

38. That the Plaintiff, at the commencement of this suit, was, and still is, indebted to the Defendant in an amount equal to (or greater than) the Plaintiff's claim for (*state the cause of set off as in a declaration, see form ante,*) which amount the Defendant is willing to set off against the Plaintiff's claim, (or, and the Defendant claims to recover a balance from the Plaintiff.)

39. That after the claim accrued, and before this suit, the Plaintiff, by deed, released the Defendant therefrom.

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PLEAS IN ACTIONS FOR WRONGS INDEPENDENT OF CONTRACT.

40. That he is not guilty.

41. That he did what is complained of by the Plaintiff's leave.

42. That the Plaintiff first assaulted the Defendant, who thereupon necessarily committed the alleged assault in his own defence.

43. That the Defendant, at the time of the alleged trespass, was possessed of land, the occupiers whereof, for twenty years before this suit, enjoyed, as of right and without interruption, a way on foot and with cattle from a public highway over the said land of the Plaintiff to the said land of the Defendant, and from the said land of the Defendant over the said land of the Plaintiff, to the said public highway, at all times of the year, for the more convenient occupation of the said land of the Defendant, and that the alleged trespass was the use by the Defendant of the said way.

REPLICATIONS.

44. The Plaintiff takes issue upon the Defendant's first, second, &c., pleas.

45. The Plaintiff as to the second Plea, says : (*here state the answer to the plea, or in the following forms.*)

46. That the alleged release is not the Plaintiff's deed.

47. That the alleged release was procured by the fraud of the Defendant.

48. That the alleged set off did not accrue within six years before this suit.

49. That the Plaintiff was possessed of land whereon the Defendant was trespassing and doing damage, whereupon the