



# Common Law Procedure Act 1852

## 1852 CHAPTER 76

### *Pleadings*

And as to Pleas and subsequent Pleadings, be it enacted as follows:  
Rules to plead and Demand of Plea abolished.

**LXII** No Rule to plead or Demand of Plea shall be necessary, and the Notice to plead indorsed on the Declaration or delivered separately shall be sufficient.

Time for pleading, where Defendant is within Jurisdiction, to be Eight Days.

**LXIII** In Cases where the Defendant is within the Jurisdiction, the Time for pleading in Bar, unless extended by the Court or a Judge, shall be Eight Days; and a Notice requiring the Defendant to plead thereto in Eight Days, otherwise Judgment, may, whether the Declaration be delivered or filed, be indorsed upon the Declaration, or delivered separately.

Express Colour abolished.

**LXIV** Express Colour shall no longer be necessary in any Plead  
Special Traverses abolished.

**LXV** Special Traverses shall not be necessary in any Pleading.  
Formal Commencement and Prayer of Judgment unnecessary.

**LXVI** In a Plea or subsequent Pleading it shall not be necessary to use any Allegation of Actionem non, or Actionem ulterius non, or to the like Effect, or any Prayer of Judgment, nor shall it be necessary in any Replication or subsequent Pleading, to use any Allegation of Precludi non, or to the like Effect, or any Prayer of Judgment.

Commencement of Plea.

**LXVII** No formal Defence shall be required in a Plea, or Avowry, or Cognizance, and it shall commence as follows, or to the like Effect:

" The Defendant by \_\_\_\_\_ his Attorney [or in Person,

" or as the Case may be,] says that [here state First Defence] " and it shall not be necessary to state in a Second or other Plea, or Avowry, or Cognizance, that it is pleaded by Leave of the Court or a Judge, or according to the Form of the Statute, or to that Effect; but every such Plea, Avowry, or Cognizance shall be written in a separate Paragraph, and numbered, and shall commence as follows, or to the like Effect:

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" And for a Second [&c] Plea the Defendant says, that [here " state Second, &c. Defence] ;" or if pleaded to Part only, then as follows, or to the like Effect: " And for a Second [&c] Plea to [stating to what it is pleaded], " the Defendant says that, " &c. and no formal Conclusion shall be necessary to any Plea, Avowry, Cognizance, or subsequent Pleading.

Plea of Matter sub sequent to Action.

**LXVIII** Any Defence arising after the Commencement of any Action shall be pleaded according to the Fact, without any formal Commencement or Conclusion; and any Plea which does not state whether the Defence therein set up arose before or after Action shall be deemed to be a Plea of Matter arising before Action.

Plea Puis darrein Continuance, when and how to be pleaded.

**LXIX** In Cases in which a Plea Puis darrein Continuance has heretofore been pleadable in Banc or at Nisi Prius, the same Defence may be pleaded, with an Allegation that the Matter arose after the last Pleading; and such Plea may, when necessary, be pleaded at Nisi Prius, between the Tenth of August and Twenty-fourth of October ; but no such Plea shall be allowed unless accompanied by an Affidavit that the Matter thereof arose within Eight Days next before the pleading of such Plea, or unless the Court or a Judge shall otherwise order.

Payment into Court in certain Actions.

**LXX** It shall be lawful for the Defendant in all Actions, (except Actions for Assault and Battery, false Imprisonment, Libel, Slander, Malicious Arrest or Prosecution, Criminal Conversation, or debauching of the Plaintiff's Daughter or Servant,) and, by Leave of the Court or a Judge, upon such Terms as they or he may think fit, for One or more of several Defendants to pay into Court a Sum of Money by way of Compensation or Amends : Provided that nothing herein contained shall be taken to affect the Provisions of a certain Act of Parliament passed in the Session of Parliament holden in the Sixth and Seventh Years of the Reign of Her present Majesty, intituled An Act to amend the Law respecting defamatory Words and Libel.

Payment into Court how pleaded.

**LXXI** When Money is paid into Court, such Payment shall be pleaded in all Cases, as near as may be, in the following Form, mutatis mutandis:

" The Defendant by \_\_\_\_\_ his Attorney [or in Person, &c] " Of pleaded to part say, as to £ \_\_\_\_\_ Parcel of the " Money claimed], brings into Court the Sum of £ " and says that the said Sum is enough to satisfy the Claim " of the Plaintiff in respect of the Matter herein pleaded to."

No Order to pay Money into Court.

**LXXII** No Rule or Judge's Order to pay Money into Court shall be necessary, except in the Case of One or more of several Defendants, but the Money shall be paid to the proper Officer of each Court, who shall give a Receipt for the Amount in the Margin of the Plea, and the said Sum shall be paid out to the Plaintiff or to his Attorney, upon a written Authority from the Plaintiff, on Demand.

Proceeding by Plaintiff after Payment into Court.

**LXXIII** The Plaintiff, after the Delivery of a Plea of Payment of Money into Court, shall be at liberty to reply to the same by accepting the Sum so paid into Court in full Satisfaction and Discharge of the Cause of Action in respect of which it has been paid in, and he shall be at liberty in that Case to tax his Costs of Suit, and, in case of Nonpayment thereof within Forty-eight Hours, to sign Judgment for his Costs of Suit so taxed, or the Plaintiff may reply that the Sum paid into Court is not enough to satisfy the Claim of the Plaintiff in respect of the Matter to which the Plea is pleaded; and, in the event

of an Issue thereon being found for the Defendant, the Defendant shall be entitled to Judgment and his Costs of Suit.

Pleas to Actions partaking both of Breach of Contract and Wrong.

**LXXIV** Whereas certain Causes of Action may be considered to partake of the Character both of Breaches of Contract and of Wrongs, and Doubts may arise as to the Form of Pleas in such Actions, and it is expedient to preclude such Doubts: Any Plea, which shall be good in Substance, shall not be objectionable on the Ground of its treating the Declaration either as framed for a Breach of Contract, or for a Wrong.

Payment, Set-off, and other Pleadings which can be construed distributively shall be so construed.

**LXXV** Pleas of Payment and Set-off, and all other Pleadings capable of being construed distributively, shall be taken distributively, and if Issue is taken thereon, and so much thereof as shall be sufficient Answer to Part of the Causes of Action proved shall be found true by the Jury, a Verdict shall pass for the Defendant in respect of so much of the Causes of Action as shall be answered, and for the Plaintiff in respect of so much of the Causes of Action as shall not be so answered.

Traverse of the Declaration.

**LXXVI** A Defendant may either traverse generally such of the Facts contained in the Declaration as might have been denied by One Plea, or may select and traverse separately any material Allegation in the Declaration, although it might have been included in a general Traverse.

Traverse of Plea or subsequent Pleading of Defendant.

**LXXVII** A Plaintiff shall be at liberty to traverse the whole of any Plea or subsequent Pleading of the Defendant by a general Denial, or, admitting some Part or Parts thereof, to deny all the rest, or to deny any One or more Allegations.

Traverse of Replication or subsequent Pleading of the Plaintiff.

**LXXVIII** A Defendant shall be at liberty in like Manner to deny the whole or Part of a Replication or subsequent Pleading of the Plaintiff.

Joinder of Issue.

**LXXIX** Either Party may plead, in answer to the Plea or subsequent Pleading of his Adversary, that he joins Issue thereon, which Joinder of Issue may be as follows, or to the like Effect:

" The Plaintiff joins Issue upon the Defendant's 1st [&c, specifying " what or what Part] Plea : " " The Defendant joins Issue upon the Plaintiff's Replication to the " 1st [ &c., specifying what] Plea ;" and such Form of Joinder of Issue shall be deemed to be a Denial of the Substance of the Plea or other subsequent Pleading, and an Issue thereon; and in all Cases where the Plaintiff's Pleading is in Denial of the Pleading of the Defendant, or some Part of it, the Plaintiff may add a Joinder of Issue for the Defendant.

As to Pleading and demurring together.

**LXXX** Either Party may, by Leave of the Court or a Judge, plead and demur to the same Pleading at the same Time, upon an Affidavit by such Party, or his Attorney, if required by the Court or Judge, to the Effect that he is advised and believes that he has just Ground to traverse the several Matters proposed to be traversed by him, and that the several Matters sought to be pleaded as aforesaid by way of Confession and Avoidance are respectively true in Substance and in Fact, and that he is further advised and believes that the Objections raised by such Demurrer are good and valid Objections in Law, and it shall be in the Discretion of the Court or a Judge to direct which Issue shall be first disposed of.

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Several Matters may be pleaded at any Stage of the Pleadings.

**LXXXI** The Plaintiff in any Action may, by Leave of the Court or a Judge, plead in answer to the Plea, or the subsequent Pleading of the Defendant, as many several Matters as he shall think necessary to sustain his Action; and the Defendant in any Action may, by Leave of the Court or a Judge, plead in answer to the Declaration, or other subsequent Pleading of the Plaintiff, as many several Matters as he shall think necessary for his Defence, upon an Affidavit of the Party making such Application, or his Attorney, if required by the Court or Judge, to the Effect that he is advised and believes that he has just Ground to traverse the several Matters proposed to be traversed by him, and that the several Matters sought to be pleaded as aforesaid by way of Confession and Avoidance are respectively true in Substance and in Fact; provided that the Costs of any Issue, either of Fact or Law, shall follow the Finding or Judgment upon such Issue, and be adjudged to the successful Party, whatever may be the Result of the other Issue or Issues.

Judge's Order to plead several Matters sufficient.

**LXXXII** No Rule of Court for Leave to plead several Matters shall be necessary where a Judge's Order has been made for the same Purpose.

Objections to Pleadings to be heard on Summons to plead several Matters.

**LXXXIII** All Objections to the pleading of several Pleas, Replications, or subsequent Pleadings, or several Avowries or Cognizances, on the Ground that they are founded on the same Ground of Answer or Defence, shall be heard upon the Summons to plead several Matters.

Certain Pleas may be pleaded together without Leave.

**LXXXIV** The following Pleas, or any Two or more of them, may be pleaded together as of course, without Leave of the Court or a Judge 5 that is to say, a Plea denying any Contract or Debt alleged in the Declaration; a Plea of Tender as to Part; a Plea of the Statute of Limitations, Set-off, Bankruptcy of the Defendant, Discharge under an Insolvent Act, Plene administravit, Plene administravit praeter, Infancy, Coverture, Payment, Accord and Satisfaction, Release, Not guilty, a Denial that the Property an Injury to which is complained of is the Plaintiff's, Leave and Licence, Son assault demesne, and any other Pleas which the Judges of the said Superior Courts, or any Eight or more of them, of whom the Chief Judges of the said Courts shall be Three, shall by any Rule or Order, to be from Time to Time by them made in Term or Vacation, order or direct.

Signature of Counsel.

**LXXXV** The Signature of Counsel shall not be required to any Pleading.  
For pleading several Matters without Leave, Judgment may be signed.

**LXXXVI** Except in the Cases herein specifically provided for, if either Party plead several Pleas, Replications, Avowries, Cognizances, or other Pleadings, without Leave of the Court or a Judge, the opposite Party shall be at liberty to sign Judgment; provided that such Judgment may be set aside by the Court or a Judge, upon an Affidavit of Merits, and such Terms as to Costs and otherwise as they or he may think fit.

One new Assignment only allowed in respect of the same Cause of Action.

**LXXXVII** One new Assignment only shall be pleaded to any Number of Pleas to the same Cause of Action 5 and such new Assignment shall be consistent with and confined by the Particulars delivered in the Action, if any, and shall state that the Plaintiff proceeds for Causes of Action different from all those which the Pleas profess to justify, or for an Excess over and above what all the Defences set up in such Pleas justify, or both.

Pleas not to be repeated.

**LXXXVIII** No Plea, which has already been pleaded to the Declaration, shall be pleaded to such new Assignment, except' a Plea in Denial, unless by Leave of the Court or a Judge; and such Leave shall only be granted upon satisfactory Proof that the Repetition of such Plea is essential to a Trial on the Merits.

Form of Demurrer and Joinder in Demurrer.

**LXXXIX** The Form of a Demurrer, except in the Cases herein specifically provided for, shall be as follows, or to the like Effect:

" The Defendant, by his Attorney [or, in Person, &c, or, " Plaintiff] says, that the Declaration [or Plea, &c] is bad in " Substance;" and in the Margin thereof some substantial Matter of Law intended to be argued shall be stated ; and if any Demurrer shall be delivered without, such Statement, or with a frivolous Statement, it may be set aside by the Court or a Judge, and Leave may be given to sign Judgment as for Want of a Plea; and the Form of a Joinder in Demurrer shall be as follows, or to the like Effect:

" The Plaintiff [or, Defendant] says that the Declaration [or, " Plea, &c.,] is good in Substance."

Time for pleading after Amendment.

**XC** Where an Amendment of any Pleading is allowed, no new Notice to plead thereto shall be necessary; but the opposite Party shall be bound to plead to the amended Pleading within the Time specified in the original Notice to plead, or within Two Days after Amendment, whichever shall last expire, unless otherwise ordered by the Court or a Judge; and in case the amended Pleading has been pleaded to before Amendment, and is not pleaded to de novo within Two Days after Amendment, or within such other Time as the Court or a Judge shall allow, the Pleadings originally pleaded thereto shall stand and be considered as pleaded in answer to such amended Pleading.