



Common Law Procedure Act 1852

1852 CHAPTER 76 15 and 16 Vict

An Act to amend the Process, Practice, and Mode of Pleading in the Superior Courts of Common Law at Westminster, and in the Superior Courts of the Counties Palatine of Lancaster and Durham. [30th June 1852]

Modifications etc. (not altering text)

- C1 Preamble omitted under authority of [Statute Law Revision Act 1892 \(c. 19\)](#)
- C2 Words of enactment omitted under authority of [Statute Law Revision Act 1948 \(c. 62\), s. 3](#)

1—22. F1

Textual Amendments

- F1 Ss. 1-22 repealed by [Statute Law Revision and Civil Procedure Act 1883 \(c. 49\)](#)

23 F2

Textual Amendments

- F2 S. 23 repealed by [Commissioners for Oaths Act 1889 \(c. 10\), Sch.](#)

24— F3
103.

Textual Amendments

- F3 Ss. 24-103 repealed by [Statute Law Revision and Civil Procedure Act 1883 \(c. 49\)](#)

*Status: Point in time view as at 06/04/2014.**Changes to legislation: There are currently no known outstanding effects
for the Common Law Procedure Act 1852. (See end of Document for details)*

104 F4

Textual AmendmentsF4 [S. 104](#) repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)105— F5
115.**Textual Amendments**F5 [Ss. 105-115](#) repealed by [Courts Act 1971 \(c. 23\)](#), [Sch. 11 Pt. I](#)116— F6
119.**Textual Amendments**F6 [Ss. 116-125](#) repealed by [Statute Law Revision and Civil Procedure Act 1883 \(c. 49\)](#)*Execution*120— F7
125.**Textual Amendments**F7 [Ss. 116-125](#) repealed by [Statute Law Revision and Civil Procedure Act 1883 \(c. 49\)](#)

126 F8

Textual AmendmentsF8 [S. 126](#) repealed by [Supreme Court Act 1981 \(c. 54, SIF 37\)](#), s. 152(4), [Sch. 7](#)

127 F9

Textual AmendmentsF9 [S. 127](#) repealed by [Administration of Justice Act 1965 \(c. 2\)](#), [Sch. 2](#)

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128— F10
131.

Textual Amendments

F10 Ss. 128-131 repealed by Statute Law Revision and Civil Procedure Act 1883 (c. 49)

132 F11

Textual Amendments

F11 S. 132 repealed by Statute Law Revision Act 1950 (c. 6)

133— F12
167.

Textual Amendments

F12 Ss. 133-207 repealed by Statute Law Revision and Civil Procedure Act 1883 (c. 49)

Ejectment

168— F13
207.

Textual Amendments

F13 Ss. 133-207 repealed by Statute Law Revision and Civil Procedure Act 1883 (c. 49)

208 F14

Textual Amendments

F14 S. 208 repealed by Statute Law Revision Act 1892 (c. 19)

209 F15

Textual Amendments

F15 S. 209 repealed by Law of Property Act 1925 (c. 20), s. 207, Sch. 7

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In all cases between landlord and tenant, as often as it shall happen that one half year's rent shall be in arrear, and the landlord or lessor, to whom the same is due, hath right by law to re-enter for the nonpayment thereof, such landlord or lessor shall and may, without any formal demand or re-entry, serve a writ in ejectment for the recovery of the demised premises, . . . ^{F16}, which service . . . ^{F16} shall stand in the place and stead of a demand and re-entry; and in case of judgment against the defendant for nonappearance, if it shall be made appear to the court where the said action is depending, by affidavit, or be proved upon the trial in case the defendant appears, that half a year's rent was due before the said writ was served, [^{F17}and that either of the conditions in section 210A was met in relation to the arrears], and that the lessor had power to re-enter, then and in every such case the lessor shall recover judgment and execution, in the same manner as if the rent in arrear had been legally demanded, and a re-entry made; and in case the lessee or his assignee, or other person claiming or deriving under the said lease, shall permit and suffer judgment to be had and recovered on such trial in ejectment, and execution to be executed thereon, without paying the rent and arrears, together with full costs, and without proceeding for relief in equity within six months after such execution executed, then and in such case the said lessee, his assignee, and all other persons claiming and deriving under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity, other than by bringing error for reversal of such judgment, in case the same shall be erroneous; and the said landlord or lessor shall from thenceforth hold the said demised premises discharged from such lease; . . . ^{F16}; provided that nothing herein contained shall extend to bar the right of any mortgagee of such lease, or any part thereof, who shall not be in possession, so as such mortgagee shall and do, within six months after such judgment obtained and execution executed pay all rent in arrear, and all costs and damages sustained by such lessor or person entitled to the remainder or reversion as aforesaid, and perform all the covenants and agreements which, on the part and behalf of the first lessee, are and ought to be performed.

Textual Amendments**F16** Words repealed by [Statute Law Revision Act 1892 \(c. 19\)](#)**F17** Words in [s. 210](#) substituted (6.4.2014) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, [Sch. 14 para. 15](#) (with [s. 89](#)); [S.I. 2014/768](#), art. 2(1)(b)**[^{F18}210A Conditions relating to commercial rent arrears recovery**

- (1) The first condition is that the power under section 72(1) of the [Tribunals, Courts and Enforcement Act 2007](#) (commercial rent arrears recovery) was not exercisable to recover the arrears.
- (2) The second condition is that there were not sufficient goods on the premises to recover the arrears by that power.]

Textual Amendments**F18** [S. 210A](#) inserted (6.4.2014) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, [Sch. 14 para. 16](#) (with [s. 89](#)); [S.I. 2014/768](#), art. 2(1)(b)

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211 Lessee proceeding in equity not to have injunction or relief without payment of rent and costs.

In case the said lessee, his assignee, or other person claiming any right, title, or interest, in law or equity, of, in, or to the said lease, shall, within the time aforesaid, proceed for relief in any court of equity, such person shall not have or continue any injunction against the proceedings at law on such ejectment, unless he does or shall, within forty days next after a full and perfect answer shall be made by the claimant in such ejectment, bring into court, and lodge with the proper officer such sum and sums of money as the lessor or landlord shall in his answer swear to be due and in arrear over and above all just allowances, and also the costs taxed in the said suit, there to remain till the hearing of the cause, or to be paid out to the lessor or landlord on good security, subject to the decree of the court; and in case such proceedings for relief in equity shall be taken within the time aforesaid, and after execution is executed, the lessor or landlord shall be accountable only for so much and no more as he shall really and bona fide, without fraud, deceit, or wilful neglect, make of the demised premises from the time of his entering into the actual possession thereof; and if what shall be so made by the lessor or landlord happen to be less than the rent reserved on the said lease, then the said lessee or his assignee, before he shall be restored to his possession, shall pay such lessor or landlord, what the money so by him made fell short of the reserved rent for the time such lessor or landlord held the said lands.

212 Tenant paying all rent with costs, proceedings to cease.

If the tenant or his assignee do or shall, at any time before the trial in such ejectment, pay or tender to the lessor or landlord, his executors or administrators, or his or their attorney in that cause, or pay into the court where the same cause is depending, all the rent and arrears, together with the costs, then and in such case, all further proceedings on the said ejectment shall cease and be discontinued; and if such lessee, his executors, administrators, or assigns, shall, upon such proceedings as aforesaid, be relieved in equity, he and they shall have, hold, and enjoy the demised lands, according to the lease thereof made, without any new lease.

213 F19

Textual Amendments

F19 S. 213 repealed by [Administration of Justice Act 1965 \(c. 2\)](#), [Sch. 2](#)

214 On trial of any ejectment between landlord and tenant, juries to give damages for mesne profits down to the verdict, or to a day specified therein.

Wherever it shall appear on the trial of any ejectment, at the suit of a landlord against a tenant, that such tenant or his attorney hath been served with due notice of trial, the judge before whom such cause shall come on to be tried shall, whether the defendant shall appear upon such trial or not, permit the claimant on the trial, after proof of his right to recover possession of the whole or of any part of the premises mentioned in the writ in ejectment, to go into evidence of the mesne profits thereof which shall or might have accrued from the day of the expiration or determination of the tenant's interest in the same down to the time of the verdict given in the cause, or to some preceding day to be specially mentioned therein; and the jury on the trial finding for the claimant

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shall in such case give their verdict upon the whole matter, both as to the recovery of the whole or any part of the premises, and also as to the amount of the damages to be paid for such mesne profits; and in such case the landlord shall have judgment within the time herein-before provided, not only for the recovery of possession and costs, but also for the mesne profits found by the jury: Provided always, that nothing herein-before contained shall be construed to bar any such landlord from bringing any action for the mesne profits which shall accrue from the verdict, or the day so specified therein, down to the day of the delivery of possession of the premises recovered in the ejectment.

215, F20
216.

Textual Amendments

F20 Ss. 215, 216 repealed by [Statute Law Revision Act 1892 \(c. 19\)](#)

217 F21

Textual Amendments

F21 Ss. 217, 219, 220 repealed by [Administration of Justice Act 1965 \(c. 2\)](#), [Sch. 2](#)

218 Saving of former remedies.

Nothing herein contained shall be construed to prejudice or affect any other right of action or remedy which landlords may possess in any of the cases herein-before provided for, otherwise than herein-before expressly enacted.

219 F22

Textual Amendments

F22 Ss. 217, 219, 220 repealed by [Administration of Justice Act 1965 \(c. 2\)](#), [Sch. 2](#)

220 F23

Textual Amendments

F23 Ss. 217, 219, 220 repealed by [Administration of Justice Act 1965 \(c. 2\)](#), [Sch. 2](#)

221— F24
225.

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Textual Amendments

F24 Ss. 221-225 repealed by [Statute Law Revision and Civil Procedure Act 1883 \(c. 49\)](#)

226 F25

Textual Amendments

F25 S. 226 repealed by [Statute Law Revision Act 1892 \(c. 19\)](#)

227— F26

234.

Textual Amendments

F26 Ss. 227-234, Schs. (A)(B) repealed by [Statute Law Revision and Civil Procedure Act 1883 \(c. 49\)](#)

235 Short title of Act.

In citing this Act in any instrument, document, or proceeding, it shall be sufficient to use the expression “The Common Law Procedure Act, 1852.”

236 Act not to extend to Ireland or Scotland.

Nothing in this Act shall extend to Ireland or Scotland . . . F27

Textual Amendments

F27 Words repealed by [Statute Law Revision Act 1892 \(c. 19\)](#)

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^{F28}^{F28}SCHEDULE (A)

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Textual Amendments

F28 Ss. 227-234, Schs. (A)(B) repealed by [Statute Law Revision and Civil Procedure Act 1883 \(c. 49\)](#)

.....
F28

^{F29}^{F29}SCHEDULE (B)

.....
Textual Amendments

F29 Ss. 227-234, Schs. (A)(B) repealed by [Statute Law Revision and Civil Procedure Act 1883 \(c. 49\)](#)

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F29

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