



Common Law Procedure Act 1852

1852 CHAPTER 76

Ejectment

And with respect to the Action of Ejectment, be it enacted as follows:
Ejectment to be brought by Writ.

CLXVIII Instead of the present Proceeding by Ejectment, a Writ shall be issued, directed to the Persons in possession by Name, and to all Persons entitled to defend the Possession of the Property claimed, which Property shall be described in the Writ with reasonable Certainty.

Form and Duration of Writ of Ejectment.

CLXIX The Writ shall state the Names of all the Persons in whom the Title is alleged to be, and command the Persons, to whom it is directed, to appear, within Sixteen Days after Service thereof, in the Court from which it is issued, to defend the Possession of the Property sued for, or such Part thereof as they may think fit, and it shall contain a Notice that in default of Appearance they will be turned out of Possession ; and the Writ shall bear Teste of the Day on which it is issued, and shall be in force for Three Months, and shall be in the Form contained in the Schedule (A.) to this Act annexed, marked No. 13., or to the like Effect; and the Name and Abode of the Attorney issuing the same, or, if no Attorney, the Name and Residence of the Party shall be indorsed thereon, in like Manner as herein-before enacted with reference to the Indorsements on a Writ of Summons in a Personal Action ; and the same Proceedings may be had to ascertain whether the Writ was issued by the Authority of the Attorney whose Name was indorsed thereon, and who and what the Claimants are, and their Abode, and as to staying the Proceedings upon Writs issued without Authority, as in the Case of Writs in Personal Actions.

Service of Writ of Ejectment.

CLXX The Writ shall be served in the same Manner as an Ejectment has heretofore been served, or in such Manner as the Court or a Judge shall order, and in case of vacant Possession, by posting a Copy thereof upon the Door of the Dwelling House or other conspicuous Part of the Property.

Appearance of Persons named in the Writ.

CLXXI The Persons named as Defendants in such Writ, or either of them, shall be allowed to appear within the Time appointed.

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Appearance of Persons not named.

CLXXII Any other Person not named in such Writ shall, by Leave of the Court or a Judge, be allowed to appear and defend, on filing an Affidavit showing that he is in possession of the Land either by himself or his Tenant.

Appearance and Defence by Landlord.

CLXXIII Any Person appearing to defend as Landlord in respect of Property, whereof he is in possession only by his Tenant, shall state in his Appearance that he appears as Landlord; and such Person shall be at liberty to set up any Defence which a Landlord appearing in an Action of Ejectment has heretofore been allowed to set up, and no other.

Notice to defend for Part only.

CLXXIV Any Person appearing to such Writ shall be at liberty to limit his Defence to a Part only of the Property mentioned in the Writ, describing that Part with reasonable Certainty in a Notice intituled in the Court and Cause, and signed by the Party appearing or his Attorney; such Notice to be served within Four Days after Appearance upon the Attorney whose Name is indorsed on the Writ, if any, and if none, then to be filed in the Master's Office; and an Appearance without such Notice confining the Defence to Part, shall be deemed an Appearance to defend for the whole.

Want of Certainty cured by Particulars.

CLXXV Want of "reasonable Certainty" in the Description of the Property, or Part of it, in the Writ or Notice, shall not nullify them, but shall only be Ground for an Application to a Judge for better Particulars of the Land claimed or defended, which a Judge shall have Power to give in all Cases.

Defence by Persons not in possession.

CLXXVI The Court or a Judge shall have Power to strike out or confine Appearances and Defences set up by Persons not in possession by themselves or their Tenants.

Judgment for Default of Appearance or Defence.

CLXXVII In case no Appearance shall be entered into within the Time appointed, or if an Appearance be entered, but the Defence be limited to Part only, the Plaintiffs shall be at liberty to sign a Judgment that the Person whose Title is asserted in the Writ shall recover Possession of the Land, or of the Part thereof to which the Defence does not apply; which Judgment, if for all, may be in the Form contained in the Schedule (A.) to this Act annexed, marked No. 14., or to the like Effect, and if for Part, may be in the Form contained in the Schedule (A.) to this Act annexed, marked No. 15., or to the like Effect.

Issue how made up.

CLXXVIII In case an Appearance shall be entered, an Issue may once be made up, without any Pleadings, by the Claimants or thek Attorney, setting forth the "Writ, and stating the Fact of the Appearance, with its Date, and the Notice limiting the Defence, if any, of each of the Persons appearing, so that it may appear for what Defence is made, and directing the Sheriff to summon a Jury; and such Issue, in case Defence is made for the whole, may be in the Form contained in Schedule (A.) to this Act annexed, marked No. 16., or to the like Effect, and in case Defence is made for Part,, may be in the Form contained in the Schedule (A.) to this Act annexed, marked No. 15., or to the like Effect.

Special Case may be stated.

CLXXIX By Consent of the Parties, and by Leave of a Judge, a Special Case may be stated according to the Practice heretofore used.

Trial of Issue.

CLXXX The Claimants may, if no Special Case be agreed to, proceed to trial upon the Issue, in the same Manner as in other Actions; and the Particulars of the Claim and Defence, if any, or Copies thereof, shall be annexed to the Record by the Claimants; and the Question at the Trial shall, except in the Cases hereafter mentioned, be, whether the Statement in the Writ of the Title of the Claimants is true or false, and, if true, then which of the Claimants is entitled, and whether to the whole or Part, and if to Part, then to which Part of the Property in question; and the Entry of the Verdict may be made in the Form contained in the Schedule (A.) to this Act annexed, marked No. 17-, or to the like Effect, with such Modifications as may be necessary to meet the Facts.

Verdict when Title appears to have expired before Trial.

CLXXXII In case the Title of the Claimant shall appear to have existed as alleged in the Writ, and at the Time of Service thereof, but it shall also appear to have expired before the Time of Trial, the Claimant shall, notwithstanding, be entitled to a Verdict according to the Fact that he was so entitled at the Time of bringing the Action and serving the Writ, and to a Judgment for his Cost of Suit.

Trial may ordered to take place in any County.

CLXXXIII The Court or a Judge may, on the Application of either Party, order that the Trial shall take place in any County or Place other than that in which the Venue is laid; and such Order being suggested on the Record, the Trial may be had accordingly.

Nonappearance at Trial.

CLXXXIII If the Defendant appears, and the Claimant does not appear at the Trial, the Claimant shall be non-suited; and if the Claimant appears, and the Defendant does not appear, the Claimant shall be entitled to recover as heretofore, without any Proof of his Title.

Special Verdict, and Bill of Exceptions.

CLXXXIV The Jury may find a Special Verdict, or either Party may tender a Bill of Exceptions. Judgment upon Finding for Claimant.

CLXXXV Upon a Finding for the Claimant, Judgment may be signed, and Execution issue for the Recovery of Possession of the Property, or such Part thereof as the Jury shall find the Claimant entitled to, and for Costs, within such Time, not exceeding the Fifth Day in Term after the Verdict, as the Court or Judge before whom the Cause is tried shall order; and if no such Order be made, then on the Fifth Day in Term after the Verdict, or within Fourteen Days after such Verdict, whichever shall first happen.

Judgment upon Finding for Defendant.

CLXXXVI Upon a Finding for the Defendants, or any of them, Judgment may be signed, and Execution issue for Costs against the Claimants named in the Writ, within such Time, not exceeding the Fifth Day in Term after the Verdict, as the Court or Judge before whom the Cause is tried shall order; and if no such Order be made, then on the Fifth Day in Term after the Verdict, or within Fourteen Days after such Verdict, whichever shall first happen.

Execution for Recovery of Possession and Costs may be joint or separate.

CLXXXVII On any Judgment in Ejectment for Recovery of Possession and Costs, there may be either One Writ or separate Writs of Execution for the Recovery of Possession and for the Costs, at the Election of the Claimant.

Defence by joint Tenants, Tenants in Common, or Coparcener.

CLXXXVIII In case of such an Action being brought by some or One of several Persons entitled as Joint Tenants, Tenants in Common, or Coparceners, any Joint Tenant, Tenant in Common, or Coparcener in possession, may, at the Time of Appearance, or within Four Days after, give Notice in the same Form as in the Notice of a limited Defence, that he or she defends as such, and admits the Right of the Claimant to an undivided

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Share of the Property, (stating what Share,) but denies any actual Ouster of him from the Property, and may, within the same Time, file an Affidavit stating with reasonable Certainty that he or she is such Joint Tenant, Tenant in Common, or Coparcener, and the Share of such Property to which he or she is entitled, and that he or she has not ousted the Claimant; and such Notice shall be entered in the Issue in the same Manner as the Notice limiting the Defence, and upon the Trial of such an Issue the additional Question of whether an actual Ouster has taken place shall be tried.

Trial and Judgment in Ejectment against Joint Tenants, Tenants in Common, and Coparceners.

CLXXXIX Upon the Trial of such Issue as last aforesaid, if it shall be found that the Defendant is Joint Tenant, Tenant in Common, or Coparcener with the Claimant, then the Question whether an actual Ouster has taken place shall be tried, and unless such actual Ouster shall be proved the Defendant shall be entitled to Judgment and Costs ; but if it shall be found either that the Defendant is not such Joint Tenant, Tenant in Common, or Coparcener, or that an actual Ouster has taken place, then the Claimant shall be entitled to such Judgment for the Recovery of Possession and Costs.

Action not to abate by Death.

CXC The Death of a Claimant or Defendant shall not cause the Action to abate, but it may be continued as herein-after mentioned.

Proceeding upon Death before Trial where Right survives.

CXCI In case the Right of the deceased Claimant shall survive to another Claimant, a Suggestion may be made of the Death, which Suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the Action may proceed at the Suit of the surviving Claimant; and if such a Suggestion shall be made before the Trial, then the Claimant shall have a Verdict and recover such Judgment as aforesaid, upon its appearing that he was entitled to bring the Action either separately or jointly with the deceased Claimant.

Proceedings upon Death before Trial, where Right does not survive.

CXCII In case of the Death before Trial of One of several Claimants, whose Right does not survive to another or others of the Claimants, where the legal Representative of the deceased Claimant shall not become a Party to the Suit in the Manner herein-after mentioned, a Suggestion may be made of the Death, which Suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the Action may proceed at the Suit of the surviving Claimant for such Share of the Property as he is entitled to, and Costs.

Upon Death of One of several Claimants having obtained a Verdict.

CXCIII In case of a Verdict for Two or more Claimants, if One of such Claimants die before Execution executed, the other Claimant may, whether the legal Right to the Property shall survive or not, suggest the Death in manner aforesaid, and proceed to Judgment and Execution for Recovery of Possession of the Entirety of the Property and the Costs; but nothing herein contained shall affect the Right of the legal Representative of the deceased Claimant, or the Liability of the surviving Claimant to such legal Representative; and the Entry and Possession of such surviving Claimant under such Execution shall be considered as an Entry and Possession on behalf of such legal Representative in respect of the Share of the Property to which he shall be entitled as such Representative, and the Court may direct Possession to be delivered accordingly.

Proceedings in case of Death of Claimant, where Right does not survive.

CXCIV In case of the Death of a sole Claimant, or, before Trial, of One of several Claimants, whose Right does not survive to another or others of the Claimants, the legal Representative of such Claimant may, by Leave of the Court or a Judge, enter a

Suggestion of the Death, and that he is such legal Representative, and the Action shall thereupon proceed; and if such Suggestion be made before the Trial, the Truth of the Suggestion shall be tried thereat, together with the Title of the deceased Claimant, and such Judgment shall follow upon the Verdict in favour of or against the Person making such Suggestion, as herein-before provided with reference to a Judgment for or against such Claimant; and in case such Suggestion in the Case of a sole Claimant be made after Trial and before Execution executed by Delivery of Possession thereupon, and such Suggestion be denied by the Defendant within Eight Days after Notice thereof, or such further Time as the Court or a Judge may allow, then such Suggestion shall be tried; and if, upon the Trial thereof, a Verdict shall pass for the Person making such Suggestion, he shall be entitled to such Judgment as aforesaid for the Recovery of Possession, and for the Costs of and occasioned by such Suggestion; and in case of a Verdict for the Defendant such Defendant shall be entitled to such Judgment as aforesaid for Costs.

Proceedings upon Death of One of several joint Defendants.

CXCV In case of the Death, before or after Judgment, of One of several Defendants in Ejectment, who defend jointly, a Suggestion may be made of the Death, which Suggestion shall not be traversable, but only be subject to be set aside if untrue, and the Action may proceed against the surviving Defendant to Judgment and Execution.

Upon Death of ali the Defendants in Ejectment before Trial.

CXCVI In case of the Death of a sole Defendant, or of all the Defendants in Ejectment, before Trial, a Suggestion may be made of the Death, which Suggestion shall not be traversable, but only be subject to be set aside if untrue, and the Claimants shall be entitled to Judgment for Recovery of Possession of the Property, unless some other Person shall appear and defend within the Time to be appointed for that Purpose by the Order of the Court or a Judge, to be made upon the Application of the Claimants; and it shall be lawful for the Court or a Judge, upon such Suggestion being made and upon such Application as aforesaid, to order that the Claimants shall be at liberty to sign Judgment within such Time as the Court or Judge may think fit, unless the Person then in possession, by himself or his Tenant, or the legal Representative of the deceased Defendant, shall within such Time appear and defend the Action; and such Order may be served in the same Manner as the Writ; and in case such Person shall appear and defend the same, Proceedings may be taken against such new Defendant as if he had originally appeared and defended the Action; and if no Appearance be entered and Defence made, then the Claimant shall be at liberty to sign Judgment pursuant to the Order.

Upon Death of all Defendants in Ejectment after Verdict.

CXCVII In case of the Death of a sole Defendant or of all the Defendants in Ejectment after Verdict, the Claimants shall nevertheless be entitled to Judgment as if no such Death had taken place, and to proceed by Execution for Recovery of Possession without Suggestion or Revivor, and to proceed for the Recovery of the Costs, in like Manner as upon any other Judgment for Money, against the legal Representatives of the deceased Defendant or Defendants.

Upon Death before Trial of Defendant in Ejectment, who defends separately for Part.

CXCVIII In case of the Death before Trial of One of several Defendants in Ejectment, who defends separately for a Portion of the Property for which the other Defendant or Defendants do not defend, the same Proceedings may be taken as to such Portion as in the Case of the Death of a sole Defendant, or the Claimants may proceed against the surviving Defendants in respect of the Portion of the Property for which they defend.

Upon Death of Defendant defending separately for Property in respect of which others also defend.

CXCIX In case of the Death before Trial of One of several Defendants in Ejectment, who defends separately in respect of Property for which surviving Defendants also defend, it shall be lawful for the Court or a Judge at any Time before the Trial to allow the Person at the Time of the Death in possession of the Property, or the legal Representative of the deceased Defendant, to appear and defend on such Terms as may appear reasonable and just, upon the Application of such Person or Representative; and if no such Application be made or Leave granted, the Claimant, suggesting the Death in manner aforesaid, may proceed against the surviving Defendant or Defendants to Judgment and Execution.

Claimant may discontinue by Notice

CC The Claimant in Ejectment shall be at liberty at any Time to discontinue the Action as to One or more of the Defendants, by giving to the Defendant or his Attorney a Notice headed in the Court and Cause, and signed by the Claimant or his Attorney, stating that he discontinues such Action; and thereupon the Defendant, to whom such Notice is given, shall be entitled to and may forthwith sign Judgment for Costs in the Form contained in the Schedule (A.) to this Act annexed, marked No. 18, or to the like Effect.

Discontinuance of Action by One of several Claimants.

CCI In case One of several Claimants shall be desirous to discontinue, he may apply to the Court or a Judge to have his Name struck out of the Proceedings, and an Order may be made thereupon upon such Terms as to the Court or Judge may seem fit, and the Action shall thereupon proceed at the Suit of the other Claimants.

Judgment for not proceeding to Trial after Notice.

CCII If after Appearance entered the Claimant, without going to Trial, allow the Time, allowed for going to Trial by the Practice of the Court in ordinary Cases after Issue joined, to elapse, the Defendant in Ejectment may give Twenty Days Notice to the Claimant to proceed to Trial at the Sittings or Assizes next after the Expiration of the Notice ; and if the Claimant afterwards neglects to give Notice of Trial for such Sittings or Assizes, or to proceed to Trial in pursuance of the said Notice given by the Defendant, and the Time for going to Trial shall not be extended by the Court or a Judge, the Defendant may sign Judgment in the Form contained in the Schedule (A.) to this Act annexed, marked No. 19, and recover the Costs of Defence.

Defendant may confess the Action.

CCIII A sole Defendant or all the Defendants in Ejectment shall be at liberty to confess the Action as to the whole or Part of the Property, by giving to such Claimant a Notice headed in the Court and Cause, and signed by the Defendant or Defendants, such Signature to be attested by his or their Attorney; and thereupon the Claimant shall be entitled to and may forthwith sign Judgment and issue Execution for the Recovery of Possession and Costs in the Form contained in the Schedule (A.) to this Act annexed, marked No. 20, or to the like Effect.

Confession by One of several Defendants defending separately for Part.

CCIV In case One of several Defendants in Ejectment, who defends separately for a Portion of the Property for which the other Defendant or Defendants do not defend, shall be desirous of confessing the Claimant's Title to such Portion, he may give a like Notice to the Claimant; and thereupon the Claimant shall be entitled to and may forthwith sign Judgment and issue Execution for the Recovery of Possession of such Portion of the Property, and for the Costs occasioned by the Defence relating to the same, and the Action may proceed as to the Residue.

Confession by One of several Defendants who defend for same Property.

CCV In case One of several Defendants in Ejectment, who defends separately in respect of Property for which other Defendants also defend, shall be desirous of confessing the Claimant's Title, he may give a like Notice thereof; and thereupon the Claimant shall be entitled to and may sign Judgment against such Defendant for the Costs occasioned by his Defence, and may proceed in the Action against the other Defendants to Judgment and Execution.

Formal Entry of Judgment on the Roll unnecessary for Purposes of Execution.

CCVI It shall not be necessary before issuing Execution upon any Judgment under the Authority of this Act to enter the Proceedings upon any Roll, but an Incipitur thereof may be made upon Paper, shortly describing the Nature of the Judgment according to the Practice heretofore used, and Judgment may thereupon be signed, and Costs taxed, and Execution issued, according to the Practice heretofore used: Provided nevertheless, that the Proceedings may be entered upon the Roll whenever the same may become necessary for the Purpose of Evidence, or of bringing Error, or the like.

Effect of Judgment.

CCVII The Effect of a Judgment in an Action of Ejectment under this Act shall be the same as that of a Judgment in the Action of Ejectment heretofore used.

Error and Bail in Error in Ejectment.

CCVIII Error may be brought in like Manner as in other Actions upon any Judgment in Ejectment, after a Special Verdict found by the Jury, or a Bill of Exceptions, or by Consent after a Special Case stated, but, except in the Case of such Consent as aforesaid, Execution shall not be thereby stayed, unless the Plaintiff in Error shall, within Four clear Days after lodging the Memorandum alleging Error, or after the signing of the Judgment, whichever shall last happen, or before Execution executed, be bound unto the Claimant, who shall have recovered Judgment in such Action of Ejectment, in double the yearly Value of the Property, and double the Costs recovered by the Judgment, with Condition, that if the Judgment shall be affirmed by the Court of Error, or the Proceedings in Error be discontinued by the Plaintiff therein, then the Plaintiff in Error shall pay such Costs, Damages, and Sum or Sums of Money as shall be awarded upon or after such Judgment affirmed or Discontinuance; and it shall be lawful for the Court wherein Execution ought to be granted upon such Affirmation, or Discontinuance, upon the Application of the Claimant, to issue a Writ to inquire as well of the mesne Profits as of the Damage by any Waste committed after the first Judgment in Ejectment, which Writ may be tested on the Day on which it shall issue, and be returnable immediately after the Execution thereof; and upon the Return thereof Judgment shall be given, and Execution awarded for such mesne Profits and Damages, and also for Costs of Suit.

Tenants to give Notice of Ejectment to Landlord.

CCIX Every Tenant to whom any Writ in Ejectment shall be delivered, or to whose Knowledge it shall come, shall forthwith give Notice thereof to his Landlord, or his Bailiff or Receiver, under Penalty of forfeiting the Value of Three Years improved or Rack Rent of the Premises, demised or holden in the Possession of such Tenant, to the Person of whom he holds, to be recovered by Action in any Court of Common Law having Jurisdiction for the Amount.

Proceedings in Ejectment by Landlord for Nonpayment of Rent.

CCX In all Cases between Landlord and Tenant, as often as it shall happen that One Half Year's Rent shall be in arrear, and the Landlord or Lessor, to whom the same is due, hath Right by Law to re-enter for the Nonpayment thereof, such Landlord or Lessor shall and may, without any formal Demand or Re-entry, serve a Writ in Ejectment for the Recovery of the demised Premises, or in case the same cannot be legally served, or

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no Tenant be in actual Possession of the Premises, then such Landlord or Lessor may affix a Copy thereof upon the Door of any demised Messuage, or in case such Action in Ejectment shall not be for the Recovery of any Messuage, then upon some notorious Place of the Lands, Tenements, or Hereditaments comprised in such Writ in Ejectment, and such affixing shall be deemed legal Service thereof, which Service or affixing such Writ in Ejectment shall stand in the Place and Stead of a Demand and Re-entry ; and in case of Judgment against the Defendant for Nonappearance, if it shall be made appear to the Court where the said Action is depending, by Affidavit, or be proved upon the Trial in case the Defendant appears, that Half a Year's Rent was due before the said Writ was served, and that no sufficient Distress was to be found on the demised Premises, countervailing the Arrears then due, and that the Lessor had Power to re-enter, then and in every such Case the Lessor shall recover Judgment and Execution, in the same Manner as if the Rent in arrear had been legally demanded, and a Re-entry made; and in case the Lessee or his Assignee, or other Person claiming or deriving under the said Lease, shall permit and suffer Judgment to be had and recovered on such Trial in Ejectment, and Execution to be executed thereon, without paying the Rent and Arrears, together with full Costs, and without proceeding for Relief in Equity within Six Months after such Execution executed, then and in such Case the said Lessee, his Assignee, and all other Persons claiming and deriving under the said Lease, shall be barred and foreclosed from all Relief or Remedy in Law or Equity, other than by bringing Error for Reversal of such Judgment, in case the same shall be erroneous, and the said Landlord or Lessor shall from thenceforth hold the said demised Premises discharged from such Lease ; and if on such Ejectment a Verdict shall pass for the Defendant, or the Claimant shall be nonsuited therein, then in every such Case such Defendant shall have and recover his Costs ; provided that nothing herein contained shall extend to bar the Right of any Mortgagee of such Lease, or any Part thereof, who shall not be in possession, so as such Mortgagee shall and do, within Six Months after such Judgment obtained and Execution executed pay all Rent in arrear, and all Costs and Damages sustained by such Lessor or Person entitled to the Remainder or Reversion as aforesaid, and perform all the Covenants and Agreements which, on the Part and Behalf of the First Lessee, are and ought to be performed.

Lessee proceeding in Equity not to have Injunction or Relief without Payment of Rent and Costs.

CCXI In case the said Lessee, his Assignee, or other Person claiming any Right, Title, or Interest, in Law or Equity, of, in, or to the said Lease, shall, within the Time aforesaid, proceed for Relief in any Court of Equity, such Person shall not have or continue any Injunction against the Proceedings at Law on such Ejectment, unless he does or shall, within Forty Days next after a full and perfect Answer shall be made by the Claimant in such Ejectment, bring into Court, and lodge with the proper Officer such Sum and Sums of Money as the Lessor or Landlord shall in his Answer swear to be due and in arrear over and above all just Allowances, and also the Costs taxed in the said Suit, there to remain till the Hearing of the Cause, or to be paid out to the Lessor or Landlord on good Security, subject to the Decree of the Court; and in case such Proceedings for Relief in Equity shall be taken within the Time aforesaid, and after Execution is executed, the Lessor or Landlord shall be accountable only for so much and no more as he shall really and bond fide, without Fraud, Deceit, or wilful Neglect, make of the demised Premises from the Time of his entering into the actual Possession thereof; and if what shall be so made by the Lessor or Landlord happen to be less than the Rent reserved on the said Lease, then the said Lessee or his Assignee, before he shall be restored to his Possession, shall pay such Lessor or Landlord, what the Money so by him made fell short of the reserved Rent for the Time such Lessor or Landlord held the said Lands.

Tenant paying all Rent with Costs, Proceedings to cease.

CCXII If the Tenant or his Assignee do or shall, at any Time-before the Trial in such Ejectment, pay or tender to the Lessor or Landlord, his Executors or Administrators, or his or their Attorney in that Cause, or pay into the Court where the same Cause is depending, all the Rent and Arrears, together with the Costs, then and in such Case, all further Proceedings on the said Ejectment shall cease and be discontinued; and if such Lessee, his Executors, Administrators, or Assigns, shall, upon such Proceedings as aforesaid, be relieved in Equity, he and they shall have, hold, and enjoy the demised Lands, according to the Lease thereof made, without any new Lease.

Ejectment by Landlord against Tenant holding over after Expiration of Term or Determination of Tenancy by Notice to quit.

CCXIII Where the Term or Interest of any Tenant now or hereafter holding under a Lease or Agreement in Writing any Lands, Tenements, or Hereditaments for any Term or Number of Years certain, or from Year to Year, shall have expired or been determined either by the Landlord or Tenant by regular Notice to quit, and such Tenant, or any one holding or claiming by or under him, shall refuse to deliver up Possession accordingly, after lawful Demand in Writing made and signed by the Landlord or his Agent, and served personally upon or left at the Dwelling House or usual Place of Abode of such Tenant or Person, and the Landlord shall thereupon proceed by Action of Ejectment for the Recovery of Possession, it shall be lawful for him, at the Foot of the Writ in Ejectment, to address a Notice to such Tenant or Person requiring him to find such Bail, if ordered by the Court or a Judge, and for such Purposes as are herein-after next specified; and upon the Appearance of the Party on an Affidavit of Service of the Writ and Notice, it shall be lawful for the Landlord producing the Lease or Agreement, or some Counterpart or Duplicate thereof, and proving the Execution of the same by Affidavit, and upon Affidavit that the Premises have been actually enjoyed under such Lease or Agreement, and that the Interest of the Tenant has expired, or been determined by regular Notice to quit, as the Case may be, and that Possession has been lawfully demanded in manner aforesaid, to move the Court or apply by Summons to a Judge at Chambers for a Rule or Summons for such Tenant or Person to show Cause, within a Time to be fixed by the Court or Judge on a Consideration of the Situation of the Premises, why such Tenant or Person should not enter into a Recognizance by himself and Two sufficient Sureties in a reasonable Sum conditioned to pay the Costs and Damages which shall be recovered by the Claimants in the Action ; and it shall be lawful for the Court or Judge upon Cause shown, or upon Affidavit of the Service of the Rule or Summons in case no Cause shall be shown, to make the same absolute in the whole or in part, and to order such Tenant or Person, within a Time to be fixed, upon a Consideration of all the Circumstances, to find such Bail, with such Conditions and in such Manner as shall be specified in the said Rule or Summons, or such Part of the same so made absolute; and in case the Party shall neglect or refuse so to do, and shall lay no Ground to induce the Court or Judge to enlarge the Time for obeying the same, then the Lessor or Landlord filing an Affidavit that such Rule or Order has been made and served and not complied with shall be at liberty to sign Judgment for Recovery of Possession and Costs of Suit in the Form contained in the Schedule (A.) to this Act annexed, marked No. 21, or to the like Effect.

On Trial of any Ejectment between Landlord and Tenant, Juries to give Damages for mesne Profits down to the Verdict, or to a Day specified therein.

CCXIV Wherever it shall appear on the Trial of any Ejectment, at the Suit of a Landlord against a Tenant, that such Tenant or his Attorney hath been served with due Notice of Trial, the Judge before whom such Cause shall come on to be tried shall, whether the Defendant shall appear upon such Trial or not, permit the Claimant on the Trial, after

Proof of his Right to recover Possession of the whole or of any Part of the Premises mentioned in the Writ in Ejectment, to go into Evidence of the mesne Profits thereof which shall or might have accrued from the Day of the Expiration or Determination of the Tenant's Interest in the same down to the Time of the Verdict given in the Cause, or to some preceding Day to be specially mentioned therein; and the Jury on the Trial finding for the Claimant shall in such Case give their Verdict upon the whole Matter, both as to the Recovery of the whole or any Part of the Premises, and also as to the Amount of the Damages to be paid for such mesne Profits; and in such Case the Landlord shall have Judgment within the Time herein-before provided, not only for the Recovery of Possession and Costs, but also for the mesne Profits found by the Jury: Provided always, that nothing herein-before contained shall be construed to bar any such Landlord from bringing any Action for the mesne Profits which shall accrue from the Verdict, or the Day so specified therein, down to the Day of the Delivery of Possession of the Premises recovered in the Ejectment.

On Trials after Bail found, Judge shall not stay the Execution except by Consent, or on Tenant's finding Security.

CCXV In all Cases in which such Security shall have been given as aforesaid, if upon the Trial a Verdict shall pass for the Claimant, unless it shall appear to the Judge before whom the same shall have been had that the finding of the Jury was contrary to the Evidence, or that the Damages given were excessive, such Judge shall not, except by Consent, make any Order to stay Judgment or Execution, except on condition that within Four Days from the Day of the Trial the Defendant shall actually find Security, by the Recognizance of himself and Two sufficient Sureties, in such reasonable Sum as the Judge shall direct, conditioned not to commit any Waste, or Act in the Nature of Waste, or other wilful Damage, and not to sell or carry off any standing Crops, Hay, Straw, or Manure produced or made (if any) upon the Premises, and which may happen to be thereupon, from the Day on which the Verdict shall have been given to the Day on which Execution shall finally be made upon the Judgment, or the same be set aside, as the Case may be: Provided always, that the Recognizance last above mentioned shall immediately stand discharged and be of no Effect, in case Proceedings in Error shall be brought upon such Judgment, and the Plaintiff in Error shall become bound in the Manner herein-before provided.

Recognizances to be taken as other Recognizances of Bail; Actions on them limited.

CCXVI All Recognizances and Securities entered into as last aforesaid may and shall be taken respectively in such Manner and by and before such Persons as are provided and authorized in respect of Recognizances of Bail upon Actions and Suits depending in the Court in which any such Action of Ejectment shall have been commenced; and the Officer of the same Court with whom Recognizances of Bail are filed shall file such Recognizances and Securities, for which respectively the Sum of Two Shillings and Sixpence, and no more, shall be paid; but no Action or other Proceeding shall be commenced upon any such Recognizance or Security after the Expiration of Six Months from the Time when Possession of the Premises, or any Part thereof, shall actually have been delivered to the Landlord.

Landlord to recover Possession of Lands, &c. after Service of Writ in Ejectment.

CCXVII In all Actions of Ejectment hereafter to be brought in any of Her Majesty's Courts at Westminster by any Landlord against his Tenant, or against any Person claiming through or under such Tenant, for the Recovery of any Lands or Hereditaments in any County, except London or Middlesex, where the Tenancy shall expire, or the Right of Entry into or upon such Lands or Hereditaments shall accrue to such Landlord, in or after Hilary or Trinity Terms respectively, it shall be lawful for the Claimant in any such Action, at any Time within Ten Days after such Tenancy shall expire, or Right

of Entry accrue as aforesaid, to serve a Writ in Ejectment in the Form contained in the Schedule (A.) to this Act annexed, marked No. 13, except that it shall command the Persons to whom it is directed to appear within Ten Days after Service thereof in the Court in which such Action may be brought; and the like Proceedings shall be thereupon had as herein-before provided, save that it shall be sufficient to give at least Six clear Days Notice of Trial to the Defendant before the Commission Day of the Assizes at which such Ejectment is intended to be tried; and any Defendant in such Action may, at any Time before the Trial thereof, apply to a Judge by Summons to stay or set aside the Proceedings, or to postpone the Trial until the next Assizes; and it shall be lawful for the Judge, in his Discretion, to make such Order in the said Cause as to him shall seem expedient.

Saving of former Remedies.

CCXVIII Nothing herein contained shall be construed to prejudice or affect any other Right of Action or Remedy which Landlords may possess in any of the Cases herein-before provided for, otherwise than herein-before expressly enacted.

In Ejectment by-Mortgagee, the Mortgagor's rendering the Principal, Interest, and Costs in Court shall be deemed a full Satisfaction, and the Court may compel the Mortgagee to re-convey.

CCXIX Where an Action of Ejectment shall be brought by any Mortgagee, his Heirs, Executors, Administrators, or Assignees, for the Recovery of the Possession of any mortgaged Lands, Tenements, or Hereditaments, and no Suit shall be then depending in any of Her Majesty's Courts of Equity in that Part of Great Britain called England, for or touching the foreclosing or redeeming of such mortgaged Lands, Tenements, or Hereditaments, if the Person having Right to redeem such mortgaged Lands, Tenements, or Hereditaments, and who shall appear and become Defendant in such Action, shall, at any Time pending such Action, pay unto such Mortgagee, or, in case of his Refusal, shall bring into Court, where such Action shall be depending, all the Principal Monies and Interest due on such Mortgage, and also all such Costs as have been expended in any Suit at Law or in Equity upon such Mortgage (such Money for Principal, Interest, and Costs to be ascertained and computed by the Court where such Action is or shall be depending, or by the proper Officer by such Court to be appointed for that Purpose), the Monies so paid to such Mortgagee, or brought into such Court, shall be deemed and taken to be in full Satisfaction and Discharge of such Mortgage, and the Court shall and may discharge every such Mortgagor or Defendant of and from the same accordingly ; and shall and may, by Rule of the same Court, compel such Mortgagee, at the Costs and Charges of such Mortgagor, to assign, surrender, or re-convey such mortgaged Lands, Tenements, and Hereditaments, and such Estate and Interest as such Mortgagee has therein, and deliver up all Deeds, Evidences, and Writings in his Custody, relating to the Title of such mortgaged Lands, Tenements, and Hereditaments, unto such Mortgagor, who shall have paid or brought such Monies into the Court, his Heirs, Executors, or Administrators, or to such other Person or Persons as he or they shall for that Purpose nominate or appoint.

Not to extend to Cases where-the Right of Redemption is controverted, or the Money due not adjusted.

CCXX Nothing herein contained shall extend to any Case where the Person, against whom the Redemption is or shall be prayed, shall (by Writing under his Hand, or the Hand of his Attorney, Agent, or Solicitor, to be delivered before the Money shall be brought into such Court of Law, to the Attorney or Solicitor for the other Side,) insist, either that the Party praying a Redemption has not a Right to redeem, or that the Premises are chargeable with other or different Principal Sums, than what appear on the Face of the Mortgage or shall be admitted on the other Side; or to any Case where the

Right of Redemption to the mortgaged Lands and Premises in question in any Cause or Suit shall be controverted or questioned by or between different Defendants in the same Cause or Suit; or shall be any Prejudice to any subsequent Mortgage or subsequent Incumbrance, anything herein contained to the contrary thereof in anywise notwithstanding.

Jurisdiction of Courts and Judges.

CCXXI The several Courts and the Judges thereof respectively shall and may exercise over the Proceedings the like Jurisdiction as heretofore exercised in the Action of Ejectment, so as to ensure a Trial of the Title, and of actual Ouster, when necessary, only, and for all other Purposes for which such Jurisdiction may at present be exercised; and the Provisions of all Statutes not inconsistent with the Provisions of this Act, and which may be applicable to the altered Mode of Proceeding, shall remain in force and be applied thereto.