



# Common Law Procedure Act 1852

## 1852 CHAPTER 76

### *Pleadings in general*

And with respect to the Language and Form of Pleadings in general, be it enacted as follows :

#### **XLIX Fictitious and needless Averments not to be made**

All Statements which need not be proved, such as the Statement of Time, Quantity, Quality, and Value, where these are immaterial; the Statement of losing and finding, and Bailment, in Actions for Goods or their Value; the Statement of Acts of Trespass having been committed with Force and Arms, and against the Peace of our Lady the Queen; the Statement of Promises which need not be proved, as Promises in Indebitatus Counts, and mutual Promises to perform Agreements; and all Statements of a like kind, shall be omitted.

#### **L Judgment upon Demurrer to be given according to the very Right of the Cause.**

Either Party may object by Demurrer to the Pleading of the opposite Party, on the Ground that such Pleading does not set forth sufficient Ground of Action, Defence, or Reply, as the Case may be; and where Issue is joined on such Demurrer, the Court shall proceed and give Judgment according as the very Right of the Cause and Matter in Law shall appear unto them, without regarding any Imperfection, Omission, Defect in or Lack of Form; and no Judgment shall be arrested, stayed, or reversed for any such Imperfection, Omission, Defect in or Lack of Form.

#### **LI Objections by way of Special Demurrer taken away.**

No Pleading shall be deemed insufficient for any Defect which could heretofore only be objected to by Special Demurrer.

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*Status: This is the original version (as it was originally enacted).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

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**LII Pleadings framed to embarrass may be struck out or amended.**

If any Pleading be so framed as to prejudice, embarrass, or delay the fair Trial of the Action, the opposite Party may apply to the Court or a Judge to strike out or amend such Pleading, and the Court or any Judge shall make such Order respecting the same, and also respecting the Costs of the Application, as such Court or Judge shall see fit.

**LIII Four Days Notice substituted for Rule to declare, reply, or rejoin.**

Rules to declare, or declare peremptorily, and Rules to reply, and plead subsequent Pleadings, shall not be necessary, and instead thereof a Notice shall be substituted requiring the opposite Party to declare, reply, rejoin, or as the Case may be, within Four Days, otherwise Judgment, such Notice to be delivered separately or indorsed on any Pleading to which the opposite Party is required to reply, rejoin, or as the Case may be.

**LIV Pleadings to be dated and entered as of Time of Pleading, unless Order to the contrary.**

Every Declaration and other Pleading shall be entitled of the proper Court, and of the Day of the Month and the Year when the same was pleaded, and shall bear no other Time or Date, and every Declaration and other Pleading shall also be entered on the Record made up for Trial and on the Judgment Roll under the Date of the Day of the Month and Year when the same respectively took place, and without Reference to any other Time or Date, unless otherwise specially ordered by the Court or a Judge.

**LV Profert and Oyer abolished.**

It shall not be necessary to make Profert of any Deed or other Document mentioned or relied on in any Pleading; and if Profert shall be made it shall not entitle the opposite Party to crave Oyer of or set out upon Oyer such Deed or other Document.

**LVI Document may be set forth, and be considered a Part of the Pleading in which it is set forth.**

A Party pleading in answer to any Pleading in which any Document is mentioned or referred to shall be at liberty to set out the whole or such Part thereof as may be material, and the Matter so set out shall be deemed and taken to be Part of the Pleading in which it is set out.

**LVII Performance of Conditions precedent may be averred generally.**

It shall be lawful for the Plaintiff or Defendant in any Action to aver Performance of Conditions precedent generally, and the opposite Party shall not deny such Averment generally, but shall specify in his Pleading the Condition or Conditions precedent the Performance of which he intends to contest.