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RULES AND ORDERS
OF
PRACTICE,
MADE FOR THE
Court of King's Bench,
District of Montreal,
FEBRUARY TERM,
1811.



Montreal :
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Court of King's Bench.

MONTREAL.

February Term=1811.

WHEREAS it is expedient to connect, alter, and amend the several Rules of Practice of this Court, made previous to the present Term :

It is therefore ORDERED—That all the said previous Rules of Practice be RESCINDED, and that the several Rules and Orders, hereafter expressed, be strictly observed and conformed to by the several Advocates, Attornies, Officers, and other persons whom it may concern.

SECTION I.

Of the Court.

ARTICLE I. **T**HAT the several days hereinafter mentioned shall, in each Term, respectively be held to be Holy days, within the intent and meaning of the 7th Section of the Provincial Statute of the 34th of His Majesty George the Third, Chap. 6 ; That is to say—The first day of January, Circumcision, Epiphany, Annunciation, Ascension, Good Friday, His Majes-

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ty's Birth Day, Pentecoste, Corpus Christi or Fête Dieu, St. Pierre and St. Paul, Assumption, All Saints, Conception, and Christmas-Day : And that on these several Holy Days, this Court shall not set or be held, but that on every other (Sundays excepted) it shall sit and be held in each Term respectively.

2. And it is ordered that the office of the Sheriff and of the Prothonotary shall be open, and attendance therein respectively given on every day at the hours by the Rules herein appointed, except on the above Holy-Days and Sundays. And that all the several rules of this Court, wherein an exception may be contained for the non-service or filing of pleas on a Holy Day, shall have relation only to the Holy Days above declared.

SECTION II.

Of the Habits of Officers, Barristers and Counsel.

IT is ordered, that the several officers of this Court, in the exercise of their respective offices in Court, do appear habited in gowns, such as are worn by like officers in His Majesty's Courts in England ; and that the several Barristers and Advocates do appear in Court habited in such gowns and bands as are worn by Barristers of similar degree at Westminster Hall. And that this Court will not hear any matter moved by any Barrister or Advocate, who shall not appear so habited when moving the same.

SECTION III.

Of the Sheriff and Prothonotaries Offices.

SHERIFF.—That the Sheriff's Office be by suitable means publicly notified on the door thereof; And that he do by himself, or some proper person by him authorized, attend in his said office every day in Term time, where free access may be had, from the hour of eight in the morning to six in the afternoon, from the first of April to the twentieth of October, inclusive; and from the hour of nine in the morning to five in the afternoon in the Terms that may be held from the twenty first of October to the first of April. And that during the vacation, attendance as aforesaid shall be given in the said office from the hour of eight in the morning to noon: and from two to six in the afternoon, from the first of April to the twentieth of October, inclusive: and from the hour of nine in the morning until noon, and from two till half past four in the afternoon, from the twenty first of October till the first of April—Sundays and Holy-Days excepted. And that the Sheriff do permanently expose in his office a public notification of the respective periods and times, above directed, at which his said office will be open for discharge of the duties thereof.

2. That the attendance in the Sheriff's Office, directed as aforesaid, shall not, in any manner, obstruct or excuse his personal attendance in Court, and during the continuance of the Court's sitting in Term time, which is hereby enjoined and directed.

PROTHONOTARIES — I. That the Office of the Prothonotaries be by suitable means publicly

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notified on the door thereof ; and that they do by themselves, or proper person or persons, by them authorized, attend in the said Office or Offices, whereby free access may be had to the Records of this Court, and such other business performed as pertain to the duties of their office, every day during Term time, from the hour of eight in the morning to six in the afternoon, from the first of April to the first of November ; and from the hour of nine in the morning to five in the afternoon, in the Terms that may be held from the first of November to the first of April. And that during the vacations attendances as aforesaid shall be given in the said Office or Offices from the hour of eight in the morning until noon, and from two till six in the afternoon, from the first of April to the first of November ; and from the hour of nine in the morning until noon, and from two till half past four in the afternoon, from the first of November to the first of April ; Sundays and Holy-Days excepted. And that the Prothonotaries do permanently expose in their Office, a public notification of the respective periods and times above directed, at which their said office will be open for discharge of the duties thereof.

2. That the attendance in the Prothonotaries Office, above directed, shall not in any manner excuse or obstruct their personal attendance in Court every day, and during the continuance of the Court's sitting in Term time, nor a like personal attendance upon any of the Judges of this Court, at any sitting that may be appointed and held during vacation, which attendance is severally hereby enjoined, and upon the said Prothonotaries respectively directed.

SECTION IV.

Of Service of Process.

1. THAT on all original suits or process, requiring any defendant or person to appear in this Court to answer or defend, and when such person may reside within the town of Montreal, or at the distance of one mile therefrom, due service of such process shall be made two whole days, or forty eight hours, previous to the return thereof.

2. And the like service of process shall be made at the several periods, and conformably to the distance of the place of residence of such defendant in the several cases following.

3. And where the defendant may reside out of the city and suburbs of Montreal, and within a distance not exceeding fifteen leagues, due service shall be made, five whole days previous to the day of the return of the said process.

4. And when such residence may be from fifteen to twenty leagues distance, the service shall be made six whole days previous to the return.

5. And where from twenty to thirty leagues, the service shall be made eight whole days previous to the return.

6. And where the defendant's residence may exceed thirty leagues, then such service shall be made conformably to the special order of one of the Judges of this Court, upon due consideration of the season of the year and situation of the defendant's residence.

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7. That the Sheriff or Coroner to whom any process or writ may be directed for service, and which may express a declaration to be thereunto annexed, do not make any return into this Court upon such writ, unless the declaration or writing, therein referred to, be annexed to the same. And if any such return be made, the same shall be taken from the Records of this Court, and no proceeding had thereupon.

8. That on the execution of every writ of *Capias ad respondendum*, the service shall be held sufficient, if the declaration whereon the action may be grounded be filed in the Prothonotary's Office, and due service of a copy thereof made on the defendant, two days after he may be apprehended and taken on such writ, and not otherwise.

SECTION V.

Of the Return of Process.

I. THAT the first business of the Court, at every sitting, be to receive the returns on the service of Process, and that the same be entered of record; and the respective Dependants, where no appearance may have been entered, be openly called for appearance, and the legal course of proceedings taken thereon.

II. That all returns upon any Process *ad respondendum*, shall be made and signed by the Officer to whom such writ may be directed, and shall specify the manner, time, and place of such service; and particularly the Parish and County, in which such service has been made.

SECTION VI.

Of Appearance, Election of Domicile, and Default.

1. IF at the return of any process or rule of this Court, the defendant thereupon shall personally appear in Court to defend any action, suit or rule, against him brought, he shall at the time of such appearance make an Election of Domicile in the Town of Montreal, and which shall be considered as his place of legal residence to all intents and purposes, respecting and during the prosecution of the said action, rule or proceeding.

2. And where any defendant may fail to elect such domicile, the plaintiff may proceed in the cause, by a regular service of rules and other legal acts, upon the defendant, in the Prothonotary's Office, as his legal domicile and place of residence.

3. The above rule for the Election of domicile shall also extend to all defendants who may personally take upon them the defence of any suit, in any stage of a cause, after the return of process.

4. That in all causes where a return of service be made on any process of summons, and the defendant may not personally, nor by an Attorney, have duly entered an appearance on the return day of such process, and during the sitting of the Court, the Prothonotary do, immediately after the rising of the Court, on the respective days of return, enter on such process a note of such non-appearance or default, and in every case where such default may be so entered, the plaintiff may, on the third day of the Court, after said return day, move that the defendant may be called for his ap-

pearance ; and failing to appear, a judgement of default may conclusively be entered, and the merits of the plaintiff's demand be examined, heard and adjudged upon *ex parte*, at such day as may be appointed for that purpose.

5. It is ordered that every Attorney employed to appear for any person, in any suit in this Court, do enter such appearance immediately after the opening of the Court, at the return day of the process, and that in every case where no such appearance may be entered the Prothonotary do cause the defendant, or person bound to appear, to be called previous to making the default directed by the rules of the Court in such case made.

SECTION VII.

Concerning Attornies, and of their Prosecuting and Defending Causes.

1. IT is order that no Attorney shall sign any writ, process or declaration, nor appear for, nor defend any person, in this Court, unless he may be thereto duly authorized.

2. That any Attorney who may accept a warrant to appear, shall duly make appearance for such party ; and wilfully neglecting so to do, shall be liable to be suspended from the Roll and practice of an Attorney of this Court. Nor shall any Attorney be received to countermand and withdraw such appearance without due notice to his client, and leave of the Court.

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3. That no person, without a rule of this Court, or an order of a Judge, and after due notice of the same to the adverse party or his Attorney, shall be admitted to change, shift or withdraw his Attorney in the cause.

4. And every Attorney who may be substituted in the place of any other, for the charge and conduct of any party in a cause, shall, at his peril, take notice of, and be bound by all rules and proceedings to which the former Attorney was or would have been liable, had he continued as Attorney in the cause.

5. That an Attorney who shall appear for any party in a suit in this Court, shall be held and taken to be the Attorney of such party, in all matters and proceedings whatsoever, collateral and incidental to such suit, as well after as before final judgement. This Rule, however, shall not be held to extend to such proceedings, after judgement, as by special rules may require personal notice to a defendant on a judgment obtained, as rules *nisi* for renewing a writ of execution, and the like.

6. That no Attorney of this Court, upon pain of being interdicted and struck from the Roll of Attornies, do permit any one to practice in his name.

7. That no Barrister, Attorney, Prothonotary, Crier, Bailiff or Sheriff's Officers, shall be Bail in any action or suit to be brought, or that may be depending in this Court.

8. That every Barrister, Advocate or Attorney, who may be in practice in this Court, and not having absented himself for twelve months, and all

the several Officers of this Court, shall respectively be held and considered as personally present, to answer every legal claim, suit and demand, that may be preferred against either of them by any person whomsoever; and shall be bound to answer the same, without the service of process of summons, requiring an appearance to answer any such demand; the course of proceedings being, in every other respect, conformed to according to the general rules of practice.

9. That no Barrister or Attorney, who shall be legally dismissed or suspended from practice, in any of His Majesty's Courts of Law, shall be admitted to practice in this Court, until such Barrister or Attorney shall have been readmitted to practice in the Court in which he hath been so dismissed or suspended from practice.

SECTION VIII.

*Of Capias ad respondendum—Of Special Bail—
Of Surrender and of Debtors—De-
tention in Prison.*

1. IT is ordered that every plaintiff or his Attorney, who may obtain the *fiat* of any judge of this Court for a writ of *Capias ad respondendum*, or seizure of goods by attachment, shall at the time of applying to the Prothonotary for process thereupon, exhibit and file the affidavit upon which the said *fiat* was obtained. And that no Prothonotary, of this Court do presume to grant any writ of *Capias ad respondendum* or attachment, until the

affidavit aforesaid shall be filed of record. And every defendant shall be entitled to a copy of such affidavit of record as aforesaid.

2. That upon every Capias or process *ad respondendum*, upon which bail is required, or upon an order of *saisie* and attachment, when the goods attached may be legally claimed and retained, or repossessed, upon giving security, the Attorney or person obtaining such writ, shall indorse upon the said writ or process, that the same hath been obtained upon affidavit, and the amount of the sum sworn to, for which bail or security should be required, in the form following:—"Issued upon the affidavit of — (expressing the name,) for the sum of — (expressing the same in words.)" And such indorsement shall be signed by the attorney, by whose ministry (or Plaintiff, if by him personally obtained,) the said writ or process may have issued.

3. And it is ordered that no such process, requiring a personal arrest of the body or an attachment of goods, shall be executed, unless there be thereon the indorsement above mentioned.

4. That whensoever any person arrested upon a Capias *ad respondendum* or attachment, may be desirous to enter special bail, the same shall be taken, if in Term time, in open Court, after due notice of two full days, or forty-eight hours to the plaintiff or his Attorney in the cause; in which notice shall be expressed the names of the Bail proposed, their respective occupations and place of abode, to the end that the plaintiff may, at the time of putting in such bail, require the persons, so becoming bail to justify upon their sufficiency, to answer the debt and costs, in case the defendant shall fail in the action. And that every plaintiff who shall neglect

to require such justification, at the time the bail may be so put in, under notice as aforesaid, shall not, at any future period, be permitted to require justification.

5. That any person, under arrest, as aforesaid, may, during vacation, after the first Term, or during the vacation of any future Term, (if the plaintiff's cause be not ripe for judgment, and under *delibéré* at such period) be permitted to enter special bail, and justify upon the same, before any two of the Judges of this Court, under and conformable to the present rules of practice for notice in putting in and the justification of special bail. And upon perfecting special bail, as aforesaid, the defendant so under arrest, may be liberated from the same, by the order of any two of the Judges aforesaid.

6. And whereas, by the rules of practice every defendant is bound to plead within certain limited periods, it is ordered, that every defendant, arrested on a writ of *Capias ad respondendum* or attachment, and in custody, shall be bound to plead, according to the rules of this Court, whether special bail be put in or not, and that no delay in the cause be had, by reason of putting in bail or justification, as above said.

7. That whensoever any person may be arrested upon a writ of *Capias* or attachment and shall be committed to Gaol for want of bail, either for appearance or of special bail to the action, such person so arrested and committed by the Sheriff (or Coroner where the Sheriff cannot legally serve the process) shall remain in custody until he may find special bail in the action—And where he may not find special bail, after such commitment, until two days, exclusively, after the plaintiff may legally have and obtain a writ of *Capias ad satisfaciendum*,

whereupon he may charge the person so committed with such judgment as the plaintiff may obtain.

8. And it is further ordered, that whensoever any person, arrested upon *Capias ad respondendum* or attachment, shall give special bail, and be afterwards surrendered in discharge of the same; the person so surrendered, and in custody, shall not remain in prison, under such surrender, longer than two Terms after judgment shall be recovered against the debtor; and upon which a *Capias ad satisfaciendum*, might legally be had (of which the Term when Judgment may be given shall be accounted one) unless the plaintiff shall lodge with the Sheriff a writ of *Ca. Sa.* whereby the body of the debtor may be charged and detained.

Of surrender of a Debtor in discharge of Bail, &c.

1. IT is ordered that whenever the Sheriff shall take bail for the appearance of the party arrested, upon writ of *Capias ad respondendum*, his return upon such writ shall specify the taking of such bail, that the plaintiff may pursue a regular course thereon.

2. And in case the party so admitted to bail do not appear on the day of the return of the writ the plaintiff shall be entitled to demand and obtain from the Sheriff an assignment of the bail-bond for such course thereon as he may be advised.

3. That such assignment of the bail bond shall not be considered, as exonerating the Sheriff, if it shall appear that the bail by him taken was not, at the time of taking the same, sufficient to secure to the plaintiff the rights by him prosecuted, under such writ of *Capias*.

4. That the defendant, arrested under a writ of *Capias ad respondendum*, may surrender himself, or be surrendered by his bail, at any time previous to an assignment of the bail bond, and the bail be thereupon discharged.

5. That after the assignment of the bail bond, or an action brought thereon, a like surrender may be made, at any time before judgement, against the bail, on payment, of all costs that have arisen by reason of the assignment of the bail bond, or of prosecuting the bail; or at any time previous to a rule upon the Sheriff to bring in the Body, or pay the debt due to the plaintiff from the person so arrested; and the same, upon his neglect, being declared absolute.

6. That such rule upon the Sheriff to bring in the Body being (by reason of his neglect or other causes) declared absolute shall charge and render the Sheriff liable to pay the debt and costs which the plaintiff may establish against the plaintiff's original debtor arrested and bailed.

7. That a plaintiff may take an assignment of a bail bond and prosecute thereon; but shall not obtain judgment until he may have established his debt against the defendant on the original suit upon which the bail became surety, either upon the *Capias ad respondendum* for appearance, or upon special bail in the action.

8. That a surrender of a debtor may be made by himself or by his special bail, in vacation, before any one of the Judges of this court,—and such debtor be charged to the custody of the Sheriff, in discharge of the bail.

SECTION IX.

Of Security for Costs by persons prosecuting Suits, &c. who are not resident within this Province.

1. IT is ordered that in every case, where any person, not resident within this Province, may prosecute any original or incidental demand or claim, by intervention or opposition, he shall be bound, within two days after the same may be entered in Court, to give security for costs, if a motion may be made for that purpose, to answer the opposite party's costs, if such plaintiff or claimant should fail to make good his demand.

2. And that every party legally entitled so to move shall obtain as of right, an order for security being duly entered within two days after such motion; and on failure thereof, that the action, claim demand or opposition aforesaid, shall, be dismissed with costs.

3. And it is further ordered, that every person who may be entitled to such security for costs, shall be bound to move therefor, within the period of four days from the entry of the action or claim aforesaid; otherwise he shall be held and considered as having waived and relinquished his right to security for costs as aforesaid.

 SECTION X.

Of Declarations and Pleadings thereto relating.

THAT the respective parties in every suit do state, with clearness and precision, the nature and grounds of the demand or action, and the defence

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thereto. And that in all answers, pleas or replications to be made in the suit, particular attention be given to avoid a departure from the object of the demand or action, as every insufficient declaration or plea to the action, and every departure in pleading that may introduce irregularity in the suit, and in the issue to be joined upon clear and certain points affirmed and denied, will be rejected and dismissed by the Court, with costs, to be taxed against the party failing to conform to this rule and order.

SECTION XI.

Of Pleas—Exceptions—Dilatory Pleas—And Inscription en faux.

1. IT is ordered, that all pleas or exceptions, *declinatoire*, *dilatoire*, or *peremptoire*, à la forme, shall be filed the day after the return of the writ or process or appearance of the defendant.

2. That in every case where the parties, plaintiff or defendant, may have right and be so advised, every answer to any exception *declinatoire*, *dilatoire*, *peremptoire* à la forme, and also every rejoinder to such answer where permitted to be made, shall respectively be filed within a like period of time allowed for filing such exception or declinatory or dilatory plea as aforesaid.

And due service shall be made of a copy of every such plea, *exception declinatoire*, *dilatoire* or *peremptoire*, and of every such answer and rejoinder as aforesaid.

3. And whereas the practice of filing pleas of general exception hath been frequently used for the purpose of evasion and delay: It is ordered

that no plea of exception, whether *declinatoire*, *peremptoire à la forme*, or *delatoire* or *peremptoire au droit*, or by whatever denomination or term such plea or exception may be described, shall be received or filed in any cause, unless such plea or exception shall contain all the special grounds upon which the same may be founded, and upon which the party excepting is to be heard upon argument before the Court; and no general exception or plea as aforesaid, not containing special grounds, shall be received or filed in any cause.

Nor shall any such plea or exception be amended, after the same hath been filed; nor any such plea, except an exception *peremptoire en droit* be received by the Prothonotary of this Court, unless at the time of presenting the same to be filed, the party shall deposit with the Prothonotary £ 2 6 8, on account of the costs that may be adjudged upon such plea if the same should be dismissed.

And it is declared, that no exception *declinatoire*, *peremptoire à la forme*, or *delatoire*, shall require an answer from the plaintiff in the cause, or any pleading or issue, if the plaintiff sees fit to have the same heard on its merits, without answer. And a verbal motion may be made by the plaintiff immediately after receiving such plea for argument thereupon, without any notice to the defendant for that purpose; and the same shall be heard forthwith, or so soon as the Court may see fit to order the same. It is, however, declared that the plaintiff so moving for hearing without answer, doth thereby confess the matters of fact contained in such declinatory or dilatory plea.

And in every case where the plaintiff shall think fit to answer such declinatory or dilatory plea or exception, and the answer may be general and not containing any special matter to which the defendant shall be bound to reply, the answer aforesaid

shall form the issue between the parties upon the matters of such plea to be argued and adjudged, and no replication shall be filed thereupon.

4. That every defendant who may not plead either of the pleas abovementioned, shall, within three days after his appearance entered, file his defence or plea to the merits of the plaintiff's action, and also file all such writings and documents in his possession, or certified copies thereof, and upon which the plea or defence is made and grounded, with a certified list of the same. And that the defendant at the day of filing such plea do make due service thereof.

The above Rule is not to be construed to debar or prevent a defendant, personally appearing, from making such verbal answer or plea to the plaintiff's demand and declaration as by law is permitted to be done and entered.

5. It is ordered that every exception *peremptoire*, or plea which respects the right and not the form of the demand, as well as all other matters or ground of plea to the merits of the plaintiff's demand, which might have been in the knowledge of the defendant, at the time of making such exception *peremptoire* or plea, shall be contained and set forth in one and the same pleading and, filed within the period allowed for filing a plea to the merits of the plaintiff's action.

6. That whensoever any defendant may have made a plea or exception *declinatoire*, *dilatoire*, or *peremptoire à la forme*, or the plaintiff may have made any exception whereon hearing and judgment may be made, the parties respectively, after the judgment made as aforesaid, shall be bound to file a plea or replication or rejoinder, as the case may require, within the period allowed for pleading to the merits

of any action, or replying to any plea to the merits, and without any special motion or order for that purpose. And the party neglecting so to do may be adjudged as in a case of default for want of a plea. And if such neglect be on the part of the plaintiff not filing a replication or other plea which of right he might have filed, he shall be foreclosed, and the cause proceed without the liberty to file a replication or other plea in the action.

7. That whensoever a defendant may be committed to Gaol upon a *Capias ad respondendum*, or under the order of this Court for want of special bail, being entered in the action, he shall be bound to plead to the plaintiff's action within the periods allowed by the rules of this Court to any other defendant, after the plaintiff may have duly served the defendant, so in custody, with a notice to plead in the action, conformable to the rules of practice in that behalf made and provided.

Inscription en Faux.

8. It is ordered that whensoever any party in a cause may be entitled to make an inscription *de faux* against any act or instrument offered in evidence by the opposite party, he shall be bound to do the same previous to his making his plea or replication as the case may be. And that in any case when a party may plead to a declaration whereon exhibits are offered, he shall thereafter be foreclosed making an inscription *en faux*; and so if the plaintiff shall reply to the defendant's plea wherein exhibits are filed, he shall be foreclosed as aforesaid. Provided always that this rule shall not deprive any party from making an inscription *en faux*, against any act or instrument offered in evidence subsequent to the plea or replication, as

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aforesaid, if such inscription be made previous to setting the cause down for evidence, on the *Role d'enquete*, or an appointment to be heard on matters of law in issue between the parties, and not otherwise.

SECTION XII.

Of Replications.

1. THAT the plaintiff do, within three days after the defendant may have filed and duly served the plaintiff within his plea to the merits, or exception *peremptoire au fond*, file his replication, or such other plea as legally he hath right to make, and do on the same day make due service thereof, otherwise he shall be foreclosed from filing any such replication or plea.

2. And it is permitted to the plaintiff, at the time of duly filing, and serving a copy of, such replication, to file such further documents and writings which the defendant's plea may have made requisite, and that were not referred to by the Plaintiff's declaration, or incumbent on him to file therewith, and whereon the said replication may be grounded; of which writings a certified statement shall be made on the plaintiff's list of exhibits, already filed in the cause, conformable to the rules of practice.

SECTION XIII.

Of Incidental Demands.

1. THAT every incidental demand shall be deemed and taken to be a distinct action from the demand in chief, and shall not be permitted in any respect to delay the proceedings of the plaintiff on his demand in chief, against which the incidental plaintiff may by his plea set up a cross demand. Provided always 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 defence to the demand in chief.

2. That when any incidental party may have several grounds of demand, he shall state and prefer the same by one and the same pleading; and at the time of filing the same, shall also file all writings, deeds and acts in his possession, or copies thereof, duly certified, upon which the said incidental claim or demand may be formed.

 SECTION XIV.

Of filing Deeds, &c.—whereon any action may be grounded, and of filing other corroborative written evidence.

1. THAT every plaintiff at, and on the day of the return of the writ or process, with a declaration annexed, do file in the Prothonotary's office

all such deeds bonds, notes, bills, accounts, documents and writings in his possession (or copies thereof by him or his Attorney certified as such) and upon which the suit or action may be grounded, as declared upon, to the end that the defendant, under communication of the same, may prepare and make his full defence and that the plaintiff do file with all such writings a certified list thereof, and whereon such documents or exhibits shall be ascertained, by a correct reference to the nature and dates thereof, and regularly numbered, and that failing such reference, by which the exhibits aforesaid may be ascertained, they shall not be held and taken as part of the record in the cause, and that no list be offered or filed but when it is to accompany and ascertain papers to be adduced in evidence.

2. That on the day of the return of any writ or process, issuing out of this Court, at the instance and on behalf of any person, not resident within this province, the Attorney suing out such writ or process, do file with the Prothonotary of this Court, the power or authority under which such writ and process may have been sued out, and insert and describe such power in the list of exhibits to be filed in the cause; or on the return day aforesaid do move the Court on the special grounds of not being able to file such power or authority, in order to obtain a further day for filing the same. And failing to file a sufficient power or authority, for prosecuting the action against an absentee, on such day as may be appointed by the Court, that no proceeding shall be had or obtained against any defendant in such action. But that he be permitted to proceed to judgment for dismissing the plaintiff's action, or otherwise, as may be advised.

3. That the plaintiff, in any suit before this Court, who may possess any corroborative written evidence relative to any demand or defence thereto, and which were not in his possession at the time of first filing his exhibits, may, upon due proof being made, appear at any time previous to setting the cause down for trial, whether on an issue at law or on facts, be permitted to file all such corroborative written documents as may relate to, and be connected with, the matters in dispute between the parties. And that a list of such documents and writings be indorsed upon, or annexed to, the plaintiff's list of exhibits filed in such cause, and in the manner as is in the first articles of this rule above directed.

SECTION XV.

Of Withdrawing Exhibits.

1. IT is ordered that the Prothonotary of this Court do not, in any case where final judgment may be made, grant during the Term or sitting of this Court, to any party in any such suit, or his attorney, any exhibit or paper filed as evidence therein, unless under the express order of this Court therefor ; nor shall any party interested obtain any such exhibit, in Term time, unless he shall have duly served on the other party or parties concerned in the records of such action, a notice of the intended application, and to shew cause why the same should not be withdrawn from the records of this Court, and delivered to the party so requiring the same.

2. And if any application be made during the vacation, to withdraw any exhibit or paper filed in evidence in any cause, the same shall not be granted, unless by the order of two of the Judges of this Court, and after due notice to the adverse party interested therein, of such application to shew cause to the contrary, if any they may have. And if the application be granted, a true copy of such exhibit or paper, authenticated by the Prothonotary of this Court, shall be filed of record before the paper applied for shall be withdrawn.

3. That no exhibit shall be withdrawn from a record, on which execution may be issued, as directed by the rule upon issuing executions.

[Section 35. 3.]

SECTION XVI.

Of Communication of Writings filed in any cause to be offered in evidence.

1. THAT it be clearly understood, and it is hereby ordered, that every party in Court entitled to communication of papers, documents or writings filed conformably to the rules of this Court, do apply to the Prothonotary's office for the same, as a matter of right, and without special motion or application to the Court for that purpose; and that all such parties may receive the said communication of papers as aforesaid, upon lodging a list and receipt at the said office for the writings so filed and taken in communication. And that the party so receiving the same shall be entitled to hold the said writings so long and until the period he may, by the ordinary rules of practice, be bound to file his defence, replication or other plea, and no longer.

2. It is, however, expressly provided and directed, that no act *sous seing privé*, or original paper writings of any description whatsoever, upon which an action or defence may be made or founded, shall be removed or taken possession of in communication from the Prothonotary's office for any cause or pretence whatsoever.

SECTION XVII.

Of Records.

WHEREAS many of the Records of this Court have, at different periods, been taken from the office of the Prothonotary, contrary to the express Rules of Practice and to the repeated orders in that respect verbally expressed by the Court; and such a practice, if suffered to continue, must be attended not only with delays, vexations, and of serious consequence to the parties interested, but may, in a highly criminal degree, obstruct the administration of justice:—

1. IT is, therefore, ordered, that any Attorney or Advocate of this Court, who by himself, or through the ministry of his clerk or other person, shall take or withdraw from the office of the Prothonotary any pleading, exhibit, or paper filed in any cause, or any part of a record in any cause, contrary to the 16th Section of the general Rules of Practice for taking communication of writings, filed and to be offered in evidence, shall be considered as having committed a contempt of this Court, and the same be proceeded upon accordingly.

2. And it is further ordered, that no Prothonotary of this Court do presume to deliver, or suffer or permit the record, or any part of the record, in any cause, deposited in his office, to be withdrawn therefrom, either by himself or through the ministry of any clerk or person he may entrust with the custody thereof, except to any of the Judges of this Court, or to any of the Attornies thereof, conformable to the 16th Section of the Rules of Practice, in that respect made for communication of writings, &c. upon the penalties attached to an open contempt of this Court, and in violation of the trust reposed in the discharge of his official duties.

SECTION XVIII.

Of Intervention.

IT is Ordered, That whensoever any person legally having rights to sustain, and who may be desirous to intervene and become a party in any suit that may be pending in this Court, the same shall be moved in the manner herein after expressed, and previous to the cause being finally heard.—

1. THAT the party intervenant, shall file a *Requête en intervention*, which shall contain the grounds of the demand and several rights which are intended to be alledged and sustained in the cause, and in respect to the party before the Court in suit.

2. That the said *Requête* shall also contain all such conclusions or claims as the party, plaintiff *en intervention*, may have or intend to make in the said

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 cause, to the end that legal issues may be taken upon the same, and the original suit proceed without delay.

3. That the said plaintiff *en intervention* shall file in the Prothonotary's office, (on the day ordered upon such *Requête* for the party's appearance to the same) all such writings and documents in his possession whereon the demand may be made.

4. That any party intervening, as aforesaid, shall, at the day of filing the intervention, give due notice thereof to all the several parties in the cause, to the end that due course may be taken thereupon, without delay.

5. That all and every further proceeding upon any intervention, as aforesaid, whether on exception or plea to the merits of the same, and the issues thereon to be taken, and the filing of all writings, exhibits or documents, touching the respective interest of the parties, shall be moved made and done, conformable to the general rules of practice of this Court on original actions.

6. That whensoever a *Requête en intervention* may be made by the party interested, and not by an Attorney of this Court, such party shall, at the time of making such *requête*, and therein and previous to an order thereon for an appearance, fix and elect a domicile, where course may be taken as needful respecting the same.

SECTION XIX.

Of Pleas and issues to be formed during vacation.

IT is ordered, that in all cases, where a plaintiff, or defendant, would, by the present rules of prac-

tice, be bound to plead after appearance, and during the sitting of this Court, such party shall be equally, and in the same manner, bound to plead, during the several vacations and out of Term. But inasmuch as a further time may be allowed for filing such pleas respectively, ten days are granted to the respective parties for duly filing any plea or replication, of what nature soever, during the vacations after February and April Terms; and twenty days after the vacation of June and October Terms. And the like delay is granted for filing the several exhibits, with such plea or replication, as are directed or permitted by the rules of practice of this Court. And that these rules shall equally extend and be applied to all cases of oppositions or intervention.

SECTION XX.

Of filing Declarations, &c.—On Evocation of Causes from the inferior Term.

WHEREAS it may be necessary, in every case, where the evocation or appeal of any cause may be made and admitted from the jurisdiction of the inferior to that of the superior Term of this Court, that the plaintiff should more specially set forth the cause of action than is prescribed by the rules of practice, on ordinary process and proceedings before the said inferior Term.

IT is therefore granted and ordered, that the plaintiff shall within three days, inclusive from the allowance of such evocation or exception, file with

the Prothonotary a declaration, containing the special grounds of his case and demand, and therewith file all such documents, writings and evidence whereon such declaration may be grounded; and that the defendant and plaintiff shall then after conform to the general rules of practice for filing pleas or exhibits, and bringing the cause to issue, hearing and judgment.

SECTION XXI.

Of General Rules for Pleading, and of other Proceedings.

1. IT is ordered, That the Rules of this Court, directing the filing of pleadings, writings, or papers, of what nature soever, be strictly conformed to, as preemptory rules made in every cause in court, and that a neglect of the same shall be considered as a default, and wilful disobedience to the rules of this Court.

2. That every rule of this Court, made in the presence of the parties, or their Attornies in Court, shall be considered as sufficiently notified, without the service of any such rule or order being requisite, to enforce the same.

3. And whereas particular circumstances and cases may, at times, require an enlargement of the rules of this Court, the same (upon sufficient cause shewn) will only be granted where application may be made, one day at least, previous to the expiration of such rules.

4. And upon every groundless application for the enlargement of any rule, the party applying,

shall, at the taxation of costs in the suit, be adjudged, upon all such dilatory proceedings, to pay full costs.

5. That all pleadings, notice, rules, orders, and judgments, and all other matters and proceedings, of which service is or shall be required, upon any party in any suit depending in this Court, shall be served upon the Attorney *ad litem*, who shall have appeared in this Court for such party. And in default of such appearance by Attorney, shall be served at the elected domicile of such party, if he may have appeared personally; those instances excepted in which personal service upon such party, is by law, or any rule of practice, or any special order made in the suit, required and directed.

6. 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 His Majesty's Court of King's Bench in England, in Westminster Hall.

7. That all rules and orders for the conduct and regulation of any Attorney or Counsel of this Court, in any cause therein depending, shall extend to the party in such case personally appearing; and where no appearance by Attorney shall have been entered on behalf of such party, be rules and orders for the conduct and regulation, in every respect, of such party so personally appearing.

8. That every order of any Judge of this Court, which shall be obtained in vacation, shall be subject to an appeal to this Court, and the validity thereof impeded, by moving the Court to set aside the same, or to set aside the proceedings which have

been had under it. Provided, that any such order which may be made with consent, or otherwise acquiesced in, shall be as valid as any act of this Court.

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

10. That no paper of any description shall be received or filed in any cause, 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, and the declaration and pleas, alphabetically marked in their regular order.

11. That all writs and process of this Court shall be tested on the day on which such writ or process shall issue.

12. That a point of practice settled by a judgment of this Court, and entered on the Prothonotary's book of "Rules of Practice," shall not be reargued.

13. That no reference to *arbitres*, or reports, or other reference of any description, shall be made by rule or order of this Court, or entered by consent or otherwise, in any case before the issue or issues in such case shall be perfected; and then only of the matters to which such issue shall relate.

14. That no writing or written conclusion be preferred to, or received by this Court, upon any Rule *Nisi*, or upon any report of *arbitres*,

Experts, or Praticiens, nor any issue in writing be raised thereon. The validity of every such report or rule *Nisi* will be verbally heard on the respective motions taken, in due course, by the parties interested, unless specially otherwise ordered by this Court.

15. That on the hearing of any motion, plea, or incidental matter, or on the trial or merits of any cause, no more than two counsel shall be heard in opening or in answer, and only one in reply.

And that a witness shall be examined by one counsel and no more, and cross-examined by one counsel and no more.

16. That every affidavit, or certificate of a bailiff, of service of any pleading, notice, rule, order, interlocutory judgment, subpoena, or other matters, shall particularly describe the manner, place and hour of service; otherwise the same shall not 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 null and void, to all intents and purposes whatsoever.

17. That in all computations of time, or delay granted upon the service of any writ, summons, rule, order, notice or judgment of this Court, and generally upon all proceedings whatsoever, not otherwise particularly provided for, the day on which such writ, summons, rule, order or judgment shall be made, or upon which service of any such writ, rule, order, notice, judgment or other proceeding may be performed, shall not be reckoned or accounted to be one, but every other day

to which such computation of time shall refer, (Sundays and Holidays not excepted, unless the expiration of time should occasion the rule to expire on a Sunday or Holiday, in which case an enlargement of time shall be made to the next day) shall be accounted to be one, and that no fractions of time shall, in any such computation, be made or allowed.

18. That in every case where, by the Rules of Practice, a duty is to be performed at a particular period, with reference to the records of this Court, the same shall be done, at the office of the Prothonotary, within the Office hours appointed, and at no other time.

SECTION XXII.

Of Trial of Causes at Issue.

1. THAT a roll and general list of all causes be kept by the Prothonotary, including as well causes continued as those newly instituted, expressing the time of issuing and return of the original writ or process, the number of the cause, the names of the parties, and those of the Attornies appearing for each party; also that the nature of the demand be expressed, and a blank column left for noting proceedings thereon had.

2. That another roll or list of causes shall be made by the Prothonotary, to be used as a diary in each Term for setting down all causes for hearing, whether on matters of law or trials by Jury, or on *Enquête* and examination of witnesses, as the same may be severally appointed. On which list shall

be expressed the number of the cause, the names of the parties and of their several Attornies, and the order or intent of such appointment for hearing. And which entry shall be conclusive against the parties and their Attornies.

3. That the Prothonotary shall prepare and keep a separate and distinct roll or list of causes for *Enquête* and the examination of witnesses, as well of *Enquête* to be had in Term as out of Term, and wherein entries may be made of proceedings had thereupon. And the said entries shall be taken as conclusive against the parties and their Attornies.

SECTION XXIII.

Of Motions and hearing thereon.

1. THAT every motion, to be made in any cause, shall be expressed in writing, and signed by the Advocate or the party applying to the Court, and be delivered to the Prothonary before moving of, or hearing the same; nor shall any motion be heard, unless for a rule to shew cause or motion for judgment, or default of appearance, or neglect to plead, or disobedience to any rule or order or interlocutory judgment, until due notice, of at least one day, shall have been first given to the adverse party or his Attorney.

2. That all motions for enlargement of rules, or to shew cause, shall be made and heard at every sitting of the Court, prior to the trial of any cause on issue joined.

3. That the service of any notice of motion, to be heard at a succeeding day, shall be deemed regular.

ly served if the same be made during the sitting of the Court on the day preceeding the hearing so notified.

4. That no motion for judgment upon the verdict of a Jury shall be made or received until after the expiration of four days in Term, from the day on which such verdict shall have been recorded.

5. That if any matter be moved in Court in presence of the Attornies, or Counsel of the parties, and the Court thereupon shall make a rule, the same shall not again be moved contrary to such rule.

6. That a motion which cannot be decided, unless by a rule or order, by which the merits of the case will be also decided, shall not be allowed.

SECTION XXIV.

Of hearing on Law issues.

THAT whensoever any law issue may be formed in any cause, as a temporary, or perpetual Bar to the plaintiff's action, and such cause be regularly inscribed on the diary for hearing *en droit*, the same shall come on to be heard on the day appointed, unless good cause be shewn to the contrary. And if the plaintiff shall not appear, or not shew good cause to delay the hearing so appointed, and the defendant be ready to proceed, the plaintiff's action shall be dismissed, with costs to the defendant, if the

conclusions taken by the defendant, exceptions be so made as to warrant such judgment. And if the plaintiff's shall appear and be ready to proceed, and the defendant raising such issue shall not appear, or not be ready to proceed, or not shew good cause to the contrary, and obtain a further day to be heard, his plea in Bar to the plaintiff's action, whether temporary or perpetual, shall be dismissed with costs to the plaintiff, who may forthwith proceed in due course to judgment on his principal demand. Nor shall the defendant be entitled to further notice, or to make any further proceedings in the cause, until he shall have paid the plaintiff's costs, which may be awarded as before said.

SECTION XXV.

Of Exception to any Interlocution, Order, or Judgment of this Court.

WHEREAS by an ordinance passed in the 27th year of His Majesty's Reign, Chapter 4, It is enacted that whenever the opinion of any Court of common pleas may be pronounced upon any law, usage, or custom of this province, and that any party may conceive the same to be to his injury, he shall be allowed to make an exception to the said opinion, to be preserved in the minutes of the said Court, and which said act in that respect is extended to the government and proceedings in this Court. It is ordered, that,

in every case where such exception may legally be admissible, the party making the same shall deliver the same, during the sitting of the Court, or at the Prothonotary's office, in the course of the day on which such exception may be raised. And that any exception which may be offered, at any future day, shall not be received nor entered on the Records of this Court.

SECTION XXVI.

Of Exceptions to the regularity of service of process, and affidavits thereon, and of exceptions to the regularity of filing exhibits or their sufficiency.

IN order to prevent delays and expences occasioned by issues raised on exceptions to the regularity of suing out and service of process, and of written exceptions or pleadings to the regularity, or sufficiency of exhibits and matters of evidence filed of record.

I. IT is ordered that no writing by way of plea or exception shall hereafter be allowed to the form, service, or other matters regarding the regularity or sufficiency of any summons, writ, or process that may be issued out of this Court, nor to any affidavit that may be made for obtaining any such writ or process, but that every alledged de-

fect, or irregularity respecting the same, shall be declared, heard, and adjudged upon motion, and not otherwise.

2. And *that* only on the day of the return of such process, otherwise the supposed defect shall be deemed to be waived, unless the party making the same can (at the day allowed by law for taking off a default) make it appear by good and sufficient reasons that until that period he was prevented from making such exceptions. Nor shall any matter concerning the sufficiency or regularity of any exhibit, filed or to be filed in any cause, be made or complained of by a written exception or other pleading, but be declared, heard and adjudged upon motion, or legal objections at the hearing of the cause, as the party so objecting may consider to be most advisable, and not otherwise.

SECTION XXVII.

Of Witnesses and their examination, of Evidence and of Enquête.

1. THE Court, having taken into consideration the abuses that are liable to be committed by the allowance for the subpoenaing and attendance of any unlimited number of witnesses whatsoever, in causes brought to issue in this Court—It is ordered, that from and after this day, in any cause wherein witnesses shall be subpoenaed to appear and give evidence in this Court, no allowance whatever, on the taxation of costs, in favor of the one

party against the other, shall be made for subpoenaing and attendance of more than six witnesses, (if so many there shall be) for each issue that may be properly joined between the parties, should there be more than one in any cause.

2. To the end, that all the evidence taken in any cause may be certainly known, and established of record—It is ordered, that in all causes where the sum prosecuted for may be above twenty pounds sterling, or where an appeal may lie from the judgment of this Court, and any depositions of witnesses may be taken, the Prothonotary do enter on the register of this Court, except in causes tried by Jury, a regular list of the names of the witnesses so examined, and the period when their respective depositions were taken, and also that he do file with the proceedings in the cause, a certified copy of the same.

3. That in every cause brought to issue in Term time, wherein witnesses may be examined, such examination shall be moved for and appointed in Term, (if there be a day in Term, in which the motion could be made) to be heard the next succeeding vacation, and not otherwise.

4. And that in every cause brought to issue during vacation, wherein witnesses may be examined, such examination shall be moved for hearing, the next or succeeding Term, and the party failing so to move for the examination of witnesses, shall be bound to give fourteen days notice in Term, on any motion subsequent to the period of which the same might have been made for the examination of witnesses on such issue.

5. That no examination of any witness about to depart the Province, shall be had or taken in any

cause, during any Term or sitting of this Court, unless issue be joined on the merits or matters of fact in controversy between the parties; the examination of a party on *Faits and Articles*, as provided by the Rules of Practice, excepted.

6. Nor shall any such examination of a witness, about to depart the Province, be had or taken in any cause on the part of the defendant, where, by the Rules of Practice, such defendant ought to have pleaded to the merits, and hath not done so. Nor shall any such examination of a witness be had or taken on the part of the plaintiff, where, by the rules of Practice, he should have replied to the defendant's plea, or taken issue on the merits, and hath not so, done previous to his application for the examination of a witness, as aforesaid.

Of written
Evidence in
possession of
an opposite
party.

7. That any party in suit before this Court, who may be in the possession of any original instrument, writing, or document, that may relate to any matter in dispute between the parties aforesaid, shall, upon due notice to produce the same, be bound to appear and produce in this Court, (subject to its further order respecting the same,) such original instrument, writing, or document; and failing so to do, the party notifying the possessor as aforesaid may offer legal testimony of and adduce a copy of such original instrument, writing, or document in evidence in such cause, unless good cause be shewn to the contrary.

And it is ordered, that the notice above said to be served upon any party, or his

attorney, in any cause, to produce any writing as aforesaid, shall be served, subject to the delays or periods respectively allowed for the service on instituting the action, according to the place of residence of the party who may possess such writing, to be produced as aforesaid. But that in every cause where the party may appear by Attorney, the service of such notice for producing any writing as aforesaid, may be legally and sufficiently served on the Attorney, appearing for the said party in the action, under such delay for communication to his client, as may appear reasonable.

8. It is ordered, that after issue may be joined, whether on the merits, or on any collateral point in the cause, for verification of facts alledged, it shall be competent for any party uniting in such issue to obtain an order and set the cause down on the diary or *roll d'Enquête* for examination of witnesses. And any party moving for further time, or a more distant day for such *Enquête* or examination aforesaid, or the continuance and delay of any *Enquête* already appointed, shall make the grounds of such motion, upon oath, stating in an affidavit, not only all the causes which have prevented or may prevent the witness, or witnesses of such party from attending, at the day moved for setting down the cause and the periods when it is expected that such witness or witnesses may be able to attend, but also particularly depose to what the party may be able or expect to prove, by the testimony

Of setting down causes for trial or *Enquête*, and of putting off such trial & *Enquête*.

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of such witness or witnesses, and this, in addition to all other matters incidental to such affidavit for continuance of an *Enquête* or trial. And if any affidavit for such continuance shall not state the above grounds and circumstances, it shall not be received or argued.

And it is ordered, that no fee or costs shall be allowed, in taxation of costs, in the cause for such affidavit.

The cause when appointed for *Enquête* shall come on to be heard

unless cause be shewn to the contrary,

Plaintiff's action shall be dismissed for default in not proceeding on the merits.

& judgment against the party in default upon collateral issues.

9. That every cause regularly set down on the diary or roll d'*Enquête*, for the examination of witnesses, whether on the merits of such cause or on any collateral issue joined therein, the hearing and examination of the witnesses shall come on, and be had at the day appointed, unless good cause be shewn to the contrary, and so inscribed on the diary or roll d'*Enquête* by the Court or examining Judge. And on the part of the plaintiff, if no such sufficient cause be shewn, he shall be precluded from a further day, and upon motion in Court by the defendant for that purpose, the plaintiff's action, if the examination aforesaid was to have been had on the merits, shall be dismissed, *sauf à se pourvoir*, with costs to the defendant. And if the examination was to have been had on any collateral issue, such issue shall be taken and adjudged against the party first tendering or raising the same with costs, by reason of his default in not proceeding thereon.

10. And on the part of the defendant, if his witnesses shall not attend on the day appointed for examination on the merits, or he be not ready to proceed, unless good cause be shewn for their non-attendance, and so inscribed on the diary, or Roll *d'Enquête*, by order of the Court or examining Judges, he shall be precluded from any further day for the examination of witnesses, and the plaintiff may proceed *ex parte*.

If defendant be in default plaintiff may proceed *ex parte*.

11. That no witness shall be examined on the part of any party in a suit, but such as have been summoned to appear, or do actually appear, and are called at the day first appointed, and (if not examined) whose names have been inscribed on the Diary for examination. Nor shall any motion, at any future day, be received for the hearing of any witnesses in the cause, who may not have been so called, and whose name may not have been, by order of the Court or examining Judges, inscribed on the Diary, with permission expressed to be examined at a future period.

No witness shall be examined, who has not been subpoenaed— or appeared on the first day of the *Enquête*, and so inscribed on the Diary.

12. That if reasonable cause be shewn for the non-attendance of witnesses, on the part of any party in a suit, and a further precise day be granted for such purpose by the Court or examining Judges, and no attendance or examination of witnesses should take place at such day, the party failing to bring forward or examine his witnesses, shall be precluded from obtaining any further day for such

If a further day be granted, it shall be conclusive, if no cause shewn, —and judgment given as directed by art. 9 & 10 above.

examination, and judgment shall be awarded upon the case, conformable to the issue between the parties, as is directed by the 9th and 10th articles of these rules.

No further or third day of Enquête allowed, but on payment of all costs, and the third day shall be conclusive.

13. Nor shall any motion be received for granting any further day to examine any witness or witnesses, unless the party so moving shall first offer and be ready to pay the opposite party all the costs that may have accrued to such party from the institution of the action, to the period of such motion. And if under such condition the Court or the examining Judges shall permit the examination of any witness or witnesses in the cause, the day to be granted for that purpose shall be final and conclusive, and judgment pronounced in the cause, according to the course of the Court, and its Rules of Practice, in such case provided.

The Enquête being opened and begun, no allegation shall be received of the absence of witnesses.

14. And inasmuch as the partial, as well as the complete examination of witnesses on one side of a cause, at one day; and a like examination of witnesses on the other side at another day, is attended with great inconvenience and frequent prejudice. It is ordered, that on calling on a cause from the Diary or Roll of *Enquête*, for examination of witnesses and proceedings therein, all the several parties submitting thereto or not opposing the same, shall be concluded as being fully prepared for the complete and entire examination of all their witnesses respectively. And

that no motion for delay in closing the *Enquête*, or for further examination of any witness not attending, shall be received or heard, unless made previous to the examination of any witness upon the opening of such *Enquête*.

15. And that if any party shall move for the continuance of such *Enquête*, or the particular examination of any witness to be heard thereupon, it shall be under the several limitations and restrictions, directed for the putting off a trial or *Enquête*.

Every motion for delay, must be supported by affidavit, containing special causes, &c.

16. And it shall be in the discretion of the Court or the Judges, attending to make such *Enquête*, under the special circumstances of the case, where no examination may have been entered upon, to direct the entire continuance of the *Enquête*, and examination of all the witnesses to a future day; in which case, the party moving for such continuance, shall pay to the opposite party or parties, the costs and expences of summoning, and the attendance of all the witnesses then attending for examination. Or if no sufficient cause be shewn for granting a delay, and the party moving for the same shall refuse to proceed, the Judges, if the examination were to be had out of Court, may refer to the Court the consideration of the default of any party, refusing to proceed as aforesaid, and thereupon the Court will, upon such reference, or itself, where the examinations were to have been had in open Court, proceed to judg-

And it shall be in the discretion of the Court or judges to direct the entire continuation of the *Enquête*.....

Subject to payment of costs

and if no sufficient cause be shewn for delay, and parties do not proceed, action may be dismissed, as by Art. 9 & 10.

ment according to the circumstances of the case and default aforesaid, either in granting a delay or strictly enforcing the penalties declared by the 9th and 10th articles of these Rules on *Enquête*.

Either party may oppose and prevent a partial examination of witnesses . . .

And thereupon shall be allowed costs of his witnesses' attendance

And no further proceedings until costs be paid.

If more than six witnesses be examined on one issue, the party moving therefor, to pay 6s. 8d. to the opposite party, for costs on each witness above 6, previous to the examination

17. Provided always—that if any motion may be made at the opening of any *Enquête*, whether in open Court or before Judges in vacation for the partial examination of a part of the witnesses in the cause, the opposite party shall have a right to oppose the same, and insist on and obtain the entire continuance of the *Enquête*. And thereupon have and obtain a full allowance of costs for examining, and the attendance of all his or their witnesses, actually attending to be examined.

And no further proceedings shall be had on the part of the failing party to proceed as above said, for the examination of his witnesses, until all such costs shall have been paid, as above directed.

18. And whereas by the Rules of Practice, no party in any cause hath a right to tax costs against an opposite party, for the examination of more than six witnesses upon any issue raised in such cause ; yet the opposite party is frequently put to charges and expences in respect to the examination of witnesses above the number allowed ; It is therefore ordered, that no further examination of witnesses above the number of six, as aforesaid, shall take place, unless the party moving for the same do first tender and pay to the Attorney of the opposite

party six shillings and eight pence costs upon each witness so to be examined, above the number aforesaid. Nor shall any costs be taxed to any Attorney as between Attorney and client for the examination of a greater number than six witnesses, on any issue as aforesaid.

No costs taxed as between attorney & client for examination of witnesses, above 6-.....,

19. And it is understood and directed, that all the above rules shall be equally applicable to parties on a cross cause, or wherein the defendant may constitute himself an incidental plaintiff, and the original plaintiff thereupon become the defendant in such incidental demand; and also in causes of intervention, or opposition.

The above Rules to apply to incidental pntffs.

20. And it is declared and ordered, that should the Court or the Judges, examining witnesses on any Enquête appointed, adjourn or continue the same over to a future day, that the day to which such adjournment shall be made, shall be taken and considered as making part of the day from which such adjournment or continuance was made, and the several rules abovementioned shall be applied accordingly.

An Enquête adjourned shall be considered a continuation of the same day.

21. And if on the day of Enquête, to be taken before any Judges in vacation, any party is not enabled or does not proceed to the examination of his witnesses, or any part thereof, and intends to claim a right for such examination at a future day, by reasons or causes to be offered to the Court for that purpose—It is ordered,

A party not proceeding to examine all or any part of his witnesses at the day of Enquête, in vacation, shall be bound to move on the

first day of the ensuing term, for such examination, or be concluded and fore-closed & judgment may be given upon the 9th or 10th Rule.. or .. Upon the circumstances of the case.

that such party be held to move the Court on the first day of its sitting, after such Enquête so appointed in vacation, to be admitted to examine such witnesses as could not have attended at the day of Enquête appointed, and to them shew sufficient cause for such examination of witnesses, otherwise the party shall be concluded from any claim or the examination of witnesses in the case. And the above 9th or 10th Rule shall be applied to the circumstances of the case for judgment.

SECTION XXVIII.

Of Commissions Rogatoires.

1. IT is ordered, that whensoever any commission *Rogatoire* may issue to persons, not being Judges or Judge of any of His Majesty's Courts of record in this province, the said commissioners shall at their first meeting for the purpose of executing the said commission, administer the Oath No. 1—heereafter mentioned to each other, and also the Oath No. 2, to the clerk or clerks named and appointed by the said commissioners for the faithful performance of their respective duties in the execution of the said commission. And that there shall be annexed to every such commission a copy of the said Oaths, so to be administered, and of the Oath to the witnesses

to be sworn by the commissioners; which said Oaths shall be delivered to the Prothonotary of this Court, with the interrogatories and the instructions directed by the 3d and 4th articles of this rule, for the execution and return of the said commission, to be annexed to the commission.

No. 1. Oath to be administered to each of the several commissioners by themselves respectively.

“ YOU swear, that you will according to the
 “ best of your skill and knowledge, truly, faithfully
 “ and without partiality to any or either of the
 “ parties in this cause, take the examinations and
 “ depositions of all and every witness and witnesses,
 “ to be produced and examined by virtue of the
 “ commission hereunto annexed, upon the interro-
 “ gation hereunto also annexed, now produced and
 “ left with you, and you shall not publish, disclose,
 “ or make known, to any person or persons what-
 “ soever, except to the clerk or clerks, to be by
 “ you employed and sworn to secrecy in the exe-
 “ cution of this commission, the contents of all or
 “ any of the depositions of the witnesses or any of
 “ them, to be taken by you and the other commis-
 “ sioners, in the said commission named, or any of
 “ them, by virtue of the said commission, until pub-
 “ lication shall pass by rule or order of the Court of
 “ King’s Bench for the district of Montreal.”

SO HELP YOU GOD.

No. 2. Oath to be administered by the commissioners to the clerk, appointed for taking and transcribing the answers of witnesses, &c.

“ YOU swear that you will truly, faithfully and
 “ without partiality to any or either of the parties
 “ in this cause, take and write down, transcribe
 “ and engross the depositions of all and every wit-
 “ nefs and witnesses, produced before and examined
 “ by the commissioners, or any of them named in
 “ the commission hereunto annexed, as far forth as
 “ you are directed and employed by the said com-
 “ missioners or any of them to take, write down, or
 “ engross the said depositions, or any of them. And
 “ you shall not publish, disclose, or make known, to
 “ any person or persons whatsoever the contents
 “ of all or any of the depositions of the witnesses,
 “ or any of them, to be taken wrote down trans-
 “ cribed, or engrossed by you, or whereto you
 “ shall have recourse, or be any wise privy until
 “ publication shall pass by rule, or order of the
 “ Court of King’s Bench, for the district of Mon-
 “ treal.

SO HELP YOU GOD.

2. It is ordered that whenever there may be any such commission *Rogatoire* to be executed by commissioners as aforesaid, the several interrogatories to be put to a witness produced (after he hath been duly sworn) by the said commissioners shall be proposed and declared in their regular order; and that the answer of the witness shall be taken down by the clerk, to each interrogatory, previous to proposing, or making known a second, or any further interrogatory and so continued until the whole examination may be closed.

3. It is ordered, that after a witness hath been sworn, his examination shall be taken in the manner above said, in the presence of at least two of the commissioners named in the commission, and if the said commissioners shall have been named the one half on the part of the plaintiff, and the other half of them on the part of the defendant, then in the presence of two of such commissioners, one of whom may have been named on the part of the plaintiff and the other on the part of the defendant, if the said commissioners on the part of each party as aforesaid shall attend for that purpose; but in case of refusal, or non attendance, the examination may be had and taken before the two commissioners ready to attend and execute the said commission, and that no person or persons shall be present at the examination of any witness but the commissioners so examining the witness and their clerk. And that previous to the examination of any witness, the commissioners aforesaid shall administer to each witness the Oath following.

“ YOU swear, that you will true answers make
 “ to all such questions as shall be asked of you on
 “ these interrogatories, without favour or affection
 “ to either party, and therein you shall speak the
 “ truth, the whole truth, and nothing but the
 “ truth.”

SO HELP YOU GOD.

4. That after the execution of the commission may have been completed, the commissioners executing the same shall bind and attach to the writ or commission, all the several examinations of the witnesses, and all writings produced and to which

the said examinations may refer. And also annex to the commission a list of the witnesses examined (which shall be signed by the said commissioners) together with the several oaths administered and the instructions transmitted with the commission previous to executing the same; and after the same may be inseparably bound together under their seals. They shall certify, on the back of the commission, their return of the execution of the said writ. The same shall then be put under a cover and sealed up directed to one of the Prothonotaries of this Court, and the title of the cause, and names of the parties in the suit shall be thereon inscribed, and these words added, "A commission *Rogatoire*," executed and returned by _____ naming the commissioners who had executed the same.

5. IT is ordered, that previous to the publication of any commission *Rogatoire* that may have been executed within this province, or in the province of Upper Canada, by commissioners, not being judges of His Majesty's Courts of record in this province, an affidavit shall be made before one of the Judges of this court by the person, holding such commission & return, of his having received the same from some one of the commissioners therein named, for the purpose of being returned into this Court, to be of record; and that the said commission is in the same state and condition as when such person received the same for return, as aforesaid.

6. That notice shall be given to all the parties concerned in the said commission and return of any motion to be made for the publication thereof, and all objections which can then be made to such commission and return, shall be raised and heard prior to such publication.

7. It is ordered, that in any cause where the defendant may have appeared either personally, or by an Attorney of this Court, (except in cases when a defendant may be in default for not pleading, or otherwise) no commission *Rogatoire* shall be granted until after issue may be joined between the parties on the merits. And that after the issue may be joined, as aforesaid, either party, who may be desirous of obtaining such commission, shall move for the same, within four days after issue may be joined as aforesaid, if in Term, and if in vacation by application, within the period aforesaid, to two of the Judges of this Court, who may grant an order therefor, to be sued out within such time as may be considered reasonable at the period of applying for the same on the *requête*, or petition of such party, to be filed of record in the cause.

And that no commission *Rogatoire* shall be granted, in any cause as above, unless moved or applied for within the period aforesaid.

And upon the order being made for issuing any commission, as aforesaid, the party obtaining such order shall forthwith, and without delay, sue out the said commission, and expedite the due execution and return thereof; otherwise it shall be competent for the opposite party to proceed in the cause as if no such commission had been moved for, or granted.

SECTION XXIX.

Of Facts & Articles.

I. WHEREAS parties in suits are entitled to obtain an examination of the respective suitors upon *Faits & Articles* that may be deemed relevant (*pertinens*) to the matters in contest, provided that the same may be required and had, “*sans retardation de l’instruction et jugement,*” to the end, therefore, of preventing delays by undue applications for such examinations: It is ordered, that *Faits & Articles* may be moved for and had “*en tout état de cause,*” that is to say, at any time after filing the declaration until closing the *Enquête*; provided that every party who, on the last day appointed for the examination of witnesses, may move to examine the opposite party on *Faits & Articles*, do apply for the same to be had in a reasonable delay, “*sans retardation du jugement*” and that a day be at the time of such application fixed and appointed for that purpose, and the party so applying shall be thereby concluded; and that no examination on *Faits & Articles* shall be granted, or had in any cause after the evidence may be closed, nor after a *venire facias* may have issued for summoning a jury in any cause appointed for such trial, unless upon special circumstances that were not, or reasonably could not be presumed to be in the knowledge of the party so applying for any such examination, after the period above mentioned.

2. That every permission for the examination of any person on *Faits & Articles*, together with a copy of the several articles to which the party is

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required to answer, shall be personally served on the person enjoined to answer such *Faits & Articles*, unless in cases where the party in the suit, who may be enjoined to answer, as aforesaid; may have appeared in the said suit personally, or by an Attorney of this Court, in which case, a service of the order and a copy of the *Faits & Articles* as aforesaid, at the actual dwelling house and domicile of the party, may be held to be sufficient for proceedings thereon.

SECTION XXX.

Of Trial by Jury, and the several proceedings thereon.

WHEREAS, trials by Jury in certain civil actions, upon issue joined by the parties for such trial, may be lawfully had in this Court; To the end of ascertaining the right of such trials, to prevent delays in Striking Juries, and declare a certain regular course of proceeding therein.

1. IT is ordered, that every suit or action to be instituted, where any plaintiff may be desirous of such trial, the same shall be moved for by the plaintiff on the day of the defendant's appearance.

2. And whensoever any defendant may be desirous of a trial by Jury, and entitled to the

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same by law, he shall, at the time of pleading an issuable plea, conclude therein to the country.

3. That in every case when a plaintiff may, on the defendant's appearance, move for, and be entitled to, a trial by Jury, the defendant in pleading an issuable plea to the merits of the action shall therein conclude to the country, and the plaintiff shall, in replying to the merits, in like manner take issue to the country.

4. That every defendant, who may be desirous of a trial by Jury, shall at the time of filing his plea, and previous to filing the same, pay into the hands of the Prothonotary of this Court the fees which the Jury may be entitled to receive upon their attendance or verdict when made and ready to be delivered. And the plaintiff, at the time of and before suing out a *Venire Facias*, shall in like manner pay into the hands of the Prothonotary the fees of the Jury as aforesaid. And either party failing to pay the fees aforesaid, the Prothonotary is hereby directed not to receive the plea nor issue the writ of *Venire Facias* aforesaid.

*Of Striking
the Jury.* } 1. That whensoever a regular issue may be joined in any cause where, by law, and under an order of the court, the trial thereof may be had by Jury, the party applying for the same shall give notice to the adverse party, or his Attorney in Court, which notice shall not be less than twenty four hours, to attend at the office of the Prothonotary for the purpose of striking a Jury in the cause. And the Prothonotary, at the time of such attendance, and in the presence of the parties, or their

Attornies, shall from the Book of Jurors regularly made and deposited in his office, and from the list of special, or other Jurors, as the case may require, make a roll or list of forty eight names, from which the plaintiff, or defendant, or their attornies, shall alternately strike a name to the number of twenty four, and the remaining twenty four persons shall form the panel to be annexed to the *venire Facias*, or summons; and upon which writ they shall be severally summoned to appear for the trial of the issue joined, and a Jury therefrom may be legally impanelled and sworn.

2. And whensoever the plaintiff's or defendant's Attorney may not attend to strike the Jury, as aforesaid, or may, if attending, refuse to strike the names of Jurors to form a panel upon which a *venire Facias* may issue, the Prothonotary shall strike the names of Jurors from the list of Jurors in place of the Attorney not attending or refusing, as aforesaid.

3. That the issue or issues in any case formed, for the trial and verdict of a Jury, shall not be altered to be tried by the Court, unless improperly formed to be tried by a Jury.

Of Defendant's Default to Proceed. } And in every case where a plaintiff or defendant, applying for and obtaining an order for a trial by Jury, shall during the space of two days after issue joined, neglect to proceed therein, and to give due notice to the opposing party to attend and strike the Jury as above said, or shall not attend to strike the said Jury, or not take out a *venire Facias* to summon the said Jury, the plaintiff, or

his Attorney may give due notice to the defendant to attend and strike such Jury, and may, after duly striking the same, in manner as above said, take out a *venire Facias* and proceed to obtain a trial in the cause, in the same manner as if the order for such Jury had been obtained at the plaintiff's instance.

Of Notice of Trial. } And after striking the jury, as aforesaid, due notice of trial shall be given by the party applying for such Jury, or suing out the *Venire Facias*, to the opposite party, or by the plaintiff in case of the defendant's neglect as above said, two full days, at least, before the trial shall be had.

Of the Venire Facias. } And the writ of *Venire Facias* shall be issued four days, inclusive, and the Jury be summoned twenty four hours before the return of such writ and trial of the cause.

Of Evidence to the Jury. } That each party be admitted to adduce in proof, as well the written documents filed in the cause whereon the action or defence may be founded, as all such other written evidence or verbal testimony as legally in the due course of trials by Jury may be offered and given in evidence. But no part of which written evidence, except such as may be

filed agreeable to the rules of practice, and whereon the demand or defence may be founded and referred to in the pleadings, shall be filed in the cause, or make part of the record.

Of Verdict. } That in every case, so soon as the Jury may be sworn, the parties, plaintiff and defendant shall be called, and it neither shall appear, the Jury shall forthwith be discharged. But if the plaintiff shall appear, and the defendant shall not appear, his default shall be recorded, and the evidence of the plaintiff shall be heard *ex parte* and the verdict of the Jury taken thereon and judgment entered, as to law and justice may pertain.

Of Non Suit. } 1. And if the defendant being so called shall appear, and the plaintiff being called shall not appear, the default of the plaintiff shall be recorded and judgment of non suit thereupon *instanter* entered, dismissing the plaintiff's action, *sauf à se pourvoir*, with costs to the defendant.

2. That in every case in which a Jury shall be sworn, and the plaintiff shall chuse, 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, the plaintiff shall be called, and if not appearing, the default shall be recorded, and judgment of non suit thereupon entered *instanter*, dismissing such plaintiff's action, *sauf à se pourvoir*, with costs to the defendant.

SECTION XXXI.

Of New Trials.

THAT all motions for New Trials shall be made previous to any motion in arrest of judgment, and within four days, exclusive of the day of Trial after verdict had, if so many days remain in the Term; and if not, then on the first day of the next Term, and after two full days notice to the adverse party, or his Attorney in Court; and every such notice shall briefly express the several grounds of, or causes upon which, such New Trial is to be moved for as aforesaid. And every such motion that may be so made, under notice as aforesaid, and duly entered as herein after directed, shall be fully heard without further delay. Provided, that no motion in the cause has been previously made in arrest of judgment; as no motion for a New Trial will be admitted in any cause, after a motion in arrest of judgment.

SECTION XXXII.*Of Arrest of Judgment.*

THAT each party in a suit having a right to move any matter in Arrest of Judgment, shall be obliged to make such motion, and may be fully heard thereupon, under the like notice and causes therein assigned, and within a like period of time as is above ordered to be observed in all motions for New Trials, and not otherwise.

SECTION XXXIII.

Of the Entry of Motions for New Trial, or its Arrest of Judgment.

THAT a copy of every notice of motion to be made for a New Trial, or in arrest of judgment, as above is expressed, shall be filed in the cause with the Prothonotary, three days inclusively, before the day on which the motion is to be heard. And the Prothonotary shall enter, or express the same in the Judges' Book, or list of causes, two whole days before the hearing of such motion.

SECTION XXXIV.

Of Peremption, or discontinuance of Actions.

WHEREAS great delays do often arise in the prosecution of suits before this Court, some of which remain pending therein, even after the matters in litigation have been settled by the parties, whereby the number of suits is unnecessarily accumulated—It is therefore ordered,

1. THAT every suit now pending before this Court, by original action, opposition, or intervention, or which may hereafter be instituted, or made therein, and in which no proceedings shall be had

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in open Court, or upon order of this Court for two succeeding Terms, shall be deemed and taken to be deserted by the plaintiff, or party prosecuting the same, or interested therein, and thereupon be dismissed with costs, upon the last day of the second Term, in which no proceedings shall be so had, or any subsequent day in Term thereafter, upon motion for that purpose of any of the parties concerned. And on default of such motion the Court will *ex officio* on the same day, or at any subsequent day, dismiss such suit, opposition, intervention, or other claim, but without costs to either party.

2. And inasmuch as every plaintiff, or demandant, should be bound to prosecute his claim within a reasonable time to a final conclusion :

It is ordered, that no cause shall remain on the records of this Court, for the purpose of any further proceedings therein being had after twelve Terms from the institution of such action, or demand (of which the Term, in which the same was instituted shall be accounted one) unless sufficient cause be shewn to the contrary. And that either party interested in the cause may, on the first day of the thirteenth Term, or at any other subsequent period, move for a judgment, declaring an absolute peremption in the said cause, and dismissing the same as aforesaid, or this Court *ex officio*, upon the certificate of the Prothonotary that the said cause has been entered in this Court during twelve Terms, as aforesaid, will dismiss such cause, and adjudge an absolute peremption of the same, with costs.

SECTION XXXV.

Of Executions.

1. THAT no execution shall issue on any judgment of this Court, subject to appeal, until after the expiration of fifteen days from the date of such judgment. Nor for the space of twenty days from the date of such judgment, where the party, meaning to appeal therefrom, shall have lodged good and sufficient security to prosecute the same with effect.

2. That whensoever no execution may be sued out within twelve months from the date of any judgment whereon execution might have issued, or whensoever twelve months may have elapsed since the date of the return of any execution, no writ of execution shall be sued out, until after a Rule *Nisi* be obtained, and regularly served on the party debtor by such judgment, to shew cause, if any he hath, why an execution should not issue, to levy from the debtor the amount of such judgment, or any part thereon, due and unsatisfied.

3. And whereas it is proper, that all the evidence of record, whereon any judgment may have been made, should appear in the said record, so long as the judgment remains unsatisfied, and any execution to be sued out thereupon—It is further ordered, that no writ of execution do issue on a judgment, in any cause wherein the several exhibits and evidence filed in the said cause; may not remain of record, either by the original evidence, or such authenticated copies thereof, as this Court, on hearing the party applying to withdraw such original, may have specially ordered.

4. That a separate book and register shall be made and kept by the Prothonotaries, of all executions which may be issued from this Court, specifying therein the description of the writ, and against what it may be particularly directed, the parties in the cause, the number of such cause, the name of the attorney or person at whose instance the writ may issue, the amount to be levied by virtue thereof, the cause of action, the date of the judgment on which the writ may be founded, the day on which the writ may issue, and the period of the return thereof; and to which Register shall be annexed, at the end, and in the same book, an alphabetical Index, referring to the parties and execution that may have been issued, as aforesaid. And that no execution do issue from this Court, until after an entry thereof shall have been made in the register aforesaid, in the manner above directed. That all the Attornies of this Court, or persons having suits therein may, at all times, during office hours, have free access to the said register, gratis.

5. That no execution, taken out to levy monies from the chattels of any debtor, shall be made returnable at a period beyond the next ensuing Term of this Court, after which such execution may issue. And on the back of every execution shall be indorsed the number of the case, or record of the cause, on which such writ shall have issued.

6. That no executions shall issue to levy monies from the *real estate* of any debtor, (not especially assenting thereto,) until after a return of an execution to levy the amount of such judgment from the *personal estate* of the debtor.

7. And whereas inconvenience and hardship may arise to creditors, by a delay for a day in Term to return a writ of *Fi. fa.* to levy monies from the

chattels aforesaid, and whereon no chattels have been attached, or such only as may in part satisfy the plaintiff's debt. It is permitted that such writ of *Fi. fa.* may be returned in vacation, after due diligence in the execution thereof, to be certified by the returning officer, and whereupon an execution may issue to levy from the debtor's real estate.

8. Whereas doubts have arisen on the right of a judgment creditor, who may have caused his debtor to be arrested, according to law, and may lie in prison, under such arrest, to obtain a writ of *Capias ad satisfaciendum*, whereby the debtor may be charged in execution, for the payment of a judgment obtained.

It is ordered, that, upon every final judgment obtained against any person, who may be in prison under process of *Capias* or attachment, or a surrender of the debtor, who may have been attached or held to bail, the judgment creditor may, after fifteen days from the date of such judgment, obtain from the Prothonotary of this Court, a writ of *Ca. Sa.* against the debtor, for the amount of the judgment aforesaid, unless the debtor, defendant, shall have lodged good and sufficient security in the Prothonotary's Office of this Court, to prosecute an appeal from the said judgment; in which case no Writ of *Ca. Sa.* shall issue. And every person who may lie in Gaol under a writ of *Capias ad respondendum*, or be committed after a surrender by the debtor or his bail, and not be charged in execution upon a writ of *Ca. Sa.* within two days after the period at which the plaintiff might legally have had and obtained such a writ, to charge the debtor, every such debtor, held and detained in Gaol, under a writ of *Capias ad respondendum*, or surrender as aforesaid, shall and may be discharged by the order of this Court, or of any one of the Judges thereof, in vacation.

SECTION XXXVI.

*Of the Sheriff's Office, Upon the receipt and return
of writs, And of levies and sales,
under Execution.*

1. IT is ordered, That the Sheriff of this district do return all Writs, Executions and Procefs to him directed, at the return day expressed in such Writ, Procefs, or Execution, respectively, which regularly may be done without any special rule, or order for that purpose.

2. That whensoever the Sheriff of this district shall, by virtue of any Writ of Execution, or Executions, sell any Chattels, or Real Estate of one and the same debtor, he shall, by his return, distinguish, how much he has levied and made from the sale of chattles, or personal property, and how much from the sale of Lands and Tenements, or Real estate ; and if Real Estate, to whom sold, and the conditions on which the same may be sold. And shall also state, by his said return, an account of the particular disbursements, as well upon the sale of the personal, as upon the Real Estate, and therein specify his several charges for fees allowed by law.

3. And whensoever the Sheriff may, in virtue of any Execution, or Executions, attach and seize various and different Real Estates, of one and the same person, in order to levy and satisfy one, or more judgments, he shall expose the same to sale separately, and, when sold, shall, in so far as may be, keep separate and distinct the several disbursements, fees, and charges, about the sales thereof, in the manner before directed.

And, in the sale of chattles and personal property, he shall in the same manner expose the same to sale, by so many lots and parcels, as may be most likely to produce the best price for the chattles so to be sold.

4. That the Sheriff do keep a book of register of all writs of execution that may come to his hands for levy and execution. That therein shall be specified the description of each writ of execution, the names of the parties, the number of the case, the name of the Attorney, or person by whom such writ shall have been sued out, the amount to be levied, under and by virtue of the said writ, the date of the judgment, whereon such execution issued, the return day thereof, and the day on which the same shall have been returned into the Prothonotary's office, the amount levied, the means by which the same had been levied, the day of sale and, if real estates, to whom sold, and as well the amount of disbursements as of his fees, upon the levy aforesaid.

And upon the sales of all real estates, where any oppositions may be made, a separate book of register shall be kept wherein, in addition to the above entries, he do insert on the said register the nature of the opposition made, and the day of receiving the same, the name of the Attorney, or person by whom such opposition may be made, and, if withdrawn, the time of withdrawing the same. That he do indorse on all oppositions, filed in his office, the period of receiving the same.

And on the return of every execution, whereon there may be oppositions filed, he do make a schedule thereof in their regular order, according to the time, and in respect to other oppositions in the same case, and if any opposition hath been with-

drawn, he do state the same; and alphabetically mark and state the several oppositions in his return aforesaid.

5. That all the Attornies and suitors in this Court interested in the levy of monies, under writs of execution, may have at office hours, free access *gratis*, to examine the register of the Sheriff above directed; and more especially to examine all the several oppositions to the levy of any monies on sales of chattels or real estate.

6. That to each of the said Registers be annexed, at the end thereof, an alphabetical index or reference to the several causes and entries therein made.

7. And that the Sheriff do, on the first day of January, every year, return into the Prothonotary's office, a correct copy by him signed, of the book of Registers of executions above directed.

SECTION XXXVII.

Of Oppositions to the Sale of Effects and Estate, seized by Execution, or to the Distribution of the Proceeds of such Sales.

WHEREAS it is necessary to provide, in so far as may be, such rules and orders as may direct a regular and speedy course of discussing and adjudging upon all oppositions that may be made to the sale

of personal or real estate, seized and attached upon writs of execution; And to the end of preventing the delays, expence, and injustice which creditors may sustain, through the means of illegal, vexatious and groundless oppositions, made to frustrate the payment of just debts:— It is therefore ordered,

THAT all oppositions which may be made to the levy and sale of any personal or real estate, which may be attached or seized upon any execution issued out of this Court, and whereby any party, so opposing, may claim a right, either to have any such seizure declared null and void, or a right of charge or incumbrance of what nature soever upon the same, shall succinctly state, in such his opposition, all and every ground or cause thereof, and to which he may pretend to have right of what nature soever. And the said opposition shall contain a clear description and election of the opposant's Domicile.

And where the seizure may be of any real estate, and the opposition be made.

A fin d'annuller, or

A fin de distraire, or

A fin de charge—the same shall be made before the sale of the realties, or where the opposition may be against the sale of any chattels, the same shall be made before the sale of any such personal estate.

And where the opposition may be *à fin de conserver*, whether upon the proceeds of a real or personal estate, ~~the same shall be made either before,~~ or within twenty-four hours after, the return of the writ of execution, under which said lands or chattels may be sold, and not otherwise.

And no opposition shall be preferred, or admitted to be made, by the same person, or others in his behalf, for any rights or claims which he may pretend to have, touching any seizure, as aforesaid, and that could have been claimed or made at the period of preferring the original or first opposition, in the manner above directed.

2. That every person, who may prefer and make any opposition as aforesaid, shall file with the Prothonotary, his declaration or state of the several claims, or *moyens d'opposition* to be made, after due notice given to file the same, and in which shall be clearly stated all and every his cause or *moyens d'opposition* of what nature soever, and whereon a full answer or plea may be made and issue taken, and that no other or further opposition, claim or *moyens* shall be made by or received from the same person, to the same levy and seizure.

3. That every person, who may file any such cause or *moyens d'opposition*, shall, at the same time, make an election of domicile in this city, if the first election made, as aforesaid, be not in this city, and failing so to do, the office of the Prothonotary shall be taken as his domicile or place of abode, to every legal intent that may be requisite, touching the proceedings of the Court to be notified to the person so opposing.

4. That every person, who may file any such declaration, or claim, or *moyens d'opposition*, shall, at the same time, file in the same office the several deeds, documents and writings, or certified copies thereof, which may be in his power or possession, and whereon the several rights, claimed by the said *moyens*, are to be maintained, together with a certified list of the same.

5. That the person, at whose instance any seizure may have been had, or others interested in any opposition to the same, shall take communication of the said declaration or *moyens*, and the several documents so filed as aforesaid, and make answer thereto, within three days from the day of filing the same, and under the like rules that a defendant is bound to plead to the merits of a cause.

6. And it is further ordered, That all and every the rules of this Court, respecting original suits and the course of proceeding therein, in so far as the same may be applicable to claims preferred by opposition, shall be strictly adhered to, as the rules for proceeding thereupon.

7. To the end, that all persons interested in the levy and returns of executions to be issued out of this Court, may be informed when such returns are made—It is ordered, that the Prothonotary of this Court do, from time to time, on every day when any execution may be returned by the Sheriff, and filed of record, fix and place to public view, in his the said Prothonotary's office, a list of such returns, expressing the names of the parties, plaintiff and defendant. That the rules of this Court respecting oppositions to be made after the return of executions, shall be considered to apply to the period that the said list was so affixed by the Prothonotary, in the office aforesaid.

SECTION XXXVIII.

Of Proceedings in respect to Appeals.

1. THAT on the allowance of every writ of appeal, the Prothonotary in making up the record, for a due return to such writ, do mark numerical-

ly and progressively, in the regular course of proceedings had in such cause, every paper filed of record in such cause, beginning with the writ of summons, and continuing the same mark at the head of each separate paper until the whole be concluded. That he do then make out an Index, or list of reference to the whole, to each by number, title, and discription under his signature to be annexed to such record, previous to the return.

That he do preserve and file in his office a copy of such list, or Index of the several papers so to be transmitted with the record.

2. That upon the return of the record, so transmitted in appeal, he do enter on the register of this Court, a copy of the judgment made in appeal, with a reference to the same as making part of the record in such case.

3. That the Prothonotary, do keep a book to be entitled "*Causes and Judgments in Appeal,*" wherein shall be entered the title of the cause, or names of the parties, the No. and Term, at which the suit was prosecuted, the subject of the demand, an abstract of the judgment, and the day it was given, the period of the appeal, and an abstract of the judgment in appeal: To which book shall be annexed an Index of alphabetical reference to the parties and causes so adjudged.