



Common Law Procedure Act 1852

1852 CHAPTER 76

Proceedings to revive

And with respect to Proceedings for the Revival of Judgments and other Proceedings by and against Persons not Parties to the Record, be it enacted as follows:

Execution in Six Years without Revival. CXXVIII. During the Lives of the Parties to a Judgment, or those of them during whose Lives Execution may at present issue within a Year and a Day without a Scire facias, and within Six Years from the Recovery of the Judgment, Execution may issue without a Revival of the Judgment. CXXIX. Judgment t& be revived by Writ or with Leave of Court, or Judge, by Suggestion.

CXXIX In Cases where it shall become necessary to revive a Judgment by reason either of Lapse of Time, or of a Change, by Death or otherwise, of the Parties entitled or liable to Execution, the Party alleging himself to be entitled to Execution may either sue out a Writ of Revivor in the Form herein-after mentioned, or apply to the Court or a Judge for Leave to enter a Suggestion upon the Roll, to the Effect that it manifestly appears to the Court that such Party is entitled to have Execution of the Judgment and to issue Execution thereupon; such Leave to be granted by the Court or a Judge upon a Rule to show Cause or a Summons, to be served according to the present Practice, or in such other Manner as such Court or Judge may direct, and which Rule or Summons may be in the Form contained in the Schedule (A.) to this Act annexed, marked No. 7, or to the like Effect.

Proceedings upon Application for Suggestion to revive Judgment.

CXXX Upon such Application, in case it manifestly appears that the Party making the same is entitled to Execution, the Court or Judge shall allow such Suggestion as aforesaid to be entered in the Form contained in the Schedule (A.) to this Act annexed, marked No. 8, or to the like Effect, and Execution to issue thereupon, and shall order whether or not the Costs of such Application shall be paid to the Party making the same; and in case it does not manifestly so appear, the Court or Judge shall discharge the Rule or dismiss the Summons with or without Costs: Provided nevertheless, that in such last-mentioned Case the Party making such Application shall be at liberty to proceed by Writ of Revivor or Action upon the Judgment.

Writ of Revivor, and Proceedings thereon.

CXXXI The Writ of Revivor shall be directed to the Party called upon to show Cause why Execution should not be awarded, and shall bear Teste on the Day of its issuing; and, after reciting the Reason why such Writ has become necessary, it shall call upon the Party, to whom it is directed, to appear, within Eight Days after Service thereof, in the Court out of which it issues, to show Cause why the Party at whose Instance such Writ has been issued should not have Execution against the Party to whom such Writ is directed, and it shall give Notice that, in default of Appearance, the Party issuing such Writ may proceed to Execution; and such Writ may be in the Form contained in the Schedule (A.) to this Act annexed, marked No. 9, or to the like Effect, and may be served in any County, and otherwise proceeded upon, whether in Term or Vacation, in the same Manner as a Writ of Summons; and the Venue in a Declaration upon such Writ may be laid in any County; and the Pleadings and Proceedings thereupon, and the Rights of the Parties respectively to Costs, shall be the same as in an ordinary Action.

Writs of Scire facias in other Cases to be tested, directed, and proceeded upon in like Manner.

CXXXII A Writ of Revivor to revive a Judgment less than Ten Years old shall be allowed without any Rule or Order; if more than Ten Years old, not without a Rule of Court or a Judge's Order; nor, if more than Fifteen, without a Rule to show Cause.