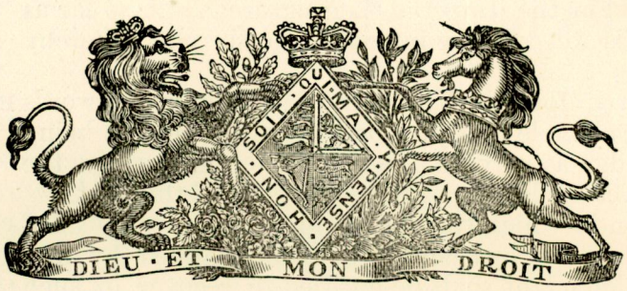


This PUBLIC BILL *originated in the* LEGISLATIVE COUNCIL, *and, having this day passed, is now ready for presentation to the* LEGISLATIVE ASSEMBLY *for its concurrence.*

Legislative Council Chamber,
Sydney, 27th September, 1894.

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.

ANNO QUINQUAGESIMO OCTAVO

VICTORIÆ REGINÆ.

* *

No. .

An Act to amend the Law relating to proceedings in the Supreme Court.

BE it 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:—

Short title.

1. This Act may be cited as the "Supreme Court Act, 1894."

Mode of trial in civil actions.

2. Whenever any issue or question of fact in any civil action or proceeding shall be set down for trial in the Supreme or any Circuit Court, such issue or question of fact shall, if the parties thereto so agree by consent in writing, signed by them or their attorneys respectively, be heard and determined by a Judge of the Supreme Court without a jury. The finding or verdict of such Judge upon any such issue or question shall, for all purposes, have the same effect in law as the finding or verdict of a jury, and a Judge shall, when trying any such issue or question without a jury, have all the powers of a jury. A Judge may at any time order any action or issues of fact to be tried with a jury if he shall think fit.

3. The Supreme Court sitting in Banco may, in all such civil actions or proceedings as have been heard and determined without a jury, direct a new trial before a Judge with or without a jury, and may in every case however heard and determined, either grant a new trial or enter a nonsuit or a verdict for the plaintiff or defendant, as the said Court in its discretion thinks fit.

Powers of Supreme Court in Banco.

4. Every enactment contained in the Act fourth Victoria number twenty-eight, intituled "*An Act to provide for the trial by Jury in Civil and Criminal cases in the Circuit and other Courts to be holden within the Colony of New South Wales and its Dependencies*"; or in the Act fifth Victoria number four, intituled "*An Act to make further provision for the trial of cases in the Circuit Courts of New South Wales, and to amend, in certain respects, the Act providing for trial by Jury in such Courts*"; or in the Act eleventh Victoria number twenty, intituled "*An Act to consolidate and amend the laws relative to Jurors and Juries in New South Wales*"; or in any other Act whether of the Local or the Imperial Legislature, shall, so far as it is inconsistent with this Act and the intent thereof be and is hereby repealed.

Repeal of inconsistent enactments.

5. Every Act now in force in New South Wales in which words heretofore exclusively applicable to a jury occur shall be read as being so far applicable to a Judge as may be necessary in order to make the provisions of any such Act applicable to the provisions of this Act.

How certain words are to be read.

6. In every action in which the defendant shall have pleaded by way of set-off or cross action any debt or demand claimed by him from the plaintiff, such defendant shall be entitled to recover in such action the amount by which such debt or demand is found to exceed the debt or demand proved by the plaintiff, and shall have judgment and execution for the same accordingly.

Proceedings where defendant's set-off or cross action exceeds the amount proved by the plaintiff.

7. (I) Where the defendant appears to a writ of summons specially indorsed under section twenty-two of the "Common Law Procedure Act of 1853," 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, and stating that in his belief there is no defence to the action, call on the defendant to show cause before a Judge why the plaintiff should not be at liberty to sign final judgment for the amount so indorsed, together with interest, if any, and costs; and the Judge may, unless the defendant, by affidavit or otherwise, satisfy the Judge 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 be permitted to defend the action, make an order empowering the plaintiff to sign judgment accordingly: Provided always that the Judge may order such judgment to be suspended for such time upon such terms and conditions as he may think fit, or that the said judgment be paid at such time or times and by such instalments (if any) as he shall in his discretion think proper. And in any case in which payment by instalments shall have been ordered, judgment and execution may be had for the whole amount due upon the judgment if default shall be made in payment of such instalment.

When plaintiff may sign judgment notwithstanding appearance of defendant.

(II) The application by the plaintiff for leave to sign final judgment under this section shall be made by summons returnable not less than two clear days after service.

(III) The defendant may show cause against such application by offering to bring into Court the sum indorsed on the writ or by affidavit. 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.

8. 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 residue of the plaintiff's claim. When defence is only as to part of the claim.

9. 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 a defence and ought not to be permitted to defend, the former may be permitted to defend; and the plaintiff shall be entitled to sign 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. Leave to one or more defendants to defend.

10. In any action brought against several defendants where the writ of summons is specially indorsed as aforesaid, if one or more of them shall appear to the writ and another or others of them shall not appear, the plaintiff shall be entitled to sign final judgment 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. Judgment and execution against defendants who do not appear.

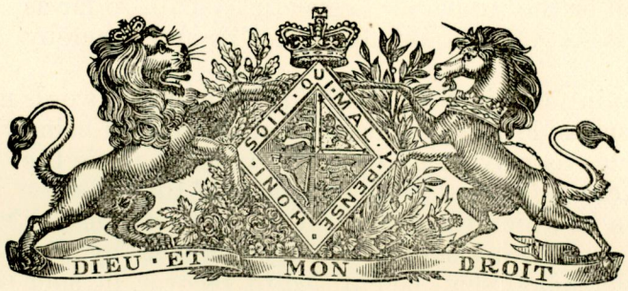
11. Leave to defend may be given unconditionally or subject to such terms as to giving security, or otherwise, as the Judge may think fit. Terms upon which leave to defend may be given.

12. The power to make general rules now possessed by the Judges of the Supreme Court shall extend to the making of general rules for carrying out the provisions and giving full effect to the meaning and intent of this Act. Power to make rules.

13. This Act shall not apply to proceedings in the Equity, Bankruptcy, Matrimonial and Divorce, or Probate Jurisdictions of the Court, and shall not affect the power of the Court or a Judge under the twelfth section of the "Arbitration Act of 1892." Limitation of Act.

Sydney: Charles Potter, Government Printer.—1894

[3*d*.]



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3. The Supreme Court sitting in Banco may, in all such civil actions or proceedings as have been heard and determined without a jury, direct a new trial before a Judge with or without a jury, and may in every case however heard and determined, either grant a new trial or enter a nonsuit or a verdict for the plaintiff or defendant, as the said Court in its discretion thinks fit.

Powers of Supreme Court in Banco.

4. Every enactment contained in the Act fourth Victoria number twenty-eight, intituled "*An Act to provide for the trial by Jury in Civil and Criminal cases in the Circuit and other Courts to be holden within the Colony of New South Wales and its Dependencies*"; or in the Act fifth Victoria number four, intituled "*An Act to make further provision for the trial of cases in the Circuit Courts of New South Wales, and to amend, in certain respects, the Act providing for trial by Jury in such Courts*"; or in the Act eleventh Victoria number twenty, intituled "*An Act to consolidate and amend the laws relative to Jurors and Juries in New South Wales*"; or in any other Act whether of the Local or the Imperial Legislature, shall, so far as it is inconsistent with this Act and the intent thereof be and is hereby repealed.

Repeal of inconsistent enactments.

5. Every Act now in force in New South Wales in which words heretofore exclusively applicable to a jury occur shall be read as being so far applicable to a Judge as may be necessary in order to make the provisions of any such Act applicable to the provisions of this Act.

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Proceedings where defendant's set-off or cross action exceeds the amount proved by the plaintiff.

7. (I) Where the defendant appears to a writ of summons specially indorsed under section twenty-two of the "Common Law Procedure Act of 1853," 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, and stating that in his belief there is no defence to the action, call on the defendant to show cause before a Judge why the plaintiff should not be at liberty to sign final judgment for the amount so indorsed, together with interest, if any, and costs; and the Judge may, unless the defendant, by affidavit or otherwise, satisfy the Judge 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 be permitted to defend the action, make an order empowering the plaintiff to sign judgment accordingly: Provided always that the Judge may order such judgment to be suspended for such time upon such terms and conditions as he may think fit, or that the said judgment be paid at such time or times and by such instalments (if any) as he shall in his discretion think proper. And in any case in which payment by instalments shall have been ordered, judgment and execution may be had for the whole amount due upon the judgment if default shall be made in payment of such instalment.

When plaintiff may sign judgment notwithstanding appearance of defendant.

(II) The application by the plaintiff for leave to sign final judgment under this section shall be made by summons returnable not less than two clear days after service.

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12. The power to make general rules now possessed by the Judges of the Supreme Court shall extend to the making of general rules for carrying out the provisions and giving full effect to the meaning and intent of this Act. Power to make rules.

13. This Act shall not apply to proceedings in the Equity, Bankruptcy, Matrimonial and Divorce, or Probate Jurisdictions of the Court, and shall not affect the power of the Court or a Judge under the twelfth section of the "Arbitration Act of 1892." Limitation of Act.

Sydney: Charles Potter, Government Printer.—1894

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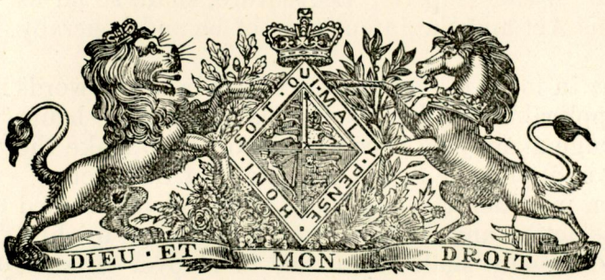

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Legislative Council Chamber,
Sydney, September, 1894.

Clerk of the Parliaments

New South Wales.

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VICTORIÆ REGINÆ.

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1. This Act may be cited as the "Supreme Court Act, 1894."

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2. Whenever any issue or question of fact in any civil action or proceeding shall be set down for trial in the Supreme or any Circuit Court, such issue or question of fact shall, if the parties thereto so agree by consent in writing, signed by them or their attorneys respectively, be heard and determined by a Judge of the Supreme Court without a jury. The finding or verdict of such Judge upon any such issue or question shall, for all purposes, have the same effect in law as the finding or verdict of a jury, and a Judge shall, when trying any such issue or question without a jury, have all the powers of a jury. A Judge may at any time order any action or issues of fact to be tried with a jury if he shall think fit.

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6. In every action in which the defendant shall have pleaded by way of set-off or cross action any debt or demand claimed by him from the plaintiff, such defendant shall be entitled to recover in such action the amount by which such debt or demand is found to exceed the debt or demand proved by the plaintiff, and shall have judgment and execution for the same accordingly.

Proceedings where defendant's set-off or cross action exceeds the amount proved by the plaintiff.

7. (I) Where the defendant appears to a writ of summons specially indorsed under section twenty-two of the "Common Law Procedure Act of 1853," 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, and stating that in his belief there is no defence to the action, call on the defendant to show cause before a Judge why the plaintiff should not be at liberty to sign final judgment for the amount so indorsed, together with interest, if any, and costs; and the Judge may, unless the defendant, by affidavit or otherwise, satisfy the Judge 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 be permitted to defend the action, make an order empowering the plaintiff to sign judgment accordingly: Provided always that the Judge may order such judgment to be suspended for such time upon such terms and conditions as he may think fit, or that the said judgment be paid at such time or times and by such instalments (if any) as he shall in his discretion think proper. And in any case in which payment by instalments shall have been ordered, judgment and execution may be had for the whole amount due upon the judgment if default shall be made in payment of such instalment.

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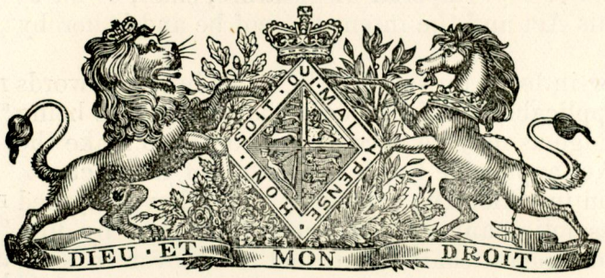
12. The power to make general rules now possessed by the Judges of the Supreme Court shall extend to the making of general rules for carrying out the provisions and giving full effect to the meaning and intent of this Act. Power to make rules.

13. This Act shall not apply to proceedings in the Equity, Bankruptcy, Matrimonial and Divorce, or Probate Jurisdictions of the Court, and shall not affect the power of the Court or a Judge under the twelfth section of the "Arbitration Act of 1892." Limitation of Act.



This Public Bill *originated in the* Legislative Council, *and, having this day passed, is now ready for presentation to the* Legislative Assembly *for its concurrence.*

Legislative Council Chamber,
Sydney, September, 1894.

Clerk of the Parliaments.

New South Wales.

ANNO QUINQUAGESIMO OCTAVO

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BE it 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 :—

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3. The Supreme Court sitting in Banco may, in all such civil actions or proceedings as have been heard and determined without a jury, direct a new trial before a Judge with or without a jury, and may in every case however heard and determined, either grant a new trial or enter a nonsuit or a verdict for the plaintiff or defendant, as the said Court in its discretion thinks fit.

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Legislative Council.

58° VICTORIÆ, 1894.

A BILL

To amend the Law relating to proceedings in the Supreme Court.

[MR. SIMPSON;—12 *September*, 1894.]

BE it 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:—

1. This Act may be cited as the "Supreme Court Act, 1894." Short title.

2. Whenever any issue or question of fact in any civil action or proceeding shall be set down for trial in the Supreme or any Circuit Court, such issue or question of fact shall, if the parties thereto so agree by consent in writing, signed by them or their attorneys respectively, be heard and determined by a Judge of the Supreme Court without a jury. The finding or verdict of such Judge upon any such issue or question shall, for all purposes, have the same effect in law as the finding or verdict of a jury, and a Judge shall, when trying any such issue or question without a jury, have all the powers of a jury. A Judge may at any time order any action or issues of fact to be tried with a jury if he shall think fit. Mode of trial in civil actions.

Powers of Supreme Court in Banco.

3. The Supreme Court sitting in Banco may, in all such civil actions or proceedings as have been heard and determined without a jury, direct a new trial before a Judge with or without a jury, and may in every case either grant a new trial or enter a nonsuit or a verdict for the plaintiff or defendant, as the said Court in its discretion thinks fit.

Repeal of inconsistent enactments.

4. Every enactment contained in the Act fourth Victoria number twenty-eight, intituled "*An Act to provide for the trial by Jury in Civil and Criminal cases in the Circuit and other Courts to be holden within the Colony of New South Wales and its Dependencies*"; or in the Act fifth Victoria number four, intituled "*An Act to make further provision for the trial of cases in the Circuit Courts of New South Wales, and to amend, in certain respects, the Act providing for trial by Jury in such Courts*"; or in the Act eleventh Victoria number twenty, intituled "*An Act to consolidate and amend the laws relative to Jurors and Juries in New South Wales*"; or in any other Act whether of the Local or the Imperial Legislature, shall, so far as it is inconsistent with this Act and the intent thereof be and is hereby repealed.

How certain words are to be read.

5. Every Act now in force in New South Wales in which words heretofore exclusively applicable to a jury occur shall be read as being so far applicable to a Judge as may be necessary in order to make the provisions of any such Act applicable to the provisions of this Act.

Proceedings where defendant's set-off or cross action exceeds the amount proved by the plaintiff.

6. In every action in which the defendant shall have pleaded by way of set-off or cross action any debt or demand claimed by him from the plaintiff, such defendant shall be entitled to recover in such action the amount by which such debt or demand is found to exceed the debt or demand proved by the plaintiff, and shall have judgment and execution for the same accordingly.

When plaintiff may sign judgment notwithstanding appearance of defendant.

7. (I) Where the defendant appears to a writ of summons specially indorsed under section twenty-two of the "Common Law Procedure Act of 1853," 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, and stating that in his belief there is no defence to the action, call on the defendant to show cause before a Judge why the plaintiff should not be at liberty to sign final judgment for the amount so indorsed, together with interest, if any, and costs; and the Judge may, unless the defendant, by affidavit or otherwise, satisfy the Judge 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 be permitted to defend the action, make an order empowering the plaintiff to sign judgment accordingly.

(II) The application by the plaintiff for leave to sign final judgment under this section shall be made by summons returnable not less than two clear days after service.

(III) The defendant may show cause against such application by offering to bring into Court the sum indorsed on the writ or by affidavit. 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.

When defence is only as to part of the claim.

8. 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

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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 residue of the plaintiff's claim.

Leave to one or more defendants to defend.

9. 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 a defence and ought not to be permitted to defend, the former may be permitted to defend; and the plaintiff shall be entitled to sign 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.

Judgment and execution against defendants who do not appear.

10. In any action brought against several defendants where the writ of summons is specially indorsed as aforesaid, if one or more of them shall appear to the writ and another or others of them shall not appear, the plaintiff shall be entitled to sign final judgment 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.

Terms upon which leave to defend may be given.

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

Power to make rules.

12. The power to make general rules now possessed by the Judges of the Supreme Court shall extend to the making of general rules for carrying out the provisions and giving full effect to the meaning and intent of this Act.

Limitation of Act.

13. This Act shall not apply to proceedings in the Equity, Bankruptcy, Matrimonial and Divorce, or Probate Jurisdictions of the Court, and shall not affect the power of the Court or a Judge under the twelfth section of the "Arbitration Act of 1892."

[3*d*.]

Sydney: Charles Potter, Government Printer.—1894.

Legislative Council.

58° VICTORIÆ, 1894.

A BILL

To amend the Law relating to proceedings in the Supreme Court.

[MR. SIMPSON;—12 *September*, 1894.]

BE it 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:—

1. This Act may be cited as the "Supreme Court Act, 1894." Short title.

2. Whenever any issue or question of fact in any civil action or proceeding shall be set down for trial in the Supreme or any Circuit Court, such issue or question of fact shall, if the parties thereto so agree by consent in writing, signed by them or their attorneys respectively, be heard and determined by a Judge of the Supreme Court without a jury. The finding or verdict of such Judge upon any such issue or question shall, for all purposes, have the same effect in law as the finding or verdict of a jury, and a Judge shall, when trying any such issue or question without a jury, have all the powers of a jury. A Judge may at any time order any action or issues of fact to be tried with a jury if he shall think fit. Mode of trial in civil actions.

Powers of Supreme Court in Banco.

3. The Supreme Court sitting in Banco may, in all such civil actions or proceedings as have been heard and determined without a jury, direct a new trial before a Judge with or without a jury, and may in every case either grant a new trial or enter a nonsuit or a verdict for the plaintiff or defendant, as the said Court in its discretion thinks fit.

Repeal of inconsistent enactments.

4. Every enactment contained in the Act fourth Victoria number twenty-eight, intituled "*An Act to provide for the trial by Jury in Civil and Criminal cases in the Circuit and other Courts to be holden within the Colony of New South Wales and its Dependencies*"; or in the Act fifth Victoria number four, intituled "*An Act to make further provision for the trial of cases in the Circuit Courts of New South Wales, and to amend, in certain respects, the Act providing for trial by Jury in such Courts*"; or in the Act eleventh Victoria number twenty, intituled "*An Act to consolidate and amend the laws relative to Jurors and Juries in New South Wales*"; or in any other Act whether of the Local or the Imperial Legislature, shall, so far as it is inconsistent with this Act and the intent thereof be and is hereby repealed.

How certain words are to be read.

5. Every Act now in force in New South Wales in which words heretofore exclusively applicable to a jury occur shall be read as being so far applicable to a Judge as may be necessary in order to make the provisions of any such Act applicable to the provisions of this Act.

Proceedings where defendant's set-off or cross action exceeds the amount proved by the plaintiff.

6. In every action in which the defendant shall have pleaded by way of set-off or cross action any debt or demand claimed by him from the plaintiff, such defendant shall be entitled to recover in such action the amount by which such debt or demand is found to exceed the debt or demand proved by the plaintiff, and shall have judgment and execution for the same accordingly.

When plaintiff may sign judgment notwithstanding appearance of defendant.

7. (I) Where the defendant appears to a writ of summons specially indorsed under section twenty-two of the "Common Law Procedure Act of 1853," 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, and stating that in his belief there is no defence to the action, call on the defendant to show cause before a Judge why the plaintiff should not be at liberty to sign final judgment for the amount so indorsed, together with interest, if any, and costs; and the Judge may, unless the defendant, by affidavit or otherwise, satisfy the Judge 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 be permitted to defend the action, make an order empowering the plaintiff to sign judgment accordingly.

(II) The application by the plaintiff for leave to sign final judgment under this section shall be made by summons returnable not less than two clear days after service.

(III) The defendant may show cause against such application by offering to bring into Court the sum indorsed on the writ or by affidavit. 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.

When defence is only as to part of the claim.

8. 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

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 residue of the plaintiff's claim.

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9. 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 a defence and ought not to be permitted to defend, the former may be permitted to defend; and the plaintiff shall be entitled to sign 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.

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12. The power to make general rules now possessed by the Judges of the Supreme Court shall extend to the making of general rules for carrying out the provisions and giving full effect to the meaning and intent of this Act.

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13. This Act shall not apply to proceedings in the Equity, Bankruptcy, Matrimonial and Divorce, or Probate Jurisdictions of the Court, and shall not affect the power of the Court or a Judge under the twelfth section of the "Arbitration Act of 1892."

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