

*Laws of Her Majesty's Province of Newfoundland*, passed in the year 1864. J. C. Withers, Queen's Printer, 1864.

27 Victoria – Chapter 10

**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:

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

- I. All statements which need not be proved, such as the statement of time, quantity, quality, and value, where these are immaterial, the statement of losing and finding, and bailment, in actions for goods, or their value, the statement of acts of trespass having been committed with force and arms, and against the peace of our Lady the Queen, the statement of promises which need not be proved, as promises in indebitatus counts, and mutual promises to perform agreements, and all statements of a like kind, shall be omitted.
- II. Either party may object by demurrer to the pleading of the opposite party, on the ground that such pleading does not set forth sufficient ground of action, defense, or reply, as the case may be; and where issue is joined on such demurrer, the Court shall proceed and give judgment according as the very right of the cause and matter in law shall appear to them, without regarding any imperfection, omission, defect in, or lack of form; and no judgment shall be arrested, stayed or reversed, for any such imperfection, omission, defect in, or lack of form.
- III. No pleading shall be deemed insufficient for any defect which could heretofore only be objected to by special demurrer.
- IV. If any pleading be so framed as to prejudice, embarrass, or delay the fair trial of the action, the opposite party may apply to the Court or a Judge to strike out or amend such pleading; and the Court or a Judge shall make such order respecting the same, and also respecting the costs of the application, as such Court or Judge shall see fit.
- V. Every declaration and other pleading shall be entitled of the proper Court, and of the day of the month and year when the same was pleaded, and shall bear no other time or date; and every declaration and other pleading shall also be entered on the record made up for trial, and on the judgment-roll, under the date of the day of the month and year when the same respectively took place, and without reference to any other time or date, unless otherwise specially ordered by the Court or a Judge.

VI. It shall not be necessary to make profert of any deed or other document mentioned or relied on in any pleading; and if profert shall be made, it shall not entitle the opposite party to craveoyer of, or set out uponoyer such deed or other document.

VII. A party pleading in answer to any pleading in which any document is mentioned or referred to, shall be at liberty to set out the whole or such part thereof as may be material, and the matter so set out shall be deemed and taken to be a part of the pleading in which it is set out.

VIII. In actions of libel and slander the plaintiff shall be at liberty to aver that the words or matter complained of were used in a defamatory sense, specifying such defamatory sense without any prefatory averment to show how such words or matter were used in that sense; and such averment shall be put in issue by the denial of the alleged libel or slander; and where the words or matter set forth, with or without the alleged meaning, show a cause of action, the declaration shall be sufficient.

IX. The commencements and conclusions of declarations shall be as in the Schedule annexed.

X. Except as herein provided, several counts on the same cause of action shall not be allowed, and any count or counts used in violation of this rule may, on the application of the party objecting, within a reasonable time, or before an order made for time to plead, be struck out or amended by the Court or a Judge on such terms, as to costs or otherwise, as such Court or Judge may think fit.

XI. Several pleas, replications, or subsequent pleadings, or several avowries or cognizances founded on the same ground of answer or defense, shall not be allowed, provided that on an application to the Court or a Judge to strike out any count, or upon an objection taken before the Judge on a summons to plead several matters, to the allowance of several pleas, replications or subsequent pleadings, avowries or cognizances, on the ground of such counts or other pleadings being in violation of this or the preceding section the Court or a Judge may allow such counts on the same cause of action, or such pleas, replications or subsequent pleadings, or such avowries or cognizances founded on the same ground of answer or defense, as may appear to such Court or Judge to be proper for the determining the real question in controversy between the parties on its merits, subject to such terms as to costs and otherwise as the Court or a Judge may think fit.

XII. The name of a District shall in all cases be stated in the margin of a declaration, and shall be taken to be the venue intended by the plaintiff; and no venue shall be stated in the body of the declaration, or in any subsequent pleading.

XIII. In all actions by and against the assignees of an insolvent, or executors or administrators, or persons authorized by Act of Parliament to sue or be sued as nominal parties, the character in which the plaintiff or defendant is stated on the record to sue or be sued, shall not in any case be considered as in issue unless specially denied.

XIV. In all actions upon bills of exchange or promissory notes, or other written instruments, any of the parties to which are designated by the initial letter or letters, or some contraction of the Christian or

first name or names, it shall be sufficient in every affidavit to hold to bail, and in the process or declaration, to designate such person by the same initial letter or letters, or contraction of the Christian or first name or names, instead of stating the Christian or first name or names in full.

XV. In actions, for trespass to land, the close or place in which, &c., must be designated in the declaration, by name or abuttals, or other description; in failure whereof the plaintiff may be ordered to amend, with costs, or give such particulars as the Court or a Judge may think reasonable.

XVI. No rule for or demand of plea or subsequent pleading shall be necessary, but the defendant shall plead within the time mentioned on the writ, and every subsequent pleading shall be filed and served within two days after the filing and service of the preceding pleading; unless the time be extended by the Court or a Judge.

XVII. Express colour shall not longer be necessary in any pleading.

XVIII. Special traverses shall not be necessary in any pleading.

XIX. In a plea or subsequent pleading it shall not be necessary to use any allegation of actionem non or actionem ulterius non, or to the like effect, or any prayer of judgment, nor shall it be necessary, in any replication or subsequent pleading, to use any allegation of precludi non, or to the like effect, or any prayer of judgment.

XX. No formal defense shall be required in a plea or avowry or cognizance, and it shall commence as follows, or to the like effect:--

“The defendant by \_\_\_\_\_ his Attorney (or in person, as the case may be) says that (here state first defense.)”

And it shall not be necessary, to state in a second or other plea, or avowry or cognizance, that it is pleaded by leave of the Court or a Judge, or according to the form of the Statute, or to that effect; but every such plea, avowry, or cognizance, shall be written in a separate paragraph and numbered, and shall commence as follows, or to the like effect: — And for a second (&c.) plea, the defendant says that (here state second, &c. defense), or if pleaded to part only, then as follows, or to the like effect:—And for a second, (&c.) plea to (stating to what it is pleaded) the defendant says that, &c.; and no formal conclusion shall be necessary to any plea, avowry, cognizance, or subsequent pleading.

XXI. Any defense arising after the commencement of the action, and before trial, shall show when the cause of defense arose, and shall be accompanied by an affidavit of verification.

XXII. Whereas certain causes of action may be considered to partake of the character both of breaches of contract and of wrongs, and doubts may arise as to the form of pleas in such actions; and it is expedient to preclude such doubts there from any plea which shall be good in substance, shall not be objectionable on the ground of its treating the declaration either as framed for a breach of contract or for a wrong.

XXIII. Pleas of payment and set-off, and all other pleadings capable of being construed distributively, shall be taken distributively; and if issue be taken thereon, and so much thereof as shall be sufficient answer to part of the causes of action proved, shall be found true by a jury, a verdict shall pass for the defendant in respect of so much of the causes of action as shall be answered, and for the plaintiff in respect of so much of the causes of action as shall not be so answered.

XXIV. A defendant may either traverse generally such of the facts contained in the declaration as might have been, denied by one plea, or may select and traverse separately any material allegation in the declaration, although it might have been included in a general traverse.

XXV. A plaintiff shall be at liberty to traverse the whole of any plea or subsequent pleading of the defendant by a general denial, or, admitting some part or parts thereof, to deny all the rest, or to deny any one or more allegations.

XXVI. A defendant shall be at liberty, in like manner, to deny the whole or part of a replication or subsequent pleading of the plaintiff.

XXVII. Either party may plead, in answer to the plea or subsequent pleading of his adversary, that he joins issue thereon, which joinder of issue may be as follows, or to the like effect:—

“The plaintiff joins issue upon the defendant’s first (&c., specifying what or what part) plea: The defendant joins issue upon the plaintiff’s replication to the first (&c. specifying what) plea.”

And such form of joinder of issue shall be deemed to be a denial of the substance of the plea or other subsequent pleading, and an issue thereon; and in all cases where the plaintiff’s pleading is in denial of the pleading of the defendant, or some part of it, the plaintiff may add a joinder of issue for the defendant.

XXVIII. Either party may, by leave of the Court or a Judge, plead and demur to the same pleading at the same time, upon an affidavit by such party or his attorney, if required by the Court or a Judge, to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be traversed by him, and that the several matters sought to be pleaded as aforesaid by way of confession and avoidance are respectively true in substance and fact, and that he is further advised and believes that the objections raised by such demurrer are good and valid objections in law, and it shall be in the discretion of the Court or a Judge to direct which issue shall be first disposed of.

XXIX. The plaintiff in any action may, by leave of the Court or a Judge, plead in answer to the plea, or the subsequent pleading of the defendant, as many several matters as he shall think necessary to sustain his action; and the defendant in any action may by leave of the Court or a Judge, plead in answer to the declaration, or other subsequent pleading of the plaintiff, as many several matters as he shall think necessary for his defense, upon an affidavit of the party making such application, or his attorney, if required by the Court or a Judge, to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be traversed by him; and that the several

matters sought to be pleaded as aforesaid by way of confession and avoidance are respectively true in substance and in fact; Provided that the costs of any issue, either in fact or law, shall follow the finding or judgment upon such issue, and be adjudged to the successful party, whatever may be the result of the other issue or issues.

XXX. All objections to the pleading of several pleas, replications, or subsequent pleadings, or several avowries or cognizances, on the ground that they are founded on the same ground of action or defense, shall be heard upon the summons to plead several matters.

XXXI. The following pleas, or any two or more of them, may be pleaded together as of course, without the leave of the Court or a Judge,—that is to say; a plea denying any contract or debt alleged in the declaration; a plea of tender as to part; a plea of the Statute of limitations; set-off; bankruptcy of the defendant; discharge under an Insolvent Act; plene administravit, plene administravit praeterea, infancy, coverture, payment, accord and satisfaction, release, not guilty, a denial that the property an injury to which is complained of is the plaintiff's, leave and license, son assault demesne, molliter manus impositus, in defense of possession; and any other pleas which the Judges of the said Courts shall, by any rule or order, to be from time to time by them made, in term or vacation, order or direct.

XXXII. Except in cases herein specially provided for, if either party plead several pleas, replications, avowries, cognizances, or other pleadings, without leave of the Court or a Judge, the opposite party shall be at liberty to sign judgment; Provided that such judgment may be set aside by the Court or a Judge upon an affidavit of merits, and such terms as to costs and otherwise as they or he may think fit.

XXXIII. One new assignment only shall be pleaded to any number of pleas to the same cause of action; and such new assignment shall be consistent with and confined by the particulars delivered in the action (if any,) and shall state that the plaintiff proceeds for causes of action different from all those which the pleas profess to justify, or for an excess over and above what all the defenses set up in such pleas justify, or both.

XXXIV. No plea which has already been pleaded to the declaration, shall be pleaded to such new assignment, except a plea in denial, unless by leave of the Court or a Judge; and such leave shall only be granted upon satisfactory proof that the repetition of such plea is essential to a trial on the merits.

XXXV. The form of a demurrer, except in the cases herein specially provided for, shall be as follows, or to the like effect:—

“The defendant by his attorney, (Or in person, &c., Or plaintiff ) says, that the declaration (Or plea, &c. ) is bad in substance.”

And in the margin thereof some substantial matter of law intended to be argued shall be stated; and if any demurrer shall be delivered without such statement, or with a frivolous statement, it may be set aside by the Court or a Judge, and leave may be given to sign judgment as for want of a plea; and the form of a joinder in demurrer shall be as follows, or to the like effect:—

"The plaintiff (or defendant) says that the declaration (or plea, &c.) is good in substance," and the same shall be filed and delivered within two days after the filing of a demurrer.

XXXVI. No motion or rule fat & concilium shall be necessary, but the demurrer may be set down for argument by either party upon two days' notice.

XXXVII. Two clear days before the day appointed for argument, copies of the demurrer-book, duly noted with the points for argument, shall be delivered to the Courtwhere, of one shall be delivered by the plaintiff to Chief Justice, and one each to the Puisne Judges by the defendant, and either, party not delivering his books at the time appointed shall not be heard on the argument.

XXXVIII. In all actions on simple contract, except as hereinafter excepted, the plea of non assumpsit, or a plea traversing the contract or agreement alleged in the declaration, shall operate only as a denial in fact of the express contract, promise or agreement alleged, or of the matters of fact from which the contract, promise or agreement alleged, may be implied by law.

XXXIX. In all actions upon bills of exchange and promissory notes, the plea of non assumpsit "and never indebted," shall be inadmissible. In such actions, therefore, a plea in denial must traverse some matter of fact; *exempli gratia*, the drawing or making, or endorsing, or accepting, or presenting, or notice of dishonour, of the bill or note.

XL. In every species of action on contract, all matters in confession and avoidance, including not only those by way of discharge, but those which shew the transaction to be either void or voidable, in point of law, on the ground of fraud or otherwise, shall be specially pleaded; *exempli gratia*, infancy, coverture, release, payment, performance, illegality of consideration either by statute or common law, drawing, endorsing, accepting, &c. bills or notes by way of accommodation, set off, mutual credit, unseaworthiness, misrepresentation, concealment, deviation, and various other defenses must be pleaded.

XLI. In actions on policies of insurance the interest of the assumed may be averred thus:—

"That A. B. C. and D., (or some, or one of them), were or was interested, &c.; and it may also be averred that the insurance was made for the use, and benefit, and on the account of the person or persons so interested.

XLII. In actions on specialities and covenants, the plea of non est factum shall operate as a denial of the execution of the deed in point of law only; and all other defenses shall be specially pleaded, including matters which make the deed absolutely void, as, well as those which make it voidable.

XLIII. The plea of nil debet shall not be allowed in any action.

XLIV. All matters in confession and avoidance shall be pleaded specially, as above directed in actions on simple contracts.

XLV. In any case in which the plaintiff shall have given credit in the particulars of his demand for any sum or sums of money therein admitted to have been paid to the plaintiff, or which the plaintiff admits the defendant is entitled to set off, it shall not be necessary for the defendant to plead the payment or set off of such sum or sums of money. But this rule is not to apply to cases where the plaintiff after stating the amount of his demand, states that he seeks to recover a certain balance, without giving credit for any particular sum or sums, or to cases of set-off where the plaintiff does not state the particulars of such set-off.

XLVI. Payment shall not in any case be allowed to be given in evidence in reduction of damages or debt, but shall be pleaded in bar.

XLVII. In actions for detaining goods, the plea of non detinet shall operate as a denial of the detention of the goods by the defendant, but not of the plaintiffs property therein; and no other defense than such denial shall be admissible under that plea.

XLVIII. In actions for torts the plea of not guilty shall operate as a denial only of the breach of duty or wrongful act alleged to have been committed by the defendant, and not of the facts stated in the inducement, and no other defense than such denial shall be admissible under that plea all other pleas in denial shall take issue on some particular matter of fact alleged in the declaration.

XLIX. All matters in confession and avoidance shall be pleaded specially, as inactions on contracts.

L. In actions for trespass to lands, the plea of not guilty shall operate as a denial that the defendant committed the trespass as alleged in the place mentioned, but not as a denial of the plaintiffs possession or right of possession of that place, which, if intended to be denied, must be specially traversed.

LI. In actions for taking, damaging, or converting the plaintiff's goods, the plea of not guilty shall operate as a denial of the defendant having committed the wrong alleged by taking damaging, or converting the goods mentioned, but not of the plaintiff's property therein.

LII. In every case in which the defendant shall plead the general issue, intending to give special matter in evidence by virtue of an Act of Parliament, or of the Legislature, he shall insert in the margin of the plea the words "by Statute," together with the year or years of the reign in which the Act of Parliament, or of the Legislature, upon which he relies for that purpose, were passed, and also the chapter and section of each of such Acts, and shall specify whether such Acts are public or otherwise; otherwise such plea shall be taken not to have been pleaded by virtue of any Act of Parliament; and such memorandum shall be inserted in the margin of the issue and of the nisi prius record.

LIII. No entry or continuance by way of imparlance curia advisari vult, vice-comes, non misit breve, or otherwise, shall be made upon any record or roll whatever, or in the pleadings.

LIV. All judgments, whether interlocutory or final, shall be entered of record of the day of the month and year, whether in term or vacation, when signed, and shall not have relation to any other day;

Provided that it shall be competent for the Court or a Judge to order judgment to be entered nunc pro tunc.

LV. And whereas it is desirable that examples should be given of the statements of causes of action and of forms of pleading; be it enacted as follows:

LVI. The forms contained in the Schedule to this Act annexed shall be sufficient, and those and the like forms may be used, with such modifications as may be necessary to meet the facts of the case; but nothing herein contained shall render it erroneous or irregular to depart from the letter of such forms, so long as the substance is expressed without prolixity.

LVII. It shall be lawful for the defendant, or plaintiff, in replevin, in any cause in either of the said Courts, in which, if judgment were obtained, he would be entitled to relief against such judgment on equitable grounds, to plead the facts which entitle him to such relief, by way of defense and the Said Courts are hereby empowered to receive such defense, by way of plea; Provided that such plea shall begin with the words "for defense on equitable grounds," or words to the like effect.

LVIII. Any such matter which, if it arose before or during the time of pleading, would be an answer to the action by way of plea, may, if it arise after the lapse of the period during which it could be pleaded, be set up by way of audita querela.

LIX. The plaintiff may reply, in answer to any plea of the defendant, facts which avoid such plea upon equitable grounds; Provided that such replication shall begin with the words "For replication on equitable grounds," or words to the like effect.

LX. Provided always that in case it shall appear to the Court or any Judge thereof that any such equitable plea or equitable replication cannot be dealt with by a Court of Law so as to do justice between the parties, it shall be lawful for such Court or Judge to order the same to be struck out on such terms as to costs and otherwise as to such Court or Judge may seem reasonable.

LXI. 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 Judge, or a Master, against the claims of any other person upon such negotiable instrument.

LXII. It shall be lawful for 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 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.



LXIII. It shall be lawful for the Judges of the Supreme Court to make all such general rules and orders, and to frame and direct all such forms of proceedings, for the effective 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 and proceedings, shall be acted upon and enforced in the same manner, as other rules, orders and proceedings of the said Courts, or either of them, are now acted upon and enforced, or as near thereto as circumstances will permit.

LXIV. All suits now pending in the said Courts shall be continued to final judgment in accordance with the course of proceeding now used therein.

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

LXVI. Nothing in this Act shall avoid or lessen the right given to any defendant by statute to plead the general issue, and give the special matter in evidence.

LXVII. This Act shall come into operation on the Thirtieth day of June next.

#### Schedule.

#### COMMENCEMENT OF DECLARATION.

Venue.—A. B. by C. D. his Attorney complains of G.H. for that, &c. [here state the cause of action, and conclude as follows] and the Plaintiff claims \_\_\_\_\_ dollars, or a return of the said goods or their value, and \_\_\_\_\_ dollars for their detention.

[Where the non-joinder of a co-defendant has been pleaded, and the plaintiff has thereupon either commenced another action or amended, insert after G. H. and J. K , which said G. H. has heretofore pleaded in abatement, the non-joinder of the said J.K.]

Money payable by the defendant to the plaintiff for [these words, money payable, &c., should precede money counts, but need only be inserted in the first] goods bargained and sold by the plaintiff to the defendant.

Work done and materials provided by the plaintiff for the defendant at his request.

Money lent by the plaintiff to the defendant.

Money received by the defendant for the use of the plaintiff.

Money found to be due from the defendant to the plaintiff on accounts stated between them.

A messuage and lands sold and conveyed by the plaintiff to the defendant.

The good will of a business of the plaintiff sold and given up by the plaintiff to the defendant.

The defendant's use, by the plaintiff's permission, of messuages and lands of the plaintiff.

Freight for the conveyance, by the plaintiff, for the defendant, at his request, of goods in ships.

The demurrage of a ship of the plaintiff kept on demurrage by the defendant.

That the defendant, on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. by his promissory note, now overdue, promised to pay to the plaintiff \_\_\_\_\_ dollars [two] months after date, but did not pay the same.

That one A. On &c. [date] by his promissory note, now overdue, promised to pay to the defendant or order \_\_\_\_\_ dollars [two] months after date; and the said defendant endorsed the same to the plaintiff, and the said note was duly presented for payment and was dishonoured, whereof the defendant had due notice, but did not pay the same.

That the plaintiff, on &c. [date] by his bill of ex-change, now over due, directed to the defendant, required the defendant to pay to the plaintiff \_\_\_\_\_ dollars [two] months after date; and the defendant accepted the said bill, but did not pay the same.

That the defendant on, &c. [date] by his bill of exchange directed to A. required A. to pay to the plaintiff \_\_\_\_\_ dollars [two] months after date, and the said bill was duly presented for acceptance and was dishonoured, of which the defendant had due notice, but did not pay the same.

That the defendant, by Warranting a horse to be then sound and quiet to ride, sold the said horse to the said plaintiff, yet the said horse was not then sound and quiet to ride.

That the plaintiff let to the defendant a house. No. 200, Duckworth-street, for seven years, to hold from the \_\_\_\_\_ day of \_\_\_\_\_ A. D. \_\_\_\_\_ at \_\_\_\_\_ dollar's a year, payable half-yearly, of which rent one- half year's rent is now due and unpaid.

That the plaintiff, by deed, let to the defendant a house, No. 200, Duckworth street, to hold for seven years from the \_\_\_\_\_ day of \_\_\_\_\_ A. D. \_\_\_\_\_ and the said defendant, by the said deed, covenanted with the: plaintiff well and substantially to repair the said house during the said term [according to the covenant], yet the said house was, during the said term, out of good and substantial repair.

FOR WRONGS INDEPENDENT OF CONTRACT.

That the defendant broke and entered certain land of the plaintiff called \_\_\_\_\_, and depastured the same with cattle.

That the defendant assaulted and beat the plaintiff, gave him into custody to a policeman, and caused him to be imprisoned in a police office.

That the defendant converted to his own use or wrongfully deprived the plaintiff of the use and possession of the plaintiff's goods—that is to say, [household furniture, or as the case may be.]  
The defendant detains from the plaintiff his title deeds of land called \_\_\_\_\_ in the \_\_\_\_\_ district of \_\_\_\_\_ that is to say, [describe the deeds.]

#### DEFAMATION OF CHARACTER.

That the defendant falsely and maliciously spoke and published of the plaintiff the words following—that is to say, “ he is a thief:” [If there be any special damage here state it with such reasonable particularity as to give notice to the defendant of the peculiar injury complained of, for instance]—whereby the plaintiff lost his situation as game-keeper.

#### COMMENCEMENT OF PLEA.

The defendant by \_\_\_\_\_ his Attorney [or in person] says,—[here state the substance of the plea.]

And, for a second plea, the defendant says, [here state the second plea].

#### PLEAS IN ACTIONS ON CONTRACTS.

That he never was indebted as alleged. [This plea is applicable to declarations like those numbered 1 to 14.]

That he did not promise, &c. as alleged. [This plea is applicable to other declarations, not on bills and notes.]

That the alleged, deed is not his deed.

That the alleged cause of action did not accrue within six years [state the period of limitation applicable to the case] before the suit.

That before action, he satisfied and discharged the plaintiffs claim for payment.

That the plaintiff at the commencement of this suit was, and still is, indebted to the defendant in an amount equal to the plaintiff's claim for [here state the cause of set-off as in a declaration—see forms ante] which amount the defendant is willing to set off against the plaintiffs claim.

That after the alleged claim accrued, and before this suit, the plaintiff, by deed, released the defendant therefrom.

PLEAS IN ACTIONS FOR WRONGS INDEPENDENT OF CONTRACTS.

That he is not guilty.

That he did what is complained of by the plaintiff's leave.

That the plaintiff first assaulted the defendant, who thereupon necessarily committed the alleged assault in his own defense.

That the defendant at the time of the alleged trespass was possessed of land, the occupiers whereof, for twenty years before this suit, enjoyed as of right and without interruption a way on foot and with cattle from a public highway over the said land of the plaintiff to the said land of the defendant, and from the said land of the defendant over the said land of the plaintiff to the said public highway, at all times of the year, for the more convenient occupation of the land of the defendant; and that the alleged trespass was a use by the defendant of the said way.

REPLICATIONS.

The plaintiff takes issue upon the defendant's first, second, &c., pleas.

The plaintiff, as to the second plea, says [here state the answer to the plea as in the following forms.]

That the alleged release is not the plaintiff's deed.

That the alleged release was procured by the fraud of the defendant.

That the alleged set-off did not accrue within six years before this suit.

That the plaintiff was possessed of land whereon the defendant was trespassing and doing damage, whereupon the plaintiff requested the said defendant to leave the said land, which the defendant refused to do; and thereupon the plaintiff gently laid his hands on the defendant in order to remove him, doing no more than was necessary for that purpose, which is the alleged first assault of the plaintiff.

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

NEW ASSIGNMENT.

The plaintiff as to the \_\_\_\_\_ and \_\_\_\_\_ pleas says, that he sues not for the trespasses therein admitted, but for trespasses committed by the defendant in excess of the alleged rights, and also in other parts of the said land, and on other occasions and for other purposes than those referred to in the said pleas.

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

And the plaintiff as to the \_\_\_\_\_ and \_\_\_\_\_ pleas, further says, that he sues not only for the trespasses in those pleas admitted, but also for &c.

[If the plaintiff replies and new assigns to some of the pleas, and new assigns only to the other, the form may be as follows.]

And the plaintiff as to the \_\_\_\_\_ and \_\_\_\_\_ pleas, further says that he sues not for the trespasses in the pleas [the pleas not replied to] admitted, but for the trespasses in the \_\_\_\_\_ pleas [the pleas replied to], admitted, and also for, &c.

#### FORM OF AN ISSUE ROLL IN GENERAL.

In the \_\_\_\_\_ Court \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord 18\_\_\_\_ [date of declaration.]

THE VENUE.—A. B. by P. A., his Attorney, (or in person, as the case may be, as in the declaration,) sues C. D., who has been summoned to answer the said A. B. by virtue of a writ issued on the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_ (the date of the writ,) out of Her Majesty's \_\_\_\_\_ Court (as the case may be) for, &c. (copy the declaration from these words to the end, and all the pleadings with their dates, writing each plea or pleading in a separate paragraph, and numbering the same as in the pleading delivered, and conclude thus),— Therefore let a jury come, &c.

#### POSTEA.

Afterwards, on the \_\_\_\_\_ (first day of sittings) at St. John's aforesaid, before the said Court, come the parties, by their attorneys aforesaid, and a jury duly empannelled also come, who being sworn, say, upon their oath, that, &c. (according to the finding)— Therefore, &c.

#### JUDGMENT.

Therefore it is considered that the plaintiff do recover against the defendant [his damages aforesaid or his said debt, &c., as the case may be,] and also \_\_\_\_\_ dollars for his costs of suit by the Court adjudged to the plaintiff, and which [moneys or debt or damages] and costs, amount in the whole to \_\_\_\_\_ dollars.

(Judgment signed, &c.)  
A. B.,  
Clerk, &c.

Judgment for the defendant to be framed according to the principle of the preceding form.  
Form of Issue, &c., where trial is by a Judge instead of a Jury.

As in ordinary cases to issue joined, and then thus, —“and the said parties having, by consent in writing, duly signed, left the decision of the said issues to the Court, let the same be tried accordingly. Afterwards, on, &c. at, &c. before the said Court come the parties by their attorneys -aforesaid, and the issues being tried, and the said Court having considered the allegations and proofs offered, herein do find, as to the first issue, that the defendant did promise as the plaintiff hath alleged, and as to the second issue, that the defendant did not, &c., and the Court assess the plaintiff's damages, &c. (if any) &c. Therefore it is considered that the plaintiff do recover, &c., or that the defendant be discharged from the plaintiff's claim, and do recover, &c., his costs of suit, &c.

The same form, with the necessary variations, may be adapted to cases wherein special cases have been submitted to the Court.