



New York State Archives

**New York State Supreme Court of Judicature (Albany)
Common Rule Books J1165**

New York State Archives
222 Madison Avenue
Albany, NY 12230
archref@nysed.gov
URL: <http://www.archives.nysed.gov/>

Table of Contents

Overview of the Records	3
Arrangement	3
Scope and Contents	3
Use of Records	5
Administrative Information	5
Access Terms	5

Overview of the Records

Repository:	New York State Archives
Summary:	This series consists of common rule books, which contain a record of common rules or orders of the court, entered by the clerk on motion made by an attorney for one of the parties to a cause. The rules include orders to plead, orders for judgment favoring the defendant or plaintiff, orders regarding a defendant's appearance in court, orders to a sheriff to arrest a defendant, and other orders.
Creator:	New York (State). Supreme Court of Judicature (Albany)
Title:	New York State Supreme Court of Judicature (Albany) common rule books
Quantity:	58 cubic feet
Quantity:	101 volumes
Inclusive Date:	1797-1849
Series:	J1165

[^ Return to Table of Contents](#)

Arrangement

Alphabetic by first letter of attorney's name, then chronological.

[^ Return to Table of Contents](#)

Scope and Content Note

Records of court rules resulting from motions made by attorneys provide title of the cause, name of attorney making the motion, and the rule granted. The rules include orders to plead, orders for judgment favoring the defendant or plaintiff, orders regarding a defendant's appearance in court, orders to a sheriff to arrest a defendant, and other orders.

Common rule books contain a record of common rules or orders of the court, entered by the clerk on motion made by an attorney for one of the parties to a cause. Motions for common rules were granted as a matter of course during a court term or in vacation between terms. The

common rules appearing most frequently in these books are: order to defendant to plead within twenty days after service of notice of filing of plaintiff's declaration; order to plaintiff to reply to defendant's plea; order to defendant to rejoin to plaintiff's replication to defendant's plea; order to plaintiff to join in demurrer; order to enter defendant's default for want of a plea to plaintiff's declaration; order for judgment in favor of defendant as in case of non-suit by the plaintiff; order for judgment in favor of plaintiff, on filing of a cognovit by the defendant; order for interlocutory judgment in favor of plaintiff with order to a court clerk or to referees to assess and report the amount of damages due; order for interlocutory judgment on defendant's default, with order that a writ of inquiry issue to a sheriff to summon jurors to make an inquisition into the amount of damages; order for final judgment on filing of clerk's or referees' report, or sheriff's inquisition; and order for final judgment on filing the nisi prius record (after 1829 called circuit roll) returned from a Circuit Court, to which an issue had been sent for trial and verdict.

Occasionally the rule books contain orders regarding defendant's appearance in court: order to a sheriff to take a defendant into custody within twenty days, in cases where an arrested defendant had failed to put in bail; order for attachment of property of sheriff who had failed to bring in a defendant; order to enter appearance of a defendant who had endorsed the writ of *capias ad respondendum* served upon him by the sheriff; and in causes brought into the Supreme Court by writ of *certiorari* or writ of *habeas corpus*, order to defendant to appear and put in bail or have a writ of *procedendo* issue against him.

In actions of ejection prior to 1830 the following common rules are found: order to defendant, or ejector (called the tenant), and to a fictitious ejectee to appear and plead; order for judgment in favor of the plaintiff on default of the tenant; or an order for judgment on return and filing of the nisi prius record by which it appeared that the plaintiff was non-suited at the trial for lack of a confession of lease, entry, and ouster by the tenant (that is to say, judgment was to be awarded to the fictitious ejectee, which had the effect of granting possession to the real owner, the plaintiff in the action). Legislation of 1829 abolished the fiction that the action of ejection concerned a lease.

In cases brought into Supreme Court on writ of error, the common rule books contain the order to defendant in error to join in error; order to plaintiff in error to assign errors (that is, to state the grounds on which he alleges error); and order to enter default of defendant in error for not joining in error. Other common rules entered were to change the venue or to issue a commission for the taking of testimony from material witnesses. These were technically special rules based on non-enumerated motions; they are usually entered in the Minute Books.

Each entry of a common rule contains the title of the name of the attorney moving the court, and the rule granted. (The first party in the title may be either the plaintiff or the defendant, depending on which was granted the rule. If it is the defendant, the form is "John Smith *ads.* William Jones;" the "*ads.*" stands for *ad sectam*, "at the suit of." The clerks of the Supreme Court of Judicature were directed to keep common rule books by order of the court made in April term, 1796.

[^ Return to Table of Contents](#)

Use of Records

Access Restrictions

There are no restrictions regarding access to or use of this material.

Administrative Information

Custodial History

The Court of Appeals placed these records on deposit at the Historical Documents Collection, Queens College, from 1973-1982.

[^ Return to Table of Contents](#)

Access Terms

- Adjudicating
- Pleading
- Bail
- Sheriffs
- Courts
- Judicial records
- New York (State)
- Appellate courts
- Motions (Law)
- Writ of error
- Arrest
- Real property
- Judgments
- Ejectment
- Appellate procedure
- Attachment and garnishment
- New York (State). Supreme Court of Judicature
- New York (State). Court of Appeals
- New York (State). Circuit Court