



Common Law Procedure Act 1852

1852 CHAPTER 76

Error

And with respect to Proceedings in Error, be it enacted as follows:
Error to be brought within Six Years.

CXLVI No Judgment in any Cause shall be reversed or avoided for any Error or Defect therein, unless Error be commenced, or brought and prosecuted with Effect, within Six Years after such Judgment signed or entered of Record.

Proviso for Disabilities.

CXLVII If any Person that is or shall be entitled to bring Error as aforesaid is or shall be, at the Time of such Title accrued, within the Age of Twenty-one Years, Feme Covert, non compos mentis, or beyond the Seas, then such Person shall be at liberty to bring Error as aforesaid, so as such Person commences, or brings and prosecutes the same with Effect, within Six Years after coming to or being of full Age, Discover, of sound Memory, or return from beyond the Seas; and if the opposite Party shall, at the Time of the Judgment signed or entered of Record, be beyond the Seas, then Error may be brought, provided the Proceedings be commenced and prosecuted with Effect within Six Years after the Return of such Party from beyond Seas.

Writ of Error abolished.

CXLVIII Writ of Error shall not be necessary or used in any Cause, and the Proceeding to Error shall be a Step in the Cause, and shall be taken in manner herein-after mentioned; but nothing in this Act contained shall invalidate any Proceedings already taken or to be taken by reason of any Writ of Error issued before the Commencement of this Act.

Error in Law how brought.

CXLIX Either Party alleging Error in Law may deliver to One of the Masters of the Court a Memorandum in Writing, in the Form contained in the Schedule (A.) to this Act annexed, marked No. 10, or to the like Effect, entitled in the Court and Cause, and signed by the Party or his Attorney, alleging that there is Error in Law in the Record and Proceedings; whereupon the Master shall file such Memorandum, and deliver to the Party lodging the same a Note of the Receipt thereof; and a Copy of such Note, together with a Statement of the Grounds of Error intended to be argued, may be served on the opposite Party or his Attorney.

Error not Supersedeas till Service of the Copy of the Note and Grounds of Error.

Status: This is the original version (as it was originally enacted).

CL Proceedings in Error in Law shall be deemed a Supersedeas of Execution from the Time of the Service of the Copy of such Note, together with the Statement of the Grounds of Error intended to be argued, until Default in putting in Bail, or an Affirmance of the Judgment, or Discontinuance of the Proceedings in Error, or until the Proceedings in Error shall be otherwise disposed of without a Reversal of the Judgment; provided always, that if the Grounds of Error shall appear to be frivolous, the Court or a Judge upon Summons may order Execution to issue.

Bail in Error.

CLI Upon any Judgment hereafter to be given in any of the said Superior Courts of Common Law in any Action, Execution shall not be stayed or delayed by Proceedings in Error, or Supersedeas thereupon, without the special Order of the Court or a Judge, unless the Person in whose Name such Proceedings in Error be brought, with Two, or, by Leave of the Court or a Judge, more than Two sufficient Sureties, such as the Court (wherein such Judgment is or shall be given) or a Judge shall allow of, 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 Party for whom any such Judgment is or shall be given, by Recognizance to be acknowledged in the same Court, in double the Sum adjudged to be recovered by the said Judgment, (except in case of a Penalty, and in case of a Penalty in double the Sum really due, and double the Costs,) to prosecute the Proceedings in Error with effect, and also to satisfy and pay (if the said Judgment be affirmed, or the Proceedings in Error be discontinued by the Plaintiff therein,) all and singular the Sum or Sums of Money and Costs adjudged or to be adjudged upon the former Judgment, and all Costs and Damages to be also awarded for the delaying of Execution, and shall give Notice thereof to the Defendant in Error, or his Attorney.

Suggestion instead of Assignment of and Joinder in Error.

CLII The Assignment of and Joinder in Error in Law shall not be necessary or used, and, instead thereof, a Suggestion to the Effect that Error is alleged by the One Party and denied by the other, may be entered on the Judgment Roll in the Form contained in Schedule (A.) to this Act annexed, marked No. 11., or to the like Effect: Provided that in case the Defendant in Error intends to rely upon the Proceeding in Error being barred by Lapse of Time, or by Release of Error, or other like Matter of Fact, he may give Four Days written Notice to the Plaintiff in Error to assign Error as heretofore, instead of entering the Suggestion; and he shall, within Eight Days, plead thereto the Bar by Lapse of Time, or Release of Error, or other like Matter of Fact; and thereupon such Proceedings may be had as heretofore.

Roll to be made up and Suggestion entered by Plaintiff in Error.

CLIII The Roll shall be made up, and the Suggestion last aforesaid entered by the Plaintiff in Error within Ten Days after the Service of the Note of the Receipt of the Memorandum alleging Error, or within such other Time as the Court or a Judge may order; and in default thereof, or of Assignment of Error in Cases where an Assignment is required, the Defendant in Error, his Executors or Admmistrators, shall be at liberty to sign Judgment of Non-pros.

Error brought by One of several Persons against whom Judgment has been given.

CLIV In case Error be brought upon a Judgment given against several Persons, and One or some only shall proceed in Error, the Memorandum alleging Error, and the Note of the Receipt of such Memorandum, shall state the Names of the Persons by whom the Proceedings are taken ; and in case the other Persons, against whom Judgment has been given, decline to join in the Proceedings in Error, the same may be continued, and the Suggestion last aforesaid entered, stating the Persons by whom the Proceedings are brought, without any Summons and Severance, or if such other Persons elect to

join, then the Suggestion shall state them to be, and they shall be deemed as Plaintiffs in Error, although not mentioned as such in the previous Proceedings.

Judgment Roll to be brought into Court instead of Transcript.

CLV Upon such Suggestion of Error alleged and denied being entered, the Cause may be set down for Argument in the Court of Error in the Manner heretofore used; and the Judgment Roll shall, without any Writ or Return, be brought by the Master into the Court of Error in the Exchequer Chamber, before the Justices, or Justices and Barons, as the Case may be, of the other Two Superior Courts of Common Law, on the Day of its Sitting, at such Time as the Judges shall appoint, either in Term or in Vacation ; or if the Proceedings in Error be before the High Court of Parliament, then before the High Court of Parliament, before or at the Time of its Sitting ; and the Court of Error shall and may thereupon review the Proceedings, and give Judgment as they shall be advised thereon; and such Proceedings and Judgment, as altered or affirmed, shall be entered on the original Record ; and such further Proceedings as may be necessary thereon shall be awarded by the Court in which the Original Judgment was given.

Jurisdiction of Courts of Error over the Proceedings.

CLVI Courts of Error shall have Power to quash the Proceedings in Error in all Cases in which Error does not lie, or where they are taken against good Faith, or in any Case in which Proceedings in Error might heretofore have been quashed by such Courts; and such Courts shall in all respects have such Jurisdiction over the Proceedings as over the Proceedings in Error commenced by Writ of Error.

Court of Error to have like Powers with Court below.

CLVII Courts of Error shall in all Cases have Power to give such Judgment and award such Process, as the Court, from which Error is brought, ought to have done, without regard to the Party alleging Error.

Proceedings in Error in Fact.

CLVIII Either Party alleging Error in Fact may deliver to One of the Masters of the Court a Memorandum in Writing, in the Form contained in the Schedule (A.) to this Act annexed, marked No. 12., or to the like Effect, intitled in the Court and Cause, and signed by the Party or his Attorney, alleging that there is Error in Fact in the Proceedings, together with an Affidavit of the Matter of Fact in which the alleged Error consists ; whereupon the Master shall file such Memorandum and Affidavit, and deliver to the Party lodging the same a Note of the Receipt thereof; and a Copy of such Note and Affidavit may be served on the opposite Party or his Attorney; and such Service shall have the same Effect, and the same Proceedings may be had thereafter as heretofore had after the Service of the Rule for Allowance of a Writ of Error in Fact.

Plaintiff may discontinue Proceedings in Error.

CLIX The Plaintiff in Error, whether in Fact or Law, shall be at liberty to discontinue his Proceedings by giving to the Defendant in Error a Notice, headed in the Court and Cause, and signed by the Plaintiff in Error or his Attorney, stating that he discontinues such Proceedings ; and thereupon the Defendant in Error may sign Judgment for the Costs of, and occasioned by, the Proceedings in Error, and may proceed upon the Judgment on which the Error was brought.

Defendant may confess Error, and consent to Reversal of Judgment.

CLX The Defendant in Error, whether in Fact or Law, shall be at liberty to confess Error, and consent to the Reversal of the Judgment, by giving to the Plaintiff in Error a Notice, headed in the Court and Cause, and signed by the Defendant in Error or his Attorney, stating that he confesses the Error, and consents to the Reversal of the Judgment; and thereupon the Plaintiff in Error shall be entitled to and may forthwith sign a Judgment of Reversal.

Status: This is the original version (as it was originally enacted).

Death of Plaintiff in Error no Abatement.

CLXI The Death of a Plaintiff in Error after Service of the Note of the Receipt of the Memorandum alleging Error, with a Statement of the Grounds of Error, shall not cause the Proceedings to abate, but they may be continued as herein-after mentioned.

Providing for Death of One of several Plaintiffs in Error.

CLXII In case of the Death of One of several Plaintiffs in Error, 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 Proceedings may be thereupon continued at the Suit of, and against the surviving Plaintiff in Error, as if he were the sole Plaintiff.

Proceedings upon Death of sole Plaintiff or of all the Plaintiffs in Error.

CLXIII In case of the Death of a sole Plaintiff or of several Plaintiffs in Error, the legal Representative of such Plaintiff or of the surviving Plaintiff may, by Leave of the Court or a Judge, enter a Suggestion of the Death, and that he is such legal Representative, which Suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the Proceedings may thereupon be continued at the Suit of, and against such legal Representative as the Plaintiff in Error; and, if no such Suggestion shall be made, the Defendant in Error may proceed to an Affirmance of the Judgment according to the Practice of the Court, or take such other Proceedings thereupon as he may be entitled to.

Death of Defendant in Error no Abatement.

CLXIV The Death of a Defendant in Error shall not cause the Proceedings to abate, but they may be continued as herein-after mentioned.

Proceedings upon Death of One of several Defendants in Error.

CLXV In case of the Death of One of several Defendants in Error, 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 Proceedings may be continued against the surviving Defendant, Proceedings upon Death or sole Defendant or of all the Defendants in Error.

CLXVI In case of the Death of a sole Defendant or of all the Defendants in Error, the Plaintiff in Error may proceed upon giving Ten Days Notice of the Proceedings in Error, and of his Intention to continue the same, to the Representatives of the deceased Defendants, or if no such Notice can be given, then, by Leave of the Court or a Judge, upon giving such Notice to the Parties interested as he or they may direct.

Marriage not to abate Proceedings in Error.

CLXVII The Marriage of a Woman, Plaintiff or Defendant in Error, shall not abate the Proceedings in Error, but the same may be continued in like Manner as herein-before provided with reference to the Continuance of an Action after Marriage.