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46

ORDERS

AND

RULES OF PRACTICE,

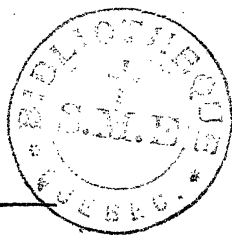
IN THE

COURT OF KING'S BENCH,

FOR THE

DISTRICT OF MONTREAL,

CANADA.



Montreal:

PRINTED BY LOVELL & GIBSON, ST. NICHOLAS STREET.

1842.

PROVINCE OF CANADA, }
DISTRICT OF MONTREAL. } In the Court of King's Bench.

IT IS ORDERED,

That from henceforth all previous Rules of Practice be rescinded, and that the following Rules and Orders of Practice shall be and the same are hereby established and declared to be the Rules and Orders of Practice of this Court.

ORDERS

AND

RULES OF PRACTICE.

SECTION I.

Of the Court.

IT IS ORDERED,

I.

That, on the first day of each Superior Term, the Court be opened at the hour of Ten in the forenoon, and at the same hour of each and every Juridical day, excepting the last two Juridical days in each Term, on which the Court shall open at the hour of Two in the afternoon.

II.

That the several days hereinafter mentioned shall, in each Term respectively, be taken and held to be holydays, within the intent and meaning of the 3d Section of the Provincial Statute 35, Geo. III., chap. 1st, that is to say:—The *Circumcision, Epiphany, Annunciation, Ascension Good Friday, Her Majesty's Birth Day, Pentecost, Corpus Christi, or Fête Dieu, St. Peter and St. Paul, Assumption, All Saints, Conception, and Christmas Day*; and that on these several holydays this Court shall not sit or be held, but that this Court shall sit and be held on every other day, (Sundays excepted,) in each Term respectively.

III.

That, at the opening of the Court on each Juridical day in Term, all Defendants who by writ shall be legally summoned then and there to appear in person, or by Attorney, for whom no appearance shall have been entered; and all Defendants who by writ shall be legally summoned then and there to appear in their own proper persons shall of course, without any motion for that purpose, be called, and that in like manner upon each Juridical day in Term, which with respect to any Defendants, shall under the 3d Section of the Provincial Statute 41, Geo. III. chap. 7, be the *tertius dies post*, such last mentioned Defendants and each of them, at the opening of the Court upon such day, shall of course, and without any motion for that purpose, be called.

IV.

That on each Juridical day of Term, when and so soon as the Defendants mentioned in the next preceding article shall have been called, the Court shall proceed to hear all such motions as shall be offered by the Queen's Counsel and Barristers, who shall be present in Court, and habited as hereinafter is directed; each making in succession, according to his precedence and seniority at the Bar respectively, one motion, until the whole shall be heard, and in like manner hear all petitions which shall be so offered. That the Court shall then proceed to the hearing and examination of all matters whatsoever especially appointed by any Rule or Order of the Court for the day, and thereafter to the hearing of all issues in fact and in law, which shall be raised by the pleadings in any cause.

V.

That in each Superior Term there shall be two days set apart for the examination of witnesses, in causes in which the Plaintiff shall proceed by default or *ex parte*; which shall be the tenth and eleventh Juridical days of each Term respectively; and upon any such day no issue of fact or law, which shall be raised by the pleadings in any cause, shall be heard; unless such issue shall by some Rule or Order of the Court, be appointed especially for hearing upon such day: and all such issues of fact or law, as are hereinbefore mentioned, shall be heard upon any

Judicial day in Term not set apart for the examination of witnesses, and upon any such last mentioned day no witnesses shall be examined in any cause ; unless the examination of such witnesses shall, by some Rule or Order of the Court, be appointed especially for or continued to such day ; and all Enquêtes in contested Causes shall be had in vacation.

SECTION II.

Of the Queen's Counsel, of Barristers, of Attornies, and of other Officers of the Court.

IT IS ORDERED,

I.

That the Queen's Counsel, and all Barristers who do or shall practise in this Court, do appear, when in Court, habited in black, and in such Robes and Bands as are worn by the Queen's Counsel and Barristers in Westminster Hall, as heretofore hath been used ; and that no such Counsel or Barrister be heard in any cause who is not so habited.

II.

That the Prothonotaries of this Court do appear, when in Court, habited in black, and in such robes and bands as are worn by the Prothonotaries in Westminster Hall, as heretofore hath been used ; that the Sheriff also, when in Court, do appear habited in black, with his robe, his wand of office and sword as heretofore hath been used ; and that the Crier, when in Court, do also appear habited in black and in such robe, as is worn by that officer in Westminster Hall.

III.

That upon all judgments entered and recorded in this Court, during the present Term, or hereafter to be entered and recorded, the Prothonotary

shall not be held or bound to expedite or deliver any copy or copies of the said judgment, or any writ of execution thereon, until the fees due to him in the same causes by the person or persons demanding such copy or copies of the judgment or such writ of execution, shall have been first paid.

IV.

That the respective offices of the Prothonotaries of this Court, and of the Sheriff of the District of Montreal, during every subsequent Term, be open from the hour of eight in the morning until the hour of six in the afternoon of every day, (Sundays, and the holydays enumerated in the second article of the first Section, excepted) and during every subsequent vacation, from the hour of nine in the morning until the hour of noon, and from the hour of two until the hour of four in the afternoon of each day, Sundays, and the holydays, excepted.

V.

That the Sheriff of the District of Montreal, the Prothonotaries, and the Crier, do personally attend in this Court, in their several and respective places, *de die in diem*, during each Superior Term, from the opening until the rising of the Court, and in like manner during all sittings of the Court held in vacation, by appointment or appointments thereof, made in any preceding Term.

VI.

That the Rules and Orders of Practice, made and to be made in this Court, and all decisions of this Court, and of the Courts of Appeals upon them, which this Court shall direct, shall be fairly entered, by the Prothonotaries, with an Index to the whole, in a book or books to be by them kept for that purpose, to which all Practisers in this Court shall, at all times during office hours, have free access, and be allowed to take extracts and copies *gratis*.

VII.

That all writs, and all other practical forms, which are or shall be settled by this Court, with an Index to the whole, shall in like manner

be fairly entered by the Prothonotaries in a Register to be by them kept for that purpose, to which all Practisers in this Court shall, at all times during office hours, have free access, and be allowed to take extracts and copies *gratis*.

VIII.

That no change of Attornies, upon the application of any party or parties, for any cause whatever, shall in any case be allowed, without a Rule of this Court permitting such change, and substituting some other Attorney, in the place and stead of the Attorney who by such change shall be put out of the cause, to be made upon motion for that purpose, with previous notice to the adverse party or parties, and to the Attorney or Attornies, to whom such motion shall refer.

IX.

That an Attorney, who shall appear in this Court, for any person or persons whomsoever, shall not (except for lawful cause of sickness, necessary absence, or the like) be permitted to withdraw himself from any suit in which he shall so appear, without the consent of such person or persons; and from no suit whatever, for any cause whatever, without a Rule of this Court permitting him to withdraw from such suit, and substituting, with the consent of the person or persons for whom he shall have so appeared, some other Attorney in his place upon motion for that purpose, with previous notice to the adverse party, and to the person or persons for whom he shall so file an appearance.

X.

That in every suit in which an Attorney who shall appear for any party shall be suspended or cease to practice or die, pending such suit, all proceedings against the party for whom such Attorney shall have appeared, shall be staid for and during one entire Term; and if, at the expiration of such Term, such party shall not then have appointed, and caused to be substituted by a Rule of this Court, another Attorney in the place of such Attorney so ceasing to practice or dead, it shall be competent to all other parties to such suit thereafter to proceed therein, as if the party of such Attorney had never appeared; it being nevertheless hereby provided

that in every suit in which it shall appear, by affidavit or affidavits, to the satisfaction of the Court, that notice of the retirement or suspension from practice, or death of such Attorney, hath, by any of the parties to such suit, been duly served upon the party for whom such Attorney, so retiring or suspended from practice, or dead, hath appeared; and in which also the party, of such Attorney, so retiring or suspended from practice or dead, being served with such notice, shall not, within the space of the two Juridical days in Term next after the day on which such affidavit or affidavits as aforesaid, shall be filed, appoint and cause to be substituted, by a Rule of this Court, another Attorney in the place of such Attorney, retired or suspended from practice or dead, it shall be competent to all other parties to such suit, thereafter to proceed therein, as if the party of such Attorney, so retired or suspended from practice or dead, had never appeared.

XI.

That every Attorney, who, in any suit, by any Rule of this Court, shall be substituted in the place of any other Attorney, shall forthwith file an appearance for the party or parties, for whom such last mentioned Attorney shall have appeared, and shall not be permitted, in any manner, to proceed in such suit, until such appearance shall be filed.

XII.

That every Attorney who shall be substituted, by a Rule of this Court, in the place of any other Attorney, shall, at his peril, take notice of all Rules to which such last mentioned Attorney was liable; and every Attorney who shall appear for any person or persons in this Court, shall be held and taken to be the Attorney of such person or persons, until some other Attorney shall, in the manner hereinbefore directed, be substituted, by a Rule of this Court, in his place; and until some other Attorney shall be so substituted by a Rule of this Court, in the place of the Attorney, who shall so appear for any person or persons, all Rules, Notices, Pleadings and other proceedings, which shall be duly served upon such last mentioned Attorney, shall be held and taken to be well and sufficiently served upon the Attorney of such last mentioned person or persons, as the case may be.

XIII.

That an Attorney, who shall appear for any party or parties, in any suit, in this Court, shall be held and taken to be the Attorney of such party or parties, in all matters and proceedings whatsoever, collateral and incidental to such suit.

XIV.

That no person, who shall have served his Clerkship in this District, and who shall be referred to the Justices of this Court, or to any of them, for examination, upon Petition to be admitted as a Barrister or Attorney, in Her Majesty's Courts of Law in this Province, or as a Notary, shall be examined, until notice of the time and place of such examination, and of the name of the person to be examined, shall be affixed, upon the outside of the Court House of this District, in such place as public notices are usually affixed, and shall there have remained, for and during the space of one week.

XV.

That no Barrister or Attorney, Prothonotary, Crier, Bailiff or Sheriff's Officer, shall be Bail in any Action or Suit, depending in this Court.

XVI.

That no Barrister or Attorney, who shall be legally dismissed, or suspended from Practice, in any other of Her Majesty's Courts of Law, shall be admitted to Practice in this Court, until such Barrister or Attorney shall have been re-admitted to Practice in the Court in which he hath so been dismissed or suspended from Practice.

SECTION III.

Of General Rules.

IT IS ORDERED,

I.

That every wilful and unlawful breach of an Order or Rule of Practice of this Court, (for which no fine or other specific punishment is provided

in the body of such Order or Rule) shall be taken and considered to be a contempt of Court in the person or persons guilty of such breach as aforesaid, and punished accordingly.

II.

That a point of Practice, settled by a Judgment of this Court, and entered on the Prothonotary's Book of Rules, shall not be re-argued.

III.

That any party to a suit, on motion and payment of costs, shall be permitted to repair any default, omission or neglect, of which he, she, or they may have been guilty, in contravention of any Order or Rule of Practice, until his, her, or their Opponent or Opponents, or some one or more of them shall have taken advantage of such default, omission or neglect, by moving or otherwise proceeding thereupon; provided such party at the time of making such motion to repair such default, omission or neglect, shall not be foreclosed from so doing, by any positive Law, or by any Order or Judgment of the Court, in such cause made, or by the express terms of the Order or Rule of Practice so contravened.

IV.

That when and so often as the Opponent or Opponents of any party or parties to any suit hath or have taken advantage of any default, omission or neglect, of which any party or parties may have been guilty, in contravention of any Order or Rule of Practice by moving or otherwise proceeding thereupon; and such party or parties so guilty of such contravention, shall apply to the Court for relief against the effects of such default, omission or neglect, by motion or application of any other description; such motion or application shall not be received or filed, unless it be accompanied by an affidavit of the special circumstances of fact, upon which such motion or application is founded, and by an affidavit or Bailiff's Certificate of the due notice of such motion upon such Opponent or Opponents, as the case may be.

V.

It is ordered, that all Rules to shew cause (Rules *Nisi*, as they are called) shall be served on the opposite party, or his Attorney, unless such party, or his Attorney, shall dispense with the service thereof.

VI.

That in all causes in which the service of a Rule for *Serment Décisoire*, or for *Faits et Articles*, shall be made in the City of Montreal, there shall be one intermediate day between the day of service and the day of return; and when out of those limits one intermediate day as above, and also one intermediate day for every five leagues of distance.

VII.

That all Writs and Process whatsoever which shall hereafter be issued, shall be tested of the day on which such Writ or Process shall issue.

VIII.

That all Orders and Rules for the conduct and regulation of the Sheriff, in the execution of his duty, or of any part thereof, shall extend to the Coroner in all cases in which, from any cause whatever, such duty or any part thereof, shall be executed by him.

IX.

That all Pleadings, Notices, Summonses by the Justices of this Court, Rules, Orders and Judgments, and all other matters and proceedings, of which service is or shall be required upon any party to a suit depending in this Court, shall be served upon the Attorney *ad litem*, who in this Court shall have appeared for such party; and in default of such appearance by Attorney, at the elected domicile of such party, if such party shall have appeared personally; those instances nevertheless excepted, in which personal service upon such party is, by Law, by any Rule or Order of Practice, or by some Special Rule or Order made in such suit, required or directed.

X.

That any Pleading, Notice, Summons, Rule, Order, Judgment, or other matter or proceeding, of which service is or shall be required upon any party in any suit depending in this Court, which shall be served upon any grown person at the Office of the Attorney who shall have appeared for such party; and in default of such appearance by Attorney, upon any grown person, at the elected domicile of such party, if such party shall have appeared personally, shall be held and taken to be well and sufficiently served; those instances excepted in which personal service upon such party is, by Law, by any Rule or Order of Practice, or by some Special Rule or Order made in such suit, required or directed.

XI.

That proof of service of Pleadings, and of Notices, by the affidavit of one disinterested witness, duly sworn before one of the Justices of this Court, or before a Commissioner duly authorised to take and receive affidavits to be read and used in this Court, or by the Certificate of any Bailiff of this Court, shall be deemed and taken to be good and sufficient, and that proof of the service of any Summons, issued by one or more of the Justices of this Court, of any Writ of Subpœna, or of any Rule, Order or Judgment of this Court, by like Certificate, shall be deemed and taken to be good and sufficient.

XII.

That every affidavit or Bailiff's Certificate of the service of any Pleading, Notice, Rule, Order, Interlocutory Judgment, Subpœna, or other matter, shall particularly describe the manner, place, and hour of such service, and shall not otherwise be received or filed; and if from such affidavit, or certificate, it shall appear that such service was made upon a Sunday or holiday, or upon any other day before the hour of six in the morning, or after the hour of eight in the evening, such service shall be held and taken to be wholly ineffectual and void to all intents and purposes whatsoever.

XIII.

That in all computations of time, or delays upon and in all proceedings whatsoever, (not otherwise particularly provided for), the day on which any Writ, Summons, Rule, Order or Judgment shall be made, or upon which the filing or service of any such Writ, Rule, Order or Judgment, or of any such Summons, Pleading or Notice, shall be had, or upon which such other proceeding as aforesaid shall, in like manner be had, shall not be reckoned or counted to be one, but every other day to which such computation of time shall refer, (Sundays and holidays not excepted) shall be reckoned and counted to be one, and no fractions of time shall, in any such computations, be made or allowed: it being nevertheless provided that, in all cases, in which any period allowed by any Writ, Summons, Rule, Order, Rule of Practice, or Judgment of this Court, shall expire upon a Sunday or holiday, such period shall, *ipso facto*, stand enlarged until the then next Juridical day.

XIV.

That no paper of any description whatsoever shall be received, or filed, in any cause whatever by the Prothonotary of this Court, unless the same be regularly docketed with the title and number of the cause, and the general description of such paper.

XV.

That in all suits which shall hereafter be heard in this Court, no more than two Counsel shall be heard in opening, or in answer, and one only in reply.

XVI.

That all Rules, and Orders, for the conduct and regulation of any Attorney or Counsel in this Court, in any cause therein depending, shall extend to the party and parties in such cause, where no appearance by Attorney shall have been entered for or on the behalf of such party or parties, and be Rules and Orders, for the conduct and regulation of such party or parties, in such case, for whom no appearance by Attorney shall have been entered, in all things.

XVII.

That every order of any Justice of this Court, which shall be obtained upon Summons in vacation, shall be subject to an appeal to this Court, and the validity thereof impeached, by moving the Court to set such order aside, or to set aside the proceedings, which have been had under it: it being nevertheless provided, that any such order which shall be made by consent or be otherwise acquiesced in, shall be as valid as any act of the Court.

XVIII.

That all proceedings upon Writs of *certiorari prohibition, mandamus, quo warranto, and habeas corpus*, and upon each of them respectively, be in all things similar to the proceedings upon such Writs in Her Majesty's Court of King's Bench in Westminster Hall.

XIX.

That every Suit or Action in which there shall have been no proceedings for and during two entire Terms of this Court, shall be removed to the Archives, and the Prothonotary shall be entitled to his costs in such suit or action as if the same was withdrawn by permission of the Court, but every such suit or action shall continue pending subject to *peremption d'instance*.

XX.

It is ordered that henceforth no contested cause be heard on the two last days of the Term.

 SECTION IV.
Of Process ad Respondendum.

IT IS ORDERED,

I.

That no Process *ad Respondendum*, of any description, sued out by the ministry of an Attorney *ad litem*, shall issue, until an appearance, for the person or persons requiring such Process, and a *Præcipe* for the same, under the signature of such Attorney, shall be filed, in the Office of the

Prothonotary ; and no other appearance shall be required or received for such person or persons, except in the case of change of Attornies, as herein before directed.

II.

That no Process *ad Respondendum*, of any description, by any person or persons who by Law are entitled to sue out such Process, without the ministry of an Attorney, shall issue, until the appearance of such person or persons, with the election of a domicile, at some house, within the limits of the City of Montreal, and a *Præcipe*, for such Process made under the signature or signatures of such person or persons, in the presence of two Notaries, or of a Notary and two Witnesses, shall be filed in the Office of the Prothonotary ; and all Pleadings, Notices, Rules, Judgments and other proceedings, which in any action so instituted, shall be served, at the domicile so elected, shall be held, and taken to be well and sufficiently served upon the person or persons by whom such domicile shall be so elected.

III.

That every action, which shall be commenced by any Process *ad Respondendum*, of any description, which shall not be served, or be imperfectly served, may be continued by an *Alias* and *Pluries* Process, of the same description ; and that such *Alias* and *Pluries* Process, as the case may be, shall be issued (without motion or application to the Court of any description) from the Office of the Prothonotary, upon a *Præcipe* for such *Alias*, or *Pluries* Process, under the signature of the Attorney *ad litem*, or of the person or persons, by whom such *Alias* or *Pluries* Process, shall be so sued out.

IV.

That all returns, upon any Process *ad Respondendum*, shall be made and signed by the Sheriff or Coroner to whom such Process shall be addressed.

V.

That every return, upon any Process *ad Respondendum*, of any description, shall specify the manner, time, (hour of service to be expressed

on pain of nullity,) and place of such service ; and particularly the Parish or Township and County in which such place is situate, and the distance thereof from the Court House of the District of Montreal.

VI.

That in all cases in which the service of any Process *ad Respondendum* shall be made in the City of Montreal, or County of Montreal, there shall be two intermediate days at least, between the day of service and the day of return ; and in all cases in which the service of any such Process shall be made at any place, without the limits of the County of Montreal, there shall, in like manner, between the day of service and the day of return be two intermediate days, and one other intermediate day for every five leagues of distance, which, upon the face of the Sheriff's Return there shall appear to be between the place at which such Process shall be served, and the Court House of the District of Montreal, in the case of service upon one Defendant only ; and in the case of service upon two or more Defendants, between the most distant place at which such Process shall be served, and the said Court House of the District of Montreal ; that every such intermediate day (Sundays and holidays not excepted,) shall be reckoned and counted to be one ; and that no service of less delay than is hereby required in each case respectively, shall be held or taken to be a valid service, nor shall a default in case of non-appearance be allowed thereon.

VII.

That from henceforth the Sheriff of the District of Montreal be at liberty in the service of all Process *ad Respondendum*, issuing from or under the authority of this Court against Defendants residing without the limits of the Parish of Montreal, to employ such Bailiff as he shall see fit, and to charge in his disbursements the ordinary mileage thereon ; notwithstanding that any other Bailiff or Bailiffs may happen to reside nearer the domicile of such Defendants than the Bailiff so employed, unless the party suing out such Process *ad Respondendum* prefer to cause the same to be served at his own diligence on giving to the Sheriff a discharge in writing from all responsibility touching the same.

VIII.

That no Process *ad Respondendum* founded upon *Affidavit* shall issue, in any suit, until the *Affidavit* upon which such Process is founded, shall be filed of Record, by the Plaintiff or Plaintiffs in such suit, in the Office of the Prothonotary; and of such *Affidavit* the Defendant or Defendants, in such suit shall, at all times, be entitled to copies certified by the Prothonotary, at the rate of six pence per folio of one hundred words each.

IX.

That every Process *ad Respondendum*, upon which bail is required, shall be indorsed in these words, viz: *issued upon the Affidavit of*
for the sum of and shall be signed by the Attorney by whose ministry such Process shall be sued out, and by the Plaintiff or Plaintiffs in the suit in which such Process shall be issued, if no Attorney shall have appeared for him, her or them. And the penalty of the Bail Bond or Bond to the Sheriff, in every such suit, shall be double the amount so sworn to and indorsed; it being hereby provided that no such Process *ad Respondendum*, upon which bail is required, shall be executed, until such indorsement thereon shall be made, and signed as aforesaid.

X.

That all and every Process *ad Respondendum*, which shall be hereafter issued, shall, by the Sheriff or Coroner to whom the same shall be directed, be returned into the Office of the Prothonotary, on or before the return day of such Process, and before the hour of eight of the clock in the forenoon, of such return day.

XI.

That a register of all and every Process *ad Respondendum*, whatsoever, issued from this Court, specifying the parties, the amount demanded, the cause of action, and the return day of each Process respectively, shall be made by, and kept in the Office of the Prothonotaries, to which all persons shall at all times, during office hours, have access *gratis*.

SECTION V.

Of defaults, of appearance by Defendants, and of Bail.

IT IS ORDERED,

I.

That the default of every Defendant, who shall be called under the third article of the 1st Section, and shall not appear, shall be recorded of course, and without any motion for that purpose.

II.

That such default once recorded, shall not be taken off without payment of ten shillings costs to the Plaintiff, or his Attorney; the case excepted in which the Plaintiff sues *in formâ pauperis*, in which no costs shall be paid.

III.

That no Defendant shall be heard until he has appeared in the manner hereinafter directed.

IV.

That every appearance in any suit whatever, by any Attorney of this Court for any Defendant or Defendants, who legally may appear by Attorney upon Process *ad Respondendum*, or any other Process, shall be filed in the Office of the Prothonotary, at any time before the hour at which such Defendant or Defendants by such Process, is or are commanded to appear, or thereafter at any time before the hour of ten in the morning of the *tertius dies post*, with a deposit of the sum of ten shillings for the first default, as heretofore hath been used; and no other appearance in such suit shall thereafter be received, for any such Defendant or Defendants, except in the case of change of Attornies, as hereinbefore directed.

V.

That of every appearance which in any suit shall be filed for any Defendant or Defendants, at the Office, or in open Court, a Duplicate shall be served upon the Attorney who shall have appeared for the Plaintiff or Plaintiffs, or at the elected domicile of such Plaintiff or Plaintiffs, if he, she, or they, shall not have appeared by Attorney.

VI.

That every Defendant, who, in obedience to any Process *ad Respondendum*, shall, in any suit appear in person, shall be held and bound to appear in open Court; and at the time of his or her appearance, shall file an appearance in writing, with an election of domicile at some house within the limits of the Town of Montreal, under his or her signature; unless the Court shall see fit to direct such appearance and election of domicile to be entered of record, and grant act thereof, in which case such writing under the hand of such Defendant shall not be required; and in default of the filing and of the entry of such appearance and election of domicile, the Plaintiff or Plaintiffs in such suit, may proceed thereon, as if such Defendant had not appeared.

VII.

That no plea to the Jurisdiction (*exception déclinatoire*) shall be filed by any Defendant, until an appearance shall be entered by or for such Defendant in manner hereinbefore directed.

VIII.

That every Defendant who shall in any suit, be arrested upon any Process *ad Respondendum*, shall and may at the return day of such Process, or on or before the *tertius dies post*, appear in person or by Attorney, in manner hereinbefore directed; and in default thereof, the Plaintiff or Plaintiffs in such suit shall and may proceed therein against such Defendant by default *ex parte*, in like manner, in all things, as such Plaintiff or Plaintiffs would have proceeded if such suit had been instituted by the ordinary Process *ad Respondendum*, and such Defendant had not

appeared : it being provided that no such proceeding, by default *ex parte*, shall affect in any manner or way whatever the right of such Plaintiff or Plaintiffs to an assignment of the Bail Bond taken by the Sheriff in such suit ; or his, her, or their right to compel the entry of special Bail, or to compel the Sheriff to bring in the body ; or any right of action upon the Bail Bond or otherwise against the Bail taken by the Sheriff, or against any special Bail in such suit ; or any measures, steps, means, or proceedings which such Plaintiff or Plaintiffs legally may have or pursue for any or either of the said purposes in any or either of the cases aforesaid.

IX.

That in every suit in which Special Bail is required, the same shall be put in in open Court on or before the *tertius dies post*, after previous notice of one day at least to the Plaintiff ; and such Bail, upon motion on the part of any Plaintiff to that effect, shall justify, or refusing to justify shall not be received as Bail.

X.

That in all suits, in which bail to the Sheriff shall be taken, the Sheriff upon the first Juridical day of Term, next after the *tertius dies post*, shall bring into Court the Bail Bond by him taken, and in open Court shall assign the same to the Plaintiff, if he shall be satisfied with the Bail so taken, and thereupon, being willing to accept of such assignment, shall move therefor ; and if such Plaintiff, in such suit, shall not be satisfied with the Bail so taken by the Sheriff, and shall therefore be unwilling to accept an assignment of the Bail Bond so taken, such Plaintiff from and after the *tertius dies post*, shall and may proceed against the Sheriff, upon his return of *cepi corpus*, to compel him to bring in the body, by attachment, or by amerciaments for contempt, in case of disobedience.

XI.

That in all suits, in which the Plaintiff, or Plaintiffs, to compel the Sheriff to bring in the body, shall see fit to proceed by attachment, and legally may, he, she or they shall make and file a motion to that effect, in open Court ; and if such motion shall be granted, and after service of an

Office Copy of the Rule which shall be made thereon, upon the Sheriff personally, at any time before the hour of eight in the evening of the day of the date of such Rule, the Sheriff shall not within three days bring in the body, and shall not show good cause to the contrary, according to the exigency of such Rule, and Special Bail shall not then be put in, an attachment shall issue against him.

XII.

That no render of any Defendant arrested, upon any Writ of *Capias ad Respondendum*, by himself, or by his bail, in discharge of bail to the Sheriff, shall be valid or effectual, or allowed as such, unless such render shall be made, in open Court, during Term, or to the Sheriff, before some one of the Justices of this Court, at Chambers, in vacation, nor unless the Court, or such Justice, before whom such render shall be made, shall have made an entry or minute of such render, and shall have committed such Defendant thereupon to the custody of the said Sheriff of the District of Montreal, in discharge of such bail; and in every case of render in discharge of bail to the Sheriff, made before any Justice of this Court, the minute of such render shall forthwith, by such Justice, be returned into the Office of the Prothonotary, and be there filed of record in the suit to which such minute shall relate, and a duplicate thereof in all things shall, by such Justice, be delivered with such Defendant to the said Sheriff.

XIII.

That until the expiration of fifteen days from the day on which final Judgment shall be obtained in any suit, the assignment of the Bail Bond, upon motion for that purpose made, as hereinbefore directed, the bringing in of the body upon the original, or any subsequent motion for that purpose, according to the exigency of the Rule thereon, the render in discharge of Bail to the Sheriff, in the manner hereinbefore directed, the putting in of Special Bail upon or before the *tertius dies post*, in the manner hereinbefore directed, or by leave of the Court, at any other time whatever, before final Judgment (such leave being granted upon motion for that purpose by consent or otherwise) the payment of the real debt and costs by the Sheriff, by the Defendant, or by any other person, and any and either of the same shall stay all further proceedings whatsoever

in such suit against the Sheriff to compel him to bring in the body, and shall supersede the attachment, if any attachment shall have issued.

XIV.

That no Notice "under the signature of the Prothonotary" of this Court, (under the provisions of the Provincial Statute 9, Geo. IV. chap. 20), sued out by the ministry of an Attorney *ad litem*, shall issue until an appearance for the person or persons requiring such Notice and *Præcipe* for the same, under the signature of such Attorney, shall be filed in the Office of the Prothonotary; and no other appearance shall be required or received for such person or persons, except in case of change of Attornies as in and by the Rules of Practice of this Court is directed.

XV.

That no Notice "under the signature of the Prothonotary" of this Court, (under the provisions of the Prov. Stat. 9, Geo. IV. chap. 20), sued out *without* the ministry of an Attorney *ad litem*, by any purchaser or proprietor who by Law is or are entitled and shall see fit to sue out such Notice without the ministry of an Attorney, shall issue until the appearance of such purchaser or proprietor, with the election of a domicile at some house within the limits of the City of Montreal; and a *Præcipe* for such Notice made under the signature of such purchaser or proprietor in the presence of two Notaries, or of a Notary and two Witnesses, shall be filed in the Office of the Prothonotary. And all Pleadings, Notices, Rules, Judgments and other proceedings *arising* out of or incident to the said notice which shall be served at the domicile so elected, shall be held and taken to be well and sufficiently served upon the purchaser or proprietor by whom such domicile shall have been so elected.

SECTION VI.

Of Exhibits and of Communication.

IT IS ORDERED,

I

That of each and every paper writing, other than public acts, particularly mentioned and set forth in the declaration, or in any subsequent pleading, in any case filed as the act, instrument, deed or writing upon which such declaration or subsequent pleading shall be founded respectively, authenticated copies (if such paper writings be *actes authentiques*) and a copy certified by the Attorney of the party filing the same (if such paper writing be *acte sous seing privé*) shall, with lists or inventories thereof, be filed in the Office of the Prothonotary, together with such declaration and pleading respectively; and that all other paper writings, or *preuve littérale* whatsoever, which the party or parties to any suit, or any or either of them shall see fit to produce in evidence, together with the originals of all *actes sous seing privé*, which shall be exhibited and filed, as hereinbefore directed, shall be exhibited and filed, with lists or inventories thereof, at the opening of the *Enquête* which shall be had upon the issue raised in such suit (if any there be) to which such last mentioned paper writings, or *preuve littérale* shall relate, as evidence.

II.

That every list, or inventory of exhibits, shall be an index to all, each and every the exhibits therewith filed, by number, title, date and description, under the signature of the Attorney *ad litem* or party filing such exhibits; and each and every exhibit which, in any case, shall not be inserted and mentioned, as herein directed, in the list or inventory of exhibits therein filed, shall not be received or filed, or be deemed, or taken to be filed, or be held or taken to be part of the record in such case.

III.

That each and every party to a suit, filing a copy of any *acte sous seing privé*, especially alledged in his declaration, exception or other pleading, shall be bound thereby, and shall not, at the *Enquête*, upon the issue, raised in such case, to which such *acte sous seing privé* shall relate, (if any there be), nor at the hearing of such issue, be permitted to produce in evidence, or to file any original paper writing whatsoever, especially alledged as aforesaid, which does not in all things correspond with such copy.

IV.

That in each and every case in which a copy of any paper writing particularly mentioned and set forth in the declaration, *demande* in chief or incidental or cross *demande*, or in any *demande* in intervention, as the act, instrument, deed or writing upon which such *demandes* respectively shall be founded shall not be filed, as hereinbefore directed, the party or parties in such case, who would otherwise be bound to plead to such declaration or *demande* in chief, incidental cross *demande*, or *demande* in intervention, as the case may be, shall not be compelled to plead thereto, until such copy of such paper writing shall be filed; and the rules to plead, in such case, shall commence and be reckoned from the day on which such copy of such paper writing shall be filed, and notice given thereof.

V.

That in each and every case in which a copy of any paper writing particularly mentioned and set forth in any plea of exception *déclinatoire*, *peremptoire à la forme*, *dilatatoire*, or *peremptoire en droit*, temporary or perpetual, as the act, instrument, deed, or writing, upon which such exceptions, respectively, shall be founded, shall not be filed, as hereinbefore directed, such plea of exception, upon motion of the party or parties, who would otherwise be bound to answer to such plea of exception, shall be overruled and dismissed with costs.

VI.

That in each and every case in which a copy of any paper writing particularly mentioned and set forth in any answer to any plea of excep-

tion *déclinatoire*, *peremptoire à la forme*, *dilatoire*, or *peremptoire en droit*, temporary or perpetual, as the act, instrument, deed, or writing upon which such answer shall be founded, shall not be filed as herein before directed, the party or parties in such case, who would otherwise be bound to reply to such answer, shall not be compelled to reply thereto, until such copy of such paper writing shall be filed; and the rule to reply in such case, shall commence and be reckoned from the day on which such copy of such paper writing shall be filed and notice given thereof.

VII.

That in every case in which the declaration or *demande* of any Plaintiff in chief, or of any incidental Plaintiff, or Plaintiff in intervention, shall not disclose the particulars of such *demande*, the Defendant shall be entitled by motion in Term, and by Summons before one of the Justices of this Court in vacation, to require and to obtain of the Plaintiff in writing, the particulars of the *demande* for which his action, cross action, or action in intervention, as the case may be, shall be brought; unless good cause be shown to the contrary; and every order to furnish the particulars of any such *demande* which shall be made in Term, or in vacation, shall operate as a stay of all proceedings upon such *demande*, until such particulars shall be furnished in writing; it being hereby provided that no such motion or Summons shall be allowed after the expiration of the first Juridical day next after the day upon which such Defendant in any action in chief shall have appeared, nor after the expiration of the first Juridical day next after the day upon which such incidental cross *demande* or *demande* in intervention, respectively, shall be filed; and further that no exception *déclinatoire*, *peremptoire à la forme* or *dilatoire*, on the part of the party or parties making such motion, or requiring such Summons, shall be received or filed.

VIII.

That all parties to a suit, pending in this Court, shall of common right, and without any motion, or other application to the Court for that purpose, be entitled to communication of all exhibits and other paper writings filed in such suit, in the manner hereinafter directed.

IX.

That of all exhibits, or other paper writings filed in any cause, being copies or expeditions of *actes authentiques*, or copies of *actes sous seing privé*, communication shall be given, upon the receipt of the Attorney of the party or parties in such cause, indorsed upon the list or inventory of such exhibits; and such Attorney shall be entitled to have and retain such copies in communication, at his office, for and during the space of forty-eight hours.

X.

That of all exhibits, or other paper writings, filed in any cause, being *actes sous seing privé*, or original paper writings of any description whatsoever, communication shall be given to the Attorney of the party or parties demanding and entitled to communication in such case, at the Office of the Prothonotary of this Court, and not elsewhere; it being expressly provided that no exhibits or other paper writings being *actes sous seing privé*, or original paper writings of any description whatsoever, shall be removed, or taken in communication, from the Office of the Prothonotary, for any cause or on any pretence whatsoever.

XI.

That after the expiration of a year and a day, from the day of the date of the final judgment, in any cause, in which no appeal shall have been, or may be instituted, all exhibits therein filed, shall and may be withdrawn by the party or parties, by whom the same have been filed, such party or parties endorsing therefor a receipt to the Prothonotary of this Court, upon the list or inventory of exhibits in such cause filed, in which the exhibits so withdrawn shall be enumerated and described.

XII.

That no exhibit which now is, or hereafter shall be filed in any cause, shall in Term be withdrawn, pending such cause or within a year and a day from the day of the date of the final judgment in such cause, from the record of such cause, without the order of this Court upon motion, with previous notice of such motion, by the space of two days, to the adverse

party or parties therein interested, duly served; and in all cases, in which such application shall be granted, such exhibits or other paper writing shall not be withdrawn, until a true copy thereof, duly authenticated by the Prothonotary of this Court, shall have been made and filed of record, in such cause, in lieu of such exhibit, or other paper writing by the Court allowed to be withdrawn.

XIII.

That no exhibit, or other paper writing, which now is, or hereafter shall be filed, shall in vacation in any cause, within a year and a day from the day of the date of the final judgment in such cause, be withdrawn from the record of such cause, without the order of one of the Justices of this Court, upon written application for that purpose, with previous notice of such application, by the space of two days, to the adverse party or parties therein interested, duly served; and in all cases, in which, such application shall be granted, such exhibit or other paper writing shall not be withdrawn, until a true copy thereof, duly authenticated by the Prothonotary of this Court, shall have been made and filed of record, in such cause, in lieu and stead of such exhibit or other paper writing by such Justice allowed to be withdrawn.

XIV.

That in future no judgment shall be entered upon a confession in any cause until the bill of particulars, or other documents upon which the action is founded, shall have been filed.

XV.

That no papers of any description whatsoever shall be received or filed in any cause or proceeding whatever, arising out of the Provincial Statute 9, Geo. IV, chap. 20, by the Prothonotary of this Court, unless the same be regularly docketed with the *title* and *number* of the cause or proceeding, and the general description of such paper.

SECTION VII.

Of Pleading.

IT IS ORDERED,

I.

That, in every case, all Pleadings, subsequent to the declaration in chief, be filed in the Office of the Prothonotary, by the party or parties Pleading the same respectively.

II.

That copies of every Pleading, which shall be filed, in the Office of the Prothonotary, in any cause, by any party, Plaintiff or Defendant, shall be served, upon the Attorney or Attornies of the adverse party or parties, in such cause, if such there be, at or before the hour of eight in the evening of the day, on which such Pleading shall be filed; and in default of such service, the filing of such Pleading shall not be taken to be perfected, and such adverse party or parties, in such cause, who shall not have been so served with a copy of such Pleading, shall and may proceed, in all things, as if such Pleading had never been filed.

III.

That the parties to any suit, depending in this Court, shall be bound and held, without any motion, or other application for that purpose, to file their several and respective Pleadings, in the manner directed, and within the time appointed and limited by these Rules and Orders, for the filing of such Pleading respectively, and that no motion or Rule to file any Pleading, shall in any case be received or filed.

IV.

That the Pleadings, in each cause, shall be filed at, or before the hour of six in Term, and of four in vacation in the evening of the day upon which by the Rules and Orders of this Court it is required that such Plead-

ings respectively should be filed; those cases only excepted, in which the common Rule or Order of this Court, with respect to the filing of any Pleading, shall be enlarged, and in all such cases, such Pleadings shall be filed at or before the hour of four or six in the evening of the day upon which such Rule or Order so enlarged shall expire, as the case may require.

V.

That, except as hereinafter is excepted, the Rules and Orders of this Court, for the filing of Pleadings, shall not, in any case, be enlarged, in Term, without the Special Order of the Court, upon motion for that purpose made in open Court, nor in vacation, without the order of one or more of the Justices of this Court upon petition for that purpose, and every such motion shall be made or presented at some time before the common and ordinary Rule hereby prescribed to plead, to answer, to reply, or otherwise (as the case may be) shall expire, and shall be supported by an affidavit of the fact or facts upon which it is grounded with previous notice of such motion or petition to be duly served, by the space of one day at least, upon the Attorney or Attornies of the party or parties who, in the suit in which such motion or petition shall be made, shall happen to be the opponent or opponents of the party or parties making such motion or petition.

VI.

That all exceptions *déclinatoires, peremptoires à la forme, and dilatoires* to be pleaded, in each case respectively, be pleaded conjointly, and be filed at one and the same time, on the second day next, after the day on which the appearance of the Defendant or Defendants, by whom such exceptions as aforesaid are pleaded, shall be filed; that no such exception shall afterwards be received or filed, and that the period allowed by these Rules and Orders for filing such exceptions, shall not, in any case, be enlarged.

VII.

That all exceptions *peremptoires en droit* and *tous défenses au fonds* to be pleaded, in each case, respectively, be pleaded conjointly and be filed

at one and the same time, on the sixth day next after the return day of the Process *ad Respondendum*, in every suit in which the Process *ad Respondendum* shall be returnable on the first day in Term, and on the twentieth day from such return day, in every suit in which the Process *ad Respondendum* shall be returnable upon the second day in Term, or upon any day, in Term, thereafter; and that the Rule hereby prescribed shall be the common Rule to plead to the action, in each case respectively.

VIII.

That in all cases in which any exceptions *déclinatoires, dilatoires, or peremptoires à la forme* shall be filed and shall not be heard and determined, or otherwise disposed of, before the day on which the common Rule to plead, in such case to action, shall expire, such common Rule to plead to the action, shall, *ipso facto*, stand enlarged until the first day next after the day on which such exceptions *déclinatoires, dilatoires, or peremptoires à la forme* shall have been so heard and determined, or otherwise disposed of.

IX.

That no plea of exception *déclinatoire, peremptoire à la forme, or dilatoire* be received or filed, unless the party offering such plea shall therewith deposit, in the hands of the Prothonotary, the sum of two pounds six shillings and eight pence, for each and every such plea, to answer the costs of the Respondent or Respondents upon such plea, if the same shall be dismissed by the Court, or withdrawn by such party, in the proportion of eleven shillings and eight pence to the Prothonotary, and one pound fifteen shillings to such Respondent or Respondents.

X.

That all *preuve littérale*, of whatever description to be adduced, in support of any exception *déclinatoire, dilatoire, or peremptoire à la forme*, be filed together with such exception; and that no *preuve littérale*, in support of such exceptions, be afterwards, at any time, received or filed.

XI.

That all exceptions *déclinatoires*, *peremptoires à la forme* and *dilatoires*, be set forth in Pleading distinctly and consecutively, in the following order, that is to say:

1st.—*Exceptions Déclinatoires.*

- (1.) For cause of *incompetence* in the Court.
- (2.) By reason of *privilege* in the Defendant.

2d.—*Exceptions Peremptoires à la forme.*

- (1.) For cause of nullity in the declaration.
- (2.) For cause of nullity in the process *ad respondendum*.
- (3.) For cause of nullity in the service of the declaration, and process *ad respondendum*, or either of them.

3d.—*Exceptions Dilatoires.*

- (1.) For cause proceeding from the Plaintiff.
- (2.) For cause proceeding from the Defendant.
- (3.) For cause proceeding from the action.

XII.

That all answers to exceptions *déclinatoires*, *peremptoires à la forme*, or *dilatoires*, to be pleaded, in each case respectively, be pleaded conjointly, and be filed, at one and the same time, on the second day next after the day, on which such exceptions *déclinatoires*, *peremptoires à la forme*, or *dilatoires* respectively, shall be filed.

XIII.

That all replications to answers to exceptions *déclinatoires*, *peremptoires à la forme*, or *dilatoires*, to be pleaded, in each case respectively, be pleaded conjointly and be filed, at one and the same time, on the second day next after the day on which such answers to exceptions *déclinatoires*, *peremptoires à la forme*, or *dilatoires*, respectively, shall be filed.

XIV.

That each and every exception *déclinatoire*, *peremptoire à la forme*, and *dilatoire* shall be considered and be heard, as an application to the Court by petition to stay or to set aside the proceedings for irregularity, and shall require no answer, or issue to be thereupon taken, in any case, in which the Plaintiff or Plaintiffs shall see fit to abide by the hearing of such exception upon its own merits, and shall therefore move for hearing thereon, without an answer; it being hereby provided that every Plaintiff, who shall so move for hearing, without answer upon any Plea of exception *déclinatoire*, *peremptoire à la forme*, or *dilatoire*, shall be held and taken thereby to confess and admit the allegations of fact set forth and contained in such Plea of exception *déclinatoire*, *peremptoire à la forme*, or *dilatoire*, and each and every of them, to be true.

XV.

That in every case, in which the Plaintiff or Plaintiffs shall not see fit to move for hearing, without answer upon any Plea of exception *déclinatoire*, *peremptoire à la forme*, or *dilatoire*, the answer of such Plaintiff or Plaintiffs to such exception *déclinatoire*, *peremptoire à la forme*, or *dilatoire*, shall be filed, as herein before is directed; and if such Plaintiff or Plaintiffs shall not see fit to file any special answer to such exception *déclinatoire*, *peremptoire à la forme*, or *dilatoire*, the answer of such Plaintiff or Plaintiffs thereto shall be general, by which general answer the issue upon such exception *déclinatoire*, *peremptoire à la forme*, or *dilatoire* shall be completed and perfected.

XVI.

That a replication to the general answer to any Plea of exception *déclinatoire*, *peremptoire à la forme*, or *dilatoire*, shall not be received or filed.

XVII.

That in every case, in which a special answer to any Plea of exception *déclinatoire*, *peremptoire à la forme*, or *dilatoire* shall be filed, a replication to such special answer shall and may be received and filed.

XVIII.

That all exceptions *peremptoires en droit*, and all *défenses au fonds*, be deemed and taken to be Pleas to the action, and be set forth in Pleading distinctly and consecutively, in the following order, that is to say :

1st.—*Exceptions peremptoires en droit*, which are temporary.

2d.—*Exceptions peremptoires en droit*, which are perpetual.

3d.—*Défenses au fonds*.

(1.) *En droit*.

(2.) *En fait*.

XIX.

That all answers to exceptions *peremptoires en droit*, temporary or perpetual, to be pleaded, in each case respectively, be pleaded conjointly, and be filed at one and the same time, on the second day next after the day on which such exceptions *peremptoires en droit*, temporary or perpetual, shall respectively be filed.

XX.

That in every case, in which the Plaintiff or Plaintiffs shall not see fit to file a special answer to any exceptions *peremptoires en droit*, temporary or perpetual, the answer of such Plaintiff or Plaintiffs thereto shall and may be general ; and by such general answer, the issue upon such exceptions *peremptoires en droit*, temporary or perpetual, shall respectively be completed and perfected.

XXI.

That a replication to the general answer to any exception *peremptoire en droit*, temporary or perpetual, to be pleaded, in each case respectively, be pleaded conjointly, and be filed, at one and the same time, on the second day next after the day on which such answers to exceptions *peremptoires en droit*, temporary or perpetual, shall be respectively filed.

XXII.

That all replications to *défenses au fonds* to be pleaded, in each case respectively, be pleaded conjointly, and be filed, at one and the same time,

on or before the second day next after the day upon which such *défenses au fonds* shall respectively be filed.

XXIII.

That no exception *déclinatoire, peremptoire à la forme, dilatoire*, or temporary *peremptoire en droit* shall be amended; nor shall any motion for any such purpose be received or filed.

XXIV.

That no declaration, perpetual *exception en droit, défense*, answer, replication, or pleading, of whatsoever description, shall be amended, without leave of the Court and payment of costs; and, in all cases, in which any declaration, perpetual *exception en droit, défense*, answer or Pleading shall be so amended, the party bound to plead, to answer, or to reply thereto, shall have the like time so to plead, to answer, or reply to such declaration, perpetual *exception en droit, défense*, answer, or other Pleading so amended, as therefore was originally allowed by these Rules and Orders; and such time shall be computed from the day on which such declaration, perpetual *exception en droit, défense*, answer, or other Pleading shall be so amended, and service made on the adverse party.

XXV.

That in every case in which the common or enlarged Rule to plead to the action shall expire, in Term, and the Defendant or Defendants, in such case, shall not file, in the Office of the Prothonotary, a Plea to the action, on or before the hour of six in the evening of the day on which such common or enlarged Rule to plead shall expire, the Plaintiff or Plaintiffs, upon filing a certificate of the Prothonotary, that no Plea hath been filed, and upon motion thereupon made in open Court, shall have leave to proceed, and shall and may proceed against such Defendant or Defendants *ex parte*, for want of a Plea, in like manner, in every respect, as if such Defendant or Defendants had never appeared: those cases excepted, in which, at the time of making such motion, sufficient cause against the granting thereof shall be shown.

XXVI.

That in every case in which the common or enlarged Rule to plead to the action shall expire in vacation, and the Defendant or Defendants in such case, shall not file, in the Office of the Prothonotary, a Plea to the action, at or before the hour of four in the evening of the day on which such common or enlarged Rule to plead shall expire, in which also the Plaintiff or Plaintiffs, after the expiration of such common or enlarged Rule to plead shall have demanded, in writing, of such Defendant or Defendants, a Plea to the action, and a Plea or Pleas to the action, shall not be filed, in the Office of the Prothonotary, at or before the hour of four in the evening of the day next after the day on which such demand of a Plea to the action shall be so made, the Plaintiff or Plaintiffs, in such case, having made such demand, shall be entitled and at liberty to foreclose the Defendant or Defendants upon whom such demand of a Plea to the action shall have been so made, from the right of filing a Plea or Pleas to the action, in such case, by filing, in the Office of the Prothonotary, a copy of such demand of a Plea to the action, with a Bailiff's certificate of due service of such demand upon the Attorney *ad litem* of such Defendant or Defendants, if such there be, or at the elected domicile of such Defendant or Defendants, if no appearance by Attorney shall have been entered, with an *acte* of foreclosure: and after the filing of such copy of a demand of a Plea to the action, with such certificate of service, and such *acte* of foreclosure, as aforesaid, no Plea to the action, on the part of such Defendant or Defendants, shall afterwards be received or filed, without the special order of the Court for that purpose, and thereupon, such Plaintiff or Plaintiffs shall be entitled and at liberty to proceed, and shall and may proceed against such Defendant or Defendants *ex parte*, for want of a Plea, in like manner, in every respect, as if such Defendant or Defendants had never appeared.

XXVII.

That in every case, in which a replication to any special answer filed by the Plaintiff or Plaintiffs, in such case, to any exceptions *déclinatoires, peremptoires à la forme, dilatoires, or peremptoires en droit*, temporary or

perpetual, in such case pleaded, shall not be filed by the excipient or excipients, in such case, at the expiration of the Rule and time thereby given in such case to reply; the Plaintiff or Plaintiffs, in such case, shall forthwith thereafter be entitled, and at liberty, to proceed in all things and in every respect as if such replication had been filed by such excipient or excipients; it being hereby provided, that in every such case the excipient or excipients therein shall be at liberty at all times thereafter, until such Plaintiff or Plaintiffs shall have proceeded thereupon, to file such replication as he, she or they may see fit to abide by, without delay to the cause, in any manner whatsoever.

XXVIII.

That every Defendant, who, in any action, shall be arrested upon a *capias ad respondendum*, shall plead and reply, within the periods, and in the manner hereinbefore respectively limited and directed, for the filing and service of pleadings subsequent to the declaration, and in default thereof, the Plaintiff or Plaintiffs, in such action, shall be entitled, and at liberty to proceed, in all things, against such Defendant, as if such action had been instituted by writ of summons.

XXIX.

That all incidental cross *demandes*, made on the part of the Defendant or Defendants, in any case, be conjointly made, and be filed, at one and the same time with the Plea or Pleas of such Defendant or Defendants to the action; and that no incidental cross *demande* of any such Defendant or Defendants, in such case be afterwards received or filed.

XXX.

That every incidental cross *demande* shall be deemed and taken to be a distinct action, and shall not be permitted, in any respect, to delay the proceedings of the Plaintiff or Plaintiffs, in any case, in which any such incidental cross *demande* shall be instituted; it being nevertheless hereby provided, that nothing in this Rule shall extend, or be construed to extend to any matter of *reconvention* or *compensation* which shall amount to and be pleaded as a *défense* to the *demande* in chief.

XXXI.

That when the Rule to plead to the *demande* in chief shall be a six day Rule, the same shall be the Rule to plead to the incidental *demande*, and so when the Rule to plead to the *demande principale* shall be a twenty day Rule, the same shall be the Rule to plead to the incidental *demande*.

XXXII.

That no *demande* in intervention shall in any cause be received, without a motion for leave to file the same, or be filed without the order of the Court for that purpose, and that no such motion shall be received or filed, unless the same be accompanied with an affidavit or certificate of previous service of a copy of such *demande* upon the several parties in such cause, who shall have appeared.

XXXIII.

That in every case, in which any *demande* in intervention shall not be filed by consent, upon the motion for leave to file the same, the Rule upon such motion shall be a Rule *nisi* of one day, and shall be served on all the parties in such cause who shall have appeared.

XXXIV.

That the Rules and Orders hereby prescribed, with respect to Pleadings upon *demandes* in chief, and each and every of them, shall, in all things, apply to and be the Rules and Orders of this Court, with respect to all Pleadings upon incidental cross *demandes*, upon which Pleadings are by law required.

XXXV.

That the Rule to plead to any *demande* in intervention shall commence and be reckoned from the day on which, by the order of the Court, such *demande* in intervention shall be filed.

XXXVI.

That in every cause, evoked from the Inferior Term of this Court, the Plaintiff or Plaintiffs, within two days from the day on which the

evocation, in such case, shall be allowed, shall file, in the Office of the Prothonotary, his declaration in such case; and that the Rules and Orders of this Court, with respect to Pleadings upon *demandes* in chief, in actions instituted by Process *ad Respondendum*, returnable in the Superior Term of this Court, and each and every of them, shall, in all things, apply to and be the Rules and Orders of this Court, with respect to all subsequent Pleadings in such case.

XXXVII.

That with every *défense au fonds en droit*, shall be filed a notice containing minutely, and in detail, all the grounds of such *défense au fonds en droit*, it being hereby expressly ordered that no party shall be permitted to urge any ground in support of a *défense au fonds en droit*, which shall not be so set forth and particularised in such notice.

SECTION VIII.

Of Issues, of Enquêtes, and of Hearing.

IT IS ORDERED,

I.

That the issue upon a *demande* in chief, upon an incidental cross *demande*, and upon a *demande* in intervention respectively, shall be perfected by the declaration and *défense au fonds*, to which the Plaintiff may reply if he see fit, without retarding the cause.

II.

That the issue upon an exception *déclinatoire, peremptoire à la forme*, and *dilatoire* respectively, in every case, in which a motion for hearing, without answer, shall not be made, shall be perfected by the exception and answer, to which, however, the excipient may reply if he see fit, but without retarding the cause.

III.

That the issue upon an exception *péremptoire en droit*, temporary or perpetual, shall, in every case, be perfected by the exception and answer, to which the exceptant may reply if he see fit, without delaying the cause.

IV.

That there be kept in the Office of the Prothonotary two Rolls; to be called respectively the Roll *de Droit*, and the Roll *d'Enquêtes*: that upon the Roll *de Droit* shall be inscribed all causes which, by the course of the Court, shall stand for hearing *en droit* upon the pleadings in such cause filed, upon the merits or other matter; and upon the Roll *des Enquêtes* all causes which, by the course of the Court, shall stand for the adduction of proof.

V.

That all causes which shall be regularly inscribed upon the Roll *de Droit*, for hearing *en droit* upon the pleadings filed in such cause, or for hearing *en droit* upon the merits or other matter, and each of them, shall, from thenceforth, be and remain set down for hearing upon the matter to which the inscription of such cause upon the Roll *de Droit* shall relate, until the same shall be heard, or such cause, in such respect, shall be otherwise disposed of by the order of the Court.

VI.

That all causes which shall be regularly inscribed upon the Roll *des Enquêtes*, and each of them, shall, from thenceforth, be and remain set down for the *Enquête* to which the inscription of such cause upon such Roll shall relate, until such *Enquête* shall be had, or such cause, in this respect, shall otherwise be disposed of by order of the Court.

VII.

That all causes which shall be regularly inscribed upon the Roll *de Droit*, for hearing *en droit* on the pleadings, on the merits, or other matter, upon any particular day, shall be first called on, and heard upon such day, or as soon thereafter as counsel can be heard, in the order and suc-

cession in which such causes shall stand inscribed upon such Roll ; and such causes so set down for hearing being first heard, the causes inscribed for hearing generally *en droit* on the pleadings, on the merits, or other matter upon such Roll, shall upon such day, or as soon as counsel can be heard, be called on and heard, in the order and succession in which such last mentioned causes shall stand inscribed upon such Roll.

VIII.

That all causes which shall be regularly inscribed upon the Roll *des Enquêtes*, for the adduction of proof, upon any particular day, shall upon such day be first called on, in the order and succession in which such causes shall stand inscribed upon such Roll ; and the *Enquêtes* in such cases being closed, or such cases being otherwise disposed of, the causes inscribed upon the Roll *des Enquêtes* generally for the adduction of proof (if any there be) shall be then called on, in the order and succession in which such last mentioned causes shall stand inscribed upon such Roll.

IX.

That every *Enquête* in each and every cause, shall be deemed and taken to be closed, upon the day appointed for such *Enquête*, if such cause shall not then be, or previously have been struck from the Roll *des Enquêtes*, or thereon continued by order of the Court ; it being hereby declared that this Rule does and shall extend to all *Enquêtes ex parte*.

X.

That after an *Enquête* shall be closed, the leave or order of the Court for the adduction of proof upon the issue or issues to which such *Enquête* shall relate, shall not be had or made, without a motion for that purpose upon affidavit, authenticating the grounds upon which such motion shall be founded ; and that a motion for such purpose, without such affidavit as aforesaid, shall not be received or filed.

XI.

That every affidavit, whereon shall be grounded an application to the Court, by a Defendant or Defendants in any case, to put off an *Enquête*,

on account of the absence of a material witness, shall state the facts which such Defendant or Defendants expect to prove by such witness, and the time at which it is probable that such witness will be able to attend, in addition to all other matters heretofore required in similar affidavits; and that an affidavit for such purpose which does not state such facts shall not be received or filed.

XII.

That when and so often as any cause shall be continued upon the Roll *des Enquêtes* generally, without day, such cause shall stand continued thereon, until the first day next after the day of such continuance upon which the *Enquête* to which the inscription of such cause on the Roll *des Enquêtes* shall relate, by the course of the Court, can be had.

XIII.

That when and so often as any cause shall be continued upon the Roll *de Droit* generally, without day, such cause shall stand continued thereon, until the first day next after the day of such continuance, upon which, by the course of the Court, such cause can be heard *en droit* upon the matter to which the inscription of such cause upon the Roll *de Droit* shall relate.

XIV.

That when and so soon as the issue or issues shall, in any cause, be perfected upon one or more exceptions *déclinatoires*, *péremptoires à la forme*, or *dilatoires*, the parties to such issue or issues, or either of them, shall be at liberty and entitled to set down such cause for hearing *en droit* upon the pleadings, by which such issue or issues shall have been raised and perfected, by inscribing such cause upon the Roll *de Droit*, in term or in vacation, and giving notice thereof to the adverse party or parties in such cause; and such cause shall be so heard upon such issue or issues, as soon thereafter as counsel, by the course of the Court, can be heard; it being hereby provided that no such cause shall be so heard upon such issue or issues, upon the day of the service of the notice hereby required, nor any cause which by order of the Court, upon motion, or otherwise, shall be struck from the Roll *de Droit* without hearing, or be continued

thereon for hearing to any subsequent day, or generally without day, nor any cause in which any order in term or in vacation, shall be made to stay proceedings, or in which the Plaintiff or Plaintiffs in such cause, shall, in the manner hereinafter provided, set down such cause for the adduction of proof generally upon such issue or issues, without a hearing *en droit* upon the pleadings, by which such issue or issues shall have been so raised and perfected.

XV.

That when and so soon as the issue or issues shall, in any cause, be perfected upon one or more exceptions *déclinatoires*, *peremptoires à la forme*, or *dilatatoires*, as the case may be, and the Plaintiff or Plaintiffs in such cause shall see fit to set down such cause for the adduction of proof generally upon such issue or issues, without a hearing *en droit* upon the pleadings in such cause filed, the Plaintiff or Plaintiffs in such cause shall be at liberty and entitled so to do, by inscribing such cause on the Roll *des Enquêtes*, and giving notice thereof, in term or in vacation, to the adverse party or parties in such cause, and upon proof of the service of such notice, by affidavit or certificate, as well the party and parties giving such notice as the party and parties upon whom such notice shall be served, shall be held and bound to adduce and to file all such evidence, proof and testimony written and unwritten, as they, or either of them, may have, and by law may be permitted to adduce or file upon such issue or issues, upon the first *Enquête* day in term or vacation, next after the day upon which such notice shall be served; and shall not thereafter be permitted to adduce or to file any evidence, proof or testimony whatsoever, written or unwritten, upon such issue or issues, without the leave or order of the Court for that purpose; it being hereby provided that such adverse party or parties shall not be hereby held or bound to adduce or file on such *Enquête* day as aforesaid, any evidence, proof or testimony whatever, written, or unwritten, in any case in which there shall not be one Juridical day in Term, or fourteen days in vacation, between the day of the service of the notice hereby required and such *Enquête* day as aforesaid, nor in any case in which such cause, by order of the Court, upon motion or otherwise, shall be struck from the Roll *des Enquêtes*, or be continued thereon to

any subsequent day, or generally without day, or in which any order, in term or vacation, shall be made to stay proceedings.

XVI.

That every cause in which a *défense en droit* shall be filed and issue thereon shall be raised and perfected, shall be heard *en droit*, as well upon the pleadings in such cause filed, by which such issue shall have been raised and perfected, as upon the pleadings in such cause filed, by which any issue or issues shall have been raised and perfected upon an exception *peremptoire en droit*, temporary or perpetual, and *défense en fait* (if such there be;) it being hereby provided that such cause shall be heard *en droit*, at one and the same time, upon all such pleadings in such cause filed, and that, at such time, the hearing on such *défense en droit* and the pleadings thereon shall precede the hearing *en droit* upon such *exception* and *défense en fait*, and the pleadings thereon.

XVII.

That when and so soon as the issue or issues shall, in any cause be perfected as well upon one or more exceptions *peremptoires en droit*, temporary or perpetual, (as the case may be), as upon the *défenses au fonds, en droit* and *en fait*, (if such there be,) the parties to such issue or issues, or either of them, shall be at liberty and entitled to set down such cause for hearing *en droit* upon the pleadings, by which such issue or issues shall have been raised and perfected, by inscribing such cause upon the Roll *de droit*, in term or in vacation, and giving notice thereof to the adverse party or parties in such cause, and such cause shall be so heard, upon such issue and issues, as soon thereafter as counsel by the course of the Court can be heard; it being hereby provided that no cause shall be so heard upon such issue or issues upon the day of the service of the notice hereby required, nor any cause which by order of the Court upon motion or otherwise shall be struck from the Roll *de droit* without hearing, or be continued thereon for hearing to any subsequent day, or generally without day, nor any cause in which any order in term or vacation shall be made to stay proceedings, or in which no *défense en droit* being filed, the party or parties being Plaintiff or Plaintiffs in such cause shall, in the manner hereinafter provided, set down such cause for the adduc-

tion of proof generally upon such issue or issues, without a hearing *en droit* upon the pleadings, by which such issue or issues shall have been so raised and perfected.

XVIII.

That in future in every cause in which the Defendant is in custody of the Sheriff, upon Process *ad Respondendum*, and issue has been joined, it shall be lawful for such Defendant, by motion, to apply to the Court for leave to inscribe such cause on the Roll *de droit* for hearing, or on the Roll *d'Enquête* for proof, as the cause may require, and if good cause to the contrary shall not be shewn by the Plaintiff, such motion so made shall be made absolute.

XIX.

That when and as soon as the issue or issues shall, in any cause, be perfected, as well upon one or more exceptions *peremptoires en droit*, temporary or perpetual (as the case may be) as upon the *défense au fonds en fait* (if such there be) and the Plaintiff or Plaintiffs, in such case, shall see fit to set down such cause for the adduction of proof generally, upon such issue or issues, without a hearing *en droit* upon the pleadings in such cause filed, the Plaintiff or Plaintiffs in such cause, shall be at liberty and entitled to do so by inscribing such cause on the Roll *des Enquêtes*, and giving notice thereof, in term or in vacation, to the adverse party or parties in such cause, and upon proof of the service of such notice, by affidavit or certificate, as well the party and parties giving such notice as the party and parties upon whom such notice shall be served, shall be held and bound to adduce and to file all such evidence, proof and testimony, written and unwritten, as they, or either of them, may have (and by law may be permitted to adduce or file) upon such issue or issues, upon the first *Enquête* day, in vacation, next after the day upon which such notice shall be served; and shall not thereafter be permitted to adduce or to file any evidence, proof or testimony whatsoever, written or unwritten, upon such issue or issues, without the leave and order of the Court for that purpose; it being hereby provided that such adverse party or parties shall not be hereby held or bound to adduce or file, on such *Enquête* day as afore-

said, any evidence, proof or testimony whatever, written or unwritten, in any case, in which there shall not be fourteen days in vacation, between the day of the service or the notice hereby required and such *Enquête* day as aforesaid, nor in any case in which such cause by order of the Court, upon motion or otherwise shall be struck from the Roll *des Enquêtes*, or be continued thereon to some subsequent day, or generally without day, or in which any order, in term or vacation, shall be made to stay proceedings, or in which a *défense en droit* shall have been filed.

XX.

That when any cause shall have been heard *en droit* upon any exceptions *déclinatoires*, *peremptoires à la forme*, or *dilatatoires*, or upon any exceptions *peremptoires en droit*, temporary or perpetual, or *défense en droit*, or *en fait* and the adduction of proof shall be ordered by the Court upon any issue or issues, the Plaintiff or Plaintiffs in such cause, shall be at liberty and entitled to set down such cause for the adduction of proof generally upon the issue or issues, upon which the adduction of proof shall be so ordered, by inscribing such cause on the Roll *des Enquêtes*, and giving notice thereof, in term or in vacation, to the adverse party or parties, and upon proof of the service of such notice, by affidavit or certificate, as well the party and parties giving such notice as the party and parties upon whom such notice shall be served, shall be held and bound to adduce and to file all such evidence, proof and testimony, written and unwritten, as they or either of them may have, and by law may be permitted to adduce or file upon such issue or issues, upon the first *Enquête* day, in vacation, next after the day upon which such notice shall be served; and shall not thereafter be permitted to adduce or file any evidence, proof or testimony whatever written, or unwritten, upon such issue or issues; it being hereby provided that such adverse party or parties shall not be hereby held or bound to adduce or file any evidence, proof or testimony, written or unwritten, in any case in which there shall not be fourteen days in vacation, between the day of the service of the notice hereby required, and such *Enquête* day as aforesaid, nor in any case, in which such cause, by order of the Court, upon motion or otherwise, shall be struck from the Roll *des Enquêtes*, or be

continued thereon to any subsequent day, or generally without day, or in which any order in term or vacation, shall be made to stay proceedings.

XXI.

That when and so soon as the *Enquête*, upon any issue or issues joined upon any exceptions *déclinatoires*, *peremptoires à la forme*, *dilatatoires*, *peremptoires en droit*, temporary or perpetual, or *défense en fait*, shall, in any cause be closed; the parties to such issue or issues, or either of them, shall be at liberty and entitled to set down such cause for final hearing upon such issue or issues upon the merits, by inscribing such cause upon the Roll *de Droit*, in term or in vacation, and giving notice thereof to the adverse party or parties in such cause; and upon proof of the service of such notice by affidavit or certificate, such cause shall be so heard, as soon thereafter as counsel, by the course of the Court, can be heard; it being hereby provided that no such cause shall be so heard upon such issue in any case, in which there shall not be one Juridical day in Term, and four days in vacation, between the day of the service of the notice hereby required and the day upon which such cause, upon such issue, by the course of the Court may be heard; nor in any case in which such cause, by order of the Court, upon motion or otherwise, shall be struck from the roll of final hearing, or be continued thereon to any subsequent day, or generally without day, or in which any order in term or vacation shall be made to stay proceeding.

XXII.

That every cause regularly inscribed on the Roll *des Enquêtes*, in which (such cause being called on) the parties, as well Plaintiff or Plaintiffs as Defendant or Defendants therein, shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, shall be struck from such roll, each party paying his own costs.

XXIII.

That in every cause which shall be regularly inscribed upon the Roll *des Enquêtes* by the Plaintiff or Plaintiffs in such cause, in which (such cause being called on) such Plaintiff or Plaintiffs shall not appear, or

appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, and in which the Defendant or Defendants in such cause, shall appear and be ready to proceed, the action of such Plaintiff or Plaintiffs shall be dismissed, *sauf à se pourvoir*, with costs to such Defendant or Defendants.

XXIV.

That in every cause which shall be regularly inscribed on the Roll *des Enquêtes* by the Defendant or Defendants in such cause, and in which (such cause being called on) such Defendant or Defendants shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, and the Plaintiff or Plaintiffs in such cause shall appear and be ready to proceed, the *Enquête* to which the inscription of such cause on the Roll *des Enquêtes* as aforesaid shall relate, shall be had *ex parte* on the behalf of such Plaintiff or Plaintiffs in such cause.

XXV.

That in every cause which shall be regularly inscribed upon the Roll *des Enquêtes* by the Plaintiff or Plaintiffs in such cause, in which (such cause being called on) such Plaintiff or Plaintiffs shall appear and be ready to proceed, and shall make due proof by affidavit or certificate, of due service of the notice of the inscription of such cause on the Roll *des Enquêtes*, required in such cause by these Rules and Orders, and the Defendant or Defendants in such case, shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, the *Enquête*, to which the inscription of such cause on the Roll *des Enquêtes* as aforesaid, shall relate, shall be had *ex parte* on the behalf of such Plaintiff or Plaintiffs in such cause.

XXVI.

That in every cause which shall be regularly inscribed upon the Roll *des Enquêtes* by the Defendant or Defendants in such cause, and in which (such cause being called on) such Defendant or Defendants shall appear and make due proof, by affidavit or certificate of due service of the notice

of the inscription of such cause on the Roll *des Enquêtes*, required in such cause by these Rules and Orders, and the Plaintiff or Plaintiffs in such cause shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, the action of such Plaintiff or Plaintiffs shall be dismissed, *sauf à se pourvoir*, with costs to such Defendant or Defendants.

XXVII.

That every cause regularly inscribed on the Roll *de Droit*, for hearing upon any matter, other than the Pleadings in such cause filed, or the merits, in which, as well the party or parties applying for such hearing, by motion or otherwise, as the party or parties, Respondent or Respondents, in such matter, shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, shall be struck from such roll, each party paying his own costs.

XXVIII.

That every cause regularly inscribed on the Roll *de Droit*, for hearing *en droit* upon any matter, other than the Pleadings in such cause filed, or on the merits in which the party or parties who shall have so inscribed such cause on the Roll *de Droit* shall appear, and shall make due proof by affidavit or certificate, of due service of the notice of the inscription of such cause as aforesaid, on the Roll *de Droit*, upon the party or parties, and in the manner indicated and required in such cause by these Rules and Orders, and the party or parties upon whom such notice shall have been so served, shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, shall, upon the matter to which the inscription of such cause on the Roll *de Droit* shall relate, be heard *ex parte* on the behalf of the party or parties who shall have so inscribed such cause on the Roll *de Droit*.

XXIX.

That every cause regularly inscribed on the Roll *de Droit*, for hearing upon any matter, other than the Pleadings in such cause filed, or the merits in which the party or parties who shall have so inscribed such cause on the Roll *de Droit*, shall not appear, or appearing shall not be

ready to proceed, and shall not shew good cause for not proceeding, and the party or parties being Respondent or Respondents in the matter so inscribed upon the Roll *de Droit*, shall appear and be ready to proceed, shall be struck from such roll, with costs to such Respondent or Respondents.

XXX.

That every cause regularly inscribed on the Roll *de Droit*, for hearing *en droit* on the Pleadings in such cause filed, or on the merits in which (such cause being called on) the parties, as well Plaintiff or Plaintiffs as Defendant or Defendants therein, shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, shall be struck from such roll, each party paying his own costs.

XXXI.

That in every cause regularly inscribed by the Plaintiff or Plaintiffs in such cause, on the Roll *de Droit*, for hearing *en droit* upon the Pleadings in such cause filed, or on the merits in which (such cause being called on) such Plaintiff or Plaintiffs shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, and in which the Defendant or Defendants in the cause, shall appear and be ready to proceed, the action of such Plaintiff or Plaintiffs shall be dismissed, *sauf à se pouvoir*, with costs to such Defendant or Defendants.

XXXII.

That every cause regularly inscribed by the Defendant or Defendants in such cause, on the Roll *de Droit*, for hearing *en droit* upon the Pleadings in such cause filed, or on the merits in which (such cause being called on) such Defendant or Defendants shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, and the Plaintiff or Plaintiffs in such cause, shall appear and be ready to proceed, shall, upon the matter to which the inscription of such cause on the Roll *de Droit* as aforesaid, shall relate, be heard *ex parte*, on the behalf of such Plaintiff or Plaintiffs in such cause.

XXXIII.

That every cause regularly inscribed by the Plaintiff or Plaintiffs in such cause, on the Roll *de Droit*, for hearing *en droit* upon the Pleadings in such cause filed, or on the merits, in which (such cause being called on) such Plaintiff or Plaintiffs shall appear and be ready to proceed, and shall make due proof by affidavit or certificate, of due service of the notice of the inscription of such cause on the Roll *de Droit* required in such case by these Rules and Orders, and the Defendant or Defendants in such cause, shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, shall, upon the matter to which the inscription of such cause on the Roll *de Droit* as aforesaid, shall relate, be heard *ex parte*, on the behalf of such Plaintiff or Plaintiffs in such cause.

XXXIV.

That in every cause regularly inscribed by the Defendant or Defendants in such cause, on the Roll *de Droit*, for hearing *en droit* upon the Pleadings in such cause filed, or on the merits in which (such cause being called on) Defendant or Defendants shall appear and make due proof by affidavit or certificate, of due service of the notice of the inscription of such cause on the Roll *de Droit*, required in such cause by these Rules and Orders, and the Plaintiff or Plaintiffs in such cause shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, the action of such Plaintiff or Plaintiffs shall be dismissed, *sauf à se pourvoir*, with costs to such Defendant or Defendants.

XXXV.

That a witness shall be examined by one Counsel, and no more, and cross-examined by one Counsel, and no more.

XXXVI.

That a Subpœna *ad testificandum*, and a Subpœna *duces te cum*, shall be deemed and taken to be writs of common right, and shall and may be sued out at the proper costs and risk of the party or parties applying for the same, upon a *Præcipe* for that purpose.

XXXVII.

That in every case in which any original paper writing shall be in the possession or power of an adverse party, and the Opponent or Opponents of such party in such case shall be desirous of proving the contents of such paper writing, such Opponent or Opponents shall, by notice in writing, require such adverse party to produce and file such paper writing, at the *Enquête* to be had in such case and service thereof, upon such adverse party, shall be made a reasonable and sufficient time before the day fixed for such *Enquête*, and no evidence of the contents of any such paper writing shall be received or heard, until previous proof of such notice as aforesaid, and of the service thereof as aforesaid, upon such adverse party, by affidavit or certificate, shall have been made and filed.

XXXVIII.

That every service of Writ of Subpœna be made, a reasonable time before the hour at which the witness is thereby required to appear, by shewing to such witness personally the original Writ of Subpœna, and delivering to him at the same time a true copy of such writ, certified to be such under the signature of the Attorney of the party or parties by whom such writ shall be sued out.

XXXIX.

That in every cause wherein the Plaintiff shall proceed by *Capias ad Respondendum*, *Saisie Revendication*, *Saisie Arret*, *Simple Arret*, *Saisie Gagerie*, or other extraordinary Process before Judgment, and the Defendant shall have pleaded an Exception or Exceptions to the Action, the Plaintiff shall answer the Defendants Plea in two days from and after the day on which it shall have been filed, and if he fail therein, the Court on motion of the Defendant shall discharge the *Capias*, seizure or attachment, as the case may be, and thereafter the cause shall and may proceed as if it had commenced by the ordinary Process *ad Respondendum*.

SECTION IX.

Of Motions.

IT IS ORDERED,

I.

That every motion be, in every case, made in writing, and under the signature of Counsel; and that a motion which is not so made shall not be received or filed.

II.

That the several motions hereinafter enumerated shall be deemed and taken to be motions requiring no previous notice, that is to say :

1. For the Sheriff to return a writ.
2. For the Sheriff to bring in the body.
3. For security for costs, the Plaintiff being a person residing without the Province, and stated so to be on the face of the declaration.
4. To record a default in every instance, in which a motion for that purpose is not by these Rules and Orders forbidden.
5. To call a party in any suit, for any purpose, for which a motion is not by these Rules and Orders forbidden.
6. To ask *acte* of the Court.
7. To strike or continue a cause upon the roll *de droit*, or roll *d'enquêtes*.
8. To pay money into Court.
9. For leave to proceed *ex parte*.
10. To discontinue on payment of costs.
11. To file a *retraxit*, on payment of costs.
12. To examine upon *faits et articles*.
13. To defer, or refer the *serment décisoire*.
14. For judgment in any case.
15. For a rule to shew cause in any case.

And all such motions, as by any Rule or Order of the Court, shall hereafter be declared to be motions requiring no previous notice.

III.

The Court considering the following enumerated motions to be of course, It is ordered that henceforth the same may be made and filed at the Office of the Prothonotary and be by him received, and Rules entered thereon, in the manner as if the same, and every of them, had been made and filed in the open Court, and if filed in vacation to be dated, filed and entered, as of the last day of the last preceding Term.

1. For particulars *nisi*,
2. For *faits et articles*.
3. For the *serment décisoire*.

4. For benefit of default on certificate, and leave to proceed *ex parte*.
5. For leave to file a Confession of Judgment.
6. For Judgment pursuant to such Confession.
7. To dismiss for want of proceedings, *nisi*.
8. To pay money into Court, *nisi*.
9. For a Jury Trial, *nisi*.
10. To give security for costs, *nisi*.
11. For the Sheriff to bring in the body.
12. For a reference to Arbitrators or Experts, *nisi*.
13. All motions by consent.
14. To set aside or confirm a report.
15. Homologate report of distribution.
16. For a retraxit or discontinuance.
17. For Act to a party that he does not contest an opposition.
18. For a Rule on Defendant for main levée on such opposition, *nisi*.

IV.

That of all motions, not herein before enumerated, previous notice shall in every case be given by the party or parties making such motion to the Opponent and Opponents, in such case, of the party or parties making such motion (if such there be); and that service of every such notice be made by the space of one day, at least, before the day appointed by such notice for the making of such motion; and if any such motion shall be made, without an affidavit or certificate of the service of such notice in the manner hereby required, such motion shall not be received or filed.

V.

That when and so often as this Court shall be moved in any cause upon any special matter, not appearing upon the record, or proceedings filed in such cause, such special matter shall previously be authenticated by affidavit, or by some *preuve authentique*, and a copy thereof shall be duly served by the space of one day, at least, upon the opponent or opponents, in such cause of the party or parties making such motion (if such there be;) and if any such motion shall be made without an affidavit, or some *preuve authentique* of such special matter, and without an affidavit or

certificate of such service of a copy thereof, as is hereby required, such motion shall not be received or filed ; and no affidavit, of which a copy hath not been so served shall be read or filed in support of any such motion.

VI.

That affidavits, upon which any motion shall be grounded, shall be properly entitled of the cause in which the same shall be sworn and used, and contain a full statement of all the circumstances necessary for the support of such motion ; and no supplementary affidavits shall, in any case, be received or filed, without leave of the Court.

VII.

That in all cases of motions, all objections for improper intituling, for imperfections of notice or of service, and other similar causes, be made before the grounds of such motion be heard ; and, if such objections be not so made they and each of them shall be held and taken to be waved, and shall not afterwards be considered.

VIII.

That all notices of motions be given for the first day next after the day of the service thereof upon which counsel, by the course and practice of the Court, may be heard thereon ; and no proceedings shall, in any case be staid by any such notice, nor by any Rule or Order of the Court *nisi*, which shall not upon the face of it direct that the proceedings in such case shall be staid.

IX.

That every Rule *nisi* shall be inscribed on the Roll *de Droit*, and cause shall be shown thereon (if any there be) upon the day appointed by such Rule, and as soon after the common motions as counsel can be heard.

X.

That in every case in which a motion shall be appointed for hearing, on any particular day, by previous notice, and the party or parties giving notice of such motion shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, and the party

or parties, Respondent or Respondents, thereupon shall appear, the costs of such party or parties, Respondent or Respondents, incurred by reason of such notice, shall be awarded to such Respondent or Respondents who shall so appear against the party or parties giving such notice; and if the party or parties giving such notice of such motion shall appear and be ready to proceed, and the party or parties, Respondent or Respondents, thereupon shall not appear, or appearing shall not be ready to proceed, and shall not shew good cause for not proceeding, and the hearing of such motion shall not be put off by order or leave of the Court, such motion shall be heard *ex parte*, on the behalf of the party or parties giving notice of such motion who shall so appear.

XI.

That every application for security for payment of costs, under the second Section of the Statute 41, Geo. III. chap. 7, shall be made by motion in Term or by Petition in vacation, within four days after the appearance of the party or parties making such motion or Petition, and not afterwards.

XII.

That a motion for Judgment upon a verdict shall not be made, received or filed, until after the expiration of four days, in Term, from the day on which such verdict shall be recorded.

XIII.

That every motion for a new trial after verdict, be made on or before the expiration of the fourth day, in Term, next after the day on which such verdict shall be recorded; that no such motion be afterwards received or filed; and that no motion for a new trial be received or filed, after a motion in arrest of judgment shall have been made.

XIV.

That every motion, in arrest of judgment after verdict, be made on or before the expiration of the fourth day, in Term next after the day on which such verdict shall be recorded; and that no such motion be afterwards received or filed.

XV.

That in every case in which a matter shall come on before the Court upon a Rule to shew cause, such Rule and the affidivits, or other proof on which the same is grounded, shall be first read by the Prothonotary, the Counsel who shew cause shall then be heard, and lastly the Counsel of the party or parties, by whom the Rule shall have been obtained, shall also be heard.

XVI.

That all costs to which in any case, any party is entitled, upon a motion in any way be asked for at the time, at which such motion is made and heard, and shall not be the object of any future motion.

SECTION X. -

Of Faits et Articles, and of Commission Rogatoires.

IT IS ORDERED,

I.

That the interrogatories to be put to the interrogate, upon an examination on *Faits et Articles*, shall be exhibited and filed, with the certificate of the service of the Rule or Order of the Court for the appearance of such interrogate for such examination as aforesaid, and not before; that a copy of such interrogatories shall be served, with such Rule or Order, upon the interrogate; and that service of such Rule or Order, and of such copy of such interrogatories, at any time before the hour of six in the afternoon of the Juridical day next preceding the day by such Rule or Order appointed for the appearance of such interrogate for such examina-

tion as aforesaid, shall be deemed and taken to be good and sufficient service of such Rule and Order, and of such interrogatories respectively.

II.

That the default of every interrogate, who, in any cause being duly served with the Rule or Order to appear for examination, upon *Faits et Articles*, and with a copy of the interrogatories to be exhibited and filed, shall not appear at the time and place appointed by such Rule or Order for his appearance shall be recorded, and if a legal excuse shall not then be offered for the absence of such interrogate, and the Rule or Order to appear as aforesaid shall not be enlarged, the interrogatories, in such cause, exhibited and filed, and the several matters and things therein contained, at the hearing of such cause, shall be taken *pro confesso*, it being hereby provided that this Rule shall not extend to any case, in which the interrogate after such default, without legal excuse as aforesaid, shall appear and answer to such interrogatories, at his own proper costs, as by law is permitted.

III.

That in every case in which a *Commission Rogatoire*, for the examination of any party or parties in any cause, upon *Faits et Articles*, or upon the *Serment Décisoire*, shall not be returned on or before the day thereby appointed and limited for the return thereof, (if such there be,) or within a reasonable time after the issuing thereof (if such *Commission* be returnable without delay,) it shall be competent to the parties, in such cause, and to each of them, to proceed therein, as if no such *Commission* had issued, unless good cause to the contrary be shown, upon motion for that purpose.

IV.

That no *Commission Rogatoire*, for the examination of witnesses, or *Commission* in the nature of a *Commission Rogatoire*, for the examination of witnesses, shall issue, before issue perfected; and every such *Commission* applied for in Term, shall be applied for by motion, within four days after issue joined; and if applied for in vacation, every such *Commission*

shall be applied for by petition to any two of the Justices of this Court, within four days after issue joined.

V.

That no interrogatories or cross interrogatories shall be annexed to any *Commission Rogatoire* for the examination of witnesses, or *Commission* in the nature of a *Commission Rogatoire* for examination of witnesses, without the allowance and order of the Court in Term, or the allowance and order of one of the Justices of this Court in vacation, made upon summons (those cases excepted in which such interrogatories and cross interrogatories shall be settled by consent;) and any interrogatories or cross interrogatories which shall be allowed and ordered to be annexed to any such *Commission* by the Court in Term, or by any one Justice of this Court in vacation, shall not afterwards be liable to objection in any shape.

VI.

That in every case in which the interrogatories or cross interrogatories to be annexed to a *Commission Rogatoire* for the examination of witnesses, or to any *Commission* in the nature of a *Commission Rogatoire* for the examination of witnesses, shall be settled by consent, the same shall be mutually signed by the Counsel of both parties; and any interrogatories or cross interrogatories which shall be signed by the Counsel of both parties, shall be deemed and taken to be settled by consent, and shall be annexed to such *Commission* without the order of the Court, or of any of the Justices of this Court for that purpose; and such interrogatories and cross interrogatories, so settled by consent, shall not afterwards be liable to objection in any shape.

VII.

That in every case in which a Rule *nisi* shall be made, on motion in Term, or a summons to shew cause shall be sued out in vacation, for the purpose of obtaining of the Court, or of two of the Justices thereof, the allowance of any interrogatories or cross interrogatories to be annexed to any *Commission Rogatoire* for the examination of witnesses, or to any *Commission* in the nature of a *Commission Rogatoire* for the examination of witnesses, and the party or parties, required by such Rule or Summons

to shew cause, shall not attend at the time and place by such Rule or Summons appointed for that purpose, an order upon due proof of service of a copy thereof, and of the Rule *nisi*, upon such party or parties so required to shew cause, or of the Summons in such case issued, shall be made for annexing to such *Commission* such interrogatories and cross interrogatories, as upon examination shall be allowed.

VIII.

That in every cause, in which a *Commission Rogatoire* for the examination of witnesses, or *Commission* in the nature of a *Commission Rogatoire* for the examination of witnesses, shall not be returned on or before the day thereby appointed and limited for the return thereof (if such there be,) or within a reasonable time after the issuing thereof (if such *Commission* be returnable without delay,) it shall be competent to the parties, in such cause, and to each of them, to proceed therein, as if no such *Commission* had issued, unless good cause to the contrary be shown, upon motion for that purpose.

IX.

That each and every *Commission Rogatoire* issued in any cause, and the return thereto be opened at the commencement of the *Enquête*, which shall be had in such cause, whether a motion for that purpose shall or shall not have been made, and if no *Enquête* shall be had then at the hearing of such cause to which such *Commission* shall relate, whether a motion for that purpose shall or shall not have been made.

SECTION XI.

Of References to Juries, to Arbitres, to Experts, and others.

IT IS ORDERED,

I.

That the option and choice of any party or parties to have and obtain the trial and verdict of a Jury, in any cause in which the same by law may be had, shall be made and declared by motion for a Jury and writ of *Venire Facias*.

II.

That a motion for a Jury and *Venire Facias* be made, within two days in Term, after issue perfected, whether such issue be perfected in Term, or in vacation; and no such motion, in any cause, shall be received or filed thereafter, or at any time after the inscription in vacation, of such cause upon the Roll *des Enquêtes* upon such issue, unless proceedings in such cause shall be staid, as hereinafter is directed.

III.

That when, and so often as any issue shall in any cause be perfected in vacation, upon which the trial and verdict of a Jury by law may apparently be had, a notice of motion for a Jury and *Venire Facias*, upon the first day of the then next ensuing Term, by any party or parties, in such cause to their Opponent or Opponents, made and served at any time before such issue shall be inscribed on the Roll *des Enquêtes*, and at any time within two days thereafter, with the order of any one or more of the Justices of this Court to such effect upon Summons for that purpose, shall stay all proceedings until the first day of the then next ensuing Term.

IV.

That the party who shall make option and choice of the trial and verdict of a Jury, in any case, shall bear and pay, as well the fees payable to the several officers of this Court for striking, summoning and impanelling such Jurors, as the fees payable to the Jurors who, in such case shall appear and compose the Jury; and to this end the party, with his motion for a *Venire Facias*, shall deposit in the hands of the Prothonotary of this Court the sum of forty shillings to be distributed in the manner following, that is to say:

To the Prothonotary for striking the Jury, for the writ of *Venire Facias*, for calling and swearing the Jury and recording the verdict, the sum of twenty shillings.

And to the Sheriff for summoning the Jury and returning the *Venire Facias*, and all charges incidental thereto, the sum of twenty shillings.

With such further sum as the Jury in such case shall be entitled to have and receive for their verdict under and by virtue of the 22d Section of the Ordinance 25, Geo. III., chap. 2.

And that without such deposit, a motion for a Jury and *Venire Facias*, or for either, shall not in any case be received or filed; it being hereby provided that every such party who shall have and obtain a verdict in his favor, and be entitled to costs thereon, shall be allowed the same upon the taxation of such costs.

V.

That each Jury shall be struck before the Prothonotary, upon a reference for that purpose by the Court; and that upon such reference in any cause, the Prothonotary, in the presence of the Attornies of the parties in such cause, shall, at a time to be appointed by the Court, take from the first or second list, or book of Jurors of record in this Court, as shall be ordered, the names of forty-eight Jurors, commencing at that part of such list, or book of Jurors, from whence the then last preceding Jury shall have been struck or taken; that of the names of such forty-eight Jurors, twelve, on each side, shall then and there be alternately struck out by the Attornies of the parties, in such cause, then and there present, the Attorney for the Plaintiff beginning; and that the list of the remaining twenty-four Jurors shall be the pannel of Jurors, to be summoned in such cause, and

as such be annexed to the *Venire Facias*, which in such cause shall be issued.

VI.

That upon any reference by the Court made to the Prothonotary, in any cause, for striking a Jury, if the Attorney of one side shall make default to appear before the said Prothonotary, at the time appointed, or appearing shall refuse to strike out from the list of forty-eight Jurors, in such cause, taken from the list, or book of Jurors, the names of twelve, or of any lesser number of such Jurors, the Prothonotary in the absence of such Attorney, who shall so make default, or refuse to strike out such names as aforesaid, shall strike out of the said list of forty-eight Jurors twelve, on the behalf of the party of such Attorney, in the manner directed in the last preceding Rule, or such lesser number as such Attorney appearing shall refuse to strike out; and twelve shall in like manner, be struck out from the said list by the Attorney of the other party; and the list of the remaining twenty-four Jurors shall be the pannel of Jurors to be summoned in such cause, and as such be annexed to the *Venire Facias* which in such cause shall be issued.

VII.

That in every cause, so soon as the Jury shall be sworn, the parties in such cause shall be solemnly called, and if neither party shall appear, such Jury shall forthwith be discharged, but if the Plaintiff shall appear and the Defendant, being so called shall not appear, the default of such Defendant shall be recorded, and thereupon the evidence of the Plaintiff shall be heard *ex parte*, the verdict of the Jury taken thereon, and judgment entered, as to law and justice shall appertain; and if the Defendant being so called shall appear and the Plaintiff, being so called, shall not appear, the default of such Plaintiff shall be recorded, and judgment of Non Suit thereupon entered *instanter*, dismissing such Plaintiff, *sauf à se pourvoir*, with costs to the Defendant.

VIII.

That in every cause in which a Jury shall be sworn, and the Plaintiff in such cause shall choose, at any time before the verdict of such Jury shall

be given, to become Non Suit, and for that purpose shall withdraw from the Court, such Plaintiff shall be solemnly called, and not appearing, the default of such Plaintiff shall be recorded, and Judgment of Non Suit thereupon entered *instantanter*, dismissing such Plaintiff, *sauf à se pourvoir*, with costs to the Defendant.

IX.

That no conclusions in writing upon any report of *arbitres, experts*, or other referees, shall be received or filed, nor shall any issue in writing be raised thereon, and the validity of every such report shall be decided upon a motion *nisi* to confirm and homologate the report, or to set aside the report as the case may be.

X.

That a motion (except by consent) to confirm and homologate, or to set aside a report shall not be received or filed upon the day upon which the report to which such motion relates shall be filed.

SECTION XII.*Of Judgment and Execution.*

IT IS ORDERED,

I.

That no Writ of Execution of any description shall issue until a *Præcipe* for such writ be filed in the Office of the Prothonotary, under the signature of the Attorney *ad litem*, by whom such writ shall be sued out; and that every such writ be indorsed or signed by the Attorney by whom such writ shall be so sued out.

but that the same is made in good faith, for the sole purpose of obtaining justice.

Sworn before me at
 this day of 184 }

And every opposition as aforesaid, to which an affidavit in form aforesaid shall not be annexed, shall not impede or delay the due execution of any Writ of *Fieri Facias* or *Venditioni Exponas* issued in any cause, and notwithstanding the service or filing of any such opposition without such affidavit as aforesaid in any cause, the Sheriff to whom any Writ of *Fieri Facias* or *Venditioni Exponas* shall in such cause be addressed, shall proceed to the due execution of such Writ of *Fieri Facias*, or *Venditioni Exponas*, in like manner as if no opposition had been served or filed. It being nevertheless provided that all such oppositions which shall be so served or filed without such affidavit as aforesaid, shall be returned into this Court with such Writ of *Fieri Facias*, or Writ of *Venditioni Exponas*, as the case may be, on the return day thereof.

IV.

That in all cases of opposition *à fin de distraire*, and *à fin de charge*, as well as of opposition *à fin de conserver* founded upon *Title*, it shall not hereafter be necessary to annex to such oppositions any affidavit in support of the same.

V.

That every opposition *à fin de conserver* upon the proceeds of any moveable or immoveable property, shall in future be served or filed, before or within forty-eight hours next, after the return day of the Writ of Execution, under and by virtue of which such property, moveable or immoveable, shall be sold, and that no opposition after the expiration of forty-eight hours next, after such return day, shall be received or filed, unless upon sufficient cause shewn, and upon such terms as the Court shall adjudge.

VI.

That from henceforth, in every cause wherein an opposition has been filed, and the Plaintiff shall declare that he does not intend to contest the same, the opposant shall be entitled to Judgment of *main levée* without proof, provided that the Defendant, upon the Service of a Rule *nisi* to that effect, shall not shew cause to the contrary or declare that he intends to contest such opposition.

VII.

That the Rules and Orders prescribed by this Court with respect to pleadings, *enquêtes* and hearings upon demands in chief, and each and every of them shall in all things apply to, and be the Rules and Orders of this Court, with respect to all pleadings, *enquêtes* and hearings upon oppositions of every description.

VIII.

That a register of all Writs of Execution, and of all Oppositions filed in the Office of the Sheriff of the District of Montreal, be made and kept by the said Sheriff in his Office, to which all persons shall, at all times, during office hours have free access *gratis*; that such register shall specify the description of each Writ of Execution which shall hereafter be issued and come to his hands, the parties to the cause, in which such writ shall issue, the number of such cause, the name of the Attorney or person by whom such writ shall be sued out, the amount to be levied, under and by virtue thereof, the cause of action, the date of the judgment on which such Writ shall be founded, the day on which such writ shall have issued, the return day thereof, the day on which such writ shall be returned into the Office of the Prothonotary, the amount levied under and by virtue of such writ, the means by which such amount shall be levied, the day and days of sale, the names of the purchasers in sale of immoveable property, the expence of levying such amount, the disbursements paid thereon, and the poundage which shall be retained by the Sheriff upon such writ, the description and date of each opposition which shall be

filed in consequence of such Writ of Execution, the name of the Attorney or person by whom such opposition shall be made, the day on which such opposition shall be filed, the amount thereby demanded, the cause and ground of such demand, the number of such opposition according to the time and order in which the same shall be filed, with respect to others, and whether such opposition hath or hath not been withdrawn; and further that upon the return of every Writ of Execution, an extract from such register of every entry therein made, in obedience to this Rule and Order, respecting such Writ of Execution, and respecting any and each, and every opposition, which shall be filed in consequence of such Writ of Execution, be made by the said Sheriff, certified under his signature, and filed with such Writ of Execution.

IX.

That any opposition made without the ministry of an Attorney of this Court, which shall not contain an election of a domicile, on the part of the opposant, at some house within the limits of the City of Montreal, under the signature or signatures of the person or persons by whom such opposition shall be made, shall not be received or filed and all Pleadings, Notices, Rules, Judgments and other proceedings, which pending such opposition shall thereto relate, and be served at the domicile thereby elected, shall be held and taken to be well and sufficiently served upon the person or persons by whom such domicile shall be so elected.

X.

That in every opposition shall be set forth, and detailed the cause and causes of such opposition as to person, time, place and circumstance, in as full and ample a manner as the cause or causes of action, with respect to person, time, place and circumstance respectively, are by law required to be set forth and detailed in the declaration; and that no other *moyens d'opposition* shall, in any case, be received or filed.

XI.

That with every opposition *Afin de Conserver*, shall be filed all *preuves littérales* to be adduced in support thereof, and that to every opposition

shall be annexed a list of all the Exhibits hereby required and therewith filed, under the signature of the Attorney *ad litem*, or other person or persons by whom such opposition shall be made.

XII.

That each and every Writ of *Fieri Facias*, and each and every Writ of *Venditioni Exponas*, under and by virtue of which any sale or sales of any goods, chattles, or estate, moveable or immoveable, shall be made, shall be filed by the Sheriff, to whom such Writ of *Fieri Facias*, or Writ of *Venditioni Exponas* shall be addressed in the Office of the Prothonotary upon the sixth day next before the return day of such Writ of *Fieri Facias*, or Writ of *Venditioni Exponas* respectively; with all such oppositions as shall relate thereto, and such return thereon indorsed, as circumstances may require.

XIII.

That it shall be the duty of the Prothonotary in every case, to prepare and file upon the return day of every Writ of *Fieri Facias* or *Venditioni Exponas*, under which any sale or sales of any goods, chattles or estate, moveable or immoveable shall be made, and with which any opposition *à conserver* shall be filed, as hereinbefore is directed, a report of the order of distribution and collocation, or order of collocation or order of distribution (as the cause may require) of the proceeds of such sale or sales to and among the Plaintiff or Plaintiffs, Opposant and Opposants, Defendant and Defendants in such cause, according to the several and respective rights apparent of such Plaintiff or Plaintiffs, Opposant or Opposants, Defendant or Defendants, and of all others interested in such order of distribution and collocation, or order of collocation, or order of distribution; it being hereby provided, that nothing in this Rule contained shall extend to any Writ of *Fieri Facias* or *Venditioni Exponas* which shall be returnable upon or after the second day of Term, and that in every such cause the report of the order of distribution and collocation, or order of collocation, or order of distribution (as the cause may require,) hereby directed shall be filed on the tenth day of the vacation next, ensuing the Term in which such writ shall be returnable.

XIV.

That communication of every report of distribution and collocation, report of collocation, or report of distribution, which shall be made by the Prothonotary and filed, in any cause, shall be had of course and taken by all parties interested therein, without motion or other application to the Court for that purpose, and each and every party in such cause, who shall see fit to contest the order of distribution and collocation, order of collocation, or order of distribution, therein set forth and reported, shall make his contestation thereof in writing, and shall file the same in the Office of the Prothonotary, at or before the hour of six in the evening of the fourth day in Term or fourth day in vacation next, after the day on which such report of distribution and collocation, report of collocation, or report of distribution shall be filed; it being hereby expressly provided that no such contestation shall afterwards be received or filed.

XV.

That in every case in which a report of distribution and collocation, report of distribution, or report of collocation shall be made and filed by the Prothonotary, and no contestation of such report or of the order of distribution and collocation, or order of distribution, or order of collocation, as the case may be, therein set forth and reported, shall be made and filed at the time and in the manner hereinbefore directed, such report and order of distribution and collocation, or order of distribution, or order of collocation, as the case may be, upon motion of the Plaintiff or Plaintiffs in such cause, or other competent party shall be confirmed and homologated, and judgment according to such report and to the order of distribution and collocation, or order of distribution, or order of collocation therein set forth and reported, shall be entered up and recorded; unless good and sufficient cause to the contrary shall be shown upon the second Juridical day in Term next, after the day on which such motion shall be made and filed; it being hereby provided that service of the Rule *nisi*, which shall be made on such motion shall not be required to be made upon the parties in such cause, or any, or either of them, but that at the diligence of the party obtaining such Rule *nisi*, a copy thereof shall, on the day on which such

Rule shall be obtained, be publicly affixed in some conspicuous place in the Office of the Prothonotary of this Court, and that all parties whom it shall in any wise concern shall be held and bound to take notice thereof at *their peril*.

XVI.

That when and so soon as any contestation of any report of distribution and collocation, or report of distribution, or report of collocation, shall in any case be filed, the parties in such cause, and each and every of them, shall be at liberty and entitled to set down such contestation, and the matter thereby contested, for final hearing, by inscribing such contestation upon the Roll for final hearing in Term, or in vacation, and giving notice thereof in Term, or in vacation, to the party or parties whose right of collocation, or distribution according to such report shall thereby be contested, to the Plaintiff or Plaintiffs, or other party or parties (if such there be) prosecuting such report to judgment, and to the Defendant or Defendants in such cause, (causes of default excepted) and upon proof of the service of such notice, by affidavit or certificate, such contestation and the matter thereby contested, shall be finally heard, as soon thereafter as counsel can be heard; it being hereby provided that no such contestation or matter thereby contested shall be so heard upon the day of the service of the notice hereby required.

XVII.

That when, and so soon as a contestation of any claim or opposition shall in any cause be filed, the Rules and Orders hereby prescribed, with respect to pleadings upon *demandes* in chief, and each and every of them shall in all things, apply to and be the Rules and Orders of this Court, with respect to all pleadings upon the claim or opposition to which such contestation shall relate; and the parties in such cause shall in all other things proceed in the manner and form hereby prescribed for proceedings upon *demandes* in chief, it being hereby provided that the Rules to plead in every such case, shall respectively be reckoned from the day on which the report of distribution and collocation, report of distribution, or report of collocation shall be filed.

XVIII.

That in every case, in which a report of distribution and collocation, or report of distribution, or report of collocation, shall be made and filed by the Prothonotary and a contestation of such report, or of any claim or opposition, on which such report shall be founded, shall be made and filed, such report of distribution and collocation, or report of distribution, or report of collocation as the case may be, upon motion of the Plaintiff or Plaintiffs, in such cause, or of any party or parties in such cause shall be confirmed and homologated, as to all uncontested claims and oppositions which shall precede in rank the claim or opposition which by such contestation shall be contested, and as to all other uncontested claims or oppositions (if any there shall be) which cannot be affected by such contestation, or by the issue raised in consequence thereof, and judgment according to such report and to the order of distribution and collocation, or order of distribution, or order of collocation therein set forth and reported in so far as the same shall be so confirmed and homologated, shall be entered up and recorded, unless good and sufficient cause to the contrary shall be shown, upon the second Juridical day in Term next after the day on which such motion shall be made and filed: it being hereby provided that service of the Rule *nisi*, which shall be made on such motion, shall not be required to be made upon the parties, in such cause, or any or either of them, but that at the diligence of the party obtaining such Rule *nisi* a copy thereof shall, on the day on which such Rule shall be obtained, be publicly affixed in some conspicuous place in the Office of the Prothonotary of this Court, and that all parties, whom it shall in any wise concern, shall be held and bound to take notice thereof at *their peril*.

ADDITIONAL RULES.

IT IS ORDERED,

I.

That the Prothonotary of this Court do, on or before the first day of February next, produce and exhibit to the Justices of this Court for their perusal and inspection, the register of all the Rules, Orders, Judgments and proceedings had, rendered and made in this Court in and during the now last preceding four Terms of this Court, and in and during the intermediate vacations including the last, and his Certificate written immediately after the last entry in the now last vacation, that the said register contains all and singular the Rules, Orders, Judgments and proceedings had, rendered and made in this Court in and during the said four Terms and during the intermediate vacations including the last.

II.

That on the first Juridical day of each and every Term of this Court, the Prothonotary do produce and exhibit to the Justices of this Court for their perusal and inspection, the register of all the Rules, Orders, Judgments and proceedings had, rendered and made in the said Court, during the last preceding Term and last preceding vacation, and his Certificate written immediately after the last entry, on the said register, that the same contains all and singular the Rules, Orders, Judgments and proceedings had, rendered and made in this Court, in and during such last Term and vacation.

IT IS ORDERED ALSO,

That all Rules and Orders of Practice heretofore made and adopted by this Court, be and the same and each of them, are hereby rescinded and annulled.