



# Common Law Procedure Act 1852

## 1852 CHAPTER 76

### *Effect of Injunction*

And whereas it is expedient that Injunctions and Orders to stay Proceedings should be rendered more effectual, be it enacted as follows:

#### **CCXXVhjunctions and Orders to stay Proceedings to have a specific Effect.**

In case any Action, Suit, or Proceeding in any Court of Law or Equity shall be commenced, sued, or prosecuted, in disobedience of and contrary to any Writ of Injunction, Rule, or Order of either of the Superior Courts of Law or Equity at *Westminster*, or of any Judge thereof, in any other Court than that by or in which such Injunction may have been issued, or Rule or Order made, upon the Production to any such other Court or Judge thereof of such Writ of Injunction, Rule, or Order, the said other Court (in which such Action, Suit, or Proceeding may be commenced, prosecuted, or taken), or any Judge thereof, shall stay all further Proceedings contrary to any such Injunction, Rule, or Order; and thenceforth all further and subsequent Proceedings shall be utterly null and void to all Intents and Purposes : Provided always, that nothing herein contained shall be held to diminish, alter, abridge, or vary the Liability of any Person or Persons commencing, suing, or prosecuting any such Action, Suit, or Proceeding contrary to any Injunction, Rule, or Order of either of the Courts aforesaid, to any Attachment, Punishment, or other Proceeding to which any such Person or Persons are, may, or shall be liable in Cases of Contempt of either of the Courts aforesaid, in regard to the commencing, suing, or prosecuting such Action, Suit, or Proceeding.

And be it enacted as follows :

#### **CCXXVh Interpretation of Terms.**

In the Construction of this Act the Word "Court" shall be understood to mean any One of the Superior Courts of Common Law at *Westminster* in which any Action is brought; and the Word " Judge " shall be understood to mean a Judge or Baron of any of the said Courts; and the Word " Master " shall be understood to mean a Master of any of the said Courts; and the Word " Action " shall be understood to mean any

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Personal Action brought by Writ of Summons in any of the said Courts ; and no Part of the United Kingdom of *Great Britain* and *Ireland*, nor the Islands of *Man*, *Guernsey*, *Jersey*, *Alderney*, or *Sark*, nor any Islands adjacent to any of them, being Part of the Dominions of Her Majesty, shall be deemed to be " beyond the Seas " within the Meaning of this Act: And wherever in this Act, in describing or referring to any Person or Party, Matter or Thing, any Word importing the Singular Number or Masculine Gender is used, the same shall be understood to include and shall be applicable to several Persons and Parties as well as One Person or Party, and Females as well as Males, and Bodies Corporate as well as Individuals, and several Matters and Things as well as One Matter or Thing, unless it otherwise be provided, or there be something in the Subject or Context repugnant to such Construction.

**~~CCXXVII~~ Her Majesty may direct all or Part of this Act to extend to any Court of Record.**

It shall be lawful for Her Majesty from Time to Time, by an Order in Council, to direct that all or any Part of the Provisions of this Act or of the Rules to be made in pursuance thereof shall apply to all or any Court or Courts of Record in *England* or *Wales*, and within One Month after such Order shall have been made and published in the *London Gazette* such Provisions and Rules respectively shall extend and apply in manner directed by such Order; and any such Order may be in like Manner from Time to Time altered or annulled.

**~~CCXXIX~~ Certain of the Provisions of this Act to extend and apply to the Court of Common Pleas at Lancaster and the Court of Pleas at Durham.**

And whereas it is expedient to apply the Provisions of this Act, with the requisite Modifications, to the Superior Courts of the Counties Palatine of *Lancaster* and *Durham* respectively: All the Enactments and Provisions of this Act with respect to Writs for the Commencement of Personal Actions, except such as relate to the Teste thereof in the Name of a Judge, to concurrent Writs, and to the Service of Writs elsewhere than in the Counties Palatine of *Lancaster* and *Durham* respectively, and Proceedings against Parties residing out of the Jurisdiction of the said Courts ; and all the Provisions of this Act with respect to the Appearance of the Defendant and Proceedings of the Plaintiff in default of Appearance; and with respect to the Joinder of Parties to Actions and Joinder of Causes of Action ; and with respect to the Determination of Questions raised by Consent of the Parties without pleading; and with respect to the Language and Form of Pleadings, and Provisions as to Pleadings, Profert, Oyer, setting out of Documents; and with regard to the Time and Manner of declaring; and as to Pleas and subsequent Pleadings, and incident thereto; and Examples and Forms of Pleading and Causes of Action; and with respect to Judgment by Default, and the Mode of ascertaining the Amount to be recovered thereupon and incident thereto; and all the Provisions of this Act with respect to Juries and Jury Process; and with respect to the Admission of Documents ; and with respect to the Expenses of Execution and the remaining in Force and Renewal of Execution, the discharging of Parties from Execution, and charging in Execution Persons in Prison ; and with respect to Proceedings for the Revival of Judgments and other Proceedings by and against Persons not Parties to the Record; and with respect to the Effect of Death, Marriage, and Bankruptcy upon the Proceedings in an Action; and with respect to the Proceedings upon Motions to arrest the Judgment and for Judgment Non obstante veredicto; and with respect to Proceedings in Error subject to the Proviso herein-after contained; and all the Provisions of this Act with respect to the Action of Ejectment, and incident thereto; and with respect to the Power of Amendment by Courts and the

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Judges thereof, shall extend and apply to the Court of Common Pleas at *Lancaster* and the Court of Pleas at *Durham*, and Actions and Proceedings therein respectively.

**~~CCXXX~~Powers given by this Act to the Judges of the Superior Courts at Westminster to make Rules, &c. may be exercised by Judges of the Court of Common Pleas at Lancaster and Court of Pleas at Durham as to those Courts.**

All the Powers given by this Act to the Judges of the said Superior Courts at *Westminster* to make Rules and Regulations for the Execution of this Act, and to frame "Writs and Proceedings for that Purpose; and to the Judges of the said respective Courts to make Rules or Orders for the Government and Conduct of the Ministers and Officers thereof; and all other Powers by this Act given to or vested in the Judges of the said Superior Courts at *Westminster* to be exercised by more than One of them, except the Powers and Authority given by the said Act of Parliament passed in the Session of Parliament held in the Thirteenth and Fourteenth Years of the Reign of Her present Majesty, intituled *An Act to enable the Judges of the Courts of Common Law at Westminster to alter the Forms of Pleading*, shall and may be exercised by the respective Judges of the said Court of Common Pleas at *Lancaster* and Court of Pleas at *Durham*, being Judges of One of the said Common Law Courts at *Westminster*, or any Two of them, with respect to the said Court of Common Pleas at *Lancaster* and Court of Pleas at *Durham* respectively, and the Ministers and Officers thereof, and Matters and Proceedings therein, within the Jurisdiction of the same Courts respectively ; and all Powers under this Act exercisable by any One Judge of the Superior Courts at *Westminster* shall and may be exercisable by One Judge of the said Superior Courts of the said Counties Palatine, being also a Judge of One of the said Courts at *Westminster*, as to Matters and Proceedings in the said Superior Courts of the said Counties Palatine.

**~~CCXXX~~Judges may make Rules for applying other Provisions of this Act to Court of Common Pleas at Lancaster and Court of Pleas at Durham.**

It shall and may be lawful to and for the Judges of each of the said Courts of Common Pleas at *Lancaster* and Pleas at *Durham*, being Judges of One of the Superior Courts at *Westminster*, or any Two of them, from Time to Time to make Rules and Orders for applying any of the other Provisions of this Act to the said respective Superior Courts of the said Counties Palatine, and Matters and Proceedings therein and Parties thereto, with such Modifications and Alterations with reference to the Constitution and peculiar Circumstances of such Court, as they may think fit and reasonable; and for modifying any of the Provisions hereby applied to such last-mentioned Courts respectively with reference to such Constitution and peculiar Circumstances; and from Time to Time to rescind, amend, or alter such Rules or Orders; and that such Rules or Orders, subject to such Power of Rescission, Amendment, and Alteration, shall have the same Force as if the same were made by and embodied in this Act.

**~~CCXXX~~Provisions to apply to Masters of Courts at Westminster to apply to Prothonotaries of Court of Common Pleas at Lancaster and Court of Pleas at Durham, and their Deputies, &c.**

Provided always, That all the Provisions of this Act applicable to Masters of the said Courts at *Westminster* shall apply to the respective Prothonotaries of the Court of Common Pleas at *Lancaster* and Court of Pleas at *Durham*, and their respective Deputies, who may singly exercise, with reference to Matters and Proceedings in the

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last-mentioned Courts respectively, the Powers hereby given to any One or more of the Masters of the Superior Courts at *Westminster*; and that such respective Officers shall record the Proceedings of Trials of Causes depending in the said respective Courts, and draw up and return Postea on Records from the Superior Courts at *Westminster*, tried in the said Counties Palatine respectively, and officiate at the Trial of such Causes therein as heretofore.

#### **~~CCXXXIII~~ As to Proceedings in Error.**

Provided also, as to Proceedings in Error, that the Court of Queen's Bench shall still be the Court of Error from the said Court of Common Pleas at *Lancaster* and Court of Pleas at *Durham*; and that it shall be sufficient to transmit to the said Court of Queen's Bench a Transcript of the Record of any Judgment or Proceedings in those Courts on which Error is alleged; and that the Judgment of the Court of Queen's Bench thereon shall be certified by One of the Masters of the said Court of Queen's Bench on the said Transcript, or by Rule of Court, as the said Court may direct; and that thereupon such Judgment shall be entered on the original Record in the said respective Courts of Common Pleas at *Lancaster* and Pleas at *Durham*; and such further Proceedings as may be necessary thereon shall be awarded by the said respective Courts, subject to the Right of either Party to allege Errors in the said Judgment in the said Court of Queen's Bench, and proceed thereon as provided by this Act in the Case of Errors alleged in Actions depending in that Court.

#### **~~CCXXXIV~~ Certain Provisions of 4 & 5 W.4 c.62 and 2 & 3 Vict. c.16 repealed.**

From the Time when this Act shall commence and take effect so much of a certain Act of Parliament passed in the Fifth Year of the Reign of His late Majesty King *William* the Fourth, intituled *An Act for improving the Practice and Proceedings in the Court of Common Pleas of the County Palatine of Lancaster*, and so much of a certain other Act of Parliament passed in the Second Year of the Reign of Her present Majesty, intituled *An Act for improving the Practice and Proceedings of the Court of Pleas of the County Palatine of Durham and Sadberge*, as relate 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; but that the other Provisions of the said last-mentioned Acts of Parliament, so far as they are not altered by or inconsistent with the Provisions of this Act, shall remain in force.

#### **~~CCXXXV~~ Short Title of Act.**

In citing this Act in any Instrument, Document, or Proceeding, it shall be sufficient to use the Expression " The Common Law Procedure Act, 1852. "

#### **~~CCXXXVI~~ not to extend to Ireland or Scotland.**

Nothing in this Act shall extend to *Ireland* or *Scotland*, except in the Cases herein specially mentioned.