

RULES AND ORDERS
OF
P R A C T I C E,
FOR THE
COURT OF KING'S BENCH,
DISTRICT OF MONTREAL.

FEBRUARY TERM, 1811.

AMENDED AND AUGMENTED TILL THE 20th JUNE, 1823.

TO WHICH IS ADDED,

THE RULES AND ORDERS OF PRACTICE,

IN THE PROVINCIAL COURT OF APPEALS.



MONTREAL:

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FOR JOSEPH NICKLESS, BOOK-SELLER.

1823.

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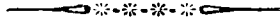
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COURT OF KING'S BENCH,

Montreal.

FEBRUARY TERM,

1811.



WHEREAS it is expedient to correct, alter, and amend the several Rules of Practice of this Court, made previous to the present Term :

It is therefore ORDERED—That all the said previous Rules of Practice be RESCINDED, and that the several Rules and Orders, hereafter expressed, be strictly observed and conformed to by the several Advocates, Attornies, Officers, and other persons whom it may concern.

SECTION I.

Of the Court:

ARTICLE I. **T**HAT the several days herein after mentioned shall, in each Term, respectively be held to be Holy Days, within the intent and meaning of the 7th Section of the Provincial Statute of the 34th of his Majesty George the Third, Chap. 6 ; That is to say—The first day of January, Circumcision, Epiphany, Annunciation, only when solemnized on the 25th of March, Ascension, Good Friday, His Majesty's Birth Day, Corpus Christi or Fête Dieu, St. Pierre and St. Paul, All Saints, Conception, and Christmas-Day : and that on these several Holy Days, this Court shall not sit or be held, but that on every other (Sundays excepted) it shall sit and be held in each Term respectively.

2.—And it is ordered that the office of the Sheriff and of the Prothonotary shall be open, and attendance therein res-

pectively given on every day at the hours by the Rules herein appointed, except on the above Holy-Days and Sundays. And that all the several Rules of this Court, wherein an exception may be contained for the non-service or filing of pleas on a Holy-Day, shall have relation only to the Holy-Days above declared.

SECTION II.

Of the Habits of Officers, Barristers and Counsel.

It is ordered, that the several Officers of this Court, in the exercise of their respective offices in Court, do appear habited in gowns, such as are worn by like officers in his Majesty's Courts in England; and that the several Barristers, and Advocates do appear in Court habited in such gowns and bands as are worn by Barristers of similar degree at Westminster-Hall. And that this Court will not hear any matter moved by any Barrister or Advocate, who shall not appear so habited when moving the same.

SECTION III.

Of the Sheriff and Prothonotaries Offices.

SHERIFF.—That the Sheriff's Office be by suitable means publickly notified on the door thereof; and that he do by himself, or some proper person by him authorised, attend in his said office every day in Term time, where free access may be had, from the hour of eight in the morning to six in the afternoon, from the first of April to the twentieth of October, inclusive; and from the hour of nine in the morning to five in the afternoon, in the Terms that may be held from the twenty-first of October to the first of April. And that during the vacation, attendance as aforesaid shall be given in the said office from the hour of eight in the morning to noon; and from two to six in the afternoon, from the first of April to the twentieth October, inclusive; and from the hour of

nine in the morning until noon, and from two till half past four in the afternoon, from the twenty-first of October till the first of April, Sundays and Holy-Days excepted. And that the Sheriff do permanently expose in his office a public notification of the respective periods and times, above directed, at which his said office will be open for discharge of the duties thereof.

2.—That the attendance in the Sheriff's Office, directed as aforesaid, shall not, in any manner, obstruct or excuse his personal attendance in Court, and during the continuance of the Court's sitting in Term time, which is hereby enjoined and directed.

PROTHONOTARIES.—1. That the Office of the Prothonotaries be by suitable means publicly notified on the door thereof; and that they do by themselves, or proper person or persons, by them authorised, attend in the said Office or Offices, whereby free access may be had to the Records of this Court, and such other business performed as pertain to the duties of their office, every day during Term time, from the hour of eight in the morning to six in the afternoon, from the first of April to the first of November; and from the hour of nine in the morning to five in the afternoon, in the Terms that may be held from the first of November to the first of April. And that during the vacations attendances as aforesaid shall be given in the said Office or Offices from the hour of eight in the morning until noon, and from two till six in the afternoon, from the first of April to the first of November; and from the hour of nine in the morning until noon, and from two till half past four in the afternoon, from the first of November to the first of April; Sundays and Holy-Days excepted. And that the Prothonotaries do permanently expose in their Office, a public notification of the respective periods and times above directed, at which their said office will be open for discharge of the duties thereof.

2.—That the attendance in the Prothonotaries Office, above directed, shall not in any manner excuse or obstruct their personal attendance in Court every day, and during the continuance of the Court's sitting in Term time, nor a like personal attendance upon any of the Judges of this Court, at

any sitting that may be appointed and held during vacation, which attendance is severally hereby enjoined, and upon the said Prothonotaries respectively directed.

3.—That the proceedings of this Court shall be regularly entered and written in a fair hand, in a register to be kept for this purpose by the Prothonotary, with a proper index thereto, in which register shall be left sufficient spaces for entering the different proceedings in each cause separately, and as they follow in succession, until the final determination thereof.

4.—That all the causes returned into this Court shall be numbered, to commence with number one of the causes of the present term, and be continued progressively for twelve terms, at the expiration of which, and of every subsequent twelve terms, the said numbers shall be again renewed.

5. That all the records in the causes in which final judgment shall have been given, shall be carefully tied up and laid aside in a separate box, on which shall be marked the term in which such judgments were rendered; and all proceedings which may arise by opposition, or otherwise, subsequent to such final judgment, shall be joined to the record in the original cause as connected therewith, and when determined shall be bound up and deposited amongst the causes decided in that term, in which such ulterior proceedings shall have been so determined. And for the greater security and the more ready access thereto.

It is ordered. That a list of the causes, so determined and deposited in each box, shall be made up in the order in which they are so deposited and remain therewith; and when any of the said records shall be at any time removed from their place, either by appeal or by reason of subsequent proceedings to be had thereon, such removal, and the cause thereof, shall be minuted by the Prothonotary upon such list.

6.—That every writ and process, and every copy of any judgment, rule or order, of this Court, or of any other paper or document issuing from the office of the Prothonotary, shall be written in a fair hand, without erasures or interlineations, and without any figures or abbreviations of words therein, other than may be contained in the original, and as are necessarily descriptive thereof; and every suit, process, or copy as aforesaid, issuing from the said office, and not made con-

formable thereto, shall not be considered as authentic, nor shall any fee be charged or allowed therefore.

7.—In order to prevent difficulties touching the payment of the fees and emoluments allowed to the Prothonotaries of this Court for the business of their office, It is ordered, that in every cause in which a bill of costs shall be presented by any Attorney of this Court for taxation, in which there shall be due or charged any fees or disbursements to the said Prothonotaries, there shall be annexed to every such bill of costs the Prothonotaries' receipt, for the payment of such fees and disbursements, before such bill shall be taxed.

8.—It is ordered, That the Prothonotaries do preserve a book or register, to ascertain the filing of copies of declarations in every cause that may be made under the rules of practice, to the end that the said Prothonotaries may at all times certify the exact period of filing such copies, and by whom so filed; and also of the defendant or his Attorney, taking up any such copy, so being filed, for his use, and the period of the same being delivered, and to whom the same may be delivered, and for every such registering the said Prothonotaries shall be entitled to charge the sum of one shilling to the plaintiff's costs against the defendant.

SECTION IV.

Of Service of Process.

1. THAT on all original suits or process, requiring any defendant or person to appear in this Court to answer or defend, and when such person may reside within the town of Montreal, or at the distance of one mile therefrom, due service of such process shall be made two whole days, or forty-eight hours, previous to the return thereof.

2. And the like service of process shall be made at the several periods, and conformably to the distance of the place of residence of such defendant in the several cases following.

3.—And where the defendant may reside out of the city and suburbs of Montreal, and within a distance not exceeding five leagues, due service shall be made three whole days

previous to the return ; and when such residence may be from five to ten leagues, the service shall be made four whole days previous to the return ; and when such residence may be from ten to fifteen leagues, the service shall be made five whole days previous to the return.

4.—And when such residence may be from fifteen to twenty leagues distance, the service shall be made six whole days previous to the return.

5. And where from twenty to thirty leagues, the service shall be made eight whole days previous to the return.

6. And where the defendant's residence may exceed thirty leagues, then such service shall be made conformably to the special order of one of the Judges of this Court, upon due consideration of the season of the year and situation of the defendant's residence.

7. That the Sheriff or Coroner to whom any process or writ may be directed for service, and which may express a declaration to be thereunto annexed, do not make any return into this Court upon such writ, unless the declaration or writing, therein referred to, be annexed to the same. And if any such return be made, the same shall be taken from the Records of this Court, and no proceeding had thereupon.

8. On the service of any writ of *capias ad respondendum*, the plaintiff shall be bound, at the time of serving the defendant with copy of such writ, to serve a notice in writing upon the said defendant, informing him that a copy of the plaintiff's declaration will be left at the Prothonotaries' office for the said defendant in such case, within five days from the service of such writ, and that the plaintiff making due service of a copy of his declaration, conformably to such notice, the same shall be taken and considered as sufficient, unless the defendant, before the expiration of the five days, do notify the plaintiff, or his attorney, of his, the defendant's, elected domicile, within the city of Montreal, where a copy of the plaintiff's declaration may be served upon him, such defendant.

SECTION V.

Of the Return of Process.

1.—THAT the first business of the Court, at every sitting, be to receive the returns on the service of process, and that the same be entered of record; and the respective defendants, where no appearance may have been entered, be openly called for appearance, and the legal course of proceedings taken thereon.

2. That all returns upon any process *ad respondendum*, shall be made and signed by the officer to whom such writ may be directed, and shall specify the manner, time, and place of such service; and particularly the parish and county, in which such service has been made.

3.—It is ordered, That no writ or process of any kind shall hereafter issue at the office of the Prothonotary of this Court, without a *fiat* signed by the party demanding the same, or by his Attorney, in which shall be expressed the names of the parties to the suit, their place of residence, and addition respectively, the nature of the writ demanded, and the day of the return thereof, which *fiat* shall be filed and preserved by the Prothonotary, who shall be entitled to demand therefore one shilling; and in case the date or day of return of any writ or process so issued in conformity to such *fiat*, or the name of any party in manner as above directed, shall be altered or changed, no return thereon shall be admitted or received by this Court.

SECTION VI.

Of Appearance, Election of Domicile, and Default.

1.—If at the return of any process or rule of this Court, the Defendant thereupon shall personally appear in Court, to defend any action, suit or rule, against him brought, he shall at the time of such appearance make an Election of Domicile in the town of Montreal, and which shall be considered as his place of legal residence to all intents and purposes,

respecting and during the prosecution of the said action, rule or proceeding.

2.—And where any Defendant may fail to elect such domicile, the Plaintiff may proceed in the cause, by a regular service of rules and other legal acts, upon the Defendant, in the Prothonotary's Office, as his legal domicile and place of residence.

3.—The above rule for the Election of domicile shall also extend to all Defendants who may personally take upon them the defence of any suit, in any stage of a cause, after the return of process.

4.—That in all causes where a return of service be made on any process of summons, and the Defendant may not personally, nor by an Attorney, have duly entered an appearance on the return day of such process, and during the sitting of the Court, the Prothonotary do, immediately after the rising of the Court, on the respective days of return, enter on such process a note of such non-appearance or default, and in every case where such default may be so entered, the Plaintiff may, on the third day of the Court, after said return day, move that the Defendant may be called for his appearance; and failing to appear, a judgment of default may conclusively be entered, and the merits of the Plaintiff's demand be examined, heard and adjudged upon *ex parte*, at such day as may be appointed for that purpose.

5.—It is ordered that every Attorney employed to appear for any person, in any suit in this Court, do enter such appearance immediately after the opening of the Court, at the return day of the process, and that in every case where no such appearance may be entered, the Prothonotary do cause the Defendant, or person bound to appear, to be called previous to making the default directed by the Rules of the Court in such case made.

SECTION VII.

Concerning Attornies, and of their Prosecuting and Defending Causes.

1.—It is ordered that no Attorney shall sign any writ, process or declaration, nor appear for, nor defend any per-

son, in this Court, unless he may be thereto duly authorised.

2.—That any Attorney who may accept a warrant to appear, shall duly make appearance for such party; and wilfully neglecting so to do, shall be liable to be suspended from the Roll and Practice of an Attorney of this Court. Nor shall any Attorney be received to countermand and withdraw such appearance without due notice to his client, and leave of the Court.

3.—That no person, without a rule of this Court, or an order of a Judge, and after due notice of the same to the adverse party or his Attorney, shall be admitted to change, shift or withdraw his Attorney in the cause.

4.—And every Attorney who may be substituted in the place of any other, for the charge and conduct of any party in a cause, shall, at his peril, take notice of, and be bound by all rules and proceedings to which the former Attorney was or would have been liable, had he continued as Attorney in the cause.

5.—That an Attorney who shall appear for any party in a suit in this Court, shall be held and taken to be the Attorney of such party, in all matters and proceedings whatsoever, collateral and incidental to such suit, as well after as before final judgement. This Rule, however, shall not be held to extend to such proceedings, after judgement, as by special rules may require personal notice to a Defendant on a judgement obtained, as rules *nisi* for renewing a writ of execution, and the like.

6.—That no Attorney of this Court, upon pain of being interdicted and struck from the Roll of Attornies, do permit any one to practice in his name.

7.—That no Barrister, Attorney, Prothonotary, Crier, Bailiff or Sheriff's Officer, shall be Bail in any action or suit to be brought, or that may be depending in this Court.

8.—That every Barrister, Advocate or Attorney, who may be in practice in this Court, and not having absented himself for twelve months, and all the several Officers of this Court, shall respectively be held and considered as personally present, to answer every legal claim, suit, and demand that may be preferred against either of them by any

person whomsoever ; and shall be bound to answer the same, without the service of process of summons, requiring an appearance to answer any such demand ; the course of proceedings being, in every other respect, conformed to according to the general rules of practice.

9.—That no Barrister or Attorney, who shall be legally dismissed or suspended from practice, in any of his Majesty's Courts of Law, shall be admitted to practice in this Court, until such Barrister or Attorney shall have been readmitted to practice in the Court in which he hath been so dismissed or suspended from practice.

10.—It is ordered that no person who by any contract in writing shall hereafter become bound to serve a Clerkship as required by law to entitle him to be admitted as a Barrister or Attorney in his Majesty's Courts of Law in this Province, shall be examined upon any reference made to the Judges of this Court, unless the Indenture or other writing containing such contract shall be registered within three months from the date thereof in the office of the Prothonotaries of the said Court in a Register to be kept for that purpose. nor shall any person to be examined in consequence of any such reference in order to be admitted as a Barrister or Attorney as aforesaid or as a Notary Public until notice of the time and place of such examination, and the name of the person to be examined, shall have been affixed upon the principal door of the Court House of this district, where public notices are usually affixed, and shall there have remained for and during the space of one week, and that no such examination shall be had until (in the case of an application to be admitted as a Barrister or Attorney) an affidavit of the person to be examined or of the Barrister, Attorney Clerk or Prothonotary to whom he was bound, shall be made and filed to the following effect, viz : that according to the intent and meaning of the Provincial Ordinance, 25th Geo. III, chap. 4th, he hath *bona fide* served a regular and continued Clerkship for and during the space of five years, under a contract in writing (to be thereunto annexed) for that purpose made and entered into with some Advocate or Attorney duly admitted and practising in the Courts of Civil Judicature in this Province or in some other part of his Majesty's dominions or with some

Clerk or Register of some Court of King's Bench or Court of Appeals within this Province, for and during the space of six years, or that such person hath been already called to the Bar, or entitled so to be and to practise as an Advocate or Attorney in some Court of Civil Jurisdiction within some part of his Majesty's dominions.

And in the case of any application to be admitted as a Notary, "that he hath *bona fide* served a regular and continued Clerkship, for and during the space of five years under a contract in writing (to be thereunto annexed) for that purpose made and entered into with some Notary duly commissioned and appointed, and practising as such" shall have been duly made and delivered to the Justice or Justices before whom such examination shall be had.

11.—That no Barrister or Attorney shall hereafter be admitted to practice in this Court until in addition to the state Oath he shall have taken and subscribed upon a Roll to be kept by the Prothonotaries of this Court for that purpose, the following Oath:—

"I, A. B. do swear that I will truly and honestly
 "demean myself in the practise of a Barrister and
 "Attorney, according to the best of my ability, learning and discretion,
 "SO HELP ME GOD."

SECTION VIII.

Of Capias ad respondendum—Of Special Bail—Of Surrender and of Debtors—Detention in Prison.

1.—It is ordered that every plaintiff or his Attorney, who may obtain the *fiat* of any Judge of this Court for a writ of *Capias ad respondendum*, or seizure of goods by attachment, or *Saisie revendication* shall at the time of applying to the Prothonotary for process thereupon, exhibit and file the affidavit upon which the said *fiat* was obtained. And that no Prothonotary, of this Court do presume to grant any writ of *Capias ad respondendum* or attachment, until the affidavit

aforesaid shall be filed of record. And every defendant shall be entitled to a copy of such affidavit of record as aforesaid.

2.—That upon every Capias or process *ad respondendum* upon which bail is required, or upon an order of *saisie* and attachment, when the goods attached may be legally claimed and retained, or repossessed, upon giving security, the Attorney or person obtaining such writ, shall indorse upon the said writ or process, that the same hath been obtained upon affidavit, and the amount of the sum sworn to, for which bail or security should be required, in the form following: “issued upon the affidavit of—— (*expressing the name,*) for “the sum of —— (*expressing the same in words.*)” And such indorsement shall be signed by the Attorney, by whose ministry (or Plaintiff, if by him personally obtained,) the said writ or process may have issued.

3.—And it is ordered that no such process, requiring a personal arrest of the body or an attachment of goods, shall be executed, unless there be thereon the indorsement above mentioned.

4.—That whensoever any person arrested upon a Capias *ad respondendum* or attachment, may be desirous to enter special bail, the same shall be taken, if in Term time, in open Court, after due notice of two full days, or forty-eight hours to the plaintiff or his Attorney in the cause; in which notice shall be expressed the names of the Bail proposed, their respective occupations and place of abode, to the end that the plaintiff may, at the time of putting in such bail, require the persons, so becoming bail to justify upon their sufficiency, to answer the debt and costs, in case the defendant shall fail in the action. And that every plaintiff who shall neglect to require such justification, at the time the bail may be so put in, under notice as aforesaid, shall not, at any future period, be permitted to require justification.

5.—That any person, under arrest as aforesaid, may during vacation, after the first Term, or during the vacation of any future Term, (if the plaintiff's cause be not ripe for judgment, and under *délibéré* at such period) be permitted to enter special bail, and justify upon the same, before any two of the Judges of this Court, under and conformable to the present rules of practice for notice in putting in and the justifi-

cation of special bail. And upon perfecting special bail as aforesaid, the defendant so under arrest, may be liberated from the same, by the order of any two of the Judges aforesaid.

6.—And whereas, by the rules of practice every defendant is bound to plead within certain limited periods, it is ordered, that every defendant, arrested on a writ of *Capias ad respondendum* or attachment, and in custody, shall be bound to plead, according to the rules of this Court, whether special bail be put in or not, and that no delay in the cause be had, by reason of putting in bail or justification, as above said.

7.—That whensoever any person may be arrested upon a writ of *Capias* or attachment and shall be committed to gaol for want of bail, either for appearance or of special bail to the action, such person so arrested and committed by the Sheriff (or Coroner where the Sheriff cannot legally serve the process) shall remain in custody until he may find special bail in the action. And where he may not find special bail after such commitment, until two days, exclusively, after the plaintiff may legally have and obtain a writ of *Capias ad satisfaciendum*, whereupon he may charge the person so committed with such judgment as the plaintiff may obtain.

8.—And it is further ordered, that whensoever any person arrested upon *Capias ad respondendum* or attachment, shall give special bail, and be afterwards surrendered in discharge of the same; the person so surrendered, and in custody, shall not remain in prison, under such surrender, longer than two Terms after judgment shall be recovered against the debtor; and upon which a *Capias ad satisfaciendum*, might legally be had (of which the Term when judgment may be given shall be accounted one) unless the plaintiff shall lodge with the Sheriff a writ of *Ca. Sa.* whereby the body of the debtor may be charged and detained.

Of surrender of a Debtor in discharge of Bail, &c.

1.—It is ordered that whenever the Sheriff shall take bail for the appearance of the party arrested, upon writ of *Capias ad respondendum*, his return upon such writ shall specify the

taking of such bail, that the plaintiff may pursue a regular course thereon.

2.—And in case the party so admitted to bail do not appear on the day of the return of the writ, the plaintiff shall be entitled to demand and obtain from the Sheriff an assignment of the bail bound for such course thereon as he may be advised.

3.—That such assignment of the bail bond shall not be considered, as exonerating the Sheriff, if it shall appear that the bail by him taken was not at the time of taking the same, sufficient to secure to the plaintiff the rights by him prosecuted, under such writ of Capias.

4.—That the defendant arrested under a writ of Capias *ad respondendum*, may surrender himself, or be surrendered by his bail, at any time previous to an assignment of the bail bond, and the bail be thereupon discharged.

5.—That after the assignment of the bail bond, or an action brought thereon, a like surrender may be made at any time before judgment against the bail, on payment of all costs that have arisen by reason of the assignment of the bail bond, or of prosecuting the bail; or at any time previous to a rule upon the Sheriff to bring in the body, or pay the debt due to the plaintiff from the person so arrested; and the same upon his neglect, being declared absolute.

6.—That such upon the Sheriff to bring in the body being (by reason of his neglect or other causes) declared absolute, shall charge and render the Sheriff liable to pay the debt and costs which the plaintiff may establish against the plaintiff's original debtor arrested and bailed.

7.—That a rule plaintiff may take an assignment of a bail bond and prosecute thereon; but shall not obtain judgment until he may have established his debt against the defendant on the original suit upon which the bail became surety, either upon the Capias *ad respondendum* for appearance, or upon special bail in the action.

8.—That a surrender of a debtor may be made by himself or by his special bail, in vacation before any one of the Judges of this Court, and such debtor be charged to the custody of the Sheriff in discharge of the bail.

9.—It is ordered that in every case where a plainiff may under special circumstances of Tort, Trespass, personal injuries to him done by the defendant, apply for a *Capias ad respondendum* to hold such defendant to special bail in the due course of proceedings thereupon, he shall by his affidavit in that respect to be made over and above swearing to a precise sum of damages sustained, be bound in the said affidavit, fully to state the several grounds and circumstances of such Torts or personal injury and damages in order that the Judge taking such affidavit may in his discretion make such order for bail as to him may appear reasonable from the circumstances of facts deposed to or any lesser sum, if any such order for bail may be reasonable to be made thereupon; and without such special grounds be stated as aforesaid for Torts or personal injuries to be granted as aforesaid.

10.—In as much as it is necessary that a positive Oath to the existence of a debt should be made to entitle a party to claim an order for a *Capias ad respondendum*; It is ordered that in every case where an Attorney *ad negotia*, for any person absent from this province may make Oath to a debt by reference to document upon which any such debt is presumed to arise to the constituent and be due at the period of the application for such suit, the said affidavit shall be accompanied by an Oath made by the Creditor, his Book-keeper or Clerk before a Judge of some Court of Record competent to receive such Oath, and if in Great Britain, such Oath to be made in conformity to the Statute in such case made and provided, and to the existence of such debt, and without which no writ of *Capias ad respondendum* shall be hereafter granted on the Oath of an Attorney *ad negotia*, who cannot positively swear to the debt due to the Plaintiff at the time of making such Oath as aforesaid.

SECTION IX.

Of Security for Costs by persons prosecuting Suits, &c. who are not resident within this Province.

1.—It is ordered that in every case where any person not resident within this province, may prosecute any original or in-

dental demand or claim, by intervention or oppositon, he shall be bound within two days after the same may be entered in Court, to give security for costs, if a motion may be made for that purpose, to answer the opposite party's costs, if such plaintiff or claimant should fail to make good his demand.

2.—And that every party legally entitled so to move, shall obtain as of right, an order for security, being duly entered within two days after such motion ; and on failure thereof, that the action, claim, demand or opposition aforesaid, shall be dismissed with costs.

3.—And it is further ordered that every person who may be entitled to such security for costs, shall be bound to move therefore, within the period of four days from the entry of the action or claim aforesaid ; otherwise he shall be held and considered as having waived and relinquished his right to security for costs as aforesaid.

SECTION X.

Of Declarations and Pleadings thereto relating.

THAT the respective parties in every suit do state, with clearness and precision, the nature and grounds of the demand or action, and the defence thereto. And that in all answers, pleas or replications to be made in the suit, particular attention be given to avoid a departure from the object of the demand or action, as every insufficient declaration or plea to the action, and every departure in pleading that may introduce irregularity in the suit, and in the issue to be joined upon clear and certain points affirmed and denied, will be rejected and dismissed by the Court, with costs, to be taxed against the party failing to conform to this rule and order.

SECTION XI.

Of Pleas—Exceptions—Dilatory Pleas—and Inscription en faux.

1.—It is ordered, that all pleas or exceptions, *declinatoire, dilatoire, or peremptoire, a la forme*, shall be filed the day after the return of the writ or process or appearance of the defendant.

2.—That in every case where the parties, plaintiff or defendant, may have right and be so advised, every answer to any exception *declinatoire, dilatoire, peremptoire, a la forme*, and also every rejoinder to such answer where permitted to be made, shall respectively be filed within a like period of time allowed for filing such exception or declinatory or dilatory plea as aforesaid.

And due service shall be made of a copy of every such plea, *exception declinatoire, dilatoire or peremptoire*, and of every such answer and rejoinder as aforesaid.

3.—And whereas the practice of filing pleas of general exception hath been frequently used for the purpose of evasion and delay : It is ordered that no plea of exception, whether *declinatoire, peremptoire, a la forme, or dilatoire or peremptoire en droit*, or by whatever denomination or term such plea or exception may be described, shall be received or filed in any cause, unless such plea or exception shall contain all the special grounds upon which the same may be founded, and upon which the party excepting is to be heard upon argument before the Court ; and no general exception or plea as aforesaid, not containing special grounds, shall be received or filed in any cause.

Nor shall any such plea or exception be amended, after the same hath been filed ; nor any such plea, except an exception *peremptoire en droit* be received by the Prothonotary of this Court, unless at the time of presenting the same to be filed, the party shall deposit with the Prothonotary £2-6-8, on account of the costs that may be adjudged upon such plea if the same should be dismissed.

And it is declared, that no exception *declinatoire, peremptoire a la forme, or dilatoire*, shall require an answer from

the plaintiff in the cause, or any pleading or issue, if the plaintiff sees fit to have the same heard on its merits, without answer. And a verbal motion may be made by the plaintiff immediately after receiving such plea for argument thereupon, without any notice to the defendant for that purpose; and the same shall be heard forthwith, or so soon as the Court may see fit to order the same. It is, however, declared that the plaintiff so moving for hearing without answer, doth thereby confess the matters of fact contained in such declinatory or dilatory plea.

And in every case where the plaintiff shall think fit to answer such declinatory or dilatory plea or exception, and the answer may be general and not containing any special matter to which the defendant shall be bound to reply, the answer aforesaid shall form the issue between the parties upon the matters of such plea to be argued and adjudged, and no replication shall be filed thereupon; And the hearing upon such plea and answer may be moved for and had without notice and in the manner before mentioned.

4.—That every defendant who may not plead either of the pleas abovementioned, shall, within three days after his appearance entered, file his defence or plea to the merits of the plaintiff's action, and also file all such writings and documents in his possession, or certified copies thereof, and upon which the plea or defence is made and grounded, with a certified list of the same; And that the defendant at the day of filing such plea do make due service thereof.

The above Rule is not to be construed to debar or prevent a defendant, personally appearing, from making such verbal answer or plea to the plaintiff's demand and declaration as by law is permitted to be done and entered.

5.—It is ordered that every exception *peremptoire*, or plea which respects the right and not the form of the demand, as well as all other matters or ground of plea to the merits of the plaintiff's demand, which might have been in the knowledge of the defendant, at the time of making such exception *peremptoire* or plea, shall be contained and set forth in one and the same pleading, and filed within the period allowed for filing a plea to the merits of the plaintiff's action.

6.—That whensoever any defendant may have made a plea or exception *declinatoire, dilatoire, or peremptoire à la forme*, or the plaintiff may have made any exception whereon hearing and judgment may be made, the parties respectively, after the judgment made as aforesaid, shall be bound to file a plea or replication or rejoinder, as the case may require, within the period allowed for pleading to the merits of any action, or replying to any plea to the merits, and without any special motion or order for that purpose.— And the party neglecting so to do may be adjudged as in a case of default for want of a plea. And if such neglect be on the part of the plaintiff not filing a replication or other plea which of right he might have filed, he shall be foreclosed, and the cause proceed without the liberty to file a replication or other plea in the action.

7.—That whensoever a defendant may be committed to Gaol upon a Capias *ad respondendum*, or under the order of this Court for want of a special bail, being entered in the action, he shall be bound to plead to the plaintiff's action within the periods allowed by the rules of this Court to any other defendant, after the plaintiff may have duly served the defendant, so in custody, with a notice to plea in the action, conformable to the rules of practice in that behalf made and provided.

Inscription en Faux.

8.—It is ordered that whensoever any party in a cause may be entitled to make an inscription *de faux* against any act or instrument offered in evidence by the opposite party, he shall be bound to do the same previous to his making his plea or replication as the case may be. And that in any case when a party may plead to a declaration whereon exhibits are offered, he shall thereafter be foreclosed making an inscription *en faux*; and so if the plaintiff shall reply to the defendant's plea wherein exhibits are filed, he shall be foreclosed as aforesaid. Provided always that this rule shall not deprive any party from making an inscription *en faux*, against any act or instrument offered in evidence subsequent to the plea or replication, as aforesaid, if such inscription be made previous

to setting the cause down for evidence, on the *Rôle d'Enquête*, or an appointment to be heard on matters of law in issue between the parties and not otherwise.

9.—That in all cases when the writ of process *ad respondendum* may not be made returnable and returned on the first day of any term the defendant shall not be bound to file any plea in any such action until fifteen days after the return of process may be made, and then according to the practice of this Court, as if the said writ, summons or process had been made returnable on the first day of any Term, and in case the above delay for pleading shall extend beyond the sitting of the Court in term, then the same shall be regulated according to the 19th section of the Rules of Practice,

10.—Whereas the practice of filing general pleas upon plain demands under an *acte authentique*, which require no evidence on the part of the plaintiff and the defendant under such general plea claiming a right of *Enquête*, or proof has been attended with great delays,—It is ordered that whensoever a plaintiff may prosecute an action upon any *acte authentique* and upon which action no verbal testimony may be requisite to support the plaintiff's demand, that every plea to the merits of the plaintiff's action shall contain the specific grounds to be set up in proof to lessen or exonerate and discharge the defendant from such demand, and upon which special grounds evidence may be legally adduced, and that failing such specific grounds of defence, the plaintiff may of right set down the cause on the Diary or *Rôle de Droit* for hearing, and judgment on the merits without proceeding to set the cause down on the Diary or *Rôle d'Enquête* for proof previous to such hearing on the merits.

11.—It is ordered that previous to the filing of any plea, exception, replication, demurrer or other pleading, the Attorney or party offering the same do enter and inscribe the same on the list of exhibits as being so filed in such cause, and thereon specify the day of such exhibit being so filed; and failing so to do that no such plea or pleading shall be received or entered on the record in the cause, but rejected, and proceedings had as if no such plea or pleading as aforesaid had been made or offered on the part of the party moving the same.

That in case a defendant do not file a plea within the periods limited by the Rules of Practice, he shall be considered to be in default, and the plaintiff shall be thereupon entitled to proceed *ex parte* against him and to fix his cause by motion in Court for such day as he shall see fit, either for adduction of evidence or for such other proceeding as circumstances may require.

SECTION XII.

Of Replications.

1.—THAT the plaintiff do, within three days after the defendant may have filed and duly served the plaintiff with his plea to the merits, or exception *peremptoire au fond*, file his replication, or such other plea as legally he hath right to make, and do on the same day make due service thereof, otherwise he shall be foreclosed from filing any such replication or plea.

2.—And it is permitted to the plaintiff, at the time of duly filing, and serving a copy of such replication, to file such further documents and writings, which the defendant's plea may have made requisite, and that were not referred to by the plaintiff's declaration, or incumbent on him to file therewith, and whereon the said replication may be grounded; of which writings a certified statement shall be made on the plaintiff's list of exhibits, already filed in the cause, conformable to the Rules of Practice.

SECTION XIII.

Of Incidental Demands.

1.—THAT every incidental demand shall be deemed and taken to be a distinct action from the demand in chief, and shall not be permitted in any respect to delay the proceedings of the plaintiff on his demand in chief, against which the incidental plaintiff may by his plea set up a cross demand. Pro-

vided always that nothing in this rule shall extend or be construed to extend to any matter of reconvention or compensation which shall amount to, and be pleaded as a defence to the demand in chief.

2.—That when any incidental party may have several grounds of demand, he shall state and prefer the same by one and the same pleading ; and at the time of filing the same, shall also file all writings, deeds and acts in his possession, or copies thereof, duly certified, upon which the said incidental claim or demand may be formed.

SECTION XIV.

Of filing Deeds, &c.—whereon any action may be grounded, and of filing other corroborative written evidence.

1.—THAT every plaintiff at, and on the day of the return of the writ or process, with a declaration annexed, do file in the Prothonotary's office all such deeds, bonds, notes, bills, accounts, documents and writings in his possession (or copies thereof by him or his Attorney certified as such) and upon which the suit or action may be grounded, as declared upon to the end that the defendant, under communication of the same, may prepare and make his full defence, and that the plaintiff do file with all such writings a certified list thereof, and whereon such documents or exhibits shall be ascertained, by a correct reference to the nature and dates thereof, and regularly numbered, and that failing such reference, by which the exhibits aforesaid may be ascertained, they shall not be held and taken as part of the record in the cause, and that no list be offered or filed but when it is to accompany and ascertain papers to be adduced in evidence.—And where copies of any exhibits so certified as aforesaid shall have been filed by a plaintiff with his declaration or replication, or by a defendant with his plea, the original of every such exhibit shall be produced and filed in this cause, and the copy withdrawn previous to the hearing of the cause on the merits or on such point in regard of which such exhibit hath been filed and failing so to do, such originals shall not afterwards be received or permitted to be filed in the cause.

2.—That on the day of the return of any writ or process, issuing out of this Court, at the instance and on behalf of any person, not resident within this province, the Attorney suing out such writ or process, do file with the Prothonotary of this Court, the power or authority under which such writ and process may have been sued out, and insert and describe such power in the list of exhibits to be filed in the cause; or on the return day aforesaid do move the Court on the special grounds of not being able to file such power or authority, in order to obtain a further day for filing the same. And failing to file a sufficient power or authority for prosecuting the action against an absentee, on such day as may be appointed by the Court, that no proceeding shall be had or obtained against any defendant in such action.

3.—That the plaintiff, in any suit before this Court, who may possess any corroborative written evidence relative to any demand or defence thereto, and which were not in his possession at the time of first filing his exhibits, may, upon due proof being made, appear at any time previous to setting the cause down for trial, whether on an issue at law or on facts, be permitted to file all such corroborative written documents as may relate to, and be connected with the matters in dispute between the parties. And that a list of such documents and writings be indorsed upon, or annexed to the plaintiff's list of exhibits filed in such cause, and in the manner as is in the first articles of this rule above directed.

SECTION XV.

Of Withdrawing Exhibits.

1.—It is ordered that the Prothonotaries of this Court do not in any case, where final judgment may be made, grant during the Term or sitting of this Court, to any party in any such suit, or his Attorney, any exhibit or paper filed as evidence therein, unless under the express order of this Court therefore; nor shall any party interested obtain any such ex-

hibit in Term time, unless he shall have duly served on the other party or parties concerned in the records of such action, a notice of the intended application, and to shew cause why the same should not be withdrawn from the records of this Court, and delivered to the party so requiring the same.

2.—And if any application be made during the vacation to withdraw any exhibit or paper filed in evidence in any cause, the same shall not be granted, unless by the order of two of the Judges of this Court, and after due notice to the adverse party interested therein, of such application to shew cause to the contrary, if any they may have. And if the application be granted, a true copy of such exhibit or paper, authenticated by the Prothonotary of this Court, shall be filed of record before the paper applied for shall be withdrawn.

3.—That no exhibit shall be withdrawn from a record, on which execution may be issued, as directed by the rule upon issuing executions.—*Sect. 35, 3.*

SECTION XVI.

Of Communication of Writings filed in any cause to be offered in evidence.

1.—THAT it be clearly understood, and it is hereby ordered, that every party in Court entitled to communication of papers, documents or writings filed conformably to the rules of this Court, do apply to the Prothonotary's office for the same, as a matter of right, and without special motion or application to the Court for that purpose; and that all such parties may receive the said communication of papers as aforesaid, upon lodging a list and receipt at the said office for the writings so filed and taken in communication. And that the party so receiving the same shall be entitled to hold the said writings so long and until the period he may, by the ordinary rules of practice, be bound to file his defence, replication or other plea, and no longer.

2.—It is however, expressly provided and directed, that no act *sous seing privé*, or original paper writings of any description whatsoever, upon which an action or defence may

be made or founded, shall be removed or taken possession of in communication from the Prothonotary's office, for any cause or pretence whatsoever.

SECTION XVII.

Of Records.

WHEREAS many of the Records of this Court have, at different periods, been taken from the office of the Prothonotary, contrary to the express Rules of Practice and to the repeated orders in that respect, verbally expressed by the Court; and such a practice, if suffered to continue, must be attended, not only with delays, vexations, and of serious consequence to the parties interested, but may, in a highly criminal degree, obstruct the administration of justice :—

1.—It is therefore ordered, that any Attorney or Advocate of this Court, who by himself, or through the ministry of his clerk or other person, shall take or withdraw from the office of the Prothonotary any pleading, exhibit or paper filed in any cause, or any part of a record in any cause, contrary to the 16th Section of the general Rules of Practice for taking communication of writings, filed and to be offered in evidence, shall be considered as having committed a contempt of this Court, and the same be proceeded upon accordingly.

2.—And it is further ordered that no Prothonotary of this Court do presume to deliver, or suffer or permit the record, or any part of the record in any cause, deposited in his office, to be withdrawn therefrom, either by himself or through the ministry of any clerk or person he may entrust with the custody thereof, except to any of the Judges of this Court, or to any of the Attornies thereof, conformable to the 16th Section of the Rules of Practice, in that respect, made for communication of writings, &c. upon the penalties attached to an open contempt of this Court, and in violation of the trust reposed in the discharge of his official duties.

SECTION XVIII.

Of Intervention.

It is ordered, that whensoever any person legally having rights to sustain, and who may be desirous to intervene and become a party in any suit that may be pending in this Court, the same shall be moved in the manner herein after expressed, and previous to the cause being finally heard.—

1.—THAT the party intervenant, shall file a *Requête en intervention*, which shall contain the grounds of the demand and several rights which are intended to be alledged and sustained in the cause, and in respect to the party before the Court in suit.

2.—That the said *Requête* shall also contain all such conclusions or claims as the party, plaintiff *en intervention*, may have or intend to make in the said cause, to the end that legal issues may be taken upon the same, and the original suit proceed without delay.

3.—That the said plaintiff *en intervention* shall file in the Prothonotary's office, (on the day ordered upon such *Requête* for the party's appearance to the same,) all such writings and documents in his possession whereon the demand may be made.

4.—That any party intervening as aforesaid, shall, at the day of filing the intervention, give due notice thereof to all the several parties in the cause, to the end that due course may be taken thereupon, without delay.

5.—That all and every further proceeding upon any intervention, as aforesaid, whether on exception or plea to the merits of the same, and the issues thereon to be taken, and the filing of all writings, exhibits or documents, touching the respective interest of the parties, shall be moved, made and done, conformable to the general Rules of Practice of this Court on original actions.

6.—That whensoever a *Requête en intervention* may be made by the party interested, and not by an Attorney of this

Court, such party shall at the time of making such Requête, and therein and previous to an order thereon for an appearance, fix and elect a domicile, where course may be taken as needful respecting the same.

SECTION XIX.

Of Pleas and Issues to be formed during vacation.

It is ordered, that in all cases where a plaintiff or defendant would, by the present Rules of Practice, be bound to plead after appearance, and during the sitting of this Court, such party shall be equally, and in the same manner, bound to plead, during the several vacations and out of Term. But inasmuch as a further time may be allowed for filing such pleas respectively, ten days are granted to the respective parties for duly filing any plea or replication, of what nature soever, during the vacations after February and April terms; and twenty days after the vacation of June and October terms. And the like delay is granted for filing the several exhibits, with such plea or replication, as are directed or permitted by the Rules of Practice of this Court. And that these rules shall equally extend and be applied to all cases of oppositions or intervention.

SECTION XX.

Of filing Declarations, &c.—On Evocation of Causes from the inferior Term.

WHEREAS it may be necessary, in every case, where the evocation or appeal of any cause may be made and admitted from the jurisdiction of the inferior to that of the superior Term of this Court, that the plaintiff should more specially set forth the cause of action than is prescribed by the Rules of Practice, on ordinary process and proceedings before the said inferior Term.

It is therefore granted and ordered, that the plaintiff shall within three days inclusive from the allowance of such evo-

cation or exception, file with the Prothonotary a declaration containing the special grounds of his case and demand, and therewith file all such documents, writings and evidence whereon such declaration may be grounded; and that the defendant and plaintiff shall then after conform to the Rules of Practice for filing pleas or exhibits, and bringing the cause to issue, hearing and judgment.

SECTION XXI.

Of General Rules for Pleading, and of other Proceedings.

1.—It is ordered that the Rules of this Court, directing the filing of pleadings, writings, or papers of what nature soever, be strictly conformed to, as peremptory rules made in every cause in court, and that a neglect of the same shall be considered as a default, and wilful disobedience to the rules of this Court.

2.—That every rule of this Court, made in the presence of the parties, or their Attornies in Court, shall be considered as sufficiently notified, without the service of any such rule or order being requisite to enforce the same.

3.—And whereas particular circumstances and cases may, at times, require an enlargement of the rules of this Court, the same (upon sufficient cause shewn) will only be granted where application may be made, one day at least, previous to the expiration of such rules.

4.—And upon every groundless application for the enlargement of any rule, the party applying shall, at the taxation of costs in the suit, be adjudged upon all such dilatory proceedings, to pay full costs.

5.—That all pleadings, notice, rules, orders and judgments, and all other matters and proceedings, of which service is or shall be required, upon any party in any suit depending in this Court, shall be served upon the Attorney *ad litem*, who shall have appeared in this Court for such party. And in default of such appearance by Attorney, shall be served at the elected domicile of such party, if he may have ap-

peared personally ; those instances excepted in which personal service upon such party, is by Law or any Rule of Practice, or any special order made in the suit, required & directed.

6.—That all proceedings upon writs of *Certiorari*, *Prohibition*, *Mandamus*, *Quo Warranto* and *Habeas Corpus*, and upon each of them respectively, be in all things similar to the proceedings, upon such writs, in his Majesty's Court of King's Bench in England, in Westminster Hall.

7.—That all Rules and Orders for the conduct and regulation of any Attorney or Counsel of this Court, in any cause therein depending, shall extend to the party in such case personally appearing ; and where no appearance by Attorney shall have been entered on behalf of such party, be Rules and Orders for the conduct and regulation in every respect, of such party so personally appearing.

8.—That every order of any Judge of this Court, which shall be obtained in vacation, shall be subject to an appeal to this Court, and the validity thereof impeded, by moving the Court to set aside the same, or to set aside the proceedings which have been had under it. Provided, that any such order which may be made with consent or otherwise acquiesced in, shall be as valid as any act of this Court.

9.—That all order and rules for the conduct and regulation of the Sheriff in the execution of his duty, or any part thereof shall extend to the Coroner, in all cases in which, from any cause whatever such duty or any part thereof, shall or ought to be executed by him.

10.—That no paper of any description shall be received or filed in any cause, by the Prothonotary of this Court, unless the same be regularly docketed, with the title and number of the cause, and the general description of such paper, and the declaration and pleas, alphabetically marked in their regular order.

11.—That all writs and process of this Court shall be tested on the day on which such writ or process shall issue.

12.—That a point of practice settled by a judgment of this Court, and entered on the Prothonotary's book of "Rules of Practice," shall not be reargued.

13.—That no reference to *arbitres*, or reports, or other reference of any description, shall be made by rule or order of this Court, or entered by consent or otherwise, in any case before the issue or issues in such case shall be perfected ; and then only of the matters to which such issue shall relate.

14.—That no writing or written conclusion be preferred to, or received by this Court, upon any Rule *Nisi*, or upon any report of *Arbitres*, *Experts*, or *Practiciens*, nor any issue in writing be raised thereon. The validity of every such report or rule *Nisi* will be verbally heard on the respective motions taken in due course, by the parties interested, unless specially otherwise ordered by this Court.

15.—That on the hearing of any motion, plea or incidental matter, or on the trial or merits of any cause, no more than two Counsel shall be heard in opening or in answer, and only one in reply.

And that a witness shall be examined by one Counsel and no more, and cross-examined by one Counsel and no more.

16.—That every affidavit or certificate of a bailiff, of service of any pleading, notice, rule, order, interlocutory judgment, subpoena, or other matters, shall particularly describe the manner, place and hour of service ; otherwise the same shall not be received or filed. And if from such affidavit or certificate it shall appear, that such service was made upon a Sunday or Holiday, or upon any other day, before the hour of six in the morning or after the hour of eight in the evening, such service shall be held and taken to be null and void, to all intents and purposes whatsoever.

17.—That in all computations of time, or delay granted upon the service of any writ, summons, rule, order, notice or judgment of this Court, and generally upon all proceedings whatsoever, not otherwise particularly provided for, the day on which such writ, summons, rule, order or judgment shall be made, or upon which service of any such writ, rule, order, notice, judgment or other proceeding may be performed, shall not be reckoned or accounted to be one, but every other day to which such computation of time shall refer, (Sundays and Holydays not excepted, unless the expiration of time should occasion the rule to expire on a Sunday or

Holiday, in which case an enlargement of time shall be made to the next day) shall be accounted to be one, and that no fractions of time shall, in any such computation, be made or allowed.

18.—That in every case where, by the Rules of Practice, a duty is to be performed at a particular period, with reference to the records of this Court, the same shall be done, at the office of the Prothonotary, within the Office hours appointed, and at no other time.

SECTION XXII.

Of Trial of Causes at Issue.

1.—THAT a roll and general list of all causes be kept by the Prothonotary, including as well causes continued as those newly instituted, expressing the time issuing and of return of the original writ or process, the number of the cause, the names of the parties, and those of the Attornies appearing for each party ; also that the nature of the demand be expressed, and a blank column left for noting proceedings thereon had.

2.—That another roll or list of causes shall be made by the Prothonotary, to be used as a diary in each term for setting down all causes for hearing, whether on matters of law or trials by Jury, or on *Enquête* and examination of witnesses, as the same may be severally appointed. On which list shall be expressed the number of the cause, the names of the parties and of their several Attornies, and the order or intent of such appointment for hearing. And which entry shall be conclusive against the parties and their Attornies.

3.—That the Prothonotary shall prepare and keep a separate and distinct roll or list of causes for *Enquête* and the examination of witnesses, as well of *Enquête* to be had in Term, as out of Term, and wherein entries may be made of proceedings had thereupon. And the said entries shall be taken as conclusive against the parties and their Attornies.

SECTION XXIII.

Of Motions and hearing thereon.

1.—THAT every motion to be made in any cause, shall be expressed in writing, and signed by the Advocate or the party applying to the Court, and be delivered to the Prothonotary before moving of, or hearing the same; nor shall any motion be heard, unless for a rule to shew cause or motion for judgment, or default of appearance, or neglect to plead, or disobedience to any rule or order or interlocutory judgment, until due notice, of at least one day, shall have been first given to the adverse party or his Attorney.

2.—That all motions for enlargement of rules, or to shew cause, shall be made and heard at every sitting of the Court, prior to the trial of any cause on issue joined.

3.—That the service of any notice of motion, to be heard at a succeeding day, shall be deemed regularly served if the same be made during the sitting of the Court on the day preceeding the hearing so notified.

4.—That no motion for judgment upon the verdict of a Jury shall be made or received until after the expiration of four days in Term, from the day on which such verdict shall have been recorded.

5.—That if any matter be moved in Court in presence of the Attornies, or Counsel of the parties, and the Court thereupon shall make a rule, the same shall not again be moved contrary to such rule.

6.—That a motion which cannot be decided, unless by a rule or order, by which the merits of the case will be also decided, shall not be allowed.

SECTION XXIV.

Of Hearing on Law Issues.

THAT whensoever any law issue may be formed in any cause, as a temporary or perpetual Bar to the plaintiff's ac-

tion, and such cause be regularly inscribed on the diary for hearing *en droit*, the same shall come on to be heard on the day appointed, unless good cause be shewn to the contrary. And if the plaintiff shall not appear, or not shew good cause to delay the hearing so appointed, and the defendant be ready to proceed, the plaintiff's action shall be dismissed, with costs to the defendant; if the conclusions taken by the defendant, exceptions be so made as to warrant such judgment. And if the plaintiff's shall appear and be ready to proceed, and the defendant raising such issue shall not appear, or not be ready to proceed, or not shew good cause to the contrary, and obtain a further day to be heard, his plea in Bar to the plaintiff's action, whether temporary or perpetual, shall be dismissed with costs to the plaintiff, who may forthwith proceed in due course to judgment on his principal demand. Nor shall the defendant be entitled to further notice, or to make any further proceedings in the cause, until he shall have paid the plaintiff's costs, which may be awarded as before said.

SECTION XXV.

Of Exception to any Interlocutory, Order or Judgment of this Court.

WHEREAS by an Ordinance passed in the 27th year of his Majesty's reign, chapter 4. It is enacted that whenever the opinion of any Court of Common Pleas may be pronounced upon any law, usage, or custom of this Province, and that any party may conceive the same to be to his injury, he shall be allowed to make an exception to the said opinion, to be preserved in the minutes of the said Court, and which said act in that respect is extended to the government and proceedings in this Court. It is ordered, that, in every case where such exception may legally be admissible, the party making the same shall deliver the same, during the sitting of the Court, or at the Prothonotary's office, in the course of the day on which the opinion or judgment of the Court may be given, and against which such exception may be raised. And that any exception which may be offered, at any future day, shall not be received nor entered on the Records of this Court.

SECTION XXVI.

Of Exceptions to the regularity of service of Process, and Affidavits thereon, and of exceptions to the regularity of filing Exhibits or their sufficiency.

IN order to prevent delays and expences occasioned by issues raised on exceptions to the regularity of suing out and service of process, and of written exceptions or pleadings to the regularity, or sufficiency of exhibits and matters of evidence filed of record.

1.—It is ordered that no writing by way of plea or exception shall hereafter be allowed to the form, service, or other matters regarding the regularity or sufficiency of any summons, writ or process that may be issued out of this Court, nor to any affidavit that may be made for obtaining any such writ or process, but that every alledged defect, or irregularity respecting the same, shall be declared, heard, and adjudged upon motion, and not otherwise.

2.—And that only on the day of the return of such process, or at the day allowed by law for taking off a default, otherwise the supposed defect shall be deemed to be waived. Nor shall any matter concerning the sufficiency or regularity of any exhibit, filed or to be filed in any cause, be made or complained of by a written exception or other pleading, but be declared, heard and adjudged upon motion, or legal objections at the hearing of the cause, as the party so objecting may consider to be most advisable, and not otherwise.

SECTION XXVII.

Of Witnesses and their Examination, of Evidence and of Enquête.

1.—The Court having taken into consideration the abuses that are liable to be committed by the allowance for the subpoenaing and attendance of any unlimited number of witnesses whatsoever, in causes brought to issue in this Court. It

is ordered that from and after this day in any cause wherein witnesses shall be subpoenaed to appear and give evidence in this Court, no allowance whatever on the taxation of costs, in favor of the one party against the other, shall be made for subpoenaing and attendance of more than six witnesses, (if so many there shall be) for each issue that may be properly joined between the parties, should there be more than one in any cause.

2.—To the end, that all the evidence taken in any cause may be certainly known and established of record.—It is ordered that in all causes where the sum prosecuted for may be above twenty pounds sterling, or where an appeal may lie from the judgment of this Court, and any depositions of witnesses may be taken, the Prothonotary do enter on the register of this Court, except in causes tried by Jury, a regular list of the names of the witnesses so examined, and the period when their respective depositions were taken, and also that he do file with the proceedings in the cause, a certified copy of the same.

3.—That in every cause brought to issue in Term time, wherein witnesses may be examined, such examination shall be moved for and appointed in Term, (if there be a day in Term, in which the motion could be made) to be heard the next succeeding vacation, and not otherwise.

4.—And that in every cause brought to issue during vacation, wherein witnesses may be examined, such examination shall be moved for hearing the next or succeeding Term, and the party failing so to move for the examination of witnesses, shall be bound to give fourteen days notice in Term, on any motion subsequent to the period of which the same might have been made for the examination of witnesses on such issue. And in case the party shall after the period aforesaid (when a motion might first have been made after issue joined) move for the examination of witnesses in vacation, no such examination in vacation shall be had until fourteen days after granting a rule for that purpose.

5.—That no examination of any witness about to depart the Province shall be had or taken in any cause, during any Term or sitting of this Court, unless issue be joined on the merits or matters of fact in controversy between the parties;

the examination of a party on *Facts and Articles*, as provided by the Rules of Practice, excepted.

6.—Nor shall any such examination of a witness, about to depart the Province, be had or taken in any cause on the part of the defendant, where by the Rules of Practice, such defendant ought to have pleaded to the merits, and hath not done so. Nor shall any such examination of a witness be had or taken on the part of the plaintiff, where by the Rules of Practice he should have replied to the defendant's plea, or taken issue on the merits, and hath not so done previous to his application for the examination of a witness, as aforesaid.

Of written
Evidence in
possession of
an opposite
party.

7.—That any party in suit before this Court, who may be in the possession of any original instrument, writing, or document that may relate to any matter in dispute between the parties aforesaid, shall, upon due notice to produce the same, be bound to appear and produce in this Court, (subject to its further order respecting the same,) such original instrument, writing or document ; and failing so to do, the party notifying the possessor as aforesaid may offer legal testimony of and adduce a copy of such original instrument, writing or document in evidence in such cause, unless good cause be shewn to the contrary.

And it is ordered that the notice above said to be served upon any party, or his Attorney in any cause, to produce any writing as aforesaid, shall be served, subject to the delays or periods respectively allowed for the service on instituting the action, according to the place of residence of the party who may possess such writing to be produced as aforesaid. But that in every cause where the party may appear by Attorney, the service of such notice for producing any writing as aforesaid, may be legally and sufficiently served on the Attorney, appearing for the said party in the action, under such delay for communication to his client, as may appear reasonable.

8.—It is ordered that after issue may be joined, whether on the merits, or on any collateral point in the cause, for verification of facts alledged, it shall be competent for any party uniting in such issue to obtain an order and set the cause down on the Diary or *Roll d'Enquête* for examination of witnesses. And any party moving for further time, or a more distant day for such *Enquête* or examination aforesaid, or the continuance and delay of any *Enquête* already appointed, shall make the grounds of such motion upon oath, stating in an affidavit, not only all the causes which have prevented or may prevent the witness or witnesses of such party from attending, at the day moved for setting down the cause and the periods when it is expected that such witness or witnesses may be able to attend, but also particularly depose to what the party may be able or expect to prove, by the testimony of such witness or witnesses, and this, in addition to all other matters incidental to such affidavit for continuance of an *Enquête* or trial. And if any affidavit for such continuance shall not state the above grounds and circumstances, it shall not be received or argued.

And it is ordered that no fee or costs shall be allowed, in taxation of costs, in the cause for such affidavit.

9.—That every cause regularly set down on the diary or *Roll d'Enquête*, for the examination of witnesses, whether on the merits of such cause or on any collateral issue joined therein, the hearing and examination of the witnesses shall come on, and be had at the day appointed, unless good cause be shewn to the contrary, and so inscribed on the Diary or *Roll d'Enquête* by the Court, or examining Judge. And on the part of the plaintiff, if no such sufficient cause be shewn, he shall be precluded from a further day, and upon motion in Court by the defendant for that purpose, the plaintiff's action if the examination aforesaid

Of setting down causes for trial or *Enquête*, and of putting off such trial & *Enquête*.

The cause when appointed for *Enquête* shall come on to be heard.

unless cause be shewn to the contrary.

Plaintiff's action shall be dismissed for default in not proceeding on the merits.

& judgment
against the
party in de-
fault upon
collateral is-
sues.

If defendant
be in default
plaintiff may
proceed *ex-
parte*.

No witness
shall be exa-
mined, who
has not been
subpoenaed,
or appeared
on the first
day of the
Enquête, and
so inscribed
on the Diary.

If a further
day be gran-
ted, it shall
be conclu-
sive, if no
cause shewn,
—and judg-
ment given
as directed by
art. 9, & 10,
above.

was to have been had on the merits, shall be dis-
missed, *sauf à se pourvoir*, with costs to the de-
fendant. And if the examination was to have
been had on any collateral issue, such issue shall
be taken and adjudged against the party first ten-
dering or raising the same with costs, by reason
of his default in not proceeding thereon.

10.—And on the part of the defendant if his
witnesses shall not attend on the day appointed for
examination on the merits, or he be not ready to
proceed, unless good cause be shewn for their
non-attendance, and so inscribed on the Diary, or
Roll d'*Enquête*, by order of the Court or exami-
ning Judges, he shall be precluded from any fur-
ther day for the examination of witnesses, and the
plaintiff may proceed *ex parte*.

11.—That no witness shall be examined on the
part of any party in a suit, but such as have been
summoned to appear, or do actually appear, and
are called at the day first appointed, and (if not
examined) whose names have been inscribed on
the Diary for examination. Nor shall any motion
at any future day, be received for the hearing of
any witnesses in the cause, who may not have been
so called, and whose name may not have been, by
order of the Court or examining Judges, inscribed
on the Diary, with permission expressed to be exa-
mined at a future period, or any in Court given
by the said Judges, for hearing on the right to ob-
tain such further examination.

12.—That if reasonable cause be shewn for the
non-attendance of witnesses, on the part of any
party in a suit, and a further precise day be gran-
ted for such purpose by the Court or examining
Judges, and no attendance or examination of wit-
nesses should take place at such day, the party
failing to bring forward or examine his witnesses,
shall be precluded from obtaining any further day
for such examination, and judgment shall be awar-
ded upon the case, conformable to the issue betwixt

ween the parties, as is directed by the 9th and 10th articles of these rules.

13.—Nor shall any motion be received for granting any further day to examine any witness or witnesses, unless the party so moving shall first offer and be ready to pay the opposite party all the costs that may have accrued to such party from the institution of the action, to the period of such motion. And if under such condition the Court or the examining Judges shall permit the examination of any witness or witnesses in the cause, the day to be granted for that purpose shall be final and conclusive, and judgment pronounced in the cause, according to the course of the Court, and its Rules of Practice, in such case provided.

No further or third day of *Enquête* allowed, but on payment of all costs, & the third day shall be conclusive.

14.—And inasmuch as the partial, as well as the complete examination of witnesses on one side of a cause, at one day; and a like examination of witnesses on the other side at another day, is attended with great inconvenience and frequent prejudice. It is ordered that on calling on a cause from the Diary or Roll of *Enquête*, for examination of witnesses and proceedings therein, all the several parties submitting thereto or not opposing the same, shall be concluded as being fully prepared for the complete and entire examination of all their witnesses respectively. And that no motion for delay in closing the *Enquête*, or for further examination of any witness not attending, shall be received or heard, unless made previous to the examination of any witness upon the opening of such *Enquête*.

The *Enquête* being opened & begun, no allegation shall be received of the absence of witnesses.

15.—And that if any party shall move for the continuance of such *Enquête*, or the particular examination of any witness to be heard thereupon, it shall be under the several limitations and restrictions, directed for the putting off a trial or *Enquête*.

Every motion for delay, must be supported by affidavit, containing special causes, &c.

And it shall be in the discretion of the Court or judges to direct the entire continuance of the *Enquête*.

Subject to payment of costs.

and if no sufficient cause be shewn for delay, and parties do not proceed, action may be dismissed, as by art. 9 & 10.

Either party may oppose and prevent a partial examination of witnesses.

And thereupon shall be allowed costs of his witnesses' attendance.

And no further proceedings until costs be paid.

16.—And it shall be in the discretion of the Court or the Judges attending, to make such *Enquête*, under the special circumstances of the case, where no examination may have been entered upon, to direct the entire continuance of the *Enquête*, and examination of all the witnesses to a future day; in which case the party moving for such continuance, shall pay to the opposite party or parties, the costs and expences of summoning, and the attendance of all the witnesses then attending for examination. Or if no sufficient cause be shewn for granting a delay, and the party moving for the same shall refuse to proceed, the Judges, if the examination were to be had out of Court, may refer to the Court the consideration of the default of any party, refusing to proceed as aforesaid, and thereupon the Court will, upon such reference, or itself, where the examinations were to have been had in open Court, proceed to judgment according to the circumstances of the case and default aforesaid, either in granting a delay or strictly enforcing the penalties declared by the 9th and 10th articles of these Rules on *Enquête*.

17.—Provided always, that if any motion may be made at the opening of any *Enquête*, whether in open Court or before Judges in vacation for the partial examination of a part of the witnesses in the cause, the opposite party shall have a right to oppose the same, and insist on and obtain the entire continuance of the *Enquête*. And thereupon have and obtain a full allowance of costs for examining, and the attendance of all his or their witnesses, actually attending to be examined.

And no further proceedings shall be had on the part of the failing party to proceed as above said, for the examination of his witnesses, until all such costs shall have been paid as above directed.

18.—And whereas by the Rules of Practice, no party in any cause hath a right to tax costs against an opposite party, for the examination of more than six witnesses upon any issue raised in such cause; yet the opposite party is frequently put to charges and expences in respect to the examination of witnesses above the number allowed; It is therefore ordered, that no further examination of witnesses above the number of six, as aforesaid, shall take place, unless the party moving for the same do first tender and pay to the Attorney of the opposite party six shillings and eight pence costs upon each witness so to be examined, above the number aforesaid. Nor shall any costs be taxed to any Attorney, as between Attorney and client for the examination of a greater number than six witnesses, on any issue as aforesaid.

If more than six witnesses be examined on one issue, the party moving therefor to pay 6s 8d to the opposite party, for costs on each witness above 6, previous to the examination.

No costs taxed as between Attorney and client for examination of witnesses above 6.

19.—And it is understood and directed, that all the above rules shall be equally applicable to parties on a cross cause, or wherein the defendant may constitute himself an incidental plaintiff, and the original plaintiff thereupon becomes the defendant in such incidental demand; and also in causes of intervention or opposition.

The above Rules to apply to incidental plaintiffs.

20.—And it is declared and ordered, that should the Court or the Judges, examining witnesses on any Enquête appointed, adjourn or continue the same over to a future day, that the day to which such adjournment shall be made, shall be taken and considered as making part of the day from which such adjournment or continuance was made, and the several rules abovementioned shall be applied accordingly.

An Enquête adjourned shall be considered a continuation of the same day.

21.—And if on the day of Enquête to be taken before any Judges in vacation, any party is not enabled or does not proceed to the examination of his witnesses, or any part thereof, and intends to claim a right for such examination at a future day, by reasons or causes to be offered to the Court for

A party not proceeding to examine all or any part of his witnesses, at the day of Enquête, in vacation shall be bound to

move on the first day of the ensuing term, for such examination, or be concluded & foreclosed & judgment may be given upon the 9th or 10th rule, or upon the circumstances of the case.

that purpose. It is ordered, that such party be held to move the Court on the first day of its sitting, after such Enquête so appointed in vacation, to be admitted to examine such witnesses as could not have attended at the day of Enquête appointed, and to them shew sufficient cause for such examination of witnesses, otherwise the party shall be concluded from any claim or the examination of witnesses in the case. And the above 9th or 10th rule shall be applied to the circumstances of the case for judgment. "And it is ordered that "this rule in respect to the further examination "of witnesses and diligence to be done to obtain "the same, shall be applicable and conformed to, "upon every reservation to examine any party "upon *faits et articles*, or the issuing of any *Commission Rogatoire*, otherwise such reservation "shall be held and adjudged to have been abandoned and relinquished; nor shall it be requisite, upon any motion to be made under the above "rules, to give the opposite party notice thereof, "but he shall be bound to consider the reservation as sufficient notice in that respect made."

In order to prevent the delays which occur in taking the testimony of witnesses, by reason of the same Attorney being employed in different causes appointed for the examination of witnesses on the same day. It is ordered that the parties shall be held to proceed to examine their witnesses in every cause as called in rotation from the Diary or *Rôle d'Enquête*, and it shall not be considered or received as an excuse of delay that any of the Attornies in such causes are at the time employed in the examination of witnesses or otherwise in any other cause, and on default of the Attorney, or some person on his behalf attending to take the examination of witnesses in every cause, so called the adverse party shall be allowed to proceed *ex parte*.

SECTION XXVIII.

Of Commission Rogatoire.

1.—It is ordered that whensoever any *Commission Rogatoire* may issue to persons, not being Judges or Judge of any of his Majesty's Courts of Record in this province, the said Commissioners shall at their first meeting for the purpose of executing the said commission, administer the Oath No. 1, hereaftermentioned to each other, and also the Oath No. 2, to the clerk or clerks named and appointed by the said Commissioners for the faithful performance of their respective duties in the execution of the said commission. And that there shall be annexed to every such commission a copy of the said Oaths, so to be administered, and of the Oath to the witnesses to be sworn by the Commissioners; which said Oaths shall be delivered to the Prothonotary of this Court, with the interrogatories and the instructions directed by the 3d and 4th articles of this rule, for the execution and return of the said commission, to be annexed to the commission.

No. 1. Oath to be administered to each of the several Commissioners by themselves respectively.

“ You swear, that you will according to the best of your
 “ skill and knowledge, truly, faithfully and without partiality to any or either of the parties in this cause, take the
 “ examinations and depositions of all and every witness and
 “ witnesses, to be produced and examined by virtue of the
 “ commission hereunto annexed, upon the Interrogation hereunto also annexed, now produced and left with you, and you
 “ shall not publish, disclose, or make known to any person
 “ or persons whatsoever, except to the clerk or clerks, to be by
 “ you employed and sworn to secrecy in the execution of this
 “ commission, the contents of all or any of the depositions of
 “ the witnesses or any of them, to be taken by you and the
 “ other commissioners, in the said commission named, or any

*“ of them by virtue of the said commisson, until publication
 “ shall pass by rule or order of the Court of King’s Bench
 “ for the District of Montreal.”*

SO HELP YOU GOD.

No. 2. Oath to be administered by the Commissioners to the clerk, appointed for taking and transcribing the answers of witnesses, &c.

“ You swear that you will truly, faithfully and without partiality to any or either of the parties in this cause, take and write down, transcribe and engross the depositions of all and every witness and witnesses, produced before and examined by the Commissioners, or any of them named in the commission hereunto annexed, as far forth as you are directed and employed by the said Commissioners or any of them to take, write down, or engross the said depositions, or any of them. And you shall not publish, disclose, or make known to any person or persons whatsoever the contents of all or any of the depositions of the witnesses, or any of them, to be taken, wrote down, transcribed or engrossed by you, or whereto yon shall have recourse, or be any wise privy until publication shall pass by rule, or order of the Court of King’s Bench, for the District of Montreal.”

SO HELP YOU GOD.

2.—It is ordered that whenever there may be any such *Commission Rogatoire* to be executed by Commissioners as aforesaid, the several interrogatories to be put to a witness produced (after he hath been duly sworn) by the said Commissioners, shall be proposed and declared in their regular order ; and that the answer of the witness shall be taken down by the clerk, to each interrogatory previous to proposing, or making known a second or any further interrogatory, and so continued until the whole examination may be closed.

3.—It is ordered that after a witness hath been sworn, his examination shall be taken in the manner above said, in the presence of at least two of the Commissioners named in the commission, and if the said Commissioners shall have been named the one half on the part of the plaintiff, and the other

half of them on the part of the defendant, then in the presence of two of such Commissioners, one of whom may have been named on the part of the plaintiff and the other on the part of the defendant, if the said Commissioners on the part of each party as aforesaid, shall attend for that purpose ; but in case of refusal or non-attendance, the examination may be had and taken before the two Commissioners ready to attend and execute the said commission, and that no person or persons shall be present at the examination of any witness, but the Commissioners so examining the witness and their clerk. And that previous to the examination of any witness, the Commissioners aforesaid shall administer to each witness the Oath following :—

“ You swear that you will true answers make to all such questions as shall be asked of you on these interrogatories, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth.”

SO HELP YOU GOD.

- 4.—That after the execution of the commission may have been completed, the Commissioners executing the same shall bind and attach to the writ or commission, all the several examinations of the witnesses, and all writings produced, and to which the said examinations may refer. And also annex to the commission a list of the witnesses examined (which shall be signed by the said Commissioners) together with the several Oaths administered, and instructions transmitted with the commission previous to executing the same; and after the same may be inseparably bound together under their seals. They shall certify on the back of the commission, their return of the execution of the said writ. The same shall then be put under a cover and sealed up directed to one of the Prothonotaries of this Court, and the title of the cause and names of the parties in the suit shall be thereon inscribed, and these words added, “ *A Commission Rogatoire,*” executed and returned by ——— naming the Commissioners who had executed the same.

5.—It is ordered that previous to the publication of any *Commission Rogatoire* that may have been executed within this province, or in the province of Upper-Canada, by Commissioners, not being Judges of his Majesty's Courts of Record in this Province, an affidavit shall be made before one of the Judges of this Court by the person holding such commission and return, of his having received the same from some one of the Commissioners therein named, for the purpose of being returned into this Court to be of Record; and that the said commission is in the same state and condition as when such person received the same for return as aforesaid.

6.—That notice shall be given to all the parties concerned in the said commission and return of any motion to be made for the publication thereof, and all objections which can then be made to such commission and return, shall be raised and heard prior to such publication.

7.—It is ordered that in any cause where the defendant may have appeared either personally, or by an Attorney of this Court, (except in cases when a defendant may be in default for not pleading, or otherwise) no *Commission Rogatoire* shall be granted until after issue may be joined between the parties on the merits. And that after the issue may be joined as aforesaid, either party who may be desirous of obtaining such commission, shall move for the same, within four days after issue may be joined as aforesaid, if in Term, and if in vacation by application, within the period aforesaid, to two of the Judges of this Court, who may grant an order therefore, to be sued out within such time as may be considered reasonable at the period of applying for the same on the *Requête*, or petition of such party to be filed of record in the cause.

And that no *Commission Rogatoire* shall be granted in any cause as above, unless moved or applied for within the period aforesaid. And that no Interrogatories or cross-Interrogatories shall be annexed to any *Commission Rogatoire* for the examination of witnesses or of any party upon *faits et articles*, unless by the consent of the parties expressed by their signatures or that of their Attornies thereto without the allowance and order of the Court in Term, or of two of the Judges of

this Court in vacation, made upon notice to the adverse party to this effect.

It is ordered that the Rule of Practice made by this Court on the 20th day of February, 1813, as an addition to this section be amended in so far as regards the allowance of the Interrogatories or cross-Interrogatories, on *faits et articles*, by two Judges in vacation, and that the allowance of Interrogatories and cross-Interrogatories on *faits et articles*, may be made by one Judge in vacation.

And upon the order being made for issuing any commission as aforesaid, the party obtaining such order shall forthwith and without delay, sue out the said commission, and expedite the due execution and return thereof; otherwise it shall be competent for the opposite party to proceed in the cause as if no such commission had been moved for, or granted.

SECTION XXIX.

Of Faits et Articles.

1.--WHEREAS parties in suits are entitled to obtain an examination of the respective suitors upon *Faits et Articles* that may be deemed relevant (*pertinens*) to the matters in contest, provided that the same may be required and had, "*sans retardation de l'instruction et jugement*," to the end therefore, of preventing delays by undue applications for such examinations: It is ordered that *Faits et Articles* may be moved for and had "*en tout état de cause*," that is to say, at any time after filing the declaration until closing the *Enquête*; provided that every party who, on the last day appointed for the examination of witnesses may move to examine the opposite party on *Faits et Articles*, do apply for the same to be had in a reasonable delay, "*sans retardation du jugement*," and that a day be, at the time of such application, fixed and appointed for that purpose, and the party so applying shall be thereby concluded; and that no examination on *Faits et Articles* shall be granted, or had in any cause

after the evidence may be closed, nor after a *venire facias* may have issued for summoning a Jury in any cause appointed for such trial, unless upon special circumstances that were not, or reasonably could not be presumed to be in the knowledge of the party so applying for any such examination, after the period above mentioned.

2.—That every permission for the examination of any person on *Faits et Articles*, together with a copy of the several articles to which the party is required to answer, shall be personally served on the person enjoined to answer such *Faits et Articles*, unless in cases where the party in the suit who may be enjoined to answer as aforesaid, may have appeared in the said suit personally, or by an Attorney of this Court, in which case a service of the order and a copy of the *Faits et Articles* as aforesaid, at the actual dwelling house and domicile of the party, may be held to be sufficient for proceedings thereon.

It is ordered that the answers to the Interrogatories of every party to be examined on *Faits et Articles*, shall be received and engrossed by one of the Prothonotaries of this Court, from the declaration of the examinant, and not in the presence of any Attorney of either of the parties in the cause, and the said answers when so engrossed shall be brought into this Court or before the Judges sitting in vacation, when such examination be appointed to be taken in vacation, there to be received upon the Oath of the party to be examined and not otherwise.

SECTION XXX.

Of Trial by Jury, and the several proceedings thereon.

WHEREAS trials by Jury in certain Civil actions, upon issue joined by the parties for such trial, may be lawfully had in this Court; to the end of ascertaining the right of such trials, to prevent delays in striking Juries, and declare a certain regular course of proceeding therein.

1.—It is ordered that every suit or action to be instituted, where any plaintiff may be desirous of such trial, the same shall be moved for by the plaintiff on the day of the defendant's appearance.

2.—And whensoever any defendant may be desirous of a trial by Jury, and entitled to the same by law, he shall at the time of pleading an issuable plea, conclude therein to the country.

3.—That in every case when a plaintiff may on the defendant's appearance, move for, and be entitled to a trial by Jury, the defendant in pleading an issuable plea to the merits of the action shall therein conclude to the country, and the plaintiff shall in applying to the merits, in like manner take issue to the country.

4.—That every defendant who may be desirous of a trial by Jury, shall at the time of filing his plea, and previous to filing the same, pay into the hands of the Prothonotaries of this Court the fees which the Jury may be entitled to receive upon their attendance or verdict when made and ready to be delivered. And the plaintiff at the time of and before suing out a *Venire Facias*, shall in like manner pay into the hands of the Prothonotary the fees of the Jury as aforesaid. And either party failing to pay the fees aforesaid, the Prothonotaries are hereby directed not to receive the plea nor issue the writ of *Venire Facias* aforesaid.

Of Striking the Jury.

1.—That whensoever a regular issue may be joined in any cause where, by law, and under an order of the Court, the trial thereof may be had by Jury, the party applying for the same shall give notice to the adverse party, or his Attorney in Court, which notice shall not be less than twenty-four hours, to attend at the office of the Prothonotaries for the purpose of striking a Jury in the cause. And the Prothonotaries, at the time of such attendance, and in the presence of the parties, or their Attornies, shall from the Book of Jurors regularly made and deposited in his office, and from the list of special or other Jurors, as the case may require, make a Roll or List of forty-eight names, from which the plaintiff or defendant, or their Attornies, shall alternately strike a name to the number of twenty-four, and the remaining twen-

ty-four persons shall form the panel to be annexed to the *Venire Facias*, or summons; and upon which writ they shall be severally summoned to appear for the trial of the issue joined, and a Jury therefrom may be legally impanelled and sworn.

2.—And whensoever the plaintiff's or defendant's Attorney may not attend to strike the Jury as aforesaid, or may if attending, refuse to strike the names of Jurors to form a panel upon which a *Venire Facias* may issue, the Prothonotaries shall strike the names of Jurors from the list of Jurors in place of the Attorney not attending or refusing as aforesaid.

3.—That the issue or issues in any case formed, for the trial and verdict of a Jury, shall not be altered, to be tried by the Court, unless improperly formed to be tried by a Jury.

Of Defendant's Default to proceed.

And in every case where a plaintiff or defendant, applying for and obtaining an order for a trial by Jury, shall during the space of two days after issue joined, neglect to proceed therein, and to give due notice to the opposing party to attend and strike the Jury as above said, or shall not attend to strike the said Jury, or not take out a *Venire Facias* to summon the said Jury, the plaintiff, or his Attorney may give due notice to the defendant to attend and strike such Jury, and may after duly striking the same, in manner as above said, take out a *Venire Facias* and proceed to obtain a trial in the cause, in the same manner as if the order for such Jury had been obtained at the plaintiff's instance.

Of Notice of Trial.

And after striking the Jury, as aforesaid, due notice of trial shall be given by the party applying for such Jury, or suing out the *Venire Facias* to the opposite party, or by the plaintiff in case of the defendant's neglect, as above, said two full days at least, before the trial shall be had.

Of the Venire Facias.

And the writ of *Venire Facias* shall be issued four days inclusive, and the Jury be summoned twenty-four hours before the return of such writ and trial of the cause, and that no *Venire Facias* shall issue or be made returnable for the trial of a cause in any Term after the fifteenth day of the month.

Of Evidence to the Jury.

That each party be admitted to adduce in proof, as well the written documents filed in the cause whereon the action or defence may be founded, as all such other written evidence or verbal testimony as legally in the due course of trials by Jury may be offered and given in evidence. But no part of which written evidence, except such as may be filed agreeable to the Rules of Practice, and whereon the demand or defence may be founded and referred to in the pleadings, shall be filed in the cause, or make part of the record.

And in every case, where a plaintiff moving for a trial by Jury may not during the space of two days in same Term, after issue joined move to set down such cause for trial, the defendant shall be at liberty to move for the same, and upon a day being appointed for such trial, if the plaintiff do not forthwith and in due course proceed thereupon to bring the cause on for trial so appointed, the defendant may move the Court for a judgment of non-suit against the plaintiff, and unless the plaintiff shall shew good cause for not proceeding to trial as aforesaid, a judgment of non-suit shall be entered against the plaintiff with costs.

Of Verdict.

That in every case, so soon as the Jury may be sworn, the parties, plaintiff and defendant shall be called, and if

neither shall appear, the Jury shall forthwith be discharged. But if the plaintiff shall appear, and the defendant shall not appear, his default shall be recorded, and the evidence of the plaintiff shall be heard *ex parte* and the verdict of the Jury taken thereon and judgment entered, as to law and justice may pertain.

Of Non Suit.

1.—And if the defendant being so called shall appear, and the plaintiff being called shall not appear, the default of the plaintiff shall be recorded and judgment of non suit thereupon *instantly* entered, dismissing the plaintiff's action, *sauf à se pourvoir*, with costs to the defendant.

2.—That in every case in which a Jury shall be sworn, and the plaintiff shall choose, at any time before the verdict of such Jury shall be given, to become non suit, and for that purpose shall withdraw from the Court, the plaintiff shall be called, and if not appearing, the default shall be recorded, and judgment of non suit thereupon entered *instantly*, dismissing such plaintiff's action, *sauf à se pourvoir*, with costs to the defendant.

SECTION XXXI.

Of New Trials.

THAT all motions for New Trials shall be made previous to any motion in arrest of judgment, and within four days, exclusive of the day of Trial after verdict had, if so many days remain in the Term; and if not, then on the first day of the next Term, and after two full days notice to the adverse party, or his Attorney in Court; and every such notice shall briefly express the several grounds of, or causes upon which, such New Trial is to be moved for as aforesaid. And every such motion that may be so made, under notice as aforesaid, and duly entered as herein after directed, shall be

fully heard without further delay. Provided, that no motion in the cause has been previously made in arrest of judgment; as no motion for a New Trial will be admitted in any cause, after a motion in arrest of judgment.

SECTION XXXII.

Of Arrest of Judgment.

THAT each party in a suit having a right to move any matter in Arrest of Judgment, shall be obliged to make such motion, and may be fully heard thereupon, under the like notice and causes therein assigned, and within a like period of time as is above ordered to be observed in all motions for New Trials, and not otherwise.

And whensoever any party who have moved for a new Trial and the same be refused should be desirous after such order to move in Arrest of Judgment, he shall be bound to make the same and therein assign the causes therefore on the next day in Term after such motion for a new Trial may have been rejected, and if the order upon such motion for a new Trial should be made on the last day of Term, then any motion for Arrest of Judgment as aforesaid shall be made on the first day of the succeeding Term and not otherwise.

SECTION XXXIII.

Of the Entry of Motions for New Trial, or in Arrest of Judgement.

THAT a copy of every notice of motion to be made for a New Trial, or an arrest of judgement, as above is expressed, shall be filed in the cause with the Prothonotaris, three days inclusively, before the day on which the motion is to be heard. And the Prothonotaries shall enter, or express the same in the Judges' Book, or list of causes, two whole days before the hearing of such motion.

SECTION XXXIV.

Of Peremption, or discontinuance of Actions.

WHEREAS great delays do often arise in the prosecution of suits before this Court, some of which remain pending therein, even after the matters in litigation have been settled by the parties, whereby the number of suits is unnecessarily accumulated—It is therefore ordered,

1.—THAT every suit now pending before this Court, by original action, opposition, or intervention, or which may hereafter be instituted or made therein, and in which no proceedings shall be had in open Court, or upon order of this Court for two succeeding Terms, shall be deemed and taken to be deserted by the plaintiff, or party prosecuting the same, or interested therein, and thereupon be dismissed with costs, upon the last day of the second Term, in which no proceedings shall be so had; or any subsequent day in Term thereafter, upon motion for that purpose of any of the parties concerned. And on default of such motion the Court will *ex officio*, on the same day, or at any subsequent day, dismiss such suit, opposition, intervention, or other claim, but without costs to either party.

2.—And inasmuch as every plaintiff, or demandant, should be bound to prosecute his claim within a reasonable time to a final conclusion :

It is ordered, that no cause shall remain on the records of this Court, for the purpose of any further proceedings therein being had after twelve Terms from the institution of such action, or demand (of which the Term, in which the same was instituted shall be counted one) unless sufficient cause be shewn to the contrary. And that either party interested in the cause may, on the first day of the thirteenth Term, or at any other subsequent period, move for a judgement, declaring an absolute peremption in the said cause, and dismissing the same as aforesaid, or this Court *ex officio*, upon the certificate of the Prothonotaries that the said cause has been entered in this Court during twelve Terms, as aforesaid, will dismiss such cause, and adjudge an absolute peremption of the same, with costs.

SECTION XXXV.

Of Execution.

1.—THAT no execution shall issue on any judgement of this Court, subject to appeal, until after the expiration of fifteen days from the date of such judgement. Nor for the space of twenty days from the date of such judgment, where the party, meaning to appeal therefrom, shall have lodged good and sufficient security to prosecute the same with effect.

2.—And whereas it is proper, that all the evidence of record, whereon any judgement may have been made, should appear in the said record, so long as the judgment remains unsatisfied, and any execution to be sued out thereupon—It is further ordered, that no writ of execution do issue on a judgment, in any cause wherein the several exhibits and evidence filed in the said cause ; may not remain of record, either by the original evidence, or such authenticated copies thereof, as this Court, on hearing the party applying to withdraw such original, may have specially ordered.

3.—That a separate book and register shall be made and kept by the Prothonotaries, of all executions which may be issued from this Court, specifying therein the description of the writ, and against what it may be particularly directed, the parties in the cause, the number of such cause, the name of the attorney or person at whose instance the writ may issue, the amount to be levied by virtue thereof, the cause of action, the date of the judgment on which the writ may be founded, the day on which the writ may issue, and the period of the return thereof ; and to which Register shall be annexed, at the end, and in the same book, an alphabetical Index, referring to the parties and execution that may have been issued, as aforesaid. And that no execution do issue from this Court, until after an entry thereof shall have been made in the register aforesaid, in the manner above directed. That all the Attornies of this Court, or persons having suits therein may, at all times, during office hours, have free access to the said register, *gratis*.

4.—That no execution, taken out to levy monies from

the chattels of any debtor, shall be made returnable at a period beyond the next ensuing Term of this Court, after which such execution may issue. And on the back of every execution shall be indorsed the number of the case, or record of the cause, on which such writ shall have issued.

5.—That no executions shall issue to levy monies from the *real estate* of any debtor, (not especially assenting thereto,) until after a return of an execution to levy the amount of such judgment from the *personal estate* of the debtor.

6.—And whereas inconvenience and hardship may arise to creditors, by a delay for a day in Term to return a writ of *Fi. Fa.* to levy monies from the chattels aforesaid, and whereon no chattels have been attached, or such only as may in part satisfy the plaintiff's debt ; It is permitted that such writ of *Fi. Fa.* may be returned in vacation, after due diligence in the execution thereof, to be certified by the returning officer, and whereupon an execution may issue to levy from the debtor's real estate.

7.—Whereas doubts have arisen on the right of a judgment creditor, who may have caused his debtor to be arrested, according to law, and may lie in prison, under such arrest, to obtain a writ of *Capias ad satisfaciendum*, whereby the debtor may be charged in execution, for the payment of a judgment obtained.

It is ordered, that, upon every final judgment obtained against any person, who may be in prison under process of *Capias* or attachment, or a surrender of the debtor, who may have been attached or held to bail, the judgment creditor may, after fifteen days from the date of such judgment, obtain from the Prothonotaries of this Court, a writ of *Ca. Sa.* against the debtor, for the amount of the judgment aforesaid, unless the debtor, defendant, shall have lodged good and sufficient security in the Prothonotaries' Office of this Court, to prosecute an appeal from the said judgment ; in which case no Writ of *Ca. Sa.* shall issue. And every person who may lie in Gaol under a writ of *Capias ad respondendum*, or be committed after a surrender by the debtor or his bail, and not be charged in execution upon a writ of *Ca. Sa.* within two days after the period at which the plaintiff might legally have had and obtained such a writ, to charge the

debtor, every such debtor, held and detained in Gaol, under a writ of *Capias ad respondendum*, or surrender as aforesaid, shall and may be discharged by the order of this Court, or of any one of the Judges thereof, in vacation.

SECTION XXXVI.

Of the Sheriff's Office, Upon the Receipt and Return of Writs, And of Levies and Sales, under Execution.

1.—It is ordered, That the Sheriff of this District do return all Writs, Executions and Process to him directed, at the return day expressed in such Writ, Process, or Execution, respectively, which regularly may be done without any special rule, or order for that purpose.

2.—That whensoever the Sheriff of this District shall, by virtue of any Writ of Execution, or Executions, sell any Chattels, or Real Estate of one and the same debtor, he shall, by his return, distinguish, how much he has levied and made from the sale of chattels, or personal property, and how much from the sale of Lands and Tenements, or Real Estate; and if Real Estate, to whom sold, and the conditions on which the same may be sold. And shall also state, by his said return, an account of the particular disbursements, as well upon the sale of the personal, as upon the Real Estate, and therein specify his several charges for fees allowed by Law.

3.—And whensoever the Sheriff may, in virtue of any Execution, or Executions, attach and seize various and different Real Estates, of one and the same person, in order to levy and satisfy one or more judgments, he shall expose the same to sale separately, and, when sold, shall, in so far as may be, keep separate and distinct the several disbursements, fees, and charges, about the sales thereof, in the manner before directed.

And in the sale of chattels and personal property, he shall in the same manner expose the same to sale, by so many lots and parcels, as may be most likely to produce the best price for the chattels so to be sold.

4.—That the Sheriff do keep a book of register of all writs of execution that may come to his hands for levy and execution. That therein shall be specified the description of each writ of execution, the names of the parties, the number of the case, the name of the Attorney, or person by whom such writ shall have been sued out, the amount to be levied, under and by virtue of the said writ, the date of the judgment, whereon such execution issued, the return day thereof, and the day on which the same shall have been returned into the Prothonotaries' office, the amount levied, the means by which the same had been levied, the day of sale and, if real estates, to whom sold, and as well the amount of disbursements as of his fees, upon the levy aforesaid.

And upon the sales of all real estates, where any oppositions may be made, a separate book of register shall be kept wherein, in addition to the above entries, he do insert on the said register the nature of the opposition made, and the day of receiving the same, the name of the Attorney, or person by whom such opposition may be made, and, if withdrawn, the time of withdrawing the same. That he do indorse on all oppositions, filed in his office, the period of receiving the same.

And on the return of every execution, whereon there may be oppositions filed, he do make a schedule thereof in their regular order, according to the time, and in respect to other oppositions in the same case, and if any opposition hath been withdrawn, he do state the same; and alphabetically mark and state the several oppositions in his return aforesaid.

5.—That all the Attornies and suitors in this Court interested in the levy of monies, under writs of execution, may have at office hours, free access, *gratis*, to examine the register of the Sheriff above directed; and more especially to examine all the several oppositions to the levy of any monies on sales of chattels or real estate.

6.—That to each of the said Registers be annexed, at the end thereof, an alphabetical index or reference to the several causes and entries therein made.

7.—And that the Sheriff do, on the first day of January, every year, return into the Prothonotaries' office, a correct

copy by him signed, of the book of Registers of executions above directed.

8.—Whereas the execution of writs of *Saisie revendication* or *Saisie arrêt* in the hands of the Defendant are frequently attended with unreasonable charges upon the Sheriff's Office and duty, and may be highly prejudicial to the rights of persons in the legal possession of chattels and effects so seized. It is ordered that every plaintiff suing out such writ shall be bound upon the delivery of any such process to the Sheriff, to make and deliver to the said Sheriff sufficient advances in money, for the necessary expences in the execution of every such writs, or otherwise satisfy and secure the Sheriff for the prompt payment thereof, and failing so to do the Sheriff may refuse to receive the said writ, to proceed in the execution of the same, and that in every case where the Sheriff may execute such writ, his recourse for payment respecting the service of such writ, and the advances to guardians or recors shall be against the plaintiff personally and not upon the goods which may be attached.

SECTION XXXVII.

Of Oppositions to the Sale of Effects and Estate, seized by Execution, or to the Distribution of the Proceeds of such sales.

WHEREAS it is necessary to provide, in so far as may be, such rules and orders as may direct a regular and speedy course of discussing and adjudging upon all oppositions that may be made to the sale of personal or real estate, seized and attached upon writs of execution; And to the end of preventing the delays, expence, and injustice which creditors may sustain, through the means of illegal, vexatious and groundless oppositions, made to frustrate the payment of just debts: It is therefore ordered,

THAT all oppositions which may be made to the levy and sale of any personal or real estate, which may be attached or seized upon any execution issued out of this Court, and whereby any party, so opposing, may claim a right, either to have any such seizure declared null and void, or a right of charge or incumbrance of what nature soever upon the same,

shall succinctly state, in such his opposition, all and every ground or cause thereof, and to which he may pretend to have right of what nature soever. And the said opposition shall contain a clear description and election of the opposant's Domicile.

And to every such opposition there shall be annexed an affidavit taken before one of the Judges of this Court, of the truth of the fact or facts contained in such opposition. And the Sheriff is hereby enjoined and required not to receive any opposition as aforesaid without such affidavit so annexed, thereto.

And where the seizure may be of any real estate, and the opposition be made.

Afin d'annuller, or

Afin de distraire, or

Afin de charge—the same shall be made before the sale of the realities, or where the opposition may be against the sale of any chattels, the same shall be made before the sale of any such personal estate.

And where the opposition may be *afin de conserver*, whether upon the proceeds of a real or personal estate, the same shall be made either before, or within office hours the day after, the return of the writ of execution, under which said lands or chattels may be sold, and not otherwise.

And no opposition shall be preferred, or admitted to be made, by the same person, or others in his behalf, for any rights or claims which he may pretend to have, touching any seizure, as aforesaid, and that could have been claimed or made at the period of preferring the original or first opposition, in the manner above directed.

2.—That every person, who may prefer and make any opposition as aforesaid, shall file with the Prothonotaries, his declaration or state of the several claims, or *moyens d'opposition* to be made, after due notice given to file the same, and in which shall be clearly stated all and every his cause or *moyens d'opposition* of what nature soever, and whereon a full answer or plea may be made and issue taken, and that no other or further opposition, claim or *moyens* shall be made

by or received from the same person, to the same levy and seizure.

3.—That every person, who may file any such cause or *moyens d'opposition*, shall, at the same time, make an election of domicile in this city, if the first election made, as aforesaid, be not in this city, and failing so to do, the office of the Prothonotaries shall be taken as his domicile or place of abode, to every legal intent that may be requisite, touching the proceedings of the Court to be notified to the person so opposing.

4.—That every person, who may file any such declaration, or claim, or *moyens d'opposition*, shall, at the same time file in the same office the several deeds, documents and writings, or certified copies thereof, which may be in his power or possession, and whereon the several rights, claimed by the said *moyens*, are to be maintained, together with a certified list of the same.

5.—That the person at whose instance any seizure may have been had, or others interested in any opposition to the same, shall take communication of the said declaration or *moyens*, and the several documents so filed as aforesaid, and make answer thereto, within three days from the day of filing the same, and under the like rules that a defendant is bound to plead to the merits of a cause.

6.—And it is further ordered, that all and every the rules of this Court, respecting original suits and the course of proceeding therein, in so far as the same may be applicable to claims preferred by opposition, shall be strictly adhered to, as the rules for proceeding thereupon.

7.—To the end, that all persons interested in the levy and returns of executions to be issued out of this Court, may be informed when such returns are made.—It is ordered that the Prothonotaries of this Court do, from time to time, on every day when any execution may be returned by the Sheriff, and filed of record, fix and place to public view, in their the said Prothonotaries' office, a list of such returns, expressing the names of the parties, plaintiff and defendant. That the rules of this Court respecting oppositions to be made after the return of executions, shall be considered to apply to

the period that the said list was so afixed by the Prothonotaries, in the office aforesaid.

8.—Whereas it frequently happens that in causes where it appears that a defendant is in a state of *deconfiture* motions are made and orders granted for calling in the several creditors of such debtor to appear in the cause and attest their respective claims upon the effects and estate of the said debtor previous to a distribution of the same; it is ordered that the plaintiff or defendant or any one of the creditors of such debtor may object to any claim which may be made in consequence of any advertisement and public notice as aforesaid, and controvert and oppose the same, provided such plaintiff or defendant, or any creditor as aforesaid, shall within the space of ten days after filing such claim file his opposition thereto, and if the opposant may reside in this city, or have elected a domicile therein, he shall give notice to the claimant of such opposition, and require the said claimant to support his claim before this Court, by such legal course as is observed in this respect for the support of claims or oppositions; and it is further ordered that every claim made in consequence of any public notice as aforesaid, by any person residing in this city, or who may have elected a domicile therein, and such election of domicile be entered on record with the claim aforesaid, and which may not be opposed as aforesaid, shall be considered and held to be admitted by all the parties interested thereupon as legal and just, and so adjudged by this Court upon the distribution of any debtor's effects and estate as aforesaid.

And it is further ordered that the above rules shall apply and be considered as binding wherever creditors of any deceased person may by public notice be called before this Court to assert their respective credit upon the effects and estate of such deceased person.

That the present rule shall be held also to extend to all claims made by opposition, *afin de conserver* upon the monies levied and returned by the Sheriff, on any writ of Execution sued out from this Court.

9th—It is ordered that the Prothonotaries of this Court, do enter in a separate book or register the returns of the Sheriff, upon every writ of Execution, in which register shall

be stated as well the oppositions annexed to every such return, as all the oppositions which may at any time afterwards be filed in this Court, touching such return, in the order and at the time every such opposition shall be so filed ; and to which register all parties interested shall have free access when required, and it is further ordered, that the rules of this Court, respecting oppositions so returned and filed, and the proceedings to be had thereon, shall be considered to apply and have effect only from the time that every opposition shall have been inscribed on such register, nor shall any opposition be admitted or received, nor be considered as regularly filed, until the same shall have been so inscribed and entered;

SECTION XXXVIII.

Of Proceedings in respect to Appeals.

1.—THAT on the allowance of every writ of Appeal, the Prothonotaries in making up the record, for a due return to such writ, do mark numerically and progressively, in the regular course of proceedings had in such cause, every paper filed of record in such cause, beginning with the writ of summons, and continuing the same mark at the head of each separate paper until the whole be concluded. That he do then make out an Index, or list of reference to the whole, to each by number, title and description under his signature to be annexed to such record, previous to the return.

That he do preserve and file in his office a copy of such list, or Index of the several papers so to be transmitted with the record.

2.—That upon the return of the record, so transmitted in appeal, he do enter on the register of this Court, a copy of the judgment made in appeal, with a reference to the same as making part of the record in such case.

3.—That the Prothonotaries, do keep a book to be entitled "*Causes and Judgments in Appeal*," wherein shall be entered the title of the cause, or names of the parties, the No.

and Term, at which the suit was prosecuted, the subject of the demand, an abstract of the judgment, and the day it was given, the period of the appeal, and an abstract of the judgment in appeal : To which book shall be annexed an Index of alphabetical reference to the parties and causes so adjudged.

SECTION XXXIX.

Of Saisie Arrêt.

WHEREAS under the present Course of Practice it may happen that upon the service of a *Saisie arrêt* at the *dernier domicile* of the *Saisi* certified, final judgment may be made against the *Tiers Saisi* for the principal debt due to the Plaintiff, although the *Tiers Saisi*, may never have received the writ of *Saisie* nor have had such reasonable knowledge of the same, as under the peculiar circumstances of his situation, he was unable to appear thereupon and make his declaration conformable to Law. In order therefore to prevent the manifest injustice that may be done by such conclusive judgment, It is ordered, that in future no conclusive or final judgment shall be made against the *Tiers Saisi* for payment of the Plaintiff's Debt, by reason of his non-attendance and not answering as aforesaid, unless it shall appear that the service of such *Saisie Arrêt* and notice had been personally made to and upon the *Tiers Saisi*, and that in every other case of legal services at the domicile, the judgment to be awarded against a *Tiers Saisi*, in default will be provisional admitting such *Tiers Saisi* to appear at a future day and take off such default and make answer to the *Saisie* or attachment or shew cause upon the irregularity of the service of such writ.

SECTION XL.

Of Costs.

It is ordered that no general rule of this Court granting fees upon certain business to be performed in causes therein

instituted shall in any manner be considered to extend to limit or restrain any judgment or order of this Court upon any matters before it wherein the Court from the circumstances of such matter or business, shall award and adjudge a specific sum to any party thereupon. And any such particular order or judgment for costs that may be made, shall determine and conclude the rights of every person therein interested ; And it is further ordered that no general allowance of Fees, by any Tariff or Rule of this Court, shall be considered as granting a right to such fees for any business performed whensoever this Court or any Judge thereof, upon taxation of costs, shall not consider such business to have been regularly and necessarily performed.

SECTION XLI.

Of Debtors in Gaol.

It is ordered that in future every alimentary pension to be allowed to Debtors in Gaol shall be paid each Monday, on or before twelve o'clock in the forenoon, to prevent the difficulties and inconveniencies which frequently arise from the course, now following of paying the alimentary allowance to Debtors in Gaol.

It is ordered therefore that the alimentary allowance to Debtors in the Gaol of this District, shall in future be paid to the Gaoler, who is hereby directed and enjoined to receive and to pay the same to such Debtors without delay.

That every Debtor claiming a right to be discharged from Gaol, by reason of the non payment of such alimentary allowance shall be bound to state upon Oath a demand made by him or by some person on his behalf, on the Gaoler for the payment of such allowance, before such Debtor shall be entitled to his discharge.

That the Gaoler shall keep a separate book or register in which he shall regularly and truly inscribe and certify the hour of receiving and paying such alimentary allowance, to which book access and reference may be had at all times when required.

And it is further ordered that copies of the present rules and orders in the English and French Languages be made out and certified by the Prothonotaries of this Court, and that the said copies be posted up by the said Gaoler in some conspicuous manner in the Debtors' Ward in the said Gaol.

SECTION XLII.

Of Actions of Assumpsit.

Whereas actions are frequently instituted and declarations thereupon framed, conformable to actions, in England, of *Assumpsit*, with General Counts therein contained, for gross sums thereby claimed, without stating in such declarations what part thereof may have been paid, or should not reasonably be claimed or adjudged to the plaintiff and to which actions general pleas of *non assumpsit*, have been made and various grounds of defence thereupon raised, and claims made of evidence to be adduced, that could not have been foreseen by the plaintiff, under such general pleas and which may be highly prejudicial to the parties; it is therefore ordered that on any such actions, the plaintiff shall generally state all such deductions, from the gross sums claimed as may be in his knowledge and shall by his demand declare and claim the precise balance of monies due by reason of such *assumpsit*, undertaking or promise as aforesaid, and for the recovery of which the defendant may be sued, and that on the return day of the writ, in such action the plaintiff shall file an exhibit stating the precise amount of his demand and in such statement shall insert and set down all matters that may have been received, whether in money or other valuable things, which ought to be reduced from the gross amount of such general demand as aforesaid, and upon which *exhibit* shall be written a notice to the defendant, of the precise amount of the plaintiff's claim, and for recovery of which the defendant is prosecuted in the said action, and failing so do the defendant shall not be bound to answer the plaintiff's demand or be adjudged in default in the notice aforesaid;

and that every plea to any such action of *assumpsit* shall contain the specific grounds of defence upon which the defendant may intend to adduce evidence, in support of any matter to be offered against the plaintiff's demand, and that no evidence verbal or written shall be received in any such action, but upon and in support of such special matters alleged in defence and that may have direct relation thereto, and to the Plaintiff's demand.

9th.—It is ordered that on the service of every writ of *Capias ad respondendum*, the plaintiff shall be bound, at the time of serving the defendant with copy of such writ, to serve a notice in writing upon the said defendant informing him that a copy of the plaintiff's declaration will be left at the Prothonotaries' office, for the said Defendant, in such case, within five days from the service of such writ, and that the plaintiff making due service of a copy of his declaration conformably to such notice, the same shall be taken and considered as sufficient, unless the defendant, before the expiration of the said five days, do notify the plaintiff, or his Attorney, of his the defendant's elected domicile within the city of Montreal, where a copy of the plaintiff's declaration may be served upon him such defendant.

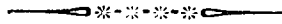
COURT OF KING'S BENCH,

Wednesday, 7th June, 1815.

PRESENT,

THE HONORABLE JAMES REID, } *Esquires,*
THE HONORABLE LOUIS C. FOUCHER, } *Judges.*

Table and Establishment of Fees in the Superior Term.



WHEREAS an Act of the Provincial Parliament passed in the 41st year of his Majesty's Reign, intituled, "An Act to amend certain forms of proceedings in the Court of Civil Jurisdiction in this Province, and to facilitate the administration of Justice," hath authorised this Court to sit and establish such Fees as may be reasonable and just to be taken, by the several officers of this Court, employed in and about suits at Law. It is therefore ordered that all Rules and Orders of this Court, heretofore made respecting the Fees to be claimed and taken in this Court, by the officers of the same be, and the same are thereby rescinded (except the Fees allowed to the Bailiffs, by the order of the twentieth of February last, which said order continues to remain in force,) and that the said officers, who may be employed in any civil suit now pending, or hereafter to be prosecuted or defended in this said Court, shall and may claim and take the respective Fees hereafter mentioned to be taxed in any suit for the several duties and services performed in such suits, and no others, under the penalty of a contempt of the Court, and being further liable to the party injured for his damages in that respect ascertained.

Fees to be taken by Attornies in all actions where the debt or the matters in contest prosecuted for, or for which a Judgment shall be obtained, shall be above £10 sterling, and not exceeding £20 currency.

ART. 1—To the plaintiff's Attorney for all Fees £ s. d.
from the Institution of the action, to final judgment in contestation. 4 0 0

And to the defendant's Attorney for all Fees in defending such suit unto final judgment. 3 0 0

But if on any exception by motion to the form for irregularities in the service of process, or in the declaration, or in the proceedings, or on any plea of exception other than plea to the merits, the action be dismissed, that there be allowed to the defendant's Attorney, for all his Fees in this cause. 1 10 0

2—To the plaintiff's Attorney when the judgment, is by default without Enquête. 2 0 0

3—To the same on Enquête. 2 6 8

4—To the same when the judgment is by confession. 1 10 0

And to the defendant's Attorney. 0 15 0

5—To the plaintiff's Attorney, when the action may be settled before the return. 1 3 4

6—To the same when the action may be settled after the return, but before issue joined. 1 10 0

6—And to the defendant's Attorney for all his Fees in such case, if a plea be filed. 0 16 8

But if no plea be filed. 0 12 6

ART. 7—To the plaintiff's Attorney when the action is settled after issue joined, but before hearing or before judgment.	£	s.	d.
	2	6	8
7—And to the defendant's Attorney for all his Fees in the last mentioned case.	1	6	8

And in the Actions above £20 currency, and not exceeding £30 currency, in the above cases.

ART. 1—To the plaintiff's Attorney.	5	0	0
To the defendant's Attorney.	3	10	0
To the defendant's Attorney in the second case.	2	0	0
2—To the plaintiff's Attorney.	2	13	4
3—To the plaintiff's Attorney.	3	2	6
4—To the plaintiff's Attorney.	2	0	0
4—And to the defendant's Attorney.	1	0	0
5—To the plaintiff's Attorney.	1	10	0
6—To the plaintiff's Attorney.	2	0	0
To the defendant's Attorney.	1	2	2
To the defendant's Attorney, in the 2d. case.	0	16	8
7—To the plaintiff's Attorney.	3	2	2
And to the defendant's Attorney.	2	0	0

Additional Fees to the two above tables, when the cases will happen.

ART. 8—To the plaintiff's Attorney on defendant's taking off a default.	0	6	8
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Art. 9—On suing out a Capias ad respondendum, saisie arrêt, saisie gagerie or entiercement.	£	s.	d.
	0	10	0
10—To the plaintiff's or defendant's Attorney for drawing and engrossing a Bail piece with notice of putting in Bail and service of the same.	0	6	8
And to the adverse party on do,	0	3	4
11—To the plaintiff's or defendant's Attorney suing out a commission rogatoire.	0	15	0
12—And to the adverse party's Attorney joining in the same.	0	11	8
13—To the Attorney attending the execution of such commission, when issued from another District.	1	0	0
And to the adverse party's Attorney on do.	0	11	8
14—To the plaintiff's or defendant's Attorney suing out a <i>venire facias</i> and conducting a cause tried by Jury.	1	6	8
And on suing a second or other <i>venire facias</i> when diligence has been done on the first.	0	10	0
To the adverse party's Attorney who may attend at striking the Jury.	0	5	0
And to the same for attending Fees on the trial of the cause.	0	10	0
15—On every Incidental demand to the Incidental plaintiff's Attorney.	1	10	0
And to the Incidental defendant's Attorney.	1	3	4

ART. 16—To the plaintiff's or defendant's Attorney, on every exception by motion to the form for irregularities in the service of process, or in the declaration, or in the proceedings. £ s. d.
0 10 0

17—To the plaintiff's or defendant's Attorney on every plea of exception other than plea to the merits. 0 13 4

18—To the defendant's Attorney on obtaining the certificate of the Prothonotaries required by the 34th Section of the Rules of Practice. 0 3 4

19—To the defendant's Attorney suing out execution and motion of the return for orders for the delivery of the money. 0 10 0

“ That no other allowance be granted against the defendant on the suing out of a second or *alias writ* of execution.”

20—To the plaintiff's Attorney on a rule *nisi* in the nature of *scire facias* for all his Fees into final decision. 0 15 0

21—But if the rule is contested. 1 3 4

And to the defendant's Attorney if successfully. 0 16 8

22—To the plaintiff's or defendant's Attorney or an inscription *en faux* for all his Fees. 1 3 4

23—To the plaintiff's Attorney on *saisi arret* in the hands of third persons after judgment, in original actions, for all his Fees to final judgment. 1 15 0

And to the defendant's Attorney on do. 0 15 0

ART. 24—To the plaintiff's or defendant's At- £ s. d.
 torney for drawing and engrossing bill
 of costs, copy, notice and attending tax-
 ation. 0 5 0

And to the adverse party for attending
 the taxation of cost. 0 3 4

25—On every evocation from the Inferior
 Term, when the said evocation is dis-
 missed to the plaintiff's Attorney. 1 3 4

*Fees to be taken by Attornies and Advocates on real and mixt actions and
 in actions for sums above £30 currency.*

ART. 1—Taking instructions to prosecute or de-
 fend. 0 15 0

2—Warrant of Attorney when filed in the
 cause. 0 3 4

3—Drawing every Declaration. 0 13 4

4—Each copy thereof, 0 3 4

5—Drawing and engrossing any affidavit
 requisite to be made in such case. 0 3 4

6—For all attendances before the Judges,
 or other Prothonotaries' or Sheriff's
 office, including *fiat* to obtain any writ. 0 5 0

7—Attendance at the return of the writ. 0 3 4

8—For drawing lists of exhibits, and at-
 tendance filing the same. 0 3 4

9—For drawing an appearance for a defen-
 dant, and filing the same. 0 2 6

10—To the plaintiff's Attorney on defendant
 taking off default. 0 6 8

ART. 11 —For putting in Bail, and notice of the same,	£	s.	d.
	0	6	8
12—Receiving notice of the same and taking instructions thereon,	0	3	4
13—Arguing exceptions upon putting in bail when excepted,	0	5	0
14—For every necessary attendance in Court or at the Prothonotaries' Office, for communication of papers, when not otherwise provided,	0	3	4
15—For every necessary motion, including a motion after Judgment, by the successful party for withdrawing exhibits,	0	3	4
16—For drawing the same,	0	1	0
17—For every notice of the same copy and service,	0	3	4
18—Attending in Court on notice of motion, and opposing the same if successfully,	0	6	8
19—Ditto, ditto, on consenting thereto,	0	5	0
20—Attendance and Counsel's fee, on arguing every Law Issue on Pleadings,	0	13	4
21—For drawing and engrossing every plea, answers, or replication,	0	6	8
22—For every copy of such plea, answers, or replication,	0	3	4
23—Fyling and signifying the same to the adverse party,	0	3	4
24— <i>Fiat</i> for <i>Subpæna</i> or <i>Subpænas</i> in each cause,	0	1	0

ART. 25—Fee on examination of every witness, 2	s. d.
allowed by rule of practice,	0 5 0
26—And for the cross examination of each of them,	0 3 4
27—For objections to the competency of any witness, or to the pertinancy of any question, and arguing the same, if successfully,	0 3 4
28—Drawing and engrossing Interrogatories for examining witnesses on a commission rogatoire,	0 10 0
29—Copy for the adverse party,	0 3 4
30—And for Cross Interrogatories, one half of the foregoing fees.	
31—Attendance and Counsel's fee, on arguing the merits of the case,	1 3 4
32—Ditto, ditto, where there is an incidental demand,	1 15 0
33—Ditto, ditto, in case of an intervention heard along with the merits of the principal cause,	1 15 0
34—Ditto, ditto, when the intervention is heard separately,	1 3 4
35—For drawing and engrossing every Petition in judicial proceedings,	0 5 0
36—For every Copy, when necessary, and service thereof,	0 3 4
37—Notice to strike a Jury and service,	0 3 4
38—Attendance striking the same,	0 6 8
39—On issuing the <i>venire</i> and delivering it to the Sheriff,	0 2 0

	£	s.	d.
ART. 40—Notice of Trial and service,	0	3	4
41—Attendance and Advocate's fee on trial before a Jury, including the examination of witnesses,	2	6	8
42—Drawing and engrossing and settling a special verdict,	0	11	8
43—Drawing and engrossing every bill of exception in such case,	0	11	8
44—Drawing and engrossing every motion for a rule <i>nisi</i> to obtain a new trial on an arrest of judgment, notice and service,	0	6	8
45—Attendance and fee on argument of the same,	0	10	0
46—Drawing and engrossing every special rule of reference to arbitrators or experts,	0	5	0
47—Term fee in original causes only, and in which there have been an appearance and pleadings, but no more than two to be allowed of ten shillings each,	0	10	0
48—Bill of costs, copy, notice, and attendance at the taxation,	0	7	6
49—To the adverse party attending the taxation,	0	3	4
50—Fiat for Execution, attendance obtaining the same, delivering it to the Sheriff, and motion of the return thereof for order for the delivery of the money,	0	15	0

ART. 50—"That no other allowance be made £ s. d.
 "against the Defendant, on the suing
 "out of a second or *alias* writ of ex-
 "ecution."

51—For all fees on a rule nisi, in the nature
 of a *scire facias* to obtain execution, or
alias execution or *contrainte par corps*
 if contested, 1 10 0

52—To the adverse party's Attorney, if
 successfully, 1 3 4

But if the rule be not contested, there
 be allowed to the Plaintiff's Attorney, 0 15 0.

53—For all fees, or a *saisie arret* or attach-
 ment in the hands of third persons af-
 ter judgment, 2 6 8

"The above fee not taxable against
 "the *saisie*, if no money or effects are
 "found and attached."

And the Defendant's Attorney, if suc-
 cessfully, 1 3 4

*Fees to be taken by the Attornies and Advocates in actions above £30 cur-
 rency, on judgment by default or on confession.*

ART. 1—For all Fees from the Institution of the £ s. d.
 action to final judgment by default
 without Enquête. 4 10 0

2—For do. on do. sur Enquête. 5 0 0

3—For do. on judgment by confession. 3 10 0

Fees on Oppositions.

On oppositions *afin de conserver* where £ s. d.
 the sum claimed may not exceed £30
 Cur'y. to the Attorney supporting such
 claim there be allowed for all his Fees. 1 3 4

And when the sum may be above £30
 currency. 2 6 8

And to the Attorney defending the
 same, there be allowed for all his Fees
 one third less than the sum allowed to
 the Attorney supporting the opposition.

On every opposition *afin de charge* or
distrainere or *afin d'annuller* the respective
 Attornies to be allowed Fees in propor-
 tion to the services performed as nearly
 as may be conformable to the Fees al-
 lowed in real actions, unless by the
 judgment on such opposition the Fees
 be otherwise determined.

For drawing and engrossing any judg-
 ment of distribution, when ordered by
 the Court for the Attorney prosecuting
 the sale and discussion. 1 3 4

*Fees to be taken by the Prothonotaries in actions above £10 sterling, and
 not exceeding £20 currency.*

ART- 1—For all Fees from the institution of the £ s. d.
 action to final judgment upon contes-
 tation, including 4s. for the summons
 or *capias ad respondendum*. and for en-
 try of *fiat* for the writ, viz. ;

From the plaintiff. 1 0 0

From the defendant. 0 15 6

ART. 2—Do. on a judgment by default without Enquête.	£	s.	d.
	0	15	0
3—Do. with Enquête.	1	0	0
4—Do. on a judgment by confession.	0	15	0
5—When no return for the summons and entry of Fiat only.	0	4	0
6—On any action entered and settled before issue joined.	0	10	0
7—On any action entered and settled after issue joined, and before the argument, or before judgment, viz. :			
From plaintiff.	0	15	6
From defendant.	0	10	0

And in actions above £20 currency, and not exceeding £30 currency, in the above cases.

ART. 1—From plaintiff.	1	6	8
From defendant.	1	0	8
2— do. do.	1	0	0
3— do. do.	1	6	8
4— do. do.	1	0	0
5— do. do.	0	4	0
6— do. do.	0	15	0
7—From plaintiff.	1	0	8
From defendant.	0	13	4

Additional Fees to the two above tables when the cases will happen.

	£	s.	d.
ART. 8—On defendant taking off a default.	0	3	4
9—For a saisi arrêt, saisi gagerie, or intiercement.	0	3	4

(The above charge not to include the sums.)

10—For every bail piece security for costs or recognizance.	0	5	0
11—For a commission rogatoire.	0	5	0
12—When the adverse party joins in do.	0	2	0
13—For the execution and return of any such commission issued from other Districts.	0	5	0
14—For a <i>venire facias</i> and proceedings on the same, when the trial takes place.	0	13	4
But in case the trial goes off then be allowed.	0	6	8

(The above charge to include 3s. for the Venire.)

15—On every incidental demand <i>videlicet</i>			
From incidental plaintiff,	0	10	0
From incidental defendant,	0	7	6
	0	17	6
16—For proceedings and judgment on every exception to the form for irregularities in the service or in the declaration, or writ, or in the proceedings.	0	3	4
17—For ditto or plea of exception other than plea on the merits.	0	5	0
18—For search and official certificate on default of proceedings in execution of the rule of practice sect. 34.	0	3	0

- ART. 19**—For every execution and for the entries £ s. d.
of the orders on the return thereof, for
delivery of the money, and for the copy
of the said order to be paid on suing
out the execution. 0 5 0
- 20—For the entry of the motion for a rule
nisi in the nature of *scire facias* to re-
vive a judgment and to obtain an exe-
cution on alias execution or contrainte
par corps and copy of the same. 0 5 0
- 21—And for all proceedings on the said rule
from the return thereof to final decision
or discontinuance. 0 10 0
- 22—On an inscription en faux for the entries
of all proceedings and copies of rules
unto final decision or discontinuance. 0 11 8
- 23—On every *saisie arret* in the hands of
third persons after judgment on an ori-
ginal action for all proceedings to final
judgment including 3s. 4d. for the writ. 0 16 8
- 24—On every bill of costs presented to be
taxed there be allowed for the verifica-
tion of the charges and for the official
certificate. 0 2 6
- 25—On money paid in Court for keeping
and paying over the same one per cent.
- 26—For a copy of Judgment not exceeding
400 words. 0 2 0
- And for every 100 words exceeding the
above number, 0 0 6
- 27—For searching and delivering papers or-
dered to be delivered in any cause ad-
judged upon or discontinued, entering
and filing the order and receipt for
papers, 0 1 6

ART. 23—On every evocation from the inferior £ s. d.
term when the said evocation is dis-
missed. 0 13 4

29—For every *subpœna* not including more
than four witnesses and necessary co-
pies. 0 3 0

Fees to be allowed to the Prothonotaries (when not otherwise provided for.)

ART. 1—For Office copies of papers, for every £ s. d.
hundred words. 0 0 6

2—For searching the records or the regis-
ters for any given year. 0 1 0

And for every other year. 0 1 0

Note—"The above fee is not chargea-
ble when particular copies of
any record or judgement are
requisite, the date being giv-
en."

ON ACTS OF TUTORSHIP.

ART. 3—For every act of tutorship or curator- £ s. d.
ship including a copy thereof and of the
petition proceeding the same. 0 7 6

4—For every act to emancipate a minor or
for the sale of property of minors or for
authorising a tutor to any other parti-
cular purpose including a copy as above
mentioned. 0 10 0

5—For every act of interdiction, *procès*
verbal d'enquete, depositions of witnes-
ses, copies and certificate. 0 15 0

ART. 6—For the homologation of every act of an *assemblée de parens* drawn by notary authorised by the Judge. £ s. d.
0 2 6

And for every copy thereof at the rate of six pence every hundred words. 0 0 6

7—For every entry of an inventory, and closing the same, and the certificate. 0 5 0

8—For every act of renonciation when done before the Judges. 0 5 0

ON INSINUATIONS.

9—For every order of the Judges for the registering of any act. 0 1 0

10—For certificate of registry. 0 1 0

11—For registering any renonciation to a community or succession any donation between conjoints in their *contract de mariage*, or any *dons mutuels* or any donation whatsoever or will or any other act, for every hundred words. 0 0 6

12—For drawing and engrossing the order of the Judge on the petition of a testamentary executor or administrator, for the probate of any will, taking and drawing depositions of witnesses, taking the oaths of office (exclusive of the registry as above provided.) 0 15 0

14—For making up the record in any cause with the lists and returns thereof, and transmitting the same to the Court of Appeals. 1 3 4

And for engrossing the transcript of the proceedings for every hundred words. 0 0 6

ART. 15—For every attendance at the examination of a candidate for the profession of the law, or as a notary, giving the necessary notice and drawing the certificate of the Judges thereon. £ s. d.
0 10 0

DISTRICT }
of
MONTREAL. }

THURSDAY, 20th February, 1823.

Present, THE HON. JAMES REID, } Esquires,
THE HON. L. C. FOUCHER, } Judges.

PROTHONOTARIES' FEES.

THE Court, upon the representations made to them by the Prothonotaries, doth hereby rescind the Tarif of fees allowed to the said Prothonotaries, as fixed and established on the Seventh of June. One Thousand Eight Hundred and Fifteen, in causes of and above Thirty Pounds, and in all real, and mixed actions, where the matters are contested; and doth order, that in future the following fees be allowed and paid by the parties interested, to the said Prothonotaries:

- ART. 1—That there be paid by the Plaintiff, or Plaintiffs, his, or their Attorney, to the said Prothonotaries, for all their fees in causes of the above description, from the institution of the action until final judgment entered, not including the Writ of Summons or other mesne Process, £ s. d.
2 10 0
- 2—That there be paid by the Defendant, or Defendants, or his Attorney, 1 5 0
- 3—And in case of an incidental demand, there shall be paid by the Plaintiff or Plaintiffs, on such demand, his or their Attorney, a further sum of 0 10 0

- ART. 4—And by the Defendant or Defendants, £ s. d.
on such incidental demand, a further
sum of 0 5 0
- 5—That there be paid by the Defendant
or Defendants, his or their Attorney,
upon every motion to quash the Writ
of Process, by reason of the insuffi-
ciency of service or other irregularity,
including all the proceedings of such
motion, when unsuccessful, 0 10 0
- And when successful, 0 15 0
- 6—And that there be paid by the plaintiff or
Plaintiffs, his or their Attorney, in case
the Writ or Process shall be quashed
on such motion, 0 15 0
- 7—And in case the action shall be dismis-
sed upon any plea of exception, with-
out enquete or hearing on the merits,
there shall be paid by the Plaintiff or
Plaintiffs, his or their Attorney, 1 5 0
- And by the defendant or defendants,
his or their Attorney, 1 0 0
- 8—And in case the action shall be discon-
tinued before enquete on the merits,
there shall be paid by the Plaintiff or
Plaintiffs, his or their Attorney, 1 5 0
- And if such discontinuance be made
after enquete, 1 10 0
- That on such discontinuance before *en-
quite*, there be paid by the Defendant
or Defendants, his or their Attorney, 0 15 0
- But after *enquite*, 1 0 0
- 9—That there be paid by the Defendant
or Defendants, his or their Attorney,
on taking off a default and entering

appearance when nothing further is done by such Defendant or Defendants in the cause,

	0	3	6
ART. 10—That there be paid by the party applying for and obtaining an order for proceeding by <i>inscription en faux</i> upon any Act, Deed, or Writing, produced by the adverse party, for all fees to the Prothonotaries, until final Judgment rendered on such proceedings, and to be paid before any motion made or allowed in his behalf,	£	s.	d.
		1	5 0

And by the Defendant or Defendants, on such *inscription en faux*, to be paid at the time of filing his or their answer to the *moyens de faux*,

0 5 0

11—That in all actions *en garantie*, and on demands *en interventions*, in real and mixed actions, and in causes of and above thirty pounds, there be paid by the parties, Plaintiff and Defendant, on every such action *en garantie* or *intervention* when the same is contested on half of the fees above allowed in original actions and when such action *en garantie* or *intervention* is by default or not contested, there be paid by the party Plaintiff thereon,

0 15 0

12—And when such action *en garantie* or *intervention* is made for a sum or in a cause under thirty pound, and the same is contested, there be paid by the party Plaintiff thereon,

1 0 0

And by the Defendant,

0 10 0

But if such action *en garantie* or *intervention* be not contested, or be by de-

fault, there shall be paid by the party
Plaintiff, on every such demand, 0 10 0

And it is ordered, that the above fees on actions *ex gar-*
antie and *en intervention*, be paid by the parties respective-
ly to the Prothonotaries in the same manner and at the
same time as the fees on original actions are herein after
directed to be paid.

And it is further ordered, that in the following cases, the
fees herein after mentioned shall be allowed and paid to the
said Prothonotaries, in lieu of what they might have been
entitled to claim by the aforesaid Tariff of the 7th June,
1815.

- | | £ s. d. |
|--|---------|
| ART. 1.—That there be paid by the Plaintiff or
Plaintiffs, his or their Attorney, in all
cases by default of or above thirty
pounds; when the cause is dismissed
from want of proceedings during two
terms, | 0 15 0 |
| 2—And if the cause be contested, | 1 5 0 |
| 3—And by the Defendant or Defendants,
his or their Attorney, to be paid be-
fore motion made or allowed in this
behalf, | 0 15 0 |
| 4—And by the Plaintiff or his Attorney, in
causes by default, when the cause is
discontinued, | 0 15 0 |
| 1—If the cause be under thirty pounds,
and by default, there be paid by the
Plaintiff or Plaintiffs, his or their At-
torney, | 0 10 0 |
| 2—But if the cause be contested, | 0 15 0 |
| 3—And by the defendant or defendants, his
or their Attorney, 10s. when on his
or their motions, to be paid before | |

	£	s.	d.
such motion made or allowed.	0	10	0
ART. 4— And by the plaintiff or plaintiffs, his or their Attorney in all causes by default when the cause is discontinued.			
	0	10	0
That in all causes of and above thirty pounds, and in all real and mixed ac- tions when the judgment is entered by default, or on confession, there be paid to the Prothonotaries as follows ;			
In causes by confessions.	1	0	0
In causes by default where no Enquête is had.	1	5	0
And in causes where an Enquête is had.	2	0	0

*That in all cases of opposition, the following be allowed and paid to the
Prothonotaries by the parties interested.*

On every opposition <i>afin d'annueller</i> , £	s.	d.
<i>afin de distraire</i> , or <i>afin de charge</i> , there be paid by the opposent on motion for the discontinuance of any such opposi- tion, and before such motion made or allowed.	0	10 0
And before motion made or allowed for hearing on the merits of such opposition for all Fees until judgment entered thereon.	0	15 0
On all oppositions <i>afin de conserver</i> where motion shall be made for discon- tinuing the same, and before such mo- tion made or allowed.	0	5 0

On the admission of any such opposition for a sum of or above thirty pounds, and for entering judgment thereon. £ s. d.
0 5 0

And for entering judgment, dismissing such opposition, to be paid by the party making the motion in his behalf, and before the same be received or allowed. 0 10 0

Upon every order or judgment, on motion for the payment of monies levied on Execution 5s. to be allowed in all cases as well below as above thirty pounds, and to be paid by the person demanding such order. 0 5 0

In cases of opposition *afin de conserver* for any sum below thirty pounds, there be paid by the opposant discontinuing the same, and before motion made or allowed in this behalf. 0 5 0

On admission of any such opposition, and entering judgment thereon. 0 5 0

And for entering judgment, dismissing such opposition on motion to be paid as above. 0 7 6

For entering every judgment of distribution, and engrossing a copy thereof, there be paid and allowed as follows :

When the sum levied and to be distributed, exceeds One Hundred Pounds, there be paid to the Prothonotaries. £ s. d.
0 17 6

When the sum levied exceeds Fifty Pounds, and not more than one Hundred there be paid. 0 12 6

When the sum levied exceeds Thirty £ s. d.
Pounds, but not more than Fifty there
be paid. 0 10 0

And when the sum levied is under Thir-
ty Pounds there be paid. 0 7 6

To be paid by the person demanding and
receiving the copy of such judgment.

And for all other duties performed or to be performed by the said Prothonotaries in their office, for the deposit of money in their hands, the execution of Commission Rogatoires, writs of execution, copies of judgment, or rules or orders of the Court, the said Prothonotaries shall be entitled to demand and receive the allowances made to them by the aforesaid Tarif of the 7th of June, 1815.

And it is ordered that in future all Fees due or to become due and payable by suitors in this Court, or their Attornies, for business done or to be done in Court, in any suit, cause or matter or thing now therein pending, or hereafter to be therein instituted, prosecuted or made, as well below as above Thirty Pounds currency, shall be advanced and paid by such suitors or Attornies in the following manner.

That in every cause by default or on confession, the fees due to the Prothonotaries shall be paid by the Plaintiff or Plaintiffs, his or their Attorney, before motion made or allowed for final hearing and Judgment, or before motion made or allowed for discontinuing the causes whether the same be by default or contested.

That in all contested causes there shall be paid by the Plaintiff or Plaintiffs, his or their attorney to the said Prothonotaries, the amount of their fees until final judgment entered in the causes, before motion made or allowed for final hearing thereon—and in case such hearing is to be had upon any motion or exception upon which the process may be quashed or the cause dismissed, the fees due to the Prothonotaries thereon, shall in like manner be paid before motion for such hearing made or allowed.

That there be paid to the said Prothonotaries by the defendant or defendants, his or their attorney, at the time of making any motion to quash the writ of process or of filing any plea of exception or plea to the merits and before such motion shall be made or allowed or such plea shall be received or filed all such fees as the said Prothonotaries may be entitled to claim from such defendant or defendants until final judgment entered on such motion or plea.

That upon all judgments entered and recorded in this Court during the present term or hereafter to be entered and recorded, the Prothonotaries shall not be held or bound to expedite or deliver any writ of execution thereon, until the fees due to them in the causes by the person or party demanding such writ of execution shall have been first paid.

SHERIFF'S FEES.

- | | |
|---|------------------|
| ART. 1—For the service of every Writ of Summons, including a Copy of the same, in personal action, not exceeding 20 <i>l.</i> Currency, | £ s. d.
0 5 0 |
| 2—For the like, in actions above 20 <i>l.</i> Currency, and not exceeding 30 <i>l.</i> Currency, | 0 6 8 |
| 3—For the like, in actions above 30 <i>l.</i> Currency, and in real and mixed actions, | 0 8 4 |
| 4—For every additional Copy, when more than one Defendant, one half more. | |
| 5—For the service of every Writ of attachment, or <i>saisie-arrest</i> , <i>saisi gagerie</i> or <i>entiercement</i> (writs of Attachment in the hands of third persons after judgment excepted) exclusive of the service of Summons, as above regulated, | 0 6 8 |

ART. 6—For the service on <i>tiers saisie</i> of every writ of attachment after Judgment, (the service of summons to the said <i>tiers saisie</i> included) exclusive of the service of summons on the Defendant.	£	s.	d.
	0	3	4
7—The same fee for such service on every other <i>tiers saisie</i> when more than one.	0	3	4
8—Warrant on every such writ and on every execution against the chattels, the body or real property.	0	2	6
9—For the service of every writ of <i>Cap. ad resp.</i> exclusive of the warrant and of the service of summons according to the above cases.	0	6	8
10—For drawing and engrossing a bail bond and execution thereof.	0	10	0
11—For the assignment of the same.	0	2	6
12—For service of a <i>venire facias</i> for a special Jury.	2	0	0
13—Ditto in causes above £50.	2	10	0

(The above to include all the duties on such service together
with the returns.)

14—For every return of <i>nulla bona</i> or <i>non est inventris</i> on every writ of execution.	£	s.	d.
	0	3	4
15—For the execution of every order to re-deliver goods attached, or for the discharge of a person arrested.	0	5	0
16—For the entry of every opposition.	0	5	0
17—For the return of the same.	0	2	6

ART. 18—For the return of every writ of execution when proceedings have had thereon with the said proceedings.	£	s.	d.
	0	5	0
19—For the service, levy and sales, on every execution whereby chattels or realties have been sold, two and a half per cent on the amount of sale.			
20—For every deed of sale of lands not exceeding £30 currency.	1	0	0
21—For ditto above £30 currency, and not exceeding £100.	1	10	0
22—For ditto above £100.	2	0	0
23—For the service of a writ of possession and return.	1	3	4
24—For ditto with the aid of <i>posse comitatus</i> .	2	6	8
25—For drawing advertisements and copies for the Printer and to publish at the Church door.	0	16	8
26—Ditto condition of sale.	0	6	8

Fees to be allowed to the Cryer and Assistant Cryer, or Bailiff attending the Court and Judges, and to each of them.

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<i>arret</i> or <i>gagerie</i> or entiercement in all actions above ten pounds sterling and not exceeding thirty pounds currency.	0	1	6
2—On ditto in all actions of debt above thirty pounds currency and not exceeding fifty pounds.	0	2	6
3—On ditto in all actions of debt above fifty pounds and in all actions of damage above thirty pounds and in real or mixt actions.	0	3	4

ART. 4 —On every rule of <i>nisi</i> to obtain an execution or <i>cap. ad sat.</i> or <i>contrainte par corps</i> .	£	s.	d.
	0	1	6
5 —On every <i>venire</i> for a Jury.	0	1	6
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Free access to be had to the Sheriff's Register of Executions gratis,	ib	ib
A copy thereof, with an Alphabetical index or reference, to be returned into the Prothonotary's office, on the first of January of each year,	ib	ib
Every person suing out a Writ of <i>Saisie Revendication</i> or <i>Saisie Arrêt</i> , must, on delivery of such process to the Sheriff, advance him a sufficient sum for the necessary expences of the execution thereof,	ib	59

Surrender.

Persons surrendered in discharge of special bail, not to remain in prison more than two Terms, after judgment recovered, upon which a Ca. Sa. might be obtained, unless a Ca. Sa. is lodged with the Sheriff, whereby the debtor may be charged and detained,	8	12
A defendant may surrender himself, or be surrendered by his bail, at any time previous to an assignment of the Bail Bond,	8	14
A like surrender may be made at any time before judgment against the bail, or previous to a rule upon the Sheriff to bring in the body on payment of all costs, that have arisen by reason of the assignment of the Bail Bond, or of prosecuting the bail,	ib	ib
A debtor may be surrendered and charged to the custody of the Sheriff in vacation, before one of the Judges,	ib	ib

T.

Trial by Jury,

Notice to be given by the party applying for a Jury to the adverse party to attend to strike the Jury,	30	49
How the Jury is to be struck,	ib	ib
Proceedings that may be taken if Plaintiff or Defendant, obtaining an order for trial by Jury, neglects to proceed during two days after issue joined,	ib	50
Notice of trial to be given by the party applying for such jury to the opposite party, two full days at least before the trial shall be had,	ib	50
<i>Venire Facias</i> to issue four days inclusive and the jury summoned twenty four hours before the return of the writ and the trial of the cause.	ib	51
No <i>venire facias</i> to issue or be made returnable for the trial of a cause in any term, after the 15th day of the month.	ib	51
No written evidence, except such as may be filed in the cause, and whereon the demand or defence may be founded and referred to in the pleadings, to be given to the jury or make part of the record.	ib	ib
After the jury are sworn, the parties, Plaintiff and Defendant shall be called, and if neither appear the jury shall be forthwith discharged. If the Plaintiff appear, and the Defendant do not appear, his default shall be recorded and the evidence of the Plaintiff shall be heard <i>ex parte</i> , and the verdict of the jury taken and judgment entered thereon.	ib	ib
If the Defendant appears and the Plaintiff do not appear, the Plaintiff's default shall be recorded, and judgment of non suit thereupon entered, dismissing the Plaintiff's action, <i>sauf à se pourvoir</i> , with costs to the Defendant.	30	52
1. after the jury sworn, the Plaintiff shall choose at any time before verdict to become nonsuit, and he shall withdraw from the Court, the Plaintiff shall be called and his default recorded, and judgment of nonsuit thereupon entered, dismissing his action <i>sauf à se pourvoir</i> , with costs to the Defendant.	ib	ib

V.

Venire Facias.

For summoning a Jury to issue four days inclusive, and the jury summoned twenty four hours before the return of such writ and trial of the cause.	ib	51
No <i>venire facias</i> to issue or be made returnable for the trial of a cause in any Term after the 15th day of the month.	30	51

W.

Witness.

To be examined by one Counsel and no more, and cross-examined by one Counsel and no more.	21	30
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Witnesses.

No allowance to be made for subpoenaing more than six for each issue joined.	27	35
List of, to be filed in the proceedings.	ib	ib
About to depart the Province, not to be examined until issue joined on the merits.	ib	ib
The examination of, in vacation, to be moved for in Term.	ib	ib

Writs.

To be tested on the day they issue.	21	29
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ADDITIONAL.

Costs.

No general rule respecting costs shall limit the order of the Court made under special circumstances, and no fees granted by Tariff or Rule for the performance of certain business, shall be demandable when the Court or a Judge shall not consider such business to have been regularly and necessarily performed.	40	65
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Of Debtors in Gaol.

Their alimentary pension to be paid into the hands of the gaoler on Monday on or before twelve o'clock in the forenoon.	41	ib
Debtors claiming to be discharged in consequence of non-payment thereof, must make oath that a demand had been made, by themselves or some one on their behalf, on the gaoler.	ib	ib
The Gaoler to keep a register containing the hour of receiving and paying the same.	ib	ib
Copies of these three Rules, in both languages and certified by the Prothonotaries, to be conspicuously posted up in the Debtors' Ward in the Gaol.	ib	66

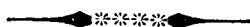
Actions of Assumpsit.

In such actions, the Plaintiff must specify in his declaration all such declarations from the gross amount claimed as may be in his knowledge; and to conclude for the remainder only—And, he also, must file an Exhibit specifying such deductions and containing a notice of the precise amount of his demand.	42	66
Every plea must contain the specific grounds of defence;—and no evidence will be received unless in support of the special matters mentioned in the Plea or Declaration.	ib	67

Saisie Arret.

No final judgment shall be made against a <i>Tiers Saisi</i> in consequence of non attendance, unless it shall be proved that the service has been made on him personally—and, in every other case of legal services at his domicile, the judgment against the <i>Tiers Saisi</i> in default, shall be provisional, admitting to appear on a future day.	39	61
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RULES AND ORDERS OF PRACTICE IN THE PROVINCIAL COURT OF APPEALS.



PROVINCE of LOWER-CANADA.	}	In the Provincial Court of Appeals of the Term of January, in the forty- ninth year of the Reign of Our Sove- reign LORD GEORGE THE THIRD, by the Grace of GOD, of the United Kingdom of <i>Great-Britain and Ire-</i> <i>land</i> , KING, Defender of the Faith.
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THURSDAY, 19th JANUARY.

PRESENT,

The Honorable JONATHAN SEWELL, Chief Justice of the
Province,

The Honorable and Rt. Rev. the LORD BISHOP of QUEBEC,

The Honorable JAMES MONK, Chief Justice of the Court
of King's Bench for the District of Montreal,

The Hon. THOMAS DUNN, FRANCIS BABY, JAMES M'GILL, JOHN YOUNG,	JENKIN WILLIAMS, P. LOUIS PANET, P. AMABLE DEBONNE, JOHN RICHARDSON.
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WHEREAS in and by the Ordinance made and Preamble.
passed in the twenty-seventh year of the reign of
our said Sovereign Lord GEORGE the THIRD,
intituled " An Ordinance to continue in force for
" a limited time an Ordinance made in the twenty-
" fifth year of his Majesty's reign, intituled " An

“ Ordinance to regulate the proceedings in the
“ courts of civil Judicature and to establish trials
“ by Jury in actions of a commercial nature and
“ personal wrongs to be compensated in damages,
“ with such additional regulations as are ex-
“ pedient and necessary. It is amongst other
“ things enacted and declared, That the provincial
“ court of appeals shall have authority to make
“ rules and orders, to regulate, effectuate and ac-
“ celerate the proceedings in all causes of appeal
“ for the advancement of Justice and to prevent
“ unnecessary delays and expence in the same.”
And whereas also in and by the provincial statute
made and passed in the forty-first year of the reign
of our said Sovereign Lord GEORGE the THIRD,
intituled, “ An Act to amend certain forms of
“ proceeding in the courts of civil Judicature in
“ this province and to facilitate the administration
“ of Justice,” It is amongst other things enacted
“ and declared, That the different courts of civil
“ Judicature in this Province shall have power and
“ authority to make and establish orders and rules
“ of practice in the said courts in all civil matters,
“ touching all services of process, execution and
“ returns of all writs, proceedings for bringing
“ causes to issue, as well in term time, as out of
“ term, and other matters of regulation within
“ the said courts.” It is therefore ordered by
the court of our Lord the King now here as fol-
lows, That is to say :—

IT IS ORDERED,

Court to be
opened at 10
o’Clock.

I.—That on the first day of each term the court
be opened at the hour of ten in the forenoon, and
at the same hour of ten in the forenoon of each
succeeding day in each term, not being a sunday
or a holiday.

King’s Coun-
sel, &c. to be

II.—That the King’s Counsel and all Barristers
who do or shall practice in this court and the

clerk of this court do appear when in court habited in black, and in such robes and bands as are worn by the King's Counsel and Barristers and by the Clerks of His Majesty's courts in Westminster Hall respectively, with their hair in bags as heretofore hath been used ; and that no King's Counsel or Barrister be heard in any cause who is not habited as herein is directed.

habited in black, &c.

III.—That the office of the clerk of this court be kept in the court house of the district of Quebec in the room therein assigned and now used for that purpose. That all records, registers, books and papers of and belonging to this court be kept at all times for safe custody in the said court house, and be not thence removed or taken away, upon any pretence whatsoever, by any person or persons whomsoever without the order of this court or some one of the Judges thereof in writing, for the proper use of this court or of such Judge or Judges.

Office of the Clerk to be kept in the Court House of Quebec, Records not to be thence removed without order.

IV.—That the office of the clerk of this court during every subsequent term be open from the hour of nine in the morning until the hour of five in the afternoon of every day, Sundays and Holidays excepted, and during every subsequent vacation from the hour of ten in the morning until the hour of two in the afternoon of every day, Sundays and Holidays excepted. That during all such office hours regular and continued attendance be given in the said office by the clerk of this court or by some sufficient person on his behalf, and that the King's Counsel, Barristers and Attorneys who shall be concerned for any party or parties appellant or respondent in any suit depending in this court during all such office hours as aforesaid, shall have free access to the record and proceedings in such suit transmitted from the court below, with free liberty to peruse and examine such record and proceedings when and so often as they shall see fit, and to take copies by them-

Office hours appointed, attendance to be given, and Attorneys, &c to have free access to the Records during office hours.

selves or by their clerks of such parts and of so much thereof as they shall think necessary or expedient, without fee or reward of any kind to the clerk of this court ; save and except the fee of 11s. 8d. heretofore and now allowed to him for communication of the record.

Schedule of suits to be kept by the Clerk, & laid before the Court on the first day of each Term.

V.—That a schedule of all suits depending in this court specifying in each suit the names of the parties, appellant and respondent, the date of the writ of appeal, the date of the return thereof, if made, and the default of such return, if not made, the names of the Attorneys who shall have fyled appearances for the appellant and respondent, respectively, the dates of such appearances and of each and every of them ; and the default of every such appearance if not fyled ; the days on which the reasons of appeal and answers thereunto (if fyled) have been fyled respectively ; the days on which the cases of the appellant and of the respondent, if fyled, have in like manner been fyled, and the default of such reasons, answers and cases respectively, if not fyled ; the day on which such suit, if inscribed upon the roll for hearing hath been so inscribed, and the day which in consequence of such inscription is fixed for the hearing of such suit, shall be made and kept by the clerk and laid before this court upon the first day of each succeeding term, and such schedule shall be deemed and taken to be in all suits therein mentioned an official certificate by the clerk of this court of the state of such suits, and of each of them respectively upon the first day of the term upon which such schedule shall be so laid before this court, and to be complete evidence to all intents and purposes of the several matters therein set forth, and contained, and of each and every of them.

Every Attorney to file an entry of his name & place

VI. That every Attorney of this Court before the first day of March next shall make and file with the clerk of this Court, under his signature

an entry in writing of his name and place of abode, and every Attorney hereafter to be admitted shall upon his admission make and file a like entry ; and as often as any such Attorney shall change his place of abode he shall make and file a like entry of such change, and all Pleadings, Summonses, Orders, Rules and Notices which do not require personal service, shall be deemed and taken to be sufficiently served, on such Attorney, if a copy thereof be left at the place last entered as aforesaid by such Attorney, with any grown person resident at or belonging to such place ; and if any Attorney shall neglect to make such entry, he shall be deemed and taken to be resident without the limits of the City of Quebec, and bound to constitute an agent as herein-after is directed.

of abode, penalty for neglect, service of rules, &c. at such place of abode when sufficient.

VII. That every Attorney who not being resident within the limits of the City of Quebec shall intend hereafter to practice in this Court shall, by an appointment in writing, under his signature, constitute some other Attorney of this Court, resident within the limits of the said City of Quebec his agent, which appointment shall specify the place of such agent's abode, shall be subscribed or indorsed with an acceptance of such appointment by such agent under his signature, and shall be filed in the Office of the Clerk of this Court and by him be recorded in the register ; and all pleadings, Summonses, Orders, Rules, Judgments and Notices which shall be served, as herein before ordered in cases of service upon Attorneys, upon any agent so appointed shall be deemed and taken to be well and sufficiently served upon the Attorney who shall have so appointed such agent, and upon the party or parties for whom such Attorney in the suit or suits to which such pleadings, Summonses, Orders, Rules, Judgments and Notices respectively relate, shall have appeared, unless the appointment of such agent shall have been superseeded by the appointment of another agent made in

Attorneys resident out of the limits of Quebec, to constitute agents, penalty for neglect, service of rules, &c. on agents when sufficient.

like manner, with leave of the Court upon motion for that purpose, first had and obtained, or the matter be such as shall require a personal service thereof upon such party or parties ; and from and after the first day of March next, no Attorney who shall be resident without the limits of the City of Quebec shall sue out any writ of appeal or otherwise practice as an Attorney of this Court in any manner whatsoever, until such appointment of an agent as is herein-before directed shall be made, filed and registered as herein-before is ordered.— And all suits now pending in this Court undetermined, in which any Attorney not resident within the limits of the City of Quebec shall have appeared for any party or parties, appellant or appellants therein, and shall not, on or before the said first day of March next file such appointment of an agent, as herein before directed, shall be deemed and taken to be deserted by such appellant or appellants, and thereupon dismissed with costs accordingly, upon the first or any subsequent day in term thereafter, upon motion for that purpose on the part of the respondent or respondents or either of them or by the Court *Ex Officio*, without such motion as may happen ; and all suits now pending in this Court undetermined in which any Attorney not resident within the limits of the City of Quebec shall have appeared for any party or parties, respondent or respondents therein, and shall not on or before the said first day of March next file such appointment of an agent as is herein before directed, shall be deemed and taken to be in the same plight and condition as if no appearance for such respondent or respondents had ever been entered, and such course shall and may be had thereupon as in suits *ex parte* is by law directed.

Postage of
Records to be
deposited u-
pon issuing
the writ in
Appeal from

VIII.—That no writ of appeal from any interlocutory or definitive judgment given in the Court of King's Bench for the district of Montreal or in the Court of King's Bench for the district of

Three-Rivers, shall issue in any suit until the party appellant in such suit shall have deposited in the hands of the Clerk of this Court the sum of four pounds to defray the postage of the record in suit; and the overplus if any there be, shall by the Clerk of this Court be paid to such appellant upon demand.

Montreal and
Three-rivers.

Writs of Ap-
peals when
to be tested.

IX.—That every writ of appeal as well from an interlocutory as from a definitive judgment to be hereafter issued, shall be tested upon the date on which the same shall issue; and every such writ shall be returnable in fifteen days from the day of the test thereof.

X.—That every Prothonotary who without lawful cause shall refuse or neglect to make return of any writ of appeal which shall be issued in any suit and by him be received within the period thereby allowed for the return thereof shall be deemed and taken to be guilty of a contempt of this Court.

Prothonota-
ries neglect-
ing or refus-
ing without
lawful cause,
to return
writs of Ap-
peal guilty of
contempt.

XI.—That no writ of Appeal from any definitive or interlocutory Judgment sued out by an Attorney of this Court shall issue in any suit until an appearance for the appellant or appellants in such suit and a *præcipe* for such writ under the signature of such Attorney or of his agent in his behalf shall be filed in the office of the Clerk of this Court; and no other appearance for such appellant or appellants shall be required or received except in the case of a change of Attorneys upon motion for that purpose, and the order of this Court thereupon.

Writ of Ap-
peal not to is-
sue without
an appearan-
ce for the ap-
pellant and a
præcipe.

XII.—That every writ of appeal as well from an interlocutory as from a definitive Judgment, which shall hereafter be issued shall be signed by the attorney of this court upon whose *præcipe* such writ shall issue or by the agent of such Attorney on his behalf, if such Attorney be not resident within the limits of the City of Quebec.

Every writ
of appeal to
be signed by
the Attorney
for the appel-
lant or his a-
gent.

XIII.—That personal service of any writ of Ap-

What ser-
vice of a writ

of appeal shall
be sufficient.

peal upon the Attorney who has appeared in the Court below, for the respondent or respondents, or in default of such service upon the respondent or respondents, at his, her or their domicile or in default of such domicile, upon the Attorney *ad negotia* upon record in such suit, shall be held and taken to be a good and sufficient service of such writ, with respect to such respondent or respondents so served in such cases respectively.

Papers composing a record, to be numbered & accompanied with an index.

XIV.—That the writs, pleadings, exhibits and other paper writings which shall form and compose any record to be hereafter transmitted to this Court, shall be marked at the head of each respectively, by the Prothonotary of the Court transmitting such record, separately, numerically, and progressively, from number one to the number indicating the entire number of such writs, pleadings, exhibits and other paper writings, and that an index of reference to the whole and to each by number, title and description, under the signature of such Prothonotary, be by him annexed to such record.

Appearance for the respondent, when to be filed, penalty for neglect.

XV.—That the respondents in every suit and appeal depending in this Court, and each of them do file their appearance in such suit in the office of the Clerk of this Court, on or before the eighth day next after the day of the return of the writ of Appeal in such suit issued, and in default thereof such respondent or respondents shall be precluded filing any appearance in such suit, and thereupon this Court will proceed to hear the matter of such suit and of the Appeal therein depending *ex parte* on the part of the appellant only, and proceed to judgment therein without the intervention of such respondent or respondents.

Reasons of appeal, when to be filed if demanded, penalty for neglect.

XVI.—That the reasons of Appeal in every suit be filed within eight days after the return of the writ and the transmission of the record and proceedings, without any motion or other application for that purpose, and if the reasons of Appeal shall

not be so filed, it shall be competent to the respondent's Attorney and to his agent, on his behalf by notice in writing, under his signature directed to the Attorney for the appellant in such suit, to demand the reasons of Appeal, and if the reasons of Appeal within four days after service of such notice and demand, shall not be filed, upon motion of the respondent by his Counsel founded upon due proof of the service of such notice and demand, and a certificate of the Clerk of this Court that such reasons of Appeal were not so filed, such suit and the Appeal therein depending, shall be dismissed with costs.

XVII.—That every Suit and Appeal in which the reasons of Appeal shall not be filed within one Calendar month from the day of the return of the writ of Appeal issued in such suit, shall be deemed and taken to be deserted by the appellant or appellants in such suit so neglecting to file such reason of Appeal, and thereupon dismissed with costs accordingly, upon the first (or any subsequent) day in Term thereafter, upon motion for that purpose on the part of the respondent or respondents, or either of them, or by the Court *Ex Officio* without such motion, as may happen.

Reasons of appeal, when to be filed if not demanded; penalty for neglect.

XVIII.—That the issue in every suit in Appeal shall be completed by the reasons of Appeal, and the answers to such reasons of Appeal, and that the answers to the reasons of Appeal be filed in every suit within four days from the day on which the reasons of Appeal in such suit shall be filed; and if the answer to such reasons of Appeal shall not be so filed, it shall be competent to the appellant's Attorney, and to his agent, on his behalf, by notice in writing, under his signature, directed to the Attorney for the respondent in such suit, to demand the answers to the reasons of Appeal, and if such answers within two days after service of such notice and demand, shall not be filed, such

Answers, when to be filed, if demanded, penalty for neglect; issue, how completed.

respondent upon motion of the appellant by his Counsel founded upon due proof of the service of such notice and demand, and a certificate of the clerk of this court that such answers were not so filed, shall be wholly precluded from filing answers to such reasons of Appeal and thereupon this court will proceed to hear the matter of such suit and of the Appeal therein depending, *ex parte* on the part of the Appellant only, and proceed to judgment therein, without the intervention of such respondent.

Answers,
when to be fi-
led, if not de-
manded, pen-
alty for neg-
lect.

XIX.—That every suit in which the answers to the reasons of Appeal shall not be filed within ten days from the day on which the reasons of Appeal in such suit shall be filed, shall be deemed and taken to be deserted by the respondent and respondents in such suit so neglecting to file such answers, and such respondent and respondents wholly precluded from filing answers to such reasons of Appeal, and thereupon this court will proceed to hear the matter of such suit and the Appeal therein depending, *ex parte*, on the part of the Appellant only, and proceed to judgment therein without the intervention of such respondent.

Copies of
all pleadings
to be served,
penalty for
neglect.

XX.—That a copy of each pleading which shall be filed in any suit depending in this court duly certified under the signature of the Attorney by whom the same shall be filed or his agent, shall be served upon the Attorney of the adverse party in such suit or his agent, upon the day on which such pleading shall be filed, and in default thereof such pleading shall not be deemed or taken to be filed, and such course thereupon shall and may be had in such suit as might be pursued if such pleading had never been filed.

Cases,
where and
when to be
filed, penalty
for neglect.

XXI.—That the cases of the Appellant and respondent in each suit and Appeal to the number of six on each side shall from henceforth be filed by the Appellant and respondent respectively in

the office of the clerk of this court within ten days after the filing of the reasons of Appeal and be by him distributed to the members of this Court who shall sit for hearing of such suit and Appeal, and each suit and Appeal in which the Attorney for the Appellant shall not so file his cases shall be deemed and taken to be deserted by such Appellant, and thereupon dismissed accordingly upon the first or any subsequent day in term thereafter, upon motion for that purpose on the part of the respondent or respondents, in such suit and Appeal, or either of them or by the court *Ex Officio* without such motion, as may happen, with costs when the respondent shall have filed his cases, and without costs to either party when the respondent shall not have filed his cases; and each suit and Appeal in which the Appellant shall have so filed his cases, and in which the respondent shall not have so filed his cases, shall be deemed and taken to be deserted by such respondent and the Appellant heard therein *Ex parte*, without the intervention of the respondent, his Counsel or Attorney, and such order and decree thereupon made, as to law and justice shall appertain, without costs in any such case to such respondent.

XXII.—That when and so soon as the answers to the reasons of Appeal in any suit and Appeal shall be filed, it shall be competent to either party in such suit having filed their cases to set down such suit for hearing upon such day in term as such party shall see fit; by inscribing such suit on a roll for hearing to be kept by the Clerk of this Court for that purpose, in vacation or in term, and two days notice thereof being served upon the adverse party, such suit and Appeal, upon proof of the service of such notice, shall come on to be heard upon the day so fixed or as soon thereafter as Counsel can be heard. And no suit and Appeal so fixed for hearing shall be put off without a special application to the Court to be

Appeals,
when to be set
down for hear-
ing upon is-
sue joined by
the parties.

made before the day so fixed (if any other than the first day of term) upon some sufficient ground to be authenticated by affidavit after one day's notice to the adverse party and due proof of the service of such last mentioned notice.

Appeals,
when to be set
down for hear-
ing ex parte
by the Ap-
pellant.

XXIII.—That when and so soon as the respondent or respondents in any suit, as the case may be, shall be precluded from appearing or having appeared shall be precluded from filing answers in such suit, it shall be competent to the Appellant or Appellants in such suit having filed his or their reasons of Appeal and cases to set down such suit for hearing upon such day in term as he or they shall see fit, by inscribing such suit on the roll for hearing, without notice thereof to the respondent or respondents so precluded, or to any or either of them, and no suit so fixed for hearing shall be put off without a special application to the Court to be made before the day so fixed (if any other than the first day of term.) upon some sufficient ground authenticated by affidavit.

Appeals,
when to be set
down for hear-
ing by the
Court.

XXIV.—That all suits and Appeals which shall not be set down for hearing upon the motion of the Appellant or of the respondent in each suit and Appeal respectively, on or before the last day of the term next after the day upon which the reasons of Appeal in such suit and Appeal shall be filed shall forthwith by the Clerk of this Court be inscribed upon the roll for hearing in succession, according to the days upon which the reasons of Appeal in each such suit and Appeal respectively shall be filed, and such suits and Appeals so inscribed and each of them shall thenceforth be and remain, set down for hearing until heard or otherwise disposed of, and if not otherwise disposed of shall be called on and come on to be heard upon the first and subsequent days of the then next ensuing term and terms in the order in which they shall be so inscribed, and no suit or Appeal so inscribed upon the roll for hearing shall be taken

therefrom, nor shall the hearing thereof be put off without a special application to the Court upon some extraordinary and sufficient ground to be authenticated by affidavit after two days notice to the adverse party, and due proof of the service of such notice.

XXV.—That all suits which by order of the court *ex officio*, or upon motion shall be set down for hearing on any particular day, shall be called on and heard upon such day (or as soon thereafter as Counsel be heard) according to the dates of such orders respectively and such suit so set down being heard, the suits inscribed upon the roll for hearing by the Clerk of this Court under and by virtue of the next preceding rule of practice and not otherwise disposed of, shall then be called on and heard as therein is directed.

Orders of hearing for causes set down to be heard.

XXVI.—That every suit and Appeal fixed for hearing, in which (such suit being called on) the Appellant and respondent do not appear or are not ready to proceed shall be dismissed without costs to either party. That every suit and Appeal fixed for hearing, in which (such suit being called on) the Appellant doth not appear, and the respondent doth appear, shall be dismissed with costs to such respondent, and that every suit and Appeal fixed for hearing in which (such suit being called on) the respondent doth not appear and the Appellant doth appear and be ready to proceed, shall be heard on the behalf of such Appellant so appearing *Ex parte*, and such order and decree thereupon made as to law and justice shall appertain, without costs in such case to such respondent.

Courts to be pursued when the appellant & respondent respectively, do not appear on the day fixed for the hearing or are not then ready to proceed.

XXVII.—That, in all suits which shall hereafter be heard in this Court, no more than two Counsel shall be heard, in opening or in answer, and one only in reply.

Counsel, how many may be heard.

XXVIII.—That when and so often as this Court shall be moved in any suit upon any special matter not appearing upon the record or proceedings filed

Motion upon special matters not appearing on the

record, to be
founded on
Affidavit and
two days no-
tice.

in such suit, such special matter, shall previously be authenticated by affidavit duly made before one of the Judges of this Court, and a copy thereof and two days notice of such motion shall be duly served upon the opponent or opponents, if such there be in such suit, of the party making such motion. And no such motion shall be made or received until such affidavit of such special matter and an affidavit of such service of such notice as aforesaid, shall be read and filed.

All facts es-
sential to the
support of
Motions upon
the com-
plaints of di-
minution, &c.
to be authen-
ticated by af-
fidavit, two-
days notice of
such motions
to be given,
and no such
motions to be
received after
the filing of
the reasons or
answers res-
pectively, un-
less the right
to make such
motion be
therein reser-
ved.

XXIX.—That in like manner when and so often as this Court shall be moved in any suit on the part of the appellant or respondent upon any suggestion or complaint of diminution or of an irregular, imperfect or undue return in any respect, or upon any application to dispense with, change or moderate security, all facts essential to the support of such motions or either of them not appearing upon the record or proceedings filed in such suit shall previously be authenticated by affidavit duly made before one of the Judges of this Court, and a copy thereof, and two days notice of such motion shall be duly served upon the opponent (or opponents, if such there be in such suit) of the party making such motion. And no such motion shall be made or received until such affidavit of such facts (if such there be) and an affidavit of such service of such notice as aforesaid, shall be read and filed. Nor shall any such motion be made and received in any suit (in which the records and proceedings in such suit shall have been transmitted by the Court below,) at any time after the filing of the reasons of Appeal, by such appellant or of the answers to the reasons of Appeal, by such respondent respectively, those cases excepted, in which the right of making such motions upon the face of such reasons, or answers respectively shall be expressly saved and reserved.

Every mo-
tion for an

XXX.—That when and so often as this Court shall be moved in any suit for an Appeal from any

interlocutory judgment, such motion shall be accompanied with copies of such interlocutory judgment, and of the pleadings filed in such suit, together with copies of all exhibits filed, and of all proceedings had in such suit in the Court below from the commencement thereof until the entry of such Judgment in any way essential to the support of such motion; And every such motion which shall not be accompanied with such copies duly certified under the Signature of the Prothonotary of the Court below, shall be dismissed with costs, and no such motion shall be made or received at any time whatever after the first day of the term of this Court next after the day of the date of such interlocutory Judgment, the April term of this Court excepted, during which any such motion shall be received until the sixth day of the term inclusive.

appeal from an interlocutory judgment to be accompanied with copies of the pleadings and of all exhibits and proceedings essential to the support of the motion.

Such motions when to be made.

XXXI.—That every writ of appeal which shall be granted or awarded from any interlocutory Judgment shall be sued out within two days after the date of the rule or order of this Court by which such writ shall be so granted or awarded, and in default thereof such writ shall not issue, and such Rule or Order shall no longer operate as a supersedeas of all or any proceedings in such suit, in the Court below.

Every writ of appeal from an interlocutory judgment to be issued within two days after the allowance thereof.

XXXII.—That all Pleadings, Notices, Summonses, Rules, Orders and Judgments, and all other matters of which service is or shall be required upon any party in any suit depending in this Court shall be served upon the Attorney who in this Court shall have appeared for such party or his agent, and in default of such appearance, upon the Clerk of this Court at his Office, to be by him filed with the proceedings in such suit, those instances excepted in which personal service upon such party is by law, by some Rule or Order of practice or by some especial Rule or Order made in such suit, expressly directed.

Pleadings, notices, &c. how to be served.

Delays, &c.
how to be
computed.

XXXIII.—That in all computations of time or delay upon any Writ, Summons, Rule, Order or Judgment of this Court, or upon the filing or service of any such Writ, Summons, Rule, Order or Judgment, or of any pleading or notice, and generally upon and in all proceedings whatsoever not otherwise particularly provided for, the day on which such Writ, Summons, Rule, Order or Judgment shall be made, or upon which the filing or service of any such Writ, Rule, Order, Judgment, or of any such Summons, Pleading or Notice shall be had, or upon which such other proceedings aforesaid shall in like manner be had, shall not be reckoned or counted to be one, but every other day to which such computation of time shall refer Sundays and Holidays not excepted, shall be reckoned and counted to be one, and no fractions of time shall in any such computation be made or allowed, it being nevertheless provided that in all cases, in which any period allowed by any Writ, Summons, Rule, Order, Rule of Practice or Judgment of this Court, shall expire upon a Sunday or Holiday, such period shall *ipso facto* stand enlarged until the then next juridical day.

Copies of
judgments in
appeal, to be
transmitted
with the re-
cord to the
Court below.

XXXIV.—That a copy of each and every judgment in consequence or by virtue whereof any record in any suit depending in this Court shall be remitted to any Court below, shall be annexed to such record and therewith remitted under the certificate and signature of the Clerk of this Court.

These rules
extended to
all suits in
Error.

XXXV.—That the rules and orders of practice herein before provided for suits in appeal, shall be deemed and taken respectively to extend to all suits in error.

Fees to be
allowed to
Counsel, &c.

XXXVI.—That the several fees by the Ordinance made and passed in the 20th year of the reign of our present Sovereign Lord GEORGE the THIRD, intituled, "An Ordinance for the regulation and establishment of fees" allowed to the Counsel, Attorneys and Officers of the Court of

Appeal for services by them done and performed, shall continue and be allowed to the Counsel, Attorneys and Officers of this Court for the like services when done and performed by them respectively until a table of fees shall be made and published.

XXXVII —That all Rules and Orders of Practice heretofore made by the Provincial Court of Appeals for the late Province of Quebec and adopted by this Court and all Rules and Orders of Practice heretofore made by this Court be and the same and each and every of them are hereby rescinded and annulled.

Former rules
of practice re-
scinded.

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