Cities, and Places in *Great Britain* or to the Governors and Deputy Governors of Counties and Places in *Ireland*, or to the Warden and Special Deputy Wardens of the Stannaries; and all the Provisions of the several Acts in force in *England*, *Scotland*, and *Ireland* respectively relating to the Militia and Corps of Miners in *Cornwall* and *Devon* shall, upon any such Order, and Direction given in pursuance thereof, become and be in full force and be carried into execution at the Period specified in such Order or Direction as aforesaid, with all such Penalties and Forfeitures for any Neglect thereof, as fully as if such Periods had been fixed in the Acts relating to such Militia and Miners.

Act to extend to Wardens of Stannaries and to Corps of Miners. The Provisions of this Act as to England to be subject to any Act passed in the present Session.

III. This Act shall be construed to extend to the Warden and Special Deputy Wardens of the Stannaries and Corps of Miners in *Cornwall* and *Devon*, as fully as if they were severally repeated in every Clause, Provision, Direction, and Authority herein contained; but in case during the present Session of Parliament, and before or after the passing of this Act, any Act shall have been or shall be passed, to amend, or to consolidate and amend, the Laws relating to the Militia in *England*, the Provisions herein-before contained, so far as the same relate to or concern Meetings and Proceedings for or in relation to the ballotting and enrolling of Men for the Militia in *England*, or the Corps of Miners in *Cornwall* and *Devon*, shall not have any Force or Effect, so far as such Provisions may be inconsistent with any such Act passed or to be passed as aforesaid.

CAP. LXXVI.

An Act to amend the Process, Practice, and Mode of Pleading in the Superior Courts of Common Law at *Westminster*, and in the Superior Courts of the Counties Palatine of *Lancaster* and *Durham*. [30th *June* 1852.]

'WHEREAS the Process, Practice, and Mode of Pleading in the Superior Courts of Common Law at *Westminster* may be rendered more simple and speedy:' Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Commencement of Act.

I. The Provisions of this Act shall come into operation on the Twenty-fourth Day of *October* in the Year of our Lord One thousand eight hundred and fifty-two.

Writs for Commencement of Actions.

And with respect to the Writs for the Commencement of Personal Actions in the said Courts against Defendants, whether in or out of the Jurisdiction of the Courts, be it enacted as follows:

Personal Actions, when Defendant resides within the Jurisdiction, to be commenced by Writ of Summons in Form No. 1. of Schedule (A.)

II. All Personal Actions brought in Her Majesty's Superior Courts of Common Law, where the Defendant is residing or supposed to reside within the Jurisdiction of the said Courts, 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 and County of the Residence or supposed 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 any One of the Officers of the said Courts respectively by whom like Process hath been heretofore issued from such Court, or by such other Officer as the Court shall direct.

Form or Cause of Action need not be mentioned.

III. 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.

Writ to state Names of all Defendants, &c.

IV. 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.

How Writ to be dated and tested.

V. 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 Lord Chief Justice or Lord Chief Baron of the Court

from which the same shall issue, or in case of a Vacancy of such Office, then in the Name of a Senior Puisne Judge of the said Court.

Writ to be indorsed with Name and Abode of Attorney, or a Memorandum that Writ has been sued by Plaintiff in Person.

VI. Every Writ of Summons shall be indorsed with the Name and Place of Abode of the Attorney actually suing out the same, and in case such Attorney shall not be an Attorney of the Court in which the same is sued out, then also with the Name and Place of Abode of the Attorney of such Court in whose Name such Writ shall be taken out; 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.

Attorney to declare if Writ issued by his Authority, and his Client's Calling, Address, &c., if ordered.

If Writ issued without Authority of Attorney, Proceedings to be stayed.

VII. 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.

Indorsement of Debt and Costs on Writ and Copy of Writ for a Debt, with Notice that Proceedings will be stayed on Payment within Four Days.

VIII. 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 Four 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:

'The Plaintiff claims £ for Debt, and £
'for Costs, and if the Amount thereof be paid to the Plaintiff or to his Attorney within
'Four 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.

Concurrent Writs may be issued.

IX. 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 with a Seal bearing the Word "concurrent," and the Date of issuing the concurrent Writ; and such Seal shall be provided and kept for that Purpose at the Offices of the Masters of the said Courts, and shall be impressed upon the Writ by the proper Officer of the Court out of which the original Writ issued: Provided always, that such concurrent Writ or Writs shall only be in force for the Period during which the original Writ in such Action shall be in force.

From Commencement of this Act certain Provisions of 2 W. 4. c. 39. repealed.

X. From the Time when this Act shall commence and take effect, so much of a certain Act of Parliament passed in the Second Year of the Reign of His late Majesty King *William* the Fourth, intituled *An Act for Uniformity of Process in Personal Actions in His Majesty's Courts of Law at* Westminster, as relates to the Duration of Writs, and to alias and pluries Writs, and to the Proceedings necessary for making the First Writ in any Action available to prevent the Operation of any Statute whereby the Time for the Commencement of any Action may be limited, shall be repealed, except so far as may be necessary for supporting any Writs that have been issued before the Commencement of this Act, and any Proceedings taken or to be taken thereon.

XI. No

Renewal of Writs of Summons to save the Statute of Limitation, and for other Purposes.

XI. 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 may 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 with a Seal, bearing the Date of the Day, Month, and Year of such Renewal, such Seal to be provided and kept for that Purpose at the Offices of the Masters of the said Superior Courts, and to be impressed upon the Writ by the proper Officer of the Court out of which such Writ issued, 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 Action 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.

XII. 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 according to the Provisions of the said Act of His late Majesty King *William* the Fourth, 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, without being returned non est inventus, or entered of Record according to the Provisions of the said Act of His late Majesty King *William* the Fourth, 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.

XIII. The Production of a Writ of Summons purporting to be marked with the Seal of the Court, showing 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.

Service of Writ.

XIV. The Writ of Summons in any Action may be served in any County.

Indorsement of Service to be made.

XV. The Person serving the Writ of Summons shall and he is hereby required, within Three Days at least after such Service, to 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 Non-appearance, 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 and Inhabitants of Hundreds and Towns.

XVI. 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, Clerk, Treasurer, or Secretary of such Corporation; and every such Writ issued against the Inhabitants of a Hundred or other like District may be served on the High Constable thereof, or any One of the High Constables thereof; and every such Writ issued against the Inhabitants of any County of any City or Town, or the Inhabitants of any Franchise, Liberty, City, Town, or Place not being Part of a Hundred or other like District, on some Peace Officer thereof.

Proceedings where personal Service cannot be effected, but Defendant knows of the Writ, and evades Service.

XVII. The Service of the Writ of Summons, wherever it may be practicable, shall, as heretofore, be personal; but it shall be lawful for the Plaintiff to apply from Time to Time, on Affidavit, to the Court out of which the Writ of Summons issued, or to a Judge; and in case it shall appear to such Court or Judge that reasonable Efforts have been made to effect personal Service, and either that the Writ has come to the Knowledge of the Defendant, or that he wilfully evades Service of the same, and has not appeared thereto, it shall be lawful

lawful for such Court or Judge to order that the Plaintiff be at liberty to proceed as if personal Service had been effected, subject to such Conditions as to the Court or Judge may seem fit.

As to Actions against British Subjects residing out of the Jurisdiction of Superior Courts.

XVIII. In case any Defendant, being a *British* Subject, is residing out of the Jurisdiction of the said Superior Courts, in any Place except in *Scotland* or *Ireland*, it shall be lawful for the Plaintiff to issue a Writ of Summons in the Form contained in the Schedule (A.) to this Act annexed, marked No. 2., which Writ shall bear the Indorsement contained in the said Form, purporting that such Writ is for Service out of the Jurisdiction of the said Superior Courts; and the Time for Appearance by the Defendant to such Writ shall be regulated by the Distance from *England* 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 Courts, 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 One of the Masters of the said Superior Courts in the Manner herein-after 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.

As to Actions against Foreigners residing out of the Jurisdiction of Superior Courts.

XIX. In any Action against a Person residing out of the Jurisdiction of the said Courts, 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 the Schedule (A.) to this Act annexed, marked No. 2., the Plaintiff shall issue a Writ of Summons according to the Form contained in the said Schedule (A.) marked 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.

Omission to insert or indorse Matters in or on Writ not to nullify it.

XX. 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 out of which the same shall issue, 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.

Substitution by Mistake or Inadvertence of One Form of Writ for another may be by Judge without Costs.

XXI. If either of the Forms of Writ of Summons contained in the Schedule (A.) to this Act annexed, and 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 without Costs.

Writs for Service in and out of Jurisdiction may be concurrent, and vice versâ.

XXII. 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.

XXIII. Any

Affidavits in certain Cases may be sworn before a Consul.

XXIII. 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 Courts may be sworn before any 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 Labour; 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 County or 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 County or 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 and taken to be guilty of Perjury, in like Manner as if such false Affidavit had been made in *England* 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 County or Place in which he shall be apprehended or be in Custody, as if his Offence had been actually committed in that County or Place.

Distringas to compel Appearance or to proceed to Outlawry abolished.

XXIV. From the Time when this Act shall commence and take effect, so much of the said Act of His late Majesty King *William* the Fourth as relates to the Writ of Distringas, and the Proceeding thereon, whether for the Purpose of compelling Appearance or for Proceedings to Outlawry, shall be repealed, except so far as may be necessary for the Purpose of giving Effect to Proceedings already taken, or to be taken after the Commencement of this Act, under or by reason of any Writ of Distringas issued before the Commencement of this Act, or under any Rule or Order authorizing the issuing of such Writ, and made before the Commencement of this Act.

Special Indorsement of the Particulars of Debts or liquidated Demands may be made on the Writ.

XXV. 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 Schedule (A.) to this Act annexed, marked 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.

And with respect to the Appearance of the Defendant, and Proceedings of the Plaintiff in default of Appearance, be it enacted as follows:

Appearance according to Provisions of Acts

XXVI. From the Time when this Act shall commence and take effect, so much of a certain Act of Parliament passed in the Twelfth Year of the Reign of His late Majesty King *George* the First, intituled *An Act to prevent frivolous and vexatious Arrests*, and so

of 12 G. 1. c. 29., and 2 W. 4. c. 39., abolished.

so much of the said Act of His late Majesty King *William* the Fourth as relates to the entering an Appearance for the Defendant by the Plaintiff in any Action in any of the said Superior Courts, shall be repealed, except so far as may be necessary to support Proceedings heretofore taken, and no Appearance need be entered by the Plaintiff for the Defendant.

Final Judgment upon Writ specially indorsed in default of Appearance.

XXVII. In case of Nonappearance by the Defendant, where the Writ of Summons is indorsed in the special Form herein-before provided, it shall and may be lawful for the Plaintiff, on filing an Affidavit of personal Service of the Writ of Summons, or a Judge's Order for Leave to proceed under the Provisions of this Act, and a Copy of the Writ of Summons, at once to sign final Judgment in the Form contained in the Schedule (A.) to this Act annexed, marked No. 5., (on which Judgment no Proceeding in Error shall lie,) 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 Masters of the said Superior Courts, or any Three of them, subject to the Approval of the Judges thereof, or any Eight of them, of whom the Lord Chief Justices and the Lord Chief Baron shall be Three,) unless the Plaintiff claim more than such fixed Sum, in which Case the Costs shall be taxed in the ordinary Way; and the Plaintiff may upon such Judgment issue Execution at the Expiration of Eight Days from the last Day for Appearance, and not before: Provided always, that it shall be lawful for the Court or a Judge, either before or after final Judgment, to let in the Defendant to defend upon an Application, supported by satisfactory Affidavits accounting for the Nonappearance, and disclosing a Defence upon the Merits.

Judgment for Nonappearance where the Writ is not indorsed in the special Form.

XXVIII. In case of such Nonappearance, where the Writ of Summons is not indorsed in the special Form herein-before provided, it shall and may be lawful for the Plaintiff, on filing an Affidavit of personal Service of the Writ of Summons, or a Judge's Order for Leave to proceed under the Provisions of this Act, and a Copy of the Writ of Summons, to file a Declaration indorsed with a Notice to plead in Eight Days, and to sign Judgment by Default at the Expiration of the Time to plead, so indorsed as aforesaid; and in the event of no Plea being delivered, where the Cause of Action mentioned in the Declaration is for any of the Claims which might have been inserted in the special Indorsement on the Writ of Summons herein-before provided, and the Amount claimed is indorsed on the Writ of Summons, the Judgment shall be final, and Execution may issue for an Amount not exceeding the Amount indorsed on the Writ of Summons, with Interest at the Rate specified, if any, and the Sum fixed by the Masters for Costs, as herein-before mentioned, unless the Plaintiff claim more, in which Case the Costs shall be taxed in the ordinary Way: Provided always, that in such Case the Plaintiff shall not be entitled to more Costs than if he had made such special Indorsement, and signed Judgment upon Nonappearance.

Appearance to be entered at any Time before Judgment.

XXIX. The Defendant may appear at any Time before Judgment, and if he appear after the Time specified either in the Writ of Summons, or in any Rule or Order to proceed as if personal Service had been effected, he shall, after Notice of such Appearance to the Plaintiff or his Attorney, as the Case may be, be in the same Position as to Pleadings and other Proceedings in the Action as if he had appeared in Time: Provided always, that a Defendant appearing after the Time appointed by the Writ shall not be entitled to any further Time for pleading or any other Proceeding than if he had appeared within such appointed Time.

Appearance by the Defendant in Person to give an Address at which Proceedings may be served.

XXX. Every Appearance by the Defendant in Person shall give an Address, at which it shall be sufficient to leave all Pleadings and other Proceedings not requiring personal Service; and if such Address be not given the Appearance shall not be received; and if an Address so given shall be illusory or fictitious, the Appearance shall be irregular, and may be set aside by the Court or a Judge, and the Plaintiff may be permitted to proceed by sticking up the Proceedings in the Master's Office without further Service.

XXXI. The

Mode of Appearance to Writ of Summons.

XXXI. The Mode of Appearance to every such Writ of Summons, or under the Authority of this Act, shall be by delivering a Memorandum in Writing according to the following Form, or to the like Effect:

"*A.*, Plaintiff, against *C.D.*
or
against *C.D.* and another,
or
against *C.D.* and others.

The Defendant *C.D.* appears in Person.

E.F., Attorney for *C.D.*, appears for him.

[*If the Defendant appears in Person here give his Address.*]

Entered the Day of 18 ."

Such Memorandum to be delivered to the proper Officer or Person in that Behalf, and to be dated on the Day of the Delivery thereof.

Proceedings may be taken in default.

XXXII. All such Proceedings as are mentioned in any Writ or Notice issued under this Act shall and may be had and taken in default of a Defendant's Appearance.

Proceedings where only some of the Defendants appear to a Writ specially endorsed.

XXXIII. In any Action brought against Two or more Defendants, where the Writ of Summons is indorsed in the special Form herein-before provided, if One or more of such Defendants only shall appear, and 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.

And with respect to the Joinder of Parties to Actions, be it enacted as follows:

Nonjoinder and Misjoinder of Plaintiffs may be amended before Trial.

XXXIV. 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. 4. c. 42.

XXXV. 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 any Court of Record holding Plea in Civil Actions, and by any Judge sitting at Nisi Prius, or other presiding Officer, 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 under an Act of Parliament passed in the Session of Parliament, held in the Third and Fourth Years of the Reign of His late Majesty King *William* the Fourth, intituled *An Act for the further Amendment*

of the Law, and the better Advancement of Justice, if it shall appear to such Court, or Judge, or other presiding Officer, 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, or other presiding Officer, 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.

Upon Notice or Plea of Nonjoinder of Plaintiffs, Proceedings may be amended.

XXXVI. 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, 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*.

Misjoinder of Defendants may be amended before or at Trial.

XXXVII. 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 herein-before 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.

Upon Plea in Abatement for Nonjoinder of Defendants Proceedings may be amended.

XXXVIII. 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.

Provision in the Case of subsequent Proceedings against the Persons named in a Plea in Abatement for Nonjoinder of Defendants.

XXXIX. 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.

Joinder of Claims by Husband and Wife

XL. 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

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 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.

with Claims in right of Husband.

And with respect to Joinder of Causes of Action, be it enacted as follows:

Joinder of Causes of Action.

XLI. 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 Counties, the Venue may be laid in either of such Counties; 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.

Different Causes of Action may be joined, but separate Trials may be ordered.

And for the Determination of Questions raised by Consent of the Parties without pleading, be it enacted as follows:

Questions by Consent without pleading.

XLII. Where the Parties to an Action are agreed as to the Question or 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 *bonâ fide* Interest in the Decision of such Question or Questions, and that the same is or are fit to be tried,) proceed to the Trial of any Question or Questions of Fact without formal Pleadings; and such Question or Questions may be stated for Trial in an Issue in the Form contained in the Schedule (A.) to this Act annexed, marked 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.

Questions of Fact may, after Writ issued, by Consent and Leave of a Judge, be raised without Pleadings.

XLIII. The Parties may, if they think fit, enter into an Agreement in Writing, which shall not be subject to any Stamp Duty, and 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 or Issues, 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.

Agreement may be entered into for Payment of Money and Costs according to Result of Issue.

XLIV. 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.

Judgment to be entered according to Agreement, and Execution issued forthwith, unless stayed.

XLV. 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.

Proceedings upon Issue may be recorded.

XLVI. 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.

Questions of Law may be raised after Writ issued, &c.

XLVII. The Parties may, if they think fit, enter into an Agreement in Writing, which shall not be subject to any Stamp Duty, and 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 Costs, as the Case may be, and Execution may issue upon such Judgment forthwith, unless otherwise agreed, or unless stayed by Proceedings in Error.

Agreement as to Payment of Money and Costs, according to Judgment upon Special Case.

Costs to follow the Event, &c.

XLVIII. 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.

Pleadings in general.

And with respect to the Language and Form of Pleadings in general, be it enacted as follows:

Fictitious and needless Averments not to be made.

XLIX. 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 Indebitatus Counts, and mutual Promises to perform Agreements; and all Statements of a like kind, shall be omitted.

Judgment upon Demurrer to be given according to the very Right of the Cause.

L. 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.

Special Demurrer taken away.

LI. No Pleading shall be deemed insufficient for any Defect which could heretofore only be objected to by Special Demurrer.

Pleadings framed to embarrass may be struck out or amended.

LII. 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.

Four Days Notice substituted for Rule to declare, reply, or rejoin.

LIII. Rules to declare, or declare peremptorily, and Rules to reply, and plead subsequent Pleadings, shall not be necessary, and instead thereof a Notice shall be substituted requiring the opposite Party to declare, reply, rejoin, or as the Case may be, within Four Days, otherwise Judgment, such Notice to be delivered separately or indorsed on any Pleading to which the opposite Party is required to reply, rejoin, or as the Case may be.

Pleadings to be dated and entered as of Time of Pleading, unless Order to the contrary.

LIV. Every Declaration and other Pleading shall be entitled of the proper 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 made up for Trial and on the Judgment Roll 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.

Profert and Oyer abolished.

LV. 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 crave Oyer of or set out upon Oyer such Deed or other Document.

Document may be set out, and considered Part of Pleadings.

LVI. 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.

Performance of Conditions precedent may be averred generally.

LVII. 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.

Declaration.

And with regard to the Time and Manner of declaring, and to Particulars of Demand, be it enacted as follows:

Plaintiff to declare within a Year.

LVIII. A Plaintiff shall be deemed out of Court, unless he declare within One Year after the Writ of Summons is returnable.

LIX. Every

Forms of Commencement, &c. of Declaration.

LIX. 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.

LX. 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 or Defendants in the Action in which such Plea in Abatement shall have been pleaded, and the Person or Persons named in such Plea in Abatement as joint Contractors, or shall amend by adding the omitted Defendant or Defendants, 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.

LXI. 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 show 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, show a Cause of Action, the Declaration shall be sufficient.

Pleas and subsequent Pleadings.

And as to Pleas and subsequent Pleadings, be it enacted as follows:

Rule to plead, &c. abolished.

LXII. No Rule to plead or Demand of Plea shall be necessary, and the Notice to plead indorsed on the Declaration or delivered separately shall be sufficient.

Time for pleading, where Defendant is within Jurisdiction.

LXIII. 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 Colour.

LXIV. Express Colour shall no longer be necessary in any Pleading.

Special Traverses.

LXV. Special Traverses shall not be necessary in any Pleading.

Formal Commencement and Prayer of Judgment unnecessary.

LXVI. 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.

LXVII. 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

"And for a Second [*&c.*] Plea to [*stating to what it is pleaded*], the Defendant says that," *&c.*

and no formal Conclusion shall be necessary to any Plea, Avowry, Cognizance, or subsequent Pleading.

Plea of Matter subsequent to Action.

LXVIII. 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 Puis darrein Continuance, when and how to be pleaded.

LXIX. In Cases in which a Plea Puis darrein Continuance has heretofore been pleadable in Banc 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 at Nisi Prius, between the Tenth of *August* and Twenty-fourth of *October*; 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.

Payment into Court in certain Actions.

LXX. It shall be lawful for the Defendant in all Actions, (except Actions for Assault and Battery, false Imprisonment, Libel, Slander, 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 a certain Act of Parliament passed in the Session of Parliament holden in the Sixth and Seventh Years of the Reign of Her present Majesty, intituled *An Act to amend the Law respecting defamatory Words and Libel.*

Payment into Court how pleaded.

LXXI. 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*:

"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."

No Order to pay Money into Court.

LXXII. 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 each 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 to his Attorney, upon a written Authority from the Plaintiff, on Demand.

Proceeding by Plaintiff after Payment into Court.

LXXIII. 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 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.

Pleas to Actions partaking both of Breach of Contract and Wrong.

LXXIV. '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.

Payment, Set-off, and other Pleadings which can be construed

LXXV. Pleas of Payment and Set-off, and all other Pleadings capable of being construed distributively, shall be taken distributively, 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

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. distributively shall be so construed.

LXXVI. 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 the Declaration.

LXXVII. 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 Plea or subsequent Pleading of Defendant.

LXXVIII. A Defendant shall be at liberty in like Manner to deny the whole or Part of a Replication or subsequent Pleading of the Plaintiff. Traverse of Replication, &c. of Plaintiff.

LXXIX. 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: Joinder of Issue.

"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.

LXXX. 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. As to Pleading and demurring together.

LXXXI. 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. Several Matters may be pleaded at any Stage of the Pleadings.

LXXXII. No Rule of Court for Leave to plead several Matters shall be necessary where a Judge's Order has been made for the same Purpose. Judge's Order to plead several Matters sufficient.

LXXXIII. 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. Objections to be heard on Summons to plead several Matters.

LXXXIV. 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 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, Certain Pleas may be pleaded together without Leave.

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 Licence, Son assault demesne, and any other Pleas which the Judges of the said Superior Courts, or any Eight or more of them, of whom the Chief Judges of the said Courts shall be Three, shall by any Rule or Order, to be from Time to Time by them made in Term or Vacation, order or direct.

Signature of Counsel.

LXXXV. The Signature of Counsel shall not be required to any Pleading.

For pleading several Matters without Leave, Judgment may be signed.

LXXXVI. 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.

One new Assignment only allowed in respect of the same Cause of Action.

LXXXVII. 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.

Pleas not to be repeated.

LXXXVIII. 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.

Form of Demurrer and Joinder in Demurrer.

LXXXIX. The Form of a Demurrer, except in the Cases herein specifically provided for, shall be as follows, or to the like Effect:

"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."

Time for pleading after Amendment.

XC. 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.

Examples of Pleading.

'And whereas it is desirable that Examples should be given of the Statements of Causes 'of Action, and of Forms of Pleading:' Be it enacted as follows:

Forms in Schedule may be adopted.

XCI. 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 from the Letter of such Forms, so long as the Substance is expressed without Prolixity.

Judgment by Default, and ascertaining Amount to be recovered.

And with respect to Judgment by Default, and the Mode of ascertaining the Amount to be recovered thereupon, be it enacted as follows:

Rule to compute abolished.

XCII. No Rule to compute shall be necessary or used; but nothing in this Act contained shall invalidate any Proceedings already taken or to be taken by reason of any Rule to compute made, or applied for, before the Commencement of this Act.

XCIII. In

XCIII. In Actions where the Plaintiff seeks to recover a Debt or liquidated Demand in Money, Judgment by Default shall be final. Judgment by Default final.

XCIV. 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 One of the Masters of the said Court; and the Attendance of Witnesses and the Production of Documents before such Master may be compelled by Subpœna, in the same Manner as before a Jury upon a Writ of Inquiry; and it shall be lawful for such Master to adjourn the Inquiry from Time to Time, as Occasion may require; and the Master 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. Inquiry of Damages may be directed to take place before the Master.

XCV. 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. Judgment, without Distinction between Debt and Damages.

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

And with respect to Notice of Trial and Inquiry, and Countermand thereof, be it enacted as follows: *Notice of Trial, Inquiry, and Countermand.*

XCVII. Ten Days Notice of Trial or Inquiry shall be given, and shall be sufficient in all Cases, whether at Bar or Nisi Prius, in Town or Country, unless otherwise ordered by the Court or a Judge. Time for Notice of Trial and Inquiry.

XCVIII. A Countermand of Notice of Trial shall be given Four Days before the Time mentioned in the Notice of Trial, unless Short Notice of Trial has been given, and then Two Days before the Time mentioned in the Notice of Trial, unless otherwise ordered by the Court or a Judge, or by Consent. Notice of Countermand.

XCIX. 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. Costs of the Day.

And with respect to Judgment for Default in not proceeding to Trial, be it enacted as follows: *Judgment for not proceeding to Trial.*

C. 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 is hereby repealed, except as to Proceedings taken or commenced thereupon before the Commencement of this Act. Statute 14 G. 2. c. 17. as to Judgment in Case of Nonsuit repealed.

CI. 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, that is to say, in Town Causes where Issue has been or shall be joined in, or in the Vacation before, any Term, for instance, *Hilary* Term, and the Plaintiff has neglected or shall neglect to bring the Issue on to be tried during or before the following Term and Vacation, for instance, *Easter* Term and Vacation, and in Country Causes where Issue has been or shall be joined in, or in the Vacation before, *Hilary* or *Trinity* Term, and the Plaintiff has neglected or shall neglect to bring the Issue on to be tried at or before the Second Assizes following such Term, or if Issue has been or shall be joined in, or in the Vacation before, *Easter* or *Michaelmas* Term, then, if the Plaintiff has neglected or shall neglect to bring the Issue on to be tried at or before the First Assizes after such Term, 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 Proceedings where Plaintiff neglects to bring on the Cause to be tried.

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 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.

Nisi Prius Record.

And with respect to the Nisi Prius Record, be it enacted as follows:

Nisi Prius Record not to be sealed or passed.

CII. The Record of Nisi Prius shall not be sealed or passed, but may be delivered to the proper Officer of the Court in which the Cause is to be tried, to be by him entered as at present, and remain until disposed of.

Trials in Counties Palatine.

CIII. Records of the Superior Courts of Common Law shall be brought to Trial and entered and disposed of in the Counties Palatine in the same Manner as in other Counties.

Jury and Jury Process.

And with respect to Juries and Jury Process, be it enacted as follows:

Jury Process abolished.

CIV. The several Writs of Venire facias juratores, and Distringas juratores, or Habeas corpora juratorum, and the Entry Jurata ponitur in respectu, shall no longer be necessary or used.

Jurors to be summoned for Civil as well as Criminal Trials.

CV. The Precept issued by the Judges of Assize to the Sheriff to summon Jurors for the Assizes shall direct that the Jurors be summoned for the Trial of all Issues, whether civil or criminal, which may come on for Trial at the Assizes; and the Jurors shall thereupon be summoned in like Manner as at present.

A printed Panel to be prepared, and annexed to the Record.

CVI. A printed Panel of the Jurors summoned shall, Seven Days before the Commission Day, be made by the Sheriff, and kept in the Office for Inspection; and a printed Copy of such Panel shall be delivered by the Sheriff to any Party requiring the same, on Payment of One Shilling; and such Copy shall be annexed to the Nisi Prius Record.

Sheriffs of London and Middlesex to summon Common Jurors and prepare a Panel, to be annexed to the Record.

CVII. The Sheriffs of *London* and *Middlesex* respectively shall, pursuant to a Precept under the Hand of a Judge of any of the said Superior Courts, and without any other Authority, summon a sufficient Number of Common Jurors for the Trial of all Issues in the Superior Courts of Common Law, in like Manner as before this Act; and Seven Days before the First Day of each Sittings a printed Panel of the Jurors so summoned for the Trial of Causes at such Sittings shall be made by such Sheriffs, and kept in their Offices for public Inspection; and a printed Copy of such Panel shall be delivered by the said Sheriffs to any Party requiring the same, on Payment of One Shilling; and such Copy shall be annexed to the Nisi Prius Record; and the said Precept shall and may be in like Form as the Precept issued by the Judges of Assize, and One thereof shall suffice for each Term, and for all the Superior Courts; and it shall be the Duty of the Sheriffs respectively to apply for and procure such Precept to be issued in sufficient Time before each Term to enable them to summon the Jurors in manner aforesaid; and it shall be lawful for the several Courts, or any Judge thereof, at any Time to issue such Precept or Precepts to summon Jurors for disposing of the Business pending in such Courts, and to direct the Time and Place for which such Jurors shall be summoned, and all such other Matters as to such Judge shall seem requisite.

Special Jurors, not exceeding Forty-eight in Number, to be summoned to try all Special Jury Causes at Assizes.

CVIII. The Precept issued by the Judges of Assize as aforesaid shall direct the Sheriff to summon a sufficient Number of Special Jurymen, to be mentioned therein, not exceeding Forty-eight in all, to try the Special Jury Causes at the Assizes; and the Persons summoned in pursuance of such Precept shall be the Jury for trying the Special Jury Causes at the Assizes, subject to such Right of Challenge as the Parties are now by Law entitled to; and a printed Panel of the Special Jurors so summoned shall be made, kept, delivered, and annexed to the Nisi Prius Record, in like Time and Manner and upon the same Terms as herein-before provided with reference to the Panel of Common Jurors; and upon the Trial the Special Jury shall be ballotted for, and called in the Order in which they shall be drawn from the Box, in the same Manner as Common Jurors: Provided that the Court or a Judge, in

in such Case as they or he may think fit, may order that a Special Jury be struck according to the present Practice, and such Order shall be a sufficient Warrant for striking such Special Jury, and making a Panel thereof for the Trial of the particular Cause.

Mode of obtaining a Special Jury in Country Causes.

CIX. In any County, except *London* and *Middlesex*, the Plaintiff in any Action, except Replevin, shall be entitled to have the Cause tried by a Special Jury, upon giving Notice in Writing to the Defendant, at such Time as would be necessary for a Notice of Trial, of his Intention that the Cause shall be so tried; and the Defendant, or Plaintiff in Replevin, shall be so entitled, on giving the like Notice within the Time now limited for obtaining a Rule for a Special Jury: Provided that the Court or a Judge may at any Time order that a Cause shall be tried by a Special Jury, upon such Terms as they or he shall think fit.

Special Juries in London and Middlesex, how struck.

CX. In *London* and *Middlesex* Special Jurors shall be nominated and reduced by and before the Under Sheriff and Secondary respectively, in like Manner as by the Master before this Act, upon the Application of either Party entitled to a Special Jury, and his obtaining a Rule for such Purpose; and the Names of the Jurors so struck shall be placed upon a Panel, which shall be delivered and annexed to the Nisi Prius Record, in like Manner and upon the same Terms as herein-before provided with reference to the Panel of Common Jurors; and upon the Trial the Special Jury shall be balloted for, and called in the Order in which they shall be drawn from the Box, in the same Manner as Common Jurors.

Remedy for Delay by Notice of Trial by Special Jury.

CXI. Where the Defendant in any Case, or Plaintiff in Replevin, gives Notice of his Intention to try the Cause by a Special Jury, and the Venue is in *London* or *Middlesex*, the Court or a Judge, if satisfied that such Notice is given for the Purpose of Delay, may order that the Cause be tried by a Common Jury, or make such other Order as to the Trial of the Cause as such Court or Judge shall think fit.

Notice to Sheriff of Trial by Special Jury.

CXII. Where Notice has been given to try by Special Jury, either Party may, Six Days before the First Day of the Sittings in *London* or *Middlesex*, or Adjournment Day in *London*, or Commission Day of the Assizes, give Notice to the Sheriff that such Cause is to be tried by a Special Jury; and in case no such Notice be given no Special Jury need be summoned or attend, and the Cause may be tried by a Common Jury, unless otherwise ordered by the Court or a Judge.

If Special Jury not summoned, Cause to be tried by a Common Jury.

CXIII. In all Cases where Notice is not given to the Sheriff that the Cause is to be tried by a Special Jury, and by reason thereof a Special Jury is not summoned or does not attend, the Cause may be tried by a Common Jury, to be taken from the Panel of Common Jurors, in like Manner as if no Proceedings had been had to try the Cause by a Special Jury.

View to be by Rule without Writ.

CXIV. A Writ of View shall not be necessary or used, but, whether the View is to be had by a Common or Special Jury, it shall be sufficient to obtain a Rule of the Court or Judge's Order, directing a View to be had; and the Proceedings upon the Rule for a View shall be the same as the Proceedings heretofore had under a Writ of View; and the Sheriff, upon Request, shall deliver to either Party the Names of the Viewers, and shall also return their Names to the Associate for the Purpose of their being called as Jurymen upon the Trial.

Proceedings before Jurors so returned same as before this Act.

CXV. The Jurors contained in such Panels as aforesaid shall be the Jurors to try the Causes at the Assizes and Sittings for which they shall be summoned respectively; and all such Proceedings may be had and taken before such Juries in like Manner, and with the like Consequences in all respects, as before any Jury summoned in pursuance of any Writ or Writs of Venire facias juratores, Distringas juratores, or Habeas corpora juratorum, before this Act.

Defendant's Right to try, upon Default of the Plaintiff, preserved.

CXVI. Nothing herein contained shall affect the Right of a Defendant to take down a Cause for Trial, after Default by the Plaintiff to proceed to Trial, according to the Course and Practice of the Court; and if Records are entered for Trial both by the Plaintiff and the Defendant, the Defendant's Record shall be treated as standing next in order after the Plaintiff's Record in the List of Causes, and the Trial of the Cause shall take place accordingly.

Admission of Documents.

And with respect to the Admission of Documents, be it enacted as follows:

Admission of Documents.

CXVII. 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 Master a Saving of Expense.

Proof of Admissions.

CXVIII. 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 Notice to produce.

CXIX. 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.

Execution.

And with respect to Execution, be it enacted as follows:

Execution after Trial.

CXX. A Plaintiff or Defendant, having obtained a Verdict in a Cause tried out of Term, 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.

Ground Writs abolished.

CXXI. It shall not be necessary to issue any Writ directed to the Sheriff of the County in which the Venue is laid, but Writs of Execution may issue at once into any County, and be directed to and executed by the Sheriff of any County, whether a County Palatine or not, without reference to the County in which the Venue is laid, and without any Suggestion of the issuing of a prior Writ into such County.

Writs in Counties Palatine to be directed to the Sheriff.

CXXII. All Writs of every Description issuing out of the Superior Courts of Common Law at *Westminster*, to be executed in the Counties Palatine, shall be directed and delivered to the Sheriffs of such Counties, and executed and returned by them to the Courts out of which such Writs are issued, in the same Manner in all respects as Writs are executed and returned by the Sheriffs of other Counties.

Expenses of Execution.

CXXIII. 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.

Writs of Execution to remain in force for One Year, and to be renewed if necessary.

CXXIV. 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 herein-after 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 renewed Writ, either by being marked with a Seal bearing the Date of the Day, Month, and Year of such Renewal, (such Seal to be provided and kept for that Purpose at the Office of the Masters of the Court out of which such Writ issued,) or by such Party giving a written Notice of Renewal to such Sheriff, signed by the Party or his Attorney, and bearing the like Seal of the Court; and a Writ of Execution so renewed shall have effect, and be entitled to Priority, according to the Time of the original Delivery thereof.

Production of renewed Writ, Evidence of Renewal.

CXXV. The Production of a Writ of Execution, or of the Notice renewing the same, purporting to be marked with such Seal, showing 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 Attorney in the Cause.

CXXVI. 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;

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 for charging in Execution a Person already in Prison of the Court.

CXXVII. It shall not be necessary in any Case to sue out a Writ of Habeas corpus ad satisfaciendum to charge in Execution a Person already in the Prison of the Court, but such Person may be so charged in Execution by a Judge's Order made upon Affidavit that Judgment has been signed and is not satisfied; and the Service of such Order upon the Keeper of the Prison for the Time being shall have the Effect of a Detainer.

Proceedings to revive.

And with respect to Proceedings for the Revival of Judgments and other Proceedings by and against Persons not Parties to the Record, be it enacted as follows:

Execution in Six Years without Revival.

CXXVIII. 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.

CXXIX. 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 herein-after 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 show 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 Schedule (A.) to this Act annexed, marked No. 7., or to the like Effect.

Proceedings upon Application for Suggestion to revive Judgment.

CXXX. 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 Schedule (A.) to this Act annexed, marked 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.

CXXXI. The Writ of Revivor shall be directed to the Party called upon to show 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, in the Court out of which it issues, to show Cause why the Party at whose Instance such Writ has been issued should 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 Schedule (A.) to this Act annexed, marked No. 9., or to the like Effect, and may be served in any County, 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 County; and the Pleadings and Proceedings thereupon, and the Rights of the Parties respectively to Costs, shall be the same as in an ordinary Action.

Writs of Scire facias in other Cases to be tested, directed, and proceeded upon in like Manner.

CXXXII. All Writs of Scire facias issued out of any of the Superior Courts of Law at *Westminster* against Bail on a Recognizance; Ad audiendum errores; 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; for Restitution after a Reversal in Error; upon a Suggestion of further Breaches after Judgment for any Penal Sum, pursuant to the Statute passed in the Session holden in the Eighth

Eighth and Ninth Years of the Reign of King *William* the Third, intituled *An Act for the better preventing frivolous and vexatious Suits;* or for Recovery of Land taken under an Elegit, shall be tested, directed, and proceeded upon, in like Manner as Writs of Revivor.

Appearance to Writ of Revivor.

CXXXIII. Notice in Writing to the Plaintiff, his Attorney or Agent, shall be sufficient Appearance to a Writ of Revivor.

Writ of Revivor upon Judgment more than Ten Years old.

CXXXIV. 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 show Cause.

Death, Marriage, and Bankruptcy.

And with respect to the Effect of Death, Marriage, and Bankruptcy upon the Proceedings in an Action, be it enacted as follows:

Action not to abate by Death.

CXXXV. The Death of a Plaintiff or Defendant shall not cause the Action to abate, but it may be continued as herein-after mentioned.

Proceedings in case of Death of One or more of several Plaintiffs or Defendants.

CXXXVI. If there be Two or more Plaintiffs or Defendants, and One or more of them should die, if 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.

Proceeding in case of sole Plaintiff.

CXXXVII. 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 deceased Plaintiff, and such Judgment shall follow upon the Verdict in favour of or against the Person making such Suggestion, as if such Person were originally the Plaintiff.

Proceeding upon Death of sole or sole surviving Defendant.

CXXXVIII. In case of the Death of a 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 Nonappearance after such Notice, as 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 Suggestion, 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.

CXXXIX. The

CXXXIX. The Death of either Party between the Verdict and the Judgment shall not hereafter be alleged for Error, so as such Judgment be entered within Two Terms after such Verdict.

Death between Verdict and Judgment.

CXL. 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 Schedule (A.) to this Act annexed, marked 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 show 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 show 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 One of the Masters, as herein-before 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.

Proceedings in case of Death after Interlocutory, and before final Judgment.

CXLI. 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 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.

Marriage not to abate Action.

CXLII. The Bankruptcy or 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, and give Security for the Costs thereof, upon a Judge's Order to be obtained 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 Bankruptcy.

Bankruptcy and Insolvency of Plaintiff, when not to abate Action.

And with respect to the Proceedings upon Motions to arrest the Judgment, and for Judgment Non obstante veredicto, be it enacted as follows:

Arrest of Judgment and Judgment Non obstante veredicto.

CXLIII. Upon any Motion made in arrest of Judgment, or to enter an Arrest of Judgment, pursuant to the Statute passed in the First Year of His late Majesty King *William* the Fourth, intituled *An Act for the more speedy Judgment and Execution in Actions brought in His Majesty's Courts of Law at* Westminster, *and in the Court of Common Pleas of the County Palatine of* Lancaster, *and for amending the Law as to Judgment on a Cognovit actionem in Cases of Bankruptcy*, or for Judgment Non obstante veredicto, by reason of the Non-averment of some alleged material Fact or Facts or material Allegation, 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 Facts, or other Matter, which, if true, would remedy the alleged Defect; 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

Upon Motion in arrest of Judgment, pursuant to 1 W. 4. c. 7., or for Judgment Non obstante veredicto, omitted Facts may by Leave of the Court be suggested.

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.

Judgment to follow Result of Suggestion.

CXLIV. If the Fact or Facts 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 Facts or Allegations had been originally stated in such 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.

Costs of abortive Issues.

CXLV. 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.

Error.

And with respect to Proceedings in Error, be it enacted as follows:

Error to be brought within Six Years.

CXLVI. No Judgment in any Cause shall be reversed or avoided for any Error or Defect therein, unless Error be commenced, or brought and prosecuted with Effect, within Six Years after such Judgment signed or entered of Record.

Proviso for Disabilities.

CXLVII. If any Person that is or shall be entitled to bring Error as aforesaid is or shall be, at the Time of such Title accrued, within the Age of Twenty-one Years, Feme Covert, *non compos mentis*, or beyond the Seas, then such Person shall be at liberty to bring Error as aforesaid, so as such Person commences, or brings and prosecutes the same with Effect, within Six Years after coming to or being of full Age, Discovert, of sound Memory, or Return from beyond the Seas; and if the opposite Party shall, at the Time of the Judgment signed or entered of Record, be beyond the Seas, then Error may be brought, provided the Proceedings be commenced and prosecuted with Effect within Six Years after the Return of such Party from beyond Seas.

Writ of Error abolished.

CXLVIII. A Writ of Error shall not be necessary or used in any Cause, and the Proceeding to Error shall be a Step in the Cause, and shall be taken in manner herein-after mentioned; but nothing in this Act contained shall invalidate any Proceedings already taken or to be taken by reason of any Writ of Error issued before the Commencement of this Act.

Error in Law how brought.

CXLIX. Either Party alleging Error in Law may deliver to One of the Masters of the Court a Memorandum in Writing, in the Form contained in the Schedule (A.) to this Act annexed, marked No. 10., or to the like Effect, entitled in the Court and Cause, and signed by the Party or his Attorney, alleging that there is Error in Law in the Record and Proceedings; whereupon the Master shall file such Memorandum, and deliver to the Party lodging the same a Note of the Receipt thereof; and a Copy of such Note, together with a Statement of the Grounds of Error intended to be argued, may be served on the opposite Party, or his Attorney.

Error not Supersedeas till Service of the Copy of the Note and Grounds of Error.

CL. Proceedings in Error in Law shall be deemed a Supersedeas of Execution from the Time of the Service of the Copy of such Note, together with the Statement of the Grounds of Error intended to be argued, until Default in putting in Bail, or an Affirmance of the Judgment or Discontinuance of the Proceedings in Error, or until the Proceedings in Error shall be otherwise disposed of without a Reversal of the Judgment; provided always, that if the Grounds of Error shall appear to be frivolous, the Court or a Judge upon Summons may order Execution to issue.

Bail in Error.

CLI. Upon any Judgment hereafter to be given in any of the said Superior Courts of Common Law in any Action, Execution shall not be stayed or delayed by Proceedings in Error, or Supersedeas thereupon, without the special Order of the Court or a Judge, unless the Person in whose Name such Proceedings in Error be brought, with Two, or, by Leave of the Court or a Judge, more than Two sufficient Sureties, such as the Court (wherein such Judgment

Judgment is or shall be given) or a Judge shall allow of, shall, within Four clear Days after lodging the Memorandum alleging Error, or after the signing of the Judgment, whichever shall last happen, or before Execution executed, be bound unto the Party for whom any such Judgment is or shall be given, by Recognizance to be acknowledged in the same Court, in double the Sum adjudged to be recovered by the said Judgment, (except in case of a Penalty, and in case of a Penalty in double the Sum really due, and double the Costs,) to prosecute the Proceedings in Error with effect, and also to satisfy and pay (if the said Judgment be affirmed, or the Proceedings in Error be discontinued by the Plaintiff therein,) all and singular the Sum or Sums of Money and Costs adjudged or to be adjudged upon the former Judgment, and all Costs and Damages to be also awarded for the delaying of Execution, and shall give Notice thereof to the Defendant in Error, or his Attorney.

Suggestion instead of Assignment of and Joinder in Error.

CLII. The Assignment of and Joinder in Error in Law shall not be necessary or used, and, instead thereof, a Suggestion to the Effect that Error is alleged by the One Party and denied by the other, may be entered on the Judgment Roll in the Form contained in Schedule (A.) to this Act annexed, marked No. 11., or to the like Effect: Provided that in case the Defendant in Error intends to rely upon the Proceeding in Error being barred by Lapse of Time, or by Release of Error, or other like Matter of Fact, he may give Four Days written Notice to the Plaintiff in Error to assign Error as heretofore, instead of entering the Suggestion; and he shall, within Eight Days, plead thereto the Bar by Lapse of Time, or Release of Error, or other like Matter of Fact; and thereupon such Proceedings may be had as heretofore.

Roll to be made up and Suggestion entered by Plaintiff in Error.

CLIII. The Roll shall be made up, and the Suggestion last aforesaid entered by the Plaintiff in Error within Ten Days after the Service of the Note of the Receipt of the Memorandum alleging Error, or within such other Time as the Court or a Judge may order; and in default thereof, or of Assignment of Error in Cases where an Assignment is required, the Defendant in Error, his Executors or Administrators, shall be at liberty to sign Judgment of Non-pros.

Error brought by One of several Persons against whom Judgment has been given.

CLIV. In case Error be brought upon a Judgment given against several Persons, and One or some only shall proceed in Error, the Memorandum alleging Error, and the Note of the Receipt of such Memorandum, shall state the Names of the Persons by whom the Proceedings are taken; and in case the other Persons, against whom Judgment has been given, decline to join in the Proceedings in Error, the same may be continued, and the Suggestion last aforesaid entered, stating the Persons by whom the Proceedings are brought, without any Summons and Severance, or if such other Persons elect to join, then the Suggestion shall state them to be, and they shall be deemed as Plaintiffs in Error, although not mentioned as such in the previous Proceedings.

Judgment Roll to be brought into Court instead of Transcript.

CLV. Upon such Suggestion of Error alleged and denied being entered, the Cause may be set down for Argument in the Court of Error in the Manner heretofore used; and the Judgment Roll shall, without any Writ or Return, be brought by the Master into the Court of Error in the Exchequer Chamber, before the Justices, or Justices and Barons, as the Case may be, of the other Two Superior Courts of Common Law, on the Day of its Sitting, at such Time as the Judges shall appoint, either in Term or in Vacation; or if the Proceedings in Error be before the High Court of Parliament, then before the High Court of Parliament, before or at the Time of its Sitting; and the Court of Error shall and may thereupon review the Proceedings, and give Judgment as they shall be advised thereon; and such Proceedings and Judgment, as altered or affirmed, shall be entered on the original Record; and such further Proceedings as may be necessary thereon shall be awarded by the Court in which the original Judgment was given.

Jurisdiction of Courts of Error over the Proceedings.

CLVI. Courts of Error shall have Power to quash the Proceedings in Error in all Cases in which Error does not lie, or where they are taken against good Faith, or in any Case in which Proceedings in Error might heretofore have been quashed by such Courts; and such Courts shall in all respects have such Jurisdiction over the Proceedings as over the Proceedings in Error commenced by Writ of Error.

Court of Error to have like Powers with Court below.

CLVII. Courts of Error shall in all Cases have Power to give such Judgment and award such Process as the Court from which Error is brought ought to have done, without regard to the Party alleging Error.

Proceedings in Error in Fact.

CLVIII. Either Party alleging Error in Fact may deliver to One of the Masters of the Court a Memorandum in Writing, in the Form contained in the Schedule (A.) to this Act annexed, marked No. 12., or to the like Effect, intitled in the Court and Cause, and signed by the Party or his Attorney, alleging that there is Error in Fact in the Proceedings, together with an Affidavit of the Matter of Fact in which the alleged Error consists; whereupon the Master shall file such Memorandum and Affidavit, and deliver to the Party lodging the same a Note of the Receipt thereof; and a Copy of such Note and Affidavit may be served on the opposite Party or his Attorney; and such Service shall have the same Effect, and the same Proceedings may be had thereafter as heretofore had after the Service of the Rule for Allowance of a Writ of Error in Fact.

Plaintiff may discontinue Proceedings in Error.

CLIX. The Plaintiff in Error, whether in Fact or Law, shall be at liberty to discontinue his Proceedings by giving to the Defendant in Error a Notice, headed in the Court and Cause, and signed by the Plaintiff in Error or his Attorney, stating that he discontinues such Proceedings; and thereupon the Defendant in Error may sign Judgment for the Costs of, and occasioned by, the Proceedings in Error, and may proceed upon the Judgment on which the Error was brought.

Defendant may confess Error, and consent to Reversal of Judgment.

CLX. The Defendant in Error, whether in Fact or Law, shall be at liberty to confess Error, and consent to the Reversal of the Judgment, by giving to the Plaintiff in Error a Notice, headed in the Court and Cause, and signed by the Defendant in Error or his Attorney, stating that he confesses the Error, and consents to the Reversal of the Judgment; and thereupon the Plaintiff in Error shall be entitled to and may forthwith sign a Judgment of Reversal.

Death of Plaintiff in Error no Abatement.

CLXI. The Death of a Plaintiff in Error after Service of the Note of the Receipt of the Memorandum alleging Error, with a Statement of the Grounds of Error, shall not cause the Proceedings to abate, but they may be continued as herein-after mentioned.

Providing for Death of One of several Plaintiffs in Error.

CLXII. In case of the Death of One of several Plaintiffs in Error, 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 Proceedings may be thereupon continued at the Suit of, and against the surviving Plaintiff in Error, as if he were the sole Plaintiff.

Proceedings upon Death of sole Plaintiff or of all the Plaintiffs in Error.

CLXIII. In case of the Death of a sole Plaintiff or of several Plaintiffs in Error, the legal Representative of such Plaintiff or of the surviving Plaintiff may, by Leave of the Court or a Judge, enter a Suggestion of the Death, and that he is such legal Representative, which Suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the Proceedings may thereupon be continued at the Suit of, and against such legal Representative as the Plaintiff in Error; and, if no such Suggestion shall be made, the Defendant in Error may proceed to an Affirmance of the Judgment according to the Practice of the Court, or take such other Proceedings thereupon as he may be entitled to.

Death of Defendant in Error no Abatement.

CLXIV. The Death of a Defendant in Error shall not cause the Proceedings to abate, but they may be continued as herein-after mentioned.

Proceedings on Death of One of several Defendants in Error.

CLXV. In case of the Death of One of several Defendants in Error, 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 Proceedings may be continued against the surviving Defendant.

Proceedings upon Death of sole Defendant or of all the Defendants in Error.

CLXVI. In case of the Death of a sole Defendant or of all the Defendants in Error, the Plaintiff in Error may proceed upon giving Ten Days Notice of the Proceedings in Error, and of his Intention to continue the same, to the Representatives of the deceased Defendants, or if no such Notice can be given, then, by Leave of the Court or a Judge, upon giving such Notice to the Parties interested as he or they may direct.

CLXVII. The

CLXVII. The Marriage of a Woman, Plaintiff or Defendant in Error, shall not abate the Proceedings in Error, but the same may be continued in like Manner as herein-before provided with reference to the Continuance of an Action after Marriage. Marriage not to abate Proceedings in Error.

And with respect to the Action of Ejectment, be it enacted as follows: *Ejectment.*

CLXVIII. 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.

CLXIX. 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, to appear, within Sixteen Days after Service thereof, in the Court from which it is issued, 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 Schedule (A.) to this Act annexed, marked No. 13., 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 herein-before 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. Form and Duration of Writ of Ejectment.

CLXX. 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. Service of Writ of Ejectment.

CLXXI. The Persons named as Defendants in such Writ, or either of them, shall be allowed to appear within the Time appointed. Appearance of Persons named.

CLXXII. 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 showing that he is in possession of the Land either by himself or his Tenant. Appearance of Persons not named.

CLXXIII. 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. Appearance and Defence by Landlord.

CLXXIV. 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 Master's Office; and an Appearance without such Notice confining the Defence to Part, shall be deemed an Appearance to defend for the whole. Notice to defend for Part only.

CLXXV. 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. Want of Certainty cured by Particulars.

CLXXVI. 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. Defence by Persons not in possession.

CLXXVII. In case no Appearance shall be entered into 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 Judgment for Default of Appearance or Defence.

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 Schedule (A.) to this Act annexed, marked No. 14., or to the like Effect, and if for Part, may be in the Form contained in the Schedule (A.) to this Act annexed, marked No. 15., or to the like Effect.

Issue how made up.

CLXXVIII. In case an Appearance shall be entered, an Issue may once be made up, without any Pleadings, by the Claimants or their 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 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 Schedule (A.) to this Act annexed, marked No. 16., or to the like Effect, and in case Defence is made for Part, may be in the Form contained in the Schedule (A.) to this Act annexed, marked No. 15., or to the like Effect.

Special Case may be stated.

CLXXIX. By Consent of the Parties, and by Leave of a Judge, a Special Case may be stated according to the Practice heretofore used.

Trial of Issue.

CLXXX. 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 Schedule (A.) to this Act annexed, marked No. 17., or to the like Effect, with such Modifications as may be necessary to meet the Facts.

Verdict when Title appears to have expired before Trial.

CLXXXI. 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.

Trial may be ordered to take place in any County.

CLXXXII. The Court or a Judge may, on the Application of either Party, order that the Trial shall take place in any County or Place other than that in which the Venue is laid; and such Order being suggested on the Record, the Trial may be had accordingly.

Nonappearance at Trial.

CLXXXIII. If the Defendant appears, and the Claimant does not appear at the Trial, the Claimant shall be non suited; 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.

Special Verdict, &c.

CLXXXIV. The Jury may find a Special Verdict, or either Party may tender a Bill of Exceptions.

Judgment upon Finding for Claimant.

CLXXXV. 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, not exceeding the Fifth Day in Term after the Verdict, 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.

CLXXXVI. 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, not exceeding the Fifth Day in Term after the Verdict, 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.

Execution for Recovery of Possession and Costs may be joint or separate.

CLXXXVII. 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.

CLXXXVIII. In

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.

CCII. If after Appearance entered the Claimant, without going to Trial, allow the Time, allowed for going to Trial by the Practice of the Court in ordinary Cases after Issue joined, to elapse, the Defendant in Ejectment 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 Schedule (A.) to this Act annexed, marked No 19., and recover the Costs of Defence.

Defendant may confess the Action.

CCIII. A sole Defendant or all the Defendants in Ejectment 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 Schedule (A.) to this Act annexed, marked No. 20., or to the like Effect.

Confession by One of several Defendants defending separately for Part.

CCIV. In case 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, 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.

CCV. In case One of several Defendants in Ejectment, 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.

CCVI. 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 according to the Practice heretofore used, and Judgment may thereupon be signed, and Costs taxed, and Execution issued, according to the Practice heretofore used: Provided nevertheless, that the Proceedings may be entered upon the Roll whenever the same may become necessary for the Purpose of Evidence, or of bringing Error, or the like.

Effect of Judgment.

CCVII. The Effect of a Judgment in an Action of Ejectment under this Act shall be the same as that of a Judgment in the Action of Ejectment heretofore used.

Error and Bail in Error in Ejectment.

CCVIII. Error may be brought in like Manner as in other Actions upon any Judgment in Ejectment, after a Special Verdict found by the Jury, or a Bill of Exceptions, or by Consent after a Special Case stated, but, except in the Case of such Consent as aforesaid, Execution shall not be thereby stayed, unless the Plaintiff in Error shall, within Four clear Days after lodging the Memorandum alleging Error, or after the signing of the Judgment, whichever shall last happen, or before Execution executed, be bound unto the Claimant, who shall have recovered Judgment in such Action of Ejectment, in double the yearly Value of the Property, and double the Costs recovered by the Judgment, with Condition, that if the Judgment shall be affirmed by the Court of Error, or the Proceedings in Error be discontinued by the Plaintiff therein, then the Plaintiff in Error shall pay such Costs, Damages, and Sum or Sums of Money as shall be awarded upon or after such Judgment affirmed or Discontinuance; and it shall be lawful for the Court wherein Execution ought to be granted upon such Affirmation, or Discontinuance, upon the Application of the Claimant, to issue a Writ to

to inquire as well of the mesne Profits as of the Damage by any Waste committed after the first Judgment in Ejectment, which Writ may be tested on the Day on which it shall issue, and be returnable immediately after the Execution thereof; and upon the Return thereof Judgment shall be given, and Execution awarded for such mesne Profits and Damages, and also for Costs of Suit.

Tenants to give Notice of Ejectment to Landlord.

CCIX. 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 any Court of Common Law having Jurisdiction for the Amount.

Proceedings in Ejectment by Landlord for Nonpayment of Rent.

CCX. 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 Nonpayment thereof, such Landlord or Lessor shall and 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 Nonappearance, 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, other than by bringing Error for Reversal of such Judgment, in case the same shall be erroneous, 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.

Lessee proceeding in Equity not to have Injunction or Relief without Payment of Rent and Costs.

CCXI. 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 any Court of Equity, such Person shall not have or continue any Injunction against the Proceedings at Law on such Ejectment, unless he does or 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 proper Officer 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, or to be paid out to the Lessor or Landlord on good Security, subject to the Decree

Defence by joint Tenants, Tenants in Common, or Coparceners.

CLXXXVIII. 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 Joint Tenant, Tenant in Common, or Coparcener in possession, 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 or she 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 or she is such Joint Tenant, Tenant in Common, or Coparcener, and the Share of such Property to which he or she is entitled, and that he or she 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.

CLXXXIX. 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 such Judgment for the Recovery of Possession and Costs.

Action not to abate by Death.

CXC. The Death of a Claimant or Defendant shall not cause the Action to abate, but it may be continued as herein-after mentioned.

Proceedings upon Death before Trial, where Right survives.

CXCI. 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.

CXCII. 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 herein-after 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.

CXCIII. 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.

CXCIV. 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 favour of or against the Person making such Suggestion, as herein-before 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

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.

Proceedings upon Death of One of several joint Defendants.

CXCV. 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.

Upon Death of all the Defendants in Ejectment before Trial.

CXCVI. 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 Defendants in Ejectment after Verdict.

CXCVII. 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 before Trial of Defendant in Ejectment, who defends separately for Part.

CXCVIII. 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 of Defendant defending separately for Property in respect of which others also defend.

CXCIX. 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 against the surviving Defendant or Defendants to Judgment and Execution.

Claimant may discontinue by Notice.

CC. The Claimant in Ejectment 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 Schedule (A.) to this Act annexed, marked No. 18., or to the like Effect.

Discontinuance of Action by One of several Claimants.

CCI. 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

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.

CCXII. If the Tenant or his Assignee do or 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 where the same Cause is depending, 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.

CCXIII. 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 herein-after 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 show 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 Claimants in the Action; and it shall be lawful for the Court or Judge upon Cause shown, or upon Affidavit of the Service of the Rule or Summons in case no Cause shall be shown, 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 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. 21., or to the like Effect.

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.

On Trial of any Ejectment between Landlord and Tenant, Juries to give Damages for mesne Profits down to the

CCXIV. Wherever it shall appear on the Trial of any Ejectment, 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 Ejectment, to go into Evidence of the mesne Profits thereof which

Verdict, or to a Day specified therein.

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 herein-before provided, not only for the Recovery of Possession and Costs, but also for the mesne Profits found by the Jury: Provided always, that nothing herein-before 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 Ejectment.

On Trials after Bail found, Judge shall not stay the Execution except by Consent, or on Tenant's finding Security.

CCXV. 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: Provided always, that the Recognizance last above mentioned shall immediately stand discharged and be of no Effect, in case Proceedings in Error shall be brought upon such Judgment, and the Plaintiff in Error shall become bound in the Manner herein-before provided.

Bail in Error to discharge such Security.

Recognizances to be taken as other Recognizances of Bail; Actions on them limited.

CCXVI. All Recognizances and Securities entered into as last aforesaid may and shall be taken respectively in such Manner and by and before such Persons as are provided and authorized in respect of Recognizances of Bail upon Actions and Suits depending in the Court in which any such Action of Ejectment shall have been commenced; and the Officer of the same Court with whom Recognizances of Bail are filed shall file such Recognizances and Securities, 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.

Landlord to recover Possession of Lands, &c. after Service of Writ in Ejectment.

CCXVII. In all Actions of Ejectment hereafter to be brought in any of Her Majesty's Courts at *Westminster* by any Landlord against his Tenant, or against any Person claiming through or under such Tenant, for the Recovery of any Lands or Hereditaments in any County, except *London* or *Middlesex*, where the Tenancy shall expire, or the Right of Entry into or upon such Lands or Hereditaments shall accrue to such Landlord, in or after *Hilary* or *Trinity* Terms respectively, it shall be lawful for the Claimant in any such Action, at any Time within Ten Days after such Tenancy shall expire, or Right of Entry accrue as aforesaid, to serve a Writ in Ejectment in the Form contained in the Schedule (A.) to this Act annexed, marked No. 13., except that it shall command the Persons to whom it is directed to appear within Ten Days after Service thereof in the Court in which such Action may be brought; and the like Proceedings shall be thereupon had as herein-before provided, save that it shall be sufficient to give at least Six clear Days Notice of Trial to the Defendant before the Commission Day of the Assizes at which such Ejectment is intended to be tried; and any Defendant in such Action may, at any Time before the Trial thereof, apply to a Judge by Summons to stay or set aside the Proceedings, or to postpone the Trial until the next Assizes; and it shall be lawful for the Judge, in his Discretion, to make such Order in the said Cause as to him shall seem expedient.

CCXVIII. *Nothing*

CCXVIII. 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 herein-before provided for, otherwise than herein-before expressly enacted. Saving of former Remedies.

CCXIX. Where an Action of Ejectment 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 any of Her Majesty's Courts of Equity in that Part of *Great Britain* called *England*, for or touching the foreclosing or redeeming of such mortgaged Lands, Tenements, or Hereditaments, if the Person having Right to redeem such mortgaged 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, where such Action shall be depending, all the Principal Monies 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 where such Action is or shall be depending, or by the proper Officer by such Court to be appointed for that Purpose), the Monies so paid to such Mortgagee, or brought into such 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 Monies 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. In Ejectment 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.

CCXX. 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 such Court of Law, 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. Not to extend to Cases where the Right of Redemption is controverted, or the Money due not adjusted; or to prejudice any subsequent Mortgage.

CCXXI. The several Courts 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 ensure 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 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. Jurisdiction of Courts and Judges.

Amendment.

'And whereas the Power of Amendment now vested in the Courts 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 as follows:

CCXXII. It shall be lawful for the Superior Courts of Common Law, and every Judge thereof, and any Judge sitting at Nisi Prius, 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. Amendment.

Power to Judge to make Rules and frame Writs and Proceedings.

And in order to enable the Courts and Judges to carry this Act thoroughly into effect, and to enable them from Time to Time to make Rules and Regulations and to frame Writs and Proceedings for that Purpose, be it enacted as follows:

General Rules may be made by the Judges.

CCXXIII. It shall be lawful for the Judges of the said Courts, or any Eight or more of them, of whom the Chiefs of each of the said Courts shall be Three, 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 for the Purpose of enforcing Uniformity of Practice in the Allowance of Costs in the said Courts, and of ensuring as far as may be practicable an equal Division of the Business of Taxation amongst the Masters of the said Courts, as in their Judgment shall be necessary or proper, and for that Purpose to meet from Time to Time as Occasion may require: And it shall further be lawful for the Judges of the said Courts, or any Eight or more of them, of whom the Chiefs of each of the said Courts shall be Three, from Time to Time to exercise all the Powers and Authority given to 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 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 Courts or the Judges thereof to make Rules or Orders, or otherwise to regulate and dispose of the Business therein.

13 & 14 Vict. c. 16.

New Forms of Writs and other Proceedings.

CCXXIV. Such new or altered Writs and Forms of Proceedings may be issued, entered, and taken, as may by the Judges of the said Courts, or any Eight or more of them, of whom the Chiefs of each of the said Courts shall be Three, be deemed necessary or expedient for giving Effect to the Provisions herein-before contained, and in such Forms as the Judges of such Courts respectively 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 Courts 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.

Rules may be made by each Court for Government of its Officers.

CCXXV. It shall and may be lawful to and for the Judges of each of the said Courts from Time to Time to make such Rules and Orders for the Government and Conduct of the Ministers and Officers of their respective Courts, in and relating to the Distribution and Performance of the Duties and Business to be done and performed in the Execution of this Act, as such Judges may think fit and reasonable: Provided always, that no additional Charge be thereby imposed on the Suitors.

Effect of Injunction.

'And whereas it is expedient that Injunctions and Orders to stay Proceedings should be 'rendered more effectual:' Be it enacted as follows:

Injunctions and Orders to stay Proceedings to have a specific Effect.

CCXXVI. In case any Action, Suit, or Proceeding in any Court of Law or Equity shall be commenced, sued, or prosecuted, in disobedience of and contrary to any Writ of Injunction, Rule, or Order of either of the Superior Courts of Law or Equity at *Westminster*, or of any Judge thereof, in any other Court than that by or in which such Injunction may have been issued, or Rule or Order made, upon the Production to any such other Court or Judge thereof of such Writ of Injunction, Rule, or Order, the said other Court (in which such Action, Suit, or Proceeding may be commenced, prosecuted, or taken), or any Judge thereof, shall stay all further Proceedings contrary to any such Injunction, Rule, or Order; and thenceforth all further and subsequent Proceedings shall be utterly null and void to all Intents and Purposes: Provided always, that nothing herein contained shall be held to diminish

diminish, alter, abridge, or vary the Liability of any Person or Persons commencing, suing, or prosecuting any such Action, Suit, or Proceeding contrary to any Injunction, Rule, or Order of either of the Courts aforesaid, to any Attachment, Punishment, or other Proceeding to which any such Person or Persons are, may, or shall be liable in Cases of Contempt of either of the Courts aforesaid, in regard to the commencing, suing, or prosecuting such Action, Suit, or Proceeding.

And be it enacted as follows:

Interpretation of Terms.

CCXXVII. In the Construction of this Act the Word "Court" shall be understood to mean any One of the Superior Courts of Common Law at *Westminster* in which any Action is brought; and the Word "Judge" shall be understood to mean a Judge or Baron of any of the said Courts; and the Word "Master" shall be understood to mean a Master of any of the said Courts; and the Word "Action" shall be understood to mean any Personal Action brought by Writ of Summons in any of the said Courts; and no Part of the United Kingdom of *Great Britain* and *Ireland*, nor the Islands of *Man*, *Guernsey*, *Jersey*, *Alderney*, or *Sark*, nor any Islands adjacent to any of them, being Part of the Dominions of Her Majesty, shall be deemed to be "beyond the Seas," within the Meaning of this Act: And wherever in this Act, in describing or referring to any Person or Party, Matter or Thing, any Word importing the Singular Number or Masculine Gender is used, the same shall be understood to include and shall be applicable to several Persons and Parties as well as One Person or Party, and Females as well as Males, and Bodies Corporate as well as Individuals, and several Matters and Things as well as One Matter or Thing, unless it otherwise be provided, or there be something in the Subject or Context repugnant to such Construction.

Her Majesty may direct all or Part of this Act to extend to any Court of Record.

CCXXVIII. It shall be lawful for Her Majesty from Time to Time, by an Order in Council, to direct that all or any Part of the Provisions of this Act or of the Rules to be made in pursuance thereof shall apply to all or any Court or Courts of Record in *England* or *Wales*, and within One Month after such Order shall have been made and published in the *London Gazette* such Provisions and Rules respectively shall extend and apply in manner directed by such Order; and any such Order may be in like Manner from Time to Time altered or annulled.

Certain of the Provisions of this Act to extend and apply to the Court of Common Pleas at Lancaster and the Court of Pleas at Durham.

CCXXIX. 'And whereas it is expedient to apply the Provisions of this Act, with the 'requisite Modifications, to the Superior Courts of the Counties Palatine of *Lancaster* and '*Durham* respectively:' All the Enactments and Provisions of this Act with respect to Writs for the Commencement of Personal Actions, except such as relate to the Teste thereof in the Name of a Judge, to concurrent Writs, and to the Service of Writs elsewhere than in the Counties Palatine of *Lancaster* and *Durham* respectively, and Proceedings against Parties residing out of the Jurisdiction of the said Courts; and all the Provisions of this Act with respect to the Appearance of the Defendant and Proceedings of the Plaintiff in default of Appearance; and with respect to the Joinder of Parties to Actions and Joinder of Causes of Action; and with respect to the Determination of Questions raised by Consent of the Parties without pleading; and with respect to the Language and Form of Pleadings, and Provisions as to Pleadings, Profert, Oyer, setting out of Documents; and with regard to the Time and Manner of declaring; and as to Pleas and subsequent Pleadings, and incident thereto; and Examples and Forms of Pleading and Causes of Action; and with respect to Judgment by Default, and the Mode of ascertaining the Amount to be recovered thereupon and incident thereto; and all the Provisions of this Act with respect to Juries and Jury Process; and with respect to the Admission of Documents; and with respect to the Expenses of Execution and the remaining in Force and Renewal of Execution, the discharging of Parties from Execution, and charging in Execution Persons in Prison; and with respect to Proceedings for the Revival of Judgments and other Proceedings by and against Persons not Parties to the Record; and with respect to the Effect of Death, Marriage, and Bankruptcy upon the Proceedings in an Action; and with respect to the Proceedings upon Motions to arrest the Judgment and for Judgment Non obstante veredicto; and with respect to Proceedings in Error subject to the Proviso herein-after contained; and all the Provisions of this Act with respect to the Action of Ejectment, and incident thereto; and with respect to the Power of Amendment by Courts and the Judges thereof, shall extend and apply to the Court

Court of Common Pleas at *Lancaster* and the Court of Pleas at *Durham*, and Actions and Proceedings therein respectively.

Powers given by this Act to the Judges of the Superior Courts at Westminster to make Rules, &c. may be exercised by Judges of the Court of Common Pleas at Lancaster and Court of Pleas at Durham as to those Courts.

CCXXX. All the Powers given by this Act to the Judges of the said Superior Courts at *Westminster* to make Rules and Regulations for the Execution of this Act, and to frame Writs and Proceedings for that Purpose; and to the Judges of the said respective Courts to make Rules or Orders for the Government and Conduct of the Ministers and Officers thereof; and all other Powers by this Act given to or vested in the Judges of the said Superior Courts at *Westminster* to be exercised by more than One of them, except the Powers and Authority given by the said 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 enable the Judges of the Courts of Common Law at* Westminster *to alter the Forms of Pleading*, shall and may be exercised by the respective Judges of the said Court of Common Pleas at *Lancaster* and Court of Pleas at *Durham*, being Judges of One of the said Common Law Courts at *Westminster*, or any Two of them, with respect to the said Court of Common Pleas at *Lancaster* and Court of Pleas at *Durham* respectively, and the Ministers and Officers thereof, and Matters and Proceedings therein, within the Jurisdiction of the same Courts respectively; and all Powers under this Act exercisable by any One Judge of the Superior Courts at *Westminster* shall and may be exercisable by One Judge of the said Superior Courts of the said Counties Palatine, being also a Judge of One of the said Courts at *Westminster*, as to Matters and Proceedings in the said Superior Courts of the said Counties Palatine.

Judges may make Rules for applying other Provisions of this Act to Court of Common Pleas at Lancaster and Court of Pleas at Durham.

CCXXXI. It shall and may be lawful to and for the Judges of each of the said Courts of Common Pleas at *Lancaster* and Pleas at *Durham*, being Judges of One of the Superior Courts at *Westminster*, or any Two of them, from Time to Time to make Rules and Orders for applying any of the other Provisions of this Act to the said respective Superior Courts of the said Counties Palatine, and Matters and Proceedings therein and Parties thereto, with such Modifications and Alterations with reference to the Constitution and peculiar Circumstances of such Court, as they may think fit and reasonable; and for modifying any of the Provisions hereby applied to such last-mentioned Courts respectively with reference to such Constitution and peculiar Circumstances; and from Time to Time to rescind, amend, or alter such Rules or Orders; and that such Rules or Orders, subject to such Power of Rescission, Amendment, and Alteration, shall have the same Force as if the same were made by and embodied in this Act.

Provisions to apply to Masters of Courts at Westminster to apply to Prothonotaries of Court of Common Pleas at Lancaster and Court of Pleas at Durham, and their Deputies, &c.

CCXXXII. Provided always, That all the Provisions of this Act applicable to Masters of the said Courts at *Westminster* shall apply to the respective Prothonotaries of the Court of Common Pleas at *Lancaster* and Court of Pleas at *Durham*, and their respective Deputies, who may singly exercise, with reference to Matters and Proceedings in the last-mentioned Courts respectively, the Powers hereby given to any One or more of the Masters of the Superior Courts at *Westminster*; and that such respective Officers shall record the Proceedings of Trials of Causes depending in the said respective Courts, and draw up and return Posteas on Records from the Superior Courts at *Westminster*, tried in the said Counties Palatine respectively, and officiate at the Trial of such Causes therein as heretofore.

As to Proceedings in Error.

CCXXXIII. Provided also, as to Proceedings in Error, that the Court of Queen's Bench shall still be the Court of Error from the said Court of Common Pleas at *Lancaster* and Court of Pleas at *Durham*; and that it shall be sufficient to transmit to the said Court of Queen's Bench a Transcript of the Record of any Judgment or Proceedings in those Courts on which Error is alleged; and that the Judgment of the Court of Queen's Bench thereon shall be certified by One of the Masters of the said Court of Queen's Bench on the said Transcript, or by Rule of Court, as the said Court may direct; and that thereupon such Judgment shall be entered on the original Record in the said respective Courts of Common Pleas at *Lancaster* and Pleas at *Durham*; and such further Proceedings as may be necessary thereon shall be awarded by the said respective Courts, subject to the Right of either Party to allege Errors in the said Judgment in the said Court of Queen's Bench, and proceed thereon as provided by this Act in the Case of Errors alleged in Actions depending in that Court.

CCXXXIV. From

CCXXXIV. From the Time when this Act shall commence and take effect so much of a certain Act of Parliament passed in the Fifth Year of the Reign of His late Majesty King *William* the Fourth, intituled *An Act for improving the Practice and Proceedings in the Court of Common Pleas of the County Palatine of* Lancaster, and so much of a certain other Act of Parliament passed in the Second Year of the Reign of Her present Majesty, intituled *An Act for improving the Practice and Proceedings of the Court of Pleas of the County Palatine of* Durham *and* Sadberge, as relate to the Duration of Writs; and to Alias and Pluries Writs, and to the Proceedings necessary for making the First Writ in any Action available to prevent the Operation of any Statute whereby the Time for the Commencement of any Action may be limited, shall be repealed, except so far as may be necessary for supporting any Writs that have been issued before the Commencement of this Act, and any Proceedings taken or to be taken thereon; but that the other Provisions of the said last-mentioned Acts of Parliament, so far as they are not altered by or inconsistent with the Provisions of this Act, shall remain in force. Certain Provisions of 4 & 5 W. 4. c. 62. and 2 & 3 Vict. c. 16. repealed.

CCXXXV. In citing this Act in any Instrument, Document, or Proceeding, it shall be sufficient to use the Expression "The Common Law Procedure Act, 1852." Short Title of Act.

CCXXXVI. Nothing in this Act shall extend to *Ireland* or *Scotland*, except in the Cases herein specially mentioned. Not to extend to Ireland or Scotland.

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 in the County of

We command you, That within Eight 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 Court of 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 in the County 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 England*] 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 Court of 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.

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 in the County 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 England*] 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 Court of 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 [*Brighton in the County of Sussex*], *or* now residing at [*Paris in France*].

Take notice, That *A.B.* of in the County of England, has commenced an Action at Law against you *C.D.* in Her Majesty's Court of Queen's Bench, 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

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, Westminster	25	10	0
Sept. 12.	Ten Sacks of Flour at 40*s.*	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 Butchers Meat supplied between the 1st of January 1849 and the 1st of January 1850 £52

Paid 20

Balance £32

[*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*l.*

Or,

£90 Principal and Interest due on a Covenant contained in a Deed dated the Day of to pay 100*l.* and Interest.

Or,

A Penalty of 100*l.* under the Statute 55 Geo. III. c. 137.

Or,

£85 on a Bill of Exchange for 100*l.*, dated the 2d 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 Queen's Bench:

On the Day of A.D. 1850.

[*Day of signing the Judgment.*]

England 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, 1852," 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 Queen's Bench:

The Day of in the Year of our Lord 18 .

Yorkshire to wit. } Whereas *A.B.* has sued *C.D.*, and affirms, and denies.

[*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, 1852," 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. show 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.*]

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 show 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.

In the Queen's Bench:

The Day of in the Year of our Lord 18 .

[*The Day of lodging Note of Error.*]

A.B. and *C.D.*

The Plaintiff [*or* Defendant] says that there is Error in Law in the Record and Proceedings in this Action; and the Defendant [*or* Plaintiff] says that there is no Error therein.

(Signed) *A.B.*, Plaintiff.
[*or C.D.*, Defendant.]
[*or E.F.*, Attorney for Plaintiff *or* Defendant.]

No. 11.

The Day of in the Year of our Lord 18 .

[*The Day of making the Entry on the Roll.*]

The Plaintiff [*or* Defendant] says that there is Error in the above Record and Proceedings, and the Defendant [*or* Plaintiff] says there is no Error therein.

No. 12.

In the Queen's Bench:

The Day of in the Year of our Lord 18 .

[*The Day of lodging Note of Error.*]

A.B. and *C.D.* in Error.

The Plaintiff [*or* Defendant] says that there is Error in Fact in the Record and Proceedings in this Action, in the Particulars specified in the Affidavit hereunto annexed.

(Signed) *A.B.*, Plaintiff.
[*or C.D.*, Defendant.]
[*or E.F.*, Attorney for Plaintiff] [*or* Defendant.]

No. 13.

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 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 will and command you, or such of you as deny the alleged Title, within Sixteen Days after Service hereof, to appear in Our Court of 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. 14.

Judgment in Ejectment in case of Non-appearance.

In the Queen's Bench:

The Day of 18 .

[*Date of Writ.*]

Lancashire 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.

No. 15.

In the Queen's Bench:

On the Day of A.D. 18 .

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 *C.D.* has, on the Day of appeared by his Attorney [*or* in Person] to the said Writ, and has defended for a Part of the Land in the Writ mentioned; that is to say [*here state the Part*], and no Appearance has been entered or Defence made to the said Writ, except as to the said Part; Therefore it is considered that the said *A.B.* [*the Claimant*] do recover Possession of the Land in the said Writ mentioned, except the said Part, with the Appurtenances, and that he have Execution thereof forthwith; and as to the rest, let a Jury come, *&c.*

No. 16.

In the Queen's Bench:

On the Day of A.D. 18 .

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 *C.D.* has, on the Day of appeared by his Attorney [*or* in Person], to the said Writ, and defended for the whole of the Land therein mentioned: Therefore let a Jury come, *&c.*

No. 17.

Afterwards on the Day of A.D. before and Justices of our Lady the Queen assigned to take the Assizes in and for the within County, come the Parties within mentioned; and a Jury of the said County being sworn to try the Matters in question between the said Parties, upon their Oath say, that *A.B.* [*the Claimant*] within mentioned, on the Day of A.D. was, and still is, entitled to the Possession of the Land within mentioned, as in the Writ alleged: Therefore, *&c.*

No. 18.

In the Queen's Bench:

On the Day of 18 .

[*Date of Writ.*]

Lancashire 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 *C.D.* has, on the Day of appeared by his Attorney [*or* in Person] to the said Writ, and *A.B.* has discontinued the Action: Therefore it is considered that the said *C.D.* be acquitted, and that he recover against the said *A.B.* £ for his Cost of Defence.

No. 19.

In the Queen's Bench:

The Day of 18 .

[*Date of Writ.*]

Lancashire 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 *C.D.* has, on the Day of appeared by his Attorney [*or* in Person] to the said Writ, and *A.B.* has failed to proceed to Trial, although duly required so to do: Therefore it is considered that the said *C.D.* be acquitted, and that he recover against the said *A.B.* £ for his Costs of Defence.

No. 20.

In the Queen's Bench:

The Day of 18 .

[*Date of Writ.*]

Lancashire 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 *C.D.* has, on the Day of appeared by his Attorney [*or* in Person] to the said Writ, and

and the said *C.D.* has confessed the said Action [*or* has confessed the said Action as to Part of the said Land, that is to say, *here state the Part*]: Therefore it is considered that the said *A.B.* do recover Possession of the Land in the said Writ mentioned [*or* of the said Part of the said Land], with the Appurtenances, and £ for Costs.

No. 21.

In the Queen's Bench:

The Day of A.D. 18 .

[*Date of Writ.*]

Yorkshire to wit. } On the Day and Year above written, a Writ of our Lady the Queen issued forth of this Court, with a Notice thereunder written, the Tenor of which Writ and Notice follows in these Words; that is to say,

[*Here copy the Writ and Notice, which latter may be as follows:*]

"Take notice, That you will be required, if ordered by the Court or a Judge, to give "Bail by yourself and Two sufficient Sureties, conditioned to pay the Costs and Damages "which shall be recovered in this Action."]

And *C.D.* has appeared by his Attorney [*or* in Person] to the said Writ; and has been ordered to give Bail, pursuant to the Statute, and has failed so to do: Therefore it is considered that the said [*here insert Name of Landlord*] do recover Possession of the Land in the said Writ mentioned, with the Appurtenances, together with £ for Costs of Suit.

SCHEDULE (B.)

FORMS OF PLEADINGS.

Statements of Causes of Action.

On Contracts.

1. Money payable by the Defendant to the Plaintiff for [*these Words* Money payable, *&c. should precede Money Counts like* 1 *to* 14, *but need only be inserted in the first*] Goods bargained and sold by the Plaintiff to the Defendant.
2. Work done and Materials provided by the Plaintiff for the Defendant at his Request.
3. Money lent by the Plaintiff to the Defendant.
4. Money paid by the Plaintiff for the Defendant at his Request.
5. Money received by the Defendant for the Use of the Plaintiff.
6. Money found to be due from the Defendant to the Plaintiff on Accounts stated between them.
7. A Messuage and Lands sold and conveyed by the Plaintiff to the Defendant.
8. The Goodwill of a Business of the Plaintiff, sold and given up by the Plaintiff to the Defendant.
9. The Defendant's Use, by the Plaintiff's Permission, of Messuages and Lands of the Plaintiff.
10. The Defendant's Use, by the Plaintiff's Permission, of a Fishery of the Plaintiff.
11. Fines payable by the Defendant as Tenant of Customary Tenements of the Manor of to the Plaintiff as Lord of the said Manor, for the Admission of the Defendant into the said Customary Tenements.
12. The Hire of [*as the Case may be*], by the Plaintiff let to hire to the Defendant.
13. Freight for the Conveyance by the Plaintiff for the Defendant at his Request of Goods in Ships.
14. The Demurrage of a Ship of the Plaintiff kept on Demurrage by the Defendant.

15. That

15. That the Defendant on the Day of A.D., by his Promissory Note, now over-due, promised to pay to the Plaintiff £ *Two* Months after Date, but did not pay the same.

16. That one *A.*, on, *&c.* [*Date*], by his Promissory Note, now over-due, 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.

17. That the Plaintiff, on, *&c.* [*Date*], by his Bill of Exchange, now over-due, 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. That the Plaintiff let to the Defendant a House, No. 401, Piccadilly, for Seven Years, to hold from the Day of A.D. at £ a Year, payable quarterly, of which Rent Quarters are due and unpaid.

24. That the Plaintiff by Deed let to the Defendant a House, No. 401, Piccadilly, 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.

25. That the Defendant broke and entered certain Land of the Plaintiff, called the Big Field, and depastured the same with Cattle.

26. 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.

27. That the Defendant debauched and carnally knew the Plaintiff's Wife.

28. 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*].

29. 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*].

30. 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.

31. That the Plaintiff was the first and true Inventor of a certain new Manufacture, that is to say, of "certain Improvements in the Manufacture of Sulphuric Acid," and thereupon

Her

Her Majesty Queen Victoria, by Letters Patent under the Great Seal of England, granted the Plaintiff the sole Privilege to make, use, exercise, and vend the said Invention within England for the Term of Fourteen Years from the Day of A.D. , subject to a Condition that the Plaintiff should within Six Calendar Months next after the Date of the said Letters Patent cause to be enrolled in the High Court of Chancery an Instrument in Writing under his Hand and Seal, particularly describing and ascertaining the Nature of his said Invention, and in what Manner the same was to be and might be performed, 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.

32. 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 Gamekeeper in the Employ of *A.*

33. 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.

34. The Defendant by his Attorney [*or* in Person] says [*here state the Substance of the Plea*].

35. And for a Second Plea the Defendant says [*here state the Second Plea*].

Pleas in Actions on Contracts.

36. That he never was indebted as alleged.

[*This Plea is applicable to Declarations like those numbered* 1 *to* 14.]

37. That he did not promise as alleged.

[*This Plea is applicable to other Declarations on Simple Contracts, not on Bills and Notes, such as those numbered* 19 *to* 22. *It would be unobjectionable to use* "did not warrant," "did not agree," *or any other appropriate Denial.*]

38. That the alleged Deed is not his Deed.

39. That the alleged Cause of Action did not accrue within Six Years [*state the Period of Limitation applicable to the Case*] before this Suit.

40. That before Action he satisfied and discharged the Plaintiff's Claim by Payment.

41. 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.

42. That *after the alleged Claim accrued, and before this Suit,* the Plaintiff by Deed released the Defendant therefrom.

Pleas in Actions for Wrongs independent of Contract.

43. That he is not guilty.

44. That he did what is complained of by the Plaintiff's Leave.

45. That the Plaintiff first assaulted the Defendant, who thereupon necessarily committed the alleged Assault in his own Defence.

46. 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.

47. That

47. 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.

REPLICATIONS.

48. The Plaintiff takes Issue upon the Defendant's 1st, 2d, &c. Pleas.

49. The Plaintiff as to the Second Plea says [*here state the Answer to the Plea as in the following Forms*].

50. That the alleged Release is not the Plaintiff's Deed.

51. That the alleged Release was procured by the Fraud of the Defendant.

52. That the alleged Set-off did not accrue within Six Years before this Suit.

53. 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.

54. 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.

NEW ASSIGNMENT.

55. 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.

[*If the Plaintiff replies and new assigns, the new Assignment may be as follows:*]

56. 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:*]

57. And the Plaintiff, as to the and Pleas, further says, that he sues not for the Trespasses in the Pleas [*the Pleas not replied to*] admitted, but for the Trespasses in the Pleas [*the Pleas replied to*] admitted, and also for, *&c.*

CAP. LXXVII.

An Act to abolish the Office of Lord Chancellor's Secretary of Bankrupts, and to regulate the Office of Chief Registrar of the Court of Bankruptcy.

[30th *June* 1852.]

'WHEREAS it is expedient that the Office of the Lord Chancellor's Secretary of Bankrupts should be abolished, and that certain Regulations should be made with respect to the Office of the Chief Registrar of the Court of Bankruptcy:' Be it therefore enacted by Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Office of Secretary of Bankrupts abolished.

I. From and after the Commencement of this Act the Office of the Lord Chancellor's Secretary of Bankrupts shall be abolished.

Appointment of the Chief Registrar of the Court of Bankruptcy.

II. From and after the Commencement of this Act *John Campbell* Esquire, One of the Registrars of the Court of Bankruptcy, shall be the Chief Registrar of the said Court, and he