operate until next Easter Term, and without it there was nothing in the Common Law Procedure Act or the new rules as they at present stood, to prohibit several counts on the same cause of action. Generally it had been decided under the old practice that special assumpsit was maintainable on such a guarantee as that given in the present case, and it was no objection that there were several counts in the declaration.—*Tyrrell v. Annis*, 1 U. C. R. 299. The test was not whether there was but one cause of action disclosed in the declaration, but whether each plea within itself and on the face of it showed the same cause of action.—*Ramsden v. Grey*, per Maule, J., 7 C. B. 961; *Calvon v. Burford*, 13 M. & W. 136; *Gilbert v. Hules*, 2 D. & L., 227; *Bulwer v. Bonsfield*, 9 Q. B., 986; *Simpson v. Raud*. 1st Exch. 688. As to the statement of the time of Chapman's indebtedness to the plaintiffs it was not mere surplusage, but might be traversed—*Nash v. Brown*, 6 C. B. 584. The statement that the debt was a large sum of money, was not objectionable, as it was true; and at all events, it could do the defendants no harm. The consideration should be stated specially—*Wilson v. Braddyl*, 23rd L. J., N.S. Exch. 227. So should the conditions precedent, as was the practice in England.—*Phelps v. Prothesoe*, 15 C. B. 370; *Bamberger et al v. The Commercial Credit Assurance Company*, 24 L.J., N. S., C. P., 115.

C. Paterson in reply. The 1st and 2nd counts manifestly are for the same cause of action—therefore one of them should be struck out. The third count also presents strong features to show that it is for the same cause of action, but as it grounded the consideration on a promise to forbear instead of a discharge of Chapman, perhaps it might on the face of it be taken as a separate cause of action. In the case of *Tyrrell v. Annis*, the question of the permissability of the several counts was not before the Court. All the other statements required to be struck out were entirely unnecessary and prolix, and should be struck out under the 98th and 101st sections. The 140th section too, in permitting departures from the forms given in schedule B., specially provided against prolixity.

RICHARDS, J.—In this case I shall not strike out the counts required, and compel the plaintiff to proceed on one which he may elect. The rule prohibiting several counts will not come into force until Easter; even before the enactment of the English Common Law Procedure Act, it was provided by the Judges in that country that each count of a declaration should disclose a separate cause of action.—(Reg. Gen. H. T., 4 Wm. IV, c. 5.) The old rule in Canada, which should govern cases until Easter Term, was however different, and treated excess in a declaration merely as a question of costs.—(34 E. T., 5 Vic., Drap. Rules, p. 93.) Therefore in the present case the three counts must remain, but under the Common Law Procedure Act all unnecessary matter must be struck out of them. The 98th section is compulsory on such matter; it leaves no option, but says it "shall be omitted." The words "large sum of money," should be struck out, or else the statement that the amount was £211; either averment might remain, but both would be surplusage. So must the statements—of the time of Chapman's indebtedness to plaintiff—of the consideration for such debt—of the consideration of defendant's indebtedness to Chapman—of the time of performing the condition precedent—of the request of performance made by plaintiff of defendant—and of the plaintiff's confidence in defendant's promise. On the other matters stated I think it better to make no order, but to leave the parties to determine upon such amendment as they may think fit. Defendant to have the costs of this motion.

[On a subsequent application a certificate was granted to tax costs for counsel, under the 160th rule.]

SWAN v. CLELAND.

In an application by married woman to revise judgment under 203rd sec. C. L. P. Act, 1856, her husband must be joined.

[Sept. 20, 1856.]

In this case a summons had been granted for an entry on the roll of a suggestion to revise a judgment under the 203rd sec.

Crooks now showed cause. The application was made by the widow and administratrix of the deceased Conusee. There were two objections of form to the affidavits, on which the summons had been granted. In the first place, the widow was now married, and she did not state in her affidavit that her husband joined with her in the application. Nor did the husband make any affidavit: and in fact there was nothing to show that he did join, as was required by law. The second objection was, that there was no evidence in any of the affidavits of the marriage at all. The widow did not state so in her affidavit, and the only statement to that effect was in the affidavit of the attorney's clerk, who merely said that he was "so informed," which was no legal evidence of the fact.

McMichael contra. The summons was taken out in the name of both husband and wife, and the application made by the attorney specially on behalf of both joined. This being the case, if as a general rule the application of the officers of the Court are to be taken as *bona fide*, there was no necessity for an affidavit either of coverture or that the husband joined in the application. This is an answer to both objections.

RICHARDS, J.—There is no doubt that the husband must be joined.—2 Saunders, K. There is certainly no affidavit of the fact here; but I must hold Mr. McMichael's answer a sufficient reply to the objections of the defendant. I must take the applications made to this court to be on the part of the parties stated, unless evidence is shown to the contrary. An affidavit might as well be required in an action commenced by man and wife against a third party, to the effect that they were married and joined in the action. The summons must be made absolute.

DIVISION COURT.

(In the First Division Court of Essex,—A. CHEWITT, Judge.)

WALLACE (claimant) v. BELLOWS (execution creditor.)

Interpleader.

Richie, the execution debtor, had bought 120,000 feet of lumber of claimant and had it on his premises. Judgments of creditors had before a re-sale of lumber to claimant, who had a bill of same, but it remained on R.'s premises at a planing machine. On the 2nd August last parties stood on the lumber, R. saying he delivered a plank in the name of the whole, clear of all but rent of the premises, which he (R.) would pay. McEwan acted as witness and agent for claimant; but he did not, nor did any one for him, or his assignee Dougall, remain in possession. On the 4th August, Bartlet, Dougall's agent, took