

Common Law Procedure Act 1852

1852 CHAPTER 76

Appearance, and Proceedings in default of Appearance

And with respect to the Appearance of the Defendant, and Proceedings of the Plaintiff in default of Appearance, be it enacted as follows:

XXVI Appearance according to Provisions of Acts of 12 G.1 c.29, and 2 W.4 c.39, abolished.

From the Time when this Act shall commence and take effect, so much of a certain Act of Parliament passed in the Twelfth Year of the Reign of His late Majesty King *George* the First, intituled *An Act to prevent frivolous and vexatious Arrests*, and so much of the said Act of His late Majesty King *William* the Fourth as relates to the entering an Appearance for the Defendant by the Plaintiff in any Action in any of the said Superior Courts, shall be repealed, except so far as may be necessary to support Proceedings heretofore taken, and no Appearance need be entered by the Plaintiff for the Defendant.

XXVII Final Judgment upon Writ specially indorsed in default of Appearance.

In case of Nonappearance by the Defendant, where the Writ of Summons is indorsed in the special Form herein-before provided, it shall and may be lawful for the Plaintiff, on filing an Affidavit of personal Service of the Writ of Summons, or a Judge's Order for Leave to proceed under the Provisions of this Act, and a Copy of the Writ of Summons, at once to sign final Judgment in the Form contained in the Schedule (A.) to this Act annexed, marked No. 5., (on which Judgment no Proceeding in Error shall lie,) for any Sum not exceeding the Sum indorsed on the Writ, together with Interest at the Rate specified, if any, to the Date of the Judgment, and a Sum for Costs, (to be fixed by the Masters of the said Superior Courts, or any Three of them, subject to the Approval of the Judges thereof, or any Eight of them, of whom the Lord Chief Justices and the Lord Chief Baron shall be Three,) unless the Plaintiff claim more than such fixed Sum, in which Case the Costs shall be taxed in the ordinary Way; and the Plaintiff may upon such Judgment issue Execution at the Expiration of Eight Days from the last Day for Appearance, and not before: Provided always, that it shall be lawful for the Court or a Judge, either before or after final Judgment, to let in the Defendant to defend upon an

Application, supported by satisfactory Affidavits accounting for the Nonappearance, and disclosing a Defence upon the Merits.

XXVIIIJudgment for Nonappearance where the Writ is not indorsed in the special Form.

In case of such Nonappearance, where the Writ of Summons is not indorsed in the special Form herein-before provided, it shall and may be lawful for the Plaintiff, on filing an Affidavit of personal Service of the Writ of Summons, or a Judge's Order for Leave to proceed under the Provisions of this Act, and a Copy of the Writ of Summons, to file a Declaration indorsed with a Notice to plead in Eight Days, and to sign Judgment by Default at the Expiration of the Time to plead, so indorsed as aforesaid; and in the event of no Plea being delivered, where the Cause of Action mentioned in the Declaration is for any of the Claims which might have been inserted in the special Indorsement on the Writ of Summons herein-before provided, and the Amount claimed is indorsed on the Writ of Summons, the Judgment shall be final, and Execution may issue for an Amount not exceeding the Amount indorsed on the Writ of Summons, with Interest at the Rate specified, if any, and the Sum fixed by the Masters for Costs, as herein-before mentioned, unless the Plaintiff claim more, in which Case the Costs shall be taxed in the ordinary Way: Provided always, that in such Case the Plaintiff shall not be entitled to more Costs than if he had made such special Indorsement, and signed Judgment upon Nonappearance.

XXIX Appearance to be entered at any Time before Judgment.

The Defendant may appear at any Time before Judgment and if he appear after the Time specified either in the Writ of Summons, or in any Rule or Order to proceed as if personal Service had been effected, he shall, after Notice of such Appearance to the Plaintiff or his Attorney, as the Case may be, be in the same Position as to Pleadings and other Proceedings in the Action as if he had appeared in Time: Provided always, that a Defendant appearing after the Time appointed by the Writ shall not be entitled to any further Time for pleading or any other Proceeding than if he had appeared within such appointed Time.

XXX Appearance by the Defendant in Person to give an Address at which Proceedings may be served.

Every Appearance by the Defendant in Person shall give an Address, at which it shall be sufficient to leave all Pleadings and other Proceedings not requiring personal Service; and if such Address be not given the Appearance shall not be received; and if an Address so given shall be illusory or fictitious, the Appearance shall be irregular, and may be set aside by the Court or a Judge, and the Plaintiff may be permitted to proceed by sticking up the Proceedings in the Master's Office without further Service.

XXXI Mode of Appearance to Writ of Summons.

The Mode of Appearance to every such Writ of Summons, or under the Authority of this Act, shall be by delivering a Memorandum in Writing according to the following Form, or to the like Effect:

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

$$A.$$
, Plaintiff, against $C.D.$ or against $C.D.$ and another, or against $C.D.$ and others.

The Defendant $C.D.$ appears in Person.

 $E.F.$, Attorney for $C.D.$, appears for him.

[If the Defendant appears in Person here give his Address.]

Entered the Day of 18.

Such Memorandum to be delivered to the proper Officer or Person in that Behalf, and to be dated on the Day of the Delivery thereof.

XXXII Proceedings mentioned in Writ or Notice may be had and taken.

All such Proceedings as are mentioned in any Writ or Notice issued under this Act shall and may be had and taken in default of a Defendant's Appearance.

XXXIIIProceedings where only some of the Defendants appear to a Writ specially endorsed.

In any Action brought against Two or more Defendants, where the Writ of Summons is indorsed in the special Form hereinbefore provided, if One or more of such Defendants only shall appear, and another or others of them shall not appear, it shall and may be lawful for the Plaintiff to sign Judgment against such Defendant or Defendants only as shall not have appeared, and, before Declaration against the other Defendant or Defendants, to issue Execution there upon, in which Case he shall be taken to have abandoned his Action against the Defendant or Defendants who shall have appeared; or the Plaintiff may, before issuing such Execution, declare against such Defendant or Defendants as shall have appeared, stating, by way of Suggestion, the Judgment obtained against the other Defendant or Defendants who shall not have appeared, in which Case the Judgment so obtained against the Defendant or Defendants who shall not have appeared shall operate and take effect in like Manner as a Judgment by Default obtained before the Commencement of this Act against One or more of the several Defendants in an Action of Debt before the Commencement of this Act.