

REPORTS of CASES ARGUED and DETERMINED
in the COURTS of EXCHEQUER and EX-
CHEQUER CHAMBER, from Michaelmas Term,
4 WILL. IV., to Easter Term, 4 WILL. IV., both
inclusive. By CHARLES CROMPTON, Esq., of
the Inner Temple, and R. MEESON, Esq., -of
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London, 1835.

[1] REPORTS OF CASES ARGUED AND DETERMINED IN THE COURTS OF EXCHEQUER
AND EXCHEQUER CHAMBER. MICHAELMAS TERM, 4 WILL IV.

REGULÆ GENERALES.—HIL. TERM, 4 W. IV. (a)

It is ordered, That, from and after the first day of Easter Term next inclusive, the following Rules shall be in force in the Courts of King's Bench, Common Pleas, and Exchequer of Pleas, and Courts of Error in the Exchequer Chamber.

1. No demurrer, nor any pleading subsequent to the declaration, shall in any case be filed with any officer of the Court, but the same shall always be delivered between the parties.

2. In the margin of every demurrer, before it is signed [2] by counsel, some matter of law intended to be argued shall be stated, and if any demurrer shall be delivered without such statement, or with a frivolous statement, it may be set aside as irregular by the Court or a Judge, and leave may be given to sign judgment as for want of a plea.

Provided, that the party demurring may, at the time of the argument, insist upon any further matters of law, of which notice shall have been given to the Court in the usual way.

3. No rule for joinder in demurrer shall be required, but the party demurring may demand a joinder in demurrer, and the opposite party shall be bound within four days after such demand to deliver the same; otherwise judgment.

4. To a joinder in demurrer no signature of a serjeant or other counsel shall be necessary, nor any fee allowed in respect thereof.

5. The issue or demurrer book shall on all occasions be made up to the suitor, his attorney or agent, as the case may be, and not as heretofore by any officer of the Court.

6. No motion or rule for a concilium shall be required; but demurrers, as well as all special cases, and special verdicts, shall be set down for argument, at the request

(a) On account of the great importance of the Rules of Hilary Term, we have placed them at the commencement of this volume, as they will there be more easily referred to, and sooner in the possession of our readers, than if they were inserted in their order of date.

of either party, with the clerk of the rules in the King's Bench and Exchequer, and a secondary in the Common Pleas, upon payment of a fee of one shilling; and notice thereof shall be given forthwith by such party to the opposite party.

7. Four clear days before the day appointed for argument, the plaintiff shall deliver copies of the demurrer book, special case, or special verdict, to the Lord Chief Justice of the King's Bench or Common Pleas, or Lord Chief Baron, as the case may be, and the senior Judge of the Court in which the action is brought; and the defend- [3]-dant shall deliver copies to the other two Judges of the Court next in seniority; and in default thereof by either party, the other party may on the day following deliver such copies as ought to have been so delivered by the party making default: and the party making default shall not be heard until he shall have paid for such copies, or deposited with the clerk of the rules in the King's Bench and Exchequer, or the secondary in the Common Pleas, as the case may be, a sufficient sum to pay for such copies.

8. Where a defendant shall plead a plea of judgment recovered in another Court, he shall in the margin of such plea state the date of such judgment, and, if such judgment shall be in a Court of record, the number of the roll on which such proceedings are entered, if any; and in default of his so doing, the plaintiff shall be at liberty to sign judgment as for want of a plea; and in case the same be falsely stated by the defendant, the plaintiff, on producing a certificate from the proper officer or person having the custody of the records or proceedings of the Court where such judgment is alleged to have been recovered, that there is no such record or entry of a judgment as therein stated, shall be at liberty to sign judgment as for want of a plea, by leave of the Court or a Judge.

9. No writ of error shall be a supersedeas of execution until service of the notice of the allowance thereof, containing a statement of some particular ground of error intended to be argued.

Provided, that if the error stated in such notice shall appear to be frivolous, the Court or a Judge, upon summons, may order execution to issue.

10. No rule to certify or transcribe the record shall be necessary; but the plaintiff in error shall, within twenty days after the allowance of the writ of error, get the transcript prepared and examined with the clerk of the [4] errors of the Court in which the judgment is given, and pay the transcript money to him; in default whereof the defendant in error, his executors or administrators, shall be at liberty to sign judgment of non pros. The clerk of the errors shall, after payment of the transcript money, deliver the writ of error when returnable, with the transcript annexed, to the clerk of the errors of the Court of Error.

11. No rule to allege diminution, nor rule to assign errors, nor scire facias quare executionem non, shall be necessary, in order to compel an assignment of errors; but, within eight days after the writ of error, with the transcript annexed, shall have been delivered to the clerk of the errors of the Court of Error, or to the signer of the writs in the King's Bench in cases of error to that Court, or within twenty days after the allowance of the writ of error in cases of error coram nobis, or coram vobis, the plaintiff in error shall assign errors; and in failure to assign errors, the defendant in error, his executors or administrators, shall be entitled to sign judgment of non pros.

12. The assignment of errors and subsequent pleadings thereon shall be delivered to the attorney of the opposite party, and not filed with any officer of the Court.

13. No scire facias ad audiendum errores shall be necessary (unless in case of a change of parties), but the plaintiff in error may demand a joinder in error, or plead to the assignment of errors; and the defendant in error, his executors or administrators, shall be bound within twenty days after such demand to deliver a joinder or plea, or to demur, otherwise the judgment shall be reversed.

Provided, that if in any case the time allowed as hereinbefore mentioned for getting the transcript prepared and examined for assigning errors, or for delivering a joinder in error, or plea, or demurrer, shall not have expired be- [5]-fore the tenth day of August in any year, the party entitled to such time shall have the like time for the same purpose, after the twenty-fourth day of October, without reckoning any of the days before the twelfth of August.

Provided also, that in all cases such time may be extended by a Judge's order.

Provided also, that, in all cases of writs of error to reverse fines and common recoveries, a scire facias to the terre-tenants shall issue as heretofore.

14. When issue in law is joined, either party may set down the case for argument with the clerk of the errors of the Court of Error, or the clerk of the rules in the King's Bench, as the case may require, and forthwith give notice in writing thereof to the other party, and proceed to argument in like manner as on a demurrer, without any rule or motion for a concilium.

15. Four clear days before the day appointed for argument, the plaintiff in error shall deliver copies of the judgment of the Court below, and of the assignment of errors, and of the pleadings thereon, to the Judges of the King's Bench, on writs of error from the Common Pleas or Exchequer, and to the Judges of the Common Pleas on writs of error from the King's Bench; and the defendant in error shall deliver copies thereof to the other Judges of the Court of Exchequer Chamber, before whom the case is to be heard; and in default by either party, the other party may deliver such books as ought to have been delivered by the party making default; and the party making default shall not be heard until he shall have paid for such copies, or deposited with the clerk of the errors, or the clerk of the rules in the King's Bench, as the case may be, a sufficient sum to pay for such copies.

16. No entry on record of the proceedings in error shall be necessary before setting down the case for argument; [6] but, after judgment shall have been given in the Court of Error in the Exchequer Chamber, either party shall be at liberty to enter the proceedings in error on the judgment roll remaining in the Court below, on a certificate of a clerk of the errors of the Exchequer Chamber of the judgment given, for which a fee of 3s. 4d., and no more, shall be charged.

17. Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his attorney or guardian, notwithstanding the general rule of Trinity Term, 1 Will. 4, s. 12.

18. It shall not be necessary to repass any Nisi Prius record which shall have been once passed, and upon which the fees of passing shall have been paid; and if it shall be necessary to amend the day of the teste and return of the distringas or habeas corpora, or of the clause of Nisi Prius, the same may be done by the order of a Judge, obtained on an application ex parte.

19. Writs of trial shall be sealed only, and not signed.

20. Either party, after plea pleaded and a reasonable time before trial, may give notice to the other, either in town or country, in the form hereto annexed, marked A., or to the like effect, of his intention to adduce in evidence certain written or printed documents; and unless the adverse party shall consent by indorsement on such notice, within forty-eight hours, to make the admission specified, the party requiring such admission may call on the party required, by summons, to shew cause before a Judge why he should not consent to such admission; or, in case of refusal, be subject to pay the costs of proof. And unless the party required shall expressly consent to make such admission, the Judge shall, if he think the application reasonable, make an order, that the costs of proving any do-[7]-cument specified in the notice, which shall be proved at the trial to the satisfaction of the Judge or other presiding officer, certified by his indorsement thereon, shall be paid by the party so required, whatever may be the result of the cause.

Provided, that, if the Judge shall think the application unreasonable, he shall indorse the summons accordingly.

Provided also, that the Judge may give such time for inquiry or examination of the documents intended to be offered in evidence, and give such directions for inspection and examination, and impose such terms upon the party requiring the admission, as he shall think fit.

If the party required shall consent to the admission, the Judge shall order the same to be made.

No costs of proving any written or printed document shall be allowed to any party who shall have adduced the same in evidence on any trial, unless he shall have given such notice as aforesaid, and the adverse party shall have refused or neglected to make such admission, or the Judge shall have indorsed upon the summons that he does not think it reasonable to require it.

A Judge may make such order as he may think fit respecting the costs of the application and the costs of the production and inspection; and, in the absence of a special order, the same shall be costs in the cause.

[8] FORM OF NOTICE REFERRED TO.

A.

In the K. B. }
 C. P. } *A. B. v. C. D.*
 or Exchequer. }

Take notice, that the {plaintiff
 defendant} in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the {defendant,
 plaintiff} his attorney, or agent, at _____, on _____, between the hours of _____; and that the {defendant
 plaintiff} will be required to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause. Dated, &c.

G. H., Attorney for {plaintiff.
 defendant.}

To E. F., Attorney or Agent for {defendant.
 plaintiff.}

[Here describe the documents, the manner of doing which may be as follows:—]

[9] ORIGINALS.

Description of the Documents.	Date.
Deed of Covenant between A. B. and C. D., 1st part; and E. F. } 2nd part	1st January, 1828
Indenture of Lease from A. B. to C. D.	1st February, 1828
Indenture of Release between A. B. and C. D., 1st part, &c.	2nd February, 1828
Letter, Defendant to Plaintiff	1st March, 1828
Policy of Insurance on Goods by ship "Isabella" on Voyage } from Oporto to London	3rd December, 1827
Memorandum of Agreement between C. D., Captain of said Ship, } and E. F.	1st January, 1828
Bill of Exchange for £100 at Three Months, drawn by A. B. on } and accepted by C. D., indorsed by E. F. and G. H.	1st May, 1829

COPIES.

Description of Documents.	Date.	Original or Duplicate served, sent, or delivered, when, how, and by whom.
Register of Baptism of A. B. in } the Parish of X.	1st January, 1808.	
Letter, Plaintiff to Defendant	1st February, 1828.	{ Sent by General Post, 2nd February, 1828. Served 2nd March, 1828, on Defendant's Attor- ney, by E. F. of
Notice to produce Papers	1st March, 1828.	
Record of a Judgment of the } Court of King's Bench, in an } action, J. S. v. J. N.	Trinity Term, 10th Geo. IV.	
Letters Patent of King Charles II. } in the Rolls Chapel	1st January, 1680.	

[10] HILARY TERM, 4 WILL. 4.

Whereas it is provided by the stat. 3 & 4 Will. 4, c. 42, s. 1, that the Judges of the superior Courts of Common Law at Westminster, or any eight or more of them, of whom the Chiefs of each of the said Courts should be three, should and might, by any rule or order to be from time to time by them made, in term or vacation, at any time within five years from the time when the said act should take effect, make such alterations in the mode of pleading in the said Courts, and in the mode of entering and transcribing pleadings, judgments, and other proceedings in actions at law, and such regulations as to the payment of costs, and otherwise, for carrying into effect the said alterations, as to them might seem expedient; which rules, orders, and regulations were to be laid before both Houses of Parliament as therein mentioned, and were not to have effect until six weeks after the same should have been so laid before both Houses of Parliament, but after that time should be binding and obligatory on the said Courts, and all other Courts of common law, and be of the like force and effect as if the provisions contained therein had been expressly enacted by Parliament;

Provided, that no such rule or order should have the effect of depriving any person of the power of pleading the general issue, and of giving the special matter in evidence, in any case wherein he then was or thereafter should be entitled so to do, by virtue of any act of Parliament then or thereafter to be in force:

It is therefore ordered, That, from and after the first day of Easter Term next inclusive, unless Parliament shall in the meantime otherwise enact, the following Rules and Regulations, made pursuant to the said statute, shall be in force.

[11] FIRST GENERAL RULES AND REGULATIONS.

1. Every pleading, as well as the declaration, shall be intitled of the day of the month and year when the same was pleaded, and shall bear no other time or date, and every declaration and other pleading shall also be entered on the record made up for trial and on the judgment-roll, under the date of the day of the month and year when the same respectively took place, and without reference to any other time or date, unless otherwise specially ordered by the Court or a Judge.

2. No entry of continuances by way of imparlance, curia advisari vult, vicecomes non misit breve, or otherwise, shall be made, upon any record or roll whatever, or in the pleadings, except the jurata ponitur in respectu, which is to be retained.

Provided, that such regulation shall not alter or affect any existing rules of practice as to the times of proceeding in the cause.

Provided also, that in all cases in which a plea puis darrein continuance is now by law pleadable in Banc, or at Nisi Prius, the same defence may be pleaded, with an allegation that the matter arose after the last pleading, or the issuing of the jury process, as the case may be.

Provided also, that no such plea shall be allowed, unless accompanied by an affidavit that the matter thereof arose within eight days next before the pleading of such pleas, or unless the Court or a Judge shall otherwise order.

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

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

[12] 4. No entry shall be made on record of any warrants of attorney to sue or defend.

5. And whereas, by the mode of pleading hereinafter prescribed, the several disputed facts material to the merits of the case will, before the trial, be brought to the notice of the respective parties more distinctly than heretofore; and, by the said act of the 3rd & 4th Will. 4, c. 42, s. 23, the powers of amendment at the trial, in cases of variance in particulars not material to the merits of the case, are greatly enlarged:—

Several counts shall not be allowed, unless a distinct subject-matter of complaint is intended to be established in respect of each; nor shall several pleas, or avowries, or cognizances be allowed, unless a distinct ground of answer or defence is intended to be established in respect of each.

Therefore, counts founded on one and the same principal matter of complaint, but varied in statement, description, or circumstances only, are not to be allowed.

Ex. gr. Counts founded upon the same contract, described in one as a contract without a condition, and in another as a contract with a condition, are not to be allowed; for they are founded on the same subject-matter of complaint, and are only variations in the statement of one and the same contract.

So, counts for not giving, or delivering, or accepting a bill of exchange in payment, according to the contract of sale, for goods sold and delivered, and for the price of the same goods to be paid in money, are not to be allowed.

So, counts for not accepting and paying for goods sold, and for the price of the same goods, as goods bargained and sold, are not to be allowed.

But counts upon a bill of exchange or promissory note, and for the consideration of the bill or note in goods, [13] money, or otherwise, are to be considered as founded on distinct subject-matters of complaint; for the debt and the security are different contracts; and such counts are to be allowed.

Two counts upon the same policy of insurance are not to be allowed.

But, a count upon a policy of insurance, and a count for money had and received, to recover back the premium upon a contract implied by law, are to be allowed.

Two counts on the same charter-party are not to be allowed.

But, a count for freight upon a charter-party, and for freight pro ratâ itineris, upon a contract implied by law, are to be allowed.

Counts upon a demise, and for use and occupation of the same land for the same time, are not to be allowed.

In actions of tort for misfeasance, several counts, for the same injury, varying the description of it, are not to be allowed.

In the like actions for nonfeasance, several counts, founded on varied statements of the same duty, are not to be allowed.

Several counts in trespass, for acts committed at the same time and place, are not to be allowed.

Where several debts are alleged in *indebitatus assumpsit* to be due in respect of several matters, ex. gr., for wages, work, and labour as a hired servant, work and labour generally, goods sold and delivered, goods bargained and sold, money lent, money paid, money had and received, and the like, the statement of each debt is to be considered as amounting to a several count within the meaning of the rule which forbids the use of several counts, though one promise to pay only is alleged in consideration of all the debts.

[14] Provided, that a count for money due on an account stated may be joined with any other count for a money demand, though it may not be intended to establish a distinct subject-matter of complaint in respect of each of such counts.

The rule which forbids the use of several counts is not to be considered as precluding the plaintiff from alleging more breaches than one of the same contract in the same count.

Ex. gr. Pleas, *avowries*, and *cognizances*, founded on one and the same principal matter, but varied in statement, description, or circumstances only, (and pleas in bar, in *replevin*, are within the rule), are not to be allowed.

Pleas of *solvit ad diem*, and of *solvit post diem*, are both pleas of payment, varied in the circumstance of time only, and are not to be allowed.

But pleas of payment, and of accord and satisfaction, or of release, are distinct, and are to be allowed.

Pleas of an agreement to accept the security of A. B., in discharge of the plaintiff's demand, and of an agreement to accept the security of C. D. for the like purpose, are also distinct, and to be allowed.

But, pleas of an agreement to accept the security of a third person, in discharge of the plaintiff's demand, and of the same agreement, describing it to be an agreement to forbear for a time, in consideration of the same security, are not distinct; for they are only variations in the statement of one and the same agreement, whether more or less extensive, in consideration of the same security, and not to be allowed.

In trespass *quare clausum fregit*, pleas of soil and freehold of the defendant in the *locus in quo*, and of the defendant's right to an easement there—pleas of right of way, of common of pasture, of common of turbary, and of common of estovers, are distinct, and are to be allowed.

[15] But, pleas of right of common at all times of the year, and of such right at particular times, or in a qualified manner, are not to be allowed.

So, pleas of a right of way over the locus in quo, varying the termini or the purposes, are not to be allowed.

Avowries for distress for rent, and for distress for damage feasant, are to be allowed.

But, avowries for distress for rent, varying the amount of rent reserved, or the times at which the rent is payable, are not to be allowed.

The examples, in this and other places specified, are given as some instances only of the application of the rules to which they relate; but the principles contained in the rules are not to be considered as restricted by the examples specified.

6. Where more than one count, plea, avowry, or cognizance shall have been used in apparent violation of the preceding rules, the opposite party shall be at liberty to apply to a Judge, suggesting that two or more of the counts, pleas, avowries, or cognizances are founded on the same subject-matter of complaint, or ground of answer or defence, for an order that all the counts, pleas, avowries, or cognizances introduced in violation of the rule, be struck out at the cost of the party pleading; whereupon the Judge shall order accordingly, unless he shall be satisfied, upon cause shewn, that some distinct subject-matter of complaint is *bonâ fide* intended to be established in respect of each of such counts, or some distinct ground of answer or defence in respect of each of such pleas, avowries, or cognizances, in which case he shall indorse upon the summons, or state in his order, as the case may be, that he is so satisfied; and shall also specify the counts, pleas, avowries, or cognizances mentioned in such application, which shall be allowed.

[16] 7. Upon the trial, where there is more than one count, plea, avowry, or cognizance upon the record, and the party pleading fails to establish a distinct subject-matter of complaint in respect of each count, or some distinct ground of answer or defence in respect of each plea, avowry, or cognizance, a verdict and judgment shall pass against him upon each count, plea, avowry, or cognizance, which he shall have so failed to establish; and he shall be liable to the other party for all the costs occasioned by such count, plea, avowry, or cognizance, including those of the evidence as well as those of the pleadings: and further, in all cases in which an application to a Judge has been made under the preceding rule, and any count, plea, avowry, or cognizance, allowed as aforesaid, upon the ground that some distinct subject-matter of complaint was *bonâ fide* intended to be established at the trial in respect of each count so allowed, or some distinct ground of answer or defence in respect of each plea, avowry, or cognizance so allowed, if the Court or Judge before whom the trial is had shall be of opinion that no such distinct subject-matter of complaint was *bonâ fide* intended to be established in respect of each count so allowed, or no such distinct ground of answer or defence in respect of each plea, avowry, or cognizance so allowed, and shall so certify before final judgment, such party so pleading shall not recover any costs upon the issue or issues upon which he succeeds, arising out of any count, plea, avowry, or cognizance with respect to which the Judge shall so certify.

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

Provided, that, in cases where local description is now required, such local description shall be given.

[17] 9. In a plea or subsequent pleading, intended to be pleaded in bar of the whole action generally, it shall not be necessary to use any allegation of *actionem non*, or to the like effect, or any prayer of judgment; nor shall it be necessary in any replication, or subsequent pleading intended to be pleaded in maintenance of the whole action, to use any allegation of "*precludi non*," or to the like effect, or any prayer of judgment; and all pleas, replications, and subsequent pleadings, pleaded without such formal parts as aforesaid, shall be taken, unless otherwise expressed, as pleaded respectively in bar of the whole action, or in maintenance of the whole action; provided, that nothing herein contained shall extend to cases where an estoppel is pleaded.

10. No formal defence shall be required in a plea, and it shall commence as follows:—"The said defendant, by _____, his attorney, [*or*, in person, &c.], says that

11. It shall not be necessary to state in a second or other plea or avowry, that it is pleaded by leave of the Court, or according to the form of the statute, or to that effect.

12. No protestation shall hereafter be made in any pleading; but either party shall be entitled to the same advantage in that or other actions, as if a protestation had been made.

13. All special traverses, or traverses with an inducement of affirmative matter, shall conclude to the country.

Provided, that this regulation shall not preclude the opposite party from pleading over to the inducement when the traverse is immaterial.

14. The form of a demurrer shall be as follows:—"The said defendant, by his attorney, [*or*, in person, &c., *or* plaintiff], says that the declaration [*or* plea, &c.] [18] is not sufficient in law," shewing the special causes of demurrer, if any.

The form of a joinder in demurrer shall be as follows:—"The said plaintiff [*or* defendant] says that the declaration [*or* plea, &c.] is sufficient in law."

15. The entry of proceedings on the record for trial, or on the judgment-roll, (according to the nature of the case), shall be taken to be, and shall be in fact, the first entry of the proceedings, in the cause, or of any part thereof, upon record; and no fees shall be payable in respect of any prior entry made, or supposed to be made, on any roll or record whatever.

16. No fees shall be charged in respect of more than one issue by any of the officers of the Court, or of any Judge at the Assizes, or of any other officer, in any action of assumpsit, or in any action of debt on simple contract, or in any action on the case.

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

"C. D. } The day of
ats.

A. B. } The defendant, by _____, his attorney, [*or*, in person, &c.], says that the plaintiff ought not further to maintain his action, because the defendant now brings into Court the sum of £ _____, ready to be paid to the plaintiff; and the defendant further says, that the plaintiff has not sustained damages [*or*, in actions of debt, that he is not indebted to the plaintiff] to a greater amount than the said sum, &c., in respect of the cause of action in the declaration mentioned, and this he is ready to verify; wherefore he prays judgment if the plaintiff ought further to maintain his action."

18. No rule or Judge's order to pay money into Court [19] shall be necessary, except under the 3 & 4 Will. 4, c. 42, s. 21; but the money shall be paid to the proper officer of each Court, who shall give a receipt for the amount in the margin of the plea; and the said sum shall be paid out to the plaintiff on demand.

19. The plaintiff, after the delivery of a plea of payment of money into Court, shall be at liberty to reply to the same, by accepting the sum so paid into Court in full satisfaction and discharge of the cause of action in respect of which it has been paid in; and, he shall be at liberty in that case to tax his costs of suit, and in case of non-payment thereof within forty-eight hours, to sign judgment for his costs of suit so taxed; or the plaintiff may reply, "that he has sustained damages [*or*, that the defendant is indebted to him, *as the case may be*] to a greater amount than the said sum;" and, in the event of an issue thereon being found for the defendant, the defendant shall be entitled to judgment and his costs of suit.

20. In all cases under the 3 & 4 Will. 4, c. 42, s. 10, in which, after a plea in abatement of the nonjoinder of another person, the plaintiff shall, without having proceeded to trial on an issue thereon, commence another action against the defendant or defendants in the action in which such plea in abatement shall have been pleaded, and the person or persons named in such plea in abatement as joint contractors, the commencement of the declaration shall be in the following form:—

"[*Venue*].—A. B., by E. F., his attorney, [*or*, in his own proper person, &c.], complains of C. D. and G. H., who have been summoned to answer the said A. B., and which said C. D. has heretofore pleaded in abatement the nonjoinder of the said G. H., &c." [The same form to be used *mutatis mutandis* in cases of arrest or detainer.]

21. In all actions by and against assignees of a bankrupt [20] or insolvent, or executors or administrators, or persons authorized by act of Parliament to sue or be sued as nominal parties, the character in which the plaintiff or defendant is stated on

the record to sue or be sued, shall not in any case be considered as in issue, unless specially denied.

PLEADINGS IN PARTICULAR ACTIONS.

I.—*Assumpsit.*

1. In all actions of assumpsit, except on bills of exchange and promissory notes, the plea of non assumpsit shall operate only as a denial in fact of the express contract or promise alleged, or of the matters of fact from which the contract or promise alleged may be implied by law.

Ex. gr.—In an action on a warranty, the plea will operate as a denial of the fact of the warranty having been given upon the alleged consideration, but not of the breach; and, in an action on a policy of insurance, of the subscription to the alleged policy by the defendant, but not of the interest, of the commencement of the risk, of the loss, or of the alleged compliance with warranties.

In actions against carriers and other bailees, for not delivering or not keeping goods safe, or not returning them on request, and in actions against agents for not accounting, the plea will operate as a denial of any express contract to the effect alleged in the declaration, and of such bailment or employment as would raise a promise in law to the effect alleged, but not of the breach.

In an action of indebitatus assumpsit for goods sold and delivered, the plea of non assumpsit will operate as a denial of the sale and delivery in point of fact; in the like action for money had and received, it will operate as a denial both of the receipt of the money and the existence [21] of those facts which make such receipt by the defendant a receipt to the use of the plaintiff.

2. In all actions upon bills of exchange and promissory notes, the plea of non assumpsit shall be inadmissible. In such actions, therefore, a plea in denial must traverse some matter of fact: ex. gr., the drawing, or making, or indorsing, or accepting, or presenting, or notice of dishonour of the bill or note.

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

4. In actions on policies of assurance the interest of the assured may be averred thus:—"That A., B., C., and D., or some or one of them, were or was interested," &c. And it may also be averred, "that the insurance was made for the use and benefit, and on the account, of the person or persons so interested."

II.—*In Covenant and Debt.*

1. In debt on specialty or covenant, the plea of non est factum shall operate as a denial of the execution of the deed in point of fact only, and all other defences shall be specially pleaded, including matters which make the deed absolutely void, as well as those which make it voidable.

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

[22] 3. In actions of debt on simple contract, other than on bills of exchange and promissory notes, the defendant may plead that "he never was indebted in manner and form as in the declaration alleged," and such plea shall have the same operation as the plea of non assumpsit in indebitatus assumpsit; and all matters in confession and avoidance shall be pleaded specially as above directed in actions of assumpsit.

4. In other actions of debt, in which the plea of nil debet has been hitherto allowed, including those on bills of exchange and promissory notes, the defendant shall deny specifically some particular matter of fact alleged in the declaration, or plead specially in confession and avoidance.

III.—*Detinue.*

The plea of non detinet shall operate as a denial of the detention of the goods by the defendant, but not of the plaintiff's property therein; and no other defence than such denial shall be admissible under that plea.

IV.—*In Case.*

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

Ex. gr. In an action on the case for a nuisance to the occupation of a house by carrying on an offensive trade, the plea of not guilty will operate as a denial only that the defendant carried on the alleged trade in such a way as to be a nuisance to the occupation of the house, and will not operate as a denial of the plaintiff's occupation of the house.

[23] In an action on the case, for obstructing a right of way, such plea will operate as a denial of the obstruction only, and not of the plaintiff's right of way; and in an action for converting the plaintiff's goods, the conversion only, and not the plaintiff's title to the goods.

In an action of slander of the plaintiff in his office, profession, or trade, the plea of not guilty will operate to the same extent precisely as at present in denial of speaking the words, of speaking them maliciously, and in the sense imputed, and with reference to the plaintiff's office, profession, or trade, but it will not operate as a denial of the fact of the plaintiff holding the office or being of the profession or trade alleged.

In actions for an escape, it will operate as a denial of the neglect or default of the sheriff or his officers, but not of the debt, judgment, or preliminary proceedings.

In this form of action against a carrier, the plea of not guilty will operate as a denial of the loss or damage, but not of the receipt of the goods by the defendant as a carrier for hire, or of the purpose for which they were received.

2. All matters in confession and avoidance shall be pleaded specially, as in actions of assumpsit.

V.—*In Trespass.*

1. In actions of trespass *quare clausum fregit*, the close or place in which, &c., must be designated, in the declaration, by name or abutments, or other description; in failure whereof the defendant may demur specially.

2. In actions of trespass *quare clausum fregit*, the plea of not guilty shall operate as a denial that the defendant committed the trespass alleged in the place mentioned, but not as a denial of the plaintiff's possession, or right of possession of that place, which, if intended to be denied, must be traversed specially.

[24] 3. In actions of trespass *de bonis asportatis*, the plea of not guilty shall operate as a denial of the defendant having committed the trespass alleged by taking or damaging the goods mentioned, but not of the plaintiff's property therein.

4. Where, in an action of trespass *quare clausum fregit*, the defendant pleads a right of way with carriages and cattle and on foot in the same plea, and issue is taken thereon, the plea shall be taken distributively; and if a right of way with cattle, or on foot only, shall be found by the jury, a verdict shall pass for the defendant in respect of such of the trespasses proved as shall be justified by the right of way so found; and for the plaintiff in respect of such of the trespasses as shall not be so justified.

5. And where, in an action of trespass *quare clausum fregit*, the defendant pleads a right of common of pasture for divers kinds of cattle, ex. gr. horses, sheep, oxen, and cows, and issue is taken thereon, if a right of common for some particular kind of commonable cattle only be found by the jury, a verdict shall pass for the defendant in respect of such of the trespasses proved as shall be justified by the right of common so found; and for the plaintiff in respect of the trespasses which shall not be so justified.

6. And in all actions in which such right of way or common as aforesaid, or other similar right, is so pleaded that the allegations as to the extent of the right are capable of being construed distributively, they shall be taken distributively.

Provided nevertheless, that nothing contained in the 5th, 6th, or 7th of the above-mentioned General Rules and Regulations, or in any of the above-mentioned Rules or Regulations relating to pleading in particular actions, [25] shall apply to any case in which the declaration shall bear date before the first day of Easter Term next.

Issues, Judgments, and other Proceedings in Actions commenced by Process under 2 Will. 4, c. 39, shall be in the several Forms in the Schedule hereunto annexed, or to the like effect, mutatis mutandis: Provided, that, in case of noncompliance, the Court or a Judge may give leave to amend.

No. 1.

Form of an Issue in the King's Bench, Common Pleas, or Exchequer.

In the King's Bench; or,
In the Common Pleas; or,
In the Exchequer.

The [date of declaration] day of _____, in the _____ year of our Lord 18 _____
[Venue.]—A. B., by E. F., his attorney, [or, in his own proper person, or by E. F., who is admitted by the Court here to prosecute for the said A. B., who is an infant within the age of twenty-one years, as the next friend of the said A. B., as the case may be], complains of C. D., who has been summoned to answer the said A. B., [or, arrested or detained in custody] by virtue [or, served with a copy, as the case may be] of a writ issued on [date of first writ] the _____ day of _____, in the year of our Lord 18 _____, out of the Court of our Lord the King, before the King himself at Westminster, [or, out of the Court of our Lord the King, before his Justices at Westminster, or, out of the Court of our Lord the King, before the Barons of his [26] Exchequer at Westminster, as the case may be]; For that

[Copy the declaration from these words to the end, and the plea and subsequent pleadings to the joinder of issue.]

Thereupon the Sheriff is commanded that he cause to come here, on the day of _____, twelve &c., by whom &c., and who neither &c., to recognise &c., because as well &c.

No. 2.

Form of Nisi Prius Record in the King's Bench, or Common Pleas, or Exchequer.

[The placita are to be omitted. Copy the issue to the end of the award of the venire, and proceed as follows:]

Afterwards, on the [teste of distringas as habeas corpora] day of _____, in the year _____, the Jury between the parties aforesaid is respited here until the [return day of distringas or habeas corpora] day of _____, unless _____ shall first come on the [first day of sittings or commission day of assizes] day of _____, at _____, according to the form of the statute in such case made and provided for default of the Jurors, because none of them did appear. Therefore let the Sheriff have the bodies of the said Jurors accordingly.

[The postea is to be in the usual form.]

No. 3.

Form of Judgment for the Plaintiff in Assumpsit.

[Copy the issue to the end of the award of the venire, and proceed as follows:—]

Afterwards, the Jury between the parties is respited until the [return of distringas or habeas corpora] day [27] of _____, unless _____ shall first come on the [day of sittings or Nisi Prius] day of _____, at _____, according to the form of the statute in that case made and provided for default of the Jurors, because none of them did appear.

Afterwards, on the [day of signing final judgment] day of _____ come the parties aforesaid, by their respective attornies aforesaid, [or as the case may be]; and _____, before whom the said issue was tried, hath sent hither his record had before him, in these words:

[Copy Postea.]

Therefore, it is considered that the said A. B. do recover, against the said C. D., his said damages, costs, and charges, by the Jurors aforesaid, in form aforesaid, assessed;

and also £ for his costs and charges, by the Court here adjudged of increase to the said A. B., with his assent; which said damages, costs, and charges in the whole amount to £ , and the said C. D. in mercy, &c.

No. 4.

Form of the Issue when it is directed to be tried by the Sheriff.

[After the joinder of issue proceed as follows:—]

And forasmuch as the sum sought to be recovered in this suit, and indorsed on the said writ of summons, does not exceed 20l., hereupon on the [teste of writ of trial] day of , in the year , pursuant to the statute in that case made and provided, the Sheriff [or, the Judge of , being a Court of Record for the recovery of debt in the said county, as the case may be,] is commanded that he summon twelve, &c., who neither &c., who shall be sworn truly to try the issue above joined between the parties aforesaid, and that he proceed to try such issue accordingly; and when the same shall have been tried, that he make known to the Court here what shall have been done by virtue of the writ of our Lord the King to him in that behalf directed, with the finding of the Jury thereon indorsed, on the day of , &c.

No. 5.

Form of Writ of Trial.

William the Fourth, by &c., to the Sheriff of our County of , [or to the Judge of , being a Court of Record for the Recovery of Debt, in our County of , as the case may be.]

Whereas A. B., in our Court before us at Westminster, [or, in our Court before our Justices at Westminster, or, in our Court before the Barons of our Exchequer at Westminster, as the case may be], on the [date of first writ of summons] day of last, impleaded C. D. in an action on promises [or as the case may be]; for that whereas one, &c., [here recite the declaration as in a writ of inquiry]; and thereupon he brought suit. And whereas the defendant, on the day of last, by , his attorney, [or as the case may be], came into our said Court and said, [here recite the pleas and pleadings to the joinder of issue], and the plaintiff did the like. And whereas the sum sought to be recovered in the said action, and indorsed on the writ of summons therein, does not exceed 20l.; and it is fitting that the issue above joined should be tried before you the said Sheriff of , [or Judge, as the case may be]: We therefore, pursuant to the statute in such case made and provided, command you that you do summon twelve free and lawful men of your county, duly qualified according to law, who are in nowise akin to the [29] plaintiff or to the defendant, who shall be sworn truly to try the said issue joined between the parties aforesaid, and that you proceed to try such issue accordingly; and when the same shall have been tried in manner aforesaid, we command you that you make known to us at Westminster, [or, to our Justices at Westminster, or, to the Barons of our said Exchequer, as the case may be], what shall have been done by virtue of this writ, with the finding of the Jury hereon indorsed, on the day of next.

Witness , at Westminster, the day of , in the year of our reign.

No. 6.

Form of Indorsement thereon of the Verdict.

Afterwards, on the [day of trial] day of , in the year , before me, Sheriff of the county of , [or, Judge of the Court of], came as well the within-named plaintiff as the within-named defendant, by their respective attorneys within named, [or as the case may be]; and the jurors of the jury by me duly summoned, as within commanded, also came, and, being duly sworn to try the said issue within mentioned on their oath, said, that

No. 7.

Form of Indorsement thereon, in case a Nonsuit takes place.

[*After the words "duly sworn to try the issue within mentioned" proceed as follows:—*]

And were ready to give their verdict in that behalf; but [30] the said A. B., being solemnly called, came not, nor did he further prosecute his said suit against the said C. D.

No. 8.

Form of Judgment for the Plaintiff after Trial by the Sheriff.

[*Copy the issue, and then proceed as follows:—*]

Afterwards, on the [*day of signing judgment*] day of _____, in the year _____, came the parties aforesaid, by their respective attornies aforesaid, [*or as the case may be*], and the said Sheriff, [*or, Judge, as the case may be*], before whom the said issue came on to be tried, hath sent hither the said last-mentioned writ, with an indorsement thereon, which said indorsement is in these words; to wit:

[*Copy the Indorsement.*]

[Therefore it is considered, &c. [*in the same form as before*].