

Queensland



COMMON LAW PLEADING ACT 1867

**Reprinted as in force on 11 August 1994
(includes amendments up to Act No. 18 of 1908)**

Reprint No. 1

This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy

Information about this reprint

This Act is reprinted as at 11 August 1994. The reprint—

- shows the law as amended by all amendments that commenced on or before that day
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

The reprint includes a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- update citations and references (Pt 4, Div 2)
- express gender specific provisions in a way consistent with current legislative drafting practice (s 24)
- use standard punctuation consistent with current legislative drafting practice (s 27)
- use expressions consistent with current legislative drafting practice (s 29)
- relocate marginal or cite notes (s 34)
- omit the enacting words (s 42A)
- number and renumber certain provisions and references (s 43)
- correct minor errors (s 44).

Also see Endnotes for—

- **details about when provisions commenced**
- **any provisions that have not commenced and are not incorporated in the reprint**
- **further information about editorial changes made in the reprint, including—**
 - **Table of corrected minor errors**
 - **Table of renumbered provisions**
 - **Table of comparative legislation.**

Queensland



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TABLE OF PROVISIONS

Section		Page
	Payment	
43	Action of debt being brought on judgment after money paid such payment may be pleaded in bar the like in bonds	3
	Payment into court	
44	Principal and interest on bonds payable into court	3
46	Payment into court in replevin	4
47	Effect of such payment in replevin	4
	Powers of the Court	
62	General rules may be made by the Judges	4
	Commencement and short title	
63	Commencement of Act—Short title	5

ENDNOTES

1	Index to Endnotes	6
2	Date to which amendments incorporated	6
3	List of legislation	6
4	List of annotations	7
5	Table of corrected minor errors	11
6	Table of renumbered provisions	11
7	Table of comparative legislation	11

COMMON LAW PLEADING ACT 1867

[as amended by all amendments that commenced on or before 11 August 1994²]

An Act to consolidate and amend the laws relating to pleading in actions at law

Payment

Action of debt being brought on judgment after money paid such payment may be pleaded in bar the like in bonds

43. When any action of debt or *scire facias* shall be brought upon any judgment if the defendant hath paid the money due upon such judgment such payment shall and may be pleaded in bar of such action or suit and where an action of debt is brought upon any bond which hath a condition or defeasance to make void the same upon payment of a lesser sum at a day or place certain if the obligor the obligor's heirs executors or administrators have before the action brought paid to the obligee the obligee's executors or administrators the principal and interest due by the defeasance or condition of such bond though such payment was not made strictly according to the condition or defeasance yet it shall and may nevertheless be pleaded in bar of such action and shall be as effectual a bar thereof as if the money had been paid at the day and place according to the condition or defeasance and had been so pleaded.

Payment into court

Principal and interest on bonds payable into court

44. If at any time pending an action upon any such bond with a penalty the defendant shall bring into court all the principal money and interest due

on such bond and also all such costs as have been expended in any suit or suits in law or equity upon such bond the said money so brought in shall be deemed and taken to be in full satisfaction and discharge of the said bond and court shall and may give judgment to discharge every such defendant of and from the same accordingly.

Payment into court in replevin

46. The plaintiff in replevin may in answer to an avowry pay money into court in satisfaction in like manner and subject to the same proceedings as to costs and otherwise as upon a payment into court by a defendant in other actions.

Effect of such payment in replevin

47. Such payment into court in replevin shall not nor shall the acceptance thereof by the defendant in satisfaction work a forfeiture of the replevin bond.

Powers of the Court

General rules may be made by the Judges

62.(1) It shall be lawful for the Judges of the Supreme Court or a majority of them of whom the Chief Justice shall be one from time to time to make all such general rules and orders for the effectual execution of this Act and of the intention and object hereof and for fixing the costs to be allowed for and in respect of the matters herein contained and the performance thereof and for apportioning the costs of issues and also for altering the number of days by this Act limited for the return of any writ or for the doing of anything by this Act prescribed or authorised to be done and substituting other days for the same as in their judgment shall be necessary or proper.

(2) However, nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the said court or the Judges thereof to make rules or orders or otherwise to regulate and dispose of the business therein.

Commencement and short title

Commencement of Act—Short title

63. This Act shall commence on 31 December 1867 and may be referred to as the *Common Law Pleading Act 1867*^{3–7}.

ENDNOTES

1 Index to Endnotes

	Page
2 Date to which amendments incorporated	6
3 List of legislation	6
4 List of annotations	7
5 Table of corrected minor errors	11
6 Table of renumbered provisions	11
7 Table of comparative legislation	11

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 11 August 1994. Future amendments of the Common Law Pleading Act 1867 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 List of legislation

Common Law Pleading Act 1867 31 Vic No. 5

date of assent 26 November 1867

commenced 31 December 1867 (see s 63)

as amended by—

Defamation Law of Queensland (of 1889) 53 Vic No. 12 s 2 Sch

date of assent 11 October 1889

commenced on date of assent

Acts Citation Act 1903 3 Edw 7 No. 10 s 10 Sch 3

date of assent 13 November 1903

commenced on date of assent

Statute Law Revision Act 1908 8 Edw 7 No. 18 s 2 Sch 1

date of assent 23 December 1908

commenced on date of assent

4 List of annotations

Key to abbreviations in list of annotations

amd	=	amended
Ch	=	Chapter
cl	=	clause
def	=	definition
Div	=	Division
hdg	=	heading
ins	=	inserted
om	=	omitted
prec	=	preceding
pres	=	present
prev	=	previous
(prev)	=	previously
prov	=	provision
Pt	=	Part
RA	=	Reprints Act 1992
renum	=	renumbered
Sdiv	=	Subdivision
sub	=	substituted

Provisions not included in reprint, or amended by
amendments not included in reprint, are underlined

Note—references to ‘Pring’s Statutes’ and to Colonial Acts were omitted from the
sectional notes throughout this Act by Act of 1903 3 Edw 7 No. 10 s 10 Sch 3

Preamble

om 1908 8 Edw 7 No. 18 s 2 Sch 1

**Questions of fact may after writ issued by consent and leave of the judge be
raised without pleadings**

s 1 om 1908 8 Edw 7 No. 18 s 2 Sch 1

**Agreement may be entered into for the payment of money and costs according
to the result of the issue**

s 2 om 1903 8 Edw 7 No. 18 s 2 Sch 1

**Judgment to be entered according to the agreement and execution issued
forthwith unless stayed**

s 3 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Proceedings upon issue may be recorded

s 4 om 1903 8 Edw 7 No. 18 s 2 Sch 1

**Questions of law may be raised after writ issued by consent &c. without
pleading**

s 5 om 1903 8 Edw 7 No. 18 s 2 Sch 1

**Agreement as to payment of money and costs according to judgment upon
special case**

s 6 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Costs to follow the event

s 7 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Pleadings to be dated and entered as of time of pleading unless order to the contrary

s 8 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Fictitious and needless averments not to be made

s 9 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Profert and oyer abolished

s 10 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Performance of conditions precedent may be averred generally

s 11 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Document may be set forth and be considered a part of the pleading in which it is set forth

s 12 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Payment set-off and other pleadings which can be construed distributively shall be so construed

s 13 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Judgment upon demurrer to be given according to the very right of the cause

s 14 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Objections by way of special demurrer taken away

s 15 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Form of demurrer and joinder in demurrer

s 16 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Pleadings framed to embarrass may be struck out or amended

s 17 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Pleas to actions partaking both of breach of contract and wrong

s 18 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Upon motion in arrest of judgment omitted facts may by leave of the court be suggested

s 19 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Judgment to follow result of suggestion

s 20 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Costs of abortive issues

s 21 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Forms of commencement &c. of declaration

s 22 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Commencement of declaration after plea of non-joinder

s 23 om 1903 8 Edw 7 No. 18 s 2 Sch 1

In actions on bonds &c. plaintiff may assign as many breaches as he pleases

s 24 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Declaration for libel or slander

s 25 om 1889 53 Vic No. 12 s 2 Sch

One new assignment only allowed in respect of the same cause of action

s 26 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Pleas not to be repeated

s 27 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Express color abolished

s 28 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Special traverses abolished

s 29 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Signature of counsel

s 30 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Formal commencement and prayer of judgment unnecessary

s 31 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Commencement of plea

s 32 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Certain pleas may be pleaded together without leave

s 33 om 1903 8 Edw 7 No. 18 s 2 Sch 1

For pleading several matters without leave judgment may be signed

s 34 om 1903 8 Edw 7 No. 18 s 2 Sch 1

As to pleading and demurring together

s 35 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Several matters may be pleaded at any stage of the pleadings

s 36 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Objections to pleadings to be heard on summons to plead several matters

s 37 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Traverse of the declaration

s 38 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Traverse of plea or subsequent pleading of defendant

s 39 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Traverse of replication or subsequent pleading of the plaintiff

s 40 om 1903 8 Edw 7 No. 18 s 2 Sch 1

General issue by statute

s 41 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Joinder of issue

s 42 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Payment into court in certain actions

s 45 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Payment into court in action on money bond and for detainer

s 48 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Payment into court how pleaded

s 49 om 1903 8 Edw 7 No. 18 s 2 Sch 1

No order to pay money into court

s 50 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Proceedings by plaintiff after payment into court

s 51 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Offer of an apology admissible in evidence in mitigation of damages

s 52 om 1889 53 Vic No. 12 s 2 Sch

In an action against a newspaper for libel the defendant may plead that it was inserted without malice and without neglect and may pay money into court as amends

s 53 om 1889 53 Vic No. 12 s 2 Sch

Subjects of cross-action may be pleaded

s 54 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Equitable defence may be pleaded

s 55 om 1903 8 edw 7 No. 18 s 2 Sch 1

Equitable defence after judgment

s 56 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Equitable replication

s 57 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Court or judge may strike out equitable plea or replication

s 58 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Plea of matter subsequent to action

s 59 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Plea puis darrein continuance when and how to be pleaded

s 60 om 1903 8 Edw 7 No. 18 s 2 Sch 1

Forms in schedule may be adopted

s 61 om 1903 8 Edw 7 No. 18 s 2 Sch 1

SCHEDULE A—FORM OF ISSUE ON SPECIAL CASE

om 1903 8 Edw 7 No. 18 s 2 Sch 1

SCHEDULE B—FORMS OF PLEADINGS

om 1903 8 Edw 7 No. 18 s 2 Sch 1

5 Table of corrected minor errorsTABLE OF CORRECTED MINOR ERRORS
under the Reprints Act 1992 s 44

Provision	Description
43	om 'brough' ins 'brought'

6 Table of renumbered provisionsTABLE OF RENUMBERED PROVISIONS
under the Reprints Act 1992 s 43

Previous	Renumbered as
62, 1st sentence	62(1)
62, proviso	62(2)

7 Table of comparative legislation

s 43	4 & 5 Anne c. 16 s 12
s 44	4 & 5 Anne c. 16 s 13
s 46	23 & 24 Vic c. 126 s 23
s 47	23 & 24 Vic c. 126 s 24
s 62	15 & 16 Vic c. 76 s 223