LXXV. Any document or writing which either party intends to use at the *enquête* shall be fyled by such party with his statement of facts, if not previously fyled in the cause; and if any document or writing not fyled with or previously to such statement be afterwards used at the *enquête* by the party who ought to have so fyled it, the costs thereby occasioned shall be taxed against him, whatever be the event of the case.

Documents intended to be used, must be filed with statement.

LXXVI. After the expiration of the three days allowed for filing such answer, but not before, the case may be inscribed for *enquête* or proceedings may be had for bringing the same to trial; but notwithstanding the expiration of the said period, any party may file an admission of facts at or before the *enquête* or trial, or admit them orally at the same; but the costs previously incurred in or about the proof of such facts shall be taxed against the party admitting them, whatever be the event of the case.

Inscription for *enquête* or proceedings for trial by Jury.

LXXVII. If any party who might file and serve such statement of facts as aforesaid shall neglect so to do at the time above mentioned, or shall state that he has no evidence to adduce at the *enquête* or trial, and shall afterwards adduce evidence, the costs thereat occasioned by such evidence shall be taxed against him, as shall also the costs occasioned by the adduction of evidence to prove any fact not mentioned in such statement, whatever be the event of the case: And if the other party be in the opinion of the Judge taken by surprise by the adduction of such evidence, the Judge may postpone the *enquête* or trial, or make such other order and impose such terms upon the party in fault, as he may deem just.

As to costs of proving facts not mentioned in statement.

Provision against surprise.

LXXVIII. Whenever under the five next preceding sections or the eighty-fifth section of the Act of one thousand eight hundred and forty-nine, chapter thirty-eight, any portion of the costs in any case are to be taxed against a party who would not otherwise be chargeable therewith, the judgment shall mention the facts or the document or writing by reason whereof such costs are taxable against such party, and they shall be taxed against him accordingly; and the amount thereof may be recovered in the usual manner by the opposite party or deducted by him from the amount of any judgment or of any costs recovered against or chargeable to him in the case.

Facts, &c., on which costs are to be specially taxed to either party to be mentioned in judgment, &c.

LXXIX. The six next preceding sections shall be construed as being enacted in furtherance of the provisions contained in the eighty-fifth section of the said Act of 1849, chapter thirty-eight, which shall always be enforced in the Superior and Circuit Court, the rules of practice for which may contain any provision which may be deemed necessary for giving effect to the provisions of the said eighty-fifth section.

Foregoing provisions to be in furtherance of section 85 of 12 V. c. 38.