

Legislative Council.

51<sup>o</sup> VICTORIÆ, 1887.

## A BILL

For the further Amendment of the Law and for the better  
Administration of Justice.

[MR. SALOMONS ;—10 November, 1887.]

**W**HEREAS it is expedient to make provision for the improve-  
ment of the process, practice, and mode of pleading in the  
Supreme Court at common law, and for the further amendment of the  
law, and the better administration of justice in New South Wales :  
5 Be it therefore enacted by the Queen's Most Excellent Majesty,  
by and with the advice and consent of the Legislative Council and  
Legislative Assembly of New South Wales in Parliament assembled,  
and by the authority of the same, as follows :—

### PRELIMINARY.

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#### *Short Title.*

SHORT TITLE.

1. This Act may be cited as The Common Law Procedure  
Act of 1887.

#### *Commencement and Application of Act.*

COMMENCEMENT  
AND APPLICATION.  
1 January, 1888.

15 2. This Act shall come into operation on the First day of  
January, One Thousand Eight Hundred and Eighty-eight (herein-  
after referred to as the commencement of this Act), and shall apply  
so far as is practicable to all actions, matters, and proceedings then  
pending in the Supreme Court as well as to such as shall be thereafter  
commenced.

Application to  
proceedings pending.

c 2—A

*Repeal.*

## REPEAL.

*Repeal.*

3. From and after the commencement of this Act there shall be repealed—

Acts in Schedule.

- (1) The Acts specified in the Schedule to this Act, to the extent in the Third Column of that Schedule mentioned, without prejudice to anything done or suffered before the commencement of this Act under the enactments hereby repealed; also,

Inconsistent enactments.

- (2) Any other enactment inconsistent with this Act.

## SAVING CLAUSES.

*Saving Clauses.*

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Saving of—

4. Nothing in this Act, or in any repeal effected thereby, shall be held to repeal—

Procedure on bills under 20 Vic. No. 30.

- (a) The provisions of the Act of the Twentieth year of Her present Majesty Number Thirty, being an Act to facilitate the remedies on Bills of Exchange and Promissory Notes. 15

Provisions of 46 Vic. No. 17.

- (b) Any provision of The Criminal Law Amendment Act of 1883.

Where no new provision, existing practice to remain in force.

5. Where no other provision is made by this Act, or by any Rules or Orders which may be made by the Judges in pursuance of the powers conferred on them in that behalf, the present procedure and practice shall remain in force. 20

## INTERPRETATION.

*Interpretation.*

6. In this Act, unless the context otherwise requires—

Court.

“Court” means the Supreme Court.

Decision.

“Decision” includes any judgment, decree, ruling, direction, or order, or refusal to make an order. 25

Judge.

“Judge” means a Judge of the Supreme Court.

## SPECIAL INDORSEMENT OF WRIT.

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7. In the following cases, when the defendant resides within the jurisdiction of the Court, the writ of summons may, at the option of the plaintiff, be specially indorsed with a statement of his claim, or of the remedy to which he claims to be entitled, that is to say:—

In actions for debt or liquidated demand arising upon—

- (1) In all actions where the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising—

A simple contract.

- (a) On a contract, express or implied, (as, for instance, on a bill of exchange, promissory note, or cheque, or other simple contract debt); or 35

A specialty contract.

- (b) On a bond or contract under seal for payment of a liquidated amount of money; or

A statute.

- (c) On a statute where the sum sought to be recovered is a fixed sum of money, or in the nature of a debt other than a penalty; or 40

A guarantee.

- (d) On a guarantee, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated demand only. 45

In ejectment against tenant holding over.

- (2) In actions of ejectment, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or against persons claiming under such tenant.

Forms.

Such special indorsement shall be to the effect of such of the Forms applicable to the case, as may be ordered to be used by the Judges 50

Judges in accordance with the provisions of this Act; and where any writ is so indorsed, it shall not be necessary to indorse on it the Form required by Section Eight of the Common Law Procedure Act of 1853.

8. Where the writ of summons is specially indorsed under the last preceding Section, no further declaration shall be filed or delivered, but the indorsement on the writ shall, in actions other than actions of ejectment, be deemed to be the declaration. Special indorsement to be deemed to be the declaration.

#### SUMMARY PROCEDURE WHERE WRIT SPECIALLY INDORSED.

SUMMARY PROCEDURE ON SPECIALLY INDORSED WRIT.  
Application for final judgment.

9. Where the defendant appears to a writ of summons specially indorsed under Section Seven of this Act, the plaintiff may, on affidavit made by himself, or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed (if any), and stating that in his belief there is no defence to the action, apply to a Judge for liberty to enter final judgment for the amount so indorsed, together with interest, if any, or for the recovery of possession of the land (with or without rent or mesne profits), as the case may be, and costs. The Judge may thereupon, unless the defendant by affidavit or otherwise shall satisfy him that he has a good defence to the action on the merits, or disclose such facts as may be deemed sufficient to entitle him to defend, make an order empowering the plaintiff to enter judgment accordingly.

10. The application by the plaintiff for leave to enter final judgment under the last preceding Section shall be made by summons, returnable in any case not less than *four* clear days after service, accompanied by a copy of the affidavit and exhibits referred to therein. Summons.

Provided that where the defendant (or any defendant, if there be more than one) resides above one hundred miles from Sydney, such summons shall be returnable not less than *eight* clear days, or where any defendant resides above two hundred miles from Sydney, not less than *twelve* clear days after service.

11. The defendant may show cause against such application by affidavit, or (except in actions of ejectment) by offering to bring into Court the sum indorsed on the writ. Such affidavit shall state whether the defence alleged goes to the whole or to part only, and (if so) to what part, of the plaintiff's claim. And the Judge may, if he think fit, order the defendant, or, in the case of a corporation, any officer thereof, to attend and be examined upon oath; or to produce any leases, deeds, books, or documents, or copies of or extracts therefrom. Defendant may show cause.

12. If it appear that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that any part of his claim is admitted, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted, subject to such terms, if any, as to suspending execution, or the payment of the amount levied or any part thereof into Court by the Sheriff, the taxation of costs, or otherwise, as the Judge may think fit. And the defendant may be allowed to defend as to the residue of the plaintiff's claim. Defence as to part of claim.

13. If it appears to the Judge that any defendant has a good defence to or ought to be permitted to defend the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter, and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former. Good defence by one of several defendants.

Leave to defend  
absolute or  
conditional.

Time to plead where  
leave given.

Court may by  
consent dispose  
finally of action.

DEFAULT OF AP-  
PEARANCE TO WRIT  
FOR LIQUIDATED  
DEMAND.

Failure of defendant  
to appear to writ  
indorsed for  
liquidated demand.

One defendant  
appearing to such  
writ, others not.

Setting aside or  
varying judgment.

#### PARTIES.

Joinder of plaintiffs.

Wrong plaintiff by  
mistake.

In case of misjoinder  
of plaintiffs defend-  
ant to have benefit  
of set-off.

Joinder of  
defendants.

14. Leave to defend may be given unconditionally or subject to such terms as to giving security or otherwise as the Judge may think fit.

15. Where leave to defend has been given, the defendant shall, in actions other than actions of ejectment, plead within such time as shall be limited by the order giving him leave to defend, or if no time is thereby limited, then within *eight* days after the order.

16. The Judge may, in any case arising under Sections Nine to Fifteen with the consent of all parties, dispose of the action finally and without appeal in a summary manner, and on such terms as to costs or otherwise as the Judge shall think just.

#### DEFAULT OF APPEARANCE TO WRIT FOR LIQUIDATED DEMAND.

17. Where the writ of summons is indorsed for a debt or liquidated demand, whether specially or otherwise, and the defendant fails, or all the defendants, if more than one, fail, to appear thereto, the plaintiff may enter final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified (if any), or (if no rate be specified) at the rate of eight per centum per annum, to the date of the judgment, and costs.

18. Where the writ of summons is indorsed for a debt or liquidated demand, whether specially or otherwise, and there are several defendants, of whom one or more appear to the writ, and another or others of them fail to appear, the plaintiff may enter final judgment, as in the last preceding Section, against such as have not appeared, and may issue execution upon such judgment, without prejudice to his right to proceed with the action against such as have appeared.

19. Where judgment is entered pursuant to the provisions of Sections Seventeen or Eighteen it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms as may be just.

#### PARTIES.

20. All persons may be joined as plaintiffs in whom any right of action is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to any remedy or relief, for such remedy or relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who shall not be found entitled to any remedy or relief unless the Court or a Judge in disposing of the costs shall otherwise direct.

21. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the Court or a Judge may, if satisfied that it has been so commenced through a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as may be just.

22. Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has pleaded a set-off, he may obtain the benefit of his set-off by proving either that all the parties named as plaintiffs are indebted to him, notwithstanding that one or more of such plaintiffs was or were improperly joined, or on proving that the plaintiff or plaintiffs who establish their right to maintain the cause is or are indebted to him.

23. All persons may be joined as defendants against whom any right of action is alleged to exist, whether jointly, severally, or in the

the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

24. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally liable on any one contract, including parties to bills of exchange and promissory notes.

Joinder of several defendants in action on one contract.

25. Where the plaintiff is in doubt as to the person from whom he is entitled to redress he may join two or more defendants, to the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties; and in every such case the Court or a Judge may make such order as to costs or otherwise as may seem just.

Several defendants in cases of doubt.

#### PAYMENT INTO AND OUT OF COURT AND TENDER.

PAYMENT INTO AND OUT OF COURT AND TENDER.

26. Where any action is brought to recover a debt or damages, any defendant may, at the time of pleading, or at any later time by leave of the Court or a Judge, pay into Court a sum of money by way of confession and satisfaction, and such payment shall be taken to admit the claim or cause of action in respect of which it is made; or he may, with a plea or pleas denying liability, (except in actions for libel or slander,) pay money into Court, in which case such payment shall be subject to the provisions of Sections Twenty-eight, Twenty-nine, and Thirty.

Payment into Court in satisfaction.

In the alternative.

Provided that in an action on a bond under the Statute of the Eighth and Ninth years of King William the Third, Chapter Eleven, payment into Court shall be admissible to particular breaches only, and not to the whole action.

In action on bond. 8 and 9 Wm. 3, c. 11.

27. With a defence setting up a tender before action, the sum of money alleged to have been tendered must be brought into Court.

Payment in with defence of tender.

28. When the liability of the defendant as regards the claim or cause of action in respect of which the payment into Court has been made, is denied in the pleas—

Where payment into Court in alternative.

(a) The plaintiff may accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, in which case he shall be entitled to have the money paid out to him in accordance with the provisions of Section Twenty-nine, notwithstanding the defendant's denial of liability, whereupon all further proceedings, in respect of such claim or cause of action, except as to costs shall be stayed; or

Plaintiff may accept in satisfaction, whereupon stay of proceedings;

(b) The plaintiff may refuse to accept the money in satisfaction and reply accordingly, in which case the money shall remain in Court subject to the provisions of Section Thirty.

or may refuse, whereupon money remains in.

29. (1) If the plaintiff accepts in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum paid in, he shall be entitled to have the money paid out to himself on his request, or to his attorney on the plaintiff's written authority, unless the Court or a Judge shall otherwise order.

Payment out to plaintiff accepting in satisfaction.

(2) In case the payment into Court is in respect of the entire claim or cause of action, and whether made by way of confession and satisfaction or with a plea or pleas denying liability, the plaintiff, if he accepts in accordance with the provisions of this Section the sum so paid in, shall be at liberty to tax his costs after the expiration of four days from the service on the defendant of such notice as aforesaid, unless the Court or a Judge shall otherwise order, and in case of non-payment of the costs within forty-eight hours after such taxation, to sign judgment for his costs so taxed.

Costs on accepting in satisfaction of entire claim.

On non-acceptance  
by plaintiff.

30. (1) If the plaintiff does not accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum paid in, but proceeds with the action in respect of such claim or cause of action, or any part thereof, the money shall remain in Court and be subject to the order of the Court or a Judge, 5 and shall not be paid out of Court except in pursuance of an order.

If he recover less,  
balance to defendant.

(2) If the plaintiff proceeds with the action in respect of such claim or cause of action, or any part thereof—

(a) In case the plaintiff recovers less than the amount paid into Court, the amount paid in shall be applied, so far as is 10 necessary, in satisfaction of the plaintiff's claim, and the balance (if any) shall, under such order, be repaid to the defendant; and

If defendant succeed,  
repayment.

(b) In case the defendant succeeds in respect of such claim or cause of action or part thereof, after having by a plea denied 15 his liability in respect of the same, the whole amount shall, under such order, be repaid to him.

Payment in where  
consolidation of  
actions.

31. Where money is paid into Court in two or more actions which are consolidated, and the plaintiff proceeds to trial in one, and fails, the money paid in and the costs in all the actions shall be dealt 20 with in the same manner as in the action tried.

Payment into Court  
under orders.

32. Money paid into Court under an order of the Court or a Judge shall not be paid out of Court except in pursuance of an order of the Court or a Judge:

Appropriation in plea  
of money paid in  
under Sections  
9 to 15.

Provided that, where before he pleads, money has been paid into 25 Court by the defendant pursuant to an order under the provisions of Sections Nine to Fifteen of this Act, he may (unless the Court or a Judge shall otherwise order), by his plea appropriate the whole or any part of such money, and any additional payment if necessary, to the whole or any specified portion of the plaintiff's claim; and the money so appropriated 30 shall thereupon be deemed to be money paid into Court pursuant to the preceding Sections relating to money paid into Court, and shall be subject in all respects to the provisions of those Sections.

#### MATTERS ARISING PENDING ACTION.

Matter arising after  
action and before  
plea.

33. Any ground of defence to a claim or cause of action, which 35 has arisen after action brought, but before the defendant has pleaded, and before the time limited for his doing so has expired, may be raised by the defendant in his pleas, either alone or together with other grounds of defence.

Matter arising after  
time for pleading.

34. Where any ground of defence arises after the defendant 40 has pleaded, or after the time limited for his doing so has expired, the defendant may, within *eight* days after such ground of defence has arisen, or at any subsequent time by leave of the Court or a Judge, file and deliver pleas or further pleas (as the case may be) setting forth the same. 45

Confession of  
defence.

35. Whenever the defendant, or any one or more of several defendants, in his or their pleas, or in any further pleas as in the last Section mentioned, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence, and may thereupon enter judgment for 50 his costs up to the time of the pleading of such defence, unless the Court or a Judge shall, either before or after the delivery of such confession, otherwise order.

Matter arising after  
set-off pleaded and  
before replication.

36. Any ground of defence to a set off, which has arisen after the defendant has pleaded, but before the plaintiff has replied, and 55 before

before the time limited for his doing so has expired may be raised by the plaintiff in his replication, either alone or together with any other grounds of reply.

37. Where any ground of defence to a set-off arises after replication, or after the time limited for replying has expired, the plaintiff may, within *eight* days after such ground of defence has arisen, or at any subsequent time by leave of the Court or a Judge, file and deliver a replication or a further replication (as the case may be) setting forth the same.

Matter arising after time for replying.

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## PROCEEDINGS IN LIEU OF DEMURRER.

PROCEEDINGS IN LIEU OF DEMURRER.

38. No demurrer shall be allowed; but any party shall be entitled without leave of the Court or a Judge to raise by his pleading, either alone or together with any pleading heretofore allowed, any point of law, and any point so raised shall be disposed of by the Judge who tries the cause at or after the trial, provided that by consent of the parties, or by order of the Court or a Judge on the application of either party, the same may be set down for hearing and disposed of by the Court or a Judge at any time before the trial.

Demurrers abolished; points of law may be pleaded.

39. If, in the opinion of the Court or a Judge, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, or matter of reply therein, the Court or Judge may thereupon dismiss the action, or make such other order therein as may be just.

Dismissal of action where decision on law disposes of it.

40. The Court or a Judge may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or defence, and in any such case, or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a Judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just.

Striking out of pleadings.

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## AMENDMENT.

AMENDMENT.

41. The Court or a Judge may, at any stage of the proceedings, order to be struck out or amended any indorsement or pleading, or any matter in any indorsement or pleading which may be unnecessary, unjustifiable, or scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action; and may in any such case, if they or he shall think fit, order the costs of and incident to the application to be paid as between attorney and client.

Amending and striking out pleadings.

42. The plaintiff may, without any leave, amend his declaration, whether indorsed on the writ or not, once at any time before the expiration of the time limited for replying, and before replying, or, where no plea is filed and delivered, at any time before the expiration of *twenty-eight* days from the appearance of the defendant who shall have last appeared.

By plaintiff without leave.

43. A defendant who has pleaded a set-off may, without any leave, amend such set-off once at any time before the expiration of the time allowed him for rejoining, and before rejoining, or in case there be no replication then at any time before the expiration of *twenty-eight* days from filing and delivering his pleas.

By defendant without leave.

44. Where any party has amended his pleading under either of the last two preceding Sections the opposite party may, within *eight* days after the filing and delivery to him of the amended pleading, apply to the Court or a Judge to disallow the amendment, or any part thereof, and the Court or Judge may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as may be just.

Disallowance of amendment.

Pleading or  
amending after  
amendment.

45. Where any party has amended his pleading under Sections Forty-two or Forty-three, the opposite party shall plead to the amended pleading, or amend his pleading, within the time he then has to plead or within *eight* days from the delivery of the amendment, whichever shall last expire; and in case the opposite party has pleaded 5 before the delivery of the amendment, and does not plead again or amend within the time above-mentioned, he shall be deemed to rely on his original pleading in answer to such amendment.

Costs of amending  
without leave.

46. The costs of and occasioned by any amendment made pursuant to Sections Forty-two or Forty-three shall be borne by the party 10 making the same, unless the Court or a Judge shall otherwise order.

Amendment by leave  
at any time.

47. In all cases not otherwise provided for, application for leave to amend may be made by either party to the Court or a Judge, or to the Judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may be just. 15

Lapse of order to  
amend.

48. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within *fourteen* days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such *fourteen* days, 20 as the case may be, become *ipso facto* void, unless the time is extended by the Court or a Judge.

Date of amendment  
to be noted.

49. Whenever any indorsement or pleading is amended, the same, when amended, shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which 25 such amendment is made, in manner following, viz.: "Amended  
the day of                      pursuant to order of                      dated  
of                      of                      "

Time for filing and  
delivering.

50. Whenever any indorsement or pleading is amended, such amended document shall be filed and also delivered to the opposite 30 party within the time allowed for amending the same.

Clerical errors in  
judgments or orders.

51. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court or a Judge on motion or summons without an appeal. 35

#### ADMISSIONS.

#### ADMISSIONS.

Notice of admissions.

52. Any party to an action or matter may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

Notice to admit  
facts.

53. (1) Any party may, by notice in writing, at any time not 40 later than *seven* days before the day for which notice of trial has been given, call on any other party to admit, for the purposes of the action, matter, or issue only, any specific fact or facts mentioned in such notice.

Costs of proving  
facts not admitted.

(2) In case of refusal or neglect to admit such fact or facts within *four* days after service of such notice, or within such 45 further time as may be allowed by the Court or a Judge, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the action, matter, or issue may be, unless at the trial or hearing the Court or a Judge certify that the refusal to admit was reasonable, or unless the Court or a Judge shall at 50 any time otherwise order or direct.

Admission for  
purpose of action  
only.

(3) Any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular action, matter, or issue, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party 55 giving the notice.

Admission amended  
or withdrawn by  
leave.

(4) The Court or a Judge may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

54. An affidavit of the attorney or his clerk, of the due signature of any admissions made in pursuance of any notice to admit facts, shall be sufficient evidence of such admissions, if evidence thereof be required. Proof of admissions.

55. Any party may at any stage of an action or matter, where admissions of fact have been made either on the pleadings or otherwise, apply to the Court or a Judge for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the Court or a Judge may upon such application make such order, or give such judgment, as the Court or Judge may think just. Judgment on admissions.

### TRIAL.

### TRIAL.

#### *Mode of Trial.*

56. (1) In all actions, except actions of ejectment, the plaintiff may, in his notice of trial, and any defendant may, upon giving notice within *four* days from the time of the service of notice of trial or within such extended time as the Court or a Judge may allow, or in the notice given by him to the plaintiff under or in pursuance of the provisions of Section Ninety-one of The Common Law Procedure Act of 1853, signify his desire to have the issues of fact tried by a Judge with a jury, and thereupon the same shall be so tried. In actions other than ejectment parties by giving notice may have trial with jury. 17 Vic. No. 21, s. 91.

Provided nevertheless that the Court or a Judge may direct the trial without a jury of any action or issue requiring any prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in their or his opinion conveniently be made with a jury. But trial without jury may be ordered in certain cases.

(2) In actions of ejectment, the mode of trial shall be by a Judge without a jury, unless an application be made to the Court or a Judge within *seven* days after notice of trial by any party thereto, or by a defendant within *seven* days after notice given by him under or in pursuance of the provisions of Section One Hundred and Fifty-four of The Common Law Procedure Act of 1853, for a trial with a jury of the action, or of any issue of fact, and upon such application the Court or Judge, if in their or his opinion it is expedient, may order that such action or issue be tried with a jury. In action of ejectment no jury, unless Court deeming it expedient make order. 17 Vic. No. 21, s. 154.

(3) Subject to the foregoing provisions of this Section, the mode of trial in all actions shall be by a Judge without a jury. Unless jury desired by parties or ordered by Court, trial to be without jury.

Provided that in any case the Court or a Judge may at any time order any action, matter, or issue to be tried by a Judge with a jury, or, subject to the rights of the parties under the provisions of Subsection One, by a Judge sitting with assessors.

#### *Countermanding Notice of Trial.*

57. No notice of trial shall be countermanded except by consent, or by leave of the Court or a Judge, which leave may be given subject to such terms as to costs or otherwise as may be just. Countermanding notice of trial.

#### *Postponement.*

58. The Judge may, if he think it expedient for the interests of justice, postpone or adjourn a trial for such time, and to such place, and upon such terms, if any, as he shall think fit. Postponement or adjournment of trial.

#### *Cross-examination.*

59. The Judge may in all cases disallow any questions put in cross-examination of any party or other witness which may appear to him to be vexatious, and not relevant to any matter proper to be inquired into in the cause or matter. Restriction on cross-examination.

*Questions for Jury.*

Judge may leave questions of fact to be answered by jury.

11 Vic., No. 20, s. 29, as to finding of three-fourths after six hours extended to such questions.

60. The Judge upon the trial of any action with a jury may in his discretion leave to the jury any questions of fact which are in his opinion pertinent to the issues; and the jury shall be bound to determine such questions, unless relieved therefrom by the Judge.

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And the provisions of Section Twenty-nine of the Act of the Eleventh year of Her present Majesty Number Twenty as to the decision of three-fourths in number of the jury being taken as the verdict of all in case of the jury not agreeing shall, so far as applicable, extend to a case where the jury shall not agree as to any question of fact which has been left to them by a Judge as aforesaid.

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*Reserving Case or Point for Court.*

Reserving cases and points for Court.

61. The Judge may at the trial reserve any case, or any point in a case, for the consideration of the Court, or may at any time direct any case, or point in a case, to be argued before the Court; and the Court shall have power to hear and determine any such case or point so reserved or so directed to be argued, and to order judgment to be entered for either party, or make such other order as it may think fit.

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*JUDGMENT.*

No judgment after trial without order.

Judgment at, or after trial, or adjournment for further consideration.

Motion for judgment.

Where no judgment at trial.

Motion for judgment on issues.

Motion where some issues determine result.

*JUDGMENT.*

62. No judgment shall be entered after a trial without the order of the Court or a Judge.

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63. The Judge may, at or after a trial, direct that judgment be entered for any or either party, or adjourn the case for further consideration, or leave any party to apply to him for judgment; and in either case may, if he think fit, order a judgment of non-suit to be entered.

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64. Except where by this Act it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained by motion for judgment, to be made to the Judge who presided at the trial of the action or issues in respect of which such motion for judgment is made.

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65. (1) Where at the trial the Judge abstains from directing any judgment to be entered, the plaintiff may set down a motion for judgment.

(2) If the plaintiff does not set down such a motion and give notice thereof to the other parties within *ten* days after the trial, then any defendant may set down a motion for judgment, and give notice thereof to the other parties.

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66. (1) Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down a motion for judgment as soon as such issues or questions have been determined.

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(2) If the plaintiff does not set down such a motion, and give notice thereof to the other parties within *ten* days after his right so to do has arisen, then any defendant may set down a motion for judgment, and give notice thereof to the other parties.

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67. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court or a Judge for leave to set down a motion for judgment, without waiting for such trial or determination. And the Court or Judge may, if satisfied of the expediency

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expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other issues of fact.

68. No motion for judgment shall, except by leave of the Court or a Judge, be set down after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do. Motion to be within one year.

## EXECUTION.

69. Every order of the Court or a Judge in any action or matter may be enforced against all persons bound thereby in the same manner as a judgment to the same effect. EXECUTION.  
Orders may be enforced like judgments.

70. No writ of execution shall be issued without the production to the Officer by whom the same should be issued of the judgment or order upon which the writ of execution is to issue, or an office copy thereof, showing the date of entry. Judgment or order to be produced.

71. Every person to whom any sum of money or any costs shall be payable under a judgment or order shall, so soon as the money or costs shall be payable, be entitled to sue out one or more writ or writs of *fiery facias* or one or more writ or writs of *elegit* to enforce payment thereof, subject nevertheless as follows: Time for issuing execution for money or costs.

(a) If the judgment or order is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period: Payment postponed

(b) The Court or a Judge may, at or after the time of giving judgment or making an order, stay execution until such time as they or he shall think fit. Stay of execution.

72. Upon any judgment or order for the recovery or payment of a sum of money and costs, there may be, at the election of the party entitled thereto, either one writ or separate writs of execution for the recovery of the sum and for the recovery of the costs, but a second writ shall only be for costs, and shall be issued not less than *eight* days after the first writ. Separate writs for money and costs.

73. Where a landlord, in an action of ejectment brought against a tenant whose term has expired or has been duly determined by notice to quit, or against persons claiming under such tenant, has specially indorsed his writ of summons under Section Seven of this Act, and has obtained an order under Section Nine empowering him to enter final judgment for the recovery of possession of the land or of part thereof (with or without rent or mesne profits), he may enter judgment accordingly and issue execution forthwith, unless the Court or a Judge, at or after the time of making such order, stay execution until such time as they or he shall think fit. Time for issuing execution in ejectment, where judgment signed under s. 9.

74. A party who has obtained judgment or an order, not being a judgment for payment of money or costs, or for the recovery of possession of land, may issue execution in fourteen days, unless the Court or a Judge shall order execution to issue at an earlier or later date with or without terms. Time for issuing execution in certain cases.

75. Any judgment or order against a Corporation wilfully disobeyed may, by leave of the Court or a Judge, be enforced by sequestration against the corporate property, or by attachment against the directors or other officers thereof, or by writ of sequestration against their property. Corporation.

## ATTACHMENT OF DEBTS.

76. In proceedings to obtain an attachment of debts, the Court or a Judge may, in their or his discretion, refuse to interfere, where from the smallness of the amount to be recovered, or of the debt sought to be attached, or otherwise, the remedy sought would be worthless or vexatious. ATTACHMENT OF DEBTS.  
Court may refuse to interfere.

Order for third person to appear.

77. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or a Judge may order such third person to appear, and state the nature and particulars of his claim upon such debt. 5

Court may bar claim of third person, and make orders.

78. After hearing the allegations of any third person under such order as in the last preceding Section mentioned, and of any other person whom by the same or any subsequent order the Court or a Judge may order to appear, or in case of such third person not appearing when ordered, the Court or Judge may order execution to issue to levy the amount due from such garnishee, or the judgment creditor to proceed against the garnishee, according to the provisions of The Common Law Procedure Act of 1857, and may bar the claim of such third person, or make such other order as such Court or Judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Court or Judge shall think just and reasonable. 10 15

20 Vic. No. 31, ss. 26 to 33.

Provisions of C.L.P. Act, 1857, to apply to order under this Section.

79. The provisions of The Common Law Procedure Act of 1857 so far as they are applicable shall apply to any order made under or in pursuance of the two last preceding Sections, and to any proceedings taken thereon. 20

TRANSFER OF ACTIONS TO DISTRICT COURT.

#### TRANSFER OF ACTIONS FROM SUPREME COURT TO DISTRICT COURT.

Certain actions of contract may be ordered to be tried in District Court.

80. Where in any action of contract brought in the Supreme Court the claim indorsed on the writ does not exceed two hundred pounds, or where such claim, though it originally exceeded two hundred pounds, is, either before or after action brought, reduced by payment into Court, payment, an admitted set-off, or otherwise, to a sum not exceeding two hundred pounds, it shall be lawful for the defendant in the action, at any time after the writ shall have been served upon him, if the whole or part of the demand of the plaintiff be contested, to apply to a Judge in Chambers for a summons to the plaintiff to show cause why such action should not be tried in a District Court; and on the hearing of such summons the Judge may, if he shall think the action proper to be tried in a District Court, and on such terms (if any) as he shall think fit, order such action to be tried accordingly, and thereupon the plaintiff, if no declaration has been filed, shall lodge the original writ and the order with the Registrar of the District Court mentioned in the order, and if, a declaration has been filed, then the plaintiff shall lodge the original writ and the order with the Prothonotary, who shall transmit the same together with the filed declaration and other pleadings (if any) to the said Registrar, and the Registrar shall appoint a day for the hearing of the action, notice whereof shall be sent by post or otherwise by the Registrar to both parties or their attorneys; and the action and all proceedings therein shall be heard and taken in such District Court as if the action could have been, and had been, originally brought in such District Court, anything in the District Courts Act of 1858 to the contrary notwithstanding. 25 30 35 40 45

22 Vic., No. 18.

Costs.

Subject to any terms as to costs imposed by the order of the Judge of the Supreme Court, the costs of the parties in respect of proceedings subsequent to such order shall be allowed according to the scale of costs in use in the District Court, and the costs of the proceedings previously had in the Supreme Court shall be allowed according to the scale in use in the Supreme Court. 50

In actions of tort Judge may order stay of proceedings unless plaintiff give

81. It shall be lawful for any person against whom any action of tort may be brought in the Supreme Court, to make an affidavit that the plaintiff has no visible means of paying the costs of the defendant 55

defendant should a verdict be not found for the plaintiff; and there-  
 upon a Judge of the Supreme Court shall have power to make an  
 order that unless the plaintiff shall, within a time to be therein  
 mentioned, give full security for the defendant's costs to the satis-  
 5 faction of the Prothonotary, or satisfy the Judge that he has a  
 cause of action fit to be prosecuted in the Supreme Court, all  
 proceedings in the action shall be stayed; or in the event of the  
 plaintiff being unable or unwilling to give such security, or  
 failing to satisfy the Judge as aforesaid, that the cause be remitted  
 10 for trial before a District Court to be therein named; and there-  
 upon the plaintiff shall lodge the original writ and the order with  
 the Registrar of such District Court, who shall appoint a day for the  
 hearing of the cause, notice whereof shall be sent by post or other-  
 wise by the Registrar to both parties or their attorneys; and the  
 15 District Court so named shall have cognizance of the action and full  
 power and jurisdiction with respect to the same and all proceedings  
 therein, anything in the District Courts Act of 1858 to the contrary  
 notwithstanding. 22 Vic. No. 18.

The costs of the parties in respect of the proceedings sub-  
 20 sequent to the order of the Judge of the Supreme Court shall be  
 allowed according to the scale of costs in use in the District Courts,  
 and the cost of the proceedings in the Supreme Court shall be allowed  
 according to the scale in use in such latter Court. Costs.

## MANDAMUS AND INJUNCTIONS.

MANDAMUS AND  
INJUNCTIONS.

25 82. A mandamus or an injunction may be granted by an inter-  
 locutory order of the Court or a Judge in all cases in which it shall appear  
 to the Court or Judge to be just and convenient that such order should  
 be made; and any such order may be made either unconditionally or  
 upon such terms and conditions as the Court or Judge shall think just,  
 30 and if an injunction is asked, either before, or at, or after the hearing  
 of any cause or matter, to prevent any threatened or apprehended  
 waste or trespass, such injunction may be granted, if the Court or Judge  
 shall think fit, whether the person against whom such injunction is  
 sought is or is not in possession under any claim of title or otherwise, or  
 35 (if out of possession) does or does not claim a right to do the act  
 sought to be restrained under any colour of title; and whether the  
 estates claimed by both or by either of the parties are legal or equitable.  
When to be granted.

## INTERIM CUSTODY OR SALE OF PROPERTY.

INTERLOCUTORY  
ORDERS FOR INTERIM  
CUSTODY OR SALE.  
Order for preserva-  
tion or interim  
custody of property.

40 83. When by any contract a *prima facie* case of liability is  
 established, and there is alleged as matter of defence a right to be  
 relieved wholly or partially from such liability, the Court or a Judge  
 may make an order for the preservation or interim custody of the  
 subject-matter of the litigation, or may order that the amount in  
 dispute be brought into Court or otherwise secured.

45 84. It shall be lawful for the Court or a Judge, on the applica-  
 tion of any party, to make any order for the sale by any person or  
 persons named in such order, and in such manner, and on such terms  
 as the Court or Judge may think desirable, of any goods, wares, or  
 merchandise, which may be of a perishable nature or likely to injure  
 50 from keeping, or which for any other just and sufficient reason it may  
 be desirable to have sold at once.  
Order for sale of  
perishable goods.

## INTERPLEADER.

85. Relief by way of interpleader may be granted,—  
 55 (a) Where the person seeking relief (hereinafter called the appli-  
 cant) is under liability at law for any debt, money, goods, or  
 chattels,  
INTERPLEADER.  
In what cases relief  
granted.

- chattels, for or in respect of which he is, or expects to be, sued by two or more parties (hereinafter called the claimants) making adverse claims thereto :
- Sheriff's interpleader. (b) Where the applicant is the Sheriff or other officer charged with the execution of process by or under the authority of the Supreme Court, and claim is made to any money, goods, or chattels taken or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process issued. 5 10
- Conditions of relief. 86. The applicant must satisfy the Court or a Judge by affidavit or otherwise—
- (a) That the applicant claims no interest in the subject-matter in dispute, other than for charges or costs ; and
- (b) That the applicant does not collude with any of the claimants ; 15 and
- (c) That the applicant is willing to pay or transfer the subject-matter into Court or to dispose of it as the Court or a Judge may direct.
- Where adverse titles of claimants. 87. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin but are adverse to and independent of one another. 20
- Summons. 88. The applicant may take out a summons calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them. 25
- Stay, on application of defendant. 89. Where the applicant is a defendant in an action, the application may be made at any time after service of the writ of summons ; and the Court or Judge may thereupon stay all further proceedings in the action.
- Time. 90. If the claimants appear in pursuance of the summons, 30 the Court or a Judge may order either that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff, and which 35 defendant.
- Summary decision. 91. The Court or a Judge may, with the consent of both claimants or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and decide the same in a summary manner and on such terms as may be just. 40
- Question of law, how decided. 92. Where the question is a question of law, and the facts are not in dispute, the Court or a Judge may either decide the question without directing the trial of an issue, or order that a special case be stated for the opinion of the Court. The proceedings upon such case shall, as nearly as may be, be the same as upon a special case stated under The Common Law Procedure Act of 1853. 45
- Claimant not appearing to be barred. 93. If a claimant, having been duly served with a summons calling on him to appear and maintain, or relinquish, his claim, does not appear in pursuance of the summons, or, having appeared, 50 neglects or refuses to comply with any order made after his appearance, the Court or a Judge may make an order declaring him and all persons claiming under him, for ever barred against the applicant, and persons claiming under him, but the order shall not affect the rights of the claimants as between themselves. 55
- Judgment final and conclusive, unless Judge give leave to appeal or otherwise order. 94. Except where otherwise provided by Statute, the judgment in any action or on any issue ordered to be tried or stated in an interpleader proceeding, and the decision of the Court or a Judge in a summary way under Section Ninety-one, shall be final and conclusive against

against the claimants, and all persons claiming under them, unless the Court or Judge, as the case may be, shall give leave to appeal, or shall otherwise order.

95. When goods or chattels have been seized in execution by the Sheriff or other officer charged with the execution of process of the Supreme Court, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the Court or a Judge may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just. Power to order sale.

96. The provisions of this Act contained in Sections Fifty-six to Sixty-eight inclusive shall with the necessary modifications, apply to an interpleader issue; and the Court or Judge who tries the issue may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise provided for. Trial of issue and judgment.

97. All rules, orders, matters and decisions to be made and done in interpleader proceedings under this Act (excepting only any affidavits) may, together with the declaration in the cause, if any, be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, if required, and to secure and enforce the payment of costs directed by any such rule or order; and every such rule or order so entered shall have the force and effect of a judgment. Rules and orders may be entered of record, and have effect as judgment.

98. The Court or a Judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just and reasonable. Costs and incidental matters.

#### AMENDMENT OF LAW AS TO CERTAIN MATTERS.

#### AMENDMENT OF LAW.

##### *Merger.*

99. There shall not, after the commencement of this Act, be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity. Merger.

##### *Assignment of Legal Choses in Action.*

100. Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed), to pass and transfer the legal right to such debt or chose in action from the date of such notice and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Assignment of legal choses in action.

Provided always, that if the debtor, trustee or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor, or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the hands of the Master in Equity under and in conformity with the provisions of the Acts for the relief of trustees.

##### *Stipulations*

*Stipulations not of the Essence of Contract.*

Stipulations not of the essence of contract.

101. Stipulations in contracts, as to time or otherwise, which would not, before the commencement of this Act, have been deemed to be or to have become of the essence of such contracts in a Court of Equity, shall receive in all Courts the same construction and effect 5 as they would have heretofore received in equity.

*Rules of Law to apply to Inferior Courts.*

Rules of law to apply to Inferior Courts.

102. The several rules of law enacted and declared by Sections Ninety-nine to One Hundred and One of this Act shall be in force and receive effect in all Courts whatsoever in New South Wales, so far as 10 the matters to which such rules relate shall be respectively cognizable by such Courts.

RELIEF AGAINST FORFEITURE.

## RELIEF AGAINST FORFEITURE.

Relief against forfeiture for non-payment of rent.

103. (1) In the case of any ejectment for a forfeiture brought for non-payment of rent, the Court or a Judge shall have power, upon 15 rule or summons, to give relief in a summary manner, up to and within the like time after execution executed, and subject to the same terms and conditions in all respects, as to payment of rent, costs, and otherwise, as in a Court of Equity; and if the lessee, his executors, administrators, or assigns, shall upon such proceeding be relieved, he and they 20 shall hold the demised lands according to the lease thereof made, without any new lease.

Minute of relief granted.

(2) Where such relief shall be granted, the Court or Judge shall direct a minute thereof to be made by indorsement on the lease 25 or otherwise.

Restrictions on and relief against forfeiture of leases.

104. (1) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of and, if the breach is capable of remedy, requiring the 30 lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach. 35

Form, address, and service of notice.

(2) Such notice shall be in writing, and shall be sufficient although only addressed to the lessee by that designation without his name, or generally to the persons interested without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained; and shall be sufficiently 40 served if it is left at the last known place of abode or business in the Colony of the lessee; or is affixed or left for him on the land or any house or building comprised in the lease; or in case of a mining lease, is left for the lessee at the office or counting house of the mine; or is sent by post in a registered letter addressed to the lessee by name at 45 the aforesaid place of abode or business, office or counting house, and if that letter is not returned through the Post Office undelivered; and the service so made by letter shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

Relief may be given to lessee.

(3) Where a lessor takes steps whether by proceedings at 50 law or in equity or otherwise to enforce such a right of re-entry or forfeiture, the lessee may in any action, suit, or other proceeding at law or in equity (if any) commenced by the lessor, or in any action, suit, or other proceeding

proceeding at law or in equity commenced by himself against the lessor, apply to the Court or a Judge for relief; and the Court or Judge, having regard to the proceedings and conduct of the parties under the foregoing provisions of this Section, and to all the other circumstances, may grant or refuse relief, as the Court or Judge may think fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court or Judge, in the circumstances of each case, may think fit.

- 10 (4) This Section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament. Section applies to statutory rights.

- (5) For the purposes of this Section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such breach. Leases until breach, how construed.

(6) This Section does not extend—

- 20 (a) To a covenant or condition against the assigning, underletting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest; or Exclusion of certain covenants and conditions from provisions of Section.
- 25 (b) In case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines, or other things, or to enter or inspect the mine or the workings thereof.

(7) For the purposes of this Section—

- “A lease” includes an original or derivative under lease, also a grant securing a rent by condition; and Definition of terms. Lease.
- 30 “A mining lease” includes a lease for mining purposes, that is the searching for, winning, working, getting, making merchantable, carrying away, or disposing of mines and minerals, or purposes connected therewith, and includes a grant or license for mining purposes; and Mining lease.
- 35 “A lessee” includes an original or derivative under-lessee, and the heirs, executors, administrators, and assigns of a lessee, also a grantee under such grant as aforesaid, his heirs and assigns; and Lessee.
- 40 “A lessor” includes an original or derivative under-lessor, and the heirs, executors, administrators, and assigns of a lessor, also a grantor as aforesaid, and his heirs and assigns; and Lessor.
- 45 “Bankruptcy” includes insolvency, and any other act or proceeding in law having, under any Act for the time being in force, effects or results similar to those of bankruptcy or insolvency. Bankruptcy.

- (8) This Section applies to actions, suits and proceedings pending at the time of the commencement of this Act, and to leases made either before or after the commencement of this Act, and to breaches committed after, and also (if the lessor has not already re-entered) to breaches committed before the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary. Application of Section.

- (9) This Section shall not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent. Section not to apply to non-payment of rent.

## MOTIONS TO THE COURT.

Rule *nisi* in certain cases abolished.

In actions and applications for new trials. To set aside, remit or enforce awards. For attachment.

To answer affidavits.

To strike off the rolls. Against Sheriff.

In appeals from Inferior Courts.

Motion for mandamus or injunction.

No motion to be made without notice except in certain cases.

Unless Court dispense with notice.

Contents of notice of motion.

Copy of affidavits.

Length of notice in certain cases.

Length of notice in other cases.

Amendment of notice.

## MOTIONS TO THE COURT.

*Motions Generally.*

105. In the following cases no motion or application for a rule *nisi* or order to show cause shall after the commencement of this Act be made, but every application in such cases to the Court or a Judge shall be made by motion; that is to say—

(a) In any action, including an application for a new trial; or

(b) To set aside, remit, or enforce an award; or

(c) For attachment; or

(d) To answer the matters in an affidavit; or

(e) To strike off the rolls; or

(f) Against the Sheriff to pay money levied under an execution; or

(g) In any appeal from Inferior Courts which before the commencement of this Act would have been by motion to the Supreme Court for a rule *nisi* or order to show cause.

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106. An application for a mandamus or an injunction under Section Eighty-two of this Act may be made to the Court or a Judge by any party. If made by a plaintiff it may be made either *ex parte* or with notice, and if made by any defendant then on notice to the plaintiff and at any time after appearance by the defendant making the application.

107. No motion shall be made without previous notice to the parties affected thereby, except in the following cases, namely:—

(a) Where, according to the practice existing at the time of the commencement of this Act, any order or rule might be made absolute *ex parte* in the first instance; and

(b) Where, according to the provisions of Section One hundred and Six of this Act, any order or rule may be made absolute *ex parte* in the first instance; and

(c) Where, notwithstanding the provisions of Section One hundred and Five of this Act, a motion or application may be made for an order to show cause only.

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Provided that the Court or a Judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or Judge may think just; and any party affected by such order may move to set it aside.

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108. Every notice of motion to set aside, remit, or enforce an award, or for attachment, or to strike off the rolls, shall state in general terms the grounds of the application; and, where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion.

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109. In applications to answer the matters in an affidavit or to strike off the rolls, the notice of motion shall be served on the parties not less than *ten* clear days before the time fixed by the notice for making the motion.

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110. In cases not otherwise provided for by this Act, there must be at least *two* clear days between the service of a notice of motion and the day named in the notice for hearing the motion, unless the Court or a Judge give special leave to the contrary.

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111. Every notice of motion, and any ground of application stated therein, may be amended at any time by leave of the Court or a Judge on such terms as the Court or Judge may think just, in order to insure the determination on the merits of the real questions intended to be raised, or which are in controversy between the parties.

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112. If on the hearing of a motion or other application the Court or a Judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court or Judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court or Judge may think just.

113. The plaintiff may, by leave of the Court or a Judge to be obtained *ex parte*, serve any notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons and before the appearance of such defendant, and the expiration of the time limited for his appearance.

114. The plaintiff may, without leave of the Court or a Judge, serve any notice of motion or other notice or any summons upon any defendant, who has appeared, or after the expiration of the time limited for appearance, upon any defendant who has been duly served with a writ of summons to appear, but has not appeared.

115. Upon every motion or application made to the Court or a Judge, whether by way of appeal or otherwise, the Court or Judge shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require.

(2) The powers aforesaid may be exercised by the Court or Judge, notwithstanding that the notice served may be a notice of motion that part only of the decision or finding may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision or finding.

116. (1) Upon every motion or application made to the Court (except a motion by way of appeal from an Inferior Court), the Court shall have full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before a commissioner.

(2) Such further evidence may be allowed, as to matters which have occurred after the date of the decision from which the appeal is brought.

(3) Such further evidence shall be admitted on special grounds only, and not without special leave of the Court, upon any motion to set aside a judgment after the trial, or hearing, of any action or matter upon the merits, or upon any appeal from such judgment.

### Motions to set aside Judgment.

117. Where, at or after a trial, either with or without a jury, the Judge has directed that any judgment be entered, any party may apply to the Court to set aside such judgment and to enter any other judgment.

118. Upon a motion to the Court to set aside a judgment, and to enter any other judgment, the Court may, if it shall think fit order judgment of non-suit to be entered, or may, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, either order a new trial, or direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, and in any case make such other order as it may think fit.

### Motions

## MOTIONS FOR NEW TRIAL.

Notice must state grounds of application and extent of complaint.  
Time for serving notice.

Time for moving.

Powers of Court on motion for new trial

Restrictions upon granting new trials.

New trial may be granted or refused on terms.

New trial as to part.

Not granted on stamp objection.

*Motions for New Trial.*

119. Every notice of motion for a new trial shall state the grounds of the application, and whether the applicant complains of all or part only of the verdict or findings.

120. The notice of motion shall be served within *eight* days after the trial, and the time of the vacations shall not be reckoned in the computation of the time for serving the notice.

121. There must be *six* clear days between the service of such notice and the day named in the notice for hearing the motion. And if the Court be not sitting on the day so named, then such motion shall be made on the first day thereafter on which the Court shall sit for the hearing of such motions.

122. Upon a motion for a new trial, the Court may, if it shall think fit, order judgment of non-suit to be entered, or may, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, either order a new trial, or direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, and in any case make such other order as it may think fit.

123. A new trial shall not be granted on the ground of misdirection, or of non-direction, or of the improper admission or rejection of evidence, or because the verdict of the jury (if any) was not taken upon a question which the Judge at the trial was not asked to leave to them, unless in the opinion of the Court some substantial wrong or miscarriage has been thereby occasioned in the trial; and if it appear to the Court that such wrong or miscarriage affects part only of the matter in controversy, or some, or one, only of the parties, the Court may give final judgment as to part thereof, or as to some, or one only of the parties, and direct a new trial as to the other part only, or as to the other party or parties, or may make such further or other order as it may think fit.

124. The Court may grant or refuse a new trial upon such terms as to increase or reduction of damages, or as to costs or otherwise, as the Court may think just.

125. A new trial may be ordered on any question, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question.

126. A new trial shall not be granted by reason of the ruling of any Judge that the stamp upon any document is sufficient, or that the document does not require a stamp.

## APPEALS FROM A JUDGE.

Applications to a Judge to be subject to appeal.

What orders shall not be subject to appeal.

Order as to costs amounting to £100 subject to appeal.

*Appeals from a Judge.*

127. Any decision by a Judge under this Act shall, unless the contrary is by this Act expressly enacted, be subject to appeal to the Court.

128. No decision given by a Judge where the parties consent to his deciding the matter in a summary way, or as to costs only which by law are left to the discretion of the Judge, shall be subject to appeal, except by leave of the Judge making such order.

Provided that if any party is by such order deprived of costs, and such costs amount to one hundred pounds or more, he may appeal against such order to the Court.

*Appeals*

*Appeals from Inferior Courts.*APPEALS FROM  
INFERIOR COURTS.

129. Every notice of motion by way of appeal from an Inferior Court shall state the grounds of the appeal, and whether all or part only of the decision or finding is complained of. Notice must state grounds of appeal.

5 130. Every appeal from an Inferior Court shall be entered with the Prothonotary, and the entry shall be made by lodging a copy of the notice. Entry of appeal.

10 131. The notice of motion shall be served on every party directly affected by the appeal entered, and the appeal shall be entered in the manner aforesaid, within *twenty-one* days from the date when the decision or finding complained of shall have been given. Time for serving notice and entering appeal.

132. There must be *six* clear days between the service of such notice and the day named in the notice for hearing the motion. Time for moving.

15 And if the Court be not sitting on the day so named, then such motion shall be made to a Judge. And if no Judge can conveniently hear the motion on the day so named, then such motion shall be made to the Court or a Judge on as early a day thereafter as can conveniently be fixed by the Court or a Judge for hearing the said motion.

20 133. An appeal shall not operate as a stay of proceedings under the decision or finding appealed from, unless the Inferior Court shall so order, or unless within *ten* days after the decision or finding shall have been given, the appellant shall deposit such sum as the Inferior Court shall fix, or give security to the satisfaction of the Inferior Court or of the Registrar of such Court. Appeal no stay of execution.

25 Provided that the sum so fixed as aforesaid shall not exceed the amount of the money or the value of the property affected by the decision or finding appealed from.

134. No motion by way of appeal from an Inferior Court shall succeed on the ground merely of misdirection, or of non-direction, or of the improper admission or rejection of evidence, or because the verdict of the jury (if any) was not taken upon a question which the Judge at the trial was not asked to leave to them, unless in the opinion of the Supreme Court or of a Judge of the Supreme Court, some substantial wrong or miscarriage has been thereby occasioned in the trial; and if it appears to the Court or Judge that such wrong or miscarriage affects part only of the matter in controversy, or some, or one, only of the parties, the Court or Judge may give final judgment as to part thereof, or as to some, or one, only of the parties, and direct a new trial as to the other part only, or as to the other party or parties, or may make such further or other order as the Court or Judge may think fit. Appeal from Inferior Court dismissed if no substantial wrong done.

135. The provisions of this Act contained in Sections One Hundred and Twenty-four to One Hundred and Twenty-six inclusive shall so far as applicable extend to motions by way of appeal from an Inferior Court. New trial granted or refused on terms, or as to part, and not granted on stamp objection.

## TIME.

TIME.

136. In all cases where a time is limited or specified by this Act, or fixed by any Rule of Court or by any order limiting or enlarging time, for doing any act or taking any proceeding whatsoever, the Court shall have power by general rules and orders, and the Court or a Judge shall have power by order in any case or cases, to enlarge or abridge the time so limited, specified, or fixed as aforesaid, upon such terms (if any) Enlargement or abridgment of time.

any) as the justice of the case may require, and any such enlargement may be ordered, although the application for the same is not made until after the expiration of the time so limited, specified, or fixed.

Enlargement of time  
by consent.

137. The time for filing, delivering, or amending any pleading, or other document may be enlarged by consent in writing, without application to the Court or a Judge. 5

#### RULES AND FORMS.

#### RULES AND FORMS.

#### *Power to make Rules and Forms.*

General Rules may be  
made by the Judges.

138. It shall be lawful for the Judges, or for the greater number of them (of whom the Chief Justice, or in case of his absence or illness or of a vacancy of such office the senior Puisne Judge, 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 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 authorized to be done, and substituting other days for the same, as in their judgment shall be necessary or proper. 15

17 Vic. No. 21,  
ss. 174, 175.  
20 Vic. No 31, s. 61.

And it shall further be lawful for the said Judges from time to time to exercise all the powers and authority given to them or any of them, by the Common Law Procedure Act of 1853, and the Common Law Procedure Act of 1857, with respect to any matter herein contained relative to practice or pleading, anything in this Act to the contrary notwithstanding; and the provisions of those Acts, as to the Rules, Orders, or Regulations made in pursuance thereof, shall be held applicable to any Rules, Orders, or Regulations, which shall be made in pursuance of this Act. 25

Provided that nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the Court or of the Judges to make rules or orders, or otherwise to regulate and dispose of business. 30

New Writs, pro-  
ceedings and Forms.

139. Such new or altered Writs may be issued and proceedings taken, as may by the said Judges in the last preceding Section mentioned be deemed necessary or expedient for giving effect to the provisions hereinbefore contained, and such new or altered Forms may be used in all actions, matters, and proceedings in the Supreme Court as the said Judges shall from time to time think fit to order, and such Writs and proceedings shall be acted upon and enforced in such and the same manner as Writs and proceedings of the Court are now acted upon and enforced, or as near thereto as the circumstances of the case will admit, and any existing Writ or proceeding, the Form of which shall be in any manner altered in pursuance of this Act, shall nevertheless be of the same force and virtue as if no alteration had been made therein, except so far as the effect thereof may be varied by this Act. 45

New Forms to be  
sufficient, but may  
be varied.

140. Any Forms ordered by the said Judges under this Act shall where applicable be sufficient, anything in The Common Law Procedure Act of 1853, The Common Law Procedure Act of 1857, or in this Act to the contrary notwithstanding; and those and the like Forms may be used with such variations as circumstances require; but it shall not be deemed erroneous or irregular to depart from the letter of such Forms, so long as the substance is expressed without prolixity. 50

Costs of prolixity.

Provided that the costs occasioned by any prolixity shall be disallowed to or borne by the party employing such prolixity, as the case may be. 55

*Council*

*Council of Judges.*

## COUNCIL OF JUDGES.

141. A Council of the Judges of the Supreme Court of which due notice shall be given to all the said Judges, shall assemble once at least in every year, on such day or days as shall be fixed by the Chief Justice, for the purpose of considering the operation of this Act and of the Rules of Court and Forms for the time being in force, and also the working of the several offices and the arrangements relative to the duties of the officers of the Supreme Court, and of enquiring and examining into any defects which may appear to exist in the system of procedure or the administration of the law in the Supreme Court; and they shall report annually to the Minister of Justice what (if any) amendments or alterations it would in their judgment be expedient to make in this Act, or otherwise relating to the administration of justice, and what other provisions (if any) which cannot be carried into effect without the authority of Parliament it would be expedient to make for the better administration of justice. Any extraordinary Council of the said Judges may also at any time be convened by the Chief Justice.

Council of Judges to consider procedure and administration, and to report.

## COSTS.

## COSTS.

142. Subject to the provisions of this Act, and of Sections One Hundred, and One Hundred and One of the District Courts Act of 1858, the costs of and incident to all proceedings in the Supreme Court in its common law jurisdiction, shall be in the discretion of the Court or Judge.

Costs in discretion of Court.

Provided that, where any action, matter, or issue is tried with a jury, the costs shall, subject to the provisions aforesaid, follow the event, unless the Judge by whom such action, matter, or issue is tried, or the Court, shall, for good cause, otherwise order.

Jury cases.

143. When issues are raised in any action or other proceeding at law, the costs of the several issues respectively, both in law and fact, shall, unless otherwise ordered, follow the event.

Costs of issues in law and fact.

## THE SUPREME COURT AND THE JUDGES.

## CONSTITUTION OF COURT IN BANC.

*Constitution of Court in Banc.*

144. The Supreme Court sitting in Banc shall for all purposes be constituted of at least three Judges.

Three Judges at least to sit in Banc, unless by consent of parties.

Provided that if the parties consent thereto an appeal or motion may be heard and determined by two Judges only.

145. Subject to the provisions of the last preceding Section, the Supreme Court may sit in two or more divisions at the same time in Banc; and each division of the Court constituted in accordance with the provisions of this Act, shall exercise the same power, jurisdiction, and authority as might be exercised by the Supreme Court constituted of all or any of the Judges thereof sitting in Banc.

Court may sit in Banc in two divisions.

146. Where any appeal, motion, or question of law, civil or criminal, has been argued or partly argued before the Supreme Court constituted of three or of two Judges, in accordance with the provisions of this Act, the Judges so constituting the Court, or a majority of them, may if they think it expedient, order that the appeal, motion, or question of law should be re-argued or argued before the Court constituted of a larger number of Judges.

Argument may be ordered before Full Court.

147. No Judge of the Supreme Court shall sit on the hearing of any motion for a new trial in any action or matter tried before himself.

Judge who tried case not to sit.

148. No Judge of the Supreme Court shall sit on the hearing of an appeal from, or on a motion to vary or set aside any decision given by himself, unless such decision was given *pro formâ* by consent of parties.

Judge who gave decision not to sit.

One

ONE JUDGE ACTING FOR ANOTHER.

On death or retirement of Judge, another Judge may exercise jurisdiction.

One Judge acting for another.

149. In all cases where any application ought to be made to, or any jurisdiction exercised by, the Judge by whom any action or matter has been tried, or any particular Judge, if such Judge shall die or cease to be a Judge of the Supreme Court, or if for any other reason it shall be impossible or inconvenient that such Judge should act in the matter, the application may be made to, and the jurisdiction exercised by any other Judge. 5

EXTENSION OF ACT.

The Governor may extend any part of C.L.P. Acts to other Courts.

17 Vict. No. 21.  
20 Vict. No. 31.

EXTENSION OF ACT.

150. It shall be lawful for the Governor with the advice of the Executive Council from time to time by order to be published in the *Gazette* to direct that all or any part of the provisions of this Act or of the Common Law Procedure Acts of 1853 and of 1857 respectively, or of the rules made or to be made in pursuance of the same, shall from a future day specified in such order apply to all or any Courts of record in the Colony; and from and after the said day such provisions and rules respectively shall extend and apply in manner directed by such order, and any such order may be in like manner from time to time altered and annulled; and in and by any such order the Governor may direct by whom any powers or duties incident to the provisions applied under this Act, or the Common Law Procedure Acts of 1853, and of 1857 respectively, shall and may be exercised with respect to matters in such Court or Courts, and may make any order or regulations which may be deemed requisite for carrying into operation in such Court or Courts the provisions so applied. 25

SCHEDULE.

Session and Number.	Title.	Extent of Repeal.
17 Vic. No. 21	The Common Law Procedure Act of 1853	Sections Forty-six, Seventy-four, Eighty-two, and Ninety-five. 30
22 Vic. No. 25	District Courts Act Amendment Act of 1859.	Section Two.
26 Vic. No. 12	Trust Property Act of 1862 ...	Sections Five to Ten inclusive.
44 Vic. No. 30	District Courts Act further Amendment Act of 1881.	In Section One the following words "at any time within eight days after the same shall have been made or given," and also the words "to be <i>ex parte</i> in the first instance and," and also the words "and if pending such eight days or at the time of their expiration the Court shall not be sitting in banc such motion may be made before any Judge thereof." 35 40
43 Vic. No. 13	An Act to regulate Appeals to and the Constitution of the Supreme Court sitting in Banco.	The whole. 45

# The Common Law Procedure Bill, 1888.

## TABLE OF CLAUSES.

Preamble.

### PRELIMINARY.

Clause.

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2. Commencement and application of Act.
3. Repeal of—
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4. Saving of—
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6. Interpretation:—
  - Applicant.
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  - Court.
  - Decision.
  - Judge.
  - Prescribed.

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7. Writ may be specially indorsed—
  - (1) In actions for debt or liquidated demand arising upon—
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10. Defendant may show cause.
11. Defence as to part of claim.
12. Good defence by one of several defendants.
13. Leave to defend absolute or conditional.
14. Time to plead when leave given.
15. Judge may by consent dispose finally of action.

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16. Failure of defendant to appear to writ indorsed for liquidated demand.
17. One defendant appearing to such writ, others not.
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19. Joinder of plaintiffs.
20. Wrong plaintiff by mistake.
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22. Joinder of defendants.
23. Joinder of several defendants in action on one contract.
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25. Payment into Court in satisfaction, or in the alternative.  
In action on bond under 8 and 9 Wm. 3, c. 11, admissible to particular breaches only.
26. Payment in with defence of tender.
27. Where payment into Court in alternative—
  - (a) Plaintiff may accept in satisfaction, whereupon stay of proceedings or
  - (b) May refuse, whereupon money remains in.
28. (1) Payment out to plaintiff accepting in satisfaction.  
(2) Costs on accepting in satisfaction of entire claim.

- 29. (1) On non-acceptance by plaintiff money to remain in Court.
- (2) (a) If plaintiff recover less, balance to defendant.
- (b) If defendant succeed after denying liability, repayment to him.
- 30. Payment in where consolidation of actions.
- 31. Payment into Court under orders.
- Appropriation in plea of money paid in under Sections 9 to 15.

#### MATTERS ARISING PENDING THE ACTION.

- 32. Matter arising after action and before plea.
- 33. Matter arising after time for pleading.
- 34. Confession of defence.
- 35. Matter arising after set-off pleaded and before replication.
- 36. Matter arising after time for replying.

#### PROCEEDINGS IN LIEU OF DEMURRER.

- 37. Demurrers abolished ; points of law may be pleaded, and disposed of at or after trial.
- Or by consent or order before trial.
- 38. Dismissal of action where decision on law disposes of it.
- 39. Striking out pleadings.

#### AMENDMENT.

- 40. Amending and striking out pleadings.
- 41. By plaintiff without leave.
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- 43. Disallowance of amendment.
- 44. Pleading or amending after amendment.
- 45. Costs of amending without leave.
- 46. Amendment by leave at any time.
- 47. Lapse of order to amend.
- 48. Date of amendment to be noted.
- 49. Time for filing and delivering.
- 50. Clerical errors in judgments or orders.
- 51. Judge of District Court to have full powers of amendment, where issues are sent to be tried there under 22 Vic. No. 18, s. 98.

#### ADMISSIONS.

- 52. Notice of admissions.
- 53. (1) Notice to admit facts.
- (2) Costs of proving facts not admitted.
- (3) Admission for purpose of action only.
- (4) Admission amended or withdrawn by leave.
- 54. Proof of admissions.
- 55. Judgment on admissions.

#### TRIAL.

- 56. Mode of trial.
- (1) In actions and issues, other than ejectment and issues under Real Property Acts, parties by giving notice may have trial with jury ; but trial without jury may be ordered in certain cases.
- (2) In action of ejectment, or issues under Real Property Acts, no jury, unless Judge deeming it expedient make order.
- (3) Unless jury desired by parties or ordered by Court or Judge, trial to be without jury.
- 57. Judge may obtain assistance of experts.
- 58. Countermanding notice of trial.
- 59. Postponement or adjournment of trial.
- 60. Restriction on cross-examination.
- 61. Judge may leave questions of fact to be answered by jury ; and provisions of 11 Vic. No. 20, s. 29, as to finding of three-fourths after six hours extended to such questions.
- 62. Reserving cases and points for Court.

#### JUDGMENT.

- 63. No judgment after trial without order or certificate.
- 64. Judgment at or after trial, or adjournment for further consideration, or parties left to apply for judgment.
- 65. Motion for judgment.
- 66. Where no judgment at trial.
- 67. Motion for judgment on issues.
- 68. Motion where some issues determine result.
- 69. Motion to be within one year.

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- 70. Orders may be enforced like judgments.
- 71. Judgment or order to be produced.
- 72. Time for issuing execution for money or costs.
  - (a) Payment postponed.
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- 73. Separate writs for money and costs.
- 74. Time for issuing execution in ejectment, where judgment signed under s. 9.
- 75. Time for issuing execution in certain cases.
- 76. Corporation.

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- 77. Court may refuse to interfere.
- 78. Order for third person to appear.
- 79. Court may bar claim of third person, and make orders.
- 80. Provisions of C.L.P. Act, 1857, to apply to orders under ss. 78 and 79.

## TRANSFER OF ACTIONS FROM SUPREME COURT TO DISTRICT COURT.

- 81. Certain actions of contract may be ordered to be tried in District Court.  
Costs in such cases.
- 82. In actions of tort Judge may order stay of proceedings unless plaintiff give security for costs, or show cause is fit to be tried in Supreme Court, or may remit cause to District Court.  
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## MANDAMUS AND INJUNCTIONS.

- 83. When to be granted by interlocutory order.

## INTERLOCUTORY ORDERS FOR INTERIM CUSTODY OR SALE OF PROPERTY.

- 84. Order for preservation or interim custody of property.
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## INTERPLEADER.

- 86. In what cases relief granted.
  - (a) Ordinary interpleader.
  - (b) Sheriff's interpleader.
- 87. Conditions of relief.
- 88. Where adverse titles of claimants.
- 89. Summons.
- 90. Time.
  - Stay, on application of defendant.
- 91. Order to make claimant defendant, or that issue be tried.
- 92. Where subject matter not above £200 proceeding may be transferred to District Court.  
Costs in such cases.
- 93. Summary decision.
- 94. Question of law, how decided.
- 95. Claimant not appearing to be barred.
- 96. Judgment final and conclusive, unless Court give leave to appeal or otherwise order.
- 97. Power to order sale.
- 98. Trial of issue and judgment.
- 99. Rules and orders may be entered of record, and have effect as judgment.
- 100. Costs and incidental matters.

## AMENDMENT OF LAW AS TO CERTAIN MATTERS.

- 101. Merger.
- 102. Assignment of legal choses in action.
- 103. Stipulations not of the essence of contract.
- 104. Rules of law to apply to Inferior Courts.

## RELIEF AGAINST FORFEITURE.

105. (1) Relief against forfeiture for non-payment of rent.  
(2) Minute of relief granted.
106. (1) Restrictions on and relief against forfeiture of leases.  
(2) Form, address, and service of notice.  
(3) Relief may be given to lessee.  
(4) Section applies to statutory rights.  
(5) Leases until breach, how construed.  
(6) Exclusion of certain covenants and conditions from provisions of Section.  
(7) Definition of terms :—  
Lease.  
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*Motions Generally.*

107. Rule *nisi* in certain cases abolished ; namely—  
(a) In actions and issues and applications for new trials.  
(b) To set aside, remit or enforce awards.  
(c) For attachment.  
(d) To answer affidavits.  
(e) To strike off the rolls.  
(f) Against Sheriff.  
(g) In appeals from District Courts.
108. Motion for mandamus or injunction.
109. No motion to be made without notice except in certain cases ; unless Court dispense with notice.
110. Contents of notice of motion.
111. Amendment of notice.
112. Failure to give notice.
113. Service by leave on defendant before time for appearance.
114. Service on defendant appearing, or after time has expired, on defendant not appearing.
115. Court may obtain assistance of experts.
116. (1) Power of Court to draw inferences and make judgment or order.  
(2) Extent of powers of Court.
117. (1) When Court may receive further evidence.  
(2) Further evidence may be allowed as to new occurrences.  
(3) When admissible on special grounds only.

*Motions to set aside Judgment.*

118. Motion to set aside judgment entered.
119. Powers of Court on such motion.

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120. Notice must state grounds of application and extent of complaint.
121. Powers of Court on motion for new trial.
122. Restrictions upon granting new trials.
123. New trial may be granted or refused on terms.
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125. Not granted on stamp objection.

*Appeals from a Judge.*

126. Decisions by a Judge to be subject to appeal.
127. What decisions shall not be subject to appeal.

*Appeals from District Courts.*

128. Notice must state grounds of appeal and extent of complaint.
129. Entry of appeal.
130. Motion to be made to Judge when Supreme Court not sitting.
131. Appeal no stay of execution.
132. Appeal from Inferior Court dismissed if no substantial wrong done.
133. New trial granted or refused on terms, or as to part, and not granted on stamp objection.

## TIME.

134. Extension or abridgment of time.
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### RULES AND FORMS.

- 136. General Rules may be made by the Judges.
- 137. New writs, proceedings, and forms.
- 138. New forms to be sufficient, but may be varied.  
Costs of prolixity.
- 139. Council of Judges to consider procedure and administration, and to report.

### COSTS.

- 140. Costs in discretion of Court.  
Jury cases.  
In defamation, verdict for plaintiff for less than 40 shillings not to carry costs.
- 141. Costs of issues in law and fact.

### THE SUPREME COURT AND THE JUDGES.

#### *Constitution of the Full Court.*

- 142. Full Court to consist of at least three Judges, unless parties consent to two only.
- 143. Full Court may sit in divisions.
- 144. Argument may be ordered before more than three Judges.
- 145. Judge who tried case not to sit.
- 146. Judge who gave decision not to sit.

#### *One Judge acting for another.*

- 147. On death or retirement of Judge, another Judge may exercise jurisdiction.

### EXTENSION OF ACT.

- 148. The Governor may extend any part of C.L.P. Acts to other Courts.

### SCHEDULE OF REPEALS.

