

take nothing by his said writ. And it is further considered by the said Court that the said C. D. do recover against the said A. B. the sum of for his costs in this behalf, by the said Court now adjudged to the said C. D., and that the said C. D. have execution thereof, &c.

No. 3.—Form of a Nisi Prius Record.

IN THE SUPREME COURT.

The day of in the year of our Lord one thousand eight hundred and [date of the declaration].

(Venue).—A. B. by C. D. his attorney (or, in person, as the case may be, and as in the declaration), sues E. F., who has been summoned to answer the said A. B. by virtue of a writ issued on the day of in the year of our Lord [the date of the first writ], out of Her Majesty's Supreme Court of Judicature; for &c. [copy the declaration to the end, and all the pleadings, with the dates, writing each plea or pleading in a separate paragraph, and numbering the same as in the pleading delivered, and conclude thus]: Therefore let a jury come before the Honorable Her Majesty's Chief Justice, assigned to hold Pleas in the Court of our Lady the Queen, at Fredericton, on the day of, in the year of our Lord 18 [the first day of the Nisi Prius Sittings], to try the matters in question between the said parties. [If the cause is to be tried at a Circuit Court, instead of the above, state as follows: "before the Honorable one of the Justices of our Lady the Queen, assigned to hold the Circuit Court and take the assizes in and for the said County of on," &c. [the first day of the Circuit Court].

No. 4.—Form of Postea on a verdict for Plaintiff.

Afterwards, on the day of A. D. [the first day of the Sittings, or Circuit Court, as the case may be], at in the County of before the Honorable Chief Justice, (or, "one of the Justices of the Supreme Court," as the case may be), come the parties within mentioned, by their respective Attorneys within mentioned, and a jury of the said County being summoned, also come, who being sworn to try the matters in question between the said parties,* upon their oath say, that [state the affirmative or negative of the issue as it is found for the plaintiff, and in the terms adopted in this pleading. If there be several issues joined and tried, say, "as to the first issue within joined, upon their oath say that" [state the affirmative or negative of the issue as found for the plaintiff], "and as to the second issue within joined, the jurors aforesaid upon their oath say that" [proceed to state the finding of the jury upon all the issues; and conclude with the assessment of damages thus]: And they assess the damages of the said A. B. on occasion of the premises within complained of by him, over and above his costs of suit, at . Therefore, &c.

[Where the verdict is for the defendant, the Postea must be varied to suit the circumstances].

No. 5.—Form of Postea on a verdict finding a balance in favor of a Defendant under a plea of set-off, Sect. 72.

[Proceed as in Form No. 4, to the asterisk, then thus]: upon their oath say, [if the first plea was "never indebted," say—that the said E. F. never was indebted, as within alleged]. And as to the second issue within joined, the jurors aforesaid say, that the said A. B. was and is indebted to the said E. F., as within alleged, in an amount greater than the said A. B.'s claim in the declaration mentioned, and they find and assess the balance due from the said A. B. to the said E. F. in respect thereof, at the sum of . Therefore, &c.

No. 6.—Form of Judgment for Plaintiff on a Verdict.

[Copy the Nisi Prius Record to the end of the Postea, and then proceed thus]: Afterwards, on the day of in the year of our Lord [day of signing final judgment], come the parties aforesaid, by their respective attorneys aforesaid, and the Honorable Her Majesty's Chief Justice assigned to hold Pleas in Her Majesty's Supreme Court at Fredericton, (or, "the Honorable one of the Justices of the Supreme Court of our Lady the Queen, assigned to hold the Circuit Court and take the assizes in and for the said County of," &c., as the case may be), before whom the said issue was (or, "issues were") tried, hath sent hither his record, had before him, in these words: Afterwards, &c., [copy the postea]. Therefore it is considered that the said A. B. do recover against the said E. F. the said moneys by the jurors aforesaid, in form aforesaid assessed, (or, if the action be in debt, and the jury do not assess the debt, but only damages for the detention, say "do recover against the defendant the said debt of and the damages by the jurors aforesaid assessed"); and also for his costs of suit by the Court here adjudged of increase to the said A.

B.; which moneys and costs, (or, "debt, damages and costs)," in the whole amount to .

No. 7.—Form of Judgment for Defendant on a verdict.

[Proceed as in the preceding Form to the end of the Postea, then thus:] Therefore it is considered that the said A. B. take nothing by his said writ, and that the said E. F. do go thereof without day, &c. And it is further considered that the said E. F. do recover against the said A. B. for his costs and charges by him about his defence in this behalf expended, by the Court here adjudged to the said E. F., and that the said E. F. have execution thereof, &c.

No. 8.—Form of Judgment for Defendant on a plea of Set-off.

[Proceed as in the above Form to the end of the Postea—then thus:] Therefore it is considered that the said A. B. take nothing by his said writ, but that the said E. F. do recover against him the sum of in form aforesaid found to be due from the said A. B. to the said E. F., together with for his costs of defence by the Court here adjudged to the said E. F., amounting in the whole to , and that the said E. F. have execution therefor.

No. 9.—Form of Postea on a verdict for Defendant in Replevin, on a plea of non capit, under 1 Rev. Stat. c. 126, § 15.

Afterwards &c. [as in the preceding Form to the asterisk, then thus:] that the said defendant did take and detain the goods and chattels mentioned in the declaration, as a distress for rent due for certain premises held by the plaintiff under a demise at a certain rent; and that there was due to the defendant for such rent at the time of the distress, and still is due, the sum of , and they assess the damages of the defendant for the said rent, and the costs and charges of making the distress, at the sum of , besides his costs of suit, &c.

[If the bailiff of the landlord, or any one acting in aid of the landlord, be made a defendant, the postea may be varied, as follows:] "And that there was due to the defendant C. D. [the landlord] for such rent, &c. [as above] and that the defendant E. F. was at the time of making the said distress, the bailiff of the said C. D. (or, "that the said E. F. was present aiding and assisting the said C. D. in making the said distress)," &c.

No. 10.—Form of Judgment for Defendant in Replevin, under 1 Rev. Statutes, c. 126, § 15.

[Proceed in the usual form to the end of the Postea—then thus:] Therefore it is considered that the said A. B. take nothing by his said writ, and that the said E. F. do go thereof without day, &c. And it is further considered that the said E. F. do recover against the said A. B. the said sum of by the jurors aforesaid assessed, and also for his costs and charges by him about his defence in this behalf expended, by the Court here adjudged to the said E. F., which said damages and costs in the whole amount to , and that the said E. F. have execution thereof, &c.

No. 11.—Writ of Fieri Facias on a Judgment for Plaintiff.

VICTORIA, by the Grace of God, &c. To the Sheriff of greeting: We command you, that of the goods and chattels of C. D. in your bailiwick, you cause to be levied and made * [the amount for which the judgment is signed], which A. B. lately in our Supreme Court recovered against him, whereof the said C. D. is convicted as appears by the record: and have that money before us at Fredericton, on" &c., [a return day in Term], to be rendered to the said A. B. And in what manner you shall have executed this our writ, make appear to us at the return hereof; and have you there then this writ. Witness, &c., [the date of issuing].

No. 12.—Writ of Fieri Facias on a Judgment for Defendant.

VICTORIA, by the Grace of God, &c., [as in the preceding form, to the asterisk], which lately in our Supreme Court were awarded to C. D. for the costs of defence in an action lately prosecuted in our said Court by the said A. B. against the said C. D., whereof the said A. B. is convicted: [If a verdict has been given in favor of the defendant for a balance, on a plea of set-off, state thus]: "were awarded to C. D. according to the provisions of 'The Common Law Procedure Act, 1873,' as well for a balance found due to him from the said A. B. in an action lately prosecuted in our said Court by the said A. B. against the said C. D., as for the costs of defence of the said action; whereof the said A. B. is convicted": and have that money before us, &c., [as in the preceding Form].