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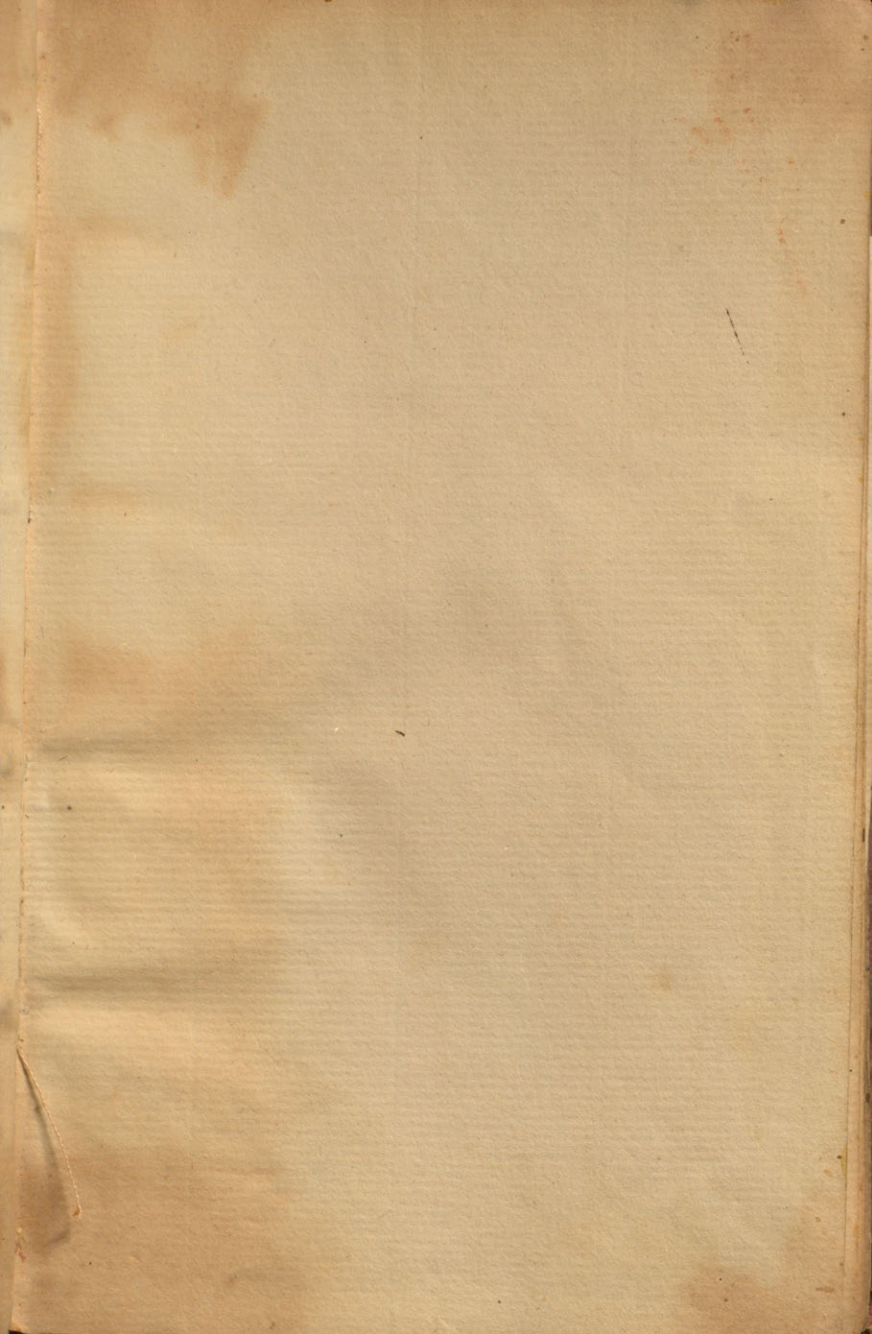
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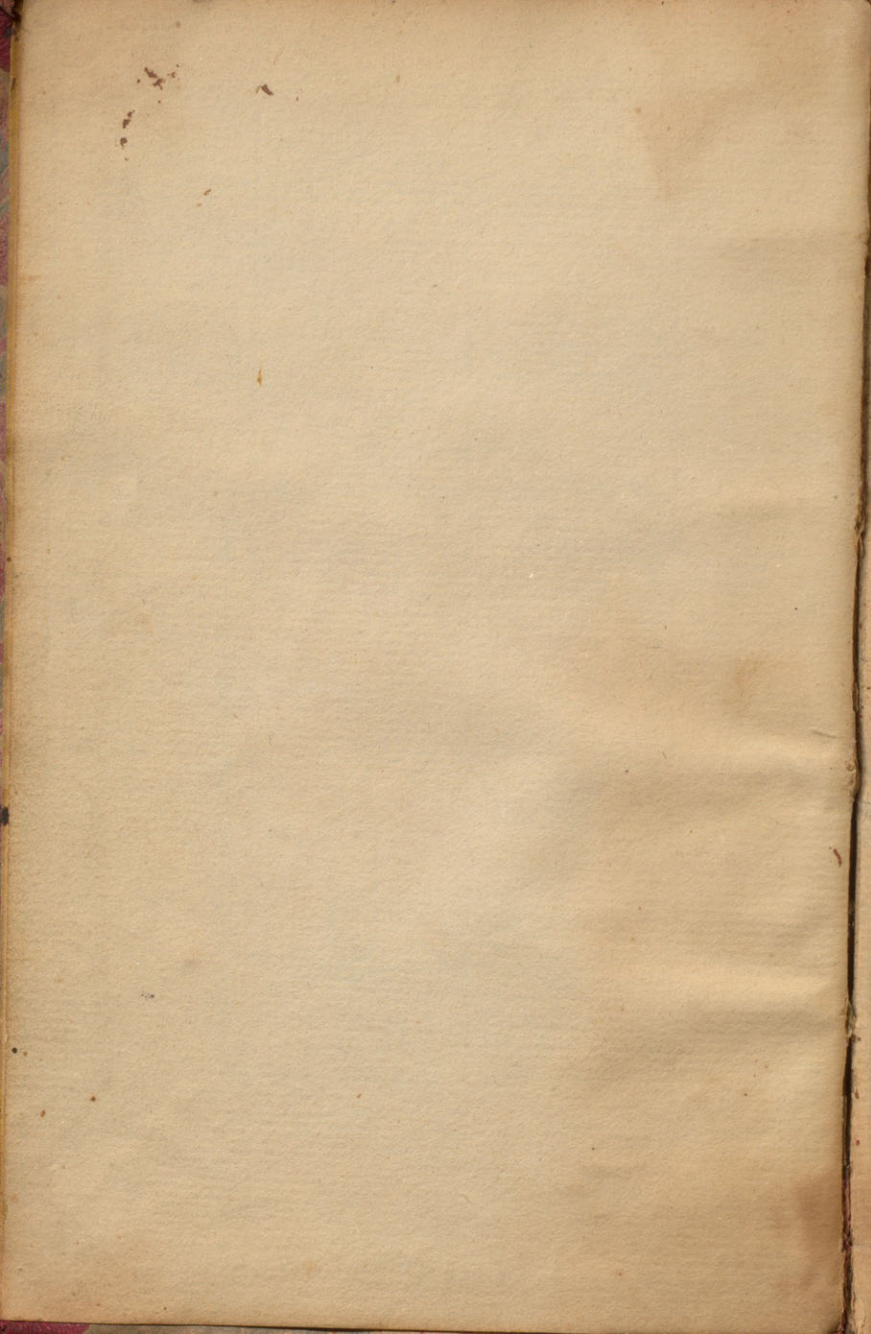


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Book
Case





1st Part
Rules and Orders
of His Majesty's Court of
Kings Bench.

made and published on the first
day of April 1795, being the first
day of Term, at Montreal

Province
of
Lower Canada

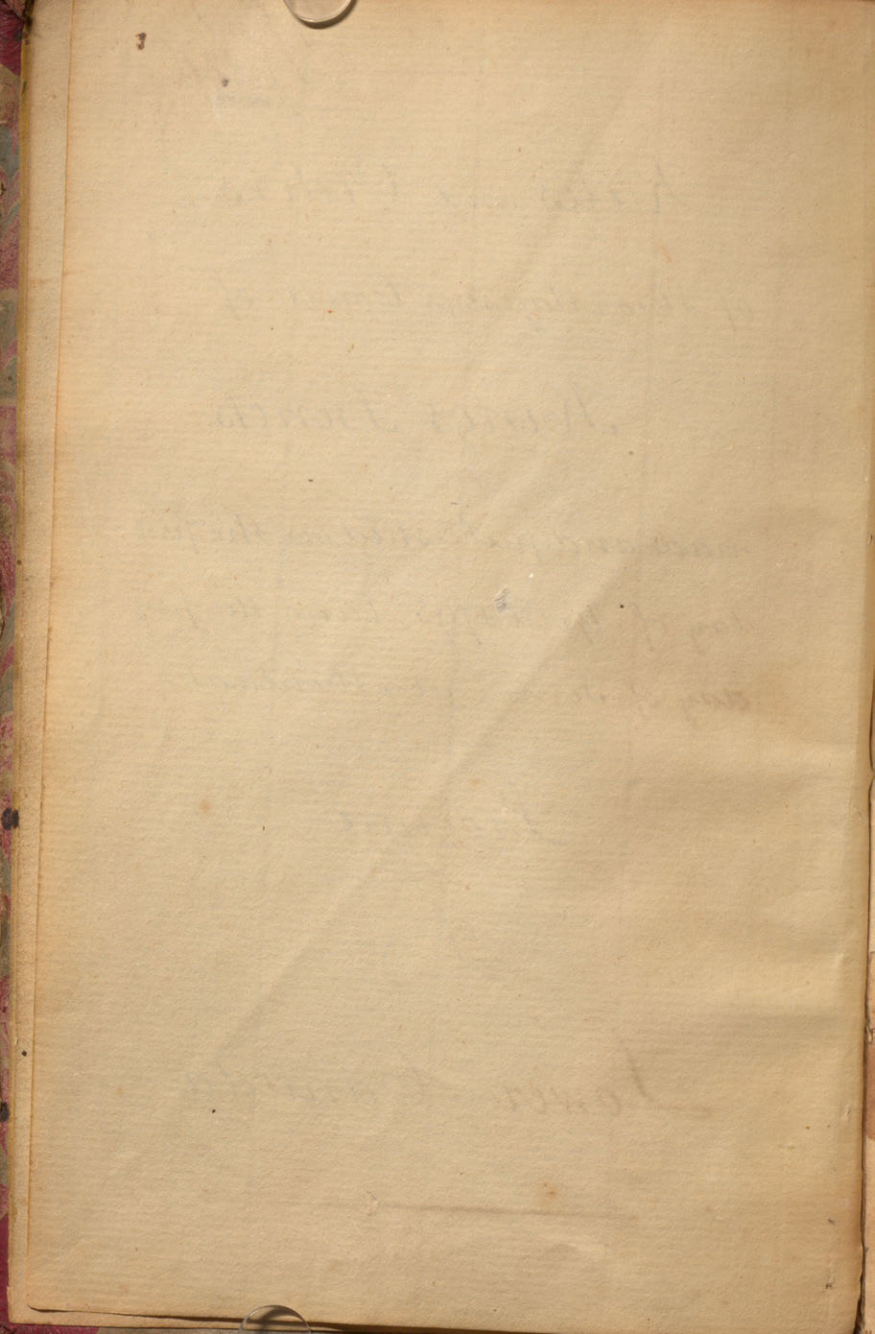


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Roll of Attornies.

Arthur Davidson.	admt.	2 Oct. 1771.
Robert Russel	—	June 1779
Thomas Walker	—	1779.
John Antill.	—	
Louis Ch ^r . Foucher.	—	24 July 1787.
Stephen Sewell.	—	
David Ross	—	7 Decr. 1792.
James Reid.	—	18 June 1795.

1
Court of Kings Bench. —

April Term

1795.

Rules and Orders. —

Whereas certain Rules of Practice, made by the late Court of Common Pleas of this District, do not appear adequate to direct the proceedings and practice of this Court, — Therefore.

It

It is ordered

That the said Rules and orders be rescinded, and that the following be strictly observed, by all Attornies, Advocates and others, whom the same may concern. —

Section. 2. 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 the distance of one mile therefrom, due service of such writ or Process, shall be made

made

made two whole days, (i. e) forty eight hours, previous to the Return thereof. ~

2. And that 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 & Suburbs of Montreal, and within a ~ distance not exceeding fifteen leagues, due service shall be made five whole days previous to the Return of the said Process. ~

4. And where such residence may be from fifteen to twenty leagues distance, the service shall be

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. ~

Section. 3.Of Return of Process

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 openly called for appearance, and the legal course of pleadings taken thereupon

Of Appearance, Domicile
and Default. —

1. If at the return of process, the Defendant shall personally appear in Court, to defend any action or Suit 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. —

2. And where any Defendant may fail to elect such Domicile, the plaintiff may proceed in the
Cause

Cause, by regular service of Rules and all 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. —

A. And in all cases of non-appearance and default, proceedings thereon shall be had in conformity to an Ordinance passed in the 25th Year of His Majesty's Reign ch. 2. and the Course of the Law in that respect provided. —

It.

5. It is ordered that in all causes where a return of service be made on any process of summons, and that the defendant may not personally, or 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 such 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 plaintiff's demand be examined heard and adjudged upon ex parte at such day as may be appointed for that purpose.

Concerning Attornies, prosecuting
or defending Causes. —

It is ordered. —

1. That after this present Term,
no Attorney shall sign any writ,
process, or declaration, nor appear
for, nor defend, any person in
this Court, unless he may be thereto
first 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 in this Court.

nor

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 Court, or 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. —

A. And every Attorney, newly coming in, shall take notice, at his peril, of all rules, whereunto the former Attorney was liable, if he had continued. —

5. Capias ad respondendum.

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; 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 until the affidavit aforesaid shall be filed of record.

Section. 6.

Of Aliens non-resident, prosecuting Suits or Claims. — — — —

It is ordered. — That every alien, who may not be a resident and House-holder within this Province, for the space of six Months, and who lawfully may prosecute Suits in this Court, and shall institute any action or claim therein, shall give security for the payment of Costs, in case of failing in the said action or demand, if the same be required by any Defendant or adverse party in the Suit; and failing to give
such

such Security, when demanded,
all proceedings, on the part of
such Alien, shall cease, and
determine. —

Of Declarations. —

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 pleas 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

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. 8.

Of filing Deeds &c. whereon any action may be grounded. —

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

make his full defence. — And that the Plaintiff do file with all such writings, a certified list thereof. —

Rule of Practice published in Court the 15th February 1798.

To the end that all the evidence taken in any Cause may be certainly known and established of Record.

3 It is ordered that in all Causes where the sum prosecuted for may be above twenty pounds Sterling, or where an Appeal may lie, and any depositions of witnesses or witness may be taken, That the Prothonotary do enter in
the

the Register of this Court a regular list of the names of the witnesses so examined, and the period when the respective depositions were taken; And also that he do file with the proceedings in the Cause a certified Copy of the same. —

Rules Published in Court 5th Octr.
1798.

— . Of Withdrawing Exhibits. —

It is ordered that the Prothonotary of this Court do not in any Cause where final Judgment may be made, grant, during the term or Sitting of this Court to any Party in any such suit, or their Attorney, any exhibit or paper filed as evidence therein unless under the express order of this Court therefor. Nor shall any party inter-
-ested

rested obtain any such exhibit 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. —

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 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. —

of Exhibits to be filed of
Record,

Whereas great irregularities have arisen, and unnecessary expences been created, by filing improper lists of Exhibits to be offered in evidence in causes to which they are said to relate

- 2 It is therefore ordered, that where-
soever any party Plaintiff or
defendant may be entitled or
bound to file any document
or writing to be received in evidence
in such cause, that he do produce
to the Prothonotary a certified list
of such Exhibits and wherein 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

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,

Section. 9.Of Pleas. —

1. That all Pleas or Exceptions Declinatoires, Dilatoires, or Peremptoires, shall be filed the day after the Return of the writ or process, or appearance of the Defendant, and due service of a copy of such Plea, shall be made on the Plaintiff, or his Attorney. —

2. That when a Defendant may have more than one Cause or ground for any such plea, whether Declinatoire, Dilatoire or Peremptoire, he shall state & offer the same by one and the same plea. —

3. That every Defendant, who may not plead either of the Pleas above-mentioned, 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, with a certified list of the same, to the end that the plaintiff may reply thereto, and form a regular Issue for future proceedings, and the Judgment of the Court thereupon. - And that the Defendant, on the day of
of

of filing such Plea, do serve the plaintiff, or his Attorney, in Court, with a copy of the plea so filed. —

The above rule is not to be construed to debar or prevent a Defendant, (under personal appearance,) from making such verbal answer or plea, to a demand and Declaration, as by Law is permitted to be done. —

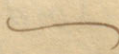
The following rules were published the 10th June 1797 in Court.

1. It is ordered that whenever a Defendant, on any mean process
may

may be committed to Gaol under the order of this Court for want of special Bail, he shall be bound to plead to the plaintiffs 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 plead to the said action, conformable to the rules of Practice of this Court in that behalf made and provided. —

5. It is also ordered that whensoever any Defendant may have made any plea or Exception Declinatoire, Dilatoire or Peremptoire, or the Defendant
may

may have made any Exception whereon issue may be taken, heard and adjudged, that after the said hearing and Judgment the parties shall be bound to file a Plea or Replication or Rejoinder as the Case may be, within the period allowed for pleading to the merits of any action, 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.



Rule published in Court the
1st June 1798. —

b. Whereas the practice used of
filing Exceptions peremptoires
distinct and separate from the
Plea to the merits, has been attended
with great delays. It is therefore
ordered, that in future, every such
Exception Peremptoire, as well as
Plea to the merits of the Plaintiffs
demand, be contained and set forth
in one and the same pleading,
and filed within the time fixed by
the 3^d art. of the 9th Sec. of the Rules
of Practice, to the end that Issues
may be formed upon the several
points of Law and fact, whereby
delays may be avoided and Speedy
Justice done to the parties. —

and it is ordered that the first
Rule of Practice in the said 9th Sec. in
so far as directs the period of filing Peremptory
Exceptions, be rescinded. —

w. respects
the right &
not the form
of the demand.

J.R.

or w. might have
been in the know-
ledge of the
Defend. at
the time of
making such
Exception
Peremptoire.

J.R.

♀ w. respects
the right but
not when it
merely respects
the form of
the diff. dem.

J.R.

Section. 10.

— .Of Replication. —

That the Plaintiff do within
three days, after the service of
the Defendant's plea, as before
mentioned, file his Replication,

0

Section. 11.Of Incidental Demands . . .

And 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 12.

Of Communication to be taken,
of Writings filed, and to be offered
in evidence. —

That it be clearly understood
and, It is hereby ordered, that
every party in Court, intitled 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 do receive the said
communication of papers as
aforesaid, upon lodging a list
and

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 be bound to file his defence, replication, or other plea, and no longer. —

Section. 15.

Of Communication of Records. —

That no part of the Records of this Court be permitted to be taken in communication from the Custody and Office of the Prothonotary, — except the papers and writings filed with any Declaration, or at the Return of any Process, on original suit, or with any Plea, Replication or other pleading, unless upon — special order of this Court. —

Section 14.Of Rules for Pleading, or other
proceedings.

1. And it is further 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. And it is likewise ordered, 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

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, ~~that~~ 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. —

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

Section 15.

Of Motions, & Hearing thereon.

1. That every motion, to be made in any Cause, shall be expressed in writing, and signed by the Advocate of, 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 on 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. And in order to expedite the course of proceedings in Causes —
It is ordered, that all motions for enlargement of Rules, or to shew Cause, shall be heard at every sitting of the Court, prior to the trial of any Cause on Issue joined. —

Section 16.

Of Trial by Jury.

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

It is ordered -

1. That in 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 defend^t's appearance. -
- 2.

2. And where the action may be already instituted, and the Declaration, or issuable plea filed, and that either of the parties may desire to obtain a trial by Jury, the same shall be expressed in writing, and filed in the Cause, within three days from making this Rule. —

3. And whensoever any Defendant may be desirous of a trial by Jury, and intitled to the same by Law, he shall, at the time of pleading an issuable plea, conclude therein to the Country. —

Rule published in Court the 20th February 1797. —

4. It is ordered that in
every

every case where a Plaintiff may
 on the Defendants 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, & the Plaintiff
 shall in replying to the merits,
 in like manner take issue to
 the Country. ~

Rule published in Court
 2^d. June 1800

5. It is further ordered 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 Prothonotary 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. ~

Section 17.Of Striking Special Juries.

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, and which notice shall not be less than twenty four hours, to attend at the Office of the Chief Clerk or Prothonotary, for the purpose of striking a Jury in the Cause. And the Prothonotary at the time of such attendance, and
in

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 Court may direct, make a Roll or list of forty eight names, from which the plaintiff and defendant, or their Attornies, shall alternately strike a name, to the number of twenty four; and the remaining twenty four persons shall form the pannel to be annexed to the venire facias or Summons; and upon which writ they shall severally be summoned to appear for the trial of the Issue joined, and a Jury therefrom may be legally impannelled and sworn. —

2. And whereas trials by Jury may be had in certain cases, de medietate lingue, composed of an equal number of natural born Subjects, and of Canadian, or new Subjects, It is ordered, that — whosoever either party in a Suit may be desirous of a Jury so composed, he shall move for the same in open Court, at the time of setting the Cause down for trial by Jury and previous to striking the Jury. — And when the same shall not be moved for, the Jury shall be struck (in cases between natural born Subjects and Canadian Subjects) from a list of names, conformably to the state of the person, plaintiff or Defendant, as a natural born Subject, or Canadian and

New

New Subject, who may require a
Jury in the Cause. u

Section. 18.Of non-appearance to strike
a Jury.

That whensoever either of the parties, or their Attornies, shall make default and not attend at the Office for striking such Jury, in manner above said, the Prothonotary shall, and is hereby authorised, to form the said list of forty eight persons, in manner as above said, and also in like manner to strike twelve names therefrom on behalf of the party so making default.

Section 19.

Of Defendants not proceeding &c.

And in every case where a 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 notify the plaintiff 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 above said, take out a Venire facias, and proceed
to

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. —

Section 20.Of Notice of Trial. c

That after striking the Jury, as
aforesaid, due notice of trial shall
be given to the party applying for
such Jury, 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. c

Section. 21.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.

Section. 22.

Of Defendants default, and non-
appearance at the day of Trial. ~

And in every case, where the Defen-
dant may not appear upon the
trial, so to be had, the Plaintiff,
after having made due proof of ~
service of the notice or notices above-
stated, may proceed in the cause,
and the Jury may be legally im-
pannelled and sworn, and return
a verdict upon the Issue joined
between the parties. ~

Section. 23.

On the Trial of Causes at Issue.

1. The Roll.

That a Roll or list of Causes be kept by the Prothonotary, expressing the time of issuing and Return of the Original writ or Process, and the names of the parties. —

2. Order of Hearing. —

That when Issue may be joined in any of the said Actions, and the Cause be ready for trial, the same be expressed on the Roll, and in the Judges Book, or list of Causes. — And that all such Causes do at issue, except where the interests of the Crown may be in question, shall be brought to trial according to the respective
 periods

periods of issue being joined in the said Causes, and in regular succession.

And whereas the practice of reading the Declaration, Plea — Replication, and other pleadings in a Cause at issue, and brought to trial, is attended with unnecessary delay,

3. On the Argum^t.

It is therefore ordered that whensoever any Cause, directed to be argued and tried on an Issue joined, the course to be observed thereon shall be, that the Plaintiff or Defendant who may raise the ground and cause of such issue, shall verbally open and state the same, and the adverse party shall
in

in the same manner answer thereto;
and upon replication in support
of the Issues taken, all Arguments
in the Cause shall be closed, and
the Cause so heard, remain for the
consideration of the Court, and
Judgment therein. —

Section 24.

Of New Trials. —

That all motions for New Trials shall be made 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

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. 25.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. —

Section 26thOf the Entry of Motions for
New Trial, or in Arrest of Judgment.

That a copy of every notice of motion, to be made either for a New Trial, or in arrest of Judgment, as above expressed, shall be filed in the Cause with the Prothonotary, three days inclusively, — before the day on which the motion is to be heard. — And the Prothonotary shall enter, or express the same in the Judge's Book, or list of Causes, two whole days before the hearing of such motion. —

Section. 27.

Of Oppositions to the Sale of Effects
and Estate seized by Execution, or to the
distribution of the proceeds of such Sale.

*the Rules
under this
Sec. are
repealed
Vid. Sec. 31.*

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 & groundless Oppositions,
made to frustrate the payment of Just
debts. —

It

It is therefore ordered —

1. 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 to the Goods and Estate so seized; or any part thereof; 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, and of what nature soever.

And

And that all, and every such Opposition to the sale of Chattels or personal Estate, be made & entered with the Sheriff, who may seize any such Chattels or personal Estate, and before the sale of the same...

And where the seizure may be of Real Estate, the said Opposition shall be made with the Sheriff, who may attach the same, before the sale thereof, or if after the sale, within the period limited by Law to make the same. - And that no Opposition shall be preferred, or admitted to be made by the same person, or others, on his behalf, for any rights or claims, which he may pretend to have, touching any seizure as aforesaid, and that
could

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 then after, and on the first sitting day of the Court, out of which any Execution may have issued, whereby such seizure may have been made, file with the Prothonotary, his Declaration or State of the several claims to be made, or moyens d'Opposition, 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

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 & 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, and failing so to do, the Office of the Prothonotary of this Court, shall be taken and considered as his Domicile or place of residence, 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

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; and shall give due notice to the person, or his attorney in Court, at whose suit such seizure was made, of his having filed such Declaration, or moyens d'opposition to the said Seizure. c

5. That the person, at whose instance any seizure may have been made, or others interested in
any

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, by the Rules of this Court, 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 thereon, 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.

Section. 28.

Concerning, the Sheriffs Office
and the Sale of Chattels or Estate levied
under process of 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, 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 Exe-
cutions, sell any Chattels or Real
Estate, of one and the same Debtor,
he shall by his Return distinguish,
how

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

the

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, shall in the same manner expose the same to sale, by so many Lots & parcels, as may be most likely to produce the best price for the Chattels so to be sold. —

¶. And whereas it is expedient, that all Oppositions to Sales, lodged at the Sheriff's Office, should

should be regularly entered and preserved in a Register, that should be annually deposited amongst the Records of this Court. .

It is therefore ordered,

That the Sheriff do keep a Book or public Register, and therein enter the general purport of every opposition, of what nature soever the same may be, to the levy and execution of any writ to him directed, and of the period of making the same, and also indorse, on each opposition, the time of receiving the same; and to which Register, shall be annexed an alphabetical list of the names of persons so opposing, with reference to the entry of the
 same

same on the Register aforesaid;
 And that each annual Register
 shall be filed at the Prothonotary's
 Office on the first day of January
 every Year.

5. That all parties, interested in
 any opposition, so to be made,
 may, at regular office hours, have
 free access to the Sheriff's Office,
 and inspect the said oppositions
 or Register aforesaid.

6. That at the Return of every
 Execution, and to the levy or pro-
 ceeds of which, any oppositions
 or claims may be made, the
 Sheriff do form a Schedule of
 the several Oppositions in their
 regular order, conformably
 thereto, and to his said Register;
 and

and, that he do distinguish the
said several Oppositions under
separate Letters in Alphabetical
order. —

Section. 29.

Habits of Officers & Advocates

And 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

or Advocate, who shall not appear
so habited, when moving the
same. u

Concerning Special Bail.

It is ordered. -

1. That whensoever any person arrested upon a Capias ad respondendum, or Attachment, may be desirous to enter Special Bail, the same shall be taken in Open Court, after due notice of two full days, or forty eight hours, to the Plaintiff, or his Attorney in the Cause; and 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

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, a further extension of time being unnecessary in the present state of this Country. -

2. And whereas, by the Rules of practice, every Defendant, is bound to plead within certain limited periods, - It is ordered,

that

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 abovesaid.

3. 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 want of special Bail in the Action; such person so arrested and committed by the Sheriff, (or Coroner, where the Sheriff cannot

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, he shall remain in Custody under the said Commitment, until two days, exclusive, after the Plaintiff may legally have and obtain a writ of Capias ad satisfaciendum, whereupon he may charge the person so committed, with the such Judgment as the Plaintiff may obtain. —

A. 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 ca. Sa. whereby the body of the Debtor may be charged and detained. —

Rule published in Court
the 10th April. 1798.

§ 5. 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
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
until the Affidavit aforesaid
shall be filed of Record. —

Saturday 20th Feb^y 1796. 97.

It is ordered that the following Rules be substituted in the place of those included under the 27th Sectⁿ of the rules of this Court, respecting Oppositions to the Sale of Effects and Estates sold by Execution, and the distribution of Monies arising from such Sales, and that the former Rules under the said Section, be rescinded. ~

Sect: 31. On Oppositions to the Sale of Effects & 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

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.

1. That all oppositions which may be made to the levy and Sale of any personal or Real Estate which may be attached and 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

Seizure declared null and void,
 or a right of charge or incumb-
 rance 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, and
 of what nature soever: And
 the said opposition shall
 contain a clear description and
 election of the Opposant's
 Domicile. -

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

- à fin d'annuller, or
- à fin de distraire, or
- à fin de charge, the same

shall be made before the sale of
 the realties, or where the opposition
 may

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 à fin de conserver, — whether upon the proceeds of a real or personal Estate, the same shall be made either before or within twenty four hours 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 on his behalf, for any rights or claims, which he may pretend to have touching any seizure as aforesaid, and that could have
been

been claimed or made at the period of preferring the original or first Opposition in the manner above directed. u

2. That every person who may prefer and make any Opposition as aforesaid, shall file with the Prothonotary, 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 so ever, 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. u

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 Prothonotary shall be taken and considered as his Domicile or place of residence to every legal intent that may be requisite, touching the proceedings of the Court to be notified to the person so opposing. —

A. 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

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. u

5. That the person at whose instance any seizure may have been had, or others interested making 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 Originals
Suits


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.

Rule published in Court the
20th day of June 1800. —

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 Prothonotary 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 his the said Prothonotary's Office, a list of such Returns, expressing the names of

of

of the parties Plaintiff and Defend^t;
and that the Rules of this Court -
respecting Oppositions to be made
after the Return of Executions shall
be considered to apply to the period
of the said List being so affixed
by the Prothonotary in the Office
aforesaid. —



The first of these is the
 fact that the number of
 persons who are employed
 in the various branches of
 the service is not
 in any way proportional
 to the amount of business
 which they have to do.
 This is a very serious
 defect in the present
 system of appointments
 and it is one which
 must be remedied if
 the service is to be
 efficient.

Sect: 32. Of a Writ of Capias ad Satisfaciendum against persons arrested and in Gaol, under a Writ of Cap: ad Respondendum. e

Whereas doubts have arisen on the right of a Judgment Creditor, who may have caused his Debtor to be arrested according to Law, and who may lie in prison under such arrest, to obtain a Writ of Ca. Sa. 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 lie in prison under process of Capias or attachment, or a Surrender of the Debtor who
may

may have been attached or held
 to Bail, the Judgment Creditor
 may, after fifteen days from
 the date of such Judgment, -
 obtain from the Clerk of this
 Court a Writ of Ca. ad Sat. against
 the Debtor, for the amount of
 the Judgment aforesaid, unless
 the Debtor Defendant shall
 have lodged good and sufficient
 Security in the Prothonotary's
 Office of this Court, to prosecute
 an appeal from the said Judgm^t.
 in which case no Ca. ad Sat.
 shall issue. . . And every person
 who may lie in Gaol under a
 Writ of Cap. ad Resp. or be com-
 mitted after a Surrender by the
 Debtor or his Bail, and not
 be charged in Execution upon

a Writ of Capias ad satisfaciend.^{Gen. III.}
within two days after the period
at which the Plaintiff might
legally have and obtain such
a Writ to charge the Debtor;
every such Debtor, held and
detained in Gaol under a Writ
of Cap. ad resp. or Surrender
as aforesaid, shall and may
be discharged by order of this
Court, or of any one of the Judges
thereof in vacation. -

tl

Sect: 33. 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, ch. 4th 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 of proceedings in this Court. —

It

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, during the course of the day on which such Exception may be raised. — And that any exception which may be offered at any future day, shall not be received, or entered on the records of this Court. —

Of filing Declaration &c.
on evocation of Causes from the
Inferior Term. *cc*

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

Plaintiff shall within ^{two} three
days inclusive from the allowance
of such evocation or exception
file with the Prothonotary
a Declaration containing
the special grounds of his
Case and demand; And that
the Defendant and Plaintiff
shall then after conform to
the general rules of Practice
for bringing the Cause to
Issue, hearing and Judgment.



Section 35Of Executions to the levy from
the Personal or Real Estate. —

1. It is ordered 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. —

2 That no Execution 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. —

3 And whereas inconvenience and hardship may arise to Creditors by a delay for a day in Term to return
a

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 Plaintiffs 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. —

A That whensoever no Execution may be sued out within twelve months from the date of any Judgment — whereon Execution might have issued or whensoever twelve months may have elapsed since the date of the Return of any Execution, no writ of Execution shall be sued out until after a Rule *Nisi* be obtained & regularly served on the party Debtor by such Judgment, to shew Cause if any he hath why an Execution should not
issue

issue to levy from the Debtor the amount of such Judgment or any part thereon due and unsatisfied.

5. And whereas it is proper that all the evidence of Record whereon any Judgment 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 the 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 Copy thereof as this Court on hearing the parties applying to withdraw such Original may have specially ordered. —

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of the ...

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Sect. 35.

Of Facts & Articles.

Whereas parties in Suits are entitled to obtain an examination the respective Suitors upon Facts & 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 no examination on facts et Articles be granted or had in any Cause after the evidence may be closed, and a day appointed for hearing upon the merits - Nor after a *venire facias* may have issued for summoning a Jury on any Cause appointed for such trial, unless

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. —

It is ordered, that every permission for the Examination of any Person on Facts & Articles, together with a copy of the several Articles to which the party is required to answer, shall be personally served on person enjoined to answer such Facts & 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 copy of the Facts &

Articles as aforesaid, at the
Actual Dwelling House and
domicile of the party, may be
held to be sufficient for proceed-
ings thereon.

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It is ordered that whenever any person legally having Rights to sustain and 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 Requite in intervention, which shall contain the grounds of the demand and several rights which are intended to be alleged & sustained in the Cause, and in respect to the parties before the Court in suit.

2. That the said Requite shall also contain all such conclusions or claims as the party Plaintiff on
intervention

intervention may have or intend to make in the said Cause, to the End that legal issues may be taken upon the same & the original suit proceeds without delay.

3. That the said Plaintiff in Intervention shall file in the Prothonotary's Office (on the day ordered upon such Request for the parties appearance to the same) all such writings and documents in his possession wherein the demands may be made,

4th 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 therein to be taken, and the filing of all writings exhibits or documents, touching the respective Interests of the parties shall be moved made
and

and done conformable to the general rules of practice of this Court on original actions.

5. That whenever a Requite in 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 Requite & therein & previous to an order thereon for an appearance, fix and elect a domicile where course may be taken as needful respecting the same.

Section 37. 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 in as much 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 Vacations of
June

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 shall equally extend and be applied to all cases of oppositions.—

of Commissions Rogatoires

It is ordered whensoever the parties moving for, or joining in a Commission rogatoire are enabled by their knowledge of the names of the witnesses, to deliver in the same previous to issuing the commission, that then and in such cases the names of the witnesses to be examined shall be stated at the time of exhibiting the interrogatories to be put to the witnesses for examination and annexed to the Commission. — And that this rule shall extend to causes when there may be a default of appearance or pleading, as well as when it may be otherwise. —

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Court of Kings Bench

Montreal

Vacation of April Term

- 1795. -

Rules and Orders

1. The Prothonotary of this Court is directed to write circular letters to the late Justices of the Courts of Requests in this District, expressive of directions by the Judges of this Court to the said Prothonotary,

that

that he do request that all the Records, that may have been made in the several Courts of Requests since the appointment of the same, be forth-with, and before the first day of June next certified by the said Justices into this Court, conformable to Law.

2. That the said Prothonotary do, by letter, request the Sheriff of this District, to return into this Court, all Executions that may be in his possession, where the days of Return have expired, before the first day of June next, together with correct lists of the same, and particular Returns of his doings thereon; The said Executions making part of the Records of this Court.

3. That the Prothonotary do request the several Attornies of this Court to indorse on every Declaration or Plea, the matter thereof, and that a uniform rule be observed in the title of all Declarations and Pleas, and the same bear date, in the margin, of the day when made. as N^o 1. and N^o 2. — see. p.

4. That the several attornies do insert, in the list of papers and exhibits, the respective dates of the same; And that such exhibits be numbered and conformably entered on the lists to be filed, and the pleadings lettered in regular succession; And that no lists be made on a piece of
paper

paper less than a quarter of a folio sheet, and that a uniform Rule be adopted for the same.

ex. gr. N^o. 3. —

5. That no writ of Execution issue from this Court, commanding the levy of Goods and Chattels, and lands and tenements, by one and the same writ; and that the Prothonotary do prepare such writs to issue against both at one and the same time, when required; and for which his fee on both writs, where the Judgment may be above thirty pounds, shall be six shillings.

6. That no Execution issue from the prothonotary's Office, to levy
any

any sum for costs of Suit, until the Attorney file a taxed Bill of Costs, and which shall remain among the Records of this Court.

7. That the Prothonotary do prepare drafts of the forms of all writs, that may be requisite under the present practice of this Court, to issue out of the same, to be laid before the Judges on the first day of next Term, to the end of settling the regular stile and order of all writs; also Bail-pieces with Conditions underwritten to be taken in cases of Special Bail. —

8. Whereas the shortness of the Vacations of February and April Terms, may not permit sufficient
time

time, to execute and return writs of Execution of the first day of the Terms of April and June, It is ordered, that the plaintiff or Defendant, who may be entitled to a writ of fieri facias, and obtain the same during the vacation, may have the said writs made returnable on the first, or at any other day during the succeeding term, before, or on, the seventeenth day of April or June respectively. ~

Montreal 26th April 1795. ~

N^os referred to in the above Rules.

N^o. 1.

Montreal. Court of Kings Bench. June Term 1795.

John Thompson. — Plff.

Richard^v Johnson. — Dfd.

John Thompson of the City and District of Montreal, Shopkeeper, Plff, complains of Richard Johnson of the same place, Mason, Dfd. &c

20th May. 1795. —

Indorsment.

Kings Bench. June Term
1795

Declaration

John Thompson. — Plff.

Richard Johnson — Dfd.

For Assault & Battery

Montreal. Court of King's Bench. June Term 1795.

John Thompson. — — — Pltff.

Richard Johnson. — — — Dfd^t.

And the said Richard Johnson by
Arthur Davidson his attorney, comes
and defends vs. &c —

June 2. 1795. — — —

Indorsed

Kings Bench. June Term
1795.

Exception Peremptoire

John Thompson. — — — Pltff.

Richard Johnson — — — Dfd^t.

Plea to the Jurisdiction of the
Court in this Cause. —

Montreal, Court of King's Bench. June Term 1795.

Thomas Williams. — — Pltff

James Jackson — — Dfd.

List of pleadings & Exhibits.

A

20th May 1794. Declaration & Writ. —

Exhibits filed on the first day of
Term. —

1. A Deed from Jac. Poirier to Pltff. bearing
date 20 Aug^r 1754.
2. An Agreement between pltff. & Dfd.^r
before P. Desere, Notary. 4th June 1756.
3. A Bond from Dfd.^r to Pltff. 1 Oct. 1790. —

C.

1st June 1794. Answer to Dfd.^r Exception Peremptoire

20 d^e d^e F. Repliques aux Defenses du Defend^r

A. Davidson. Pltff.^s
Att^y. 20th Feb. 1795.

Indorsed

Indorsed.

King's Bench, June Term

1795.

Thomas Williams — — — — — Pltff.

James Jackson. — — — — — Dfdt.

List of pleadings & Exhibits.

20th Feb. 1795

The Defendant's Attorney
will observe the same course, and
all the pleadings be marked in
regular Succession between Pltff.
and Defend^t. by letters, denoting
the order thereof, A, B &c.

On the Subject of Costs.

Although the Fee Ordinance of 1780 be expired, it is intended and directed, that all persons, interested in the formation of claims for costs, do conform to the present rules, and the rates stipulated in the said Fee Ordinance, for such services as are therein set forth; And that the legal construction on that Law may be understood, and what charges should be made; the following allowances and rules, will be strictly adhered to in taxing Bills of Costs. —

Such

Such allowances are made, as are thought reasonable upon the new Rules of Practice, for services to be performed under those rules. —

Although the Legislature, in establishing the fee Ordinance, might have considered that an allowance for a similar fee for all Declarations & Pleas, ought to compensate, on a scale of general Service, yet the Judges will consider special Declarations and Pleas in bar, (peremptorie) and when the real merits of a case may have required such to be lengthy, and extraordinary care in preparing the same, due

consideration and allowance will be made in such cases in the taxation of costs, above the fee stated in the said Ordinance. —

Upon the same principle, the Judges will consider the special arguments of Causes at issue, whether on points of Law, or on the merits; — Ten shillings in the former, and twenty in the latter case, may have been an adequate compensation for ordinary services on a general Scale of the then mode of conducting a Client's Cause. But to great application & Science, on intricate questions of right, the service of a laborious and able

Advocate

Advocate merits, and will receive, a reward beyond such fees, in the taxation of Costs.

In ordinary cases, the Judges will adhere to the present rules respecting Costs, until time and occasion may make a change requisite, or that the Legislature shall prescribe the fees which shall be taxed for business performed on proceedings in His Majesty's Courts, in the Administration of Justice. —

General Rules

on the
Taxation of Costs.

In causes under thirty pounds, where the same may not be tried by Jury, the Prothonotary — shall insert the Costs on the Judgment accruing to the Attornies, Clerk, Sheriff & Crier, conformable to the fee-ordinance whether the Cause be of one or more Terms, without any other allowance whatever, viz^t.

Attorney.	£2. 6. 8
Clerk	1. 2. 6
Sheriff	.. 4. 9
Crier. 9
	£3. 14. 8

except

except where it shall appear, that there hath been an actual and necessary travel for the service of Process, in which case there will be allowed, in addition to the above, one shilling per league. -

That no other Costs be taxed, allowed or taken, by the Defendant's Attorney, other than directed by the Fee ordinance of 1780, vizt. £1, 10.

That there be allowed for drawing, engrossing & filing a list of pleadings & exhibits . . . 3. .

Also for notice of a motion and Service. — — — . . . 3. .

And

And for the motion so notified
and filed " 1" .

That in all cases where there
may be a motion for referring
matters of fact to Experts to
estimate &c. and assented to
by the Defendant. " 3" .

Where the application may
be controverted, and an
argument on point of Law " 5" .

For special Rule of Court
drawn up by reference to Experts " 5" .

For every service of a Plea on
Pltff's or Dfd.^t Attorney. " 1" .

That a Term fee not exceeding
two in any Cause, be allowed
in Causes above £30. viz^t . —

In Default causes — " 3" 4

In Causes defended — " 5" .

That

That there be allowed for
 the fiat and several attendances
 to obtain an Execution, only 3/
 and for attendances at the
 Return thereof 3/ — — — — . " 6" .

For attendance at the Office
 to take communication of papers
 only one fee be allowed, and
 for attending to return the
 papers so received, only one fee,
 vizt. 1/ each. — — — — . " 2" .

Attending taking Commu-
 nication of papers filed, and
 returning the same in the
 Cause — — — — . " 2" .

And that no fee be charged or
 allowed in the following instances.

Attendance

Attendance for receiving Defend.^{or}
Plea, or Plaintiff's Replication, or
any other pleading. —

Nor for attendance in Court to
set down a Cause on default to be
heard ex parte. —

Nor for a second attendance,
when a Cause has been set down
for hearing, and not argued,
but stands over a Remanet on
the Roll, to a future day. —

That no fees be charged in
any Attorney's Bill by separate
items for attendance in Court,
and for motion under that
attendance, but simply the
motion, for which 3/. —

That

That every Attorney's Bill, to be taxed, which may include fees to the Officers of the Court, be accompanied with separate bills of particular items that form such bills, or a particular statement on the Attorney's Bill of the particular charges that form the whole disbursement. —

Sheriffs Fees.

That the Sheriff be allowed, and may claim and receive the following fees for the respective Services to be performed, and none other for such services, until the Legislature may establish a Tarif of fees to that office.

For service of a Summons in a Cause, where the demand may be under £30. — — — — — . " 2. 6

And for service of a Summ^s above £30. — — — — — . " 5. —

this service to include the Return of the writ. — —

For Copy of the writ of Sum^s. " 1. 6

On

On all Causes entered in Court
on process of Sum^o. returned
under £30. — — — — — " 9

And on entry, where above £30.. " 1. .

For service of a Saisie arret
and Return of that writ.. " 6. 8

For service of Ca. ad Resp.
or Ca. Sa. & return.. Arrest
on mesne process or Ex^o,
including any warrant
to any under Officer — " 10. .

Bail Bond. — — — — — " 10. .

And for assignment of the
same. — — — — — " 2. 6

For service of a Venire facias,
summoning a Jury special
and Return of Process. — 1 " 3. 4

For summoning a Com. Jury. " 15. .

This service to include all fees to
Bailliffs or others from the Sheriff's Office.

For

For service and return of
 Execution, whether Fi: Fa: lev:
 fa: or Vend: exp: $2\frac{1}{2}$ p Cent
 or sixpence in the pound,
 which is the fee allowed for
 the whole service, and
 includes the service & return
 of the writ, whether by the
 Sheriff, or his under Officers..

For a Return of nulla bona
 on every Execution. ~ ~ ~ " 2. 0

Drawing Advertisement
 of Sale of Lands and Real
 Property, & for the necessary
 Copies. ~ ~ ~ ~ ~ " 11. 8

For a Deed of Sale ~ ~ ~ 1. 10. ~

For receiving at, and
 entering on the Register of,
 the Sheriff's Office, the substance
 of

of every opposition —
(formed by one and the same
act) preparing & making
the special Return there=
upon. " 5. . .

Witnesses

That no witness be allowed for more than one day's attendance, and not above. " 2. " 6

That rate and rule being applied as in cases of similar characters on Special Juries.

And that the same Rule be observed as to witnesses who would fall under the list of Common Jurors. " 1. " .

That one shilling p: league be allowed for travelling expences, taken & estimated from the place of service to the Court-House. *in*

That

That no witness, living above
 one league from the Court-House,
 shall be liable to process of
 Attachment, for Contempt in
 not obeying a Subpona, unless
 the expences of travelling be
 first tendered, at the time of
 serving the Subpona. —

Montreal 30th April 1795. J. Walker. C. L. & K. B.

(signed)



Walker J. K. B.



Additional Rules

on the Taxation of Costs.

1. On oppositions to the levy of Monies by execution, or distribution thereof, where the sum claimed may not exceed £20, due at the period of the claim, or rent, or incumbrance, or charge upon the premises, the attorney prosecuting such claim to be allowed for all his fees — — — — — £1. 0. 0
2. And where in like manner the sum may be above £20 and not exceed £40. — — — £1. 10. 0
3. And ^{from} from £40 to £100. — — — £2. 6. 8

And to the attorney defend^g every such opposⁿ or claim as above, to be allowed for all his fees therein, a sum one third less than the attorney supporting the claim. —

5. And to the Attorney filing an admission to any opposition or claim, to be allowed for all his fees - - - - - £. 6. 8.

6. That the Prothonotary be allowed for his whole fees in either of the above Cases, a sum equal to one fourth of the Attorney's fees (not including the general fee for Judgment on Distribution) and no more. -



