

the general issue and giving the special matter in evidence, in any case in which he then was or thereafter might be entitled to do so by virtue of any Act of Parliament then or thereafter to be in force: And whereas, for simplifying the proceedings in the said court (now styled her Majesty's Court of Queen's Bench in and for the Province of Upper Canada), and rendering the same less expensive to the suitors, the Chief Justice and Judges thereof have made certain other Rules regarding the practice and pleading in the said court, which Rules, though made without the aid of the said Statute are, for convenience of arrangement, incorporated with those which are thereby required to be laid before the Legislature, care being nevertheless taken to distinguish the Rules made under the authority of the said Statute, by marking every such Rule in the margin thereof.

I. It is therefore ordered, that from and after the last day of Hilary Term next inclusive, unless the Legislature shall in the mean time otherwise enact, the following Rules and Regulations shall be in force:

II. (a) In every case the suing out of process shall be regarded for all purposes, as the commencement of the action.

III. In all cases in which a defendant shall have been or shall be detained in prison on any writ of *capias*, or being arrested thereon, shall go to prison for want of bail; and in all cases in which he shall have been or shall be rendered to prison before declaration, on any such process, the plaintiff in such process shall declare against such defendant before the end of the next term after such arrest or detainer, or render and notice thereof; otherwise such defendant shall be entitled to be discharged from such arrest or detainer, upon entering a common appearance, unless further time to declare shall have been given to such plaintiff by rule of court or order of a Judge.

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(a) It had been held by the court that the declaration was the commencement of the action.—*Cameron v. Ferguson*. Hil. Term 4 Will. IV.