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I. Summons and service.

R. S. 964.

P. L. 1855, p. 288.

Fictions abolished.
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§ 47.

How commenced.
Id.

Who shall be
defendant.
Amended.

Whom plaintiff
may join as de-
fendants.

An act concerning the action of ejectment.

Revision—Approved March 27, 1874.

1. That in actions of ejectment, the consent rule, and all the fictions heretofore used in such actions, be and the same are hereby abolished.
2. That the action shall be commenced by summons, in the name of the person claiming the premises in question, as plaintiff.
3. That the defendant in the action shall be the person in possession, if the premises are occupied, or some person exercising ownership on the premises or claiming title thereto, in case they are unoccupied. (a)
4. That the plaintiff may join as a defendant with the person in possession any other person who as landlord, remainderman, reversioner or otherwise may claim title to the premises adversely to the plaintiff. (b)

(a) If the persons served with notice as tenants in possession do not defend, the only effect of the judgment against them will be to turn them out of possession when the execution issues. *Semie* that their names cannot be struck out on their own application and on the ground that they have no interest. *Den, Hancock v. Atken*, 4 Zab. 544.

(b) A joint tenant or tenant in common may maintain ejectment against his co-tenant, on proof of ouster. *Den, Obert v. Bordine, Spen*, 394. See *Zard v. Bodine*, 3 Stock. 403. A trustee may recover from his own *cestui que trust*, whose only remedy is in equity. *Brown ads. Combs*, 5 Dutch. 36. A party claiming the legal title to premises and out of possession may, by an action of ejectment, put to a final determination the title of an adverse claimant who is in possession, if the premises are occu-

pled, or who, if the premises are unoccupied, exercises acts of ownership over the same, or claims title thereto. In such a situation there is no inadequacy of the legal remedy which will lay the foundation for a suit in equity to quiet the title. *Shepherd v. Nixon*, 16 Steu. 627. The entries of rent paid by and receipts given therefor to persons since deceased are not admissible as evidence of adverse possession. *Shields v. Ivey*, 23 Vr. 280. The bare legal title, with no beneficial interest in the land, is sufficient to enable the holder to maintain ejectment, even against the person for whom he holds the legal title. *Commissioners v. Johnson*, 9 Steu. 211. A trustee cannot maintain ejectment against his *cestui que trust* when the facts justify a presumption that he had surrendered the legal estate to his *cestui que trust*. *Id.*

5. That the summons shall be according to form number one in the schedule hereto annexed, or to the like effect; and shall describe the premises with such certainty as will distinctly apprise the defendant of their description and situation, so that from such description possession thereof may be delivered; (a) and if the plaintiff claims only an undivided interest therein, it shall also state such interest.
6. That the summons shall be tested on the day it is issued, (b) and may be made returnable in term time or vacation, and shall be served at least ten days (c) before its return, on the defendant in person, or by leaving a copy at his dwelling-house or place of abode with some member of his family above the age of fourteen years; (d) and if such service cannot be made, then the summons shall be served in such manner as the court or a judge thereof shall direct.
7. That the summons shall in all cases be returned with an affidavit of the time and manner of service. (e)
8. That every tenant, on whom any summons in ejectment shall be served for any lands, tenements or hereditaments in his possession shall forthwith give notice thereof to his landlord, or his agent or attorney, under the penalty of forfeiting the value of three years' rent of the premises in the possession of such tenant, to the person of whom he holds, to be recovered by action of debt, in any court of record in this state.

Form of summons. § 47. Amended. Premises, how described.

Teste and return of summons. Ib. Amended.

How served.

How returned.

Tenant to notify landlord. R. S. 55, § 15. Amended.

II. Pleading and practice.

9. That the pleadings shall be filed within the times limited for filing the same in personal actions; (g) and the practice and proceedings shall be in all respects in conformity with the practice in personal actions, so far as the same may be applicable, unless otherwise specially provided.
10. That the declaration shall describe the premises claimed with the same certainty as the summons, and shall state the time when the plaintiff's right to the possession thereof accrued, (h) and may contain several counts; and shall be according to one of the forms of declarations contained in said schedule, as the circumstances of the case may require, or to the like effect.
11. That if no plea be filed within the time limited, the plaintiff shall be entitled to a judgment that he recover possession of the premises claimed in the declaration, upon which a writ of possession may issue. (i)
12. That the plea shall be according to one of the forms of pleas contained in said schedule, as the circumstances of the case may require, or to the like effect, and, under such plea, the defendant may give in evidence any lawful defense to the action, not inconsistent with the other provisions of this act. (k)

Pleadings, when filed. P. L. 1855, p. 288, § 49. Amended.

Declaration, what to contain. Ib., § 50.

Judgment by default. Ib., § 55.

Form of plea. Ib., § 51.

(a) A lot described as "about five chains and twenty-five links in depth," is sufficient. *White v. Den, Woodruff, 4 Zab. 753.* But "bounded, on one side, on other lands of the plaintiff's," is faulty. *Stewart v. Camden and Amboy Railroad Co., 4 Vr. 119.* Such uncertainty will not be corrected or made the ground of interference in equity. *S. C., 3 C. E. Gr. 489.* Where the true location of the boundary line between East and West Jersey dividing two townships was uncertain, the court ordered the name of the township to be struck out of the description. *Keen ads. Den, Saeton, 2 Har. 313.*

(b) The time of issuing the declaration may be proved by parol. *Den, Sharp v. Hamilton, 7 Hal. 109.*

(c) The mode of computation is to include the day of service or appearance and to exclude the other—both days are excluded where the statute requires *entire days.* *Den, Bray v. Drake, 3 Hal. 303.*

(d) Service upon the wife of the defendant, "at the dwelling-house on said premises," where it was evident the defendant had notice of such service, is good. *Derrickson v. White, 3 Vr. 187.* It may be served by a special deputy. *Klopping ads. Stellmacher, 7 Vr. 178.* A declaration served by the lessor of the plaintiff held good. *Den, Auten v. Bridgewater Copper Co., 5 Hal. 237.* Service of summons upon the tenant in possession is not required. *Hughes ads. Cooper, 10 Vr. 445.*

(e) The affidavit is necessary whether the service be made by the sheriff or a third person. *Klopping ads. Stellmacher, 7 Vr. 178.* It may be amended. *Den, Ely v. Applegate, 7 Hal. 321.*

(g) The declaration must be filed within thirty days after the return day of the summons, and not within thirty days after the expiration of the twenty days within which the landlord may be admitted to defend. *Lee v. Consoly, 2 Dutch. 209.* If the declaration be filed in season, and a copy served, the defendant must plead within thirty days after service, if the copy have indorsed upon it the notice required by section 105 of

the practice act. *Hunt v. O'Neill, 15 Vr. 564.* The notice indorsed need not contain the file-mark of the declaration, nor the date of the service. *Ib. Hughes ads. Cooper, 10 Vr. 445.*

(h) The time stated must be the time when the right actually existed or accrued. *Vreeland v. Ryerson, 4 Dutch. 205.* See *Den, Bray v. McShane, 1 Gr. 35.* *Den, Obert v. Bordaine, Spen. 394.* The date of the demise is amendable. *Den, Denny v. Smith, Pen. *710.* *Den, Hoover v. Sharp, 2 South. *850 (b).* It does not follow that because in a declaration the plaintiff's right of possession is averred to have accrued more than twenty years ago, that his right of action is gone; to have produced this result, there must have been an adverse possession covering the statutory period. *Yanclevy v. Book, 11 Vr. 25.*

(i) But not several years after the service of the declaration and after the demise has run out. *Den, Rutherford v. Folger, Spen. 299.* Upon affidavit of merits, judgment may be opened and execution stayed. *Den, Lee v. Ewald, Cox 201.* *Den, Biker v. Ball, Pen. *974.* *Den, Sheppard v. ———, 2 Hal. 161.* *Keen ads. Den, Stanton, 2 Har. 313.* *Den, Popino v. McAllister, 4 Wash. C. C. 393.* A judgment by default will not be set aside on the ground of surprise and merits, if it appeared that the defendant has been guilty of laches. *Hughes ads. Cooper, 10 Vr. 445.*

(k) The defendant may give in evidence any title which confers a present right of possession. *Stewart v. Camden and Amboy Railroad Co., 4 Vr. 115.* It is not necessary that the defendant should prove title in himself; he will defeat the action by proving that it is out of the plaintiff. *Jennings v. Burnham, 27 Vr. 289.* The mere right of way over the *locus in quo* will not justify its exclusive possession by the person to whom that right may belong, and its existence will not constitute a sufficient defense to an action of ejectment by the owner of the fee. *Burnett v. Crane, 27 Vr. 235.*

- What plea admits.** **13.** That the plea of the defendant shall, for the purposes of that action, be an admission that he was in possession of the premises for which he defends, or that he claimed title thereto, at the time of commencing the action.
Ib., § 52.
Amended.
- May defend jointly or separately.** **14.** That the defendants named in the summons may plead to and defend the action, either jointly or separately.
- Defense may be as to part.** **15.** That the defendants, or either of them, may defend for a part only of the premises, and when for a part, it shall be described in the plea with the same certainty as is required in the summons.
Ib., § 51.
- Amendment of insufficient description.** **16.** That if the premises be not described with sufficient certainty in the declaration or plea, the court or a judge may order it to be amended so as to be so described, and if either party fail to comply with such order, judgment may be entered as for want of a declaration or plea, according to the circumstances of the case.
Ib., § 53.
- Landlord may be admitted to defend.** **17.** That the landlord of a tenant in possession (*a*) or other proper person (*b*) may by leave of the court or a judge, be admitted to appear and defend the action, in all cases where the same would have been allowed heretofore; *provided*, the application therefor be made in twenty days after the return day of the summons, or within such further time as may be granted by the court or a judge, and five days' notice of such application, and of the taking of affidavits to be used thereon, be given to the plaintiff; and the landlord or other person admitted under this section to defend, in respect of property whereof he is in possession only by the tenant, shall state, in his plea, that he defends as landlord, and shall be at liberty to set up such defense as a landlord has heretofore been allowed to set up, and no other.
Ib., § 48.
- How application made.** **18.** That if the landlord or any other person than the defendant named in the summons be admitted to defend the action, the plaintiff shall declare against him and the defendant named in the summons, and he may join with the tenant in possession in the defense, or they may defend separately.
- How to declare and plead if landlord admitted.** **19.** That if a plea be filed limiting the defense to a part only of the premises, the plaintiff shall be entitled to a judgment that he recover possession of the part not defended for, upon which a writ of possession may issue; and where a part only of the premises are defended for, the plaintiff may enter a discontinuance of the action as to that part, and enter judgment for the residue, without thereby becoming liable to pay costs to the defendants, or any of them.
Ib., §§ 50, 51.
- Plea may be to part of premises.** **20.** That the plaintiff may, at any time, discontinue the action, as to any or all of the defendants, upon payment of his or their costs.
- Discontinuance as to that and judgment for residue.** **21.** That if one of several plaintiffs desires to discontinue, he may apply to the court or a judge to have his name struck out of the proceedings, which may be ordered upon such terms as the court or judge may think just, and the action shall thereupon proceed at the suit of the other plaintiff.
- Plaintiff may discontinue.** **22.** That any person made a defendant, who is not in actual possession of the premises at the commencement of the action, may appear at any time before the time for pleading has expired, and disclaim all right or title in or to the premises, and thereupon such disclaimer, if allowed by the court or a judge, shall be entered on the record, and the defendant shall have judgment that he recover his costs of the plaintiff, and the plaintiff shall as against such defendant be entitled to a judgment forthwith that he recover possession of the premises, (*c*)
- Discontinuance by one of several plaintiffs.** **23.** That if one of several defendants, who defends separately for a portion of the property, retracts his plea, and confesses the plaintiff's action as to such portion, the plaintiff may forthwith enter judgment, and issue execution for the recovery of the possession of that portion, and for the
Ib., § 73.
- Defendant not in possession may disclaim.**
- If disclaimer allowed, to be entered of record.**
- Retrahit by one of several defendants.**
Ib., § 74.

(a) The court will admit a person to defend as landlord where it appears that the title of such person is connected with the possession of the occupant, and existed prior to the commencement of the action. *Den, Layton v. Shupe*, 1 Gr. 66, 2 Gr. 497. Or where the tenant refuses to appear. *Den v. Smith*, 1 Har. 438. His right to be so admitted must be shown by affidavit or other competent evidence. *Den, Dickinson v. Lanning*, 6 Hal. 185. Where the landlord defends without the tenant, who does not appear, it is not necessary to prove the defendant or his tenant in possession of the premises. *Den, Williamson v. Snow-Hill*, 1 Gr. 23.

(b) A mortgagee may be admitted to defend, although the mortgage became due after the action was brought. *Den, Nathan v. Fen*, 1 Hal. 478. In ejectment by a purchaser at a sheriff's sale, against the defendant in execution, who is tenant in possession, the person under whom such tenant entered, upon a contract for a purchase, or the legal grantee of such person, may be admitted. *Den, Vanclève v. Green, Spen*, 171. See, also, *Chance v. Steward*, Pen. *929.

(c) See *Hughes* ads. *Cooper*, 10 Vr. 445.

cost occasioned by the defense relating to the same, and the action may proceed as to the residue; *provided*, that if any other defendant defends for the same portion, then the plaintiff shall not be at liberty to issue execution for the recovery of the possession of that portion, until he has recovered a judgment against all the defendants who defended therefor.

1. BY AND AGAINST JOINT TENANTS.

24. That if the action be brought by one of several joint tenants or tenants in common or coparceners, any co-tenant or coparcener defending the action may give notice with his plea, that he defends as such and admits the right of the plaintiff to an undivided share of the property (stating what share), but denies an actual ouster of him from the property which notice shall be copied as a part of the circuit record, and recorded with the pleadings; and upon the trial of such issue, the additional question of whether an actual ouster has taken place shall be tried; and if, upon the trial of the issue, it be proved that the defendant is such joint tenant, tenant in common, or coparcener, with the plaintiff, and no such actual ouster shall be proved, then the plaintiff shall be non-suited, with costs; but if it shall be proved either that the defendant is not such joint tenant, tenant in common, or coparcener, or that an actual ouster has taken place, then the jury shall so find by their verdict, and the plaintiff shall have judgment, in accordance with the verdict, for the recovery of possession and costs. (a)

Joint tenants' action, how prosecuted and defended. *Ib.*, § 60.
Denial of ouster.

Proceedings at trial.

2. BILL OF PARTICULARS.

25. That after issue joined in ejectment, either party may demand in writing of the other a bill of particulars of his claim or title to the premises in question; and such bill of particulars shall be delivered in twenty days after the same shall be demanded, or within such further time as the court or a judge on good cause shown may grant, and in default thereof no evidence of such title shall be given on the trial. (b)

Bill of particulars. *Ib.*, § 56.

26. That the bill of particulars shall include an abstract of such documentary evidence of title as the party may intend to give in evidence on the trial; and if any such documents may by law be recorded, it shall also state where they are recorded, or if not recorded, then it shall include copies of such thereof as are in the possession of the party, with the name or names of the subscribing witness or witnesses, if any.

What to contain. *Ib.*, § 56.

27. That the court or a judge may, upon good cause shown, allow either party to serve an amended bill of particulars; but in all cases the evidence of title shall at the trial be confined to the matters contained in the bill of particulars.

May be amended. *Ib.*, § 56.
Evidence.

3. DEATH OF PARTIES.

28. That the death of a plaintiff or defendant in ejectment shall not cause the action to abate, but it may be continued as hereinafter provided.

Action not abated by death. *Ib.*, § 61.

29. That in case the right of the deceased plaintiff shall survive to another plaintiff, a suggestion may be made of the death, which suggestion shall not be traversable, but be subject to be set aside if untrue, and the action may proceed at the suit of the surviving plaintiff; and if such suggestion be made before the trial, then the plaintiff shall have a verdict, and recover such judgment as aforesaid, upon its appearing that he was entitled to bring the action, either separately or jointly with the deceased plaintiff;

Proceedings in case of death of plaintiff. *Ib.*, § 62.

Where right survives to co-plaintiff.

(a) If such joint tenant defends for the whole premises, it is an admission of ouster and the plaintiff will recover whatever his proof shows he is entitled to. *Brown v. Combs*, 5 *Dutch*. 36. See *Den v. Brands*, 3 *Gr.* 465. Proceedings where some of the tenants in common reside out of the state and ejectment is brought in a state court. *Ex parte Turner*, 3 *Wall. Jr.* 258.

(b) When the declaration is general and the defendant is in doubt for what the plaintiff means to proceed, the latter may

be compelled by rule to specify the premises sought to be recovered. *Den, Phillips v. Phillips*, 1 *Zab.* 436. And the party is precluded by its delivery from setting up any other title. *Graham v. Whiteley*, 2 *Dutch.* 254. When a bill of particulars is demanded, a plaintiff is not required by the statute to give notice to his adversary of the documents which it may become necessary for him to use in rebuttal. *Miller v. Mead*, 10 *Fr.* 538

Where right does not survive.

and in case of the death before trial of one of several plaintiffs, whose right does not survive to any other of the plaintiffs, if the legal representatives of the deceased plaintiff shall not become a party to the action, in the manner hereinafter provided, a suggestion may be made of the death, which shall not be traversable, but be subject to be set aside if untrue, and the action may proceed at the suit of the surviving plaintiff, for such share of the property as he is entitled to, and costs.

Death of one of several plaintiffs after verdict.
Ib., § 63.

30. That in case of a verdict for two or more plaintiffs, if one of such plaintiffs die before execution executed by delivery of possession thereupon, the other plaintiff may, whether the legal right to the property shall survive or not, suggest the death in manner aforesaid, and proceed to judgment and execution for recovery of the possession of the whole of the premises in question to which the right of possession may be found by the verdict; but nothing herein contained shall affect the right of the legal representative of the deceased plaintiff, or the liability of the surviving plaintiff to such representative; and the entry and possession of such surviving plaintiff, under such execution, shall be considered as an entry and possession on behalf of such representative, in respect of the share of the premises in question to which he shall be entitled as such representative, and the court may direct possession to be delivered accordingly.

Death of sole plaintiff before trial.

31. That in case of the death before trial^(a) of a sole plaintiff, or of one of several plaintiffs whose right does not survive to any other plaintiff, the legal representative of such deceased plaintiff may, by leave of the court, enter a suggestion of such death, and that he is such legal representative, and the action shall thereupon proceed; and the truth of such suggestion shall be tried on the trial of the action, together with the title of the deceased plaintiff; and such judgment shall follow upon the verdict in favor of or against the person making such suggestion, as is hereinbefore provided with reference to a judgment for or against such deceased plaintiff.

Where right does not survive.
Ib., § 64.

Action continued in name of legal representative.

Death of sole plaintiff after verdict.
Ib., § 65.

Judgment to be entered.

32. That in case a sole plaintiff die after a verdict in his favor, and before execution executed by delivery of possession thereon, judgment shall nevertheless be entered in his favor, and have the same effect as if entered in his lifetime; and the court, upon suggestion of such death, and application of the legal representative of the deceased plaintiff, may order that a writ issue for the delivery to such representative of the possession of the premises recovered, and the same shall be delivered accordingly, subject however, to such terms as the court may impose; and the personal representatives of such deceased plaintiff shall have like remedies for the collection of the costs recovered by such judgment as they would have upon any other judgment for money in favor of said deceased.

Costs.

In case of verdict for defendant and death of plaintiff before judgment.
Ib., § 66.

Judgment to be entered.

Execution for costs, how issued.

33. That if, after a verdict in favor of a defendant, a sole plaintiff, or one of several plaintiffs, die before judgment, the defendant shall nevertheless be entitled to judgment as if no such death had happened; and in case of a sole plaintiff, the defendant may proceed for the recovery of his costs, in like manner as upon any other judgment for money, against such deceased; and in case of several plaintiffs, the defendant may have execution against the surviving plaintiff for his costs; and if, after such verdict in favor of a defendant, and before judgment, he shall die, judgment shall nevertheless be entered in his favor, and have the same effect as if entered in his lifetime.

Proceedings in case of death of one defendant before judgment.
Ib., § 67.

Action to proceed against survivor.

34. That in case of the death before judgment of one of several defendants who defends jointly, a suggestion may be made of the death, which suggestion shall not be traversable, but be subject to be set aside if untrue, and the action may proceed against the surviving defendant to judgment and execution; but if such death happen before trial, the court, in its discretion, may order that notice be given to the legal representatives of such deceased defendant to appear and defend the action within a time to be limited by the court, the notice to be served in such manner as the

^(a) The death of the plaintiff's lessor after notice of trial, is no bar to the trial. *Den, Terrill v. Sayre, Pen. *598.*

court may direct; and in case such representative appear and plead he shall plead the same plea, and the same proceedings may be taken against him as if he had been originally admitted to defend the action; and if no such order be made, or if one be made, and such representative do not appear and plead within the time so limited, and an affidavit be filed of the due service of such notice, then the plaintiff suggesting the death, in manner aforesaid, may proceed against the surviving defendant to judgment and execution.

But if defendant die before trial, court may direct his legal representative to appear.

35. That in case of the death of a sole defendant, or of all the defendants, before trial, a suggestion may be made of the death, which suggestion shall not be traversable, but be subject to be set aside if untrue, and the plaintiff shall be entitled to a judgment for recovery of the possession of the premises in question, unless some other person shall appear and defend within the time to be appointed for that purpose by the order of the court, to be made on the application of the plaintiff; and the court, upon such application, may order that the plaintiff shall be at liberty to sign judgment within such time as the court may think fit, unless the legal representative of the deceased defendant or defendants shall, within such time appear and plead to the action; and such order may be served in such manner as the court, under the circumstances may direct; and in case such person shall appear and plead he shall plead the same plea, and the same proceedings may be taken against him as if he had been originally admitted to defend the action; and if no plea be filed within the time limited then the plaintiff, upon filing an affidavit of the due service of such order, shall be at liberty to sign judgment pursuant thereto.

In case of death of sole defendant before trial. *Ib.*, § 68.

Plaintiff shall have judgment unless some other person shall appear and defend as ordered by court.

36. That in case of the death of a sole defendant, or of all the defendants, after verdict against him or them, the plaintiff shall nevertheless be entitled to judgment as if no such death had taken place, and to proceed by execution for the recovery of possession without suggestion or revivor, and to proceed for the recovery of the costs in like manner as upon any judgment for money against such defendant or defendants.

In case of death of sole defendant after verdict. *Ib.*, § 69.

37. That in case of the death of one of several defendants, who defends separately for a portion of the premises in question, for which no other defendant defends, before trial, or after a verdict against him, the same proceedings may be taken as to such portion as in case of the death of a sole defendant, or the plaintiff may proceed against the surviving defendant in respect of the portion of the premises in question for which he defends.

In case of death of defendant, who defends separately. *Ib.*, § 70.

38. That in case of the death before trial of one of several defendants who defends separately in respect of property for which a surviving defendant also defends, the court, at any time before the trial, may order that notice be given to the legal representative of such deceased defendant to appear and defend the action within a time to be limited by the court, the notice to be served in such manner as the court may, under the circumstances direct; and in case such representative appear and plead, he shall plead the same plea and the same proceedings may be taken against him, as if he had been originally admitted to defend the action; and if no such order be made, or if one be made and such representative do not appear and plead within the time so limited, and an affidavit be filed of the due service of such notice, then the plaintiff suggesting the death, in manner aforesaid, may proceed against the surviving defendant to judgment and execution.

In case of defendant who defends separately in respect to property which surviving defendant also defends for. *Ib.*, § 71.

Court may order representative to appear.

If no order or appearance, action to proceed against survivor.

39. That if, after verdict, a new trial be granted, then, for the purpose of preventing an abatement of the action, the same proceedings may be had as if there had been no trial.

Proceedings in case of new trial granted. *Ib.*, § 72.

III. Trial and judgment.

Trial.
Ib., § 57.

40. That after issue is joined, the parties shall proceed to the trial as in other actions. (a)

If defendant does not appear.

If the plaintiff appears at the trial, and the defendant does not, the jury shall render a verdict of guilty against the defendant, without any proof of title by the plaintiff.

If plaintiff does not appear.

If the defendant appears, and the plaintiff does not, the plaintiff shall be non-suited.

If both parties appear.

If both parties appear, the question at the trial shall be (except as hereinafter provided), whether the plaintiff or plaintiffs, or either, and which of them, is entitled to recover the possession of the premises, and whether of the whole or of part, and if of part, then of which part.

Verdict of jury for part.
Ib., § 57.

41. That if a verdict be found for the plaintiff or plaintiffs, or either of them, for the whole or a part, the jury shall, by the verdict, particularly specify such part, (b) and judgment shall be entered thereon, that he or they recover the possession of the same, either in whole or in part, as the case may be, with costs, upon which a writ of possession may issue. (c)

Verdict and judgment in case possession is severed from title.

42. *Provided*, that if it shall appear at the trial, that the plaintiff is entitled to the possession of the premises or any part thereof, but that the title thereto (other than the mere possessory right) is in some one of the defendants who, as landlord, remainderman, reversioner or otherwise, has been made a defendant by the plaintiff, the verdict shall be, that the plaintiff recover possession thereof, and that the title (other than such possessory right) is in the defendants or some one of them, as the same shall be specially found; and judgment shall be entered thereon in pursuance of such verdict, and a writ of possession shall thereupon be issued accordingly.

If plaintiff's title expired pending suit.
Ib., § 58.

43. That if at trial the title of the plaintiff shall appear to have existed as alleged in the declaration, in such manner that the plaintiff or plaintiffs, or one of them, was, at the commencement of the action, entitled to recover possession of the premises in question, or of some part thereof, but shall also appear to have expired at the time of the trial, the plaintiff or plaintiffs so entitled shall, notwithstanding such expiration, be entitled to a verdict, according to the fact, that he was so entitled at the commencement of the action, and to a judgment accordingly, with his costs of suit; and as to the premises claimed, the judgment shall be, that the defendant go thereof without day. (d)

Judgment conclusive.
Ib., § 77.
Amended.

44. That a judgment in an action of ejectment, commenced after this act takes effect, shall be conclusive, as to the right of possession, and the title to the premises (as the case may be), as the same has been established by such judgment, upon the party against whom it is recovered, and upon all persons claiming from, through, or under such party, by title arising after the commencement of such action; *provided*, that if any person against whom such judgment is recovered shall be, at the time of its recovery, an infant, idiot or lunatic, the judgment shall be no bar to an action commenced by such person, or anyone claiming from, through, or under such person, within three years after the removal of such disability. (e)

Saving rights of infants, lunatics, &c.

(a) The cause may be referred. *Den, Cranmer v. Taylor, Pen. 875. Den v. Brands, 3 Gr. 465.*

(b) The plaintiff may recover several distinct tracts, claimed under different titles, if from all he has been unlawfully ejected by the same defendant. *Den, Williamson v. Snowhill, 1 Gr. 23.* If two or more persons holding separate possessions are united in the declaration and plead jointly, judgment may be given against them separately, if their separate possessions are found by the jury. *Ib. Bayard v. Coffee, 4 Wash. C. C. 38.* If the verdict be for an entire farm, judgment cannot be rendered for a part only unless by consent. *Den, Obert v. Hammel, 3 Har. 73.*

(c) The plaintiff in ejectment, upon his writ of possession, must point out to the officer the premises to which he has established his title, and take possession at his peril. *Den, McAndrews v. O'Hanlin, 3 Har. 127.* The service of a writ of *habere facias* must be by putting the tenant out of and the plaintiff into the house, if there be one on the premises. *Den, Smallwood v. Moore, 1 Har. 497.* Proceedings by defendant to obtain restitution. *Den, Hicks v. Johnson, 7 Hal. 275.*

(d) A plaintiff in ejectment, having a defeasible title, is enti-

led to a general judgment if his title has not expired or been determined at the time of the trial. This section, which authorizes a special judgment, applies only to cases in which the plaintiff's title has, in fact, expired pending the suit. *Hunt v. O'Neill, 15 Vr. 544.*

(e) Judgment was not conclusive upon the rights of the parties where the suit was commenced previous to the passage of this section (March 17th, 1855). *Van Blarcom v. Kip, 2 Dutch. 352.* Although a single recovery, if the right was not further controverted at law, was regarded in equity as decisive. *Obert v. Obert, 2 Stock. 98, 1 Beas. 423.* The operation of this section is only upon the right of possession as it existed at the termination of the suit, and does not conclude any subsequent right of possession. *Hoboken Co. v. Mayor of Hoboken, 7 Vr. 545, per Depue, J.* This section relates only to the right of possession and the title as they existed at the termination of the suit. A judgment in ejectment will not conclude the defeated party as to a title or right of possession subsequently accruing. *Hunt v. O'Neill, 15 Vr. 544.*

IV. Mesne profits and costs.

45. That after a judgment in favor of the plaintiff, an action may be brought for the mesne profits and damages in all cases where the defendant in ejectment would be liable for mesne profits and damages, as heretofore, or the plaintiff may declare for and recover the same in the same action, under such regulations as to the pleadings and proceedings as the justices of the supreme court may prescribe, which regulations shall be applicable to actions of ejectment in the circuit court, as well as in the supreme court. (a)

Mesne profits,
how recovered.
Ib., § 76.

46. That the action for the recovery of mesne profits shall be brought in the name of the plaintiff in the action of ejectment, or of his personal representatives if he shall have died after judgment recovered.

Action, how
brought.

47. That in the action for mesne profits, the plaintiff shall be entitled to recover of the defendant as damages the full value of the use and occupation of the premises for the time such defendant was in possession thereof, not exceeding six years before the commencement of such action; but such damages shall not include the value of the use of any improvements made by the defendant; and where permanent improvements have been made in good faith on the premises by the defendant, or those under whom he claims, while holding adversely to the plaintiff under color of title obtained by a fair bona fide purchase from some person in possession, and supposed to have a legal right and title thereto, the value of such permanent improvements shall be allowed to the defendant, and set off against the damages of the plaintiff to the extent of such damages and no further (b)

Damages in actions for mesne profits.
R. S. 964.
Amended.

Value of permanent improvements made in good faith to be set off against damages.

48. That in ejectment, the successful party shall in all cases, except where it is otherwise provided in this act, recover his costs of the other party, and may have like executions therefor, as in personal actions ex delicto.

Costs.
P. L. 1855, p. 288,
§ 59.

49. That if upon the issue joined, the plaintiff shall recover a verdict either for the whole or a part of the premises in dispute, he shall recover costs, and may include in the writ of possession an execution for the costs, or may issue a separate execution therefor.

Costs if verdict for the whole or part.
Ib., § 57.

50. That if the plaintiff shall obtain judgment by default for want of a plea, he shall also recover his costs by the same judgment, and have execution therefor, including the costs on the writ of possession, against the defendant named in the summons, which execution for costs may be included in the writ of possession; provided, it appear by the affidavit of service of the summons that the defendant was in actual possession of the premises claimed, or some part thereof, at the time of such service, and that the same was served personally upon him, or upon some member of his family above the age of fourteen years, at his dwelling-house or place of abode; and if it do not so appear, then the plaintiff may recover his costs in an action for mesne profits against the defendant named in the summons, as heretofore. (c)

Costs on default.
Ib., § 54.

Affidavit
required.

51. That if by the plea filed, the defense is limited to part only of the premises claimed, and the plaintiff takes judgment of the part undefended for, and enters a discontinuance as to the residue, the costs of the plaintiff in the ejectment shall only be recoverable in an action for mesne profits, as heretofore.

Costs on plea to part only and discontinuance as to that part.
Ib., § 54.

(a) Mesne profits can only be recovered from the time of the demise laid in the declaration. *Den, Delatouche v. Chubb, Coxe* 466. *Den, Bray v. McShane*, 1 Gr. 35. And the defendant must be proved to have been actually in possession. *Den, Hancock v. Aiken*, 4 Zab. 545. *Derrickson v. White*, 3 Vr. 137. *Stewart v. Camden and Amboy Railroad Co.*, 4 Vr. 115. *Battin v. Bigelow*, Fed. C. C. 452. See *Sanderson v. Price*, 1 Zab. 637. *Den, Price v. Sanderson*, 3 Har. 429.

(b) The value of the improvements made by the defendant ought to be first set off against the mesne profits prior to the

actual ouster and after the title of the plaintiff accrued. *Hylton v. Brown*, 2 Wash. C. C. 165. See *Sanderson v. Price*, 1 Zab. 643, *per Carpenter, J.*

(c) A plaintiff is only entitled to his costs on a judgment by default where it appears by the affidavit of service of the summons that the defendant was, at the time of the service, in actual possession of the premises claimed, or some part thereof. If it does not so appear, he must recover his costs in action for mesne profits. *Hunt v. O'Neill*, 15 Vr. 564.

V. Miscellaneous provisions.

Writ of error.
Ib., § 75.

Construction of
act.
Ib., § 89.

Control of court
over action.
Ib., § 79.

52. That error may be brought in like manner as in other actions, upon any judgment in ejectment.

53. That wherever in this act, the words "legal representative" of a deceased party, plaintiff or defendant, occur in relation to the effect of the death of such party, they shall be understood to mean such heir, devisee, or other representative of the deceased person, as upon his death became seized or possessed of or otherwise entitled to, the estate or interest in the premises in question of which he was seized, possessed, or entitled unto at the time of his death.

54. That the several courts in which actions of ejectment may be pending, may exercise over the proceedings therein, the like jurisdiction and control as heretofore exercised in the action of ejectment, so as to insure a trial of the title only, (a) and of actual ouster when necessary, and for all other purposes for which such jurisdiction may at present be exercised, and may make such regulations concerning the said actions as may be necessary more fully to carry into effect the intention of this act; and the provisions of all statutes not inconsistent with the provisions of this act, and which may be applied to the altered mode of proceeding, shall remain in force and be applied thereto; *provided*, that nothing in this section contained shall authorize the said courts to exercise any control or jurisdiction, or make any regulations inconsistent with the true intent and meaning of this act.

VI. Schedule.

NO. 1. FORM OF SUMMONS IN EJECTMENT.

New Jersey, ss.—The state of New Jersey to the sheriff of the county of _____, greeting:

We command you to summon C. D. to appear before our supreme court, at Trenton, on the _____ day of _____ next, to answer to the [L. s.] complaint of A. B., who demands of him the possession of the equal undivided one-fourth part of a tract of land, with the appurtenances, situated in the township of _____, in the county of _____, containing _____ acres, more or less, bounded on the north by lands of E. F., on the south by lands of G. H., on the east by lands of I. K., on the west by lands of L. M.

And in default of his appearing and defending this action, judgment will be entered against him, and he will be turned out of possession of said land.

And have you then and there this writ.

Witness _____, esquire, chief justice, at Trenton, the _____ day of _____, eighteen hundred and _____.

_____, Attorney.

_____, Clerk.

NO. 2. FORM OF DECLARATION AGAINST THE DEFENDANT NAMED IN THE SUMMONS.

New Jersey supreme court—of the [here insert the date of the summons] county, ss.—A. B., the plaintiff in this action, by _____, his attorney, demands of C. D., the defendant therein, the possession of the equal undivided one-fourth part of a tract of land, with the appurtenances, situated in the township of _____, in said county, containing _____ acres, more or less, bounded on the north by lands of E. F., on

(a) A court of law, in ejectment, can deal only with the legal title, and cannot inquire into a title claimed under an implied trust. *Mulford v. Tunis*, 6 Vr. 256. See *Den, Gardner v. Sharp*, 4 Wash. C. C. 609.

the south by lands of G. H., on the east by lands of I. K., on the west by lands of L. M. And the plaintiff says that his right to the possession of the same accrued on the _____ day of _____, eighteen hundred and _____, and that the defendant wrongfully deprives him of the possession thereof, to his damage _____ dollars.

_____, Attorney of plaintiff.

NO. 3. FORM OF DECLARATION WHERE THE LANDLORD, OR OTHER PERSON,
IS ADMITTED TO DEFEND.

[State the title of the court, and time of commencing the action, as in number two, and then proceed as follows]:

_____ county, *ss.*—A. B., the plaintiff in this action, by _____, his attorney, demands of C. D. and R. S., the defendants therein (the summons having been issued against the said C. D., and the said R. S. having been admitted to defend), [and then proceed as in form number two, to the end].

NO. 4. FORM OF PLEA BY THE TENANT IN POSSESSION, WHERE HE DEFENDS
FOR THE WHOLE PREMISES CLAIMED.

New Jersey supreme court.

C. D. }
adsm. } In ejectment, plea.
A. B. }

And the said C. D., by _____, his attorney, appears and defends this action, and says that he is not guilty of the injury whereof the said A. B. hath complained in his declaration, nor of any part thereof, and of this he puts himself upon the country, and the said A. B. doth the like.

_____, Attorney of defendant.

NO. 5. FORM OF PLEA IF THE TENANT IN POSSESSION DEFENDS ONLY FOR A
PART OF THE PREMISES.

[After stating the court and action, say]:

And the said C. D., by _____, his attorney, appears and defends this action as to a part of the premises claimed by the plaintiff in his declaration, to wit, _____ acres thereof, situate and described as follows, to wit: and as to the part so defended for, he says that he is not guilty of the injury whereof the said A. B. hath complained in his declaration, and of this he puts himself upon the country, and the said A. B. doth the like.

_____, Attorney for defendant.

NO. 6. FORM OF PLEA BY THE LANDLORD WHEN DEFENDING SEPARATELY.

[State the court and the action, as in form number four, and then say]:

And R. S., who is admitted to defend this action as landlord, by _____, his attorney, appears and defends the action, and so forth [as form number four or five, according to the circumstances of the case].

NO. 7. FORM OF PLEA BY ANY OTHER PERSON THAN THE LANDLORD
ADMITTED TO DEFEND, AND DEFENDING SEPARATELY.

[State the court and the action, as in number four, and then say]:

And N. O., who is admitted as a proper person to defend this action, by _____, his attorney, appears and defends the action, &c. [as in form number four or five, according to the circumstances of the case].

ELECTIONS.

NO. 8. FORM OF PLEA BY THE LANDLORD WHEN DEFENDING JOINTLY WITH
THE TENANT IN POSSESSION.

[State the court and action, as in form number four, and then say]:

And the said C. D., together with R. S., who is admitted to defend this action as landlord, by ———, their attorney, appear and defend the action, &c. [as in form number four or five, according to the circumstances of the case].

NO. 9. FORM OF PLEA WHERE ANY PERSON OTHER THAN THE LANDLORD IS
ADMITTED TO DEFEND AND DEFENDS JOINTLY WITH THE TENANT IN
POSSESSION.

[If any other person than the landlord be admitted to defend, and defend jointly with the tenant in possession, then after stating the court and action, as in form number four, say]:

And the said C. D., together with N. O., who is admitted as a proper person to defend this action, by ———, their attorney, appear and defend the action, &c. [as in form number four or five, according to the circumstances of the case].

Elections.

I. OF ELECTIONS GENERALLY.

1. OF THE GENERAL ELECTION.

1. Annual election.
2. Town meeting to fix place for.
3. Superseded by section 223.
4. Secretary of state to give notice of expiration of senatorial terms.
5. Time and mode of electing sheriff, coroners, register and surrogate.
6. Time and mode of electing governor.
7. Secretary of state to give notice of such election.
8. Who deemed elected.
9. Township clerk to give notice of election.
10. Military duty not to be performed on election day.

2. OF THE QUALIFIED ELECTORS.

11. Who entitled to vote, and where.
12. Challenge for conviction of crime.
13. Voters privileged from arrest.

3. ELECTION OFFICERS, POWERS AND DUTIES.

14. Superseded by section 359.
15. Superseded by section 359.
16. How member of election board to record dissent.
17. Superseded by section 336, &c.
18. Superseded by section 359.
19. Superseded by section 360.
20. To what offices members of election board not to be elected.
21. Superseded by sections 359 and 360.
22. Superseded by section 360.
23. Superseded by section 360.
24. Superseded by section 235, &c.
25. Superseded by section 235, &c.
26. Punishment of election officers for misdemeanors in office.

4. MODE OF CONDUCTING ELECTIONS.

27. Amended by sections 219 and 351.
28. Voting to be by ballot.
29. Proclamation to be made of opening of election.
30. Ballot-boxes to be exhibited.
31. Time of opening and closing polls.
32. Proceedings on adjournment of board during election.
33. Judge and inspectors to keep keys of ballot-box.
34. Clerk to provide and keep poll-book.
35. How entries to be made in poll-book in cities.

36. Ballots to be delivered to judge or inspector of election.
37. Votes may be challenged.
38. When judge and inspectors to challenge.
39. Oath of person challenged as an alien.
40. Members of board may examine claimant.
41. Form of oath on challenge.
42. Entry at the foot of the list of voters.
43. Votes to be canvassed.
44. Mode of canvassing votes.
45. In what cases ballots not counted.
46. In what cases ballots to be deemed null in part.
47. Statement of result to be made.
48. Statement of result, &c.
49. Amended by section 188.
50. Additional copy, when made.
51. Form of statement.
52. Amended by section 191.

5. MEETINGS AND DUTIES OF COUNTY CANVASSERS

53. One member of each election board to attend.
54. Superseded by section 365.
55. Majority appointed to form board.
56. Time and place of meeting. Oath.
57. If county clerk absent, his place how supplied.
58. Proceedings and duties of board.
59. Copies of statement to be sent to county clerk and secretary of state.
60. Member to send statement if he cannot attend.
61. When board shall adjourn one day.
62. County clerk to lay statements before board.
63. Proceedings to be public. Member may dissent.
64. Statements to be filed by county clerk.
65. Form of statement.
66. Statement of determination to be made.
67. Form of such statement.
68. Grounds on which statements are founded.
69. Certified copies to be delivered to persons elected.
70. Copies to be sent to secretary of state.
71. Certificate of election of sheriff or coroner.

6. DUTIES OF SECRETARY OF STATE.

72. Duties in certain contingencies.

7. BOARD OF STATE CANVASSERS.

73. Time and place of meeting of state canvassers.
74. Board, how constituted.