Common Law Procedure Act 1852

1852 CHAPTER 76

Writs for Commencement of Actions

And with respect to the Writs for the Commencement of Personal Actions in the said Courts against Defendants, whether in or out of the Jurisdiction of the Courts, be it enacted as follows :

II Personal Actions, when Defendant resides within the Jurisdiction, to be commenced by Writ of Summons in Form No.1 of Schedule (A).

All Personal Actions brought in Her Majesty's Superior Courts of Common Law, where the Defendant is residing or supposed to reside reside within the Jurisdiction of the said Courts, shall be commenced by Writ of Summons in the Form contained in the Schedule (A.) to this Act annexed, marked No.1, and in every such Writ and Copy thereof the Place and County of the Residence or supposed Residence of the Party Defendant, or wherein the Defendant shall be or shall be supposed to be, shall be mentioned; and such Writ shall be issued by any One of the Officers of the said Courts respectively by whom like Process hath been heretofore issued from such Court, or by such other Officer as the Court shall direct.

III No Form or Cause of Action to be mentioned in Writ.

It shall not be necessary to mention any Form or Cause of Action in any "Writ of Summons, or in any Notice of Writ of Summons, issued under the Authority of this Act.

IV Writ to state Names of all Defendants, and for only One Action.

Every Writ of Summons shall contain the Names of all the Defendants, and shall not contain the Name or Names of any Defendant or Defendants in more Actions than One.

Status: *This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

V Writ to be dated of Day of issuing, and tested in Name of Chief or Senior Judge.

Every Writ of Summons shall bear Date on the Day on which the same shall be issued, and shall be tested in the Name of the Lord Chief Justice or Lord Chief Baron of the Court from which the same shall issue, or in case of a Vacancy of such Office, then in the Name of a Senior Puisne Judge of the said Court.

VI Writ to be indorsed with Name and Abode of Attorney, or a Memorandum that Writ has been sued by Plaintiff in person.

Every Writ of Summons shall be indorsed with the Name and Place of Abode of the Attorney actually suing out the same, and in case such Attorney shall not be an Attorney of the Court in which the same is sued out, then also with the Name and Place of Abode of the Attorney of such Court in whose Name such Writ shall be taken out; and when the Attorney actually suing out any Writ shall sue out the same as Agent for an Attorney in the Country, the Name and Place of Abode of such Attorney in the Country shall also be indorsed upon the said Writ; and in case no Attorney shall be employed to issue the Writ, then it shall be indorsed with a Memorandum expressing that the same has been sued out by the Plaintiff in person, mentioning the City, Town, or Parish, and also the Name of the Hamlet, Street, and Number of the House of such Plaintiff's Residence, if any such there be.

VII Attorney on Demand to declare whether Writ issued by his Authority, and to declare Name and Abode of his Client, if ordered. If Writ issued without Authority of Attorney Proceedings to be stayed.

Every Attorney whose Name shall be indorsed on any Writ issued by Authority of this Act shall, on Demand in Writing, made by or on behalf of any Defendant, declare forthwith whether such Writ has been issued by him or with his Authority or Privity; and if he shall answer in the Affirmative, then he shall also, in case the Court or a Judge shall so order and direct, declare in Writing, within a Time to be allowed by such Court or Judge, the Profession, Occupation, or Quality, and Place of Abode of the Plaintiff, on pain of being guilty of a Contempt of the Court from which such Writ shall appear to have been issued; and if such Attorney shall declare that the Writ was not issued by him, or with his Authority or Privity, all Proceedings upon the same shall be stayed, and no further Proceedings shall be taken thereupon without Leave of the Court or a Judge.

VIII If Writ issued without Authority of Attorney Proceedings to be stayed. Indorsement of Debt and Costs on Writ and Copy of Writ for a Debt, with Notice that Proceedings will be stayed on Payment within Four Days.

Upon the Writ and Copy of any Writ served for the Payment of any Debt the Amount of the Debt shall be stated, and the Amount of what the Plaintiff's Attorney claims for the Costs of such Writ, Copy, and Service, and Attendance to receive Debt and Costs, and it shall be further stated that upon Payment thereof within Four Days to the Plaintiff or his Attorney, further Proceedings will be stayed; which Indorsement shall be written or printed in the following Form or to the like Effect:

The Plaintiff claims £ for Debt, and £ for Costs, and if the Amount thereof be paid to the Plaintiff or to his Attorney within Four Days from the Service hereof further Proceedings will be stayed.

But the Defendant shall be at liberty, notwithstanding such Payment, to have the Costs taxed, and if more than One Sixth shall be disallowed, the Plaintiff s Attorney shall pay the Costs of Taxation.

IX Concurrent Writs may be issued.

The Plaintiff in any such Action may, at any Time during Six Months from the issuing of the original Writ of Summons, issue One or more concurrent Writ or Writs, each concurrent Writ to bear Teste of the same Day as the original Writ, and to be marked with a Seal bearing the Word " concurrent," and the Date of issuing the concurrent Writ; and such Seal shall be provided and kept for that Purpose at the Offices of the Masters of the said Courts, and shall be impressed upon the Writ by the proper Officer of the Court out of which the. original Writ issued: Provided always, that such concurrent Writ or Writs shall only be in force for the Period during which the original Writ in such Action shall be in force.

X From Commencement of this Act certain Provisions of 2 W.4 c.39 repealed.

From the Time when this Act shall commence and take effect, so much of a certain Act of Parliament passed in the Second Year of the Reign of His late Majesty King *William* the Fourth, intituled *An Act for Uniformity of Process in Personal Actions in His Majesty's Courts of Law at* Westminster, as relates to the Duration of Writs, and to alias and pluries Writs, and to the Proceedings necessary for making the First Writ in any Action available to prevent the Operation of any Statute whereby the Time for the Commencement of any Action may be limited, shall be repealed, except so far as may be necessary for supporting any Writs that have been issued before the Commencement of this Act, and any Proceedings taken or to be taken thereon.

XI Renewal of Writs of Summons to save the Statute of Limitation, and for other Purposes.

No original Writ of Summons shall be in force for more than Six Months from the Day of the Date thereof, including the Day of such Date; but if any Defendant therein named may not have been served therewith, the original or concurrent Writ of Summons may be renewed at any Time before its Expiration, for Six Months from the Date of such Renewal, and so from Time to Time during the Currency of the renewed Writ, by being marked with a Seal, bearing the Date of the Day, Month, and Year of such Renewal, such Seal to be provided and kept for that Purpose at the Offices of the Masters of the said Superior Courts, and to be impressed upon the Writ by the proper Officer of the Court out of which such Writ issued, upon Delivery to him by the Plaintiff or his Attorney of a Praecipe in such Form as has heretofore been required to be delivered upon the obtaining of an alias Writ; and a Writ of Summons so renewed shall remain in force and be available to prevent the Operation of any Statute whereby the Time for the Commencement of the Action may be limited, and for all other Purposes, from the Date of the issuing of the original Writ of Summons.

Status: *This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

XII Renewal of Writs issued before this Act.

Where any Writ of Summons in any such Action shall have been issued before, and shall be in force at, the Commencement of this Act, such Writ may at any Time before the Expiration thereof be renewed under the Provisions of and in the Manner directed by this Act; and where any Writ, issued in continuation of a preceding Writ according to the Provisions of the said Act of His late Majesty King *William* the Fourth, shall be in force and unexpired, or where One Month next after the Expiration thereof shall not have elapsed at the Commencement of this Act, such continuing Writ may, without being returned non est inventus, or entered of Record according to the Provisions of the said Act of His late Majesty King *William* the Fourth, be filed in the Office of the Court within One Month next after the Expiration of such Writ, or within Twenty Days after the Commencement of this Act; and the original Writ of Summons in such Action may thereupon, but within the same Period of One Month next after the Expiration of the continuing Writ, or within Twenty Days after the Commencement of this Act, be renewed under the Provisions of and in the Manner directed by this Act; and every such Writ shall after such Renewal have the same Duration and Effect for all Purposes, and shall, if necessary, be subsequently renewed, in the same Manner as if it had originally issued under the Authority of this Act.

XIII Production of renewed Writ Evidence of Commencement of Action.

The Production of a Writ of Summons purporting to be marked with the Seal of the Court, showing the same to have been renewed according to this Act, shall be sufficient Evidence of its having been so renewed, and of the Commencement of the Action as of the First Date of such renewed Writ for all Purposes.

XIV Writ may be served in any County.

The Writ of Summons in any Action may be served in any County.

XV Indorsement of Service to be made.

The Person serving the Writ of Summons shall and he is hereby required, within Three Days at least after such Service, to indorse on the Writ the Day of the Month and Week of the Service thereof, otherwise the Plaintiff shall not be at liberty, in case of Nonappearance, to proceed under this Act; and every Affidavit of Service of such Writ shall mention the Day on which such Indorsement was made.

XVI As to Service of Writ on Corporation and Inhabitants of Hundreds and Towns.

Every such Writ of Summons issued against a Corporation Aggregate may be served on the Mayor or other Head Officer, or on the Town Clerk, Clerk, Treasurer, or Secretary of such Corporation; and every such Writ issued against the Inhabitants of a Hundred or other like District may be served on the High Constable thereof, or any One of the High Constables thereof; and every such Writ issued against the Inhabitants of any County of any City or Town, or the Inhabitants of any Franchise, Liberty, City, Town, or Place not being Part of a Hundred or other like District, on some Peace Officer thereof.

XVII Proceedings where personal Service cannot be effected, but Defendant knows of the Writ, and evades Service.

The Service of the Writ of Summons, wherever it may be practicable, shall, as heretofore, be personal; but it shall be lawful for the Plaintiff to apply from Time to Time, on Affidavit, to the Court out of which the Writ of Summons issued, or to a Judge; and in case it shall appear to such Court or Judge that reasonable Efforts have been made to effect personal Service, and either that the Writ has come to the Knowledge of the Defendant, or that he wilfully evades Service of the same, and has not appeared thereto, it shall be lawful for such Court or Judge to order that the Plaintiff be at liberty to proceed as if personal Service had been effected, subject to such Conditions as to the Court or Judge may seem fit.

XVIII As to Actions against British Subjects residing out of the Jurisdiction of Superior Courts.

In case any Defendant, being a *British* Subject, is residing out of the Jurisdiction of the said Superior Courts, in any Place except in *Scotland* or *Ireland*, it shall be lawful for the Plaintiff to issue a Writ of Summons in the Form contained in the Schedule (A.) to this Act annexed, marked No. 2., which Writ shall bear the Indorsement contained in the said Form, purporting that such Writ is for Service out of the Jurisdiction of the said Superior Courts; and the Time for Appearance by the Defendant to such Writ shall be regulated by the Distance from *England* of the Place where the Defendant is residing ; and it shall be lawful for the Court or Judge, upon being satisfied by Affidavit that there is a Cause of Action, which arose within the Jurisdiction, or in respect of the Breach of a Contract made within the Jurisdiction, and that the Writ was personally served upon the Defendant, or that reasonable Efforts were made to effect personal Service thereof upon the Defendant, and that it came to his Knowledge, and either that the Defendant wilfully neglects to appear to such Writ, or that he is living out of the Jurisdiction of the said Courts, in order to defeat and delay his Creditors, to direct from Time to Time that the Plaintiff shall be at liberty to proceed in the Action in such Manner and subject to such Conditions as to such Court or Judge may seem fit, having regard to the Time allowed for the Defendant to appear being reasonable, and to the other Circumstances of the Case: Provided always, that the Plaintiff shall and he is hereby required to prove the Amount of the Debt or Damages claimed by him in such Action, either before a Jury upon a Writ of Inquiry, or before One of the Masters of the said Superior Courts in the Manner herein-after provided, according to the Nature of the Case, as such Court or Judge may direct; and the making such Proof shall be a Condition precedent to his obtaining Judgment.

XIX As to Actions against Foreigners residing out of the Jurisdiction of Superior Courts.

In any Action against a Person residing out of the Jurisdiction of the said Courts, and not being a *British* Subject, the like Proceedings may be taken as against a *British* Subject resident out of the Jurisdiction, save, that in lieu of the Form of Writ of Summons in the Schedule (A.) to this Act annexed marked No. 2., the Plaintiff shall issue a Writ of Summons according to the Form contained in the said Schedule (A.) marked No. 3., and shall in manner aforesaid serve a Notice of such last-mentioned Writ upon the Defendant therein mentioned, which Notice shall be in the Form contained in the said Schedule also marked No. 3.; and such Service shall be of the same Force and Effect as the Service of the Writ of Summons in any Action against a *British* Subject resident abroad, and by Leave of the Court or a Judge, upon their

or his being satisfied by Affidavit as aforesaid, the like Proceedings may be had and taken thereupon.

XX Omission to insert or indorse Matters in or on Writ not to nullify it.

If the Plaintiff or his Attorney shall omit to insert in or indorse on any Writ or Copy thereof any of the Matters required by this Act to be inserted therein or indorsed thereon, such Writ or Copy thereof shall not on that Account be held void, but it may be set aside as irregular, or amended, upon Application to be made to the Court out of which the same shall issue, or to a Judge; and such Amendment may be made, upon any Application to' set aside the Writ, upon such Terms as to the Court or Judge may seem fit.

XXI Substitution by Mistake or Inadvertence of One Form of Writ for another may be by Judge without Costs.

If either of the Forms of Writ of Summons contained in the Schedule (A.) to this Act annexed, and marked respectively Nos. 1, 2, and 3, shall by Mistake or Inadvertence be substituted for any other of them, such Mistake or Inadvertence shall not be an Objection to the Writ or any other Proceeding in such Action, but the Writ may, upon an *ex parte* Application to a Judge, whether before or after any Application to set aside such Writ or any Proceeding thereon, and whether the same or Notice thereof shall have been served or not, be amended by such Judge without Costs.

XXII Writs for Service within and without Jurisdiction may be concurrent, and vice versa.

A Writ for Service within the Jurisdiction may be issued and marked as a concurrent Writ with One for Service out of the Jurisdiction, and a Writ for Service out of the Jurisdiction may be issued and marked as a concurrent Writ with One for Service within the Jurisdiction.

XXIII Affidavits in certain Cases may be sworn before a Consul.

Any Affidavit for the Purpose of enabling the Court or a Judge to direct Proceedings to be taken against a Defendant residing out of the Jurisdiction of the said Courts may be sworn before any Consul General, Consul, Vice-Consul, or Consular Agent for the Time being, appointed by Her Majesty at any Foreign Port or Place; and every Affidavit so sworn by virtue of this Act may be used and shall be admitted in Evidence, saving all just Exceptions, provided it purport to be signed by such Consul General, Consul, Vice-Consul, or Consular Agent, upon Proof of the official Character and Signature of the Person appearing to have signed the same: Provided always, that if any Person shall forge the Signature of any such Affidavit, or shall use or tender in Evidence any such Affidavit with a false or counterfeit Signature thereto, knowing the same to be false or counterfeit, he shall be guilty of Felony, and shall upon Conviction be liable to Transportation for Seven Years, or to Imprisonment for any Term not exceeding Three Years, nor less than One Year, with Hard Labour; and every Person who shall be charged with committing any Felony under this Act may be dealt with, indicted, tried, and, if convicted, sentenced, and his Offence may be laid and charged to have been committed in the County or Place in which he shall be apprehended or be in Custody ; and every Accessory before or after the Fact to any such Offence may be dealt with, indicted, tried, and, if convicted, sentenced, and his Offence may be laid

and charged to have been committed, in any County or Place in which the principal Offender may be tried: Provided also, that if any Person shall wilfully and corruptly make a false Affidavit before such Consul General, Consul, Vice-Consul, or Consular Agent, every Person so offending shall be deemed and taken to be guilty of Perjury, in like Manner as if such false Affidavit had been made in *England* before competent Authority, and shall and may be dealt with, indicted, tried, and, if convicted, sentenced, and his Offence may be laid and charged to have been committed, in any County or Place in which he shall be apprehended or be in Custody, as if his Offence had been actually committed in that County or Place.

XXIV Distringas to compel Appearance or to proceed to Outlawry abolished.

From the Time when this Act shall commence and take effect, so much of the said Act of His late Majesty King *William* the Fourth as relates to the Writ of Distringas, and the proceeding thereon, whether for the Purpose of compelling Appearance or for Proceedings to Outlawry, shall be repealed, except so far as may be necessary for the Purpose of giving Effect to Proceedings already taken, or to be taken after the Commencement of this Act, under or by reason of any Writ of Distringas issued before the Commencement of this Act, or under any Rule or Order authorizing the issuing of such Writ, and made before the Commencement of this Act.

XXV Special Indorsement of the Particulars of Debts or liquidated Demands may be made on the Writ. Special Indorsement to stand for Particulars of Demand.

In all Cases where the Defendant resides within the Jurisdiction of the Court, and the Claim is for a Debt or liquidated Demand in Money, with or without Interest, arising upon a Contract, express or implied, as, for instance, on a Bill of Exchange, Promissory Note, or Cheque, or other Simple Contract Debt, or on a Bond or Contract under Seal for Payment of a liquidated Amount of Money, or on a Statute where the Sum sought to be recovered is a fixed Sum of Money, or in the Nature of a Debt, or on a Guarantee, whether under Seal or not, where the Claim against the Principal is in respect of such Debt or liquidated Demand, Bill, Cheque, or Note, the Plaintiff shall be at liberty to make upon the "Writ of Summons and Copy thereof a special Indorsement of the Particulars of his Claim, in the Form contained in the Schedule (A.) to this Act annexed, marked No. 4., or to the like Effect; and when a Writ of Summons has been indorsed in the special Form herein-before mentioned, the Indorsement shall be considered as Particulars of Demand, and no further or other Particulars of Demand need be delivered, unless ordered by the Court or a Judge.