



# Common Law Procedure Act 1852

## 1852 CHAPTER 76

### *Joinder of Parties*

And with respect to the Joinder of Parties to Actions, be it enacted as follows:

#### **XXXIV Nonjoinder and Misjoinder of Plaintiffs may be amended before Trial.**

It shall and may be lawful for the Court or a Judge, at any Time before the Trial of any Cause, to order that any Person or Persons, not joined as Plaintiff or Plaintiffs in such Cause, shall be so joined; or that any Person or Persons, originally joined as Plaintiff or Plaintiffs, shall be struck out from such Cause, if it shall appear to such Court or Judge that Injustice will not be done by such Amendment, and that the Person or Persons, to be added as aforesaid, consent, either in Person or by Writing, under his, her, or their Hands, to be so joined, or that the Person or Persons, to be struck out as aforesaid, were originally introduced without his, her, or their Consent, or that such Person or Persons consent in Manner aforesaid to be so struck out; and such Amendment shall be made upon such Terms as to the Amendment of the Pleadings (if any), Postponement of the Trial, and otherwise, as the Court or Judge by whom such Amendment is made shall think proper; and when any such Amendment shall have been made, the Liability of any Person or Persons, who shall have been added as Co-plaintiff or Co-plaintiffs, shall, subject to any Terms imposed as aforesaid, be the same as if such Person or Persons had been originally joined in such Cause.

#### **XXXV Nonjoinder and Misjoinder of Plaintiffs may be amended at the Trial, as in Cases of Amendments of Variances under 3 & 4 W.4 c.42.**

In case it shall appear at the Trial of any Action that there has been a Misjoinder of Plaintiffs, or that some Person or Persons, not joined as Plaintiff or Plaintiffs, ought to have been so joined, joined, and the Defendant shall not, at or before the Time of pleading, have given Notice in Writing that he object to such Nonjoinder, specifying therein the Name or Names of such Person or Persons, such Misjoinder or Nonjoinder may be amended, as a Variance, at the Trial by any Court of Record holding Plea in Civil Actions, and by any Judge sitting at Nisi Prius, or other presiding Officer, in like Manner as to the Mode of Amendment, and Proceedings consequent thereon, or as near thereto as the Circumstances of the Case will admit, as in the Case of Amendments

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of Variances under an Act of Parliament passed in the Session of Parliament, held in the Third and Fourth Years of the Reign of His late Majesty King *William the Fourth*, intituled *An Act for the farther Amendment of the Law, and the better Advancement of Justice*, if it shall appear to such Court, or Judge, or other presiding Officer, that such Misjoinder or Nonjoinder was not for the Purpose of obtaining an undue Advantage, and that Injustice will not be done by such Amendment, and that the Person or Persons, to be added as aforesaid, consent, either in Person or by Writing, under his, her, or their Hands, to be so joined, or that the Person or Persons, to be struck out as aforesaid, were originally introduced without his, her, or their Consent, or that such Person or Persons consent, in manner aforesaid, to be so struck out; and such Amendment shall be made upon such Terms as the Court, or Judge, or other presiding Officer, by whom such Amendment is made, shall think proper; and when any such Amendment shall have been made, the Liability of any Person or Persons, who shall have been added as Co-plaintiff or Co-plaintiffs, shall, subject to any Terms imposed as aforesaid, be the same as if such Person or Persons had been originally joined in such Action.

**XXXVI Upon Notice or Plea of Nonjoinder of Plaintiffs, Proceedings may be amended.**

In case such Notice be given, or any Plea in Abatement of Nonjoinder of a Person or Persons as Co-plaintiff or Co-plaintiffs, in Cases where such Plea in Abatement may be pleaded, be pleaded by the Defendant, the Plaintiff shall be at liberty, without any Order, to amend the Writ and other Proceedings before Plea, by adding the Name or Names of the Person or Persons named in such Notice or Plea in Abatement, and to proceed in the Action without any further Appearance, on Payment of the Costs of, and occasioned by such Amendment only, and in such Case the Defendant shall be at liberty to plead de novo.

**XXXVII Misjoinder of Defendants may be amended before or at Trial.**

It shall and may be lawful for the Court or a Judge in the Case of the Joinder of too many Defendants in any Action on Contract, at any Time before the Trial of such Cause, to order that the Name or Names of One or more of such Defendants be struck out, if it shall appear to such Court or Judge that Injustice will not be done by such Amendment; and the Amendment shall be made upon such Terms as the Court or Judge, by whom such Amendment is made, shall think proper; and in case it shall appear at the Trial of any Action on Contract that there has been a Misjoinder of Defendants, such Misjoinder may be amended, as a Variance, at the Trial, in like Manner as the Misjoinder of Plaintiffs has been hereinbefore directed to be amended, and upon such Terms as the Court, or Judge, or other presiding Officer, by whom such Amendment is made, shall think proper.

**XXXVIII Upon Plea in Abatement for Nonjoinder of Defendants, Proceedings may be amended.**

In any Action on Contract where the Nonjoinder of any Person or Persons as a Co-Defendant or Co-Defendants has been pleaded in Abatement, the Plaintiff shall be at liberty, without any Order, to amend the Writ of Summons and the Declaration, by adding: the Name or Names of the Person or Persons named in such Plea in Abatement as Joint Contractors, and to serve the amended Writ upon the Person or Persons so named in such Plea in Abatement, and to proceed against the original Defendant or Defendants, and the Person or Persons so named in such Plea in Abatement: Provided that the Date of such Amendment shall, as between the Person or Persons so named

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in such Plea in Abatement and the Plaintiff, be considered for all Purposes as the Commencement of the Action.

**XXXIX Provision in the Case of subsequent Proceedings against the Persons named in a Plea in Abatement for Nonjoinder of Defendants.**

In all Cases after such Plea in Abatement and Amendment, if it shall appear upon the Trial of the Action that the Person or Persons so named in such Plea in Abatement was or were jointly liable with the original Defendant or Defendants, the original Defendant or Defendants shall be entitled as against the Plaintiff to the Costs of such Plea in Abatement and Amendment; but if at such Trial it shall appear that the original Defendant or any of the original Defendants is or are liable, but that One or more of the Persons named in such Plea in Abatement is or are not liable as a contracting Party or Parties, the Plaintiff shall nevertheless be entitled to Judgment against the other Defendant or Defendants who shall appear to be liable ; and every Defendant who is not so liable shall have Judgment, and shall be entitled to his Costs as against the Plaintiff, who shall be allowed the same, together with the Costs of the Plea in Abatement and Amendment, as Costs in the Cause against the original Defendant or Defendants who shall have so pleaded in Abatement the Nonjoinder of such Person: Provided that any such Defendant who shall have so pleaded in Abatement shall be at liberty on the Trial to adduce Evidence of the Liability of the Defendants named by him in such Plea in Abatement.

**XL Joinder of Claims by Husband and Wife with Claims in right of Husband.**

In any Action brought by a Man and his Wife for an Injury done to the Wife, in respect of which she is necessarily joined as Co-Plaintiff, it shall be lawful for the Husband to add thereto Claims in his own Right, and separate Actions brought in respect of such Claims may be consolidated, if the Court or a Judge shall think fit: Provided that in the Case of the Death of either Plaintiff such Suit, so far only as relates to the Causes of Action, if any, which do not survive, shall abate.