



# Common Law Procedure Act 1852

## CHAPTER 76

### COMMON LAW PROCEDURE ACT 1852

#### I Commencement of Act.

##### *Writs for Commencement of Actions*

- II Personal Actions, when Defendant resides within the Jurisdiction, to be commenced by Writ of Summons in Form No.1 of Schedule (A).
- III No Form or Cause of Action to be mentioned in Writ.
- IV Writ to state Names of all Defendants, and for only One Action.
- V Writ to be dated of Day of issuing, and tested in Name of Chief or Senior Judge.
- VI Writ to be indorsed with Name and Abode of Attorney, or a Memorandum that Writ has been sued by Plaintiff in person.
- VII Attorney on Demand to declare whether Writ issued by his Authority, and to declare Name and Abode of his Client, if ordered. If Writ issued without Authority of Attorney Proceedings to be stayed.
- VIII If Writ issued without Authority of Attorney Proceedings to be stayed. Indorsement of Debt and Costs on Writ and Copy of Writ for a Debt, with Notice that Proceedings will be stayed on Payment within Four Days.
- IX Concurrent Writs may be issued.
- X From Commencement of this Act certain Provisions of 2 W.4 c.39 repealed.
- XI Renewal of Writs of Summons to save the Statute of Limitation, and for other Purposes.
- XII Renewal of Writs issued before this Act.
- XIII Production of renewed Writ Evidence of Commencement of Action.
- XIV Writ may be served in any County.
- XV Indorsement of Service to be made.

- XXVI As to Service of Writ on Corporation and Inhabitants of Hundreds and Towns.
- XXVII Proceedings where personal Service cannot be effected, but Defendant knows of the Writ, and evades Service.
- XXVIII As to Actions against British Subjects residing out of the Jurisdiction of Superior Courts.
- XIX As to Actions against Foreigners residing out of the Jurisdiction of Superior Courts.
- XX Omission to insert or indorse Matters in or on Writ not to nullify it.
- XXI Substitution by Mistake or Inadvertence of One Form of Writ for another may be by Judge without Costs.
- XXII Writs for Service within and without Jurisdiction may be concurrent, and vice versa.
- XXIII Affidavits in certain Cases may be sworn before a Consul.
- XXIV Distringas to compel Appearance or to proceed to Outlawry abolished.
- XXV Special Indorsement of the Particulars of Debts or liquidated Demands may be made on the Writ. Special Indorsement to stand for Particulars of Demand.

*Appearance, and Proceedings in default of Appearance*

- XXVI Appearance according to Provisions of Acts of 12 G.1 c.29, and 2 W.4 c.39, abolished.
- XXVII Final Judgment upon Writ specially indorsed in default of Appearance.
- XXVIII Judgment for Nonappearance where the Writ is not indorsed in the special Form.
- XXIX Appearance to be entered at any Time before Judgment.
- XXX Appearance by the Defendant in Person to give an Address at which Proceedings may be served.
- XXXI Mode of Appearance to Writ of Summons.
- XXXII Proceedings mentioned in Writ or Notice may be had and taken.
- XXXIII Proceedings where only some of the Defendants appear to a Writ specially endorsed.

*Joinder of Parties*

- XXXIV Nonjoinder and Misjoinder of Plaintiffs may be amended before Trial.
- XXXV Nonjoinder and Misjoinder of Plaintiffs may be amended at the Trial, as in Cases of Amendments of Variances under 3 & 4 W.4 c.42.
- XXXVI Upon Notice or Plea of Nonjoinder of Plaintiffs, Proceedings may be amended.
- XXXVII Misjoinder of Defendants may be amended before or at Trial.
- XXXVIII Upon Plea in Abatement for Nonjoinder of Defendants, Proceedings may be amended.
- XXXIX Provision in the Case of subsequent Proceedings against the Persons named in a Plea in Abatement for Nonjoinder of Defendants.
- XL Joinder of Claims by Husband and Wife with Claims in right of Husband.

*Joinder of Causes of Action*

- XLI Different Causes of Action maybe joined, but separate Trials may be ordered.

*Questions by Consent without pleading*

- XLII Questions of Fact may, after Writ issued, by Consent and Leave of a Judge, be raised without Pleadings.
- XLIII Agreement may be entered into for the Payment of Money and Costs according to the Result of the Issue.
- XLIV Judgment to be entered according to the Agreement, and Execution issued forthwith, unless stayed.
- XLV Proceedings upon Issue may be recorded.
- XLVI Questions of Law may be raised after Writ issued, by Consent, &c., without Pleading.
- XLVII Agreement as to Payment of Money and Costs, according to Judgment upon Special Case.
- XLVIII Costs to follow the Event, unless otherwise agreed.

*Pleadings in general*

- XLIX Fictitious and needless Averments not to be made
  - L Judgment upon Demurrer to be given according to the very Right of the Cause.
  - LI Objections by way of Special Demurrer taken away.
  - LII Pleadings framed to embarrass may be struck out or amended.
  - LIII Four Days Notice substituted for Rule to declare, reply, or rejoin.
  - LIV Pleadings to be dated and entered as of Time of Pleading, unless Order to the contrary.
  - LV Profert and Oyer abolished.
  - LVI Document may be set forth, and be considered a Part of the Pleading in which it is set forth.
  - LVII Performance of Conditions precedent may be averred generally.

*Declaration*

- LVIII Plaintiff to declare within a Year.
- LIX Forms of Commencement, &c. of Declaration.
- LX Commencement of Declaration after Plea of Nonjoinder.
- LXI Declaration for Libel or Slander

*Pleadings*

- LXII Rules to plead and Demand of Plea abolished.
- LXIII Time for pleading, where Defendant is within Jurisdiction, to be Eight Days.
- LXIV Express Colour abolished.
- LXV Special Traverses abolished.
- LXVI Formal Commencement and Prayer of Judgment unnecessary.
- LXVII Commencement of Plea.
- LXVIII Plea of Matter sub sequent to Action.
- LXIX Plea Puis darrein Continuance, when and how to be pleaded.
- LXX Payment into Court in certain Actions.
- LXXI Payment into Court how pleaded.
- LXXII No Order to pay Money into Court.
- LXXIII Proceeding by Plaintiff after Payment into Court.
- LXXIV Pleas to Actions partaking both of Breach of Contract and Wrong.
- LXXV Payment, Set-off, and other Pleadings which can be construed distributively shall be so construed.

- LXXXVI Traverse of the Declaration.
- LXXXVII Traverse of Plea or subsequent Pleading of Defendant.
- LXXXVIII Traverse of Replication or subsequent Pleading of the Plaintiff.
- LXXXIX Joinder of Issue.
- LXXX As to Pleading and demurring together.
- LXXXI Several Matters may be pleaded at any Stage of the Pleadings.
- LXXXII Judge's Order to plead several Matters sufficient.
- LXXXIII Objections to Pleadings to be heard on Summons to plead several Matters.
- LXXXIV Certain Pleas may be pleaded together without Leave.
- LXXXV Signature of Counsel.
- LXXXVI For pleading several Matters without Leave, Judgment may be signed.
- LXXXVII One new Assignment only allowed in respect of the same Cause of Action.
- LXXXVIII Pleas not to be repeated.
- LXXXIX Form of Demurrer and Joinder in Demurrer.
- XC Time for pleading after Amendment.

*Examples of Pleading*

- XCI Forms in Schedule may be adopted.

*Judgment by Default, and ascertaining Amount to be recovered*

- XCII Rule to compute abolished.
- XCIII Judgment by Default for liquidated Demands final.
- XCIV Inquiry of Damages may be directed to take place before the Master.
- XC V Judgment for Money Demands without Distinction between Debt and Damages.
- XCVI Saving as to certain Provisions of 8 & 9 W.3 c.11.

*Notice of Trial, Inquiry, and Countermand*

- XCVII Time for Notice of Trial and Inquiry.
- XCVIII Notice of Countermand.
- XCIX Costs of the Day.

*Judgment for not proceeding to Trial*

- C Statute 14 G.2 c.17 as to Judgment in case of Nonsuit repealed.
- CI Proceeding where Plaintiff neglects to bring on the Cause to be tried.

*Nisi Prius Record*

- CII Nisi Prius Record not to be sealed or passed.
- CIII Trials in Counties Palatine.

*Jury and Jury Process*

- CIV Jury Process abolished.
- CV Precept by Judges of Assize to summon Jurors for Civil as well as Criminal Trials.
- CVI A printed Panel to be prepared, and annexed to the Record.
- CVII Sheriffs of London and Middlesex to summon Common Jurors, and prepare a Panel, to be annexed to the Record.

- CVIII Special Jurors, not exceeding Forty-eight in Number, to be summoned to try all Special Jury Causes at Assizes.
- CIX Mode of obtaining a Special Jury in Country Causes.
- CX Special Juries in London and Middlesex, how struck.
- CXI Remedy for Delay by Notice of Trial by Special Jury.
- CXII Notice to Sheriff of Trial by Special Jury.
- CXIII If Special Jury not summoned, Cause to be tried by a Common Jury.
- CXIV View to be by Rule without Writ.
- CXV Proceedings before Jurors so returned same as before this Act.
- CXVI Defendant's Right to try, upon Default of the Plaintiff, preserved.

#### *Admission of Documents*

- CXVII Admission of Documents.
- CXVIII Proof of Admissions.
- CXIX Proof of Notice to produce.

#### *Execution*

- CXX Execution after Trial.
- CXXI Ground Writs abolished.
- CXXII Writs in Counties Palatine to be directed to the Sheriff.
- CXXIII Expenses of Execution.
- CXXIV Writs of Execution to remain in force for One Year and to be renewed if necessary.
- CXXV Production of renewed Writ, Evidence of Renewal.
- CXXVI Sheriff or Gaoler may discharge Prisoner by Authority of Attorney in the Cause.
- CXXVII Proceedings for charging in Execution a Person already in Prison of the Court.

#### *Proceedings to revive*

- CXXVIII Execution in Six Years without Revival.
- CXXIX Judgment to be revived by Writ or with Leave of Court, or Judge, by Suggestion.
- CXXX Proceedings upon Application for Suggestion to revive Judgment.
- CXXXI Writ of Revivor, and Proceedings thereon.
- CXXXII Writs of Scire facias in other Cases to be tested, directed, and proceeded upon in like Manner.
- CXXXIII Appearance to Writ of Revivor.
- CXXXIV As to Issue of Writ of Revivor upon Judgment more than Ten Years old.

#### *Death, Marriage, and Bankruptcy*

- CXXXV Action not to abate by Death.
- CXXXVI Proceedings in case of Death of One or more of several Plaintiffs or Defendants.
- CXXXVII Proceeding in case of sole Plaintiff.
- CXXXVIII Proceeding upon Death of sole or sole surviving Defendant.
- CXXXIX Death between Verdict and Judgment.
- CXL Proceedings in case of Death after Interlocutory, and before final Judgment.
- CXLI Marriage not to abate Action.
- CXLII Bankruptcy and Insolvency of Plaintiff, when not to abate Action.

*Arrest of Judgment and Judgment non obstante veredicto*

- CXLIII Upon Motion in arrest of Judgment, pursuant to 1 W.4 c.7, or for Judgment Non obstante veredicto, omitted Facts may by Leave of the Court be suggested.
- CXLIV Judgment to follow Result of Suggestion.
- CXLV Costs of abortive Issues.

*Error*

- CXLVI Error to be brought within Six Years.
- CXLVII Proviso for Disabilities.
- CXLVIII Writ of Error abolished.
- CXLIX Error in Law how brought.
- CL Error not Supersedeas till Service of the Copy of the Note and Grounds of Error.
- CLI Bail in Error.
- CLII Suggestion instead of Assignment of and Joinder in Error.
- CLIII Roll to be made up and Suggestion entered by Plaintiff in Error.
- CLIV Error brought by One of several Persons against whom Judgment has been given.
- CLV Judgment Roll to be brought into Court instead of Transcript.
- CLVI Jurisdiction of Courts of Error over the Proceedings.
- CLVII Court of Error to have like Powers with Court below.
- CLVIII Proceedings in Error in Fact.
- CLIX Plaintiff may discontinue Proceedings in Error.
- CLX Defendant may confess Error, and consent to Reversal of Judgment.
- CLXI Death of Plaintiff in Error no Abatement.
- CLXII Providing for Death of One of several Plaintiffs in Error.
- CLXIII Proceedings upon Death of sole Plaintiff or of all the Plaintiffs in Error.
- CLXIV Death of Defendant in Error no Abatement.
- CLXV Proceedings upon Death of One of several Defendants in Error.
- CLXVI Proceedings upon Death of sole Defendant or of all the Defendants in Error.
- CLXVII Marriage not to abate Proceedings in Error.

*Ejectment*

- CLXVIII Ejectment to be brought by Writ.
- CLXIX Form and Duration of Writ of Ejectment.
- CLXX Service of Writ of Ejectment.
- CLXXI Appearance of Persons named in the Writ.
- CLXXII Appearance of Persons not named.
- CLXXIII Appearance and Defence by Landlord.
- CLXXIV Notice to defend for Part only.
- CLXXV Want of Certainty cured by Particulars.
- CLXXVI Defence by Persons not in possession.
- CLXXVII Judgment for Default of Appearance or Defence.
- CLXXVIII Issue how made up.
- CLXXIX Special Case may be stated.
- CLXXX Trial of Issue.
- CLXXXI Verdict when Title appears to have expired before Trial.
- CLXXXII Trial may ordered to take place in any County.
- CLXXXIII Nonappearance at Trial.

- CLXXXIV Special Verdict, and Bill of Exceptions.
- CLXXXV Judgment upon Finding for Claimant.
- CLXXXVI Judgment upon Finding for Defendant.
- CLXXXVII Execution for Recovery of Possession and Costs may be joint or separate.
- CLXXXVIII Defence by joint Tenants, Tenants in Common, or Coparcener.
- CLXXXIX Trial and Judgment in Ejectment against Joint Tenants, Tenants in Common, and Coparceners.
  - CXC Action not to abate by Death.
  - CXCI Proceeding upon Death before Trial where Right survives.
  - CXCII Proceedings upon Death before Trial, where Right does not survive.
  - CXCIII Upon Death of One of several Claimants having obtained a Verdict.
  - CXCIV Proceedings in case of Death of Claimant, where Right does not survive.
  - CXCV Proceedings upon Death of One of several joint Defendants.
  - CXCVI Upon Death of all the Defendants in Ejectment before Trial.
  - CXCVII Upon Death of all Defendants in Ejectment after Verdict.
  - CXCVIII Upon Death before Trial of Defendant in Ejectment, who defends separately for Part.
  - CXCIX Upon Death of Defendant defending separately for Property in respect of which others also defend.
    - CC Claimant may discontinue by Notice
    - CCI Discontinuance of Action by One of several Claimants.
    - CCII Judgment for not proceeding to Trial after Notice.
    - CCIII Defendant may confess the Action.
    - CCIV Confession by One of several Defendants defending separately for Part.
    - CCV Confession by One of several Defendants who defend for same Property.
    - CCVI Formal Entry of Judgment on the Roll unnecessary for Purposes of Execution.
    - CCVII Effect of Judgment.
    - CCVIII Error and Bail in Error in Ejectment.
    - CCIX Tenants to give Notice of Ejectment to Landlord.
    - CCX Proceedings in Ejectment by Landlord for Nonpayment of Rent.
    - CCXI Lessee proceeding in Equity not to have Injunction or Relief without Payment of Rent and Costs.
    - CCXII Tenant paying all Rent with Costs, Proceedings to cease.
    - CCXIII Ejectment by Landlord against Tenant holding over after Expiration of Term or Determination of Tenancy by Notice to quit. Rule or Summons for the Tenant to give Bail. On Rule or Summons absolute, if Tenant shall not conform, Judgement to be for the Landlord.
    - CCXIV On Trial of any Ejectment between Landlord and Tenant, Juries to give Damages for mesne Profits down to the Verdict, or to a Day specified therein.
    - CCXV On Trials after Bail found, Judge shall not stay the Execution except by Consent, or on Tenant's finding Security. Bail in Error to discharge such Security.
    - CCXVI Recognizances to be taken as other Recognizances of Bail; Actions on them limited.
    - CCXVII Landlord to recover Possession of Lands, &c. after Service of Writ in Ejectment.
    - CCXVIII Saving of former Remedies.

- CCXIX In Ejectment by-Mortgagee, the Mortgagor's rendering the Principal, Interest, and Costs in Court shall be deemed a full Satisfaction, and the Court may compel the Mortgagee to re-convey.
- CCXX Not to extend to Cases where-the Right of Redemption is controverted, or the Money due not adjusted; or to prejudice any subsequent Mortgage.
- CCXXI Jurisdiction of Courts and Judges.

*Amendment*

- CCXXII Amendment.

*Power to Judge to make Rules and frame Writs and Proceedings*

- CCXXIII General Rules may be made by the Judges.
- CCXXIV New Forms of Writs and other Proceedings.
- CCXXV Rules may be made by each Court for Government of its Officers.

*Effect of Injunction*

- CCXXVI Injunctions and Orders to stay Proceedings to have a specific Effect.
- CCXXVII Interpretation of Terms.
- CCXXVIII Her Majesty may direct all or Part of this Act to extend to any Court of Record.
- CCXXIX Certain of the Provisions of this Act to extend and apply to the Court of Common Pleas at Lancaster and the Court of Pleas at Durham.
- CCXXX Powers given by this Act to the Judges of the Superior Courts at Westminster to make Rules, &c. may be exercised by Judges of the Court of Common Pleas at *Lancaster* and Court of Pleas at Durham as to those Courts.
- CCXXXI Judges may make Rules for applying other Provisions of this Act to Court of Common Pleas at Lancaster and Court of Pleas at Durham.
- CCXXXII Provisions to apply to Masters of Courts at Westminster to apply to Prothonotaries of Court of Common Pleas at Lancaster and Court of Pleas at Durham, and their Deputies, &c.
- CCXXXIII As to Proceedings in Error.
- CCXXXIV Certain Provisions of 4 & 5 W.4 c.62 and 2 & 3 Vict. c.16 repealed.
- CCXXXV Short Title of Act.
- CCXXXVI Act not to extend to *Ireland* or *Scotland*.

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SCHEDULE (A.) —  
referred to in the  
foregoing Act.

SCHEDULE (B.) — FORMS OF PLEADINGS