

INDEX.

A.

- ACTIONS, LIMITATION OF. *See* LIMITATION OF ACTIONS.
- ACTS OF STATE,
proof of, 27
- ADMINISTRATOR. *See* EXECUTOR ; LIMITATION OF ACTIONS.
- AFFIRMATION,
in lieu of oath, 269, 270
See also EVIDENCE.
- ARMS AND MUNITIONS OF WAR,
exportation of, 312
See FOREIGN ENLISTMENT.
- ASSAULT AND BATTERY,
jurisdiction of Courts of Quarter Sessions in cases of, 291

B.

- BANISHMENT,
Supreme Court may order certain convicted offenders to quit the colony, 295
punishment for not departing, or returning, 295
removal from one district to another, 295
term of imprisonment may be dispensed with or reduced, 295
- BARRISTER,
See LAW SOCIETY, BARRISTERS AND SOLICITORS.
- BEGGARS AND VAGRANTS,
punishment of, 294
- BY-STANDER,
constable may call upon for assistance, 294
penalty for refusing, 294

C.

- CENTRAL DISTRICT COURT. *See* DISTRICT COURTS.
- CHATTELS REAL,
lands, tenements, &c., in this colony to be, 320
exception as to titles acquired before June 12th, 1834, 320
- CHIEF JUSTICE, SUPREME COURT,
may hold office of Administrator of Government, 3

CODFISH,

larceny of, 294

See MAGISTRATES.COURT OF LABRADOR. *See* LABRADOR, COURT OF.

• CRIMINAL LAW,

law of England to apply where no local enactment, 288

penalties, application of, 288

appellate jurisdiction of Supreme Court, 288

where appeals in England to quarter sessions, 288

Imperial statutes, certain, in force in this colony, 289

in amendment or alteration of above, 289

relating to jurisdiction, &c., 289

penal servitude, imprisonment in lieu of, 289

receiving stolen goods, &c., a misdemeanour, 289

order of magistrate for payment of money enforceable by distress and sale of
offender's goods, 290

Quarter Sessions, criminal jurisdiction of, 290

larceny, 291

false pretences, obtaining goods, &c., by, 291

receiving stolen goods, 291

aggravated assaults, &c., 291

proceedings, 291

See QUARTER SESSIONS.

magistrates and justices of the peace, jurisdiction of, in certain cases, 293-294

See MAGISTRATES.

removal of convicts from the colony, 295

See BANISHMENT.

whipping and hard labour, 296

See WHIPPING.

commutation of sentences, 297

cruelty to animals, 298

See CRUELTY TO ANIMALS.

railway trains, injuries to, 301, 302

See RAILWAY TRAINS, INJURIES TO.

telegraphs and telephones, injuries to, 302, 303

See TELEGRAPHS AND TELEPHONES.

submarine cables, injuries to, 303-311

See TELEGRAPH CABLES (SUBMARINE), INJURIES TO.

foreign enlistment, and export of arms and munitions of war, 312, 313

See FOREIGN ENLISTMENT.

public processions, 313

See PROCESSIONS, PUBLIC.

lotteries, 314

See LOTTERIES.

forest fires, 315-319

See FOREST FIRES.

- CROWN GRANTS, LICENSES, &c.,
 questions relating to trial of, 283-285
 interpretation of terms, 283
 petition to Court, requisites of, 284
 service upon Attorney General, 284
 parties to proceedings, 284
 proceedings as in equity suits, 284
 nature of relief, 284
 appeal 285
 remedy cumulative, 285
- CRUELTY TO ANIMALS,
 cruelty defined, penalty, 298
 damage to animal, compensation for, 299
 carrying, &c., animals so as to cause suffering, 299
 pritchet for carts, &c., to be used, penalty for neglect, 299
 arrest without warrant, upon view, 299
 upon information or complaint, 299
 vehicles, custody of, pending complaint, 299
 may be sold to pay penalty, 300
 proceedings under chapter summary, 300
 limitation of, 300
 distress and sale of offender's goods, 300
 "animal," meaning of, 300
- CUTTING AND WOUNDING,
 jurisdiction of Courts of Quarter Sessions in cases of, 291
- D.
- DEATHS,
 sudden, &c., inquiries into cause of, 233
- DEEDS,
 registration of, 326-331
 See REGISTRATION OF DEEDS.
- DISTRESS AND REPLEVIN,
 particulars of claim to be delivered, 272
 articles exempt from, 272
 sheriffs authorized to make replevies, 272
 replevin bond, 273, form of, 274
 assignment of to person distrained, 273, form, 274
 warrant of replevin, 273, form, 275
 proceedings in action, when to be taken, 273
 limitation of right to make, 367, 368, 369, 370, 373
 See LIMITATION OF ACTIONS (REAL PROPERTY).
- DISTRESS AND SALE,
 where not expressly provided, power of magistrate to order, 290

DISTRICT COURTS,

- Central District Court, limits of district of, 227
- Harbour Grace District Court, limits of district of, 227
- jurisdiction of, 227
 - in actions to recover chattels, 229
- Judges of Central District may sit apart, 228
 - ex officio* stipendiary magistrates and justices of the peace, 228
 - salaries of, 229
 - not to engage in other business, 229
- causes of action not to be divided, 228
- witnesses, compelling attendances of, at, 228
- feri facias* upon execution, 228
 - attachment in hands of third party, 228
- removal of causes into supreme court from, 228
- appeal from, 229
- clerks of the peace to be clerks of, 229
- counter-claims and equitable defences, 229
- rules to be made by judges of Supreme Court, 230
- evidence to be taken by judge fully in writing, 230
 - ruling upon, to be reduced to writing, 230

E.

ELECTRIC TELEGRAPHS AND TELEPHONES,

- protection of, 302
- See* TELEGRAPHS AND TELEPHONES.

EVIDENCE,

- competency of witnesses,
 - parties or persons interested, 266
 - husbands and wives, 266, 267
 - clergymen and priests, 267
 - crime not to incapacitate, 269
 - person charged criminally not competent or compellable for or against himself, 266
- exceptions, summary proceedings, 267
 - adultery, proceedings in consequence of, 267
- corroboration, breach of promise of marriage, 267
 - against representative of deceased person, 272
 - lunatic, 272
- documents, how proved,
 - proclamations, treaties, acts of state, &c., 267
 - judgments, decrees, orders, 267
 - judicial and legal proceedings, 267
 - documents admitted without proof in British Courts elsewhere, 268
 - registers of ships, 268
 - book or document of public nature, by copy, 268

INDEX.

v

EVIDENCE—CONTINUED.

- falsely certifying copies, penalty, 269
- oaths, who may administer, 269
 - affirmation instead of, 269, 270
 - false, penalty for, 270
- forging seal, stamp or signature, felony, 269
- examination of witnesses, 270
 - discrediting party's own witness, 270
 - previous statements, cross-examination as to, 270
 - previous conviction for felony or misdemeanor, as to, 271
 - attesting witness not necessary, when attestation not requisite to validity, 271
 - writing, disputed, comparison of with genuine, 271
- affidavit, when party may be called upon to make, 271
 - proceedings therefor, 271
- registry of deeds, proof in case of loss of original, 272
 - See also* SUPREME COURT AND PROCEDURE THEREIN, *Evidence*.

EXECUTOR,

- action by for injury to real estate of testator, 355
 - limitation of, 355
- action against for wrong committed by testator, 355
 - limitation of, 355
- distrain by for rent due to testator, 355
 - limitation of, 356
- trust moneys, deposit of in Savings' Bank, 356
 - proceedings thereupon, 356
 - majority of trustees, &c., to decide as to, 357
 - indemnity to Savings' Bank upon, 357
 - Savings' Bank not to be compelled to assume liability, 357
 - to be indemnified as to costs, 357
- power of attorney, indemnity for acts *bona fide* done under, 358
- lease held by testator, provision for future claims under out of estate, 358
 - distribution of estate thereafter, 358
 - may assign lease thereafter, 358
- creditors and claims, advertisement for, 358
 - distribution of estate thereafter, 358
- opinion, advice or direction of Supreme Court, application for, 359
 - proceedings upon, 359
- instruments of trusts, implied clause in, 359
 - expenses incurred under, indemnity for, 359
- investment of trust funds by, in what securities, 359
- compensation to for services, 361, 362
- purchase of estate of testator by, 362
- proceedings by in relation to trusts, &c., 350, 359
 - appeal, 361
 - costs, 362
 - Supreme Court may make rules for, 362

F.

FALSE PRETENCES,

obtaining goods, &c., by ; jurisdiction of Courts of Quarter Sessions in case of, 291
See QUARTER SESSIONS.

FIRES,

inquiries into origin of, 233
forest, 315, 319. *See* FOREST FIRES.

FOREIGN ENLISTMENT, AND EXPORT OF ARMS, &c.

foreign enlistment, prevention of, 312
arms and munitions of war, prevention of exportation of, 312
proclamations may be amended, 312
violation of chapter, penalty, 312
trial, place, venue, &c., 313
Justice may issue warrant for arrest of party charged, 313
"foreign state," meaning of, 313
limitation of prosecution, 313

FOREST FIRES,

fires, lighting of, in woods, prohibited, 316
 purposes excepted, 316
 precautions to be observed, 316
 violation, penalty, 317
owner of land *prima facie* deemed to be offender, 316
Crown lands, upon, persons last engaged near place deemed to be offenders, 316
surveyors, &c., to procure copy of chapter, 317
 penalty for violation, 317
locomotive engines to be provided with bonnet or screen, 317
 duty of engineer, 317
 penalty for violation, 317
 proof of name or number of engine, or name of engineer, not necessary, 317
railway passing through woods, combustible material to be removed from track, 317
 violation, penalty, 318
inspection of railway engines by government engineer, 318
 power to enter shops, sheds, &c., 318
 penalty for obstructing or hindering, 318
offences, summary conviction for, 318
 application of penalty, 318
 imprisonment if penalty not paid, 318
Government railway engine, damage by, compensation for, 318 ; how determined, 318
limitation of prosecutions, 319
duty of officers of Crown lands and constables, 319
"woods," meaning of, 319
civil action, right to bring not affected, 319

G.

GRIEVOUS BODILY HARM,

jurisdiction of Courts of Quarter Sessions in cases of, 291

See QUARTER SESSIONS.

GUARANTEE,

consideration, absence of statement of, in, not to invalidate, 365

H.

HARD LABOUR,

summary conviction, upon, may be imposed, 296

HOMESTEAD. *See* CROWN LANDS, MINES, MINERALS, &c.

settler cultivating, &c., to extent of twenty acres may acquire, 320

exemption from execution, sale, &c., 321

title, how acquired, set forth, &c., 321

declaration of, 321 ; form, 322

registration of, 321

not to be defeated by conveyance, &c., 321

partition between owner of and other parties, 321

insolvency, homestead to be set apart, 321

execution, homestead to be set apart, 321

death of holder, property to go to widow and minor children, 322

sale for benefit of widow or children may be ordered by Court or Judge, 322

I.

IMPRISONMENT FOR DEBT,

provisions respecting, 19-21

See SUPREME COURT, &c. *Arrest for Debt.*

INFANT,

real estate of, Court may order sale of, 338

title under sale effectual, 338

report of sale to be filed, 338

proceeds to be invested under order of Court, 338

interest of infant in proceeds same as in estate, 338

conveyance to be *prima facie* evidence of regularity of proceedings, 338

INSOLVENCY,

ARRANGEMENTS AND COMPOSITIONS,

upon making of, stay of proceedings, &c., 351

trustee may be relieved, 351

manager and debtor liable to orders of Court or Judge, 351

opposing creditors, reservation of rights of, 351

power of Court to refuse to act upon arrangement, 351

punish debtor, 351

order that debtor shall continue liable, 351

declare debtor insolvent, 352

preferential creditors, claims of, 352

calculation of number and value of creditors, 352

INSOLVENCY—CONTINUED.

ARRANGEMENTS AND COMPOSITIONS—*continued*.

effect of, when acted upon, same as certificate of insolvency, 352
registry of, certificate of, 352

ARREST,

party declared insolvent not afterwards liable to, 341

CERTIFICATE OF INSOLVENCY AND DISCHARGE,

proceedings to obtain, 345, 346
effect of, 346
rent accruing after insolvency, not discharged from, 346
registration of, 352

COSTS,

attaching creditor, of, 365
petitioner, of, 365
creditors proving claims, of, 365
taxation of, 365

DECEASED PERSONS,

estates of, 349

DISTRAINT,

right of landlord before or after appointment of trustee, 353

CLAIMS AND DIVIDENDS,

reference of claims, 350
stated periods, payments due at, 353
provision for creditors resident at a distance, 353
creditors whose debts not proved when dividend declared, 353
specific security, creditor holding, 354
preferential. *See Privileged Creditors.*

DISTRIBUTION,

after payment of preferential claims, rateably, 338

JURISDICTION,

Judge, illness or absence of, 354
to be a Court of record, 354
may make necessary orders, 350
disobedience of orders to be contempt, 350

JURY,

trial of question of fact by, 350

LEASEHOLD INTERESTS,

trustees not bound to accept, 344

PENAL PROCEEDINGS,

punishment of insolvent in certain cases, 342
relief from, 342
for refusal to deliver up property, 345
in cases of arrangement or composition, 351

INSOLVENCY--CONTINUED.

PERJURY,

false evidence in any proceeding under this chapter to be, 350

PREFERENTIAL ASSIGNMENTS,

certain declared void, 343

PRIVILEGED CREDITORS,

seaman, fisherman, or servant in the fishery, and suppliers of bait, 345

to claim on voyage, &c., 345

where insufficient to pay in full, 346

party supplying place of servant incapacitated, dead, &c., 347

collusion with hirer or employer to dispose of voyage wrongfully, loss of claim, 348

declaration of insolvency not necessary as proof, 347

sealers, for shares of seals, 348

clerks and servants, wages for current year, 348

Crown debts, 349

Newfoundland Savings' Bank, 349

supplies for fishery for current season, 349

PROCEDURE,

power of Court or Judge to declare parties insolvent, 340, 341

application to be by petition, 341

requisites of petition and schedule, 341

hearing, appointment of time for, 341

rule or order for, publication of, 341

in outport, 341

examination may be taken before examiner, 341

adjournment of hearing, 341, 342

petition not to be withdrawn except by consent of creditors, 342

may be dismissed, 342

judge may order apprehension of debtor, 342

debtor in prison, may be remanded, or bail taken, 345

power of Court or Judge to compel attendance of witnesses, 343

rehearing, right of any party to, 350

Court or Judge may make all further orders necessary, 350

punish for contempt, 350

RECEIVER OF VOYAGE,

liability for servants' wages, &c., at the fishery, 346

defences available to, 347

supplying merchant liable only where servant, &c., engaged with his consent, 347

insolvency of, claims of servants, &c., to be preferential, 348

RENT,

liability of estate for, 344

SURETIES AND PARTIES SECONDARILY LIABLE,

liabilities of not affected by insolvency, 352

TRUSTEES,

appointment of, 343

INSOLVENCY—CONTINUED.

TRUSTEES—*continued*.

- powers and duties of, 344
- articles exempt from vesting order, 344
- under assignment for benefit of creditors, powers and duties of, 344
- change or removal of, 344
- compensation of, 344

J.

JUDGES,

- of Supreme Court to be visitors of Law Society, 237
- See* DISTRICT COURTS AND PROCEDURE THEREIN.

JURORS AND JURIES,

- Central district, qualification of grand, 257
 - petty, 258
- Northern and Southern districts, qualification of grand, 258
 - petty, 258
- Courts of Sessions, liability to serve in, 258
- list of, to be made and returned to Sheriff, 258
 - revised, annually, 259
 - open to public inspection, 259
 - persons removed from, to be kept by sheriff, 259
 - in sessions by magistrate, 259
 - revised, persons on, to serve for current year, 259
- grand, drawing and summoning of, 259
 - not liable to serve on petty jury, 263
- petty, drawing and summoning of, 260
 - time for attendance of, 260
 - extension of, 260
 - drawing of, at trials, 262
 - from whole panel, 263
- special, in criminal cases, 261
 - proceedings for drawing, summoning, &c., 261
 - challenge, 262
 - in civil cases, 262
 - proceedings for drawing and summoning, 262
 - drawing of, at trial, 262
- criminal cases, to be drawn from whole panel, 263
 - sworn simultaneously, 264
- challenge, peremptory, civil causes, 263
 - misdemeanours, 263
 - special jury, felonies, 262
 - for want of qualification, examination of, 264
 - not British subject, or under age, challenge only, 263
 - for cause, to be tried by the Court, 265
- exemptions from service, 265
- summons, service upon, of, 264

JURORS AND JURIES—CONTINUED.

- non-attendance, fines for, 264
- special commission, liability to serve upon, 264
- civil causes, number of jurors in, 264
- meat or drink, keeping without abolished, 264
- treason, felony, perjury, &c., persons convicted of, not competent to serve, 264
- additional, special precept for, 265
- irregularities in drawing, summoning, &c., cause of challenge only, 265
- aliens, trial of, 265
- fund for payment of petty jurors, 265

JUSTICES OF THE PEACE,

- may commit for trial in any district, 232
- jurisdiction of, in criminal matters, 232
- decision of, review of, 232, 233
- fires, inquiries into origin of, by, 233
- powers and jurisdiction of, where no resident stipendiary magistrate, 233
- Clerk of the Peace: performance of duties of, by, 233
- conviction by, not to be set aside for want of form, 233
- costs of proceedings before, 234, 235
- criminal jurisdiction in certain cases, 293, 294
- See* MAGISTRATES.

L.

LABRADOR, COURT OF,

- constitution and jurisdiction of, 223
- proceedings to be summary, 223
- salary of Judge, 223
- appeal, in what cases, 223
- proceedings upon, 224
- Judge to be *ex officio* J. P. for colony, 224
- imprisonment of offenders, where, 224
- law of attachment to apply, 224
- schedule of forms of process, &c., 224–226
- costs, scale of, 226

LANDLORD AND TENANT,

- tenant to notify landlord of writ for recovery of tenement, 275
- recovery of premises by landlord, when half year's rent in arrear, 276
- relief in equity, on what conditions upon payment of rent, 277
- cumulative remedy, 277

LARCENY,

- jurisdiction of certain Courts of Quarter Sessions to try, &c., 290
- See* QUARTER SESSIONS.
- codfish, of, 294
- See* MAGISTRATES.

LAW SOCIETY, BARRISTERS AND SOLICITORS,

ANNUAL CERTIFICATES,

- regulations respecting, 252, 253
- list of Solicitors to be kept by Secretary, 252
- issue of, date, &c., 252
- requisites of, 252, 253
- fees for, 253
- solicitor indebted to society not to obtain, 253
 - newly admitted, first required, 253
- practising without, penalty for, 253

BARRISTER,

- call or admission of, rules respecting, 241
- professional or other misconduct of, 242
 - disbarring of, upon, 242
 - procedure upon, 242, 243
- non-payment of fees or fines by, disqualification of, 242
- not to sit as bencher upon charge against himself, 243
- qualifications for admission of, 245, 246

BENCHERS,

- who to be, 237
- number of, 238
- election of, 238
 - regulations respecting, 238, 239, 240
 - voters at, qualification of, 239
 - failure in, proceedings upon, 240
- qualification of, 239
- tenure of office of, 240
- vacation of seat of, 240
- officers, election of, 240
- vacancies among, how filled, 241
- powers of, 241, 242
 - to make rules, 241
 - examine witnesses upon oath, 241
 - compel attendance of witnesses, 241
 - in relation to legal education, 241
 - to call and admit to the bar, 241
 - students at law, respecting, 241
 - discipline and honour of the bar, respecting, 241
 - solicitors, examination, admission of, respecting, 241, 242, 251
 - certificates, to suspend grant or refuse, 242
 - professional or other misconduct, respecting, 242
 - See Barrister, Solicitor.*
 - library, control and management of, respecting, 243
 - law reporting, respecting, 243
 - loan, to raise, 245
- not to sit upon investigation of charge against himself, 243

LAW SOCIETY, BARRISTERS AND SOLICITORS—CONTINUED.

FEES,

- scale of, payable to Chief Clerk and Registrar for society, 252
- application of, 252
- annual certificates for, 253

LAW REPORTING,

- benchers to appoint reporters, 243
- reporters to hold office during pleasure, 243
 - be amenable to benchers, 243
 - remuneration of, 244
- printing and publishing, regulations for, 244

LAW SOCIETY,

- to continue as at present constituted, 237
- constitution of, as body corporate, 237
- judges of Supreme Court to be visitors of, 237
- officers of, election of, 240
- meetings of, annual, 244
 - proceedings at, 244
 - special general, 244
 - requisition for, 244

LIBRARY,

- control and management of, 243
- appropriation of funds for, 243

REVENUE AND EXPENDITURE,

- society to fix and receive fees, &c., 244
- loan, power to raise, 243
 - sinking fund to pay off, 245
 - form of debenture, 255

RULES AND REGULATIONS,

- in force on June 1st, 1889, to continue, 337
- election of benchers, for, 240
- society, government of, for, 241
- education, legal, for improvement of, 241
- students at law, admission of, 241
- solicitors, examination of, 241, 261
- library, management of, 243
- law reporting, respecting, 244
- barristers, admission of, 245

SECRETARY,

- election of, 240
- tenure of office of, 240

SOLICITOR,

- admission of, rules respecting, 241, 247
 - conditions of, 249, 250, 251
 - proceedings upon, 251

LAW SOCIETY, BARRISTERS AND SOLICITORS - CONTINUED.

SOLICITOR—*continued.*

- examination of, 251
 - suspension of certificate upon, 242
- misconduct of, powers of benchers as to, 242
 - proceedings in relation to, 242
 - suspension from practice, 242
- unless admitted and enrolled, no person to practice as, 246
- qualification for admission of, 246, 247
- powers and privileges of, 246
- oaths of allegiance and of office to be taken by, 249
- certificate of fitness and capacity from benchers, 251
 - compliance with requirements of chapter, 351
- annual certificate, rules respecting, 252, 253
 - indebted to society not to obtain, 253
 - newly admitted, when to be taken out by, 253
 - practising without, penalty for, 253
- in prison, not to practice, penalty, 253, 254
- unqualified, practising by, penalty, 254
 - as agent of, 254
- default by, in payment of moneys received, 254
- holding office, not to practise 254
 - penalty, 254
- engaged in mercantile business, not to practise, 254
- striking off roll, limitation of time for, 255
 - proceedings upon, 255

STUDENT AT LAW AND ARTICLED CLERK,

- education of, rules respecting, 241
- admission of, rules respecting, 241
- examinations of, rules respecting, 250
- conduct of, proceedings upon, 252
- service of, enactments respecting, 248

TREASURER,

- election of, 240
- to be called president of the society, 240
- tenure of office of, 240

VISITORS,

- Judges of Supreme Court to be, 237

LIMITATIONS OF ACTIONS (PERSONAL),

- actions to be brought within twenty years, 363
 - six years, 363, 366
 - two years, 363
- for rent upon a demise, 362, 363
- on specialties, 362, 363
- on award where submission not by specialty, 362, 363
- for money levied on execution, 362, 363

LIMITATIONS OF ACTIONS, (PERSONAL)—CONTINUED.

- action of trespass, 362, 363
 - of detinue, 362, 363
 - of trover, 362, 363
 - of replevin, 362, 363
 - of account, 362, 363
 - of debt on contract without specialty, 363
 - on the case (other than slander), 362, 363
 - of debt for arrears of rent, 363
 - for seamen's wages, on Admiralty side of Supreme Court, 363
 - of assault and battery, wounding and imprisonment, 363
 - for penalties given by statute, 363
 - of slander, 363
- judgment reversed, action may be commenced within one year after, 363
- minors, and persons *non compos mentis*, and beyond seas, disability of provided for, 363
- acknowledgment, to take case out of statute, what necessary, 364
 - by joint contractors, debtors, &c., effect of, 364
 - time for bringing action after, 364
 - disability at time of, provided for, 364
- co-contractors, or co-executors, effect of acknowledgment by one, 364
 - payment by one, 366
- part payment, effect of upon, 364
 - what sufficient proof of, 364, 365
- set-off, chapter to apply to, 365
- infant, ratification of contract by, to be in writing, 365
- guarantee, consideration not necessary to appear upon, 365
- surety or co-contractor, paying debt, to have benefit of creditors rights, 365

LIMITATION OF ACTIONS (REAL PROPERTY),

- interpretation of terms, 366
- entry must be made within twenty years, 366
 - not deemed possession, 369
 - right of, when deemed to have first accrued, 367, 368, 369
- distress must be made within 20 years, 367
- action must be brought within 20 years, 367
- time when right of action, &c., first accrued, how determined, 367
 - in case of mortgage, 367
 - dispossession, 367
 - discontinuance of payment of rent, 367
 - deceased persons, 367
 - estate in reversion or remainder, 367
 - forfeiture or breach of condition, 368
 - tenancy at will, 368
 - tenancy from year to year, 368
 - where rent reserved by lease, received by person wrongfully claiming, 369
 - fraud, concealed, 371
- administrator shall claim as if no interval between death and grant of administration, 368

LIMITATION OF ACTIONS (REAL PROPERTY)—CONTINUED.

- mortgagor or *cestui que trust* not to be deemed tenant at will, 368
- claim, upon or near land, not to preserve right, 369
- joint tenants, tenant in common, possession or receipt by one or more, effect of, 369
- acknowledgment in writing, effect of, 369, 372
- disabilities, right of action within ten years after removal of, 370
 - no such action but within forty years, 370
 - absence "beyond seas" not to extend period of limitation, 370
 - succession of, upon death of first party, 370
- equity, remedy in, subject to same limitations as action at law, 371
 - acquiescence, jurisdiction not affected, 371
- cestui que trust*, limitation of suit against trustees, 371
- fraud, concealed, time from which right of action accrued, 371
- mortgage, suit for redemption of, must be within twenty years after possession
 - by mortgagee, 372
 - action for debt upon, within twenty years after right of accrued, 372
 - acknowledgment in writing, effect of, 372
 - part payment, effect of, 373
- legacy, suit to recover within twenty years, 372
 - acknowledgment or part payment, effect of, 372
- rent, arrears of, not recoverable after six years, 372, 373
 - title to, extinguished after period of limitation, 373
 - receipt of deemed to be receipt of profits, 373
- interest, arrears of, not recoverable after six years, 372, 373
- title to land, rent, &c., extinguished after expiry of period of limitation, 373

LOTTERIES,

- holding, prohibition of, 314 ; penalty, 314
- publication of scheme or plan for, 314 ; penalty, 314
- buying, selling, &c., tickets for, 314 ; penalty, 314
- sales, gifts, &c., founded on, void, forfeiture, 315
 - bona fide* purchasers without notice not affected, 315
- imprisonment upon non-payment of penalty, 315
- limitation of prosecution, 315
- division of property by tenants in common, chapter not to apply to, 315
- special permission to hold, magistrates may grant, 315

M.

MAGISTRATES,

- power of, to hold Courts of Quarter Sessions, 231
 - out of session, 232
- may commit for trial in any district, 232
- attachment of moneys, goods, &c., upon judgment by, 232
- witnesses, compelling attendance of, by, 232
- fires, inquiries in cases of, by, 233

MAGISTRATES—CONTINUED.

- sudden deaths, inquiries in cases of, by, 233
 - fees upon, 233
- coroners, powers, &c., of, vested in, 233
- may perform duties of Clerk of Peace, 233
- conviction by, not to be quashed for want of form, 233
- fees to be taken in Police offices and Courts of Session, 234, 235
- west and north coasts, on, jurisdiction of, 235
 - appeal from, 235
 - rules for practice, &c., of, 235
- criminal jurisdiction of, in certain cases, 293, 294
- malicious injuries to property, 293
 - penalty, 293
 - defense, leave and license, 293
 - limitation, 293
 - person found committing, arrest without warrant, 294
- larceny of codfish, value under \$20, 294
- law of England cumulative, 294
- beggars and vagrants, 294
- constable may call upon bystander for assistance, 294
 - penalty for refusal, 294
- conviction not to be quashed for want of form, 294

MALICIOUS INJURIES TO PROPERTY,

See MAGISTRATES.

MARRIED WOMAN,

- capacity to contract, 331
 - hold separate property, 331
- loan by wife to husband, 332
- moneys of husband invested in name of, remedies of husband, 334
- husband of, liability for ante-nuptial debts and wrongs, 336
 - extent of, 336
 - jointly with wife, 336
- execution of general power by will, effect of, 332
- separate property, kinds of, real and personal, 334
 - stocks, debentures, deposits in banks, &c., 334
 - insurance policy of upon her life, 334
- transfer of stock, &c., by, joinder of husband not necessary, 334
- remedies of for protection of separate property, 335
- liabilities of in respect of separate property, 335
 - jointly with husband, 335
 - in respect of husband's property, 336
 - as executrix or administratrix, 337
 - for maintenance of children and grandchildren, 337
- husband and wife, questions between, procedure, 337
- settlements, saving as to, 337

MARRIED WOMAN—CONTINUED.

- rights acquired under "Married Womens' Property Act, 1876," saving as to, 338
- and liabilities to pass to personal representatives, 338
- "contract," meaning of, 338
- "property," meaning of, 338

MORTGAGEE,

- action by, to recover possession, proceedings upon payment of rent, &c., 277
- where right of redemption disputed, 278

PENALTY,

- where no provision for levy of, imprisonment if not paid, 290

P.

PRISON LABOUR. *See* PENITENTIARY.

PROCESSIONS, PUBLIC,

- Governor may prohibit in certain cases, 313
- penalty for violation, 313
- appeal, 313
- bail pending, 314

Q.

QUARTER SESSIONS,

- criminal jurisdiction, Central and Harbour Grace districts, 290, 292
- larceny, 291
- receiving stolen goods, 291
- false pretences, obtaining goods, &c., by, 291
- assault and battery, cutting and wounding, &c., 291
- complaint to be forwarded to Attorney General, 291
- fine, and security to keep the peace, 291
- application of, 292 ; limit of, 292
- payment of costs and damages, 291
- term of imprisonment, 291
- distress and sale of offender's goods, 292
- conviction to have same effect as upon indictment, 292
- not to be set aside for want of form, 292
- dismissal and certificate where offence not proved, 292
- effect of certificate, 292
- persons found committing offences apprehended without warrant, 292

R.

REAL PROPERTY,

- limitation of actions respecting, 366
- See* LIMITATION OF ACTIONS, (REAL PROPERTY).

INDEX.

xix

RECEIVING STOLEN GOODS, &c.,

- to be misdemeanour, 290
- jurisdiction of certain courts of Quarter Sessions in cases of, 290
- See QUARTER SESSIONS.

RECOGNIZANCES,

- forfeiture of, proceedings upon, 285
- rule *nisi*, hearing and order, 285
- justice to return forfeited recognizances to Supreme Court, 285
 - form of return, 286
- court may submit questions to jury, 286
- order may be enforced by attachment of person or property, 286
 - forms of attachment, 286

REGISTRATION OF DEEDS,

- Registrar, appointment of, 326
 - deputy registrars, appointment and powers of, 326
 - liabilities of, 326
- registry, books in which kept, 326
 - particulars to be copied into, 326
 - certificate to be endorsed on deed, &c., 328
 - mortgage release or transfer of, memorandum sufficient, 329
 - wills, of, how kept, 330
 - deed executed abroad, certified copy to be registered, 329
- registration, in what cases necessary,
 - lands or tenements, conveyances of interest in, 326
 - effect of non-registration, 328
 - chattels, personal, conveyances of in what cases, 330
 - effect of non-registration, 330
 - leases at rack rent, unnecessary, 330
 - time from which to take effect, 328
- proof of deeds, &c., executed within the colony, 327
 - outside colony, 327
 - where witness abroad, 328
 - where parties and witnesses dead, 328
- decrees, judgments, &c., 328
- wills, 330
- witnesses, compelling attendance of, &c., 329
- tacked mortgage no priority, 329
- deeds, &c., executed before 1846 to be registered free of charge, 329
- fees, scale of, 330, 331
 - account of to be rendered to Receiver General, 331

S.

SENTENCES,

- commutation of, 327, 328
 - regulations respecting, 327, 328

SESSIONS, COURTS OF,

- places of holding and jurisdiction, 231
- times of sittings, 231
- jurisdiction, summary, in what cases, 231
- constitution for civil business, 231
- magistrates out of session, powers of, 232
- attachment of moneys, &c., after judgment, 232
- fees and costs in, scale of, 234, 235
 - to be posted up, 235
 - penalty for taking excessive, 235
 - to be paid over to Receiver General, 235

See also QUARTER SESSIONS.

SHERIFF,

- appointment of, 256
- duties, powers and privileges of, 256
- deputies, appointment, powers, &c., of, 256
- special deputations, grant of by, 257

SUPREME COURT AND PROCEDURE THEREIN,

ABATED CAUSE OR MATTER,

- certificate of, to be given by solicitor to proper officer, 59
- to be struck out of cause book after one year, 59

ABATEMENT,

- plea or defence in, not to be pleaded, 66

ABOLISHED PROCEEDINGS,

- new assignment, 60
- plea or defence in abatement, 63
- demurrer, 70
- rule *nisi* for new trial, 93
- audita querela*, 99
- injunction, writ of, 103
- mandamus, writ of, in an action, 106

ACCOUNT,

- action for, statement of claim, 40
- claim for, in writ, default of appearance, 49
- stated or settled, how pleaded, 63
- estate, of. *See Accounts and Inquiries.*

ACCOUNTS AND INQUIRIES, (ORDER XV., ORDER XXX.)

- under Order XV., 49
 - in default of appearance, order for, 49
 - evidence in support of, 49
 - affidavit for, 49
- under Order XXX., 79
 - at what stage of proceedings directed, 79
 - directions as to manner of taking, 80
 - surcharge, notice to accounting party of, 80

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

ACCOUNTS AND INQUIRIES, (ORDER XV., ORDER XXX.)—*continued.*

- directions in order for, to be numbered, 80 ; form, 214
- delay in taking, procedure upon, 80
- persons not parties to action, where rights or interests affected by, 54
- on motion for judgment or new trial, 94
- estate, of, application to court or judge for, 112

ACTION,

- definition of, 35
- what proceedings shall be commenced by, 38
- commenced by writ, 38
- causes of, joinder of, 59
- discontinuance and withdrawal of, 71
- mandamus, of, 103
- perpetuate testimony, to, 89
- trial of, 82. *See Trial.*
- pleading matters arising pending, 69. *See Pleading.*
- commenced on circuit, continuance of, 124

ADDRESS,

- plaintiff's, to be endorsed on writ, 40
 - solicitor, of, to be endorsed on writ, 40
- for service, to be endorsed on writ, 40
- for proceedings not commenced by writ, 40
- of solicitor for defendant, to be stated in appearance, 45
- of defendant, to be stated in appearance, 46
- illusory or fictitious, 46

ADMINISTRATION,

- next of kin, representation of, 53
- judgment for, at instance of any legatee or next of kin, 54
 - executor, administrator or trustee, 54
- parties to actions for, 54
- sale in action for, conduct of, 103
- letters of, grant of, 110
 - petition for, affidavit and notice, 110
 - consent to, 111 ; proceedings upon, 111
- list of letters of, to be returned by clerks and commissioners, 111
 - entered as record, 111
- papers, production of, in proceedings for, 111
 - attendance of parties having custody of, 111
 - contempt, in case of default, 111, 112
- estate, of, application to Court or Judge for, 112
- person not ordinarily entitled to, grant of to, 113
- security to be given upon grant of, 113
- temporary grant of, 113
 - proceedings commenced before revocation of, to be continued, 113
- on circuit, 134. *See Circuit, Practice on.*

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

ADMINISTRATOR,

- action by and against, on behalf of estate, 50
- absence from colony of, appointment of administrator during, 112
- originating summons, by and against, 115, 116
- See Originating Summons.*

ADMIRALTY,

- jurisdiction in, 1
- rules to prevail in causes for collision, 6

ADMISSIONS, (ORDER XXIX.), 78, 79

- notice, by, 78
- notice to admit documents, 78 ; form, 79
 - facts, 78
- costs of proving documents where notice to admit not given, not allowable, 78
 - refusal to admit documents, 78
 - refusal to admit facts, 78, 79
 - notice comprising unnecessary documents, 79
- judgment on, of facts, made by pleading or otherwise, 79
 - application for, mode of, 79
- evidence of, 79
- notice to produce, 79 ; form, 79, 137

AFFIDAVIT, (ORDER XXXIV.), 89, 92

- motion, petition or summons, upon, 89
 - cross-examination upon, 89
- title of, 89
- confined to facts witness is able to prove, must be, 90
- swearing to, before whom, in Newfoundland, 90
 - abroad, 90
- time and place of swearing to be certified, 90
- first person, to be drawn in, 90
- paragraphs of, to be numbered consecutively, 90
- costs of, where rules not complied with, 90
- deponent to, place of abode to be stated, 90
 - two or more, by, 90
- scandalous matter in, striking out, 91
- interlineations or erasures in, 91
- illiterate or blind deponents, by, 91
- defective, may be received, 91
- office copy, when used, 91
- solicitor in cause, his partner or clerk, not to take, 91
- filed out of time, not to be used without leave, 91
- chambers, in, previously read in court may be used, 91
 - alterations or erasures in, 92
- trial on, 92
 - time for filing defendant's, 92
 - plaintiff's, 92 ; reply, 92
 - cross-examination upon, 92

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

AFFIDAVIT, (ORDER XXXIV.)—*continued.*

- notice to witness to attend upon, 92
- failure of witness to attend upon, 92
- expenses of witness upon, 92
- compelling witness to attend for, 92
- notice of, 92
- note, on whose behalf filed, at foot of, 120

AMENDMENT, (ORDER XXVII.), 74, 75

- generally, 74
- power of Court or Judge to allow, 74, 75
- plaintiff, by, without leave, when, 74
- defendant, by, without leave, when, 74
- disallowance of, 74 ; application for, 74
- time for opposite party to plead after, 74
- application for leave to make, when to be made, 74
- failure to make after order for, effect of, 74
- marking date of order for leave to make, 74
- delivery of amended pleading, 74
- errors and slips in judgments or orders, 75
- costs of, 75

APPEARANCE, (ORDER XII.), 45

- mode of, 45
- form of, 45, 128
- by solicitor, address for service to be stated, 45
- in person, address to be stated, 46
- if address illusory or fictitious, 46
- by partners, 46
- by members of firm, 46
- several defendants, by one solicitor, 46
- failure of solicitor to enter appearance, 46
- in probate actions, 46
- time for, 46
- in action for recovery of land, 46
 - by landlord, 46
 - by leave of Court, 46
 - limitation of defence, 47
- setting aside service of writ without appearing, 47
- default of. *See Default of Appearance.*
- on Circuit, 124. *See Circuit, Practice on.*

ARBITRATION,

- compulsory reference to, in what cases, 12
 - questions of fact or law to be determined by jury or Court, 12
 - award in form of special case, 13
- judge upon trial may refer questions of account to, 13
- proceedings upon compulsory reference similar to those upon consent, 13
- power of Court to remit for re-consideration, 13

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

ARBITRATION—*continued*.

- application to set aside award, time for, 13
- agreement to submit, stay of proceedings upon, 13
- failure of parties to appoint arbitrator, proceedings upon, 14
- umpire may be appointed except otherwise provided, 15
- Court may extend time for making award, 15
- award to have effect of judgment in ejectment, 15
- agreement may be made rule of Court, 15
- authority of arbitrator not revocable, 15
- appeal from award upon compulsory reference, 15
- setting aside, &c., award, motion for, 104
 - rule nisi* abolished, 104
 - time for application for, 115

ARREST FOR DEBT,

- abolished, except in certain cases, 19
- in what cases Judge may order, 19
- bail, upon arrest, conditions of, 20
 - bond, form of, 37
- capias ad satisfaciendum*, in what cases ordered, 20
- detaining creditors to pay for maintenance in prison of debtor, 20
- discharge from custody, application for, &c., 20
- writ for arrest to be executed within one month, 21

ATTACHMENT FOR CONTEMPT,

- judgment which may be enforced by, 96
 - corporation, directors of, 99
 - to do act other than payment of money, 96
- notice of motion for, 104
 - copies of affidavits to be served with, 104
- order sought to be enforced by, must be served, 97

ATTACHMENT FOR DEBT,

- writ may issue, in what cases, 16
- security to be given upon, 16
 - bail bond, form of, 37
 - assignment of to plaintiff, 16
- perishable goods attached, may be sold, 16
- attachment of property in hands of third party, proceedings upon, 16, 17
 - when debt attached, payable in goods, 17
- garnishee disputing liability, trial of question, 17
 - claim by third party, proceedings upon, 17
 - payment, &c., by, to be valid discharge as against debtor, 18
- when lands, &c., attached, notice to tenants, &c., 18
 - rents, &c., to abide order of Court, 18
- feri facias*, warrants under, in hands of third parties, 18
- property attached to abide judgment, &c., of Court, 18
- costs of applications upon, 18

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

ATTACHMENT FOR DEBT--*continued.*

- costs, amounts to be attached for, 19
- plaintiff to proceed to trial first term, 19
- property exempt from attachment, 19

BILL OF EXCHANGE,

- defence in action on, 64

CAUSE BOOK,

- writs to be entered in, 41

CHAMBERS, (ORDER XLIV.), 107-108

- applications at, by summons, 107
 - form of, 108, 196
- summons at, service of, 107
 - signature of, 107
 - entry of in "Summons Book," 107
 - several applications may be included in, 108
- non-attendance at, 107
 - proceedings on, 107
 - reconsideration of, 108
 - costs upon, 108
- adjournment for further consideration in, 108
- Judge, in absence of, any Judge may hear matter, 108

CHANGE OF PARTIES, (ORDER XVII.), 57

- deaths, marriages, bankruptcy, &c., of, *pendente lite*, on, 57
- assignment or devolution of estate, *pendente lite*, on, 57
- devolution by operation of law, *pendente lite*, on, 57
- order for continuance of proceedings by representative or assignee, &c., 57, 58
- new parties, order for continuance of proceedings by or against, 58
 - service upon new parties, 58
 - discharge of, persons not under disability, 58
 - under disability, 58
- death of plaintiff or defendant, and failure to proceed by person entitled to do so, 58
- judgment for defendant or other party, 58

CIRCUIT, PRACTICE ON, (ORDER LIV.), 123-124

- application of rules to, 124
- writs, when returnable, 124
- appearance, how effected, 124
- defence, how entered, 124
 - account to be furnished, 124
- other proceedings, how entered, 124
- verdict or judgment, how entered, 124
- trial on return day, 124
 - defendant to be called, 124
- default, upon, Judge may require proof of claim, 124

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

CIRCUIT, PRACTICE ON, (ORDER LIV.)—*continued*.

- probate or administration, notice may be dispensed with, 487
- seal unnecessary, 124
- continuance of action commenced on, 124
- new trial and review of judgments, proceedings upon, 124
- notice of application to be filed within two days, 124

CIRCUITS,

- to be held in northern and southern districts, 7
- time and place to be appointed by proclamation of Governor, 7
- one judge to preside, 7
- crimes committed outside of limits of circuit may be tried on circuit, 7
- reservation of questions in criminal cases, 7
- witnesses in criminal cases may be summoned from any part of colony, 7
- prisoners convicted on circuit may be sentenced to gaol in any part of colony, 8
 - removal from one gaol to another, 8
- rule *nisi* from circuit, returnable in St. John's, 8
- re-hearing in St. John's, special cases, &c., 8
- trial by judge without jury, where no jury to be had, 8

CLAIMS AGAINST THE GOVERNMENT,

- proceedings to be commenced by petition, 31
- service upon Attorney General, 32
- answer of Attorney General, 32
- default of answer, judgment, 32
- upon answer, subsequent proceedings as in other cases, 32
- judgment, how enforced, 32
- costs, as in other cases, 32
- re-hearing, 32
- appeal, 32

COMPANY OR CORPORATION,

- service of writ upon, 43, 44
- interrogatories, how delivered to, 76
- execution against shareholders of, 98
- discovery in aid of execution against, 100

CONCURRENT WRITS,

- issue of, *teste*, marking, &c., 41
- for service within and without jurisdiction, 41

CONSOLIDATION OF CAUSES OR MATTERS,

- former practice preserved, 123

CONSTITUTION, JURISDICTION AND POWERS,

- jurisdiction of Supreme Court, 1
 - in Admiralty, 1
- judges of, Chief Justice and two others, 1
 - appointment of, 1
 - to be barristers of ten years' standing, 1
 - vacancies in office of, 1

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

CONSTITUTION, JURISDICTION AND POWERS—*continued.*

- judges of, powers, &c., of, 2
- Court, how held, 2
 - matters to be heard by one judge, 2
 - two judges, 2
 - re-hearing before three judges, 2
- judges may sit apart, 2
- jurisdiction of single judge, 2
 - two or more judges, 2
- absence or illness of one judge, another may sit, &c., 2
- judgment, &c., of a judge subject to review, &c., 2
- judgment of two judges, when final, 3
- Chief Justice may be Administrator of Government, 3

CONTRACT,

- denial of, in pleading, 63
- implied, how pleaded, 63

COPIES, (ORDER XLIX.), 119, 120

- regulations as to writing of, 119, 120
- printing of, 119, 120
- office, to be evidence, 85. *See Office Copy.*

COSTS,

- generally in discretion of Court or Judge, 24
- actions tried by jury, former law to apply, 24
- causes within jurisdiction of district courts, no costs, 24
- issues of fact and law, to follow event, 24
- causes removed from inferior courts, 24
- solicitor causing delay liable for costs, 24
- security for, amount, how fixed, 25
 - bond to be given to party, 25
- unreasonably or unnecessarily incurred, orders upon solicitor, 25
- guardian *ad litem*, costs incurred by, &c., 25
- set-off for, between parties, 25
- upon award, 25
- taxation of, notice, 26
 - when not necessary, 26
- interlocutory applications, gross sum in lieu of taxation, 26
- inspection of documents, no allowance for, 26
- taking copies of documents, no allowance for, 26
- petition, tender of sum for perusing, &c., 26
- unnecessary or vexatious proceedings, 26
- set-off, one party's against the other's, 27
- appearance by party not interested, 27
- taxing masters, powers of, 27
- account consisting partly of costs, taxation, 27
- unnecessary attendances, disallowed, 28
- refusal to bring in costs for taxation, 28

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED

Costs—*continued*.

- work and labour not provided for, 28
- amendment, costs occasioned by, 28
 - unnecessary, occasioned by, 28
- taxation, when order referring for unnecessary, 29
 - in case parties differ, 29
- fund in Court, taxing officer to state total amount, 29
- fees to accountants, scientific persons, &c., 29
- discretionary fees or allowances, 29
- review of taxation, 29
 - evidence to be received by judge, 30
- cause struck out for want of parties, defendant to have costs, 30
- out of fund or property, bills to be furnished to clients, 30
- taxation, extension of time for, &c., 30
- solicitor and client, between, 30
 - action not necessary, 30
 - filing taxed bill equivalent to judgment, 31
 - client may have bill taxed, 31
 - if more than one-fifth taxed off, solicitor to pay cost of taxation, 31
 - action for, taxation and proceedings thereon, 31
 - counsel may recover fees, 31
 - bill taxed, over \$25, revision of, 31
- of prolix writs or forms, 38
- of including plaintiffs not entitled to relief, 49
- payable to pauper, taxation of, 53
- scandalous matter in pleadings, of, 64
- improper denial in defence, of, 65
- interrogatories, of, 75
- discovery, of, 78
- separate writ of execution for, 97, 100, 101
- discovery in aid of execution, of, 100
- scale of, (Appendix L.), 215-222

COUNSEL,

- assignment of to pauper, 53

COUNTER-CLAIM, (ORDER XXI.),

- general rules as to pleading, 65
- when allowed, 65
- how pleaded, 65
- title of, 65
- new party brought in by, 65
 - notice to, 65, form, 133
 - appearance by, 66

striking out, 63

- dismissal or discontinuance of action, effect of, on, 66
- judgment for balance on, 66
- payment into Court in answer, to, 69

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

COUNTER-CLAIM, (ORDER XXI.)—*continued.*

withdrawal of, 71
amendment of, 74

CREDITORS,

originating summons, by, proceedings by and against, 115-116
See Originating Summons.
advertisement inquiring for; excluded from proof of claims after time
appointed, 118

CRIMINAL PROCEEDINGS,

excepted from the rules, 122

CROWN SIDE OF COURT,

application of rules to, 122
how far excepted from the rules, 122

DAMAGES,

allegation of need not be specifically denied, 65
assessment of referred to officer of Court, 85

DATE,

of writ to be day of issue, 39

DEATH,

party to action, of, not to abate action, 57

DEBT,

action for, defences in, 64

DECLARATORY JUDGMENT,

action not open to objection for seeking, 70

DEFAULT,

final judgment by, where debt or demand liquidated, 39
on Circuit, 12. *See Circuit, Practice on.*

DEFAULT OF APPEARANCE, (ORDER XIII.), 47

affidavit of service to be filed, 47
judgment upon, 47
in action for recovery of land, 47
proceedings as if appearance entered, 47
by infant or person of unsound mind, 47
in action claiming account, 49

DEFAULT OF PLEADING, (ORDER XXVI.), 71-3

claim, statement of, by non-delivery of, 71
dismissal of action upon, 71
application for, 71
defence, by non-delivery of, 72
in action for debt or liquidated demand, 72
where several defendants, 72
detention of goods and damages, 72
where several defendants, 72

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

DEFAULT OF PLEADING, (ORDER XXVI.)—*continued*.

defence, in action for debt and damages, 72
 recovery of land, 72
 and damages, 72

 probate action, 73

 motion for judgment, upon, 73

 where several defendants, 73

 where defence as to part only, 73

party, other than plaintiff or defendant, by, 73

setting aside judgment obtained upon, 73

DEFENCE, (ORDER XXI.), 64-67

to be filed with appearance and served on plaintiff, 60

actions for debt or liquidated demand, in, 64

 mere denial of debt inadmissible, 64

 on bills and notes, in, 64

 on other debts, in, 64

action to recover land, in, 66

action, probate, in, 66

damages need not be denied in, 65

denial in, must be specific, 62

 of representative capacity, 65

costs of improper denial in, 65

counter-claim, rules as to, 65, 66. *See Counter-claim.*

general issue by statute, of, 66

abatement, in, not to be pleaded, 66

payment into Court. *See Payment into Court.*

arising after action brought, 69

 reply to, 70

confession of, 70 ; form of, 133

frivolous or vexatious, may be struck out, 70

withdrawal of, or of part of, 71

on circuit, 124. *See Circuit, Practice on.*

forms of, 162-174

DEFENDANT,

who to be made, 50

every, need not be interested in all relief sought, 50

application to add, strike out, or substitute, 51

joinder of, in case of doubt, 50

adding, service of writ on new parties after, 51

infant, 52

claims for contribution or indemnity between, 57

interpleader, relief of by, 108, 109

DELIVERY, WRIT OF,

payment for recovery of property other than land may be enforced by, 101

form of, 186

separate writ for costs, with, 101

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

DEMURRER,

abolition of, 70

proceedings in lieu of, 70. *See Proceedings in lieu of Demurrer.*

DEPOSITIONS,

See Examination of Witnesses.

DISCONTINUANCE, (ORDER XXV.), 71

action, of, by plaintiff before or after receipt of defence, 71

effect of, on subsequent action, 71

costs on, 71

judgment on, 71 ; form of, 181

leave of Court, by, 71

on what terms granted, 71

notice of, 71 ; to be in writing, 71

stay of second action till costs of first action paid, 71

withdrawal of part of alleged cause of action, 71

of defence or counter-claim, 71

of part of defence, 71

leave for, 71

of record, by consent, 71

counter-claim, how affected by, 66

DISCOVERY,

interrogatories, by, 75

See Interrogatories. See Documents.

DISMISSAL OF ACTION,

counterclaim may be proceeded with, notwithstanding, 66

frivolous or vexatious action, in case of, 70

statement of claim, for default in delivery of, 71

DOCUMENTS,

discovery of, application for, 76

order for, 76

failure to comply with, 77

affidavit as to, 76, form, 134

production of, order for, 76

inspection of, notice to produce for, 76 ; form, 135

non-compliance with, effect of, 77

time and place for, after notice, 77

order for, 77 ; form, 100

postponement of, till issue determined, 77

attachment for disobedience to order for, 77

service of order for, 77

costs of, 78

EMBARRASSING MATTER,

in pleading, striking out, 64

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

ENTRY OF JUDGMENT, (ORDER XXXVII.), 94, 95

mode of, 94

forms of, to be used, 94

appendix F, 177, 183

date of, 95

alteration of, 95

specific act, to enforce doing of,

time to be stated in, 95

memorandum to be endorsed upon, 95

form of, 95

filing of affidavits, upon, 95

delivery of documents, upon, 95

order, certificate, or return, upon, 95

master's certificate, on, 95

filing of, 95

consent, by, order for, where defendant appears by solicitor, 95

has not appeared or appeared in

person, 95

on circuit, 124. *See Circuit, Practice on.*

EQUITY,

rules for administration of, 3-6

See Law and Equity, Rules, &c.

EVIDENCE,

answers to interrogatories, used at trial as, 78

(Order XXXIII.), 85-89

trial, at, generally, 85

taken in another cause, 85

office copies admissible in, 85

examiner, taken before, 85, 86

See Examination of Witness.

subsequent to trial, to be taken in same manner as at trial, 88

special directions, as to, after trial, 88

depositions or affidavits before issue joined, not receivable as, without leave, 88

taken at hearing, may be used in subsequent proceedings, 88

affidavit, by, 92. *See Affidavit.*chambers, in, 96. *See Affidavit.**See also EVIDENCE.*

EXAMINATION OF WITNESSES,

examiner, before, 85, 86, 87

commission, on, order for, 86, form, 205

attendance of witness, order for, 86

production of documents upon, 86

disobedience of order, 86

conduct money on, 86

documents to be furnished to examiner, 86

conduct of, 86

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

EXAMINATION OF WITNESSES—*continued*.

- depositions, how taken, 86
 - when receivable in evidence, 87
- refusal to attend for, 87
- objections to questions put, to be taken down by examiner, 87
 - costs of, witness may be ordered to pay, 87
- special report of examiner, upon, 87
- oaths on, how administered, 87
- subpœna to witnesses for, 87
- practice as to, at trial, to apply to evidence taken at any other stage, 88

EXECUTION, (ORDER XXXVIII.), 96-100

- in what cases, generally, 96
- judgment subject to condition, upon, 96
 - application for, 96
 - against firm, upon, 96, 97
 - other than for money or land, upon, time for issue of, 98
 - mandatory, 99
- writ of, endorsement of, 97
 - teste* of, 97
 - forms, 97, 184-188
 - directions to sheriff, upon, 97
 - duration of, 98
 - renewal of, 98 ; proof of renewal, 98
- expenses of, levy for, 97
- interest on, levy for, 97
- fieri facias*, in what cases, 97
 - time for issue of, 97
 - stay of, 97
- separate writs of, for money and costs, 97
- issue of, time for, 98, 99
- leave to issue, when required, 98
 - after lapse of six years, 88
 - husband against wife, 98
 - judgment of assets *in futuro*, 98
 - shareholders, against, 98
- order enforced by, in same manner as a judgment, 99
- person not a party, by or against, 99
- stay of, 99 ; application for, 99
- corporation, against, 99, 100
- discovery in aid of, 100
 - examination of debtor or other person for, 100
 - order for attendance on, 100
 - costs of, 100
- venditioni exponas*, writ of, when available, 100
- land, action for recovery of, in, 100
- property, other than land, action for recovery of, 101

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

EXECUTOR,

- action by or against, on behalf of estate, 50
- absence from colony of, appointment of administrator during, 112
- after administration granted, not to act till administration revoked, 113
- payments to, before revocation of probate, indemnity for, 113
- renunciation of probate by, interest to cease, 116
- originating summons, by and against, 115-116
- See Originating Summons.*

FORMS,

- included in term "Rules of Court," 34
- particulars in, where further necessary, 61

FORMS, SCHEDULE OF, 125-215

- appearance, (Appendix A.), 128-130
- claims, statement of, (Appendix C.), 140-162
- defences, (Appendix D.), 162-174
- equitable matters, (Appendix K.), 211-215
- execution, writs of, (Appendix G.), 184-188
- judgments, (Appendix F.), 177-183
- notices, &c., (Appendix B.), 131-140
- orders, (Appendix J.), 196-211
- reply, (Appendix E.), 175-176
- subpoena, *habeas corpus*, &c., (Appendix H.), 189-196
- writs, (Appendix A.), 125-128

GENERAL ISSUE BY STATUTE,

- preserved, 66
- how pleaded, 66

GUARDIAN,

- infant, of person or property of, appointment or removal of, 112
- lunatic, of person or property of, 112
- security to be given by, 113

HUSBAND,

- execution by or against, on judgment for or against wife, 98

HUSBAND AND WIFE,

- when both defendants, service on husband sufficient, 43
- joint and several claims by and against, 60

INDORSEMENT OF ADDRESS, (ORDER IV.), 40

See Address.

INFANT,

- default of appearance by, 47
- actions by and against, 52
 - appearance by guardian *ad litem*, 52
- next friend of, authority of, 52
- money recovered by, payment into Court, 69
 - mode of dealing with, 69
- guardian of person or property of, application to appoint or remove, 112

INDEX.

xxxv

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

INFERIOR COURTS,

- appeals from, proceedings upon, 32
- District Courts, provisions of chapter to be extended to, 33
- order for, publication of, 33

INITIAL LETTER,

- used instead of name of party, in what cases, 123

INJUNCTION, (ORDER XLI.), 101-103

- interlocutory, generally, 101
- practice as to, 103
- writ of, abolished, 103

INQUIRIES,

See Accounts and Inquiries.

INSOLVENCY,

- party to action, of, not to abate action, 57

INSPECTION,

- documents, of, 77. *See Documents.*

INTEREST,

- judgment, on, 97
- debts due by deceased person, on, 118

INTERLOCUTORY ORDERS, (ORDER XLI.), 101-104

- generally, 101
- custody or preservation of property, for, 101
- sale of perishable goods, for, 101
- detention, inspection, &c., of property, for, 101
- samples, for taking of, 101
- inspection of property, for, 102
 - by jury, 102
- mandamus, by, 102
- receiver, for appointment of, 102, 103, 104
- injunction, by, 102, 103
- application for, when to be made, 102
- possession, for, on payment into Court when lien claimed, 102
- allowance of income out of estate, for, 102
- conduct of sale under will or settlement, 103
- against repetition of wrong, 103
- compounding penal action, for, 103

INTERPLEADER,

- proceedings in, as heretofore, 38
- relief by, when obtainable, 108
- sheriff, by, 109
- affidavit in support of order for, contents of, 109
- adverse title of claimants, no bar to relief by, 109
- defendant, by, 109

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

INTERPLEADER—*continued*.

- defendant, time for application by, 109
 - stay of proceedings, 109
- order for, 109
- issue in, 109
 - power to direct an, 109
 - parties to, 109
 - trial of, 109, 110
- special case may be ordered, 110
- claimant in, may be made defendant by order, 109
 - not appearing, barred, 110
- judgment in, when to be final, 110
- sale, power to order in, 110
- causes, in several, 110
- costs, in proceedings for, 110
- incidental orders in, 110
- discovery in, 110

INTERPRETATION OF WORDS AND EXPRESSIONS,

- "rules," 34
- "cause," 34
- "suit," 34
- "action," 35
- "probate action," 35
- "plaintiff," 35
- "petitioner," 35
- "defendant," 35
- "party," 35
- "matter," 35
- "pleading," 35
- "judgment," 35
- "order," 35
- "oath," 35
- "proper officer," 35
- "master," 36
- "receiver," 36
- "taxing officer," 36
- "this Act," "the principal Act," 36
- "the passing of this Act, &c.," 36
- words and phrases referring to passing of this Act, 36
- where duty to be discharged, who to be proper officer, 35
- singular to include plural, and *vice versa*, 36

INTERROGATORIES, (ORDER XXVIII.), 75-78

- delivery of, 75
- irrelevant, 75
- costs of unnecessary, unreasonable or prolix, 75
- forms of, 75, 134

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

INTERROGATORIES, (ORDER XXVIII.)—*continued.*

- corporation or company, to, 75
- objections to, to be taken in answer, 76
- answer, to be by affidavit, 76
 - order for, to, 76
- order to answer, failure to comply with, attachment for, 77
- disallowance of, 76
- further answer to, 76
- use of answer to, at trial, 78
- costs, of, when allowed, 78

IRREGULARITY,

- application to set aside proceedings for, 123
 - must be made within reasonable time, 123
 - none after fresh step, 123
 - objections must be stated in, 123
 - costs of, 123

See Non-compliance.

ISSUE,

- joinder of. *See Joinder.*

ISSUES OF FACT,

- settling, 79

ISSUES OF FACT WITHOUT PLEADING,

- order for, by consent, 82 ; form, 123
- agreement for payment of fixed sum, on trial of, 82
- judgment according to findings on, 82
- record of proceedings on, 82

JOINDER,

- causes of action, of, [Order XVIII.], 59, 60
- action for recovery of land, 59
- claims by trustee in insolvency, 59
 - or against husband and wife, 60
 - executor or administrator, 60
- joint and several, of plaintiffs, 60
- power to order separate trial, in case of, 60
- when granted, generally, 60
- parties, of, 49, 50. *See Parties.*
- of issue, 62 ; effect of, 62
 - non-delivery of reply by, 61
 - no pleading subsequent to reply other than, without leave, 60

JUDGE, SINGLE,

- jurisdiction of, 2
- absence or illness of, another may sit, 2
- judgment or finding of, may be renewed, varied, &c., 2

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

JUDGE, SINGLE—*continued*.

- case tried by, without jury, new trial not necessary, 3
- trial by, with or without jury, in what cases, 10, 11, 12
 - verdict or finding of, effect of, 11
 - reservation of opinion of, 11

JUDGMENT,

- leave to sign, where writ for liquidated demand, 48
 - proceedings for, 48, 49
- motion for, 94. *See Motion for Judgment.*
- entry of, 94, 95. *See Entry of Judgment.*
- forms of, 177-183
- specific act, to enforce the doing of, 95. *See Entry of Judgment.*
- enforcement of, generally, 96
- conditional, waiver of, 96
 - enforcement of, 96
- action for recovery of land, in, how enforced, 100
- mandamus, upon writ for, 106
- on circuit, 124
 - review of, 124

JUDGMENT BY DEFAULT OF APPEARANCE,

- how signed, 47
- in actions for recovery of land, 47
- on writs issued or served outside Central District, 48
- setting aside, 48

JUDGMENT BY DEFAULT OF PLEADING,

See Default of Pleading.

- final, in what cases, 72
- interlocutory, in what cases, 72
- where defence as to part only of plaintiff's claim, 73
- probate actions, 73
- motion for, in what cases, 73
 - where several defendants, 73
- setting aside, 73
- where demand liquidated, 39, 40

JURY,

- trial by, in what cases, 10, 11, 12
 - without, in what cases, 10
- special verdict, in what cases, 11
- questions to be answered by, 11

LAND, ACTION FOR RECOVERY OF,

- mode of service of writ, 44
- appearance in, 46
 - by landlord, 46
 - leave of Court for, 46

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

LAND, ACTION FOR RECOVERY OF—*continued.*

- appearance in, limiting defence, 47
- judgment by default of appearance in, 47
 - pleading in, 72
- defence in, 66 ; equitable, 66 ; possession of, 66
- execution in, 100
 - separate writ for costs, 100

LAW,

- points of, 60. *See Proceedings in lieu of Demurrer.*

LAW AND EQUITY, RULES FOR THE ADMINISTRATION OF,

- (1.) plaintiff to have relief on equitable grounds, 3
- (2.) defendant to have relief on equitable grounds, 3
- (3.) counter-claims and third parties, 4
- (4.) equities appearing incidentally, 4
- (5.) defence or stay of proceedings, instead of injunction or prohibition, 4
- (6.) common law and statutory rights and duties, 5
- (7.) complete justice to be done in every case, as far as possible, 5
- (8.) statute of limitations inapplicable to express trusts, 5
- (9.) equitable waste, 5
- (10.) merger, 5
- (11.) suits for recovery of lands, &c., by mortgagor, 5
- (12.) assignments of debts and choses in action, 5
- (13.) stipulations not of essence of contracts, 6
- (14.) collision of ships, admiralty rules to prevail, 6
- (15.) mandamus, injunctions and receivers, 6
- (16.) custody of infants, 6
- (17.) cases of conflict, not enumerated, equity to prevail, 6

LEGATEE,

- residuary, entitled to administration, may obtain judgment therefor, 54
- originating summons by and against, 115, 116
 - See Originating Summons.*
- interested in legacy, may obtain like judgment, 54

LIEN,

- delivery of property subject to, on payment into Court, 102

LIQUIDATED DEMAND,

- See Default of Pleading.*
- statement of claim, requisites of, 40

LUNATIC,

- actions by and against, 52
- committee of, consent by, to procedure, 52
- guardian of person or property of, appointment of by Court or Judge, 112

MANDAMUS,

- interlocutory, application for, 102

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED

MANDAMUS—*continued*.

- interlocutory, application for, how made, 102
 - when granted, 102
- action of, (Order XLIII.), 103
- claim for to be endorsed on writ, 103
- judgment in action for, 103
 - or order substituted for writ, 103
- prerogative writ of, 103 ; application for, 103
 - peremptory, in first instance, 103
 - date and *teste* of, 103
 - return of, time for, 103
 - to be to first writ, 103
 - pleading to, 103
 - subsequent proceedings, 103
 - law, point of, in answer to, 103
- prerogative writ, judgment upon, peremptory writ to issue, 6
- obedience to, indemnity for, 7
- respondent having no interest, 7
 - conduct of proceedings by party interested, 7
- death, resignation or removal of, not to abate proceedings, 7
- enforcement of, 7
- rules of procedure applicable to, 7
- application of rules to, 122

MARRIAGE,

- party to action, of, not to abate action, 57

MARRIED WOMEN,

- actions by and against, 52
- trustees for, appointment of, by Court or Judge, 112

MASTER'S REPORTS,

- confirmation of, 119 ; time for, 119 ; exceptions to, 119

MONTH,

- meaning and computation of, 114

MOTION, (ORDER XLII.), 104, 105

- application to Court or Judge to be made by, 104
- rule *nisi* abolished, in what cases, 104
- notice of, required, unless dispensed with by Court, 104
 - grounds of application, when to be stated in, 104
- affidavit to be served with, 104
- service of, 104
 - length of, 104
 - with writ, 105
 - before appearance, 105
 - leave for, 105
- on default of appearance, 105

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

MOTION, (ORDER XLII.)—*continued*

- notice of, short, by leave, 104
 - person not a party, service upon, 105
- ex parte* order upon, in what cases, 104
- dismissal of, 105
 - when notice not served on proper parties, 105
- adjournment of, 105

MOTION FOR JUDGMENT, (ORDER XXXVI.), 93, 94

- either party may make, 93
- findings wrongly entered, where, 93
- judgment wrongly entered on findings, where, 94
- issues, after trial of, 94
 - some only, 94
- time for setting down limited to one year, 94
- inferences of fact, Court may draw, on, 94
- further consideration, to stand over for, 94
- accounts and inquiries may be ordered, 94

NEW ASSIGNMENT,

- abolished, and amendment substituted, 60

NEW TRIAL, (ORDER XXXV.), 92-93

- Judges before whom motion to be made, 92
- notice of motion for, 93, length of, 93, time for, 93, amendment of, 93
- rule *nisi* for, abolished, 93
- grounds for granting, misdirection, 93
 - improper admission or rejection of evidence, 93
- power of Court on motion for, 93
- stay of proceedings, upon application for, 93
- inferences of fact, Court may draw, 94
- further consideration, motion for to stand over for, 94
- on Circuit, 124. *See Circuit, Practice on.*

NEXT OF KIN,

- representation of, in proceedings, 53
- may have judgment for administration, 54
- originating summons by and against, 115, 116
 - See Originating Summons.*
- advertisement inquiring for ; excluded from claim after time appointed by, 118

NON-COMPLIANCE, (ORDER LII.), 123

- effect of, 123
- proceedings may be set aside for, 123
 - not rendered void by, 123
- application to set aside proceedings for, 123
 - time for making, 123
 - objections to be stated in, 123
 - costs of, where dismissed, 123
- fresh step after knowledge of, amounts to waiver of, 123

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

NOT GUILTY BY STATUTE,

- defence of, preserved, 66
- how pleaded, 66

NOTICE,

- documents, to inspect, 76, 77
- admitting case of opposite party, 78, form, 137
- to admit documents, 78, form, 86
- to produce, 79, form, 79, 135
- to admit facts, 79, form, 79, 136
- of trial, 83
- motion, of, 104, 105. *See Motion.*
- writing, to be in, 119

OFFICE COPY,

- admissible in evidence, 85
- marking copy as, 122
- rules as to obtaining, 120
- production of, in proceedings, when required, 120
- numbering of folios on, 120
- order, of, may be exhibited instead of original, 120

OFFICERS,

- Chief Clerk and Registrar, appointment of, 8
 - duties of, 8
 - not to engage in practice, 8
 - to give security, 9
- Assistant Clerks, powers of, 9
 - to give security, 9
- Crier and Tipstaff, appointment, &c., 9
- Commissioners, 9
 - abroad, 9

ORDER,

- specific act, for performance of, memorandum to be endorsed upon, 95
 - form of, 95
 - time to be stated in, 95
- obedience of, without further demand, 96
- conditions, upon, waived by non-performance, 96
 - execution upon performance of condition, 96
- enforceable like judgment, 99
- date of, 105
- original or office copy to be filed when service to be effected, 121
 - need not be shewn if office copy exhibited, 121
- service of, rules respecting, 121-122

ORIGINATING SUMMONS, (ORDER XLVIII.), 115, 119

- definition of, 115
- form of, 115, 210
- administration of estate or execution of trust, for, 115, 116
 - persons who may take out, 115

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

ORIGINATING SUMMONS, (ORDER XLVIII.)—*continued.*

- relief which may be sought by, 115, 116
- persons to be served with, 116, 117
- judgment not obligatory if question otherwise determinable, 117
- mortgage, for foreclosure, sale, redemption, &c., of, 117
 - who may obtain, 117
 - persons to be served, 117
- persons other than parties to be served, 117
- evidence upon application for, 117
- judgment upon, 117
 - special directions upon, 117
- discretion of trustees, &c., how far interference with, 117
- appearance to, 117
- experts, assistance of, upon, 117
- attendance upon, 118
 - representation of parties and classes at, 118
 - by parties other than those directed, 118
 - conduct of proceedings at, 118

PAPER,

- for accounts, copies, &c., 119
- for printed proceedings, 119

PARTICULARS,

- bill of, sufficient pleading, in certain cases, 61
- misrepresentation, fraud, breach of trust, &c., general allegations of, 61
- further and better, when ordered, 61
- pleading, time for, after delivery of, 61
 - when to be stated in, 61
- order for, no stay of proceedings, 61

PARTIES, (ORDER XVI.), 49

- plaintiffs, who to be made, 49
 - costs occasioned by wrong joinder of, 50
 - substitution for wrong, 50
 - counter-claim or set-off in case of misjoinder of, 50
 - application to add, strike out or substitute, 51
 - addition of, consent in writing required, 51
- defendants, who to be made, 50
 - need not be all interested in relief sought, 50
 - application to add, strike out or substitute, 51
 - joinder of, in case of doubt, 50
 - adding, service of writ on new parties after, 51
- jointly and severally liable in one contract, may be joined as defendants, 51
- estate, trustees, executors and administrators, may represent, 50
- beneficiaries need not be joined, 50
- numerous, having same interest, 51
- probate actions, in, 51

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

PARTIES, (ORDER XVI.)—*continued.*

- mis-joinder or non-joinder of, not to defeat action, 51
- amendment as to, 51
- infant, 52
- married women, 52
- lunatics, 52
- administration and execution of trusts, 53, 54
- next of kin, representation of, 53
 - entitled to judgment, 54
- class, representation of, 53
- legatees, judgment at instance of any one, 54
- cestuis que trust*, judgment at instance of any one, 54
- waste, action for, any one person may sue, 54
- administration actions, in, 54
- execution of trusts, actions for, 54
- executor, administrator or trustee, 54
- persons interested, not parties, service of notice of judgment or order, upon, 54
 - liberty to attend proceedings, 54
 - memo. of service to be entered, 55
 - form of notice, 55, 183
- deceased person, representative of, 55
- third parties, 55, 56, 57. *See Third Party.*
- change of, by death, &c., 57. *See Change of Parties.*

PARTITION,

- party entitled to may have writ of summons for, 21
- judgment by default, and order thereon, 21
- final judgment upon execution of order, 21
 - conclusive, exceptions, 21
- upon irregularity shewn, new partition may be ordered, 21
- where defendant appears, proceedings, 22
- provisions as to infants, lunatics, &c., 22
- order and judgment to be registered, 22
- sale in lieu of partition, in what cases, 22
 - proceedings for, 22, 23
 - parties by leave of Court may bid, 23
- rent charge or annuity, proceedings for determining, &c., 23
- parties to suit, who to be served, &c., 23
- costs, in discretion of Court, 23
- declaration of trusts in decree, &c., 23
- necessary decrees, orders, &c., to be made, 24

PARTNERS,

- service upon, 43
- appearance by, 46
- actions against, 51
- disclosure by, as to names of firm, 51
- may be used in name of firm, 52
- execution against, 96

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

PAUPER,

- actions by or against, 52
- application by, for leave to sue or defend, 53
- Court fee, none payable by, 53
- assignment of counsel or solicitor to, 53
- fees, none to be taken from, 53
 - giving, to be dispaupered, 53
- solicitor of, duty of, 53
- costs ordered to be paid to, taxation of, 53

PAYMENT INTO COURT, (ORDER XXII.), 67-69

- in what cases, 67
 - libel and slander, actions in, none, 67
 - actions on bond, under statute of Wm. III., c. 11, to particular breaches only, 67
 - to be signified in defence, 67
 - with defence of tender, 67
 - without defending, notice to plaintiff, 67 ; form, 67, 133
 - plaintiff may accept in satisfaction, 68
 - notice thereon, 68 ; form, 68, 133
 - taxation of costs and judgment thereon, 68
- in what cases money to be paid out to plaintiff, 67
- when liability denied, rules to apply, 68
- consolidated action, in, 69
- counter-claim, in answer to, 69
- not to be paid out without order, 69
- Order XIV., money paid in under, appropriation of, 69
- garnishee order, money paid in under, appropriation of, 69
- money recovered by infant or person of unsound mind, of, 69

PAYMENT OUT OF COURT,

- defence, where paid in before delivery of, 67
 - with, setting up tender, 67
 - denying liability, 67
- acceptance in satisfaction, on, 68
 - notice to defendant of, 68, form, 133
- order of Court or Judge required for, 69
- money recovered by infant, &c., of, 69

PENAL ACTION,

- leave to compound, 103
 - undertaking in order for, 103
- Queen's half of composition to be paid to Chief Clerk and Registrar, 103

PERPETUATION OF TESTIMONY, (ORDER XXXIII.), 89

- action for, 89
 - Attorney General, when to be made a defendant in, 89
 - not to be set down for trial, 89
- witnesses not to be examined for, without action, 89

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED

PETITION,

- service of, length of, 105
- Trustee Act, under, title of, 105
- statements required in, 105

PLAINTIFF,

- who to be made, 49
- wrong joinder of, costs occasioned by, 49
- wrong, by mistake, substitution, 60
- counter-claim or set-off in case of mis-joinder of, 50
- application to add, strike out or substitute, 51
- addition of, consent to, in writing, required, 51
- infant, 52
- married women, 52
- lunatics, 52
- joint and several claims by, joinder of, 60

PLEADING, (ORDER XIX.), 60-64

- statement of claim. *See Statement of Claim.*
- defence. *See Defence.*
- reply and subsequent pleadings, 60
- new assignment abolished, 60
- close of, 60, 61
- to be concise, contents of, 61
- forms in Appendices C. and D. to be used, 61 ; forms, 140-174
- facts, material, to be stated in, 61
- evidence not to be pleaded, in, 61
- bill of particulars sufficient in certain cases, 61
- misrepresentation, fraud, breach of trust, wilful default, undue influence,
 - particulars of, to be stated in, 61
- dates, sums, numbers, how to be expressed in, 61
- particulars to be stated in, 61. *See Particulars.*
- filing, delivering and endorsing of, 61, 62
- allegations not denied to be taken as admitted, 62
- conditions precedent need not be averred, 62
- facts, how to be pleaded in, 62
- new ground of claim not to be raised in, except by amendment, 62
- denial in, must be specific, 62
 - not be evasive, 63
- joinder of issue, 62
 - effect of, 63
- denial of contract, 63
- contents of documents, how set out in, 63
- malice, fraud, knowledge, &c., how to be alleged in, 63
- notice, to be alleged as a fact in, 63
- implied contract, 63
- burden of proof, 63
- technical objections to, not to be raised, 63

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

PLEADING, (ORDER XIX.)—*continued.*

- amendment of, 64
- striking out, 64, 70
- scandalous matter in, striking out, 64
- not guilty by statute, plea of, not affected, 66
 - no other defence to be joined with, without leave, 66
- abatement, plea in, abolished, 66
- payment into Court to be signified in defence, 67
- matter arising after action brought, 69, 70
- demurrers abolished, 70
- default of, 71–73. *See Default of Pleading.*
- amendment of, 74–75. *See Amendment.*
- mandamus, to return to, 106. *See Mandamus.*
- on circuit, 124. *See Circuit, Practice on.*

PLEADINGS AND PRACTICE,

- “Rules of Supreme Court, 1889,” to constitute, 33
- cases not provided for, English practice to apply, 33
- matters pending at commencement of act, 33

POSSESSION, WRIT OF, (ORDER XXXIX.), 100

- recovery of land, judgment for, may be enforced by, 100
- form of, 186
- separate writ of costs, 100

PRINTING, (ORDER XLIX.), 119

- paper to be used in, size and margin, 119
- affidavits, 119
- regulations as to, 119–121

PROBATE, (ORDER XLVI.), 110–114

- grant of, 110
- petition for, affidavit and notice, 110
 - gaveat* to, 111, proceedings upon, 111
- proof in solemn form, 111
 - proceedings upon, 111
- lists of, granted, to be returned by clerks and commissioners, 111
 - registered, 111
- production of papers or writings in proceedings for, 111
 - attendance of parties having control of papers, for, 111
 - default in, contempt, 112
- person not ordinarily entitled to, grant of to, 113
- revocation of, 113
 - See also Probate Actions.*
- on Circuit, 124. *See Circuit, Practice on.*

PROBATE ACTIONS,

- statement of claim, capacity in which plaintiff sues to be stated, 39
- appearance in, 46
- parties to, 51

PROBATE ACTIONS—*continued.*

- denial of interest in, how pleaded, 64
- defence in, 66

PROCEEDINGS IN LIEU OF DEMURRER,

- demurrers abolished, 70
- point of law, raised by pleadings, 70
 - setting down, 70
- dismissal or stay of action, in, 70
 - where shewn to be frivolous or vexatious, 70
- pleading disclosing no reasonable cause of action or answer, striking out, 70

PRODUCTION OF DOCUMENTS. *See Documents.*

PROHIBITION,

- pleadings in, 122

PROPERTY,

- allowance of income of, in administration proceedings, &c., 103
- detention of, may be ordered, 101
- inspection of, order for, 101
 - by Judge, 102
 - by jury, 102
- possession of, order for on payment into Court of amount of lien claimed, 102
- preservation of, interim order for, 101

QUO WARRANTO,

- application of rules to, 122

RECEIVER,

- appointment of, order for, 102
 - application for, 102

- security to be given by, 103

- form of, 103, 213

- accounts of, passing, 103
 - default in, 104

- balances on, when to be paid, 103

- interest on, 104

- filing of, 104

RECORD,

- withdrawing, 71

RENEWAL OF WRIT,

- in what cases, 42
- Judge may order, 42

REPLEVIN,

- proceedings and pleadings in, 123

REPLY,

- time for filing and delivering, 60
- pleadings subsequent to, 60

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

REPLY—*continued*.

- none other than joinder of issue without leave, 60
- new ground of claim not to be raised by, 60
- effect of non-delivery of, 61
- denial in, must be specific, 62
- joinder of issue by, 62
- to counter-claim, rules applicable to, 65

REPRESENTATIVE,

- action by or against, 50
- action by, on behalf of a class, 50, 54
- deceased person, of, Court may proceed in absence of, 55
 - appointment of, 55
- capacity of plaintiff to be shewn in statement of claim, 39
- denial of, 65

RETURN TO WRIT,

- no order for required, 105
- notice to sheriff to make, 105

REVENUE PROCEEDINGS,

- application of certain Orders to, 122
- excepted in general from rules, 122

RULES OF COURT,

- judges may make rules, 33
 - regulating sittings in Court and Chambers, 33
 - practice, pleading, &c., 33
 - hearing of appeals, *certiorari*, &c., 33
 - to make rules under future statutes relating to Supreme Court, 34
- provisions relating to payment into or out of Court, deemed to be practice and procedure, 34
- duties of officers, rules concerning, 34
- to be laid before legislature, 34
- to have force after publication in *Gazette*, 34

SCANDALOUS MATTER,

- striking out, from pleadings, 64
 - affidavits, 91

SEAL,

- on writ, when necessary, 41

SERVICE, (ORDER IX.), 43, 44, (ORDER L.), 121, 122

- of writ, mode of, 43
 - on particular defendants, 43
 - on partners, firms, and other bodies, 43, 44
 - in actions to recover lands, 44
 - affidavit of, 44
 - setting aside, without entering appearance, 47

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

SERVICE, (ORDER IX.)—*continued*.

- substituted, order for, 44
- writ out of jurisdiction, (Order XI.), 44
 - in what cases, 44
 - application for, 45
 - limit of time for, 45
 - defendant not British subject, and abroad, 45
 - notice in lieu of service, 45
- subpoena, of, 89
- hours for effecting, 114
- order, of, 121
- mode of, where personal service not necessary, 121
- Supreme Court notices, of, 121
- by filing, in case of non-appearance or no address given, 121
- personal, how effected, 121
- substituted, 121
- party appearing in person, afterwards instructing solicitor, in case of, 122
- affidavit of, contents of, 122

SHERIFF,

- poundage fees and expenses of, may be levied on execution, 97
- rule *nisi* in application against, abolished, 104
- notice to, to return writ or bring in body, sufficient to ground application for committal, 105
- interpleader by, 109

SITTINGS AND DISTRIBUTION OF BUSINESS,

- two terms or sessions, when held, &c., 6, 7
- post-terminal sittings, 7
- special terms or sessions, 7
- in vacation, may be held by one or more judges, 2

SOLICITOR,

- address, and address for service, of, 40, 45, 46
- for plaintiff, to declare if writ issued by him or with his authority, 41
- proceedings, if writ issued without authority, 42
- where firm of, to declare names and addresses, 42
 - proceedings in default, 42
- change of, how effected, 405
- failure of, to enter appearance or bail, 46
- to pauper, assignment of, 53
 - duty of, 53
- signature of, to pleadings, 61
- attachment against, for failure to give notice to client of order for discovery or inspection, 78
- affidavit, not to be sworn before, 91

SPECIAL CASE, (ORDER XXXI.), 81

- consent of parties, by, 81

INDEX.

LI

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

SPECIAL CASE, (ORDER XXXI.)—*continued.*

- stating, mode of, 81
- argument of, power of Court upon, 81
- question of law in any cause or matter to be raised by, 81
- filing, signing, and delivery of copies, 81
- setting down, 81
 - persons under disability, 81
- judgment on, 81

STATEMENT OF CLAIM, (ORDER III.), 39, (ORDER XX.), 64

- to be indorsed on or attached to writ, 38, 39
 - served upon defendant, with writ, 60
- amendment of, 39
- to be concise and specific, 29
- form and effect of, 39
- representative capacity, statement of, 39
- probate action, 39
- liquidated demand, final judgment by default, 39
 - notices and statements required, 40
- in action for account, 40
- general rules as to pleading applicable to, 61
- relief, how claimed in, 64
 - general, need not be sought, 64
 - in respect of several distinct claims, 64
- settled account, how pleaded in, 64
- probate actions, denial of defendant's interest, 64
- amendment of, 74. *See Amendment.*

SUBPŒNA,

- examiner, for attendance before, 87
- forms of, 88, 189, 190
- chambers, for attendance at, 88
 - to issue on note from Judge, 88
- number of names in, 88
 - duces tecum*, 88
- duces tecum*, 88
- errors in, corrections of, 88
- service of, 89
 - affidavit of, contents of, 89
 - time for, 89

SUMMONS,

- applications at chambers to be by, 107
- service of, 107
- to be signed by Judge, 107
 - entered in "Summons Book," 107
- form of, 108, 196
- See Chambers.*

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

TESTE OF WRIT, 39

THIRD PARTY,

claim against, for contribution or indemnity, 55

notice to, 55

appearance by, 56

default of, judgment against, for indemnity, 56

notice to, of judgment for plaintiff, 56

defence by, 56

trial of questions affecting, 56, 57

costs between, and other parties, 57

TIME, (ORDER XLVII.), 114, 115

month, meaning of, in computation of, 114

computation of, 114

by days, 114, 115

security for costs, effect of order for, upon, 114

Sunday, &c., exclusion of, where limit of less than six days, 114

where expiring on, act to be done on next open day, 114

enlargement or abridgement of, 114

by consent, 114

award, to set aside, 115

month's notice to proceed after lapse of one year from last proceeding, 115

TRANSFER,

causes and matters, of, by Court or Judge at any time, 123

TRIAL,

various modes of, 10, 11, 12

(Order XXXII.), 82-85

place of, where writ returnable, 82

transfer, 82

questions of fact, of, modes of, 82,

notice and entry of, 83

plaintiff, by, 83

time for, 83

when trial on affidavit, 92

default of, defendant may give, or move to dismiss action, 83

notice before entry on cause list, 83

countermanding, 83

entry by opposite party, 83

papers for Judge at, 83

proceedings at, 83

non-appearance of defendant, 83

plaintiff, 83

power to adjourn, 84

speeches to jury, 84

restrictions on cross-examination, 84

evidence in mitigation in libel and slander cases, 84

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

TRIAL—*continued*.

- habeas corpus*, for attendance of party, on, 84
 - new writ on adjournment, of, 84
- verdict or judgment on non-appearance at, may be set aside, 84
- judgment at, or after, 84
- assessment of damages by officer of Court, 84
 - continuing cause of action, 85
- on affidavit. *See Affidavit.*
- on circuit, 124 *See Circuit, Practice on.*

TRUSTEE,

- action by or against, as representing trust estate, 50
- any, may have judgment for execution of trust, 54
- appointment, substitution or removal of, application to Court or Judge for, 112
- originating summons by and against, 115, 116
 - See Originating Summons.*

TRUSTEES ACT, (CAP. 84, CON. STAT.)

- petitions, &c., under, title of, 105
 - statements required in, 105
- opinion, advice or direction of Judge to be record, 105

TRUSTS,

- execution of, action for, parties to, 54
 - originating summons for, 115, 116. *See Originating Summons.*
- administration of, application to Court or Judge for, 115, 116

UNSOUND MIND, PERSON OF,

- default of appearance, proceedings upon, 47
 - See Lunatic.*

WIFE,

- See Husband and Wife.*

WITNESS,

- examination of, generally to be *viva voce* in Court, 85
 - before examiner, 86-88
- See Examination of Witnesses.*

WRIT, (ORDER II.), 38

- action to be commenced by, 38
- statement of claim to be endorsed on or attached to, 38
- proximity of, costs of, 38
- forms of, 125-128
- for service out of jurisdiction, leave of Court or Judge necessary, 39
 - form of, 39
- notice of which in lieu of service, 39
 - form of notice, 127
- date and *teste* of, 39
- issue, (Order V.), place of, 41
 - to be written or printed, 41
 - seal, when necessary, 41

SUPREME COURT AND PROCEDURE THEREIN—CONTINUED.

WRIT, (ORDER II.)—*continued*.

- issue, (Order V.), entry of in cause book, 41
- concurrent, (Order VI.), issue, *teste*, marking, &c., 41
 - for service within and without jurisdiction, 41
- renewal of, (Order VIII.), 42
 - Judge may order, 42
 - production *prima facie* proof, 42
- upon loss of original, copy in lieu thereof, 43
- service of, (Order IX.), mode of, 43
 - on particular defendants, 43
 - on parties, firms and other bodies, 43
- service of, (Order IX.), statutory provisions as to corporations, &c., 44
 - in actions to recover lands, 44
 - affidavit of, 44
- substituted service, (Order X.), order for, 44
- service out of jurisdiction, (Order XI.), in what cases, 44
 - application for, 45
 - limit of time for, 45
 - defendant not British subject, 45
 - notice in lieu of service, 45
- possession, of, 100, form, 185
- delivery, of, 101, form, 186
- mandamus, of, 106
- returnable, when, on Circuit, 124
 - See Circuit, Practice on.*
 - See CRIMINAL LAW*, 288

SURETY,

- rights and remedies of, upon paying debt of creditor, 365

T.

TELEGRAPH CABLES, SUBMARINE, INJURIES TO,

- convention of March 14th, 1874, confirmed, 303
 - articles of, 307–311
- injury, wilful or negligent, to submarine cables, prohibited, 303
 - offence, or attempt to commit, misdemeanour, 304
- preservation of life or vessel, a defence, 304
- repair of another cable, *bona fide* attempt, 304
- aiders or abettors, guilty as principals, 304
- lights and signals, provisions of Merchants' Shipping Act 1862, to apply, 304
- Sea Fisheries' Act, 1883, (Imperial), to apply, 304
- commissioners for carrying convention into effect, 305
 - commanders of H. M. warships, 305
- obstructing an officer in execution of duty, 305
 - procedure, 305
 - Merchants' Shipping Act, 1854 to apply, 305

TELEGRAPH CABLES, SUBMARINE, INJURIES TO—CONTINUED.

evidence, documents drawn up under convention, 306
 master of vessel committing injury held liable, 306
 provisions of this chapter cumulative, 306
 interpretation clause, 306
 chapter, when in force, 307

TELEGRAPHS AND TELEPHONES,

malicious injuries to, misdemeanour, 302
 summary conviction for, 302
 attempts to commit, summary conviction for, 303
 arrest without warrant when found committing, 303

TENEMENTS, RECOVERY OF POSSESSION OF,

when rent in arrear, or term expired, 278
 summary proceedings before J. P., 278
 notice to tenant, 279 ; form, 281
 service of, 279
 complaint, 279 ; form, 281
 warrant to give possession, 279 ; form, 281
 appeal, 280 ; bond to prosecute, 280 ; form, 283
 forfeiture of, 280
 protection of justices and constables in issuing and executing warrant, 280
 forcible entry and detainer, proceedings upon, 280
 limitation of proceedings for, 280
 fees and costs, scale of, 280

TRUSTEE,

trust moneys, deposit of in Savings' Bank, 356
 proceedings thereupon, 356
 majority of trustees to decide as to, 357
 indemnity to Savings' Bank as to trusts, 357
 costs, 357
 Bank not compellable to assume trusts, 357
 power of attorney, acts *bona fide* done under, indemnity for, 358
 opinion, advice and direction of Supreme Court, in what cases, 359
 application for, 359
 effect of, 359
 instruments of trust, implied clauses in, 359
 expenses incurred under, indemnity for, 359
 express provisions of to control provisions of chap. 84, 361
 investment of trust funds by, in what securities, 359
 leaseholds, of, power to renew leases, 360
 infants, for, power to apply property to maintenance, &c., 360
 receipts of, discharge to party paying to, 361
 services of, compensation for, 361
 proceedings by, in relation to trusts, &c., 366, 359
 appeal, 361
 costs, 362
 rules to be made by Supreme Court, 362

V.

VAGRANTS,

punishment of, 294

See Magistrates.

W.

WHIPPING AND HARD LABOUR,

offenders in certain cases may be whipped, 296

injury to gaol or furniture to be punished by whipping, 296

personal violence, whipping for, 296

summary conviction, hard labour may be imposed, 296

WILLS,

making and execution of, 323

publication not necessary, 323

by person under seventeen, invalid, 323

appointment by, how executed, 223

witness, incompetency of, not to invalidate, 323

devise to, not to invalidate, 324

in what cases void, 324

executor competent to be, 324

revocation of, by marriage, 324

except under power of appointment, 324

alteration in circumstances, presumption from, 324

subsequent will or writing, 324

burning, tearing, &c., 324

revival after, how effected, 324

obliterations, interlineations, alterations, &c., effect of, 324

conveyances, subsequent, effect of upon, 325

construction of, with reference to property comprised in, 325

general devise of property, 325

words "die without issue," &c., 325

child of testator, bequest to not to lapse, 325

made before October 13th, 1864, chapter not to apply to, 325

See Supreme Court Procedure, Probate, &c.

registration of, 330

loss of original, registry to be evidence, 330

executed before 1846, free of charge, 329