

5. Any person not named in the writ may, by leave of a Judge, appear and defend on filing an affidavit, shewing that he is in possession of the land either by himself or his tenant, and when he appears to defend as landlord when in possession of property only by his tenant, shall state in his appearance that he appears as landlord, and shall set up no other matters of defence than a landlord in an Ejectment has heretofore been allowed.

6. Any person appearing to the action, may limit his defence to a part only of the property mentioned in the declaration, describing the same with reasonable certainty in the plea.

7. A Judge may at any time, on the application of either party, amend the description of the property in the declaration or plea, upon such terms as he may direct; and want of reasonable certainty in the description of the property or mesne profits in the declaration or bill of particulars annexed mentioned or in the plea, shall be a ground only for an application to a Judge for better particulars of the land claimed or defended, or of the mesne profits, an order for which a Judge may make.

8. A Judge may strike out or confine appearances and defences set up by persons not in possession by themselves or their tenants.

9. If no appearance be entered in time, or if an appearance be entered and the defence be limited to part only, the plaintiff shall be entitled to judgment and recover possession of the land, or of the part thereof to which the defence does not apply; if there be no appearance, and the plaintiff claims mesne profits, he shall proceed by writ of enquiry to assess the same.

10. By consent of the parties and leave of a Judge, a special case may be stated according to the practice heretofore used.

11. The defendant shall be restricted to one plea as given in the said Schedule number (3), and the plaintiff, if no special case be agreed to, may proceed to trial upon the issue in the same manner as in other actions, and the question at the trial shall, except as heretofore mentioned, be whether the plaintiff's title be good or not, and if good whether to the whole or part, and if to part, then to which part, and also whether he be entitled to mesne profits or not, and the amount of the same, and the postea shall be according to facts.

12. A Judge may on the application of either party order that the trial shall take place in any County other than where the said venue is laid, and such order being suggested on the Record the trial may be had accordingly.

13. The judgment for either party may be signed pursuant to the finding of the Jury, and execution issue accordingly with costs.

14. On an action brought by some or one of several persons entitled as joint tenants, tenants in common, or co-parceners, any of them in possession may with the plea give notice that he defends as such, admitting the right of the plaintiff to an undivided share of the property, stating what share, but denying any actual ouster by him; and upon the trial of the issue the additional question of an actual ouster of the plaintiff shall be put to the Jury, and if it be proved that the defendant is joint tenant, tenant in common, or co-parcener with the plaintiff, and that there has been no actual ouster, the defendant shall have judgment and costs; but if it be found either that the defendant is not such joint tenant, tenant in common, or co-parcener, or that an actual ouster shall have taken place, the plaintiff shall have judgment for the recovery of possession and costs.

15. If one of several plaintiffs desire to discontinue, he may apply to a Judge to have his name struck out of the proceedings, who may make an order to that effect, upon such terms as he may direct, and the action shall proceed at the suit of the other plaintiff.

16. The plaintiff may at any time discontinue the action as to one or more of the defendants, by giving the defendant notice thereof and on payment of costs.

17. The effect of a Judgment in an Action of Ejectment under this Act shall be the same as heretofore.

18. Every tenant to whom any writ in ejectment shall be delivered, or to whose knowledge it shall come, shall forthwith give notice thereof to his landlord or receiver, or forfeit the value of three year's rent of the premises demised or holden in the possession of such tenant to the person of whom he holds, to be recovered in any Court of competent jurisdiction.

19. In an action for the recovery of land which shall have been occupied by the defendant with the knowledge of the plaintiff, the defendant shall be allowed to give evidence of the fair value of any improvements he may have made thereon, which shall be set off against the mesne profits, and for any excess a verdict may be given for either party, and judgment be rendered with costs, and execution issued accordingly.

20. On the trial of any action of ejectment the plaintiff shall not be required to prove in addition to his title, any right of entry, unless it become necessary by some evidence of possession on the part of the defendant.

21. No person shall be precluded from recovering any land in ejectment on the ground of his title having been obtained while some other person was in possession.

22. No tenant shall be barred from defending any action of ejectment on the ground of his being such tenant, if at the time of the action brought he shall be clothed with the legal title.

23. The execution in ejectment shall be the Form in the Schedule to this Act numbered (4).

SCHEDULE.

Number 1.

To the Sheriff of County

[L. S.] You are commanded to summon C. D. to appear before us at Fredericton on *[here insert some return day]* to answer A. B. in Ejectment for Lands situate in the Parish of , in the County of , and also for mesne profits, and have then there this Writ.

Witness, J. C., Esquire, at Fredericton, the day of , A. D. 18 . *[date of issue.]*

Clerk.

Number 2.

Declaration in Ejectment.

Of Term, 18 .

In the Supreme Court.

York to-wit: A. B. by G. H. his Attorney (or in person) sues C. D., for that A. B. is entitled to the possession of certain Lands, situate in the Parish of , in the County of , and the defendant has possessed himself thereof, and the plaintiff claims to eject the defendant therefrom, and also claims £ according to the bill of particulars hereto annexed, for mesne profits.

L. M., Plaintiff's Attorney.