

Common Law Courts (Ireland) Bill

ARRANGEMENT OF CLAUSES.

Clause.

1. Commencement of Act.

Writ for Commencement of Actions.

2. Personal Actions, when Defendant resides within the Jurisdiction, to be commenced by Writ of Summons in Form No. 1. of Schedule (A.)
3. Writs for Commencement of Actions to be issued in rotation for the several Courts. No Objection on Ground of Privilege to be valid.
4. No Form or Cause of Action to be mentioned in Writ.
5. Writ to state Names of all Defendants, and for only One Action.
6. Writ to be dated on Day of issuing, and tested in Name of Superior Courts of Law.
7. Writ to be endorsed with Name and Abode of Attorney, or a Memorandum that Writ has been sued by Plaintiff in Person.
8. Attorney on Demand to declare whether Writ issued by his Authority, and to declare Name and Abode of his Client, if ordered. If Writ issued without Authority of Attorney, Proceedings to be stayed.
9. Endorsement 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.
10. Concurrent Writs may be issued.
11. Renewal of Writs of Summons to save the Statute of Limitation, and for other Purposes.
12. Production of renewed Writ, Evidence of Commencement of Action.
13. Writ may be served in any County.
14. Endorsement of Service to be made.
15. As to Service of Writ on Corporations and Inhabitants of Baronies and Towns.

[Bill 48.]

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16. Proceedings

Clause.

16. Proceedings where Personal Service cannot be effected, but Defendant knows of the Writ and evades Service.
17. As to Actions against British Subjects residing out of the Jurisdiction of Superior Courts.
18. As to Actions against Foreigners residing out of the Jurisdiction of Superior Courts.
19. Courts may direct Substitution of Service.
20. Omission to insert or endorse Matters in or on Writ not to nullify it.
21. Substitution by Mistake or Inadvertence of One Form of Writ for another may be amended without Costs.
22. Writs for Service within and without Jurisdiction may be concurrent, and vice versâ.
23. Special Endorsement of the Particulars of Debts or liquidated Demands may be made on the Writ. Special Endorsement to stand for Particulars of Demand.

Appearance and Proceedings in default of Appearance.

24. Final Judgment upon Writs specially endorsed in default of Appearance.
25. Judgment for Nonappearance where the Writ is not endorsed in special Form.
26. Appearance to be entered at any Time before Judgment.
27. Appearance by the Defendant in Person to give an Address at which Proceedings may be served.
28. Mode of Appearance to Writ of Summons.
29. Proceedings mentioned in Writ or Notice may be had and taken.
30. Proceedings where only some of the Defendants appear to a Writ specially endorsed.

Joinder of Parties.

31. Joinder as Plaintiffs of all Persons supposed to be legally entitled.
32. Defendant to have Benefit of Set-off, though some Plaintiffs improperly joined.
33. No other Action for same Claim to be brought.
34. Nonjoinder and Misjoinder of Plaintiffs may be amended before Trial.
35. Nonjoinder and Misjoinder of Plaintiffs may be amended at the Trial as in Cases of Amendments of Variances under 3 & 4 Vict. c. 105. s. 45.

36. Upon

Clause.

36. Upon Notice of Plea of Nonjoinder of Plaintiffs, Proceedings may be amended.
37. Misjoinder of Defendants may be amended before or at Trial.
38. Proceeding when Nonjoinder of Defendant objected to.
39. Upon Plea in Abatement for Nonjoinder of Defendants, Proceedings may be amended.
40. Provision in the Case of subsequent Proceedings against the Persons named in a Plea in Abatement for Nonjoinder of Defendants.
41. Joinder of Claims by Husband and Wife, with Claims in right of Husband.

Joinder in Causes of Action.

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

Questions by Consent without Pleading.

43. Questions of Fact may, after Writ issued by Consent and Leave of a Judge, be raised without Pleadings.
44. Agreement may be entered into for the Payment of Money and Costs according to the Result of the Issue.
45. Judgment to be entered according to the Agreement, and Execution issued forthwith, unless stayed.
46. Proceedings upon Issue may be recorded.
47. Judge may, by Consent, try Questions of Fact.
48. Questions of Law may be raised after Writ issued by Consent, &c., without Pleading.
49. Agreement as to Payment of Money and Costs according to Judgment upon Special Case.
50. Costs to follow the Event, unless otherwise agreed.

Pleadings in general.

51. Fictitious and needless Averments not to be made.
52. Judgment upon Demurrer to be given according to the very Right of the Cause.
53. Objections by way of special Demurrer.
54. Pleadings framed to embarrass may be struck out or amended.
55. Four Days Notice to declare, reply, or rejoin.
56. Pleadings to be dated and entered as of Time of pleading, unless Order to the contrary.
57. Profert and Oyer not necessary.

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58. Document

Clause.

58. Document may be set forth, and be considered a Part of the Pleading in which it is set forth.
59. Declaration for Libel or Slander.
60. Performance of Conditions precedent may be averred generally.
61. The Process of Adjudication of an inferior Jurisdiction may be pleaded generally.

Declaration.

62. Plaintiff to declare within a Year.
63. Actions against Justices of the Peace, Mayors, &c., to be laid in the County in which the Cause of Action has arisen.
64. Court or Judge may direct such Actions to be tried elsewhere.
65. Court or Judge may, in transitory Actions, order Venue to be changed.
66. Forms of Commencement, &c. of Declaration.
67. Several Counts on the same Cause of Action not to be allowed.
68. Commencement of Declaration after Plea of Nonjoinder.
69. Further Particulars.

Pleadings.

70. Rules to plead, and demand of Plea, not necessary.
71. Time for pleading, where Defendant is within Jurisdiction, to be Eight Days.
72. Express Colour and special Traverses not necessary.
73. Formal Commencement and Prayer of Judgment unnecessary.
74. Commencement of Plea.
75. Character of Assignees of Bankrupt, &c. to be taken as admitted, if not denied.
76. Effect of Plea of Non assumpsit in Actions on Simple Contract.
77. Pleas of Non assumpsit and Never indebted not to be allowed in Actions on Bills of Exchange and Promissory Notes.
78. Effect of Plea of Non est factum.
79. Plea of Nil debet not to be allowed.
80. Defences by way of Confession and Avoidance to be specially pleaded in Actions upon Contract.
81. Payment not to be given in Evidence in reduction of Amount without Plea.
82. Effect of Plea of Non detinet.
83. Effect of Plea of Not Guilty in Actions of Wrong.
84. General Issue may be pleaded in certain Actions.
85. In Actions of Wrong, Defences in Confession and Avoidance to be specially pleaded.

86. Effect

Clause.

86. Effect of Plea of Not Guilty in Actions of Trespass.
87. Effect of Plea of Not Guilty in Actions for taking Goods.
88. Set-off.
89. Plea of Matter subsequent to Action.
90. Plea Puis darrein continuance, when and how to be pleaded.
91. Payment into Court.
92. Payment into Court in Actions on Money Bonds, and for Detainer.
93. Payment into Court how pleaded.
94. Payment of Money into Court.
95. Proceeding by Plaintiff after Payment into Court.
96. Pleas to Actions partaking both of Breach of Contract and Wrong.
97. Payment, Set-off, and other Pleadings which can be construed distributively, shall be so construed.
98. Traverse of the Declaration.
99. Traverse of Plea or subsequent Pleading of Defendant.
100. Traverse of Replication or subsequent Pleading of the Plaintiff.
101. Equitable Defence may be pleaded.
102. Equitable Defence after Judgment.
103. Equitable Replication.
104. Court or Judge may strike out equitable Plea or Replication.
105. Actions on lost Instruments.
106. Joinder of Issue.
107. As to pleading and demurring together.
108. Several Matters may be pleaded at any Stage of the Pleadings.
109. Objections to Pleadings to be heard on Application to plead several Matters.
110. Certain Pleas may be pleaded together without Leave.
111. For pleading several Matters without Leave, Judgment may be signed.
112. One new Assignment only allowed in respect of the same Cause of Action.
113. Pleas not to be repeated.
114. Form of Demurrer and Joinder in Demurrer.
115. Time for pleading after Amendment.
116. Pleadings subsequent to the Declaration not to be filed.

Examples of Pleading.

117. Forms in Schedule may be adopted.

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Judgment

Judgment by Default, and ascertaining Amount to be recovered.

Clause.

- 118. Rule to compute unnecessary.
- 119. Inquiry of Damages may be directed to take place before the Master.
- 120. Ordinary Writ of Inquiry in other Cases.
- 121. Inquiries may be directed to take place before Master of the Court. Inquiries may be directed to take place before a Judge.

Discovery.

- 122. Affidavits on new Matter.
- 123. Power to Court or Judge to direct oral Examination of Witnesses.
- 124. Proceedings before and upon such Examination.
- 125. Examination of Person who refuses to make an Affidavit.
- 126. Proceedings upon Order for Examination.
- 127. Discovery of Documents.
- 128. Power to deliver written Interrogatories to opposite Party.
- 129. Affidavits by Party proposing to interrogate, and his Attorney.
- 130. Oral Examination of Parties, when to be allowed.
- 131. Proceedings upon such Rule or Order.
- 132. Depositions upon such Examinations to be returned to Master's Office.
- 133. Examiner may make Report to the Court.
- 134. Costs of Rule and Examination to be in the Discretion of the Court.

Mandamus and Injunction.

- 135. Action for Mandamus to enforce the Performance of Duties.
- 136. Declaration in Action for Mandamus.
- 137. Proceedings upon Claim for Mandamus.
- 138. Judgment and Execution.
- 139. Form of peremptory Writ.
- 140. Effect of Writ of Mandamus, and Proceedings to enforce it.
- 141. The Court may order the Act to be done at the Expense of the Defendant.
- 142. Prerogative Writ of Mandamus preserved.
- 143. Proceedings for Prerogative Writ of Mandamus.

144. Pro-

Clause.

144. Proceedings on Prerogative Writ of Mandamus.
145. Specific Delivery of Chattels.
146. Claim of Writ of Injunction.
147. Form of Writ of Summons and Indorsement thereon.
148. Form of Proceedings and of Judgment.
149. Writ of Injunction may be applied for at any Stage of the Cause.
150. Costs of Writs of Mandamus and Injunction may be included in Writs.

Notice of Trial, Inquiry, and Countermand.

151. Time for Notice of Trial and Inquiry.
152. Notice of Countermand.
153. Costs of the Day.
154. Proceeding where Plaintiff neglects to bring on the Cause to be tried.

Nisi Prius Record.

155. Nisi Prius Record not to be sealed or passed.

Juries and Jury Process.

156. Courts or a Judge to issue Precept to summon Jurors.
157. Panel of Jury to be annexed to Nisi Prius Record.
158. Mode of obtaining a Special Jury.
159. Remedy for Delay by Notice of Trial by Special Jury.
160. Notice to Sheriff of Trial by Special Jury.
161. If Special Jury not summoned, Cause to be tried by a Common Jury.
162. Court or Judge may provide for View out of the County, or County of City in which Action is to be tried.
163. Inspection by Jury of Parties or Witnesses.
164. Rule or Order for summoning Jury.
165. Defendant's Right to try, upon Default of the Plaintiff, preserved.
166. Two Judges may sit at same Time for Trial of Causes pending in the same Court.

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167. Power

Clause.

167. Power to the Court or Judge in certain Cases to direct Trial to take place before Chairman or Recorder.

Arbitration.

168. Power to Court or Judge to direct Arbitration before Trial.
 169. Special Case may be stated, and Question of Fact tried.
 170. Arbitrator may state Special Case.
 171. Power to Judge to direct Arbitration at Time of Trial, when Issues of Fact left to his Decision.
 172. Proceedings before and Power of such Arbitrator.
 173. Power to send back to Arbitrator.
 174. Application to set aside the Award.
 175. Enforcing of Awards within Period for setting them aside.
 176. If Action commenced by One Party after all have agreed to Arbitration, the Court or Judge may stay Proceedings.
 177. On Failure of Parties or Arbitrators, Court or Judge may appoint single Arbitrator or Umpire.
 178. When Reference is to Two Arbitrators, and One Party fail to appoint, other Party may appoint Arbitrator to act alone.
 179. Two Arbitrators may appoint Umpire.
 180. Award to be made in Three Months, unless Parties or Court enlarge Time.
 181. Rule to deliver Possession of Land pursuant to Award to be enforced as a Judgment in Ejectment.
 182. Agreement or Submission in Writing may be made Rule of Court, unless a contrary Intention appear.

Admission of Documents, Proceedings at Trial and Evidence.

183. Admission of Documents.
 184. Proof of Admissions.
 185. Proof of Notice to produce.
 186. Speeches to the Jury.
 187. Power to adjourn Trial.
 188. Affirmation instead of Oath in certain Cases.
 189. Persons making a false Affirmation to be subject to the same Punishment as for Perjury.
 190. How far a Party may discredit his own Witness.
 191. Proof of contradictory Statements of adverse Witness.
 192. Cross-

Clause.

192. Cross-examination as to previous Statements in Writing.
193. Proof of previous Conviction of a Witness may be given.
194. Attesting Witness need not be called except in certain Cases.
195. Comparison of disputed Writing.
196. Provision for stamping Documents at the Trial.
197. Officer of the Court to receive the Duty and Penalty.
198. Secondary Evidence may be given of lost Documents where Original unstamped.
199. The last Two preceding Sections not to apply where Document cannot be stamped after Execution.
200. No Document under this Act to require a Stamp.
201. No new Trial for ruling as to Stamp.

Bills of Exceptions.

202. Form of Bill of Exceptions.

Judgments.

203. Judgment not to be arrested on technical Grounds.
204. Entry of Judgment on the Roll unnecessary for Execution.
205. Judgment for Money Demands without Distinction between Debt and Damages.

Execution.

206. Execution after Trial.
207. Ground Writs not necessary.
208. Expenses of Execution.
209. Writs of Execution to remain in force for One Year, and to be renewed if necessary.
210. Production of renewed Writ Evidence of Renewal.
211. Sheriff or Gaoler may discharge Prisoner by Authority of Attorney in the Cause.
212. Proceedings for charging in Execution a Person already in Prison of the Court.
213. Sheriff empowered to seize Money, Bank Notes, &c., and to pay Money or Bank Notes to Execution Creditor.
214. Attachment of Government and public Stock and Shares.
215. Order in respect of Money in Name of Accountant General.
216. Order of Court or Judge to be made in the first instance *ex parte*, and Notice to Bank or Company to operate as a *Distringas*.

Clause.

- 217. Execution against beneficed Clergymen.
- 218. Return of Devastavit not to be made but on Finding of Jury.
- 219. Examination of Judgment Debtor as to Debts due to him.
- 220. Judge may order an Attachment of Debts.
- 221. Order for Attachment to bind Debts.
- 222. Proceedings to levy Amount due from Garnishee to Judgment Debtor.
- 223. Judge may allow Judgment Creditor to sue Garnishee.
- 224. Garnishee discharged.
- 225. Attachment Book to be kept by the Masters of each Court.
- 226. Costs of Application.
- 227. Judge may refuse to interfere in Proceedings to attach Debts.
- 228. Proceedings when Third Person has a Lien on the Debt.
- 229. Judge may bar Claim of Third Person, and make Orders.
- 230. Mode of enforcing Writs of Injunction against Corporations.

Assignment of Breaches.

- 231. Assignment of Breaches on penal Covenant.
- 232. Damages on Breaches to be ascertained.
- 233. Suggestion of further Breaches and Execution on same.

Proceedings to revive.

- 234. Execution in Six Years without Revival.
- 235. Judgment to be revived by Writ or with Leave of Court or Judge by Suggestion.
- 236. Proceedings upon Application for Suggestion to revive Judgment.
- 237. Plea of Payment of Judgment.
- 238. Writ of Revivor, and Proceedings thereon.
- 239. Writs of Scire facias in other Cases to be tested, directed, and proceeded upon in like Manner.
- 240. Appearance to Writ of Revivor.
- 241. As to Issue of Writ of Revivor upon Judgment more than Ten Years old.

Satisfaction of Judgments.

- 242. Satisfaction of Judgments by Party.
- 243. Court may order Satisfaction to be entered on Judgment fully paid.

Death,

Death, Marriage, and Bankruptcy.

Clause.

- 244. Action not to abate by Death.
- 245. Proceedings in case of Death of One or more of several Plaintiffs or Defendants.
- 246. Proceeding in case of Death of sole Plaintiff.
- 247. Proceeding upon Death of sole or sole surviving Defendant.
- 248. Death between Verdict and Judgment.
- 249. Proceedings in case of Death after Interlocutory and before Final Judgment.
- 250. To compel Continuance or Abandonment of Action in case of Death.
- 251. Marriage not to abate Action.
- 252. Bankruptcy and Insolvency of Plaintiff, when not to abate Action.

Arrest of Judgment and Judgment Non obstante veredicto.

- 253. Upon Motion in Arrest of Judgment, or for Judgment Non obstante veredicto, omitted Facts may by Leave of the the Court be suggested.
- 254. Judgment to follow Result of Suggestion.
- 255. Cost of abortive Issues.

Error and Appeal.

- 256. Error to be brought within Six Years.
- 257. Error may be brought by legal Representative of a deceased Party.
- 258. Proviso for Disabilities.
- 259. Writ of Error not necessary.
- 260. Error in Law how brought.
- 261. Error not Supersedeas till Service of the Copy of the Note and Grounds of Error.
- 262. Bail in Error.
- 263. Suggestion instead of Assignment of, and Joinder in Error.
- 264. Roll to be made up and Suggestion entered by Plaintiff in Error.
- 265. Error brought by One of several Persons against whom Judgment has been given.
- 266. Judgment Roll to be brought into Court instead of Transcript.
- 267. Jurisdiction of Courts of Error over the Proceedings.
- 268. Court of Error to have like Power with Court below.

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269. Pro-

Clause.

- 269. Proceedings in Error in Fact.
- 270. Plaintiff may discontinue Proceedings in Error.
- 271. Defendant may confess Error, and consent to Reversal of Judgment.
- 272. Death of Plaintiff in Error no Abatement.
- 273. Providing for Death of One of several Plaintiffs in Error.
- 274. Proceedings upon Death of sole Plaintiff or of all the Plaintiffs in Error.
- 275. Death of Defendant in Error no Abatement.
- 276. Proceedings upon Death of One of several Defendants in Error.
- 277. Proceedings upon Death of sole Defendant or of all the Defendants in Error.
- 278. Marriage not to abate Proceedings in Error.
- 279. Grounds to be stated in Rule Nisi for new Trial.
- 280. If Rule Nisi refused, Party may appeal.
- 281. Appeal upon Rule discharged or absolute.
- 282. Courts of Error to be Courts of Appeal.
- 283. Notice of Appeal.
- 284. Bail.
- 285. Form of Appeal.
- 286. Rule Nisi granted on Appeal, how disposed of.
- 287. Judgment of Court of Appeal.
- 288. Powers of Court of Appeal as to Costs and otherwise.
- 289. Error upon Award of Trial de novo.
- 290. Payment of Costs upon new Trial on Matter of Fact.

Interpleader.

- 291. Interpleader may be granted though Titles have not a common Origin.
- 292. Court or Judge may direct Sale of Goods seized in Execution.
- 293. Power to Court or Judge to decide summarily in certain Cases.
- 294. Special Case may be stated where Facts undisputed.
- 295. Judgment and Decision when to be final.
- 296. General Provisions to apply to Interpleader.
- 297. Rules, Orders, &c. made in Interpleader Proceedings may be entered of Record and made Evidence.

Summary

Summary Procedure upon Bills of Exchange and Promissory Notes.

Clause.

298. Actions upon Bills of Exchange, &c., may in certain Cases be commenced by Writ of Summons as Form in Schedule A. Plaintiff, on filing Affidavit of personal Service, may at once sign Final Judgment as Form in Schedule A.
299. Defendant showing a Defence upon the Merits to have Leave to appear.
300. Judge may under special Circumstances set aside Judgment.
301. Judge may order Bill to be deposited with Officer of Court in certain Cases.
302. Remedy for the Recovery of Expenses of noting Non-acceptance of dishonoured Bill.
303. Holder of Bill of Exchange may issue One Summons against all or any of the Parties to the Bill.

Ejectment.

304. Ejectment to be commenced by Writ of Summons.
305. Form and Duration of Writ of Ejectment.
306. Summons of Ejectment for Nonpayment of Rent upon whom to be served.
307. Service of Writ of Ejectment.
308. Appearance of Persons named in the Writ.
309. Appearance of Persons not named.
310. Appearance and Defence by Landlord.
311. Notice to defend for Part only.
312. Want of Certainty cured by Particulars.
313. Defence by Persons not in Possession.
314. Judgment for Default of Appearance or Defence.
315. Issue how made up.
316. Special Case may be stated.
317. Trial of Issue.
318. Verdict when Title appears to have expired before Trial.
319. Trial may be ordered to take place in any County.
320. Nonappearance at Trial.
321. Mesne Rates may be recovered by Ejectment to the Day of Trial.
322. Ascertainment of Rent.
323. Special Verdict and Bill of Exceptions.
324. Judgment and Execution upon Finding for Claimant.

Clause.

325. Judgment upon Finding for Defendant.
326. Execution for Recovery of Possession and Costs may be joint and separate.
327. Defence by Joint Tenants, Tenants in Common, or Coparceners.
328. Trial and Judgment in Ejectment against Joint Tenants, Tenants in Common, and Coparceners.
329. Claimant in Second Ejectment for same Premises against same Defendant may be ordered to give Security for Costs.
330. Action not to abate by Death.
331. Proceeding upon Death before Trial, where Right survives.
332. Proceedings upon Death before Trial where Right does not survive.
333. Proceedings upon Death of One of several Claimants having obtained a Verdict.
334. Proceedings in case of Death of Claimant where Right does not survive.
335. Proceedings upon Death of One of several joint Defendants.
336. Upon Death of all the Defendants in Ejectment before Trial.
337. Upon Death of all Defendants in Ejectment after Verdict.
338. Upon Death before Trial of Defendant in Ejectment who defends separately for Part.
339. Upon Death of Defendant defending separately for Property in respect of which others also defend.
340. Claimant may discontinue by Notice.
341. Discontinuance of Action by One of several Claimants.
342. Judgment for not proceeding to the Trial after Notice.
343. Defendant may confess the Action.
344. Confession by One of several Defendants defending separately for Part.
345. Confession by One of several Defendants who defend for the same Property.
346. Court or a Judge may in Action of Ejectment on the Title direct temporary Bars to be waived.
347. Effect of Judgment.
348. Error and Bail in Error in Ejectment.
349. On Trials after Bail found, Judge shall not stay the Execution except by Consent, or on Tenants finding Security. Bail in Error to discharge such Security.
350. Recognizances to be taken as other Recognizances of Bail; Actions on them limited.

351. Saving

Clause.

- 351. Saving of former Remedies.
- 352. In Ejectment by Mortgagee, the Mortgagors rendering the Principal, Interest, and Costs in Court shall be deemed a full Satisfaction, and the Court may compel the Mortgagee to re-convey.
- 353. Not to extend to Cases where the Right of Redemption is controverted, or the Money due not adjusted ; or to prejudice any subsequent Mortgage.
- 354. Jurisdiction of Courts and Judges.
- 355. Relief against Forfeiture for non-insuring.
- 356. Minute of Relief granted.
- 357. Appeal to the Court from Order of Judge.
- 358. Power to appeal from Order of Court.
- 359. Proof of Title.

Action for Replevin of Goods.

- 360. Action for Replevin to be commenced by Writ of Summons.
- 361. Plaintiff may sue out also a Writ of Replevin.
- 362. If Plaintiff in Replevin be nonprossed or nonsuited, Defendant entitled to Judgment and Execution for his Rent.
- 363. Payment into Court in Replevin.

Real Actions.

- 364. Dower, Writ of Right of Power, and Quare impedit abolished as Real Actions, and to be commenced by Writ of Summons.
- 365. Writ, and all Proceedings thereupon, to be same as in ordinary Actions.

Error on Special Case.

- 366. Error may be brought on a Special Case.

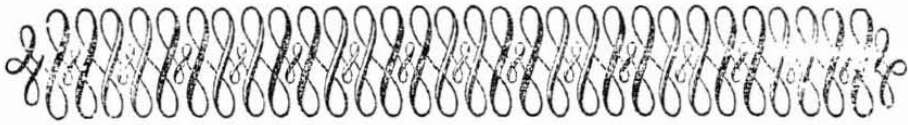
Miscellaneous Provisions.

- 367. Injunctions and Orders to stay Proceedings to have a specific Effect.
- 368. False Evidence.
- 369. Courts may appoint Sittings.
- 370. Amendments.
- 371. The Lord Lieutenant may direct all or Part of this Act to extend to any Court of Record.
- 372. General Rules may be made by the Judges.
- 373. New Forms of Writs and other Proceedings.

Clause.

- 374. Rules may be made by each Court for Government of its Officers.
- 375. Enactment of certain Sections to apply to all Civil and Criminal Courts in Ireland.
- 376. Repeal of former Acts.
- 377. This Act not to affect "The Common Law Procedure Amendment Act (Ireland), 1864," as to the County of Cork Juries.
- 378. Schedule of Law Fund Duties.
- 379. Interpretation of Terms.
- 380. Short Title.

SCHEDULES.



A

B I L L

TO

Amend the Pleading, Practice, and Procedure of the Courts of Common Law in Ireland.

WHEREAS it is expedient to amend the Process, Practice, Preamble.
and Mode of Pleading in the Superior Courts of Com-
mon Law at Dublin, with the View of establishing
Uniformity in the Superior Courts of Common Law in England and
5 Ireland, in the Process, Practice, and Mode of Pleading therein :

Be it therefore 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 :

10 1. The Provisions of this Act shall come into operation on the Commence-
Day of in the Year ment of Act.

And with respect to the Writs for the Commencement of personal Writs for
Actions in the Superior Courts of Common Law at Dublin, against Commence-
Defendants, whether in or out of the Jurisdiction of the Courts, be ment of
15 it enacted, as follows : Actions.

2. All personal Actions brought in Her Majesty's Superior Personal
Courts of Common Law at Dublin, where the Defendant is residing Actions
or supposed to reside within the Jurisdiction of the said Courts, when De-
[Bill 48.] A fendant re-
other

sides within the Jurisdiction to be commenced by Writ of Summons in Form No. 1. of Schedule (A).

15 & 16 Vict. c. 76. s. 2.
16 & 17 Vict. c. 113. s. 8

other than in Cases of summary Procedure upon Bills of Exchange and Promissory Notes, which are herein-after specially provided for, 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 5 or supposed Residence of the Party Defendant, or wherein the Defendant shall or shall be supposed to be, shall be mentioned; and such Writ shall be authenticated by the Common Seal of the Superior Courts of Law at Dublin, to be thereunto set by the Clerk of the Writs, who shall not be required to sign such Writ, but shall 10 enter the Particulars thereof in a Book to be kept for that Purpose, at the Time of the sealing thereof; and such Writ shall bear Date on the Day on which it shall be sealed, and may be issued out at any Time, notwithstanding any Privilege.

Writs for Commencement of Actions to be issued in Rotation for the several Courts.

16 & 17 Vict. c. 113. s. 15.

3. All Writs of Summons for the Commencement of Actions in 15 the said Courts, in Cases in which they have a common Jurisdiction, shall, by the Clerk of the Writs, be entered and appropriated to the several Superior Courts of Law in Rotation by *Twenty-fives*, that is to say, the First *Twenty-five* for the Queen's Bench, the Second *Twenty-five* for the Common Pleas, and the Third *Twenty-five* for 20 the Exchequer, and so on in continuous Rotation of *Twenty-fives* for the several Courts, so as to produce and keep up an equal Distribution of such Writs; and all subsequent Proceedings in any Action so commenced shall be had and taken in the Court to which the said Writ shall be in the Course of Rotation appropriated, and 25 shall be the Business of the said Court and the Offices thereof: Provided always, that no Objection on the Ground of any Privilege possessed or claimed by any Defendant to be sued in any particular Court shall be valid in any such Action.

No Objection on Ground of Privilege to be valid.

No Form or Cause of Action to be mentioned in Writ.

15 & 16 Vict. c. 76. s. 3.

4. It shall not be necessary to mention any Form or Cause of 30 Action in any Writ of Summons, or in any Notice of Writ of Summons, issued under the Authority of this Act in any personal Action.

Writ to state Names of all Defendants, and for only One Action.

15 & 16 Vict. c. 76. s. 4.

5. Every Writ of Summons shall contain the Names of all the Defendants, and shall not, save in Cases of summary Procedure 35 upon Bills of Exchange and Promissory Notes, contain the Name or Names of any Defendant or Defendants in more Actions than One.

Writ to be dated on Day of issuing, and tested

6. Every Writ of Summons for the Commencement of Actions 40 in the said Courts, in Cases in which they have a common Jurisdiction, shall bear Date on the Day on which the same shall be issued,

in Name of
Superior
Courts of
Law.
15 & 16 Viet.
c. 76 s. 5

Writ to be
indorsed
with Name
and Abode
of Attorney,
or a Memo-
randum that
Writ has
been sued
by Plaintiff
in person.

15 & 16 Vict.
c. 76. s. 6.
Attorney on
Demand to
declare
whether
Writ issued
by his
Authority,
and Name
and Abode
of his Client,
if ordered.
15 & 16 Vict.
c. 76. s. 7.
If Writ
issued with-
out Autho-

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

15 & 16 Vict.
c. 76. s. 8.

[48.]

10. The

Concurrent
Writs may
be issued.
15 & 16 Vict.
c. 76. s. 9.

10. The Plaintiff in any 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 Office of the Clerk of the Writs, and shall be impressed by him upon the Writ: 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. 5 10

Renewal of
Writs of
Summons to
save the
Statute of
Limitation,
and for other
Purposes.
15 & 16 Vict.
c. 76. s. 11.
16 & 17 Vict.
c. 113. s. 28.

11. 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 has not 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, including the Day of such Date, and so from Time to Time during the Currency of the renewed Writ, by being marked with the Common Seal of the Superior Courts, together with a Memorandum, signed or initialed by the Officer, of the Date of the Day, Month, and Year of such Renewal; and a Writ of Summons so renewed shall remain in force and be available for all Purposes from the Date of the issuing of the original Writ of Summons: Provided always, that no Writ of Summons so renewed shall be available to prevent the Operation of any Statute whereby the Time for the Commencement of the Action may be limited, unless such Renewal shall be had by Leave of the Court or a Judge, on an Affidavit to satisfy the said Court or Judge that reasonable Diligence was used to effect Service thereof. 15 20 25

Production
of renewed
Writ Evi-
dence of
Commence-
ment of
Action.
15 & 16 Vict.
c. 76. s. 13.

12. The Production of a Writ of Summons purporting to be marked with the Common Seal of the said Superior Courts and initialed by the said Officer, 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. 30

Writ may be
served in
any County.
15 & 16 Vict.
c. 76. s. 14.

13. The Writ of Summons in any Action may be served in any Country. 35

Indorse-
ment of
Service to be
made.
15 & 16 Vict.
c. 76. s. 15.

14. The Person serving the Writ of Summons shall and he is hereby required, within *Three Days* 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 Nonappearance, to proceed under this Act; and every Affidavit of Service 40

Service of such Writ shall mention the Day on which such Indorsement was made.

15. Every such Writ of Summons issued against a Corporation aggregate may be served on the Mayor or other Head Officer, or on
 5 the Town Clerk, Clerk, Treasurer, or Secretary of such Corporation; and every such Writ issued against the Inhabitants of a Barony, Half-Barony, 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
 10 any City or Town, or the Inhabitants of any Franchise, Liberty, City, Town, or Place, not being Part of a Barony or other like District, on some Peace Officer thereof, or other known and responsible Officer thereof.

As to Service of Writ on Corporations and Inhabitants of Baronies and Towns.
 15 & 16 Vict. c. 76. s. 16.

16. The Service of the Writ of Summons, wherever it may be
 15 practicable, shall be personal, but it shall be lawful for the Plaintiff to apply from Time to Time, on Affidavit, to the Court into which the Writ of Summons is returnable, or to a Judge thereof; and in case it shall appear to such Court or Judge that reasonable Efforts have been made to effect personal Service, and
 20 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 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
 25 seem fit.

Proceedings where personal Service cannot be effected, but Defendant knows of the Writ and evades Service.
 15 & 16 Vict. c. 76. s. 17.

17. In case any Defendant, being a British Subject, is residing out of the Jurisdiction of the Superior Courts, in any Place except in Scotland or England, it shall be lawful for the Plaintiff to issue a Writ of Summons in the Form contained in the Schedule (A.) to
 30 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 Ireland of the Place where the Defen-
 35 dant is residing; and it shall be lawful for such Court or Judge as aforesaid, upon being satisfied by Affidavit that there is a Cause of Action which or any Part of 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 De-
 40 fendant, 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
 [48.] A 3 the

As to Actions against British Subjects residing out of the Jurisdiction of Superior Courts.
 15 & 16 Vict. c. 76. s. 18.

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, in case the Defendant shall not appear, 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.
15 & 16 Vict.
c. 76. s. 19.

18. 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 such Court or Judge as aforesaid, upon their or his being satisfied by Affidavit as aforesaid, the like Proceedings may be had and taken thereupon.

Courts may direct Substitution of Service.
16 & 17 Vict.
c. 113. s. 34.

19. In case any Defendant is residing out of the Jurisdiction of the said Superior Courts, it shall be lawful for the said Court or Judge as aforesaid, upon being satisfied by Affidavit that there is a Cause of Action which or any Part of which arose within the Jurisdiction, or in respect of the Breach of a Contract made within the Jurisdiction, and that such Defendant can be properly served through any Agent or Representative, Attorney or Solicitor, or any Manager of the Real or Personal Estate of such Defendant within such Jurisdiction, upon an Application made at any Time while the said Writ shall be in force, to authorize such Substitution of Service through the Post Office, or in such Manner, and with such Extensions of Time for Service and Appearance, as to them or him shall seem fit; and that in default of an Appearance the Plaintiff may proceed thereon to Judgment as the Court or Judge may direct; and the Taxing Officer shall allow reasonable Costs on such Proceedings for substituting

stituting Service or effecting such Service as the Court or Judge shall have directed or deemed good.

20. If the Plaintiff or his Attorney shall omit to insert in or indorse on any Writ or Copy thereof any of the Matters herein-
 5 before required 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 into which the same shall be returnable, or to a Judge; and such Amendment may be made upon Application to
 10 set aside the Writ upon such Terms as to the Court or Judge may seem fit.

Omission to insert or indorse Mat-
 ters in or on Writ not to nullify it.
 15 & 16 Vict.
 c. 76. s. 20.

21. If any 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
 15 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 the Court or a Judge, whether before or after any Application to set aside such Writ or any Proceeding thereon, and whether the same or Notice
 20 thereof shall have been served or not, be amended by such Court or Judge without Costs.

Substitution by Mistake or Inadvertence of One Form of Writ for another, may be amended without Costs.
 15 & 16 Vict.
 c. 76. s. 21.

22. 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
 25 issued and marked as a concurrent Writ with One for Service within the Jurisdiction.

Writs for Service within and without Jurisdiction may be concurrent.
 15 & 16 Vict.
 c. 76. s. 22.

23. In all Cases other than Cases of summary Procedure upon Bills of Exchange and Promissory Notes, which are herein-after specially provided for, where the Defendant resides within the
 30 Jurisdiction of the said Courts, and the Claim is for a Debt or liquidated Demand in Money, with or without Interest, arising upon a Contract expressed 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
 35 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
 40 make upon the Writ of Summons and Copy thereof a special Endorsement of the Particulars of his Claim, in the Form contained

Special Endorsement of the Particulars of Debts or liquidated Demands may be made on the Writ.
 15 & 16 Vict.
 c. 76. s. 25.

Special
Endorsement
to stand for
Particulars
of Demand.

in the Schedule (A.) to this Act annexed, marked No. 4., or to the like Effect; and when a Writ of Summons has been endorsed in the special Form herein-before mentioned, the Endorsement shall be considered as Particulars of Demand, and no further or other Particulars of Demand need be delivered, unless ordered by the 5 Court or a Judge.

*Appearance,
and Pro-
ceedings in
default of
Appearance.*

Final Judg-
ment upon
Writ spe-
cially en-
dorsed in
default of
Appearance.
15 & 16 Vict.
c. 76. s. 27.

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

24. In case of Nonappearance by the Defendant, where the 10 Writ of Summons is endorsed 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 the Order of a Court or Judge for Leave to proceed under the Provisions of this Act, and a Copy of the Writ of Summons, at once to sign final 15 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 endorsed 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 a 20 General Order to be made as herein-after mentioned), 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 25 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. 30

Judgment
for Non-
appearance
where the
Writ is not
endorsed in
the special
Form.
15 & 16 Vict.
c. 76. s. 28.

25. In case of such Nonappearance, where the Writ of Summons is not endorsed 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 the Order for Leave to proceed under the Provisions of this Act, or in the Case of Service 35 substituted under the Provisions of this Act, on filing the Order directing such Substitution of Service, and an Affidavit, and such Documents as may be necessary for the Purpose of showing that the Requirements of such Order have been satisfied, and a Copy of the Writ of Summons, to file a Declaration endorsed with a Notice 40 to plead in Eight Days, and to sign Judgment by Default at the Expiration of the Time to plead so endorsed as aforesaid; and in the event of no Plea being delivered where the Cause of Action mentioned

mentioned in the Declaration is for any of the Claims which might have been inserted in the special Endorsement on the Writ of Summons herein-before provided, and the Amount claimed is endorsed on the Writ of Summons, the Judgment shall be final, and Execution may issue for an Amount not exceeding the Amount endorsed on the Writ of Summons, with Interest at the Rate specified, if any, and the Sum fixed by a General Order 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 Endorsement and signed Judgment upon Nonappearance.

26. 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 Order to proceed as if personal Service had been effected, or in any Order directing Substitution of Service, 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.

27. Every Appearance by the Defendant in Person shall give an Address in Dublin, 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 posting the Proceedings in the Master's Office without further Service.

28. 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.B., Plaintiff, against C.D., or } The Defendant, C.D. appears in
"against C.D. and another, or } Person, or E.F., Attorney for
"against C.D. and others: } C.D., appears for him.

40 [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.

[48.]

B

29. All

Appearance to be entered at any Time before Judgment. 15 & 16 Vict. c. 76. s. 29.

Appearance by the Defendant in Person to give an Address, at which Proceedings may be served. 15 & 16 Vict. c. 76. s. 30.

Mode of Appearance to Writ of Summons. 15 & 16 Vict. c. 76. s. 31.

Proceedings mentioned in Writ or Notice may be had and taken.

15 & 16 Vict. c. 76. s. 32.

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

15 & 16 Vict. c. 76. s. 33.

29. 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.

30. In any Action brought against Two or more Defendants, where the Writ of Summons is endorsed in the special Form herein- 5 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 10 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 15 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 the "Common Law Procedure 20 Amendment Act (Ireland), 1853," against One or more of the several Defendants in an Action of Debt before the Commencement of the said Act.

Joinder of Parties.

Joinder as Plaintiffs of all Persons supposed to be legally entitled.

23 & 24 Vict. c. 126. s. 19.

And with respect to the Joinder of Parties to Actions, be it enacted as follows: 25

31. The Joinder of too many Plaintiffs shall not be fatal, but every Action may be brought in the Name of all the Persons in whom the legal Right may be supposed to exist; and Judgment may be given in favour of the Plaintiffs by whom the Action is brought, or of One or more of them; or in case of any Question of 30 Misjoinder being raised, then in favour of such One or more of them as shall be adjudged by the Court to be entitled to recover: Provided always, that the Defendant, though unsuccessful, shall be entitled to his Costs occasioned by joining any Person or Persons in whose Favour Judgment is not given, unless otherwise ordered by the 35 Court or a Judge.

Defendant to have Benefit of Set-off, though some Plaintiffs improperly joined.

23 & 24 Vict. c. 126. s. 20.

32. Upon the Trial of such Cause, a Defendant who has therein pleaded a Set-off may obtain the Benefit of his Set-off by proving either that all the Parties named as Plaintiffs are indebted to him, notwithstanding that One or more of such Plaintiffs was or were 40 improperly joined, or on proving that the Plaintiff or Plaintiffs who established their Right to maintain the Cause is or are indebted to him.

33. No

33. No other Action shall be brought against the Defendant by any Person so joined as Plaintiff in respect of the same Cause of Action.

No other Action for same Claim to be brought. 23 & 24 Vict. c. 126. s. 21.

34. It shall and may be lawful for the Court or a Judge, at any
 5 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
 10 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 the
 15 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
 20 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 before Trial. 15 & 16 Vict. c. 76. s. 34.

35. In case it shall appear at the Trial of any Action that there
 25 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 Misjoinder or Nonjoinder, specifying therein the Name or Names of such Person or
 30 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
 35 Variances under the Provisions of the Forty-eighth Section of an Act of Parliament passed in the Session of Parliament held in the Third and Fourth Years of the Reign of Her Majesty the Queen, intituled "An Act for abolishing Arrest on Mesne Process in Civil
 40 " Actions, except in certain Cases; for extending the Remedies of " Creditors against the Property of Debtors; and for the further " Amendment of the Law and the better Advancement of Justice " in Ireland " (which Section is hereby for the Purposes of this

Nonjoinder and Misjoinder of Plaintiffs may be amended at the Trial as in Cases of Amendments of Variances under 3 & 4 Vict. c. 105. s. 48. 15 & 16 Vict. c. 76. s. 35.

Act re-enacted), 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 5 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 10 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 15 Persons had been originally joined in such Action.

Upon Notice
or Plea of
Nonjoinder
of Plaintiffs,
Proceedings
may be
amended.
15 & 16 Vict.
c. 76. s. 36.

36. 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 to enter a Side 20 Bar 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 25 Defendant shall be at liberty to plead de novo.

Misjoinder
of Defen-
dants may be
amended
before or at
Trial.
15 & 16 Vict.
c. 76. s. 37.

37. 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 30 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 Mis- 35 joinder 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. 40

Proceeding
when Non-
joinder of

38. No Plea in Abatement for the Nonjoinder of any Person as a Co-Defendant shall be allowed unless it shall be stated in such Plea that

that such Person is resident within the Jurisdiction of the Court, and unless the Place of Residence of such Person shall be stated with convenient Certainty in an Affidavit verifying such Plea; and upon any Objection for the Nonjoinder of a Defendant being taken
 5 by Plea in Abatement, it shall be competent to the Plaintiff to reply that such Person has been discharged by Bankruptcy or Insolvency, or that the Statute of Limitations would be a Bar to any Action against him.

Defendant objected to.
 3 & 4 Vict.
 c. 105. ss. 37, 38.

39. In any Action on Contract where the Nonjoinder of any
 10 Person or Persons as a Co-Defendant or Co-Defendants has been pleaded in Abatement, the Plaintiff shall be at liberty to enter a Side Bar 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
 15 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 Abate-
 20 ment and the Plaintiff, be considered for all Purposes as the Commencement of the Action.

Upon Plea in Abatement for Nonjoinder of Defendants, Proceedings may be amended.
 15 & 16 Vict.
 c. 76. s. 38.

40. 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
 25 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
 30 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
 35 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
 40 Abatement shall be at liberty on the Trial to adduce Evidence of the Liability of the Defendants named by him in such Plea in Abatement.

Provision in the Case of subsequent Proceedings against the Persons named in a Plea in Abatement for Nonjoinder of Defendants.
 15 & 16 Vict.
 c. 76. s. 39.

Joinder of
Claims by
Husband and
Wife, with
Claims in
right of
Husband.
16 & 17 Vict.
c. 113. s. 55.

41. In any Action brought by a Man and his Wife for any Cause of Action arising in respect of the Wife, and in respect of which she is necessarily joined as Co-Plaintiff, it shall be lawful for the Husband to add thereto Claims in his own Right, and separate Actions brought in respect of such Claims may be consolidated if 5
the Court or 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.

*Joinder of
Causes of
Action.*

—
Different
Causes of
Action may
be joined,
but separate
Trials may
be ordered
15 & 16 Vict.
c. 76. s. 41.

And with respect to Joinder of Causes of Action, be it enacted as follows : 10

42. 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 Real Actions or to Actions of Replevin or Ejectment; and where Two or more of the Causes of Action so joined are local and arise in different Counties 15
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 Cases such Court or Judge may order separate Records to be made up and separate Trials to be had. 20

*Questions
by Consent
without
Pleading.*

Questions
of Fact may,
after Writ
issued by
Consent and
Leave of a
Judge, be
raised
without
Pleadings.
15 & 16 Vict.
c. 76. s. 42.

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

43. 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 25
the Court or a Judge, (which Order the said Court or 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 30
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 Proceeding in such Action and Issue shall be 35
under and subject to the ordinary Control and Jurisdiction of the Court as in other Actions.

Agreement
may be
entered into
for the Pay-
ment of
Money and
Costs ac-

44. 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 or any subsequent Order, 40
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

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.

according to the Result of the Issue.
15 & 16 Vict.
c. 76. s. 43.

45. 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

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

10 Verdict or for a new Trial.

15 & 16 Vict.
c. 76. s. 44.

46. 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.
15 & 16 Vict.
c. 76. s. 45.

15 47. The Parties to any Cause may, by Consent in Writing, signed by them or their Attorneys, as the Case may be, leave the Decision of any Issue of Fact to the Court, provided that the Court or a Judge shall, in their or his Discretion, think fit to allow such Trial; or provided the Judges of the Superior Courts of Law at
20 Dublin shall, in pursuance of the Power herein-after given to them, make any General Rule or Order dispensing with such Allowance either in all Cases or in any particular Class or Classes of Cases to be defined in such Rule or Order; and such Issue of Fact may thereupon be tried and determined, and Damages assessed, where
25 necessary, in open Court, either in Term or Vacation, by any Judge who might otherwise have presided at the Trial thereof by Jury, either with or without the Assistance of any other Judge or Judges of the same Court, or included in the same Commission at the Assizes; and the Verdict of such Judge or Judges shall be of the
30 same Effect as the Verdict of a Jury, save that it shall not be questioned upon the Ground of being against the Weight of Evidence; and the Proceedings upon and after such Trial, as to the Power of the Court or Judge, the Evidence, and otherwise, shall be the same as in the Case of Trial by Jury.

Judges may, by Consent, try Questions of Fact.
17 & 18 Vict.
c. 123. s. 1.

35 48. The Parties may, after Writ issued, and before Judgment by Consent and Order of the Court, or 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 by Consent, &c., without Pleading.

15 & 16 Vict.
c. 76. s. 46.

49. The Parties may, if they think fit, enter into an Agreement
40 in Writing, which shall not be subject to any Stamp Duty, and
[48.] B 4 which

Agreement as to Pay-

ment of
Money and
Costs ac-
cording to
Judgment
upon Special
Case.

15 & 16 Vict.
c. 76. s. 47.

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 5
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 10
Proceedings in Error.

Costs to
follow the
Event, unless
otherwise
agreed.

15 & 16 Vict.
c. 76. s. 48.

*Pleadings in
General.*

50. 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.

And with respect to the Language and Form of Pleadings in 15
general, be it enacted as follows :

Fictitious
and needless
Averments
not to be
made.

15 & 16 Vict.
c. 76. s. 49.

51. 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 20
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. 25

Judgment
upon De-
murrer to
be given
according to
the very
Right of the
Cause.

15 & 16 Vict.
c. 76. s. 50.

52. 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 30
Cause and Matter in Law shall appear unto them, without regarding any Imperfection, Omission, Defect in or Lack of Form.

Objections
by way of
special
Demurrer.
15 & 16 Vict.
c. 76. s. 51.

53. No Pleading shall be deemed insufficient for any Defect, which, prior to the Commencement of the Common Law Procedure Amendment Act (Ireland), 1853, could only be objected to by 35
special Demurrer.

Pleadings
framed to
embarrass
may be
struck out
or amended.

54. 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 Judge shall make such Order respecting the same, and also 40
respecting

respecting the Costs of the Application, as such Court or Judge shall think fit. 15 & 16 Vict. c. 76. s. 52.

55. 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 served requiring the opposite Party to declare, reply, rejoin, or otherwise, as the Case may be, within *Four Days*, otherwise Judgment; such Notice to be delivered separately or endorsed on any Pleading to which the opposite Party is required to reply, rejoin, or otherwise plead, as the Case may be. Four Days Notice to declare, reply, or rejoin. 15 & 16 Vict. c. 76. s. 53.
56. Every Declaration and other Pleading shall be intituled 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. Pleadings to be dated and entered as of Time of Pleading, unless Order to the contrary. 15 & 16 Vict. c. 76. s. 54.
57. 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. Profert and Oyer not necessary. 15 & 16 Vict. c. 76. s. 55.
58. A Party pleading in answer to any Pleading in which any Document is mentioned or referred to shall be at liberty to set out the whole or such Part thereof as may be material, and the Matter so set out shall be deemed and taken to be Part of the Pleading in which it is set out. Document may be set forth, and be considered a Part of the Pleading in which it is set forth. 15 & 16 Vict. c. 76. s. 56.
59. 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. Declaration for Libel or Slander. 15 & 16 Vict. c. 76. s. 61.
60. It shall be lawful for the Plaintiff or Defendant in any Action to aver Performance of Conditions precedent generally, and the opposite Party shall not deny such Averment generally, but shall specify in his Pleading the Condition or Conditions precedent the Performance of which he intends to contest. Performance of Conditions precedent may be averred generally. 15 & 16 Vict. c. 76. s. 57.
- [48.] C 61. In

The Process
or Adjudica-
tion of an
inferior Ju-
risdiction
may be
pleaded
generally.
16 & 17 Vict.
c. 113. s. 67.

61. In pleading any Process, Decree, Judgment, or Adjudication of a Court or Officer of special or inferior Jurisdiction, it shall not be necessary for the Party pleading or relying on such Process, Decree, Judgment, or Adjudication to state in his Pleading the Facts or Matters conferring Jurisdiction on such Court or Officer 5 to entertain the Question, or issue such Process, or make such Decree, Judgment, or Adjudication, but the same respectively may be stated in such Pleading to have been duly entertained or made by such Court or Officer; and if such Statement be controverted, the Party so pleading or relying on such Process, Decree, Judgment, 10 or Adjudication shall on the Trial establish by Proof the Facts and Matters necessary to confer Jurisdiction on such Court or Officer to entertain the Question, or issue the Process, or make the Adjudication so pleaded as aforesaid.

Declaration.

Plaintiff to
declare
within a
Year.

15 & 16 Vict.
c. 76. s. 58.

And with regard to the Time and Manner of declaring, and to 15 the Venue in personal Actions, and to particulars of Demand, be it enacted as follows :

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

Actions
against Jus-
tices of the
Peace,
Mayors, &c.
to be laid in
the County
in which the
Cause of
Action has
arisen.

21 Jac. 1.
(Eng.) c. 12.
s. 5.
42 G. 3. c. 85.
s. 6.

63. All Actions against Justices of the Peace for anything done 20 by them in execution of or by reason of their Office, and all Actions of Trespass or on the Case brought against Mayors or Bailiffs of Cities or Towns Corporate, Constables, Officers of Police, and Churchwardens, for any Act done by them in execution of or by reason of their Office, or against any Person or Persons acting in 25 their Aid or by their Command, or against any Person or Persons holding or exercising or being employed in any public Employment, or any Office, Station, or Capacity, either Civil or Military, either in or out of Ireland, and who, under and by virtue and in pursuance of any Act or Acts of Parliament, may have or may hereafter have, 30 by virtue of any such Employment, Office, Station, or Capacity, Power or Authority to commit Persons to safe Custody, for any Act done by them in the Execution of or by reason of their Office, shall be laid and tried in the County where the Cause of Action is alleged to have arisen, and not in any other County; and if upon the Trial 35 of any such Action the Plaintiff therein shall not prove that the Fact or Cause of Action was done or arose within the County laid as Venue in the Margin of the Declaration, the Jury shall find the Defendant not guilty, without having regard to any Evidence given by the Plaintiff relative to the Fact or Cause in respect of which 40 the Action shall be brought: Provided always, that when any such Action shall be brought in any of the said Superior Courts against any such Person holding or exercising any such public Employment

or

or Office, Station, or Capacity as last aforesaid, for or upon any Act, Matter, or Thing done out of the Jurisdiction of the said Courts, it shall be lawful for the Plaintiff to lay the Venue in the County or County of the City of Dublin, or in any County where the Defendant shall then reside.

64. In all Actions in which the Venue is local, the Court in which such Action shall be pending or a Judge may, on the Application of either Party, order the Issue to be tried or Writ of Inquiry to be executed in any other County or Place than that in which the Venue is laid; and for that Purpose any such Court or Judge may order a Suggestion to be entered on the Record that the Trial may be more conveniently or properly had or Writ of Inquiry executed in the County or Place where the same is ordered to take place: Provided also, that nothing herein contained shall be deemed to affect the general Jurisdiction of the Court to order the Venue to be changed in such Actions upon other Grounds.

65. In all Actions in which the Venue is transitory it shall be lawful for the Court or a Judge to order the Venue to be changed to any other County in which the Trial can be more conveniently or properly had, on special Grounds only, and not merely because the Cause of Action arose in any particular Place or County, and for that Purpose to direct that a Suggestion be entered upon the Record that the Trial may be more conveniently or properly had in the County or Place where the same is ordered to take place.

66. 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:

30 "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]."

And the Name of a County shall in all Cases be stated in the Margin of such Declaration, and shall be taken to be the Venue intended by the Plaintiff, and no Venue shall be stated in the Body of the Declaration or in any subsequent Pleading: Provided, that in Cases in which local Description is now required, such local Description shall be given.

40 67. Several Counts on the same Cause of Action shall not be allowed, and any Count or Counts used in violation of this Provision

[48.]

C 2

sion

Court or Judge may direct such Actions to be tried elsewhere.

3 & 4 Vict. c. 105. s. 47.

Court or Judge may, in transitory Actions, order Venue to be changed.

Forms of Commencement, &c. of Declaration. 15 & 16 Vict. c. 76. s. 59.

Several Counts on the same

Cause of
Action not
to be al-
lowed.

sion may, on the Application of the Party objecting, within a reasonable Time, or before an Order made for Time to plead, be struck out, or amended by the Court or a Judge, on such Terms as to Costs or otherwise as such Court or Judge may think fit: Provided always, that on an Application to the Court or a Judge to strike out any Count on the Ground of such Count being in violation of this Provision, the Court or Judge may allow such Counts on the same Cause of Action as may appear to such Court or Judge to be proper for determining the real Question in controversy between the Parties on its Merits, subject to such Terms as to Costs and otherwise as the Court or Judge may think fit. 10

Commence-
ment of De-
claration
after Plea
of Non-
joinder.
15 & 16 Vict.
c. 76. s. 60.

68. 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 : 15 20

[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.

Further
Particulars.
16 & 17 Vict.
c. 113 s. 46.

69. The Court or a Judge may, in any Case, by any Order made on Motion, direct a further or more detailed Particular of the Items of Demand or Credits referred to in any Declaration, or of any Payments or Set-off referred to in any Plea or subsequent Pleading, to be furnished; and in any Action for any Injury to Person or Property, the Court or a Judge may order Plans of the Place in which the Injury is alleged to have been committed, or as to which any Justification is pleaded, to be given or exchanged between the Parties; and in case any Order shall be made for any of the Purposes aforesaid, the Defendant shall, unless the Court or Judge shall otherwise direct, have the same Time for Pleading after Compliance with such Order as he had at the Time when Notice of such Application was given. 25 30 35

Pleadings.
Rules to
plead and
Demand of
Plea not
necessary.
15 & 16 Vict.
c. 76. s. 62.

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

70. No Rule to plead or Demand of Plea shall be necessary, and the Notice to plead endorsed on the Declaration or delivered separately shall be sufficient. 40

71. In

71. 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 in Eight Days, otherwise Judgment may, whether the Declaration be delivered or filed, be endorsed upon the Declaration or delivered separately.

Time for pleading, where Defendant is within Jurisdiction, to be Eight Days.

15 & 16 Vict. c. 76. s. 63.

72. Express Colour or special Traverses shall not be necessary in any Pleading.

Express Colour or special Traverses not necessary.

15 & 16 Vict. c. 76. ss. 64, 65.

73. 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.

Formal Commencement and Prayer of Judgment unnecessary. 15 & 16 Vict. c. 76. s. 66.

74. No formal Defence shall be required in a Plea or Avowry or Cognizance, and it shall commence as follows, or to the like Effect:

Commencement of Plea. 15 & 16 Vict. c. 76. s. 67.

“ The Defendant, by _____, his Attorney, [*or in Person, “ or as the Case may be*], says that [*here state First*

“ *Defence ;*] ”

And it shall not be necessary to state in a Second or other Plea or Avowry or Cognizance, that it is pleaded by Leave of the Court or a Judge, or according to the Form of the Statute, or to that Effect; but every such Plea, Avowry, or Cognizance shall be written in a separate Paragraph, and numbered, and shall commence as follows, or to the like Effect:

“ And for a Second [*&c.*] Plea the Defendant says, that [*here “ state Second, &c. Defence ;*] ”

or if pleaded to Part only, then as follows, or to the like Effect:

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

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

75. In all Actions by and against Assignees of a Bankrupt or Insolvent, or Executors or Administrators, or Persons authorized by Act of Parliament to sue or be sued as nominal Parties, the Character in which the Plaintiff or Defendant is stated on the Record to sue or be sued shall not in any Case be considered as in Issue, unless specially denied.

Character of Assignees of Bankrupt, &c. to be taken as admitted, if not denied.

Effect of
Plea of Non
assumpsit in
Actions on
Simple Con-
tract.

76. In all Actions on Simple Contract, except as herein-after excepted, the Plea of "Non assumpsit," or a Plea traversing the Contract or Agreement alleged in the Declaration, shall operate only as a Denial in Fact of the express Contract, Promise, or Agreement alleged, or of the Matters of Fact from which the Contract, Promise, or Agreement alleged may be implied by Law; as for instance :—

In an Action on a Warranty such Pleas shall operate as a Denial of the Fact of the Sale and Warranty having been given, but not of the Breach; and in an Action on a Policy of Insurance, of the Subscription to the alleged Policy by the Defendant, but not of the Interest, of the Commencement of the Risk, of the Loss, or of the alleged Compliance with Warranties :

In Actions against Carriers and other Bailees for not delivering or not keeping Goods safe, or not returning them on Request, and in Actions against Agents for not accounting, such Pleas shall operate as a Denial of any express or implied Contract to the Effect alleged in the Declaration, but not of the Breach :

To Causes of Action to which the Plea of "Never was indebted" is applicable, as provided in Schedule (B.) 35. to this Act annexed, and to those of a like Nature, the Plea of "Non assumpsit" shall be inadmissible, and the Plea of "Never was indebted" shall operate as a Denial of those Matters of Fact from which the Liability of the Defendant arises; as, for instance, in Actions for Goods bargained and sold, or sold and delivered, the Plea shall operate as a Denial of the Bargain and Sale, or Sale and Delivery, in Point of Fact; in the like Action for Money had and received it shall operate as a Denial both of the Receipt of Money and the Existence of those Facts which make such Receipt by the Defendant a Receipt to the Use of the Plaintiff.

Pleas of Non
assumpsit
and Never in-
debted not to
be allowed in
Actions on
Bills of Ex-
change and
Promissory
Notes.

77. In all Actions upon Bills of Exchange and Promissory Notes, the Pleas of "Non assumpsit" and "Never indebted" shall be inadmissible, and every Plea in Denial must traverse some Matter of Fact; as, for instance, the drawing, or making, or endorsing, or accepting, or presenting, or Notice of Dishonour of the Bill or Note.

Effect of
Plea of Non
est factum.

78. In Actions on Specialties and Covenants the Plea of "Non est factum" shall operate as a Denial of the Execution of the Deed in Point of Fact only, and all other Defences shall be specially pleaded,

pleaded, including Matters which make the Deed absolutely void, as well as those which make it voidable.

79. The Plea of "Nil debet" shall not be allowed in any Action. Plea of Nil debet not to be allowed.

80. In Actions on Contract all Matters in Confession and Avoidance, including not only those by way of Discharge but those which show the Transaction to be either void or voidable in Point of Law, on the Ground of Fraud or otherwise; as, for instance, Infancy, Coverture, Release, Payment, Performance, Illegality of Consideration, either by Statute or Common Law, drawing, endorsing, accepting, &c., Bills or Notes by way of Accommodation, Set-off, mutual Credit, Unseaworthiness, Misrepresentation, Concealment, Deviation, and other Defences of the like Character, shall be specially pleaded. Defence by way of Confession and Avoidance to be specially pleaded in Actions upon Contract.

81. Payment, whether before Action brought, or when made into Court, shall not in any Case be allowed to be given in Evidence in reduction of Damages or Debt without being pleaded. Payment not to be given in Evidence in reduction of Amount without Plea.

82. In Actions for detaining Goods, the Plea of "Non detinet" shall operate as a Denial of the Detention of the Goods by the Defendant, but not of the Plaintiff's Property therein, and no other Defence than such Denial shall be admissible under that Plea. Effect of Plea of Non detinet.

83. In Actions of Tort the Plea of "Not Guilty" shall operate as a Denial only of the Breach of Duty or wrongful Act alleged to have been committed by the Defendant, and not of the Facts stated in the Inducement, and no other Defence than such Denial shall be admissible under that Plea; all other Pleas in denial shall take Issue on some particular Matter of Fact alleged in the Declaration; as for instance: Effect of Plea of Not Guilty in Actions of Wrong.

In an Action for a Nuisance to the Occupation of a House by carrying on an offensive Trade, the Plea of "Not Guilty" shall operate as a Denial only that the Defendant carried on the alleged Trade in such a Way as to be a Nuisance to the Occupation of the House, and shall not operate as a Denial of the Plaintiff's Occupation of the House:

In an Action for obstructing a Right of Way, such Plea shall operate as a Denial of the Obstruction only, and not of the Plaintiff's Right of Way:

In an Action for Slander of the Plaintiff in his Office, Profession, or Trade, the Plea of "Not Guilty" shall operate in denial of speaking the Words, of speaking them maliciously, and in the defamatory Sense imputed, and with reference to the

[48.]

C 4

Plaintiff's

Plaintiff's Office, Profession, or Trade, but it shall not operate as a Denial of the Fact of the Plaintiff holding the Office or being of the Profession or Trade alleged :

In Actions for an Escape, the Plea of "Not Guilty" shall operate as a Denial of the Neglect or Default of the Sheriff or his Officers, but not of the Debt, Judgment, or preliminary Proceedings :

In Actions against a Carrier, the Plea of "Not Guilty" shall operate as a Denial of the Loss or Damage, but not of the Receipt of the Goods by the Defendant as a Carrier for Hire, or of the Purpose for which they were received.

General
Issue may be
pleaded in
certain
Actions.
21 Jac. 1.
(Eng.) c. 12.
s. 5.

84. In all such Actions as in the Sixty-third Section of this Act mentioned, it shall be lawful for the Defendant to plead the General Issue therein, and to give any special Matter of Defence, Excuse, or Jurisdiction in Evidence under such Plea at the Trial of such Action.

In Actions
of Wrong,
Defences in
Confession
and Avoid-
ance to be
specially
pleaded.
Effect of
Plea of Not
Guilty in
Actions of
Trespass.

85. Save as herein otherwise provided, all Matters in Confession or Avoidance shall be specially pleaded in Actions of Tort in like Manner as in Actions on Contract.

86. In Actions for Trespass to Land, the Plea of "Not Guilty" shall operate as a Denial that the Defendant committed the Trespass alleged in the Place mentioned, but not as a Denial of the Plaintiff's Possession or Right of Possession of that Place, which, if intended to be denied, must be traversed specially.

Effect of
Plea of Not
Guilty in
Action for
taking Goods

87. In Actions for taking, damaging, or converting the Plaintiff's Goods, the Plea of "Not Guilty" shall operate as a Denial of the Defendant having committed the Wrong alleged, by taking, damaging, or converting the Goods mentioned, but not of the Plaintiff's Property therein.

Set-off.
16 & 17 Vict.
c. 113. s. 40.

88. In any Case in which there are mutual Debts between the Plaintiff and the Defendant, or if either Party sue or be sued as Executor or Administrator where there are mutual Debts between the Testator and Intestate and either Party, whether such Debts have accrued before or after Action brought, One Debt may be set off against the other, and such Matter may be pleaded, according to Circumstances, in bar of the Action, or the further Maintenance thereof, or so much of the Debt as it covers, and the Account upon which it became due shall be alleged as in a Declaration for the same Debt.

89. Any

89. 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 a Plea of Matter arising before Action.

Plea of Matter subsequent to Action.
15 & 16 Vict. c. 76. s. 69.

90. In Cases in which a Plea *Puis darrein* continuance was before the Commencement of the Common Law Procedure Amendment Act (Ireland), 1853, 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 *First of August* and *Twentieth 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.

Plea *Puis darrein* continuance, when and how to be pleaded.
15 & 16 Vict. c. 76. s. 69.

91. 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, and upon such Terms as they or he may think fit, for the Defendant in such excepted Actions, or for One or more of several Defendants in any Action, 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.
15 & 16 Vict. c. 76. s. 70.

92. In any Action brought upon a Bond which has a Condition or Defeazance to make void the same upon Payment of a lesser Sum at a Day or Place certain, with a Penalty, and in any Action for detaining the Goods of the Plaintiff, it shall be lawful for the Defendant, by Leave of the Court or a Judge, and upon such Terms as they or he shall think fit, to pay into Court a Sum of Money to answer the Claim of the Plaintiff in respect of such Bond in the former Case, and in the latter Case to the Value of the Goods alleged to be detained.

Payment into Court in Actions on Money Bonds, and for Detainer.
23 & 24 Vict. c. 126. s. 25.

93. When Money is paid into Court such Payment shall be pleaded in all Cases as near may be in the following Form, *mutatis mutandis*:

Payment into Court how pleaded?
15 & 16 Vict. c. 76. s. 71.

"The Defendant by his Attorney [or in Person, &c.] [*if pleaded to Part, say, as to £*
[48.] D

“ 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.”

Payment of
 Money into
 Court.
 16 & 17 Vict.
 c. 113. ss. 75,
 76.

94. No Order of the Court or a Judge to pay Money into Court 5
 shall be necessary, except in the Cases herein-before specially pro-
 vided, but such Payment shall be made by lodging the Money in
 the Bank of Ireland on behalf of the Defendant, who shall make
 such Lodgment with the Privity of the Master of the Court, and to
 the Credit of the Cause; and such Master, on the Certificate of such 10
 Lodgment being delivered to him, shall give a Receipt for the
 Amount in the Margin of the Plea; and the Master shall, on
 Demand by the Plaintiff, draw upon the Bank of Ireland in favour
 of the Plaintiff or his Attorney, upon a written Authority from the
 Plaintiff, for the Sum so lodged by the Defendant. 15

Proceeding
 by Plaintiff
 after Pay-
 ment into
 Court.
 15 & 16 Vict.
 c. 76. s. 73.

95. 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 Dis-
 charge 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, 20
 and, in case of Nonpayment 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 25
 Defendant, the Defendant shall be entitled to Judgment and his
 Costs of Suit.

Pleas to
 Actions par-
 taking both
 of Breach of
 Contract
 and Wrong.
 15 & 16 Vict.
 c. 76. s. 74.

96. Whereas certain Causes of Action may be considered to par-
 take 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 30
 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 Plead-
 ings which
 can be con-
 strued dis-
 tributively
 shall be so
 construed.
 15 & 16 Vict.
 c. 76. s. 75.

97. Pleas of Payment and Set-Off, and all other Pleadings 35
 capable of being construed distributively, shall be taken distri-
 butively, and if Issue is taken thereon, and so much thereof as
 shall be sufficient Answer to Part of the Causes of Action proved
 shall be found true by the Jury, a Verdict shall pass for the De-
 fendant in respect of so much of the Causes of Action as shall be 40
 answered,

answered, and for the Plaintiff in respect of so much of the Causes of Action as shall not be so answered.

98. A Defendant may either traverse generally such of the Facts contained in the Declaration as might have been denied by
5 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.
15 & 16 Vict. c. 76. s. 76.

99. A Plaintiff shall be at liberty to traverse the whole of any Plea or subsequent Pleading of the Defendant by a general Denial,
10 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.
15 & 16 Vict. c. 76. s. 77.

100. 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 or subsequent Pleading of the Plaintiff.
15 & 16 Vict. c. 76. s. 78.

15 101. It shall be lawful for the Defendant in any personal Action, and for the Plaintiff in any Action of Replevin in any of the said Superior Courts, in which if Judgment were obtained he would be entitled to Relief against such Judgment on equitable Grounds, to plead the Facts which entitle him to such Relief by
20 way of Defence, and the said Courts are hereby empowered to receive such Defence by way of Plea, provided that such Plea shall begin with the Words "For Defence on equitable Grounds," or Words to the like Effect.

Equitable Defence may be pleaded.
17 & 18 Vict. c. 125. s. 83.

25 102. Any such Matter which, if it arose before or during the Time for pleading, would be an Answer to the Action by way of Plea, may, if it arise after the Lapse of the Period during which it could be pleaded, be set up by way of Audita querela.

Equitable Defence after Judgment.
17 & 18 Vict. c. 125. s. 84.

30 103. The Plaintiff may reply, in answer to any Plea of the Defendant, Facts which avoid such Plea upon equitable Grounds, provided that such Replication shall begin with the Words "For Replication on equitable Grounds," or Words to the like Effect.

Equitable Replication.
17 & 18 Vict. c. 125. s. 85.

35 104. Provided always, That in case it shall appear to the Court or a Judge that any such equitable Plea or equitable Replication cannot be dealt with by a Court of Law so as to do Justice between the Parties, it shall be lawful for such Court or Judge to order the same to be struck out, on such Terms as to Costs and otherwise, as to such Court or Judge may seem reasonable.

Court or Judge may strike out equitable Plea or Replication.
17 & 18 Vict. c. 125. s. 86.

Actions on
lost Instru-
ments.
17 & 18 Vict.
c. 125. s. 87.

105. In case of any Action founded on a Bill of Exchange or other negotiable Instrument, it shall be lawful for the Court or a Judge to order that the Loss of such Instrument shall not be set up, provided an Indemnity is given to the Satisfaction of the Court, Judge, or Master against the Claims of any other Person upon such negotiable Instrument. 5

Joinder of
Issue.
15 & 16 Vict.
c. 76. s. 79.

106. Either Party may plead, in answer to the Plea or subsequent Pleading of his Adversary, that he joins Issue thereon, which Joinder of Issue may be as follows, or to the like Effect :

“The Plaintiff joins Issue upon the Defendant’s First [*&c.* 10

“ *specifying what or what Part*] Plea :”

“The Defendant joins Issue upon the Plaintiff’s Replication to

“ the First [*&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 15 thereon ; and in all Cases where the Plaintiff’s Pleading is in denial of the Pleading of the Defendant, or some Part of it, the Plaintiff may add a Joinder of Issue for the Defendant.

As to plead-
ing and de-
murring
together.
15 & 16 Vict.
c. 76. s. 80.

107. Either Party may, by Leave of the Court or a Judge, plead and demur to the same Pleading at the same Time, upon an 20 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 afore- said by way of Confession and Avoidance are respectively true in 25 Substance and in Fact, and that he is further advised and believes that the Objections raised by such Demurrer are good and valid Objections in Law, and it shall be in the Discretion of the Court or a Judge to direct which Issue shall be first disposed of.

Several
Matters may
be pleaded
at any Stage
of the
Pleadings.
15 & 16 Vict.
c. 76. s. 81.

108. The Plaintiff in any Action may, by Leave of the Court 30 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 35 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 40 as aforesaid by way of Confession and Avoidance are respectively true in Substance and in Fact : Provided that the Costs of any Issue either

either in 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.

109. All Objections to the Pleading of several Pleas, Repliations, 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 Application to plead several Matters.

Objections to Pleadings to be heard on Application to plead several Matters.
15 & 16 Vict. c. 76. s. 83.

110. 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, Plene administravit, Plene 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 Seven 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.

Certain Pleas may be pleaded together without Leave.
15 & 16 Vict. c. 76. s. 84.

111. 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 upon such Terms as to Costs and otherwise as they or he may think fit.

For pleading several Matters without Leave, Judgment may be signed.
15 & 16 Vict. c. 76. s. 86.

112. One new Assignment only shall be pleaded to any Number of Pleas to the same Cause of Action; and such new Assignment shall be consistent with and confined by the Particulars delivered in the Action, if any, and shall state that the Plaintiff proceeds for Causes of Action different from all those which the Pleas profess to justify, or for an Excess over and above what all the Defences set up in such Pleas justify, or both.

One new Assignment only allowed in respect of the same Cause of Action.
15 & 16 Vict. c. 76. s. 87.

113. No Plea which has already been pleaded to the Declaration shall be pleaded to such new Assignment, except a Plea in Denial, unless by Leave of the Court or a Judge, and such Leave shall only be granted upon satisfactory Proof that the Repetition of such Plea is essential to a Trial on the Merits.

Pleas not to be repeated.
15 & 16 Vict. c. 76. s. 88.

[48.]

D 3

114. The

Form of De-
murrer and
Joinder in
Demurrer.
15 & 16 Vict.
c. 76. s. 89.

114. The Form of a Demurrer 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 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 : 10

“ The Plaintiff [*or* Defendant] says that the Declaration [*or* Plea, &c.] is good in Substance.”

Time for
Pleading
after
Amendment.
15 & 16 Vict.
c. 76. s. 90.

115. 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 15 specified in the original Notice to plead, or within Two Days after Amendment, whichever shall last expire, unless otherwise ordered by the Court or 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 20 Court or a Judge shall allow, the Pleadings originally pleaded thereto shall stand and be considered as pleaded in answer to such amended Pleading.

Pleadings
subsequent
to the Decla-
ration not to
be filed.

116. No Demurrer, nor any Pleading subsequent to the Declara-
tion, shall in any Case, except by special Order of the Court, be filed 25
with any Officer of the Court, but the same shall, unless otherwise
provided by General Orders, be delivered between the Parties :
Provided always, that before delivering any Demurrer or other such
Pleading as aforesaid, the Attorney or Person delivering the same
shall bring or cause the same to be brought to the Office of the 30
Clerk of the Writs, impressed with the Stamp now or hereafter by
Law required to be impressed upon such Demurrer or other such
Pleading as aforesaid, and thereupon the Clerk of the Writs shall
impress such Demurrer or other Pleading with the Seal of the said
Superior Courts of Common Law; and no Delivery of any Demurrer 35
or other such Pleading shall be of any Effect unless so stamped and
sealed as aforesaid.

*Examples of
Pleading.*

Forms in
Schedule
may be
adopted.
15 & 16 Vict.
c. 76. s. 91.

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 : 40

117. The Forms contained in the Schedule (B.) to this Act
annexed shall be sufficient, and those and the like Forms may be
used,

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.

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

Judgment by Default and ascertaining Amount to be recovered.

118. No Rule to compute shall be necessary or used, but in Actions where the Plaintiff seeks to recover a Debt or liquidated Demand in Money Judgment by Default shall be final.

Rule to compute unnecessary.
15 & 16 Vict.
c. 76. ss. 92, 93.

119. In Actions in which it shall appear to the Court or a Judge that the Amount of Damages sought to be recovered by the Plaintiff is substantially a Matter of Calculation, it shall not be necessary to issue a Writ of Inquiry, but the Court or a Judge may direct that the Amount for which final Judgment is to be signed shall be ascertained by the Master 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: Provided always, that in case the said Master shall upon any such Reference think it proper to have any Fact controverted on the Reference tried by a Jury, in such Case the said Master may sign a Requisition to that Effect intituled in the Cause, and direct the same to be delivered to the Sheriff of the County of the City of Dublin Two Days before the Time when such Jury shall be required, and the Jurors shall be summoned and taken from the List of Persons liable to serve as Jurors in the County of the City of Dublin, and the Sheriff shall cause so many of the said Jurors as in his Opinion he shall deem sufficient to be summoned, and such Persons shall attend, and either Party shall be entitled to his lawful Challenge against all or any of the said Jurors; and a Jury of Twelve shall be returned to try such Fact or Facts as shall seem doubtful to such Master, who shall proceed to make his Report on the Verdict of such Jury as he shall think fit; and such Jury shall be sworn and paid as a Common Jury at Nisi Prius, and the Master shall endorse 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 Endorsement 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.
16 & 17 Vict.
c. 113. s. 98.

Ordinary
Writ of
Inquiry in
other Cases.
16 & 17 Vict.
c. 76. s. 100.

120. In Actions in which the Plaintiff's Demand is not for a Debt or liquidated Sum in Money, and where the Amount of Damages sought to be recovered cannot be calculated as aforesaid, it shall be lawful for the Plaintiff to issue a Writ of Inquiry to the Sheriff of the proper County, or other Person thereunto lawfully authorized, 5 and such Inquiry shall be holden at the chief Town in the County, or such other Place and at such Time as shall be agreed on between the Sheriff and the Party delivering the Writ to him; and the said Writ of Inquiry may be made returnable and be returned on any Day certain in Term or in Vacation to be named in such Writ, and 10 upon the Return thereof, and without any Rule for Judgment thereon, the Costs may be taxed, and Judgment signed and Execution issued forthwith, unless the Sheriff or other Officer before whom such Writ shall be executed, shall certify under his Hand upon such Writ that Judgment ought not to be signed until the Defendant 15 or Plaintiff shall have had an Opportunity to apply to the Court or a Judge to set aside the Execution of such Writ of Inquiry, or unless the Court or Judge shall think fit to order the Judgment to be stayed until a Day to be named in such Order: Provided that where a Writ of Inquiry shall have been executed before a Judge 20 the Proceedings from the finding to issuing Execution shall be the same as in the Case of ordinary Trials at Nisi Prius.

Inquiries
may be
directed to
take place
before
Master of
the Court.
16 & 17 Vict.
c. 113. s. 101.
19 & 20 Vict.
c. 102. s. 99.

121. It shall be lawful for the Court or a Judge, instead of a Writ of Inquiry to the Sheriff to ascertain the Amount of Damages, to direct that the Amount for which final Judgment shall be marked 25 shall be ascertained by the Master of the Court, and thereupon such Damages shall be ascertained by the Master in like Manner as such Damages are ascertained under a Writ of Inquiry by the Sheriff; and for such Purpose it shall be the Duty of the Sheriff of the County of the City of Dublin to summon Jurors to attend before the 30 said Masters, who shall have the like Jurisdiction and Authority as have been heretofore exercised by Sheriffs in holding such Inquiries; provided always, that whenever there is any such Trial by Jury Twelve Jurymen shall be empannelled and sworn to give their Verdict according to the Evidence; and it shall be lawful 35 for the Master to adjourn such Inquiry from Time to Time as Occasion may require; and the Master shall indorse on the Rule or Order of Reference the Finding of the said Jury, and shall deliver the same to the Plaintiff, and such and the like Proceedings may thereupon be had as to Taxation of Costs, signing Judgment, and 40 otherwise, as upon a Finding of a Jury upon a Writ of Inquiry to the Sheriff: Provided always, that in all Cases of Writs of Inquiry it shall be lawful for the Court or a Judge to order that they shall be executed before a Judge sitting at Nisi Prius for the Trial of Causes,

Inquiries
may be
directed to

Causes, either in the consolidated Nisi Prius Court, or at the After Sittings or Assizes, as such Court or Judge shall in their or his Discretion direct, and for that Purpose to enter a Suggestion upon the Record whenever the Trial is ordered to take place in a County other than that in which the Venue is laid.

And with reference to Discovery, be it enacted as follows :

Discovery.

- 122.** Upon Motions founded upon Affidavits, it shall be lawful for either Party, with Leave of the Court or a Judge, to make Affidavits in answer to the Affidavits of the opposite Party, upon any new Matter arising out of such Affidavits, subject to all such General Orders as shall hereafter be made respecting such Affidavits.
- 123.** Upon the Hearing of any Motion it shall be lawful for the Court or Judge, at their or his Discretion, and upon such Terms as they or he shall think reasonable, from Time to Time to order such Documents as they or he may think fit to be produced, and such Witnesses as they or he may think necessary to appear, and be examined *vivâ voce* either before such Court or Judge or before the Master, and upon hearing such Evidence, or reading the Report of such Master, to make such Rule or Order as may be just.
- 124.** The Court or Judge may, by such Rule or Order or any subsequent Rule or Order, command the Attendance of the Witnesses named therein for the Purpose of being examined, or the Production of any Writings or other Documents to be mentioned in such Rule or Order ; and such Rule or Order shall be proceeded upon in the same Manner, and shall have the same Force and Effect as a Rule of the Court under an Act passed in the Session of Parliament holden in the Third and Fourth Years of the Reign of Her present Majesty, Chapter One hundred and five, intituled “ An Act for abolishing Arrest on Mesne Process in Civil Actions except in certain Cases for extending the Remedies of Creditors against the Property of Debtors ; and for the further Amendment of the Law, and the better Advancement of Justice in Ireland ; ” and it shall be lawful for the Court, or Judge, or Master to adjourn the Examination from Time to Time as Occasion may require ; and the Proceedings upon such Examination shall be conducted and the Depositions taken down as nearly as may be in the Mode now in use with respect to the *vivâ voce* Examinations of Witnesses under the last-mentioned Act.

Affidavits on new Matter.
17 & 18 Vict.
c. 125. s. 45.

Power to Court or Judge to direct oral Examination of Witnesses.
17 & 18 Vict.
c. 125. s. 46.

Proceedings before and upon such Examination
17 & 18 Vict.
c. 125. s. 47.

3 & 4 Vict.
c. 105.

Examination of Person who refuses

125. Any Party to any Civil Action or other Civil Proceeding in any of the Superior Courts requiring the Affidavit of a Person who
[48.] E refuses

to make an Affidavit.
17 & 18 Vict.
c. 125. s. 48.

refuses to make an Affidavit, may apply for an Order requiring such Person to appear and be examined upon Oath before a Judge or Master, to whom it may be most convenient to refer such Examination, as to the Matters concerning which he has refused to make an Affidavit; and the Court or a Judge may, if they or he think fit, 5 make such Order for the Attendance of such Person before the Person therein appointed to take such Examination, for the Purpose of being examined as aforesaid, and for the Production of any Writings or Documents to be mentioned in such Order, and may therein impose such Terms as to such Examination, and the Costs of the 10 Application and Proceedings thereon, as they or he shall think just.

Proceedings upon Order for Examination.
17 & 18 Vict.
c. 125. s. 49.

126. Such Order shall be proceeded upon in like Manner as an Order made under the herein-before mentioned Act passed in the Session of Parliament holden in the Third and Fourth Years of the 15 Reign of Her present Majesty, and the Examination thereon shall be conducted, and the Depositions taken down and returned, as nearly as may be in the Mode now used on vivâ voce Examinations under the said Act of Parliament.

Discovery of Documents.
17 & 18 Vict.
c. 125. s. 50.

127. Upon the Application of either Party to any Cause or other 20 Civil Proceeding in any of the Superior Courts, upon an Affidavit by such Party, or his Attorney or Agent, or in the Case of a Body Corporate of their Attorney or Agent, of his Belief that any Document to the Production of which he is entitled for the Purpose of Discovery or otherwise, is in the Possession or Power of the opposite Party, it 25 shall be lawful for the Court or Judge to order that the Party against whom such Application is made, or if such Party is a Body Corporate that some Officer to be named of such Body Corporate, shall answer on Affidavit stating what Documents he or they has or have in his or their Possession or Power relating to the Matters in Dispute, or 30 what he knows as to the Custody they or any of them are in, and whether he or they objects or object (and if so, on what Grounds,) to the Production of such as are in his or their Possession or Power; and upon such Affidavit being made the Court or Judge may make such further Order thereon as shall be just. 35

Power to deliver written Interrogatories to opposite Party.
17 & 18 Vict.
c. 125. s. 51.

128. In all Causes in any of the Superior Courts, by Order of the Court or a Judge, the Plaintiff may, with the Declaration, and the Defendant may, with the Plea, or either of them, by Leave of the Court or a Judge, may at any other Time, deliver to the opposite Party or his Attorney (provided such Party, if not a Body Corporate, would 40 be liable to be called and examined as a Witness upon such Matter) Interrogatories in Writing upon any Matter as to which Discovery may be

- be sought, and require such Party, or in the Case of a Body Corporate any of the Officers of such Body Corporate, within Ten Days, to answer the Questions in Writing by Affidavit to be sworn and filed in the ordinary Way; and any Party or Officer omitting,
- 5 without just Cause, sufficiently to answer all Questions as to which a Discovery may be sought within the above Time, or such extended Time as the Court or a Judge shall allow, shall be deemed to have committed a Contempt of the Court, and shall be liable to be proceeded against accordingly.
- 10 **129.** The Application for such Order shall be made upon an Affidavit of the Party proposing to interrogate, and his Attorney or Agent, or, in the Case of a Body Corporate of their Attorney or Agent, stating that the Deponents or Deponent believe or believes that the Party
- 15 proposing to interrogate, whether Plaintiff or Defendant, will derive material Benefit in the Cause from the Discovery which he seeks, that there is good Cause of Action or Defence upon the Merits, and, if the Application be made on the Part of the Defendant, that the Discovery is not sought for the Purpose of Delay: Provided, that
- 20 where it shall happen from unavoidable Circumstances that the Plaintiff or Defendant cannot join in such Affidavit, the Court or Judge may, if they or he think fit, upon an Affidavit of such Circumstances, allow and order that the Interrogatories may be delivered without such Affidavit.
- 130.** In case of Omission, without just Cause, to answer sufficiently
- 25 such written Interrogatories, it shall be lawful for the Court or a Judge, at their or his Discretion, to direct an oral Examination of the interrogated Party, as to such Points as they or he may direct, before a Judge or Master; and the Court or Judge may, by such Rule or Order, or any subsequent Rule or Order, command the
- 30 Attendance of such Party or Parties before the Person appointed to take such Examination, for the Purpose of being orally examined as aforesaid, or the Production of any Writings or other Documents to be mentioned in such Rule or Order, and may impose therein such Terms as to such Examination, and the Costs of the Application
- 35 and of the Proceedings thereon, and otherwise, as to such Court or Judge shall seem just.
- 131.** Such Rule or Order shall have the same Force and Effect and may be proceeded upon in like Manner as an Order made under the said herein-before mentioned Act passed in the Session of Par-
- 40 liament holden in the Third and Fourth Years of the Reign of Her present Majesty.
- 132.** When-

Affidavits by Party proposing to interrogate or his Attorney.
17 & 18 Vict. c. 125. s. 52.

Oral Examination of Parties, when to be allowed.
17 & 18 Vict. c. 125. s. 53.

Proceedings upon such Rule or Order.
17 & 18 Vict. c. 125. s. 54.

Depositions
upon such
Examina-
tions to be
returned to
Master's
Office.

17 & 18 Vict.
c. 125. s. 55.
3 & 4 Vict.
c. 105.

132. Whenever by virtue of this Act an Examination of any Witness or Witnesses has been taken before a Judge of One of the said Superior Courts, or before a Master, the Depositions shall be returned to and kept in the Master's Office of the Court in which the Proceedings are pending; and Office Copies of such Depositions may be given out, and the Depositions may be otherwise used in the same Manner as in the Case of Depositions taken under the herein-before mentioned Act passed in the Third and Fourth Years of the Reign of Her present Majesty. 5

Examiner
may make
Report to
the Court.

17 & 18 Vict.
c. 125. s. 56.

133. It shall be lawful for every Judge or Master named in any such Rule or Order as aforesaid for taking Examinations under this Act, and he is hereby required to make, if need be, a special Report to the Court in which such Proceedings are pending, touching such Examination, and the Conduct or Absence of any Witness or other Person thereon or relating thereto; and the Court is hereby authorized to institute such Proceedings and make such Order and Orders upon such Report as Justice may require, and as may be instituted and made in any Case of Contempt of the Court. 10 15

Costs of
Rule and
Examination
to be in the
Discretion of
the Court.]

17 & 18 Vict.
c. 125. s. 57.

134. The Costs of every Application for any Rule or Order to be made for the Examination of Witnesses by virtue of this Act, and of the Rule or Order and Proceedings thereon, shall be in the Discretion of the Court or Judge by whom such Rule or Order is made. 20

*Mandamus
and
Injunction.*

And with respect to Mandamus and Injunction, be it enacted as follows: 25

Action for
Mandamus
to enforce
the Perform-
ance of
Duties.

17 & 18 Vict.
c. 125. s. 68.

135. The Plaintiff in any Action in any of the Superior Courts, except Replevin and Ejectment, may endorse upon the Writ and Copy to be served a Notice that the Plaintiff intends to claim a Writ of Mandamus; and the Plaintiff may thereupon claim in the Declaration, either together with any other Demand which may now be enforced in such Action or separately, a Writ of Mandamus commanding the Defendant to fulfil any Duty in the Fulfilment of which the Plaintiff is personally interested. 30

Declaration
in Action for
Mandamus.

17 & 18 Vict.
c. 125. s. 69.

136. The Declaration in such Action shall set forth sufficient Grounds upon which such Claim is founded, and shall set forth that the Plaintiff is personally interested therein, and that he sustains or may sustain Damage by the Nonperformance of such Duty, and that Performance thereof has been demanded by him and refused or neglected. 35

137. The

137. The Pleadings and other Proceedings in any Action in which a Writ of Mandamus is claimed shall be the same in all respects, as nearly as may be, and Costs shall be recoverable by either Party as in an ordinary Action for the Recovery of 5 Damages.

Proceedings upon Claim for Mandamus.
17 & 18 Vict. c. 125. s. 70.

138. In case Judgment shall be given for the Plaintiff that a Mandamus do issue, it shall be lawful for the Court in which such Judgment is given, if it shall think fit, besides issuing Execution in the ordinary Way for the Costs and Damages, also to issue a 10 peremptory Writ of Mandamus to the Defendant, commanding him forthwith to perform the Duty to be enforced.

Judgment and Execution.
17 & 18 Vict. c. 125. s. 71.

139. The Writ need not recite the Declaration or other Proceedings, or the Matter therein stated, but shall simply command the Performance of the Duty, and in other respects shall be in the Form 15 of an ordinary Writ of Execution, except that it shall be directed to the Party and not to the Sheriff, and may be issued in Term or Vacation, and returnable forthwith; and no Return thereto, except that of Compliance, shall be allowed, but Time to return it may, upon sufficient Grounds, be allowed by the Court or a Judge, either 20 with or without Terms.

Form of Peremptory Writ.
17 & 18 Vict. c. 125. s. 72.

140. The Writ of Mandamus so issued as aforesaid shall have the same Force and Effect as a peremptory Writ of Mandamus issued out of the Court of Queen's Bench, and in case of Disobedience may be enforced by Attachment.

Effect of Writ of Mandamus and Proceedings to enforce it.
17 & 18 Vict. c. 125. s. 73.

141. The Court may, upon Application by the Plaintiff, besides or instead of proceeding against the disobedient Party by Attachment, direct that the Act required to be done may be done by the Plaintiff, or some other Person appointed by the Court, at the Expense of the Defendant; and upon the Act being done, the 25 Amount of such Expense may be ascertained by the Court, either 30 by Writ of Inquiry or Reference to a Master, as the Court or a Judge may order; and the Court may order Payment of the Amount of such Expenses and Costs, and enforce Payment thereof by Execution.

The Court may order the Act to be done at the Expense of the Defendant.
17 & 18 Vict. c. 125. s. 74.

142. Nothing herein contained shall take away the Jurisdiction of the Court of Queen's Bench to grant Writs of Mandamus; nor shall any Writ of Mandamus issued out of that Court be invalid by reason of the Right of the Prosecutor to proceed by Action for Mandamus under this Act.

Prerogative Writ of Mandamus preserved.
17 & 18 Vict. c. 125. s. 75.

Proceedings
on Preroga-
tive Writ of
Mandamus.
17 & 18 Vict.
c. 125. s. 76.

143. Upon Application by Motion for any Writ of Mandamus in the Court of Queen's Bench, the Rule may in all Cases be absolute in the first instance if the Court shall think fit; and the Writ may bear Teste on the Day of its issuing, and may be made returnable forthwith, whether in Term or in Vacation, but Time may be allowed to return it by the Court or a Judge either with or without Terms. 5

Proceedings
on Preroga-
tive Writ of
Mandamus.
17 & 18 Vict.
c. 125. s. 77.

144. The Provisions of this Act, so far as they are applicable, shall apply to the Pleadings and Proceedings upon a Prerogative Writ of Mandamus issued by the Court of Queen's Bench. 10

Specific
Delivery of
Chattels.
17 & 18 Vict.
c. 125. s. 78.

145. The Court or a Judge shall have Power, if they or he think fit so to do, upon the Application of the Plaintiff in any Action for the Detention of any Chattel, to order that Execution shall issue for the Return of the Chattel detained, without giving the Defendant the Option of retaining such Chattel upon paying the Value assessed, and that if the said Chattel cannot be found, and unless the Court or a Judge should otherwise order, the Sheriff shall distrain the Defendant by all his Lands and Chattels in the said Sheriff's Bailiwick, till the Defendant render such Chattel, or, at the Option of the Plaintiff, that he cause to be made of the Defendant's Goods the assessed Value of such Chattel; provided that the Plaintiff shall, either by the same or a separate Writ of Execution, be entitled to have made of the Defendant's Goods the Damages, Costs, and Interest in such Action. 15 20

Claim of
Writ of
Injunction.
17 & 18 Vict.
c. 125. s. 79.

146. In all Cases of Breach of Contract or other Injury, where the Party injured is entitled to maintain and has brought an Action, he may, in like Case and Manner as herein-before provided, with respect to Mandamus, claim a Writ of Injunction against the Repetition or Continuance of such Breach of Contract or other Injury, or the Committal of any Breach of Contract or Injury of a like Kind, arising out of the same Contract or relating to the same Property or Right; and he may also in the same Action include a Claim for Damages or other Redress. 25 30

Form of
Writ of
Summons
and Endorse-
ment there-
on.
17 & 18 Vict.
c. 125. s. 80.

147. The Writ of Summons in such Action shall be in the same Form as the Writ of Summons in any personal Action, but on every such Writ and Copy thereof there shall be endorsed a Notice that in default of Appearance the Plaintiff may, besides proceeding to Judgment and Execution for Damages and Costs, apply for and obtain a Writ of Injunction. 35 40

Form of
Proceedings

148. The Proceedings in such Action shall be the same as nearly as may be, and subject to the like Control, as the Proceedings 40

ceedings in an Action to obtain a Mandamus under the Provisions herein-before contained; and in such Action Judgment may be given that the Writ of Injunction do or do not issue, as Justice may require; and in case of Disobedience, such Writ of Injunction may be enforced by Attachment by the Court or by a Judge.

and of Judgment.
17 & 18 Vict.
c. 125. s. 81.

149. It shall be lawful for the Plaintiff at any Time after the Commencement of the Action, and whether before or after Judgment, to apply ex parte to the Court or a Judge for a Writ of Injunction to restrain the Defendant in such Action from the Repetition or Continuance of the wrongful Act or Breach of Contract complained of, or the Committal of any Breach of Contract or Injury of a like Kind arising out of the same Contract, or relating to the same Property or Right; and such Writ may be granted or denied by the Court or Judge upon such Terms as to the Duration of the Writ, keeping an Account, giving Security, or otherwise, as to such Court or Judge shall seem reasonable and just; and in case of Disobedience such Writ may be enforced by Attachment by the Court or by a Judge: Provided always, that any Order for a Writ of Injunction made by a Judge, or any Writ issued by virtue thereof, may be discharged or varied or set aside by the Court, on Application made thereto by any Party dissatisfied with such Order.

Writ of Injunction may be applied for at any Stage of the Cause.
17 & 18 Vict.
c. 125. s. 82.

150. In all Cases in which a Writ of Mandamus or of Injunction is issued under the Provisions of this Act, such Writ shall, unless otherwise ordered by the Court or Judge, in addition to the Matter directed to be inserted therein, command the Defendant to pay to the Plaintiff the Costs of preparing, issuing, and serving such Writ; and Payment of such Costs may be enforced in the same Manner as Costs payable under a Rule of Court are now by Law enforceable.

Costs of Writs of Mandamus and Injunction may be included in Writs.
23 & 24 Vict.
c. 126. s. 32.

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

Notice of Trial, Inquiry, and Countermand.

151. 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.
15 & 16 Vict.
c. 76. s. 97.
Notice of Countermand.
15 & 16 Vict.
c. 70. s. 98.

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

[48.]

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153. A

Costs of the
Day.
15 & 16 Vict.
c. 76. s. 99.

153. 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.

Proceeding
where Plain-
tiff neglects
to bring on
the Cause to
be tried.
15 & 16 Vict.
c. 76. s. 101.

154. Where any Issue is or shall be joined in any Cause, and the Plaintiff has neglected or shall neglect to bring such 5 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 10 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 15 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 mean-time have given Notice of Trial or not, the Defendant may give *Twenty Days* Notice to the Plaintiff to bring the Issue on to be 20 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 25 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. 30

*Nisi Prius
Record.*

Nisi Prius
Record not
to be sealed
or passed.
15 & 16 Vict.
c. 76. s. 102.

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

155. 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 and remain until 35 disposed of.

*Juries and
Jury Process.*

Courts or
a Judge to
issue Pre-
cept to
summon
Jurors.

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

156. It shall be lawful for the several Courts, or any Judge thereof, save where it is by any other Act otherwise provided, at any Time to issue a Precept or Precepts to summon Jurors for 40 disposing of the Business pending in such Courts and in the consolidated Nisi Prius Court, and to direct the Time and Place for which such Jurors shall be summoned, and all such other Matters as to the Court or Judge shall seem requisite.

157. A

157. A Panel of the Jury or Speccial Jury, as the Case may be, by whom the Cause is to be tried shall be annexed to the Nisi Prius Record.

Panel of Jury to be annexed to Nisi Prius Record.

158. The Plaintiff in any Action except Replevin, and the Defendant in Replevin, shall be entitled to have the Cause tried by a Special Jury, upon giving Notice in Writing to the Defendant, or Plaintiff, as the Case may be, at such Time as would be necessary for a Notice of Trial, of his Intention that the Cause shall be so tried; and the Plaintiff in an Action of Replevin, and the Defendant in other Actions, shall be so entitled, on giving the like Notice within the Time limited for obtaining a Rule for a Special Jury by a General Order to be made as herein-after provided: 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.

Mode of obtaining a Special Jury. 15 & 16 Viet. c. 76. s. 109.

159. Where the Defendant in any Case, or the Plaintiff in Replevin, gives Notice of his Intention to try the Cause by a Special Jury, 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.

Remedy for Delay by Notice of Trial by Special Jury. 15 & 16 Viet. c. 76. s. 111.

160. Where Notice has been given to try by Special Jury, either Party may, *Eight Days* before the First Day of the Sittings 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 Judge.

Notice to Sheriff of Trial by Special Jury. 15 & 16 Viet. c. 76. s. 112.

161. 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.

If Special Jury not summoned, Cause to be tried by a Common Jury. 15 & 16 Viet. c. 76. s. 113.

162. In all Actions in which any Order shall be made for the Purpose of changing the Venue it shall be lawful for the Court or a Judge to provide for a View out of the County in which the Action is to be tried; and for that Purpose to make such Orders, directed to the Sheriffs of the different Counties, as such Court or Judge shall think right.

Court or Judge may provide for View out of the County, or County of City, in which Action is to be tried.

163. Either Party shall be at liberty to apply to the Court or a Judge for a Rule or Order for the Inspection by the Jury, or by himself

Inspection by Jury of Parties or Witnesses.

17 & 18 Vict. himself or by his Witnesses, of any Real or Personal Property the
c. 125. s. 58. Inspection of which may be material to the proper Determination of
the Question in dispute; and it shall be lawful for the Court or a
Judge, if they or he think fit, to make such Rule or Order, upon
such Terms as to Costs and otherwise as such Court or Judge may 5
direct.

Rule or
Order for
summoning
Jury.

17 & 18 Vict.
c. 125. s. 59.

164. The several Courts, or any Judge thereof, may make all
such Rules or Orders upon the Sheriff or other Person as may be
necessary to procure the Attendance of a Special or Common Jury
for the Trial of any Cause or Matter depending in such Courts, at 10
such Time and Place and in such Manner as they or he may
think fit.

Defendant's
Right to try,
upon De-
fault of the
Plaintiff,
preserved.

15 & 16 Vict.
c. 76. s. 116.

165. Nothing herein contained shall affect the Right of a Defen-
dant to take down a Cause for Trial, after Default by the Plaintiff
to proceed to Trial, according to the Course and Practice of the 15
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.

Two Judges
may sit at
the same
Time for
Trial of
Causes
pending in
the same
Court.

17 & 18 Vict.
c. 125. s. 2.

166. It shall be lawful for any One of the Judges of any of the 20
Superior Courts at Dublin, at the Request of the Lord Chief
Justice or Lord Chief Baron, to try the Causes entered for Trial
at Nisi Prius in Dublin in any of the Courts, on the same Days on
which the said Lord Chief Justice or Lord Chief Baron, or any
other Judge of the same Court, shall be sitting to try Causes at 25
Dublin, so that the Trial of Two Causes may be proceeded with
at the same Time; and all Jurors, Witnesses, and other Persons,
who may have been summoned or required to attend at or for the
Trial of any Cause before the said Lord Chief Justice or Lord Chief
Baron, as the Case may be, shall give their Attendance at and for 30
the Trial thereof before such other Judge as may be sitting to try
the same by virtue of this Act; and it shall be lawful for the
Registrars and other Officers of the Lord Chief Justice or Lord
Chief Baron, as the Case may be, to appoint from Time to Time
fit and proper Persons, to be approved by the said Lord Chief 35
Justice or Lord Chief Baron, to attend for them and on their
Behalf respectively before such Judge; and the Trial of every
Cause which shall be so had by virtue of this Act shall, if
necessary, be entered of Record as having been had before the
Judge by whom such Cause in fact was tried. 40

Power to the
Court or
Judge in
certain

167. In any Action when the Plaintiff's Claim is for a Debt or
liquidated Demand in Money not exceeding Twenty Pounds, or
when such Claim, though it originally exceeded Twenty Pounds,
is

is reduced by Payment into Court, Payment, an admitted Set-off, or otherwise, to a Sum not exceeding Twenty Pounds, it shall be lawful for the Court or a Judge, on the Application of either Party, after Issue joined, in their or his Discretion, to order that the Cause
 5 be tried before any Chairman of Quarter Sessions of any County, or the Recorder of any Borough, as the Court or Judge shall direct, and thereupon the Plaintiff shall lodge with the Clerk of the Peace of such County, or the proper Officer of such Borough Court, such Order, and the Issue; and the Judge before whom the same shall
 10 be directed to be tried shall appoint a Day for the hearing of the Cause, Notice whereof shall be sent, through the Post Office or otherwise, to both Parties or their Attorneys; and after such Hearing the Clerk of the Peace or proper Officer shall certify the Result to the Master's Office of such Superior Court, and Judgment in
 15 accordance with such Certificate may be signed in such Superior Court.

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

168. If it be made appear, at any Time after the issuing of the Writ, to the Satisfaction of the Court or a Judge, upon the Application of either Party, that the Matter in dispute consists wholly or
 20 in part of Matters of mere Account which cannot conveniently be tried in the ordinary Way, it shall be lawful for such Court or Judge, upon such Application, if they or he think fit, to decide such Matter in a summary Manner, or to order that such Matter, either
 25 wholly or in part, be referred to an Arbitrator appointed by the Parties, or to an Officer of the Court, upon such Terms as to Costs and otherwise as such Court or Judge shall think reasonable; and the Decision or Order of such Court or Judge, or the Award or Certificate of such Referee, shall be enforceable by the same Process as the
 30 Finding of a Jury upon the Matter referred.

169. If it shall appear to the Court or a Judge that the Allowance or Disallowance of any particular Item or Items in such Account depends upon a Question of Law fit to be decided by the Court, or upon a Question of Fact to be decided by a Jury, or by a
 35 Judge, upon the Consent of both Parties as herein-before provided, it shall be lawful for such Court or Judge to direct a Case to be stated, or an Issue or Issues to be tried; and the Decision of the Court upon such Case, and the Finding of the Jury or Judge upon such Issue or Issues, shall be taken and acted upon by the Arbitrator
 40 as conclusive.

170. It shall be lawful for the Arbitrator, upon any compulsory Reference under this Act, or upon any Reference by Consent of Parties, where the Submission is or may be made a Rule or Order of any of the Superior Courts of Law or Equity at Dublin, if he
 [48.] F 2 shall

Cases to direct Trial to take place before Chairman or Recorder.

19 & 20 Vict. c. 103. s. 26.

Arbitration.

Power to Court or Judge to direct Arbitration before Trial.
 17 & 18 Vict. c. 125. s. 3.
 21 & 22 Vict. c. 74. s. 5.

Special Case may be stated, and Question of Fact tried.
 17 & 18 Vict. c. 125. s. 4.

Arbitrator may state special Case.
 17 & 18 Vict. c. 125. s. 5.

shall think fit, and if it is not provided to the contrary, to state his Award, as to the whole or any Part thereof, in the Form of a special Case for the Opinion of the Court; and when an Action is referred Judgment, if so ordered, may be entered according to the Opinion of the Court.

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Power to
Judge to
direct Ar-
bitration at
Time of
Trial when
Issues of
Fact left to
his Decision.
17 & 18 Vict.
c. 125. s. 6.

171. If upon the Trial of any Issue of Fact by a Judge under this Act it shall appear to the Judge that the Questions arising thereon involve Matter of Account which cannot conveniently be tried before him, it shall be lawful for him, at his Discretion, to order that such Matter of Account be referred to an Arbitrator appointed by the Parties, or to an Officer of the Court, upon such Terms as to Costs and otherwise as such Judge shall think reasonable; and the Award or Certificate of such Referee shall have the same Effect as herein-before provided as to the Award or Certificate of a Referee before Trial; and it shall be competent for the Judge to proceed to try and dispose of any other Matters in question, not referred, in like Manner as if no Reference had been made.

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Proceedings
before and
Power of
such Arbi-
trator.
17 & 18 Vict.
c. 125. s. 7.

172. The Proceedings upon any such Arbitration as aforesaid shall, except otherwise directed hereby, or by the Submission or Document authorizing the Reference, be conducted in like Manner, and subject to the same Rules and Enactments as to the Power of the Arbitrator and of the Court, the Attendance of Witnesses, the Production of Documents enforcing or setting aside the Award, and otherwise, as upon a Reference made by Consent under a Rule of Court or Judge's Order.

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Power to
send back to
Arbitrator.
17 & 18 Vict.
c. 125. s. 8.

173. In any Case where Reference shall be made to Arbitration as aforesaid the Court or a Judge shall have Power at any Time, and from Time to Time, to remit the Matters referred, or any or either of them, to the Re-consideration and Re-determination of the said Arbitrator, upon such Terms as to Costs and otherwise as to the said Court or Judge may seem proper.

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Application
to set aside
the Award.
17 & 18 Vict.
c. 125. s. 9.

174. All Applications to set aside any Award made on a compulsory Reference under this Act shall and may be made within the first Seven Days of the Term next following the Publication of the Award to the Parties, whether made in Vacation or Term; and if no such Application is made, or if no Rule is granted thereon, or if any Rule granted thereon is afterwards discharged, such Award shall be final between the Parties.

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Enforcing
of Awards
within
Period for
setting them
aside.
17 & 18 Vict.
c. 125. s. 10.

175. Any Award made on a compulsory Reference under this Act may, by Authority of the Court or a Judge, on such Terms as to them or him may seem reasonable, be enforced at any Time after Seven Days from the Time of Publication, notwithstanding that the Time for moving to set it aside has not elapsed.

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180. Whenever

176. Whenever the Parties to any Deed or Instrument in Writing to be hereafter made or executed, or any of them, shall agree that any then existing or future Differences between them or any of them shall be referred to Arbitration, and any One or more
 5 of the Parties so agreeing, or any Person or Persons claiming through or under him or them, shall nevertheless commence any Action at Law or Suit in Equity against the other Party or Parties, or any of them, or against any Person or Persons claiming through or under him or them in respect of the Matters so agreed to be referred,
 10 or any of them, it shall be lawful for the Court in which the Action or Suit is brought, or a Judge thereof, on Application by the Defendant or Defendants, or any of them, after Appearance and before Plea or Answer, upon being satisfied that no sufficient Reason exists why such Matters cannot be or ought not to be
 15 referred to Arbitration according to such Agreement as aforesaid, and that the Defendant was at the Time of the bringing of such Action or Suit, and still is, ready and willing to join and concur in all Acts necessary and proper for causing such Matters so to be decided by Arbitration, to make a Rule or Order staying all Pro-
 20 ceedings in such Action or Suit, on such Terms as to Costs and otherwise as to such Court or Judge may seem fit: Provided always, that any such Rule or Order may at any Time afterwards be discharged or varied as Justice may require.

If Action commenced by One Party after all have agreed to Arbitration, Court or Judge may stay Proceedings.
 17 & 18 Vict. c. 125. s. 11.

177. If in any Case of Arbitration the Document authorizing
 25 the Reference provide that the Reference shall be to a single Arbitrator, and all the Parties do not after Differences have arisen concur in the Appointment of an Arbitrator, or if any appointed Arbitrator refuse to act, or become incapable of acting, or die, and the Terms of such Document do not show that it was intended that
 30 such Vacancy should not be supplied, and the Parties do not concur in appointing a new one, or if where the Parties or Two Arbitrators are at liberty to appoint an Umpire or Third Arbitrator such Parties or Arbitrators do not appoint an Umpire or Third Arbitrator, or if any appointed Umpire or Third Arbitrator refuse
 35 to act, or become incapable of acting, or die, and the Terms of the Document authorizing the Reference do not show that it was intended that such a Vacancy should not be supplied, and the Parties or Arbitrators respectively do not appoint a new one, then in every such Instance any Party may serve the remaining Parties or the
 40 Arbitrators, as the Case may be, with a written Notice to appoint an Arbitrator, Umpire, or Third Arbitrator respectively; and if within Seven clear Days after such Notice shall have been served no Arbitrator, Umpire, or Third Arbitrator be appointed, it shall be lawful for the Court, or any Judge of any of the Superior Courts of

On Failure of Parties or Arbitrators, Court or Judge may appoint single Arbitrator or Umpire.
 17 & 18 Vict. c. 125. s. 12.

Law or Equity at Dublin, upon Application of the Party having served such Notice as aforesaid, to appoint an Arbitrator, Umpire, or Third Arbitrator, as the Case may be, and such Arbitrator, Umpire, and Third Arbitrator respectively shall have the like Power to act in the Reference and make an Award as if he had been 5 appointed by Consent of all Parties.

When Reference is to Two Arbitrators, and one Party fail to appoint, other Party may appoint Arbitrator to act alone.
17 & 18 Vict. c. 125. s. 13.

178. When the Reference is or is intended to be to Two Arbitrators, One appointed by each Party, it shall be lawful for either Party, in the Case of the Death, Refusal to act, or Incapacity of any Arbitrator appointed by him, to substitute a new Arbitrator, unless 10 the Document authorizing the Reference show that it was intended that the Vacancy should not be supplied; and if on such a Reference One Party fail to appoint an Arbitrator, either originally or by way of Substitution as aforesaid, for Seven clear Days after the other Party shall have appointed an Arbitrator, and shall have 15 served the Party so failing to appoint with Notice in Writing to make the Appointment, the Party who has appointed an Arbitrator may appoint such Arbitrator to act as sole Arbitrator in the Reference, and an Award made by him shall be binding on both Parties as if the Appointment had been by Consent: Provided, 20 however, that the Court or Judge may revoke such Appointment on such Terms as shall seem just.

Two Arbitrators may appoint Umpire.
17 & 18 Vict. c. 125. s. 14.

179. When the Reference is to Two Arbitrators, and the Terms of the Document authorizing it do not show that it was intended that there should not be an Umpire, or provide otherwise for the 25 Appointment of an Umpire, the Two Arbitrators may appoint an Umpire at any Time within the Period during which they have Power to make an Award, unless they be called upon by Notice as aforesaid to make the Appointment sooner.

Award to be made in Three Months unless Parties or Court enlarge Time.
17 & 18 Vict. c. 125. s. 15.

180. The Arbitrator acting under any such Document or compulsory Order of Reference as aforesaid, or under any Order referring the Award back, shall make his Award under his Hand, and (unless such Document or Order respectively shall contain a different Limit of Time) within *Three Months* after he shall have been 35 appointed, and shall have entered on the Reference, or shall have been called upon to act by a Notice in Writing from any Party, but the Parties may by Consent in Writing enlarge the Term for making the Award; and it shall be lawful for the Superior Court of which such Submission, Document, or Order is or may be made a Rule or Order, or for any Judge thereof, for good Cause to be stated in the 40 Rule or Order for Enlargement, from Time to Time to enlarge the Term for making the Award; and if no Period be stated for the Enlargement

Enlargement in such Consent or Order for Enlargement, it shall be deemed to be an Enlargement for *One Month*; and in any Case where an Umpire shall have been appointed it shall be lawful for him to enter on the Reference in lieu of the Arbitrators, if the
 5 latter shall have allowed their Time or their extended Time to expire without making an Award, or shall have delivered to any Party or to the Umpire a Notice in Writing stating that they cannot agree.

181. When any Award made on any such Submission, Document, or Order of Reference as aforesaid directs that Possession of
 10 any Lands or Tenements capable of being the Subject of an Action of Ejectment shall be delivered to any Party, either forthwith or at any future Time, or that any such Party is entitled to the Possession
 of any such Lands or Tenements, it shall be lawful for the Court of
 15 which the Document authorizing the Reference is or is made a Rule or Order, or any Judge thereof, to order any Party to the Reference who shall be in possession of any such Lands or Tenements, or any Person in possession of the same claiming under or put in possession by him since the making of the Document authorizing the
 20 Reference, to deliver Possession of the same to the Party entitled thereto pursuant to the Award; and such Rule or Order to deliver Possession shall have the Effect of a Judgment in Ejectment against every such Party or Person named in it, and Execution may issue, and Possession shall be delivered by the Sheriff as on a Judgment
 25 in Ejectment.

Rule to deliver Possession of Land pursuant to Award to be enforced as a Judgment in Ejectment.
 17 & 18 Vict.
 c. 125. s. 16.

182. Every Agreement or Submission to Arbitration by Consent, whether by Deed or Instrument in Writing not under Seal, may be made a Rule of any One of the Superior Courts of Law or Equity at Dublin, on the Application of any Party thereto, unless such
 30 Agreement or Submission contain Words purporting that the Parties intend that it should not be made a Rule of Court; and if in any such Agreement or Submission it is provided that the same shall or may be made a Rule of One in particular of such Superior Courts, it may be made a Rule of that Court only; and if, when
 35 there is no such Provision, a Case be stated in the Award for the Opinion of One of the Superior Courts, and such Court be specified in the Award, and the Document authorizing the Reference have not, before the Publication of the Award to the Parties, been made a Rule of Court, such Document may be made a Rule only of the
 40 Court specified in the Award; and when in any Case the Document authorizing the Reference is or has been made a Rule or Order of any One of such Superior Courts, no other of such Courts shall have any Jurisdiction to entertain any Motion respecting the Arbitration or Award.

Agreement or Submission in Writing may be made Rule of Court, unless a contrary Intention appear.
 17 & 18 Vict.
 c. 125. s. 17.

Admission of Documents; Proceedings at Trial and Evidence.

Admission of Documents.

15 & 16 Vict. c. 76. s. 117.

And with respect to the Admission of Documents, Proceedings at the Trial, and Evidence, be it enacted as follows :

183. 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 Taxing Officer, a Saving of Expense. 5 10

Proof of Admissions. 15 & 16 Vict. c. 76. s. 118.

184. 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. 15

Proof of Notice to produce. 15 & 16 Vict. c. 76. s. 119.

185. 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. 20

Speeches to the Jury. 17 & 18 Vict. c. 125. s. 18.

186. Upon the Trial of any Cause the Addresses to the Jury shall be regulated as follows : The Party who begins, or his Counsel, shall be allowed, in the event of his Opponent not announcing at the Close of the Case of the Party who begins his Intention to adduce Evidence, to address the Jury a Second Time at the Close of such Case, for the Purpose of summing up the Evidence; and the Party on the other Side, or his Counsel, shall be allowed to open the Case, and also to sum up the Evidence (if any); and the Right to reply shall be the same as at present. 25 30

Power to adjourn Trial.

17 & 18 Vict. c. 125. s. 19.

187. It shall be lawful for the Court or Judge, at the Trial of any Cause where they or he may deem it right for the Purposes of Justice, to order an Adjournment for such Time, and subject to such Terms and Conditions as to Costs and otherwise, as they or he may think fit. 35

Affirmation instead of Oath in certain Cases. 17 & 18 Vict. c. 125. s. 20.

188. If any Person called as a Witness, or required or desiring to make an Affidavit or Deposition, shall refuse or be unwilling from alleged conscientious Motives to be sworn, it shall be lawful for the Court or Judge, or other presiding Officer or Person qualified to take Affidavits or Depositions, upon being satisfied of the Sincerity of such Objection, to permit such Person, instead of being sworn, 40

sworn, to make his or her solemn Affirmation or Declaration in the Words following; videlicet,

- ‘ I *A.B.* do solemnly, sincerely, and truly affirm and declare, that
 ‘ the taking of any Oath is, according to my Religious Belief,
 5 ‘ unlawful; and I do also solemnly, sincerely, and truly affirm and
 ‘ declare, &c.’

Which solemn Affirmation and Declaration shall be of the same Force and Effect as if such Person had taken an Oath in the usual Form.

- 10 **189.** If any Person making such solemn Affirmation or Declaration shall wilfully, falsely, and corruptly affirm or declare any Matter or Thing which, if the same had been sworn in the usual Form, would have amounted to wilful and corrupt Perjury, every such Person so offending shall incur the same Penalties as by the
 15 Laws and Statutes of this Kingdom are or may be enacted or provided against Persons convicted of wilful and corrupt Perjury.

Persons making a false Affirmation subject to the same Punishment as for Perjury.
 17 & 18 Vict.
 c. 125. s. 21.

- 190.** A Party producing a Witness shall not be allowed to impeach his Credit by general Evidence of bad Character, but he may, in case the Witness shall in the Opinion of the Judge prove
 20 adverse, contradict him by other Evidence, or, by Leave of the Judge, prove that he has made at other Times a Statement inconsistent with his present Testimony; but before such last-mentioned Proof can be given, the Circumstances of the supposed Statement, sufficient to designate the particular Occasion, must be mentioned to
 25 the Witness, and he must be asked whether or not he has made such Statement.

How far a Party may discredit his own Witness.
 17 & 18 Vict.
 c. 125. s. 22.

- 11.** If a Witness, upon Cross-examination as to a former Statement made by him relative to the Subject Matter of the Cause, and inconsistent with his present Testimony, does not distinctly admit
 30 that he has made such Statement, Proof may be given that he did in fact; but before such Proof can be given the Circumstances of the supposed Statement, sufficient to designate the particular Occasion, must be mentioned to the Witness, and he must be asked whether or not he has made such Statement.

Proof of contradictory Statements of adverse Witness.
 17 & 18 Vict.
 c. 125. s. 23.

- 192.** A Witness may be cross-examined as to previous Statements made by him in Writing, or reduced into Writing, relative to the Subject Matter of the Cause without such Writing being shown to him; but if it is intended to contradict such Witness by the Writing, his Attention must, before such contradictory Proof can be
 40 given, be called to those Parts of the Writing which are to be used for the Purpose of so contradicting him: Provided always, that it

Cross-examination as to previous Statements in Writing.
 17 & 18 Vict.
 c. 125. s. 24.

[48.]

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shall

shall be competent for the Judge at any Time during the Trial to require the Production of the Writing for his Inspection, and he may thereupon make such Use of it for the Purposes of the Trial as he shall think fit.

Proof of
previous
Conviction
of a Witness
may be
given.
17 & 18 Vict.
c. 125. s. 25.

193. A Witness in any Cause may be questioned as to whether he has been convicted of any Felony or Misdemeanor, and upon being so questioned, if he either denies the Fact or refuses to answer, it shall be lawful for the opposite Party to prove such Conviction; and a Certificate containing the Substance and Effect only (omitting the formal Part) of the Indictment and Conviction for such Offence, purporting to be signed by the Clerk of the Court or other Officer having the Custody of the Records of the Court where the Offender was convicted, or by the Deputy of such Clerk or Officer (for which Certificate a Fee of Five Shillings and no more shall be demanded or taken), shall, upon Proof of the Identity of the Person, be sufficient Evidence of the said Conviction, without Proof of the Signature or official Character of the Person appearing to have signed the same.

Attesting
Witness
need not be
called except
in certain
Cases.
17 & 18 Vict.
c. 125. s. 26.

194. It shall not be necessary to prove by the attesting Witness any Instrument to the Validity of which Attestation is not requisite; and such Instrument may be proved by Admission or otherwise, as if there had been no attesting Witness thereto.

Comparison
of disputed
Writing.
17 & 18 Vict.
c. 125. s. 27.

195. Comparison of a disputed Writing with any Writing proved to the Satisfaction of the Judge to be genuine shall be permitted to be made by Witnesses, and such Writings and the Evidence of Witnesses respecting the same may be submitted to the Court and Jury as Evidence of the Genuineness or otherwise of the Writing in dispute.

Provision
for stamping
Documents
at the Trial.
17 & 18 Vict.
c. 125. s. 28.

196. Upon the Production of any Document as Evidence at the Trial of any Cause it shall be the Duty of the Officer of the Court whose Duty it is to mark such Document, to call the Attention of the Judge to any Omission or Insufficiency of the Stamp; and the Document, if unstamped or insufficiently stamped, shall not be received in Evidence until the whole or (as the Case may be) the Deficiency of the Stamp Duty; and the Penalty required by Statute, together with the additional Penalty of *One Pound*, shall have been paid.

Officer of
the Court to
receive the

197. Such Officer of the Court shall upon Payment to him of the whole or (as the Case may be) of the Deficiency of the Stamp Duty payable upon or in respect of such Document, and of the
Penalty

- Penalty required by Statute, and of the additional Penalty of *One Pound*, give a Receipt for the Amount of the Duty or Deficiency which the Judge shall determine to be payable, and also of the Penalty, and thereupon such Document shall be admissible in
- 5 Evidence, saving all just Exceptions on other Grounds; and an Entry of the Fact of such Payment, and of the Amount thereof, shall be made in a Book kept by such Officer; and such Officer shall at the End of each Sittings or Assizes (as the Case may be) duly make a Return to the Commissioners of Inland Revenue of the Moneys,
- 10 if any, which he has so received by way of Duty or Penalty, distinguishing between such Moneys, and stating the Name of the Cause and of the Parties from whom he received such Moneys, and the Date, if any, and Description of the Document for the Purpose of identifying the same, and he shall pay over the said Moneys to the
- 15 Receiver General of the Inland Revenue, or to such Person as the said Commissioners shall appoint or authorize to receive the same; and in case such Officer shall neglect or refuse to furnish such Account, or to pay over any of the Moneys so received by him as aforesaid, he shall be liable to be proceeded against in the Manner
- 20 directed by the Eighth Section of an Act passed in the Session of Parliament holden in the Thirteenth and Fourteenth Years of the Reign of Her present Majesty, intituled "An Act to repeal certain
- " Stamp Duties, and to grant others in lieu thereof; and to amend
- " the Laws relating to the Stamp Duties;" and the said Commissioners shall, upon Request and Production of the Receipt herein-
- 25 before mentioned, cause such Documents to be stamped with the proper Stamp or Stamps in respect of the Sums so paid as aforesaid.

Duty and
Penalty.
17 & 18 Vict.
c. 125. s. 29.

198. If, upon any Trial or other Proceeding pending in any Court, it shall appear to the Court or Judge or other presiding
- 30 Officer that any Document liable to Stamp Duty has been lost or destroyed, or cannot be produced, and that such Document was or is either unstamped or insufficiently stamped, and that but for such Defect secondary Evidence thereof would be admissible, it shall be lawful for such Court, Judge, or other presiding Officer, at their or
- 35 his Discretion, upon Payment to the Officer of the Court whose Duty it would be to mark the said Document if forthcoming of the whole, or, as the Case may be, of the Deficiency of the Stamp Duty which the Court or Judge or other presiding Officer shall determine to be payable upon or in respect of such Document, and
- 40 of such Penalties as mentioned in the last preceding Section, to receive secondary Evidence of the Contents of such Document, saving all just Exceptions on other Grounds; and the last-mentioned Officer shall, upon Demand, within a reasonable Time after such Trial, deliver to the Party by whom or on whose Behalf such Stamp
- [48.]

Secondary
Evidence
may be
given of
lost Docu-
ments where
Original
unstamped.

Duty and Penalties have been paid, a Certificate under his Hand containing the Title of the Cause or other Proceeding in which such Payment has been made, the Nature of the Stamp Duty, and the Amount which the Judge or other presiding Officer shall have determined to be payable as aforesaid, the Moneys received in respect of Stamp Duty and Penalties, distinguishing between such Moneys, and such short Description and Summary of the Contents of the Document as may be sufficient to identify the same; and such Certificate shall thenceforth have the same Force and Effect in all Courts of Justice as if such original Document were duly impressed with the Stamp expressed in such Certificate; and the said Officer shall make such Returns and Payments in respect of Moneys so to be received by him as are provided by the last preceding Section, and in case of Neglect or Refusal so to do he shall be liable to be proceeded against in the Manner provided in the last preceding Section.

The last Two preceding Sections not to apply where Document cannot be stamped after Execution.
17 & 18 Vict. c. 135. s. 29.

199. The Enactments contained in the last Two preceding Sections shall not extend to the Case of any Document which cannot now be stamped after the Execution thereof on the Payment of the Duty and a Penalty.

20

No Document under this Act to require a Stamp.

17 & 18 Vict. c. 125. s. 30.

No new Trial for ruling as to Stamp.

17 & 18 Vict. c. 125. s. 31.

200. No Document made or required under the Provisions of this Act shall, save as herein-after provided, be liable to any Stamp Duty.

201. No new Trial shall be granted by reason of the ruling of any Judge that the Stamp upon or in respect of any Document is sufficient, or that the Document does not require a Stamp.

25

With respect to Bills of Exception, be it enacted as follows :

Bills of Exceptions.

Form of Bill of Exceptions.
16 & 17 Vict. c. 113. s. 121.

202. Every Bill of Exceptions may be according to the Form No. 7. in the Schedule (A.) to this Act annexed; and it shall be lawful, by Consent of the Parties or Order of the Judge, to incorporate any Deed or Document therewith by an appropriate Reference to such Deed or Document, without setting forth the same.

30

Judgment.

With respect to the Form and Manner of entering Judgment, be it enacted as follows :

35

Judgment not to be arrested on technical Grounds.
16 & 17 Vict. c. 113. s. 122.

203. No Judgment shall be arrested or stayed or reversed by reason of any Imperfection, Omission, Defect in, or Lack of Form in any Declaration or other Pleading or Proceeding, nor by reason that the Venue is misplaced, or the Trial had in a wrong County or Place, nor by reason of any Misnomer of any of the Jurors who tried

tried the Case in Name, Surname, or Addition, so as it appeared to the Court to be the same Person that was meant to be returned, nor by reason that the Plaintiff or Defendant, being under the Age of Twenty-one Years, did sue or defend by Attorney.

- 5 **204.** 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 on producing and lodging with the proper Officer a Certificate of the Name, Description, and Address of the Parties, an Entry shall be made in the Judgment Book, signed by
 10 the Master, shortly stating the Nature of the Judgment, and thereupon the Costs shall be taxed and Execution issued according to the Practice heretofore used; and such Entry in the said Judgment Book shall contain a Reference to the Number of the Roll on which such Judgment shall be enrolled, and shall contain a Column in
 15 which any Satisfaction of the said Judgment may be afterwards entered, if necessary: 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.

Entry of Judgment on the Roll unnecessary for Execution.
 16 & 17 Vict.
 c. 113. s. 123.

- 20 **205.** In all Actions where the Plaintiff recovers a Sum of Money the Amount to which he is entitled may be awarded to him generally without any Distinction being therein made as to whether such Sum is recovered by way of Debt or Damages.

Judgment for Money Demands without Distinction between Debt and Damages.
 15 & 16 Vict.
 c. 76. s. 95.

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

- 25 **206.** A Plaintiff or Defendant having obtained a Verdict or Nonsuit in a Cause tried out of Term shall be entitled, without any Rule on the Postea or Inquisition, to mark Judgment, and to issue Execution in Fourteen Days, and in a Cause tried in Term in Four Days, unless the Judge who tries the Cause, or some other Judge,
 30 or the Court, shall order Execution to issue at an earlier or later Period, with or without Terms; and it shall be lawful for the said Judge before whom the Trial has been had, or any other Judge, or the Court, to make such Order accordingly: Provided that, notwithstanding any Judgment signed or recorded or Execution issued
 35 by virtue of this Act, it shall be lawful for the Court in which such Action shall have been brought, to order such Judgment to be vacated, and Execution to be stayed or set aside, and to enter an Arrest of Judgment, or grant a new Trial or new Writ of Inquiry, as Justice may appear to require, and thereupon the Party affected by
 40 such Execution shall be restored to all he may have lost thereby in such Manner as upon the Reversal of a Judgment by a Proceeding in Error, or otherwise as the Court may think fit to direct.

Execution.

Execution after Trial.
 16 & 17 Vict.
 c. 113. s. 127.

Ground
Writs not
necessary.
15 & 16 Vict.
s. 76. s. 121.

207. 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, without reference to the County in which the Venue is laid, and without any Suggestion 5 of the issuing of a prior Writ into such County.

Expenses of
Execution.
15 & 16 Vict.
c. 76. s. 123.

208. 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.
15 & 16 Vict.
c. 76. s. 124.

209. A Writ of Execution issued after the Commencement of this 10 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 15 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 Master of the Court out of which such Writ issued), or by such Party giving a written Notice of Renewal to the Sheriff, signed by 20 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: Provided, however, that no Writ of Habere shall be renewed without the special Leave of the Court or Judge. 25

Production
of renewed
Writ Evi-
dence of
Renewal.
15 & 16 Vict.
c. 76. s. 125.

210. 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.
15 & 16 Vict.
c. 76. s. 126.

211. A written Order under the Hand of the Attorney in the 30 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, 35 Gaoler, or Person in whose Custody the opposite Party may be, but such Discharge shall not be a Satisfaction of the Debt, unless made by the Authority of the Creditor; and nothing herein contained shall justify any Attorney in giving such Order for Discharge without the Consent of his Client.

212. It

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212. 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 for charging in execution a Person already in Prison of the Court.

15 & 16 Vict. c. 76. s. 127.

213. By virtue of any Writ of Fieri facias to be sued out of any Superior or Inferior Court, or any Precept in pursuance thereof, the Sheriff or other Officer having the Execution thereof may and shall seize and take any Money or Bank Notes (whether of the Governor and Company of the Bank of Ireland or of any other Bank or Bankers), and any Cheques, Bills of Exchange, Promissory Notes, Bonds, Specialties, or other Securities for Money, belonging to the Person against whose Effects such Writ of Fieri facias shall be sued out, and may and shall pay or deliver to the Party suing out such Execution any Money or Bank Notes which shall be so seized, or a sufficient Part thereof, and may and shall hold any such Cheques, Bills of Exchange, Promissory Notes, Bonds, Specialties, or other Securities for Money as a Security or Securities for the Amount by such Writ of Fieri facias directed to be levied, or so much thereof as shall not have been otherwise levied and raised, and may sue in the Name of such Sheriff or other Officer for the Recovery of the Sum or Sums secured thereby, if and when the Time of Payment thereof shall have arrived; and the Payment to such Sheriff or other Officer by the Party liable, with or without Suit, or the Recovery and levying Execution against the Party so liable, shall discharge him to the Extent of such Payment, or of such Recovery and Levy in Execution, as the Case may be, from his Liability on any such Cheque, Bill of Exchange, Promissory Note, Bond, Specialty, or other Security; and such Sheriff or other Officer may and shall pay over to the Party suing out such Writ the Money so to be recovered, or such Part thereof as shall be sufficient to discharge the Amount by such Writ directed to be levied; and if, after Satisfaction of the Amount so to be levied, together with Sheriff's Poundage and Expenses, any Surplus shall remain in the Hands of such Sheriff or other Officer, the same shall be paid to the Party against whom such Writ shall be so issued: Provided that no such Sheriff or other Officer shall be bound to sue any Party liable upon any such Cheque, Bill of Exchange, Promissory Note, Bond, Specialty, or other Security, unless the Party suing out such Execution shall enter into a Bond, with Two sufficient Sureties, for indemnifying him from all Costs and Expenses to be incurred in the Prosecution of such Action, or to which he may become liable in consequence

Sheriff empowered to seize Money, Bank Notes, &c., and to pay Money or Bank Notes to Execution Creditor.

16 & 17 Vict. c. 113. s. 131.

3 & 4 Vict. c. 105. s. 20

thereof, the Amount of such Bond or the Sufficiency of such Sureties, or such Amount and such Sufficiency, to be determined by the Master of the Court in which such Action shall be brought, or, if the Court shall so order, by a Commissioner of such Court authorized to take special Bail, and the Expense of such Bond to be deducted out of any Money to be recovered in such Action. 5

Attachment
of Govern-
ment and
public Stock
and Shares.
16 & 17 Vict.
c. 113. s. 132.
3 & 4 Vict.
c. 105. s. 23.

214. If any Person against whom any Judgment shall have been entered up in any of Her Majesty's Superior Courts at Dublin shall have any Government Stock, Funds, or Annuities, or any Stock or Shares in any public Company in Ireland, whether incorporated or not, and standing in his Name in his own Right, or in the Name of any Person in trust for him, it shall be lawful for the Court or a Judge, on the Application of such Judgment Creditor, to order that such Stock, Funds, Annuities, or Shares, or such of them or such Part thereof as such Court or Judge shall think fit, shall stand charged with the Payment of the Amount for which such Judgment shall have been so recovered, and Interest thereon, and such Order shall entitle the Judgment Creditor to all such Remedies as he would have been entitled to if such Charge had been made in his Favour by the Judgment Debtor; and the Provisions last aforesaid shall extend to the Interest of any Judgment Debtor, whether in Possession, Remainder, or Reversion, and whether vested or contingent, as well in any such Stocks, Funds, Annuities, or Shares as aforesaid, as also in the Dividends, Interest, or annual Produce of any such Stocks, Funds, Securities, or Shares; provided that no Proceedings shall be taken to have the Benefit of such Charge until after the Expiration of *Six Calendar Months* from the Date of such Order. 10 15 20 25

Order in
respect of
Money in
Name of
Accountant
General.
16 & 17 Vict.
c. 113. s. 135.
3 & 4 Vict.
c. 105. s. 23.

215. If such Judgment Debtor shall have any such Estate or Interest, as mentioned in the last preceding Section, in any such Stock, Funds, Annuities, or Shares, or Money, which shall be standing in the Name of the Accountant General of the Court of Chancery, or of the Landed Estates Court, or of the Master of any of the Superior Courts of Law in Ireland, or in the Dividends, Interest, or annual Produce thereof, it shall be lawful for the Court or a Judge to make such Order as to such Stock, Funds, Annuities, Shares, or the Dividends, Interest, and annual Produce thereof, as if the same had been standing in the Name of a Trustee for such Judgment Debtor; but no such Order shall prevent the Governor and Company of the Bank of Ireland or any public Company from permitting any Transfer of such Stocks, Funds, Annuities, or Shares, or Money, or the Payment of the Dividends, Interest, or annual Produce thereof, in such Manner as the said Court of Chancery, or the 30 35 40

the Landed Estates Court, or the Court of Common Law may direct, or shall have any greater Effect than if such Debtor had charged such Stock, Funds, Annuities, or Shares, or the Interest, Dividends, or annual Produce thereof, in favour of the Judgment Creditor, with
 5 the Amount of the Sum to be mentioned in any such Order: Provided, that no Proceedings shall be taken to have the Benefit of such Charge until after the Expiration of *Six Calendar Months* from the Date of such Order; and provided also, that it shall be lawful for the said Court of Chancery, or Court of Common Law, or the said
 10 Landed Estates Court, on the Application of the Judgment Creditor, to make such Order in respect of same shall be just.

216. And in order to prevent any Person against whom Judgment shall have been obtained from transferring, receiving, or disposing of any Stock, Funds, Annuities, or Shares hereby authorized to be
 15 charged for the Benefit of a Judgment Creditor, under an Order of a Court or Judge, be it enacted, That every Order of such Court or Judge charging any Government Stock, Funds, or Annuities, or any Stock or Shares in any public Company under this Act, shall be made in the first instance *ex parte* and without any Notice to
 20 the Judgment Debtor, and shall be an Order to show Cause only; and such Order, if any Government Stock, Funds, or Annuities standing in the Name of the Judgment Debtor in his own Right, or in the Name of any Person in trust for him, is or are to be affected by such Order, shall restrain the Governor and Company of
 25 the Bank of Ireland from permitting a Transfer of such Stock in the meantime, and until such Order shall be made absolute or discharged; and if any Stock or Shares of or in any public Company standing in the Name of the Judgment Debtor in his own Right, or in the Name of any Person in trust for him, is or are to be affected
 30 by any such Order, shall in like Manner restrain such public Company from permitting a Transfer thereof; and if after Notice of such Order to the Person or Persons to be restrained thereby, or in case of Corporations, to any authorized Agent of such Corporation, and before the same Order shall be discharged or made absolute, such
 35 Corporation or Person or Persons, shall permit any such Transfer to be made, then and in such Case the Corporation or Person or Persons so permitting such Transfer shall be liable to the Judgment Creditor for the Value or Amount of the Property so charged and so transferred, or such Part thereof as may be sufficient to satisfy
 40 his Judgment; and no Disposition of the Judgment Debtor in the meantime shall be valid or effectual as against the Judgment Creditor; and further, unless the Judgment Creditor shall within a Time to be mentioned in such Order show to One of the said Courts or a Judge thereof sufficient Cause to the Contrary, the said Order shall, after

Order of Court or Judge to be made in the first instance *ex parte*, and Notice to Bank or Company to operate as a *Distringas*.
 3 & 4 Vict. c. 105. s. 24.

Proof of Notice thereof to the Judgment Debtor, his Attorney, or Agent, be made absolute: Provided that any such Court or Judge shall, upon the Application of the Judgment Debtor, or any Person interested, have full Power to discharge or vary such Order, and to award such Costs upon such Application as the said Court or Judge may think fit. 5

Execution
against
beneficed
Clergymen.
16 & 17 Vict.
c. 113. s. 136.

217. Where to a Writ of Fieri facias issued against a beneficed Clergyman the Sheriff shall have returned Nulla bona, and that the Defendant is a beneficed Clerk having no lay Fee, the Plaintiff may as of course issue a Writ of Execution De bonis ecclesiasticis directed to the Bishop of any Diocese in which the Defendant may have a Benefice, and at any Time after a Writ of Execution De bonis ecclesiasticis shall have been delivered to any Bishop, the Plaintiff may apply to the Court by Motion for an Order that the Bishop do certify what has been done under the Writ, and that the Sequestrator do account; and where, in obedience to any such Writ of Fieri facias de bonis ecclesiasticis, a Sequestration of the ecclesiastical Benefice shall be issued by any Bishop, it shall be lawful for any Court in which any Judgment shall be had against the same Defendant, and Execution issued and returned Nulla bona, to make an Order extending the said Sequestration to the Matter of the said last-mentioned Judgment, without any further Writ or Proceeding; and the said last-mentioned Creditor shall have the Benefit of such Sequestration, and with Priority as from the Date of such Order of Extension, as if it were a Sequestration issued at his own Instance. 10 15 20 25

Return of
Devastavit
not to be
made but on
Finding of
Jury.
16 & 17 Vict.
c. 113. s. 137.

218. No Sheriff or other Officer shall return a Devastavit against any Defendant being an Executor or Administrator in any Action, but upon any Inquisition taken on the Oaths of Twelve lawful Men of his County to whom Challenge may be taken; and the Plaintiff shall give the Defendant Ten Days previous Notice of the taking of such Inquisition, and of the Time and Place of taking the same; and upon the Return of such Devastavit the Plaintiff shall be entitled to immediate Execution De bonis propriis without further Rule or Judgment. 30 35

Examination
of Judgment
Debtor as to
Debts due to
him.
17 & 18 Vict.
c. 125. s. 60.

219. It shall be lawful for any Creditor who has obtained a Judgment in any of the Superior Courts to apply to the Court or a Judge for a Rule or Order that the Judgment Debtor should be orally examined as to any and what Debts are owing to him before a Master of the Court, or such other Person as the Court or Judge shall appoint, and the Court or Judge may make such Rule or Order for the Examination of such Judgment Debtor and for the 40 the

the Production of any Books or Documents, and the Examination shall be conducted in the same Manner as in the Case of an oral Examination of an opposite Party before a Master under this Act.

- 220.** It shall be lawful for the Court or a Judge, upon the ex parte Application of such Judgment Creditor, either before or after such oral Examination, and upon Affidavit by himself or his Attorney, stating that Judgment has been recovered, and that it is still unsatisfied, and to what Amount, and that any other Person is indebted to the Judgment Creditor, and is within the Jurisdiction, to order that all Debts owing or accruing from such Third Person (herein-after called the Garnishee) to the Judgment Debtor shall be attached to answer the Judgment Debt; and by the same or any subsequent Order it may be ordered that the Garnishee shall appear before the Court or Judge, to show Cause why he should not pay the Judgment Creditor the Debt due from him to the Judgment Debtor, or so much thereof as may be sufficient to satisfy the Judgment Debt; and the Court may, in relation to the Service of such Order, or any Notice thereof, exercise such or the like Powers as are contained in the Sixteenth, Seventeenth, Eighteenth, and Nineteenth Sections of this Act, in relation to the Service of Writs in personal Actions.

Court or Judge may order an Attachment of Debts.
17 & 18 Vict.
c. 125. s. 61.

- 221.** Service of an Order that Debts due or accruing to the Judgment Debtor shall be attached, or Notice thereof to the Garnishee, in such Manner as the Court or Judge shall direct, shall bind such Debts in his Hands.

Order for Attachment to bind Debts.
17 & 18 Vict.
c. 125. s. 62.

- 222.** If the Garnishee does not forthwith pay into Court the Amount due from him to the Judgment Debtor, or an Amount equal to the Judgment Debt, and does not dispute the Debt due or claimed to be due from him to the Judgment Debtor, or if he does not appear upon Summons, then the Court or Judge may order Execution to issue, and it may be sued forth accordingly, without any previous Writ or Process, to levy the Amount due from such Garnishee towards Satisfaction of the Judgment Debt.

Proceedings to levy Amount due from Garnishee to Judgment Debtor.
17 & 18 Vict.
c. 125. s. 63.

- 223.** If the Garnishee disputes his Liability, the Court or a Judge, instead of making an Order that Execution shall issue, may order that the Judgment Creditor shall be at liberty to proceed against the Garnishee by Writ, calling upon him to show Cause why there should not be Execution against him for the alleged Debt, or for the Amount due to the Judgment Debtor, if less than the Judgment Debt, and for Costs of Suit; and the Proceedings upon such Suit shall be the same as nearly as may be as upon a Writ of Revivor issued under this Act.

The Court or a Judge may allow Judgment Creditor to sue Garnishee.
17 & 18 Vict.
c. 125. s. 64.

Garnishee
discharged.
17 & 18 Vict.
c. 125. s. 65.

224. Payment made by or Execution levied upon the Garnishee under any such Proceeding as aforesaid shall be a valid Discharge to him as against the Judgment Debtor to the Amount paid or levied, although such Proceeding may be set aside or the Judgment reversed.

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Attachment
Book to be
kept by the
Masters of
each Court.
17 & 18 Vict.
c. 125. s. 66.

225. In each of the Superior Courts there shall be kept at the Master's Office a Debt Attachment Book, and in such Book Entries shall be made of the Attachment and Proceedings thereon, with Names, Dates, and Statements of the Amount recovered, and otherwise; and the Mode of keeping such Books shall be the same in all the Courts; and Copies of any Entries made therein may be taken by any Person upon Application to the Master.

10

Costs of Ap-
plication.
17 & 18 Vict.
c. 125. s. 67.

226. The Costs of any Application for an Attachment of Debt under this Act, and of any Proceedings arising from or incidental to such Application, shall be in the Discretion of the Court or a Judge.

15

The Court
or a Judge
may refuse
to interfere
in Proceed-
ings to at-
tach Debts.
23 & 24 Vict.
c. 126. s. 28.

227. In Proceedings to obtain an Attachment of Debts under the foregoing Provisions, the Court or Judge may, in their or his Discretion, refuse to interfere, or may impose such Terms and Conditions as to the Time and Mode of Payment, or otherwise, as they or he may think fit.

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Proceedings
where Third
Person has a
lien on the
Debt.
23 & 24 Vict.
c. 126. s. 29.

228. Whenever in Proceedings to obtain an Attachment of Debts under this Act, it is suggested by the Garnishee that the Debt sought to be attached belongs to some Third Person who has a Lien or Charge upon it, the Court or Judge may order such Third Person to appear before them or him, and state the Nature and Particulars of his Claim upon such Debt.

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The Court
or a Judge
may bar
Claim of
Third Person,
and make
Orders.
23 & 24 Vict.
c. 126. s. 30.

229. After hearing the Allegations of such Third Person under such Order, and of any other Person whom by the same or any subsequent Order the Court or Judge may think fit to call before them or him, or in case of such Third Person not appearing before them or him upon such Summons, the Court or Judge may order Execution to issue to levy the Amount due from such Garnishee, or the Judgment Creditor to proceed against the Garnishee, according to the Provisions of this Act, and may bar the Claim of such Third Person, or make such other Order as the Court or Judge shall think fit, upon such Terms, in all Cases, with respect to the Lien or Charge (if any) of such Third Person, and to Costs, as they or he shall think just and reasonable.

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230. Writs

230. Writs of Injunction against a Corporation may be enforced either by Attachment against the Directors or other Officers thereof, or by Writ of Sequestration against the Property and Effects of such Corporation, or of such Directors or Officers, to be issued in such Form and tested and returnable in like Manner as Writs of Execution, and to be proceeded upon and in like Manner as Writs of Sequestration issuing out of the Court of Chancery.

Mode of enforcing Writs of Injunction against Corporations.
23 & 24 Vict. c. 126. s. 33.

And with respect to the Assignment and Suggestion of Breaches on Covenants and Agreements for Payment of any penal Sum, be it enacted as follows :

Assignment of Breaches.

231. In any Action on any Bond, Covenant, or Agreement for Payment of any penal Sum for Nonperformance of any Covenant or Agreement contained in any Deed or Writing, and whether accompanied by Warrant of Attorney or not, the Plaintiff may, in the Declaration, assign One or more than One Breach of such Covenant or Agreement.

Assignment of Breaches on penal Covenant.
16 & 17 Vict. c. 113. s. 145.

232. In all such Actions as last aforesaid, the Jury or the Master shall ascertain the Damages in respect of such Breach or Breaches as shall be proved or admitted, and Judgment shall be entered for the full Amount of such Penalty, with an Award of the Payment of the Damages assessed if any ; and in case the Defendant shall pay into Court to the Credit of the Cause the Damages so assessed by the Jury or the Master, with the Costs of Suit, a Stay of Execution shall be entered on the Record of such Judgment for that Time ; and in case the Plaintiff shall be paid or satisfied the said Damages so assessed or the penal Sum aforesaid at the Election of the Defendant, with the Costs of Suit aforesaid and of Execution, the Defendant shall be discharged from such Execution entirely or for that Time, and for the Amount so paid, according as the Case may be, and such Discharge may be entered on the Record of the said Judgment ; but in case the said Damages do not amount to the said penal Sum, such Judgment shall still remain in full Force as a further Security to answer the Plaintiff, his Executors and Administrators, all such Damages as may be afterwards sustained by reason of any further Breach of any Covenant or Agreement in the said Deed or Writing as far as the Remainder of such penal Sum, after the Payment of the Damages formerly recovered out of the same, will reach.

Damages on Breaches to be ascertained.
16 & 17 Vict. c. 113. s. 146.

233. In all such Actions as last aforesaid, in case Judgment shall pass for the Plaintiff, and the full Amount thereof, and the Costs of Suit shall not have been paid or levied, and afterwards any further Breach or Breaches shall happen, the Plaintiff shall be at liberty to

Suggestion of further Breaches and Execution on same.
16 & 17 Vict. c. 113. s. 147.

file One or more than One Suggestion of such Breaches in the Form No. 8. in the Schedule (A.) to this Act annexed, or to the like Effect, and such Suggestion shall be pleaded to and the Truth of the Matters therein suggested shall be tried, and Damages awarded, and Judgment and Execution shall be given in like Manner as if the same were on Writ and Declaration; and upon Payment or Satisfaction of such further Damages and Costs, further Proceedings shall be stayed for that Time, and so from Time to Time as often as Occasion may require, on every new Breach the said Judgment may be resorted to, so far as aforesaid, and no further; and upon Payment or Satisfaction made to the full Amount of the said penal Sum and Costs as aforesaid, the said Defendant, his Body, Lands, and Goods, shall be discharged of all Execution in respect of the same.

*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 Re-
vival.
15 & 16 Vict.
c. 76. s. 128.

234. Writs of Execution may be issued at any Time within *Six Years* after the Recovery of the Judgment, by or against the Plaintiffs or Defendants, or the Survivors of them, without any Revival of such Judgment.

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Judgment
to be revived
by Writ or
with Leave
of Court or
Judge by
Suggestion.
15 & 16 Vict.
c. 76. s. 129.

235. 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, and which Rule may be in the Form contained in the Schedule (A.) to this Act annexed, marked No. 9., or to the like Effect.

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Proceedings
upon Appli-
cation for
Suggestion
to revive
Judgment.
15 & 16 Vict.
c. 76. s. 130.

236. 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. 10., 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 the said Costs shall be so ordered to the Party making the Application, they shall be Costs in the Cause; and in case it does not manifestly so appear, the

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the Court or Judge shall discharge the Rule 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.

- 5 **237.** In any Action on a Judgment or in any Proceeding by Writ of Revivor to revive a Judgment, or to have Execution for the Sum remaining due and unsatisfied on Foot of such Judgment, if the Defendant has paid the Money due on such Judgment or the Balance claimed on Foot of the same, such Payment shall and may
10 be pleaded in bar of any such Action or Proceeding by Writ of Revivor.

Plea of Payment of Judgment.
16 & 17 Vict. c. 113. s. 125.

- 238.** 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
15 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
20 is directed for the Amount claimed to be due, and it shall give Notice that, in default of Appearance, the Party issuing such Writ may proceed to Execution for such Amount, together with the Costs of such Proceedings; and such Writ may be in the Form contained in the Schedule (A.) to this Act annexed marked
25 No. 11., 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
30 Parties respectively to Costs, shall be the same as in an ordinary Action.

Writ of Revivor and Proceedings thereon.
15 & 16 Vict. c. 76. s. 131.

- 239.** All Writs of Scire facias issued out of any of the Superior Courts of Law at Dublin against Bail on a Recognizance, against
Members of a Joint Stock Company or other Body upon a Judgment recorded against a public Officer or other Person sued as
35 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, or for Execution upon a Judgment of Assets in futuro, shall
40 be tested, directed, and proceeded upon in like Manner as Writs of Revivor.

Writs of Scire facias in other Cases to be tested, directed, and proceeded upon in like Manner.
15 & 16 Vict. c. 76. s. 132.
17 & 18 Vict. c. 125. s. 91.

Appearance
to Writ of
Revivor.

15 & 16 Vict.
c. 76. s. 133.

As to Issue
of Writ of
Revivor
upon Judg-
ment more
than Ten
Years old.

15 & 16 Vict.
c. 76. s. 134.

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

241. 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 an Order of the Court or a Judge, nor, if more than Fifteen, without a Rule to show Cause.

And with respect to the Satisfaction of Judgments, be it enacted as follows:

*Satisfaction
of Judg-
ments.*

Satisfaction
of Judg-
ments by
Party.

16 & 17 Vict.
c. 113. s. 143.

242. When any Party who shall have recovered Judgment in any of the said Courts, or his personal Representative or legal Assignee, shall be willing to cause an Entry of Satisfaction thereof or a Memorandum of part Payment to be entered on the Record, such Party shall execute a Satisfaction Piece according to the Form No. 12. in the Schedule (A.) to this Act annexed (which Satisfaction Piece shall not be subject to any Stamp Duty); and such Satisfaction Piece shall be executed in the Presence of One Witness who shall attest by Affidavit the Execution of the same; and thereupon it shall be lawful for any Attorney of the said Court employed for that Purpose to require the proper Officer to enter Satisfaction or a Memorandum of part Payment on the Record of such Judgment; and such Officer shall, on having such Satisfaction Piece verified as aforesaid, and such Requisition lodged with him, enter such Satisfaction or a Memorandum of part Payment on the Record accordingly.

Court may
order Satis-
faction to be
entered on
Judgment
fully paid.
16 & 17 Vict.
c. 113. s. 144.

243. It shall be lawful for the Court or a Judge to order a Memorandum of Satisfaction to be entered upon the Record of any Judgment, Judgment Roll, or Judgment Book if it shall clearly appear to the said Court or Judge that the Debt or Damages for which the said Judgment was obtained have been fully satisfied and discharged.

*Death,
Marriage,
and
Bankruptcy.*

Action not
to abate by
Death.

15 & 16 Vict.
c. 76. s. 135.

Proceedings
in case of
Death of One
or more of
several

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

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

245. 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

proceed at the Suit of the surviving Plaintiff or Plaintiffs against the surviving Defendant or Defendants.

Plaintiffs or Defendants.
15 & 16 Vict.
c. 76. s. 136.

246. In case of the Death of a sole Plaintiff or sole surviving Plaintiff, when the Action survives, the legal Representative of such Plaintiff may, by Leave of the Court or a Judge, enter a Suggestion of the Death, and that he is such legal Representative, and the Action shall thereupon proceed; and if such Suggestion be made before the Trial, the Truth of the Suggestion shall be tried thereat, together with the Title of the deceased Plaintiff, and such Judgment shall follow upon the Verdict in favour of or against the Person making such Suggestion as if such Person were originally the Plaintiff.

Proceeding in case of Death of sole Plaintiff.
15 & 16 Vict.
c. 76. s. 137.

247. 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

Proceeding upon Death of sole or sole Surviving Defendant.
15 & 16 Vict.
c. 76. s. 138.

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 5 and subsequent thereto he shall be entitled to the like Judgment as in an Action originally commenced against the Executor or Administrator.

Death between Verdict and Judgment.
15 & 16 Vict.
c. 76. s. 139.

248. The Death of either Party between the Verdict or Nonsuit and the Judgment shall not hereafter be alleged for Error, so as 10 such Judgment be entered within Two Terms after such Verdict or Nonsuit.

Proceedings in case of Death after Interlocutory and before Final Judgment.
15 & 16 Vict.
c. 76. s. 140.

249. 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 15 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 20 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. 11., or to the like Effect, against the Defendant if living after such Interlocutory Judgment, 25 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, 30 or shall make Default, a Writ of Inquiry of Damages shall be thereupon awarded, or the Amount for which Final Judgment is to be signed shall be referred to the Master as herein-before provided; and upon the Return of the Writ, or Delivery of the Order with the Amount endorsed thereon, to the Plaintiff, his Executors or 35 Administrators, Final Judgment shall be given for the said Plaintiff, his Executors or Administrators, prosecuting such Writ of Revivor against such Defendant, his Executors or Administrators respectively.

To compel Continuance or Abandonment of Action in case of Death.
17 & 18 Vict.
c. 125. s. 92.

250. Where an Action would but for the Provisions of this Act have abated by reason of the Death of either Party, and the 40 Proceedings may be revived and continued under this Act, the Defendant or Person against whom the Action may be so continued may

may apply by Notice or otherwise to compel the Plaintiff or Person entitled to proceed with the Action in the Room of the Plaintiff to proceed according to the Provisions of this Act within such Time as the Court or Judge shall order; and in default of such Proceeding, the Defendant or other Person against whom the Action may be so continued as aforesaid shall be entitled to enter a Suggestion of such Default, and of the representative Character of the Person by or against whom the Action may be proceeded with, as the Case may be, and to have Judgment for the Costs of the Action and Suggestion against the Plaintiff or against the Person entitled to proceed in his Stead, as the Case may be, and in the latter Case to be levied off the Goods of the Testator or Intestate.

251. 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.
15 & 16 Vict.
c. 76. s. 141.

252. 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 an Order of the Court or Judge to be obtained for that Purpose, within such reasonable Time as the Court or 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 or Insolvency.

Bankruptcy
and Insol-
vency of
Plaintiff,
when not to
abate Ac-
tion.
15 & 16 Vict.
c. 76. s. 142.

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

253. No Judgment shall be arrested, nor shall Judgment be given Non obstante veredicto, by reason of the Nonaverment of any alleged material Fact or other Cause, unless the Party insisting on

[48.]

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*Arrest of
Judgment
and Judg-
ment Non
obstante
veredicto.*
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Upon Mo-
tion in Ar-
rest of Judg-

ment Non
obstante
veredicto,
omitted
Facts may,
by Leave of
the Court, be
suggested.

15 & 16 Vict.
c. 76. s. 143.
16 & 17 Vict.
c. 113. s. 163.

the Objection shall satisfy the Court that there has been an Omission of some substantial Matter of Fact, whereby the said Party may have been prejudiced in the Merits of his Case; and in such Case the Party whose Pleading is alleged or adjudged to be therein defective may, by Leave of the Court, suggest the Existence of the 5 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 Judge may allow; and the Proceedings for Trial of any Issues joined upon such Pleadings shall be the same 10 as in an ordinary Action.

Judgment to
follow Re-
sult of Sug-
gestion.

15 & 16 Vict.
c. 76. s. 144.

254. 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 15 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. 20

Costs of
abortive
Issues.

15 & 16 Vict.
c. 76. s. 145.

255. 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 25 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
Appeal.*

Error to be
brought
within Six
Years.

15 & 16 Vict.
c. 76. s. 146.

And with respect to Proceedings in Error and on Appeal, be it enacted as follows: 30

256. 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.

Error may
be brought
by legal Re-
presentative
of a deceased
Party.

16 & 17 Vict.
c. 113. s. 167.

257. If any Person is or shall be entitled to bring Error as Heir 35 or personal Representative of any Party, Plaintiff or Defendant, such Person 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 be embodied in the Memorandum of Error herein-after mentioned, and shall not be traversable, but shall only be 40 subject to be set aside on Application to the Court or a Judge, on Motion,

Motion, if untrue, and the like Proceedings in Error may thereupon be taken at the Suit of such legal Representative.

258. 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, or non compos mentis, 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, or of sound Memory; and if the opposite Party shall, at the Time of 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 the Seas.

Proviso for Disabilities.
15 & 16 Vict.
c. 76. s. 147.

259. A Writ of Error shall not be necessary or used in any Cause, and the Proceedings to Error shall be a Step in the Cause, and shall be taken in manner herein-after mentioned.

Writ of Error not necessary.
15 & 16 Vict.
c. 76. s. 148.

260. Either Party alleging Error in Law may deliver to the Master of the Court a Memorandum in Writing, in the Form contained in the Schedule (A.) to this Act annexed, marked No. 13., 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 in Law how brought.
15 & 16 Vict.
c. 76. s. 149.

261. 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 Motion, may order Execution to issue.

Error not Supersedeas till Service of the Copy of the Note and Grounds of Error.
15 & 16 Vict.
c. 76. s. 150.

262. 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,

Bail in Error
15 & 16 Vict.
c. 76. s. 151.

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 is or shall be given) or a Judge shall allow of, shall within Four clear Days after lodging the Memorandum alleging Error, or after 5 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 10 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 15 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.

Suggestions
instead of
Assignment
of and Joinder
in Error.
15 & 16 Vict.
c. 76. s. 152.

263. The Assignment of and Joinder in Error in Law shall not be necessary or used, and instead thereof a Suggestion to the 20 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. 14., 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, 25 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 30 Proceedings may be had as heretofore.

Roll to be
made up and
Suggestion
entered by
Plaintiff in
Error.
15 & 16 Vict.
c. 76. s. 153.

264. 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 35 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 Per-

265. In case Error be brought upon a Judgment given against 40 several Persons, and One or some only shall proceed in Error, the Memorandum alleging Error and the Note of the Receipt of such
Memorandum

- 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.
- 10 **266.** 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
 15 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; and the Court of Error shall and may thereupon review the Proceedings, and give Judgment as they shall be advised thereon; and such Pro-
 20 ceedings 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; provided, however, that in case of Error to the High Court of Parliament a Transcript of the Record shall be
 25 prepared and forwarded in the Manner heretofore used.
- 267.** 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
 30 such Courts shall in all respects have such Jurisdiction over the Proceedings as over the Proceedings in Error commenced by Writ of Error, and shall have Authority to make an Order for Payment of Interest for Delay of Execution, whether the Judgment of the Court from which Error is brought be affirmed or reversed.
- 35 **268.** 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.
- 269.** Either Party alleging Error in Fact may deliver to the
 40 Master of the Court a Memorandum in Writing, in the Form contained in the Schedule (A.) to this Act annexed marked No. 15., or
 [48.] I 4

sons against whom Judgment has been given.
 15 & 16 Vict.
 c. 76. s. 154.

Judgment Roll to be brought into Court instead of Transcript.
 15 & 16 Vict.
 c. 76. s. 155.

Jurisdiction of Courts of Error over the Proceedings.
 15 & 16 Vict.
 c. 76. s. 156.

Court of Error to have like Powers with Court below.
 15 & 16 Vict.
 c. 76. s. 157.

Proceedings in Error in Fact.
 15 & 16 Vict.
 to c. 76. s. 158.

to the like Effect, entitled 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 5 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 prior to the Commencement of the "Common Law Procedure Amendment Act (Ireland), 1853," 10 were had after the Service of the Rule for Allowance of a Writ of Error in Fact.

Plaintiff may
discontinue
Proceedings
in Error.

15 & 16 Vict.
c. 76. s. 159.

270. 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 15 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. 20

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

15 & 16 Vict.
c. 76. s. 160.

271. 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 25 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.

15 & 16 Vict.
c. 76. s. 161.

272. The Death of a Plaintiff in Error after Service of the Note of the Receipt of the Memorandum alleging Error, with a State- 30 ment 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.

15 & 16 Vict.
c. 76. s. 162.

273. 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, 35 and the Proceedings may thereupon be continued at the Suit of and against the surviving Plaintiff in Error as if he were the sole Plaintiff.

Proceedings
upon Death
of sole Plain-

274. In case of the Death of a sole Plaintiff or of several Plaintiffs in Error, the legal Representative of such Plaintiff or of 40 the

- 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.
- 10 **275.** The Death of a Defendant in Error shall not cause the Proceedings to abate, but they may be continued as herein-after mentioned.
- 276.** 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.
- 277.** 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.
- 25 **278.** 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.
- 279.** In every Rule Nisi for a new Trial or to enter a Verdict or Nonsuit, the Grounds upon which such Rule shall have been granted shall be shortly stated therein.
- 30 **280.** In all Cases of Rules to enter a Verdict or Nonsuit upon a Point reserved at the Trial, if the Rule to show Cause be refused or granted, and then discharged or made absolute, the Party decided against may appeal.
- 281.** In all Cases of Motions for a new Trial upon the Ground that the Judge has not ruled according to Law, if the Rule to show Cause be refused, or if granted be then discharged or made absolute,

tiff or of all the Plaintiffs in Error.

15 & 16 Vict. c. 76. s. 163.

Death of Defendant in Error no Abatement. 15 & 16 Vict. c. 76. s. 164.

Proceedings upon Death of One of several Defendants in Error. 15 & 16 Vict. c. 76. s. 165.

Proceedings upon Death of sole Defendant or of all the Defendants in Error. 15 & 16 Vict. c. 76. s. 166.

Marriage not to abate Proceedings in Error. 15 & 16 Vict. c. 76. s. 167.

Grounds to be stated in Rule Nisi for new Trial. 17 & 18 Vict. c. 125. s. 33.

If Rule Nisi refused, Party may appeal. 17 & 18 Vict. c. 125. s. 34.

Appeal upon Rule discharged or absolute.

17 & 18 Vict. the Party decided against may appeal, provided any One of the
c. 125. s. 35 Judges dissent from the Rule being refused, or, when granted, being discharged or made absolute, as the Case may be, or provided the Court in its Discretion think fit that an Appeal should be allowed; provided that where the Application for a new Trial 5 is upon Matter of Discretion only, as on the Ground that the Verdict was against the Weight of Evidence or otherwise, no such Appeal shall be allowed.

Courts of
Error to be
Courts of
Appeal.
17 & 18 Vict.
c. 125. s. 36.

282. The Court of Exchequer Chamber and the House of Lords shall be Courts of Appeal for the Purposes of this Act. 10

Notice of
Appeal.
17 & 18 Vict.
c. 125. s. 37.

283. No Appeal shall be allowed unless Notice thereof be given in Writing to the opposite Party or his Attorney, and to the Master of the Court, within Four Days after the Decision complained of, or such further Time as may be allowed by the Court or a Judge.

Bail.
17 & 18 Vict.
c. 125. s. 38.

284. Notice of Appeal shall be a Stay of Execution, provided 15 Bail to pay the Sum recovered and Costs, or to pay Costs where the Appellant was Plaintiff below, be given in like Manner and to the same Amount as Bail in Error, within Eight Days after the Decision complained of, or before Execution delivered to the Sheriff.

Form of
Appeal.
17 & 18 Vict.
c. 125. s. 39.

285. The Appeal herein-before mentioned shall be upon a Case 20 to be stated by the Parties (and in case of Difference to be settled by the Court or a Judge of the Court appealed from), in which Case shall be set forth so much of the Pleadings, Evidence, and the Ruling or Judgment objected to, as may be necessary to raise the Question for the Decision of the Court of Appeal. 25

Rule Nisi
granted on
Appeal, how
disposed of.
17 & 18 Vict.
c. 125. s. 40.

286. When the Appeal is from the Refusal of the Court below to grant a Rule to show Cause, and the Court of Appeal grant such Rule, such Rule shall be argued and disposed of in the Court of Appeal.

Judgment of
Court of
Appeal.
17 & 18 Vict.
c. 125. s. 41.

287. The Court of Appeal shall give such Judgment as ought 30 to have been given in the Court below, and shall have Power to remit the Cause with such Directions as they shall think proper; and all such further Proceedings may be taken thereupon as if the Judgment had been given by the Court in which the Record originated. 35

Powers of
Court of
Appeal as to
Costs and
otherwise.
17 & 18 Vict.
c. 125. s. 42.

288. The Court of Appeal shall have Power to adjudge Payment of Costs and to order Restitution, and they shall have the same Powers as the Court of Error in respect of awarding Process and otherwise.

289. Upon

289. Upon an Award of a Trial *de novo* by any One of the Superior Courts, or by the Court of Error, upon Matter appearing upon the Record, Error may at once be brought, and if the Judgment in such or any other Case be affirmed in Error, it shall be lawful for the Court of Error to adjudge Costs to the Defendant in Error.

Error upon Award of Trial *de novo*.
17 & 18 Vict. c. 125. s. 43.

290. When a new Trial is granted on the Ground that the Verdict was against Evidence, the Costs of the First Trial shall abide the Event, unless the Court shall otherwise order.

Payment of Costs upon new Trial on Matter of Fact.
17 & 18 Vict. c. 125. s. 43.

10 And with respect to Interpleader, be it enacted as follows :

Interpleader.

291. Where an Action has been commenced in respect of a Common Law Claim for the Recovery of Money or Goods, or where Goods or Chattels have been taken or are intended to be taken in Execution under Process issued from any One of the Superior Courts, and the Defendant in such Action, or the Sheriff or other Officer, has applied for Relief under the Provisions of an Act made and passed in the Session of Parliament held in the Ninth and Tenth Years of the Reign of Her present Majesty, intituled “ An “ Act to enable Courts of Law to give Relief against adverse “ Claims made upon Persons having no Interest in the Subject of “ such Claims,” it shall be lawful for the Court or a Judge to whom such Application is made to exercise all the Powers and Authorities given to them by this Act in Cases of Interpleader, and the herein-before mentioned Act passed in the Session of Parliament held in the Ninth and Tenth Years of the Reign of Her present Majesty, though the Titles of the Claimants to the Money, Goods, or Chattels in question, or to the Proceeds or Value thereof, have not a common Origin, but are adverse to and independent of one another.

Interpleader may be granted, though Titles have not a common Origin.
23 & 24 Vict. c. 126. s. 12.

292. When Goods or Chattels have been seized in Execution by a Sheriff or other Officer under Process of the above-mentioned Courts, and some Third Person claims to be entitled under a Bill of Sale or otherwise to such Goods or Chattels by way of Security for a Debt, the Court or a Judge may order a Sale of the whole or Part thereof, upon such Terms as to Payment of the whole or Part of the secured Debt or otherwise as they or he shall think fit, and may direct the Application of the Proceeds of such Sale in such Manner and upon such Terms as to such Court or Judge may seem just.

Court or Judge may direct Sale of Goods seized in Execution.
23 & 24 Vict. c. 126. s. 13.

293. Upon the hearing of any Rule or Order calling upon Persons to appear and state the Nature and Particulars of their
[48.]

Power to Court or Judge to

decide
summarily
in certain
Cases.

23 & 24 Vict.
c. 126. s. 14.

Claims, it shall be lawful for the Court or Judge, wherever from the Smallness of the Amount in dispute, or of the Value of the Goods seized, it shall appear to them or him desirable and right so to do, at the Request of either Party, to dispose of the Merits of the respective Claims of such Parties, and to determine the same in a summary Manner, upon such Terms as they or he shall think fit to impose, and to make such other Rules and Orders therein, as to Costs and all other Matters, as may be just.

Special Case
may be
stated where
Facts un-
disputed.

23 & 24 Vict.
c. 126. ss. 15,
16.

294. In all Cases of Interpleader Proceedings, where the Question is one of Law, and the Facts are not in dispute, the Court or Judge shall be at liberty, at their or his Discretion, to decide the Question without directing an Action or Issue, and, if they or he shall think it desirable, to order that a special Case be stated for the Opinion of the Court, and Error may be brought upon a Judgment on such Case, and the Provisions of this Act relating to Proceedings upon special Cases, and the bringing of Error thereon, shall extend to the Proceedings upon such special Case, and to the bringing of Error thereon.

Judgment
and Decision
when to be
final.

23 & 24 Vict.
c. 126. s. 17.

295. The Judgment in any such Action or Issue as may be directed by the Court or a Judge in any Interpleader Proceedings, and the Decision of the Court or Judge in a summary Manner, shall be final and conclusive against the Parties, and all Persons claiming by, from, or under them.

General
Provisions
to apply to
Interpleader.

296. The Provisions of this Act relating to Inspection, Discovery, Appeal, and otherwise shall extend to Interpleader Proceedings, *mutatis mutandis*, unless where the same shall not be applicable, or where otherwise specially provided by this Act; and the Court or Judge may, in relation to the Service of any Rule or Order, exercise such or the like Powers as are contained in the Sixteenth, Seventeenth, Eighteenth, and Nineteenth Sections of this Act in relation to the Service of Writs in personal Actions.

Rules,
Orders, &c.
made in
Interpleader
Proceedings
may be
entered of
Record and
made Evi-
dence.

23 & 24 Vict.
c. 126. s. 18.

297. All Rules, Orders, Matters, and Decisions to be made and done in Interpleader Proceedings under this Act may, together with the Declaration in the Cause, if any, be entered of Record, with a Note in the Margin expressing the true Date of such Entry, to the end that the same may be Evidence in future Times, if required, and to secure and enforce the Payment of Costs directed by any such Rule or Order; and every such Rule or Order so entered shall have the Force and Effect of a Judgment in the Superior Courts of Common Law.

40

And

And with respect to summary Procedure upon Bills of Exchange and Promissory Notes, be it enacted as follows :

298. All Actions upon Bills of Exchange or Promissory Notes commenced within Six Months after the same shall have become
 5 due and payable may be by Writ of Summons in the special Form contained in Schedule (A.) No. 16. to this Act annexed, and endorsed as therein mentioned; and it shall be lawful for the Plaintiff, on filing an Affidavit of personal Service of such Writ within the Jurisdiction of the Court, or an Order for Leave to proceed, as herein-
 10 before provided, or, in the Case of Service substituted under the Provisions of this Act, the Order directing such Substitution of Service, and an Affidavit and such Documents as may be necessary for the Purpose of showing that the Directions of such Order have been complied with, and a Copy of the Writ of Summons and the
 15 Endorsements thereon, in case the Defendant shall not have obtained Leave to appear, and have appeared to such Writ according to the Exigency thereof, at once to sign Final Judgment, in the Form in Schedule (A.) No. 17. to this Act annexed (on which Judgment no Proceeding in Error shall lie), for any Sum not exceeding the Sum
 20 endorsed 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 a General Order to be made as herein-after mentioned, 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
 25 upon such Judgment issue Execution forthwith.

Summary Procedure upon Bills of Exchange and Promissory Notes.

—
 Actions upon Bills of Exchange, &c. may in certain Cases be commenced by Writ of Summons as Form in Schedule (A.) Plaintiff, on filing Affidavit of personal Service, may at once sign Final Judgment as Form in Schedule (A.) 18 & 19 Vict. c. 67. s. 1.

299. The Court into which such Writ shall be returnable, or a Judge, shall, upon Application within the Period of Twelve Days from such Service, give Leave to appear to such Writ, and to defend the Action, on the Defendant paying into Court the Sum endorsed
 30 on the Writ, or upon Affidavits satisfactory to the Court or Judge, which disclose a legal or equitable Defence, or such Facts as would make it incumbent on the Holder to prove Consideration, or such other Facts as the Court or Judge may deem sufficient to support the Application, and on such Terms as to Security or otherwise
 35 as to the Court or Judge may seem fit.

Defendant showing a Defence upon the Merits to have Leave to appear. 18 & 19 Vict. c. 67. s. 2.

300. After Judgment the Court or a Judge may, under special Circumstances, set aside the Judgment, and, if necessary, stay or set aside the Execution, and may give Leave to appear to the Writ, and to defend the Action, if it shall appear to be reasonable to the
 40 Court or Judge so to do, and on such Terms as to the Court or Judge may seem just.

Judge may, under special Circumstances, set aside Judgment. 18 & 19 Vict. c. 67. s. 3.

301. In all Cases of summary Procedure on Bills of Exchange and Promissory Notes under this Act, it shall be competent to the
 [48.] K 3 Court Judge may order Bill to be deposited

with Officer
of Court
in certain
Cases.
18 & 19 Vict.
c. 67. s. 4.

Court or a Judge to order the Bill or Note sought to be proceeded upon to be forthwith deposited with an Officer of the Court, and further to order that all Proceedings shall be stayed until the Plaintiff shall have given Security for the Costs thereof.

Remedy for
the Recovery
Expenses of
of noting
Non-acceptance
of dis-
honoured
Bill.
18 & 19 Vict.
c. 67. s. 5.

302. The Holder of every dishonoured Bill of Exchange or Promissory Note shall have the same Remedies for the Recovery of the Expenses incurred in noting the same for Non-acceptance or Nonpayment, or otherwise, by reason of such Dishonour, as he has under this Act for the Recovery of the Amount of such Bill or Note. 10

Holder of
Bill of Ex-
change may
issue One
Summons
against all
or any of
the Parties
to the Bill.
18 & 19 Vict.
c. 67. s. 6.

303. The Holder of any Bill of Exchange or Promissory Note may, if he think fit, issue One Writ of Summons according to this Act, against all or any Number of the Parties to such Bill or Note, and such Writ of Summons shall be the Commencement of an Action or Actions against the Parties therein named respectively, and all subsequent Proceedings against such respective Parties shall be in like Manner, so far as may be, as if separate Writs of Summons had been issued. 15

Ejectment.

And with respect to the Action of Ejectment, be it enacted as follows : 20

Ejectment
to be com-
menced by
Writ of
Summons.
16 & 17 Vict.
c. 113. s. 194.

304. Where any Party shall claim Possession of any Lands, Tenements, or Hereditaments, and shall be desirous of proceeding by Ejectment for the Recovery of the same in any of the said Superior Courts of Common Law, such Party shall commence any Action for such Purpose by a Writ of Summons, which Writ shall be directed to the immediate Tenant or any One Tenant in possession, as Defendant, with the Addition of the Words "and all Persons concerned," and shall contain the Description of the Property sought to be recovered with reasonable Certainty, and the County and the Barony or Parish in which the same is situated. 25 30

Form and
Duration of
Writ of
Ejectment.
15 & 16 Vict.
c. 76. s. 169.

305. 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 into which it is returnable, 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. 18., or to the like Effect; and in Cases of Ejectment on the Title the Writ shall be endorsed with the 35 40

Par-

Particulars of the Sum (if any) claimed as Damages for the Loss of the mesne Rates and Profits of the Lands sought to be recovered; and in Cases of Ejectment for Nonpayment of Rent such Writ shall be endorsed with full Particulars of the Rent due and of all Credits
 5 to which the Defendant shall be justly entitled; and the Name and Abode of the Attorney issuing the same, or, if no Attorney, the Name and Residence of the Party shall be endorsed thereon, in like Manner as herein-before enacted with reference to the Endorsements on a Writ of Summons in a personal Action; and the same Pro-
 10 ceedings may be had to ascertain whether the Writ was issued by the Authority of the Attorney whose Name was endorsed 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, and the Provisions of the
 15 Third Section of this Act in relation to the Rotation of Writs shall be deemed to apply to and include Writs of Summons in Ejectment.

306. The Writ of Summons in Ejectment for Nonpayment of Rent shall be served on the Tenant sought to be evicted, and on
 20 every Person in possession or in receipt of the Rents and Profits of the Land sought to be recovered, or any Part thereof, and also on any Mortgagee of such Lands, whose Mortgage shall have been registered within *Six Calendar Months* from the Perfection thereof, and also on the Assignee of any such Mortgagee whose Assignment
 25 shall have been in like Manner registered, or upon such Person or Persons as shall be directed by General Orders to be made in the Manner herein-after provided.

Writ in Ejectment for Non-payment of Rent, upon whom to be served.

307. The Writ shall be served in the same Manner as an Ejectment has heretofore been served, or in such Manner as shall be
 30 directed by General Orders to be made in the Manner herein-after provided; and in case of vacant Possession the Writ may be served by posting a Copy thereof upon the Door of the Dwelling House or other conspicuous Part of the Property; and the Court or Judge may, in relation to the Service of such Writ, exercise such or the
 35 like Powers as are contained in the Sixteenth, Seventeenth, Eighteenth, and Nineteenth Sections of this Act, in relation to the Service of Writs in personal Actions.

Service of Writ of Ejectment. 15 & 16 Vict. c. 76. s. 170.

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

Appearance of Persons named in the Writ. 15 & 16 Vict. c. 76. s. 171.

309. 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

Appearance of Persons not named. an

15 & 16 Vict. c. 76. s. 172. an Affidavit showing that he is in possession of the Land either by himself or his Tenant.

Appearance and Defence by Landlord. 15 & 16 Vict. c. 76. s. 173. **310.** Any Person appearing to defend as Landlord in respect of Property whereof he is in possession only by his Tenant shall state in his Appearance that he appears as Landlord; and such Person shall be at liberty to set up any Defence which a Landlord appearing in an Action of Ejectment has heretofore been allowed to set up, and no other.

Notice to defend for Part only. 15 & 16 Vict. c. 76. s. 174. **311.** 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 endorsed 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; but a Defence to an Ejectment for Nonpayment of Rent shall be a Defence for all the Lands in the Writ of Summons mentioned, and in case a Defendant shall desire to take Defence for Part only of the Lands, upon the Ground that such Part was not included in the Estate or Interest sought to be evicted, he shall make a special Application to the Court for that Purpose.

Want of Certainty cured by Particulars. 15 & 16 Vict. c. 76. s. 175. **312.** 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 the Court or a Judge for better Particulars of the Land claimed or defended, which the Court or a Judge shall have Power to give in all Cases.

Defence by Persons not in possession. 15 & 16 Vict. c. 76. s. 176. **313.** The Court or a Judge shall have Power to strike out or confine Appearances and Defences set up by Persons not in possession by themselves or their Tenants.

Judgment for Default of Appearance or Defence. 15 & 16 Vict. c. 76. s. 177. **314.** In case no Appearance shall be entered within the Time appointed, or if an Appearance be entered, but the Defence be limited to Part only, the Plaintiffs shall be at liberty to sign a Judgment that the Person whose Title is asserted in the Writ shall recover Possession of the Land, or of the Part thereof to which the Defence does not apply; which Judgment, if for all, may be in the Form contained in the Schedule (A.) to this Act annexed marked No. 19., 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. 20., or to the like Effect.

315. In

315. In case an Appearance shall be entered, an Issue may at 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. 21., 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. 20., or to the like Effect.

Issue how made up.
15 & 16 Vict.
c. 76. s. 178.

316. By Consent of the Parties, and by Leave of the Court or a Judge, a Special Case may be stated according to the Practice heretofore prescribed in reference to personal Actions.

Special Case may be stated.
15 & 16 Vict.
c. 76. s. 179.

317. 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 herein-after 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 whether to any, and if any to what Damages, by way of Compensation, for Loss of mesne Rates and Profits; and upon the Trial of an Ejectment for Nonpayment of Rent the Amount of the Rent due to the Claimant shall be found by the Jury, and the Entry of the Verdict may be made in the Form contained in the Schedule (A.) to this Act annexed marked No. 22., or to the like Effect, with such Modifications as may be necessary to meet the Facts.

Trial of Issue.
15 & 16 Vict.
c. 76. s. 180.

16 & 17 Vict.
c. 113. s. 202.

318. 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 Costs of Suit.

Verdict when Title appears to have expired before Trial.
15 & 16 Vict.
c. 76. s. 181

319. 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.

Trial may be ordered to take place in any County.
15 & 16 Vict.
c. 76. s. 182.

[48.]

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320. If

Nonappear-
ance at
Trial.
15 & 16 Vict.
c. 76. s. 183.

320. If the Defendant appears and the Claimant does not appear at the Trial, the Claimant shall be nonsuited; and if the Claimant appears and the Defendant does not appear the Claimant shall be entitled to recover as heretofore, without any Proof of his Title; and in case of Ejectment on the Title shall be entitled to 5 prove the Amount of Damages sustained by reason of the Loss of the mesne Rates and Profits, and in case of an Ejectment for Nonpayment of Rent, shall be entitled to prove the Amount of Rent actually due, and to have a Verdict for the same with Judgment for his Costs of Suit. 10

Mesne Rates
may be re-
covered by
Ejectment
to the Day
of Trial.
23 & 24 Vict.
c. 154. s. 77.

321. In all such Ejectments as herein-after mentioned the Jury shall be at liberty to give Compensation for the Loss of Mesne Rates and Profits; in Ejectments on the Title in which Mesne Rates are claimed, from the Commencement of the Action, and in Ejectments for Nonpayment of Rent, from the Day up to which the 15 Rent claimed by the Ejectment accrued due, and in both Cases down to the Day of Trial.

Ascertain-
ment of
Rent.
16 & 17 Vict.
c. 113. s. 206.

322. In Ejectment for Nonpayment of Rent, where Judgment shall have gone by Default, or the Defendant shall not appear at the Trial, it shall be sufficient for the Purpose of ascertaining the 20 Amount of the Rent due, and to satisfy the Provisions of the Statutes with respect to ascertaining the Rent, that an Affidavit be made by the Plaintiffs, or One of them, or their or his Agent, to the Effect that an Amount of Rent not less than One Year's Rent, and specifying the same, was due at the Time of the Commencement of 25 the Action after all just Allowances.

Special
Verdict and
Bill of Ex-
ceptions.
15 & 16 Vict.
c. 76. s. 184.

323. The Jury may find a special Verdict, or either Party may tender a Bill of Exceptions.

Judgment
and Exec-
ution upon
Finding for
Claimant.
16 & 17 Vict.
c. 113. s. 207.

324. Upon a Finding for the Claimant Judgment may be signed and Execution issued for the Recovery of Possession of the Pro- 30 perty or such Part thereof as the Jury shall find the Claimant entitled to and in case of Ejectment on the Title for such Damages for Loss of mesne Rates and Profits as shall be found by the said Jury, and in case of Ejectment for Nonpayment of Rent for Recovery of so much Rent as shall be found to be due, and 35 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 first shall happen. 40

325. Upon

325. Upon a Finding for the Defendants, or any of them, or upon a Nonsuit, Judgment may be signed and Execution issued for Costs against the Claimants named in the Writ, within such Time, not exceeding the Fifth Day in Term after the Verdict or Nonsuit, 5 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 Nonsuit, or within *Fourteen Days* after such Verdict or Nonsuit, whichever shall first happen.

Judgment upon Finding for Defendant.
15 & 16 Vict. c. 76. s. 186.

326. Upon any Judgment in Ejectment there may be either 10 One or separate Writs of Execution for the Recovery of the Possession and for the Damages or the Rent ascertained to be due, and Costs, at the Election of the Claimant.

Execution for Recovery of Possession and Costs may be joint and separate.
16 & 17 Vict. c. 113. s. 209.

327. In case of such an Action being brought by some or One of several Persons entitled as Joint Tenants, Tenants in Common, or 15 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 20 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 25 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.

Defence by Joint Tenants, Tenants in Common, Coparceners.
15 & 16 Vict. c. 76. s. 188.

328. Upon the Trial of such Issue as last aforesaid, if it shall be 30 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 35 Joint Tenant, Tenant in Common, or Coparcener, or that an Ouster has taken place, then the Claimant shall be entitled to such Judgment for the Recovery of Possession and Costs.

Trial and Judgment in Ejectment against Joint Tenants, Tenants in Common, and Coparceners.
15 & 16 Vict. c. 76. s. 189.

329. If any Person shall bring an Action of Ejectment, after a prior Action of Ejectment for the same Premises has been or shall 40 have been unsuccessfully brought by such Person, or by any Person through or under whom he claims, against the same Defendant, or
[48.] L 2 against

Claimant in Second Ejectment for same Premises against same

Defendant
may be
ordered to
give Security
for Costs.
17 & 18 Vict.
c. 125. s. 93.

against any Person through or under whom he defends, the Court or a Judge may, if they or he think fit, on the Application of the Defendant at any Time after such Defendant has appeared to the Writ, order that the Plaintiff shall give to the Defendant Security for the Payment of the Defendant's Costs, and that all further Proceedings in the Cause shall be stayed until such Security be given, whether the prior Action has been or shall have been disposed of by Discontinuance, or by Nonsuit, or by Judgment for the Defendant.

Action not
to abate by
Death.
15 & 16 Vict.
c. 76. s. 190.

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

Proceeding
upon Death
before Trial
where Right
survives.
15 & 16 Vict.
c. 76. s. 191.

331. 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.
15 & 16 Vict.
c. 76. s. 192.

332. 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.

Proceeding
upon Death
of One of
several
Claimants
having
obtained a
Verdict.
15 & 16 Vict.
c. 76. s. 193.

333. 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.

334. In

334. 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 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; and in case the said Suggestion shall not be denied within the Time aforesaid the said personal Representative, on producing an Affidavit of the Service of the Notice, shall be entitled to proceed to Judgment and Execution in his own Name.

Proceedings
in case of
Death of
Claimant
where Right
does not
survive.

15 & 16 Vict.
c. 76. s. 194.

335. In case of the Death, before or after Judgment, of One of several Defendants in Ejectment who defend jointly, a Suggestion may be made of the Death, which Suggestion shall not be traversable, but only be subject to be set aside if untrue, and the Action may proceed against the surviving Defendant to Judgment and Execution.

Proceedings
upon Death
of One of
several joint
Defendants.

15 & 16 Vict.
c. 76. s. 195.

336. 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

Upon Death
of all the
Defendants
in Eject-
ment before
Trial.

15 & 16 Vict.
c. 76. s. 196.

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 5 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.

15 & 16 Vict. c. 76. s. 197.

337. In case of the Death of a sole Defendant or of all the 10 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, 15 against the legal Representatives of the deceased Defendant or Defendants.

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

15 & 16 Vict. c. 76. s. 198.

338. 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 20 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.

15 & 16 Vict. c. 76. s. 199.

339. In case of the Death before Trial of One of several 25 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, 30 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. 35

Claimant may discontinue by Notice.

15 & 16 Vict. c. 76. s. 200.

340. 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 40 Defendant to whom such Notice is given shall be entitled to and

may

may forthwith sign Judgment for Costs in the Form contained in the Schedule (A.) to this Act annexed, marked No. 23. or to the like Effect.

5 **341.** In case One of several Claimants shall be desirous to discontinue, he may apply to the Court or a Judge to have his Name struck out of the Proceedings, and an Order may be made thereupon upon such Terms as to the Court or Judge may seem fit, and the Action shall thereupon proceed at the Suit of the other Claimants.

Discontinu-
ance of Ac-
tion by One
of several
Claimants.
15 & 16 Vict.
c. 76. s. 201.

10 **342.** If after Appearance entered the Claimant, without going to Trial, allow the Time allowed for going to Trial by the Prac-
tice 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
15 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
20 Form contained in the Schedule (A.) to this Act annexed, marked No. 24, and recover the Costs of the Defence.

Judgment
for not pro-
ceeding to
Trial after
Notice.
15 & 16 Vict.
c. 76. s. 202.

343. 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 the Claimant a Notice headed in the
25 Court and Cause, and signed by the Defendant or Defendants, such Signature to be attested by his or their Attorney; and there-
upon the Claimant shall be entitled to and may forthwith sign Judgment and issue Execution for the Recovery of Possession and Costs in the Form in the Schedule (A.) to this Act annexed, marked
30 No. 25. or to the like Effect.

Defendant
may confess
the Action.
15 & 16 Vict.
c. 76. s. 203.

344. 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
35 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
defending
separately
for Part.
15 & 16 Vict.
c. 76. s. 204.

Confession
by One of
several
Defendants
who defend
for same
Property.
15 & 16 Vict.
c. 76. s. 205.

345. 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. 5

Court or a
Judge may,
in Action of
Ejectment
on the Title,
direct tem-
porary Bars
to be waived.
19 & 20 Vict.
c. 102. s. 89.

346. It shall and may be lawful for the Court or a Judge, in any Action of Ejectment on the Title to be commenced after the passing of this Act, to make an Order directing temporary Bars to be waived and the real Title tried in such Ejectment, in any Case in which it shall be made to appear, to the Satisfaction of such Court or Judge, that a Decree or Decretal Order to the same Effect would be pronounced by the Court of Chancery upon a Bill filed for the Purpose of having temporary Bars waived, but upon such Terms or Conditions as to the said Court or Judge shall seem just. 10 15

Effect of
Judgment.

347. A Judgment in an Action of Ejectment under this Act shall have no greater Effect than a Judgment in Ejectment before the passing of an Act made in the Session of Parliament holden in the Thirteenth and Fourteenth Years of the Reign of Her present Majesty, intituled "An Act for the Regulation of Process and Practice in the Superior Courts of Common Law in Ireland." 20

Error and
Bail in Error
in Ejectment.
15 & 16 Vict.
c. 76. s. 208.

348. 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 Judgement, 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 inquire as well of 25 30 35 40

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.

- 349.** In all Cases in which such Security shall have been given as provided by the Seventy-fifth Section of the "Landlord and Tenant Law Amendment Act (Ireland), 1860," 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 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.

On Trials after Bail found, Judge shall not stay the Execution except by Consent, or on Tenants finding Security.
15 & 16 Vict. c. 76. s. 215.

Bail in Error to discharge such Security.

- 350.** 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; but no Action or other Proceeding shall be commenced upon any such Recognizance or Security after the Expiration of Six Months from the Time when Possession of the Premises or any Part thereof shall actually have been delivered to the Landlord.

Recognizances to be taken as other Recognizances of Bail; Actions on them limited.
15 & 16 Vict. c. 76. s. 216.

- 351.** 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 as herein-before expressly enacted.

Saving of former Remedies.
15 & 16 Vict. c. 76. s. 218.

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352. Where

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 reconvey.

15 & 16 Vict. c. 76. s. 219.

352. Where an Action of Ejectment shall be brought by any Mortgagee, his Heirs, Executors, Administrators, or Assigns, 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 Ireland, for or touching the fore-
closing 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 Moneys and Interest due on such Mortgage, and also all such Costs as have been expended in any Suit at Law or in Equity, upon such Mortgage (such Money for Principal, Interest, and Costs to be ascertained and computed by the Court where such Action is or shall be depending, or by the proper Officer by such Court to be appointed for that Purpose), the Moneys 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 Moneys into the Court, his Heirs, Executors, or Administrators, or to such other Person or Persons as he or they shall for that Purpose nominate or appoint.

Not to extend to Cases where the Right of Redemption is controverted, or the Money due not adjusted.

or to prejudice any subsequent Mortgage.

15 & 16 Vict. c. 76. s. 220.

353. 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 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,

Incumbrance, anything herein contained to the contrary thereof in anywise notwithstanding.

354. 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 hereby repealed, and not inconsistent with the Provisions of this Act, and which may be applicable to the Mode of proceeding under this Act, shall remain in force and be applied thereto.

Jurisdiction
of Courts
and Judges.
15 & 16 Vict.
c. 76. s. 221.

355. In the Case of any Ejectment for a Forfeiture for Breach of a Covenant or Condition to insure against Loss or Damage by Fire, the Court or a Judge shall have Power, upon Motion, to give Relief in a summary Manner, but subject to Appeal as hereinafter mentioned, in all Cases in which such Relief may now be obtained in the Court of Chancery under the Provisions of an Act passed in Session of Parliament held in the Twenty-second and Twenty-third Years of the present Reign, intituled "An Act to further amend the Law of Property, and to relieve Trustees," and upon such Terms as would be imposed in such Court.

Relief
against For-
feiture for
not insuring.
23 & 24 Vict.
c. 126. s. 2.

22 & 23 Vict.
c. 35.

356. Where such Relief shall be granted the Court or a Judge shall direct a Minute thereof to be made by Endorsement on the Lease or otherwise.

357. Any Order made by a Judge upon an Application for Relief under the Provisions of the last Two preceding Sections shall be subject to an Appeal to the Court, and may be discharged, varied, or set aside by the Court, upon such Terms as the Court shall think fit, on Application made thereto by any Party dissatisfied with such Order.

Minute
of Relief
granted.
23 & 24 Vict.
c. 126. s. 3.

Appeal to
the Court
from Order
of Judge.
23 & 24 Vict.
c. 126. s. 4.

358. It shall be lawful for the Party against whom the Court makes any Rule or Order in respect of such Relief to appeal from such Rule or Order, and the Courts of Error shall be the Courts of Appeal for this Purpose, and every such Appeal shall be subject to the like Provisions as herein-before provided in relation to Appeals from Rules of the Court upon Motions for new Trials, or to enter a Verdict or Nonsuit by Sections 287., 288., 289., 291., and 292 of this Act.

Power to
appeal from
Order of
Court.
23 & 24 Vict.
c. 126. s. 5.

359. The Proof of Title in any One or more several Claimants in Ejectment shall be sufficient to entitle a Verdict to be entered for such

Proof of
Title.
16 & 17 Vict.
c. 113. s. 203.

such Claimant or Claimants, and it shall not be necessary to produce or prove upon any Trial of an Ejectment the Affidavit of Service of the Writ of Summons.

*Action for
Replevin of
Goods.*

And with respect to the Proceedings for Recovery of Goods and Chattels by way of Replevin :

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*Action for
Replevin to be
commenced
by Writ of
Summons.*

13 & 14 Vict.
c. 18. s. 11.

360. Where any Party whose Goods or Chattels have been taken or distrained shall dispute the Validity of such Taking or Distress, and shall be desirous of proceeding for the Recovery of such Goods and Chattels by Replevin in any of the said Superior Courts, such Party may commence a personal Action for the Recovery of the Goods or Chattels so taken or distrained by a Writ of Summons, which Writ of Summons shall, in addition to any Particulars herein-before required in an ordinary Writ of Summons, state the Particulars of the Property taken or distrained, and the Place where such Taking, Seizure, or Distress shall have been made, and shall be served by delivering a Copy or Copies thereof to the Defendant or Defendants, or to any Agent or other Person acting for him or them in making such Seizure or Distress, or in keeping the Goods and Chattels so taken or distrained, in the Manner herein-before provided in respect of an ordinary Writ of Summons.

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*Plaintiff may
sue out also
a Writ of
Replevin.*

16 & 17 Vict.
c. 113. s. 229.

361. When any such Action shall have been so commenced it shall be lawful for the Plaintiff therein to sue out of the Court in which such Action shall be instituted a Writ, to be called a Writ of Replevin, in the Form No. 26. in the Schedule (A.) to this Act annexed, directed to the Sheriff of the County in which such Goods and Chattels shall be under Seizure or Distress, requiring him to replevy the said Goods and Chattels, and the said Sheriff shall and he is hereby required, upon good Security (by the Bond, the Plaintiff, and Two responsible Persons as Sureties, conditioned as usual in such Cases) being given to him in double the Amount of the Value of the Property taken or distrained, to execute such Writ, and to return the said Writ, with a correct and proper Statement endorsed thereon of the Manner in which the same shall have been executed, or the Cause why the same has not been executed, to the Court out of which the same shall have issued within Eight Days, exclusive of any Days appointed to be observed and kept as Holidays, next after such Writ shall have been delivered to him : Provided always, that the Value of the Property so taken or distrained shall be ascertained by the said Sheriff in like Manner as the Value of Goods distrained is now ascertained by Law by the Sheriff in taking Security in Replevins, and that the said Bonds shall be assignable by the Sheriff under like Circumstances and in like

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35

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like

like Manner, and shall be available to the Assignee thereof, as by Law now or hereafter authorized in respect of Replevin Bonds.

- 362.** If the Plaintiff in any such Action for Replevin of a Distress made for Rent shall be non-prossed for not filing his Declaration, it shall be lawful for the Defendant to file a Suggestion in the Nature of a Declaration for Rent, praying the Court to inquire the Cause of the Distress; and thereupon, or in case Judgment be given for the Defendant on Demurrer, it shall be lawful for the Court to issue a Writ of Inquiry to the Sheriff of the County wherein the Distress was taken, or to the Master of the Court, to inquire touching the Amount of Rent in arrear at the Time of such Distress being taken, and the Value of the Goods or Chattels distrained, and such Inquiry shall be taken in the Manner hereinbefore provided upon Judgment by Default in case of unliquidated Demands; and upon the Return of such Inquisition the Defendant shall have Judgment and Execution to recover against the Plaintiff the Arrears of Rent, whether the Value of the Goods and Chattels distrained shall amount to so much or not, with his Costs of Suit in that Behalf incurred; and in case the said Plaintiff shall be non-suit after Issue joined, or if the Verdict shall be given against the Plaintiff, then the Jurors impaneled to try such Issue shall, at the Prayer of the Defendant, inquire the Amount of Rent due and the Value of the Goods and Chattels distrained, and the Defendant shall have Judgment and Execution for such Arrears, whether the Value of the said Goods and Chattels shall amount to so much or not, together with his Costs of Suit in that Behalf incurred: Provided always, that nothing herein contained shall in any Manner alter or affect the Liability of the Sureties in the Replevin Bond.
- If Plaintiff in Replevin be non-prossed or nonsuited, Defendant entitled to Judgment and Execution for his Rent.*
16 & 17 Vict. c. 113. s. 230.
- 19 & 20 Vict. c. 102. s. 101.

- 363.** The Plaintiff in Replevin may in answer to an Avowry pay Money into Court in satisfaction in like Manner and subject to the same Proceedings as to Costs and otherwise as upon a Payment into Court by a Defendant in other Actions, but such Payment shall not, nor shall the Acceptance thereof by the Defendant in Satisfaction, work a Forfeiture of the Replevin Bond.
- Payment into Court in Replevin.*
23 & 24 Vict. c. 126. ss. 23 and 24.

- And with respect to the Procedure in Real Actions, be it enacted as follows:

Real Actions.

- 364.** No Writ of Right of Dower or Writ of Dower Unde nihil habet, and no Complaint for Free Bench or Dower in the Nature of any such Writ, and no Quare impedit shall be brought after the Commencement of this Act in any Court whatsoever; but where any such Writ, Action, or Complaint would now lie, either in a Superior or in any other Court, an Action may be commenced by Writ of Summons
- Dower, Writ, of Right, of Dower and Quare impedit abolished as Real Actions, and to be commenced by*
- [48.] M 3

Writ of
Summons.
23 & 24 Vict.
c. 126. s. 26.

Summons returnable into the Court of Common Pleas in the same Manner and Form as the Writ of Summons in an ordinary Action ; and upon such Writ shall be endorsed a Notice that the Plaintiff intends to declare in Dower, or for Free Bench, or in Quare impedit, as the Case may be.

5

Writ and all
Proceedings
thereupon,
to be same
as in ordi-
nary Actions.
23 & 24 Vict.
c. 126. s. 27.

365. The Service of the Writ, Appearance of the Defendant, Proceedings in default of Appearance, Pleadings, Judgment, Execution, and all other Proceedings and Costs upon such Writ, shall be subject to the same Rules and Practice, as nearly as may be, as the Proceedings in an ordinary Action commenced by Writ of Summons ; and the Provisions of this Act shall apply to the Writ and Pleadings thereupon.

*Error on
Special
Case.*

And with respect to Error on a Judgment upon a Special Case, be it enacted as follows :

Error may
be brought
on a Special
Case.
17 & 18 Vict.
c. 125. s. 32.

366. Error may be brought upon a Judgment upon a Special Case in the same Manner as upon a Judgment upon a Special Verdict, unless the Parties agree to the contrary ; and the Proceedings for bringing a Special Case before the Court of Error shall, as nearly as may be, be the same as in the Case of a Special Verdict ; and the Court of Error shall either affirm the Judgment or give the same Judgments as ought to have been given in the Court in which it was originally decided, the said Court of Error being required to draw any Inferences of Fact from the Facts stated in such Special Case which the Court where it was originally decided ought to have drawn.

25

*Miscella-
neous
Provisions.*

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 Pro-
ceedings to
have a spe-
cific Effect.
15 & 16 Vict.
c. 76. s. 226.

367. 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 any of the Superior Courts of Law and Equity at Dublin, 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, alter, abridge, or vary the

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.

368. Any Person who shall upon any Examination upon Oath or Affirmation, or in any Affidavit in Proceedings under this Act, wilfully and corruptly give false Evidence, or wilfully and corruptly swear or affirm anything which shall be false, being convicted thereof, shall be liable to the Penalties of wilful and corrupt Perjury.

False Evidence.
17 & 18 Vict.
c. 125. s. 89.

369. The Superior Courts may appoint and hold Sittings either in banco or for the Trial of Issues in Fact by Judge or Jury at any Time or Times, whether in Term or Vacation, not being between the First of August and the Twentieth of October, and this Section shall apply to Business at the Crown Side of the Court of Queen's Bench.

Courts may appoint Sittings.
17 & 18 Vict.
c. 125. s. 95.

370. 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 Writ, Pleading, Record, or other 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 in such Manner as shall be thereby directed, and 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, if duly applied for; and when such Amendment shall be made at Nisi Prius, or upon an Inquiry, the Order shall be endorsed upon the Record or Writ, and all Pleadings or other Records of the Court which it may be necessary to amend in conformity therewith shall be amended accordingly.

Amendments.
15 & 16 Vict.
c. 76. s. 222.

371. It shall be lawful for the Lord Lieutenant of Ireland 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 several Orders to be made in pursuance thereof, shall apply to all or any Court or Courts of Record in Ireland; and within One Month after such Order shall have been made and published in the "Dublin Gazette," such Provisions and Orders respectively shall extend and apply in manner directed by such Order, and any such Order may be in like

The Lord Lieutenant may direct all or Part of this Act to extend to any Court of Record.
17 & 18 Vict.
c. 125. s. 105.

Manner from Time to Time altered and annulled; and in and by any such Order the Lord Lieutenant may direct by whom any Powers or Duties incident to the Provisions applied under this Act shall and may be exercised with respect to Matters in such Court or Courts, and may make any Orders or Regulations which may be 5 deemed requisite for carrying into operation in such Court or Courts the Provisions so applied.

General
Rules may
be made by
the Judges.
16 & 17 Vict.
c. 113. s. 233.

372. It shall be lawful for the Judges of the Superior Courts of Common Law, or any Seven or more of them, whereof Two shall be Chief Judges, from Time to Time to make all 10 such General Rules and Orders for the effectual Execution of this Act, and the "Mercantile Law Amendment Act, 1856," and for making such Alterations in the Mode of Pleadings in the said Courts, and in the Mode of entering and transcribing Pleadings, Judgments, and other Proceedings in Actions at 15 Law, and in the Time and Manner of objecting to Errors in Pleadings and other Proceedings, and in the Mode of verifying Pleas, and in obtaining Final Judgment without Trial in certain Cases, and such Regulations as to the Payment of Costs, and for apportioning the Costs of Issues, and for fixing the Costs to be allowed for and in 20 respect of the Matters herein contained, or prescribed by such General Orders, and for enforcing the Performance thereof, and for settling a Scale of Expenses or Remuneration to be allowed to Witnesses, and for the Purpose of enforcing Uniformity of Practice and Pleading in the said Courts, and of Practice in the Offices 25 thereof, and of ensuring, as far as may be practicable, an equal Division of the Business amongst 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 if any Difference shall appear to exist in the Practice of the said Courts and the Offices 30 thereof, it shall be lawful for the Lord Chief Justice of the Court of Queen's Bench to summon a Meeting of the Judges, and thereupon the said Judges shall have full Power by a General Order or Orders to be made by any Seven or more of them, whereof Two shall be Chief Judges, to determine what the Practice in all the said Courts 35 and Offices thereof shall thenceforward be; and all such Rules and Orders as they shall so make shall be valid and effectual, and shall be observed in each of the said Courts and the Offices thereof, until varied or altered by the like Authority, anything in this Act to the contrary notwithstanding; and any Expenses which the Judges shall 40 certify (as now required with reference to incidental Expenses) to have been properly incurred in giving effect to the Provisions of this Act shall be charged and paid in like Manner and as Part of the incidental Expenses of the said Courts: Provided that nothing herein contained shall be construed to restrain the Authority or 45
limit

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.

373. 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 Seven or more of them, of whom Two shall be the Chief Judges, be deemed necessary or expedient for giving Effect to the Provisions herein-before contained and the Provisions of the "Mercantile Law Amendment Act, 1856," and in such Forms as the Judges of the said 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.

New Forms of Writs and other Proceedings.
15 & 16 Vict.
c. 76. s. 224.

374. 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.

Rules may be made by each Court for Government of its Officers.
15 & 16 Vict.
c. 76. s. 225.

375. The Enactments contained in Sections 105, 180, 191 of this Act shall apply and extend to every Court of Civil Judicature in Ireland; and the Enactments contained in Sections 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, and 372 shall apply and extend to all Courts of Judicature, as well Criminal as others, and to all Persons having, by Law or Consent of Parties, Authority to hear, receive, and examine Evidence.

Enactments of certain Sections to apply to all Civil and Criminal Courts in Ireland.

376. From and after the Commencement of this Act the several Acts and Parts of Acts set forth in the Schedule (C.) to this Act annexed, and to the Extent to which such Acts or Parts of Acts are by such Schedule expressed to be repealed, are hereby repealed, except as to anything done before the Commencement of this Act, and except so far as may be necessary for the Purpose of supporting and continuing any Proceeding heretofore taken upon any Action brought before the Commencement of this Act, and except as to

Repeal of former Acts.

the Recovery or Application of any Penalty for any Offence which shall have been committed before the Commencement of this Act, and except so far as the said Acts or Parts of Acts, or any Part thereof, are or is incorporated in "The Probates and Letters of Administration Act (Ireland), 1857," and in a certain Act passed 5 in the Session of Parliament holden in the Twentieth and Twenty-first Years of the Reign of Her present Majesty, intituled "An Act " to alter the Constitution and amend the Procedure of the Court " of Exchequer Chamber in Ireland," in relation to Proceedings in the Court of Exchequer Chamber other than those specially pro- 10 vided for by this Act.

This Act not to affect "The Common Law Procedure Amendment Act (Ireland), 1864," as to the County of Cork Juries.

377. Nothing in this Act contained shall be deemed or taken to repeal an Act passed in the Session of Parliament held in the Twenty-seventh and Twenty-eighth Years of Her present Majesty, intituled "The Common Law Procedure Amendment Act (Ireland), 15 1864," as to County of Cork Juries; and the Clauses in the said Act contained referring to "The Common Law Procedure Act (Ireland), 1853," shall be deemed to apply to this Act, *mutatis mutandis*.

Schedule of Law Fund Duties.

378. The several Duties set forth in Schedule (D.) to this Act 20 annexed shall be the respective Law Fund Duties on the Proceedings in Actions in the said Superior Courts of Law in Ireland, and shall be in lieu and stead of the existing Duties in respect of the same or the like Subject Matter, and the like Penalties, Forfeitures, and Remedies for the Enforcement and Recovery of the same shall 25 attach upon the said Duties as previously existed in respect of the Law Fund Duties heretofore in force.

And with respect to the Interpretation of Words in this Act :

Interpretation of Terms.
16 & 17 Vict.
c. 113. s. 4.

379. In the Construction of this Act the Word "Court" shall be understood to mean any One of the Superior Courts of Common 30 Law at Dublin 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 "Action" shall, except where inconsistent with the Context, be understood to mean any Personal Action brought by Writ of Summons in any of the said Courts; 35 and the Word "Master" shall be understood to mean a Master of 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 40 "beyond the Seas" within the Meaning of this Act; and the Word "County" shall be taken to extend to and include, where necessary and

and consistent, any City, County of a City, or County of a Town or City, and County of any Place, as the Case may be; and the Word "Party" or "Person" shall extend to and include any Corporation or other Public Body; and the Word "Affidavit" shall include an
5 Affirmation or Declaration made by any Person who is empowered to give Evidence by Affirmation or Declaration in lieu of Oath; and no Provision requiring the Affidavit of or any Act to be done by the Attorney, or the Signature of Attorney or Counsel, or Service on the Attorney, shall apply to Cases where the Plaintiff or
10 Defendant shall sue or defend in person, but all such Acts shall be done by and Notices given to the Party so suing or defending in person; 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
15 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
20 to such Construction.

380. In citing this Act in any Instrument, Document, Pleading, Short Title. Proceeding, or Act of Parliament it shall be sufficient to use the Expression "The Common Law Procedure Act (Ireland), 1867."

SCHEDULES referred to in the foregoing Act.

SCHEDULE (A.)

No. 1.

Writ where the Defendant resides within the Jurisdiction.

Victoria, by the Grace of God, &c. 5

To C.D. of in the County of Merchant.

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 10 proceed therein to Judgment and Execution. Witness the Seal of Our Superior Courts of Common Law hereunto set at Dublin, the Day of in the Year of our Lord 18 .

Memorandum to be subscribed on the Writ.

N.B.—The Writ is to be served within [Six] Calendar Months from the 15 Date thereof, or, if renewed, from the Date of such Renewal, including the Day of such Date, and not afterwards.

Endorsement 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 20
[Mention the City, Town, or Parish, and also the Name of the Street and Number of the House of the Plaintiff's Residence, if any such, and his Description.]

Endorsement 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 25 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.

5 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 Ireland]

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
10 vice, 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.

15 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.

Endorsement 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
20 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 Street and Number of the House of the Plaintiff's Residence, if any such.]

The Endorsement required by the Ninth Section should be made on this Writ,
25 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.

30 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 Ireland]

40 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.

5

Notice of the foregoing Writ.

To *G.H.* late of [*Mullingar in the County of Westmeath*], or now residing at [*Paris in France*].

Take notice, That *A.B.* of _____ in the County of _____ Ireland, has commenced an Action at Law against you *C.D.* in Her Majesty's Court of 10
by a Writ returnable into that Court, dated the _____ Day
of _____ A.D. 18 ____; and you are required within _____ Days after the
Receipt of this Notice, inclusive of the Day of such Receipt, to defend the said
Action by causing an Appearance to be entered for you in the said Court to
the said Action; and in default of your so doing the said *A.B.* may, by Leave 15
of the Court or a Judge, proceed thereon to Judgment and Execution.

[*Here state Amount of Claim as required by the Ninth Section, but allowing the Defendant the Time limited for Appearance to pay Debt and Costs.*]

(Signed) *A.B.* of _____ &c.
or _____ 20
E.F. of _____ &c.
Attorney for *A.B.*

No. 4.

Special Indorsement.

[*After the Indorsement required by the Ninth Section of this Act, this special 25
Indorsement may be inserted.*]

The following are the Particulars of Plaintiff's Claim:

	£	s.	d.	
1867.—June 20. Half Year's Rent to this Day of House				
and Premises in Grafton Street, Dublin -	25	10	0	
Sept. 12. Ten Sacks of Flour, at 40s. -	20	0	0	30
Dec. 1. Money received by Defendant -	17	0	0	

	62	10	0	
Paid - - - -	15	0	0	
Balance due - -	47	10	0	35

Or

To Butcher's Meat supplied between the 1st of January 1866 and the 1st of				
January 1867 - - - -			£52	
Paid - - - -			20	
Balance - - - -			£32	40

[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 Demand, so as to prevent the Necessity of an Application for further Particulars.]

Or,

- 5 £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 say 100*l*. and Interest.

10

Or,

A Penalty of 50*l*. under the Statute 26 Vict. c. 29.

Or,

£85 on a Bill of Exchange for 100*l*., dated the 2d February 1864, accepted
or drawn, or indorsed by the Defendant.

15

Or,

£50 on a Guarantee, dated the 1st of January 1863, whereby the Defendant
guaranteed the due Payment by *E.F.* of Goods supplied or to be supplied to
him.

- 20 [To any of the above may be added, in Cases where Interest is payable, "the
" Plaintiff also claims Interest on *l.* 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
25 Sum not exceeding the Sum above claimed (with Interest at the Rate
specified), and the Sum of *l.* for Costs, and issue Execution
at the Expiration of Eight Days from the last Day for Appearance.

No. 5.

- 30 Judgment for Default of Appearance by Defendant residing within
the Jurisdiction when the Writ is specially indorsed.

In the Queen's Bench:

On the Day of A.D. 1867.

[Day of signing the Judgment.]

- Ireland, } A.B. in his own Person (or by X.Y. his Attorney) sued out a
35 to wit. } Writ of Summons against C.D., indorsed according to "The
Common Law Procedure Act (Ireland), 1867," 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. *l.* together with *l.* for
40 Costs of Suit.

No. 6.

The Issue on a Question or Questions of Fact without Pleadings.

In the Queen's Bench :

The Day of in the Year of our Lord 18
 County of Leitrim, } Whereas *A.B.* has sued *C.D.*, and affirms and denies 5
 to wit. }

[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 (Ireland), 1867," that the said Question
 shall be tried by a Jury : Therefore let the same be tried accordingly.

No. 7.

10

Bill of Exceptions.

In the Queen's Bench :

Monday, the 20th Day of July A.D. 1867.

A.B. The Issues in Fact in the annexed Record of *Nisi Prius*
 Plaintiff. } having come to be tried by a Jury on this Day, the Plaintiff 15
C.D. } produced and examined as a Witness one *G.H.* to prove
 Defendant. } the Fact of [*&c. &c.*]; and the said *G.H.* deposed that
 [*&c., &c.*], which Evidence the Defendant objected to as not being legal
 Evidence of the Fact; and the Plaintiff insisting to the contrary, the Judge
 at *Nisi Prius* admitted the Evidence to be received accordingly; and therefore 20
 the Defendant excepts, and prays that his Exception shall be placed upon the
 Record, for the Examination of the Court above.

(Signed) *L.M.*, Counsel for Defendant.
 L.P., Judge.

No. 8.

25

Suggestion of Breaches.

In the Queen's Bench :

Monday, the 20th Day of June A.D. 1867.

A.B. And now on this Day the said *A.B.* the Plaintiff comes
 Plaintiff. } and informs the Court, that after the Recovery of the said 30
C.D. } Judgment, and on the First Day of April 1865, another
 Defendant. } half-yearly Gale of the said Annuity, amounting to the
 Sum of 100*l.*, became due and payable to the Plaintiff, and that the Defendant
 has neglected and refused to pay the same, in breach and violation of the
 Conditions of the said Bond upon which the Plaintiff recovered such Judgment; 35
 and therefore the Plaintiff prays Execution of the said Judgment for the
 further Sum of 100*l.*

No. 9.

Form of Rule or Summons where a Judgment Creditor applies for Execution against a Judgment Debtor.

[Formal Parts.]

- 5 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 l. 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.]

15

No. 10.

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. 11.

Form of Writ of Revivor.

- VICTORIA, by the Grace of God, &c., to E.F. of greeting.
- 30 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] l.; and take notice, that in default of your so doing the said A.B. [or as the Case may be] may proceed to Execution.
- 40 Witness, &c.

No. 12.

Satisfaction Piece, Affidavit, and Requisition to enter Satisfaction on Judgment.

A.B. Plaintiff. } I A.B. of did obtain a Judgment in the
 C.D. Defendant. } Court of as of Term 18 Roll 5
 } No. against C.D. for the Sum
 } of which said Judgment has been fully
 satisfied and discharged [or, in case of part Payment, of which the Sum of
 } , Part of the Sum secured by the said Judgment, has been
 paid]; and I hereby consent that Satisfaction [or, in case of part Payment, a 10
 Memorandum of such part Payment shall] be entered on the Record of said
 Judgment.

Dated this Day of 18 .
 Signed in Presence of E.F.

A.B.

The above-named E.F. of this Day maketh Oath and saith, 15
 That he is the subscribing Witness to and saw the above Consent duly
 executed by A.B. of , and saith that the Name E.F. subscribed
 as Witness to the above Consent is Deponent's proper Name and Handwriting.

(Signed) E.F.

Sworn before me, this

20

Now I G.H. of a practising Attorney of this Honourable
 Court, do hereby, on behalf of the Defendant, require the proper Officer to
 enter Satisfaction [or, in case of part Payment, that a Memorandum of part
 Payment be entered] on the Record of said Judgment.

(Signed) G.H., Attorney. 25

To the Master of the Court of

No. 13.

Memorandum of Error in Law.

In the Queen's Bench:

The Day of in the Year of our Lord 18 . 30
 [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.

35

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

No. 14.

40

Suggestion of Error and Denial of it.

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 that there is no Error 45
 therein.

No. 15.

Memorandum alleging Error in Fact.

In the Queen's Bench :

The Day of in the Year of our Lord 18 .

5 [*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.

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

No. 16.

15 *Writ of Summons in Cases of Summary Procedure on Bills of Exchange.*

Victoria, by the Grace of God, &c.

To *C.D.*, of in the County of

WE warn you, that unless within Twelve Days after the Service of this Writ
 20 on you, inclusive of the Day of such Service, you obtain Leave from the Court
 of or One of the Judges thereof, to appear, and do within that
 Time appear, in Our Court of in an Action at the Suit of *A.B.*,
 the said *A.B.* may proceed to Judgment and Execution.

Witness, &c.

25 *Memorandum to be subscribed on the Writ.*

N.B.—This Writ is to be served within Six Calendar Months from the Date
 hereof, or if renewed from the Date of such Renewal, including the
 Day of such Date, and not afterwards.

Endorsement to be made on the Writ before Service thereof.

30 This Writ was issued by *E.F.* of Attorney for the 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 Street, and
 Number of the House of the Plaintiff's Residence.*]

Endorsement.

35 The Plaintiff claims [Pounds, Principal and Interest], or
 Pounds, Balance of Principal and Interest, due to him as the Payee [*or Endorsee*]
 of a Bill of Exchange or Promissory Note, of which the following is a Copy :
 [*Here copy Bill of Exchange or Promissory Note, and all Endorsements upon it.*]
 And if the Amount thereof be paid to the Plaintiff or his Attorney within
 40 Days from the Service hereof, further Proceedings will be stayed.

Notice.

Take notice, That if the Defendant do not obtain Leave from the Court, or One of the Judges thereof, within Twelve Days after having been served with this Writ, inclusive of the Day of such Service, to appear thereto, and do not within such Time cause an Appearance to be entered for him in the Court 5 into which this Writ is returnable, the Plaintiff will be at liberty, at any Time after the Expiration of such Twelve Days, to sign final Judgment for any Sum not exceeding the Sum above claimed, and the Sum of Pounds for Costs, and issue Execution for the same.

Leave to appear may be obtained on an Application to the Court or a Judge, 10 supported by Affidavit, showing that there is a Defence to the Action on the Merits, or that it is reasonable that the Defendant should be allowed to appear in the Action.

Endorsement to be made on the Writ after Service thereof.

15

This Writ was served by X. Y. on L. M. (the Defendant or the Defen-
dants), on Monday the Day of 18 ,
By X. Y.

No. 17.

*Judgment on Nonappearance in Cases of Summary Procedure on 20
Bills of Exchange and Promissory Notes.*

In the Queen's Bench :

On the Day of in the Year of our Lord 18

[*Day of signing Judgment.*]

Ireland, } A. B. in his own Person [*or by his Attorney*] sued out a Writ 25
to wit. } against C. D., endorsed as follows :

[*Here copy Endorsement of Plaintiff's Claim.*]

And the said C. D. has not appeared.

Therefore it is considered that the said A. B. recover against the said C. D.
Pounds, together with Pounds for Costs of Suit. 30

No. 18.

*Ejectment.**Form of Writ.*

Victoria, &c., to X. Y. Z., and all Persons entitled to defend the Possession
of

35

[*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 40
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. (*as in personal Actions*).

5 *[Here endorse the Sum claimed as Damages for the Loss of Mesne Rates and Profits, or the Particulars of the Rent due, as the Case may be.]*

No. 19.

Judgment in Ejectment in case of Nonappearance.

In the Queen's Bench :

The Day of 18 .

10 *[Date of Writ.]*

County of Cork, } On the Day and Year above written, a Writ of our Lady
to wit. } the Queen issued forth, returnable into this Court, in
these Words; that is to say,

Victoria, by the Grace of God

15 *[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
20 Appurtenances.

No. 20.

Judgment in Ejectment where no Defence to Part.

In the Queen's Bench ;

The Day of A.D. 18 .

25 County of Galway, } On the Day and Year above written, a Writ of our
to wit. } Lady the Queen issued forth, returnable into this
Court, in these Words ; that is to say,

Victoria, by the Grace of God

[Here copy the Writ]

30 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,
35 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. [*as in the next Form,*
No. 21].

No. 21.

Issue in Ejectment where the Defence is to the whole.

In the Queen's Bench:

The Day of A.D. 18
 County of Dublin, } On the Day and Year above written a Writ of our Lady 5
 to wit. } the Queen issued forth, returnable into 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 10
 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., and let the Jury
 ascertain whether the Plaintiff is entitled to any and what Damages for Loss
 of Mesne Rates and Profits, and [*in case of Ejectment for Nonpayment of Rent*]
 the Amount of Rent due to the Plaintiff. 15

No. 22.

Judgment in Ejectment on Verdict for the Plaintiff.

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 20
 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 it is considered that the said A.B. (*the Claimant*) 25
 do recover the Possession of the said Land with the Appurtenances, and the
 Sum of l. for his Damages for the Loss of the Mesne Rates and
 Profits of the said Lands [*and in Ejectment for Nonpayment of Rent*] the Sum
 of l. for the Arrears of the Rent of the said Land.

No. 23.

30

Judgment in Ejectment for Costs after Discontinuance.

In the Queen's Bench:

The Day of 18

[*Date of Writ.*]

County of Kildare, } On the Day and Year above written a Writ of our Lady 35
 to wit. } the Queen issued forth returnable into 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 40
 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. l. for his Cost of Defence.

No. 24.

Judgment in Ejectment where the Plaintiff has not proceeded to Trial when required so to do.

In the Queen's Bench:

5 The Day of 18.

[*Date of Writ.*]

County of Tyrone, } On the Day and Year above written a Writ of our Lady
to wit. } the Queen issued forth, returnable into this Court, in
these Words; that is to say,

10 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

15 *C.D.* be acquitted, and that he recover against the said *A.B.* *l.* for
his Costs of Defence.

No. 25.

Judgment in Ejectment by Confession.

In the Queen's Bench:

20 The Day of 18 .

[*Date of Writ.*]

County of Carlow, } On the Day and Year above written a Writ of our Lady
to wit. } the Queen issued forth, returnable into this Court, in
these Words; that is to say,

25 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 the said *C.D.* has confessed
the said Action [*or has confessed the said Action as to Part of the said Land,*
30 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 *l.* for Costs.

No. 26.

Writ of Replevin.

35 VICTORIA, by the Grace of God, &c.

To the Sheriff of greeting.

WE command you that without Delay you cause to be replevied to *A.B.* his
Goods and Chattels (and Cattle), to wit, which *C.D.* took
and unjustly detains, as it is said, and after what Manner you shall have executed
40 this Our Writ make appear to Us [*or to Our Justices or Barons, as the Case may*
be], at the Queen's Courts, Dublin, and have there this Our Writ.

Witness, &c.

Endorsements as in other Cases.

SCHEDULE (B.)

FORMS OF PLEADINGS.

STATEMENT OF CAUSES OF ACTION.

On Contracts.

Goods sold.	1. MONEY payable by the Defendant to the Plaintiff for [<i>These Words, "Money payable," &c. should precede Money Counts like 1 to 13, but need only be inserted in the first.</i>] Goods bargained and sold by the Plaintiff to the Defendant.	5
Work and Materials.	2. Work done and Materials provided by the Plaintiff for the Defendant at his Request.	10
Money lent.	3. Money lent by the Plaintiff to the Defendant.	
Money paid.	4. Money paid by the Plaintiff for the Defendant at his Request.	
Money received.	5. Money received by the Defendant for the Use of the Plaintiff.	
Account stated.	6. Money found to be due from the Defendant to the Plaintiff on Accounts stated between them.	15
For an Estate sold.	7. A Messuage and Land sold and conveyed by the Plaintiff to the Defendant.	
For Goodwill.	8. The Goodwill of a Business of the Plaintiff sold and given up by the Plaintiff to the Defendant.	
For the Use of a House and Land.	9. The Defendant's Use, by the Plaintiff's Permission, of Messuages and Lands of the Plaintiff.	20
For the Use of a Fishery.	10. The Defendant's Use, by the Plaintiff's Permission, of a Fishery of the Plaintiff.	
For Hire of Goods, &c.	11. The Hire of [<i>as the Case may be</i>] by the Plaintiff, let to Hire to the Defendant.	25
For Freight.	12. Freight for the Conveyance by the Plaintiff, for the Defendant, at his Request, of Goods in Ships.	
For Demurrage.	13. The Demurrage of a Ship of the Plaintiff kept on Demurrage by the Defendant.	
Payee against Maker of Note.	14. That the Defendant on the _____ Day of _____ A.D., by his Promissory Note, now overdue, promised to pay to the Plaintiff l. [<i>Two</i>] Months after Date, but did not pay the same.	30
Indorsee against Indorser of Note.	15. That one A. on, &c. [<i>Date</i>], by his Promissory Note, now overdue, promised to pay to the Defendant or Order _____ l. [<i>Two</i>] 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.	35
Drawee against Acceptor of Bill.	16. That the Plaintiff on, &c. [<i>Date</i>], by his Bill of Exchange, now overdue, directed to the Defendant, required the Defendant to pay to the Plaintiff l. [<i>Two</i>] Months after Date; and the Defendant accepted the said Bill, but did not pay the same.	40

17. That the Defendant, on, &c. [Date], by his Bill of Exchange, directed to A., required A. to pay to the Plaintiff *l.* [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.
18. That the Plaintiff and Defendant agreed to marry one another, and a reasonable Time for such Marriage has elapsed, and the Plaintiff has always been ready and willing to marry the Defendant, yet the Defendant has neglected and refused to marry the Plaintiff.
19. That the Plaintiff and Defendant agree 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.
20. That the Defendant, by warranting a Horse to be then sound and quiet to ride, sold the said Horse to the Plaintiff, yet the said Horse was not then sound and quiet to ride.
21. That the Plaintiff and the Defendant agreed by Charterparty 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 *l.* 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 *l.* 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 the Time for so doing has elapsed, yet the Defendant made default in loading the agreed Cargo.
22. That the Plaintiff let to the Defendant a House, No. , Merrion Square, North, Dublin, for Seven Years, to hold from the Day of A.D. at *l.* a Year, payable quarterly, of which Rent Quarters are due and unpaid.
23. That the Plaintiff by Deed let to the Defendant a House, No. , Henrietta Street, Dublin, 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.

Payee against Drawer.

Breach of Promise of Marriage.

Warranty of a Horse.

For not loading pursuant to Charterparty.

Upon a Lease for Rent.

Upon a Covenant to repair.

Trespass Land.

Assault, Battery, and false Imprisonment.

Criminal Conversation.

Wrongful Conversion of Goods.

Wrongful Detention of Property, &c.

For Wrongs independent of Contract.

24. That the Defendant broke and entered certain Land of the Plaintiff, called the Big Field, and depastured the same with Cattle.
25. That the Defendant assaulted and beat the Plaintiff, gave him into Custody to a Policeman, and caused him to be imprisoned in a Police Office.
26. That the Defendant debauched and carnally knew the Plaintiff's Wife.
27. That the Defendant converted to his own Use or wrongfully deprived the Plaintiff of the Use and Possession of the Plaintiff's Goods; that is to say, Iron, Hops, Household Furniture [or, as the Case may be].
28. That the Defendant detained from the Plaintiff his Title Deeds of Land called Belmont in the County of Cork; that is to say [describe the Deeds].

Diverting
Water from
a Mill.

29. That the Plaintiff was possessed of a Mill, and by reason thereof was entitled to the Flow of a Stream for working the same, and the Defendant, by cutting the Bank of the said Stream, diverted the Water thereof away from the said Mill.

Infringement
of a Patent.

30. That the Plaintiff was the First and true Inventor of a certain new 5
Manufacture; that is to say, of "certain Improvements in the Manufacture of
"Sulphuric Acid," and thereupon 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 Ireland, for the
Term of Fourteen Years from the Day of A.D. 10
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, particu-
larly 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 15
within the Time prescribed fulfil the said Condition, and the Defendant during
the said Term did infringe the said Patent Right.

Defamation of
Character.

31. That the Defendant falsely and maliciously spoke and published of the Plaintiff the Words following; that is to say, "he is a Thief."

[If there be any special Damage, here state it with such reasonable Particularity 20
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.

32. That the Defendant falsely and maliciously printed and published of the Plaintiff, in a Newspaper called " , " the Words following; that is to 25
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.

30

33. The Defendant by his Attorney [or in Person] says
[Here state the Substance of the Plea.]

34. And for a Second Plea the Defendant says
[Here state the Second Plea.]

Pleas in Actions on Contracts.

40

Denial of Debt.

35. That he never was indebted as alleged.
[This Plea is applicable to Declarations like those numbered 1 to 13.]

Denial of Con-
tract.

36. 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 18 to 21. It would be unobjectionable to use 45
"did not warrant," "did not agree," or any other appropriate Denial.]

Denial of Deed.

37. That the alleged Deed is not his Deed.

Statute of Li-
mitations.

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

50

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

40. That the Plaintiff at the Commencement of this Suit was, and still is, Set-off indebted to the Defendant in an Amount equal to the Plaintiff's Claim, for

5 [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.

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

Pleas in Actions for Wrongs independent of Contract.

10 42. That he is not guilty.

Not guilty.

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

Leave and
Licence.

44. That the Plaintiff first assaulted the Defendant, who thereupon neces- Self Defence.
sarily committed the alleged Assault in his own Defence.

45. That the Defendant, at the Time of the alleged Trespass, was possessed Right of Way.
15 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
20 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.

46. That the Defendant, at the Time of the alleged Trespass, was possessed Right of
of Land the Occupiers whereof for Thirty Years before this Suit enjoyed as of Common.
Right, and without Interruption, Common of Pasture over the said Land of
25 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.

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

Joinder of
Issue.

48. The Plaintiff as to Second Plea says,—

[Here state the Answer to the Plea as in the following Forms:]

Replication to
Pleas contain
ing new Matter

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

To Plea of
Release.

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

35 51. That the alleged Set-off did not accrue within Six Years before this
Suit. To Plea of Set-off.

52. That the Plaintiff was possessed of Land whereon the Defendant was To Self Defence.
trespassing and doing Damage, whereupon the Plaintiff requested the Defendant to leave the said Land, which the Defendant refused to do; and there-
40 upon 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.

53. That the Occupiers of the said Land did not for Twenty Years before To Right of
this Suit enjoy as of Right and without Interruption the alleged Way. Way.

New Assignment.

To the Pleas
of Right of Way
and Right of
Common.

54. The Plaintiff, as to the and Pleas, says, that he
sues, not for the Trespasses therein admitted, but for Trespasses committed by
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 5
the said Pleas.

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

55. And the Plaintiff, as to the and Pleas, further
says, that he sues not only for the Trespasses in those Pleas admitted, but also 10
for, &c.

[If the Plaintiff replies, and new assigns to some of the Pleas, and new
assigns only to the other, the Form may be as follows:]

56. And the Plaintiff, as to the and Pleas, further
says, that he sues not for the Trespasses in the Pleas 15
[The Pleas not replied to],
admitted, but for the Trespasses in the Pleas
[The Pleas replied to]
admitted, and also for, &c.

SCHEDULE (C.)

20

Acts to be repealed, in so far as in the foregoing Act declared.

Date of Act.	Title of Act.	Extent of Repeal.	
33 Geo. 3. c. 42. -	An Act for the Relief of Insolvent Debtors in regard to the Imprisonment of their Persons.	Sect. 28.	
35 Geo. 3. c. 30. -	An Act for the Relief of Insolvent Debtors in regard to the Imprisonment of their Persons.	Sect. 31.	25
16 & 17 Vict. c. 113.	An Act to amend the Procedure in the Superior Courts of Common Law in Ireland.	The entire Act, except Sections 7, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 126, 191, 192, 232, 234, 235, 236, 237, 238.	30
19 & 20 Vict. c. 102.	An Act to further amend the Procedure in the Superior Courts of Common Law in Ireland.	The entire Act, except Sections 96, 97.	35
23 & 24 Vict. c. 154.	An Act to consolidate and amend the Laws of Landlord and Tenant in Ireland.	Sections 55, 56, 57, 58, 60, 67, 74, 77, so far as they relate to Proceedings in the Superior Courts of Common Law.	40
24 & 25 Vict. c. 43.	An Act to facilitate the Remedies on Bills of Exchange and Promissory Notes in Ireland, by the Prevention of frivolous or fictitious Defences to Actions thereto.	The entire Act.	45
25 Vict. c. 23.	An Act to amend the "Summary Procedure on Bills of Exchange (Ireland) Act, 1861."	The entire Act.	50

SCHEDULE (D.)

Law Fund Duties on Proceedings under the foregoing Act.

							£	s.	d.
	Affidavits	-	-	-	-	-	-	-	-
5	Attested Copy of any Pleading, Judgment, Affidavit, &c., &c., per Folio of Seventy-two Words	-	-	-	-	-	-	-	-
	Every Appearance entered in Ejectment	-	-	-	-	-	-	-	-
	Copy of any Rule	-	-	-	-	-	-	-	-
	Rule or Order of every Description	-	-	-	-	-	-	-	-
10	Writs of Summons, Declaration, Pleas, Demurrers, and all other Pleadings and Consents for Judgment	-	-	-	-	-	-	-	-
	Writs of Subpœna, Execution, and all other Writs whatsoever, save Writs of Summons	-	-	-	-	-	-	-	-
	Nisi Prius Record	-	-	-	-	-	-	-	-
15	Report of Master	-	-	-	-	-	-	-	-
	Requisition to enter Judgment, whether final or interlocutory, on Cognovit or otherwise, except a Final Judgment where Interlocutory Judgment has been already entered	-	-	-	-	-	-	-	-
	Summons to tax Costs	-	-	-	-	-	-	-	-
20	Requisition to tax Costs not exceeding 20 <i>l</i> .	-	-	-	-	-	-	-	-
	Requisition to tax Costs not exceeding 50 <i>l</i> .	-	-	-	-	-	-	-	-
	Requisition to tax Costs not exceeding 100 <i>l</i> .	-	-	-	-	-	-	-	-
	Requisition to tax Costs exceeding 100 <i>l</i> .	-	-	-	-	-	-	-	-
25	General Exemption from the foregoing Duties in respect of all Proceedings on behalf of Paupers admitted to sue or defend in formâ Pauperis.								

Common Law Courts (Ireland).

A

B I L L

To amend the Pleading, Practice, and
Procedure of the Courts of Common
Law in Ireland.

*(Prepared and brought in by
Mr. Attorney General for Ireland and
Mr. Solicitor General for Ireland.)*

*Ordered, by The House of Commons, to be Printed
22 February 1867.*

[Bill 48.]

Under 17 oz.