abatement as joint contractor or shall amend by adding the omitted defendant the commencement of the declaration shall be in the following form or to the like effect—

[Venue] “ *A. B.* by *E. F.* his attorney [*or in his own proper person &c.*] sues *C. D.* and *G. H.* which said *C. D.* has heretofore pleaded in abatement the nonjoinder of the said *G. H.* for” &c.

Declaration for libel or slander.

56. In actions of libel and slander the plaintiff shall be at liberty to aver that the words or matter complained of were used in a defamatory sense specifying such defamatory sense without any prefatory averment to shew how such words or matter were used in that sense and such averment shall be put in issue by the denial of the alleged libel or slander and where the words or matter set forth with or without the alleged meaning shew a cause of action the declaration shall be sufficient.

Pleas and subsequent pleadings.

Pleas and subsequent pleadings.

Time for pleading where defendant is within jurisdiction to be eight days.

57. In cases where the defendant is within the jurisdiction the time for pleading in bar unless extended by the Court or a Judge shall be eight days and a notice requiring the defendant to plead thereto in eight days otherwise judgment may whether the declaration be delivered or filed be indorsed upon the declaration or delivered separately.

Express color abolished.
Special traverses abolished.
Formal commencement and prayer of judgment unnecessary.

58. Express color shall no longer be necessary in any pleading.

59. Special traverses shall not be necessary in any pleading.

60. In a plea or subsequent pleading it shall not be necessary to use any allegation of *actionem non* or *actionem ulterius non* or to the like effect or any prayer of judgment nor shall it be necessary in any replication or subsequent pleading to use any allegation of *precludi non* or to the like effect or any prayer of judgment.

Commencement of plea.

61. No formal defence shall be required in a plea or avowry or cognizance and it shall commence as follows or to the like effect—

“ The defendant by his attorney [*or in person or as the case may be*] says that [*here state first defence*]” and it shall not be necessary to state in a second or other plea or avowry or cognizance that it is pleaded by leave of the Court or a Judge or according to the form of the Statute or to that effect but every such plea avowry or cognizance shall be written in a separate paragraph and numbered and shall commence as follows or to the like effect—

“ And for a second [*&c.*] plea the defendant says that [*here state second &c. defence*]” or if pleaded to part only then as follows or to the like effect—

“ And for a second [*&c.*] plea to [*stating to what it is pleaded*] “ the defendant says that &c.”

and

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and no formal conclusion shall be necessary to any plea avowry cognizance or subsequent pleading.

62. Any defence arising after the commencement of any action shall be pleaded according to the fact without any formal commencement or conclusion and any plea which does not state whether the defence therein set up arose before or after action shall be deemed to be a plea of matter arising before action. Plea of matter subsequent to action.

63. In cases in which a plea puis darrein continuance has heretofore been pleadable in Banco or at Nisi Prius the same defence may be pleaded with an allegation that the matter arose after the last pleading and such plea may when necessary be pleaded in vacation but no such plea shall be allowed unless accompanied by an affidavit that the matter thereof arose within eight days next before the pleading of such plea or unless the Court or a Judge shall otherwise order. Plea puis darrein continuance when and how to be pleaded.

64. It shall be lawful for the defendant in all actions (except actions for libel malicious arrest or prosecution criminal conversation or debauching of the plaintiff's daughter or servant) and by leave of the Court or a Judge upon such terms as they or he may think fit for one or more of several defendants to pay into Court a sum of money by way of compensation or amends Provided that nothing herein contained shall be taken to affect the provisions of the Act of Council passed in the eleventh year of the reign of Her present Majesty intituled "*An Act to amend the Law respecting defamatory words and libel.*" Payment into Court in certain actions. 11 Vic. No. 13.

65. When money is paid into Court such payment shall be pleaded in all cases as near as may be in the following form *mutatis mutandis*— Payment into Court how pleaded.

"The defendant by his attorney [*or* in person &c.]
 " [*if pleaded to part say* as to £ parcel of the
 " money claimed] brings into Court the sum of £
 " and says that the said sum is enough to satisfy the
 " claim of the plaintiff in respect of the matter herein
 " pleaded to."

66. No rule or Judge's order to pay money into Court shall be necessary except in the case of one or more of several defendants but the money shall be paid to the proper officer of the Court who shall give a receipt for the amount in the margin of the plea and the said sum shall be paid out to the plaintiff or his attorney upon a written authority from the plaintiff on demand. No order to pay money into Court.

67. The plaintiff after the delivery of a plea of payment of money into Court shall be at liberty to reply to the same by accepting the sum so paid into Court in full satisfaction and discharge of the cause of action in respect of which it has been paid in and he shall be at liberty in that case to tax his costs of suit and in case of non-payment thereof within forty-eight hours to sign a judgment for his costs of suit so taxed or the plaintiff may reply that the sum paid into Court is not enough to satisfy the claim of the plaintiff in respect of the matter to which the plea is pleaded and in the event of an issue thereon being found for the defendant the defendant shall be entitled to judgment and his costs of suit from the time of such plea. Proceeding by plaintiff after payment into Court.

68. Whereas certain causes of action may be considered to partake of the character both of breaches of contract and of wrongs and doubts may arise as to the form of pleas in such actions and it is expedient to preclude such doubts Any plea which shall be good in substance shall not be objectionable on the ground of its treating the declaration either as framed for a breach of contract or for a wrong. Pleas to actions partaking both of breach of contract and wrong.

69. Pleas of payment and set-off and all other pleadings capable of being construed distributively shall be taken distributively Payment set-off and other pleadings which can be con-
 and

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strued distributively shall be so construed.

and if issue is taken thereon and so much thereof as shall be sufficient answer to part of the causes of action proved shall be found true by the jury a verdict shall pass for the defendant in respect of so much of the causes of action as shall be answered and for the plaintiff in respect of so much of the causes of action as shall not be so answered.

Traverse of the declaration.

70. A defendant may either traverse generally such of the facts contained in the declaration as might have been denied by one plea or may select and traverse separately any material allegation in the declaration although it might have been included in a general traverse.

Traverse of plea or subsequent pleading of defendant.

71. A plaintiff shall be at liberty to traverse the whole of any plea or subsequent pleading of the defendant by a general denial or admitting some part or parts thereof to deny all the rest or to deny any one or more allegations.

Traverse of replication or subsequent pleading of the plaintiff.
Joinder of issue.

72. A defendant shall be at liberty in like manner to deny the whole or part of a replication or subsequent pleading of the plaintiff.

73. Either party may plead in answer to the plea or subsequent pleading of his adversary that he joins issue thereon which joinder of issue may be as follows or to the like effect—

“The plaintiff joins issue upon the defendant’s 1st [*&c. specifying what or what part*] plea”

“The defendant joins issue upon the plaintiff’s replication to the 1st [*&c. specifying what*] plea”

and such form of joinder of issue shall be deemed to be a denial of the substance of the plea or other subsequent pleading and an issue thereon and in all cases where the plaintiff’s pleading is in denial of the pleading of the defendant or some part of it the plaintiff may add a joinder of issue for the defendant.

As to pleading and demurring together.

74. Either party may by leave of the Court or a Judge plead and demur to the same pleading at the same time upon an affidavit by such party or his attorney if required by the Court or Judge to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be traversed by him and that the several matters sought to be pleaded as aforesaid by way of confession and avoidance are respectively true in substance and in fact and that he is further advised and believes that the objections raised by such demurrer are good and valid objections in Law and it shall be in the discretion of the Court or a Judge to direct which issue shall be first disposed of.

Several matters may be pleaded at any stage of the pleadings.

75. The plaintiff in any action may by leave of the Court or a Judge plead in answer to the plea or the subsequent pleading of the defendant as many several matters as he shall think necessary to sustain his action and the defendant in any action may by leave of the Court or a Judge plead in answer to the declaration or other subsequent pleading of the plaintiff as many several matters as he shall think necessary for his defence upon an affidavit of the party making such application or his attorney if required by the Court or Judge to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be traversed by him and that the several matters sought to be pleaded as aforesaid by way of confession and avoidance are respectively true in substance and in fact Provided that the costs of any issue either of fact or law shall follow the finding or judgment upon such issue and be adjudged to the successful party whatever may be the result of the other issue or issues.

Objections to pleadings to be heard on summons to plead several matters.

76. All objections to the pleading of several pleas replications or subsequent pleadings or several avowries or cognizances on the ground that they are founded on the same ground of answer or defence shall be heard upon the summons to plead several matters.

Certain pleas may be pleaded together without leave.

77. The following pleas or any two or more of them may be pleaded together as of course without leave of the Court or a Judge that

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that is to say a plea denying any contract or debt alleged in the declaration a plea of tender as to part a plea of the statute of limitations set-off bankruptcy of the defendant discharge under an Insolvent Act *plenè administravit plenè administravit præter infancy coverture* payment accord and satisfaction release not guilty a denial that the property an injury to which is complained of is the plaintiff's leave and license son assault demesne and any other pleas which the Judges of the said Supreme Court shall by any rule or order from time to time order or direct.

78. The signature of counsel shall not be required to any pleading. Signature of counsel.

79. Except in the cases herein specifically provided for if either party plead several pleas replications avowries cognizances or other pleadings without leave of the Court or a Judge the opposite party shall be at liberty to sign judgment provided that such judgment may be set aside by the Court or a Judge upon an affidavit of merits and such terms as to costs and otherwise as they or he may think fit. For pleading several matters without leave judgment may be signed.

80. One new assignment only shall be pleaded to any number of pleas to the same cause of action and such new assignment shall be consistent with and confined by the particulars delivered in the action if any and shall state that the plaintiff proceeds for causes of action different from all those which the pleas profess to justify or for an excess over and above what all the defences set up in such pleas justify or both. One new assignment only allowed in respect of the same cause of action.

81. No plea which has already been pleaded to the declaration shall be pleaded to such new assignment except a plea in denial unless by leave of the Court or a Judge and such leave shall only be granted upon satisfactory proof that the repetition of such plea is essential to a trial on the merits. Pleas not to be repeated.

82. The form of a demurrer except in the cases herein specifically provided for shall be as follows or to the like effect— Form of demurrer and joinder in demurrer.

“The defendant by his attorney [*or* in person *&c.* *or* plaintiff] says that the declaration [*or* plea *&c.*] is bad in substance” and in the margin thereof some substantial matter of law intended to be argued shall be stated and if any demurrer shall be delivered without such statement or with a frivolous statement it may be set aside by the Court or a Judge and leave may be given to sign judgment as for want of a plea and the form of a joinder in demurrer shall be as follows or to the like effect—

“The plaintiff [*or* defendant] says that the declaration [*or* plea *&c.*] is good in substance.”

83. Where an amendment of any pleading is allowed no new notice to plead thereto shall be necessary but the opposite party shall be bound to plead to the amended pleading within the time specified in the original notice to plead or within two days after amendment whichever shall last expire unless otherwise ordered by the Court or a Judge and in case the amended pleading has been pleaded to before amendment and is not pleaded to *de novo* within two days after amendment or within such other time as the Court or a Judge shall allow the pleadings originally pleaded thereto shall stand and be considered as pleaded in answer to such amended pleading. Time for pleading after amendment.

Examples given of the statements of causes of action and of forms of pleading. Examples of pleading.

84. The forms contained in the Schedule B to this Act annexed shall be sufficient and those and the like forms may be used with such modifications as may be necessary to meet the facts of the case but nothing herein contained shall render it erroneous or irregular to depart Forms in Schedule may be adopted.

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depart from the letter of such forms so long as the substance is expressed without prolixity.

Judgment by default and ascertaining amount to be recovered.

Judgment by default for liquidated demands final. Inquiry of damages may be directed to take place before the Master.

Judgment for money demands without distinction between debt and damages.

Saving as to certain provisions of 8 & 9 W. 3 c. 11.

Notice of trial inquiry and countermand.

Costs of the day.

Judgment for not proceeding to trial.

Statute 14 Geo. 2 c. 17 as to judgment in case of nonsuit repealed.

Proceeding where plaintiff neglects to bring on the cause to be tried.

Judgment by default and the mode of ascertaining the amount to be recovered thereupon.

85. In actions where the plaintiff seeks to recover a debt or liquidated demand in money judgment by default shall be final.

86. In actions in which it shall appear to the Court or a Judge that the amount of damages sought to be recovered by the plaintiff is substantially a matter of calculation it shall not be necessary to issue a writ of inquiry but the Court or a Judge may direct that the amount for which final judgment is to be signed shall be ascertained by the Prothonotary of the said Court and the attendance of witnesses and the production of documents before such Prothonotary may be compelled by subpoena in the same manner as before a jury upon a writ of inquiry and it shall be lawful for such Prothonotary to adjourn the inquiry from time to time as occasion may require and the Prothonotary shall indorse upon the rule or order for referring the amount of damages to him the amount found by him and shall deliver the rule or order with such indorsement to the plaintiff and such and the like proceedings may thereupon be had as to taxation of costs signing judgment and otherwise as upon the finding of a jury upon a writ of inquiry.

87. In all actions where the plaintiff recovers a sum of money the amount to which he is entitled may be awarded to him by the judgment generally without any distinction being therein made as to whether such sum is recovered by way of a debt or damages.

88. Nothing in this Act contained shall in any way affect the provisions of a certain Act of Parliament passed in the Session of Parliament holden in the eighth and ninth years of the reign of His Majesty King William the Third intituled "*An Act for the better preventing frivolous and vexatious suits*" as to the assignment or suggestion of breaches or as to judgment for a penalty as a security for damages in respect of further breaches.

Notice of trial and inquiry and countermand thereof.

89. A rule for costs of the day for not proceeding to trial pursuant to notice or not countermanding in sufficient time may be drawn up on affidavit without motion.

Judgment for default in not proceeding to trial.

90. The provisions of the Act passed in the fourteenth year of the reign of His Majesty King George the Second intituled "*An Act to prevent Inconveniences arising from delays of Causes after issue joined*" so far as the same relates to judgment as in the case of a nonsuit shall be and the same are hereby repealed except as to proceedings taken or commenced thereupon before the commencement of this Act.

91. Where any issue is or shall be joined in any cause and the plaintiff has neglected or shall neglect to bring such issue on to be tried according to the practice for the time being of the Supreme Court whether the plaintiff shall in the meantime have given notice of trial or not the defendant may give twenty days' notice to the plaintiff to bring the issue on to be tried at the sittings or Assizes as the case may be next after the expiration of the notice and if the plaintiff afterwards neglects to give notice of trial for such sittings or Assizes or to proceed to trial in pursuance of the said notice given by

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by the defendant the defendant may suggest on the record that the plaintiff has failed to proceed to trial although duly required so to do (which suggestion shall not be traversable but only be subject to be set aside if untrue) and may sign judgment for his costs provided that the Court or a Judge shall have power to extend the time for proceeding to trial with or without terms.

Admission of documents.

92. Either party may call on the other party by notice to admit any document saving all just exceptions and in case of refusal or neglect to admit the costs of proving the document shall be paid by the party so neglecting or refusing whatever the result of the cause may be unless at the trial the Judge shall certify that the refusal to admit was reasonable and no costs of proving any document shall be allowed unless such notice be given except in cases where the omission to give the notice is in the opinion of the Prothonotary a saving of expense.

Admission of documents.

Admission of documents.

93. An affidavit of the attorney in the cause or his clerk of the due signature of any admissions made in pursuance of such notice and annexed to the affidavit shall be in all cases sufficient evidence of such admissions.

Proof of admissions.

94. An affidavit of the attorney in the cause or his clerk of the service of any notice to produce in respect of which notice to admit shall have been given and of the time when it was served with a copy of such notice to produce annexed to such affidavit shall be sufficient evidence of the service of the original of such notice and of the time when it was served.

Proof of notice to produce.

Process of execution.

95. A plaintiff or defendant having obtained a verdict shall be entitled to issue execution in fourteen days unless the Judge who tries the cause or some other Judge or the Court shall order execution to issue at an earlier or later period with or without terms.

Execution.

Execution after trial.

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

Expenses of execution.

97. When the action shall have been brought to recover specific goods and the plaintiff shall have claimed a return of such goods or their value and damages for their detention and shall have recovered a verdict and judgment in such action it shall be lawful for the Sheriff if so required by the plaintiff to demand and seize the specific goods claimed if they can be found by him and to deliver them to the plaintiff and if the Sheriff shall not find and seize the said goods it shall be lawful for the Court or a Judge if the said Court or Judge shall see fit on the application of the plaintiff to order the actual return thereof and to enforce such order by process of attachment and if such application be refused or if such order be not obeyed the plaintiff may by leave of a Judge procure a separate writ of *fieri facias* to be issued for the value of the goods without prejudice to his right to issue execution either before or after or concurrently therewith for his costs of suit and the damages awarded for the detention of the goods.

In action for recovery of specific goods Sheriff after verdict may seize such goods

and further procedure if such goods cannot be found or delivery of them refused.

98. A writ of execution issued after the commencement of this Act if unexecuted shall not remain in force for more than one year from the teste of such writ unless renewed in the manner hereinafter provided but such writ may at any time before its expiration be renewed by the party issuing it for one year from the date of such renewal and so on from time to time during the continuance of the

Writs of execution to remain in force for one year and to be renewed if necessary.

renewed

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renewed writ either by being marked by the Prothonotary with the date of the day month and year of such renewal or by such party giving a written notice of renewal to the Sheriff signed by the party or his attorney and countersigned by the Prothonotary and a writ of execution so renewed shall have effect and be entitled to priority according to the time of the original delivery thereof.

Production of renewed writ evidence of renewal.

99. The production of a writ of execution or of the notice renewing the same purporting to be so marked or countersigned as aforesaid shewing the same to have been renewed according to this Act shall be sufficient evidence of its having been so renewed.

Sheriff or Gaoler may discharge prisoner by authority of the attorney in the cause.

100. A written order under the hand of the attorney in the cause by whom any writ of *capias ad satisfaciendum* shall have been issued shall justify the Sheriff gaoler or person in whose custody the party may be under such writ in discharging such party unless the party for whom such attorney professes to act shall have given written notice to the contrary to such Sheriff gaoler or person in whose custody the opposite party may be but such discharge shall not be a satisfaction of the debt unless made by the authority of the creditor and nothing herein contained shall justify any attorney in giving such order for discharge without the consent of his client.

Proceedings to revive.

Proceedings for the revival of judgments and other proceedings by and against persons not parties to the record.

Execution in six years without revival.

101. During the lives of the parties to a judgment or those of them during whose lives execution may at present issue within a year and a day without a scire facias and within six years from the recovery of the judgment execution may issue without a revival of the judgment.

Judgment to be revived by writ or with leave of Court or Judge by suggestion.

102. In cases where it shall become necessary to revive a judgment by reason either of lapse of time or of a change by death or otherwise of the parties entitled or liable to execution the party alleging himself to be entitled to execution may either sue out a writ of revivor in the form hereinafter mentioned or apply to the Court or a Judge for leave to enter a suggestion upon the roll to the effect that it manifestly appears to the Court that such party is entitled to have execution of the judgment and to issue execution thereupon such leave to be granted by the Court or a Judge upon a rule to shew cause or a summons to be served according to the present practice or in such other manner as such Court or Judge may direct and which rule or summons may be in the form contained in the aforesaid Schedule A No. 7 or to the like effect.

Proceedings upon application for suggestion to revive judgment.

103. Upon such application in case it manifestly appears that the party making the same is entitled to execution the Court or Judge shall allow such suggestion as aforesaid to be entered in the form contained in the said Schedule A No. 8 or to the like effect and execution to issue thereupon and shall order whether or not the costs of such application shall be paid to the party making the same and in case it does not manifestly so appear the Court or Judge shall discharge the rule or dismiss the summons with or without costs Provided nevertheless that in such last-mentioned case the party making such application shall be at liberty to proceed by writ of revivor or action upon the judgment.

Writ of revivor and proceedings thereon.

104. The writ of revivor shall be directed to the party called upon to shew cause why execution should not be awarded and shall bear teste on the day of its issuing and after reciting the reason why such writ has become necessary it shall call upon the party to whom it is directed to appear within eight days after service thereof to shew cause why the party at whose instance such writ has been issued should not

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not have execution against the party to whom such writ is directed and it shall give notice that in default of appearance the party issuing such writ may proceed to execution and such writ may be in the form contained in the said Schedule A No. 9 or to the like effect and may be served and otherwise proceeded upon whether in term or vacation in the same manner as a writ of summons and the venue in a declaration upon such writ may be laid in any district and the pleadings and proceedings thereupon and the rights of the parties respectively to costs shall be the same as in an ordinary action.

105. All writs of *scire facias* issued against bail on a recognizance against members of a Joint Stock Company or other body upon a judgment recorded against a public officer or other person sued as representing such company or body or against such company or body itself by or against a husband to have execution of a judgment for or against a wife or upon a suggestion of further breaches after judgment for any penal sum pursuant to the Statute passed in the reign of King William the Third intituled "*An Act for the better preventing frivolous and vexatious suits*" shall be tested directed and proceeded upon in like manner as writs of revivor.

Writs of *scire facias* in other cases to be tested directed and proceeded upon in like manner.

106. Notice in writing to the plaintiff his attorney or agent shall be sufficient appearance to a writ of revivor.

Appearance to writ of revivor.

107. A writ of revivor to revive a judgment less than ten years old shall be allowed without any rule or order if more than ten years old not without a rule of Court or a Judge's order nor if more than fifteen without a rule to shew cause.

As to issue of writ of revivor upon judgment more than ten years old.

Effect of death marriage and insolvency upon the proceedings in an action.

Death marriage and insolvency.

108. The death of a plaintiff or defendant shall not cause the action to abate but it may be continued as hereinafter mentioned.

Action not to abate by death.

109. If there be two or more plaintiffs or defendants and one or more of them shall die and the cause of such action shall survive to the surviving plaintiff or plaintiffs or against the surviving defendant or defendants the action shall not be thereby abated but such death being suggested upon the record the action shall proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants.

Proceedings in case of death of one or more of several plaintiffs or defendants.

110. In case of the death of a sole plaintiff or sole surviving plaintiff the legal representative of such plaintiff may by leave of the Court or a Judge enter a suggestion of the death and that he is such legal representative and the action shall thereupon proceed and if such suggestion be made before the trial the truth of the suggestion shall be tried thereat together with the title of the deceased plaintiff and such judgment shall follow upon the verdict in favor of or against the person making such suggestion as if such person were originally the plaintiff.

Proceeding in case of sole plaintiff.

111. In case of the death of the sole defendant or sole surviving defendant where the action survives the plaintiff may make a suggestion either in any of the pleadings if the cause has not arrived at issue or in a copy of the issue if it has so arrived of the death and that a person named therein is the executor or administrator of the deceased and may thereupon serve such executor or administrator with a copy of the writ and suggestion and with a notice signed by the plaintiff or his attorney requiring such executor or administrator to appear within eight days after service of the notice inclusive of the day of such service and that in default of his so doing the plaintiff may sign judgment against him as such executor or administrator and the same proceedings may be had and taken in case of non-appearance after such notice as

Proceeding upon death of sole defendant or sole surviving defendant.

upon

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upon a writ against such executor or administrator in respect of the cause for which the action was brought and in case no pleadings have taken place before the death the suggestion shall form part of the declaration and the declaration and suggestion may be served together and the new defendant shall plead thereto at the same time and in case the plaintiff shall have declared but the defendant shall not have pleaded before the death the new defendant shall plead at the same time to the declaration and suggestion and in case the defendant shall have pleaded before the death the new defendant shall be at liberty to plead to the suggestion only by way of denial or such plea as may be appropriate to and rendered necessary by his character of executor or administrator unless by leave of the Court or a Judge he should be permitted to plead fresh matter in answer to the declaration and in case the defendant shall have pleaded before the death but the pleadings shall not have arrived at issue the new defendant besides pleading to the suggestions shall continue the pleadings to issue in the same manner as the deceased might have done and the pleadings upon the declaration and the pleadings upon the suggestion shall be tried together and in case the plaintiff shall recover he shall be entitled to the like judgment in respect of the debt or sum sought to be recovered and in respect of the costs prior to the suggestion and in respect of the costs of the suggestion and subsequent thereto he shall be entitled to the like judgment as in an action originally commenced against the executor or administrator.

Death between verdict and judgment.

112. The death of either party between the verdict and the judgment shall not hereafter prejudice the judgment so as such judgment be entered within two terms after such verdict.

Proceedings in case of death after interlocutory and before final judgment.

113. If the plaintiff in any action happen to die after an interlocutory judgment and before a final judgment obtained therein the said action shall not abate by reason thereof if such action might be originally prosecuted or maintained by the executor or administrator of such plaintiff and if the defendant die after such interlocutory judgment and before final judgment therein obtained the said action shall not abate if such action might be originally prosecuted or maintained against the executor or administrator of such defendant and the plaintiff or if he be dead after such interlocutory judgment his executors or administrators shall and may have a writ of revivor in the form contained in the said Schedule A No. 9 or to the like effect against the defendant if living after such interlocutory judgment or if he be dead then against his executors or administrators to shew cause why damages in such action should not be assessed and recovered by him or them and if such defendant his executors or administrators shall appear at the return of such writ and not shew or allege any matter sufficient to arrest the final judgment or shall make default a writ of inquiry of damages shall be thereupon awarded or the amount for which final judgment is to be signed shall be referred to the Prothonotary as hereinbefore provided and upon the return of the writ or delivery of the order with the amount indorsed thereon to the plaintiff his executors or administrators judgment final shall be given for the said plaintiff his executors or administrators prosecuting such writ of revivor against such defendant his executors or administrators respectively.

Marriage not to abate action.

114. The marriage of a woman plaintiff or defendant shall not cause the action to abate but the action may notwithstanding be proceeded with to judgment and such judgment may be executed against the wife alone or by suggestion or writ of revivor pursuant to this Act judgment may be obtained against the husband and wife and execution issue thereon and in case of a judgment for the wife execution may be issued thereupon by the authority of the husband without any writ

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writ of revivor or suggestion and if in any such action the wife shall sue or defend by attorney appointed by her when sole such attorney shall have authority to continue the action or defence unless such authority be countermanded by the husband and the attorney changed according to the practice of the Court.

115. The insolvency of the plaintiff in any action which the Assignees might maintain for the benefit of the creditors shall not be pleaded in bar to such action unless the Assignees shall decline to continue it and give security for the costs thereof upon a Judge's summons for that purpose within such reasonable time as the Judge may order but the proceedings may be stayed until such election is made and in case the Assignees neglect or refuse to continue the action and give such security within the time limited by the order the defendant may within eight days after such neglect or refusal plead the insolvency.

Bankruptcy and insolvency of plaintiff when not to abate action.

Proceedings upon motions to arrest the judgment and for judgment non obstante veredicto.

Arrest of judgment and judgment non obstante veredicto.

116. Upon any motion made in arrest of judgment or to enter an arrest of judgment or for judgment *non obstante veredicto* by reason of the non-averment of some fact or matter or other cause the party whose pleading is alleged or adjudged to be therein defective may by leave of the Court suggest the existence of the omitted fact or matter or that it was proved at the trial of the cause and such suggestion may be pleaded to by the opposite party within eight days after notice thereof or such further time as the Court or a Judge may allow and the proceedings for trial of any issues joined upon such pleadings shall be the same as in an ordinary action. Provided that in cases in which the suggestion shall be that the omitted fact or matter was proved at the trial if the Judge before whom the cause was tried shall certify that such proof was given to his satisfaction such certificate shall be conclusive upon the parties and judgment shall be given in accordance therewith.

Upon motion in arrest of judgment omitted facts may by leave of the Court be suggested.

117. If the fact or matter suggested be admitted or found to be true the party suggesting shall be entitled to such judgment as he would have been entitled to if such fact or matter had been originally stated in pleading and proved or admitted on the trial together with the costs of and occasioned by the suggestion and proceedings thereon but if such fact or facts be found untrue the opposite party shall be entitled to his costs of and occasioned by the suggestion and proceedings thereon in addition to any other costs to which he may be entitled.

Judgment to follow result of suggestion.

118. Upon an arrest of judgment or judgment *non obstante veredicto* the Court shall adjudge to the party against whom such judgment is given the costs occasioned by the trial of any issues of fact arising out of the pleading for defect of which such judgment is given upon which such party shall have succeeded and such costs shall be set off against any money or costs adjudged to the opposite party and execution may issue for the balance if any.

Costs of abortive issues.

Action of ejectment.

Ejectment.

119. Instead of the present proceeding by ejectment a writ shall be issued directed to the persons in possession by name and to all persons entitled to defend the possession of the property claimed which property shall be described in the writ with reasonable certainty.

Ejectment to be brought by writ.

120. The writ shall state the names of all the persons in whom the title is alleged to be and command the persons to whom it is directed

Form and duration of writ of ejectment.

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directed to appear within sixteen days after service thereof in the Supreme Court to defend the possession of the property sued for or such part thereof as they may think fit and it shall contain a notice that in default of appearance they will be turned out of possession and the writ shall bear teste of the day on which it is issued and shall be in force for three months and shall be in the form contained in the said Schedule A No. 10 or to the like effect and the name and abode of the attorney issuing the same or if no attorney the name and residence of the party shall be indorsed thereon in like manner as hereinbefore enacted with reference to the indorsements on a writ of summons in a personal action and the same proceedings may be had to ascertain whether the writ was issued by the authority of the attorney whose name was indorsed thereon and who and what the claimants are and their abode and as to staying the proceedings upon writs issued without authority as in the case of writs in personal actions.

Service of writ of
ejectment.

121. The writ shall be served in the same manner as an ejectment has heretofore been served or in such manner as the Court or a Judge shall order and in case of vacant possession by posting a copy thereof upon the door of the dwelling-house or other conspicuous part of the property.

Appearance of persons
named in the writ.

122. The persons named as defendants in such writ or either of them shall be allowed to appear within the time appointed.

Appearance of persons
not named.

123. Any other person not named in such writ shall by leave of the Court or a Judge be allowed to appear and defend on filing an affidavit shewing that he is in possession of the land either by himself or his tenant.

Appearance and defence
by landlord.

124. Any person appearing to defend as landlord in respect of property whereof he is in possession only by his tenant shall state in his appearance that he appears as landlord and such person shall be at liberty to set up any defence which a landlord appearing in an action of ejectment has heretofore been allowed to set up and no other.

Notice to defend for
part only.

125. Any person appearing to such writ shall be at liberty to limit his defence to a part only of the property mentioned in the writ describing that part with reasonable certainty in a notice intituled in the Court and cause and signed by the party appearing or his attorney such notice to be served within four days after appearance upon the attorney whose name is indorsed on the writ if any and if none then to be filed in the Prothonotary's Office and an appearance without such notice confining the defence to part shall be deemed an appearance to defend for the whole.

Want of certainty
cured by particulars.

126. Want of "reasonable certainty" in the description of the property or part of it in the writ or notice shall not nullify them but shall only be ground for an application to a Judge for better particulars of the land claimed or defended which a Judge shall have power to give in all cases.

Defence by persons
not in possession.

127. The Court or a Judge shall have power to strike out or confine appearances and defences set up by persons not in possession by themselves or their tenants.

Judgment for default
of appearance or
defence.

128. In case no appearance shall be entered within the time appointed or if an appearance be entered but the defence be limited to part only the plaintiffs shall be at liberty to sign a judgment that the person whose title is asserted in the writ shall recover possession of the land or of the part thereof to which the defence does not apply which judgment if for all may be in the form contained in the said Schedule A No. 11 or to the like effect and if for part may be in the form contained in the said Schedule No. 12 or to the like effect.

Issue how made up.

129. In case an appearance shall be entered an issue may at once be made up without any pleadings by the claimants or their attorney

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attorney setting forth the writ and stating the fact of the appearance with its date and the notice limiting the defence if any of each of the persons appearing so that it may appear for what the defence is made and directing the Sheriff to summon a jury and such issue in case defence is made for the whole may be in the form contained in the said Schedule A No. 13 or to the like effect and in case defence is made for part may be in the form contained in the said Schedule No. 12 or to the like effect.

130. By consent of the parties and by leave of a Judge a special case may be stated according to the practice heretofore used. Special case may be stated.

131. The claimants may if no special case be agreed to proceed to trial upon the issue in the same manner as in other actions and the particulars of the claim and defence if any or copies thereof shall be annexed to the record by the claimants and the question at the trial shall except in the cases hereafter mentioned be whether the statement in the writ of the title of the claimants is true or false and if true then which of the claimants is entitled and whether to the whole or part and if to part then to which part of the property in question and the entry of the verdict may be made in the form contained in the said Schedule A No. 14 or to the like effect with such modifications as may be necessary to meet the facts. Trial of issue.

132. In case the title of the claimant shall appear to have existed as alleged in the writ and at the time of service thereof but it shall also appear to have expired before the time of trial the claimant shall notwithstanding be entitled to a verdict according to the fact that he was so entitled at the time of bringing the action and serving the writ and to a judgment for his cost of suit. Verdict when title appears to have expired before trial.

133. The Court or a Judge may on the application of either party order that the trial shall take place in any district other than that in which the venue is laid and such order being suggested on the record the trial may be had accordingly. Trial may be ordered to take place in any district.

134. If the defendant appears and the claimant does not appear at the trial the claimant shall be nonsuited and if the claimant appears and the defendant does not appear the claimant shall be entitled to recover as heretofore without any proof of his title. Non-appearance at trial.

135. The jury may find a special verdict or either party may tender a bill of exceptions. Special verdict and bill of exceptions.

136. Judgment as in a case of nonsuit may be given where the Court shall think fit. Judgment as in case of nonsuit.

137. Upon a finding for the claimant judgment may be signed and execution issue for the recovery of possession of the property or such part thereof as the jury shall find the claimant entitled to and for costs within such time as the Court or Judge before whom the cause is tried shall order and if no such order be made then on the fifth day in term after the verdict or within fourteen days after such verdict whichever shall first happen. Judgment upon finding for claimant.

138. Upon a finding for the defendants or any of them judgment may be signed and execution issue for costs against the claimants named in the writ within such time as the Court or Judge before whom the cause is tried shall order and if no such order be made then on the fifth day in term after the verdict or within fourteen days after such verdict whichever shall first happen. Judgment upon finding for defendant.

139. Upon any judgment in ejectment for recovery of possession and costs there may be either one writ or separate writs of execution for the recovery of possession and for the costs at the election of the claimant. Execution for recovery of possession and costs may be joint or separate.

140. In case of such an action being brought by some or one of several persons entitled as joint tenants tenants in common or coparceners any other joint tenant tenant in common or coparcener in possession

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sion may at the time of appearance or within four days after give notice in the same form as in the notice of a limited defence that he defends as such and admits the right of the claimant to an undivided share of the property (stating what share) but denies any actual ouster of him from the property and may within the same time file an affidavit stating with reasonable certainty that he is such joint tenant tenant in common or coparcener and the share of such property to which he is entitled and that he has not ousted the claimant and such notice shall be entered in the issue in the same manner as the notice limiting the defence and upon the trial of such an issue the additional question of whether an actual ouster has taken place shall be tried.

Trial and judgment in ejectment against joint tenants tenants in common and coparceners.

141. Upon the trial of such issue as last aforesaid if it shall be found that the defendant is joint tenant tenant in common or coparcener with the claimant then the question whether an actual ouster has taken place shall be tried and unless such actual ouster shall be proved the defendant shall be entitled to judgment and costs but if it shall be found either that the defendant is not such joint tenant tenant in common or coparcener or that an actual ouster has taken place then the claimant shall be entitled to judgment for the recovery of possession and costs.

Action not to abate by death.

142. The death of a claimant or defendant shall not cause the action to abate but it may continue as hereinafter mentioned.

Proceeding upon death before trial where right survives.

143. In case the right of the deceased claimant shall survive to another claimant a suggestion may be made of the death which suggestion shall not be traversable but shall only be subject to be set aside if untrue and the action may proceed at the suit of the surviving claimant and if such a suggestion shall be made before the trial then the claimant shall have a verdict and recover such judgment as aforesaid upon its appearing that he was entitled to bring the action either separately or jointly with the deceased claimant.

Proceedings upon death before trial where right does not survive.

144. In case of the death before trial of one of several claimants whose right does not survive to another or others of the claimants where the legal representative of the deceased claimant shall not become a party to the suit in the manner hereinafter mentioned a suggestion may be made of the death which suggestion shall not be traversable but shall only be subject to be set aside if untrue and the action may proceed at the suit of the surviving claimant for such share of the property as he is entitled to and costs.

Upon death of one of several claimants having obtained a verdict.

145. In case of a verdict for two or more claimants if one of such claimants die before execution executed the other claimant may whether the legal right to the property shall survive or not suggest the death in manner aforesaid and proceed to judgment and execution for recovery of possession of the entirety of the property and the costs but nothing herein contained shall affect the right of the legal representative of the deceased claimant or the liability of the surviving claimant to such legal representative and the entry and possession of such surviving claimant under such execution shall be considered as an entry and possession on behalf of such legal representative in respect of the share of the property to which he shall be entitled as such representative and the Court may direct possession to be delivered accordingly.

Proceedings in case of death of claimant where right does not survive.

146. In case of the death of a sole claimant or before trial of one of several claimants whose right does not survive to another or others of the claimants the legal representative of such claimant may by leave of the Court or a Judge enter a suggestion of the death and that he is such legal representative and the action shall thereupon proceed and if such suggestion be made before the trial the truth of the suggestion shall be tried thereat together with the title of the deceased claimant and such judgment shall follow upon the verdict in favor

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favor of or against the person making such suggestion as hereinbefore provided with reference to a judgment for or against such claimant and in case such suggestion in the case of a sole claimant be made after trial and before execution executed by delivery of possession thereupon and such suggestion be denied by the defendant within eight days after notice thereof or such further time as the Court or a Judge may allow then such suggestion shall be tried and if upon the trial thereof a verdict shall pass for the person making such suggestion he shall be entitled to such judgment as aforesaid for the recovery of possession and for the costs of and occasioned by such suggestion and in case of a verdict for the defendant such defendant shall be entitled to such judgment as aforesaid for costs.

147. In case of the death before or after judgment of one of several defendants in ejectment who defend jointly a suggestion may be made of the death which suggestion shall not be traversable but only be subject to be set aside if untrue and the action may proceed against the surviving defendant to judgment and execution.

Proceedings upon death of one of several joint defendants.

148. In case of the death of a sole defendant or of all the defendants in ejectment before trial a suggestion may be made of the death which suggestion shall not be traversable but only be subject to be set aside if untrue and the claimants shall be entitled to judgment for recovery of possession of the property unless some other person shall appear and defend within the time to be appointed for that purpose by the order of the Court or a Judge to be made upon the application of the claimants and it shall be lawful for the Court or a Judge upon such suggestion being made and upon such application as aforesaid to order that the claimants shall be at liberty to sign judgment within such time as the Court or Judge may think fit unless the person then in possession by himself or his tenant or the legal representative of the deceased defendant shall within such time appear and defend the action and such order may be served in the same manner as the writ and in case such person shall appear and defend the same proceedings may be taken against such new defendant as if he had originally appeared and defended the action and if no appearance be entered and defence made then the claimant shall be at liberty to sign judgment pursuant to the order.

Upon death of all the defendants in ejectment before trial.

149. In case of the death of a sole defendant or of all the defendants in ejectment after verdict the claimants shall nevertheless be entitled to judgment as if no such death had taken place and to proceed by execution for recovery of possession without suggestion or revivor and to proceed for the recovery of the costs in like manner as upon any other judgment for money against the legal representatives of the deceased defendant or defendants.

Upon death of all defendants in ejectment after verdict.

150. In case of the death before trial of one of several defendants in ejectment who defends separately for a portion of the property for which the other defendant or defendants do not defend the same proceedings may be taken as to such portion as in the case of the death of a sole defendant or the claimants may proceed against the surviving defendants in respect of the portion of the property for which they defend.

Upon death before trial of defendant in ejectment who defends separately for part.

151. In case of the death before trial of one of several defendants in ejectment who defends separately in respect of property for which surviving defendants also defend it shall be lawful for the Court or a Judge at any time before the trial to allow the person at the time of the death in possession of the property or the legal representative of the deceased defendant to appear and defend on such terms as may appear reasonable and just upon the application of such person or representative and if no such application be made or leave granted the claimant suggesting the death in manner aforesaid may proceed

Upon death of defendant defending separately for property in respect of which others also defend.

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proceed against the surviving defendant or defendants to judgment and execution.

Claimant may discontinue by notice.

152. The claimant in ejection shall be at liberty at any time to discontinue the action as to one or more of the defendants by giving to the defendant or his attorney a notice headed in the Court and cause and signed by the claimant or his attorney stating that he discontinues such action and thereupon the defendant to whom such notice is given shall be entitled to and may forthwith sign judgment for costs in the form contained in the said Schedule A No. 15 or to the like effect.

Discontinuance of action by one of several claimants.

153. In case one of several claimants shall be desirous to discontinue he may apply to the Court or a Judge to have his name struck out of the proceedings and an order may be made thereupon upon such terms as to the Court or Judge may seem fit and the action shall thereupon proceed at the suit of the other claimants.

Judgment for not proceeding to trial after notice.

154. If after appearance entered the claimant without going to trial shall suffer the time allowed for going to trial by the practice of the Court in ordinary cases after issue joined to elapse the defendant in ejection may give twenty days' notice to the claimant to proceed to trial at the sittings or Assizes next after the expiration of the notice and if the claimant afterwards neglects to give notice of trial for such sittings or Assizes or to proceed to trial in pursuance of the said notice given by the defendant and the time for going to trial shall not be extended by the Court or a Judge the defendant may sign judgment in the form contained in the said Schedule A No. 16 and recover the costs of defence.

Defendant may confess the action.

155. A sole defendant or all the defendants in ejection shall be at liberty to confess the action as to the whole or part of the property by giving to such claimant a notice headed in the Court and cause and signed by the defendant or defendants such signature to be attested by his or their attorney and thereupon the claimant shall be entitled to and may forthwith sign judgment and issue execution for the recovery of possession and costs in the form contained in the said Schedule A No. 17 or to the like effect.

Confession by one of several defendants defending separately for part.

156. In case one of several defendants in ejection who defends separately for a portion of the property for which the other defendants do not defend shall be desirous of confessing the claimant's title to such portion he may give a like notice to the claimant and thereupon the claimant shall be entitled to and may forthwith sign judgment and issue execution for the recovery of possession of such portion of the property and for the costs occasioned by the defence relating to the same and the action may proceed as to the residue.

Confession by one of several defendants who defend for same property.

157. In case one of several defendants in ejection who defends separately in respect of property for which other defendants also defend shall be desirous of confessing the claimant's title he may give a like notice thereof and thereupon the claimant shall be entitled to and may sign judgment against such defendant for the costs occasioned by his defence and may proceed in the action against the other defendants to judgment and execution.

Formal entry of judgment on the roll unnecessary for purposes of execution.

158. It shall not be necessary before issuing execution upon any judgment under the authority of this Act to enter the proceedings upon any roll but an incipitur thereof may be made upon paper shortly describing the nature of the judgment and judgment may thereupon be signed and costs taxed and execution issued Provided nevertheless that the proceedings may be entered upon the roll whenever the same may become necessary for the purpose of evidence or of an appeal.

Effect of judgment.

159. The effect of a judgment in an action of ejection under this Act shall be the same as that of a judgment in the action of ejection heretofore.

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160. Every tenant to whom any writ in ejectment shall be delivered or to whose knowledge it shall come shall forthwith give notice thereof to his landlord or his bailiff or receiver under penalty of forfeiting the value of three years improved or rack rent of the premises demised or holden in the possession of such tenant to the person of whom he holds to be recovered by action in the Supreme Court.

Tenants to give notice of ejectment to landlord.

161. In all cases between landlord and tenant as often as it shall happen that one half-year's rent shall be in arrear and the landlord or lessor to whom the same is due hath right by law to re-enter for the non-payment thereof such landlord or lessor may without any formal demand or re-entry serve a writ in ejectment for the recovery of the demised premises or in case the same cannot be legally served or no tenant be in actual possession of the premises then such landlord or lessor may affix a copy thereof upon the door of any demised messuage or in case such action in ejectment shall not be for the recovery of any messuage then upon some notorious place of the lands tenements or hereditaments comprised in such writ in ejectment and such affixing shall be deemed legal service thereof which service or affixing such writ in ejectment shall stand in the place and stead of a demand and re-entry and in case of judgment against the defendant for non-appearance if it shall be made appear to the Court where the said action is depending by affidavit or be proved upon the trial in case the defendant appears that half a year's rent was due before the said writ was served and that no sufficient distress was to be found on the demised premises countervailing the arrears then due and that the lessor had power to re-enter then and in every such case the lessor shall recover judgment and execution in the same manner as if the rent in arrear had been legally demanded and a re-entry made and in case the lessee or his assignee or other person claiming or deriving under the said lease shall permit and suffer judgment to be had and recovered on such trial in ejectment and execution to be executed thereon without paying the rent and arrears together with full costs and without proceeding for relief in Equity within six months after such execution executed then and in such case the said lessee his assignee and all other persons claiming and deriving under the said lease shall be barred and foreclosed from all relief or remedy in Law or Equity and the said landlord or lessor shall from thenceforth hold the said demised premises discharged from such lease and if on such ejectment a verdict shall pass for the defendant or the claimant shall be nonsuited therein then in every such case such defendant shall have and recover his costs provided that nothing herein contained shall extend to bar the right of any mortgagee of such lease or any part thereof who shall not be in possession so as such mortgagee shall and do within six months after such judgment obtained and execution executed pay all rent in arrear and all costs and damages sustained by such lessor or person entitled to the remainder or reversion as aforesaid and perform all the covenants and agreements which on the part and behalf of the first lessee are and ought to be performed.

Proceedings in ejectment by landlord for non-payment of rent.

162. In case the said lessee his assignee or other person claiming any right title or interest in Law or Equity of in or to the said lease shall within the time aforesaid proceed for relief in Equity such person shall not have or continue any injunction against the proceedings at Law on such ejectment unless he shall within forty days next after a full and perfect answer shall be made by the claimant in such ejectment bring into Court and lodge with the Master in Equity such sum and sums of money as the lessor or landlord shall in his answer swear to be due and in arrear over and above all just allowances and also the costs taxed in the said suit there to remain till the hearing of the cause

Lessee proceeding in Equity not to have injunction or relief without payment of rent and costs.

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cause or to be paid out to the lessor or landlord on good security subject to the decree of the Court and in case such proceedings for relief in Equity shall be taken within the time aforesaid and after execution is executed the lessor or landlord shall be accountable only for so much and no more as he shall really and *bonâ fide* without fraud deceit or wilful neglect make of the demised premises from the time of his entering into the actual possession thereof and if what shall be so made by the lessor or landlord happen to be less than the rent reserved on the said lease then the said lessee or his assignee before he shall be restored to his possession shall pay such lessor or landlord what the money so by him made fell short of the reserved rent for the time such lessor or landlord held the said lands.

Tenant paying all rent with costs proceedings to cease.

163. If the tenant or his assignee shall at any time before the trial in such ejectment pay or tender to the lessor or landlord his executors or administrators or his or their attorney in that cause or pay into the Court all the rent and arrears together with the costs then and in such case all further proceedings on the said ejectment shall cease and be discontinued and if such lessee his executors administrators or assigns shall upon such proceedings as aforesaid be relieved in Equity he and they shall have hold and enjoy the demised lands according to the lease thereof made without any new lease.

Ejectment by landlord against tenant holding over after expiration of term or determination of tenancy by notice to quit.

164. Where the term or interest of any tenant now or hereafter holding under a lease or agreement in writing any lands tenements or hereditaments for any term or number of years certain or from year to year shall have expired or been determined either by the landlord or tenant by regular notice to quit and such tenant or any one holding or claiming by or under him shall refuse to deliver up possession accordingly after lawful demand in writing made and signed by the landlord or his agent and served personally upon or left at the dwelling-house or usual place of abode of such tenant or person and the landlord shall thereupon proceed by action of ejectment for the recovery of possession it shall be lawful for him at the foot of the writ in ejectment to address a notice to such tenant or person requiring him to find such bail if ordered by the Court or a Judge and for such purposes as are hereinafter next specified and upon the appearance of the party on an affidavit of service of the writ and notice it shall be lawful for the landlord producing the lease or agreement or some counterpart or duplicate thereof and proving the execution of the same by affidavit and upon affidavit that the premises have been actually enjoyed under such lease or agreement and that the interest of the tenant has expired or been determined by regular notice to quit as the case may be and that possession has been lawfully demanded in manner aforesaid to move the Court or apply by summons to a Judge at Chambers for a rule or summons for such tenant or person to shew cause within a time to be fixed by the Court or Judge on a consideration of the situation of the premises why such tenant or person should not enter into a recognizance by himself and two sufficient sureties in a reasonable sum conditioned to pay the costs and damages which shall be recovered by the claimant in the action and it shall be lawful for the Court or Judge upon cause shewn or upon affidavit of the service of the rule or summons in case no cause shall be shewn to make the same absolute in the whole or in part and to order such tenant or person within a time to be fixed upon a consideration of all the circumstances to find such bail with such conditions and in such manner as shall be specified in the said rule or summons or such part of the same so made absolute and in case the party shall neglect or refuse so to do and shall lay no ground to induce the Court or Judge to enlarge the time for obeying the same then the lessor or landlord filing an affidavit that such rule or order has been made and served

Rule or summons for the tenant to give bail.

On rule or summons absolute if tenant shall not conform judgment to be for the landlord.

and

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and not complied with shall be at liberty to sign judgment for recovery of possession and costs of suit in the form contained in the Schedule (A) to this Act annexed marked No. 18 or to the like effect.

165. Wherever it shall appear on the trial of any ejection at the suit of a landlord against a tenant that such tenant or his attorney hath been served with due notice of trial the Judge before whom such cause shall come on to be tried shall whether the defendant shall appear upon such trial or not permit the claimant on the trial after proof of his right to recover possession of the whole or of any part of the premises mentioned in the writ in ejection to go into evidence of the mesne profits thereof which shall or might have accrued from the day of the expiration or determination of the tenant's interest in the same down to the time of the verdict given in the cause or to some preceding day to be specially mentioned therein and the jury on the trial finding for the claimant shall in such case give their verdict upon the whole matter both as to the recovery of the whole or any part of the premises and also as to the amount of the damages to be paid for such mesne profits and in such case the landlord shall have judgment within the time hereinbefore provided not only for the recovery of possession and costs but also for the mesne profits found by the jury Provided always that nothing hereinbefore contained shall be construed to bar any such landlord from bringing any action for the mesne profits which shall accrue from the verdict or the day so specified therein down to the day of the delivery of possession of the premises recovered in the ejection.

On trial of any ejection between landlord and tenant juries to give damages for mesne profits down to the verdict or to a day specified therein.

166. In all cases in which such security shall have been given as aforesaid if upon the trial a verdict shall pass for the claimant unless it shall appear to the Judge before whom the same shall have been had that the finding of the jury was contrary to the evidence or that the damages given were excessive such Judge shall not except by consent make any order to stay judgment or execution except on condition that within four days from the day of the trial the defendant shall actually find security by the recognizance of himself and two sufficient sureties in such reasonable sum as the Judge shall direct conditioned not to commit any waste or act in the nature of waste or other wilful damage and not to sell or carry off any standing crops hay straw or manure produced or made (if any) upon the premises and which may happen to be thereupon from the day on which the verdict shall have been given to the day on which execution shall finally be made upon the judgment or the same be set aside as the case may be.

On trials after bail found Judge shall not stay the execution except by consent or on tenant's finding security.

167. All recognizances and securities entered into as last aforesaid shall be taken respectively in such manner and by and before such persons as the Judges shall direct and shall be filed with the Prothonotary for which respectively the sum of two shillings and sixpence and no more shall be paid but no action or other proceeding shall be commenced upon any such recognizance or security after the expiration of six months from the time when possession of the premises or any part thereof shall actually have been delivered to the landlord.

Recognizances to be taken as other recognizances of bail actions on them limited.

168. Nothing herein contained shall be construed to prejudice or affect any other right of action or remedy which landlords may possess in any of the cases hereinbefore provided for otherwise than hereinbefore expressly enacted.

Saving of former remedies.

169. Where an action of ejection shall be brought by any mortgagee his heirs executors administrators or assignees for the recovery of the possession of any mortgaged lands tenements or hereditaments and no suit shall be then depending in Equity for or touching the foreclosing or redeeming of such mortgaged lands tenements or hereditaments if the person having right to redeem such mortgaged lands

In ejection by mortgagee the mortgagor's rendering the principal interest and costs in Court shall be deemed a full satisfaction and the Court may compel the mortgagee to re-convey.

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lands tenements or hereditaments and who shall appear and become defendant in such action shall at any time pending such action pay unto such mortgagee or in case of his refusal shall bring into Court all the principal moneys and interest due on such mortgage and also all such costs as have been expended in any suit at Law or in Equity upon such mortgage (such money for principal interest and costs to be ascertained and computed by the Court or the proper officer in that behalf) the moneys so paid to such mortgagee or brought into Court shall be deemed and taken to be in full satisfaction and discharge of such mortgage and the Court shall and may discharge every such mortgagor or defendant of and from the same accordingly and shall and may by rule of the same Court compel such mortgagee at the costs and charges of such mortgagor to assign surrender or re-convey such mortgaged lands tenements and hereditaments and such estate and interest as such mortgagee has therein and deliver up all deeds evidences and writings in his custody relating to the title of such mortgaged lands tenements and hereditaments unto such mortgagor who shall have paid or brought such moneys into the Court his heirs executors or administrators or to such other person or persons as he or they shall for that purpose nominate or appoint.

Not to extend to cases where the right of redemption is controverted or the money due not adjusted

170. Nothing herein contained shall extend to any case where the person against whom the redemption is or shall be prayed shall (by writing under his hand or the hand of his attorney agent or solicitor to be delivered before the money shall be brought into Court to the attorney or solicitor for the other side) insist either that the party praying a redemption has not a right to redeem or that the premises are chargeable with other or different principal sums than what appear on the face of the mortgage or shall be admitted on the other side or to any case where the right of redemption to the mortgaged lands and premises in question in any cause or suit shall be controverted or questioned by or between different defendants in the same cause or suit or shall be any prejudice to any subsequent mortgage or subsequent incumbrance anything herein contained to the contrary thereof in anywise notwithstanding.

or to prejudice any subsequent mortgage.

Jurisdiction of Courts and Judges.

171. The Supreme Court and the Judges thereof respectively shall and may exercise over the proceedings the like jurisdiction as heretofore exercised in the action of ejectment so as to insure a trial of the title and of actual ouster when necessary only and for all other purposes for which such jurisdiction may at present be exercised and the provisions of all Laws and Statutes not inconsistent with the provisions of this Act and which may be applicable to the altered mode of proceeding shall remain in force and be applied thereto.

*Amendment.**Amendments of proceedings.*

Amendment.

172. And whereas the power of amendment now vested in the Supreme Court and the Judges thereof is insufficient to enable them to prevent the failure of justice by reason of mistakes and objections of form Be it enacted That it shall be lawful for the said Court and every Judge thereof and for every Circuit Court at all times to amend all defects and errors in any proceeding in civil causes whether there is anything in writing to amend by or not and whether the defect or error be that of the party applying to amend or not and all such amendments may be made with or without costs and upon such terms as to the Court or Judge may seem fit and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made.

Costs

*Common Law Procedure.**Costs where action improperly brought in the Supreme Court.**Costs where action improperly brought in the Supreme Court.*

173. If any plaintiff in any action commenced in the Supreme Court of the said Colony shall obtain a verdict for less than ten pounds unliquidated damages or less than thirty pounds liquidated damages or debt and the presiding Judge shall certify on the trial of such action that the cause of action was not of sufficient value to justify an action in the Supreme Court the plaintiff shall recover no costs.

Power to Judges to make general rules and regulations and to frame writs and proceedings in order to enable the Court and Judges to carry this Act thoroughly into effect.

Power to Judges to make rules and frame writs and proceedings.

174. It shall be lawful for the Judges of the Supreme Court from time to time to make all such general rules and orders for the effectual execution of this Act and of the intention and object hereof and for fixing the costs to be allowed for and in respect of the matters herein contained and the performance thereof and for apportioning the costs of issues and also for altering the number of days by this Act limited for the return of any writ or for the doing of anything by this Act prescribed or authorized to be done and substituting other days for the same as in their judgment shall be necessary or proper and it shall further be lawful for the Judges of the said Court from time to time to exercise all the powers and authority given to the Judges at Westminster or any of them by an Act of Parliament passed in the Session of Parliament held in the thirteenth and fourteenth years of the reign of Her present Majesty intituled "*An Act to* 13 and 14 Vic. c. 16.
enable the Judges of the Common Law at Westminster to alter the forms of Pleading" with respect to any matter herein contained relative to practice or pleading anything in this Act to the contrary notwithstanding and the provisions of the said last-mentioned Act as to the rules orders or regulations made in pursuance thereof shall be held applicable to any rules orders or regulations which shall be made in pursuance of this Act Provided that nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the said Court or the Judges thereof to make rules or orders or otherwise to regulate and dispose of the business therein.

General rules may be made by the Judges.

175. Such new or altered writs and forms of proceedings may be issued entered and taken as may by the Judges of the said Court be deemed necessary or expedient for giving effect to the provisions hereinbefore contained and in such forms as the Judges of such Court shall from time to time think fit to order and such writs and proceedings shall be acted upon and enforced in such and the same manner as writs and proceedings of the said Court are now acted upon and enforced or as near thereto as the circumstances of the case will admit and any existing writ or proceeding the form of which shall be in any manner altered in pursuance of this Act shall nevertheless be of the same force and virtue as if no alteration had been made therein except so far as the effect thereof may be varied by this Act.

New forms of writs and other proceedings.

176. In citing this Act in any instrument document or proceeding it shall be sufficient to use the expression "The Common Law Procedure Act of 1853."

Short title of Act.

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SCHEDULE (A) REFERRED TO IN THE FOREGOING ACT.

No. 1.

Writ where the defendant resides within the Jurisdiction.

VICTORIA by the Grace of God &c.

To C. D. of

We command you that within _____ days after the service of this writ on you inclusive of the day of such service you do cause an appearance to be entered for you in Our Supreme Court at Sydney in an action at the suit of A. B. and take notice that in default of your so doing the said A. B. may proceed therein to judgment and execution.

Witness &c.

Memorandum to be subscribed on the writ.

N.B.—This writ is to be served within (*six*) calendar months from the date thereof or if renewed from the date of such renewal including the day of such date and not afterwards.

Indorsement to be made on the writ before service thereof.

This writ was issued by E. F. of _____ attorney for the said plaintiff or this writ was issued in person by A. B. who resides at _____ [mention the city town or parish and also the name of the hamlet street and number of the house of the plaintiff's residence if any such.]

Indorsement to be made on the writ after service thereof.

This writ was served by X. Y. on L. M. [the defendant or one of the defendants] on Monday the _____ day of _____ 18

(Signed) X. Y.

No. 2.

Writ where the defendant being a British subject resides out of the Jurisdiction.

VICTORIA by the Grace of God &c.

To C. D. of

We command you that within [here insert a sufficient number of days within which the defendant might appear with reference to the distance he may be at from New South Wales] days after the service of this writ on you inclusive of the day of such service you do cause an appearance to be entered for you in Our Supreme Court at Sydney in an action at the suit of A. B. and take notice that in default of your so doing the said A. B. may by leave of the Court or a Judge proceed therein to judgment and execution.

Witness &c.

Memorandum to be subscribed on the writ.

N. B.—This writ is to be served within (*six*) calendar months from the date thereof or if renewed from the date of such renewal including the day of such date and not afterwards.

Indorsement to be made on the writ before the service thereof.

This writ is for service out of the Jurisdiction of the Court and was issued by E. F. of _____ attorney for the said plaintiff or this writ was issued in person by A. B. who resides at [mention the city town or parish and also the name of the hamlet street and number of the house of the plaintiff's residence if any such.]

The Indorsement required by the 8th section should be made on this writ but should allow the defendant the time limited for appearance to pay the debt and costs.

Common Law Procedure.

No. 3.

Writ where the defendant not being a British subject resides out of the Jurisdiction.

VICTORIA by the Grace of God &c.

To C. D. late of

We command you that within [*here insert a sufficient number of days within which the defendant might appear with reference to the distance he may be at from New South Wales*] days after notice of this writ is served on you inclusive of the day of such service you do cause an appearance to be entered for you in our Supreme Court at Sydney in an action at the suit of A. B. and take notice that in default of your so doing the said A. B. may by leave of the Court or a Judge proceed therein to judgment and execution.

Witness &c.

Memorandum to be subscribed on the writ.

N.B.—Notice of this writ is to be served within (*six*) calendar months from the date thereof including the day of such date and not afterwards.

Indorsements as in other cases.

NOTICE of the foregoing writ.

To G. H. late of [*Bathurst in the Colony of New South Wales*] or now residing at [*Auckland in New Zealand.*]

Take notice That A. B. of in the Colony of New South Wales has commenced an action at law against you C. D. in Her Majesty's Supreme Court of New South Wales by a writ of that Court dated the day of A.D. 18 and you are required within days after the receipt of this notice inclusive of the day of such receipt to defend the said action by causing an appearance to be entered for you in the said Court to the said action and in default of your so doing the said A. B. may by leave of the Court or a Judge proceed thereon to judgment and execution.

[*Here state amount of claim as required by 8th section but allowing the defendant the time limited for appearance to pay debt and costs.*]

(Signed) A. B. of &c.
 or
 E. F. of &c.
 Attorney for A. B.

No. 4.

Special Indorsement.

[*After the Indorsement required by the 8th section of this Act this special Indorsement may be inserted.*]

The following are the particulars of plaintiff's claim —

	£	s.	d.
1849.—June 20. Half-year's rent to this day of house and premises in _____street Sydney	...	25	10 0
Sept. 12. Ten sacks of flour at 40s.	...	20	0 0
Dec. 1. Money received by defendant	...	17	0 0
		62	10 0
Paid	...	15	0 0
Balance due	...	47	10 0

Or

To butcher's meat supplied between the 1st of January 1849 and the 1st of January 1850	...	52	0 0
Paid	...	20	0 0
Balance	...	32	0 0

[*If any account has been delivered it may be referred to with its date or the plaintiff may give such a description of his claim as in a particular of demand so as to prevent the necessity of an application for further particulars.*]

Or

£50 principal and interest due on a bond dated the day of conditioned for the payment of £100.

Or

*Common Law Procedure.**Or*

£90 principal and interest due on a covenant contained in a deed dated the day of _____ to pay £100 and interest.

Or

A penalty of £100 under the Statute 55 Geo. III. c. 137.

Or

£85 on a bill of exchange for £100 dated the 2nd February 1849 accepted *or* drawn *or* indorsed by the defendant.

Or

£50 on a guarantee dated the 1st of January 1850 whereby the defendant guaranteed the due payment by E. F. of goods supplied *or* to be supplied to him.

[*To any of the above may be added in cases where interest is payable* "the plaintiff also claims interest on £ _____ of the above sum from the date of the writ until "Judgment.""]

N.B.—Take notice that if a defendant served with this writ within the jurisdiction of the Court do not appear according to the exigency thereof the plaintiff will be at liberty to sign final judgment for any sum not exceeding the sum above claimed [with interest at the rate specified and the sum of _____ for costs and issue execution at the expiration of eight days from the last day for appearance.

No. 5.

In the Supreme Court of New South Wales.—

On the _____ day of _____ A.D. 1850.

[*Day of signing the judgment.*]NEW SOUTH WALES }
TO WIT. }

A. B. in his own person [*or by* _____ his attorney] sued out a writ of summons against C. D. indorsed according to the "Common Law Procedure Act of 1853" as follows:—

[*Here copy special indorsement*]

And the said C. D. has not appeared. Therefore it is considered that the said A. B. recover against the said C. D. £ _____ together with £ _____ for costs of suit.

No. 6.

In the Supreme Court of New South Wales.—

The _____ day of _____ in the year of our Lord 18 _____

SYDNEY TO WIT.

Whereas A. B. has sued C. D. and _____ affirms and _____ denies that

[*Here state the question or questions of fact to be tried*]

And it has been ordered by the Hon. Mr. Justice _____ according to "The Common Law Procedure Act of 1853" that the said question shall be tried by a Jury. Therefore let the same be tried accordingly.

No. 7.

Form of Rule or Summons where a judgment creditor applies for execution against a judgment debtor.

[*Formal parts as at present.*]

C. D. shew cause why A. B. [*or as the case may be*] should not be at liberty to enter a suggestion upon the roll in an action wherein the said A. B. was plaintiff and the said C. D. was defendant and wherein the said A. B. obtained judgment for £ _____ against the said C. D. on the _____ day of _____ that it manifestly appears to the Court that the said A. B. is entitled to have execution of the said judgment and to issue execution thereupon and why the said C. D. should not pay to the said A. B. the costs of this application to be taxed.

[*Note.—The above form may be modified so as to meet the case of an application by or against the representative of a party to the judgment.*]

Common Law Procedure.

No. 8.

Form of suggestion that the judgment creditor is entitled to execution against the judgment debtor.

And now on the _____ day of _____ it is suggested and manifestly appears to the Court that the said A. B. [or C. D. as executor of the last will and testament of the said A. B. deceased or as the case may be] is entitled to have execution of the judgment aforesaid against the said E. F. [or against G. H. as executor of the last will and testament of the said E. F. or as the case may be] Therefore it is considered by the Court that the said A. B. [or C. D. as such executor as aforesaid or as the case may be] ought to have execution of the said judgment against the said E. F. [or against G. H. as such executor as aforesaid or as the case may be].

No. 9.

Form of Writ of Revivor.

VICTORIA by the Grace of God &c. to E. F. of _____ greeting.
We command you that within eight days after the service of this writ upon you inclusive of the day of such service you appear in our Court of _____ to shew cause why A. B. [or C. D. as executor of the last will and testament of the said A. B. deceased or as the case may be] should not have execution against you [if against a representative here insert as executor of the last will and testament of _____ deceased or as the case may be] of a judgment whereby the said A. B. [or as the case may be] on the _____ day of _____ in the said Court recovered against you [or as the case may be] £ _____ and take notice that in default of your so doing the said A. B. [or as the case may be] may proceed to execution.

Witness &c.

No. 10.

EJECTMENT.

Form of Writ.

VICTORIA &c. to X. Y. Z. and all persons entitled to defend the possession of [describe the property with reasonable certainty] in the parish of _____ in the county [or district] of _____ to the possession whereof A. B. and C. some or one of them claim to be [or to have been on and since the _____ day of _____ A.D. _____] entitled and to eject all other persons therefrom These are to command you or such of you as deny the alleged title within sixteen days after service hereof to appear in person or by attorney in Our Supreme Court at Sydney to defend the said property or such part thereof as you may be advised in default whereof judgment may be signed and you turned out of possession.

Witness &c.

No. 11.

Judgment in Ejectment in case of non-appearance.

In the Supreme Court of New South Wales.—

The _____ day of _____ 18_____

[Date of Writ.]

CUMBERLAND }
TO WIT. }

On the day and year above written a writ of our Lady the Queen issued forth of this Court in these words that is to say

VICTORIA by the Grace of God [here copy the writ] and no appearance has been entered or defence made to the said writ Therefore it is considered that the said [here insert the names of the persons in whom title is alleged in the writ] do recover possession of the land in the said writ mentioned with the appurtenances.

Common Law Procedure.

- Indorsee against indorser of note. 15. That one A. on &c. [date] by his promissory note now overdue promised to pay to the defendant or order £ [two] months after date and the defendant indorsed the same to the plaintiff and the said note was duly presented for payment and was dishonoured whereof the defendant had due notice but did not pay the same.
- Drawee against acceptor of bill. 16. That the plaintiff on &c. [date] by his bill of exchange now overdue directed to the defendant required the defendant to pay to the plaintiff £ two months after date and the defendant accepted the said bill but did not pay the same.
- Payee against drawer. 17. That the defendant on &c. [date] by his bill of exchange directed to A. required A. to pay to the plaintiff £ [two] months after date and the said bill was duly presented for acceptance and was dishonoured of which the defendant had due notice but did not pay the same.
- Breach of promise of marriage. 18. That the plaintiff and defendant agreed to marry one another and a reasonable time for such marriage has elapsed and the plaintiff has always been ready and willing to marry the defendant yet the defendant has neglected and refused to marry the plaintiff.
- Breach of promise of marriage. 19. That the plaintiff and defendant agreed to marry one another on a day now elapsed and the plaintiff was ready and willing to marry the defendant on that day yet the defendant neglected and refused to marry the plaintiff.
- Warranty of a horse. 20. That the defendant by warranting a horse to be then sound and quiet to ride sold the said horse to the plaintiff yet the said horse was not then sound and quiet to ride.
- For not loading pursuant to charter-party. 21. That the plaintiff and the defendant agreed by charter-party that the plaintiff's ship called the "Ariel" should with all convenient speed sail to R. or so near thereto as she could safely get and that the defendant should there load her with a full cargo of tallow or other lawful merchandise which she should carry to H. and there deliver on payment of freight £ per ton and that the defendant should be allowed ten days for loading and ten for discharge and ten days for demurrage if required at £ per day and that the plaintiff did all things necessary on his part to entitle him to have the agreed cargo loaded on board the said ship at R. and that the time for so doing has elapsed yet the defendant made default in loading the agreed cargo.
- Upon a lease for rent. 22. That the plaintiff let to the defendant a house No. 40 George-street Sydney for seven years to hold from the day of A.D. at £ a year payable quarterly of which rent quarters are due and unpaid.
- Upon a covenant to repair. 23. That the plaintiff by deed let to the defendant a house No. 40 George-street Sydney to hold for seven years from the day of A.D. and the defendant by the said deed covenanted with the plaintiff well and substantially to repair the said house during the said term [according to the covenant] yet the said house was during the said term out of good and substantial repair.

For Wrongs independent of Contract.

- Trespass to land. 24. That the defendant broke and entered certain land of the plaintiff called the Big Field and depastured the same with cattle.
- Assault battery and false imprisonment. 25. That the defendant assaulted and beat the plaintiff gave him into custody to a policeman and caused him to be imprisoned in a Police Office.
- Criminal conversation. 26. That the defendant debauched and carnally knew the plaintiff's wife.
- Wrongful conversion of goods. 27. That the defendant converted to his own use or wrongfully deprived the plaintiff of the use and possession of the plaintiff's goods that is to say iron hops household furniture [or as the case may be].
- Wrongful detention of property &c. 28. That the defendant detained from the plaintiff his title deeds of land called Belmont in the county of that is to say [describe the deeds].
- Diverting water from a mill. 29. That the plaintiff was possessed of a mill and by reason thereof was entitled to the flow of a stream for working the same and the defendant by cutting the bank of the said stream diverted the water thereof away from the said mill.
- Infringement of a patent. 30. That the plaintiff was the first inventor of a certain new manufacture that is to say of "certain improvements in the manufacture of sulphuric acid" for which he obtained letters patent for the term of fourteen years from the day of A.D. subject to a condition that the plaintiff should within six calendar months cause to be enrolled an instrument in writing particularly describing the nature of his said invention and the plaintiff did within the time prescribed fulfil the said condition and the defendant during the said term did infringe the said patent right.
- Defamation of character. 31. That the defendant falsely and maliciously spoke and published of the plaintiff the words following that is to say "he is a thief"
[if there be any special damage here state it with such reasonable particularity as to give notice to the defendant of the peculiar injury complained of for instance]
whereby the plaintiff lost his situation as overseer in the employ of A.
32. That the defendant falsely and maliciously printed and published of the plaintiff in a newspaper called " " the words following that is to say "he is a regular prover under bankruptcies" the defendant meaning thereby that the plaintiff had proved and was in the habit of proving fictitious debts against the estates of bankrupts with the knowledge that such debts were fictitious.

COMMENCEMENT OF PLEA.

33. The defendant by his attorney [or in person] says [here state the substance of the plea].

34. And for a second plea the defendant says [here state the second plea].

Pleas

Common Law Procedure.

Pleas in Actions on Contracts.

35. That he never was indebted as alleged. Denial of debt.
 [This plea is applicable to declarations like those numbered 1 to 14.]
36. That he did not promise as alleged. Denial of contract.
 [This plea is applicable to other declarations on simple contracts not on bills and notes such as those numbered 18 to 21. It would be unobjectionable to use "did not warrant" "did not agree" or any other appropriate denial.]
37. That the alleged deed is not his deed. Denial of deed.
38. That the alleged cause of action did not accrue within six years [state the period of limitation applicable to the case] before this suit. Statute of limitations.
39. That before action he satisfied and discharged the plaintiff's claim by payment. Payment.
40. That the plaintiff at the commencement of this suit was and still is indebted to the defendant in an amount equal to the plaintiff's claim for [here state the cause of set-off as in a declaration see forms ante] which amount the defendant is willing to set off against the plaintiff's claim. Set-off.
41. That after the alleged claim accrued and before this suit the plaintiff by deed released the defendant therefrom. Release.

Pleas in Actions for Wrongs independent of Contract.

42. That he is not guilty. Not guilty.
43. That he did what is complained of by the plaintiff's leave. Leave and license.
44. That the plaintiff first assaulted the defendant who thereupon necessarily committed the alleged assault in his own defence. Self-defence.
45. That the defendant at the time of the alleged trespass was possessed of land the occupiers whereof for twenty years before this suit enjoyed as of right and without interruption a way on foot and with cattle from a public highway over the said land of the plaintiff to the said land of the defendant and from the said land of the defendant over the said land of the plaintiff to the said public highway at all times of the year for the more convenient occupation of the said land of the defendant and that the alleged trespass was a use by the defendant of the said way. Right of way.
46. That the defendant at the time of the alleged trespass was possessed of land the occupiers whereof for thirty years before this suit enjoyed as of right and without interruption common of pasture over the said land of the plaintiff for all their cattle levant and couchant upon the said land of the defendant at all times of the year as to the said land of the defendant appertaining and that the alleged trespass was a use by the defendant of the said right of common. Right of common.

REPLICATIONS.

47. The plaintiff takes issue upon the defendant's 1st 2nd &c. pleas. Joinder of issue.
48. The plaintiff as to the second plea says [here state the answer to the plea as in the following forms.] Replication to pleas containing new matter.
49. That the alleged release is not the plaintiff's deed. To plea of release.
50. That the alleged release was procured by the fraud of the defendant.
51. That the alleged set-off did not accrue within six years before this suit. To plea of set-off.
52. That the plaintiff was possessed of land whereon the defendant was trespassing and doing damage whereupon the plaintiff requested the defendant to leave the said land which the defendant refused to do and thereupon the plaintiff gently laid his hands on the defendant in order to remove him doing no more than was necessary for that purpose which is the alleged first assault by the plaintiff. To self-defence.
53. That the occupiers of the said land did not for twenty years before this suit enjoy as of right and without interruption the alleged way. To right of way.

NEW ASSIGNMENT.

54. The plaintiff as to the _____ and _____ pleas says that he sues not for the trespasses therein admitted but for trespasses committed by the defendant in excess of the alleged rights and also in other parts of the said land and on other occasions and for other purposes than those referred to in the said pleas. To the pleas of right in of way and right of common.

[If the plaintiff replies and new assigns the new assignment may be as follows—]

55. And the plaintiff as to the _____ and _____ pleas further says that he sues not only for the trespasses in those pleas admitted but also for &c.

[If the plaintiff replies and new assigns to some of the pleas and new assigns only to the other the form may be as follows—]

56. And the plaintiff as to the _____ and _____ pleas further says that he sues not for the trespasses in the _____ admitted but for the trespasses in the _____ pleas [the pleas not replied to] and also for &c. _____ pleas [the pleas replied to] admitted