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At the Court at Buckingham Palace,  
THE FOURTH DAY OF APRIL, 1856.

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**Present**---THE QUEEN'S MOST EXCELLENT MAJESTY. His Royal Highness PRINCE ALBERT, Lord Privy Seal, Viscount Palmerston, Duke of Wellington, Sir George Grey, Bart., Lord Chamberlain, Mr. Vernon Smith, Marquis of Lansdowne, Sir Charles Wood, Bart., Marquis of Abercorn, Mr. Baines, Lord Steward.

WHEREAS by an Act passed in the Session of Parliament, held in the 12th and 13th years of Her Majesty's reign, entitled: "An Act to provide for the administration of Justice in Vancouver's Island," it is amongst other things provided that it shall be lawful for Her Majesty, from time to time to make provision for the administration of Justice in the said Island, and for that purpose to constitute such Court or Courts of Record, and other Courts, with such Jurisdiction in matters Civil and Criminal, and such Equitable and Ecclesiastical Jurisdiction, subject to such limitations and restrictions, and to appoint and remove, or provide for the appointment and removal of such Judges, Justices, and such ministerial and other Officers for the administration and execution of Justice in the said Island as Her Majesty may think fit and direct.

And whereas it is expedient that provision should be made for the administration of Justice in Civil cases in the said Island.

It is therefore ordered, by the Queen's Most Excellent Majesty, by and with the advice of Her Privy Council, that there shall be within Her said Island, a Court which shall be called the Supreme Court of Civil Justice of the Colony of Vancouver's Island.

And the said Supreme Court is hereby constituted to be a Court of Record.

And it is hereby further ordered that the said Supreme Court shall be holden before a Chief Justice, and that the said Chief Justice shall be called and known by the name and style of "the Chief Justice of the Colony of Vancouver's Island," and shall from time to time be nominated and appointed to such his office by Her Majesty, Her Heirs and Successors by Letters Patent, under the Public Seal of the said Colony, to be issued in pursuance of any Warrants or Warrant to be from time to time for that purpose granted by Her Majesty, Her Heirs and Successors, under Her or Their sign manuel.

And it is hereby declared, that upon the death, resignation, sickness, or incapacity of the said Chief Justice, or in the case of his absence from the said Colony, or in case of any such suspension from office as hereinafter mentioned, it shall and may be lawful to and for the Governor of Her Majesty's said Colony for the time being by Letters Patent

to be by him for that purpose made and issued under the Public Seal of the said Colony, to nominate and appoint some fit and proper person to act as and in the place and stead of any such Chief Justice, so dying or resigning, or laboring under such sickness or incapacity, or being so absent from the said Colony, or being so suspended as aforesaid, until the vacancy so created, by any such death or resignation, or sickness, or incapacity, or absence or suspension, shall be supplied by a new appointment, to be made in manner aforesaid by Her Majesty, Her Heirs and Successors, or until the Chief Justice so becoming sick or incapable, or being absent or suspended as aforesaid, shall resume such his office, and enter into the discharge of the duties thereof. And her Majesty doth further order, that the said Chief Justice shall hold such his office during Her Majesty's pleasure. Provided nevertheless, that it shall and may be lawful for the Governor of Her said Colony for the time being, by any Order or Orders, to be by him for that purpose made and issued under the Public Seal of the said Colony, with the advice of the Executive Council of Government of the said Colony, or the major part of them, upon proof of the misconduct of any such Chief Justice, to suspend him from such his office, and from the discharge of the duties thereof. Provided that in every such case the said Governor shall immediately report through one of Her Majesty's Principal Secretaries of State, the grounds and causes of such suspension.

And Her Majesty doth hereby reserve to Herself, Her Heirs, and Successors, full power and authority to confirm or disallow such suspension from office as aforesaid of any such Chief Justice.

And Her Majesty doth hereby give and grant to Her said Chief Justice, for the time being, rank and precedence above and before all Her subjects whomsoever, within the said Colony of Vancouver's Island, and the Territories and places dependent thereupon, excepting the Governor thereof, and the Commander-in-Chief of Her Majesty's Forces, for the time being within the same.

And Her Majesty doth further grant, ordain and appoint, that the said Supreme Court shall have and use as occasion may require, a Seal, bearing a device and impression of Her Majesty's Royal Arms within an exergue or label surrounding the same, with this inscription "The Seal of the Supreme Court of Civil Justice of Vancouver's Island."

And Her Majesty doth hereby ordain, grant and appoint, that the said Seal shall be delivered to, and shall be kept in the custody of the said Chief Justice; and in case of vacancy of, or suspension from the office of Chief Justice, the same shall be delivered over to and kept in the custody of such person as shall be appointed by the said Governor to act as, and in the place and stead of the said Chief Justice.

And Her Majesty doth hereby order, that there shall be attached and belong to the said Supreme Court, such and so many other officers as to the Chief Justice of the said Court for the time being shall, from time to time, appear to be necessary for the administration of Justice, and the due execution of the powers and authorities which are granted and committed to the said Court by this Order; Provided nevertheless, that no new office shall be created in the said Court unless the Governor for the time being shall first signify his approbation thereof to the said Chief Justice for the time being in writing, under the hand of such Governor, and that all persons who shall and may be appointed to any such office within the said Court, shall be so appointed by the Governor for the time being of the said Colony. And Her Majesty doth further direct and appoint that the several officers of the said Court, shall hold their respective offices therein during the pleasure of Her Majesty, Her Heirs and Successors.

And Her Majesty doth hereby authorize and empower the said Supreme Court to approve and admit such persons as shall have been admitted as Barristers in England, or Ireland, or Advocates in the Court of Sessions of Scotland, or to the degree of Doctor of Civil Law at Her Majesty's Universities of Oxford, Cambridge or Dublin, to act as Barristers, or Advocates, in the said Supreme Court.

And Her Majesty doth further authorize and empower the said Supreme Court to approve, admit and enrol any persons being Attorneys, or Solicitors, of any of the Courts of Record at Westminster or Dublin, or being Proctors admitted to practice in any Ecclesiastical Court in England, or Ireland, or being Writers to the Signet in Scotland, to act as Attornies, Solicitors or Proctors in the said Supreme Court. And Her Majesty doth further authorize Her said Supreme Court, in pursuance of any rule or rules of Court, to be for that purpose made in manner hereafter mentioned, to approve, admit and enrol as such Attornies, Solicitors or Proctors as aforesaid, such and so many persons as may be instructed within Her said Colony, in the knowledge and practice of the law by any Barrister, or Advocate, Attorney, Solicitor or Proctor, duly admitted to practice in the said Court.

And Her Majesty doth ordain and declare, that persons approved, admitted and enrolled as aforesaid, shall be and they are authorized to appear, and plead, and act for the suitors of the said Supreme Court according to their respective stations therein, and that no person or persons whatsoever, not so approved, admitted and enrolled as aforesaid, where enrolment is required, shall be allowed to appear, plead or act in the said Supreme Court, for or on behalf of any suitors in the said Court. Provided nevertheless, that in case there shall not be a sufficient number of Barristers and Advocates within the said Colony competent and willing to act for the suitors of the said Court, the said Court shall and is hereby authorized to admit any of the Attornies, Solicitors or Proctors thereof, to appear and act as Barristers and Advocates, during the time of such insufficiency only; and in case there shall not be a sufficient number of Attornies, Solicitors and Proctors within the said Colony, competent and willing to appear and act in that capacity for the suitors of the said Court, the said Court shall and is hereby authorized to admit any of such Barristers or Advocates to practice and act in the capacity of Attornies, Solicitors and Proctors during the time of such insufficiency only.

And Her Majesty doth ordain and declare that the Governor for the time being of the said Colony of Vancouver's Island shall, on the first Monday in the month of January, in each year, by Warrant under his hand and seal, nominate and appoint some fit and proper person to act as, and be the Sheriff for Her Majesty's said Colony of Vancouver's Island and its Dependencies for the year ensuing, which Sheriff, when appointed, shall, as soon as conveniently may be, and before he shall enter upon his said office, take an oath faithfully to execute the duties thereof, and the oath of allegiance, before the said Governor, who is hereby authorized to administer the same.

And Her Majesty doth direct that the said Sheriff shall continue in such his office, during the space of one whole year, to be computed from the said first Monday in the month of January, and until another shall be appointed, and sworn into the said office, and in case such Sheriff should die in, or resign said office, or depart from Her Majesty's said Colony of Vancouver's Island, during the period of his office, then another person shall as soon as conveniently may be after the death, resignation or departure of such Sheriff, be in like manner appointed and sworn as aforesaid, and shall continue in his office for the remainder of the year, and until another Sheriff shall be duly appointed and sworn into the said office.

And Her Majesty doth further order, direct and appoint, that the said Sheriff for the time being shall by himself, or his sufficient deputies, to be by him appointed and duly authorized under his hand and seal, and for whom he shall be responsible during his continuance in such office, execute, and the said Sheriff by himself and his said Deputies are hereby authorized to execute all the Sentences, Decrees, Judgments, Writs, Summonses, Rules, Orders, Warrants, Commands, and Processes of the said Supreme Court, and shall make a return of the same, together with the manner of the execution thereof, to the said Court, and shall receive and detain in prison all such persons as shall be committed to the custody of such Sheriff by the said Court or by the Chief Justice thereof; and Her

Majesty doth further authorize Her Governor for the time being of the said Colony of Vancouver's Island, in each succeeding year to re-appoint the same person to fill the office of Sheriff, if it shall appear to the said Governor expedient so to do: provided, nevertheless, and Her Majesty doth hereby require Her said Governor in the selection of any person to fill the said office of Sheriff of Vancouver's Island, to conform himself to such directions, as may from time to time be given in that behalf by Her Majesty, Her Heirs and Successors, through one of Her or Their principal Secretaries of State. And Her Majesty doth further direct and ordain, that whenever the said Supreme Court shall direct or award any process against the said Sheriff, or award any process in any cause, matter or thing, wherein the said Sheriff, on account of his being related to the parties or any of them, or by reason of any good cause of challenge, which would be allowed against any Sheriff in England, cannot, or ought not by law to execute the same, in every such case the said Court shall name and appoint some other fit person to execute and return the same, and the said process shall be directed to the person so to be named for that purpose, and the cause of such special proceedings shall be registered and entered on the records of the said Court.

And Her Majesty doth hereby further ordain, direct, and appoint that the said Supreme Court shall have cognizance of all pleas, and jurisdiction in all Civil cases arising within the said Colony, with jurisdiction over Her subjects, and all other persons whomsoever, residing and being within the said Colony, and shall have all such Equitable jurisdiction, and all such powers for enforcing and giving effect to the same as the High Court of Chancery hath in England, and shall have power to appoint and control Guardians of Infants and of their Estates, and Committees of the Persons and Estates of Idiots, Lunatics, and such as being of unsound mind are unable to govern themselves and their Estates, and to institute all such examinations as the said Court shall deem necessary to ascertain such idiocy, lunacy or unsoundness of mind, and shall have exclusive jurisdiction in all questions relating to testacy or intestacy, and to the validity of Wills of personal property as fully as any Ecclesiastical Court hath in England, and shall have power to grant Probates of Wills, and Letters of Administration of the Estates and Effects of deceased persons, being in the said Colony of Vancouver's Island, and to take order for the due passing of the accounts of the Executors and Administrators of such deceased persons, and for the proper custody of the Estate and Effects of such deceased persons, and for the delivery of the same to the person entitled thereto.

And Her Majesty doth further give and grant to the said Supreme Court full power, authority and jurisdiction to apply, judge and determine upon and according to the Laws now or hereafter in force within her Majesty's said Colony.

And Her Majesty doth further give and grant to the said Supreme Court full power, jurisdiction and authority, to review the proceedings of all inferior Courts of Civil Justice within Her Majesty's said Colony, and if necessary, to set aside or correct the same, and in the exercise of such jurisdiction, power and authorities as aforesaid, Her Majesty's will and pleasure is, that the pleadings and proceedings of the said Supreme Court shall be carried on, and the sentences, decrees, judgments and orders thereof, pronounced and declared in open Court, and not otherwise.

And it is hereby further ordered, that whenever any question shall arise before the said Supreme Court, involving any issue or issues, of fact, or whenever it may become incumbent on the said Court to assess the amount of damages to be paid by a Defendant, in any action or suit, it shall be lawful for the Judge of the said Court, in his discretion, upon the petition of either of the parties, to summon a Jury to enquire into the disputed facts, or assess the damages as the case may be, and that such Jury shall consist of such number of persons, and qualified in such manner, as the said Court may, by rule or rules to be made as aforesaid, establish: and that the verdict of such Jury shall be unanimous,

and the final judgment of the Court, if satisfied with the verdict, shall be in accordance with such verdict; provided, always, that it shall be competent to the Court, if dissatisfied with the verdict, to direct a new trial before a fresh jury.

And it is hereby ordered, that it shall and may be lawful for the said Supreme Court, by any Rules or Orders of Court, to be by them from time to time for that purpose made and published, to frame, constitute and establish such rules, orders, and regulations as shall seem meet, touching and concerning the time and place of holding the said Court, and touching the forms and manner of proceeding to be observed in the said Court, and the practice and pleadings, upon all actions, suits and other matters, indictments and informations to be therein brought, the appointing of Commissioners to take bail and examine witnesses who are out of the jurisdiction of the Court, the examination of witnesses de bene esse, and allowing the same as evidence, the proceedings of the Sheriff, and other ministerial officers of the said Court, the process of the Court, and the mode of executing the same, the summoning, impannelling and challenging of Jurors, the admission of Barristers, Advocates, Attorneys and Solicitors, and Proctors, the fees, poundage or perquisites to be lawfully demanded by any, and payable to any officers, Attorneys, Solicitors, and Proctors in the said Court, the granting of Probates of Wills, and Letters of Administration, and the duties, remuneration and control of Executors and Administrators, and of the Guardians of Infants, and of the Committees of the Persons or Estates of Lunatics, Idiots, or persons of unsound mind; and touching and concerning all such other matters and things necessary for the proper conduct and despatch of business in the said Court, and all such orders, rules and regulations, from time to time, to revoke, alter, amend, or renew, as occasion may require.

Provided always, that no such rules, orders or regulations, shall be repugnant to this Order, and that the same shall be so framed as to promote, as far as may be, economy and expedition in the despatch of business of the said Court; and that all such rules and forms of practice, process and proceedings, shall so far as the circumstances of the said Colony may permit, be framed with reference to the corresponding rules and forms in use in Her Majesty's Supreme Courts of Law and Equity at Westminster, and that the same be drawn up in plain, succinct and compendious terms, avoiding all unnecessary repetitions and obscurity; and promulgated in the most public and authentic manner in the said Colony, for three months at least, before the same shall operate, and take effect. Provided always, that all such rules, orders and regulations shall be approved by the Governor of the said Colony in Council, and shall forthwith be transmitted to Her Majesty, through one of Her principal Secretaries of State, under the Seal of the said Court, for her final approbation or disallowance.

And it is further ordered, that any bond which may be entered into to Us, Our Heirs and Successors in pursuance of this Order, or of any such rule or order as aforesaid, may be put in suit under order of the said Court in the name of the Attorney General for the time being of the said Colony, or other officer authorized by the said Court in that behalf, and not otherwise.

And whereas, it is by the same act of Parliament provided that all judgments given in any civil suit in the said Island, shall be subject to appeal, to Her Majesty in Council, in the manner and subject to the regulations in and subject to which appeals are now brought from the Civil Courts of Canada, and to such further or other regulations as Her Majesty with the advice of Her Privy Council, shall from time to time appoint.

And whereas, it is expedient that provision should be made in pursuance of the said recited enactment to regulate appeals in civil causes from the decisions of the said Supreme Court of Civil Justice in Vancouver's Island to Her Majesty in Council: It is hereby further ordered, that any person or persons may appeal to Her Majesty, Her Heirs and Successors in Her or Their Privy Council, from any Final Judgment, Decree, Order or Sentence of the said Supreme Court, in such manner, within such time, and under and subject to

such rules, regulations and limitations as are hereinafter mentioned, (that is to say) in case any such Judgment, Decree, Order or Sentence shall be given or pronounced for or in respect of any sum or matter at issue above the amount or value of £300 sterling, or in case such Judgment, Decree, Order or Sentence shall involve directly or indirectly any claim, demand or question to or respecting property in any civil right amounting to, or of the value of £300 sterling, the person or persons feeling aggrieved by any such judgment, decree, order or sentence, may within twenty-one days next after the same shall have been pronounced, made or given, apply to the said Court by Petition for leave to appeal therefrom to Her Majesty, Her Heirs and Successors, in Her or Their Privy Council, and in case such leave to appeal shall be prayed by the party or parties who is or are directed to pay any such sum, or perform any duty, the said Court shall, and is hereby empowered, either to direct that the judgment, decree, order or sentence appealed from, shall be carried into execution, or that the execution thereof shall be suspended pending the said appeal, as to the said Court may appear to be most consistent with real and substantial justice, and in case the said Court shall direct such judgment, decree, order or sentence to be carried into execution, the person or persons in whose favor the same shall be given, shall before the execution thereof, enter into good and sufficient security, to be approved by the said Court, for the due performance of such judgment or order, as Her Majesty, Her Heirs and Successors shall think fit to make thereupon. And it is further ordered, that in all cases security shall also be given by the party or parties appellant, in a bond or mortgage, or personal recognizance not exceeding the value of £500 sterling for the prosecution of the appeal, and for the payment of all such costs as may be awarded by Her Majesty, Her Heirs and Successors, or by the Judicial Committee of Her Majesty's Privy Council, to the party or parties respondent; and that such security as aforesaid for the prosecution of the appeal, and for the payment of all such costs as may be awarded, be completed within twenty-eight days from the date of the petition for leave to appeal; and the party or parties appellant shall then, and not otherwise, be at liberty to prefer and prosecute his, her or their appeal to Her Majesty, Her Heirs and Successors in Her or Their Privy Council, in such manner, and under such rules as are, or may be observed in appeals made to Her Majesty from Her Majesty's Colonies and Plantations abroad.

And it is further ordered, that it shall be lawful for the said Supreme Court, at its discretion, on the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order or sentence of the said Court, to grant permission to such party, to appeal against the same to Her Majesty, Her Heirs and Successors, in Her or Their Privy Council, subject to the same rules, regulations and limitations as are herein expressed respecting appeals from final judgments, decrees, orders and sentences.

Provided always, and it is hereby ordered, that nothing herein contained doth or shall extend, or be construed to extend, to take away or abridge the undoubted right and authority of Her Majesty, Her Heirs and Successors, upon the humble petition of any person or persons aggrieved by any Judgment or determination of the said Court, at any time, to admit his, her or their appeal therefrom, upon such terms, and upon such securities, limitations, restrictions and regulations, as Her Majesty, or Her Heirs or Successors shall think fit, and to reverse, correct, or vary such Judgment, or determination, as to Her Majesty, Her Heirs or Successors shall seem meet.

And it is further ordered, that in all cases of appeal, made from any Judgment, order, sentence, or decree of the said Court, to Her Majesty, Her Heirs or Successors in Her or Their Privy Council, such Court shall certify and transmit to Her Majesty, Her Heirs or Successors, in Her or Their Privy Council, a true and exact copy of all Evidence, Proceedings, Judgments, decrees and orders had or made in such cases, so far as the same have relation to the matters of appeal, such copies to be certified under the Seal of the said Court. And that the said Court shall also certify and transmit to Her Majesty, Her Heirs and Successors, in Her or Their Privy Council, a copy of the reasons given



by the Judge of such Court for or against the Judgment or determination appealed against, and Her Majesty doth further direct and ordain, that the said Supreme Court shall, in all cases of appeal to Her Majesty, Her Heirs and Successors, conform to and Execute, or cause to be executed, such Judgments and orders, as Her Majesty, Her Heirs or Successors, in Her or Their Privy Council shall think fit to make in the Premises, in such manner as any original Judgment, decree, or decretal order, or other order or rule of the said Court shall or might have been executed.

And it is hereby ordered, that in this Order in Council the term Governor shall include the officer for the time being administering the Government of the Colony of Vancouver's Island.

And the Right Honorable Henry Labouchere, one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

(SIGNED.)



**RULES**  
AND  
**MANNER OF PROCEEDING,**  
OF THE  
**SUPREME COURT OF CIVIL JUSTICE, FOR VANCOUVER'S ISLAND.**

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WHEREAS, By an Order of the QUEEN'S MOST EXCELLENT MAJESTY in Council, dated at the Court of Buckingham Palace, London, the 4th day of April, 1856, Her Majesty was graciously pleased to order by and with the advice of Her Privy Council, that there shall be within Her Colony of Vancouver's Island, a Court, which shall be called the Supreme Court of Civil Justice, of the Colony of Vancouver's Island, and that the said Supreme Court shall be a Court of Record.

And Her Majesty, amongst other things, was graciously pleased to order, direct, and appoint, that the said Supreme Court shall have cognizance of all pleas, and jurisdiction in all civil causes arising within the said Colony; with jurisdiction over Her Subjects, and all other persons whomsoever residing and being within the said Colony, and shall have all such equitable jurisdiction, and all such powers for enforcing and giving effect to the same, as the High Court of Chancery hath in England, and shall have power to appoint, and control, guardians of infants, and of their estates, and committees of the persons and estates of idiots, lunatics, and such as being of unsound mind are unable to govern themselves and their estates; and to institute all such examinations, as the said Court shall deem necessary to ascertain such idiotcy, lunacy, or unsoundness of mind; and shall have exclusive jurisdiction, in all questions relating to testacy, or intestacy, and to the validity of wills of personal property, as fully as any ecclesiastical Court hath in England, and shall have power to grant probates of wills, and letters of administration of the estates and effects of deceased persons being in the said Colony of Vancouver's Island, and to take order for the due passing of the accounts of the Executors, and Administrators of such deceased persons, and for the proper custody of the estates and effects of such deceased persons, and for the delivery of the same to the person entitled thereto.

And Her Majesty was further graciously pleased to give and grant to the said Supreme Court full power, authority and jurisdiction to apply, judge and determine upon, and according to the laws now or hereafter in force, within Her Majesty's said Colony.

And Her Majesty was further graciously pleased, to order and declare, that it shall and may be lawful for the said Supreme Court, by any rules or orders of Court, to be by them from time to time for that purpose made and published, to frame, constitute, and establish such rules, orders, and regulations, as shall seem meet touching and concerning the time and place of holding the said Court, and touching the forms and manner of proceeding, to be observed in the said Court, and the practice and pleadings upon all actions, suits, and other matters, indictments and informations, to be therein brought, the appointing of Commissioners to take bail and examine witnesses *de bene esse*, and allowing the same as evidence, the proceedings of the Sheriff, and other ministerial officers

of the said Court, the process of the Court, and the mode of executing the same, the summoning, empanelling and challenging of Jurors, the admission of Barristers, Advocates, Attorneys and Solicitors, and Proctors, the fees, poundage, or perquisites, to be lawfully demanded, by any and payable to any officers, attorneys, solicitors and proctors, in the said Court, the granting of probates of wills, and letters of administration, and the duties, remuneration, and control of executors and administrators, and of the guardians of infants, and of the committees of the persons or estates of lunatics, idiots or persons of unsound mind, and touching and concerning all such other matters and things necessary for the proper conduct, and dispatch of business, in the said Court; and all such orders, rules and regulations; from time to time to revoke, alter, amend or renew, as occasion may require.

### IT IS THEREFORE ORDERED.

**RULE 1ST.** That sessions of the Supreme Court shall be held four times during the year, commencing on the second Monday in the Months of January, April, July and November, for trial of all causes that may be brought before it.

**RULE 2ND.** The office of the Court at Victoria shall be open every day, Sundays and Holidays excepted, and the Registrar and other officers of the Court shall attend therein, from 10 o'clock in the morning to 3 o'clock in the afternoon, and on Saturdays from 10 to 1 o'clock only.

**RULE 3D.** There shall be enrolled in the Court, to practice therein as Barristers, such persons only as shall have been admitted as Barristers in England, or Ireland; or Advocates of the Court of Session of Scotland, or to the degree of Doctor of Civil Law, at the University of Oxford, Cambridge, or Dublin.

**RULE 4TH.** There shall be enrolled in the Court, to practice therein as Solicitors, such persons only as have been admitted to practice as Attorneys, or Solicitors of any of the Courts of Record at Westminster or Dublin, or being Proctors admitted to practice in any ecclesiastical Court in England, or Ireland, or being writers to the signet in Scotland.

**RULE 5TH.** Every person who shall apply to be enrolled as a Barrister or Solicitor of the Supreme Court shall make and sign a declaration in the form No. 1 or 2 (as the case may be,) in the Schedule, hereunto annexed.

**RULE 6TH.** The Barristers of the Court shall be allowed to act as Solicitors, and the Solicitors of the Court to act also as Barristers, so long only as there is not a sufficiency of Barristers or Solicitors competent and willing to act for the suitors of the said Court, in these capacities, and during the time of such insufficiency only, provided that nothing herein contained shall be construed to prevent the suitors in the said Court from appearing and acting for themselves, if they shall so think fit.

**RULE 7TH.** Any person having any complaint or demand of a civil nature, whether of debt or damages, or personal chattel, or in respect of any matter of contract, or of tort, or taking, or detention, or in any matter ecclesiastical, shall, and may enforce the same, in an action, to be called a personal action; and all actions of ejectment shall be commenced and prosecuted in the manner hereinafter provided.

**RULE 8TH.** All such personal actions shall be commenced, by a Writ of Summons, according to the form marked No. 3 in the Schedule hereunto annexed, and which shall be authenticated by the seal of the said Supreme Court, to be thereunto set, by the Clerk of the Writs, who shall not be required to sign such writ, but shall enter the particulars thereof in the book to be kept for that purpose, and such writ shall bear date of the day in which it is sealed, and may be sued out at any time.

**RULE 9TH.** In every such Writ of Summons, and copy thereof, the names of the

plaintiff and defendant, the place of residence of the plaintiff, and the place of residence, or supposed residence, or last known residence of the defendant, and such designation or description of the parties respectively as the plaintiff, or his Solicitor, may be able to give, shall be mentioned in such Writ, and shall contain a true and succinct statement of the plaintiff's cause, or causes of action; and if the plaintiff shall sue, or the defendant be sued, otherwise than in his own rights, shall also state the character in which, and the title by which he sues, or in respect of which the defendant is sued, and shall also state the relief which the plaintiff requires.

**RULE 10TH.** The particulars of the plaintiff's demand, where the same shall be a liquidated or money demand, and of all credits to which the defendant may be entitled, and of the balance, if any, claimed by the plaintiff, shall be indorsed on the Writ, and on the copies thereof for service, unless the said demand shall consist of so many items or particulars that they cannot be conveniently indorsed thereon; in which case the plaintiff shall cause particulars to be annexed to said Writ, and to the copies thereof intended for service to be incorporated therewith, by proper reference, and shall cause the same to be served on the defendant; such indorsement on or paper annexed to the Writ shall be considered as particulars of demand, and no further or other particulars need be delivered, unless ordered by the Court, or Judge.

**RULE 11TH.** Every Writ of Summons shall contain, or be endorsed with the name and place of abode of the Solicitor actually suing out the same, and in case no Solicitor should be employed to issue the Writ, then shall contain, or be endorsed with a memorandum expressing that the same has been sued out by the plaintiff in person, mentioning the Town or District, and also the name of the street, and number, if any, of the house of such plaintiff's residence; and also, in case the said plaintiff shall not reside in the town of Victoria, mentioning some place in the said Town at which the debt may be paid; and all notices and other proceedings in the cause may be served.

**RULE 12TH.** One duplicate or more of such Writ of Summons shall be sealed, with the seal of the said Supreme Court, by the said Clerk of the Writs, on application of the plaintiff or his Solicitor.

**RULE 13TH.** Upon the Writ, and duplicate, or copy of any Writ, served for the payment of any debt, the amount of the debt shall be stated, and the amount of what the plaintiff or his Solicitor claims for the cost of such writ, copy and service, and attendance, to receive debt and costs; and it shall be further stated, that upon payment thereof, within six days, to the plaintiff or his Solicitor, further proceedings will be stayed, which endorsement shall be written or printed in the following form or to the like effect, viz: "The plaintiff claims £ for debt, and £ for costs, and if the amount thereof be paid, to the plaintiff or his Solicitor within six days from the service hereof, further proceedings will be stayed." But the defendant shall be at liberty, notwithstanding such payment, to have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff or his Solicitor, shall pay the costs of taxation.

**RULE 14TH.** 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 shall not have been served therewith, the original Writ of Summons may be renewed at any time before its expiration, for six months from the date of such renewal, and so from time to time, during the currency of the renewed writ, by being re-sealed with the seal of the said Supreme Court, and a memorandum of the date of the day, month and year of such renewal, signed or initialed, by the proper officer of the Court.

**RULE 15TH.** The person serving the Writ of Summons shall, and is hereby required to serve on the defendant an exact copy of the original Writ of Summons, with the particulars and other endorsement thereon, and at the same time to exhibit to the

defendant the original Writ of Summons, if so required, as his authority for the service; and he is hereby required, within three days at least after such service, to endorse 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 non-appearance to proceed, and every affidavit of service of such Writ, shall mention the day on which such endorsement was made.

**RULE 16TH.** Service of any Writ of Summons on the defendant, shall be effected either by a delivery of a copy of such Writ to the defendant in person, if it be reasonably practicable, and in other cases, and where it shall appear by the affidavit of service hereinafter mentioned, that such defendant is personally within the jurisdiction, and that due and reasonable diligence has been exercised in endeavoring to effect such personal service, and without effect; in such case it shall be sufficient to make service of such Writ, by leaving such copy at the defendant's house or place of residence, or at his office, warehouse, counting-house, shop, factory, or place of business, with the wife, child, father, mother, brother, or sister of the defendant, or with any servant or clerk of the defendant; the person with whom such copies shall be left being of the age of 16 years or upwards, and showing to such person the original, or duplicate of the original, of such Writ of Summons.

**RULE 17TH.** In case it should be made to appear by affidavit, to the satisfaction of the Court or in vacation to the Judge of the said Court, that any defendant in any summons, the cause of action in respect of which the same shall have issued, having arisen within the jurisdiction of the Court, has not been served with the Writ of Summons in the manner hereinbefore prescribed, and has not according to the exigency thereof, appeared and taken defence to the action, and that due and proper means were used to serve such writ in the manner aforesaid, or that such defendant is out of the jurisdiction of the Court, and cannot be properly served through or upon any agent or representative, or any manager of the real or personal estate of such defendant, within such jurisdiction, or has removed to avoid service or on any other good and sufficient grounds, it shall be lawful upon an application made at any time while the said Writ shall be in force, for the Court or Judge to authorize such substitution of service, through the Post Office, or in such manner, and with such extension of time, for service and defence, as to the Court or Judge shall seem fit, and the taxing officer shall allow reasonable costs on such proceedings, for substituting service, or of effecting such service as the Court shall have directed, or deemed good; and in default of an appearance and defence, by such defendant in due time, it shall be lawful for the plaintiff to proceed thereon, as is hereinafter provided.

**RULE 18TH.** An affidavit of the service of the Writ of Summons in the manner hereinbefore prescribed, or in the manner directed, by any such orders, for liberty to substitute service as aforesaid, shall be made and filed in the office of the Registrar, in case it shall become necessary, to enter judgment by default.

**RULE 19TH.** The original or duplicate Writ of Summons, with the endorsements and particulars thereon, shall in order to enforce a defence thereto within the period of time in such writ mentioned, four days at least before the time for pleading thereto has expired, be filed with the Registrar of the Court, and such writ shall be deemed to be a pleading of the plaintiff; provided that in case such writ of summons shall not be filed within the time aforesaid, it shall be sufficient for the purpose of enforcing a defence thereto, after the filing of the same, to give notice of the filing to the defendant, and such defendant shall have eight days from the service of such notice, to file his defence thereto; but in no case shall the plaintiff be at liberty to proceed to enforce a defence after the expiration of six months from the service of such Writ of Summons.

**RULE 20TH.** In case the plaintiff shall neglect to file the original Writ of Summons within two months after the service thereof on the defendant, unless the time for filing such writ of summons shall have been extended, such defendant may on an affidavit of

the service thereof, and a certificate of no writ of summons filed, enter a rule that the plaintiff do file his writ of summons within four days after the service thereof, or pay to the defendant such sum as shall be fixed by the taxing officer, as and for his costs, occasioned by being served with such writ of summons; and in case the plaintiff shall, after the entry of such rule, file his Writ of Summons, he shall pay to the defendant his costs occasioned thereby, upon demand, not exceeding the sum of one pound ten shillings, or in default thereof, the defendant may obtain a rule for the payment of such sum, and the costs of such rule.

**RULE 21ST.** The defendant may, within the time specified in the said writ of summons, or within eight days from the service of the notice of filing the said writ in manner aforesaid, or at any time before judgment, or within such time as the Court or Judge may permit, file with the Registrar an appearance and defence, or demurrer to the said writ of summons, and such defence may be according to the form No. 4 in the Schedule hereunto annexed, and shall contain at the foot thereof, the name and residence of the defendant's Solicitor, where the same is pleaded by a Solicitor; and where it is pleaded in person, the residence of the defendant, and in case such residence shall not be in the town of Victoria, shall specify, by the name of the street and number of the house if any, some place within the said town, whereat all notices and papers relating to the suit may be served and delivered for the defendant.

**RULE 22ND.** In any case in which there are mutual debts between the plaintiff and defendant, or if either parties sue or be sued, as executor or administrator, where there are mutual debts between the testator or intestate, and either party, one debt may be set off against the other, and such matter may be pleaded in bar of the action, or of 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 Writ of Summons for the same debt.

**RULE 23D.** In case the defence shall insist upon any payment, or set-off, the full particulars of the same shall be endorsed, in the said defence, and on the copies for service, unless they are so many, that they cannot be conveniently introduced therein, in which case they shall be annexed thereto, and incorporated therewith by a proper reference.

**RULE 24TH.** Where the defendant is within the jurisdiction, the time for the appearance and defence of the Writ of Summons shall be sixteen clear days from the day of the service thereof, exclusive of Sundays; or eight days from the service of a notice of filing of a Writ of Summons, whichever period shall last expire, unless the Court or Judge shall extend the time; and the day for appearing to said Writ of Summons shall run as well in vacation as during the sessions of the Court, excepting the days from the 24th day of July till the 13th day of October inclusive.

**RULE 25TH.** Notice of filing such defence, together with a correct copy thereof, shall be served on the plaintiff's Solicitor, or on such plaintiff in case no Solicitor shall be employed; and such defence shall be considered as filed, as on the day on which such notice and copy shall be served.

**RULE 26TH.** The Court or Judge may in any case, by an order made on motion, direct a further or more detailed particular of the items of demand, or credits referred to in any Writ of Summons, or of any payments or set-off, referred to in any defence to be furnished; and in any action for an injury to person or property the Court or 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 the Court or Judge may extend the time for pleading or making up the issue, in consequence of the necessity of such particulars, or further particulars on such terms, as shall appear to be just; and where any party shall require to amend his particulars, he shall apply to the Court or Judge for the purpose.

**RULE 27TH.** In any case in which it shall appear to the Court, or Judge, that it would be necessary, for the purpose of ascertaining the truth of any matter in dispute between the parties in the action, that an inspection or examination of any premises or chattels in the possession or power of either party, and in respect of which, or some right or injury connected with which, the said action shall be brought, should be had by the opposite party, his solicitor, agent, witnesses, or by the jury, it shall be lawful for the Court or Judge to order that the party in whose possession or power the same shall be, shall permit an inspection and examination of the said premises or chattels by the jury, or by such person or persons on behalf of the party applying, and at such times and under such regulations as to the Court or Judge shall seem fit.

**RULE 28TH.** There shall be no further pleading after the defence, except a demurrer to the defence, or a replication to a defence of set off or plea of matter, occurring subsequently to the commencement of the action, unless by the special leave of the Court or Judge on an application to allow such further pleading, which shall only be allowed in case the real question or questions, whether of fact or law, between the parties cannot conveniently be raised, and put in issue, by the amendment of the previous pleadings.

**RULE 29TH.** Every replication and subsequent pleading shall be pleaded, and filed in the office of the Registrar, and notice of the filing with a copy thereof shall be served, and the particulars of any payments relied upon shall be endorsed or annexed thereto, in a similar manner to that hereinbefore prescribed in respect of the defence, so far as the same shall be applicable thereto.

**RULE 30TH.** The defence and replication, and subsequent pleadings, if any, shall state all facts which constitute the ground of defence or reply, in ordinary language, and without repetition, and as concisely as is possible consistently with clearness.

**RULE 31ST.** The forms of pleading contained in the Schedule hereunto annexed, shall be sufficient in the cases to which they apply, and these and the like forms, may be used with such modification 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.

**RULE 32ND.** Any defendant served with any Writ of Summons in any action, shall thereupon be deemed to be in Court, for the purpose of making application to the Court or Judge; to compel the plaintiff to give security for costs, and for other like purposes; provided, that no order for security for costs shall be made by reason of any plaintiff being resident out of the jurisdiction of the Court, at the instance of any defendant, unless upon a satisfactory affidavit, that such defendant has a defence upon the merits.

**RULE 33D.** The defendant may by leave of the Court or Judge, plead and demur, or the plaintiff may reply and demur, to the same portion of the Writ of Summons or defence at the same time, upon an affidavit by the party pleading or his solicitor, if required by the Court or Judge, that he is advised and believes all the objections raised by demurrer are good and valid objections in law, and it shall be in the discretion of the Court or Judge to direct which issue, whether of fact or law, shall be first disposed of.

**RULE 34TH.** The costs of every issue, whether of 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 issues.

**RULE 35TH.** When any party shall rely on any deed or document, or any portion thereof, in his pleading, the said deed or document shall be produced upon every trial and argument in the cause, unless its nonproduction can be satisfactorily excused; and in default thereof it shall be lawful for the Court or Judge, before whom such trial or argument shall be had, to exclude the said party so in default from all benefit or advantage of the said deed or document, or to make such order for the postponement of the trial or

argument, and the payment of the costs occasioned by the said postponement, as shall seem to be just; and the opposite party shall be at liberty, by notice in writing, to demand of the parties so relying on the said deed or document, an inspection or copy, or both an inspection and copy of the same, including the names of the witnesses, by whom it is attested if any, and any indorsement or defeasance thereon; and also the production, inspection, or copy of any other deed or instrument, whereof inspection could be obtained by a bill of discovery, and such copy when furnished shall be certified to be a correct copy by the solicitor or party furnishing the same; and in case such copy shall not be delivered, or such inspection or production shall not be granted, the party demanding the same shall be at liberty to apply to the Court or Judge, for an order for such copy or inspection or production, or copy and inspection and production, as such Judge shall think fit; but such demand, notice or order, shall in no case operate as a stay of proceedings, except when a special order shall be made by the Judge to that effect.

**RULE 36TH.** All facts stated in any Writ of Summons, and not denied in the defence, shall be deemed to be admitted for the purpose of the suit; and an action by Executors or Administrators, or persons authorized by letter of attorney, or by act of Parliament, to sue or to be sued as nominal parties, the character in which the plaintiff or defendant is stated to sue or be sued shall not in any case be considered as an issue unless specially denied.

**RULE 37TH.** Any defendant in any personal action whatsoever, except actions for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution, criminal conversation, or debauching the plaintiff's daughter or servant, and in any proceeding by Writ of Revivor, to have execution of any judgment, may pay into Court a sum of money by way of compensation or amends, or in discharge of plaintiff's demand, or upon any defence of tender, and such payment shall be made by lodging the money with the Registrar of the Court, and the Registrar shall give a receipt for the amount in the margin of the defence.

**RULE 38TH.** At any time before verdict or judgment for the defendant, or peremptory order for payment of costs for not proceeding to trial, the plaintiff may in any case in which money has been lodged in Court in discharge of the plaintiff's demand, or on a defence of tender, apply to the Registrar for the sum lodged by the defendant; and the said Registrar on being satisfied, by affidavit or otherwise, that a verdict or judgment, or peremptory order for such payment as aforesaid for the defendant has not been had, shall thereupon pay accordingly; but after verdict, or judgment, or peremptory order aforesaid for the defendant, the money shall remain in Court to answer the defendant's costs, and the plaintiff shall not be at liberty to draw the same unless by order of the Court on motion.

**RULE 39TH.** In case the plaintiff shall accept the amount lodged in full satisfaction of his demand, the receipt for the money given to the Registrar shall state that it has been so accepted, and the plaintiff's costs of suit shall be taxed and ascertained by the Registrar, and in case of nonpayment thereof, within forty-eight hours after taxation and demand, the plaintiff shall be at liberty to enter a peremptory order for payment of his costs of suit so taxed, and for such further sum as shall be fixed by the Registrar, subject to the approval of the Judge of the Court as and for his costs of obtaining such order.

**RULE 40TH.** In case the plaintiff declines to accept the sum paid into Court to satisfy the claim of the plaintiff, in respect of the matter to which the plea is pleaded, the sufficiency of the payment shall be tried upon the issue raised for that purpose by the said defence; and in case of such issue being found for the defendant, the defendant shall be entitled to judgment and his costs of suit.

**RULE 41ST.** Either party may object by demurrer to the pleading of the opposite party, for that such pleading does not set forth sufficient ground of action, defence or



reply, as the case may be, and every such demurrer shall state concisely and explicitly the legal points or objections to be relied on, and may be according to the Form No. 5 in the Schedule hereunto annexed, and to such demurrer there shall be no further pleading.

**RULE 42ND.** No objection by way of general or special demurrer for formal matter only shall be allowed, and wherever issue shall be joined on any demurrer the Court shall proceed and give judgment according to the very right of the cause, without regarding any imperfection, omission, defect in or lack of form; and every Writ of Summons and defence or other pleading which shall, with reasonable clearness and distinctness, state all such matters of fact as are necessary to ground the action, defence or reply, as the case may be, shall be sufficient; and it shall not be necessary that such matter shall be stated in any technical or formal language or manner.

**RULE 43RD.** Judgment on demurrer for defendant, and also for the plaintiff, in all cases in which the action is for a liquidated or money demand, shall be final, unless the Court shall give liberty to amend the pleading demurred to, or to plead *de novo* on the argument of the demurrer or by any subsequent order.

**RULE 44TH.** If any pleading or demurrer be so framed as to prejudice, embarrass or delay the fair trial of the action, the opposite party may apply to the Court or Judge to strike out or amend such pleading, and the Court or Judge shall make such order respecting the same, and also respecting the costs of the application, as to the Court or Judge shall seem fit.

**RULE 45TH.** No plea in abatement for the nonjoinder of any person as a party, plaintiff or defendant, shall be filed without the leave of the Court, but such defect, or the misjoinder, or nonjoinder of any party, may be pointed out by either party, by notice before the trial, and such notice may be followed by a summary application to the Court or Judge in respect thereof, upon which application the Court or Judge may make such order therein as shall seem to be just.

**RULE 46TH.** In default of such defence or demurrer filed as aforesaid, and where the plaintiff's claim is for a debt or liquidated demand in money, with or without interest, arising upon a contract, express or implied, it shall be lawful for the plaintiff on filing an affidavit of the service of the Writ of Summons in the manner hereintofore prescribed, and certificate of no defence filed to sign a final judgment in the form 6 in the Schedule hereunto annexed for any principal sum, not exceeding the sum claimed by the said writ, with legal interest thereon, and a sum for costs to be fixed by the Registrar of the said Supreme Court, subject to the approval of the Judge of the said Court, and the plaintiff may upon such judgment issue execution, provided always that it shall be lawful for the Court or Judge to let in the defendant to defend upon such terms as such Court or Judge shall seem proper.

**RULE 47TH.** In default of such defence or demurrer filed as aforesaid, in case of judgment for the plaintiff on demurrer, where the plaintiff's claim is not for a debt or liquidated demand in money; but it shall appear to the Court or Judge that the amount of damages so to be recovered by the plaintiff, although not liquidated in its nature is substantially a matter of calculation, it shall not be necessary to issue a writ of inquiry, but the Court or Judge may direct that the amount for which final judgment is to be signed shall be ascertained by the Registrar of the Court on affidavit, or by oral evidence; and the attendance of witnesses, and the production of documents, before such Registrar may be compelled by subpoena, in the same manner as before a jury, upon a writ of inquiry; and it shall be lawful for such Registrar to adjourn the inquiry from time to time, as occasion may require.

**RULE 48TH.** In default of such defence or demurrer, and in case of judgment for the plaintiff on demurrer, when the plaintiff's demand is not for a debt or liquidated sum of

money, and when the amount of damages so 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 Colony, or other person thereunto lawfully authorized, to summon a Jury to assess the same, ten 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 District of Victoria; and the Sheriff shall cause so many of the jurors, as in his opinion he shall deem sufficient to be summoned, but not less than eight of 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 consisting of not less than four shall be empaneled to try such fact or facts, or assess such damages, and such jury shall be sworn and paid as a common jury, and such inquiry shall be holden at Victoria or such other place as shall be agreed on between the Sheriff and the party delivering the writ to him, who shall have ten days notice, in writing, of the time and place of holding such inquiry; and notice of the holding of such inquiry shall also be given by the plaintiff to the defendant ten days before the holding of the same; and the said writ of inquiry may be made returnable, and be returned on any day certain in sessions or in vacation, to be named in such writ, and upon the return thereof 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 or plaintiff, shall have had an opportunity to apply to the Court to set aside the execution of such writ of inquiry, or unless the Judge or the Court shall think fit to order the judgment to be staid, until a day to be named in such order.

**RULE 49TH.** It shall be the duty of the Registrar of the Court, before he permits any such judgment by default to be marked, to see that a proper affidavit of the service of the Writ of Summons has been filed, and that according to such affidavit, service of such writ has been effected in the manner hereinbefore prescribed, or in the manner substituted by the order of the Court or Judge as aforesaid.

**RULE 50TH.** After defence or last subsequent pleading filed, and together with the notice of trial, the plaintiff or his Solicitor shall furnish to the defendant or his Solicitor, a draft of the abstract of the pleadings, and of the issues in fact to be tried, according to the form No. 7 in the Schedule hereunto annexed, and in case the defendant shall not return the same, approved of, within four days from the delivery thereof, the plaintiff may take out a summons to settle the same before the Judge, who shall settle the same, and shall also adjudicate on the costs of such settlement; and such abstract so agreed upon or settled, shall be lodged with the Registrar of the Court, and an engrossment of such abstract so agreed on or settled, and prepared by the plaintiff, shall be in the place of the Record of Nisi Prius, and the Postea and all other proceedings of the trial shall be endorsed thereon, and shall be returnable in the like manner as the Nisi Prius Record in England.

**RULE 51ST.** Ten days notice of trial or inquiry shall be given, and shall be sufficient in all cases, in Town or Country, unless otherwise ordered by the Court or Judge.

**RULE 52ND.** A countermand of notice of trial or inquiry may be given four days before the time mentioned in the notice, unless otherwise ordered by the Court or Judge, or by consent.

**RULE 53D.** A rule or order for costs of the day for not proceeding to trial, or inquiry, pursuant to notice, or not countermanding in sufficient time, may be drawn up on affidavit without motion, at any time within one month after the day of trial or inquiry, fixed by the notice of trial or inquiry; and if such order or rule be not entered within said period, such costs shall be costs in the cause; provided however that such rule shall, so long as it remains in force, be an answer to any application, in respect to any default in proceeding to trial.

**RULE 54TH.** The plaintiff shall proceed to trial within three sessions from that in which, or the vacation of which the defence or other subsequent pleading is filed; and in default thereof, the defendant may enter a rule, that the plaintiff do proceed to trial, at the sessions next after the expiration of twenty days from the service of such rule, and that in default the defendant shall be dismissed with his costs of the suit; and if the plaintiff neglects to proceed to trial in pursuance thereof, the defendant, on filing an affidavit of the service of such rule, and that the plaintiff has failed to proceed to trial in pursuance thereof, may enter a peremptory order for the payment of his costs of the suit, which order shall be in lieu, and shall have the effect of a judgment as in case of a nonsuit, and the defendant, on producing such order to the Registrar, shall have execution thereon; provided, however, that the Court or Judge shall have power to extend the time for proceeding to trial with or without terms.

**RULE 55TH.** Nothing herein contained shall affect the right of a defendant, to take down a cause for trial, after default by the plaintiff to proceed to trial as aforesaid; and it shall be lawful for the defendant, after such default, to proceed to have the abstract of the issues settled in the same manner as the plaintiff might have done.

**RULE 56TH.** When a defendant shall be entitled to go to trial as aforesaid, he may proceed without any rule or order for that purpose, and the same notice of trial shall be given as in ordinary cases, and if abstracts are entered for trial, both by the plaintiff and defendant, the defendant's abstract shall be treated as standing next in order after the plaintiff's abstract in the list of causes, and the trial of the cause may take place accordingly.

**RULE 57TH.** No jury process shall be necessary or used in any action, but a precept issued by the Judge of the said Supreme Court to the Sheriff of the Colony, to summon a sufficient number of common jurors, shall direct that the jurors be summoned for the trial of all issues in the said Supreme Court; and seven days before the first day of each session, a printed or written pannel of the jurors so summoned, for the trial of causes at such sessions shall be made by the Sheriff, and kept in his office for public inspection, and a written or printed copy of such pannel shall be delivered by the Sheriff to any party requiring the same, on payment of a fee of one shilling and six pence, and a copy thereof shall be annexed to the abstract for trial, and it shall be the duty of the Sheriff to apply for and procure such precept to be issued in sufficient time, before each session, to enable him to summon the jurors in manner aforesaid.

**RULE 58TH.** The precept issued by the Judge of the said Supreme Court, shall also direct the Sheriff to summon a sufficient number of special jurymen to be mentioned therein, not exceeding sixteen in all, and the persons summoned in pursuance of such precept shall be the jury for trying the special jury causes at the Sessions, subject to such right of challenge as the parties are entitled to by law, and subject to the liability as to the payment of the costs of obtaining such special jury; and a written or printed pannel of the special jurors so summoned, shall be made, kept, delivered and annexed to the abstract for trial in like time and manner, and upon the same terms as hereinbefore provided, with reference to the pannel of common jurors, and upon the trial the special jury shall be balloted for, and called, in the order in which they shall be drawn from the box, in the same manner as common jurors.

**RULE 59TH.** The number of jurors in all trials before the said Supreme Court, in consequence of the smallness of the population of the Colony, shall be eight jurors, and no more, until further provision is made for increasing the number to twelve, as in England: and the said eight jurors shall, in all cases, deliver an unanimous verdict.

**RULE 60TH.** The plaintiff in any action, except for the replevin of goods, shall be entitled to have the cause tried by a special jury, upon giving notice in writing to the

defendant, 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 for the replevin of goods, and the defendant in other cases, shall be so entitled, on giving the like notice within six days before the first day of the sessions; provided that the Court or Judge may at any time order that a cause shall be tried by a special jury, on such terms as the Court or Judge shall think fit.

**RULE 61ST.** When notice has been given to try by a special jury, either party may, six days before the first day of the sessions, give notice to the Sheriff, that such action is to be tried by a special jury; and in case no such notice be given, or the notice has not been given in sufficient time, 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.

**RULE 62ND.** A Writ of View shall not be necessary or used, but when a view is required to be had by a common or special jury, it shall be sufficient to obtain a rule of the Court, or the Judge's order, directing a view to be had, and directing the Sheriff to have four or more of the jurors named in the pannel, chosen by consent, or if the parties cannot agree, nominated by the proper officer of the Court at the place in question, some convenient time before the trial, and the viewers shall have the place shewn to them by two persons to be named in the order by the Court or Judge; and the Sheriff, upon request, shall deliver to either party the names of the Viewers, and shall also return their names to the Registrar, for the purpose of their being called as jurymen upon the trial.

**RULE 63RD.** Either party may call upon the other party by notice, to admit any documents, or a copy thereof, saving all just exceptions, and in case of refusal or neglect to admit within a reasonable time, the costs of proving the document, or copy, shall be paid by the parties 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, or copy, shall be allowed unless such notice be given.

**RULE 64TH.** An affidavit of the party, or his Solicitor in the cause, 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.

**RULE 65TH.** An affidavit of the party, or his Solicitor in the cause, 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 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;

**RULE 66TH.** Every Bill of Exceptions may be according to the form No. 9, in the schedule hereunto 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.

**RULE 67TH.** No judgment shall be arrested or stayed, or reversed, by reason of any imperfection, omission, defection, or lack of form in any Writ of Summons, defence or other pleading, or proceeding, nor by reason of any misnomer of any of the jurors who tried the case, in name, surname, or addition, so as it appear to the Court to be the same man 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.

**RULE 68TH.** When it shall be required to sign any judgment, the party or his Solicitor requiring the same, shall deliver to the proper officer a correct summary or recital of the proceedings, briefly stating the several pleadings, and the nature thereof, fairly written out and signed by the party or his Solicitor, and thereupon the officer shall take off from the Pleadings' File the several pleadings in the cause in which such judgment shall be required to be made up, and shall place them, together with the said sum-

mary prefixed, in consecutive order upon the file of judgments, there to be kept as the permanent records of the Court; and shall upon the said summary give the proper award of judgment; and it shall in all cases of enrolling judgments, be sufficient to place on the roll a correct copy of the said summary or recital of the proceedings according to fact, together with the award of judgment in proper form, with a reference to the original pleadings on the judgment file, whereby the same may be immediately found and inspected; and no judgment so enrolled, shall be liable to be disturbed on the ground of error, on account of any omissions hereby authorized; provided, always, that if it shall be deemed necessary for the prosecution of any proceeding in appeal, or for any other purpose, it shall be lawful for the Court to order, that the whole, or any part of the pleadings, shall be transcribed upon the roll, and the same shall be transcribed by the proper officer accordingly.

**RULE 69TH.** In all actions where the plaintiff recovers a sum of money the amount which he is entitled to may be awarded to him by the judgment generally, without any distinction being made therein as to whether such sum is recovered by way of a debt or damages.

**RULE 70TH.** In all actions for a trespass on lands or tenements, assault and battery, or for slander, the plaintiff in such action, in case the jury shall find the damages to be under the value of forty shillings, shall not recover or obtain more costs of suit than the damages so found shall amount unto, unless the Judge at the trial shall certify under his hand on the back of the abstract, that the assault and battery was sufficiently proved by the plaintiff against the defendant, or that the freehold or title of the land mentioned in the Writ of Summons was chiefly in question, or that the trespass was voluntary or malicious.

**RULE 71ST.** A plaintiff or defendant having obtained a verdict or non-suit, shall be entitled to mark judgment and to issue execution in fourteen days after the trial, unless the Judge or the Court shall order execution to issue at an earlier or later period, with or without terms; provided, that notwithstanding any judgment signed or recorded, or execution issued, it shall be lawful for the Court or Judge 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 such execution, shall be restored to all he may have lost thereby.

**RULE 72ND.** It shall not be necessary before issuing execution upon any judgment, 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 the Registrar, shortly stating the nature of the judgment, and thereupon the costs shall be taxed, and execution issued, 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 which any satisfaction of the said judgment may be afterwards entered, if necessary.

**RULE 73RD.** When any execution is demanded, the party demanding the same shall lodge with the Registrar, or officer required to issue such writ, a certificate signed by the party, or his Solicitor, containing such sum as the party demands to be in good conscience due to him, after all just and equitable deductions, which certificate shall be filed in the office, and the sum mentioned therein entered in the book wherein executions are entered; and also, in the body of the said execution that shall issue as the sum to be levied on foot of the sum adjudged by the judgment or order of the Court; and if the party at whose suit such execution issues, shall appear wilfully,

fraudulently, and maliciously, to have overcharged the party against whom such execution issues in such case, he shall forfeit to the party grieved treble damages.

**RULE 74TH.** In every case of execution, the party entitled to execution may levy the poundage fees and expenses of the execution, by law payable over and above the sum recovered.

**RULE 75TH.** Under a Writ of Execution, the Sheriff may seize and take any money, bank notes, or specialties belonging to the person against whom such writ shall be sued out, and if not sufficient to satisfy the judgment, then on the goods and chattels of the said party; and if the said goods and chattels shall not be sufficient to supply the judgment, then on the lands, hereditaments, or real property of the party, wherever they may be within the jurisdiction of the Court; and if not sufficient to satisfy the judgment, then the person of the party against whom the execution is issued, may be taken in satisfaction, if the debt or damages amount to not less than £20, exclusive of costs.

**RULE 76TH.** A plaintiff or defendant arrested under any Writ of Execution, shall be entitled to his discharge from such arrest, on payment or tender to the opposite party, or his Solicitor in the cause, or to the Sheriff or Jailor in whose custody such person may be under such writ, of the amount directed to be levied by such writ.

**RULE 77TH.** A Writ of Execution, if unexecuted, shall not remain in force for more than one year from the date of such writ; 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, by being marked with the seal of the Court, and with a memorandum signed or initialed by the proper officer, of the date of the day, month, and year of such renewal; and a Writ of Execution so renewed, shall have effect and be entitled to the same priority as the original writ would have had; provided, however, that no writ shall be renewed without the special leave of the Court or Judge.

**RULE 78TH.** It shall be lawful for the Court or 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.

**RULE 79TH.** The death of a plaintiff or defendant shall not cause the action to abate, but it may be continued as hereinafter mentioned.

**RULE 80TH.** In case there be two or more plaintiffs or defendants, and one or more of them shall die, if the cause of action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants.

**RULE 81ST.** In case of the death of a sole plaintiff, or sole surviving plaintiff, the Executor or Administrator of such plaintiff may, by leave of the Court or Judge, enter a suggestion of the death, and that he is such Executor or Administrator, 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 favor of or against the person making such suggestion, as if he were originally the plaintiff.

**RULE 82ND.** In case of the death of a sole defendant, or sole surviving defendant, where the action survives, the plaintiff may file a suggestion 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 of Summons and suggestion, and with a notice signed by the plaintiff or his Solicitor, requiring such Executor or Administrator to file a defence within twelve days after service of the notice, and that in

default of his so doing, the plaintiff may sign judgment against him as such Executor or Administrator; and the same proceeding may be had and taken thereon, 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 the plaintiff shall have issued his Writ of Summons, but the defendant shall not have pleaded before the death, the new defendant shall plead at the same time to the Writ of Summons 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 Judge, he should be permitted to plead fresh matter in answer to the Writ of Summons; and in case the plaintiff shall recover, he shall be entitled to the like judgment in respect of the debt or damages so ought to be recovered, and in respect to the costs prior to the suggestion; and he shall be entitled in respect of the costs of the suggestion, and subsequent thereto, to the same judgment as in an action originally commenced against the Executor or Administrator.

**RULE 53RD.** The death of either party between the verdict or non-suit and the judgment shall not be alleged for error, so as such judgment be entered within two sessions after such verdict or non-suit.

**RULE 54TH.** The marriage of a female 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, judgment may be obtained against the husband and wife, and execution issued thereon; and in case of a judgment for the wife, recovered before or after her marriage in an action commenced by her when sole, upon which she would be entitled to execution if she had continued, sole execution may be issued thereupon by the authority of the husband, without any 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 shall be countermanded by the husband.

**RULE 55TH.** When 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 the said Supreme Court, such party shall commence an action for such purpose by a Writ of Summons, which writ shall be directed to the immediate tenant or party in possession as defendant, with the addition of the words, "and all persons concerned," and shall in addition to any particulars hereinbefore required, contain a description of the property so to be recovered with reasonable certainty, and the County, or Parish, or District in which the same is situated; provided, however, that no want of "reasonable certainty" in the description of the property in the Writ of Summons, or copy, shall nullify them, but shall be ground for an application to the Court or Judge for better particulars of the land claimed, which the Court or Judge shall have power to give in all cases, upon the application of any person named as a defendant or interested in the lands claimed, or supposed to be claimed.

**RULE 56TH.** The Writ of Summons in ejectment 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 the service thereof, at the office of the Registrar, to defend the possession of the property sued for, or such part thereof as they may think fit, and the writ shall be dated and endorsed and continue in force, and be renewed, and shall be filed after service thereof in like manner as hereinbefore directed with reference to the Writ of Summons in a personal action; and in cases of ejectment on the title, it shall be lawful for the plaintiff by such writ to claim damages for the loss of the mesne rates and profits of the lands so to be recovered; and in case of ejectment

for nonpayment of rent, such writ shall be endorsed with the full particulars of the rent due, and of all credits to which the defendant shall be justly entitled, and may be in the form No. 12 in the schedule hereunto annexed, or to the like effect.

**RULE 87TH.** The venue shall be laid in the county or district in which the lands are situate, but the Court or Judge may on the application of either party, order that the trial shall take place in any county or district other than that, in which the venue is laid, and such order being suggested on the abstract, the trial may be had accordingly.

**RULE 88TH.** The writ shall be served by delivering a copy of it to the tenant or party in possession, or his wife, or servant, or other person on the premises, or in such manner as the Court or Judge shall order, and in case of vacant possession, by posting a copy thereof upon the door of the dwelling house or other conspicuous part of the premises.

**RULE 89TH.** Every defence to a summons in ejectment on the title, shall be in the form No. 13 as in the schedule hereunto annexed, or to the like effect; and every defence to an ejectment for non-payment of rent, shall set forth the substantial ground of the defence: as for example, whether the title of the plaintiff as landlord is disputed, or the fact of the rent being due, if in dispute, and such defence shall be endorsed, with the particulars of any payments made, and may be according to the form No. 14 in the said schedule.

**RULE 90TH.** Any person taking defence as aforesaid to an ejectment on the title, 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, otherwise the defence shall be deemed to apply to the whole; but a defence to an ejectment for non-payment of rent shall be a defence for all the lands and premises in the summons mentioned, and in case a defendant shall desire to take defence for part only of the premises, upon the ground that such part was not included in the lease or other instrument so ought to be evicted, he shall make a special application to the Court for that purpose.

**RULE 91ST.** Any other person not named in, or served with such writ, shall by leave of the Court or Judge, be allowed to defend, on filing an affidavit shewing that he is in possession of the land, either by himself or his tenant; and the Court or Judge shall have power to strike out, or confine any defence, set up by a person not in possession by himself or his tenants.

**RULE 92ND.** In case no defence be filed within the time appointed, or if the defence filed be limited to part only, the plaintiff shall, on filing an affidavit of service of the Writ of Summons, be at liberty to sign judgment that the plaintiff shall recover possession of the land, or of the part thereof to which the defence does not apply, and such judgment, if for all, may be in the form No. 15 in the schedule hereunto annexed, or to the like effect, without any award of costs, but without prejudice to the plaintiff's right to have the costs taxed by the proper officer, and to proceed by action for the recovery of mesne rates and costs, or either of them, and the said judgment for part may be in the form No. 16 in the said schedule, or to the like effect; and a memorandum of such judgment shall be recited in the abstract for judgment thereafter to be made up.

**RULE 93RD.** In case a defence shall be filed, an abstract of the issue for trial may at once be made up by the plaintiff, or his Solicitor, setting forth the writ, and stating the fact of the defence, with its date, and the names of each of the persons taking defence, so that it may appear for what defence is made; and such abstract may be in the form No. 17 contained in the schedule hereunto annexed, or to the like effect; and such abstract shall be lodged with the Registrar; and the question at the trial shall be, whether the statement of the title of the plaintiffs in the Writ of Summons



is true or false, and if true, then which of the plaintiffs 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 any issue in an ejectment for non-payment of rent, the amount of the rent due to the plaintiff shall be found by the jury.

**RULE 94TH.** The proof of the title in any one or more of several plaintiffs in ejectment, shall be sufficient to entitle a verdict to be entered for such plaintiff or plaintiffs; 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.

**RULE 95TH.** If the defendant appears, and the plaintiff does not appear at the trial, the plaintiff shall be non-suited; and if the plaintiff appears and the defendant does not appear, the plaintiff shall be entitled to a verdict without any proof of his title; and in case of ejectment on the title, shall be entitled to prove the amount of damages sustained by reason of the loss of the mesne rates and profits; and in case of an ejectment for non-payment of rent, shall be entitled to prove the amount of rent actually due, and to have a verdict for the same.

**RULE 96TH.** Upon a verdict for the plaintiff, judgment may be signed, and execution issued for the recovery of possession of the property, or such part thereof as the jury shall find the plaintiff entitled to; and in case of an 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 non-payment of rent, for recovery of so much rent as shall be found to be due, and costs, within fourteen days after such verdict, unless the Court or Judge shall order execution in a shorter time.

**RULE 97TH.** Upon a verdict for the defendants, or any of them, or upon a non-suit, judgment may be signed, and execution issued for costs against the plaintiffs named in the writ within fourteen days after verdict or non-suit, or sooner if the Court or Judge shall so order.

**RULE 98TH.** Upon any judgment in ejectment, there may be either one or several 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 plaintiff.

**RULE 99TH.** The death of a plaintiff or defendant in ejectment, shall not cause the action to abate, but the suit may be continued to judgment and execution by the Executors and Administrators of the parties in the same manner as is hereinbefore provided in the case of the death of a plaintiff or defendant in a personal action.

**RULE 100TH.** Where any party whose goods and 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 in the said Supreme Court, such party may commence a personal action for the recovery of the goods and chattels so taken or distrained, by a Writ of Summons, which Writ of Summons shall, in addition to any particulars hereinbefore 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 hereinbefore provided in respect of an ordinary Writ of Summons.

**RULE 101ST.** When any such personal action shall have been so commenced, it shall be lawful for the plaintiff therein, to sue out of the Court a Writ, to be called a Writ of Replevin, in the form No. 18 in the schedule hereunto annexed, directed to the Sheriff, requiring him to replevy the said goods and chattels; and the said Sheriff shall, and is hereby required, upon good security, (by the bond of 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 within eight days, exclusive of 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, and that the said bonds shall be assignable by the Sheriff under like circumstances and in like manner, and shall be available to the assignee thereof, as by law now or hereafter authorized in respect of replevin bonds.

**RULE 102ND.** If the plaintiff in any such action for replevin of a distress made for rent, shall be nonprossed for not filing his Writ of Summons as aforesaid, it shall be lawful for the defendant to file a suggestion in the nature of a plaint for rent, and praying the Court to enquire 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, or to the Registrar 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; and upon the return of such inquisition, the defendant shall have judgment and execution to recover against the plaintiff the arrears of rent, in case the goods and chattels shall amount to the value, and in case they shall not amount to that value, then for so much as the value of the said goods and chattels shall amount to, with his costs of suit in that behalf incurred; and in case the said plaintiff shall be non-suited after issue joined, or if the verdict shall be given against the plaintiff, then the jurors empaneled to try such issue shall, at the prayer of the defendant, inquire of the amount of the rent due, and the value of the goods and chattels distrained, and the defendant shall have judgment and execution for such arrears, or so much thereof as the value of the goods and chattels distrained shall amount unto, together with his costs of suit in that behalf incurred.

**RULE 103RD.** If any party against whom a verdict shall have been found, shall desire to obtain a new trial, he shall move the Court accordingly within six days from the date of the verdict.

**RULE 104TH.** In every rule Nisi for a new trial, or to enter a verdict or non-suit, the grounds upon which such rule shall have been granted, shall be shortly stated therein.

**RULE 105TH.** 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.

**RULE 106TH.** Upon motions founded upon affidavits, either party may with leave of the Court or Judge, make affidavits in answer to the affidavits of the opposite party, upon any new matter arising out of such affidavit, subject to all such rules as shall hereafter be made respecting such affidavits.

**RULE 107TH.** Upon the hearing of any motion or summons, the Court or Judge may at their or his discretion, and upon such terms as they or he shall think reasonable from time to time 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 *viva voce*, either before the Court or Judge or before the Registrar, and upon hearing such evidence or reading the report of the Registrar, make such rule or order as may be just.

**RULE 108TH.** 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 to make his or her solemn affirmation or declaration in the words following, viz: "I, A. B., do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, 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.

**RULE 109TH.** If any person making such solemn affirmation or declaration, shall wilfully, falsely, and corruptly affirm and 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 laws and statutes of the Kingdom are, or may be enacted or provided against persons convicted of wilful or corrupt perjury.

**RULE 110TH.** Every cause that shall be tried at any sessions of the Supreme Court, shall be entered by the plaintiff or his Solicitor in a list to be kept for that purpose by the Registrar; such entry shall be made at least three clear days before the first day of the sessions, and if the plaintiff shall fail to make such entry, such default shall be deemed equivalent to a countermand of notice of trial.

**RULE 111TH.** Upon the trial of any cause, the addresses to the jury shall be regulated as follows: The plaintiff or his counsel shall begin, and briefly state the facts which he means to prove without comment thereon, and shall then proceed to the proof thereof; likewise the defendant or his counsel shall, if he mean to call any witnesses, state briefly the facts which he means to prove, without comment thereon, and shall then proceed to the proof thereof; when the whole of the defence is closed, the plaintiff or his counsel shall observe generally upon the case, and after him in like manner the defendant or his counsel. The Judge shall then sum up the evidence to the jury. The term plaintiff in this Rule shall mean the party on whom the proof of the affirmative side of the issue shall lay; and the term defendant shall mean the party on whom lies the proof the negative.

**RULE 112TH.** All applications for relief in Equity, may be made at any time to the Court or Judge, by filing a Bill or Petition supported by the proper affidavits with the Registrar of Court, stating the cause of complaint, and praying the interposition of the Court or Judge.

**RULE 113TH.** No motion other than a motion for an Injunction or for a Writ of Arrest, shall be heard by the Court or Judge, unless notice thereof shall have been given to the opposite party two clear days before the day appointed for the hearing thereof as aforesaid, nor shall any affidavit be read in support thereof, unless the same shall have been filed in the office of the Registrar at least two clear days before the day so appointed.

**RULE 114TH.** Any defendant or other person against whom an Injunction shall be granted, may move the Court to dissolve the same upon affidavit; notice of such motion shall be given to the opposite party two clear days at least before the day appointed for the hearing thereof.

**RULE 115TH.** Where an affidavit filed in support of, or in opposition to any motion, shall contain irrelevant matter, or matter not being legal evidence, it shall be competent for the Court or Judge, upon application made at the close of the argument upon such motion to direct the costs of such affidavit to be paid by the party filing the same, whatever may be the result of the motion.

**RULE 116TH.** Affidavits may be sworn before the Judge of the Court, the Registrar, or any Solicitor of the Court not employed in the suit; no affidavit shall be read unless it is so sworn, or before some other person authorized by the Court to take affidavits.

**RULE 117TH.** When a fine shall be imposed upon any person for making default in the discharge of his duty as a juror or witness, at any sitting of the Court, or when any recognizance shall become forfeited, or a fine imposed on any person for any other matter or thing, the Registrar shall on the direction of the Judge, issue a Writ of Summons in the form No. 19 in the schedule hereunto annexed, requiring the person on whom the fine shall be imposed, or whose recognizance shall become forfeited, to shew cause why the same should not be levied; the summons shall be personally served six days before the day fixed for shewing cause.

**RULE 118TH.** In such case, cause must be shewn on affidavit filed one clear day at least before the day fixed for shewing cause; if sufficient cause be not shewn, the Judge shall direct the Registrar forthwith to issue a writ in the form No. 20 in the schedule hereunto annexed to the Sheriff, to enforce payment of such fine or recognizance, or of such part thereof as to the Judge may seem meet.

**RULE 119TH.** Any party, plaintiff or defendant, feeling dissatisfied or aggrieved with any final judgment, decree, order, or sentence of the said Supreme Court, in respect of any sum or matter at issue above the amount or value of £300 sterling, or in case such judgment, decree, or sentence shall involve directly or indirectly any claim, demand or question to, or respecting property, in any civil right, amounting to, or of the value of £300 sterling, such party, plaintiff or defendant, may, if they shall so think fit, appeal therefrom, to Her Majesty, Her Heirs and Successors, in Her or Their Privy Council, by petitioning the said Court for leave to appeal therefrom, within twenty-one days next after the said judgment, decree, order or sentence shall have been pronounced.

**RULE 120TH.** If such leave to appeal be prayed by the party or parties who is or are directed to pay any such sum, or perform any duty, the Court may direct that the judgment, decree, order or sentence appealed from, shall be carried into execution, or that the execution thereof shall be suspended pending the said appeal, as to the Court may appear to be most consistent with real and substantial justice; and in case the Court shall direct such judgment, decree, order or sentence to be carried into execution, the party or parties in whose favor the same shall be given, shall, before the execution thereof, enter into good and sufficient security, to be approved by the Court, for the performance of such Judgment or Order as Her Majesty, Her Heirs and Successors shall think fit to make thereupon.

**RULE 121ST.** In all cases, the party or parties appellant shall also give security in a bond or mortgage, or personal recognizance, not exceeding the value of £500 sterling for the prosecution of the appeal, and for the payment of all such costs as may be awarded by Her Majesty, Her Heirs and Successors, or by the Judicial Committee of Her Majesty's Privy Council, to the party or parties respondent.

**RULE 122ND.** In all such cases, the party or parties appellant must, within twenty-eight days from the date of the petition for leave to appeal, complete the security for such costs as may be awarded, and the party or parties appellant shall then, and not otherwise, be at liberty to prefer and prosecute his, her, or their appeal to Her Majesty, Her Heirs and Successors, in Her or their Privy Council, in such manner and under such rules as are, or may be observed in appeals made to Her Majesty from Her Majesty's Colonies and Plantations abroad.

**RULE 123RD.** Any party, plaintiff or defendant, who considers himself aggrieved by any preliminary or interlocutory judgment, order, or sentence of the said Supreme Court, may, if he shall so think fit, petition the Court to grant permission to such party to appeal against the same to Her Majesty, Her Heirs and Successors in Her or Their Privy Council, subject to the same rules, regulations and limitations as are hereinbefore expressed, respecting appeals from final judgments, decrees, orders or sentences.

**RULE 124TH.** In all cases of appeal made from any judgment, order, sentence or decree of the said Supreme Court, to Her Majesty, Her Heirs, or Successors in Her or Their Privy Council, the Court shall certify and transmit to Her Majesty, Her Heirs and Successors, in Her or Their Privy Council, a true and exact copy of all evidence, proceedings, judgments, decrees and orders, had or made in such cases, so far as the same shall have relation to the matter of appeal; such copies to be certified under the seal of the Court; and the Court shall also certify and transmit to Her Majesty, Her Heirs and Successors, in Her or Their Privy Council, a copy of the reasons given by the Judge of the Court, for or against, the judgment, decree, order or sentence appealed against.

**RULE 125TH.** The said Supreme Court shall, in all cases of appeal to Her Majesty, Her Heirs and Successors, conform to and execute, or cause to be executed, such judgments and orders as Her Majesty, Her Heirs and Successors, in Her or Their Privy Council shall think fit to make in the premises, in such manner as any original judgment, decree, or decretal order, or other order, or rule of the said Court shall or might have been executed.

**RULE 126TH.** Every person who shall be named in any Will as Executor thereof, and who shall apply for Probate thereof, shall file in the office of the Registrar, the Will of the deceased, and an affidavit in the form No. 21 in the schedule hereunto annexed, made by some person acquainted with the testator, and his residence at the time of his decease, and shall also make and file an affidavit in the form No. 22 in the said schedule; Probate shall thereupon be granted in the form No. 23 in the said schedule, with a copy of the Will annexed, unless a Caveat shall have been previously entered.

**RULE 127TH.** If none of the Executors named in the Will shall apply for Probate within one calendar month after the death of the testator, and if the residuary legatee, widow, widower, or next of kin of such testator, shall apply for Administration within two calendar months from the death of the said testator, and if the parties so applying, shall file as aforesaid an affidavit in the form No. 21 in the schedule hereunto annexed, and make and file as aforesaid an affidavit in the form No. 24 in the said schedule; the party so applying shall thereupon be entitled to Letters of Administration, with the Will annexed, in the form No. 25 of the said schedule, unless a Caveat shall have been previously entered.

**RULE 128TH.** If there be no Will, or if there be a Will, but no Executor be named therein, and if the residuary legatee, widow, widower, or next of kin of such testator or intestate, shall apply for administration within two calendar months from the death of the said testator or intestate, and if the parties so applying shall file as aforesaid an affidavit in the form No. 21 of the schedule hereunto annexed, and shall make and file as aforesaid, an affidavit in the form No. 24 or No. 26, the party so applying shall be entitled to Letters of Administration, with the Will annexed, as in the form No. 25 in the said schedule; or to Letters of Administration in the form No. 27, as the case may require, unless a Caveat shall have been previously entered.

**RULE 129TH.** All Caveats against applications for Probates of Wills, or Letters of Administration, shall be filed in the office of the Registrar; if the same shall be filed by a Solicitor, the Solicitor shall annex to the Caveat his warrant for filing the same; the party applying for Probate or Administration, shall be entitled to a summons upon the party on whose behalf the Caveat is filed, calling upon him to appear before the Judge of the Supreme Court on a certain day, and shew cause why the application for Probate or Administration, as the case may be, should not be granted; if the party so summoned shall fail to appear accordingly, the Caveat shall be deemed to be abandoned, and the party so applying for Probate or Administration, shall be entitled to the same as if no Caveat had been filed.

**RULE 130TH.** Every person to whom Letters of Administration shall be committed as a residuary legatee, widow, widower, or next of kin, shall, before obtaining the same, give security by bond in the form No. 29 in the schedule hereunto annexed, to the Registrar, with two sureties to the satisfaction of such Registrar, who may require such sureties to justify if he shall think fit; the penalty in such bond shall be twice the amount of property to be administered, as sworn to by the party applying for Administration; nevertheless, it shall be lawful for the Judge of the Court, upon application to him, to moderate such sum in the following cases:

**1ST.** Where the party taking the Administration is solely entitled to the property to be administered, or where all other persons entitled in distribution shall consent thereto in writing, such penalty may be limited to twice the amount of the debts of the intestate.

**2ND.** Where some person so entitled shall consent, and others shall either dissent or be legally incapable of consenting, such penalty may be limited to twice the amount of the debts of the intestate, together with twice the amount of the shares of the person so dissenting or legally incapable of consenting, the Registrar may allow the Administrator to give security by any number of sureties, so that there be two bound for each portion of the amount.

**RULE 131ST.** If no person shall apply for Administration of the estate and effects of any person deceased, within two calendar months after such decease, or if every such application shall have been opposed, and the opposition thereto shall have been considered well founded, it shall be the duty of the Registrar to obtain and file an affidavit in the form No. 30 in the schedule hereunto annexed, from some person acquainted with the facts therein set forth; and also to make and file an affidavit in the form No. 31 in the said schedule, whereupon Letters of Administration shall be granted to such Registrar by the Judge of the Court; such grant of Administration to the Registrar shall not be revoked or defeated, save only upon the production of a Will by an Executor therein named.

**RULE 132ND.** Every Registrar who shall not, upon his appointment to his office, have given general security for the true and faithful Administration of all Estates which shall be committed to his charge, shall, before Letters of Administration be granted to him in any particular case, enter into bond with sufficient sureties to the satisfaction of the Judge of the Court, as is hereinbefore provided with respect to ordinary Administrators; such bonds will be made to the Attorney General for the time being of the Colony, or other officer authorized by the said Court in that behalf, and shall be assigned by him to any person who may be authorized by order of the Court to sue thereon.

**RULE 133RD.** If any person deceased shall have left behind him property of a perishable nature, and whereof the value may be greatly diminished in the interval before Letters of Administration can be duly granted, the Judge of the Court may, upon application to him for that purpose, make an order authorizing the sale of such property by some person therein named, and may direct the proceeds to be paid to the Registrar on account of the estate of the deceased.

**RULE 134TH.** Every Executor or Administrator shall, within three months from the time of proving the Will, or from the grant of Letters of Administration, file in the office of the Registrar of the Supreme Court, an inventory of the estate and effects of the deceased; every inventory so filed, shall be verified by affidavit; if the inventory be filed by the Registrar, the affidavit shall be made before the Judge of the Court, or a Commissioner appointed by the Court to take affidavits, if filed by any other person, then before the Registrar, or the said Commissioner, or any Justice of the Peace of the district in which such person shall reside.

**RULE 135TH.** In all cases of official administration, the Registrar shall cause public notice to be made in the district where the deceased was domiciled, or resident, at the time of his death, and also in Victoria, for a space of one month at least, requiring the creditors of the deceased to come in and prove their debts before such Registrar, giving notice that in default of their so doing within a time to be therein specified, they will be absolutely excluded from any benefit to arise from the estate and effects of the deceased.

**RULE 136TH.** So soon as the estate and effects shall be wholly got in, and converted into money, the Registrar shall, in the first place, retain thereout all costs and charges which he shall have reasonably incurred, or which he shall have become entitled to in respect of such estate and effects, such costs and charges being first examined and allowed by the Judge of the Court; and in the next place, he shall proceed to pay the debts proved before him in the lawful course of his administration, and the residue, if any, he shall cause to be paid to the Treasurer of the Colony, who shall place the same to an account to be called—"The Registrar's Administration Account:" "The Estate of A. B.;" there to remain until the said residue is claimed by the heirs of the deceased. No money so paid to the Colonial Treasurer shall be paid out by him without the authority of an order of the Court or Judge, and the Registrar shall publicly notify to the heirs, and next of kin of the deceased, to come in and prove their claim or right to the said residue before the said Court.

**RULE 137TH.** Every Executor or Administrator shall, within twelve calendar months after the decease of the testator, file in the office of the Registrar a full and distinct account in writing of his administration of the estate, which shall set forth the dates and particulars of all receipts and disbursements, which account shall be verified by affidavit; if such account shall not then be exhibited, the Judge may fix a further time, at the expiration whereof, if the Executor or Administrator shall fail to pass his accounts, he shall be chargeable with interest at the rate of six per cent. per annum for the balance, if any, remaining in his hands, unless he can show good and sufficient cause to the contrary.

**RULE 138TH.** Every account rendered by the Registrar as Official Administrator shall be notified in some public place in Victoria, as being open to inspection in his office for the benefit of all interested therein, during the space of one calendar month from the date of such notice.

**RULE 139TH.** It shall be lawful for the Court to allow to the Registrar acting as Official Administrator, such commission or per centage out of such estate as shall be a reasonable compensation for his pains and trouble; such per centage shall in no case exceed seven pounds ten shillings per cent., and not less than two pounds ten shillings per cent., as the Court in their discretion may allow, according to the nature and amount of the property realized.

**RULE 140TH.** The following days, and none other, shall be observed and kept as Holidays in the said Court and in the office of the Registrar, that is to say, every Sunday, Christmas-day, and the seven days following that day, Good Friday, Easter Eve, Monday and Tuesday in Easter week, Whit-Monday and Whit-Tuesday, and any day appointed for a Public Fast or Thanksgiving, the day appointed to be kept as the Birthday, and the Day of the Accession of Her Majesty the Queen, or any of Her Successors; and the said Holidays shall not be reckoned or included in any notices or other proceedings in the said Court, except notices of Trial and notices of Inquiry, and Sunday shall not be reckoned or included in any notice or proceeding whatsoever; and where the last day included in any such notice of Trial or notice of Inquiry, shall happen to fall on any of the days hereby appointed to be observed and kept as Holidays, in such case the following day, or when there shall be consecutive Holidays, the day following the last of

such Holidays shall be considered as the last of such days, and the days from and including the 24th day of July to the 13th day of October, inclusive, in each year, shall not be reckoned days within which any Writ of Summons, defence or other pleading shall be filed, nor shall any such pleading be filed or received upon such days, except a plea of confession or consent for judgment.

**RULE 141ST.** The several fees mentioned and set forth in the schedule hereunto annexed, shall be the fees chargeable against any party plaintiff or defendant in respect of the specified items of proceedings to which the same shall be applicable, until the same shall be altered or amended by any general rule to be hereinafter made by the Court under the power hereinbefore given. A table of such fees shall be put up in some conspicuous place in the Court House, and in the Registrar's office; and the fees in every proceeding shall be paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had, on or before such proceeding, and in default, payment thereof shall be enforced and recovered by order of the Judge, in the same manner as any debt or damage ordered to be paid by the Court; and the Registrar will collect from the suitors and receive for the Judge's use, the fees payable to him.

**RULE 142ND.** All costs between party and party, shall be taxed by the Registrar of the Court, according the schedule hereunto annexed.

**RULE 143RD.** The Registrar shall keep a book, to be called the Minute Book, and shall daily enter therein all the proceedings of the Court, or before the Judge in vacation. The Judge shall, as soon as conveniently may be, examine and sign the entries in such book relating to the business transacted on the previous days.

**RULE 144TH.** In all matters of practice not hereinbefore provided for, the practice of Her Majesty's Superior Courts at Westminster shall be followed, so far as the same shall be applicable and consistent with the circumstances of the Colony.

DAVID CAMERON, C. J.

12 [23, 1857]  
Sec p. 41





# SCHEDULE.

## FORMS.

### NO. 1.—DECLARATION.

I, A. B., of \_\_\_\_\_, do solemnly and sincerely declare, that I am a Barrister at Law, (or Advocate,) duly authorized to practice in the Superior Courts of England, (Ireland or Scotland,) and that I was called to the Bar by the Honorable Society of \_\_\_\_\_ (or admitted, &c.) on the \_\_\_\_\_ day of \_\_\_\_\_ and that I am the person named in the Certificate now produced.

Made and declared at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ before me \_\_\_\_\_ A. B.

### NO. 2.—DECLARATION.

I, A. B., of \_\_\_\_\_, do solemnly and sincerely declare that I am an Attorney of Her Majesty's Court of \_\_\_\_\_ at Westminster, (or Writer or Proctor, &c., as the case may be,) and that I was duly admitted an Attorney of the said Court at Westminster (or Writer, &c.) on the \_\_\_\_\_ day of \_\_\_\_\_ and that I am the person named in the Certificate.

Made and declared at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ before me \_\_\_\_\_ A. B.

### NO. 3.—WRIT OF SUMMONS.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith: To C. D., of \_\_\_\_\_ in the district of \_\_\_\_\_ Greeting:—

We command you—That within sixteen days after the service of this writ on you, inclusive of the day of such service, you do make, or cause an appearance to be entered for

you in our Supreme Court of Civil Justice, in an action at the suit of A. B., the particulars of which are endorsed hereon; and take notice that in default of your so doing, the said A. B. may proceed therein to judgment and execution.

Witness, \_\_\_\_\_, Esquire, Chief Justice at Victoria, the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_

**MEMORANDUM TO BE SUBSCRIBED ON THE WRIT.**

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 OF PARTICULARS.**

Jan. 1, 1854.—To amount of goods furnished as per account furnished 1st	
December, 1853, . . . . .	£200 0 0
Dec. 10, 1853.—By cash received on account, . . . . .	60 0 0
	<hr/>
Balance due plaintiff, . . . . .	£140 0 0

(Or as the case may be.)

**ENDORSEMENT TO BE MADE ON THE WRIT BEFORE SERVICE THEREOF.**

This Writ was issued by E. F., of \_\_\_\_\_, Solicitor for the said plaintiff; or this Writ was issued in person by A. B., who resides at, &c.

**ENDORSEMENT TO BE MADE ON THE WRIT AFTER SERVICE THEREOF.**

This Writ was served by X. Y. on C. D., the defendant, or one of the defendants, on Monday the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_

(Signed) \_\_\_\_\_ X. Y.

**NO. 4.—APPEARANCE AND DEFENCE.**

In the Supreme Court of Civil Justice,  
Monday, the 14th day of February, A. D. 1857.

John James,	} The said Richard Roe appears and takes
Plaintiff.	
Richard Roe, Executor of Henry Roe,	} defence to the action of the said John James,
Defendant.	

and says that the goods sold and delivered to Henry Roe, were of the value of £80, and no more, and that the said sum of £80 has been paid by the defendant to the plaintiff, and is sufficient to satisfy the plaintiff's demand, and therefore he defends the action.

E. M., Solicitor for the Defendant,  
Street, Victoria.

**ENDORSEMENT OF PARTICULARS OF PAYMENT.**

Aug. 1, 1851.—By cash paid plaintiff by the defendant, . . . . .	£45 0 0
“ “ “ By defendant's acceptance, dated at three months, . . . . .	35 0 0
	<hr/>
	£80 0 0

NO. 5.—DEMURRER TO A PLAINT OR DEFENCE.

In the Supreme Court of Civil Justice,  
Thursday, the 11th day of February, A. D. 1857.

<p>John James, Plaintiff. Richard Roe, Executor of Henry Roe, Defendant.</p>	}	<p>The said Richard Roe, the defendant, appears and says that the Writ of Summons does not disclose any cause of action, good in substance, because that no sufficient consideration for the alleged promise of the defendant as Executor of the said Henry Roe is stated therein, to render the said defendant liable to pay the debt of the said Henry Roe.</p>
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E. M., Solicitor.

NO. 6.—JUDGMENT BY DEFAULT FOR WANT OF DEFENCE.

In the Supreme Court of Civil Justice,  
On Monday, the 9th day of March, A. D. 1857.

(Day of signing judgment.)

<p>District of Victoria,</p>	}	<p>John James, by William Thompson his Solicitor, sued out a Writ of Summons against Richard Roe, claiming the sum of £140 for debt on account of a Bill of Exchange drawn by Henry Jasper, dated the 15th day of October, 1853, and endorsed by the said Richard Roe.</p>
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And the said Richard Roe has not appeared to take defence, but the service of such Writ, and the particulars thereof, have been duly verified; therefore it is considered that the said John James do recover against the said Richard Roe the sum of £140, together with £ for costs.

NO. 7.—ABSTRACT.

In the Supreme Court of Civil Justice,  
Monday, the 20th day of March, A. D. 1857.

<p>District of Victoria, to wit : John James, Plaintiff. Richard Roe, Defendant.</p>	}	<p>Whereas John James, the plaintiff, has sued Richard Roe, the defendant, and demanded the sum of £150, as the price and value of 130 barrels of wheat, sold and delivered to the defendant.</p>
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And the said Richard Roe has taken defence and admits the delivery of the wheat, but has alleged that he paid the sum of £130 to the plaintiff before the commencement of this action, and that such payment was a full satisfaction of the value of said wheat; and that said wheat was not sound and merchantable at the time of its delivery to the defendant.

Therefore, let the Jury try—

- 1st. Whether the said wheat was sound and merchantable at the time of its delivery.
- 2nd. Whether the value of said wheat exceeded the sum of £130.

Robert Jones, Solicitor for Plaintiff.  
Henry Green, Solicitor for Defendant.

NO. 9.—BILL OF EXCEPTIONS.

In the Supreme Court of Civil Justice,  
Monday, the 20th day of March, A. D. 1857.

John James,  
Plaintiff.  
Richard Roe,  
Defendant.

The Issues in Fact in the annexed Abstract,  
having come to be tried by a Jury on this day,  
the plaintiff produced and examined as a witness  
one G. H., to prove 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 the trial, admitted the evidence to be received accordingly, and therefore, 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. 12.—WRIT OF SUMMONS IN EJECTMENT.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland,  
and the Colonies thereunto belonging, Queen, Defender of the Faith:

To X. Y. Z., and all persons entitled to defend the possession of (describe the property with reasonable certainty) in the district of to the possession whereof A. B. & 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 command you, or such of you as deny the alleged title, within sixteen days after service hereof, to appear in our Supreme Court of Civil Justice 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.

NO. 13.—DEFENCE IN EJECTMENT ON THE TITLE.

In the Supreme Court of Civil Justice,  
Thursday, the 20th day of April, A. D. 1856.

A. B., C. D. and E. F.,  
Plaintiffs.  
G. H. and Others,  
Defendants.

George Hines, one of the defendants, appears  
and takes defence for the said lands of Black-  
acre, and says that the said plaintiffs are not  
entitled to the possession of them, and that the

said possession belongs to the said George Hines as of right, and therefore he defends the action.

B. M., Solicitor for the said George Hines,  
Government Street, Victoria.

NO. 14.—DEFENCE IN EJECTMENT FOR NON-PAYMENT OF RENT.

In the Supreme Court of Civil Justice,  
Saturday, the 22d day of April, A. D. 1856.

A. B. C. and D., Plaintiffs. G. H. and Others, Defendants.	}	George Hines, one of the defendants and tenant to the lands of Blackacre, appears and takes defence and says, that the rent of the said premises is not in arrear, and that the defendant paid the said rent and every part thereof to the said plaintiffs, before the commencement of this action, and therefore he defends as aforesaid.
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E. M., Solicitor for the said G. Hines,  
No. 14 Government Street, Victoria.

ENDORSEMENT OF PARTICULARS OF PAYMENT.

1st June, 1854.—By cash paid by defendant, G. Hines, to plaintiff, . . . £140 0 0

NO. 15.—JUDGMENT BY DEFAULT IN EJECTMENT FOR ALL THE LANDS.

In the Supreme Court of Civil Justice,  
The 26th day of April, A. D. 1856.

(Date of Writ.)

District of Victoria, to wit: A. B., Plaintiffs. C. D., Defendants.	}	On the day and year above written, a Writ of Summons issued forth, returnable into this Court, in these words; that is to say: (here copy the writ); and no appearance and defence has been entered to the said writ; therefore, it is considered that the said (here insert the names of the plaintiffs in the writ) do recover possession of the land in the said writ mentioned, with the appurtenances.
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NO. 16.—JUDGMENT BY DEFAULT IN EJECTMENT FOR PART.

In the Supreme Court of Civil Justice,  
The 26th day of April, A. D. 1856.

District of Victoria, to wit:	}	On the day and year above written, a Writ of Summons issued forth, returnable into this Court in these words; that is to say: (here copy the writ); and C. D. has, on the first day of May, appeared by E. M. his Solicitor (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 or defence has been entered to the said writ, except as to the said part; therefore, it is considered that the said A. B. (the plaintiff) 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.
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NO. 17.—ABSTRACT FOR NISI PRIUS.

In the Supreme Court of Civil Justice,  
Monday, the 20th day of March, A. D. 1857.

District of Victoria,  
to wit:  
John James,  
Plaintiff.  
Richard Roe,  
Defendant.

Whereas, John James the plaintiff, has sued  
Richard Roe the Defendant, for the recovery of  
the possession of the lands of Blackacre, claiming  
title thereto from the twentieth day of January,  
one thousand eight hundred and fifty, and the  
said Richard Roe has taken defence for the whole

of the land mentioned in the Writ of Summons; Therefore, let the Jury try whether the plaintiff was entitled to the possession of the said lands, or any part of them, on the said day, or at any time subsequent to such day, and before the commencement of the action: and whether the plaintiff is entitled to any, and what damages for loss of mesne rates and profits.

NO. 18.—WRIT OF REPLEVIN.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and the Colonies thereunto belonging, Queen, Defender of the Faith: To the Sheriff of Vancouver's Island, 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 this our writ, make appear to us, in our Supreme Court of Civil Justice, at Victoria, and have there this our writ.

Witness, the seal of our Supreme Court of Civil Justice hereunto set, at  
the \_\_\_\_\_ day of \_\_\_\_\_  
in the year of our Lord one thousand, &c.

Issued by G. F., Solicitor for said A. B.,  
or, Issued by A. B., in person.

NO. 19.—SUMMONS TO SHEW CAUSE WHY A FINE SHOULD NOT BE LEVIED.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and the Colonies thereunto belonging, Queen, Defender of the Faith: To

of \_\_\_\_\_ in the  
District of \_\_\_\_\_ Greeting:

Whereas, a fine of (in words) \_\_\_\_\_ hath been set by \_\_\_\_\_ Esquire, Chief Justice, of our Supreme Court of Civil Justice of Vancouver's Island, upon you for (failing to appear in Court on the \_\_\_\_\_ day of \_\_\_\_\_ when publicly called as a Juror); Now, we hereby command you that you appear personally, or by Solicitor, before the said Chief Justice at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ in the forenoon, to shew cause why the fine aforesaid should not be levied by process of the Court.

Witness, &c.

N. B.—Cause is to be shewn upon affidavit filed one clear day before the said  
day of \_\_\_\_\_ 18 \_\_\_\_\_

NO. 20.—WRIT TO LEVY FINE.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and the Colonies thereunto belonging, Queen, Defender of the Faith: To the Sheriff of Vancouver's Island, Greeting:—

We command that of the goods and chattels of A. B., in your bailiwick, you cause to be made the sum of (in words) being a fine set by , &c., (as in No. 19,) and that immediately after the execution hereof, you render that money unto us, and in what manner you shall have executed this our writ make appear to us in our Supreme Court of Civil Justice, at Victoria, immediately after execution hereof, and have you then and there this writ.

Witness, &c.

N. B.—The Forms Nos. 19 and 20 may be adapted to the case of Forfeited Recognizances.

NO. 21.—AFFIDAVITS BEFORE THE GRANTING OF PROBATE.

In the Supreme Court of Civil Justice.

I, A. B., of swear that I knew C. D., of when alive, and that the said C. D. was resident (or domiciled) at within the district of and that the said C. D. died at on or about the day of one thousand eight hundred, &c.

Sworn at Victoria, this 18th day }  
of May, A. D. 1856, before me. }  
E. F. }

A. B.

NO. 22.—AFFIDAVITS.

In the Supreme Court of Civil Justice.

I, of swear that I believe the writing now produced, bearing date the day of and marked to be the last Will and Testament of deceased, and that I am the Executor (or one of the Executors) therein named; I swear that I will faithfully execute the said Will by paying the debts and legacies of the deceased, as far as the property will extend and the law binds; and that I will exhibit unto this Court a true, full and perfect inventory of all the personal estate, effects and credits of the deceased on or before the day of and that I will file a true account of my Executorship on or before the day of

Sworn at, &c.



NO. 23.—PROBATE.

In the Supreme Court of Civil Justice.

Be it known to all men : That on this \_\_\_\_\_ day of \_\_\_\_\_ in the year one thousand eight hundred, &c.; the last Will and Testament of \_\_\_\_\_ deceased, a copy of which is hereunto annexed, hath been exhibited, read and proved before \_\_\_\_\_ Esquire, Chief Justice, and administration of the personal estate effects and credits of the deceased, hath been, and is hereby granted to \_\_\_\_\_ the Executor in the said Will and Testament named, being first sworn faithfully to execute the said Will, by paying the debts and legacies of the deceased, as far as the property will extend and the law binds, and also to exhibit into this Court a true, full and perfect inventory of the said property on or before the \_\_\_\_\_ day of \_\_\_\_\_ and to file a true account of his Executorship on or before the \_\_\_\_\_ day of \_\_\_\_\_ (reserving nevertheless to this Court full power and authority to grant like Probate and Administration to \_\_\_\_\_ the other Executors named in the Will, whenever they shall appear before this Court and sue for the same.

Given under the seal of the said Supreme Court of Civil Justice, this \_\_\_\_\_ day of \_\_\_\_\_ IS \_\_\_\_\_ A. B.

Registrar.

NO. 24.—AFFIDAVIT BEFORE GRANT OF ADMINISTRATION WITH WILL ANNEXED.

In the Supreme Court of Civil Justice.

I \_\_\_\_\_ of \_\_\_\_\_ swear that I believe the \_\_\_\_\_ writing now produced to me, bearing date the \_\_\_\_\_ day of \_\_\_\_\_ and marked \_\_\_\_\_ to be the last Will and Testament of \_\_\_\_\_ deceased. I swear that to the best of my knowledge, information and belief, the estate, effects and credits of the deceased to be administered by me, are under the value of \_\_\_\_\_ ; that I will faithfully execute the said Will, by paying the debts and legacies of the deceased, as far as the property will extend and the law binds ; and that I will exhibit into this Court a true, full and perfect inventory of all the estate and effects and credits of the deceased, on or before the \_\_\_\_\_ day of \_\_\_\_\_ eighteen hundred and fifty \_\_\_\_\_ ; and that I will file a true account of my Administratorship on or before the \_\_\_\_\_ day of \_\_\_\_\_

Sworn at, &c.

NO. 25.—LETTERS OF ADMINISTRATION WITH WILL ANNEXED.

In the Supreme Court of Civil Justice.

To \_\_\_\_\_ widow, widower, or next of kin of \_\_\_\_\_ deceased:

Whereas, the said \_\_\_\_\_ lately departed this life, leaving a Will which has been duly proved in this Court, and whereas no Executor is named

in that Will, you are therefore fully empowered and authorized by these presents to administer the estate and effects of the said deceased, and to demand and recover whatever debts may belong to his estate, and pay whatever debts the said deceased did owe, and also the Legacies contained in the said Will, so far as such estate and effects shall extend; you having been already sworn well and faithfully to administer the same, and to exhibit a true and perfect inventory of all the estate and effects into this Court on or before the \_\_\_\_\_ day of \_\_\_\_\_ next: and you are, therefore, by these presents, constituted Administrator, with the Will annexed, of all the estate and effects of the said deceased.

Given under the seal, &c.

NO. 26.—OATH BEFORE GRANT OF ADMINISTRATION WITHOUT A WILL.

In the Supreme Court of Civil Justice,

I, \_\_\_\_\_ of \_\_\_\_\_ swear that to the best of my knowledge, information and belief, the estate, effects and credits of the deceased to be administered by me, are under the value of \_\_\_\_\_; that I will exhibit into this Court a true, full and perfect inventory of all the estate, effects and credits of the deceased, on or before the \_\_\_\_\_ day of \_\_\_\_\_; and that I will file a true account of my Administratorship on or before the \_\_\_\_\_ day of \_\_\_\_\_

Sworn at, &c.

NO. 27.—LETTERS OF ADMINISTRATION WITHOUT A WILL.

In the Supreme Court of Civil Justice.

To \_\_\_\_\_ widow, widower, or next of kin of \_\_\_\_\_ deceased:

Whereas, the said \_\_\_\_\_ lately departed this life intestate, you are therefore fully empowered and authorized, &c., &c., and to pay whatever debts the said deceased did owe, so far as such estate and effects shall extend, you having been, &c., &c., on or before the \_\_\_\_\_ day of \_\_\_\_\_ and you are therefore by these presents constituted Administrator of all the estate and effects of the said deceased.

Given under the seal, &c.

NO. 28.—CAVEAT.

In the Supreme Court of Civil Justice.

{ In the Will or Goods, of A. B. }  
 { late of \_\_\_\_\_ deceased. }

Let nothing be done in the Will (or goods) of A. B., late of Vancouver's Island, deceased, without notice to \_\_\_\_\_ Solicitor for C. D., of \_\_\_\_\_ having interest, (or the widow or creditors of the deceased.)

Dated \_\_\_\_\_ day of \_\_\_\_\_ }  
 A. D. 18 \_\_\_\_\_ } Solicitor for C. D.

NO. 29.—ADMINISTRATION BOND.

In the Supreme Court of Civil Justice.

Know all men by these presents, that We, \_\_\_\_\_ of \_\_\_\_\_, &c., are held and firmly bound unto the Registrar of the Supreme Court, (or to the Registrar for the time being,) in the sum of \_\_\_\_\_ pounds, for which payment well and truly to be made to the said \_\_\_\_\_ or to such Registrar for the time being, we do and each of us doth bind ourselves, and each of us, and the heirs, Executors and Administrators of us, and of each of us, jointly and severally, firmly by these presents.

Whereas, by order of this Court of the \_\_\_\_\_ day of \_\_\_\_\_, it is ordered that Letters of Administration of the personal estate, effects and credits of \_\_\_\_\_ of \_\_\_\_\_, deceased, be granted to the said \_\_\_\_\_ on his giving security for the due administration thereof; And, whereas, \_\_\_\_\_ hath sworn that to the best of his knowledge, information and belief, the said personal estate, effects and credits are under the value of \_\_\_\_\_ pounds. Now, the conditions of the above written bond are, that if the above bounden \_\_\_\_\_ shall exhibit into this Court a true and perfect inventory of all the personal estate, effects and credits of the deceased, which shall come into the possession of the said \_\_\_\_\_ or of any other person by his order, or for his use, on or before the \_\_\_\_\_ day of \_\_\_\_\_, and \_\_\_\_\_ shall well and truly administer the same according to law, and render to this Court a true and just account of his Administratorship, on or before the \_\_\_\_\_ day of \_\_\_\_\_; then this bond shall be void and of none effect, but otherwise, shall remain in full force.

Signed, the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 \_\_\_\_\_, in presence }  
of \_\_\_\_\_ }  
A. B.  
C. D.  
E. F.

NO. 30.—AFFIDAVIT TO BE FILED BY THE REGISTRAR BEFORE GRANT OF ADMINISTRATION.

In the Supreme Court of Civil Justice.

In the matter of \_\_\_\_\_, deceased, intestate.

I, A. B., of \_\_\_\_\_, swear that I knew C. D. when alive, and that the said C. D. \_\_\_\_\_ at the time of his decease was resident (or domiciled) at \_\_\_\_\_ within this district, and that he died at \_\_\_\_\_, on or about the \_\_\_\_\_ day of \_\_\_\_\_ in the year one thousand eight hundred and \_\_\_\_\_. I swear that to the best of my knowledge, information and belief, the personal estate, effects and credits of the deceased, are under the value of, &c.

Sworn at, &c.

NO. 31.—AFFIDAVIT, &c.

In the Supreme Court of Civil Justice.

In the matter of \_\_\_\_\_, deceased, intestate.

I, \_\_\_\_\_, swear that I will exhibit unto this Court a full, true and perfect inventory of all the personal estate, effects and credits of the said deceased, on or before the \_\_\_\_\_ day of \_\_\_\_\_; and that I will file a true account of my administratorship on or before the \_\_\_\_\_ day of, &c.

Sworn at, &c.



# SCHEDULE.

## FORMS OF PLEADINGS.

### STATEMENT OF CAUSES OF ACTION.

#### ON CONTRACTS.

1. Money payable by the defendant to the plaintiff for (these words, "money payable," &c., should precede the statement of causes of action like 1 to 9, but need only be inserted in the first,) goods bargained and sold by the plaintiff to the defendant. Goods sold
2. Work done and materials furnished by the plaintiff for the defendant, at his request. Work and materials.
3. Money lent by the plaintiff to the defendant. Money lent.
4. Money paid by the plaintiff for the defendant, at his request. Money paid.
5. Money received by the defendant for the use of the plaintiff. Money received
6. Money found to be due from the defendant to the plaintiff on accounts stated between them. Account stated.
7. A messuage and lands sold and conveyed by the plaintiff to the defendant. For an estate sold.
8. The defendant's use, by the plaintiff's permission, of messuages and lands of the plaintiff. For the use of a house and land.
9. The hire of (as the case may be) by the plaintiff let to hire to the defendant. For the hire of goods, etc.
10. That the defendant on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. by his promisory note, now overdue, promised to pay to the plaintiff £ \_\_\_\_\_, (two) months after date, but did not pay the same. Payee against maker of note
11. That one A., on &c., (date) by his promisory note, now overdue, promised to pay to the defendant, or order, \_\_\_\_\_ (two) months after date, and the defendant endorsed the same to the plaintiff; and the said note was duly presented for payment, and was dishonored, whereof the defendant had due notice, but did not pay the same. Endorsee against Endorser of note
12. That the plaintiff, on &c., (date) by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff £ \_\_\_\_\_ (two) months after date, and the defendant accepted the said bill, but did not pay the same. Drawer against acceptor of bill.

13. That the defendant, on &c., (date) by his bill of exchange, directed to A., required A. to pay to the plaintiff £ (two) months after date, and the said bill was duly presented for acceptance, and was dishonored, of which the defendant had due notice, but did not pay the same.
14. 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.
15. 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.
16. That the plaintiff let to the defendant a house street for six years, to hold from the day of A. D. at £ a year, payable quarterly, of which rent quarters are due and unpaid.
17. That the plaintiff by deed let to the defendant a house, No. 40 Great Britain street, 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.

FOR WRONGS INDEPENDENT OF CONTRACT.

18. That the defendant broke and entered certain land of the plaintiff, called the Big Field, and depastured the same with cattle.
19. 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.
20. That the defendant debauched and carnally knew the plaintiff's wife.
21. That the defendant converted to his own use the plaintiff's goods, that is to say, household furniture, (or as the case may be.)
22. That the defendant detained from the plaintiff his title deeds of land called Belmont, in the district of , that is to say (describe the deeds.)
23. 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 as to give notice to the defendant of the peculiar injury complained of; for instance—]  
 Whereby the plaintiff lost his situation as game-keeper in the employ of A.
24. That the defendant falsely and maliciously printed and published of the plaintiff, in a newspaper called " ;" the words following, that is to 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.

25. The defendant, by his Solicitor, (or in person) says, (here state the substance of the Plea.)
26. And for a second Plea, the defendant says, (here state the second Plea.)

PLEAS IN ACTIONS ON CONTRACTS.

- |   |                         |
|---|-------------------------|
| 27. That he never was lent the money as alleged.  | Denial of debt.         |
| 28. That he did not accept the bill as alleged.   |                         |
| 29. That he never executed the alleged deed.  | Denial of Deed.         |
| 30. That the alleged cause of action did not accrue within six years, (state the period of limitation applicable to the case,) before this suit.  | Statute of limitations. |
| 31. That before action he satisfied and discharged the plaintiff's claim, by payment of the said sum of £50, in the time and manner herein endorsed.  | Payment.                |
| 32. That the plaintiff at the commencement of the suit was, and still is indebted to the defendant in an amount equal to the plaintiff's claim, for (here state the cause of set-off, as in a Writ of Summons. See Forms ante;) which amount the defendant is willing to set-off against the plaintiff's claim. | Set-off.                |
| 33. That after the alleged claim accrued, and before this suit, the plaintiff by Deed released the defendant therefrom.   | Release.                |

PLEAS IN ACTION FOR WRONGS INDEPENDENT OF CONTRACT.

- |   |                    |
|---|--------------------|
| 34. That he did not assault the plaintiff as alleged.   | Not Guilty.        |
| 35. That he did what is complained of by the plaintiff's leave.   | Leave and License. |
| 36. That the plaintiff first assaulted the defendant, who thereupon necessarily committed the alleged assault in his own defence.   | Self Defence.      |
| 37. 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 a use by the defendant of the said way. | Right of Way.      |
| 38. That the defendant at the time of the alleged trespass, was possessed of land the occupiers whereof for thirty years before this suit, enjoyed as of right, and without interruption, common of pasture over the said land of 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.  | Right of Common.   |

REPLICATIONS.

- |  |  |
|--|--|
| 39. The plaintiff takes issue upon the defendant's 1st, 2d, &c., Pleas.  | Joinder of issue                           |
| 40. The plaintiff as to the second Plea says, (here state the answer to the Plea as in the following forms.)   | Replication to plea containing new matter. |
| 41. That the alleged release is not the plaintiff's deed.  | To Plea of Release.                        |
| 42. That the alleged release was procured by the fraud of the defendant.   |  |
| 43. That the alleged set-off did not accrue within six years before this suit.   | To Plea of Set-off.                        |
| 44. That the plaintiff was possessed of land whereon the defendant was trespassing and doing damage; whereupon the plaintiff requested the defendant to leave the said land, which the defendant refused to do, and thereupon the plaintiff gently laid his hands on the defendant in order to remove him, | To self-defence.                           |



doing no more than was necessary for that purpose, which is the alleged first assault by the plaintiff.

To right of way. 45. That the occupiers of the said land did not for twenty years before this suit enjoy as of right, and without interruption, the alleged way.

NEW ASSIGNMENT.

To the Pleas of Right of Way and Common. 46. The plaintiff as to the \_\_\_\_\_ and \_\_\_\_\_ Pleas, says that he sues not for the trespasses therein admitted, but for trespasses committed by the 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 the said Pleas.

[If the plaintiff replies and new assigns, the new assignment may be as follows:]

47. And the plaintiff as to the \_\_\_\_\_ and \_\_\_\_\_ Pleas, further says, that he sues not only for the trespasses in those Pleas admitted, but also 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:)

48. And the plaintiff as to the \_\_\_\_\_ and \_\_\_\_\_ Pleas, further says, that he sues not for the trespasses in the \_\_\_\_\_ Pleas (the Pleas not replied to) admitted, but for the trespasses in the \_\_\_\_\_ Pleas (the Pleas replied to) admitted, and also for, &c.

# IN THE SUPREME COURT OF CIVIL JUSTICE,

The 26th day of April, A. D., 1858.

Whereas, by an order of the Queen's Most Excellent Majesty in Council, dated the 4th day of April, A. D., 1856, Her Majesty was graciously pleased, to constitute the Supreme Court of Civil Justice of Vancouver Island, and to order and declare, that it shall and may be lawful for the said Supreme Court, by any Rules or Orders of Court, to be by them from time to time made and published, to frame, constitute, and establish such Rules, Orders and Regulations as shall seem meet, touching and concerning all matters and things necessary for the proper conduct and dispatch of business in the said Court, and all such Orders, Rules, and Regulations, from time to time, to revoke, alter, amend, or renew as occasion may require. And whereas Rules were made accordingly on the 12th day of February, A. D., 1857, and it is now expedient to amend the same.

It is therefore ordered.

1st. That no person shall be summoned to act on a Jury, or special Jury, who is a member of the Legislature, or Judge, or Officer of the Supreme Court; or Justice of the Peace, or a Clergyman of any Religious persuasion not following any other secular occupation than that of Schoolmaster, or an Officer belonging to Her Majesty's Army or Navy, or a Barrister, Advocate, or Solicitor, or an Officer of the Customs; or who is below the age of twenty-one years or above the age of sixty years, or who, not being a British subject, has not resided in the Colony for the greater of the last preceding twelve months. And it shall be a good cause of challenge against any Juror, that he cannot read; or does not understand English, or that he has been convicted of Felony at any time within the last preceding five years.

2nd. The Sheriff shall keep lists of all persons qualified to act as Jurors, and shall on the first Monday of July in each year submit such lists to the Chief Justice of the Supreme Court; and the said Chief Justice may, with the approval of the Governor, strike any name from such list, or insert any name therein, and may with such approval, declare which of the persons named in such lists, may be summoned for Special; and which for Common Juries.

3rd. The form of the Writ of Summons in the Schedule hereunto annexed is hereafter to be used, instead of the Form No. 3; in the Schedule of the said Rules of 12th day of February, A. D., 1857.

4th. The 12th of the said Rules is revoked and the following substituted for it, viz: The Original or Duplicate Writ of Summons, with the indorsements and particulars thereon, shall, in order to enforce a defence thereto, within the period of time in such Writ mentioned, four days at least, before the time for pleading thereto has expired, be filed with the Registrar of the Court, and such Writ shall be deemed to be a pleading of

the Plaintiff, and in lieu and stead of a Declaration: Provided however, that when the Writ of Summons, as issued heretofore, does not contain the Plaintiff's cause or causes of action as required by Rule 9th, it shall and may be lawful for the Plaintiff on filing an affidavit of the service of the Writ of Summons, to file a Declaration indorsed with a notice to plead in eight days; Provided always, that in case such Writ of Summons shall not be filed within the time aforesaid, it shall be sufficient for the purpose of enforcing a defence thereto, after the filing of the same, to give notice of the filing to the Defendant, and such Defendant shall have eight days from the service of such notice to file his defence thereto; but in no case shall the Plaintiff be at liberty to proceed to enforce a defence after the expiration of six months from the service of such Writ of Summons.

5th. The 75th of the said Rules respecting Executions, and the 108th and 109th respecting the substitution of affirmations for Oaths are revoked.

6th. So much of the said Rules as respect Appeals from the determination of the said Supreme Court to Her Majesty, Her Heirs, or Successors, in Her, or Their, Privy Council, shall remain in force till otherwise provided by Her Majesty, and no longer.

7th. If a Plaintiff in any action in the said Supreme Court, shall by affidavit shew to the satisfaction of the Judge thereof, that he has a cause of action against the Defendant to the amount of £20 sterling or upwards, or has sustained damage to that amount, and that there is probable cause for believing that the Defendant, or any one or more of the Defendants, is, or are about to leave the Colony, unless he or they be forthwith apprehended, the Judge may order such Defendant or Defendants to be held to bail, for such sum as he shall think fit, not exceeding the amount of the Debt or Damages; and thereupon such Plaintiff may, within the time which shall be expressed in such order, sue out a Writ of Capias against such Defendant so directed to be held to bail; and which Writ of Capias shall be in the form in the Schedule hereunto annexed, and bear date of the day on which the same shall be issued.

8th. The Sheriff to whom such Writ of Capias shall be directed, shall within one Calendar Month after the date thereof, proceed to arrest the Defendant thereupon. And such Defendant when so arrested shall remain in custody until he shall have given a Bail Bond to the Sheriff, or shall have made a deposit of the sum indorsed on such Writ of Capias, together with Ten Pounds for costs; And all subsequent proceedings as to the putting in and perfecting Special Bail, or of making deposit and payment of money into Court, instead of putting in and perfecting Special Bail, shall be according to the practice of Her Majesty's Superior Courts of Law at Westminster, or as near thereto as the circumstances of the case will admit.

9th. Any such order may be made and the Defendant arrested in pursuance thereof at any time after the commencement of such action, and before final judgment shall have been obtained therein; and a Defendant in custody upon any such arrest, and not previously served with a copy of the Writ of Summons, may be lawfully served therewith.

10th. Any Defendant arrested upon a Writ of Capias may apply at any time to the said Supreme Court, or to the Judge thereof, for a Rule or Order on the Plaintiff to shew cause why the Defendant so arrested should not be discharged out of custody, and it shall be lawful for the Court or Judge to make absolute or discharge such Rule or Order, and to direct the costs of the application to be paid by either party, or to make such other Order therein as the Court or Judge may seem fit.

DAVID CAMERON,  
Chief Justice.

# SCHEDULE OF FORMS.

## WRIT OF SUMMONS.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland,  
and the Colonies thereunto belonging, Queen: Defender of the Faith, &c.

To A. B.,

GREETING:

Victoria, to wit:

C. D.,  
of Victoria, Broker,  
Plaintiff,  
A. B.,  
of Victoria, Merchant,  
Defendant.

A. B., the Defendant, is summoned to answer the Complaint of C. D., who complains that the Defendant is indebted to the Plaintiff in the sum of One Hundred Pounds, Fifteen Shillings and Eleven Pence, money payable by the Defendant to the Plaintiff, for money paid by the Plaintiff for the Defendant at his request, the particulars of

which are endorsed hereon.

And the Plaintiff prays Judgment against the said Defendant to recover the said sum of one hundred pounds, fifteen shillings and eleven pence, and interest thereon, and his costs of suit.

Therefore the Defendant is hereby required to appear in the said Court, within sixteen days after the service hereof, and answer the said Complaint, or in default thereof Judgment shall be given according to Law.

Witness,  
Majesty's Supreme Court of Civil Justice at Victoria.

Esquire, Chief Justice of Her

Dated, Friday, the tenth day of July, A. D., 1857.

C. D., Plaintiff.

### ENDORSEMENTS TO BE MADE ON THE WRIT.

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.

### SPECIAL ENDORSEMENT WHEN THE WRIT IS SERVED FOR THE PAYMENT OF A DEBT.

The Plaintiff claims One Hundred Pounds, Fifteen Shillings and Eleven Pence for Debt, and Two Pounds Twelve Shillings and Six Pence for Costs; and if the amount thereof be paid to the Plaintiff or his Solicitor within six days from the service hereof further proceedings will be stayed.

The particulars of Plaintiff's claim

1857, July 20th. To Cash paid E. F., by your order, £100 15 11.

This writ was issued in person by C. D., who resides at No. 6 Government street, Victoria; or this Writ was issued by G. A., of No. 16 Johnston street, Victoria, Solicitor for the said Plaintiff.

### (ENDORSEMENT TO BE MADE ON THE WRIT AFTER SERVICE THEREOF.)

This Writ was served by I. J., on A. B., (the Defendant or one of the Defendants,) on Tuesday, the Fourteenth day of July, A. D., 1857.

Signed, I. J.

**WRIT OF CAPIAS.**

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland,  
and the Colonies thereunto belonging, Queen: Defender of the Faith, &c.

TO THE SHERIFF OF VANCOUVER'S ISLAND,

GREETING:

We command you that you omit not by reason of any liberty in your bailiwick, but that you enter the same and take A. B., of Victoria, Merchant, if he shall be found in your bailiwick, and him safely keep until he shall have given you bail, or made deposit with you according to law, in a personal action at the suit of C. D., of Victoria, Broker, or until the said A. B. shall by other lawful means be discharged from your custody. And we do further command you, that on execution hereof you do deliver a copy hereof to the said A. B. And we do hereby require the said A. B. to take notice, that within eight days from the execution hereof on him, inclusive of the day of such execution, he should cause special bail to be put in for him in our SUPREME COURT OF CIVIL JUSTICE of Vancouver Island to the said action, and that in default of so doing such proceedings may be had and taken as are mentioned in the warning written or endorsed hereon.

And we do further command you, that immediately after the execution hereof you do return this writ to Our said Court, together with the manner in which you shall have executed the same and the day of the execution thereof: or that if the same shall remain unexecuted, then that you do so return the same at the expiration of one calendar month from the date hereof, or sooner if you shall be thereto required by order of the said Court or the Judge thereof.

Witness, Esquire, Our Chief Justice, at Victoria, the thirteenth day of July, in the twenty-second year of our Reign.

ENDORSEMENTS TO BE MADE ON THE WRIT.

MEMORANDUM.—This writ is to be executed within one calendar month from the date thereof, including the day of such date, and not afterwards.

**A WARNING TO THE DEFENDANT.**

If a Defendant, having given bail on the arrest, shall omit to put in special bail as required, the Plaintiff may proceed against the Sheriff or on the bail bond.

Bail for One Hundred Pounds, Fifteen Shillings and Eleven Pence, by order of  
Esquire, Chief Justice, dated this thirteenth day of July,  
A. D., 1857.

This Writ was issued in person by the Plaintiff within named, who resides at No. 6 Government street, Victoria: or this Writ was issued by G. H., of No. 16 Johnston street, Victoria, Solicitor for the Plaintiff (or Plaintiff's) within named.

In the Supreme Court of Civil Justice of Vancouver's Island, at Victoria, the 6th day of April, 1857.

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BEFORE DAVID CAMERON, ESQUIRE, CHIEF JUSTICE.

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**WHEREAS**, by HER MAJESTY'S GRACIOUS ORDER IN COUNCIL, of the 4th day of April, 1856, constituting the **Supreme Court of Civil Justice**, of the Colony of Vancouver's Island, it was ordered, "That the said Supreme Court should have cognizance of all Pleas and jurisdiction in all civil causes arising within the said Colony;" and did further give and grant "To the said Supreme Court full power, jurisdiction, and authority, to review the proceedings of all inferior Courts of Civil Justice, within Her Majesty's said Colony, and, if necessary, set aside and correct the same;"

**AND WHEREAS**, there are no Inferior Courts of Civil Justice in the Colony; and whereas, the Practice of the Supreme Court, as published on the 18th day of February last, is too slow and expensive to meet the exigencies of the numerous suitors in the recovery of small debts and demands; it is expedient, therefore, that the said Supreme Court should frame other Rules of Practice, giving a cheaper and more summary process for the recovery of such small debts and demands.

It is therefore hereby **ORDERED**, that so much of the enactments of the Act 9 and 10, Vict. cap. 95, entitled, "An Act for the more easy Recovery of small Debts and Demands in England," as are suitable to the circumstances of the Colony, shall be adopted by the Court. And that the Chief Justice shall preside in a Court to be held monthly for adjudicating on such small Debts and Demands, in the same way as the judges appointed in England under the said Act; and that the Registrar of the Court shall perform the duties appointed to be performed by the Clerks of the Courts appointed in England under the said Act; and that the Sheriff shall perform the duties of the High Bailiffs appointed in England under the said act. And that all Pleas of personal actions, where the debt or damage claimed is not more than fifty pounds sterling, whether on balance of account or

otherwise, may be holden in this Court without Writ; and all such actions brought to the said Court shall be heard and determined in a summary way, according to the provisions of the said Act. And all summonses and other process issuing out of the said Court, shall be in accordance with the said Act, and shall be sealed and stamped with the seal of the Court.

And it is Ordered, that the following general Rules for regulating the Practice and Proceedings, and the Forms of every proceeding in this branch of the Supreme Court, and the fees payable on every proceeding, to the Judge, Registrar and Sheriff, according to the scale hereunto annexed, shall be observed and used in the Court holden under this order, and which Court, to distinguish it from the Supreme Court, of which it is, however, a part, shall be styled, *THE INFERIOR OR SUMMARY COURT OF CIVIL JUSTICE OF VANCOUVER'S ISLAND.*

# RULES OF PRACTICE

For the

## INFERIOR COURT OF CIVIL JUSTICE.

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### SITTINGS OF THE COURT.

**RULE 1ST.** A sitting of the Court will be held at Victoria, on the third Monday of every month in the year, at ten of the clock in the forenoon, excepting in the months of August and September.

### REGISTRAR'S DUTIES.

**RULE 2ND.** The Registrar of the Court shall keep the Books mentioned in the Act 9 and 10 Vict. c. 95, sec. 27, in the form in the schedule; and every entry in such Books shall have a number prefixed, corresponding with the number of the Plaintiff to which the entry relates.

**RULE 3RD.** Whenever the Registrar or his lawful deputy, the Clerk of the Writs, is absent from the Court, the Judge shall appoint a Deputy to act on behalf of the Registrar, and an entry of such appointment and the cause of such absence (if known) shall be made in the minutes of the Court.

**RULE 4TH.** All duties required to be performed by the Registrar, except that of acting in Court as Registrar or signing the minute book, may be performed by the Clerk of the Writs, or assistant Clerks, provided by him.

**RULE 5TH.** The money to which suitors are entitled shall be paid out upon demand at any time when the Registrar's office is open.

**RULE 6TH.** Whenever money is paid into or deposited in Court, whether before or after judgment, an acknowledgment in writing of such payment or deposit shall be given by the Registrar.

**RULE 7TH.** All the Books of the Court, including the Cash Book, shall at all times be open to the inspection of the Judge.

**RULE 8TH.** Neither the Registrar nor Clerk of the Writs, assistant Clerk, Sheriff or other officer of the Court shall sign the Ledger or receive money on account of suitors, or otherwise act as an agent for that purpose.



**RULE 9TH.** Neither the Registrar, nor the Clerk of the Writs, Assistant Clerk, Sheriff, or other officer of the Court, or any Solicitor or Clerk of such Solicitor, shall become surety in any cause where by the practice of the Court security is required.

### SHERIFF'S DUTIES.

**RULE 10TH.** Whenever the Sheriff cannot attend any sitting of the Court, the cause of his absence (if known) shall be entered in the minutes of the next succeeding Court.

**RULE 11TH.** The Sheriff shall attend for the purpose of receiving Summonses, or for the performance of other duties at the office of the Registrar, once every day.

**RULE 12TH.** Eight days before the day of holding any Court the Sheriff shall deliver to the Registrar a return of all Summonses on Plaints, before Judgment issued to him, ten days before the holding of such Court, returnable at such Court, and such return shall state the mode of service of each Summons, and the Sheriff shall at the same time deliver to the Registrar the copy of every such Summons, endorsed as required by Rule 35.

**RULE 13TH.** The Sheriff shall enter in a book, to be kept by him for that purpose, the particulars of all orders for the payment of money or costs, or both, which he shall have received, and of the mode in which he shall have served the same, and once in every calendar month at least he shall lay the same before the Judge of the Court, who shall sign the same and attest its having been duly laid before him.

**RULE 14TH.** Once in every calendar month or oftener, if the Judge shall so order, the Sheriff shall deliver a return to the Registrar, pursuant to the Form in the Schedule, of what shall have been done since his last return under every Process of Execution or Commitment which he has been required to execute, and at the Court held next after the delivery of every such return the Registrar shall lay the same before the Judge of the Court, who shall sign the same and attest its having been duly laid before him.

**RULE 15TH.** Whenever the Sheriff or his sub-Sheriff levies or receives any money by virtue of any process issuing out of the Court he shall, within twenty-four hours from the receipt thereof, pay over the same to the Registrar of the Court, and shall file and retain such process in his custody.

### PLAINT.

**RULE 16TH.** Every Complaint shall, on application at the office of the Registrar, be entered in the form of the Schedule, and all particulars required by such form shall be entered by the Registrar before issuing the Summons: Provided, that if the Plaintiff is unacquainted with the Defendant's christian name the Defendant may be described by his surname, or by his surname and the initial of his christian name, or by such name as he is generally known by, and the Defendant may be so described in the Summons; and in the event of the Plaintiff or the Defendant not appearing, the proceedings under sections 79 and 80 of the 9th and 10th Vict. C. 95, may be taken as if the true christian name and surname had been stated in the Summons, and all subsequent proceedings thereon may be taken in conformity with such description.

**RULE 17TH.** Claims by Husbands in their own right, may be joined with claims, in respect of which, the wife must be joined as a party.

**RULE 18TH.** Where an Infant applies to enter a *Plaint* for any cause of action, (other than for wages or piecework, or for work as a servant,) he must procure the attendance of a next friend at the office of the Registrar at the time of entering the *Plaint*, and no *Plaint* shall be entered until the next friend has undertaken, in the form in the Schedule, to be responsible for costs, and on entering into such undertaking he shall be liable in the same manner and to the same extent as if he were a party in an ordinary suit, and the cause shall proceed in the name of the Infant by such next friend, and such undertaking shall be filed by the Registrar, and no order of the Court shall be necessary for the appointment of such next friend. If the Plaintiff fail in or discontinue his suit, and shall not pay the amount of costs awarded by the Court to be paid by him to the Defendant, such proceedings may be taken for the recovery of such amount from the next friend as for the recovery of any debt or damage ordered to be paid by the Court.

### PARTICULARS.

**RULE 19TH.** On entering the *Plaint* the Plaintiff shall in all cases, if the sum sought to be recovered shall exceed forty shillings, deliver at the office of the Registrar as many copies of a statement of the particulars of his demand or cause of action as there are Defendants, and an additional copy to be filed, and all such copies shall be sealed with the seal of the Court, and such particulars shall be taken to be, and be treated, as part of the *Summons*.

**RULE 20TH.** In Actions for penalties to secure the performance of covenants within the meaning of the 8 and 9 Wm. 3, C. 11, the Plaintiff shall deliver particulars of the breaches on which he relies, in the same manner as required by the last rule, which when delivered shall be taken to be and treated as part of the *Summons*, and if the Court shall be of opinion that the Plaintiff is entitled to recover judgment, shall be entered for the penalty, not exceeding the amount over which the Court has jurisdiction, and an entry shall be made on the minutes, of the damages awarded to the Plaintiff, and execution may issue for the amount of such damages, and in case of subsequent breaches the Plaintiff may enter a *Plaint* and sue out a *Summons* in the nature of a *SEIRE FACIAS* on such judgment, and shall deliver particulars of such subsequent breaches in the manner before mentioned, and which shall be taken to be and treated as part of such *Summons*.

### PLAINT NOTE.

**RULE 21ST.** At the time of entering the *Plaint* the Registrar shall give to the Plaintiff or his Agent a note under the seal of the Court, according to the form in the Schedule; and no money shall be paid out of Court to the Plaintiff or his Agent, unless on production of such note or by order of the Judge.

### MILEAGE.

**RULE 22ND.** The *Mileage* shall be ascertained and determined by the Registrar, by such means as he shall think proper, and his determination thereon shall be final.

## SUMMONS TO APPEAR TO A PLAINT.

**RULE 23RD.** The Summons to appear to a Plaintiff shall be in the form in the Schedule, and shall be dated of the day in which the Plaintiff was entered, and shall correspond in substance with the Plaintiff, and the date thereof shall be the commencement of the suit.

**RULE 24TH.** Such Summons may be returnable either at the next Court after the entry of the Plaintiff, or at any subsequent Court within three months.

**RULE 25TH.** The Registrar shall issue the Summons to the Sheriff forthwith after the Plaintiff is entered.

**RULE 26TH.** The Registrar shall, in cases where by these rules particulars are required, annex to the Summons a copy of the Plaintiff's particulars, sealed with the Seal of the Court, and shall also make and deliver to the Sheriff a true copy of the Summons for endorsement as hereinafter required, and it shall be the duty of the Sheriff to ascertain by examination and comparison with the Summons the correctness of the copy.

**RULE 27TH.** Where a Summons has not been served, successive Summonses may be issued by the Registrar on the application of the Plaintiff under the circumstances and on the conditions following, unless the Judge shall otherwise order. If the non-service has been caused by the defective description given by the Plaintiff of the Defendant, or of his place of residence or business, or by any other act or neglect of the Plaintiff, successive Summonses shall be issued only on payment of the poundage for a Summons, and the Sheriff's Fee for serving the same. If the non-service has not been so caused, and has not been caused by the neglect of the Sheriff, successive Summonses shall be issued only on payment by the Plaintiff of the Sheriff's Fee for serving the same; if the non-service has been caused by the neglect of the Sheriff, the poundage for such Summons shall be paid by the Sheriff, and such successive Summons shall be served by him without further fee. And the successive Summons or Summonses shall bear the same date and number as the Summons first issued, and shall be a continuance of the first Summons, provided that the costs of such successive Summons or Summonses shall not be allowed against the Defendant, unless the Judge shall otherwise order.

## SERVICE OF A SUMMONS TO APPEAR TO A PLAINT.

**RULE 28TH.** A Summons to appear to a Plaintiff must be issued and served at least ten clear days before the holding of the Court at which it is returnable, provided that a Summons may be issued at any time before the holding of any Court on production by the Plaintiff of an affidavit shewing that the Defendant is about to remove out of the jurisdiction of the Court, and service of such Summons any day before the return day may be deemed good service, if at the hearing it shall be proved on oath to the satisfaction of the Judge that such party was about to remove out of the jurisdiction of the Court, but in every such case the Judge may in his discretion, and on such terms as he shall think fit, adjourn the hearing.

**RULE 29TH.** The service of the Summons, except in the cases hereinafter specially provided for, must be either personal or by delivering the same to some person, apparently of sixteen years of age at least, at the house or place of dwelling, or place of business of the Defendant; but no place of business shall be deemed the place of business of the Defendant, unless he shall be the master or one of the masters thereof.

**RULE 30TH.** Where a Defendant is living or serving on board of any Ship or Vessel, it shall be sufficient service to deliver the Summons to the person on board who has, at the time of such service, charge of such Ship or Vessel.

**RULE 31ST.** Where a Defendant is working in any mine or other works under ground it shall be sufficient service to deliver the Summons at such mine or works to the Engine man, Banksman, or other person in charge of such Mine or Works.

**RULE 32ND.** Where a Defendant keeps his House or place of Dwelling, or place of business closed in order to prevent the Sheriff from serving the Summons, and such Summons shall have been affixed on the door of such house or place of dwelling, or place of business, such affixing shall be good service.

**RULE 33RD.** Where the Sheriff is prevented, by the violence or threats of the Defendant, or of any other person or persons in concert with him, from personally serving such Summons, and the Sheriff leaves the same as near to the Defendant as practicable, such leaving shall be good service.

**RULE 34TH.** Where the Summons has not been served personally, and the Defendant does not appear in person, or by Solicitor or Agent, at the return day, it must be proved on oath to the satisfaction of the Judge that the service of such Summons has come to the knowledge of the Defendant before the return day, except in the cases specially mentioned in the Rules 32 and 33.

**RULE 35TH.** If the service of the Summons has been personal, the Sheriff who served the same shall endorse on the copy of the Summons hereinbefore directed to be delivered to him by the Registrar, the fact of such service, and if the service has not been personal he shall endorse on the copy of the Summons the statement which has been made by the person to whom the Summons was delivered, or other circumstances from which it may be inferred that the service of the Summons has come to the knowledge of the Defendant. If the Summons has not been served, the reason of such non-service shall be endorsed on such copy, and the Sheriff shall deliver such copy so endorsed to the Registrar at the time of making the return required by Rule 12, and such copy shall be produced at the time of the trial by the Registrar, and shall be filed by the Registrar.

**RULE 36TH.** Whenever a Summons has been served in one of the modes hereinbefore mentioned, but it appears has come to the knowledge of the Defendant less than ten clear days before the day of hearing, the cause may, at the discretion of the Judge, proceed or be adjourned whether the Defendant appears or not.

**RULE 37TH.** When any Affidavit of service of a Summons is sworn before the Judge of the Court the Fee on such Affidavit shall be taken and accounted for by the Registrar, and shall be applied as the Judge's Fees are applicable.

**RULE 38TH.** No Summons, Order, or other process of notice shall be served on Sunday, Christmas-day, or Good Friday, or any day appointed by a Royal Proclamation for a public Fast or Thanksgiving, but such day shall be counted in the computation of the time required by these Rules.

**RULE 39TH.** The above Rules as to the mode, but not as to the time of service of Summonses to appear to a Plaintiff, shall apply to the mode of service of all Notices and Processes whatever, except where otherwise directed by Statute or by these Rules.

## PAYMENT INTO COURT, WHETHER BEFORE OR AFTER JUDGMENT.

**RULE 40TH.** Where the Defendant is desirous of paying money into Court it must be so paid five clear days before the return day of the Summons with costs proportionate to the amount paid in, together with the Fee for paying in and for notice of payment to the Plaintiff; and the Registrar shall forthwith send to the Plaintiff notice of such payment, provided that at any time before the hearing of the cause the Defendant may pay money into Court with such costs as aforesaid, and the Registrar shall give notice thereof to the Plaintiff as aforesaid; but where money is so paid in less than five clear days before the return day of the Summons it shall be lawful for the Court to order the Defendant to pay such costs as the Plaintiff shall have incurred in preparing for trial, or in attending the Court, before the notice of such payment was received by him.

**RULE 41ST.** If the Plaintiff elect to accept in full satisfaction of his claim such money as shall have been paid into Court by the Defendant, and shall send to the Defendant or leave at the Defendant's place of dwelling or place of business a written notice, stating such acceptance, two clear days or within such reasonable time as the time of payment by the Defendant has permitted, before the return day of the Summons the action shall abate and the Plaintiff shall not be liable to any further costs, but in default of such notice of the Plaintiff the cause may proceed.

**RULE 42ND.** The Fee on paying money into Court shall be paid by the party paying the same, and the Fee on paying money out of Court shall be paid by the party receiving the same.

## INSPECTION OF DOCUMENTS.

**RULE 43RD.** Where in any Action the Defendant is desirous of inspecting any Deed, Bond, or other Instrument under seal, or any written Contract or other Instrument in which he has an interest and which shall be in the possession, power, or control of the Plaintiff, the Defendant may within five days from the service of the Summons to appear give notice in writing to the Plaintiff that he desires to inspect such Instrument at any place to be appointed by the Plaintiff, and the Plaintiff shall appoint a place accordingly, and if the Plaintiff shall neglect or refuse to appoint such place or to allow the Defendant or his Solicitor to inspect it within three days after receiving such notice, the Judge may, in his discretion on the day of hearing, adjourn the cause for the purpose of such inspection, and make such order as to costs as he shall think fit.

## WITHDRAWAL BY PLAINTIFF.

**RULE 44TH.** If the Plaintiff be desirous of not proceeding in the cause, he may give a written notice thereof to the Registrar and to the Defendant, and after the receipt of such notice the Defendant shall not be entitled to any further costs than those incurred up to the receipt of such notice, unless the Judge shall otherwise order.

## DEFENCES.

**RULE 45TH.** Where the Defendant intends to rely on a set-off, Infancy, Coverture, or statute of limitations, his notice shall contain the particulars hereinafter mentioned: Provided that in case of non-compliance with this Rule or those Rules applying to such foregrounds of Defence, and the Plaintiff will not consent at the Hearing to permit the

Defendant to avail himself of such defence, the Judge may on such terms as he shall think fit adjourn the hearing of the cause to enable the Defendant to give such notice.

**RULE 46TH.** Where a Defendant intends to set-off any debt or demand alleged to be due to him by the Plaintiff, he must give notice thereof in writing to the Registrar of the Court, and deliver to such Registrar a particular of such set-off, at least five clear days before the return day of the Summons.

**RULE 47TH.** Where a Defendant intends to rely on the defence of Infancy, he must give notice thereof in writing to the Registrar of the Court, at least five clear days before the return day of the Summons, setting forth in such notice the supposed place and date of his birth.

**RULE 48TH.** Where a Defendant intends to rely on the Defence of Coverture she shall give notice thereof in writing to the Registrar of the Court, at least five clear days before the return day of the Summons, setting forth in such notice the place and date of marriage, together with the christian name and surname of her husband.

**RULE 49TH.** Where a Defendant intends to rely on the defence of any statute of limitations, he shall give notice thereof in writing to the Registrar of the Court, at least five clear days before the return day of the Summons.

**RULE 50TH.** In all cases, unless otherwise expressly ordered, when any notice or statement is required to be given by any party, such party shall at least five clear days before the day of hearing, deliver to the Registrar as many copies thereof as there are opposite parties, and an additional copy to be filed, and all the said copies shall be signed by the party giving such notice, his Solicitor or Agent, and the Registrar shall, within twenty-four hours from the time of receiving the same, transmit one copy of such notice to each of the said parties.

**RULE 51ST.** Where the Defence is a tender, such defence shall not be available, unless before or at the hearing of the cause the Defendant pays into Court (which may be without costs) the amount alleged to have been tendered.

## EVIDENCE.

**RULE 52ND.** Witnesses may be summoned without leave of the Court, and the Registrar shall forthwith, on issuing the Summons, deliver it to the Sheriff.

**RULE 53RD.** It shall be sufficient if a Summons to a Witness be served a reasonable time before the actual hearing.

**RULE 54TH.** Where either party proposes to give a Judgment of the Supreme Court or any other document, whether printed or written; in evidence, he may by a demand in writing made a reasonable time before the hearing, require the other party to admit (saving all just exceptions to the admissibility of such document in evidence,) the document to be read in evidence without proof, and if such demand be not made, no costs of proving such document shall be allowed, unless the Judge shall otherwise order. If such demand be not complied with, and the Judge think it reasonable that the admission should have been made, the party refusing shall bear the expense of proving such document whatever may be the event of the cause.

**RULE 55TH.** Either party may call the other or the wife of the other party as a witness and appearance may be enforced by Summons as in the case of any other witness.

## JURY.

**RULE 56TH.** Every notice of a demand of a Jury must be made in writing to the Registrar of the Court five clear days before the day of hearing, and the Summonses to the intended Jurors shall be delivered to the Sheriff forthwith.

**RULE 57TH.** Where notice of a demand of a Jury has not been given in due time, or if at the hearing both parties desire to try by a Jury, the Judge may, on such terms as he shall think fit, adjourn the case in order that the necessary steps for such trial may be taken, and the trial shall take place accordingly.

**RULE 58TH.** Cases of interpleader, and of replevin, may at the instance of either party be tried by a Jury, and in the same manner as ordinary actions.

**RULE 59TH.** The poundage fee upon Summonses shall not be payable upon any Summons to a jury or jurymen, but the Sheriff's Fees for service on each jurymen shall be payable as upon the service of a Summons to appear to a Plaintiff.

**RULE 60TH.** In all cases to be tried by a Jury the number of jurymen summoned shall be ten, unless the Judge shall otherwise order.

## ADJOURNMENT.

**RULE 61ST.** Where a Summons has been served, the parties may by consent, at any time before the cause is called on, on payment to the Registrar of the fee on an adjournment, postpone the hearing to such subsequent Court as the Judge shall direct, but where a cause is called on, the hearing fee shall be forthwith payable, and if the Plaintiff on being required thereto do not pay such fees, he shall be deemed not to have appeared; and if the cause be adjourned after being called on, and the hearing fees paid, the fee on an adjournment shall then be paid by the party requiring the adjournment, and at the adjourned hearing or hearings of such cause no further hearing fee shall be payable, but the cause may from time to time be adjourned, on payment of the fees on an adjournment.

**RULE 62ND.** Where a cause is adjourned no order of adjournment shall be served on either party, unless by direction of the Judge.

**RULE 63RD.** When anything required by the practice of the Court to be done by either party before or during the hearing has not been done, the Judge may in his discretion, and on such terms as he shall think fit, adjourn the hearing to enable the party to comply with the practice.

## HEARING.

**RULE 64TH.** Where a cause is struck out in consequence of the non-appearance of both parties, no hearing fee shall be payable.

**RULE 65TH.** If at the return day of the Summons, or at any continuation or adjournment of the Court at which it is returnable, the Plaintiff does not appear, the Judge may in his discretion award to the Defendant costs, in the same manner and to the same

amount, as to Counsel, Solicitor, Witnesses and other matters, as if the cause had been tried, but no hearing fee shall be charged.

**RULE 66TH.** No Solicitor shall be allowed to appear in the Court for any person until he has signed a Roll or Book, to be kept for that purpose by the Registrar, but no fee shall be payable for that purpose.

**RULE 67TH.** It shall not be necessary for either party previous to the hearing to give notice to the other, or to the Court, of his intention to employ a Barrister or Solicitor to act as his advocate at the hearing, and the allowance of costs for such Barrister or Solicitor shall not be affected by such want of notice.

**RULE 68TH.** The provisions of the 91st section of the statute 9th and 10th, Viet. C. 95, shall be followed as to the persons who shall be allowed to appear for any party in any proceeding before the Court.

**RULE 69TH.** Where an Infant Defendant appears at the hearing, and names a person willing to act as a guardian, and who then assents so to act, such person shall be appointed guardian accordingly, but if the Defendant do not name a guardian, the Judge may appoint any person in Court willing to become guardian, or in default of such person the Judge shall appoint the Registrar of the Court to be guardian, and the case shall proceed thereupon as if another person had been appointed guardian, and the name of the guardian appointed shall be entered in the form in the Schedule, and no responsibility shall attach to the person so appointed guardian.

**RULE 70TH.** Where a Plaintiff avails himself of the Provisions of Section 68 of 9 and 10 Viet. C. 95, and proceeds against only one or more of several persons jointly answerable, the Defendant or Defendants sued may avail himself or themselves of any set-off or other defence to which he or they would be entitled if all the persons liable were made Defendants.

## AMENDMENT.

**RULE 71ST.** Where a person other than the Defendant appears at the hearing, and admits that he is the person whom the Plaintiff intended to charge, his name may be substituted for that of the Defendant, if the Plaintiff consents, and thereupon the cause shall proceed as if such person had been originally named in the Summons, and if necessary the hearing may be adjourned on such terms as the Judge shall think fit, and the costs of the person originally named as Defendant shall be in the discretion of the Judge.

**RULE 72ND.** Where a party sues or is sued in a representative character, but at the hearing it appears that he ought to have sued or been sued in his own right, the Judge may at the instance of either party, and on such terms as he shall think fit, amend the proceedings accordingly, and the case shall then proceed, in all respects as to set-off and other matters, as if the proper description of the party had been given in the Summons.

**RULE 73RD.** Where a party sues or is sued in his own right, and it appears at the hearing that he should have sued or have been sued in a representative character, the Judge may at the instance of either party, and on such terms as he shall think fit, amend the proceedings accordingly, and the case shall then proceed in all respects, as to set-off and other matters, as if the proper description of the party had been given in the Summons.



**RULE 74TH.** Where the name or description of a Plaintiff in the Summons is insufficient or incorrect, it may at the hearing be amended at the instance of either party by order of the Judge on such terms as he shall think fit, and the cause may then proceed as to set-off and other matters as if the name or description had been originally such as it appears after the amendment has been made.

**RULE 75TH.** Where the name or description of a Defendant in the Summons is insufficient or incorrect, and the Defendant appears and objects to the description, it may be amended at the instance of either party by order of the Judge, on such terms as he shall think fit, and the cause may proceed, as to set-off and other matters, as if the name or description had been originally such as it appears after the amendment has been made; but if no such objection is taken, the cause may proceed, and in the judgment, and all subsequent proceedings founded thereon, the Defendant shall be described in the same manner.

**RULE 76TH.** In actions by or against a husband, if the wife is improperly joined or omitted as a party, the Summons may at the hearing be amended at the instance of either party by order of the Judge, on such terms as he shall think fit, and the cause may proceed, as to set-off and other matters, as if the proper person had been made party to the suit.

**RULE 77TH.** Where it appears at the hearing, that a greater number of persons have been made Plaintiffs than by law required, the name of the person improperly joined may at the instance of either party, be struck out by order of the Judge, on such terms as he shall think fit, and the cause may proceed, as to set-off and other matters, as if the proper party or parties only had been made Plaintiffs.

**RULE 78TH.** Where it appears at the hearing that a less number of persons have been made Plaintiffs than by law required, the name of the omitted person may, at the instance of either party, be added by order of the Judge, on such terms as he shall think fit, and the cause shall proceed, as to set-off and other matters, and judgment shall be pronounced, as if the proper persons had been originally made parties, and unless the person whose name is so added shall assent thereto, either at the hearing or some adjournment thereof, personally or by writing signed by him or his Solicitor, proceedings on the judgment shall be stayed until the Court next after five clear days from the day of hearing; and if the person whose name is added shall, at the hearing or an adjournment thereof, consent to become a Plaintiff, (such consent being in writing, signed by him or his Solicitor,) execution shall issue as the Judge shall think fit; but if such party shall not consent to become a Plaintiff in manner aforesaid, either at the hearing or at an adjournment thereof, judgment of nonsuit may be entered.

**RULE 79TH.** When it appears at the hearing that more persons have been made Defendants than by law required, the name of the party improperly joined may, at the instance of either party, be struck out by order of the Judge, on such terms as he shall think fit, and the cause shall proceed, as to set-off and other matters, as if the party or parties liable had been sued, and judgment shall be given for the party improperly joined.

**RULE 80TH.** Where several persons are made Defendants, and all of them have not been served, the name or names of the Defendant or Defendants who have not been served may, at the instance of either party, be struck out by order of the Judge, on such terms as he shall think fit; and the cause shall then proceed, in all respects as to set-off and other matters, as if all the Defendants had been served.

**RULE 81ST.** Where at the hearing a variance appears between the evidence and the matters stated in any of the proceedings in Court, such proceedings may, at the discretion of the Judge and on such terms as he shall think fit, be amended, and such amendment as well as amendments as to parties, when ordered, shall be made in open Court, and during the sitting of the Court.

**RULE 82ND.** In all cases of amendment, a corresponding amendment shall be made in the presence of the Judge, in the proceedings of the Court, antecedent to such amendment, and the subsequent proceedings shall be in conformity therewith.

## COSTS.

**RULE 83RD.** All costs between party and party shall be taxed by the Registrar of the Court, but his taxation may be reviewed by the Judge upon the application of either party; and it shall not be necessary that the costs shall be taxed in Court, or during the sitting of the Court at which judgment is given.

**RULE 84TH.** The Judge shall in each case direct what number of witnesses are to be allowed on taxation of costs, and their allowance for attendance shall be according to the scale in the schedule unless otherwise ordered, but shall in no case exceed the allowances therein mentioned.

**RULE 85TH.** The costs of Witnesses, whether they have been examined or not, may, in the discretion of the Judge, be allowed, though they have not been summoned.

**RULE 86TH.** Money paid into Court on a judgment shall be appropriated—first, in satisfaction of the costs, and afterwards in satisfaction of the original demand.

**RULE 87TH.** The calculation of fees payable for the issuing and execution of warrants shall be governed by the direction given in the table of fees; that where the sum demanded is above twenty pounds the Poundage shall be taken on twenty pounds only.

**RULE 88TH.** Costs of unexecuted or unproductive Warrants against the goods shall not be allowed against the defendant, unless the Judge shall otherwise direct.

**RULE 89TH.** Costs of Warrant of Commitment, on which the Defendant has not been taken, shall not be allowed against the Defendant, unless the Judge shall otherwise direct.

**RULE 90TH.** Costs of executed Warrants, whether of Commitment or against the goods, shall be allowed, unless the Judge shall otherwise direct.

## ORDERS.

**RULE 91ST.** Orders for payment of money, or costs, or both, and orders of adjournment when directed by rule 63 to be served, shall in all cases be served by the Sheriff, provided that in no case shall any mileage be allowed, but the Sheriff shall be entitled to be paid only as upon a service within two miles of the Court House; provided always that it shall not be necessary for the party in whose favor such order was made to prove that it was served previous to taking proceedings thereon.

**RULE 92ND.** Where the Court gives leave to take any proceeding, it shall not be necessary to draw up any order, nor shall any order be drawn up to warrant such proceeding.

## INSTALMENTS,—PAYMENT BY.

**RULE 93RD.** Where an order is made for the payment of any debt, damages, costs, or other sum of money by instalments, such instalments shall be payable at such periods as the Court shall order; and if no period be mentioned, the first shall become due on the twenty-eighth day from the day of making the order, and every successive instalment shall become due at a like period of twenty-eight days from the day of the previous instalment becoming due; and such instalments shall be paid at the office of the Registrar, and not to the party in whose favor such order was made.

**RULE 94TH.** When an order is made for payment by instalments or otherwise, the Registrar shall give notice to the Plaintiff in writing, according to the form in the Schedule of every payment made, and the fee allowed for such notice may be deducted from the amount paid in, whether such sum is paid out to the Plaintiff or not, and such fee shall not be paid by the Defendant; provided that such notice shall not be given, nor the fee taken, where the instalment does not amount to ten shillings, unless the Plaintiff shall by writing, under his hand, require the Registrar to give him such notice.

## PROCEEDING ON A JUDGMENT MORE THAN A YEAR OLD.

**RULE 95TH.** No Warrant of Execution, or Summons for Commitment shall, without leave of the Judge, issue on a Judgment more than a year old, (unless an instalment has been paid on such Judgment, or a Warrant of Execution against the goods, or a Warrant of Commitment has been issued within a year from the time of obtaining such Judgment,) or if more than a year has elapsed since an instalment has been paid, or since the expiration of the Warrant against the goods, or of the last Warrant of Commitment; but no notice to the Defendant, previous to applying for such leave shall be necessary, and such leave shall be expressed on the Warrant under the Seal of the Court.

## EXECUTION.

**RULE 96TH.** Warrants of Execution shall bear date on the day on which they are issued, and shall continue in force for three calendar months from such date, and no longer.

**RULE 97TH.** Where a Defendant has made default in payment of the whole amount awarded by the Judgment, or of an instalment thereof, execution may issue against his goods without leave of the Court, and such execution shall be for the whole amount of the Judgment and costs then remaining unsatisfied, unless in the case of instalments the Judge otherwise direct at the time of giving Judgment.

**RULE 98TH.** The Registrar shall, on issuing a Warrant of Execution, indorse on such Warrant the amount to be levied, distinguishing the amount of the debt or damages and costs adjudged to be paid, the amount of the fees for issuing the Warrant, and the Sheriff's fees for its Execution, including mileage to the place in which the Sheriff is directed to take the goods, and no further mileage shall be taken by the Sheriff.

**RULE 99TH.** Successive Warrants of Execution against the goods may be issued without leave of the Court, and they may also be issued under the same circumstances, and on the same conditions as in the case of successive Summonses to appear to a plaintiff, except that the fee for issuing such Warrants shall in all cases be paid, and such successive Warrants shall bear date of the day on which they are issued. See Rule 27th.

**RULE 100TH.** Successive Warrants against the goods may be issued when only a part of the Judgment is satisfied, on payment of fees proportioned to the amount of the Judgment remaining unsatisfied.

**RULE 101ST.** Warrants of Execution against the goods may be issued concurrently into one or more districts, provided that the costs of more than one Warrant shall not be allowed against the other party, unless by order of the Judge.

### SUMMONS FOR COMMITMENT.

**RULE 102ND.** Every Summons for a party to appear, pursuant to the 98th section of the 9 and 10 Vict. C. 95, may issue at any time without leave of the Court, except in cases provided for by Rule 95, and shall be forthwith issued by the Registrar to the Sheriff, and shall be served personally not less than three clear days before the day on which the party is required to appear to such Summons, unless it be proved on oath at the hearing, to the satisfaction of the Judge, that such party was about to remove out of the jurisdiction of the Court, or was keeping out of the way to avoid service, in which case, service upon the party at any time before the time appointed for the appearance of such party shall be sufficient.

**RULE 103RD.** Successive Summonses for Commitment may be issued without leave of the Court, and they may also be issued under the same circumstances and on the same conditions as in the case of successive Summonses to appear to a Plaintiff. See Rule 27th.

### COMMITMENT.

**RULE 104TH.** Warrants for Commitment, whenever issued, shall bear date on the day in which the order for Commitment was made, and shall continue in force for three calendar months from such date, and no longer; but no order for Commitment shall be drawn up or served.

**RULE 105TH.** In cases of Commitment under sections 99 or 101 of the 9 and 10 Vict. C. 95, the amount of the Judgment, and all costs payable by the Defendant, shall be indorsed on the Warrant, and the amount due to the Sheriff for execution shall be stated separately.

**RULE 106TH.** Where an order is made for Commitment for non-payment of money, the Defendant may at any time before his body is delivered to the custody of the gaoler, pay to the Sheriff the total amount indorsed on the Warrant, and on receiving such amount, the Sheriff shall discharge the Defendant out of custody, and shall within twenty-four hours from receiving the same, pay over the amount of the Judgment and costs to the Registrar.

**RULE 107TH.** In all cases of Commitment for non-payment, it may be made part of the order, that on production of the Registrar's Certificate, stating that payment or satisfaction of the sum and costs remaining due at the time of making the order for imprisonment, together with the costs of obtaining such order and all subsequent costs has been made, the Defendant shall be discharged.

**RULE 108TH.** Successive Warrants of Commitment may, by leave of the Judge, (without issuing a fresh Summons when no previous Warrant has been executed) be issued under the same circumstances, and on the same conditions as in the case of Summonses

to appear to a Plaintiff, except that the fee for issuing such Warrant shall in all cases be paid, and such Successive Warrants shall bear date of the day on which leave was given.

**RULE 109th.** Warrants of Commitment may be issued concurrently against the same party into the same or different districts; provided that the cost of more than one Warrant shall not be allowed against the other party, unless by order of the Judge.

### NEW TRIAL.

**RULE 110th.** An application for a New Trial, or to set aside proceedings, may be made and determined on the day of hearing, if both parties are present, or may be made at the first Court held next after the expiration of twelve clear days from such day of hearing, and the party intending to make such application shall, seven clear days before the holding of such Court, deliver a notice in writing signed by himself, his Solicitor or Agent, stating the grounds of his intended application to the Registrar at his office, and give a similar notice to the opposite party, by service of the same personally on such party, or by leaving the same at his place of abode or business, and such notice shall not operate as a stay of proceedings, unless the Judge shall otherwise order, and if money be paid into Court under any execution or order in the suit, the Registrar shall retain the same, to abide the event of the application aforesaid, and if no such application be made, the money shall, if required, be paid over to the party in whose favor the order is made, unless the Judge shall otherwise order, and if such application be not made at the Court mentioned in the notice, no subsequent application for a New Trial, or to set aside proceedings, shall be made, unless by leave of the Judge, and on such terms as he shall think fit.

**RULE 111th.** The fee payable for an application for a New Trial, or to set aside proceedings, shall be paid by the party intending to make such application, at the time of giving notice of his intention so to apply.

**RULE 112th.** Where a New Trial is granted, the Judge may in his discretion make it a condition of granting such New Trial, that it shall take place before a Jury, although the former Trial did not take place before a Jury.

**RULE 113th.** In all cases where security is required to be given in any proceeding in the Court, whether under section 127 of 9 and 10 Viet. C. 95, or in any other case, such security shall be at the expense of the party giving it.

### INTERPLEADER.

**RULE 114th.** Where any claim is made to, or in respect of any goods or chattels taken in execution under the process of the Court, or in respect of the proceeds or value thereof, by any Landlord for rent, or by any person not being the party against whom such process has issued, and Summonses have been issued on the application of the officer charged with the execution of such process, such Summonses shall be served in such time and mode as hereinbefore directed for a Summons to appear to a Plaintiff, and the claimant shall be deemed the Plaintiff, and the execution creditor the Defendant; and the claimant shall, five clear days before the day on which the Summonses are returnable, deliver to the said officer, or leave at the office of the Registrar of the Court, a particular of any goods or chattels alleged to be the property of the claimant, and the grounds of his claim, or in case of a claim for rent, of the amount thereof, and for what period, and in respect of what premises, the same is claimed to be due, and the name and description

and address of the claimant, shall be fully set forth in such particular, and any money paid into Court, under the execution, shall be retained by the Registrar until the claim shall have been adjudicated upon: provided that by consent an interpleader claim may be tried, although the above rule has not been complied with.

**RULE 115TH.** Interpleader Summonses may be issued by the Registrar, on the application of the Sheriff, without leave of the Court.

**RULE 116TH.** Where the claim to any goods or chattels taken in execution, or the proceeds or value thereof shall be dismissed, the costs of the Sheriff shall be retained by him out of the amount levied, unless the Judge shall otherwise order.

### ABATEMENT.

**RULE 117TH.** Where one or more of several Plaintiffs or Defendants dies before Judgment, the suit shall not abate, if the cause of action survive to or against such parties.

**RULE 118TH.** Where one or more of several Plaintiffs or Defendants shall die after Judgment, proceedings thereon may be taken by the Survivors or Survivor, or against the Survivors or Survivor without leave of the Court.

**RULE 119TH.** Where a married woman is sued as a feme sole, and she obtains Judgment on the ground of coverture, proceedings may be taken thereon in the name of the wife at the instance of the husband without leave of the Court.

### APPLICATIONS OR PROCEEDINGS IN THE NATURE OF A SCIRE FACIAS.

**RULE 120TH.** Execution on a Judgment shall not issue by or against any person not a party to such suit, without a Plaint and Summons upon the Judgment, the proceedings in which shall be the same, and shall be subject to the payment of the same fees as in ordinary cases.

**RULE 121ST.** Where a Judgment has been given for or against a person deceased, his Executors or Administrators may, in the same manner, sue or be sued upon the Judgment.

**RULE 122ND.** In all proceedings in the nature of a scire facias, a Jury may be summoned in the same manner and under the like restrictions as are provided by sections 70, 71, 72, and 73, of 9 and 10 Vict. C. 95. [For proceeding on Judgments for penalties under the 8 and 9 Wm. III. C. 11., see Rule 20.]

### PROCEEDINGS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

**RULE 123RD.** In actions by Executors or Administrators, if the Plaintiff fail, the costs shall, unless the Court shall otherwise order, be awarded in favor of the Defendant, and shall be levied de bonis propriis.

**RULE 124TH.** Where an Executor or Administrator, Plaintiff or Defendant, shall not appear on the day of hearing, the provisions of sections 79 and 80 of the 9 and 10 Vict.

C. 95, shall apply respectively, subject to the Rules applicable to Executors or Administrators suing or being sued.

**RULE 125TH.** A party suing an Executor or Administrator, may charge in the Summons, in the form in the schedule, that the Defendant has assets, and has wasted them.

**RULE 126TH.** In all cases, if the Court shall be of opinion that the Defendant has wasted the assets, the Judgment shall then be, that the debt or damage and costs shall be levied *de bonis testatoris, si, &c., et si non, de bonis propriis*, and the non-payment of the amount of the demand, immediately on the Court finding such demand to be correct, and that the Defendant is chargeable in respect of assets, shall be conclusive evidence of wasting to the amount with which he is so chargeable.

**RULE 127TH.** When an Executor or Administrator denies his representative character, or alleges a release to himself of the demand, whether he insists on any other ground of defence or not, and the Judgment of the Court is in favor of the Plaintiff, it shall be that the amount found to be due and costs shall be levied *de bonis testatoris, si, &c., et si non, de bonis propriis*.

**RULE 128TH.** Where an Executor or Administrator admits his representative character, and only denies the demand, if the Plaintiff prove it, the Judgment shall be that the demand and costs shall be levied *de bonis testatoris, si, &c., et si non*, as to the costs, *de bonis propriis*.

**RULE 129TH.** Where the Defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the Plaintiff proves his demand, and the Defendant proves the administration alleged, the Judgment shall be, to levy the costs of proving the demand *de bonis testatoris, si, &c., et si non, de bonis propriis*: and as to the whole or residue of the demand, Judgment of assets, *quando acciderint*, and the Plaintiff shall pay the Defendants costs of proving the administration of assets.

**RULE 130TH.** Where the Defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the Plaintiff proves his demand, but the Defendant does not prove the administration alleged, the Judgment shall be to levy the amount of the demand, if such amount of assets is shown to have come to the hands of the Defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris, si, &c., et si non*, as to the costs, *de bonis propriis*, and as to the residue of the demand, if any Judgment of assets, *quando acciderint*.

**RULE 131ST.** Where a Defendant admits his representative character, and the Plaintiff's demand, but alleges a total or partial administration of the assets, and proves the administration alleged, the Judgment shall be for assets, *quando acciderint*, and the Plaintiff shall pay the Defendant's costs of proving the administration of assets.

**RULE 132ND.** Where a Defendant admits his representative character, and the Plaintiff's demand, but alleges a total or partial administration of the assets, but does not prove the administration alleged, the Judgment shall be to levy the amount of the demand, if so much assets is shown to have come to the Defendant's hands, or so much as is shown to have come to them, and costs, *de bonis testatoris, si, &c., et si non*, as to the costs, *de bonis propriis*, and as to the residue of the demand, if any Judgment of assets, *quando acciderint*.

**RULE 133RD.** Where Judgment has been given against an Executor or Administrator, that the amount be levied upon assets of the deceased, *quando acciderint*, the Plaintiff or his personal representative may issue a Summons in the form in the schedule, and if it shall appear that assets have come to the hands of the Executor, or Administrator, since the Judgment, the Court may order that the debt, damages, and costs be levied *de bonis testatoris, si, &c., et si non*, as to the costs, *de bonis propriis*: provided that it shall be competent for the party applying to charge in the Summons that the Executor or Administrator has wasted the assets of the testator or intestate, in the same manner as in Rule 125, and the provisions of Rule 126 shall apply to such inquiry, and the Court may, if it appears that the party charged has wasted the assets, direct a levy to be made as to the debt and costs, *de bonis testatoris, si, &c., et si non, de bonis propriis*.

**RULE 134TH.** Where a Defendant admits his representative character, and the Plaintiff's demand, and that he is chargeable with any sum in respect of assets, he shall pay such sum into Court, subject to the rules relating to payment into Court in other cases.

**RULE 135TH.** In actions against Executors or Administrators for which provision is not hereinbefore specially made, if the Defendant fails as to any of his defences, the Judgment shall be for the Plaintiff as to his costs of disproving such defence, and such costs shall be levied *de bonis testatoris, si, &c., et si non, de bonis propriis*.

## NOTICES.

**RULE 136TH.** Where by these Rules any party is required to give notice according to a form mentioned in the schedule, it shall be sufficient if the notice given complies substantially with such form.

**RULE 137TH.** In all cases where any notice or thing is required by these Rules to be given or done within a period of twenty-four hours, such period shall be understood to mean forty-eight hours, if any part of Sunday, Good Friday, or Christmas-day, or any day appointed by Royal Proclamation for a public fast or thanksgiving, is included in such twenty-four hours.

## STATUTE OF LIMITATIONS.

**RULE 138TH.** Successive Summonses may be issued without leave of the Court for the purpose of preventing the operation of any Statute, whereby the time for the commencement of any action is or may be limited, and such Summonses shall be in force for four calendar months from the time of issuing the same, including the day of such issuing; and shall be issued before the expiration of the previous Summons, and entered in the Plaint-book of the Court: provided that on entering the Plaint in the first instance, the usual fees shall be paid, as if the Defendant resided within two miles of the Court; but for every Successive Summons, no further fee shall be paid, nor shall it be necessary that any attempt be made to serve such Summons, unless the Plaintiff requires the same, when the proper Sheriff's fees for such service shall be paid in addition to those already received; and such successive Summonses, when so entered, shall be a continuance of the action from and inclusive of the day on which the first Summons was issued.

## ARBITRATION.

**RULE 139TH.** Where a Plaint is entered, the Judge may, with the consent of the parties, make an order for a reference under the provision of section 77, of the 9 and 10



Vict. C. 95, without awaiting the return of the Summons, and all the provisions in the said last mentioned act contained, and all Rules of practice of the Court, as to references, shall apply to a reference proceeding under such an order; provided that the same fees shall be paid as on the hearing of the cause.

## REPLEVIN.

**RULE 140TH.** In actions of Replevin no other cause of action shall be joined in the Summons.

**RULE 141ST.** On entering a Plaint in Replevin, the Plaintiff must specify and describe, in a statement of particulars, the cattle, or the several goods and chattels, taken under the distress, and of the taking of which he complains.

**RULE 142ND.** All actions of Replevin, in cases of distress for rent in arrear, or damage *faisant*, shall be tried in a summary way, as other actions in the Court, held under the authority of the said Act, of the 9 and 10 Vict. C. 95, and the Judgment therein, in ordinary cases, whether for Plaintiff or Defendant, shall be according to the forms in the schedule.

**RULE 143RD.** Where the distress has been for rent, and the Defendant succeeds in the action, if the Defendant require, the Judge shall, if the cause is tried without a Jury, and the Jury shall, if the cause be tried with a Jury, find the value of the goods distrained, and if the value is less than the amount of rent in arrear, Judgment shall be given for the amount of such value; but if the amount of the rent in arrear is less than the value so found, Judgment shall be given for the amount of such rent, and may be enforced in the same manner as any other Judgment of the Court.

**RULE 144TH.** When the distress was for damage *faisant*, and the Defendant is entitled to Judgment for a return, if the Plaintiff require, the Judge shall, if the cause is tried without a Jury, and the Jury shall, if the cause is tried with a Jury, find the amount of the damage sustained by the Defendant, and Judgment shall then be given in favor of the Defendant in the alternative, for a return, or for the amount of the damage so found.

**RULE 145TH.** Where either party is desirous of removing any Plaint in Replevin to the Supreme Court, in pursuance of section 121, of the 9 and 10 Vict. C. 95, he shall, at least five clear days before the return day of the Summons, deliver to the Registrar two copies of a notice, signed by himself, his Solicitor or Agent, stating the ground of such removal, together with the names of the two sureties, whom he proposes to become bound with him, in the form in the schedule, and the Registrar shall forthwith transmit one of the said copies, of the said notice, to the opposite party or parties, and unless such notice is given, the party removing shall pay all the expenses to which the opposite party has been put in consequence of such non-compliance with this rule, unless the Judge shall otherwise order; and in case a reasonable time has not been allowed to enable the Registrar to ascertain the sufficiency of the sureties, the cause shall be postponed at the expense of the party seeking to remove, or upon such terms as the Judge shall think fit.

**RULE 146TH.** The amount of the sum for which the security is taken shall, unless the Judge shall otherwise order, be the same as that of the security given to the Sheriff, and such security shall be given at the expense of the party seeking to remove.

**RECOVERY OF TENEMENTS.**

**RULE 147TH.** All Plaints for the recovery of the possession of Tenements shall be brought in accordance with the 122nd section of the 9 and 10 Vict. C. 95.

**RULE 148TH.** Warrants for giving possession of tenements shall bear date of the day named by the Judge for the issuing thereof, and shall issue to the Sheriff, requiring and authorising him to give possession of the premises, within a period therein named, which shall be a period commencing with the date of such Warrant, and ending at a time not less than seven or more than ten days from such date; and the Sheriff may execute such Warrant forthwith on the receipt thereof, or any time during the period therein named.

**RULE 149TH.** Upon application of a tenant, who seeks under section 126, of the 9 and 10 Vict. C. 95, to stay execution of a Warrant of possession by an action of trespass in the Supreme Court, against the person suing out the Warrant, he must apply for that purpose in person, or by his Solicitor or Agent, to the Court, and the Judge shall then fix the sum for which security is to be given, and the names and description of the securities shall be given to the Registrar within such time as the Judge shall direct, and the giving such security shall be at the expense of the party applying.

**FORMS.**

**RULE 150TH.** In proceedings for which forms are not provided in the schedule the Registrar of the Court shall use, as guides in framing the forms required, those which are prescribed in the schedule.



## SCALE OF FEES,

Payable on Proceedings in the Inferior or Summary Court of Civil-Justice, under the Order of the Supreme Court of Civil-Justice, dated the 6th day of April, 1857.

### FEES ON ENTERING PLAINTS.

	£1	£2	£3	£4	£5	£6	£7	£8	£9	£10	£11	£12	£13	£14	£15	£16	£17	£18	£19	£20	
Where the Debt does not exceed.....																					
Poundage.....	0 1 0	0 2 0	0 3 0	0 4 0	0 5 0	0 6 0	0 7 0	0 8 0	0 9 0	0 10 0	0 11 0	0 12 0	0 13 0	0 14 0	0 15 0	0 16 0	0 17 0	0 18 0	0 19 0	1 0 0	
Sheriff's Fee.....	0 0 2	0 0 4	0 0 6	0 0 8	0 0 10	0 1 0	0 1 2	0 1 4	0 1 6	0 1 8	0 1 10	0 2 0	0 2 2	0 2 4	0 2 6	0 2 8	0 2 10	0 3 0	0 3 2	0 3 4	
	0 1 2	0 2 4	0 3 6	0 4 8	0 5 10	0 7 0	0 8 2	0 9 4	0 10 6	0 11 8	0 12 10	0 14 0	0 15 2	0 16 4	0 17 6	0 18 8	0 19 10	1 1 0	1 2 2	1 3 4	

If the Defendant resides beyond two miles from the Court House, then extra for every additional mile, 9d. (say ninepence.)

SUBPENA.

	£1	£2	£3	£4	£5	£6	£7	£8	£9	10	11	£12	£13	£14	£15	£16	£17	£18	£19	£20
Where the Debt does not exceed.....																				
Subpœna each Witness.....	0 3 4	0 3 1	0 3 4	0 3 4	0 3 4	0 3 4	0 3 4	0 3 1	0 3 4	0 3 1	0 3 4	0 3 4	0 3 4	0 3 4	0 3 4	0 3 4	0 3 4	0 3 4	0 3 4	0 3 4
Sheriff's Fee*.....	0 0 2	0 0 4	0 0 6	0 0 8	0 0 10	0 1 0	0 1 2	0 1 1	0 1 6	0 1 8	0 1 10	0 2 0	0 2 2	0 2 4	0 2 6	0 2 8	0 2 10	0 3 0	0 3 2	0 3 4
	0 3 6	0 3 8	0 3 10	0 4 0	0 4 2	0 4 4	0 4 6	0 4 10	0 4 10	0 5 0	0 5 2	0 5 1	0 5 6	0 5 8	0 5 10	0 6 0	0 6 2	0 6 4	0 6 6	0 6 8

\* If the Witness resides beyond two miles from the Court House, then extra for every additional mile, ninetence. Where more than one Witness is summoned at the same time in the same cause, and from the same place or neighborhood, mileage is to be charged once only for the actual distance to be traveled beyond the first two miles.

HEARING WITHOUT A JURY, OR IN NATURE OF SOL. FA.

	£1	£2	£3	£4	£5	£6	£7	£8	£9	£10	£11	£12	£13	£14	£15	£16	£17	£18	£19	£20
Where the Debt does not exceed.....																				
Poundage.....	0 3 S	0 7 1	0 11 0	0 11 S	0 18 S	1 2 0	1 5 S	1 9 4	1 13 0	1 16 S	2 0 4	2 4 0	2 7 S	2 11 1	2 15 0	2 18 S	3 2 4	3 6 0	3 9 S	3 13 1
Sheriff's Fee*.....	0 0 2	0 0 4	0 0 6	0 0 8	0 0 10	0 1 0	0 1 2	0 1 4	0 1 6	0 1 8	0 1 10	0 2 0	0 2 2	0 2 4	0 2 6	0 2 8	0 2 10	0 3 0	0 3 2	0 3 4
	0 3 10	0 7 S	0 11 6	0 15 4	0 19 2	1 3 0	1 6 10	1 10 S	1 14 6	1 18 4	2 2 2	2 6 0	2 9 10	2 13 S	2 17 6	3 1 4	3 5 2	3 9 0	3 12 10	3 16 S

\* No Fee for Mileage. See Rule 91.

Scale of Fees in Proceedings in Plaints Continued.

ON REQUIRING A JURY.

	£1	£2	£3	£4	£5	£6	£7	£8	£9	£10	£11	£12	£13	£14	£15	£16	£17	£18	£19	£20	
Where the Debt does not exceed.....																					
Deposit of Jury.....	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0
Sheriff serving 10 Summonses*	0 1 8	0 3 4	0 5 0	0 6 8	0 8 4	0 10 0	0 11 8	0 13 4	0 15 0	0 16 8	0 18 4	1 0 0	1 1 8	1 3 4	1 5 0	1 6 8	1 8 4	1 10 0	1 11 8	1 13 4	1 15 0
	0 4 8	0 8 1	0 10 0	0 11 8	0 13 4	0 15 0	0 16 8	0 18 4	1 0 0	1 1 8	1 3 4	1 5 0	1 6 8	1 8 4	1 10 0	1 11 8	1 13 4	1 15 0	1 16 8	1 18 4	1 20 0

\* Add Mileage at ninepence for each additional mile beyond two miles. When Jurors are summoned from the same place or neighborhood, Mileage to be charged once only, and only for the distance to be actually traveled beyond the first two miles.

HEARING WITH A JURY.

	£1	£2	£3	£4	£5	£6	£7	£8	£9	£10	£11	£12	£13	£14	£15	£16	£17	£18	£19	£20	
Where the Debt does not exceed.....																					
Poundage.....	0 5 6	0 11 0	0 16 6	1 2 0	1 7 6	1 13 0	1 18 6	2 4 0	2 9 6	2 15 0	3 0 6	3 6 0	3 11 6	3 17 0	4 2 6	4 8 0	5 3 6	5 9 0	6 4 6	7 0 0	7 5 6
Sheriff serving Order*	0 0 2	0 0 4	0 0 6	0 0 8	0 1 0	0 1 2	0 1 4	0 1 6	0 1 8	0 2 0	0 2 2	0 2 4	0 2 6	0 2 8	0 3 0	0 3 2	0 3 4	0 3 6	0 3 8	0 4 0	0 4 2
	0 5 8	0 11 4	0 17 0	1 2 8	1 8 4	1 14 0	1 19 6	2 5 2	3 0 8	3 6 4	4 2 0	4 7 6	5 3 2	5 8 8	6 4 4	7 0 0	7 5 6	8 1 2	8 6 8	9 2 4	9 8 0

\* No Fee for Mileage payable. See Rule 91.



APPLICATION FOR NEW TRIAL.

	£1	£2	£3	£4	£5	£6	£7	£8	£9	£10	£11	£12	£13	£14	£15	£16	£17	£18	£19	£20	
Where the Debt does not exceed.....																					
Poundage.....	0 0 10	0 1 8	0 2 6	0 3 4	0 4 2	0 5 0	0 5 10	0 6 8	0 7 6	0 8 4	0 9 2	0 10 0	0 10 10	0 11 8	0 12 6	0 13 4	0 14 2	0 15 0	0 15 10	0 16 8	
Sheriff's Fee*	0 0 1	0 0 8	0 1 0	0 1 1	0 1 5	0 2 0	0 2 1	0 2 8	0 3 0	0 3 4	0 3 8	0 4 0	0 4 1	0 4 1 8	0 5 0	0 5 1	0 5 8	0 6 0	0 6 4	0 6 8	
	0 1 2	0 2 4	0 3 6	0 4 8	0 5 10	0 7 0	0 8 2	0 9 4	0 10 6	0 11 8	0 12 10	0 14 0	0 15 2	0 16 4	0 17 6	0 18 8	0 19 10	1 1 0	1 2 2	1 3 4	

\*No Mileage payable, See Rule 51.

FOR EVERY WARRANT AGAINST THE GOODS OR BODY,

Or to Deliver Possession of Tenements.

	£1	£2	£3	£4	£5	£6	£7	£8	£9	£10	£11	£12	£13	£14	£15	£16	£17	£18	£19	£20	
Where amount to be levied does not exceed.....																					
Poundage.....	0 1 0	0 3 0	0 4 6	0 6 0	0 7 6	0 9 0	0 10 6	0 12 0	0 13 6	0 15 0	0 16 6	0 18 0	0 19 6	1 1 0	1 2 6	1 4 0	1 5 6	1 7 0	1 8 6	1 10 0	
Sheriff's Fee*	0 1 0	0 2 0	0 3 0	0 4 0	0 5 0	0 6 0	0 7 0	0 8 0	0 9 0	0 10 0	0 11 0	0 12 0	0 13 0	0 14 0	0 15 0	0 16 0	0 17 0	0 18 0	0 19 0	1 0 0	
	0 2 0	0 5 0	0 7 6	0 10 0	0 12 6	0 15 0	0 17 6	1 0 0	1 2 6	1 5 0	1 7 6	1 10 0	1 12 6	1 15 0	1 17 6	2 0 0	2 2 6	2 5 0	2 7 6	3 0 0	

\*On issuing Warrants against the body, there will be payable the Sheriff's Fee for conveying Defendant to Goal, at 1s. per mile, and which must be returned to Plaintiff if Defendant does not go to Goal. Where the Defendant lives beyond two miles from the Court House, then extra for every additional mile, 9d.



SUMMONS FOR COMMITMENT.

Where the amount remaining due does not exceed.....)	£1	£2	£3	£4	£5	£6	£7	£8	£9	£10	£11	£12	£13	£14	£15	£16	£17	£18	£19	£20
Poundage.....	0 0 10	0 1 5	0 2 6	0 3 1	0 4 2	0 5 0	0 5 10	0 6 8	0 7 6	0 8 1	0 9 2	0 10 0	0 10 10	0 11 8	0 12 6	0 13 4	0 14 2	0 15 0	0 15 10	0 16 8
Sheriff's Fees*.....	0 0 2	0 0 4	0 0 6	0 0 8	0 0 10	0 1 0	0 1 2	0 1 4	0 1 6	0 1 8	0 1 10	0 2 0	0 2 2	0 2 4	0 2 6	0 2 8	0 3 0	0 3 2	0 3 4	0 3 6
	0 1 0	0 2 6	0 3 0	0 4 0	0 5 0	0 6 0	0 7 0	0 8 0	0 9 0	0 10 0	0 11 0	0 12 0	0 13 0	0 14 0	0 15 0	0 16 0	0 17 0	0 18 0	0 19 0	0 20 0

\* If the Defendant resides more than Two Miles from the Court House, then extra for each additional mile nine pence.

HEARING ON SUMMONS FOR COMMITMENT.

Where the amount remaining due does not exceed.....)	£1	£2	£3	£4	£5	£6	£7	£8	£9	£10	£11	£12	£13	£14	£15	£16	£17	£18	£19	£20
Poundage.....	0 1 8	0 3 1	0 5 0	0 6 8	0 8 1	0 10 0	0 11 8	0 13 4	0 15 0	0 16 8	0 18 4	1 0 0	1 1 8	1 3 4	1 5 0	1 6 8	1 8 4	1 10 0	1 11 8	1 13 4

No Orders must be drawn up or reset, where an order for Commitment is made, but when former order is altered, a fresh order must be drawn up, and the Sheriff's Fee of two pence in the pound be charged, but no Millesse.

Scale of Fees in Proceedings in Plaints Continued.

**SPECIAL DEFENCE.**

In all cases . . . . .

£ s. d.  
2 6

**PAYING MONEY INTO COURT.**

On each payment not exceeding 10s. . . . .

1

Exceeding 10s., on the amount paid in the pound . . . . .

2

} Payable  
by  
Defendant.

**PAYING MONEY OUT OF COURT.**

On each payment not exceeding 10s. . . . .

1

Exceeding 10s. on the amount paid in the pound . . . . .

2

Notice of payment into Court . . . . .

2

} Payable  
by  
Plaintiff.

Taking recognizance bond or security for costs on amount claimed,  
in the pound . . . . .

7

Inquiring into sufficiency of sureties on amount claimed, in the  
pound . . . . .

10

**ALLOWANCE TO WITNESSES.**

Gentlemen, Merchants, Bankers, and Professional Men . . . . .

8 4

Tradesmen, Auctioneers, Accountants, Clerks, and Yeomen . . . . .

6 3

Journeyman, Laborers, and the like . . . . .

4 2

Traveling Expenses, per mile, one way . . . . .

6

## GENERAL DIRECTIONS.

In calculating the Poundage, all fractions of a Pound to be treated as an entire Pound.

Where the Plaintiff recovers less than the amount of his claim, so as to reduce the scale of costs, the Plaintiff to pay the difference.

The several Fees payable on proceedings in Replevin to be regulated on the foregoing scale, by the amount distrained for. And on proceedings for the recovery of Tenements by the yearly rent or value of the Tenements sought to be recovered, but in neither case to exceed the Fees payable on a demand for £20.

In cases of Interpleader, Summons to Sheriff to be issued gratis: poundage for hearing to be estimated on value of Goods claimed, which, in case of dispute, is to be assessed by the Judge. The costs of the Summons estimated on the above-mentioned value, to be included in the general costs, which may, in the discretion of the Judge, be awarded at the hearing.

The Fee Book shall be audited at the expiry of each quarter of the year ending on the last days of the months of March, June, September, and December.

And the Registrar shall divide the total sum received during the quarter as Judges and Officers Fees into fortieth parts, and pay the same to the Officers of the Court, and for the use of the Court in the following proportions, viz:

To the Judge, . . . . .	nineteen-fortieth parts.	
“ Registrar, . . . . .	ten	“ “
“ Clerk of the Writs, . . . . .	five	“ “
“ Sheriff, . . . . .	two	“ “
“ Court Fund, . . . . .	four	“ “

To provide for the costs of Court and Office Books, Stationery and other incidental expenses of the Court.

The Sheriff's Fees for the Service of Summonses, Orders, Warrants, &c., may be paid by the Registrar on the Sheriff's return of the service or otherwise, as may be just.

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