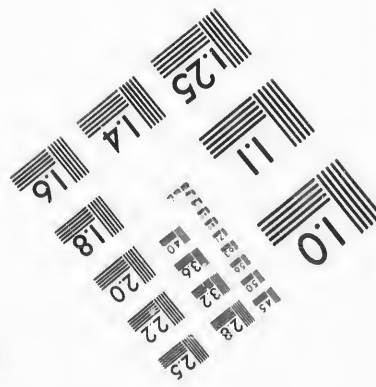
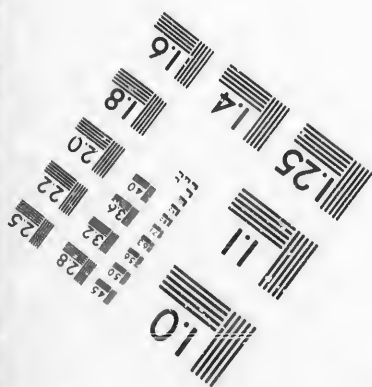
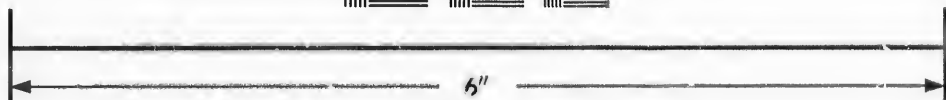
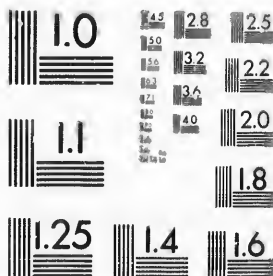


**IMAGE EVALUATION
TEST TARGET (MT-3)**



**Photographic
Sciences
Corporation**

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

1.8
2.0
2.2
2.4
2.6
2.8
3.0
3.2
3.6
4.0

**CIHM/ICMH
Microfiche
Series.**

**CIHM/ICMH
Collection de
microfiches.**



Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques

1.0
1.2
1.4
1.6
1.8
2.0
2.2
2.4
2.6
2.8
3.0
3.2
3.6
4.0

© 1987

Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- | | |
|--|--|
| <input type="checkbox"/> Coloured covers/
Couverture de couleur | <input type="checkbox"/> Coloured pages/
Pages de couleur |
| <input type="checkbox"/> Covers damaged/
Couverture endommagée | <input type="checkbox"/> Pages damaged/
Pages endommagées |
| <input type="checkbox"/> Covers restored and/or laminated/
Couverture restaurée et/ou pelliculée | <input type="checkbox"/> Pages restored and/or laminated/
Pages restaurées et/ou pelliculées |
| <input type="checkbox"/> Cover title missing/
Le titre de couverture manque | <input checked="" type="checkbox"/> Pages discoloured, stained or foxed/
Pages décolorées, tachetées ou piquées |
| <input type="checkbox"/> Coloured maps/
Cartes géographiques en couleur | <input type="checkbox"/> Pages detached/
Pages détachées |
| <input type="checkbox"/> Coloured ink (i.e. other than blue or black)/
Encre de couleur (i.e. autre que bleue ou noire) | <input checked="" type="checkbox"/> Showthrough/
Transparence |
| <input type="checkbox"/> Coloured plates and/or illustrations/
Planches et/ou illustrations en couleur | <input type="checkbox"/> Quality of print varies/
Qualité inégale de l'impression |
| <input type="checkbox"/> Bound with other material/
Relié avec d'autres documents | <input type="checkbox"/> Includes supplementary material/
Comprend du matériel supplémentaire |
| <input type="checkbox"/> Tight binding may cause shadows or distortion
along interior margin/
La reliure serrée peut causer de l'ombre ou de la
distorsion le long de la marge intérieure | <input type="checkbox"/> Only edition available/
Seule édition disponible |
| <input type="checkbox"/> Blank leaves added during restoration may
appear within the text. Whenever possible, these
have been omitted from filming/
Il se peut que certaines pages blanches ajoutées
lors d'une restauration apparaissent dans le texte,
mais, lorsque cela était possible, ces pages n'ont
pas été filmées. | <input type="checkbox"/> Pages wholly or partially obscured by errata
slips, tissues, etc., have been refilmed to
ensure the best possible image/
Les pages totalement ou partiellement
obscurcies par un feuillet d'errata, une pelure,
etc., ont été filmées à nouveau de façon à
obtenir la meilleure image possible. |
| <input type="checkbox"/> Additional comments:
Commentaires supplémentaires: | |

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	12X	14X	16X	18X	20X	22X	24X	26X	28X	30X	32X
				✓							

The copy filmed here has been reproduced thanks to the generosity of:

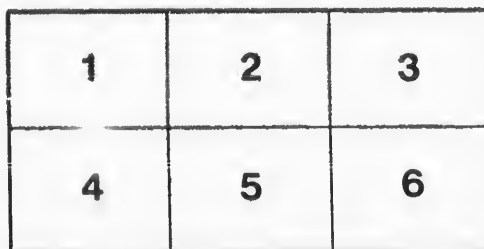
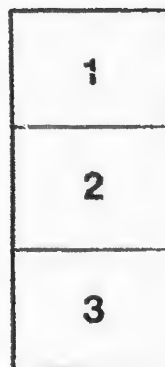
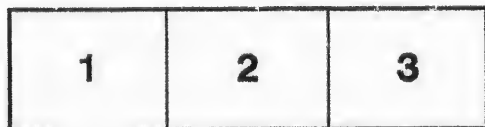
Metropolitan Toronto Library
Canadian History Department

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol \rightarrow (meaning "CONTINUED"), or the symbol ∇ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:



L'exemplaire filmé fut reproduit grâce à la générosité de:

Metropolitan Toronto Library
Canadian History Department

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole \rightarrow signifie "A SUIVRE", le symbole ∇ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.

NOTICE.

Just published, by W. SLADDEN, Esq., Parliamentary Agent,
“*The Act of 1857, Consolidating the Laws of Chattel Mortgages,
with Index, for Counting-House and Office.*” Royal 12mo.
Price, 1s. 3d.

H. ROWSELL.

Now preparing for the press, “*A Manual of the Registry Laws
affecting Lands in Upper Canada, with the principal cases
decided in our own Courts, &c., with Forms for practical use
and copious Index.*” By the same author.

H. ROWSELL.

Preparing for the press, “*A Comprehensive Index of the Un-
repealed Acts relating to County Courts, combined with ‘The
County Courts Procedure Act, 1856.’*” By the same author.

This Index will be prepared after the model of the one in
the opposite title page.

H. ROWSELL.

SYNOPSIS,

IN THE FORM OF

A COMPREHENSIVE INDEX

OF

THE COMMON LAW PROCEDURE ACT, 1856,

AND

THE COMMON LAW PROCEDURE ACT, 1857,

COMBINED.

BY

WILLIAM SLADDEN, Esq.,

PARLIAMENTARY AGENT.

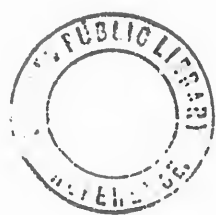
TORONTO: :

H. ROWSELL, KING STREET. :

1857.

512A27

Entered according to the Act of the Provincial Legislature, in the year of our Lord one thousand eight hundred and fifty-seven, by WILLIAM SLADDEN, in the office of the Registrar of the Province of Canada.



1074



W. Lecky L. P.

PREFACE.

The following compilation was begun for personal reference only, and under an impression that the labour attendant on it would be compensated by the information gained of the contents of the Common Law Procedure Acts of 1856 & 1857.

In this I have not been disappointed; but whether I have too hastily offered it in print to the Legal Profession must be determined by the amount of uses to which Lawyers may find it applicable, or the doom of the shelf, to which they may consign it.

If any object to its length as an Index, I would say, that it is to a large extent a synopsis; and, if others criticise it as too short for a synopsis, they, too, must kindly recollect its two-fold character; and if some should find it useful—as it is hoped they may—the compiler trusts to the fairness of the profession in dealing with its imperfections.

Pages 4 to 8 contain the leading heads of the Index.

The references throughout the Index are to the sections of the two acts combined in it. The letters and figures "C. L. P., 1857," indicate that the amended Common Law Procedure Act, passed in the last session of Parliament, is referred to. In all other instances "The Common Law Procedure Act, 1856," is intended.

WILLIAM SLADDEN,
Parliamentary Agent.

TORONTO, Sept. 1., 1857.

he year
WILLIAM
da.

W. Sladden

LEADING HEADS
OF THE
INDEX AND SYNOPSIS.

A.	PAGE	B.	PAGE
A Judge	9	Bail	34
Abandonment	9	Bailiff	35
Abatement	9	Bill of Exceptions	35
Absconding Debtor.....	10	Bill of Exchange	35
Account	16	Bond.....	36
Act	16	Breaches	37
Action	16	British Act	37
Admissions	21	C.	
Advertisement	21	Capias	38
Affidavit	21	Causes of Action	39
Agreement	24	Certificate	39
Answers	24	Christmas Day.....	40
Appearance	24	Claimant	40
Arbitration	27	Clerks of Crown, &c. ...	43
Arbitrator	28	Clerk of Process	43
Arrears of Rent	29	Client	43
Arrest	29	Cognovit Actionem	44
Assessment	29	Com. Law Pro. Act, 1856,	44
Assignment	29	Compulsory Reference...	45
Assizes	30	Concurrent Writs.....	45
Attachment	30	Contempt	45
Attorney	31	Contract	46
Award	33	Conveyance	46

M. J. J. J.

Cor
Cor
Cos
Cou
Cou
Cou
Cou
Cou
Cro

 Dan
Dea
Del
Del
Deo
Def
Def
Def
De
De
Dep
Dep
De
Dis
Dis
Dis
Dis
Div
Do
Do
Do

LEADING HEADS.

V

C.

	PAGE
Coroner	46
Corporation	46
Costs.....	46
Country Causes	51
County Court	51
County and Unions.....	52
Court	52
Court or Judge.....	52
Crown	60

D.

Damages	60
Death	60
Debtors.....	63
Debt Attachment Book	63
Declaration	63
Defendant	65
Defence	68
Defects	69
Demand of Rent	69
Demurrer	69
Deposit.....	70
Depositions	70
Deputy Clerk of Crown	70
Disabilities	70
Discharge.....	70
Discovery.....	71
Discontinuance.....	71
Distributive	72
Division Court.....	72
Docket	72
Documents	72
Dog Days.....	73

E.

	PAGE
Ejectment.....	73
Enlargement	82
Equitable Grounds	82
Error	82
Escape	82
Examination	83
Evidence	84
Execution.....	84
Executor	89
Exhibits	89

F.

False Swearing	89
Fees	89
Felony	89
Fieri Facias	89
Final Judgment	90
Forms	91
Fraud	91

G.

Gaol	91
Gaoler	91
Garnishee.....	91
Good Friday	93
Governor of Province ...	93

H.

Habeas Corpus	93
Holder	93
Holidays	93
Husband and Wife	93

Handwritten notes:
 34
 35
 35
 35
 36
 37
 37
 38
 39
 39
 40
 40
 43
 43
 43
 44
 56, 44
 45
 45
 45
 46
 46

I.	PAGE
Incumbrances	94
Indemnity	94
Indorsement.....	94
Injunction	94
Injunction, Writ of	94
Inspection	95
Issue.....	95
Interpleader.....	96
Interrogatories.....	96
Inventory.....	97
J.	
Joint Contractors.....	98
Joint Obligation	98
Joint Tenants	98
Joinder of Issue	98
Judge	98
Judge's Order	102
Judgment.....	102
Judgment Final	108
Judgment Rolls	109
Jurisdiction	109
Justification	110
L.	
Landlord and Tenant ...	110
Lease	111
Lessee	111
Legal Representative ...	112
Liability	113
Libel or Slander	113
Limitations	113
Limits	113
Loss	113

M.	PAGE
Mandamus	113
Margin	114
Marriage	115
Mesne Profits	115
Mileage	115
Money	115
Mortgagor & Mortgagee	115
Motions	116

N.

Negotiable Instrument...	116
New Trial.....	116
Nonsuit.....	116
Notarial Expenses.....	117
Notice.....	117
Office Copies	119

O.

Official Gazette	119
Omission.....	119
Oral Examination	119
Order	120
Ouster.....	120
Oyer	120

P.

Particulars	120
Parties Joinder, &c...	121
Payment.....	126
Payment into Court ...	127
Perishable Goods	127
Perjury	127
Personal Actions	127
Personal Service.....	128

Plain
Plea
Plea
Post
Priso
Privi
Prod
Proc
Prof

Reas
Rec
Red
Ref
Ref
Reg
Ren
Ren
Rep
Rep
Rep
Rep
Rev
Rev
Rev
Rul
Rul

Sat
Scin
Sec

PAGE
113
114
 ... 115
115
115
115
 agee115
116

 nt...116
116
116
 117
 117
 119

 119
 119
 119
 ... 120
 120
 120

 120
 &c... 121
 126
 t ... 127
 127
 127
 127
 128

P.	PAGE
Plaintiff	128
Plea	133
Pleading	133
Postea.....	139
Prisoner in Custody,	140
Privilege	141
Production	141
Proceedings in Action..	141
Profert	143

R.

Reasonable Certainty...	143
Record	143
Redemption	144
Reference Compulsory,	144
Reference to Arbitration	144
Registration	145
Remission	145
Renewal	146
Rent	146
Repeal	146
Replevin.....	146
Replication.....	147
Report Special	147
Revival	147
Revivor	147
Revocation	148
Rule of Court.....	148
Rules General	149

S.

Satisfaction of Debt...	149
Scire Facias	149
Security	149

S.

	PAGE
Separate Defence	149
Service	149
Set Off	150
Sheriff	150
Special Bail	154
Special Indorsement ...	154
Special Case	155
Specific Delivery	155
Staying Proceedings...	155
Suggestion	155
Summary Decision.....	157
Summons	157
Sunday	158
Superior Court	158
Sureties	158
Surrender	159

T.

Taxation.....	159
Taxing Master	159
Terms.....	159
Time	159
Title	164
Tools	164
Town & Country Causes.	165
Trespass	165
Trial	165

U.

Umpire	168
--------------	-----

V.

Vacation.....	169
Variance.....	169
Venue.....	169

V.		W.	
	PAGE		PAGE
Verdict	170	Writ of Appeal	174
View	171	Writ of Attachment... ..	174
		Writ of Capias.....	175
		Writ Concurrent	177
		Writ of Ejectment....	177
Warrants of Attorney,	171	Writ of Execution.....	177
Wearing Apparel.....	171	Writ of Injunction.....	177
Weekly Allowance....	171	Writ of Mandamus ...	177
Wife	171	Writ of Revivor.....	177
Witness	171	Writ of Summons	178
Writ	173		

.....	PAGE
.....	174
ment...	174
.....	175
nt	177
ent....	177
tion.....	177
tion.....	177
mus ...	177
r.....	177
ons	178

INDEX AND SYNOPSIS.

A JUDGE	SECTION
Whenever any power is given by this act to the court or a judge, the words "a judge" shall be held to authorise any judge of either of the superior courts to execute that power	315

ABANDONMENT

<i>Of Action</i> against defendants who appear to specially indorsed writ of summons, results, where plaintiff signs judgment and issues execution against the other defendants not appearing	66
<i>Of Action</i> ; how prevented	66

ABATEMENT

<i>Of Action.</i> Sheriff's death, resignation or removal pending action against debtor, &c. of absconding debtor not to operate as.....	53
<i>Plea of nonjoinder</i> of plaintiff, plaintiff at liberty to amend without order on payment of costs of amendment only, and defendant at liberty to plead <i>de novo</i>	69
<i>Plea of nonjoinder</i> of defendants in action on contract, plaintiffs proceedings to amend writ, &c...	71
<i>Plea of nonjoinder</i> of defendants, judgment between parties regulated at trial, and costs dependant on joint liability or otherwise of parties named in plea with original defendant	72

B

ABATEMENT *continued.*

<i>In consolidated suits</i> by husband and wife, on the death of either plaintiff, is to be abatement only so far as relates to the causes of action which do not survive	76
<i>Of Action, death</i> of plaintiff or defendant not to cause, but it may be continued	203
<i>Death of one or more Plaintiffs</i> or defendants not to create where the cause of action survives to the others	209
<i>Death of sole Plaintiff</i> not to cause, but legal representative by leave, may enter suggestion of death and of his representative character, and action may proceed.....	210
<i>Death of sole Defendant</i> or sole surviving defendant, not to cause where the action survives and plaintiff makes the suggestions and gives the notices thereon mentioned in section.....	211
<i>Death of either party</i> between interlocutory and final judgment not to cause, in cases where plaintiff or his executors might originally have maintained action against defendant or his executors	213
<i>Marriage of Woman</i> , plaintiff or defendant not to cause, and proceedings thereon.....	214
<i>Where but for this Act</i> , death of either party would have abated, the defendant or person against whom the action may be revived and continued may compel plaintiff, &c. by summons to proceed within a limited time	215
<i>In Ejectment</i> , death of claimant or defendant not to cause, but may be continued.....	244
See Ejectment and Sections	244 to 263

ABSCONDING DEBTOR

<i>Who deemed</i>	43
-------------------------	----

SECTION

SECTION

ABSCONDING DEBTOR *continued.*

on the
nt only
hich do
..... 76
not to
..... 208
nts not
ives to
..... 209
egal re-
tion of
er, and
..... 210
endant,
l plain-
notices
..... 211
ry and
where
ly have
his ex-
..... 213
ant not
..... 214
party
person
nd con-
mons to
..... 215
ant not
..... 244
244 to 263
..... 43

Property of, may be seized by writ of attachment 43
Attachment also to contain summons to (Schedule A. No. 7) 43
Dated the day of suing out 43
To issue in duplicate 44
In force six months from date 43
Renewed for purpose of effecting service on defendant in like manner as writ of summons..... 43
Affidavits required to warrant court or judge to direct issue of writ of attachment against..... 44
Affidavit what to contain 44
Rule or Order of court or judge, or judge of county court for attachment 44
To appoint time for putting in special bail 44
Served with writ of attachment, or where impracticable to serve him, plaintiff allowed by court or judge to proceed..... 45
Plaintiff proceeding with action after service, &c. required to prove his claim before judgment... 45
Plaintiff not to have execution against, till further affidavit of claim made 45
Execution under attachment, what indorsed to levy 45
Concurrent Writs of Attachment against, for attaching real or personal property in aid of original writ 46
Court or Judge may before or after final judgment but before execution issued let in defendant to special bail and to defend the action..... 47
Application to be supported by affidavit and accounting for the delay and disclosing a good defence on the merits..... 47
Special Bail to the action, putting in and perfecting, all his property attached in the suit and proceeds of perishable property sold shall be restored and paid to him 48

ABSCONDING DEBTOR *continued.*

- Special Bail* to the action, putting in and perfecting, shall be let in to plead and action to proceed as in ordinary cases begun by writ of *capias*..... 48
- Plaintiff after obtaining Judgment* need not file any other affidavit than that on which the writ of attachment was ordered in order to sue out a *ca. sa.* 48
- Before Execution issued* showing on motion in court and affidavits that he was not an absconding debtor, when writ of attachment sued out against, shall recover costs of defence 48
- Plaintiff against*, in case last mentioned, not to take out writ of execution for amount of verdict rendered or ascertained unless same exceeds, and then only for excess of defendant's taxed costs... 48
- Execution* may be taken out by, against plaintiff, where sum recovered by him in last case, is less than defendant's taxed costs, for the difference between plaintiff's verdict and such taxed costs 48
- Property of*, sheriff to whom writ of attachment directed to seize, including all rights and shares in any association or corporation (as in 12 Vic. chap. 23) as set forth in writ..... 49
- Perishable Goods*, belonging to, how sheriff to deal with..... 50
- Sheriff seizing perishable property of*, &c., and plaintiff after notice of same to himself or his attorney neglecting or refusing security, after lapse of four days next after notice, sheriff relieved from liability to plaintiff in respect of articles so seized, which sheriff is thereupon to restore to person from whose possession taken 51
- Debtor to*, or custodian of property of, after notice in writing served on him by sheriff, or by or on behalf of plaintiff, paying same or delivering

ABSCONDING DEBTOR *continued.*

perfect-
 proceed
 as..... 48
 not file
 he writ
 e out a
 48
 n court
 onding
 gainst,
 48
 not to
 verdict
 ds, and
 costs... 48
 aintiff,
 is less
 erence
 l costs 48
 hment
 shares
 2 Vic.
 49
 to deal
 50
 plain-
 torney
 pse of
 l from
 seized,
 person
 51
 notice
 or on
 vering

property to absconding debtor or to another for his use, deemed to have acted fraudulently and is liable therefor to plaintiff in writ of attachment, provided plaintiff recover judgment against absconding debtor, and if property seized by sheriff insufficient to satisfy judgment..... 52

Debtor to, sued by, after notice of attachment, may obtain stay of proceedings, and how..... 52

Debtor to, or custodian of property seized or assignee to whom assignment made after date of writ of attachment may on affidavit apply to court to stay proceedings in action, until known whether property seized by sheriff sufficient to discharge sum recovered against absconding debtor 52

Real and Personal Property, &c. of, attached by writ of attachment insufficient to satisfy execution or suit thereon against him, sheriff may by rule or order of court or judge, to be granted on application of plaintiff sue for and recover debt or property from debtor or custodian and costs 53

Actions by Sheriff against debtors or custodians of property of, defendant allowed to set up any defence which would have been available against absconding debtor at date of writ of attachment 53

Sheriff, recovering in such action, to operate as a discharge as against 53

Sheriff to hold money recovered by him of debtor of, &c. as part of assets of..... 53

Sheriff suing Debtor of, or custodian of property of, to declare in action with a particular introductory averment. 53

Sheriff not bound to sue debtors of, until attaching creditor give his bond with two sureties as indemnity for costs, &c..... 53

Handwritten note:
 See page 12

ABSCONDING DEBTOR *continued.*

- Action not to abate* by death, resignation, &c. of sheriff, but may be continued in name of successor to whom benefit of bond shall enure upon entering suggestion of facts as to change of sheriff on record..... 53
- Plaintiff in Writ of Attachment* to pay sheriff's costs of seizing, &c., and payments for inventory and appraising in the first instance 54
- Writ of Attachment* against, not to prevent any person who commenced suit in any court of record in Upper Canada the process wherein was served or executed before the suing out of writ of attachment, from proceeding to judgment and execution in his suit in the usual manner..... 55
- Such party obtaining execution* before plaintiff in any such writ of attachment against, shall have full advantage of priority of execution as though property, &c., of absconding debtor, still remained in his own hands and possession, subject to the prior satisfaction of all costs of suing out and executing attachment, if court or judge so order. 55
- Such action collusive or fraudulent*, court where brought, or a judge, may, on application of plaintiff on writ of attachment, set aside any such judgment or execution, or stay proceedings..... 55
- Property or Proceeds of*, sheriff finding in hands, &c., of constable or bailiff, or clerk of a division court by virtue of a warrant of attachment under 13 & 14 Vic., ch. 53, to demand and take from them, and they are bound to deliver under penalty of double value to be recovered by sheriff with costs of suit, which penalty, sheriff, (after deducting his own costs) is to hold as part of property of..... 56
- Creditor of, Suing out Warrant of Attachment*

ABSCONDING DEBTOR *continued.*

&c. of
 f suc-
 upon
 ge of
 53
 rriff's
 ntory
 54
 t any
 ecord
 erved
 of at-
 and
 55
 iff in
 have
 ough
 main-
 et to
 and
 rder. 55
 here
 plain-
 such
 55
 nds,
 ision
 nder
 from
 nder
 rriff
 after
 rt of
 56
 ment

under 13 & 14 Vic., ch. 53, may proceed to judgment, and on obtaining same and serving memorandum of amount and of his costs, certified by clerk of division court, entitled to rateable proportion with other creditors of absconding debtor who obtain judgment 56
Several Persons suing out Writs of Attachment against, the proceeds of the property in the sheriff's hands, to be rateably distributed among the plaintiffs who shall obtain judgment and issue execution, and court or judge may delay distribution to give reasonable time for obtaining judgment against 57
Creditor of, producing certified memorandum from clerk of division court of his judgment, to be considered a plaintiff who has obtained judgment and issued execution, and share accordingly ... 57
Property of, insufficient to satisfy such plaintiffs, none shall be allowed to share unless their writs of attachment were issued and placed in the hands of the sheriff for execution within six months from the date of the first writ of attachment; or in case of a warrant of attachment, unless same was placed in the hands of the bailiff before or within six months after date of the first writ of attachment 57
Unappropriated Proceeds, entitled to receive from sheriff, &c., books of account, &c., after one month next following the return of any execution against his property, or after one month from the distribution under the order of court or judge; and after satisfying the several plaintiffs entitled, if there shall be no other writ of attachment against the same property and effects in hands of sheriff 58

ABSCONDING DEBTOR *continued.*

Where Defendant ; the section relating to application to attach debts due from garnishee is not to apply to actions against 194

Attachments against, the sheriff may interplead as in writs of execution and provisions of the law in that behalf shall apply..... 27

C. L. P., 1857.

ACCOUNT.

Court or Judge may decide in summary way on application of either party or by reference wholly or in part to arbitrator appointed by parties, or to officer of court, or in country causes to judge of C. C. Award, &c., enforceable in same way as finding of jury in matter referred 84

Case to be stated or issue tried under direction of court where it appears that particular item involves a question of law or fact fit for decision of court or jury, and decision thereon to be acted on by arbitrator as conclusive..... 85

Compulsory Reference of issues of fact may be directed by judge at *nisi prius* during trial, &c. 156

Compulsory Reference may be directed by judge in like manner as under 84 & 85 sections of C. L. P. Act, 1856, and arbitrators appointed at *nisi prius* to be subject to provisions of said sections and to have powers expressed in the 86th, and subject to regulations in regard to arbitrators of 87th sections..... 12

C. L. P., 1857

ACT

Commencement of C. L. P. 1856, 21st August 1856. 1

Acts or parts of acts repealed 318

ACTION

Cause of Transitory, writs may be taken out

ACTION *continued.*

from office of clerk or deputy clerk of Crown and pleas of either court	6
<i>Same, for various causes, may be, by and against same parties and in same rights, except replevin and ejection.....</i>	75
<i>By Husband and Wife, on any cause of, accruing personally to wife in respect of which they are necessarily co-plaintiffs, the husband may add thereto claims in his own right, and separate actions by may be consolidated by order.....</i>	76
<i>Parties, where agreed on questions of fact to be decided, may, after writ and before judgment by consent and order go to trial without formal pleadings, on statements for trial in an issue in the form Sched. A. No. 8, which may be entered for trial and tried accordingly as ordinary action.</i>	77
<i>Special case, after writ and before judgment parties may by consent and order, state questions of law in, for opinion of court, without pleadings.....</i>	81
<i>Referred to Arbitrator, he may, and when, state his award in form of special case for opinion of court, and when action is referred, judgment if so ordered may be entered according to the opinion of the court</i>	86
<i>In contravention of agreement to arbitrate differ- ences, may be stayed by court or judge, when and on what proof and terms</i>	91
<i>Fair trial of, where prejudiced, embarrassed or delayed by peculiarly framed pleading, opposite party may apply to court or judge to have it struck out</i>	101
<i>Defence to, arising after begun, to be pleaded ac- cording to the fact without formal commence- ment or conclusion.....</i>	117
<i>Causes of. Statements schedule B.....</i>	140

applica-
 s not
 194
 plead
 e law
 27
 C. L. P., 1857.

y on
 holly
 es, or
 udge
 way
 84

on of
 a in-
 ision
 o be
 85

y be
 , &c. 156
 ge in
 L. P.

nisi
 tions
 and
 rs of
 12
 C. L. P., 1867

856. 1
 318

out

ACTION *continued.*

<i>Accounts</i> involving investigation of, judge may direct reference during trial	156
<i>Discovery of Documents.</i> In superior courts either party may apply on affidavit to judge for, in possession, &c., of opponent, and for order to answer by affidavit.....	175
<i>Interrogatories</i> in writing for discovery may in superior courts be delivered on leave to either party, by plaintiff with declaration and defendant with plea, and to be answered within ten days by affidavit filed	176
<i>In Superior Courts or C. C.</i> Plaintiff or demandant, being nonsuit, or a verdict for plaintiff or demandant, defendant or tenant, judge may certify for immediate execution, or on day to be named	182
<i>Against Garnishee</i> by judgment creditor, proceedings on, to be the same as near as possible as in writ of revivor issued under Act	197
<i>For detention of Chattels</i> , court may order specific delivery in execution	201
<i>Defendant in</i> , not to have option of retaining chattel, or paying value assessed.....	201
<i>Court</i> not otherwise ordering, plaintiff to have specific delivery under distraint of sheriff till chattel rendered, or at his option the value of chattel made out of defendant's goods	201
<i>Damages in</i> , of plaintiff, how recovered	201
<i>Plaintiff in</i> , may apply to judge for execution for specific return.....	201
<i>Plaintiff in</i> , to have option, unless court otherwise orders, to have execution on defendant's goods for value of the chattel	201
<i>Costs of Plaintiff in</i> , for detention of chattel, damages and interest how recovered	201
<i>On Judgment</i> , party at liberty to proceed by, where	

e may 156
 s either
 for, in
 der to 175
 ay in
 either
 d de-
 in ten
 176
 mand-
 or de-
 certify
 named 182
 oceed-
 e as in
 197
 pecific
 201
 g chat-
 201
 have
 ff till
 lue of
 201
 201
 on for
 201
 erwise
 goods
 201
 attel,
 201
 where

ACTION *continued.*

- execution not revived by leave of court, when. 204
Death of a plaintiff or defendant not to abate, but it may be continued 208
Death of one or more plaintiffs or defendants where cause of action survives to surviving plaintiffs, or against surviving defendants, not to abate, but being suggested on the record, to proceed at suit of surviving plaintiffs against surviving defendants 209
Death of sole Plaintiff not to abate, but legal representative by leave, may enter suggestion of death and of his representative character, and action to proceed 200
Death of sole Defendant, plaintiff's proceedings as to suggestion to be entered on record, and proceedings against executor..... 211
Pleadings before death, in case of..... 211
No Pleadings before death, in case of 211
Declaration before death, but no plea 211
Plea before death, the new defendant to plead to suggestion only by way of denial, or such plea as may be appropriate to him as executor, &c., unless leave given to plead fresh matter 211
Plea before death, but not arrived at issue, the new defendant besides pleading to suggestion within eight days after service to continue pleadings to issue, and the pleadings on the declaration, and the suggestion to be tried together 211
Plaintiff recovering, entitled to judgment for debt and costs prior to suggestion, and costs of suggestion, and subsequent, as in an action originally commenced against executor. 211
Death of either party between interlocutory and final judgment not to abate, where it might originally have been brought against executor of

ACTION *continued.*

- defendant, or by executor of plaintiff against defendant; and plaintiff or his executor to have writ of revivor, Sch. A., No. 11, against defendant, if living, after such interlocutory judgment, or if dead, then against his executor, &c., to shew cause why damages in such action should not be assessed and recovered by plaintiff or his executor 213
- Appearance* at return of writ and no cause shewn to arrest final judgment, or default in appearance, damages to be assessed, &c., and after a sessment final judgment for plaintiff 213
- Marriage of Woman*, plaintiff or defendant, not to abate 214
- Proceeded* with to judgment notwithstanding... 214
- Judgment* may be against wife alone 214
- By suggestion* judgment may be obtained against husband and wife and execution issued thereon... 214
- Judgment* for the wife, execution may issue thereon, by authority of husband, without any writ of revivor or suggestion..... 214
- Attorney* suing or defending for wife appointed by her while sole, to continue unless husband countermands and attorney changed..... 214
- Where abatement* would have arisen but for this act by death of either party, and in which the proceedings may be revived and continued, defendant or person against whom it may be continued, may apply by summons to compel proceeding within time to be appointed by judge 215
- In default* of such proceeding, the defendant &c., may enter suggestion of default, &c., and have final judgment for costs of action against plaintiff, or person entitled to proceed in his room; in the latter case to be levied of the

ACT

AD.

AD

AFI

ACTION *continued.*

goods of the testator or intestate.....	215
<i>Of Ejectment, not to abate</i> by death of claimant or defendant, but it may be continued	244
<i>Of Ejectment, by suggestion</i> of death may be proceeded with, at suit of surviving claimant where right of deceased claimant survives	245
<i>For Injunction</i> , proceedings on.....	285
<i>Sheriff</i> cannot release, after assigning bond to the plaintiff.....	305
<i>Not liable</i> to action after assignment of bail bond to plaintiff	305
<i>On bail bond</i> , plea of surrender of principal to sheriff, and refusal on his part to accept, good answer to	306
<i>Holder of bill or note</i> may proceed against all the parties in one action	9

C. L. P., 1857.

ADMISSIONS

<i>Under notice to admit</i> , proved by affidavit of attorney in cause or clerk.....	166
---	-----

ADVERTISEMENT

<i>In Official Gazette</i> , of lands for sale under execution during currency of writ, sufficient commencement of execution to enable same to be completed after it shall be returnable, by sale and conveyance.....	188
---	-----

AFFIDAVIT

<i>For Capias</i> , what to contain and where entitled...	23
<i>Service writ of Summons</i> , what to contain.....	32
<i>Plaintiff to apply on</i> , for leave to proceed in action without personally serving writ of summons.....	34
<i>On which Court or Judge</i> may direct proceedings against party out of jurisdiction, how to be	

against
 have
 defen-
 ment,
 shew
 ot be
 his
 213
 cause
 n ap-
 after
 213
 not to
 214
 ing... 214
 214
 against
 eon... 214
 issue
 at any
 214
 pointed
 asband
 214
 his act
 proceed-
 endant
 tinued,
 ceeding
 215
 endant
 c., and
 against
 in his
 of the

AFFIDAVIT *continued.*

sworn and when to be used and admitted in evidence	40
<i>To ground attachment</i> against absconding debtor, contents of.....	44
<i>Person forging signature to</i> , or using or tendering in evidence with false signature, knowing it to be so, to be guilty of felony, and on conviction, to be confined at hard labour in Penitentiary not less than four, nor more than ten years..	40
<i>Accessories</i> , how dealt with.....	40
<i>Persons wilfully</i> , &c., making false one to be guilty of felony.....	40
<i>On Defendant's application</i> to be let in to defend writ of summons with special indorsement, where he has not appeared, must account for delay and disclose defence on merits	60
<i>Of truth of plea in abatement</i> required to be filed with plea, when	73
<i>Before leave to plead and demur</i> at same time, may be required by court; party or attorney may make and contents.....	129
<i>On application to plead several matters</i> when required by court. Party or attorney may make and contents.....	130
<i>Of merits required</i> , on application to set aside judgment signed for pleading several pleas without leave	135
<i>Of admissions</i> under notice to admit, may be made by attorney in cause or clerk.....	166
<i>Of service of notice to produce</i> may be made by attorney in cause or clerk.....	167
<i>Motions</i> made on, opposite party may, by leave, make affidavits in answer to, upon any new matter arising out of.....	169
<i>Summons</i> for person to appear before judge, &c.,	

AFFIDAVIT *continued.*

SECTION

to be examined, &c., may be had by party to any civil action where he refuses to make.....	174
<i>Interrogatories</i> to be answered by, within ten days and filed	176
<i>Order for Interrogatories</i> for plaintiff, to ground, what to contain	177
<i>Contents</i> , where for defendant	177
<i>To ground application</i> for leave to deliver interrogatories for discovery, where plaintiff or defendant unable to join in application	177
<i>To sue out Ca. Sa.</i> when defendant has not been held to special bail, similar to that made on issue of writ of <i>capias</i>	185
<i>Of Judgment Creditor</i> or attorney, necessary to ground order to attach debts due from garnishee to judgment debtor.....	194
<i>In Ejectment</i> , required for court or judge to change place of trial from place of venue to another county	236
<i>In Ejectment</i> , denying ouster, &c., filed by defendant, joint tenant, &c., with claimant, where right of claimant to share is admitted, what to contain	242
<i>Prisoner in Execution</i> to make, to ground order for weekly allowance	295
<i>Prisoner in Execution</i> for three successive months after fifteen days' notice to plaintiff of intention to apply for discharge making, what to contain, to ground application for rule or summons for discharge.....	300
<i>On application for leave to appear</i> to defend action on bill of exchange, &c., after July 1st, 1858; what to contain	5
<i>Of one subscribing witness</i> required to prove certificate of discharge of registry of judgment to be	

C. L. P., 1857.

SECTION

ed in 40

debtor, 44

dering

to be

on, to

ry not

..... 40

..... 40

to be

..... 40

defend

where

y and

..... 60

e filed

..... 73

time,

orney

..... 129

en re-

make

..... 130

judg-

without

..... 135

made

..... 166

de by

..... 167

leave,

y new

..... 169

e, &c.,

AFFIDAVIT *continued.*

produced to registrar	20
-----------------------------	----

C. L. P., 1857.

AGREEMENT

<i>To arbitrate</i> , between parties and one or more of them subsequently bringing action or suit against the others, court or judge in which action brought may, on application of defendants, after appearance and before plea make a rule or order to stay proceedings.....	91
---	----

ANSWERS

<i>Of Debtor, Prisoner in Execution</i> , on oath to plaintiff's interrogatories, sufficient notice of and filing to be given to plaintiff's attorney	296
<i>Debtor, &c.</i> , after order for weekly allowance, four days' notice of filing, to be given	297

APPEARANCE

<i>Entry by Plaintiff</i> for defendant, need not be	59
<i>Default in</i> by defendant to writ of summons specially indorsed, plaintiff on filing affidavit of personal service, or a rule of court or judge's order to proceed under act, and the writ of summons at once to sign final judgment (Schedule A. No. 7, bis).....	60
<i>Default in</i> , defendant to writ of summons with special indorsement, where on application supported by affidavit, accounting for non-appearance and disclosing defence on merits, court or judge before or after final judgment may let in defendant to defend	60
<i>Default in</i> plaintiff's steps when writ of summons not specially indorsed	61
<i>Defendant may appear</i> at any time before judgment	62

SECTION

SECTION

APPEARANCE *continued.*

..... 20
 C. L. P., 1357.

more of
 against
 brought
 appear-
 der to
 91

ath to
 of and
 296
 e, four
 297

be 59

mnons
 avit of
 dge's
 f sum-
 hedule
 60

s with
 n sup-
 arance
 judge
 efend-
 60

mnons
 61

judg-
 62

Appearing after time specified in writ of sum-
 mons or warning on *ca. sa.* or on rule or order
 to proceed, as if personal service had been
 effected, shall after notice thereof to plaintiff or
 attorney be in same position as to pleadings or
 other proceedings in action as if appearance
 in time 62

Appearing after time appointed in writ, not to
 entitle him to any further time to plead than if
 he had appeared within such appointed time 62

Appearing after time appointed and omitting to
 give notice to plaintiff or his attorney, plaintiff
 may proceed as in case of non-appearance 62

Defendant in person to give address where plead-
 ings and other proceedings not requiring personal
 service may be left..... 63

Not receivable if address not given 63

Address where illusory or fictitious, appearance is
 irregular 63

Irregular, for illusory or fictitious address may
 be set aside by court or judge 63

Form and mode of, to writ of summons 64

Writ amended by plaintiff, no further required
 after notice of defendant's objection or plea in
 abatement for nonjoinder 69

To Writ of Revivor, sufficient by notice in writing
 to plaintiff his attorney or his agent..... 205

Default in, after notice by executor of sole de-
 fendant dying, plaintiff's proceeding against,
 where there have been pleadings before de-
 fendant's death 211

To Writ of Ejectment within sixteen days after
 service 221 and 224

Notice of Defendant's Title or claim to be filed
 with..... 224

APPEARANCE *continued.*

- Notice* to be filed with, addressed to claimant stating that defendant besides denying title of claimant asserts title in himself or in some other persons (stating whom) through whom he claims 224
- In Ejectment* and to defend, allowed by court, &c. to any person not named in writ, on filing affidavit showing possession by himself or tenant... 225
- In Ejectment*, to be entered in the office from which writ issued, and all subsequent proceedings to be conducted in same office 226
- In Ejectment by Landlord*, to state that he appears as landlord 227
- In Ejectment*, any person may limit his defence to part of property in writ, describing same in notice, entitled in court and cause, and signed by party appearing, or attorney, to be served within four days after appearance, or attorney indorsed on writ, or if none, then to be filed in proper office 228
- Absence of Notice to defend in part*, to be deemed an appearance to defend for whole..... 228
- In Ejectment*, and defences, where set up by persons not in possession, may be struck out or confined by judge 230
- In Ejectment, default in*, plaintiff at liberty to sign judgment (Sch. A. No. 13)..... 231
- Entered* where defence limited to part only, plaintiff at liberty to sign judgment for the part to which defence does not apply (Sch. A. No. 14.) 231
- In Ejectment*, when entered, claimant or attorney may make up issue without pleadings 232
- In Ejectment*, at or within four days after, joint tenants, &c., with claimant, may give notice of defence as such 242
- To Action on Bill of Exchange, &c.*, after 1st of July, 1858, defendant not obtaining leave to

APP

ARBI

APPEARANCE *continued.*

appear and not appearing, plaintiff after affidavit of personal service of writ, &c., may sign final judgment, and issue execution at the end of fifteen days..... 4
C. L. P., 1857.

To Action on Bill of Exchange, &c., any judge of the superior or county court on application within sixteen days from service of writ shall allow defendant to appear and defend on paying into court the sum indorsed on writ 5
C. L. P., 1857.

Or, on affidavit, satisfactory to judge, which disclose a legal or equitable defence, or such facts as would make it incumbent on the holder to prove consideration, or such other facts as judge may deem sufficient to support application for leave to appear and defend, and on terms as to security, &c., in discretion of judge 5
C. L. P., 1857.

To action on Bill of Exchange, &c., leave to appear and defend may under special circumstances be given after judgment and execution on setting aside of judgment and execution 6
C. L. P., 1857

ARBITRATION

Mere matters of account may be ordered by court or judge, at any time after writ, to be referred wholly or in part to arbitrator appointed by the parties or to an officer of the court, or the judge of the county court in country cases..... 84

Where two Arbitrators and no prohibition against appointing an umpire, they may so appoint at any time within the period for making the award 94

Agreement or submission to, by consent, whether by deed under seal or not, any party to it may make it a rule of any one of the superior courts

ARBITRATION *continued.*

- of law or equity, when agreement does not prohibit it 97
- To be made Rule of* particular superior court when so provided in the agreement 97
- When made a Rule of* one superior court, no other of superior courts to have jurisdiction to entertain motion respecting arbitration or award 97

ARBITRATOR

- On compulsory reference*, of mere matter of account to act on finding of jury or decision of the court, on issues tried or special case upon particular items of account..... 85
- On compulsory reference*, or consent of parties, where submission is or may be made rule of court, may state his award in form of special case for opinion of court, when 86
- On compulsory reference* of matter of account, power of, and of court the same as on reference by consent under a rule of court or judge's order... 87
- Or Umpire*, court or judge may remit matters referred to, whether under this act or otherwise, where the submission shall be made a rule of court, for reconsideration, &c. 88
- Parties after agreement not appointing*, or arbitrator or umpire refusing or becoming incapable to act or dying, and original document not shewing that vacancy is not to be supplied, judge of superior court in law or equity, after seven clear days' notice served, from any party to agreement on the remaining parties, or summons, may appoint, &c..... 92
- Appointed sole Referee*, may be, by one party, where the other party omits after notice to appoint his arbitrator 93

ARB

ARR

ARI

ASS

ASS

ARBITRATOR *continued.*

- Revocation* of such appointment may be by court... 93
On compulsory reference of account may be appointed by parties, and in default, by judge..... 156

ARREARS OF RENT

- Ejectment* may be brought where half a year's rent due and landlord has right of re-entry..... 263
Ejectment, lessee seeking injunction against landlord to pay arrears of rent 264
Ejectment to be discontinued on payment to landlord or attorney or into court of arrears and costs 265

ARREST

- Sheriff* may re-arrest debtor where he apprehends insufficiency of sureties..... 304

ASSESSMENT OF DAMAGES

- Notice of.* Eight days 146
Countermand four days, unless short notice, when two days 147
New; may be ordered by the court in which action brought 184

ASSIGNMENT

- New*, one only to be pleaded to any number of pleas to same cause of action 136
To state that plaintiff proceeds for causes of action different from all those which plea professes to justify, or for excess over and above what all the defences set up by such pleas justify or both..... 136
Plea already pleaded to declaration not to be pleaded to new assignment, except plea of denial unless by leave 137

ASSIGNMENT *continued.*

*Of bond, on bail to the limits, by sheriff to plaintiff
how to be made, and effect of.....* 305

*Of bond, on bail to the limits with new condition
for allowance by judge of C. C. may be made by
sheriff to plaintiff upon breach of the condition,
and the like remedies as in respect of breaches
in the 305th section of C. L. P. Act, 1856 ...* 25

C. L. P., 1857.

ASSIZE, COURTS OF, AND NISI PRIUS

*Of Oyer and Terminer and general gaol delivery
to be held in every county, &c. in U. C. (except
where Toronto is situated) in every year,
In the Vacations between Hilary and Easter
Terms. In the Vacations between Trinity and
Michaelmas Terms, with or without commissions
on days to be named by Chief Justice, and
Judges of Superior Courts* 30

C. L. P., 1857.

*To be held in county where Toronto is situated
three times a-year, to*

*Commence on the Thursday next after the Muni-
cipal Elections in January,*

on the second Monday in April,

on the second Monday in October..... 30

C. L. P., 1857.

ATTACHMENT

*Form of Writ of, against absconding debtor, dura-
tion and renewal. Schedule A. No. 7.* 43

*Application for against witnesses in contempt, for
disobeying rule or order, for examination, &c., the
rule or order must be made a rule of court* 171

*Debt Attachment Book, to be kept in office of clerk
of the crown and deputies in superior courts, and
contents and copies of entries may be taken ...* 199

Of Debts, costs on application for, left to discretion

ATTACHMENT *continued.*

of court or judge..... 200
Writ of Injunction, may be enforced by, when... 285
Absconding Debtor against, sheriff to have the
right of interpleading as in cases of writ of ex-
ecution 27

C. L. P., 1857.

ATTORNEY

Whose name indorsed on any writ on demand in
writing by defendant shall declare whether writ
was issued by him or by his authority, and if
yea, then in case court or judge order, declare
in writing within time limited by judge, the pro-
fession and residence of plaintiff, otherwise guilty
of contempt..... 25
Declaring that writ not issued by him, or by his
authority, all proceedings thereon shall be stayed,
and no further proceedings shall be taken thereon
without leave 25
Plaintiff's to pay costs of defendant's taxation
of costs indorsed on writ, when more than one
sixth disallowed 26
Plaintiff's notice to, by sheriff, of seizure of pro-
perty of absconding debtor under writ of attach-
ment, good 51
Plaintiff's on producing written authority may re-
ceive money out of court 121
Of Party asking Leave to plead and demur at
same time, may make affidavit 129
Of Party asking Leave to plead several matters,
may make affidavit..... 130
Service of Notice to Produce proved by affidavit of,
or clerk 167
In cause, who issued Ca. Sa. giving written order
under his hand, shall justify sheriff, &c., in dis-
charging party unless client has given notice to

CTION

305

25
P., 1857.

30
1857.

30
1857.

48

71

99

ATTORNEY *continued.*

contrary	191
<i>Not justified</i> in giving written order to sheriff, &c., to discharge party in custody under <i>ca. sa.</i> without consent of client	191
<i>Of Judgment Creditor</i> may make affidavit required to attach debts due from garnishee	194
<i>In Action, for wife</i> when sole, to continue the action or defence for her after marriage, unless husband countermands, and attorney changed	214
<i>Name to be indorsed</i> issuing writ of ejection, or name and residence of party, where no attorney	221
<i>Notice to limit defence</i> in ejection to part of premises, may sign	228
<i>Ejection, for Claimant</i> in, may sign discon- tinuance of action against one or more defen- dants, for client	254
<i>Ejection, for Defendants</i> in, to attest signature of defendants' to notice confessing the action.....	257
<i>For Lessor in Ejection</i> , may receive arrears of rent and costs, and action to discontinue thereon.....	265
<i>Redemption of Mortgage</i> , of party having right to, and admitted to defend, may, before principal interest and costs are paid into court under the 271st section, by writing under his hand notify the attorney on the other side, that the right to redeem and the sum due are contested.....	272
<i>Prisoner in Execution</i> giving fifteen days' notice to of intention to apply for discharge is sufficient	300
<i>Prisoner in Execution</i> , giving ten days' notice to, of filing answers to interrogatories, and of intention to apply for leave to be re-admitted to limits, sufficient.....	307
<i>Debtor</i> , giving four days' notice to, of intention to move allowance of bond to the limits sufficient	26

AWARD

SECTION

CTION

191

Under Compulsory Reference of matter of account enforceable by same process as the finding of a jury 84

191

Of Arbitrator under Compulsory Reference, or by consent of parties, where the submission is or may be made rule or order of superior court, may be stated in form of special case for opinion of court 86

194

214

On Compulsory Reference, to be set aside on application within first six days of term next following publication, whether made in vacation or term... 89

221

228

By sole Referee, appointed by one party, the other party failing to appoint, when to be binding on both parties, as if by consent..... 93

254

To be made within three months after appointment, &c., and the parties may enlarge by consent, the term for making..... 95

257

265

Time for making, may be enlarged by consent in writing by court or judge, and where no period is stated, then to be deemed an enlargement for one month 95

272

300

On any Order of Reference, when directing possession to be delivered of lands, &c., capable of being the subject of ejectment, or, that any such party is entitled to possession of such lands, court may order any party to the reference in possession, or any party put into possession by or claiming under him, since the agreement to refer, to deliver possession to the party entitled thereto, and the award shall have the effect of judgment in ejectment and execution may issue and possession shall be delivered by the sheriff as in such judgment..... 96

307

26

1657

Specifying Court of which agreement to be made a rule, to operate as limitation to that court only,

AWARD *continued.*

- where the document authorising the reference was not before the publication of the award a rule of court 97
- Special Case*, stated in, for opinion of court, when, and the award specifies a particular count and the agreement for reference was not before the publication of the award a rule of court, the agreement can be made a rule of that court only which is specified in the award 97
- On Compulsory Reference*, to be moved against, within first four days of term next after making. 156

BAIL

- Writs of Execution* to fix, may be tested and returnable in vacation 192
- In Ejectment* by landlord against tenant holding over, to secure claimant's costs and damages, may be ordered by court or judge to be found by tenant 266
- Tenant* neglecting or refusing, claimant may have judgment by order of court 266
- In Ejectment*, manner of entering into recognizances 269
- No action* against, after six months from time possession actually given to landlord 269
- Fees* and charges thereon 269
- To the Limits*, sheriff may take of any debtor in gaol on mesne process 302
- To the Limits*, bond taken by sheriff under the 302nd section of the C. L. P. Act, 1856, to contain a further condition as to allowance by judge of C. C. within thirty days 25
- C. L. P., 1857.
- To the Limits* maybe allowed by county court judge on debtor's motion, on five days' notice in writing to plaintiff or attorney 26
- C. L. P., 1857.

BAILIFF

Of Division Court, holding property of absconding debtor under warrant of attachment, to deliver same to sheriff executing writ of attachment... 56

Of Division Court to levy on execution issued against garnishee, when 16

C. L. P., 1857.

Of Division Court, seizing goods under warrant of execution, when sheriff at same time seizes under fi. fa. from Q. B., C. P., or C. C., the right to goods to be determined by priority of time of delivery of writ to sheriff, or warrant to bailiff 24

C. L. P., 1857.

Time of delivery of warrant, how determined... 24

C. L. P., 1857.

BILL OF EXCEPTIONS

On trial of Ejectment, may be tendered by either party 238

BILL OF EXCHANGE AND PROMISSORY NOTE

One action, the obligation or right of plaintiff to include in, all or any of the drawers, makers, endorsers, or acceptors of, not restricted or diminished 75

Loss of, or other negotiable instrument, court may order, shall not be set up in action, if indemnity given 292

Actions commenced on, after 1st July, 1858, in superior courts, within 6 months after maturity, to be by writ of summons in special form, Schedule No. 1, and indorsed as therein mentioned .. 4

C. L. P., 1857.

Plaintiff on filing affidavit of service of such writ within the jurisdiction, or an order for leave to proceed under the C. L. P. Act, 1856, and copy of the writ of summons and indorsements, in case defendant shall not have obtained leave

SECTION

BILL OF EXCHANGE AND PROMISSORY NOTE

continued.

- to appear and have appeared, at once to sign final judgment in form, Schedule No. 2, (on which no proceeding in error shall be), for any sum not exceeding sum indorsed on writ, with interest to date of judgment, and a sum for costs to be fixed by rule of court, unless plaintiff claims more than such fixed sum when the costs shall be taxed, and plaintiff may issue execution at the end of fifteen days after signing judgment 4
C. L. P., 1857.
- Deposit* of, with officer of court may be ordered forthwith by court or judge in any proceedings under this act 7
C. L. P., 1857.
- Security for costs*, until given by plaintiff, court or judge may order stay of proceedings..... 7
C. L. P., 1857.
- Dishonoured*, holder of, shall have the same remedies for recovery of the expenses of noting and protesting, or of damages for non-payment, where recoverable, as he has under act for recovery of the bill or note..... 8
C. L. P., 1857.
- Holder of*, may proceed against all the parties under this act in one action..... 9
C. L. P., 1857.
- Sheriff* may seize under fi. fa. against goods..... 22
C. L. P., 1857.

BOND

- Bail to Limits*, to contain not less than two or more than four sureties, in what penalty, and how conditioned 302
- Assignment*, sheriff may make to plaintiff after breach of condition by debtor 305

BOND *continued.*

Bail to Limits, taken by sheriff under C. L. P., 1856, to have further condition, that the debtor will get it allowed by judge of C. C. within thirty days from delivery to sheriff, &c. 25
C. L. P., 1857.

On Breach of the last condition to be assignable and like remedies had as in respect of breaches in the 305th section of C. L. P. 1856. 25
C. L. P., 1857.

Bail to Limits. County court judge may allow on debtor's motion on four days' notice in writing to plaintiff or attorney, and if disallowed, another bond may be made and like motion for allowance 26
C. L. P. 1857.

Execution Creditor to give to sheriff with two sureties indemnifying him from costs, &c., on suing parties liable on cheques, bills of exchange, &c., expense of, to be paid out of money recovered in action. 22
C. L. P. 1857.

BREACHES

British Act 8 and 9, W. III., c. 11, "*An act for better preventing frivolous and vexatious suits*" as to the assignment or suggestion of breaches or as to judgment to remain in force in Upper Canada 145

BRITISH ACT

The 8 and 9 W. III. c. 11, "*An act for the better preventing frivolous and vexatious suits*" as to the assignment or suggestion of breaches or as to judgment to remain in force in Upper Canada 145
The 14 Geo. II., c. 17, "*An act to prevent inconveniences from delays of causes, after issue joined*" so far as relates to judgments as in case

BRITISH ACT *continued.*

of a nonsuit not to remain in force in U. C.

CAPIAS

<i>Writ</i> , where intention to arrest and hold defendant to special bail	22
<i>Form of</i> , schedule A. No. 2.	22
<i>Direction</i> to sheriff of any county or union of counties in Upper Canada	22
<i>Copies of writ</i> , memorandums and endorsements equal to number of persons to be arrested to be delivered with original writ to sheriff, &c.	22
<i>Sheriff</i> after execution of process to deliver copy to every person and indorse on writ within three days of service or arrest the true day of execution thereof.	22
<i>Defendant</i> taken or charged in custody on, and imprisoned for want of sureties or appearance, plaintiff may before end of next term after arrest of defendant declare against him and proceed under third and fourth rules of Queen's Bench, Easter Term, 5 Victoria	22
<i>Plaintiff or Attorney</i> may order sheriff, &c., to arrest one or more of defendants and to serve a copy on one or more of the others.	22
<i>Where served</i> only on one defendant to operate as service of writ of summons	22
<i>Affidavit</i> for suing out of, plaintiff's cause of action	23
<i>For debt certain</i> (not less than ten pounds)	23
<i>Cause of action</i> other than a debt certain, capias may be issued, a judge's order having been first obtained, in cases and manner as heretofore the practice	23
<i>Privilege from arrest</i> preserved	23
<i>After Writ of Summons</i> , and before judgment plaintiff may have on affidavit as in 23rd section	

CTION

SECTION

CAPIAS *continued.*

	or by judge's order. Sch. A. No. 6.....	42
	<i>Ad satisfaciendum</i> , against absconding debtor, after judgment in proceedings upon writ of attachment may be obtained without further affidavit than that on which writ of attachment was ordered..	48
22	<i>Ad satisfaciendum</i> , where defendant has been held to special bail, may be sued out on the affidavit on which the writ of capias was issued in the first instance.....	185
22	<i>Where Defendant</i> not held to special bail, may issue after judgment, on affidavit in same form as for suing out capias, or affidavit of plaintiff, his servant or agent, of reason to believe that defendant has parted with his property or made secret or fraudulent conveyance to prevent execution	185
22	<i>Discharge</i> of debtor from custody, attorney or client may authorise	191

CAUSES OF ACTION

22	<i>By or against</i> same parties and in same rights may be joined in one suit except replevin and ejectment	75
22	<i>Where two or more</i> joined are local, and arise in different counties, venue may be in either county	75
22	<i>Different</i> , the trial of together may be prevented by court or judge if inexpedient, and in such case court or judge may order separate records and separate trials.....	75
23	<i>Not surviving</i> , on death of one of co-plaintiffs' husband and wife, the action so far to abate but not otherwise	76

CERTIFICATE

Of Judgment, given by deputy clerk of the crown

CERTIFICATE *continued.*

- may be registered and bind lands 15
- For Costs* by judge what to contain, and where and when made to entitle plaintiff to, in trespass or trespass on the case where verdict of jury less than 40s. 312
- For immediate execution*, judge may make, or day named on back of record at any time before end of assizes 182
- Discharge of judgment.* Form and proof of certificate 20

C. L. P. 1857.

CHRISTMAS DAY

- Where the last* of the ten days for proceedings mentioned in writs of summons or capias, same to be taken on following day 65

CLAIMANT

- In Ejectment*, or his attorney may make up issue without pleadings, and what to contain 232
- In Ejectment*, how to proceed to trial, and what the questions at trial shall be, and entry of verdict 234
- In Ejectment*, entitled to verdict and costs although title expired between writ and trial 235
- In Ejectment*, not appearing at trial and defendant appearing, nonsuited 237
- In Ejectment*, jury finding for, may sign judgment and issue execution for possession and for costs within what time 239
- In Ejectment*, having judgment for possession and costs may at election have one or several writs of execution 241
- In Ejectment*, where his right to share with defendants as joint tenants is admitted, but ouster denied, the question of ouster to be tried on the trial of issue 242

CLAIMANT *continued.*

- 15 *In Ejectment*, where defendant defends as joint
tenant, &c., with him, but denies ouster, when
entitled to judgment and costs 243
- 12 *In Ejectment*, to whom right of deceased claimant
survives, may make suggestion of death, which
shall not be traversable, but subject to be set
aside if untrue and the action may proceed 245
- 82 *In Ejectment*, to whom the right of deceased claim-
ant does not survive, and his legal representative
does not become a party to writ, what course to
take to proceed with action 246
- 20 357. *In Ejectment*, the surviving one, where one of
several dies after verdict for them, but before
execution, by suggesting death, may proceed to
judgment and execution for possession of the
entirety of property and costs..... 247
- 55 *In Ejectment*, dying, his right transmitted to legal
representative, not affected by surviving claimant's
obtaining judgment and execution for entirety.. 247
- 32 *In Ejectment*, sole one dying, or one whose right
does not survive to another, what course of sug-
gestion, &c., may be taken by legal representa-
tive to proceed with action..... 248
- 34 *In Ejectment*, on death of sole defendant or all
defendants before trial, may, upon application to
court or judge have judgment for possession after
suggestion, unless some other person shall appear
and defend within time to be appointed 250
- 5 *In Ejectment*, entitled to judgment after verdict
without suggestion or revivor, although sole
defendant or all defendants dead since verdict.. 251
- 7 *In Ejectment*, proceedings where one of several
defendants dies before trial, who defends for
portion of property not defended by the other
defendants..... 252
- 9
- 1
- 2

CLAIMANT *continued.*

- In Ejectment*, on death before trial of one of several defendants, who defends separately, but for property for which others also defend, where leave not granted to person in possession or legal representative of defendant, to defend, may, by suggesting death, proceed against surviving defendants to judgment and execution 253
- In Ejectment*, may discontinue against one or more defendants, and how..... 253
- In Ejectment*, one of several may discontinue on application to and leave of court, &c. 255
- In Ejectment*, after discontinuance by one claimant the others to proceed with action..... 255
- In Ejectment*, not proceeding to trial in due time after notice, how defendant to proceed to compel him, or to get judgment..... 256
- In Ejectment*, proceedings on confession of one or several defendants, who defends for part of the property not defended by the others..... 258
- In Ejectment*, to have judgment for costs occasioned by defence, where one of several defendants, who defends severally for what the others defend, confesses his title, and proceedings against other defendants 259
- In Ejectment* by landlord for arrears of rent, non-suited in, defendant to have costs 263
- In Ejectment*, landlord against tenant holding over, may, on trial after verdict for him have judgment and execution by leave of judge in six days 268
- In Ejectment*, bringing second action of, against same defendant for same property, may be ordered by court on defendant's application after appearance, to give *security for costs*, and stay proceedings till given 273

CLERKS OF CROWN, &c.

	<i>To give Security for performance of duties and payment of fees</i>	1 C. L. P. 1857.
	<i>Failing in, offices vacated</i>	1 C. L. P. 1857.
253	<i>Acts done by during appointment not affected by avoidance of office</i>	1 C. L. P. 1857.
253	<i>Judge of County Court to certify his approval of the sureties of deputy clerks</i>	2 C. L. P. 1857.
255	<i>Governor of Province to approve of sureties of clerks and deputy clerks</i>	2 C. L. P. 1857.
255	<i>Securities to be recorded in manner provided by 4 & 5 Vic., ch. 91, sec. 3</i>	2 C. L. P. 1857.
256	<i>To give new security on death of surety</i>	2 C. L. P. 1857.
258	<i>Failing in, appointment void</i>	2 C. L. P. 1857.

CLERK OF PROCESS

	<i>Office in Osgoode Hall</i>	3
259	<i>To Seal and Sign all writs and process from Queen's Bench and Common Pleas</i>	4
263	<i>To issue to parties or attorneys all writs of sum- mons and capias and alias and pluries summons and capias and writs of capias in actions com- menced and concurrent writs</i>	4
	<i>To renew writs</i>	4
268	<i>To issue writs alternately one from Q.B. and C.P.</i>	4
	<i>To make Quarterly Returns to Inspector General of writs issued</i>	5
	<i>Deputy Clerk to pay over fees received</i>	5

CLIENT

273	<i>Authorising discharge of party from custody under ca. sa. is a satisfaction of the debt</i>	191
-----	--	-----

SECTION

COGNOVIT ACTIONEM AND CONFESSIONS

Final Judgment on, may be entered in first instance, and before suing out of process in any of said offices unless some one be named in cognovit 10

None valid to support any judgment, or a writ of execution, unless same or a sworn copy shall be filed of record in proper office of the court in the county where the person giving it resides, within one month after giving it..... 17

C. L. P. 1857.

Unsatisfied when act begins (10th June, 1857) in order to support judgment or execution must be filed within four months after passing of act ... 18

C. L. P. 1857.

Book, where kept and what to contain 17-18

C. L. P. 1857.

Fee on inspecting..... 17

C. L. P. 1857.

In Ejectment, sole defendant or all defendants, may make confession as to whole or part of property by notice attested by attorney, and claimant's proceedings thereon 257

In Ejectment, as to portion of property, may be given by one of several defendants who defends for it, where other defendants do not defend as to it..... 258

In Ejectment, may be given on notice by one of several defendants defending severally for what others defend also, and thereupon claimant entitled to judgment for costs occasioned by defence 259

COMMON LAW PROCEDURE ACT, 1856,

Provisions of and rules made under, so far as possible to extend to proceedings under act 31

C. L. P. 1857.

COMPULSORY REFERENCE

Of mere matters of account, court or judge may on application of either party order 84

Power of arbitrator under..... 87

Court or Judge may remit matters referred to arbitrator or umpire for re-consideration 88

Application to set aside award under, to be made within first six days of term next following publication, whether made in term or vacation 89

Award on when final 89

CONCURRENT WRITS

Plaintiff in any action may have, at any time during six months from issuing of original writ of summons or capias..... 27

To issue from office whence original writ issued, 27

Tested of the same day as original writ and marked with word "concurrent" in the margin and memorandum under 20th section 27

In force for period during which original writ in the action in force 27

Jurisdiction, may be out of, and in 39

Of Attachment, against absconding debtor, plaintiff may issue, to operate merely for attachment of real and personal property, credits and effects in aid of any writ..... 46

CONTEMPT

Witnesses in, wilfully disobeying rule or order of court or judge to appear and be examined or produce documents, and may be proceeded against by attachment..... 171

Omitting without just cause sufficiently to answer interrogatories for discovery within ten days... 176

Court on special report of examiner on witness' conduct, &c., to proceed as in case of..... 180

CONTRACT

Injunction, Writ of, where party entitled to for prevention of breach of, or other injury..... 283

CONVEYANCE

Debtor applying for discharge, court may require to make of property to plaintiff, in what cases prior to discharge 300

CORONER

To serve writ on sheriff when action against him.. 28
C. L. P. 1857.

CORPORATION

How served with writ of summons..... 33
Agents of, who considered..... 33
Officers of, to answer interrogatories in writing ... 176

COSTS

Revision of taxation of, made by any deputy clerk of the crown and pleas, either party may have by the principal clerk of the court wherein proceedings had 12
Two days notice of revision to opposite party.. 12
Deputy clerk, who taxed, when liable to costs of revision 12
Of Taxation. Defendant, taxing plaintiff's attorney's costs indorsed on writ, where more than one-sixth disallowed to be paid by plaintiff's attorney 26
Inferior Jurisdiction only allowed, where attachment against absconding debtor issued, and case within C. C. jurisdiction..... 44
Of suing out attachment in duplicate against absconding debtor, to be allowed only as for single writ..... 44
Of Defendant, absconding debtor, allowed against

COSTS *continued.*

283	plaintiff, where, on motion, it has appeared that he was not an absconding debtor, and execution for as in ordinary cases, and for what amount..	48
300	<i>Paid by Plaintiff</i> on writ of attachment against absconding debtor, to sheriff as his costs of seizure, &c., to be taxed to him as part of disbursements in suit against absconding debtor ..	54
28 1857.	<i>Of Sheriff</i> and persons assisting in making inventory, and appraising property under writ of attachment against absconding debtor, five shillings per day.....	54
33	<i>Of suing out</i> and executing writ of attachment against absconding debtor, to be satisfied before prior executions where court or judge order....	55
33	<i>On final judgment</i> in action, what amount plaintiff entitled to where writ of summons not specially indorsed, when claims might have been inserted by special indorsement.....	61
176	<i>Of Amendment of Writ</i> , &c., to be paid by plaintiff after notice of objection by defendant, or plea of abatement for non-joinder	69
12	<i>Of Plea in Abatement</i> , plaintiff when entitled to, as costs in cause, against original defendants, who pleaded non-joinder	72
12	<i>Of Action</i> when tried on issue (Sch. A. No. 8) may be subject to the agreement of the parties.....	78
26	<i>On Special Case</i> where no agreement, to follow the event, and to be recovered by the successful party	83
44	<i>On Reference to Arbitration</i> of mere matters of account, terms as to costs fixed by court or judge	88
44	<i>Of Remission</i> to arbitrator or umpire for reconsideration, terms as to costs may be fixed by court or judge	88
44	<i>Of Application</i> to strike out pleading framed to pre- judice, embarrass or delay, in discretion of judge.	101

COSTS *continued.*

<i>Of Plaintiff</i> , where money paid into court, accepted by him, to be taxed and paid by defendant within forty-eight hours, and judgment may be signed for same if not so paid	122
<i>Defendant</i> entitled to, where money paid into court, not accepted by plaintiff, and issue thereon found for defendant.....	122
<i>Of Suit and Judgment</i> , defendant entitled to, where on plea of set-off, verdict passes for balance due to him	124
<i>Of Successful Party</i> , on any issue of fact or law, where several matters pleaded by leave of court, to be adjudged to him, whatever may be the result of other issues	130
<i>On Application</i> to set aside judgment signed for pleading several pleas without leave, court to exercise discretion as to costs	135
<i>Plaintiff to Tax</i> , after damages on judgment by default are ascertained for final judgment	143
<i>Of the Day</i> , rule for, for not proceeding to trial, or assessment, pursuant to notice, or not countermanding in sufficient time, may be drawn up on affidavit without motion in court	148
<i>Defendant</i> entitled to judgment for, where plaintiff neglects to go to trial within a certain time after issue joined, and defendant having given notice to plaintiff	151
<i>On Adjournment of Trial</i> , may be provided for on terms and conditions imposed by court, &c.....	158
<i>Of Proof of Documents</i> not admitted on notice to admit fall on party refusing, unless judge certify refusal as reasonable at trial	165
<i>Proof of Documents</i> , of which no notice to admit given, not allowed, unless taxing master of opinion that expense was saved thereby	165

COSTS *continued.*

ION

122

122

124

130

135

143

148

51

58

65

65

- Of First Trial* to abide the event, where new trial granted on the ground that verdict is contrary to evidence, unless court otherwise orders..... 168
- Of Inspection* by jury, &c., in discretion of court or judge..... 172
- Of Application* to judge for order, and proceedings to examine witnesses refusing to make affidavit, in discretion of court, &c..... 174
- Of Oral Examination*, and terms to be fixed by judge..... 178
- Of Application* for rule or order for examination of parties or witnesses, and of rule or order and proceedings thereon, in discretion of court, &c.. 181
- Taxation of*, may be, and judgment entered forthwith, where judge certifies for immediate execution or day named 182
- Of Application* for attachment of debt and proceedings arising therefrom, in discretion of court, &c. 200
- Plaintiff's*, in suit for detention of chattel how recovered 201
- Writ of Revivor*, proceedings by, rights of parties to costs the same as in ordinary action..... 205
- Prior to Suggestion*, of, and subsequent to suggestion, plaintiff entitled to in action, where he gets judgment for debt, where executor is substituted as defendant in place of sole defendant, deceased, 211
- Of Suggestion* and proceedings on, allowed to party suggesting, if found to be true, and to opposite party if untrue, in cases where suggestion arises out of motions in arrest of judgment or for judgment, *non obstante veredicto*..... 217 & 218
- On Arrest of Judgment*, or *non obstante veredicto*, where they may be set off 219
- In Ejectment*, of suit, claimant entitled to judgment for, whose title existed at service of writ, but

COSTS *continued.*

expired before trial.....	235
<i>In Ejectment</i> , claimant to have judgment and execution for, when jury finds for him....	239
<i>In Ejectment</i> , defendants to have, when finding for them	240
<i>In Ejectment</i> , of suggestion of death by legal representative of sole deceased claimant, &c., party suggesting entitled to, on verdict for him; and defendant entitled to, if verdict for him	248
<i>In Ejectment</i> , defendant entitled to judgment where action discontinued against him.....	254
<i>In Ejectment</i> , claimant to have judgment for, occasioned by defendant, who confesses his title, having defended severally for what others defended	259
<i>In Ejectment</i> by landlord for arrears, defendant to have, where verdict for him, or claimant nonsuited,	263
<i>In Ejectment</i> by landlord for arrears, to be paid prior to discontinuance.....	265
<i>In Ejectment</i> by landlord against tenant holding over, court may order bond to be given to secure same to claimant	266
<i>In Ejectment</i> by mortgagee, may be paid into court, with principal and interest computed	271
<i>In Second Ejectment</i> by same claimant, defendant may get court to order security for	273
<i>Of Mandamus</i> , against defendant disobedient to, may be recovered by execution.....	280
<i>Of Writs</i> , under this act to be as near as possible the same as heretofore, but in no case greater: mileage not allowed for service of writ without affidavit produced to taxing officer, stating sum actually disbursed and to whom paid	311
<i>Plaintiff not entitled</i> to, where in action of trespass, or trespass on the case brought in either of	

COST

COU

CO

COSTS *continued.*

superior courts or in any county court, he shall recover less damages than 40 shillings, unless judge or presiding officer shall immediately certify on the back of the record, &c., that action was really brought to try a right besides the right to recover damages for the trespass, &c., or that the trespass or grievance was wilful or malicious 312

Verdict less than forty shillings, plaintiff to have without judge's certificate in trespasses, where notice given to defendant not to trespass..... 312

Of Actions for Trespasses, where notice given not to trespass, not allowed when brought in superior instead of inferior court..... 312

Indorsed on special writ of summons on action for bill of exchange, &c., to be fixed by rule of court 4
C. L. P. 1857.

Where larger amount claimed by plaintiff to be taxed in usual way 4
C. L. P. 1857.

Security for, court or judge may require plaintiff to give in any proceedings under the act, or stay proceedings 7
C. L. P. 1857.

COUNTRY CAUSES

When Venue laid elsewhere than in united counties of York and Peel..... 150

Trial of, defendant's steps on plaintiff's neglect to bring issue to trial..... 151

Record to be entered by plaintiff with deputy clerk of the crown before noon of commission or opening day of assizes 154

COUNTY COURT

Judge may make rule or order for issue of writ of attachment against absconding debtor, when, and on what affidavits 44

COUNTY COURT *continued.*

Or Division Court—garnishee in jurisdiction^m of, disputing liability to debtor, the judgment creditor may by leave proceed against him in, for amount of and costs 16
C. L. P. 1857.

Sections of this act 4, 5, 6, 7, 8, 9 and 31 shall extend and apply to action in and proceedings thereon 32

COUNTY AND UNION, &c.,

Limits of, identical with the limits of the gaols of the same..... 301

COURT

Of which Submission, &c., to arbitration is or may be made a rule or order, when the award directs possession of any lands, &c., capable of being the subject of an ejectment, to be given to any party forthwith or at a future time, or that such party is entitled to the possession, may order any party to the reference who is in possession, &c., to deliver possession to the party entitled under award 96

Rule or Order of, to have the effect of a judgment in ejectment 96

Of which of the superior courts, agreement or submission to arbitration may be made a rule..... 97

On Motion of any rule requiring reference to *nisi prius* record may, on affidavit of notice to transmit served on deputy clerk and search, allow same without production..... 3

C. L. P. 1857.

Trial at Bar, on application for, may grant or refuse in discretion..... 13

C. L. P. 1857.

COURT OR JUDGE

Attorney, whose name is endorsed on writ, who

COURT OR JUDGE *continued.*

	admits its issue, may order to declare plaintiff's name and abode, or in contempt.....	25
	<i>Personal service</i> of writ of summons, may dispense with, and allow plaintiff to proceed without, when.	34
16 1857.	<i>The like</i> , where defendant a British subject, is out of jurisdiction	35
32	<i>The like</i> , where defendant not a British subject, resides out of jurisdiction	36
	<i>Particulars</i> of demand, may order further.....	41
301	<i>Defendant Absconding Debtor</i> , may let in to put in special bail or to defend on affidavits accounting for delay and disclosing good defence on merits	47
	<i>May Rule or Order Sheriff</i> to sue debtor, &c., of absconding debtor on application of plaintiff in writ of attachment.....	53
	<i>Judgment and Execution</i> obtained fraudulently or in collusion with absconding debtor, may be set aside or proceedings stayed by, on application of plaintiff on any writ of attachment.....	55
96	<i>May stay proceedings</i> in action by absconding debtor against his debtor or custodian of property after notice of writ of attachment.....	52
96	<i>On disputed question</i> of fact arising out of action by absconding debtor against his debtor, &c., may direct an issue to try the same	52
97	<i>Before or after final judgment</i> may let in defendant to defend, on affidavits accounting for non-appearance, and disclosing defence on the merits.	60
3 1857.	<i>May set aside</i> defendant's appearance in person, where his address given is illusory or fictitious	63
13 1857.	<i>May permit Plaintiff</i> , where defendant's appearance is irregular or set aside, to stick up proceedings in office whence writ issued	63
	<i>At any time</i> before trial may order person not	

COURT OR JUDGE *continued.*

SECTION

joined as plaintiff to be joined, and strike out plaintiff originally joined.....	67
<i>Misjoinder of Defendants</i> , may amend as a variance at the trial of any action on contract.....	70
<i>May order separate trials</i> of different causes of action joined in one action on separate records to be made up....	75
<i>May order delay</i> in execution on judgment, entered on finding of jury (on trial of issue without formal pleadings, as in section 77 Sch. A. No. 8), in order to give either party an opportunity to set aside the verdict, or to move for a new trial	79
<i>Summary Decision</i> of mere matter of account may give, on application of either party, or order that such matter either in whole or part, be referred to an arbitrator appointed by the parties, or to an officer of the court, or in country causes to judge of county court	84
<i>When mere matter of account</i> is referred to arbitration, may direct a case to be stated for the opinion of the court, or an issue for a jury, upon the allowance or disallowance of a particular item	85
<i>On Compulsory Reference</i> under this act or on ordinary reference to arbitrator or umpire where the submission is made a rule of court, may remit matters referred for reconsideration.	88
<i>May stay proceedings</i> in action in contravention of agreement to refer matters in difference to arbitration, on application of defendant, but the order thereon may be afterwards varied or discharged.....	91
<i>May revoke</i> the appointment made by any party of his arbitrator as sole referee where the other referee omitted to appoint his arbitrator	96

COURT OR JUDGE *continued.*

TION

67

Pleading, may strike out, framed to prejudice, embarrass or delay..... 101

70

May extend time for pleading in bar beyond the eight days..... 112

75

Puis darrein continuance, plea of, may dispense with affidavit to accompany..... 118

Payment into Court, may order one or more defendants to be allowed to make..... 119, 121

Plead and Demur at same time may grant leave for and direct which issue to be first disposed of ... 129

79

Plead several matters, may give leave to either plaintiff or defendant to, on affidavit, if required 130

Where leave granted by, to plead several matters and order made, no rule of court required 131

Judgment signed for pleading several matters without leave, may set aside on affidavit of merits, and terms as to costs in discretion..... 135

84

New Assignment, may grant leave to plead same plea to, already pleaded to declaration on proof that repetition of plea is essential to trial on merits 137

85

Demurrer delivered without statement in margin, or with frivolous statement, may give leave to sign judgment for want of a plea..... 138

88

Amended Pleading, may allow further time than two days to plead *de novo* to 139

91

On Judgment by Default, where damages for which final judgment is to be signed, are substantially a matter of calculation, may order them to be ascertained by clerk of the crown and pleas, if proceedings in principal office Toronto, or if in county, then by judge of C. C. 143

93

Adjournment of Trial, may order on terms at discretion 158

Judge at N. P. may, during trial in actions involv-

COURT OR JUDGE *continued.*

SECTION

ing long accounts, direct a reference as to part of issue, and verdict for the rest (See 20 Vic., ch. 57, sec. 12).....	156
<i>Judge at trial</i> , has a right to inspect and use for purposes of trial in his discretion writing on which witness is cross-examined, without being shown to him	161
<i>Rule Nisi for new trial</i> , or to enter a verdict or nonsuit, court may amend where omission made of grounds on which same was granted.....	168
<i>On Motions</i> , founded on affidavits, may give leave to opposite party to answer by, any new matter arising out of the other's affidavits.....	167
<i>Inspection</i> of real or personal property, may make rule or order for, by jury, party, or witnesses..	172
<i>Discovery of Documents</i> , in action in superior courts, may order one party on the application of the other, to make.....	175
<i>Interrogatories</i> in writing for discovery, may give leave to deliver in actions in superior court	176
<i>Oral Examination</i> and production of documents may make order for, where party omits without just cause to answer interrogatories in writing for discovery	177
<i>Affidavit</i> may dispense with, plaintiff asking for leave to serve interrogatories	177
<i>Examination of parties or witnesses</i> , making rule or order for, to exercise discretion as to costs of it, and of application therefor.....	181
<i>Execution immediate</i> , judge before end of sittings or assizes may certify for, or at day to be named in certificate	182
<i>Judgment to be entered, and execution stayed or set aside</i> , court in which action brought, after judgment signed or recorded, or execution issued	

COURT OR JUDGE *continued.*

	under sections 182 & 183, may order, and may enter arrest of judgment, or grant a new trial, or a new assessment of damages.....	184
	<i>Oral Examination</i> of judgment debtor as to debts owing to him, and production of books, may make rule or order for.....	193
	<i>Attachment of Debts</i> , at discretion to determine costs of application for, and proceedings incidental thereto	200
	<i>In action for detention of Chattel</i> , may on plaintiff's application order execution for return of chattel	201
	<i>Revival of judgment and execution</i> , court may grant rule to shew cause, Sch. A. No, 9 ...	203, 204
	<i>Court discharging rule</i> , applicant may proceed by writ of revivor, or action on judgment.....	204
	<i>Executor</i> , new defendant, may allow to plead fresh matter in answer to declaration.....	211
	<i>Suggestion of omitted facts, &c.</i> , court may allow, to remedy alleged defect in pleading, upon motion in arrest of judgment, or for judgment <i>non obstante veredicto</i>	217
	<i>In Ejectment</i> , may give leave to insert in notice of claimant's title more than one mode in which title is set up.....	222
	<i>In Ejectment</i> , may allow any person filing affidavit of possession to appear and defend, although not named in writ	225
	<i>In Ejectment</i> , judge may order in all cases better particulars of land claimed or defended	229
	<i>In Ejectment</i> , may strike out or confine appearances and defences set up by persons not in possession by themselves or tenants.....	230
	<i>In Ejectment</i> , judge may give leave, with consent of parties, for special case.....	233
	<i>In Ejectment</i> , may order trial out of county where	

COURT OR JUDGE *continued.*

- venue laid, on application of either party, on grounds in affidavit..... 236
- In Ejectment*, where surviving claimant gets judgment and execution for recovery of entirety of property, may direct possession to be delivered of deceased claimant's share to his legal representative 247
- In Ejectment*, on suggestion of death of sole defendant, or all defendants before trial, on application of claimants, may give claimants liberty to sign judgment, unless person in possession or tenant, or legal representative of deceased defendant appear and defend within time to be appointed 250
- In Ejectment*, may, on death of one of several defendants who defends separately for property for which others also defend, let in person or legal representative to defend..... 253
- In Ejectment*, may order the name of one claimant desirous to discontinue, to be struck out of proceedings on his application—terms in discretion 255
- In Ejectment*, may order tenant against whom landlord is proceeding to secure his costs, &c... 266
- In Ejectment*, by landlord against tenant holding over, where security given under sec. 266, court may, on verdict for claimant order judgment and execution in six days unless judge thinks verdict contrary to evidence, or damages excessive 268
- In Ejectment*, may on application of defendant in second ejectment by same plaintiff for same property, order plaintiff to give defendant security for costs, and stay proceedings till given..... 274
- In Ejectment*, the several courts and judges to exercise over proceedings like jurisdiction as

COURT OR JUDGE *continued.*

under old ejectment so as to insure trial of title,
and actual ouster, &c. 273

Mandamus, may direct plaintiff to perform act re-
quired by mandamus, if defendant disobedient
thereto, and enforce expense and costs by execu-
tion against defendant 280

Mandamus prerogative writ, on motion for, court
may make rule absolute in first instance and
may enlarge time for return 281

Injunction, may on ex parte application of plaintiff
after commencement of action whether before or
after judgment, grant writ of. 286

Injunction, court may by attachment, compel
obedience to. 285

Injunction, court may discharge order for writ or
vary it, or set it aside. 286

Replevin, may strike out equitable plea or replica-
tion when 290

Actions generally, superior courts of common law,
and every judge thereof, and judge at N. P.
to amend at all times all defects and errors in
any proceedings, in order to determine real ques-
tions in controversy 291

Prisoner in Execution, on application of, in prison
for three successive months, after notice to plain-
tiff and oath of certain facts, to grant rule on
order to shew cause why he should not be dis-
charged from custody, and discharge accordingly. 300

Prisoner in Execution, may impose condition on
debtor to assign his right, &c., in property, &c.,
to plaintiff, before granting discharge, in what
cases. 300

Costs, judge may give certificate for in action of
trespass or trespass on the case, when verdict less
than 40s. damages. 312

COURT OR JUDGE *continued.*

- General Rules*, judges have power to make for practice and pleading 313
- General Rules*, judges' powers under 13 & 14 Vic., ch. 51, not affected by act 315
- Power* given to, by this act, the words, "a judge" to be held to authorise any judge of either of the superior courts to exercise power given by act 315
- In action on bill of exchange*, &c., after July 1st, 1858, may under special circumstances set aside the judgment and stay or set aside execution, and may give leave to appear to the writ on terms in discretion 6
C. L. P., 1857.
- Plea "for defence on equitable grounds"* empowered to receive from either plaintiff or defendant in replevin..... 11
C. L. P., 1857

CROWN

- Trial at Bar* may be had by as of right as in English cases..... 14
C. L. P., 1857.

DAMAGES

- Amount for final Judgment* may be ascertained on order of court, by clerk of crown or judge of county court, when substantially a matter of calculation 143
- New Assessment* may be ordered by court in which action brought 184
- Plaintiff's* in action for detention of chattel, how recovered 201
- Claim* for, or other redress, may be included in action for writ of injunction 283

DEATH

- Of Sheriff* pending action against debtor of absconding debtor, not to abate action..... 53

DEATH *continued.*

- Of Plaintiff or Defendant* not to abate action, but it may be continued 208
- Of Plaintiff or Defendant*, where more than one, and cause of action surviving to surviving plaintiff, or against surviving defendant, not to abate action, but death suggested on record, action to proceed by survivors 209
- Of Sole Plaintiff*, his legal representative may by leave of the court or judge, enter suggestion of death and of representative character, and action to proceed 210
- Of Sole or Sole Surviving Defendant*, where the action survives; plaintiff may make suggestion of same, either on any of pleadings, if not at issue, or by filing same with pleadings if arrived at issue, of the death, and naming executor of deceased, and may serve executor, &c., with copy writ and suggestion, and other pleadings, and with a notice signed by plaintiff or attorney, requiring executor to appear within ten days after service, and in default plaintiff may sign judgment against him as such executor 211
- If no Pleadings* before death 211
- Pleadings* in other stages before death 211
- Of either Party* between verdict and judgment not to be alleged for error, if judgment be entered within two terms after verdict 212
- Of either Party* after interlocutory and before final judgment, the action if it might be originally prosecuted by executor, &c., of the plaintiff, or against executor, &c., of defendant, may be revived by writ of revivor (Sch. A. No. 11) 213
- In Ejectment*, of claimant or defendant, not to abate action, but may be continued 244
- In Ejectment*, of claimant whose right survives to

DEATH *continued.*

- another claimant, may be suggested, and action may proceed 245
- In Ejectment*, of one of several claimants, where right does not survive, and legal representative of deceased claimant does not become a party to suit, suggestion may be made of death, and surviving claimant to proceed with action for such share of the property as he is entitled to, and costs 246
- In Ejectment*, of one of several claimants after verdict for them, but before execution, surviving claimant suggesting death may proceed to judgment and execution for the recovery of the possession of the entirety of the property and costs 247
- In Ejectment*, of sole claimant or before trial of one of several, whose right does not survive, what course of suggestion, &c. may be taken by legal representative to proceed with action 248
- In Ejectment*, before or after judgment of one of several defendants who defend jointly, when suggested, action may proceed against surviving defendant to judgment and execution 249
- In Ejectment*, of sole defendant or all defendants before trial, upon suggestion, unless some person appear and defend within time appointed by court or judge, on claimant's application, claimant entitled to judgment for possession 250
- In Ejectment*, before trial, of one of several defendants, who defends separately for portion of property for which the other defendants do not defend, the same proceedings may be taken as to such portion as in the case of a sole defendant, or the claimants may proceed against the other defendants in respect of the portions of the property for which they defend 252

DEATH *continued.*

In Ejectment, before trial, of one of several defendants who defends separately, but for property for which others also defend, person in possession or legal representative of defendant may by leave defend, or claimant suggesting death may proceed thereon, and how 253

DEBT ATTACHMENT BOOK

Clerk of Crown, in superior courts, and his deputies to keep in office, and contents 199

DEBTORS

Of Absconding Debtors, or custodian of property paying or delivering debt or property after notice of sheriff's seizure, to the debtor, &c., for his use, deemed and liable to plaintiff in writ of attachment in certain cases and may have stay of proceedings..... 52

Of Absconding Debtor, may be sued by sheriff in certain cases by leave of court on application of plaintiff 53

DECLARATION

Where Defendant taken and in custody under *capias* and imprisoned for want of sureties for his appearance thereto, plaintiff may before end of next term after defendant's arrest, declare under the 3rd and 4th Rules of Queen's Bench, made in Easter Term, 5 Vic. 22

In Action by Sheriff against debtor of absconding debtor, to contain particular introductory averment 53

No Declaration nor Pleadings after declaration to be filed or served between 1st of July and 21st of August, in proceedings on writ of summons or *capias* 65

DECLARATION *continued.*

<i>Amendment</i> of, by adding names of parties named in defendant's plea of nonjoinder in abatement, plaintiff may make without order	71
<i>And other Pleadings</i> to be entitled of the proper court, and of the day of the month and year when filed	103
<i>To be Entered</i> on record for trial and on judgment roll under date of day and month and year when same took place, unless otherwise specially ordered by court or judge.....	103
<i>Form</i> of commencement and conclusion	108
<i>Form</i> after plea in abatement of nonjoinder, where plaintiff without proceeding to trial commences action against original defendants and persons not joined, or where plaintiff amends by adding omitted defendants.....	109
<i>In Libel or Slander</i> , what averment it may contain	110
<i>Copy</i> of, served or delivered separately may be indorsed with notice to defendant to plead thereto in eight days, otherwise judgment.....	112
<i>Material Allegation</i> in, may be selected and traversed separately by defendant, although it might have been included in general traverse.....	125
<i>One new Assignment</i> only shall be pleaded to any number of pleas to same cause of action, to be consistent with, and confined by particulars, and what to state	136
<i>Plea already Pleaded to</i> , not to be pleaded again to new assignment by plaintiff, except plea of denial, except by leave	137
<i>Interrogatories</i> in writing for discovery, to be delivered with.....	176
<i>To contain Suggestion</i> of sole defendant's death where it happens before pleadings, and to be served with it, and notice to plead	211

DECLARATION *continued.*

Mandamus required in action, what the declaration to contain 276

DEFENDANT

Paying Costs indorsed on writ, may notwithstanding have them taxed, and taxing off more than one-sixth, attorney of plaintiff to pay costs of taxation 26

Absconding Debtor, in what cases entitled to costs against plaintiff, and how recovered 48

Several, in writ of summons, some appearing and some not, plaintiff's proceedings where writ of summons specially indorsed 66

To Writ of Summons with Special Indorsement not appearing, may be let in to defend either before or after final judgment by court or judge, on application supported by affidavit accounting for non-appearance and disclosing a defence on the merits 60

To Writ of Summons not Specially Indorsed not appearing thereto, plaintiff's proceedings thereon 61

Objecting to Non-joinder of, plaintiffs should give notice at or before time of pleading 68

After Amendment by plaintiff of non-joinder may plead *de novo* 69

Mis-joinder of, how amended 70

In Action, by any parties bound by agreement with him to arbitrate matters, commenced in contravention of agreement to arbitrate, may get proceedings stayed 91

In any Action may aver performance of conditions precedent generally 106

In Jurisdiction, the time for pleading in bar is eight days, unless extended by court or judge 112

Plea of, commencement 116

DEFENDANT *continued.*

<i>May Pay Money into Court</i> (except in actions for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution, criminal conversation, or debauching plaintiff's daughter or servant)	119
<i>One of several</i> , may, by leave of court or judge, pay money into court.....	119
<i>Act 13 & 14 Vic., ch. 60</i> , not to be affected by this act	119
<i>Plea of payment into court</i>	120
<i>Paying Money into Court</i> not accepted by plaintiff, is entitled to judgment and costs of suit where issue thereon is found for him	122
<i>Traverses of facts in declaration</i> ..	125
<i>Replication</i> or subsequent pleading of plaintiff, at liberty to deny whole or part	127
<i>Several Matters</i> may be pleaded by on leave	130
<i>Proceedings</i> to compel plaintiff to try issue and get judgment for costs	151
<i>Interrogatories for Discovery</i> , may deliver, in superior courts by order, to be answered within ten days by affidavit filed.....	176
<i>Asking order for Interrogatories</i> in superior court to produce affidavit stating belief that he will be materially benefitted by discovery, that there is good defence on the merits, and that discovery not sought for delay	177
<i>Death of</i> , after interlocutory and before final judgment action may be revived (Sch. A. No. 13), if action brought might be originally prosecuted against his executor	213
<i>In Ejectment</i> , not appearing at trial, and claimant appearing, claimant to recover without proof of title	237
<i>In Ejectment</i> , finding of jury for, entitled to judg-	

DEFENDANT *continued.*

- ment and execution within time not exceeding fifth day of term after verdict, as court, &c., shall order 240
- In Ejectment* joint tenant, &c., with claimant, admitting his right to share, but denying ouster, the question of ouster shall be tried on trial of issue..... 242
- In Ejectment*, where i. defends as joint tenant, &c., with plaintiff, but denies actual ouster, entitled to judgment and costs unless actual ouster proved 243
- In Ejectment*, several, and defendant jointly, and one dying before or after judgment, action may on suggestion of death proceed against survivors to judgment and execution..... 249
- In Ejectment*, sole, or all defendants dying after verdict, claimant is entitled to judgment without suggestion or revivor 251
- In Ejectment*, one dying before trial, who defends for part of property for which the others do not defend, claimant's proceedings thereon..... 252
- In Ejectment*, dying before trial, defending separately for property for which others also defend, legal representative may on application get leave of court to appear and defend, and claimant's proceedings if such application is not granted... 253
- In Ejectment*, action discontinued against, entitled to judgment for costs (Sch. A, No. 17)..... 254
- In Ejectment* may give claimant failing to go to trial, twenty days' notice to proceed, &c..... 256
- In Ejectment*, sole or all may confess action as to whole or part, how, and claimant's proceedings... 257
- In Ejectment*, one of several may confess action for portion of the property, on notice when defending separately for a portion of the property for which the other defendants do not defend 258

DEFENDANT *continued.*

- In Ejectment*, one of several defending severally for what other defendants defend, may confess claimant's title on notice, whereon claimant may sign judgment for costs occasioned by defence... 259
- In Second Ejectment*, by same claimant for same property, may, after appearance, apply to judge and get order for security for costs and for stay of proceedings till given 273
- Mandamus*, disobedient to, court may order attachment, and also that plaintiff do the act required of defendant at his expense, and execution for same and costs may issue against him 273
- In Action* on bill of exchange after 1st July, 1858, in order to appear must get leave of any judge of a superior or county court on affidavits..... 5

C. L. P., 1857.

DEFENCE

- Arising after Action begun*, to be pleaded according to the fact without any formal commencement or conclusion 117
- In Ejectment*, any person not named in writ may by leave, appear and defend, on filing affidavit shewing possession in himself or tenant 225
- In Ejectment by Landlord*, limited to defence which landlord might heretofore have set up... 227
- In Ejectment*, person appearing may limit to part of premises in writ, giving notice 228
- In Ejectment*, deemed to be for whole unless notice given confining defence to part..... 228
- In Ejectment*, by persons not in possession, may be confined or struck out by court or judge 230
- Separate in Ejectment*, by one defendant who dies before trial for property for which the other defendants also defend, proceedings to be taken by claimant thereon..... 253

DEFENCE *continued.*

259

Separate in Ejectment by one of several, defending for part of property not defended by others, confession may be given by him as to such portion 258

DEFECTS

273

In Proceedings in civil causes may be amended by superior courts, and judge at *nisi prius* at all times 291

273

In Judgments, &c., at law or equity may be set aside for, by writ of appeal, to be sued out within four years from entering judgment, &c. 293

DEMAND OF RENT

5
1857.

Ejectment by Landlord against tenant, when rent half a year in arrear and landlord has right of re-entry, demand not necessary.... 263

117

DEMURRER

225

Either Party may object to pleading by, for not setting forth sufficient ground of action, defence or reply 99

227

After issue Joined thereon, not to be set aside for defect or lack of form, but court to proceed and give judgment according to the very right 99

228

With Plea, may be allowed by court on affidavit if required 129

228

Form of, and margin statement of some substantial matter of law intended to be argued..... 138

230

Set Aside, may be, if delivered without statement in margin, or for frivolous statement, and leave may be given to sign judgment as for want of plea..... 138

253

Joinder on and form 138

DEPOSIT

- Bill or Note* on which action is brought may be required by court or judge, to be made with officers of the court..... 7
C. L. P., 1857.

DEPOSITIONS

- Taken under Order* for examination to be returned and kept in office of court where proceedings carried on 179
Office Copies of, may be given 179
Evidence, when Certified under hand of judge, &c., makes them without proof of signature..... 179

DEPUTY CLERK OF CROWN

- Office hours*..... 13
Within twenty-four hours after notice in writing delivered to him at his office, to enclose, seal up, and transmit by post to the proper office in Toronto, addressed to the clerk, any record of *nisi prius* in his custody mentioned in such notice and all exhibits filed at the trial, and in default may be in contempt and dealt with in discretion of court 3

DISABILITIES

- Parties under*, allowed further time to sue out writ of appeal against judgments, &c..... 294

DISCHARGE

- Prisoner in Execution*, applying for, on plaintiff's default in payment of weekly allowance, plaintiff may file interrogatories which debtor must answer on oath before order made..... 296
Prisoner in Execution, for three successive months after fifteen days' notice to plaintiff of intention may, on proof of notice apply for rule or sum-

DISCHARGE *continued.*

mons to shew cause why he should not be discharged	300
<i>Court</i> may, on application for discharge, make it a condition that he shall first assign and convey to plaintiff his right to any property, &c.....	300
<i>Prisoner in Execution</i> , and also on criminal charge, act not to apply to applications for discharge by.	309
<i>Of party in custody</i> under <i>ca. sa.</i> by sheriff, &c., not to be a satisfaction of the debt, unless made by authority of the creditor.....	191
<i>Debtor in Custody</i> , may have, on default of plaintiff in payment of weekly allowance, after service of rule <i>nisi</i> , but not to operate to prevent plaintiff from proceeding to judgment and execution against body, lands, or goods, nor as satisfaction of judgment, &c., not to deprive plaintiff of any remedy against lands or goods of debtor	295
<i>Of Judgment</i> from registry by certificate and affidavit of signature	20
	C. L. P., 1857.
<i>May be</i> in manner now provided by law	20
	C. L. P., 1857

DISCOVERY

<i>Of Documents</i> in possession of opposite party in action in superior courts, may be had and answers required on affidavit by order of court or judge	175
<i>Interrogatories</i> in writing for, may be by parties to action in superior court, and answers required on affidavits within ten days, and contempt for insufficient answers	176

DISCONTINUANCE

<i>In Ejection</i> , by claimant against one or more defendants, how	254
--	-----

DISCONTINUANCE *continued.*

- In Ejectment* by one of several claimants, may be
by leave of court 255
- In Ejectment*, landlord against tenant, for arrears
of rent, where tenant or assignee pays landlord
or attorney or into court, at any time before
trial, arrears and costs..... 265

DISTRIBUTIVE

- Pleading* to be construed as, and verdicts thereon 124

DIVISION COURT

- Creditors* obtaining warrants of attachment and
judgment against absconding debtors, entitled to
satisfaction rateably with other judgment
creditors 56
- Bailiff of, &c.*, to deliver property and proceeds of
property of absconding debtor in his hands under
warrant, to sheriff acting on writ of attachment 56
- Garnishee*, after notice failing to pay account due,
or not appearing, then on proof of notice, judge
of county court may order execution to issue out
of county or division court..... 16
C. L. P., 1857.
- Sheriff or Bailiff* to levy debt and costs 16
C. L. P., 1857.

DOCKET

- Deputy Clerk of Crown and Pleas* to keep, and
contents 15
- Copies* of entries in, certified, to be evidence
when judgment roll lost..... 15

DOCUMENTS

- Attestation to*, requiring none, need not be proved 163
- Notice* to admit 165
- Proof of*, not allowed in costs unless notice to

DOCUMENTS *continued.*

255	admit given, except taxing master considers it a saving	165
	<i>Production of</i> , may be ordered on rule or summons	170
265	<i>Discovery of, and Production</i> , how obtained in actions in superior courts	175
	<i>Mentioned in order or rule for oral examination to be produced</i>	178

124

DOG DAYS

	<i>Proviso</i> for proceedings mentioned in writ of summons or <i>capias</i>	65
--	--	----

EJECTMENT

56	<i>Writ</i> , to whom directed: form, Sch. A. No. 12, Statements, commands, notice, teste, when issued, duration three months	221
56	<i>Attorney</i> issuing to indorse his name and residence. No attorney, the party issuing to indorse his name and residence. Proceedings to ascertain if issued by attorney whose name indorsed	221
16 1857.	<i>Claimant's Title</i> , notice of to be attached to notice; at trial claimant confined to title in notice.....	222
16 1857.	<i>Service of</i> , vacant possession	223
	<i>Appearance</i> to within sixteen days after service...	224
	<i>Person not named in</i> may on affidavit get leave to appear and defend.....	225
15	<i>Appearance</i> entered in office whence writ issued subsequent proceedings in same office	226
15	<i>Appearance to Defend as Landlord</i> , so to state, any defence heretofore allowed to landlord, allowable, and no other	227
163	<i>Limitation of Defence</i> , persons appearing to defend may make to part of premises, giving notice, and serving within four days after appearance.....	228
165		

EJECTMENT *continued.*

“ <i>Reasonable Certainty</i> ,” want of in description of property, ground to apply for better particulars.	229
<i>Appearances and Defences</i> , by persons not in possession may be confined or struck out by court or judge	230
<i>Appearance</i> , defendant making default in, claimant to sign judgment (Sch. A. No. 13).....	231
<i>Appearance</i> by defendant to defend for part, claimant to sign judgment for residue (Sch. A. No. 14).....	231
<i>Issue without Pleadings</i> , claimant or attorney may make up after appearance. Where defence is for whole (Sch. A. No. 15), for part (Sch. A. No. 14)	232
<i>Special Case</i> may be stated by consent and leave...	233
<i>Claimant</i> going to trial to affix notices of claim and defence to record. Questions at trial, whether statement in writ of claimant’s title true or false; if true, which is entitled; whether to whole or part, which part. Verdict in form Sched. A. No. 16, or like effect.....	234
<i>Claimant</i> proving title at service of writ, although since expired, entitled to verdict and judgment for his costs of suit.....	235
<i>Court or Judge</i> , on application by either party on grounds in affidavit, may order trial in county where venue is not laid	236
<i>On Trial of</i> , defendant appearing and claimant not appearing, claimant to be nonsuited; claimant appearing and defendant not appearing, claimant to recover without proof of title.....	237
<i>At Trial of</i> , jury may find special verdict, or either party tender bill of exceptions	238
<i>At Trial</i> , verdict for plaintiff, judgment and execution to follow for possession and costs within such time as court may order, not beyond the	

EJECTMENT *continued.*

TION

229

fifth day of term after verdict; if no order, then
on the fifth day of term after verdict 239

230

At Trial of, verdict for defendants or any of them,
judgment and execution to follow for costs against
claimant before fifth day of term after verdict, if
court orders; and no order, then on the fifth day
of term 240

231

Judgment for possession and costs, claimant may
elect to have execution in one or separate writs 241

231

By some Joint Tenants, or one of several against
the other joint tenants, &c., any of the latter
may, on appearance or within four days after,
notify defence as joint tenant and admitting
claimant's right to share, but denying ouster
and filing affidavit, &c., the notice shall be
entered in the issue, and on trial of issue the
actual ouster shall be tried 242

232

233

Trial of Issue under sec. 242, claimant gets judg-
ment for possession and costs, where found that
defendant who defends as joint tenant, &c., is not
such, or that actual ouster has taken place; and
defendant gets judgment for costs, where found
that defendant is such joint tenant, &c., and
actual ouster not proved..... 243

234

235

Death of Claimant or defendant not to abate the
action, but it may be continued..... 244

236

Claimant Dying and right surviving to another
claimant, suggestion may be made of death, and
action may proceed at suit of surviving claimant.

237

238

If suggestion before trial, surviving claimant to
have verdict and judgment on proof that he was
entitled to bring the action either separately or
jointly with deceased claimant 245

Death of one of several Claimants whose right does
not survive, when the legal representative of

EJECTMENT *continued.*

- deceased claimant shall not become a party to the suit (as in 248th section) suggestion may be made of death, &c., and action proceed by surviving claimant for his share of property and costs..... 246
- After Verdict* for two or more claimants, and before execution, if one of such claimants die, the surviving claimant may, whether the legal right to the property survive or not, suggest the death and proceed to judgment and execution for possession of the entirety of the property and costs 247
- Share of property* to which legal representative entitled, preserved under execution, and entry and possession accordingly 247
- Death of a Sole Claimant*, or before trial, of one of several claimants whose rights do not survive to another or others, the legal representative of deceased may by leave enter suggestion of death and of his representative character, and action to proceed 248
- Suggestion* where made before trial, the truth of it shall be tried thereat, with the title of deceased claimant, and judgment to follow on the verdict in favour of or against the suggestor as provided with respect to a judgment for or against the claimant 248
- Legal Representative* suggesting death of sole claimant, after trial, and before execution executed by delivery of possession, and the defendant denying suggestion within eight days after notice, then the suggestion shall be tried, and if on trial thereof a verdict pass for suggestor he shall be entitled to judgment for possession and costs of suggestion, and if verdict for defendant, he shall have judgment for costs..... 248

EJECTMENT *continued.*

- Death* of one of several defendants before or after judgment for possession, who defend jointly, on suggestion of death, action may proceed against surviving defendant to judgment and execution 249
- 246 *Death* of sole defendant, or of all defendants before trial, on suggestion, the claimant shall be entitled to judgment for possession, unless some other person appear and defend within time appointed by order of court or judge, to be made on application of claimants..... 250
- 247 *Death* of sole defendant or all defendants, after verdict, claimant entitled to judgment as if no death, and to proceed by execution for possession without suggestion or revivor, and for costs in same way as on any other judgment for money against the legal representative of deceased defendant 251
- 247 *Death* before trial of one of several defendants who defends separately for part, proceedings may be taken as in case of a sole defendant; or claimant may proceed against surviving defendants in respect of the property for which they defend ... 252
- 248 *Death*, before trial of one of several defendants who defends separately, but for property for which others also defend, the person in possession or legal representative of defendant, may by leave defend; or, where no leave, claimant suggesting death may proceed against surviving defendants to judgment and execution..... 253
- 48 *Discontinue* claimant may, as to one or more defendants by notice to defendant or attorney headed in court and cause, signed by claimant or attorney, stating discontinuance, and defendant thereon entitled to sign judgment for costs (Sch. A. No. 17) 254

EJECTMENT *continued.*

- Discontinuance* by one of several claimants may be, on application to and leave of court or judge to have name struck out of proceedings, when order to be made on terms in discretion, and action to proceed at suit of other claimants..... 255
- Trial*, claimant where appearance entered, without going to trial, allowing the time fixed by the practice of the court for going to trial in ordinary cases after issue joined to elapse, defendant may give him twenty days' notice to proceed at assizes after its expiration, and claimant neglecting, defendant may sign judgment (Sch. A. No. 18), and recover costs of defence 256
- Confession* of, may be by sole defendant or all defendants, as to whole or part of property, by giving notice to claimant, headed in court and cause, signed by defendant or defendants, to be attested by his or their attorney, and thereupon claimant entitled to judgment and issue execution for possession and costs (Sch. A. No. 19)... 257
- Confession* may be given by one of several defendants who defends separately for portion of property for which the other defendants do not defend, by like notice, whereupon judgment may be signed and execution issued for the recovery of the portion of the property and costs of defence and the action to proceed as to the residue 258
- Confession* by one of several defendants who defends severally in respect of property for which other defendants defend, may be made of claimants' title by giving notice whereon claimants may sign judgment against such defendant for costs occasioned by defence, and proceed against the others to judgment and execution 259
- Proceedings* need not be entered on roll before

EJECTMENT *continued.*

- issuing execution on judgment, but *incipitur* thereof may be made on paper, and judgment thereon signed, costs taxed and execution issued; but proceedings to be entered on roll in some cases 260
- 255 *Judgment in*, effect of to be the same as that of a judgment in ejectment obtained before the passing of 13 & 14 Vic., chap. 57, "*an act to alter and amend the practice and proceedings in actions of ejectment in Upper Canada*" 261
- 256 *Landlord and Tenant.* Tenant receiving or knowing of writ of, to give notice to landlord, &c., under penalty of value of three years' rack rent 262
- Landlord and Tenant.* Where half year's rent in arrear, and landlord has right to re-enter, he may bring ejectment without formal demand or re-entry 263
- 257 *Service of writ*, where premises vacant. Proof required before judgment and execution on non-appearance, or at trial where defendant appears. Lessee or assignee not paying arrears and costs, or seeking relief in equity within six months after execution, barred of relief, save appeal for reversal of judgment if erroneous. If verdict for defendant or plaintiff nonsuited defendant to have costs 263
- 258 *Mortgagee of Lease* not in possession, not barred of rights, paying arrears, costs, and damages, and performing covenants, within six months after judgment obtained and execution executed 263
- 259 *Landlord and Tenant.* By landlord for arrears of rent, lessee or assignee claiming any right, &c., at law or equity, and proceeding for relief in equity not to continue injunction against the ejectment unless within forty days after full

EJECTMENT *continued.*

answer by claimant, he pays into court the sum sworn to by landlord as arrears, and also the costs taxed to abide issue of cause, or paid to landlord on security; and where proceedings in equity taken after execution executed, lessor or landlord to account only for the exact sum he makes of premises, or which, if less than rent, lessee or assignee to pay before getting possession, enough to make up the rent 264

Landlord and Tenant. By landlord for arrears of rent, tenant or assignee paying or tendering at any time before trial landlord his executors, &c., or their attorney, or paying into court all the rent and arrears and costs, proceedings discontinued 265

Landlord against Tenant for years, or year to year holding over after service of demand of possession, may address a notice to tenant to find bail if ordered by court or judge, for the purpose thereafter specified; and on appearance or non-appearance, or filing affidavit of service of writ and notice, and producing lease and proving execution by affidavit, and on affidavit that premises have been actually enjoyed under lease, and that tenant's interest has expired or determined and possession demanded, to move court, or apply to judge at chambers for rule or summons for tenant to shew cause within time fixed by judge why he should not enter recognizance with two sureties, conditioned to pay costs and damages recovered by plaintiff, and court on affidavit of service of rule or summons, if no cause shewn, to make same absolute in whole or part, and order accordingly, and party neglecting to obey order, then landlord filing affidavit to be at

EJECTMENT *continued.*

liberty to sign judgment for possession and costs (Sch. A. No. 20.) 266

Landlord and Tenant, at trial of against tenant so soon as landlord has proved his right to possession, he may prove *mesne profits* from expiration of tenancy to verdict, or some preceding day specially mentioned in it, and jury to give verdict for recovery of premises and for damages for such mesne profits, and landlord to have judgment for possession and costs and for mesne profits found by jury 267

Landlord and Tenant, against tenant holding over and security given under section 266 and verdict for claimant, unless judge thinks it contrary to evidence or damages excessive he may order judgment to be entered and execution to issue for claimant in six days after verdict..... 268

Landlord and Tenant, against tenant holding over recognizances and securities given under section 266 may be taken before persons authorised to take bail in actions in superior courts and with like fees and charges, but no action on same to be brought after six months from time when possession given to landlord 269

Mortgagee bringing, where no suit for foreclosure or redemption pending, if person having right to redeem who becomes defendant at any time during action pays mortgagee, or in case of his refusal shall bring into court principal, interest and costs, court may discharge mortgagor and by rule compel mortgagee to re-convey premises and deliver deeds 271

C. L. P., 1857.

Mortgagee bringing, where right to redemption contested or premises chargeable with other sums,

EJECTMENT *continued.*

- or right to redemption contravened between different defendants in same cause, the 271st section not to apply, and no subsequent mortgage, &c., to be prejudiced by act..... 272
- Same Claimant* bringing against same defendant for same property, court, on defendants application after appearance may order claimant to give defendant security for costs, and stay of proceedings till given..... 273
- Generally.* Courts and judges to exercise like jurisdiction as exercised in old action of ejectment, so as to insure trial of title and actual ouster when necessary, &c..... 273

ENLARGEMENT

- Of Time for making Award* may be by consent in writing of parties, or by order of court or judge, and where no time specified, to be deemed for one month 95

EQUITABLE GROUNDS

- Replication* in replevin, may be for 289
- Equitable Defence* which in replevin would in the superior courts entitle the opposite party to relief against judgment, may be pleaded now in replevin, provided the plea begins "For defence on equitable grounds," or the like effect 11

C. L. P., 1857

ERROR

- Death* of either party between verdict and judgment not to be alleged for error, if judgment be entered within two terms after verdict 212

ESCAPE

- Sheriff* not liable to action for, where debtor allowed the limits on bond, &c., in the regular way 303

ESCAPE *continued.*

Sheriff not liable to action for, after assignment of
 bail bond to plaintiff 305

EVIDENCE

Party not to impeach his own witness by general
 evidence of bad character, but may, when he is
 adverse contradict him, and how 159

Contradictory Verbal statements of witness, proof of 160

Written contradictory statements by witness how
 proved..... 161

Conviction of felony or misdemeanor, proof of ... 162

Attesting Witness to document not requiring attes-
 tation, need not be produced..... 163

At Trial by admission of documents after notice to
 admit, and as to costs of refusal 165

Admissions may be proved by affidavit of attorney
 in the cause 166

At Trial, service of notice to produce, and time of,
 may be proved by affidavit of attorney in the
 cause, or clerk, where copy of notice is annexed 167

Court or Judge on motions may order production
 of documents, and *vivâ voce* examination, and
 before whom, prior to making order..... 170

Examinations and Depositions certified under hand
 of judge, &c., to be received and read without
 proof of signature saving just exceptions 179

Of Writ of Execution being renewed, the mark
 and memorandum in the margin of renewal suffi-
 cient..... 190

EXAMINATION

Of Witnesses at trial, party discrediting his own
 witness.... 159

Cross Examination, as to previous statements in
 writing 161

EXAMINATION *continued*

<i>Cross Examination</i> of witnesses at trial, proof of contradictory verbal statements by, how regulated.	160
<i>Viva voce</i> may on hearing of motions, be ordered by court or judge	170
<i>Adjourned</i> , may be under rule or order of court from time to time as court or judge, or person appointed to take same may require.....	171
<i>Prisoner</i> may be taken up for, on <i>habeas corpus</i> by sheriff	173
<i>Oral</i> may be ordered by court or judge when party omits to answer written interrogatories for discovery without just cause	178
<i>Special Report</i> of, and conduct or absence of witness or other person thereon, may, if needed be made to court where proceedings pending, and court to proceed for contempt	180
<i>Of Judgment Debtor</i> as to what debts are due to him, may be had by judgment creditor upon order	193

EXECUTION

<i>Writs of</i> , all to issue from office where judgment is entered or after transmission of roll to principal office, at option of party entitled thereto, out of principal office	11
<i>Against Absconding Debtor</i> , not to issue until plaintiff, his attorney or agent swear to sum due, plaintiff giving credit for lawful sets off...	45
<i>In Action</i> by plaintiffs, obtained before the plaintiff in writ of attachment against absconding debtor, such suit having commenced in any court of record in Upper Canada and process served or executed before suing out of writ of attachment, to have priority if suit not fraudulent or in collusion with plaintiff, subject to costs of suing out and executing the attachment if court orders, when fraudulent &c., court or judge may set aside	55

EXECUTION *continued.*

On Final Judgment against defendant for want of appearance to writ of summons with special indorsement, plaintiff may issue at expiration of eight days from last day of appearance, and not before 60

May be Issued by plaintiff against one or more of defendants not appearing to specially indorsed writ of summons, and effect of such execution by creating abandonment against the other defendants 66

To Issue for amount not exceeding amount indorsed on writ of summons, with interest and costs..... 61

Immediate, may issue on judgment obtained on finding of jury on trial of issue, without formal pleadings (Sched. A. No. 8)..... 79

After Judgment of Court, on special case, immediate, unless otherwise agreed or stayed by proceedings in error or appeal..... 82

May Issue as on a judgment in ejectment where court orders possession of lands to be given pursuant to award, and possession to be given by the sheriff in the same way 96

Immediate, or on day named, judge may certify for, at any time before the end of assizes..... 182

Issue of, may be forthwith or afterwards, according to terms of judge's certificate on any day in vacation or term..... 182

Staying, or setting aside by court, in which action brought 184

Set Aside, &c., party affected by, restored to all he may have lost thereby, as on reversal of judgment by writ of error..... 184

Writs of, may be issued at once into any county or united counties, and be directed to sheriff of any county or united counties without reference

TION

160

170

171

173

178

180

193

11

45

55

EXECUTION *continued.*

to venue, and without suggestion of issuing of prior writ.....	186
<i>Writ of</i> against lands current when sheriff goes out of office, to be executed, and sale made by successor	187
<i>Advertisement</i> in official Gazette, of sale of lands during currency of writ, sufficient commencement to enable completion after it shall be returnable, by sale and conveyance of the lands.....	188
<i>Writ of</i> , dated and tested on day of issue	189
<i>Duration</i> , one year.....	189
<i>Renewal</i> before expiration for one year from date of renewal	189
<i>Renewal of</i> , to give priority according to the time of the original delivery thereof	189
<i>Renewal of</i> writ of execution; Evidence of	190
<i>Writs of</i> , to fix bail, may be tested, and returnable in vacation	192
<i>Against Garnishee</i> , by order of judge, may issue without any writ or process for amount due from him towards satisfaction of the judgment debt...	196
<i>Levied against Garnishee</i> is valid discharge to him for amount levied by judgment creditor	198
<i>Writ or Writs</i> . Plaintiff in action for detention of chattel, entitled to against defendant's goods or lands for, damages costs and interest.....	201
<i>Revival of</i> , where necessary, how	203-204
<i>Issue of</i> , may be by authority of husband, without writ of revivor or suggestion.....	214
<i>On Wife's Judgment</i> , may be authorized by husband	214
<i>In Ejectment</i> , for possession and costs, when to issue on finding for claimant	239
<i>In Ejectment</i> , for defendant, to issue on fifth day of term after verdict, unless ordered by court or judge previously	240

EXECUTION *continued.*

CTION

186	<i>In Ejectment</i> on judgment for recovery of possession and costs, may be either in one or separate writs	241
187	<i>In Ejectment</i> after confession of action	257
188	<i>In Ejectment</i> for recovery of possession of the portion of the property for which one of several defendants gives confession	258
189	<i>In Ejectment</i> , on judgment in, may issue without entering proceedings on roll, except where necessary for the purpose of evidence or bringing error or appealing, &c.	260
189	<i>In Ejectment</i> , executed, by landlord for arrears of rent, lessee, &c., seeking relief in equity against him, limited to six months after.....	263
189	<i>On Mandamus</i> , against disobedient defendant, may be issued by court for expense of act performed by plaintiff and costs	280
190	<i>In Action</i> on bill of exchange, &c., after July 1st, 1858, plaintiff may issue on final judgment at end of 15 days after judgment has been signed... 4	
192		C. L. P., 1857.
196	<i>After Judgment</i> , in action on bill of exchange, &c., court or judge, under special circumstances, may stay or set aside and give leave to appear to the writ on terms, in discretion	6
198		C. L. P., 1857.
201	<i>On Judgment</i> , within what time may issue on without renewal.....	10
204		C. L. P., 1857.
214	<i>Against Garnishee</i> , may issue out of county or division court by order of judge of county court,	16
214		C. L. P., 1857.
239	<i>Founded on Confession or Cog. Act.</i> the latter in order to support the former must be filed of record within one month after giving	17
240		C. L. P., 1857.

EXECUTION *continued.*

Founded on Confession or Cog. Act. which at passing of act was unsatisfied, the confession or *cog. act.* must be filed of record within four months from passing of act to make it valid to support execution..... 18

C. L. P., 1857.

Against Goods. Sheriff under *fi. fa.* to seize money and bank notes, (including surplus of any former execution), cheques, bills of exchange, promissory notes, bonds, mortgages, specialties, or other securities for money, and pay or deliver same to plaintiff 22

C. L. P., 1857.

Plaintiff to whom sheriff has delivered bills, &c., may sue in the name of the sheriff, &c., for the sums secured thereon 22

C. L. P., 1857.

Payment to sheriff, &c., of cheques, &c., or recovery and levying execution against the party liable thereon, shall discharge him to amount of payment or recovery and levy, from his liability on such cheque, &c..... 22

C. L. P., 1857.

After Execution, and satisfaction of levy and sheriff's poundage and expenses, if any surplus in sheriff's hands, same to be paid to party against whom writ issued 22

C. L. P., 1857.

Sheriff on, not bound to sue any party upon any cheque, &c., unless execution creditor gives bond, with two sureties indemnifying him from costs and expenses 22

C. L. P., 1857.

From Q. B., C. P., or County Court against goods, wearing apparel of debtor and family, exempted from seizure, and tools, &c., to value of £15 also exempted..... 23

C. L. P., 1857.

EXECUTION *continued.*

Against Goods, where issued from Q. B., C. P., C. C. and warrant of execution against the goods of the same party has issued from a division court, the right to the goods seized to be determined by the priority of time of delivery of writ to sheriff, or warrant to bailiff 24
 C. L. P. 1857.

EXECUTOR

Of Sole Plaintiff, where plaintiff had declared, but sole defendant had not pleaded before death, shall plead at same time to declaration and suggestion within eight days after service of suggestion 211

Proceedings Against, upon a judgment of assets *in futuro*, may be had and taken in the manner provided as to writs of revivor 216

EXHIBITS AT TRIAL

To be Sent to clerk of principal office in Toronto, with record of *nisi prius*, by deputy clerk of the crown, after twenty-four hours' notice in writing to do so..... 3
 C. L. P. 1857.

FALSE SWEARING

Penalties of perjury on persons convicted of 310

FEEES

Service of writs, when no fees allowed for 28
 C. L. P., 1857.

FELONY

Conviction of, or of misdemeanor may be proved against witness and how 162
Forging signature to affidavit, &c..... 40

FIERI FACIAS

For Goods, Sheriff may seize under, money, cheques, bills of exchange, bonds, &c..... 22
 C. L. P., 1857.

FLERI FACIAS *continued.*

<i>Wearing Apparel</i> of debtor and family, &c., exempted from seizure under.....	23
	<small>C. L. P., 1857.</small>
<i>Tools</i> to value of £15 exempted from.....	23
	<small>C. L. P., 1857.</small>
<i>Against Goods</i> , from Q. B., C. P., or C. C. and warrant of execution from division court issued at the same time, priority to be determined by time of delivery to sheriff of writ and of warrant to bailiff.....	24
	<small>C. L. P., 1857.</small>

FINAL JUDGMENT

<i>On Cognovits Actionem</i> and warrants of attorney when and where they may be entered	10
<i>Plaintiff may sign at once</i> (Sch. A. No. 7 bis.) and what amount where writ of summons specially indorsed, on filing affidavit of personal service of writ of summons, or rule of court, or judge's order for leave to proceed under the act, and the writ of summons	60
<i>Error or Appeal</i> , no proceedings to be on.....	60
<i>In action</i> where defendant does not appear, and plaintiff signs judgment, the writ of summons not being specially indorsed, but where it might have been	61
<i>In Action on Bill of Exchange</i> , &c., after 1st of July, 1858, plaintiff may sign in form, Sch. 2, on default of defendant's appearance.....	4
	<small>C. L. P., 1857.</small>
<i>Amount</i> for which to be signed	4
	<small>C. L. P., 1857.</small>
<i>Sum for Costs</i> in to be fixed by rule of court.....	4
	<small>C. L. P., 1857.</small>
<i>After</i> , in action on bill of exchange, &c., court or judge may, under special circumstances set it	

FINAL JUDGMENT *continued.*

aside, and stay or set aside execution and give
leave to appear to the writ on terms in discretion 6
C. L. P., 1857.

FORMS

Of Writs altered by act, not to destroy previous
force and effect except as to alteration..... 314

FRAUD

Prisoner in Execution for, and for other reasons
specified in section, may be recommitted for
twelve months 300

GAOL

Limits of, to be the limits of the county, &c. 301
Sheriff may take bail to limits of 302
Sureties of a debtor on bail to the limits may sur-
render debtor at 306
Limits of, not for debtors in custody on criminal
charges 307
Limits of, sheriff taking bond from debtor under
the 302nd section of C. L. P. Act, 1856, to have
further condition in bond for debtor to get same
allowed, &c., within thirty days from delivery to
sheriff, &c. 25
C. L. P., 1857.

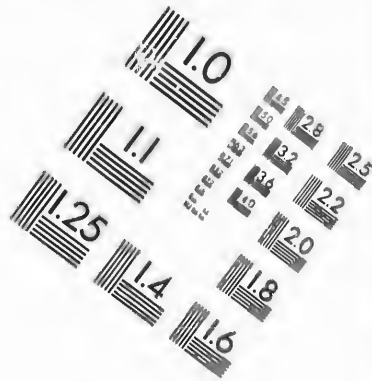
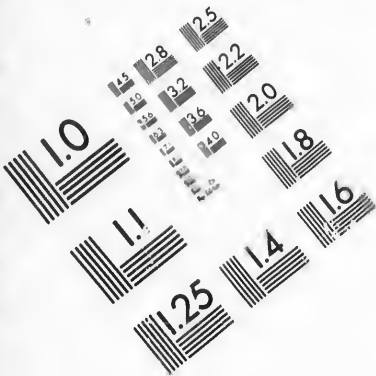
GAOLER

To Receive Debtor surrendered by sureties 306

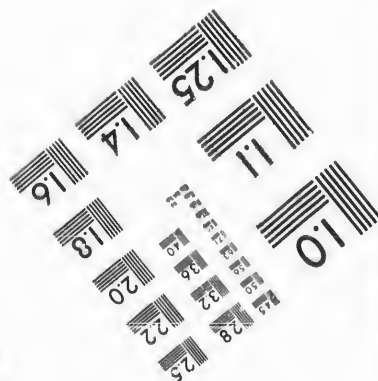
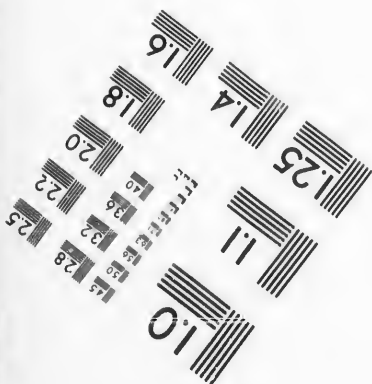
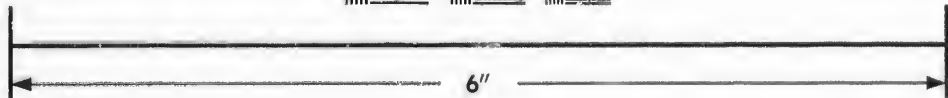
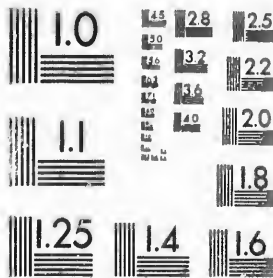
GARNISHEE

Is a Party owing debts to judgment creditor within
jurisdiction 194
Judge may order to appear before him, to shew
cause why he should not pay judgment creditor
the debt due from him to judgment debtor or
sufficient to satisfy judgment 194





**IMAGE EVALUATION
TEST TARGET (MT-3)**



**Photographic
Sciences
Corporation**

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

18
20
22
25
28
32
36
40
45
50

54
57
60
63
66
69
72
75
78
81
84
87
90
93
96
99
100

GARNISHEE *continued.*

Debts in hands of, bound by service of judge's order to attach debts or by notice as judge may direct 195

Execution may issue against on order of judge, for not paying forthwith into court and not disputing debt claimed to be due to judgment debtor, or not appearing on summons 196

Disputing Liability, writ against him may be had by order of judge for alleged debt, &c..... 197

Discharged is, as to amount paid, as against judgment debtor..... 198

Costs of application for attachment of debts and proceedings arising from or incidental to such application, in discretion of court or judge.... 200

Amount Claimed within jurisdiction of county or division court; the order under the 194th section of C. L. P. Act, 1856, shall be for garnishee to appear before judge of county court where garnishee resides, on particular day and place in county 16
C. L. P., 1857.

Notice thereof to, on service of order 16
C. L. P., 1857.

Execution against, to issue out of county or division court, failing to pay, or not disputing debt, or not appearing, may be ordered by judge, on proof of service of order and appointment four days previous 16
C. L. P., 1857.

Disputing his Liability, judge may give judgment creditor leave to proceed against in the county or division court for same and costs 16
C. L. P., 1857.

Payment by, or execution levied on, to be a discharge to him as against the judgment creditor, although the proceedings may be set aside, or the judgment reversed 16
C. L. P., 1857.

GOOD FRIDAY

When Last of Ten Days, for proceedings mentioned in writs of summons or capias in default of defendant's appearance or putting in special bail, same to be taken on following day 65

GOVERNOR OF PROVINCE

May suspend rules made by judges, when..... 313

HABEAS CORPUS

Prisoner to be had up for examination on issue of by court or judge 173

HOLDER

Of Dishonored Bill or note, remedies for expenses of noting and protesting, or damages for non-payment 8

C. L. P., 1857.

Of Bill or Note may proceed against all parties to it under this act in one action 9

C. L. P., 1857.

HOLIDAYS

Provision where the last of the ten days for proceedings mentioned in writs of summons and capias, in default of defendant's appearance, or putting in special bail, falls on 65

HUSBAND AND WIFE

In Action by, on cause of action arising to wife, husband may add thereto claims in his own right, 76

Separate actions brought in respect of their claims, court or judge may order to be consolidated, and, either plaintiff dying, the suit will abate only as to causes of action not surviving 76

Judgment may be against wife alone, or, by suggestion or writ of revivor, against husband and wife,

HUSBAND AND WIFE *continued.*

and execution issue thereon, where wife, plaintiff
or defendant, married after action commenced... 214

INCUMBRANCES

In Ejectment subsequent to mortgage, not to be
prejudiced by any proceedings under the 271st
section..... 272

INDEMNITY

Against Loss of negotiable instrument given, court
may order that the loss shall not be set up in
action 292

INDORSEMENT

On every Writ of summons or capias, what..... 21
On any Writ, and copy served or executed for the
payment of any debt, shall be stated.
Amount of Debt 26
Amount of what plaintiff's attorney claims for costs
of writ, copy and service, and attendance to
receive debt and costs..... 26
That on Payment within eight days to plaintiff or
attorney, further proceedings will be stayed..... 26
Form of 26
On any Writ omitted, may be amended, how and
when 37
On Writ of Ejectment 221

INJUNCTION

Chancery in, ejectment by landlord against tenant,
conditions precedent to grant or continuation of
injunction against ejectment imposed on lessee
seeking relief against landlord in equity 263

INJUNCTION WRIT

Breach of Contract, in all cases of and other injury

INJUNCTION WRIT *continued.*

when party injured is entitled to maintain and has brought an action, he may in like case and manner as for mandamus claim a writ of injunction against repetition or continuance of breach of contract or injury, and may include in same action claim for damages 284

Writ of summons in such action, the form the same as writ of summons on any personal action, but on every such writ and copy is to be indorsed a notice that in default of appearance the plaintiff may besides proceeding to judgment and execution for damages and costs apply for and obtain a writ of injunction..... 284

Writ, Proceedings in action to obtain similar to those in action for mandamus, and judgment may be given that writ of injunction do or do not issue; and may be enforced by attachment by the court or judge thereof..... 285

Writ, order for, if granted *ex parte* may be discharged, varied or set aside by court..... 286

INSPECTION

By Jury, Party or Witnesses, of real or personal property may be ordered by court, &c., on terms on application of either party 172

ISSUE

Without Formal Pleadings in form of Sched. A. No. 8, may be made up for trial by consent of parties and order of judge, between writ and judgment 77

(*Schedule A. No. 8*) by consent for trial, without formal pleadings, on the finding of the jury upon, judgment may be entered, and execution issued forthwith, unless otherwise agreed, or the court or judge shall otherwise order 79

ISSUE *continued.*

<i>The Proceedings upon</i> , on trial by consent (Sched. A. No. 8,) may be recorded at instance of either party, and effective whether recorded or not ...	80
<i>Finding of Jury</i> on, as to particular items in account referred to arbitration, tried by order of judge, to be acted on by arbitrator	85
<i>Joinder of</i> , and form	128
<i>Plaintiff</i> may add for defendant in all cases where plaintiff's pleading is in denial of defendant's pleading or some part of it.....	128
<i>Of Fact or Law</i> , resulting in favour of either party where several matters pleaded by leave of court, costs to be adjudged to successful party whatever may be the result of the other issues	130
<i>Joined</i> , and plaintiff neglecting to bring up to trial, defendant may give twenty days' notice to bring it on, and plaintiff neglecting, defendant may suggest on record, and sign judgment for his costs	151
<i>In Ejectment</i> may be made up by claimant or attorney, after appearance entered without pleadings, so that it may appear for what defence is made, and directing sheriff to summon a jury...	232
<i>Defence for Whole.</i> Sched. A. No. 15.....	232
<i>Defence for Part.</i> Sched. A. No. 14.....	232
<i>In Ejectment</i> , notice limiting the defence of each of the persons answering to form part of	232

INTERPLEADER

<i>Sheriff</i> to have the like right of in case of attachment against absconding debtor, as in respect of writs of execution.....	27
--	----

C. L. P., 1857.

INTERROGATORIES

For Discovery, in writing, may be delivered by

INTERROGATORIES *continued.*

ed.	order of court, &c., in causes in superior courts	
er	by plaintiff, with declaration, and by defendant	
. . . 80	with plea, requiring answer on affidavit within	
ac-	ten days to be filed.....	176
of	<i>Order for</i> , founded on affidavit of party applying	
. . . 85	his attorney or agent	177
. . . 128	<i>Party Omitting</i> to answer without just cause, court	
es	may direct oral examination, and before whom.	178
d-	<i>Prisoner in Execution</i> applying for weekly allow-	
. 128	ance or discharge in default of payment, plaintiff	
y	may file against, to be answered on oath prior to	
t,	order for allowance or discharge	296
er	<i>Prisoner in Execution</i> , plaintiff may file against	
. 130	and serve on, and court or judge may stay pay-	
l,	ment of weekly allowance till answers filed, and	
g	four days' notice given of filing.....	297
y	<i>Prisoner in Execution</i> , against, must be filed by	
is	all plaintiffs joining in, as if they were plaintiffs	
. 151	in one suit	298
r	<i>Prisoner in Execution</i> for three successive months,	
l-	plaintiff may file further against, applying for	
s	discharge on rule or summons, and debtor order-	
. 232	ed to answer rule or summons before finally	
. 232	disposed of, in what cases	300
. 232		

INVENTORY

	<i>And Appraisement</i> by sheriff of property seized	
	under writ of attachment against absconding	
	debtor, how made, and how paid for	49, 50, 54
	<i>And Appraisement</i> sheriff having made on first	
	writ of attachment against absconding debtor,	
	not required to make new one on subsequent	
	writ of attachment coming to hands.....	54
27	<i>To be made</i> by sheriff of property siezed by him of	
., 1857.	absconding debtor	49, 54

JOINT CONTRACTORS

- Proceedings* against, on writ amended by plaintiff
after plea in abatement for non-joinder 71
- Abatement of Action* against, not to be unless
special averments in defendant's plea of abate-
ment that joint contractor is living within the
limits of Upper Canada and affidavit of truth of
plea filed 73
- Judgment* may be recovered against one or more
of that are sued on proof of joint obligation,
which may be given in evidence against any one
contractor 74

JOINT OBLIGATION, &c.,

- Evidence* may be given in, against any one or more
of joint obligors, &c., for recovery of judgment
against him 74

JOINT TENANTS, &c.,

- In Ejectment*, with claimant, may at time of ap-
pearance or within four days after, give notice
of their defence as such, and admitting claimant's
right to share with them and denying ouster and
supporting same by affidavit, notice shall be
entered on the issue, and the question of ouster
tried in addition..... 242

JOINDER OF ISSUE

- Form* and effect of 128
- Plaintiff* may add for defendant, in all cases where
plaintiff's pleading is in denial of defendant's
pleading or some part of it 128

JUDGE

- Meaning* of the words "A judge" 315
- On consent* of parties, may order trial without for-

JUDGE *continued.*

TION

71	mal pleadings (Sch. A. No. 8) on being satisfied that they have a <i>bonâ fide</i> interest in the decision of the question, and that the same is fit to be tried	77
	<i>On Consent</i> of parties, may order special case on questions of law for the opinion of the court, after writ issued and before judgment	81
73	<i>Award</i> , enforcement of under compulsory reference, may authorise at any time after six days from publication although the time for setting it aside has not elapsed.	90
74	<i>Of Superior Court</i> may appoint arbitrator or umpire where parties fail to appoint under agreement or arbitrator or umpire die refuse or become incapable to act.	92
74	<i>Of Superior Courts.</i> Judges may order and direct by rule or order, either in term or vacation, what pleas may be pleaded together, other than those which may be pleaded together of course.	133
	<i>At Nisi Prius</i> may during trial in actions involving long accounts direct a reference as to part of issues, and verdict for the rest, &c. (See 20 Vic., chap. 57, sec. 12)	156
242	<i>At Trial</i> has right to inspect and use for purposes of trial, in his discretion, writing on which witness is cross-examined without being shewn to him	161
128	<i>Witness</i> , attendance and examination of, and production of documents, may order, when witness has refused to make affidavit required in action in superior courts	174
128	<i>Certificate</i> may give for immediate execution, or at day named, at any time before end of sittings or assizes	182
315	<i>On Application</i> , <i>exparte</i> of judgment creditor on affidavit, may order attachment of debts in hands	

JUDGE *continued.*

of garnishee to pay amount of creditor's judgment	194
<i>Garnishee</i> , to appear, may order	194
<i>Service of Order</i> to attach debts due to judgment debtor, or notice to garnishee, as judge may direct, shall bind debts	195
<i>Execution against Garnishee</i> , omitting to pay amount due from him into court, or not appearing on summons, may be ordered by judge	196
<i>May issue Summons</i> to judgment debtor to shew cause why judgment should not be revived and execution. (Sch. A. No. 9).....	203-204
<i>On Summons</i> , may limit time for proceedings by party entitled to continue action, where but for his act the action would have abated.....	215
<i>In Ejectment</i> may in all cases order better particulars of land claimed or defended, or of title thereto	229
<i>In Ejectment</i> , may give leave with consent of parties for special case to be stated	233
<i>General Rules</i> of practice, power as to	313
<i>Powers of</i> , under 13 & 14 Victoria, cap. 51, not affected by act.....	316
<i>Of Superior Courts</i> may sit after term, for giving judgment.....	316
<i>In Action</i> on bill of exchange, &c., after July 1st, 1858, judge of any superior court or county court shall on application, within sixteen days from service of writ, give leave to defendant to appear and defend on defendant paying money into court, &c., or upon affidavits disclosing a legal or equitable defence, &c.....	5
	C. L. P., 1857
<i>At Nisi Prius</i> directing any reference under the 156th sect. of the C. L. P. Act, 1856, may direct	

JUDGE *continued.*

lg- ... 194	such reference in like manner as he has power to do under the 84th and 85th sections of the C. L. P. Act, 1856.....	12
... 194		C. L. P., 1857.
nt ay ... 195	<i>Every Arbitrator</i> so appointed by, shall be subject to the provisions of the said 84th and 85th sections	12
ay ar- ... 196		C. L. P., 1857.
ew nd 03-204	<i>Powers</i> of arbitrator so appointed by, to be those expressed in the 86th section of the C. L. P. Act, 1856	12
by or ... 215		C. L. P., 1857.
r- le ... 229	<i>Regulations</i> , as to which arbitrator so appointed by is to be subject, are those mentioned and provided in regard to arbitrators in and by the 87th section of the C. L. P. Act, 1856.....	12
of ... 233		C. L. P., 1857.
... 313	<i>Trial at Bar</i> , judges may appoint a particular day for	15
ot ... 315		C. L. P., 1857.
g ... 316	<i>Of County Court</i> of county where garnishee resides to exercise jurisdiction in orders made for him to appear before him in cases where amount claimed is within the jurisdiction of county or division court	16
t, y ys to y a . 5 . P., 1857		C. L. P., 1857.
e et	<i>When</i> he may order execution to issue out of county or division court against garnishee	16
		C. L. P., 1857.
	<i>Of County Court</i> , may, in actions in superior court when the attorneys of plaintiff and defendant reside in same county, issue summonses and orders for copy or inspection of documents and particulars of demand or set off, security for costs and time to plead	21
		C. L. P., 1857.

JUDGE *continued.*

<i>Of County Court, allowance of bond on bail to the limits by</i>	25
	C. L. P., 1857.
<i>Disallowance of</i>	25
	C. L. P., 1857.
<i>Powers conferred on judges by C. L. P. Act, 1856, extended to making rules and new forms of proceeding under this act</i>	31
	C. L. P., 1857.

JUDGE'S ORDER

<i>For Issue of capias where cause of action other than debt certain</i>	23
--	----

JUDGMENT

<i>In Queen's Bench or Common Pleas when entered by deputy clerk, certificate signed by him to be given of same, which may be registered and bind lands</i>	15
<i>Against Absconding Debtor, not obtainable till plaintiff proves debt or damages</i>	45
<i>And Execution thereon obtained fraudulently, or action brought by plaintiff in collusion with absconding debtor, no privilege allowed over subsequent execution under writ of attachment, but court or judge may set aside</i>	55
<i>Obtained by creditor of absconding debtor in division court, creditor obtaining to share with other creditors of absconding debtor who obtain judgment</i>	56
<i>Creditors of absconding debtor, when to share rateably with judgment creditors under writ of attachment</i>	57
<i>May be Signed by plaintiff against one or more of several defendants, not appearing to specially indorsed writ, others appearing</i>	66
<i>By Default, plaintiff may sign in action commenced by writ of summons not specially indorsed</i>	61

SECTION

SECTION

JUDGMENT *continued.*

Joint Contractors, against one or more of, on proof of the joint obligation to be recovered as if it were only the obligation of the defendant or defendants sued 74

May be Entered on finding of jury upon trial of issue without formal pleadings (Sch. A. No. 8) 79

On Trial by Consent (Sch. A. No. 8) whether recorded or not, to have same effect as any other judgment in contested action..... 30

To be Entered for sum fixed by parties in submitting special case to court, as dependent on its opinion..... 82

In Ejectment, order of court for delivery of possession of lands under award, to have effect of..... 96

Against Land, registered, ceases to be a lien, and lien ceases in three years after registration or within one year after passing of act (10th June, 1857) unless re-registered 19
C. L. P., 1857.

Discharge from registry by certificate signed by judgment creditor 20
C. L. P., 1857.

Discharge, may be in manner now provided by law 20
C. L. P., 1857.

For Costs of suit, plaintiff to sign, if, after taking money out of court in discharge of action, defendant omit to pay as taxed within forty-eight hours 122

And Costs of suit, defendant entitled to, where plaintiff does not accept money paid into court, and where issue thereon is subsequently found for defendant 122

For Balance, when defendant entitled to, and his costs on plea of set-off..... 124

Opposite Party may sign, where (cases provided

he
... 25
L. P., 1857.
... 25
L. P., 1857.
56,
CO-
... 31
L. P., 1857.
er
... 23
ed
be
ad
... 15
ill
... 45
or
b-
b-
nt
... 55
n
i-
nt 56
e-
n-
... 57
f
y
... 66
d
... 61

JUDGMENT *continued.*

- for in act excepted) either party pleads several pleas, &c., without leave..... 135
- For Pleading several Pleas without leave* signed, may be set aside by court or judge upon affidavit of merits, and terms as to costs in discretion ... 135
- When Demurrer* set aside for want of statement in margin, or for frivolous statement, may by leave be signed as for want of a plea..... 138
- By Default*, and mode of ascertaining amount to be recovered thereon 141
- By Default*, to be *final* where plaintiff seeks to recover a debt or liquidated demand in money, where true cause and amount stated in special endorsement on writ of summons or declaration. 142
- By Default*, where it appears to court that damages, which ought to be recovered by plaintiff, are substantially matter of calculation, amount may be ascertained by the clerk of the crown and pleas, or by the judge of the county court 143
- Final*, plaintiff may sign after damages on judgment by default are ascertained, as on the finding of a jury for assessment of damages..... 143
- Sum of Money* recovered by plaintiff may be awarded to generally in, without any distinction being made as to whether such sum is recovered by way of debt or damages..... 144
- Default* for not proceeding to trial, British act 14 Geo. II., ch. 17, "*An act to prevent inconveniences from delays of causes after issue joined,*" so far as relates to judgments, as in cases of nonsuit, not to remain in force in Upper Canada... 149
- For Costs*, and defendant to have, where plaintiff neglects to go to trial within a certain time after issue joined, having given notice to plaintiff..... 151
- Entered forthwith*, where judge certifies for imme-

JUDGMENT *continued.*

ral		diate execution or day named, but party entitled	
....	135	to judgment may postpone signing	182
ed,		<i>Signed</i> by section 182 may be entered and recorded	
ivit		as of the court where action pending, though	
... 135		court not sitting on day of signing	183
in		<i>Signed or Recorded</i> , or execution issued under sec-	
ave		tions 182, 183, may be vacated, and execution	
.... 138		stayed or set aside by court in which action	
to		brought	184
.... 141		<i>Arrest of</i> , court in which action brought may enter,	184
to		<i>Application to vacate</i> , to be made within first four	
ey,		days of term after verdict	184
cial		<i>In Superior Court</i> , any creditor who has obtained,	
on. 142		may apply for order for oral examination of judg-	
ges,		ment debtor as to what debts are owing to him.	193
ub-		<i>Creditor</i> , on ex parte application to court, and on	
be		leave before or after oral examination of judg-	
as,		ment debtor, or affidavit of recovery of judgment	
.... 143		still unsatisfied, to attach debts owing from gar-	
ent		nishee to recover the judgment, &c.	194
of a		<i>Creditor</i> may sue garnishee, by leave of judge, for	
.... 143		his debt and costs	198
rd-		<i>Revival of</i> , and execution, may be by writ of revivor,	
ing		or on leave of court on a rule to shew cause, or	
way		by a judge on summons, which may be in form,	
.... 144		Sch. A. No. 9.....	203
14		<i>Revival of</i> , court or judge discharging rule, or dis-	
ve-		missing summons to shew cause against revival,	
d,"		party at liberty to proceed by writ of revivor or	
on-		action on judgment.....	204
a... 149		<i>Action on</i> , may be brought by judgment creditor,	204
atiff		<i>Age less than ten years</i> , may be revived by writ of	
fter		revivor, without any rule or order.....	207
.... 151		<i>Age more than ten years</i> , may be revived by writ	
me-		of revivor, allowed by rule of court or a judge...	207

JUDGMENT *continued.*

- Age more than fifteen years, may be revived by writ of revivor upon a rule to shew cause.....* 207
- On Trial after death of sole plaintiff, and suggestion entered on the record, to follow verdict in favour of or against person making suggestion as if he were originally plaintiff.....* 210
- Death of either party between verdict and, must be entered within two terms after verdict, to save allegation for error.....* 212
- Interlocutory, death of either party after and before final judgment not to abate suit where executor of plaintiff might originally have maintained action against defendant, or by plaintiff against executor of defendant.....* 213
- Of or against Wife, how proceeded on in case where wife, plaintiff or defendant, marries after commencement of action* 214
- Of Assets in Futuro, proceedings against executors may be had and taken upon in the same manner as writs of revivor* 216
- On Motion in Arrest of, court may grant leave to party to suggest the existence of omitted facts, which, if true, would remedy defect* 217
- Non obstante Veredicto, on motion for, court may grant leave to party to suggest the existence of omitted facts, which, if true, would remedy defect,* 217
- In Ejectment, to be signed by plaintiff in default of appearance, Sch. A. No. 13* 231
- To be Signed by plaintiff where defence limited to part, Sch. A. No. 14* 231
- In Ejectment for costs of suit, claimant entitled to, whose title is proved to have existed at service of writ, although subsequently expired before trial* 235
- In Ejectment, on finding for claimant when to be*

JUDGMENT *continued.*

by	207	signed, and execution to issue for possession and costs.....	239
ges- in as	210	<i>In Ejectment</i> , for defendants, when signed, &c. ...	240
.....	210	<i>In Ejectment</i> , for possession and costs, execution may be in one or several writs, at claimant's option	241
be ave	212	<i>In Ejectment</i> , for defendant and costs, when on trial of issue it is found that defendant is joint tenant, &c., and actual ouster not proved.....	243
Fore ator ned inst	213	<i>For Claimant</i> for possession and costs, where defendant defends as joint tenant, &c., with him, and is not found such, or that an actual ouster has taken place	243
ere om-	214	<i>In Ejectment</i> , on continuance of action, for surviving claimant, when and on what proof	245
.....	214	<i>In Ejectment</i> , on death of one of several defendants before or after who defend jointly, on suggestion action may proceed against surviving defendant to judgment and execution.....	249
tors ner	216	<i>In Ejectment</i> , claimant may have, without suggestion or revivor, although sole defendant or all defendants dead since verdict	251
e to cts,	217	<i>In Ejectment</i> for defendant, after twenty days' notice to claimant and latter not proceeding to trial	256
may e of ect, ault	217	<i>In Ejectment</i> , may be had on <i>confession</i> (Sch. A. No. 19)	257
.....	231	<i>In Ejectment</i> , on confession by one of several defendants as to the portion of the property for which he separately defends.....	258
d to	231	<i>In Ejectment</i> for costs occasioned by defence of one of several defendants where the others defended for the same property, claimant to have where confession given	259
l to, vice fere	235	<i>In Ejectment</i> , effect of, the same as that of a judg-	
o be			

JUDGMENT *continued.*

ment in ejectment under the 13th & 14th Vic., c. 57, "An act to alter and amend the practice and proceedings in actions of ejectment in Upper Canada."	261
<i>In Ejectment</i> , landlord to have for recovery of possession and costs against tenant holding over who neglects or refuses to find bail under order of judge to secure claimant's costs	266
<i>In Ejectment</i> , landlord against tenant holding over, may be entered by leave in six days after verdict	268
<i>Judgments, Decrees, &c.</i> , at law or equity may be set aside for defects or errors four years from entering of record, &c.	293
<i>In certain Actions</i> , and on fraudulent debts, to warrant court or judge to re-commit debtor applying for discharge, for twelve calendar months, and then to be discharged	300
<i>Out of Term</i> , pronounced on days specially appointed by judges, to have same effect as though given in term	316

JUDGMENT FINAL

<i>Judgment on Cognovits actionem</i> and warrants of attorney, when and where they may be entered	10
<i>Plaintiff</i> may sign at once (Sch. A. No. 7, bis.) and for what amount, where writ of summons specially indorsed, and affidavit of personal service of writ of summons or a rule of court, or a judge's order for leave to proceed under the act and the writ of summons are filed	60
<i>No Proceedings in Error</i> or appeal to be on.....	60
<i>When to be</i> , in action where defendant does not appear, and plaintiff signs judgment, the writ of summons not being specially indorsed	61
<i>In Action on Bill of Exchange, &c.</i> , after 1st of	

JUDGMENT FINAL *continued.*

July, 1858, plaintiff may sign in form schedule
 2, on default of defendant's appearance 4
C. L. P., 1857.

Amount for which to be signed..... 4
C. L. P., 1857.

Sum for costs in to be fixed by rule of court..... 4
C. L. P., 1857.

After Final Judgment, Action on Bill of Exchange, &c., court or judge may, under special circumstances, set it aside and stay or set aside execution, and give leave to appear to the writ in terms in discretion 6
C. L. P., 1857.

Founded on Confession or Cog. Act. the latter in order to support the former must be filed of record within one month after giving..... 17
C. L. P., 1857.

Founded on Confession, or Cog. Act. which at passing of Act (10 June, 1857), was unsatisfied, the confession or *cog. act.* must be filed of record within four months from passing of act, to make it valid to support judgment..... 18

JUDGMENT ROLLS

And Papers belonging to, deputy clerk to send to principal clerk of proper court in Toronto to be docketed 15

Lost or destroyed, certified copy of entry in docket books to be evidence 15

JURISDICTION

Writ of Summons, where defendant, a British subject resides out of (Sch. A. No. 3)..... 35

Writ of Summons, where defendant, not a British subject, resides out of, (Sch. A. No. 4)..... 36, 40

JURISDICTION *continued.*

<i>Jurisdiction and Non-jurisdiction Writs</i> , may be marked as concurrent, one for service out of jurisdiction, and one in, and <i>vice versa</i>	39
<i>Defendant out of</i> , where affidavit to be sworn on which to enable court to direct proceedings.....	40
<i>Of Superior Courts</i> , to entertain motion respecting arbitration or award, not to arise, when agreement made a rule of any one in particular of such supreme courts	97
<i>In Ejectment</i> , of courts and judges under this act co-extensive with jurisdiction in old action of ejectment.....	273

JUSTIFICATION

<i>Of Sureties</i> , to bond on bail to the limits, how to be made	302
--	-----

LANDLORD AND TENANT

<i>In Ejectment</i> , party in possession may, by leave, appear and defend, though not named in writ, on shewing possession in himself or tenant	225
<i>In Ejectment</i> , person appearing to defend as landlord, of property in his own or tenant's possession, to state in appearance, that he appears as landlord	227
<i>In Ejectment</i> , defence by landlord, may be any which he might heretofore have set up.....	227
<i>In Ejectment</i> , appearance or defences, by persons not in possession by themselves or tenants, may be struck out or confined by court or judge.....	230
<i>Tenant</i> , receiving writ of ejectment, or knowing of it, to notify landlord, and failing, is subject to a penalty of three years' rack rent	262
<i>Landlord</i> , in ejectment, may recover penalty against tenant, who omits to notify him of writ of ejectment	262

LANDLORD AND TENANT *continued.*

be		<i>Landlord</i> , where half a year's rent in arrear, having right to re-enter, may without formal demand and entry, bring ejectment, and proceedings thereon	263
is-	39		
... on	40	<i>Landlord and Lessee</i> , in ejectment, for arrears of rent, proceedings of, where lessee, &c. seeks relief in equity, and for what accountable after execution executed, pending proceedings	264
ng			
ee-	97	<i>Landlord</i> in ejectment, against tenant holding over, entitled to bail, under order of court, to secure his costs	266
ch			
... act	273	<i>Landlord</i> , notwithstanding this act, may proceed against tenant, wrongfully holding over, under 4 Wm. IV., chap. 1, " <i>An act to amend the law respecting real property, and to render the proceedings for recovering possession thereof in certain cases less difficult and expensive</i>	266
of			
... be	302	<i>In Ejectment</i> , landlord at trial, after establishing his right to possession, may go into evidence of mesne profits up to verdict, and have judgment for same, and for recovery of possession and costs.....	267
ve,			
on	225	<i>In Ejectment</i> , against tenant holding over; not to be barred of action for mesne profits, after verdict	267
... ad-	227	<i>Landlord's</i> rights of action or remedies, not to be prejudiced or affected by the act, otherwise than as expressly enacted	270
n,			
d-			
ny	227		
... ns			
ay	230		
... of	262		
a			
... st	262		
ct-			
... 262			

LEASE

<i>In Ejectment</i> , landlord against tenant for rent in arrears; landlord discharged from lease, after lessee barred of relief; but mortgagee's rights saved	263
--	-----

LESSEE

<i>In Ejectment</i> , by landlord against tenant for arrears	
--	--

LESSEE *continued.*

- of rent, not paying arrears, and full costs, or proceeding for relief in equity within six months after execution executed, barred and foreclosed from relief, except appeal, &c. 263
- In Ejectment*, by landlord against tenant for arrears of rent, proceeding for relief in equity, not to have injunction, unless within forty days after claimant's answer he shall pay arrears sworn to by landlord, and costs, into court, to abide issue of cause, or to be paid to landlord on security 264
- In Ejectment*, landlord against tenant for arrears of rent, paying or tendering landlord or attorney, or into court, at any time before trial, all the rent and arrears and costs, proceedings to be discontinued 265
- Relieved in Equity*, to hold land, according to lease thereof made, without new lease 265
- For Years*, or from year to year, holding over after expiration or determination of term, after demand in writing, may be proceeded against by writ of ejectment; and, after notice to find bail, court or judge may order him to find security for amount to be recovered by plaintiff and costs ... 266

LEGAL REPRESENTATIVE

- In Ejectment*, of deceased claimant, right to share property not to be affected by surviving claimant's receiving possession of entirety 247
- In Ejectment*, of deceased sole claimant, how to continue action by suggestion, and proceedings thereon 248
- In Ejectment*, of defendant who defended severally for property for which others also defend, dying before trial, may get leave of court to appear and defend 253

SECTION

SECTION

ro-
ter
om
... 263
ars
ve
m-
by
of
... 264
ars
ey,
ent
on-
... 265
ase
... 265
ter
de-
by
ail,
for
... 266

are
im-
... 247
to
ngs
... 248
ally
ing
and
... 253

LIABILITY

- Of Plaintiff, joined by order of court or judge, to be the same as if originally joined as co-plaintiff in cause* 67
- Of Party Joined, as plaintiff, upon amendment at trial of non-joinder to be the same as if he had been originally joined in the action* 68

LIBEL OR SLANDER

- Actions for, what averments plaintiffs may make...* 110

LIMITS

- County and Union of Counties, for judicial purposes, identical with the limits of the gaols of such county*..... 301
- Sheriff may take bail to*..... 302
- Debtor on, execution may be sued out against his lands or goods*..... 308
- Of Gaol, bond to the sheriff, under 302nd section of C. L. P., 1856, to contain further condition as to allowance by judge of county court* 25
C. L. P., 1857.

LIMITATIONS

- Statutes of, effect of renewed writs on* 28

LOSS

- Of Negotiable Instrument, court may order not to be set up in action, if indemnity given*..... 292

MANDAMUS

- Writ, plaintiff in any action in superior court (except replevin and ejectment) may endorse on writ and copy for service a notice that he intends to claim a writ of mandamus, and he may thereupon claim it in the declaration, together with any other demand, or, separately, a writ of man-*

MANDAMUS *continued.*

- mandamus, commanding defendant to fulfil any duty in which plaintiff is personally interested..... 275
- Declaration* to set forth sufficient ground, on which claim is founded, that plaintiff is personally interested, that he sustains damage by non-performance of such duty, and that performance has been demanded and refused 276
- Pleadings* on the same, and costs recoverable by either party, as in action for damages; if judgment that mandamus do issue, the court, besides ordinary execution for costs and damages, also to issue peremptory writ of mandamus to defendant 277
- Form* of such writ, to whom addressed, and return thereto..... 278
- Writ so issued* to have force and effect of peremptory writ of mandamus 279
- Court may*, on plaintiff's application, besides, or instead of proceeding against disobedient defendant by attachment, order that the act to be done may be done by plaintiff at expense of defendant, to be ascertained either by writ of inquiry or reference, and enforce payment and costs by execution..... 280
- Jurisdiction of Superior Courts* to issue writs of, preserved, and not to be invalid because prosecutor had the right to proceed by action for mandamus under this act 281
- Prerogative Writ of*, on motion for, rule may be absolute in the first instance, if court think fit, and when to be tested and returnable, and enlargement of time to return 282

MARGIN

Of any Writ issued by clerk or deputy-clerk of

MARGIN *continued.*

crown and pleas to contain memorandum of office
and county whence issued 20

MARRIAGE

Of Woman, plaintiff or defendant, not to abate
action, which may be proceeded with to judgment
and execution 214

MESNE PROFITS

In Ejectment, landlord against tenant, may be
proved at trial, and judgment given for damages
to amount of, and for possession and costs..... 267

MILEAGE

Not allowed on service of writs, except on affidavit,
produced to taxing master, of actual disburse-
ment, and to whom paid..... 311

MONEY, &c.

Sheriff may seize, and cheque, &c., under fi. fa.
for goods 22

C. L. P., 1857.

MORTGAGOR AND MORTGAGEE

Mortgagee of Lease, not in possession, not barred
of rights on landlord's ejectment against tenant
for arrears, if within six months after judgment
obtained, and execution executed, he pay arrears,
costs, and damages, and perform first lessee's
covenants 263

Mortgagee bringing Ejectment, where defendant
having right to redeem, pays him, or into court
principal interest and costs computed, may be
ruled to assign, &c., premises, and deliver deeds
to mortgagor 271

MORTGAGOR AND MORTGAGEE *continued.*

- Mortgagor Appearing* to defend ejection brought by mortgagee, may at any time pending action, pay mortgage or into court, principal, interest, and costs computed, and court will thereon discharge him, and order re-conveyance of premises, and delivery of deeds..... 271
- Mortgagee*, or subsequent incumbrancers, not to be prejudiced by any proceedings in ejection, under the 271st section 272

MOTIONS

- On Affidavits*, court or judge may give leave to opposite party to answer by affidavits, new matter arising thereon 169
- Hearing of*, or summons, court &c., at discretion, may order production of documents, or witness for *vivâ voce* examination and before whom.... 170

NEGOTIABLE INSTRUMENT

- Loss of*, court may order not to be set up in action, if indemnity given 292

NEW TRIAL

- After trial by consent without Pleadings*, judge may delay execution, to give either party an opportunity to move for 79

NONSUIT

- Rule Nisi for*, must contain grounds on which granted, but court may amend omission and permit re-service..... 168
- In Ejection*, of claimant, where defendant appears at trial, and he does not..... 237

NOTARIAL EXPENSES

On Bill or Note, dishonoured, may be recovered by holder, with amount of the bill..... 8

C. L. P., 1887

NOTICE

Of Defendant's Objection, for non-joinder of plaintiff, should be given in writing, at or before time of pleading 68

Of Objection, given by defendant to non-joinder of plaintiff, writ and other proceedings may be amended by plaintiff before plea, by adding persons named in notice 69

Instead of Rule, shall be sufficient requiring opposite party to declare, reply, rejoin, within eight days, otherwise judgment, and may be indorsed on any pleading which the other party is required to answer..... 102

To Plead to declaration in eight days, otherwise judgment, may be indorsed on copy declaration or delivered separately 112

To Plead, no new one required to amended pleading 139

Of Assessment of Damages, eight days to be given Countermand, four days, or when short notice, two days 147

Of Trial, eight days..... Countermand, four days, or where short notice, two days 147

To Produce, service of, proved by affidavit of attorney in the cause, or clerk, and how..... 167

To Sheriff, by creditor not to discharge his debtor, nullifies authority given by attorney for discharge from custody 191

To Garnishee, as judge may direct, or service on him of judge's order, shall bind debts in his hands 195

NOTICE *continued.*

- In Ejectment*, of claimant's title, to be attached to writ and copies 222
- In Ejectment*, of claimant's title, attached to writ, not to contain more than one mode in which title is set up without leave of court or judge 222
- In Ejectment*, of defendant's claim, to be filed with appearance, its contents, and rules and restrictions applicable thereto 224
- In Ejectment*, to limit defence as to part of premises in writ, to be given by party not intending to defend for whole, and to be served within four days after appearance on attorney, or filed in office 228
- In Ejectment*, of defence as joint tenants, tenants in common, &c. 242
- In Ejectment*, defendant may give twenty days to claimant not proceeding to trial, and proceedings on default to judgment. Sch. A. No. 18. 256
- Tenant*, to give to landlord, of writ of ejectment, under penalty of three years' rack rent 262
- In Ejectment*, to tenant to find bail, where landlord proceeding by writ of ejectment against tenant for years, or from year to year, holding over.. 266
- On Writ*, where mandamus required and allowed, given in any action in the superior courts 275
- What, to be Indorsed* on writ of summons, issued in action where writ of injunction to be applied for..... 284
- Sufficient*, prisoner in execution to give of filing answers to plaintiff's interrogatories, upon his application for weekly allowance or discharge.... 296
- Four Clear Days*, prisoner in execution to give to plaintiff, of answers filed to interrogatories, after order obtained for allowance..... 297

SECTION

SECTION

NOTICE *continued.*

Prisoner in Execution, for three successive months, to give fifteen days' notice to plaintiff of intention to apply for discharge 300

After Twenty-four Hours, deputy clerk of crown to send record of *nisi prius*, and exhibits filed at trial, to the clerk of the principal office in Toronto 3
C. L. P., 1857.

Written to Garnishee, of proceedings against him in county court required 16
C. L. P., 1857.

Service of, and appointment, four days previous, to be proved to judge of county court, on application for leave to issue execution against garnishee, out of county or division court..... 16
C. L. P., 1857.

Debtor to give four days, in writing, to plaintiff or attorney, of motion for allowance of bond to the limits 26
C. L. P., 1857.

OFFICE COPIES

Of Depositions, taken under order for examination, may be given out 179

OFFICIAL GAZETTE

Advertisement in, of lands for sale under execution, during currency of writ, to be deemed sufficient commencement of execution, to enable same to be completed after it shall be returnable, by sale and conveyance of the lands 188

OMISSION

Of Requirements in, and indorsements on, any writ, effect of 37

ORAL EXAMINATION

Court or Judge may order, when party omits to

to
... 222
it,
tle
... 222
ith
ic-
... 224
of
in-
ed
ey,
... 228
nts
... 242
to
gs
... 256
nt,
... 262
rd
unt
... 266
ed,
... 275
ed
ed
... 284
ng
P-
... 296
to
er
... 297

ORAL EXAMINATION *continued.*

- answer interrogatories for discovery without just
cause 178
- Of Judgment Debtor*, may be had by judgment
creditor 193

ORDER

- Of Judge*, for arbitration of mere matters of
account, how enforced ... 84

OUSTER

- In Ejectment*, when denied by defendant joint
tenant, &c., with claimant, and supported by affi-
davit, to be an additional question to be tried on
trial of issue..... 242
- In Ejectment*, actual, if question to be tried, and on
trial of issue, in section 242, it be found that
defendant is joint tenant, &c., with claimant, and
unless ouster proved defendant to be entitled to
judgment and costs; but if found that defendant
is not joint tenant, &c., with claimant, and ouster
has taken place, then judgment for possession
and costs for claimant 243

OYER

- Opposite Party* cannot claim, because profert
made of deed mentioned, &c., in pleading 104

PARTICULARS

- Of Demand*, need not be delivered, in cases
where writ of summons is indorsed in special
form, Sch. A. No. 5 41
- New Assignment* by plaintiff, to be consistent with
and confined by 136
- In Ejectment*, of land claimed or defended, better
may be ordered by judge than are contained in
writ or notice 229

PARTIES, JOINDER, MIS-JOINDER, NON-JOINDER.

Joinder or striking out Plaintiffs before Trial.

Court or Judge, at any time

Before Trial of cause may

Order, that any person

Not Joined as

Plaintiff shall be so

Joined, or that any person originally joined as plaintiff shall be

Struck out from the cause, if it appears that

Injustice will not be done thereby, and that the person to be

Added consent to be so

Joined, or that the person to be

Struck out was originally introduced without his consent or

Consents to be struck out; and such

Amendment shall be made upon such

Terms as to amendment of proceedings, if any,

Postponement of trial and otherwise, as

Court or Judge think proper; and when any such amendment shall have been made, the

Liability of any person

Added as Plaintiff shall subject to the terms, be the same as if he had been

Originally Joined in the cause 66

Mis-joinder or Non-joinder of Plaintiffs at Trial.

Where at Trial of any action it shall appear that there has been a

Mis-joinder of plaintiff, or that some person

Not Joined as plaintiff ought to have been so joined, and the

Defendant shall not at or before the time of pleading have given

PARTIES, JOINDER, MIS-JOINDER, NON-JOINDER *continued.*

Notice in writing that he Objects to such non-joinder, specifying therein the name or names of such person, &c., such Mis-joinder or Non-joinder may be Amended as a Variance by any Court of Record holding pleas in civil actions, or by any Judge sitting at nisi prius or other Presiding Officer, in like manner as to the mode of amendment of variances under 7 Wm. IV., ch. 3, if it shall appear that such Mis-joinder or Non-joinder was not for the purpose of obtaining an Undue Advantage, and that Injustice will not be done by such Amendment, and that the person to be added Consent to be, and that the person to be Struck out was originally introduced without his consent, or that such person consents to be struck out, and such Amendment shall be made upon such Terms as the Court, &c., think proper; and when such amendment shall be made the Liability of person Added as Co-Plaintiff shall, subject to the terms, be the same as if he had been Originally Joined in such action 68

Non-Joinder of Co-Plaintiffs.

Where Defendant gives Notice of his objection before pleading, or where Plea in abatement of

PARTIES, JOINDER, MIS-JOINDER, NON-JOINDER *continued.*

Non-joinder of a person as co-plaintiff is pleaded by defendant,
Plaintiff shall be at liberty without order to *Amend* the writ and other proceedings *Before Plea*, by adding the names of the persons named in such
Notice or
Plea in Abatement, and to
Proceed in the Action without any further appearance, on payment of the
Costs of such amendment, only and in such case the
Defendant shall be at liberty to
Plead de novo 69

Mis-joinder of Defendants before Trial.
Court or Judge, in the case of the
Joinder of too many defendants in any
Action on Contract, at any time
Before the Trial of such cause to
Order that the name of such defendant, &c., be
Struck out, if it appears that
Injustice will not be done by such
Amendment, which shall be made upon such
Terms as court or judge shall think proper 70

Mis-joinder of Defendants at Trial.
Where at the Trial of any
Action on Contract it appears that there has been a
Mis-joinder of Defendants, it may be
Amended as a
Variance at the trial in like manner as the mis-joinder of plaintiff, and upon such

68

PARTIES, JOINDER, MIS-JOINDER, NON-
 JOINDER *continued.*

Terms as the court or judge, or other presiding officer, by whom such amendment is made, shall think proper..... 70

Non-Joinder as Co-Defendants.

In Action on Contract, where
Non-Joinder as co-defendant has been
Pleaded in Abatement,
Plaintiff shall be at liberty without any order to
 Amend the writ of summons and the declaration by
 Adding the name of the person named in the
Plea of Abatement as joint contractors, and to
 serve the
Amended Writ on the person named in such
Plea of Abatement, and to proceed against the
Original Defendant and the person so named in
 the plea of abatement; but the
Date of such
Amendment shall, as between the person, &c., so
 named in such
Plea of Abatement and the
Plaintiff, be considered for all purposes as the
Commencement of the action..... 71

In all Cases after such

Plea of Abatement and
Amendment, if it shall appear on
Trial of the action that the person named in such
Plea in Abatement was or were
Jointly Liable with the original defendant, the
Original Defendant shall be entitled, as against
 the
Plaintiff, to the

PARTIES, JOINDER, MIS-JOINDER, NON-JOINDER *continued.*

Costs of such

Plea in Abatement and amendment; but if at such

Trial it shall appear that the

Original Defendant or Defendants, or any of them, is or are liable, but that one or more of the persons named in such plea in abatement is or are not liable as a contracting party or parties,

The Plaintiff shall nevertheless be entitled to *Judgment* against the other

Defendant or Defendants who shall appear to be *Liable*, and

Every Defendant who is

Not so Liable shall have

Judgment, and shall be entitled to his

Costs as against the

Plaintiff, who shall be allowed the same, together with the costs on the plea in abatement and amendment, as costs in the cause against the *Original Defendant or Defendants* who shall have so

Pleaded in abatement the mis-joinder of such person

Provided that any defendant who shall have so *Pleaded in Abatement* shall be at liberty on the *Trial* to adduce evidence of the liability of the defendants named by him in such plea in abatement 72

In any Action brought against any *Joint Obligor or Contractor* the action shall *Not Abate* on account of any *Other Joint Obligor*, not being made a

SECTION

ng
de,
... 70

to
ra-

to

e
in

so

e
... 71

ch

e
ast

PARTIES, JOINDER, MIS-JOINDER, NON-JOINDER *continued.*

Defendant unless the party pleading such
Non-joinder shall aver in his
Plea that such
Joint Obligor or Joint Contractor is
Living within the limits of Upper Canada, and
state the
Place of his Residence, nor unless an
Affidavit of the
Truth of such
Plea be filed therewith 73

May Consent and go to trial on order of judge,
without formal pleadings, Sch. A. No. 8..... 77

May Agree in Writing, and embody it in judge's
order, to pay the one to the other a fixed sum, or
to be ascertained by the jury, on the issue,
according to the result of the trial of issue, with
or without costs of action 77

Between Writ and Judgment, may agree to special
case for opinion of court upon questions of law
without pleadings 81

To Action, may agree to pay or not money fixed
or to be ascertained according to decision on
special case..... 82

To Action where mere matter of account involved
to appoint arbitrator, to whom court or judge
may refer..... 84

To Deed or Writing, agreeing to refer differences
to arbitration, to have proceedings at law or in
equity subsequently instituted by one or more of
them in contravention of agreement, stayed on
terms 91

PAYMENT

By Defendant of Costs indorsed on writ, not to

PAYMENT *continued.*

preclude him from taxing them, and getting costs of taxation of plaintiff's attorney, where more than one-sixth disallowed 26

PAYMENT INTO COURT

Defendant, in all actions, allowed to make, (except in actions specified in section) and one or more defendants may, by leave of court. The 13 and 14 Vic., chap. 60, not to be affected 119

Form of plea of 120

Rule or Order for, not necessary, except in case of one or more of several defendants 121

To Whom to be made, and how paid out 121

Receipt for, when paid in..... 121

After Plea Filed, and service, plaintiff may reply by accepting sum in satisfaction of cause of action 122

And Tax his costs of suit, and if not paid within forty-eight hours, sign judgment for taxed costs 122

Garnishee, making default in, of amount due to judgment debtor, judge may order execution against him 196

In Ejectment, by mortgagee, mortgagor may pay principal into court and costs to be computed.. 271

PERISHABLE GOODS

Of Absconding Debtor, seized by sheriff, how and when to be sold..... 50

PERJURY

Penalties of, persons liable to, who on examination on oath or affirmation, or affidavit under act, willfully and corruptly giving false evidence, or willfully and corruptly swearing to any thing which shall be false, on conviction 310

PERSONAL ACTIONS

Defendant, residing or supposed to reside within the jurisdiction, except where it is intended to

and
... 73
lge,
... 77
ge's
, or
sue,
with
... 77
cial
law
... 81
ixed
a on
... 82
lved
dge
... 84
nces
or in
e of
d on
... 91
t to

PERSONAL ACTIONS *continued.*

hold him to special bail, commenced by writ of summons (Sch. A. No. 1).....	16
<i>Defendant</i> to be held to bail, commenced by writ of <i>capias</i> (Sch. A. No. 2).....	22
<i>Defendant</i> , a British subject, residing out of jurisdiction of superior courts, plaintiff may issue writ of summons (Sch. A. No. 3).....	35
<i>Defendant</i> , not a British subject, residing out of jurisdiction, writ of summons to be according to form Sch. A. No. 4	36

PERSONAL SERVICE

<i>Of Writ of Summons</i> , necessary where practicable	34
<i>Where Impracticable</i> , court or judge on plaintiff's application, supported by affidavit, may give him liberty to proceed as in case of personal service..	34

PLAINTIFF

<i>At Liberty</i> , where defendant in jurisdiction, and claim for debt or liquidated demand, to put special indorsement on writ (Sch. A. No. 5) to operate as particulars.....	41
<i>In Action against Absconding Debtor</i> , must prove his debt or damages before jury, or on assessment, or by reference to compute, as a condition precedent to obtaining judgment	45
<i>Against Absconding Debtor</i> , if defendant on motion shews that he was not such at time of suing out writ of attachment, he shall recover his costs of defence, and the plaintiff disabled from taking out execution.....	48
<i>Against Absconding Debtor</i> , giving sheriff security, may have perishable property of absconding debtor seized, sold by him	50
<i>On Writ of Attachment</i> , against absconding debtor	

PLAINTIFF *continued.*

t of
 ... 16
 writ
 ... 22
 writ
 ... 35
 t of
 g to
 ... 36
 able
 ff's
 him
 e.. 34
 and
 put
) to
 ... 41
 ove
 ent,
 pre-
 ... 45
 ion
 out
 s of
 ing
 ... 48
 ity,
 ing
 ... 50
 tor

after notice from sheriff of seizure of perishable property, &c., refusing or neglecting to give security for sheriff to sell, warrants a restoration of property..... 51

On Writ of Attachment, against absconding debtor, may apply to court to rule or order sheriff to sue debtor, &c., of absconding debtor 53

In Writ of Attachment, against absconding debtor, cannot compel sheriff to sue debtor, &c., of latter without indemnifying him against costs, &c.... 53

In Suit, where execution obtained before plaintiff on writ of attachment against absconding debtor, to have priority, and on what conditions..... 55

In Writ of Attachment against absconding debtor, may by notice to his debtor or custodian of his property, fix such party with liability, if debt paid, or property delivered after notice..... 52

In Writ of Attachment against absconding debtor, to pay sheriff's costs of seizure, &c., in first instance, and subsequently to be taxed to him as part of his disbursements in suit, against absconding debtor, and so recovered from him..... 54

In Writs of Attachment against absconding debtor who shall obtain judgment and issue execution against him, to share rateably the proceeds of property in sheriff's hands..... 57

On Writs of Attachment against absconding debtor, where the property of absconding debtor, insufficient to pay all, none to share unless writs of attachment were issued, and placed in hands of sheriff for execution within six months from date of first writ of attachment, or in case of warrant of attachment, unless placed in the hands of the bailiff within the same time 57

May Stick up proceedings in office whence writ -

PLAINTIFF *continued.*

issued, when defendant, appearing in person gives illusory or fictitious address, on permission of court and judge	63
<i>In Writ of Summons</i> , special indorsement, proceedings in case of non-appearance of defendant to final judgment (Sch. A. No. 7, bis).....	60
<i>On Writ of Summons</i> not specially indorsed, proceedings in case of, to sign judgment by default, and when such judgment shall be final.....	61
<i>Party Joined as</i> , may be struck out, or not joined may be joined by court or judge before trial, on his consent, &c.	67
<i>Amending Writ</i> and other proceedings after defendant's notice of objection, or plea in abatement for non-joinder, may proceed in action without further appearance, paying costs of amendment	69
<i>How to Cure</i> mis-joinder of defendant before trial	70
<i>In Action on Contract</i> , where the nonjoinder of defendants has been pleaded in abatement, may without order amend writ of summons and declaration, &c.	71
<i>Out of Court</i> deemed, not declaring within one year after writ of summons is returnable	107
<i>Payment into Court</i> , may receive out of court, in person or by attorney, in last case giving written authority	121
<i>Payment into Court</i> , accepting, may tax his costs, and if not paid within forty-eight hours, to sign judgment for costs.....	122
<i>Payment into Court</i> , plaintiff may reply that same is insufficient, but if issue thereon be found for defendant, he is entitled to judgment and costs of suit	122
<i>May Plead Several Matters</i> , in answer, by leave...	130
<i>One New Assignment</i> , may be made by, and what to state.....	136

PLAINTIFF *continued.*

After Damages on judgment by default are ascertained, and indorsed on the rule or order by the clerk of the crown, or judge of county court, may tax costs and sign judgment, as on finding of jury for assessment of damages 143

Neglecting to try Issue, defendant's proceedings .. 151

Record to be entered by, in country causes, with deputy clerk of the crown before noon of the commission or opening day of the assizes..... 154

Record to be entered by in town causes with clerk of assize, from nine o'clock till noon of commission or opening day 155

Interrogatories for Discovery may be delivered with declaration, by order of court, &c., in actions in superior courts, to be answered within ten days by affidavits filed..... 176

Interrogatories, Order for, plaintiff asking, to produce affidavits stating belief that he will derive material benefit in cause from the discovery, and that there is good cause of action 177

Verdict for, judge may certify for immediate execution, or on day to be named for whole or part of sum..... 182

Authorising Discharge from custody of sheriff, &c. under *ca. sa.* is discharge of debt 191

In Action for Detention of Chattel, damages how recovered, execution how and for what issued and option of plaintiff therein 201

Death of, after interlocutory and before final judgment, not to abate suit, if action might be originally prosecuted by his executor..... 213

Mandamus, may have in any action in superior courts (except replevin and ejectionment) by giving notice on writ and copy 275

Injunction, may make *ex parte* application for writ of..... 286

PLAINTIFF *continued.*

- In Replevin*, may reply to defendant's plea facts which avoid the plea on equitable grounds..... 289
- Against Debtor*, prisoner in execution, what rights not to be prejudiced by discharge of debtor for default in payment of weekly allowance..... 295
- Filing Interrogatories* against debtor in custody, before order for weekly allowance, entitled to sufficient notice of answers filed..... 296
- Interrogatories*, may file against debtor in custody, after order for weekly allowance, and court may stay payment till answers filed, and four days' notice of filing..... 297
- In all Suits*, under which debtor is in custody, to be joined in his application for weekly allowance or discharge, and all must join in administering interrogatories to him, and to regulate amongst themselves the apportionment of the weekly allowance 298
- Debtor on Mesne Process*, liable to re-pay weekly allowances, on proof of amount, before taxing master, and to be allowed as disbursements in the suit, and taxed as part of the costs..... 299
- Debtor in Custody*, for three months, obtaining rule or summons to shew cause against discharge, on return of, may get leave to file further interrogatories, and order for debtor to answer them before rule, &c., finally disposed of..... 300
- On Debtor breaking Condition* of bond to limits, may have assignment of bond from sheriff, and proceed thereon in his own name..... 305
- May file Interrogatories* against debtor on the limits 306
- Execution* may have, against lands or goods of debtor on limits, and may be proceeded on although debtor re-committed to close custody . 308

PLAINTIFF *continued.*

<i>In Trespass</i> or trespass on the case, recovering less than 40s. damages, not allowed costs, except judge immediately certifies	312
<i>Costs allowed to</i> , where verdict less than forty shillings, where notice given to defendant not to trespass	312
<i>On Delivery of Cheques</i> , bills of exchange, &c., by sheriff seizing under <i>fi. fa.</i> , may sue parties in sheriff's name	22

C. L. P., 1857.

PLEA

<i>Not Filed</i> and served pursuant to notice to plead indorsed on declaration, where cause of action in declaration is for any of claims which might have been inserted in special indorsement on the writ of summons, judgment shall be final	61
<i>In Abatement of Non-joinder</i> , effect on, and plaintiff's proceedings to amend writ, &c.	69
<i>In Abatement</i> , in action on contract, or non-joinder of defendants, plaintiff's proceedings to amend writ by adding joint-contractors	71
<i>Costs</i> of such plea of abatement	72
<i>Judgment</i> , at trial, regulated according to defendant's liability or non-liability	72
<i>In Abatement for non-joinder</i> , defendant at trial may give evidence of the liability of the defendants named by him therein	72
<i>For Non-joinder</i> , joint contractor or obligor must contain averment, that other joint-contractor, &c., is living in Upper Canada, and where, and affidavits filed of truth of plea therewith	73

PLEADING

<i>No Declaration</i> , or pleading after declaration, to be filed or served between the 1st July, and the 21st August	65
--	----

PLEADING *continued.*

<i>Amendment of</i> , on striking out or adding plaintiff's name, to be made on terms to be imposed by court or judge.....	67
<i>Need not</i> contain statements of time, quantity, quality, and value, where immaterial, nor of losing and finding, and bailment in actions for goods, and their value, nor of acts of trespass having been committed with force, &c., against the peace, &c., and statements of promises in <i>indebitatus</i> counts and mutual promises to perform agreements, and of like kind shall be omitted.....	98
<i>May be Objected to</i> by demurrer, on the ground that it does not shew sufficient ground of action, defence or reply, as the case may be, and where issue is joined, the court not to regard any defect in demurrer, but give judgment according to the very right.....	99
<i>On Amended Pleading</i> , after this act not to be deemed insufficient for any defect which heretofore could only be objected to by special demurrer.....	100
<i>Framed to Prejudice</i> , embarrass or delay fair trial, may be struck out, or amended by judge.....	101
<i>May have Indorsed on it</i> the notice requiring the opposite party to declare, reply, rejoin or otherwise, as the case may be, within eight days, otherwise judgment, and no rule is necessary.....	102
<i>To be Intituled</i> , of proper court, and day of month and year when filed.....	103
<i>Filing of</i> and date, to be identical.....	103
<i>To be Entered</i> on record for trial, and on judgment roll, under day of month and year when same respectively took place.....	103
<i>Profert of deed</i> , &c., not necessary; and if made, opposite party not entitled to crave oyer.....	104

PLEADING *continued.*

iff's
 l by
 ... 67
 ity,
 of
 for
 pass
 inst
 in
 per-
 be
 ... 98
 und
 on,
 ere
 fect
 the
 ... 99
 be
 to-
 ur-
 ... 100
 al,
 ... 101
 the
 er-
 er-
 ... 102
 th
 ... 103
 ... 103
 ent
 me
 ... 103
 le,
 ... 104

Document referred to in, may in answer to plea be set out wholly or the material part, and deemed part of pleading in which set out..... 105
Conditions precedent, the performance of may be averred generally..... 106
Conditions precedent, denial of performance of, not to be general, but to specify those intended to be contested 106
Declaration, to be within one year after writ of summons returnable, or plaintiff deemed out of court 107
Declaration, form of commencement and conclusion 108
Declaration, form of commencement after abatement for non-joinder as defendant..... 109
In Action for Libel and Slander, plaintiff at liberty to make certain averments 110
Rule to Plead or demand of plea unnecessary.... 111
Notice to plead served to be sufficient..... 111
In Bar, time for, where defendant within jurisdiction, eight days, unless extended by court, &c.. 112
Notice, requiring defendant to plead thereto in eight days, otherwise judgment, may be indorsed on copy declaration served or delivered separately 112
Express Colour, no longer necessary in 113
Special Traverses, no longer necessary..... 114
No Allegation necessary of *actionem non*, or *actionem ulterius non*, or any prayer of judgment, nor in replication or subsequent pleading to use any allegation of *precludi non* 115
Formal Defence, not required in plea, avowry or cognizance 116
Commencement of plea, form..... 116
Commencement of second plea, avowry or cognizance 116
Formal Conclusion not necessary 116
Plea, not stating whether defence arose before or after action, deemed before 117

PLEADING *continued.*

<i>Puis darrein Continuance</i> , may be with an allegation that matter arose after last pleading, but not allowed unless accompanied with affidavit that that it arose within eight days before pleading such plea, unless court orders otherwise	118
<i>Payment of Money into Court</i> , allowed in all actions (exceptions in section)	119
<i>Payment into Court</i> , filed and served, plaintiff may reply by accepting in satisfaction of cause of action	122
<i>Payment into Court</i> , plaintiff accepting may tax costs, and if not paid within forty-eight hours, sign judgment for	122
<i>Payment into Court</i> , not accepted, plaintiff may reply that sum is insufficient to satisfy his claim, and if issue thereon is found for defendant, he is entitled to judgment and costs of suit	122
<i>Plea good in substance</i> not objectionable for treating declaration either as framed for breach of contract or for wrong.....	123
<i>Payment and Set-off</i> , and all pleadings capable of such construction, to be taken distributively.....	124
<i>Set-off</i> . If jury finds due from plaintiff to defendant more than from defendant to plaintiff, verdict to pass for defendant for balance, and defendant to have judgment for balance and costs.....	124
<i>Where one Plea</i> might have denied certain of the facts contained in declaration, defendant may traverse generally those facts, or may select and traverse	125
<i>Separately</i> , any material allegation in the declaration, although it might have been included in general traverse	125
<i>Plaintiff may Traverse</i> by general denial, or he may admit some parts and deny the rest, or deny any one or more allegations	126

PLEADING *continued*

<i>Defendant</i> at liberty to deny the whole or part of replication, or subsequent pleading of plaintiff...	127
<i>Joinder of Issue</i> , either party may plead in answer to plea or subsequent pleading	128
<i>Joinder of Issue</i> , form of	128
<i>Joinder of Issue</i> , deemed a denial of the substance of the plea or subsequent pleading, and an issue thereon	128
<i>Of Plaintiff</i> , where in denial of defendant's pleading, or some part of it, plaintiff may add a joinder of issue for defendant.....	128
<i>And Demurring together</i> , leave may be granted to either party on affidavit.....	129
<i>Several Matters</i> to opponent's pleading may be allowed by court.....	130
<i>Several Matters</i> , where allowed, the costs of any issue of fact or law to follow the finding or judgment on such issue	130
<i>Several Matters</i> , where judge's order for, no rule of court required for same purpose	131
<i>Several Matters</i> , all objections to, because founded on same ground of answer or defence, to be heard on the summons to plead several matters,	132
<i>Two or more Pleas together</i> , list of those which may be so pleaded of course and without leave,	133
<i>Other Pleas</i> may be pleaded together by order ...	133
<i>Counsel's Signature</i> not required to.....	134
<i>Several Pleas</i> , replications, &c., without leave (except cases provided for in act), the opposite party at liberty to sign judgment.....	135
<i>New Assignment</i> , one only may be by plaintiff....	136
<i>New Assignment</i> , no plea already pleaded to declaration shall be pleaded to, except denial, unless by leave, on proof that repetition of plea is essential to trial on merits.....	137
<i>Demurrer</i> , form of.....	138

PLEADING *continued.*

- Demurrer*, margin to contain some substantial matter of law to be argued..... 138
- Demurrer*, without statement in margin or frivolous statement, may be set aside by court, &c., and leave given to sign judgment as for want of a plea..... 138
- Joinder on Demurrer*, and form 138
- Amendment* of, where allowed, no notice to plead necessary..... 139
- Amended*, opposite party bound to plead to within time specified in original notice to plead, or within two days after amendment, which shall last expire, unless otherwise ordered 139
- Amended*, where pleaded to before amendment, and not pleaded to *de novo* within two days after amendment, the pleading originally pleaded to be considered as pleaded in answer to amended pleading 139
- Forms of Pleading*, Sch. B..... 140
- Interrogatories for Discovery*, defendant to deliver with plea..... 176
- Of New Defendant Executor*, to declaration and suggestion of sole defendant's death, to be within eight days after service of suggestion 211
- Of New Defendant Executor*, sole defendant dying, having pleaded before death, the executor (new defendant) at liberty to plead to plaintiff's suggestion only, and within eight days after service, by way of denial or plea, appropriate as executor, unless court, &c., allow him to plead fresh matter in answer to declaration 211
- Fresh Matter* by executor (new defendant) to be allowed by court..... 211
- Of New Defendant Executor*, sole defendant dying having pleaded before death, but not arrived at issue, the new defendant, besides pleading to sug-

PLEADING *continued.*

gestion within eight days after service, shall continue pleadings to issue as deceased might, and the pleadings on the declaration and on the suggestion shall be tried together..... 211

To Suggestion allowed by court to opposite party within eight days after notice, on motions in arrest of judgment or for judgment *non obstante veredicto* 217

In Ejection, claimant or attorney may, after appearance, make up issue without pleadings 232

In Action where Mandamus claimed, the same as in ordinary action for damages 277

Upon Prerogative Writ of Mandamus, to be as far as possible as under this act 282

Replevin in, plaintiff may reply in answer to any plea of defendant facts which avoid such plea on equitable grounds, provided such replication begin with the words, "for replication on equitable grounds"..... 289

Equitable, in replevin (see 20 Vic., ch. 57, sec. 11, repealing the 287th section of this act), court or judge may strike out when..... 290

Surrender, offer of, of principal to sheriff, and refusal to receive, sufficient answer to action on the bail-bond for a breach of the conditions after surrender or tender or refusal 306

Judges have power to make alterations in mode of, 313

Plea for Defence on Equitable Grounds allowed in replevin, when the facts pleaded would entitle the party to relief against judgment recovered... 11

C. L. P., 1857

POSTEA

To be Entered of record, with certificate of judge as to execution as part thereof, of the day on which judgment signed..... 182

PRISONER IN CUSTODY

- Sheriff* may take up under *habeas corpus* for examination under act 173
- Debtor* in execution on mesne process, &c., on affidavit, may get order on plaintiff to pay him on 3rd Monday after service of rule, &c., and on every Monday thereafter 10s. during detention, and on default of payment, may on rule *nisi* be discharged, but discharge not to operate as satisfaction of judgment, &c..... 295
- Debtor* applying for weekly allowance or discharge, and plaintiff filing interrogatories, debtor to answer on oath and file answers, and give notice to plaintiff before order made..... 296
- Weekly Allowance*, having obtained order for, plaintiff may at any time serve and file interrogatories, and court, &c., may stay further payment till answers filed and four days' notice given... 297
- In Several Suits*, to make all plaintiffs parties to application for allowance, and only entitled to one weekly sum of 10s., and if unpaid, to be discharged from all the suits named in order for payment..... 298
- Weekly Allowance to*, on proof of amount, to be allowed by taxing master as disbursements in suit, and taxed as part of costs..... 299
- For three successive calendar months*, may, on giving plaintiff or attorney fifteen days' notice of intention to apply for discharge, on proof of notice, &c., apply for rule or summons, to shew cause why he should not be discharged 300
- Court* may order previous assignment, or conveyance by to plaintiff, of right to any property, &c. 300
- Re-committal of*, for twelve months, may be, in what cases 300
- Sheriff* not liable to action for escape from gaol, where bail given to limits 303

PRISONER IN CUSTODY *continued.*

Surrender of, by sureties, may be, after bail to limits 306

On Bail to the Limits, may be re-committed for omitting to answer interrogatories within fifteen days, &c. 307

To remain in custody till again admitted to limits by rule or order 307

On Limits, plaintiff may have execution against lands or goods 308

Criminal charge against, provisions as to weekly allowance and discharge not applicable 309

To get Bond to Limits allowed by county court judge, within thirty days from delivery thereof to sheriff 25

C. L. P., 1857.

To move for Allowance after four days' notice in writing to plaintiff or attorney who may object to sufficiency of sureties 26

C. L. P., 1857.

On Motion by, and allowance of bond refused, may make another bond, which after allowance is to have same effect as bond first given to sheriff 26

C. L. P., 1857.

PRIVILEGE

From Arrest, protected 23

PRODUCTION

Of Documents, court, &c., may command in order for oral examination 178

PROCEEDINGS IN ACTION

Notwithstanding change of Venue, to be carried on in office whence first process was sued out 8

All in Action, to final judgment to be carried on in office whence first process was sued out 9

PROCEEDINGS IN ACTION *continued.*

<i>Service of, and of all papers after writ to be on defendant or attorney according to present practice, unless special provision made in act..</i>	9
<i>Stayed, where attorney declares that writ was not issued by him, or by his authority, and no further taken without leave.....</i>	25
<i>Stay of, court or judge may order, where plaintiff in writ of attachment against absconding debtor applies for on ground that action is brought in collusion with absconding debtor and for fraudulent purpose</i>	5
<i>Sticking up in office, plaintiff may be permitted whence writ was sued out</i>	63
<i>Examination and Production of Documents, on order of judge against party who refused to make affidavit proceedings the same as under 171st section.....</i>	174
<i>Oral Examination, party disobeying order of judge for, proceedings similar to those on order under the 171st section</i>	178
<i>On Writ against garnishee if he disputes debt...</i>	197
<i>Against Executors on judgment of assets in futuro..</i>	216
<i>Motions on, in arrest of judgment, or for judgment non obstante veredicto.....</i>	217
<i>In Ejectment, to ascertain whether writ of, issued by authority of attorney whose name indorsed, and who and what claimants are and their abode, and staying proceedings on writs issued without authority, same as in case of writs in personal actions.....</i>	221
<i>Prerogative Writ of Mandamus, on.....</i>	282
<i>Writ of Injunction in action to obtain, similar to those in mandamus.....</i>	283 to 286
<i>In Actions generally, general powers to courts and judges to amend errors and defects in</i>	291

PROCEEDINGS IN ACTION *continued.*

In Action on Bill of Exchange, &c., may be stayed if plaintiff fails in giving security for costs on requirement of court..... 7
C. L. P., 1857.

PROFERT

Of Deed not necessary, and if made opposite party not entitled to oyer.... 104

REASONABLE CERTAINTY

In Ejectment, notice of nature of claimant's title to be stated with. 222
In Ejectment, defendant's title to be stated with... 224
In Ejectment, notice limiting defence to part of premises, to describe that part with 228
In Ejectment, want of in description of property or part in the writ or notice of defence, or in notice of title by either party, not to nullify them, but only ground for application to judge for better particulars 229

RECORD

Entry of, in country causes, and indorsements to be made when entered..... 154
Entry of, in town causes, with clerk of assize from nine o'clock till noon of commission or opening day 155
In Ejectment, notices of claimant's and defendant's titles to be affixed to, by claimant proceeding to trial..... 234
Suggestion to be made on, of judge's order, when place of trial changed..... 236
Of Nisi Prius, in custody of deputy clerk of crown, with all exhibits filed at trial to be sent to clerk of the principal office in Toronto, by the deputy clerk of the crown, within twenty-four hours after notice in writing delivered to him at his office... 3
C. L. P., 1857.

RECORD *continued.*

Of Nisi Prius, not in court after notice, at the time of moving any rule requiring a reference thereto, the party moving may on filing affidavit of service of notice, and that the record on search has not been found in the principal office, be allowed by court to move without production of. 3

C. L. P., 1857.

REDEMPTION

Of Mortgage, party having right to and appearing and defending ejection brought by mortgagee, may pay principal and interest and costs to him or into court, and get discharged 271

Right to, in ejection, where contested or sum due disputed, the 271st section not to be applicable... 272

REFERENCE COMPULSORY

See (*Compulsory Reference.*)

REFERENCE TO ARBITRATION

Remission of, court may order matter referred to arbitrator or umpire for re-consideration 88

Where Parties under do not appoint arbitrator and arbitrators do not appoint umpire, or arbitrator or umpire refuse or become incapable to act, or die, a judge of superior court may after notice and upon summons appoint..... 92

Where to two Arbitrators, one to be appointed by each party, on death, refusal or incapacity to act of one, the party who appointed him, is entitled to supply his place, if not contrary to document authorising reference, and failing to appoint, either originally or by substitution, for seven clear days after the other party shall have appointed an arbitrator and served the party so failing with notice in writing to make the appointment, the

REFERENCE TO ARBITRATION *continued.*

party who has appointed an arbitrator may appoint him sole referee	93
<i>Where to two Arbitrators</i> , and terms of document authorising it do not shew that there should not be an umpire the two arbitrators may appoint an umpire during the period within which they have power to make an award	94
<i>Submission</i> to may be made rule of any court where no prohibition	97
<i>Limitation</i> as to court of which submission may be made a rule, in what cases	97
<i>Of Accounts</i> , and issues of fact, &c., may be made by judge at and during trial (See 20 Vic., ch. 57, sec. 12)	156
<i>Arbitrators' Names</i> , where parties agree on them to be inserted in order of <i>nisi prius</i> , but not agreeing, the judge to appoint, and other terms to be inserted in order.....	156

REGISTRATION

<i>Of Certificate of Judgment</i> , given by deputy clerk of the crown, &c., in any county, to bind lands	15
<i>Of Judgments</i> against lands, in three years after or within one year from passing of act (10th June, 1857) they cease to be a lien thereon, without re-registration, and the lien ceases.....	19

C. L. P., 1857

<i>Discharge of Judgments</i> , may be from the county registry, on production to registrar of certificate signed by judgment creditor, and on proof of certificate by affidavit of one subscribing witness	20
---	----

C. L. P., 1857.

REMISSION

Of Matters to arbitrator or umpire, whether arbitration is under this act or by submission made

REMISSION *continued.*

a rule of court, may be made by court for re-
consideration, &c. 88

RENEWAL

Of Writs of summons or *capias*..... 28
Of Writs issued before this act..... 29
Production of writ with memorandum required by
the 28th section, evidence of 30

RENT

Half a year in Arrear, and landlord having right
of re-entry, may bring ejectment without formal
demand or re-entry..... 263
In Arrear, to be paid or tendered in ejectment to
landlord before discontinuance 265

REPEAL

Of Acts 318
Of the 202nd section of "the Common Law Pro-
cedure Act, 1856," as to revival of judgments... 10
C. L. P., 1857.
Of the 287th section of C. L. P. Act, 1856, relating
to equitable defence in replevin 11
C. L. P., 1857.
After 21st August, 1857, of the 19th section of 12
Vic., ch. 63, as to terms of sittings of courts..... 29
C. L. P., 1857.
After the Last Day of Trinity Term next of the
152 & 153 sections of the C. L. P. Act, 1856... 30
C. L. P., 1857.

REPLEVIN

Certain facts which if they arose before or during
the time for pleading, would be an answer to the
action by way of plea may, if they arise after
the time during which they could be pleaded, be
set up by way of *auditâ querelâ*..... 288

REPLEVIN *continued.*

Equitable plea and replication in, may be struck out when it cannot be dealt with by a court of law, so as to do justice between the parties.... 290

Plaintiff or Defendant in replevin in any cause in either of the superior courts in which, if judgment were obtained, he would be entitled to relief against such judgment on equitable grounds, may plead the facts so entitling him to relief by way of defence, and courts to receive the plea if it begins with the words, "For defence on equitable grounds" or the like effect... 11
C. L. P., 1857.

REPLICATION

To Plea of Payment in Court, plaintiff may reply that it is not sufficient to satisfy his claim, and where issue thereon found for defendant, he is entitled to judgment and costs of suit..... 122

Denial of, or subsequent pleading, may be by defendant in whole or part 127

In Replevin may be for equitable grounds..... 289

Equitable, in Replevin, when court or judge may strike out..... 290

REPORT SPECIAL

Examiner to make, if necessary, of conduct, absence, &c., of witness, &c., at examination, to court where proceedings pending 180

REVIVAL

Of Judgment or Execution, how effected... 203 & 204

Of Judgment, when execution may issue without.. 10
C. L. P., 1857.

REVIVOR

Writ of, may be sued out by party seeking to revive a judgment, and execution thereon..... 203, 204

REVOCAATION

- Of Appointment*, of one arbitrator, as sole referee where the other party omits to appoint his arbitrator, may be made by court on terms..... 93

RULE OF COURT

- For Returning Writs* and process on sheriff or coroner, may be signed and issued by deputy clerks of Crown and Pleas..... 14
- Or Order*, for writ of attachment against absconding debtor by either of courts or a judge or the judge of any county court..... 44
- Agreement or Submission to Arbitrate* may be made of any one superior court of law or equity..... 97
- To Plead Several Matters*, not required when judge's order made for same purpose 131
- Or Order* to compute, not to be used..... 141
- For Costs of the Day*, for not proceeding to trial or assessment pursuant to notice, or not countermending in sufficient time, may be made on affidavit without motion in court 148
- Nisi for a New Trial*, or to enter a verdict or nonsuit, to state shortly the grounds on which granted 168
- Amendment of*, may be allowed by court..... 168
- Re-Service of*, may be allowed by court 168
- For Oral Examination*, documents mentioned in to be produced..... 178
- On Judgment Debtor*, to shew cause against revival of judgment and execution..... 203
- Discharged*, applicant's remedy..... 204
- Or Order of Court or Judge*, for again admitting debtor to the limits, may be granted on his shewing that he has filed his answers to interrogatories, and has given to plaintiff or his attorney ten days' notice thereof, and of his intention to apply 307

RULE OF COURT *continued.*

Moving on, may be allowed by court without production of *nisi prius* record, where notice given to transmit and search made and not found in principal office proved by affidavit..... 3
C. L. P., 1857.

RULES GENERAL

Judges have power to make 313
Forms and rules for giving effect to this act. *Judges* have power to make 31
C. L. P., 1857.

SATISFACTION OF DEBT

Discharge from Custody under Ca. Sa. by authority of creditor, operates as, but not so by his attorney, except by authority of creditor..... 191

SCIRE FACIAS

Writ of, issued out of Q. B. and C. P., to be tested, directed and proceeded on in like manner as writs of revivor 206

SECURITY

For Costs in action on bill of exchange, &c., court or judge may order plaintiff to give or stay proceedings..... 7
C. L. P., 1857.

SEPARATE DEFENCE

In Ejectment, for portion of property by one of defendants dying before trial, the other defendants not defending for it, claimant's proceedings therein..... 252

SERVICE

Of all Papers and proceedings after writ may be on defendant or attorney according to present practice unless special provision in act..... 9

SERVICE *continued.*

<i>Attorney of either party not residing in, or not having authorised agent residing in county where action commenced, then to be made on attorney wherever resident, or on agent in Toronto.....</i>	9
<i>Agent, attorney having none in Toronto, by leaving copy of the papers for him in the office where action was commenced, marked on outside as copies left for such attorney</i>	9
<i>Of Writ of Summons in any action may be in any county in Upper Canada</i>	31
<i>To be Indorsed on writ within three days, otherwise plaintiff not at liberty in case of non-appearance to proceed</i>	32
<i>Affidavit of service to mention day on which indorsement made</i>	32
<i>Of Absconding Debtor, or attempted service of writ of attachment on, and plaintiff's proceedings thereon</i>	45
<i>Of Judges's Order to attach debts due to judgment debtor or notice to garnishee as judge may direct shall bind debts</i>	195
<i>Of Writ of Ejectment the same as ejectment was formerly served</i>	223
<i>Where vacant possession</i>	223
<i>Of Writ of Ejectment, landlord against tenant.....</i>	263
<i>Of Writs, when fees not allowed for.....</i>	28

G. L. P., 1857.

SET-OFF

<i>Plea of, jury finding due from plaintiff to defendant more than from defendant to plaintiff, verdict to pass for defendant for balance and defendant to have judgment for balance and costs</i>	124
--	-----

SHERIFF

<i>To Return Writs to office from which rule issued in case he shall be served with such rule</i>	14
---	----

SHERIFF *continued.*

<i>To Arrest</i> some of, and serve other defendants with capias where plaintiff or attorney so directs	22
<i>Duties of</i> on writ of <i>capias</i> issued (Sch. A. No. 6), after commencement of action by writ of sum- mons	42
<i>To Seize</i> property of absconding debtor under writ of attachment and make inventory with two freeholders and return with attachment	49
<i>Seizing Perishable Property</i> of absconding debtor, or unsafe to keep or take care of, how to deal with same, on receiving security from plaintiff...	50
<i>After Notice</i> to plaintiff in writ of attachment against absconding debtor, of seizure of perish- able articles, &c., on neglect or refusal of plain- tiff to give security after four days' notice, to restore property to party from whose possession taken, and discharged from liability to plaintiff..	51
<i>To Sue</i> debtor, &c., of absconding debtor on rule or order of court, and on attaching creditor giving bond of indemnity to him	53
<i>Having made Inventory</i> , and appraisement on first writ of attachment, not required to make new one on subsequent writ of attachment	54
<i>Death of</i> , pending action against debtors, &c., of absconding debtor, not to abate action	53
<i>To Demand</i> and take from constable, bailiff, or clerk of division court, property or proceeds of absconding debtor's property in their hands under warrant of attachment issued by 13 & 14 Vic...	56
<i>Costs for Seizing</i> under writ of attachment against absconding debtor to be paid by plaintiff in first instance	54
<i>Of Assistance</i> in making inventory and appraise- ment after seizure under writ of attachment after the rate of five shillings per day	54

SECTION
not
ere
ncy
..... 9
ing
ere
as
..... 9
any
..... 31
wise
ance
..... 32
in-
..... 32
writ
ings
..... 45
ment
irect
..... 195
ment
..... 223
..... 223
..... 263
..... 28
C. L. P., 1857.
ndant
ict to
ant to
..... 124
issued
..... 14

SHERIFF *continued.*

<i>Holding Proceeds</i> of seizure under writ of attachment against absconding debtor, how plaintiffs who have obtained judgments and issued executions are entitled to share	57
<i>At end of one Month</i> following return of any execution against property of absconding debtor, or after a period of one month from a distribution under the order of the court or a judge, to deliver to absconding debtor, or to person in whose custody property was found, or the agent of absconding debtor, the remaining unappropriated property in his hands after the several plaintiffs in writs of attachment satisfied	58
<i>To Deliver Possession</i> of lands awarded to party on reference upon execution issued under order of court	96
<i>Gaoler, &c.</i> , to deliver up prisoner for examination under writ of <i>habeas corpus</i>	173
<i>Going out of Office</i> during currency of writ of execution against lands, and before sale, writ to be executed and sale made by successor	187
<i>Out of Office</i> , may execute any deed to complete sale of lands made by him while in office	187
<i>Bond to the Limits</i> , sheriff may take of any debtor confined in gaol on execution on mesne process, with not less than two, or more than four sureties, and may require justification of sureties, &c.	302
<i>On Receipt of Bond</i> on bail to the limits, and affidavit, &c., if required, may allow debtor out of close custody in gaol into gaol limits, and debtor remaining in limits and keeping condition of bond, sheriff not liable to action for escape	303
<i>Insufficiency of Sureties</i> , fearing, after bond taken, may arrest debtor again, who may again take the benefit of gaol limits on entering into new bond with sureties	304

SHERIFF *continued.*

May Assign Bond to Limits after the breach of condition, on requirement of plaintiff, to operate as a discharge to him of liability on account of debtor or safe custody 305

Assigning Bond to the Limits, has no power afterwards to release the action..... 305

Deputy or Gaoler, bound to receive debtor into custody when surrendered by sureties 306

On Receiving Notice of rule or order of court, or judge re-committing debtor for not answering, &c., interrogatories while on limits, forthwith to take into close custody 307

Of County, to levy on execution issued against garnishee out of county court, when 16
C. L. P., 1857.

On Fi. Fa. against goods to seize money, bank notes, cheques, bills of exchange, &c., and may deliver to plaintiff to cover his debt 22
C. L. P., 1857.

Payment to, or levy by, of and on cheques, bills of exchange, to be a discharge to amount of payment or levy..... 22
C. L. P., 1857.

Seizing under Fi. Fa. from Q. B., C. P., or C. C., and bailiff of Division Court under warrant at the same time, the right to the goods to be determined by priority in time of delivery of writ to sheriff and warrant to bailiff 24
C. L. P., 1857.

Time of delivery of writ how determined..... 24
C. L. P., 1857.

Taking Bond from Debtor in Gaol under the 302nd sec. of C. L. P. Act, 1856, the bond to contain a further condition that debtor shall within thirty days from delivery thereof to sheriff get same allowed by the judge of the county court of the

SHERIFF *continued.*

- county, &c., where debtor is confined and the allowance indorsed by the judge 25
C. L. P., 1857.
- On Notice to Produce Bond* before judge, from debtor, and after allowance indorsed, to be discharged from all responsibility respecting the debtor, except on re-committal..... 25
C. L. P., 1857.
- May Assign Bond*, on which the like remedies, may be had as in the 305th section of the C. L. P. Act, 1856, 25
C. L. P., 1857.
- Interpleader*, has the right of in cases of attachments against absconding debtor as in cases of writs of execution..... 27
C. L. P., 1857.
- To Indorse Service of Writs*, or fees for not allowed except return indorsed, &c., with exceptions..... 28
C. L. P., 1857.
- Action against Coroner*, to serve and indorse return on writ 28
C. L. P., 1857.

SPECIAL BAIL

- May be put in* and perfected according to present practice 24
- After put in*, plaintiff may proceed by filing declaration, or otherwise, to judgment as if action commenced by writ of summons and defendant had appeared thereto..... 24

SPECIAL INDORSEMENT

- On Writ*, in what cases Sch. A No. 5..... 41
- To be considered* as particulars of demand, and no further need be delivered unless by order of court or judge..... 41

SPECIAL CASE

For Opinion of Court, without pleadings, upon questions of law, after writ and before judgment, may be stated by parties, on order of judge... 81

Costs of, to follow event where no agreement..... 83

Execution on, immediate unless stayed by error or appeal 82

For Opinion of Court upon allowance or disallowance of a particular item of mere account referred to arbitration, may be ordered by the court 85

For Opinion of Court, arbitrator of mere matter of account may state his award in form of, when *Where stated for opinion of court* in award the agreement to refer not being before publication of award a rule of court, must be made a rule only of the court specified in award..... 97

In Ejectment may be stated by consent of parties and leave of judge..... 233

SPECIFIC DELIVERY

Of a Chattel may be ordered on execution by court or judge 201

When so Ordered, sheriff to distrain for till rendered by defendant, or, at plaintiff's option when no other order of court, to make of defendant's goods the value of the chattel 201

STAYING PROCEEDINGS

At Law or in Equity taken by any of parties to agreement to arbitrate in contravention of agreement, how and when 91

SUGGESTION

Of Sheriff's death, pending action against debtor, &c., of absconding debtor, to be entered of record on continuance of action by successor... 53

SUGGESTION *continued.*

- Of Death*, where two or more plaintiffs or defendants, and one or more dying, if cause of action survive to plaintiffs, or against defendants' entries on the record of..... 209
- Of Death*, of sole plaintiff, by legal representative and of his being such representative, to be by order of court or judge 210
- Of Death* of sole plaintiff where made before trial, the truth of it to be tried thereat, with title of deceased plaintiff 210
- Of Death* of sole defendant, to be made by plaintiff in any of pleadings if cause not arrived at issue 211
- Filed*, with pleadings, may be 211
- Of Sole Defendant's Death* before pleadings to be part of declaration, and the declaration with a notice to plead and suggestion may be served together 211
- Judgment* may be obtained against husband and wife, and execution issued thereon by suggestion of wife's marriage since commencement of action 214
- Not Necessary* to authorise husband to direct execution to issue on wife's judgment..... 214
- Of Omitted Facts* to remedy defect, may be allowed to party on motions to arrest judgment, or for judgment *non obstante veredicto* 217
- Of Facts to cure Defects*, where allowed by court on motions to arrest judgment, &c., where found true, party suggesting entitled to judgment, as though the facts were originally stated in pleading and proved at trial, together with costs of suggestion, &c., if untrue, opposite party entitled to his costs occasioned by suggestion, and proceedings thereon, &c..... 218
- In Ejectment*, if order of court or judge, to alter place of trial to be made on record..... 236

SUGGESTION *continued.*

- In Ejectment*, of death of deceased claimant, to be made when his right [survives to another claimant and not traversable, but may be set aside as untrue, and action may proceed 245
- In Ejectment*, of death of one of several claimants to be made when right of deceased claimant does not survive, and legal representative does not become party to suit, &c., and action to proceed, &c. 246
- In Ejectment*, of death when one of several claimants dies after verdict for them, but before execution, to be made to enable survivors to proceed to judgment and execution for recovery of the possession of the entirety and costs 247
- In Ejectment*, by legal representative of deceased sole claimant, or before trial, of one of several claimants, whose right does not survive, effect of, to continue proceedings..... 248

SUMMARY DECISION

- Of Mere Matter of Account*, by court or judge, and enforceable by the same process as the finding of a jury upon the matter referred..... 84

SUMMONS

- By Party* giving notice to the other parties to appoint an arbitrator or umpire, to be taken out seven clear days after notice, upon which judge may appoint 92
- To Plead Several Matters*, all objections to pleading several pleas, &c., on the ground that they are founded on the same ground of answer or defence, shall be heard on the summons 132
- On Hearing of*, or motion, court, &c., at discretion, may order production of documents or witnesses for *viva voce* examination, and before whom.... 170

SECTION

fen-
tion
ants'
..... 209

ative
e by
..... 210

trial,
tle of
..... 210

aintiff
issue 211
..... 211

to be
with a
red to-
..... 211

nd and
gestion
action 214

ct exe-
..... 214

allowed
or for
..... 217

by court
re found
dgment,
stated in
with costs
te party
ggestion,
..... 218

e, to alter
..... 236

SUMMONS *continued.*

<i>Party to Action</i> in superior courts may apply for, to party refusing to make affidavit required, for an order to appear and be examined, &c... . . .	174
<i>Garnishee</i> , not appearing on, judge may order execution against him.....	196
<i>To Judgment Debtor, Service of</i> , to shew cause against renewal of judgment and execution, Sch. A. No. 9, to be according to present practice . . .	203
<i>Dismissed</i> , applicant's remedy thereon.....	204
<i>Court satisfied</i> therein, suggestion to be made Sch. A. No. 10, and execution thereon	204
<i>Party</i> may have, against whom action may be continued, which but for act would have been abated, and judge may limit time for proceedings in continuance of action	215

SUNDAY

<i>Christmas Day</i> or Good Friday, the last of the ten days for proceedings mentioned in writs of summons or <i>capias</i> , what other day substituted for... . . .	65
--	----

SUPERIOR COURT

<i>Plaintiff's Costs</i> in actions of trespass or trespass on the case not allowed where action might have been brought in inferior court	312
--	-----

SURETIES

<i>In Bond</i> on bail to the limits, how to justify	302
<i>In Bond to Sheriff</i> on bail to limits becoming in his apprehension insufficient, debtor may be again arrested and detained in custody, and sureties may plead same in bar of action on bond	304
<i>Of Debtor</i> , may surrender him to sheriff at gaol and may plead same, &c.	306

SURRENDER

Of Debtor by his Sureties may be made by them, to sheriff at the gaol 306

TAXATION

By Defendant, of costs indorsed on writ may be allowed after payment 26
Revision of..... 12

TAXING MASTER

To allow Plaintiff's Weekly Allowances to debtor in custody as disbursements in suit, and tax as part of costs 299

TERMS

Repeal after 21st August, 1857, of the 19th sec. 12th Victoria, ch. 53, and
Trinity, to begin *Monday* next after 21st August, end *Saturday* of the ensuing week.
Michaelmas, to begin *Third Monday* in November, end *Saturday* of ensuing week.
Hilary, to begin *First Monday* in February, end *Saturday* of ensuing week..... 29
 C. L. P., 1857

TIME

Two Days' Notice for revision of deputy clerk's taxation 12.
Three Days, within which sheriff executing *capias*, Sch. A. No 2, to indorse on such writ the true day of execution thereof 22
Six Months, during which from issuing of original writ of summons or *capias*, plaintiff may have concurrent writs 27
Three Days after the service of writ of summons, for party to indorse day of month and week of service..... 32

TIME *continued.*

<i>Six Months</i> from date, writ of attachment against absconding debtor in force.....	43
<i>Six Months</i> from date of original attachment against absconding debtor, within which plaintiff may issue concurrent writs	46
<i>Six Days' Notice</i> of sale, sheriff to give, of perishable goods, &c., of absconding debtor, seized under writ of attachment	50
<i>Four Days'</i> after lapse of notice by sheriff to plaintiff of seizure under writ of attachment against absconding debtor of perishable articles, &c., and plaintiff omits to give security, authorises sheriff to restore property, and relieves him from liability to plaintiff.....	51
<i>Six Months</i> from date of first writ of attachment against absconding debtor, within which subsequent writs of attachment must have been issued and placed in hands of sheriff for execution, or warrants of attachment in hands of bailiff of division court, to entitle judgment creditor to share rateably proceeds of property seized in hands of sheriff	57
<i>Eight Days</i> from last day for appearance, where defendant in default to writ of summons with special endorsement, plaintiff may issue execution on judgment at expiration of	60
<i>Eight Days</i> , in notice to plead, indorsed on declaration filed by plaintiff in proceeding for non-appearance of defendant to writ of summons not specially indorsed	61
<i>First Six Days of Term</i> next following publication of award under compulsory reference, within which to apply to set it aside.....	89
<i>After Six Days</i> from time of publication of award made on compulsory reference, the award may,	

TIME *continued.*

by authority of judge on terms, at discretion, be enforced, although the time for moving to set it aside has not elapsed	90
<i>Seven clear Days' Notice</i> to be given by one party who has appointed his arbitrator to the other to appoint his arbitrator, before the party who has appointed can make his arbitrator sole referee	93
<i>Seven clear Days</i> , within which, after notice to the parties entitled to appoint arbitrator, umpire, &c., and they omit to appoint, judge of superior court may, upon summons, appoint	92
<i>Three Months</i> , within which arbitrator acting under documents authorising reference, or under compulsory order of reference, or on reference back, is required to make his award	95
<i>One Month</i> for enlargement of award, deemed to be where no time is specified in consent, or order for enlargement	95
<i>Eight Days</i> in notice to declare, &c., substituted for rule to declare, &c.	102
<i>One Year</i> after writ of summons is returnable, within which plaintiff must declare or be out of court	107
<i>Eight Days</i> for pleading in bar when defendant within jurisdiction	112
<i>Eight Days</i> , plea of <i>puis darrein continuance</i> not allowed, unless accompanied with affidavit that matter arose within.....	118
<i>Forty-eight Hours</i> allowed to defendant to pay plaintiff's costs, where plaintiff accepts same paid into court and taxes his costs.....	122
<i>Two Days</i> after amendment of pleadings allowed for pleading to an amended pleading, or to be within the time specified in original notice to plead	139
<i>Eight Days' notice of trial</i> or assessment	146

TIME *continued.*

<i>Four Days'</i> countermand notice of trial or assessment	147
<i>Two Days</i> for countermand where short notice.....	147
<i>Twenty Days</i> for defendant to give notice to plaintiff to bring issue on to be tried, condition precedent to defendant's getting judgment for costs by reason of plaintiff's omission	151
<i>First Four Days</i> of term within which to move against <i>award</i> under reference by order of judge at trial.....	156
<i>Ten Days</i> for answering interrogatories in writing for discovery	176
<i>Four Days</i> , within first of term after verdict for application to vacate judgment	184
<i>Ten Days</i> in writ of <i>revivor</i> for party to <i>appear</i> thereto.....	205
<i>Eight Days</i> after service of suggestion of death of sole defendant for new defendant executor to plead	211
<i>Sixteen Days</i> for appearance to writ of <i>ejectment</i>	221
<i>Three Months</i> , <i>ejectment</i> writ in force.....	221
<i>Four Days</i> within, after appearance in <i>ejectment</i> for party to give notice to limit his defence to part of property	228
<i>Fifth Day of Term</i> after verdict for claimant, execution in <i>ejectment</i> to issue within time not exceeding as court orders, and where no order, then <i>on</i> the 5th day of term after verdict	239
<i>Four Days</i> after appearance in <i>ejectment</i> for joint tenants, &c., with claimant, to give notice of defence as such	242
<i>Twenty Days</i> for defendant to give claimant not proceeding to trial, notice to proceed at assizes next after expiration	256
<i>Six Months</i> after execution executed in <i>ejectment</i>	

TIME *continued.*

	by landlord for arrears of rent, within which lessee, &c., limited to seek relief in equity.....	263
	<i>Six Months</i> after judgment and execution executed before mortgagee of lease not in possession barred of rights, in ejectment by landlord for arrears..	263
	<i>Forty Days</i> after full answer by claimant landlord in ejectment, within which to pay arrears of rent and costs into court in order to continue injunction against ejectment	264
	<i>Six Days</i> , at expiration of, after verdict in ejectment for landlord against tenant holding over, judge may order judgment and execution for plaintiff in cases where security given.....	268
	<i>Six Months</i> within which after possession actually delivered to landlord in ejectment against tenant for holding over, action may be brought on bail given under the 266th section	269
	<i>Four Years</i> after entry of record of judgment, decree, or proceeding, within which appeal to be brought for reversal for defect or error.....	293
	<i>Six Years</i> for error or appeal against judgment extended, &c., in case of disabilities.....	294
	<i>Fifteen Days'</i> notice by prisoner in execution of intention to apply for discharge	300
	<i>Fifteen Days</i> allowed debtor on limits to answer interrogatories and file answers after service...	307
	<i>Ten Days'</i> notice by debtor committed for not answering interrogatories, of answers filed and intention to apply for new rule or order to admit to limits, &c.	307
	<i>Three Weeks</i> next ensuing the last day of term within which judges may appoint one or more days to give judgment out of term	316
	<i>Twenty-four Hours</i> after notice, within which under penalty of contempt deputy clerk of the crown to	

SECTION

s-
 .. 147
 .. 147
 n-
 e-
 sts
 ... 151
 ve
 ge
 ... 156
 ng
 ... 176
 for
 184
 ear
 205
 n of
 to
 211
 ment 221
 221
 ment
 e to
 228
 exe-
 ceed-
 n on
 239
 joint
 f de-
 242
 t not
 ssizes
 256
 tment

TIME *continued.*

- send record of *nisi prius* and exhibits filed at trial
to clerk at principal office in Toronto 3
C. L. P., 1857.
- Fifteen Days* after signing judgment for plaintiff
in action on bill of exchange, &c., after 1st
July, 1858, for execution to issue 4
C. L. P., 1857.
- One Month* after confession of judgment or *cog. act.*
given, for filing of record to make it valid to sup-
port any judgment or execution 17
C. L. P., 1857.
- Four Months* after passing of act (10th June, 1857)
allowed for filing confessions of judgment and
cognovits actionem unsatisfied at passing of act 18
C. L. P., 1857.
- Thirty Days*, to be in condition of bond on bail to
the limits for debtor to obtain allowance of same
by judge of county court 25
C. L. P., 1857.
- Four Days*, debtor to give notice in writing to
plaintiff or attorney of motion for allowance of
bond to the limits 26
C. L. P., 1857.

TITLE

- Act* when cited to be
" *The Common Law Procedure Act, 1856.*" .. 317
- Act* when cited to be
" *The Common Law Procedure Act, 1857.*" .. 33
C. L. P., 1857.

TOOLS

- Execution*, exempted from, to value of £10, debtor
on limits 308
- Implements of Trade* of execution debtor to the
value of £15, protected from seizure under exe-
cution from Q. B., C. P., or C. C. 23
C. L. P., 1857

TOWN AND COUNTRY CAUSES

Venue distinguishes 150
Trial of, defendant's steps on plaintiff's neglect to
bring issue to 151
Record, when to be entered..... 154

TRESPASS

Actions for costs where verdict less than 40s.
allowed to plaintiff where notice given to defen-
dant not to trespass 312

TRIAL

Separate, may be ordered by court or judge of
different causes of action joined..... 75
Of Action where prejudiced, embarrassed or delayed
by peculiar framing of pleading, judge may, on
application by opposite party, strike out or amend 101
Notice of, eight days to be given..... 146
Countermand of four days..... 147
• “ “ two days when short notice of
trial 147
Or Assessment, not proceeding to, pursuant to
notice, or insufficient countermand, rule for costs
of the day may be had on affidavit without motion 148
Judgment for default in proceeding to..... 149, 151
Of Issue, plaintiff neglecting to bring to trial,
defendant may give him twenty days' notice to
bring it on, and neglecting, may suggest on the
record, and sign judgment for costs..... 151
Of Actions involving investigation of accounts,
judge at, may order reference, and appoint arbi-
trators when parties do not agree 156
Addressing Jury at, right of regulated..... 157
Adjournment of, at, may be ordered by court or
judge 158
Examination of Witness at, how far party may
discredit his own witness 159

TRIAL *continued.*

<i>Examination of Adverse Witness at, proof of contradictory statements by, how regulated.....</i>	160
<i>Cross Examination at, of witness as to previous statements in writing</i>	161
<i>Judge at, has right to inspect and use for the purpose of, in his discretion, writing on which witness is cross-examined without being shewn to him..</i>	161
<i>Examination of Witnesses at, previous conviction of felony or misdemeanor by a witness may be asked and proof given on denial</i>	162
<i>Witness at, may compare disputed with genuine writing and give evidence thereon.....</i>	164
<i>Proof of Instruments Attested at, which would be valid without attestation, may be by admission or otherwise, and attesting witness not required</i>	163
<i>Admission of Documents and costs of proof, where party refuses to admit after notice</i>	165
<i>Affidavit at, of attorney in cause or clerk sufficient to prove service of notice to produce where copy of notice attached.....</i>	167
<i>New, when granted on ground that verdict is against evidence, the costs of the first trial to abide the event unless otherwise ordered by the court</i>	168
<i>New, may be granted by court in which action brought, notwithstanding judgment signed under 182nd and 183rd sections</i>	184
<i>Suggestion by legal representative of sole plaintiff's death before, the truth of it to be tried thereat, with the title of deceased plaintiff.....</i>	210
<i>Of Issues joined on pleadings upon suggestions allowed by court to be made upon motions in arrest of judgment, or for judgment non obstante veredicto.....</i>	217
<i>Ejectment at, claimant confined to proof of title set up in notice attached to writ</i>	222

TRIAL *continued.*

- Ejectment*, defendant confined to title or claim set up on notice filed with appearance 224
- Ejectment*, how claimant to proceed to, questions to be determined, and verdict and form of entry (Sch. A. No. 16)..... 234
- Ejectment Title of Claimant* at, appearing to have existed as alleged in writ at service, although expired before trial, he is entitled to verdict according to the fact that he was so entitled, and to judgment for his costs of suit 235
- Ejectment*, place for trial may be changed by court or judge, on application from either party 236
- Ejectment*, defendant appearing and claimant not appearing at, claimant to be nonsuited 237
- Ejectment*, claimant appearing and defendant not appearing at, claimant to recover without proof of title 237
- Ejectment*, jury may find special verdict, or either party may tender bill of exceptions..... 238
- Ejectment*, of issue in, where defendants defend as joint tenants, &c., with claimant where ouster denied, the question of ouster also to be tried 242
- Ejectment*, where defendant proved to be joint tenant, &c., with claimant and defending as such, then unless actual ouster proved defendant entitled to judgment and costs..... 243
- Ejectment*, when defendant defending as joint tenant, &c., and not found such, or no proof that an actual ouster has taken place claimant entitled to judgment for possession and costs... 243
- Ejectment*, of ouster when to take place..... 243
- Ejectment*, where legal representative suggests before trial death of sole claimant whose right does not survive, and of his representative character, and the truth of the suggestions and

TRIAL *continued.*

- title of deceased claimant established at, judgment to follow on the verdict in favour of or against the person making the suggestion, as provided for with reference to judgment for or against any such claimant..... 248
- Ejectment*, claimant not proceeding to, defendant may give him twenty days' notice to proceed, &c. 256
- Ejectment by Landlord* for rent in arrear, what proof required at, to entitle him to judgment and execution as if rent had been demanded and re-entry made 263
- Ejectment by Landlord* against tenant holding over, landlord after proof of right to possession may prove *mesne profits*..... 267
- At Bar*, plaintiff or demandant, and defendant or tenant in any action in Q. B. or C. P., may in term next after issue joined apply to court for, and discretionary to grant or refuse 13
C. L. P., 1857.
- At Bar*, where crown interested, may be had as of right upon the English principle..... 14
C. L. P., 1857.
- At Bar*, judges may appoint a particular day for, and if in vacation the time to be deemed a part of the preceding term..... 15
C. L. P., 1857.

UMPIRE

- Or Third Arbitrator*, refusing to act or becoming incapable, or dying and original document not shewing that vacancy not to be supplied, or where the parties or two arbitrators are at liberty to appoint and do not appoint, judge of superior court may appoint after notice and summons... 92
- May always* be appointed within period for making award by two arbitrators, where document does not shew that there should not be an umpire.... 94
- Notice to appoint* 94

UMPIRE *continued.*

To Enter on reference in lieu of arbitrators, if the latter shall have allowed their time to expire, without making an award or shall have delivered to any party or to the umpire a notice in writing that they cannot agree..... 95

VACATION

Execution on judge's certificate may issue in any day of or term 182
Writs of Execution to fix bail may be tested and returnable in..... 192

VARIANCE

At Trial in mis-joinder or non-joinder may be corrected 68, 70

VENUE

Local, writ must be sued out from office in proper county 7
In any Action may be changed according to present practice..... 8
Changed, proceedings to be continued in office where first process was sued out 8
May be in either County where two or more causes of action joined arose in different counties..... 75
Laid in united counties of York and Peel, or in York alone, when not united with Peel, called town causes..... 150
Laid elsewhere, called country causes 150
Writs of Execution may be issued to sheriff in any county without reference to 186
In Writ of Revivor may be laid in county or union of counties where sued out..... 205
In Ejectment not to prevent court or judge from changing place of trial to another county 236

VERDICT

<i>Judge</i> may delay execution to give either party an opportunity to set aside, after trial of issue by consent without pleading (Sch. A. No. 8)	79
<i>On Distributive Pleas</i> , how regulated.....	124
<i>For Balance</i> for defendant and costs, where jury find on plea of set-off, that plaintiff owes more to defendant than defendant to plaintiff	124
<i>Rule Nisi</i> to enter, must contain grounds on which granted, but court may amend omission, and permit re-service.....	168
<i>For Plaintiff</i> , judge may certify for immediate execution or day named for whole or part of sum found by	182
<i>In Ejectment, Special</i> , may be found by jury on trial	238
<i>In Ejectment</i> for claimant, execution to issue when	239
<i>In Ejectment</i> for defendants, execution to issue on the fifth day of term after if not ordered previously.....	240
<i>In Ejectment</i> , continuance of action, surviving claimant making suggestion of deceased claimant's death, shall have and judgment, when.....	245
<i>In Ejectment</i> for two or more claimants and one dying before execution, how survivors proceed to judgment and execution for entirety subject to deceased claimant's share	247
<i>In Ejectment</i> , after, sole defendant or all defendants dying, claimant is entitled to judgment without suggestion or revivor.....	251
<i>In Ejectment</i> landlord against tenant for arrears of rent, for defendant, or where claimant non-suited, defendant to have costs	263
<i>In Ejectment</i> for claimant, landlord against tenant for holding over, court may order payment and execution for him at the end of six days after ...	268

VIEW

By Jury, provisions as to obtaining under any previous act not to be affected 172

WARRANTS OF ATTORNEY

Final Judgment on, may be entered as in, and see "*Cognovits actionem* final judgment on" 10

WEARING APPAREL

Exempt from Execution against debtor on the limits to £10 308

WEEKLY ALLOWANCE

Prisoners in Execution, what, when, and how to obtain 295

Debtor applying for discharge, plaintiff may file interrogatories against which debtor must answer on oath before order for allowance or discharge 296

Only One Ten Shillings where several plaintiffs, and to be apportioned amongst themselves..... 298

To Debtor in Custody, on *mesne* process, proved before taxing master, to be allowed as disbursements in suit, and taxed as part of costs 299

Debtor in Custody also for criminal charge, no allowance to 309

WIFE

Plaintiff or Defendant, married since commencement of action, judgment may be executed against alone, or against husband and wife by suggestion or writ of revivor..... 214

Judgment for Wife alone, execution may be issued by authority of husband, without writ of revivor or suggestion 214

WITNESS

Discredit, how far party may, his own witness 159

WITNESS *continued.*

<i>Cross-examination</i> of, as to previous contradictory statements, how regulated.....	160
<i>Cross-examination</i> of, as to previous statement in writing.....	161
<i>Cross-examination</i> of, as to whether convicted of felony or misdemeanor allowed, and denying it, the opposite party may prove it, and how.....	162
<i>Comparison of Writing</i> , disputed, may be made by witness with genuine writing, and evidence given thereon	164
<i>Court or Judge</i> on hearing motion or summons may order to appear and be examined <i>vivâ voce</i> , and before whom	170
<i>Wilfully Disobedient</i> to rule or order of court to be examined, produce documents, &c., in <i>contempt</i> , and may be proceeded against by attachment ...	171
<i>Prisoner in Custody</i> may be brought up on <i>habeas corpus</i>	173
<i>Payment</i> , entitled to for attendance of examination under judge's order, and expenses as in subpoena at trial	171
<i>To Produce</i> at examination under order of judge only such documents as could be required at trial	171
<i>Examination of</i> , under order of court may be adjourned from time to time	171
<i>Inspection by</i> , may be ordered by court or judge...	172
<i>Depositions of</i> , to be returned to and kept in proper office of court in which proceedings carried on, where office copies may be had	179
<i>Examination of</i> , special report on, his conduct or absence upon order for examination to be made, and court to proceed for contempt.....	180

WRIT GENERALLY

<i>Issues of</i> , to parties or attorneys by clerk of the process at Osgoode Hall	4
<i>Alternate</i> in Q. B., and C. P.	4
<i>Alternate</i> not to affect concurrent writs	4
<i>Issues of</i> , in transitory actions from office of clerk of Crown and Pleas of Q. B. or C. P., or from office of any of deputy clerks.....	6
<i>Issues of</i> , to be from proper officer in county where venue local	7
<i>Any</i> , issued by clerk or deputy clerk of Crown and Pleas, to have memorandum in margin signed by officer issuing stating from what office and in what county writ issued.....	20
<i>Every</i> , to be <i>Indorsed</i> with name and abode of attorney actually suing out	21
<i>Sued out</i> by agent for any other attorney, then to be indorsed with name of such other attorney...	21
<i>Any</i> , and <i>Copy Served</i> or executed for payment of any debt, how indorsed	26
<i>Any or Copy</i> , plaintiff omitting any of the indorsements required not on that account to be held void	37
<i>May be Set Aside</i> as irregular.....	37
<i>Amended</i> , on application to court of which issued or a judge	37
<i>Amended</i> , on application to set aside writ on terms	37
<i>Defendant Within Jurisdiction</i> and plaintiff's claim for debt or liquidated demand in money, &c., plaintiff may on such writ make special indorsement (Sch. A. No. 5)	41
<i>Special Indorsement on</i> , as in Sch. A. No. 5, to be considered as particulars of demand and sufficient unless further ordered by court or judge.....	41
<i>Against Garnishee</i> , by judgment creditor, may be had calling on him to shew cause why there should not be execution against him for alleged debt or	

WRIT GENERALLY *continued.*

for amount due to judgment debtor if less than judgment debt and costs of suit.....	197
<i>Costs of</i> , same as heretofore as near as possible but in no case greater.....	311
<i>Forms of</i> , new and altered may be issued by judges	314
<i>Existing</i> , force and effect of from, to be the same as heretofore except as to alteration ordered by judges	314
<i>No Fees for Service of</i> , by which actions commenced in superior courts or C. C. unless a return of the sheriff (or coroner when action against the sheriff) of the county where made is indorsed, unless where sheriff has omitted to serve within fifteen days after delivery to him for service.....	28

C. L. P., 1857.

WRIT OF APPEAL

<i>Sued out within Four Years</i> from entry of judgment, decree or proceeding	293
--	-----

WRIT OF ATTACHMENT

<i>Against Absconding Debtor</i> (Sch. A. No. 7)...	43
<i>Dated</i> on day of suing out.....	43
<i>In Force</i> six months.....	43
<i>Renewal of</i>	43
<i>Affidavits</i> required to obtain rule or order of court for issue of.....	44
<i>Issue of</i> , to be marked "Inferior Jurisdiction" where within jurisdiction of county court and costs accordingly	44
<i>Rule or Order</i> for issue to fix time for putting in special bail.....	44
<i>To be Issued</i> in duplicate	44
<i>After Service of</i> , or impracticability of service proved, court or judge may direct plaintiff to proceed in action as they may order.....	45
<i>Plaintiff</i> to prove his debt before a jury or on	

WRIT OF ATTACHMENT *continued.*

assessment or by reference to compute as condition precedent to obtaining judgment.....	45
<i>Execution</i> not to issue until plaintiff, his attorney or agent make oath of sum due by absconding debtor to plaintiff, giving him credit for lawful sets off	45
<i>Execution</i> , how indorsed to levy	45
<i>Concurrent</i> , plaintiff may issue within six months from date of original writ without further order	46
<i>Tested</i> on same day as the original writ, and marked in margin by officer issuing "concurrent"	46
<i>Directed</i> , may be to any sheriff, and need not be sued out in duplicate	46
<i>Operation of</i> , merely for attachment of debtors' real or personal property, in aid of the original writ	46
<i>Sheriff</i> to return with inventory	49
<i>Execution under</i> , when to be postponed to execution got by plaintiff in another suit, and upon what terms as to paying costs of writ of attachment and seizure.....	55

WRIT OF CAPIAS

<i>Not to Issue</i> except on affidavit of plaintiff, his servant or agent, and what the affidavit to contain	23
<i>Nor in any Case</i> where cause of action less than £10	23
<i>May Issue on Judge's Order</i> where cause of action other than debt certain in cases and in manner of previous practice.....	23
<i>Not to Issue</i> against privileged person	23
<i>Dated</i> on day of issue.....	19
<i>Tested</i> in name of chief justice of the court from which issued or on vacancy of office, of senior puisne judge	19
<i>Indorsed, to be</i> , with name and abode of attorney	

WRIT OF CAPIAS *continued.*

actually suing out, or where sued out by agent for any other attorney, then with name of such other attorney.....	21
<i>No Attorney</i> suing out, then of its being issued by plaintiff in person, naming city, &c., where he resides	21
<i>In Force</i> , for six months only from day of date including day of date.....	28
<i>Renewed</i> , may be, at any time before the expiration of six months from date of renewal, and so from time to time, during currency of renewed writ	28
<i>Renewed</i> , to be marked in the margin, with memorandum of renewal.....	28
<i>Renewal</i> , effect of on statute of limitations	28
<i>Production of</i> , with memorandum of renewal, signed under 28th section to be evidence of renewal	30
<i>After Action Commenced by Writ of Summons</i> , but before judgment, plaintiff may have on affidavit, as in 23rd section, or on judge's order (Sch. A. No. 6)	42
<i>To Issue</i> out of court whence original writ of summons issued	42
<i>Direction</i> to sheriff, &c., and duties thereon.....	42
<i>Costs of</i> , plaintiff entitled to, on taxation, on entering judgment	42
<i>Proceedings mentioned in</i> or notice or warning may be had in default of special bail at expiration of ten days from execution thereof on whatever day the last day may fall, whether in term or vacation	65
<i>Holidays</i> excepted	65
<i>Executed or Served</i> between 1st July and 21st of August, special bail may be put in by defendant at expiration of such ten days	65

WRIT OF CAPIAS *continued*

No Declaration, &c., to be filed or served between 1st July and 21st August 65

WRITS CONCURRENT

(See "Concurrent Writs") 27
Jurisdiction, may be out of and in 39

WRIT OF EJECTMENT

Form (Sch. A. No. 12), statements, commands, and notice 221
Attorney Issuing, to indorse his name and residence, or where no attorney, name and residence of party issuing 221
 "Reasonable Certainty," want of in description of property or part of it, ground to apply for better particulars 229
Questions at Trial, whether statement in, if claimant's title is true or false..... 234

WRITS OF EXECUTION

All to Issue from office where judgment entered, or after transmission of the roll to the principal office, at the option of the party entitled thereto out of principal office 11

WRIT OF INJUNCTION

Proceedings on 283 to 286

WRIT OF MANDAMUS

Proceedings thereon 275 to 282

WRIT OF REVIVOR

Proceedings thereon 205
Teste on the day of issuing..... 205

WRIT OF REVIVOR *continued.*

<i>Sued out and served in any county and proceeded on in term or vacation as a writ of summons.....</i>	205
<i>Venue may be laid where sued out</i>	205
<i>Pleadings and proceedings the same as in other actions.....</i>	205
<i>Costs, rights of parties to, the same as in other actions.....</i>	205
<i>To Revive a Judgment less than ten years' old will be allowed without rule or order</i>	
<i> If more than ten, not without a rule or order</i>	
<i> If more than fifteen, not without a rule to shew cause</i>	207
<i>In Form Sch. A. No. 11, plaintiff or his executor to have against defendant or his executor after interlocutory judgment and proceedings thereon to final judgment where either party dies between interlocutory and final judgment</i>	213
<i>Judgment may be obtained against husband and wife and execution issue thereon</i>	214
<i>Not Necessary to authorise husband to direct execution to issue against wife's judgment.....</i>	214

WRIT OF SUMMONS

<i>In Personal Action, defendant in jurisdiction not to be held to special bail (Sch. A. No. 1).....</i>	16
<i>To mention Residence or supposed residence of defendant</i>	16
<i>Form or Cause of Action, need not be mentioned in Notice of, issued under authority of act need not mention</i>	17
<i>To contain names of all the defendants</i>	18
<i> Not to contain name or names of defendant or defendants in more actions than one.....</i>	18
<i>Dated on day of issue.....</i>	19
<i> Tested in name of chief justice of court from</i>	

WRIT OF SUMMONS *continued.*

which issued or vacancy of office of senior puisne judge of court.....	19
<i>Clerk of Crown, &c.</i> , issuing writ to mark in margin a memorandum of office and county from which issued and sign same.....	20
<i>Attorney's name and abode to be indorsed</i>	21
<i>No Attorney</i> , then name and residence of plaintiff suing out in person	21
<i>Attorney on demand in writing to declare whether writ issued by him or not, if yea, then to declare place of abode of plaintiff on pain of contempt. Declaring that writ not issued by him proceedings to be stayed</i>	25
<i>Amount of Debt to be stated on and plaintiff's attorney's costs, &c.</i>	26
<i>Further Indorsements</i>	26
<i>Concurrent writs of, plaintiff may have during six months from issuing of original writ</i>	27
<i>In Force during period original writ shall be in force</i>	27
<i>In Force</i> , not for more than six months from day of date, including day of date	28
<i>May be Renewed</i> at any time before the expiration of six months from date of renewal, and so from time to time during currency of renewed writ	28
<i>Renewed</i> , to be marked in the margin with memorandum of renewal	28
<i>Renewal</i> , effect of on statute of limitations	28
<i>Sch. A. 1, 3, 4</i> , mistake in using one for the other may be amended by judge on <i>ex parte</i> application without costs	38
<i>Appearance to, form and mode of</i>	64
<i>Service of, may be in any county in Upper Canada</i>	31
<i>Service, party making, to indorse day of month</i>	

WRIT OF SUMMONS *continued.*

and week within three days from service, or plaintiff not at liberty on non-appearance to proceed.....	32
<i>Against Corporations</i> aggregate may be served on major, warden, president, agent, &c., and whom considered agents, on whom same may be served	33
<i>Service to be Personal</i> where it may be practicable	34
<i>Where Impracticable</i> , court or judge may allow plaintiff on application supported by affidavit to proceed without personal service.....	34
<i>Writ of Summons, Defendant being British Subject out of Jurisdiction of Superior Courts.....</i>	35
Plaintiff may issue Sch. A. No. 3.....	35
<i>Time for Appearance</i> thereon regulated by distance from Upper Canada where defendant resides and time for postal and other communication.....	35
<i>Court or Judge</i> may upon being satisfied of certain enumerated facts give plaintiff liberty to proceed.....	35
<i>Plaintiff</i> to prove amount of debt or damages claimed in action either before a jury or an assessment in usual mode, or by reference to compute, as court may direct.....	35
<i>Judgment</i> not to be obtained by plaintiff until amount of debt, &c., proved.....	35
<i>Writ of Summons against Defendant Residing out of the Jurisdiction and not a British Subject ...</i>	36
<i>The like Proceedings</i> against a British subject resident out of jurisdiction except that writ to be Schedule A. No. 4.....	36
<i>Notice also</i> to be served of such writ upon the defendant also in form Sched. No. 4.....	36

WRIT OF SUMMONS *continued.*

<i>Service</i> or efforts to serve of same force and effect as service on or efforts to serve British subject resident abroad.....	36
<i>Court or Judge</i> , on being satisfied by affidavit of impracticability of service, the like proceedings may be taken thereupon.....	36
<i>Action Commenced by</i> , plaintiff may before judgment on affidavit under 23rd section or on judge's order sue out from same office writ of <i>capias</i> , &c.	42
<i>Appearance to</i> , need not be entered by plaintiff for defendant	59

<i>With Special Indorsement, &c.</i> , non-appearance by defendant, plaintiff on filing affidavit of personal service of, or a rule of court or judge's order to proceed under act at once to sign (Sched. A. No. 7 bis) final judgment for any sum not exceeding sum indorsed on writ, with interest to date of judgment, and costs to be taxed in ordinary way	60
<i>No Proceedings in Error</i> or appeal on judgment	60
<i>Plaintiff</i> may issue execution on such judgment at the expiration of eight days from last day for appearance and not before	60
<i>Court or Judge</i> , before or after final judgment, may let in defendant to defend on application supported by affidavits accounting for non-appearance and disclosing defence on merits.....	60

<i>Not Specially Indorsed on Non-appearance</i> by defendant, plaintiff on filing affidavit of personal service of, or a judge's order to proceed under act, and the writ of summons may	
<i>File Declaration</i> , indorsed with a notice to plead in eight days and to sign	

CTION
r
o
32
n
33
e 34
w
o
34
ct
35
35
s-
nt
u-
35
r-
to
35
es
as-
m-
... 35
til
... 35
out
... 36
ect
be
... 36
the
... 36

WRIT OF SUMMONS *continued.*

Judgment by Default at the expiration of the time to plead, and in the event of

No Plea being filed and served where the cause of action mentioned in the declaration is for any of the claims which might have been inserted in the special indorsement on the writ of summons, the

Judgment shall be final, and

Execution may issue for amount indorsed on writ of summons with interest and costs..... 61

Costs on, plaintiff not entitled to more than if he had made such special indorsement and signed judgment on non-appearance 61

Proceedings mentioned in or notice or warning may be had in default of defendant's appearance at the expiration of

Ten Days from service on whichever day the last of such ten days may happen to fall, whether in

Term or Vacation, except as to

Holidays, for which see the act; and where

Served between 1st July and 21st August in any year

Appearance may be entered by defendant at the expiration of such ten days, but

No Declaration or pleading after declaration shall be filed or served between 1st July and 21st August 65

Writ of Summons with Special Indorsement against

Two or more Defendants, if

One or more of such defendants only shall

Appear and another or others of them shall

Not appear

Plaintiff may sign

Judgment against such defendants only as

WRIT OF SUMMONS *continued.*

Shall not have Appeared, and before declaration against the other defendants who shall not have appeared

Issue Execution thereupon, in which case he shall be taken to have

Abandoned his action against the defendants who shall have

Appeared; or

Plaintiff may before such execution declare against such defendants who shall have

Appeared, stating by way of

Suggestion the judgment obtained against the other defendants who shall

Not have Appeared, in which case the

Judgment so obtained shall operate as

Judgment by Default, obtained before the act against one or more of several defendants in an action of debt.....

66

Amendment of, in case where

Notice given by defendant of

Non-Joinder of co-plaintiff, or

Plea in Abatement of such non-joinder the

Plaintiff shall be at liberty

Without Order to

Amend before

Plea by adding the names of the persons named

in

Notice or

Plea in Abatement 69

Amendment of in any

Action on Contract where

Non-Joinder of defendant is

Pleaded in Abatement the

WRIT OF SUMMONS *continued.*

Plaintiff to be at liberty
Without Order to amend
Writ of Summons and
Declaration by adding the names of the
Joint Contractors and to
Serve the
Amended Writ on them and to
Proceed against the
Original defendant and the persons named in
Plea of Abatement, but the
Date of such
Amendment shall as between the person or per-
 sons so named in such
Plea of abatement and the
Plaintiff be considered for all purposes as the
Commencement of the
Action 71

CTION

er-

le

... 71

