

said Court to confirm, alter, amend or reverse, its former Judgment, as the merits of the case may require.

VIII.—When any such Petition shall be dismissed or Judgment in the matter thereof be given against the Petitioner, the Attorney of the Defendants shall tax, and be entitled to from the Petitioner, the same Costs as are allowed in an Equity Suit between Private Parties, and shall have the like remedy for the recovery thereof; and where Judgment shall be given for the Petitioner, he shall be entitled to tax and recover Costs after the same scale from the Government, in manner provided with respect to Judgments for the payment of Money; Provided, that nothing herein contained shall control the discretion of the Court in giving or withholding Costs according to the ordinary rules of Equity, where the relief sought is of an equitable character.

Provisions as to costs.

Proviso.

IX.—It shall be lawful for either Party in any such Suit to Appeal to the Queen in Council, in the same manner as in ordinary cases, between Party and Party, under the Royal Charter.

Appeal to Queen in Council.

CAP. IX.

An Act to improve and simplify the Practice on the Common Law side of the Supreme and Central Circuit Courts, and to Consolidate the Laws relating to the same.

[Passed April 13, 1864.]

WHEREAS it is expedient to improve and simplify the Practice on the Common Law side of the Supreme and Central Circuit Courts, and to Consolidate the Laws relating to the same :

Preamble.

Be it therefore enacted by the Governor, Legislative Council, and Assembly, in Legislative Session convened, as follows:—

I.—All Personal Actions in the said Courts shall be commenced by Writs either of Summons, Attachment, or Capias, in one or other of the forms contained in the Schedule to this Act, and such Writs shall be issued under the Seal of the Court and be signed by the

PERSONAL ACTIONS commenced by Summons, Attachment or Capias.

Clerk or a Commissioner thereof, and shall bear date on the day of the issuing of the same, and be tested in the name of the Chief Justice, or Senior Judge if there be no Chief Justice of the Court out of which such Writ shall have issued.

Writs to contain
ENDORSEMENTS.

II.—Every such Writ shall contain the Endorsements mentioned in the Schedule, numbers 1 and 2 ; and where the action shall be for a specific debt, such Writ shall also contain an endorsement as in form number 3, of the amount and particulars of such debt, and of the costs claimed thereon, with a notice that on payment of such debt and costs within four days after service of the Writ, proceedings in such action will be stayed ; but the Defendant shall be at liberty upon such payment to have the costs taxed by the proper officer.

CONCURRENT
WRITS may be
issued.

III.—In actions brought in the Supreme Court the Plaintiff shall be at liberty, at any time during six months from the issuing of the original Writ, to issue one or more concurrent Writs into other Districts than that into which such original Writ issued ; but such Writs shall be marked “ Concurrent ” by the Officer of the Court, and shall be in force only during such time as the original Writ shall be in force.

No original
Writ in force
beyond six
months, &c.

IV.—No original Writ shall be in force for a longer period than six months ; but if not completely executed within that time, Alias and Pluries Writs of the like force and duration, marked “ Alias and Pluries ” by the Officer of the Court, may be issued, as may be necessary, and shall be available to prevent the operation of any Statute limiting the commencement of the action, and for all other purposes.

Writs against
CORPORATION to
be served on
Chief Officer.

V.—Writs issued against a Corporation aggregate may be served upon the Chief Officer, Secretary, or Treasurer of such Corporation.

Service to be
personal on
Agent, if De-
fendant absent.

VI.—The service of every such Writ shall be personal on every Defendant within the jurisdiction of the Court, and upon the Partner or recognized Agent, if

any such within the jurisdiction, of any Defendant being or residing out of such jurisdiction ; but it shall be lawful for the Court or a Judge of the Supreme Court to order substituted service upon the Clerk of the Court for any Defendant within the jurisdiction, upon it being made to appear to such Court or Judge that such Writ has come to the knowledge of such Defendant, and that he evades service thereof, and substituted service shall be as valid and effectual as personal service upon such Defendant.

SUBSTITUTED SERVICE.

VII.—In case any Defendant shall reside out of this Colony, having no partner or recognized Agent therein, the Writ may be served upon such Defendant, and the same shall, in addition to all other endorsements required by the previous Sections of this Act, contain the endorsement number 4, in the Schedule annexed, and the time for appearance by the Defendant to such Writ shall be regulated by the distance of the place where the Defendant is residing ; and it shall be lawful for the Court or Judge, upon being satisfied by affidavit that there is a cause of action which arose within the jurisdiction, and that the Writ was personally served upon the Defendant, or that reasonable efforts were made to effect personal service thereof upon the Defendant, and that it came to his knowledge, and either that the Defendant wilfully neglects to appear to such Writ, or that he is living out of the jurisdiction of the said Courts, in order to defeat and delay his creditors, to direct from time to time that the Plaintiff shall be at liberty to proceed in the action in such manner and subject to such conditions as to the Court or Judge may seem fit, having regard to the time allowed for the Defendant to appear being reasonable, and to the other circumstances of the case. Provided always that the Plaintiff shall and he is hereby required to prove the amount of the debt or damages claimed by him in such action, either before a Jury or before one of the Masters of the said Superior Courts in the manner hereinafter provided, according to the nature of the

Service on Defendant residing out of Colony, and having no Agent herein, &c.

case, as such Court or Judge may direct; and the making such proof shall be a condition precedent to his obtaining Judgment.

OMISSIONS of endorsement shall not render Writ void, &c.

VIII.—The omission to insert or endorse on any Writ any matter required by this Act, shall not render the Writ void, but shall be an irregularity for which it may be set aside or amended, on such terms as the Court or Judge of the said Court may think proper.

A Writ for service within jurisdiction may be marked concurrent with one without.

IX.—A Writ for service within the jurisdiction may be issued and marked as a concurrent Writ with one for service out of the jurisdiction, and a Writ for service out of the jurisdiction may be issued and marked as a concurrent Writ with one for service within the jurisdiction.

AFFIDAVITS for the purpose of proceedings against absent Defendants may be sworn before Consul General, &c.

X.—Any Affidavit for the purpose of enabling the Court or Judge to direct proceedings to be taken against a Defendant residing out of the jurisdiction of the said Courts, may be sworn before a Judge of a Superior Court, a Mayor or Chief Magistrate, a Commissioner of Affidavits, or before any Consul General, Consul, Vice-Consul, or Consular Agent for the time being, at any port or place; and every affidavit so sworn by virtue of this Act may be used and shall be admitted in evidence, saving all just exceptions, provided it purport to be signed by such Judge, Mayor, Chief Magistrate, Commissioner, Consul General, Consul, Vice-Consul or Consular Agent, upon proof by Affidavit before some competent authority within the jurisdiction of this Court, of the official character and signature of the person appearing to have signed the same; or by such official character and signature being verified by Certificate purporting to be under the hand and seal of a Consular authority or of a Notary Public; Provided always that if any person shall forge the signature of any such Affidavit or Certificate, or shall use or tender in evidence any such Affidavit or Certificate with a false or counterfeit signature thereto, knowing the same to be false or counterfeit, he shall be

Proviso respecting forged signatures, &c.

guilty of felony, and shall upon conviction be liable to transportation for seven years, or to imprisonment for any term not exceeding three years nor less than one year, with hard labour; and every person who shall be charged with committing any felony under this Act may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed in the District or place in which he shall be apprehended or be in custody; and every accessory before or after the fact to any such offense, may be dealt with, indicted, tried, and, if convicted, sentenced, and his offense may be laid and charged to have been committed in any district or place in which the principal offender may be tried; Provided also that if any person shall wilfully and corruptly make a false Affidavit before such Judge, Mayor, Chief Magistrate, Commissioner, Consul General, Consul, Vice Consul, or Consular Agent, every person so offending shall be deemed and taken to be guilty of perjury, in like manner as if such false Affidavit had been made in this Colony before competent authority, and shall and may be dealt with, indicted, tried, and, if convicted, sentenced, and his offense may be laid, and charged to have been committed in any district or place in which he shall be apprehended or be in custody, as if his offense had been actually committed in that district or place.

Penalty.

Respecting accessories.

Proviso—person making false affidavit.

XI.—In all Actions *ex contractu*, where the amount sought to be recovered shall exceed One Hundred Dollars, and in all Actions *ex delicto*, a Declaration, in such form as shall be by Law prescribed, shall be annexed to the original Writ at the issuing thereof, and true copies of such Declaration shall be annexed at the time of service to the copies of the Writ served upon the Defendant.

DECLARATIONS to be annexed to Writ.

XII.—No original Writ of Capias shall issue out of the said Courts except upon the filing of a sufficient Affidavit to be made by the Plaintiff, or some one on his behalf, before a Judge, Commissioner of Affidavits,

ARREST. No CAPIAS shall issue unless on affidavit, &c.

or a Clerk of the said Courts respectively, or where made out of this Colony, before one or other of the authorities mentioned in the tenth section and verified in the same way, showing the Defendant to be justly and truly indebted to the Plaintiff in a liquidated amount of Fifty Dollars, or upwards, in a legal cause of action to be therein set forth, but it shall be lawful for either Court or for a Judge of the Supreme Court to authorize the issuing of a Writ of Capias, where the debt or damages are unliquidated, upon sufficient cause to be shown in that behalf.

**EXEMPTIONS
FROM ARREST ON
original process.**

XIII.—The following Persons shall be exempt from Arrest on original process, namely, the Judges of the Supreme Court, the Members and Officers of the Legislature while in Session and for ten days before and after such Session, Practising Barristers and Attorneys, except when about to leave this Colony, Jurors, Parties and Witnesses to a suit going to, remaining and returning from Court, and Clergymen during the performance of any religious service, and Females shall be exempt from arrest in both original and final process.

**No second arrest
for same cause.**

XIV.—No person shall be arrested a second time on original process for the same cause of action without the order of a Judge.

**No person ar-
rested to be dis-
charged unless
by termination
of suit or bail.**

XV.—No person regularly arrested on an original Alias or Pluries Writ of Capias shall be discharged from custody, except by the termination of the suit in his favour, or otherwise by operation of Law, until he shall have given Bond with two sufficient Sureties to the Sheriff in double the sum sworn to, conditioned as in the form in the Schedule annexed, or until he shall have deposited with the Sheriff, to abide the order of the Court in the cause, an amount equal to the sum sworn to and a further sum of Sixty Dollars for Costs.

**BAIL above not
necessary.**

XVI.—It shall not be necessary for any Defendant to put in bail above in any suit in which he may have

been arrested, but the bail bond or deposit aforesaid shall be and stand as security to the Plaintiff to abide the final judgment in the cause. **Provided** that it shall be incumbent on every Defendant who shall have given bail as aforesaid within fourteen days thereafter to obtain the Plaintiff's assent in writing, or a Judge's order to be made, upon sufficient proof, after hearing the parties, declaring the sufficiency of such bail, and upon such assent or order being duly made and filed, the liability of the Sheriff with respect to such Bond shall cease. **Provided further** that in default of such assent or order, it shall be lawful for the Sheriff to proceed forthwith upon the Bond for the recovery of the sum sworn to, and such further sum aforesaid, and to hold the same as an indemnity against any claim that may be preferred against him as hereinafter mentioned: **Provided also** that it shall be lawful for such bail at any time before a *Capias ad Satisfaciendum* shall have issued in the cause, or within four days thereafter upon obtaining a Judge's order in that behalf, to be made as of course upon a sufficient Affidavit of the conditions here imposed having been complied with, and upon payment of the costs, (if any,) incurred by the Sheriff in any action aforesaid, to render the Defendant to the custody of the Sheriff in discharge of their Bond, and where such render shall be before execution as aforesaid, such Defendant shall not again be discharged but by operation of Law until he shall have given sufficient security, to the satisfaction of a Judge, to pay the amount of any judgment that may be, or may have been, obtained against him, or to render himself to the Sheriff within four days after a *Capias ad Satisfaciendum* shall have issued against him thereon.

XVII.—Upon a breach occurring in the condition of such Bond after judgment, the same shall be assigned by the Sheriff to the Plaintiff, who may sue thereon in his own name; and if by reason of the insufficiency of such Bond, or of the Sureties therein,

Bond to be assigned to Plaintiff in case of breach.

where no such order or assent aforesaid has been had, the Plaintiff shall fail to recover the amount of the sum sworn to, and such further sum for costs as aforesaid, he may recover any deficiency in such amounts in an action on the case against the Sheriff.

ARREST.

One or more defendants in a *ca' res.* may be arrested.

XVIII.—It shall be competent to the Plaintiff in any action commenced by *Capias* to direct the Sheriff to arrest only one or more of the Defendants, and to serve the other Defendants with copies of the Writ or Declaration, and a copy of such Writ and Declaration shall always be served upon a Defendant arrested, at the time of the arrest being made.

ATTACHMENT.

No ATTACHMENT for less than £5 on affidavit, &c.

XIX.—No original Writ of Attachment shall issue out of the said Courts except upon the filing of a sufficient affidavit to be made by the Plaintiff or some one on his behalf, before a Judge, Commissioner of Affidavits, or a Clerk of the said Courts respectively, or, where made out of this Colony, before some one or other of the Authorities mentioned in the Tenth Section, and verified in the same way, shewing the Defendant to be justly and truly indebted to the Plaintiff in a liquidated amount of Twenty Dollars or upwards, in a legal cause of action to be therein set forth; but it shall be lawful for either Court, or a Judge of the Supreme Court, to authorize the issuing of a Writ of Attachment where the debt or damages are unliquidated, upon sufficient cause to be shewn in that behalf.

Property attached to be released only on termination of suit in favour of defendant on bond, &c.

XX.—No property, debts, or effects, regularly attached under original Alias or Pluries Writs of Attachment, shall be released except by the termination of the suit in favour of the Defendant, or otherwise by operation of Law, until the Defendant, or some one on his behalf shall have given Bond with two sufficient Sureties to the Sheriff in double the sum sworn to, conditioned as in the form in the Schedule annexed, or until he shall have deposited with the Sheriff, to abide the order of the Court in the cause,

an amount equal to the sum sworn to, and such amount as is provided in cases of Attachment by the Twenty-eighth Section of this Act for Costs.

XXI.—Such Bail-bond shall stand and be security to the Plaintiff, to abide the Final Judgment in the cause, and upon a breach occurring in the condition thereof, the same shall be assigned by the Sheriff to the Plaintiff, who may sue thereon in his own name; and if by reason of the insufficiency of such Bond, or of the Sureties therein, the Plaintiff shall fail to recover the amount of the sum sworn to and such further sum for costs as aforesaid, he may recover any deficiency in such amounts in an action on the case against the Sheriff.

Bail-bond to abide final judgment.

XXII.—When the goods or effects attached under any process of either of the said Courts shall be of a perishable nature, or be such as either from the expense of holding the same, or from other circumstances may considerably deteriorate in value before Judgment can be obtained in the action or suit in which [such goods or effects may have been attached, and good and sufficient Bail to satisfy the Judgment, Order, or Decree of the said Court, shall not have been put in by the Defendant or Defendants, it shall and may be lawful for such Court respectively, or for any Judge of the Supreme Court in vacation, on the application of any Plaintiff or Defendant, to order the immediate appraisal and sale of such goods or effects, or of a sufficiency thereof to satisfy the debt and costs, and to direct the proceeds thereof to be paid into Court, to abide the further Order, Judgment, or Decree of the Court in such action or suit.

Perishable goods may be sold, &c.

XXIII.—So often as any goods, debts, or effects of any Defendant or Defendants in any action or suit now depending or hereafter to be brought in either of the said Courts, have been or shall be attached in the hands of any third person, such goods, debts, or effects, shall be paid into Court or delivered to the

Moneys or goods in hands of third persons attached, to be paid into Court or delivered to the Sheriff.

Sheriff, as the case may be, to abide the Order, Judgment, or Decree of the said Court; and for the purpose of ascertaining the nature and amount of such goods, debts, and effects, it shall be lawful for such Courts respectively, or for a Judge of the Supreme Court in vacation, to summon such third person, or in the event of his or her absence from the Colony, his or her Agent, to appear before such Court or Judge respectively to be examined upon oath, and thereupon to make order for the payment into Court, or delivery to the Sheriff, as the case may be, of such goods, debts or effects, and for the realization by the Master, by action or suit (if necessary), in his own name or otherwise, of such effects as may consist of Choses in action, and to enforce such order by process of contempt; Provided always that no such attachment as aforesaid shall be deemed to operate on or to affect any Contract executory, upon which at any day after the service of the Warrant of Attachment any sum of money shall or may accrue or become payable to any Defendant for or on account of any work, labour, or service to be executed, performed, or completed by such Defendant at any time after the service of such Warrant of Attachment upon the Bailee; nor upon any moneys, goods, debts, or effects, in and over which such Defendant shall not have, at the time of the service of any such Warrant of Attachment, a then present interest and disposing power.

Proviso as to executing contract and accruing interest.

Debts payable in goods. Plaintiff to specify goods in certain cases.

XXIV.—When any debt which has been or shall be so attached as aforesaid shall be payable in goods to be specified by the Defendant or Defendants, to whom such debt shall be owing, and such Defendant or Defendants shall neglect or refuse to specify the same previously to, or at the time of such examination as aforesaid, such goods to the amount of the debt so attached shall be delivered to the Sheriff as the Plaintiff or Plaintiffs in any such action or suit shall direct and prescribe.

XXV.—In all cases where any lands or tenements, or the interest of any person or persons in any lands or tenements, shall be attached by virtue of any process of the said Courts respectively, the Sheriff, his Deputy or Bailiff, shall serve notice of such attachment on the tenants, occupiers, or owners of such lands or tenements; and thereafter the rents, profits, or annuities to which such person or persons may be entitled from such lands or tenements, whether then in arrear or thereafter to grow due until final Judgment, or so much thereof as shall be sufficient to satisfy the Plaintiff's demand with reasonable costs, shall, (after deducting thereout ground rents if any) be paid to the Sheriff, to abide the Order, Judgment, or Decree of the said Court; and the like proceedings may be had for ascertaining the nature and amount of such rents, profits, or annuities, and for enforcing payment of the same according to the orders of the Court, as are hereinbefore prescribed with respect to goods, debts, or effects, attached in the hands of a third person.

Where lands, &c., attached, notice to be served on tenants.

And like proceedings as in cases of debts attached.

XXVI.—It shall and may be lawful for any party or parties having obtained Judgment against a Defendant or Defendants, to issue a Writ of "*Fieri Facias*," thereupon, and to cause Warrants under such Writs of "*Fieri Facias*" to be placed in the hands of any party or parties having the custody or control of any moneys, goods, debts, or effects of the said Defendant or Defendants; and the like proceedings shall be had to examine persons holding the said moneys, goods, debts, or effects, and to cause the said money to be paid into Court, or the said goods to be sold, and where such effects shall consist of Choses in action, to cause the same to be realized, and the proceeds paid into Court, under such Warrants as are had under Warrants laid in virtue of mesne process.

Moneys may be levied under writ of execution.

XXVII.—Property, debts, and effects, attached under original or final process, shall abide the Judg-

Property attached to abide final Judgment.

ment, Order or Decree of the Court, in the cause in which they have been attached.

Sheriff may attach for costs, &c.

XXVIII.—It shall be lawful for the Sheriff, in all cases of attachment by original process, in addition to the amount sworn to, to attach for Costs, as follows : where the sum sworn to do not exceed Fifty Dollars, the sum of Fifteen Dollars; where it exceeds Fifty Dollars and does not exceed Two Hundred Dollars, the sum of Twenty-five Dollars; where it exceeds Two Hundred Dollars, and does not exceed Four Hundred Dollars, the sum of Thirty Dollars; and where it exceeds Four Hundred Dollars, the sum of Fifty Dollars; and in cases of attachment under execution, in addition to the amount of the Judgment, to attach for the costs of execution.

Actions commenced by Capias.—Plaintiff bound to proceed to trial first term.

XXIX.—In all actions commenced by Capias or Attachment, it shall be incumbent on the Plaintiff to proceed to trial, in the term first after the issuing of the Writ, and to Judgment and execution within ten days after trial, unless prevented by the action of the Defendant; and in default of his so doing, it shall be lawful for the Court or a Judge of the Supreme Court, as the case may require, to cause the Defendant or the Property attached to be released, or the Bail-bond to be cancelled; Provided that the Court or a Judge may upon sufficient cause extend the time for either proceeding.

Proviso.

In case of non-appearance, where defendant resides out of Colony, Plaintiff may sign Judgment.

XXX.—In case of the Defendant not appearing and pleading, where the Writ contains the special endorsement, number 3, it shall be lawful for the Plaintiff, on filing an affidavit of service of the Writ and Declaration, and of the order of the Court or Judge under the provisions of this Act, where the Defendant resides out of the Colony, at once to sign final Judgment in the form prescribed in the Schedule number 5, for any sum not exceeding the amount so endorsed, and to issue execution thereon; Provided that the Court or a Judge may, within a

Proviso.

reasonable time after Judgment, let in the Defendant to defend, upon satisfactory affidavits accounting for non-appearance, and disclosing a defence upon the merits.

XXXI.—In case of such Defendant not appearing and pleading where the Writ has not been endorsed in the special form before provided, it shall be lawful for the Plaintiff, on filing an affidavit of service of the Writ and Declaration, and the order of the Court or Judge under the provisions of this Act, where the Defendant resides out of the Colony, to sign interlocutory Judgment by default, and to proceed to final Judgment and execution as follows: First,—No rule to compute shall be necessary, but where it shall appear to the Court, or a Judge, that the amount sought to be recovered is substantially a matter of calculation, such Court or Judge may direct that the amount for which final Judgment is to be signed shall be ascertained by the Clerk or Master of the Court, and the attendance of witnesses and the production of documents before him shall be enforced by subpoena, as in ordinary cases, and the Clerk or Master shall endorse upon the rule referring the matter to him the amount found by him, and file the same in the Clerk's Office, and such and the like proceedings may be thereafter had as to taxation of costs, signing Judgment, and otherwise, as in ordinary cases. Second,—In all other cases the amount sought to be recovered shall be assessed before the Court by the Jury in attendance for the trial of issues, or in summary cases by the Court or a Judge thereof.

Proceeding in case of non-appearance where the Writ has not been endorsed in special form.

XXXII.—The Defendant may appear and plead at any time before Judgment signed against him. Every Defendant appearing in person must give an address in St. John's, at which it shall be sufficient to leave all pleadings and other proceedings for him; and in default whereof his appearance shall be a nullity. The mode of appearance shall be by filing in

Defendant may appear at any time before Judgment.—Defendant appearing in person to give address.

XXXV.—It shall and may be lawful for the Court or a Judge, at any time before the trial of any cause, to order that any person or persons, not joined as Plaintiff or Plaintiffs in such cause, shall be so joined; or that any person or persons originally joined as Plaintiff or Plaintiffs shall be struck out from such cause, if it shall appear to such Court or Judge that injustice will not be done by such amendment, and that the person or persons to be added as aforesaid consent, either in person or by his Attorney, or by writing, under his, her, or their hands, to be so joined, or that the person or persons to be struck out as aforesaid, were originally introduced without his, her, or their consent, or that such person or persons consent in manner aforesaid to be so struck out; and such amendment shall be made upon such terms, as to the amendment of the pleadings (if any) postponement of the trial, and otherwise, as the Court or Judge by whom such amendment is made shall think proper: and when any such amendment shall have been made, the liability of any person or persons who shall have been added as co-plaintiff or co-plaintiffs, shall, subject to any terms imposed as aforesaid, be the same as if such person or persons had been originally in such cause.

Joinder of parties.

XXXVI.—In case it shall appear at the trial of any action that there has been a mis-joinder of Plaintiffs, or that some person or persons not joined as Plaintiff or Plaintiffs ought to have been so joined, and the Defendant shall not at or before the time of pleading have given notice in writing that he objects to such non-joinder, specifying therein the name or names of such person or persons, such mis-joinder or non-joinder may be amended, as a variance at the trial, by any Court of Record or Judge holding plea in civil actions, in like manner as to the mode of amendment and the proceedings consequent thereon, or as near thereto as the circumstances of the case will admit, as in case of amendments of variances under an Act of the Imperial Parliament passed in the Session of Parliament held in the

Non-joinder and mis-joinder of Plaintiffs may be amended.

third and fourth years of the Reign of His late Majesty King William the Fourth, entitled "An Act for the further amendment of the Law, and the better advancement of Justice," if it shall appear to such Court or Judge or other presiding Officer that such mis joinder or non-joinder was not for the purpose of obtaining an undue advantage, and that injustice will not be done by such amendment, and that the person or persons to be added as aforesaid consent, either in person, or by his or their Attorney, or by writing under his, her, or their hands, to be so joined, or that the person or persons to be struck out, as aforesaid, were originally introduced without his, her, or their consent, or that such person or persons consent in manner aforesaid to be so struck out; and such amendment shall be made upon such terms as the Court or Judge, or other Presiding Officer by whom such amendment is made, shall think proper; and when any such amendment shall have been made, the liability of any person or persons who shall have been added as co-plaintiff or co-plaintiffs, shall, subject to any terms imposed as aforesaid, be the same as if such person or persons had been originally joined in such action.

Upon notice of plea of non-joinder of plaintiffs proceedings may be amended

XXXVII.—In case such notice be given, or any plea in abatement of non-joinder of a person or persons as co-plaintiff or co-plaintiffs, (in cases where such plea in abatement may be pleaded) be pleaded by the Defendant, the Plaintiff shall be at liberty, without any order, to amend the Writ and other proceedings before plea by adding the name or names of the person or persons named in such notice or plea in abatement, and to proceed in the action without any further appearance, on payment of the costs of and occasioned by such amendment only; and in such case the Defendant shall be at liberty to plead *de novo*.

Mis-joinder of defendants may be amended before trial.

XXXVIII.—It shall and may be lawful for the Court or a Judge, in case of the joinder of too many Defendants in any action on contract, at any time before

the trial of such cause, to order that the name or names of one or more of such Defendants be struck out, if it shall appear to such Court or Judge that injustice will not be done by such amendment, and the amendment shall be made upon such terms as the Court or Judge by whom such amendment is made, shall think proper; and in case it shall appear at the trial of any action on contract that there has been a mis-joinder of Defendants, such mis-joinder may be amended as a variance at the trial, in like manner as the mis-joinder of Plaintiffs has been hereinbefore directed to be amended, and upon such terms as the Court or Judge, or other presiding Officer by whom such amendment is made, shall think proper.

XXXIX.—In any action or contract where the non-joinder of any person or persons as co-defendant or co-defendants has been pleaded in abatement, the Plaintiff shall be at liberty without any order to amend the Writ and declaration by adding the name or names of the person or persons named in such plea in abatement as joint-contractors, and to serve the amended Writ upon the person or persons so named in such plea in abatement, and to proceed against the original Defendant or Defendants, and the person or persons so named in such plea in abatement; Provided that the date of such amendment shall, as between the person or persons so named in such plea in abatement and the Plaintiff, be considered for all purposes as the commencement of the action.

Upon plea in abatement for non-joinder of defendants proceeding may be amended.

XL.—In all cases after such plea in abatement and amendment, if it shall appear upon the trial of the action that the person or persons so named in such plea in abatement was or were jointly liable with the original Defendant or Defendants, the original Defendant or Defendants shall be entitled as against the Plaintiff to the costs of such plea in abatement and amendment; but if at such trial it shall appear that the original Defendant or any of the original Defendants is or are

Provision in the case of subsequent proceedings against the persons named in a plea in abatement for non-joinder of defendants.

liable, but that one or more of the persons named in such plea in abatement is or are not liable as a contracting party or parties, the Plaintiff shall nevertheless be entitled to Judgment against the other Defendant or Defendants who shall appear to be liable; and every Defendant who is not so liable shall have Judgment, and shall be entitled to his costs as against the Plaintiff who shall be allowed the same, together with the costs of the plea in abatement and amendment, as costs in the cause against the original Defendant or Defendants who shall have so pleaded in abatement the non-joinder of such person; Provided that any such Defendant who shall have so pleaded in abatement shall be at liberty on the trial to adduce evidence of the liability of the Defendants named by him in such plea in abatement; Provided, also, that no plea in abatement for non-joinder of a Defendant shall be good unless it state that such Defendant resides at a place shown by the said plea to be within the jurisdiction of the Court, and unless it be accompanied by an affidavit of verification.

Proviso.

Joinder of claims by husband and wife with claims in right of husband.

XLI.—In any action brought by a man and his wife for an injury done to the wife, in respect of which she is necessarily joined as co-plaintiff, it shall be lawful for the husband to add thereto claims in his own right, and separate actions brought in respect of such claims may be consolidated, if the Court or Judge shall think fit; Provided that in case of the death of either Plaintiff, such suit, so far only as relates to the causes of action (if any) which do not survive, shall abate.

Proviso.

Different causes of action may be joined.

XLII.—Causes of action, of whatever kind, provided they be by and against the same parties, and in the same right, may be joined in the same suit; but this shall not extend to replevin or ejectment; and where two or more of the causes of action so joined are local and arise in different Districts, the venue may be laid in either of such Districts, but the Court or a Judge shall have power to prevent the trial of different causes of action together, if such trial would be inex-

Exceptions

pedient, and in such case such Court or Judge may order separate records to be made up, and separate trials to be had.

XLIII.—Where the parties to an action are agreed as to any question of law or fact to be decided between them, they may, after Writ issued and before Judgment, by consent, and by order of the Court or a Judge, proceed to the trial and determination of such question of law or fact, without formal pleading; and such question may be stated in the form in the Schedule annexed;—and such question, if of fact, may be tried and determined by the Court or a Jury as may be agreed upon; and if of law, may be heard and determined by the Court; and such hearing, trial, and determination shall be attended by and subject to the like incidents, in all respects, as to judgment, costs, execution, and other proceedings, as if had and conducted upon formal pleadings.

XLIV.—It shall be lawful for the Defendant in all actions except actions for false imprisonment, libel, slander, malicious arrest or prosecution, criminal conversation, or debauching of the Plaintiff's daughter or servant, but including actions on bonds with a penalty conditioned for the payment of a less sum, and actions for detaining the goods of the Plaintiff, and by leave of the Court or a Judge, and upon such terms as they or he may think fit, for one or more of several Defendants to pay into Court a sum of money by way of compensation or amends.

XLV.—When money is paid into Court, such payment shall be pleaded in all cases, as nearly as may be, in the following form, *mutatis mutandis* :—

“The Defendant by _____ his Attorney,
(or in person, &c.) if pleaded to part say, as to
_____ parcel of the money claimed brings into
Court the sum of _____ and says that the
said sum is enough to satisfy the claim of the
Plaintiff in respect of the matter herein plead-
ed to.”

Questions of fact may, after writ issued, by consent and leave of a Judge, be raised without pleadings.

PAYMENT OF MONEY.

Defendant may pay money into Court in certain cases.

Payment to be pleaded.

No rule or Judge's order necessary.

XLVI.—No rule or Judge's order to pay money into Court shall be necessary, except in the case of one or more of several Defendants, but the money shall be paid to the proper Officer of each Court, who shall give a receipt for the amount in the margin of the plea, and the said sum shall be paid out to the Plaintiff or his Attorney.

Plaintiff may reply by accepting, &c.

XLVII —The Plaintiff, after the delivery of a plea of payment of money into Court, shall be at liberty to reply to the same by accepting the sum so paid into Court in full satisfaction and discharge of the cause of action in respect of which it has been paid in, and he shall be at liberty in that case to tax his costs of suit, and in case of non-payment thereof within forty-eight hours, to sign judgment for his costs of suit so taxed; or the Plaintiff may reply that the sum paid into Court is not enough to satisfy the claim of the Plaintiff in respect of the matter to which the plea is pleaded; and, in the event of an issue thereon being found for the Defendant, the Defendant shall be entitled to judgment and his costs of suit.

NOTICE OF TRIAL.
Eight days' notice of trial in continued causes.

XLVIII.—Eight days' notice of trial shall be given in continued causes, and twenty-four hours' notice shall be given in causes tried in the term in which issue is joined.

NOTICE BY PRO-
VISO.

XLIX.—When any cause shall not have been tried in the term in which issue was joined, it shall be competent for the Defendant to give eight days' notice of trial for the ensuing term; and unless such cause shall be tried during that term, it shall be lawful for the Defendant to sign judgment of nonsuit therein against the Plaintiff; Provided that the Court or a Judge, for a sufficient cause, may extend the time for such trial.

PROVISO,

SPECIAL JURY.

L.—A Special Jury may be had for the trial of a cause as of course, within twenty-four hours after the same shall have been entered upon the Docket for a

trial; and within any time after that period by leave of the Court or a Judge, upon cause shewn; and by the like leave, a Special Jury may be had for an assessment of damages.

LI.—A Plaintiff or Defendant having obtained a verdict in a defended cause, and a Plaintiff having obtained a verdict in an undefended cause, shall be entitled to sign judgment and issue execution after four days thereafter; but the Court or a Judge, for a sufficient cause, may shorten or extend the time for such judgment and execution, with or without terms.

Judgment may be signed after four days after verdict unless otherwise ordered.

LII.—Writs of Execution may be issued from the Circuit Courts, upon judgment obtained therein, to the other Judicial Districts of this Colony, directed to the Sheriff of such other Districts, who shall, under the authority of the said Writs, levy under the same as if issued from the Supreme Court.

WRITS OF EXECUTION.

LIII.—A Writ of Execution, if unexecuted, shall continue in force for one year, but *alias* and *pluries* Writs of the like duration may be issued as long as the judgment remains unsatisfied, or such Writ of Execution may at any time before its expiration be renewed by the party issuing it for one year from the date of such renewal; and so on, from time to time, during the continuance of the renewed Writ, by having the same re-sealed with the Seal of the Court out of which the same shall have issued, such re-sealing being marked with the initials of the Chief Clerk or a Commissioner, together with the date of re-sealing; and a Writ of Execution, so renewed, shall have effect and be entitled to priority according to the time of the original delivery thereof.

Execution.

LIV.—Execution may be levied, as well as attachment laid, upon money, choses in action, equitable interests in property, real or personal, and all other property and effects whatsoever; and for the purpose of ascertaining the nature and amount of goods, debts,

Execution.

and effects, upon which Warrants under Executions may be laid in the hands of third persons, and for realizing the same, and also for realizing choses in action, seized under execution, the like proceedings shall be had as are prescribed in cases of attachment under the 23rd Section of this Act.

Execution in six
years without
revival.

LV.—During the lives of the parties to a judgment, or those of them during whose lives execution may at present issue, within a year and a day, without a *scire facias*, and within six years from the recovery of the judgment, execution may issue without a revival of the judgment.

Revivor.

Judgment to be
revived by writ,
or with leave of
Court or Judge,
by suggestion.

LVI.—In cases where it shall become necessary to revive a judgment by reason either of lapse of time, or of a change by death, or otherwise, of the parties entitled or liable to execution, the party alleging himself to be entitled to execution, may either sue out a Writ of Revivor in the form hereinafter mentioned, or apply to the Court or a Judge for leave to enter a suggestion on the Roll, to the effect that it manifestly appears to the Court that such party is entitled to have execution of the judgment, and to issue execution thereupon; such leave to be granted by the Court or a Judge upon a rule to shew cause, or a Summons to be served according to the present practise, or in such other manner as such Court or Judge may direct; and which Rule or Summons may be in the form contained in the Schedule to this Act annexed, or to the like effect.

Proceedings up-
on application
for suggestion
to revive Judg-
ment.

LVII.—Upon such application, in case it manifestly appears that the party making the same is entitled to execution, the Court or Judge shall allow such suggestion as aforesaid to be entered in the form contained in the Schedule to this Act annexed, or to the like effect, and execution to issue thereupon, and shall order whether or not the costs of such application shall be paid to the party making the same; and in case it does not manifestly so appear, the Court or Judge shall

discharge the rule or dismiss the summons, with or without costs; Provided, nevertheless, that in such last mentioned case the party making such application shall be at liberty to proceed by Writ of Revivor or action upon the Judgment.

LVIII.—The Writ of Revivor shall be directed to the party called upon to show cause why execution should not be awarded, and shall bear test on the day of its issuing; and, after reciting the reason why such Writ has become necessary, it shall call upon the party to whom it is directed, to appear, within four days after service thereof, in the Court out of which it issues, to shew cause why the party at whose instance such Writ has been issued should not have execution against the party to whom such Writ is directed; and it shall give notice that, in default of appearance, the party issuing such Writ may proceed to execution; and such Writ may be in the form contained in the Schedule to this Act annexed, or to the like effect, and may be served in any district, and otherwise proceeded upon, whether in term or vacation, in the same manner as a Writ of Summons; and the *venue* in a declaration upon such Writ may be laid in any District, and the pleadings and proceedings thereupon, and the rights of the parties respectively to costs, shall be the same as in an ordinary action.

Writ of revivor and proceedings thereon.

LIX.—All Writs of *scire facias*, issued out of any of the superior Courts, against members of a joint-stock Company or other body, upon a judgment recorded against a public officer or other person sued as representing such Company or body, or against such Company or body itself; by or against a husband to have execution of a judgment for or against a wife; upon a suggestion after judgment for any penal sum pursuant to the Statute passed in the Imperial Parliament in the Session holden in the Eighth and Ninth Years of the Reign of King William the Third, entitled "An Act for the better preventing frivolous and

Writs of *scire facias* in other cases to be tested, directed, and proceeded upon in like manner.

vexatious Suits," shall be tested, directed, and proceeded upon in like manner as Writs of Revivor.

Appearance to writ of revivor.

LX.—Notice in writing to the Plaintiff, his Attorney or Agent, shall be sufficient appearance to Writ of Revivor.

As to issue of writ of revivor upon judgment more than ten years old.

LXI.—A Writ of Revivor to revive a judgment less than ten years old, shall be allowed without any rule or order; if more than ten years old, not without a rule of Court or a Judge's order; nor if more than fifteen years, without a rule to shew cause.

Death of plaintiff or defendant not cause suit to abate.

LXII.—The death of a Plaintiff or Defendant shall not cause the action to abate, but it may be continued as hereinafter mentioned.

Proceedings in case of death of one or more of several plaintiffs or defendants.

LXIII.—If there be two or more Plaintiffs or Defendants, and one or more of them should die, if the cause of such action shall survive to the surviving Plaintiff or Plaintiffs, or against the surviving Defendant or Defendants, the action shall not be thereby abated; but such death being suggested upon the Record, the action shall proceed at the suit of the surviving Plaintiff or Plaintiffs against the surviving Defendant or Defendants.

Proceedings in case of sole plaintiff.

LXIV.—In case of the death of a sole Plaintiff, or sole surviving Plaintiff, the legal representative of such Plaintiff may, by leave of the Court or a Judge, enter a suggestion of the death, and that he is such legal representative, and the action shall thereupon proceed: and if such suggestion be made before trial, the truth of the suggestion shall be tried thereat, together with the title of the deceased Plaintiff; but such judgment shall follow upon the verdict in favour of, or against the person making such suggestion, as if such person were originally the Plaintiff.

Proceedings on death of sole surviving defendant.

LXV.—In case of the death of a sole Defendant or sole surviving Defendant, where the action survives, the Plaintiff may make a suggestion, either in

any of the pleadings if the cause have not arrived at issue, or in a copy of the issue if it have so arrived, of the death; and that a person named therein is the Executor or Administrator of the deceased; and may thereupon serve such Executor or Administrator with a copy of the Writ and suggestion, and with a notice signed by the Plaintiff or his Attorney, requiring such Executor or Administrator to appear within eight days after service of the notice, inclusive of the day of such service, and that in default of his so doing the Plaintiff may sign Judgment against him as such Executor or Administrator; and the same proceedings may be had and taken in case of non-appearance after such notice, as upon a Writ against such Executor or Administrator in respect of the cause for which the action was brought; and in case the Plaintiff shall have declared, but the Defendant shall not have pleaded before the death, the new Defendant shall plead at the same time to the declaration and suggestion; and in case the Defendant shall have pleaded before the death, the new Defendant shall be at liberty to plead to the suggestion, only by way of denial, or such plea as may be appropriate to, and rendered necessary by his character of Executor or Administrator, unless by leave of the Court or a Judge, he should be permitted to plead fresh matter in answer to the declaration; and in case the Defendant shall have pleaded before the death, but the pleadings shall not have arrived at issue, the new Defendant, besides pleading to the suggestion, shall continue the pleadings to issue, in the same manner as the deceased might have done, and the pleadings upon the declaration and the pleadings on the suggestion shall be tried together; and in case the Plaintiff shall recover, he shall be entitled to the like judgment in respect of the debt or sum sought to be recovered, and in respect of the costs prior to the suggestion; and in respect of the costs of the suggestion and subsequent thereto, he shall be entitled to the like Judgment as in action originally commenced against the Executor or Administrator.

Death between
verdict and
judgment.

LXVI.—The death of either party between the verdict and the judgment shall not hereafter be alleged for error, so as such judgment be entered within two terms after such verdict.

Proceedings in
case of death
after interlocu-
tory and before
final judgment.

LXVII.—If the Plaintiff in any action happen to die after an interlocutory judgment, and before a final judgment obtained therein, the said action shall not abate by reason thereof, if such action might be originally prosecuted or maintained by the Executor or Administrator of such Plaintiff; and if the Defendant die after such interlocutory judgment and before final judgment therein obtained, the said action shall not abate, if such action might be originally prosecuted or maintained against the Executor or Administrator of such Defendant and the Plaintiff, or if he be dead after such interlocutory judgment, his Executors or Administrators shall and may have a Writ of Revivor in the form contained in the Schedule to this Act annexed, or to the like effect, against the Defendant if living after such interlocutory judgment, or if he be dead, then against his Executors or Administrators, to shew cause why damages in such action should not be assessed and recovered by him or them; and if such Defendant, his Executors or Administrators shall appear at the return of such Writ, and not shew or allege any matter sufficient to arrest the final judgment, or shall make default, assessment of damages shall be thereupon had, or the amount for which final judgment is to be signed shall be referred to one of the Masters as hereinbefore provided; and thereafter final judgment shall be given for the said Plaintiff, his Executors or Administrators prosecuting such Writ of Revivor, against such Defendant, his Executors or Administrators respectively.

Marriage not to
abate action.

LXVIII.—The marriage of a Woman, Plaintiff or Defendant, shall not cause the action to abate, but the action may notwithstanding be proceeded with to judgment; and such judgment may be executed against the wife alone, or by suggestion, or Writ of Revivor pursuant to this Act, judgment may be obtained against the hus-

band and wife, and execution issue thereon; and in case of a judgment for the wife, execution may be issued thereupon by the authority of the husband without any Writ of Revivor or suggestion; and if in any such action the wife shall sue or defend by Attorney appointed by her when sole, such Attorney shall have authority to continue the action or defense, unless such authority be countermanded by the husband, and the Attorney changed, according to the practice of the Court.

LXIX.—The insolvency of the Plaintiff in any action which he might maintain for the benefit of the creditors, shall not be pleaded in bar to such action, unless his trustees shall decline to continue, and give security for the costs thereof, upon a Judge's order to be obtained for that purpose, within such reasonable time as the Judge may order; but the proceedings may be stayed until such election is made; and in case the trustees neglect or refuse to continue the action and give such security within the time limited by the order, the Defendant may, within eight days after such neglect or refusal, plead the Insolvency.

Insolvency of plaintiff, when not to abate action.

LXX.—Where an action would, but for the provisions of this Act, have abated by reason of the death of either party, and in which the proceedings may be revived and continued under this Act, the Defendant or person against whom the action may be so continued may apply by Summons to compel the Plaintiff to proceed according to the provisions of this Act, within such time as the Judge shall order; and in default of such proceeding the Defendant or other person against whom the action may be so continued as aforesaid, shall be entitled to enter a suggestion of such default, and of the representative character of the person by or against whom the action may be proceeded with, as the case may be, and to have judgment for the costs of the action and suggestion against the Plaintiff or against the person entitled to proceed in

To compel continuance or abandonment of action in case of death.

his room, as the case may be, and in the latter case to be levied of the goods of the Testator or Intestee.

ARREST OF JUDGMENT.

On motion in arrest of judgment, omitted facts may by leave be suggested.

LXXI.—Upon any motion made in arrest of judgment, or to enter an arrest of judgment, or for judgment *non obstante veredicto* by reason of the non-averment of some alleged material fact or facts, or material allegation or other cause, the party whose pleading is alleged or adjudged to be therein defective, may, by leave of the Court, suggest the existence of the omitted fact or facts, or other matter, which, if true, would remedy the alleged defect; and such suggestion may be pleaded to by the opposite party within eight days after notice thereof, or such further time as the Court or a Judge may allow; and the proceedings for trial of any issues joined upon such pleadings shall be the same as in an ordinary action.

Judgment to follow result of suggestion.

LXXII.—If the fact or facts suggested be admitted, or found to be true, the party suggesting shall be entitled to such judgment, as he would be entitled to, if such fact or facts or allegations had been originally stated in such pleading, and proved or admitted on the trial, together with the costs of, and occasioned by, the suggestion and proceedings thereon; but if such fact or facts be found untrue, the opposite party shall be entitled to his costs of, and occasioned by, the suggestion and proceedings thereon, in addition to any other costs to which he may be entitled.

Costs of a abortiv issues.

LXXIII.—Upon an arrest of judgment, or judgment *non obstante veredicto*, the Court shall adjudge to the party against whom such judgment is given the costs occasioned by the trial of any issues of fact arising out of the pleading for defect of which such judgment is given, upon which such party shall have succeeded; and such costs shall be set off against any money or costs adjudged to the opposite party, and execution may issue for the balance, if any.

EJECTMENT.

Ejectment to be brought by writ.

LXXIV.—Instead of the present proceeding by Ejectment, a Writ shall be issued directed to the per-

son in possession by name, and to all persons entitled to defend the possession of the property claimed, which property shall be described in the Writ with reasonable certainty.

LXXV.—The Writ shall state the names of all the persons in whom the title is alleged to be, and command the persons to whom it is directed to appear, within four days after service thereof, in the Court from which it issued, to defend the possession of the property sued for, or such part thereof as they may think fit, and it shall contain a notice that in default of appearance they will be turned out of possession; and the Writ shall bear test of the day on which it is issued, and shall be in force for six months, and shall be in the form contained in the Schedule to this Act annexed, or to the like effect; and the name and abode of the Attorney issuing the same, or, if no Attorney, the name and residence of the party, shall be endorsed thereon, in like manner as hereinbefore enacted, with reference to the endorsements on a Writ of Summons in a personal action.

Form and duration of writ of ejectment.

LXXVI.—The Writ shall be served in the same manner as an Ejectment has heretofore been served, or in such manner as the Court or a Judge shall order; and in case of vacant possession, by posting a copy thereof upon the door of the dwelling house, or other conspicuous part of the property.

Service of writ of ejectment.

LXXVII.—The persons named as Defendants in such Writ, or either of them, shall be allowed to appear within the time appointed.

Appearance of persons named in the writ.

LXXVIII.—Any other person not named in such Writ shall, by leave of the Court or a Judge, be allowed to appear and defend, on filing an affidavit shewing that he is in possession of the land either by himself or his tenant.

Appearance of persons not named.

LXXIX.—Any person appearing to defend as landlord, in respect of property whereof he is in posses-

Appearance and defence by landlord.

sion only by his tenant, shall state in his appearance that he appears as landlord; and such person shall be at liberty to set up any defense which a landlord appearing in an action of ejection has heretofore been allowed to set up, and no other.

Notice to defend for part only.

LXXX.—Any person appearing to such Writ shall be at liberty to limit his defense to a part only of the property mentioned in the Writ, describing that part with reasonable certainty in a notice intituled in the Court and cause, and signed by the party appearing, or his Attorney, such notice to be served at the time of appearance upon the Attorney whose name is endorsed on the Writ, if any, and if none, then to be filed in the Master's Office; and an appearance, without such notice confining the defense to part, shall be deemed an appearance to defend for the whole.

Defence by persons not in possession.

LXXXI.—The Court or a Judge shall have power to strike out or confine appearances and defenses set up by persons not in possession by themselves or their tenants.

Judgment for default of appearance, &c.

LXXXII.—In case no appearance shall be entered into within the time appointed, or if an appearance be entered, but the defense be limited to part only, the Plaintiffs shall be at liberty to sign a judgment that the person whose title is asserted in the Writ, shall recover possession of the land, or of the part thereof to which the defense does not apply; which judgment, if for all, may be in the form contained in the Schedule to this Act annexed, or to the like effect, and if for part, may be in the form contained in the Schedule to this Act annexed, or to the like effect.

Issue how made up.

LXXXIII.—In case an appearance shall be entered, an issue may at once be made up, without any pleadings, by the claimants or their Attorney, setting forth the Writ, and stating the fact of the appearance, with its date, and the notice limiting the defense, if any, of each of the persons appearing, so that it may

appear for what defense is made, and directing the Sheriff to summon a Jury; and such issue, in case defense is made whether for the whole or for part, may be in the form contained in the Schedule to this Act annexed, or to the like effect.

LXXXIV.—By consent of the parties and by leave of a Judge, a special case may be stated according to the practice heretofore used, or herein prescribed.

Special case may be stated.

LXXXV.—The claimants may, if no special case be agreed to, proceed to trial upon the issue, in the same manner as in other actions; and the question at the trial shall, except in cases hereinafter mentioned, be, whether the statement in the Writ of the title of the claimants be true or false, and, if true, then which of the claimants is entitled, and whether to the whole or part, and if to part, then to which part of the property in question; and the entry of the verdict may be made in the form contained in the Schedule to this Act annexed, or to the like effect, with such modifications as may be necessary to meet the facts.

Time of issue.

LXXXVI.—In case the title of the Claimant shall appear to have existed as alleged in the Writ, and at the time of service thereof, but it shall also appear to have expired before the time of the trial, the claimant shall, notwithstanding, be entitled to a verdict according to the fact that he was so entitled at the time of bringing the action and serving the Writ, and to a judgment for his costs of suit.

Verdict when title appears to have expired before trial.

LXXXVII.—If the defendant appear, and the claimant do not appear at the trial, the claimant shall be nonsuited and the defendant shall recover his costs of suit; and if the claimant appear and the defendant do not appear, the claimant shall be entitled to recover judgment as heretofore, with his costs of suit, without any proof of his title; if the Plaintiff

Non-appearance at trial.

be non-suited for any other cause than non-appearance, the Defendant shall have judgment for his costs of suit.

Judgment upon finding for claimant.

LXXXVIII.—Upon a finding for the claimant, judgment may be signed and execution issue for the recovery of possession of the property, or such part thereof as the Jury shall find the claimant entitled to, and for costs as in ordinary cases under this Act; and upon a finding for the defendants, or any of them, judgment may be signed and execution for costs issued for him or them in like manner.

Execution for recovery of possession and costs, may be joint or separate.

LXXXIX.—Upon any judgment in ejectment for recovery of possession and costs, there may be either one Writ or separate Writs of execution for the recovery of possession and for the costs, at the election of the claimant.

Defence by joint tenants, tenants in common or coparceners.

XC.—In case of such an action being brought by some or one of several persons entitled as joint-tenants, tenants in common, or coparceners, any joint-tenant, tenant in common, or coparcener in possession, may, at the time of appearance, give notice in the same form as in the notice of a limited defense, that he or she defends as such, and admits the right of the claimant to an undivided share of the property, and may within the same time file an affidavit, stating, with reasonable certainty, that he or she is such joint-tenant, tenant in common, or coparcener, and the share of such property to which he or she is entitled, and that he or she has not ousted the claimant; and such notice shall be entered in the issue in the same manner as the notice limiting the defense; and upon the trial of such an issue, the additional question of whether an actual ouster has taken place shall be tried.

Trial and judgment against joint-tenants, &c.

XCI.—Upon the trial of such issue as last aforesaid, if it shall be found that the defendant is joint-tenant, tenant in common, or coparcener with the claimant, then the question whether an actual ouster has taken place shall be tried, and unless such actual

ouster shall be proved, the defendant shall be entitled to judgment and costs; but if it shall be found either that the defendant is not such joint-tenant, tenant in common, or coparcener, or that an actual ouster has taken place, then the claimant shall be entitled to judgment for the recovery of possession and costs.

XCII.—The death of the claimant or defendant shall not cause the action to abate, but it may be continued as hereinafter mentioned.

Action not to abate by death.

XCIII.—In case the right of the deceased claimant shall survive to another claimant, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside, if untrue, and the action may proceed at the suit of the surviving claimant; and if such a suggestion shall be made before the trial, then the claimant shall have a verdict and recover judgment as aforesaid, upon its appearing that he was entitled to bring the action either separately or jointly with the deceased claimant.

Proceedings upon death before trial where right survives.

XCIV.—In case of the death before trial of one of several claimants whose right does not survive to another or others of the claimants, where the legal representative of the deceased claimant shall not become a party to the suit in the manner hereinafter mentioned, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the action may proceed at the suit of the surviving claimant for such share of the property as he is entitled to, and costs.

Proceedings upon death before time where right does not survive.

XCV.—In case of a verdict for two or more claimants, if one or more of such claimants die before execution executed, the surviving claimant may, whether the legal right to the property shall survive or not, suggest the death in manner aforesaid, and proceed to judgment and execution for recovery of possession of the entirety of the property and costs; but

Upon death of one of several claimants having obtained a verdict.

nothing herein contained shall affect the right of the legal representative of the deceased claimant, or the liability of the surviving claimant to such legal representative; and the entry and possession of such surviving claimant under such execution shall be considered as an entry and possession on behalf of such legal representative in respect of the share of the property to which he shall be entitled as such representative, and the Court may direct possession to be delivered accordingly.

Proceedings in case of death of claimant, where right does not survive

XCVI.—In case of the death of a sole claimant, or before trial of one of several claimants, whose right does not survive to another or others of the claimants, the legal representative of such claimant may, by leave of the Court or a Judge, enter a suggestion of the death, and that he is such legal representative, and the action shall thereupon proceed; and if such suggestion be made before trial, the truth of the suggestion shall be tried thereat, together with the title of the deceased claimant, and such judgment shall follow upon the verdict in favour of or against the person making such suggestion, as hereinbefore provided with reference to a judgment for or against such claimant; and in case such suggestion in the case of a sole claimant be made after trial and before execution executed by delivery of possession thereupon, and such suggestion be denied by the defendant within eight days after notice thereof, or such further time as the Court or a Judge may allow, then such suggestion shall be tried; and if upon the trial thereof a verdict shall pass for the person making such suggestion, he shall be entitled to such judgment as aforesaid for the recovery of possession, and for the costs of and occasioned by such suggestion; and in case of a verdict for the defendant, such defendant shall be entitled to judgment as aforesaid for costs.

Proceedings upon death of one of several joint defendants.

XCVII.—In case of the death before or after judgment, of one of several defendants in ejectment who defend jointly, a suggestion may be made of the death,

which suggestion shall not be traversable, but only be subject to be set aside, if untrue, and the action may proceed against the surviving defendant to judgment and execution.

XCVIII.—In case of the death of a sole defendant, or of all the defendants in ejectment before trial, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue, and the claimants shall be entitled to judgment for recovery of possession of the property, unless some other person shall appear and defend within the time to be appointed for that purpose by the order of the Court or a Judge to be made upon the application of the claimants; and it shall be lawful for the Court or a Judge, upon such suggestion being made, and upon such application as aforesaid, to order that the claimant shall be at liberty to sign judgment within such time as the Court or Judge may think fit, unless the person then in possession, by himself or his tenant, or the legal representative of the deceased defendant, shall within such time appear and defend the action; and such order may be served in the same manner as the writ; and in case such person shall appear and defend, the same proceedings may be taken against such new defendant as if he had originally appeared and defended the action; and if no appearance be entered and defense made, then the claimant shall be at liberty to sign judgment pursuant to the order.

Upon death of all the defendants in ejectment before trial.

XCIX.—In case of the death of a sole defendant, or of all the defendants in ejectment after verdict, the claimants shall nevertheless be entitled to judgment as if no such death hath taken place, and to proceed by execution for recovery of possession without suggestion or revivor, and to proceed for the recovery of costs, in like manner as upon any other judgment for money against the legal representatives of the deceased defendant or defendants.

Upon death of all defendants in ejectment after verdict.

Upon death of defendant defending separately.

C.—In case of the death before trial of one of several defendants in ejectment, who defends separately for a portion of the property for which the other defendant or defendants do not defend, the same proceedings may be taken as to such portion, as in the case of the death of a sole defendant, or the claimants may proceed against the surviving defendants in respect of the portion of the property for which they defend.

In case of death of one of several defendants.

CI.—In case of the death before trial of one of several defendants in ejectment, who defends separately in respect of property for which surviving defendants also defend, it shall be lawful for the Court or a Judge at any time before the trial to allow the person at the time of the death in possession of the property, or the legal representative of the deceased defendant, to appear and defend on such terms as may appear reasonable and just, upon the application of such person or representative; and if no such application be made or leave granted, the claimant suggesting the death in manner aforesaid may proceed against the surviving defendant or defendants to judgment and execution.

Claimant may discontinue by notice.

CII.—The claimant in ejectment shall be at liberty at any time to discontinue the action as to one or more of the defendants, by giving to the defendant or his attorney a notice headed in the Court and cause, and signed by the claimant or his attorney, stating that he discontinues such action; and thereupon the defendant to whom such notice is given shall be entitled to and may forthwith sign judgment for costs in the form contained in the Schedule to this Act annexed, or to the like effect.

Discontinuance of action by one of several claimants.

CIII.—In case one of several claimants shall be desirous to discontinue, he may apply to the Court or a Judge to have his name struck out of the proceedings, and an order may be made thereupon upon such terms as to the Court or Judge may seem fit, and the action shall thereupon proceed at the suit of the other claimants.

CIV.—In every action of ejectment the plaintiff may be compelled to proceed to trial, or be subjected to judgment of nonsuit by the same means and subject to the same conditions as are prescribed by this Act in ordinary cases.

Trial by proviso.

CV.—One or more defendants in ejectment shall be at liberty to confess judgment in whole or in part for the land claimed in the action, in like manner as judgment may be confessed in other suits.

Defendants may confess judgment.

CVI.—The effect of a judgment in an action of ejectment under this Act shall be the same as that of a judgment in an action of ejectment heretofore used.

Effect of judgment.

CVII.—Every tenant to whom any writ in ejectment shall be delivered, or to whose knowledge it shall come, shall forthwith give notice thereof to his landlord, or his bailiff or receiver, under penalty of forfeiting the value of three years improved or rack rent of the premises demised or holden in the possession of such tenant to the person of whom he holds, to be recovered by action in any Court of Common Law having jurisdiction for the amount.

Tenants to give notice of ejectment to landlord.

CVIII.—In all cases between landlord and tenant, as often as it shall happen that one-half year's rent shall be in arrear, and the landlord or lessor to whom the same is due hath right by law to re-enter for the non-payment thereof, such landlord or lessor shall and may, without any formal demand or re-entry, serve a writ of ejectment for the recovery of the demised premises, or in case the same cannot be legally served, or no tenant be in actual possession of the premises, then such landlord or lessor may affix a copy thereof upon the door of any demised messuage, or in case such action in ejectment shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements and hereditaments comprised in such writ of ejectment, and such affixing shall be deemed legal service thereof, which service or affixing such writ in

Proceedings in ejectment by landlord for non-payment of rent.

ejectment shall stand in the place and stead of a demand and re-entry; and in case of judgment against the defendant for non-appearance, if it shall be made to appear to the Court where the said action is depending, by affidavit, or be proved upon the trial in case the defendant appears, that a half-year's rent was due before the writ was served, and that no sufficient distress was to be found on the demised premises, countervailing the arrears then due, and that the lessor had power to re-enter, then and in every such case the lessor shall recover judgment and execution in the same manner as if the rent in arrear had been legally demanded, and a re-entry made; and in case the lessee or his assignee, or other person claiming or deriving under the said lease, shall permit and suffer judgment to be had and recovered on such trial in ejectment, and execution to be executed thereon without paying the rent and arrears together with full costs, and without proceeding for relief in equity within six months after execution executed, then and in such case the said lessee, his assignee, and all other persons claiming and deriving under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity, such said landlord or lessor shall from thenceforth hold the said demised premises discharged from such lease; and if on such ejectment a verdict shall pass for the defendant, or the claimant shall be non-suited therein, then and in every such case such defendant can recover his costs; Provided that nothing herein contained shall extend to bar the right of any mortgagee of such lease, or any part thereof, who shall not be in possession, so as such mortgagee shall and do within six months after judgment obtained and execution executed, pay all rent in arrear and all costs and damages sustained by such lessor or person entitled to the remainder or reversion as aforesaid, and perform all the covenants and agreements which, on the part and behalf of the first lessee, are or ought to be performed.

Proviso as to mortgagees.

CIX.—In case the said lessee, his assignee, or other

person claiming any right, title, or interest in law or equity, of, in, or to the said lease, shall within the time aforesaid proceed for relief in any Court of Equity, such person shall not have or continue any injunction against the proceedings at law on such ejectment, unless he does or shall, within ten days next after a full and perfect answer shall be made by the claimant in such ejectment, bring into Court and lodge with the proper Officer, such sum and sums of money as the lessor or landlord shall in his answer swear to be due and in arrear over and above all just allowances, and also the costs taxed in the said suit, there to remain till the hearing of the cause, or to be paid out to the lessor or landlord on good security, subject to the decree of the Court; and in case such proceedings for relief in equity shall be taken within the time aforesaid, and after execution is executed, the lessor or landlord shall be accountable for so much and no more as he shall really and *bona fide*, without fraud, deceit, or wilful neglect, make of the demised premises from the time of his entering into the actual possession thereof; and if what shall be so made by the lessor or landlord happen to be less than the rent reserved on the said lease, then the said lessee or his assignee, before he shall be restored to his possession, shall pay such lessor or landlord what the money so by him made fell short of the reserved rent for the time such lessor or landlord held the said lands.

CX.—If the tenant or his assignee do or shall at any time before the trial in such ejectment pay or tender to the lessor or landlord, his executors or administrators, or his or their attorney in that cause, or pay into Court where the same cause is depending all the rent and arrears, together with the costs, then and in such case all further proceedings on the ejectment shall cease and be discontinued; and if such lessee, his executors, administrators, or assigns, shall, upon such proceedings as aforesaid, be relieved in equity, he and they shall have, hold, and enjoy the demised lands ac-

Lessee proceeding in equity not to have injunction and relief without payment of rent and costs.

Tenant paying all rent with costs, proceedings to cease.

ording to the lease thereof made, without any new lease.

Saving of former remedies.

CXI.—Nothing herein contained shall be construed to prejudice or affect any other right of action or remedy which landlords may possess in any of the cases hereinbefore provided for, otherwise than hereinbefore expressly enacted.

In ejectment by mortgagee the mortgagor rendering principal interest and costs in Court shall be deemed full satisfaction, and Court may compel mortgagee to re-convey.

CXII.—Where an action of ejectment shall be brought by any mortgagee, his executors, administrators, or assigns, for the recovery of the possession of any mortgaged lands, tenements, or hereditaments, and no suit shall be then depending for or touching the foreclosing or redeeming of such mortgaged lands, tenements, or hereditaments, if the person having right to redeem such mortgaged lands, tenements, or hereditaments, and who shall appear and become defendant in such action, shall at any time pending such action pay unto such mortgagee, or, in case of his refusal to receive the same, shall bring into Court, where such action shall be depending, all the principal moneys and interest due on such mortgage, and also all such costs as have been expended in any suit at law or in equity upon such mortgage, such moneys for principal, interest and cost, to be ascertained and computed by the Court where such action is or shall be depending, or by the proper Officer by such Court to be appointed for that purpose, the moneys so paid to such mortgagee or brought into such Court shall be deemed and taken to be in full satisfaction and discharge of such mortgage, and the Court shall and may discharge every such mortgagor or defendant of and from the same accordingly ; and shall and may, by rule of the same Court, compel such mortgagee, at the costs and charges of such mortgagor, to assign, surrender, or re-convey such mortgaged lands, tenements, and hereditaments, and such estate and interest as such mortgagee has therein, and deliver up all deeds, evidences and writings in his custody relating to the title of such mortgaged lands,

tenements and hereditaments, unto such mortgagor who shall have paid or brought such moneys into Court, his executors or administrators, or to such other person or persons as he or they shall for that purpose nominate and appoint.

CXIII.—Nothing herein contained shall extend to any case where the person against whom the redemption is or shall be prayed, shall (by writing under his hand or the hand of his Attorney, Agent or Solicitor, to be delivered before the money shall be brought into such Court of Law, to the Attorney or Solicitor for the other side,) insist either that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other and different sums than what appear on the face of the mortgage, or shall be admitted on the other side; or to any case where the right to redemption to the mortgage lands and premises in question in any cause or suit, shall be controverted or questioned by or between different defendants in the same cause or suit; or shall be any prejudice to any subsequent mortgage or any subsequent incumbrance, anything herein contained to the contrary thereof in anywise notwithstanding.

Not to extend to cases where the right of redemption is controverted, or the money due not adjusted;

or to prejudice any subsequent mortgage.

CXIV.—The several Courts and the Judges thereof respectively shall and may exercise over the proceedings the like jurisdiction as heretofore exercised in the action of ejectment, so as to insure a trial of the title, and of actual ouster, when necessary only, and for all other purposes for which such jurisdiction may at present be exercised; and the provisions of all Statutes not inconsistent with the provisions of this Act, and which may be applicable to the altered mode of proceeding, shall remain in force and be applied thereto.

Jurisdiction of Court and Judges.

CXV.—The Sheriffs of the several Districts of this Island, as well as their sworn Bailiffs to be appointed by them at convenient places within their respective districts, and for whom and for whose acts the Sheriffs shall be respectively responsible, shall be and they are

REPLEVIN.
Replevin—Sheriffs and their sworn Bailiffs to be appointed by them to grant replevin.

hereby authorized to make replevies and deliverances of distress in manner hereinafter directed ; and the said Sheriffs shall from time to time respectively notify and publish in the Newfoundland *Royal Gazette* the names and places of residence of all such sworn Bailiffs, who shall have authority to make such replevies and deliverances as aforesaid in the Sheriff's name, and in the same manner as the Sheriff may and ought to do.

Replevin—Sheriff to take bond from parties replevying.

CXVI.—In all cases of distresses for rent and otherwise, the person or persons whose goods shall be distrained, and who shall be desirous of replevying the same or any part thereof, shall enter into a bond with the Sheriff of the district, with one or more sufficient sureties, to the satisfaction of the Sheriff or the Bailiff by whom the said bond shall be taken; which bond shall be in the form set forth in the Schedule to this Act annexed, and the penalty of such bond shall be a sum sufficient to cover the value of the cattle or goods distrained, if taken for any other cause than for rent, and if taken for rent then in a sum double the value of the cattle or goods distrained; and upon the execution of such bond the said Sheriff, or such Bailiff as aforesaid in the name of the Sheriff, shall forthwith issue his warrant to replevy the cattle or goods so distrained as aforesaid, which warrant shall be in the form in the schedule to this Act annexed; and it shall be lawful to execute such warrant at any time before the sale of any such cattle or goods so distrained, as may by law be sold in pursuance of any such distress.

Bond may be assigned by Sheriff and avowant may sue thereon if forfeited.

CXVII.—The Sheriff or Bailiff taking any replevin bond shall, at the request and costs of the avowant or person making cognizance, assign such bond to the avowant or person aforesaid, by endorsing the same and attesting it under his hand and seal, in the presence of two or more credible witnesses, in the form set forth in the schedule to this Act annexed; and if the bond so taken and assigned be forfeited, the avowant or person making cognizance may bring an action, and recover

thereon in his own name, and the Court wherein such action shall be brought may, by a rule of the same Court, give such relief to the parties upon such bond as may be agreeable to justice and reason; and such rule shall have the nature and effect of a defeazance of such bond.

CXVIII.—The party obtaining a replevy of cattle or other goods so to be distrained as aforesaid, shall, on or before the first day of the then next term or sittings of the Court, to be mentioned in such warrant of replevin, or if such Court be sitting, then within four days after the execution of such warrant of replevin, file in Court, and also serve or cause to be served upon the person avowing or making cognizance, or upon his agent or attorney, a declaration in the usual form in such cases, to which declaration the defendant shall enter an appearance, and shall also plead, avow, or make cognizance thereto, without any demand of plea or rule to plead, within the first four days of the term or sittings of the Court aforesaid, or if such declaration be served in term time, then within four days after service of a copy thereof as aforesaid; and the plaintiff shall, to every such plea, avowry or cognizance, plead or demur within two days after service of a copy thereof, without any demand of plea or rule to plead, unless the Court or a Judge thereof shall in any such case otherwise order, and thereupon subject to the provisions hereinbefore contained, such further and other proceedings shall be had as are now used and practised in cases of replevin; Provided that it shall not be necessary in any case to execute a writ of enquiry of damages before the Sheriff, but all such damages shall be assessed in the usual manner before the Court, or a Judge of the Court in which any such action may be pending.

Declaration when and how to be filed and served, and proceedings thereon

No writ of inquiry to be executed—damages to be assessed before the Court.

CXIX.—In all cases of distresses for rent, the person making any such distress shall deliver to the person in possession of the premises, for the rent of which such

Particulars of rent distrained for, to be furnished.

distress shall be made, or in case there shall not be any person found in possession, shall affix upon some conspicuous part of such premises a particular in writing of the rent demanded, specifying the amount thereof, the time or times when the same accrued, and the person by whom or by whose authority such distress is made.

Plaintiff in replevin may pay money into Court.

CXX.—The Plaintiff in replevin may, in answer to an avowry, pay money into Court in like manner and subject to the like conditions as to costs and otherwise as upon a payment into Court by a defendant in other actions, and such payment shall not, nor shall any acceptance thereof work a forfeiture of the Replevin bond.

Act to extend to all cases of replevy.

CXXI.—This Act shall extend to all cases in which replevin will lie.

ARBITRATION.
Power of Court—Judge to direct arbitration before trial.

CXXII.—If it be made appear, at any time after the issuing of the Writ, to the satisfaction of the Court or a Judge, upon the application of either party, that the matter in dispute consists wholly or in part of matters of mere account which cannot conveniently be tried in the ordinary way, it shall be lawful for such Court or Judge, upon such application, if they or he think fit, to decide such matter in a summary manner, or to order that such matter either wholly or in part be referred to one or more arbitrators appointed by the parties, or, if the parties cannot agree in the choice of arbitrators, to an Officer of the Court, or some other person or persons, upon such terms, as to costs and otherwise, as such Court or Judge shall think reasonable; and the decision or order of such Court or Judge, or the award or certificate of such referee or referees, shall be enforceable by the same process as the finding of a Jury upon the matter referred.

Special case may be stated and question of fact tried.

CXXIII.—If it shall appear to the Court or Judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law fit to be decided by the Court, or upon a question of fact fit to be decided by a Jury, or by a Judge

upon the consent of both parties hereinbefore provided, it shall be lawful for such Court or Judge to direct a case to be stated, or an issue or issues to be tried; and the decision of the Court upon such case, and the finding of the Jury or Judge upon such issue or issues, shall be taken and acted upon by the arbitrator or officer as conclusive.

CXXIV.—It shall be lawful for the arbitrator or officer, upon any compulsory reference under this Act, or upon any reference by consent of parties, where the submission is or may be made a rule or order of either of the said Courts, if he shall think fit, and if it be not provided to the contrary, to state his award as to the whole or any part thereof, in the form of a special case, for the opinion of the Court; and when an action is referred, Judgment, if so ordered, may be entered according to the opinion of the Court.

Arbitrator may state special case

CXXV.—If upon the trial of any issue of fact by a Judge under this Act, it shall appear to the Judge that the questions arising thereon involve matter of account which cannot conveniently be tried before him, it shall be lawful for him, at his discretion, to order that such matter of account be referred to an arbitrator or arbitrators appointed by the parties, or in the event of their disagreement as aforesaid, to an Officer of the Court, or some other person or persons, upon such terms as to costs and otherwise as such Judge shall think reasonable, and the award or certificate of such referee shall have the same effect as hereinbefore provided as to the award or certificate of a referee before trial, and it shall be competent for the Judges to proceed to try and dispose of any other matter in question not referred in like manner as if no reference had been made.

Power of Judge to direct arbitration at time of trial when issues of fact left to his decision.

CXXVI.—The proceedings upon any such arbitration as aforesaid shall, except otherwise directed hereby, or by the submission or document authorising the reference, be conducted in like manner and subject to the same rules and enactments, as to the power of the arbitrator

Proceedings before and power of arbitrator.

and of the Court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, and otherwise as upon a reference made by consent under a rule of Court or Judge's order.

Power to send
back to arbitra-
tor.

CXXVII.—In any case where reference shall be made to arbitration as aforesaid, the Court or a Judge shall have power at any time, and from time to time, to remit the matters referred, or any or either of them, to re-consideration and re-determination of the said arbitrator, upon such terms as to costs and otherwise as to the said Court or Judge may seem proper.

Application to
set aside award.

CXXVIII.—All applications to set aside any award made on a compulsory reference under this Act, shall and may be made within seven days after publication of the award to the parties, whether made in vacation or term; and if no such application be made, or if no rule be granted thereon, or if any rule granted thereon be afterwards discharged, such award shall be final between the parties.

If action com-
menced by one
party after all
have agreed to
arbitration,
Court or Judge
may stay pro-
ceeding.

CXXIX.—Whenever the parties to any deed or instrument in writing to be hereafter made or executed, or any of them, shall agree that any then existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so agreeing, or any person or persons claiming through or under him or them, shall nevertheless commence an action at law or suit in equity against the other party or parties, or any of them, or against any person claiming through or under him or them, or any of them, it shall be lawful for the Court in which such action or suit is brought, or a Judge thereof, on application by the defendant or defendants, or any of them, before plea or answer, upon being satisfied that no sufficient reason exists why such matters cannot be or ought not to be referred to arbitration according to such agreement as aforesaid, and that the defendant was at the time of bringing such action or suit, and still is ready and

willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, to make a rule or order staying all proceedings in such action or suit, on such terms as to costs and otherwise as to directing a reference as hereinbefore provided, as to such Court or Judge may seem fit; Provided always that any rule or order may at any time afterwards be discharged or varied as justice may require.

CXXX.—If in any case of arbitration the document authorizing the reference, provide that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator; or if any appointed arbitrator refuse to act, or become incapable of acting, or die, and the terms of such document do not show that it was intended that such vacancy should not be supplied, and the parties do not concur in appointing a new one; or if where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, such parties or arbitrators do not appoint an umpire or third arbitrator, or if any appointed umpire or arbitrator refuse to act or become incapable of acting, or die, and the terms of the document authorizing the reference do not show that it was intended that such vacancy should not be supplied, and the parties or arbitrators respectively do not appoint a new one, then and in every such instance any party may serve the remaining parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator, respectively; and if within seven clear days after such notice shall have been served, no arbitrator, umpire, or third arbitrator, be appointed, it shall be lawful for a Judge of either of the said Courts, upon summons to be taken out by the party having served such notice as aforesaid, to appoint an arbitrator, umpire or third arbitrator, as the case may be; and such arbitrator, umpire, or third arbitrator respectively, shall have the like power to act in the

On failure of parties or arbitrators, Judge may appoint single arbitrator or umpire.

reference and make an award as if he had been appointed by consent of all parties.

When reference is to two arbitrators, and one party fail to appoint, other party may appoint arbitrator to act alone.

CXXXI.—When the reference is or is intended to be to two arbitrators, one appointed by each party, it shall be lawful for either party, in case of the death, refusal to act, or incapacity of any arbitrator appointed by him, to substitute a new arbitrator, unless the document authorizing the reference show that it was intended that the vacancy should not be supplied; and if on such a reference one party fail to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party shall have appointed an arbitrator, and shall have served the party so failing to appoint, with notice in writing to make the appointment, the party who has appointed an arbitrator may appoint such arbitrator to act as sole arbitrator in the reference, and an award made by him shall be binding on both parties, as if the appointment had been by consent; Provided, however, that the Court or a Judge may revoke such appointment on such terms as shall deem just.

Proviso.

Two arbitrators may appoint umpire.

CXXXII.—When the reference is to two arbitrators, and the terms of the document authorizing it do not shew that it was intended that there should not be an umpire, or provide otherwise for the appointment of an umpire, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award, unless they be called upon, by notice as aforesaid, to make the appointment sooner.

Court or Judge may extend time for making award.

CXXXIII.—It shall be lawful for the Court or a Judge, upon sufficient cause, and from time to time, to extend the time for making any award under this Act; and notwithstanding that the time originally fixed may have elapsed.

CXXXIV.—When any award made on any such submission, document or order of reference as afore-

said, directs that possession of any lands or tenements capable of being the subject of an action of ejectment shall be delivered to any party either forthwith or at any future time, or that any such party is entitled to the possession of any such lands or tenements, it shall be lawful for the Court of which the document authorizing the reference is or is made a rule or order, to order any party to the reference who shall be in possession of any such lands or tenements, or any person in possession of the same claiming under or put in possession by him since the making of the document authorizing the reference, to deliver possession of the same to the party entitled thereto pursuant to the award; and such rule or order to deliver possession shall have the effect of a judgment in ejectment against every such party or person named in it, and execution may issue, and possession shall be delivered by the Sheriff, as on a judgment in ejectment.

Arbitration
ejectment rule
to deliver pos-
session of land
pursuant to
award enforced
as a judgment
in ejectment.

CXXXV.—Every agreement or submission to arbitration by consent, whether by deed or instrument in writing not under seal, may be made a rule of either of the said Courts on the application of any party thereto, unless such agreement or submission contain words purporting that the parties intend that it should not be made a rule of Court; and if in any such agreement or submission it is provided that the same shall or may be made a rule of one in particular of such Courts, it may be made a rule of that Court only; and if when there is no such provision a case be stated in the award for the opinion of one of the said Courts, and such Court be specified in the award, and the document authorizing the reference have not, before the publication of the award to the parties, been made a rule of Court, such document may be made a rule only of the Court specified in the award; and when in any case the document authorizing the reference is or has been made a rule or order of one of such Courts, the other of such Courts shall not have any jurisdiction to entertain any motion respecting the arbitration or award.

Agreement or
submission in
writing may be
made rule of
Court unless a
contrary inten-
tion appear.

ADJOURNMENT.

Power to adjourn trial.

CXXXVI.—It shall be lawful for the Court or Judge, at the trial of any cause where they or he may deem it right for the purposes of justice, to order an adjournment for such time, and subject to such terms and conditions as to costs, and otherwise, as they or he may think fit.

Affidavits on new matter.

CXXXVII.—Upon motions founded upon affidavit it shall be lawful for either party, with leave of the Court or a Judge, to make affidavits in answer to the affidavits of the opposite party, upon any new matter arising out of such affidavits, subject to all such rules as shall hereafter be made respecting such affidavits.

MANDAMUS.

Action for mandamus to enforce the performance of duties.

CXXXVIII.—The plaintiff in any action in either of the said Courts, except replevin and ejectment, may endorse upon the writ and copy to be served, a notice that the plaintiff intends to claim a writ of mandamus, and the plaintiff may thereupon claim in the declaration, either together with any other demand which may now be enforced in such action, or separately, a writ of mandamus commanding the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested.

Declaration in action for mandamus.

CXXXIX.—The declaration in such action shall set forth sufficient grounds upon which such claim is founded, and shall set forth that the plaintiff is personally interested therein, and that he sustains damage by the non performance of such duty, and that the performance thereof has been demanded by him and refused or neglected.

Proceedings upon claim for mandamus.

CXL.—The pleadings and other proceedings in any action in which a writ of mandamus is claimed, shall be the same in all respects as nearly as may be, and costs shall be recoverable by either party as in an ordinary action for the recovery of damages.

Judgment and execution.

CXLI.—In case judgment shall be given for the plaintiff that a mandamus do issue, it shall be lawful for the Court in which such judgment is given, if it

shall see fit, besides issuing execution in the ordinary way for the costs and damages, also to issue a peremptory writ of mandamus to the defendant commanding him forthwith to perform the duty to be enforced.

CXLII.—The writ need not recite the declaration or other proceedings, or the matter therein stated, but shall simply command the performance of the duty, and in other respects shall be in the form of an ordinary writ of execution; except that it shall be directed to the party, and not to the Sheriff, and may be issued in term or vacation, and returnable forthwith; and no return thereto except that of compliance, shall be allowed, but time to return it may, upon sufficient grounds, be allowed by the Court or Judge, either with or without terms.

Form of peremptory Writ.

CXLIII.—The writ of mandamus so issued as aforesaid shall have the same force and effect as a peremptory writ of mandamus issued out of either of the said Courts, and in case of disobedience may be enforced by attachment, by the Court, or, when such Court shall not be sitting, by a Judge.

Effect of mandamus and proceedings to enforce it.

CXLIV.—The Court may, upon application by the plaintiff, besides or instead of proceeding against the disobedient party by attachment, direct that the act required to be done may be done by the plaintiff, or some other person appointed by the Court, at the expense of the defendant; and upon the act being done, the amount of such expense may be ascertained by the Court, by reference to a master; and the Court may order payment of the amount of such expense and costs, and enforce payment thereof by execution.

The Court may order the Act to be done at the expense of the defendant.

CXLV.—Nothing herein contained shall take away the jurisdiction of either of the said Courts to grant writs of mandamus; nor shall any writ of mandamus issued out of either of the said Courts be invalid by reason of the right of the prosecutor to proceed by action for mandamus under this Act.

Prerogative writ of mandamus preserved.

Proceedings for prerogative writ of mandamus accelerated.

CXLVI.—Upon the application by motion for any writ of mandamus in either of the said Courts, the rule may in all cases be absolute in the first instance, if the Court shall think fit; and the writ may bear test on the day of its issuing, and may be made returnable forthwith, whether in term or in vacation, but time may be allowed to return it by the Court or a Judge, either with or without terms.

SPECIFIC DELIVERY OF CHATTELS.

CXLVII.—The Court or a Judge shall have power, if they or he see fit so to do, upon the application of the plaintiff in any action for the detention of any chattel, to order that execution shall issue for the return of the chattel detained, without giving the defendant the option of retaining such chattel, upon paying the value assessed; and that if the said chattel cannot be found, and unless the Court or a Judge should otherwise order, the Sheriff shall distrain the defendant by all his lands and chattels in the said Sheriff's bailiwick, till the defendant render such chattel, or, at the option of the plaintiff, that he cause to be made of the defendant's goods the assessed value of such chattel; Provided that the Plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods the damages and costs in such action.

INJUNCTION.
Claim of writ of injunction.

CXLVIII.—In all cases of breach of contract or other injury, where the party injured is entitled to maintain and has brought an action, he may, in like manner, as hereinbefore provided with respect to mandamus, claim a writ of injunction against the repetition or continuance of such breach of contract or other injury, or the committal of any breach of contract or injury of a like kind, arising out of the same contract, or relating to the same property or right; and he may also in the same action include a claim for damages or other redress.

Form of summons and endorsement thereon.

CXLIX.—The writ of summons in such action shall be in the same form as the writ of summons in

any personal action; but on every such writ and copy thereof there shall be endorsed a notice that in default of appearance the plaintiff may, besides proceeding to judgment and execution for damages and costs, apply for and obtain a writ of injunction.

CL.—The proceedings in such action shall be the same, as nearly as may be, and subject to the like control, as the proceedings in an action to obtain a mandamus under the provisions hereinbefore contained; and in such action judgment may be given that the writ of injunction do or do not issue, as justice may require; and in case of disobedience such writ of injunction may be enforced by attachment by the Court; or, when such Court shall not be sitting, by a Judge.

Form of proceedings and of judgment.

CLI.—It shall be lawful for the plaintiff at any time after the commencement of the action, and whether before or after judgment, to apply *ex parte* to the Court or a Judge for a writ of injunction to restrain the defendant in such action from the repetition or continuance of the wrongful act or breach of contract complained of, or the committal of any breach of contract or injury, of a like kind, arising out of the same contract, or relating to the same property or right; and such writ may be granted or denied by the Court or Judge upon such terms as to the duration of the writ, keeping an account, giving security, or otherwise, as to such Court or Judge shall seem reasonable and just; and in case of disobedience, such writ may be enforced by attachment by the Court, or, when such Court shall not be sitting, by a Judge; Provided always that any order for a writ of injunction made by a Judge, or any writ issued by virtue thereof, may be discharged or varied or set aside by the Court, on application made thereto by any party dissatisfied with such order.

Writ of injunction may be applied for at any stage of cause.

CLII.—In case any action, suit or proceeding, in any Court of Law or Equity, shall be commenced,

Injunctions and orders to stay proceedings to have a specific effect.

sued or prosecuted, in disobedience of, and contrary to, any writ of injunction, rule or order of either of the said Courts, or of any Judge thereof, in any other Court than that by or in which such injunction may have been issued, or rule or order made, upon the production of such writ of injunction, rule or order, the said other Court, (in which such action, suit or proceeding may be commenced, prosecuted or taken), or any Judge thereof, shall stay all further proceedings contrary to any such injunction, rule or order; and thenceforth all further and subsequent proceedings shall be utterly null and void to all intents and purposes; Provided always that nothing herein contained shall be held to diminish, alter, abridge or vary the liability of any person or persons commencing, suing or prosecuting any such action, suit, or proceeding, contrary to any injunction, rule or order of either of the Courts aforesaid, to any attachment, punishment, or other proceeding to which any such person or persons are, may or shall be liable in cases of contempt of either of the Courts aforesaid, in regard to the commencing, suing, or prosecuting such action, suit, or proceeding.

Mandamus.

CLIII.—Writs of mandamus and injunction shall, in addition to other matter inserted therein, and unless otherwise ordered by the Court or a Judge, command the defendant to pay the plaintiff the cost thereof, and such payment may be enforced in the same manner as the payment of costs under rule of Court are now enforced.

Loss of note, &c., not to be set up as defence.

CLIV.—In case of any action founded upon a bill of exchange or other negotiable instrument, it shall be lawful for the Court or a Judge to order that the loss of such instrument shall not be set up, provided an indemnity is given, to the satisfaction of the Court or a Judge, or a Master, against the claims of any other person upon such negotiable instrument.

Indemnity.

SCIRE FACIAS.

CLV.—Proceedings against executors upon a judgment of assets *in futuro* may be had and taken by

revivor in the manner hereinbefore provided by this Act.

Scire facias on judgment of assets *in futuro*.

CLVI.—No judgment shall be signed upon a cognovit or warrant of attorney, signed by the defendant himself, and not by his attorney, unless an affidavit by the subscribing witness to such cognovit or warrant of attorney, of the due execution thereof, be previously filed.

CLVII.—Where property is held in joint-tenancy, coparcenary or common, any party wishing a partition thereof may sue out a writ in the form in the Schedule to this Act annexed, against all persons who have a joint possession with them of such property, and refuse to make a fair partition of it.

PARTITION.
Joint tenants, &c., may claim partition.

CLVIII.—Upon the said writ being duly returned and filed, with an affidavit of the service thereof, upon default of the appearance of the parties to whom it shall be addressed, the Court shall proceed to examine into the demandant's title, and the quantity or proportion of the property to which he is entitled, and accordingly as they shall find the demandant's right and proportion to be, they will for so much give judgment by default, and award a writ to make a partition whereby such part and proportion shall be set out severally, and which writ shall be in the form in the Schedule to this Act annexed.

Upon default of appearance, Court will examine title and give judgment, &c.

CLIX.—When this writ shall have been executed, after eight days' notice given to the occupier or tenant of the premises, and returned, final judgment will be entered; and the same shall be good and conclude all persons whatsoever, after notice as aforesaid, whatever right or title they have, or may at any time claim to have, in any of the property mentioned in the said judgment and writ of partition; unless such tenant or person concerned, or either of them, against whom, or their right and title, such judgment, by default is given, shall, within the next term of the Court,

Final judgment to be entered after execution of writ and eight days' notice to tenant.

Infants *femes*
covertes, non
sane persons,
and absentees,
to apply to set
aside proceed-
ings in one year
after removal of
restriction.

or in case of infancy, *non sanæ memoriæ*, or absence out of this Island, within one year after his, her or their return, or the determination of such inability, apply to the Court by motion, and shew a good and probable matter in bar to such partition; in which case the Court will set aside such judgment, and the cause shall proceed as if no judgment had been given. But if the Court, upon hearing thereof, shall adjudge for the first demandant, then the said first judgment shall stand confirmed, and shall be good against all persons whatsoever, except such other persons as shall be absent or disabled as aforesaid, and the person or persons so appealing shall be awarded thereupon to pay costs.

Proceedings in
case of inequa-
lity of partition.

CLX.—Should any person described in the last section, and within the time or times as there stated, come into Court, and, admitting the demandant's title, shew an inequality in the partition, the Court shall award a new partition to be made in the presence of all parties concerned, (if they will appear), notwithstanding the return and filing upon the record of the former; and such second partition shall be good and firm forever, against all persons not labouring under any of the disabilities herein previously mentioned.

In case of ap-
pearance, issue
to be tried by a
jury.

CLXI.—In the event of the party against whom the writ shall have been issued, appearing, he may either confess the action or plead that the demandants do not hold together with him. In the first case, a writ of partition like that before described, with such slight alterations as may be necessary to adapt it to the present purpose, will issue to the Sheriff immediately; in the second case the truth of the tenant's plea must be tried within a convenient time by a jury; and if their verdict shall be against him on that point, the demandant will then be entitled to a writ of partition.

Amendments.

CLXII.—It shall be lawful for either of the said Courts, and every Judge thereof, at all times to amend

all defects and errors in any proceedings under the provisions of this Act, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments may be made with or without costs, and upon such terms as to the Court or a Judge may seem fit; and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties, shall be so made if duly applied for.

CLXIII.—It shall be lawful for the Judges of the Supreme Court to make all such general rules and orders, and to frame such writs and forms of proceeding for the effectual execution of this Act, and of the intention and object thereof, as in their judgment shall be necessary and proper; and all such rules, orders, writs and proceedings, shall be acted upon and enforced, in the same manner as rules, orders, writs and proceedings of the said Courts or either of them are now acted upon and enforced, or as near thereto as circumstances will permit; and in cases not provided for in this Act, or by the rules made thereunder, the practice of the Queen's Bench shall, so far as the same is applicable, be the practice of the Supreme and Central Circuit Courts.

General rules
may be made by
Judges.

CLXIV.—All actions, *ex contractu*, where the amount sought to be recovered shall not exceed one hundred dollars, shall be heard and determined in the said Courts in a summary manner; the writ shall be in the form in the Schedule to this Act annexed, and concurrent alias and pluries writs may issue, and the like security on *capias* and attachment may be given, as in ordinary cases. In pleading it shall be sufficient for the party pleading to file a notice of his pleading by the usual and known title thereof in practice, or by a short statement of its effect, with a copy of offset, if any; it shall not be necessary to file any roll, but the trial shall be had upon the papers filed in Court; judg-

SUMMARY AC-
TIONS.

Actions under
§20 summary.

ment by default, where the demand is for a specific debt, shall be final as in other cases, and where a trial or an assessment is had, it shall be sufficient to enter a memorandum of the judgment in the Record Book; Provided that in cases where the amount sought to be recovered shall exceed Fifty Dollars, it shall be lawful for either party to have a Jury for the trial of the cause; but in such case he shall not be entitled to the cost thereof unless the Court shall so order.

Suits now pending to be continued under present practice

CLXV.—All suits now depending in the said Courts shall be continued to final judgment in accordance with the present practice.

Computation of time.

CLXVI.—In the computation of time under this Act, the period within which any act is to be done, is to be calculated one day exclusive and the other inclusive, unless the first or last day shall be Sunday, Good Friday, Christmas Day, New Year's Day, or the Queen's Birth day, which are to be in such cases excluded from the computation.

Chief Justice may appoint commissioners of writs, &c.

CLXVII.—It shall be lawful for the Chief Justice, or in his absence for the Senior Judge of the Supreme Court, by warrant under his hand and seal of the said Court, to appoint, at any place within the colony, Commissioners for taking affidavits in the Supreme and Circuit Courts, or any of them, and for issuing writs returnable into any or either of the said Courts; Provided that it shall not be necessary to the validity of any writ issued by a Commissioner out of St. John's, that such writ should be under Seal.

Writs issued out of St. John's, need not be necessary.

Court may assess damages in certain cases.

CLXVIII.—Where both parties agree, or where the defendant not appearing at the trial, the plaintiff is willing, and the Court shall not otherwise order, it shall be lawful for the Court or a Judge thereof to try and to assess the damages upon any issue or default; and the finding of such Court or Judge shall have the same effect, and judgment shall be entered thereon, as in cases of trial or assessment by a Jury.

CLXIX.—So much of the third section of the Act 13th Victoria, cap. 7, entitled “An Act to fix and establish the terms of the Supreme, Central Circuit, and Sessions Courts, and to extend the jurisdiction and amend the practice of the said Courts,” as prevents the issuing of attachment for contempt, shall be and the same is hereby repealed.

3rd sec. 18 Vic., cap. 7, in part repealed.

CLXX.—This Act shall come into operation on the thirtieth day of June next.

Commencement of Act.

Schedule of Forms.

No. 1.

Writ of Summons where the defendant resides within the Colony:

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

Summons.

To C. D. of _____, Yeoman, &c.

We command you that within four days after service of this Writ and Declaration upon you, you do appear and plead in our Court in an action at the suit of A. B., and take notice that in default of your so doing the said A. B. may proceed to judgment and execution.

Witness, &c.

E. F.,
Plaintiff’s Attorney.

MEMORANDUM, No. 1.

This writ is to be served within six calendar months from the date thereof.

Endorsements

Service.

MEMORANDUM, No. 2.

This writ was served by X. Y. on C. D., the defendant, on the _____ day of _____ A.D. 186 _____

(Signed,)

X. Y.

Endorsement. SPECIAL ENDORSEMENT, No. 3.

The following are the particulars of the plaintiff's claim :

1863. June 20—Half-year's rent to date	\$30.0
<i>CR.</i>	
By Cash paid	10.0
Balance Due	\$20.0

Notice.

N.B.—Take notice, that if a defendant served with this writ do not appear and plead according to the exigency thereof, the plaintiff will be at liberty to sign final judgment for any sum not exceeding the amount above claimed, and the sum of dollars for costs, and to issue execution after the expiration of four days from the last day of appearance.

No. 2.

Writ of Attachment where the defendant resides within the Colony :

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To G. H., Sheriff of the District of Newfoundland :

Attachment.

We command you to attach C. D., of , Yeoman, by his lands and chattels, goods, debts and effects, that he do, within four days after service of this writ and declaration, appear and plead in our Court, in an action at the suit of A. B. ; and notice is hereby given that in default of the said C.D.'s so doing, the said A.B. may proceed to judgment and execution.

Witness, &c.

And in addition to the memoranda and other endorsements in form No. 1, the writ of attachment shall be endorsed as follows :

“By oath for dollars” (or, by order of Mr. Justice) and by oath for dollars, as the case may be.

No. 3.

Writ of Capias where the defendant resides within the Colony :

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To G. H., Sheriff of the District of Newfoundland :

We command you that you take C. D., of Yeoman, and him safely keep, so that he do within four days after service of this writ and declaration, appear and plead in our Court in action at the suit of A. B. ; and notice is hereby given that in default of the said C. D.'s so doing, the said A. B. may proceed to judgment and execution.

Capias ad respondentum.

Witness, &c.

And in addition to the Memoranda and other endorsements in form No. 1, the writ of capias shall be endorsed as follows :

By oath for dollars, or, by order, of Mr. Justice , and by oath for dollars, as the case may be.

No. 4.

The form of writ where the defendant resides out of the jurisdiction may be the same as in other cases of summons, capias, or attachment respectively, but the number of days for appearance must be made with reference to the distance the defendant may be at from Newfoundland, and the words "by leave of the Court, or a Judge," must be inserted in the notice of proceeding after the word "may;" also the following notice must be endorsed on the writ, in addition to all other endorsements.

Writ when defendant out of jurisdiction.

To C. D., late of , &c., now residing at , &c.,

Take notice that A. B., of , &c., has commenced an action at law against you in Her Majesty's Supreme Court of Newfoundland by a writ, copy whereof is within written, and you are required within

Notice.

days after receipt of this notice to appear and plead to the said action, otherwise the said A. B. may, by leave of the Court, proceed thereon to judgment and execution.

(Signed,)

A. B.,
Attorney for Plaintiff.

No. 5.

FORM OF SUMMARY WRIT.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c., &c.

To A. B., of Greeting

Summary Writ.

We command you that within four days after the service of this writ upon you, you do appear and plead in our Court to an action at the suit of C. D., who claims from you for the matters contained in the annexed particulars; and in default of your so doing the plaintiff may proceed to judgment and execution.

Witness, &c.

Attachment.

A summary writ of attachment or capias may be framed in accordance with the preceding form. And all such writs must contain the usual endorsements.

No. 6.

In the Court
on the day of 186
(Day of signing final judgment.)

SAINT JOHN'S, }
to wit: }

Judgment by default.

A. B., in his own person, (or by J. B., his Attorney), sued out a writ of against C. D., endorsed according to the prescribed forms, as follows :-

(Here copy Special Endorsement.)

And the said C. D. has not appeared; therefore it is considered that the said A. B. recover against the said C. D. \$, together with \$, for costs of suit.

(Signed,)

M. W. W., C. C. & R.

No. 7.

In the Court
the day of A. D., 186 .

SAINT JOHN'S, }
to wit: }

Whereas A. B. has sued C. D., and affirms and denies.

(Here state the question or questions of fact to be tried.)

And it has been ordered by the Honorable Mr. Justice that the said question shall be tried by a Jury; therefore let the same be tried accordingly (Special case for the opinion of the Court)

Order that question be tried by Jury.

In the Court

Between { A. B., Plaintiff,
and
C. D., Defendant.

The following case is stated for the opinion of the Court, under a Rule of the Court, (or order of the Honorable Mr. Justice), dated the day of 186 .

Special case for the opinion of Court.

(Here state the material facts of the case bearing upon the question of law to be decided.)

The question or questions for the opinion of the Court is, or are,—

- First, whether &c.
- Second, whether &c.

“ Judgment for the Plaintiff on a special case.”

Copy the special case, and then proceed thus—

Judgment on special case.

Afterwards on come the parties aforesaid by their respective attorneys aforesaid, and the Court is of opinion that, &c. (state the opinion of the Court on the question or questions stated in the case.) Therefore it is considered that the plaintiff do recover against the defendant the said \$, and \$ for his costs of suit.

(Signed)

M. W. W., C. C. & R.

No. 8.

Rule where
judgment ap-
plies for exe-
cution.

Form of rule or summons where a judgment creditor applies for execution against a judgment debtor.

[Formal parts as above.]

C. D. shew cause why A. B. [or as the case may be] should not be at liberty to enter a suggestion upon the roll in an action wherein the said A. B. was plaintiff, and the said C. D. was defendant; and wherein the said A. B. obtained judgment for dollars against the said C. D. on the day of , that it manifestly appears to the Court that the said A. B. is entitled to have execution of the said judgment, and to issue execution thereupon, and why the said C. D. should not pay to the said A. B. the costs of this application to be taxed.

[NOTE—The above form may be modified so as to meet the case of an application by or against the representative of a party to a judgment.]

No. 9.

Form of sug-
gestion.

Form of suggestion that the judgment creditor is entitled to execution against the judgment debtor.

And now on the day of , it is suggested and manifestly appears to the Court that the said A. B., [or C. D., as Executor of the last will and testament of the said A. B., deceased, or as the case may be,] is entitled to have execution of the judgment aforesaid against the said E. F. [or against G. H., as executor of the last will and testament of the said E. F., or as the case may be]; therefore it is considered by the Court that the said A. B., [or C. D., as such executor as aforesaid, or as the case may be,] ought to have execution of the said judgment against the said E. F. [or against G. H., as such executor as aforesaid, or as the case may be.]

No. 10.

FORM OF WRIT OF REVIVOR.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To E F. of

Greeting :

We command you that within four days after the service of this writ upon you, inclusive of the day of such service, you appear in our ^{Writ of revivor.} Court, to shew cause why A. B. or C. D., as executor of the last will and testament of the said A. B., deceased, [or as the case may be,] should not have execution against you, [if against a representative, here insert, as executor of the last will and testament of deceased, or as the case may be,] of a judgment, whereby the said A. B. [or as the case may be,] on the day of in the said Court, recovered against you, [or as the case may be], dollars; and take notice that in default of your so doing, the said A. B. [or as the case may be] may proceed to execution.

Witness, &c.

No. 11.

EJECTMENT—FORM OF WRIT.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To X. Y. Z., and all persons entitled to defend the possession of , [describe the property with reasonable certainty] in the District of , to the possession whereof A. B. and C., or some or one of them, claim to be [or to have been on and since the day of A. D. 186] enti- ^{Writ of ejectment.}

tled, and to eject all other persons therefrom ; these are to will and command you, or such of you as deny the alleged title, within four days after service hereof, to appear in our Court to defend the said property, or such part thereof as you may be advised ; and in default whereof judgment may be signed, and you turned out of possession.

Witness, &c.

No. 12.

**JUDGMENT IN EJECTMENT IN CASE OF
NON-APPEARANCE.**

In the Court
The day of A. D. 186 .
[Date of the Writ]

SAINT JOHN'S }
to wit :

Judgment on
non-appearance.

On the day and year above written a writ of our Lady the Queen issued forth of this Court in these words,—that is to say,—

Victoria, by the Grace of God, [here copy the writ]; and no appearance has been entered, or defense made to the said writ ; therefore it is considered that the said [here insert the names of the persons in whom title is alleged in the said writ] do recover possession of the land in the said writ mentioned, with the appurtenances.

No. 13.

In the Court
on the day of A. D. 186 .

SAINT JOHN'S }
to wit :

On the day and year above written a writ of our Lady the Queen issued forth of this Court in these words,—that is to say,—

Victoria, by the Grace of God, [here copy the writ];
 and C. D. has on the day of
 appeared by his attorney (or in person) to the said writ,
 and has defended for a part of the land in the said writ
 mentioned,—that is to say, [here state the part]; and
 no appearance has been entered or defense made to the
 writ, except as to the said part; therefore it is con-
 sidered that the said A. B. (the claimant) do recover
 possession of the land in the said writ mentioned, ex-
 cept the said part, with the appurtenances, and that
 he have execution thereof forthwith; and as to the
 rest let the jury come, &c.

Judgment where
 appearance is
 confined to part.

No 14.

In the Court
 on the day of A. D. 186 .
 SAINT JOHN's, }
 to wit: }

On the day and year above written a writ of our
 Lady the Queen, issued forth of this Court in these
 words,—that is to say,—

Issue.

Victoria, by the Grace of God, [here copy the writ];
 and C. D. has on the day of appeared
 by his attorney (or in person) to the said
 writ, and defended for the whole of the land therein
 mentioned: therefore let a Jury come, &c.

No. 15.

Afterwards on the day of
 A. D 186 , before the Justices of our Court
 come the parties within mentioned, and a Jury of the
 said district being sworn to try the matter in question
 between the said parties, upon their oath say, that
 A. B. (the claimant within mentioned), on the
 day of A. D. , was and still is en-
 titled to the possession of the land within mentioned,
 as in the writ alleged; therefore, &c.

Postea.

No. 16.

In the Court
on the day of A. D., 186 .
(Date of writ.)

SAINT JOHN'S, }
to wit: }

Discontinuance. On the day and year above written, a writ of our Lady the Queen issued forth of this Court, in these words,—that is to say,—

Victoria, by the Grace of God, [here copy the writ]; and C. D. has on the day of A. D., 186 , appeared by his attorney [or in person] to the said writ, and A. B. has discontinued the action; therefore it is considered that the said C. D. be acquitted, and that he recover against the said A. B. dollars, for his costs of defense.

No. 17.

In the Court
on the day of A. D. 186 .
(Date of Writ.)

SAINT JOHN'S }
to wit: }

Nonsuit. On the day and year above written, a writ of our Lady the Queen issued forth of this Court, in these words,—that is to say,—

Victoria, by the Grace of God, (here copy the writ); and C. D. has on the day of A. D. 186 , appeared by his Attorney, (or in person) to the said Writ, and A. B. has failed to proceed to trial, although duly required so to do; therefore it is considered that the said C. D. be acquitted, and that he recover against the said A. B. dollars, for his costs of defense.

No. 18.

In the Court the day of A.D., 186 .
(Date of writ.)

SAINT JOHN'S, }
to wit :

On the day and year above written, a writ of our Lady the Queen issued forth of this Court, in these words,—that is to say,—

Victoria, by the Grace of God, (here copy the writ); and C. D. has on the day of A.D., 186 , appeared by his Attorney (or in person), to the said writ, and the said C. D. has confessed the said action (or has confessed the said action as to part of the said land,—that is to say,—here state the part) ; therefore it is considered that the said A. B. do recover possession of the said land in the said writ mentioned (or of the said part of the said land) with the appurtenances, and dollars, for costs. Judgment for part.

WRITS OF EXECUTION.**No. 19.****FIERI FACIAS ON JUDGMENT.**

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith. Fieri Facias.

To the Sheriff of the District of Newfoundland, Greeting :

We command you that of the goods and chattels, lands and tenements of C.D., in your bailiwick, you cause to be made, which A. B., lately in our Court, recovered against him, whereof the said C. D. is convicted, and have that money before us in our said Court immediately after the execution of this writ, to be rendered to the said A. B., and have you then there this writ.

Witness, &c.

No. 20.**WRIT OF "CAPIAS AD SATISFACIENDUM."**

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the Sheriff of the District of Newfoundland, Greeting :

Capias ad satisfaciendum.

We command you that you take C. D., if to be found within your bailiwick, and him safely keep, so that you have his body before us, in our said Court, immediately after the execution hereof, to satisfy A. B., which the said A. B. lately in our said Court, recovered against the said C. D., whereof the said C. D. is convicted; and have you then there this writ.

Witness, &c.

No. 21.**WRIT OF "HABERE FACIAS" POSSESSIONEM.**

Habere facias.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the Sheriff of the District of Newfoundland, Greeting :

Whereas A. B., lately in our Court, by judgment of the said Court, recovered possession of [here describe the property as in the writ of ejectment, or, if part only of the land has been recovered, describe such part as in the judgment] with the appurtenances, in your bailiwick ; therefore we command you that you enter the same, and without delay you cause the said A. B. to have possession of the said land and premises with the appurtenances ; and in what manner you shall have executed this our writ, make appear to our said Court immediately after the execution hereof, and have you then there this writ.

Witness, &c.

No. 22.

WRIT OF "HABERE FACIAS" AND "FIERI FACIAS" for costs upon a judgment for plaintiff in ejectionment, where defendant has appeared. Habere facias
and fieri facias.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the Sheriff of the District of Newfoundland, Greeting :

Whereas A. B., lately in our Court, recovered possession of [here describe the property as in the writ of ejectionment, or if part only of the land has been recovered, describe such part as in the judgment]; with the appurtenances, in your bailiwick, in an action of ejectionment at the suit of the said A. B. against C. D.; therefore we command you that without delay you cause the said A. B. to have possession of the said land and premises with the appurtenances; and we also command you that of the goods and chattels of the said C. D. in your bailiwick, you cause to be made dollars, which the said A. B., lately in our said Court, recovered against the said C. D. for the said A. B.'s costs of the said suit, whereof the said C. D. is convicted, and have that money in our said Court immediately after the execution hereof, to be rendered to the said A. B.; and in what manner you shall have executed this our writ, make appear to our said Court immediately after the execution hereof, and have you then there this writ.

Witness, &c.

No. 23.**WRIT OF FIERI FACIAS FOR COSTS IN
EJECTMENT.**

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the Sheriff of the District of Newfoundland, Greeting :

Fieri facias for costs.

We command you that of the goods and chattels of C. D. in your bailiwick, you cause to be made dollars, which A. B., lately in our Court, recovered against him for the said A. B.'s costs of suit in an action of ejectment brought by the said A. B. against the said C. D. in that Court, whereof the said C. D. is convicted; and have that money in our said Court immediately after the execution hereof, to be rendered to the said A. B., and have you then there this writ.

Witness, &c.

[Other writs of execution may be prepared according to the above forms, with the necessary variations.]

No. 24.**FORM OF BOND TO THE SHERIFF IN CASES
OF ATTACHMENT.**

Bond on attachment.

Know all Men by these Presents, that we, A. B., of , C. D., of , and E. F., of , are severally held and firmly bound unto the Sheriff of the District of Newfoundland, in the penal sum of (double the amount sworn to) each, to be paid to the said Sheriff, his successors, and assigns; and for which payment well and truly to be made, we severally bind ourselves, our executors and administrators, by these presents. Sealed with our Seals, and dated at , this day of A. D.

Whereas the said A. B. has been attached at the suit of G. H., for the sum of (the amount sworn to), and is desirous of giving security, pursuant to the Statute for release from such attachment.

Now, the condition of this obligation is such, that if the said A. B., his executors or administrators, do and shall well and truly pay, or cause to be paid, to the said G. H., his executors, administrators, or assigns, upon demand, the said sum of _____, or the amount of any judgment, if it be less than the said sum, that may be recovered by the said G. H. against the said A. B., in the said suit, and in default thereof, restore to the said Sheriff the property mentioned in the Schedule annexed, and attached in this suit, in the like order and condition in which the same now is; then this obligation to be void, otherwise to be and remain in full force and virtue.

No. 25.

**FORM OF BOND TO THE SHERIFF IN CASES
OF CAPIAS.**

Know all Men by these Presents, that we, A. B., of _____, C. D., of _____, and E. F., of _____, Bond in cases of
capias.
are severally held and firmly bound unto the Sheriff of the _____ District of Newfoundland, in the penal sum of (double the amount sworn to) each, to be paid to the said Sheriff, his successors, and assigns, and for which payment well and truly to be made, we severally bind ourselves, our executors, and administrators, by these presents. Sealed with our seals, and dated at this _____ day of _____ A.D.

Whereas the said A. B. has been arrested at the suit of G. H., for the sum of (the amount sworn to) and is desirous of giving security, pursuant to the statute for release of such ar-

rest. Now, the condition of this obligation is such, that if the said sureties do and shall, within fourteen days hereafter, justify themselves as sufficient bail in this cause, pursuant to the statute in such case provided, or render the said A. B. to the custody of the said Sheriff, to abide the judgment of the Court in this cause, and if, within four days after a *capias ad satisfaciendum* shall have issued against the said A. B., in this cause, the said A. B. shall render himself to the Sheriff thereon, or shall pay the amount of the judgment therein, with costs of execution, then this obligation to be void, but otherwise to be and remain in full force and virtue.

No. 26.

WRIT OF EXECUTION IN DETINUE

For the return of a chattel detained, and for a *distringas* until returned, separate from a writ of damages or costs.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To the Sheriff of the

District of Newfound-

land, Greeting :

Execution in
detinue.

We command you that without delay you cause the following chattels,—that is to say, [here enumerate the chattels recovered by the judgment, for the return of which execution has been ordered to issue], to be returned to A. B., which the said A. B., lately in our Court, recovered against C. D. in an ac-

tion for the detention of the same, whereof the said C. D. is convicted; * and we further command you that if the said chattels cannot be found in your bailiwick, you distrain the said C. D. by all his lands and chattels in your bailiwick, so that neither the said C. D. nor any one for him, do lay hands on the same until the said C. D. render to the said A. B. the said chattels; and in what manner you shall have executed this our writ make appear to our said Court immediately after the execution thereof, and have you then there this writ.

Witness, &c.

No: 27.

The like; but instead of a distress until the chattel is returned, commanding the Sheriff to levy on the defendant's goods the assessed value of it. ^{† The like, with levy.}

[Proceed as in the preceding form until the * and then thus].—And we further command you that if the said chattels cannot be found in your bailiwick, of the goods and chattels of the said C. D., in your bailiwick, you cause to be made _____ dollars, [the assessed value of the chattels] whereof the said C. D. is also convicted, and have that money in our said Court to be rendered to the said A. B. immediately after the execution hereof; and in what manner, &c.

No. 28.

Endorsement on
summons of
claim for in-
junction.

Endorsement on writ of summons of claim for a writ of injunction.

The plaintiff intends to claim a writ of injunction to restrain the defendant from [herestate concisely for what the writ of injunction is required,—as, for example, thus,—felling or cutting down any timber], in and upon the said land and premises; and take notice that in default of the defendant's entering an appearance and plea, as within commanded, the plaintiff may, besides proceeding to judgment and execution for damages and costs, apply for and obtain such writ.

No. 29.

Judgment that
mandamus do
issue.

Judgment for plaintiff after verdict that a mandamus do issue.

[The same as in the ordinary form of an entry of a judgment to the end of the postea, and then thus]—
Therefore it is considered that a writ of mandamus do issue commanding the defendant to—[here state the duty to be performed, or the thing to be done, as claimed by the declaration]; and it is also considered that the plaintiff do recover of the defendant the said moneys by the Jury aforesaid, in form aforesaid, above assessed, and also dollars for his costs of suit in this behalf.

No. 30.

REPLEVIN BOND.

Know all Men by these presents, that we, A. B., of Replevin bond.
 , G. A. of , and T. R. of
 , are jointly and severally held and
 firmly bound to G. H. Esquire, Sheriff of the
 District, in the sum of dollars, (a sufficient
 sum to cover the value of the cattle or goods distrained,
 if taken damage feasant, or if for rent then double the
 value of the cattle or goods taken), to be paid to the
 said Sheriff or his certain attorney, executors, adminis-
 trators or assigns; for which payment to be well and
 truly made, we bind ourselves and each and every of
 us, and our and each and every of our executors
 and administrators, firmly by these presents. Sealed
 with our seals. Dated this day of
 18

The condition of this obligation is such, that if the
 above bounden A. B. do appear at the next term or
 sittings of the Court which shall next sit within
 the district ; to be holden at , for the
 said district (or if it be in term time, then say, "in this
 present term of the Court at ,")—and do then
 and there prosecute his suit with effect and without
 delay against C. D. for the taking and unjustly
 detaining of his cattle, goods, and chattels—to wit,
 (state the cattle or goods distrained) and do make re-
 turn of the said cattle, goods and chattels, if a return
 thereof shall be adjudged; then this present obligation
 shall be void and of none effect, or else to be and re-
 main in full force and virtue.

A. B.—(L. S.)

G. A.—(L. S.)

T. R.—(L. S.)

“Assignment of Replevin Bond” to be endorsed on the Bond.

Assignment of Bond.

Know all men by these presents, that I, G. H., Esquire, Sheriff of the District of Newfoundland, have, at the request of the above-named C. D., the avowant (or person making cognizance), assigned over to him, the said C. D., this replevin bond, according to the statute in such case made and provided.

Dated, &c.

G. H.

WARRANT OF REPLEVIN.

District, }
to wit: }

Warrant.

G. H., Esquire, Sheriff of the District of Newfoundland, to and and to every of them, jointly and severally, Greeting:

Whereas A. B. hath found me sufficient security, as well for prosecuting his suit with effect against C. D. for taking and unjustly detaining his cattle, goods and chattels—to wit, [set out the cattle or goods] which the said C. D. hath taken and unjustly detains, as it is said; therefore, on behalf of the said A. B., I command you, jointly and severally, that without delay you replevy and cause to be delivered to the said A. B. his said cattle, goods, and chattels, and that you immediately summon the said C. D. to appear at the next term of the Supreme Court, (or Central, Northern, or Southern Circuit, to be holden at , in and for the said district, or as the case may be) to answer the said A. B. in

the plea aforesaid; and in what manner you shall have executed this precept certify to me at the time and place aforesaid, under the peril attending the neglect thereof.

Given under my Seal this }
day of A. D. 186 . }

G. H., Sheriff, [L. S.]

(Or if granted by a Bailiff, say L. H., one of the Bailiffs of the said Sheriff, according to the form of the Statute.

FORM OF WRIT OF PARTITION.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith. Writ of Partit-
tion.

To the Sheriff of _____ and his Deputy and Deputies, Greeting:

Whereas E. F., late of _____ was commanded to be in our _____ Court to answer A. B. and C. D., of a plea, whereupon the said A. B. and C. D., and the said E. F., held together and undivided (state the property in the same manner as in the original writ), and the said E. F. denieth partition thereof to be made between them, and permitted not the same to be done, as they said; and the said E. F. not appearing in our said Court according to the command of our said writ, our said Court did proceed to examine the title of the said A. B. and C. D., whereupon it was considered in our said Court that partition should be made between them of the messuages, lands and tenements aforesaid, with the appurte-

nances; therefore we command you, that taking with you twelve free and lawful men of the neighbourhood of _____ aforesaid, by whom the truth of these matters may be better known, in your proper person you go to the messuages, lands and tenements aforesaid, with the appurtenances, and there, in the presence of the parties aforesaid, by you to be forewarned, if they shall be willing to be present, the same messuages, lands, and tenements aforesaid, with the appurtenances, by the oath of the said twelve free and lawful men, respect being had to the true value of the messuages, lands, and tenements aforesaid, with the appurtenances, you cause to be divided into _____ equal parts, and _____ parts of these to be delivered and assigned to the said A. B. and C. D., and the other part thereof to the said E. F., to be holden to them and their assigns in severalty, so that neither the said A. B. and C. D. and the said E. F. may have more of the messuages, lands, and tenements aforesaid, with the appurtenances, than it belongs to them to have, and that the said A. B. and C. D. of their part to them belonging, and the said E. F. of his part to him belonging, may severally apportion themselves; and that that partition by you so distinctly and openly made, you have here on _____ under your Seal, and the Seals of those by whose oath you shall have made that partition; and have you then the names of those by whose oath you shall have made the same partition, and this writ.

Witness, &c.

FORM OF SUMMONS IN CASES OF PARTITION.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith. Partition Summons.

To the Sheriff of _____ and his deputy and deputies, Greeting:

Command E. F. to appear in our _____ Court on the _____ day of _____ to shew wherefore he denieth partition to be made between him and A. B. and C. D. of _____ [here state the nature of the property, with such a description of it as would be necessary in a conveyance] which he holds together with the said A. B. and C. D., as they say; and you are commanded to make return of what you shall do upon this writ at the time and place above mentioned.

Witness, &c.

CAP. X.

An Act to shorten and simplify the forms of Pleading in the Supreme and Central Circuit Courts, and to render them more adapted than at present to the discovery and determination of the real points in dispute between the parties to a suit.

[Passed 13th April, 1864.]

WHEREAS it is expedient to shorten and simplify the forms of Pleading in the Supreme and Central Circuit Courts, and to render them more adapted than at present to the discovery and determination of the real points in dispute between the parties to a suit: Preamble.

Be it therefore enacted by the Governor, Legisla-