

thenceforth be continued and prosecuted in the said High Court as if it had been originally commenced therein. A.D. 1873.

91. The several rules of law enacted and declared by this Act shall be in force and receive effect in all Courts whatsoever in England, so far as the matters to which such Rules relate shall be respectively cognizable by such Courts. Rules of law to apply to inferior Courts.

PART VII.

Miscellaneous Provisions.

92. All books, documents, papers, and chattels in the possession of any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or to the Court of Appeal, or of any officer or person attached to any such Court, as such officer, or by reason of his being so attached, shall be transferred to the Supreme Court, and shall be dealt with by such officer or person in such manner as the High Court of Justice or the Court of Appeal may by order direct; and any person failing to comply with any order made for the purpose of giving effect to this section shall be guilty of a contempt of the Supreme Court. Transfer of books and papers to Supreme Court.

93. This Act, except as herein is expressly directed, shall not, unless or until other commissions are issued in pursuance thereof, affect the circuits of the Judges or the issue of any Commissions of Assize, Nisi Prius, Oyer and Terminer, Gaol Delivery, or other commissions for the discharge of civil or criminal business on circuit or otherwise, or any patronage vested in any Judges going circuit, or the position, salaries, or duties of any officers transferred to the Supreme Court who are now officers of the Superior Courts of Common Law, and who perform duties in relation to either the civil or criminal business transacted on circuit. Saving as to circuits, &c.

94. This Act, except so far as herein is expressly directed, shall not affect the office or position of Lord Chancellor; and the officers of the Lord Chancellor shall continue attached to him in the same manner as if this Act had not passed; and all duties, which any officer of the Court of Chancery may now be required to perform in aid of any duty whatsoever of the Lord Chancellor, may in like manner be required to be performed by such officer when transferred to the Supreme Court, and by his successors. Saving as to Lord Chancellor.

95. This Act, except so far as is herein expressly directed, shall not affect the offices, position, or functions of the Chancellor of the County Palatine of Lancaster. Saving as to Chancellor of Lancaster.

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Saving as to
Chancellor
of the Ex-
chequer

and sheriffs.

96. The Chancellor of the Exchequer shall not be a Judge of the High Court of Justice, or of the Court of Appeal, and shall cease to exercise any judicial functions hitherto exercised by him as a Judge of the Court of Exchequer; but save as aforesaid he shall remain in the same position as to duties and salary, and other incidents of his office, as if this Act had not passed. The same order and course with respect to the appointment of sheriffs shall be used and observed in the Exchequer Division of the said High Court as has been heretofore used and observed in the Court of Exchequer.

Saving as
to Lord
Treasurer
and office of
the Receipt
of Ex-
chequer.

97. Nothing in this Act contained shall affect the office of Lord Treasurer, except that any Lord Treasurer shall not hereafter exercise any judicial functions hitherto exercised by him as a Judge of the Court of Exchequer; and nothing in this Act shall affect the office of the Receipt of the Exchequer.

Provisions
as to Great
Seal being in
commission.

98. When the Great Seal is in commission, the Lords Commissioners shall represent the Lord Chancellor for the purposes of this Act, save that as to the Presidency of the Court of Appeal, and the appointment or approval of officers, or the sanction to any order for the removal of officers, or any other act to which the concurrence or presence of the Lord Chancellor is hereby made necessary, the powers given to the Lord Chancellor by this Act may be exercised by the Senior Lord Commissioner for the time being.

Provision as
to Commis-
sions in
Counties
Palatine.

99. From and after the commencement of this Act, the Counties Palatine of Lancaster and Durham shall respectively cease to be Counties Palatine, so far as respects the issue of Commissions of Assize, or other like Commissions, but not further or otherwise; and all such Commissions may be issued for the trial of all causes and matters within such counties respectively in the same manner in all respects as in any other counties of England and Wales.

Interpreta-
tion of terms.

100. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have, or include, the meanings following; (that is to say,)

“ Lord Chancellor ” shall include Lord Keeper of the Great Seal.

“ The High Court of Chancery ” shall include the Lord Chancellor.

“ The Court of Appeal in Chancery ” shall include the Lord Chancellor as a Judge on Rehearing or Appeal.

“ London Court of Bankruptcy ” shall include the Chief Judge in Bankruptcy.

"The Treasury" shall mean the Commissioners of Her Majesty's Treasury for the time being, or any two of them. A.D. 1873.

"Rules of Court" shall include forms.

"Cause" shall include any action, suit, or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the Crown.

"Suit" shall include action.

"Action" shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by Rules of Court; and shall not include a criminal proceeding by the Crown.

"Plaintiff" shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise.

"Petitioner" shall include every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant.

"Defendant" shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings.

"Party" shall include every person served with notice of, or attending any proceeding, although not named on the Record.

"Matter" shall include every proceeding in the Court not in a cause.

"Pleading" shall include any petition or summons, and also shall include the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant.

"Judgment" shall include decree.

"Order" shall include rule.

"Oath" shall include solemn affirmation and statutory declaration.

"Crown cases reserved" shall mean such questions of law reserved in Criminal Trials as are mentioned in the Act of the eleventh and twelfth years of Her Majesty's reign, chapter seventy-eight.

"Pension" shall include retirement and superannuation allowance.

"Existing" shall mean existing at the time appointed for the commencement of this Act.

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SCHEDULE.

RULES OF PROCEDURE.

Form of Action.

Form of action in High Court. 1. All actions which have hitherto been commenced by writ in the Superior Courts of Common Law at Westminster, or in the Court of Common Pleas at Lancaster, or in the Court of Pleas at Durham, and all suits which have hitherto been commenced by bill or information in the High Court of Chancery, or by a cause in rem or in personam in the High Court of Admiralty, or by citation or otherwise in the Court of Probate, shall be instituted in the High Court of Justice by a proceeding to be called an action.

All other proceedings in and applications to the High Court may, subject to Rules of Court, be taken and made in the same manner as they would have been taken and made in any Court in which any proceeding or application of the like kind could have been taken or made if this Act had not passed.

Writ of Summons.

Actions to be commenced by writ. 2. Every action in the High Court shall be commenced by a writ of summons, which shall be endorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, and which shall specify the Division of the High Court to which it is intended that the action should be assigned.

Form of writ. 3. Forms of writs and of endorsements thereon, applicable to the several ordinary causes of action, shall be prescribed by Rules of Court, and any costs incurred by the use of any more prolix or other forms shall be borne by the party using the same, unless the Court shall otherwise direct.

Acceptance of service. 4. No service of writ shall be required when the defendant, by his solicitor, agrees to accept service, and enters an appearance.

Service of writ. 5. When service is required the writ shall, wherever it is practicable, be served in the manner in which personal service is now made, but if it be made to appear to the Court or to a Judge that the plaintiff is from any cause unable to effect prompt personal service, the Court or Judge may make such order for substituted or other service, or for the substitution of notice for service, as may seem just.

Service out of the jurisdiction. 6. Whenever it appears fit to the Court or to a Judge in a case in which the cause of action has arisen within the jurisdiction, or is properly cognizable against a defendant within the jurisdiction, that any person out of the jurisdiction of the Court should be served with the writ or other process of the Court, the Court or Judge may order such service, or such notice in lieu of service, to be made or given in such manner and on such terms as may seem just.

7. In all actions where the plaintiff seeks merely to recover a debt or liquidated demand in money, payable by the defendant, with or without interest, arising upon a contract, express or implied, as, for instance, on a bill of exchange, promissory note, cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt, or on a guaranty, whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, cheque, or note, or on a trust, the writ of summons may be specially endorsed with the particulars of the amount sought to be recovered, after giving credit for any payment or set-off.

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Special endorsement of particulars of debts or liquidated demands.

See C. L. P. Act, 1852, ss. 25, 27.

In case of non-appearance by the defendant where the writ of summons is so specially endorsed, the plaintiff may sign final judgment for any sum not exceeding the sum endorsed on the writ, together with interest at the rate specified, if any, to the date of the judgment, and a sum for costs, but it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms as may seem just.

Where the defendant appears on a writ of summons so specially endorsed, the plaintiff may, on affidavit verifying the cause of action, and swearing that in his belief there is no defence to the action, call on the defendant to show cause before the Court or a Judge why the plaintiff should not be at liberty to sign final judgment for the amount so endorsed, together with interest, if any, and costs; and the Court or Judge may, unless the defendant, by affidavit or otherwise, satisfy the Court or Judge that he has a good defence to the action on the merits, or disclose such facts as the Court or Judge may think sufficient to entitle him to be permitted to defend the action, make an order empowering the plaintiff to sign judgment accordingly. Permission to defend the action may be granted to the defendant on such terms and conditions, if any, as the Judge or Court may think just.

8. In all cases of ordinary account, as, for instance, in the case of a partnership or executorship or ordinary trust account, where the plaintiff, in the first instance, desires to have an account taken, the writ of summons shall be endorsed with a claim that such account be taken.

Special endorsement of particulars in cases of account.

In default of appearance on such summons, and after appearance unless the defendant, by affidavit or otherwise, satisfy the Court or a Judge that there is some preliminary question to be tried, an order for the account claimed, with all directions now usual in the Court of Chancery in similar cases, shall be forthwith made.

Parties.

9. No action shall be defeated by reason of the mis-joinder of parties, and the Court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a Judge may, at any stage of the proceedings, either upon or without the application of either party, in the manner prescribed by Rules of Court, and on such terms as may appear to the Court or a Judge to be just, order that the name or names of any party or parties, whether as plaintiffs or as de-

Mis-joinder or non-joinder of parties.

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Representation
of parties
having same
interest.

10. Where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorised by the Court to defend in such action, on behalf or for the benefit of all parties so interested.

11. Any two or more persons claiming or being liable as co-partners may sue or be sued in the name of their respective firms, if any; and any party to an action may in such case apply by summons to a Judge in Chambers for a statement of the names of the persons who are co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the Judge may direct.

Power to de-
termine ques-
tions as against
third parties.

12. Where a defendant is or claims to be entitled to contribution or indemnity, or any other remedy or relief over against any other person, or where from any other cause it appears to the Court or a Judge that a question in the action should be determined not only as between the plaintiff and defendant, but as between the plaintiff, defendant, and any other person, or between any or either of them, the Court or a Judge may on notice being given to such last-mentioned person, in such manner and form as may be prescribed by Rules of Court, make such order as may be proper for having the question so determined.

Provision for
case of doubt
as to proper
parties.

13. Where in any action, whether founded upon contract or otherwise, the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as may be prescribed by Rules of Court, or by any special order, join two or more defendants, to the intent that in such action the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties to the action.

Trustees,
executors, &c.

14. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate, and shall be considered as representing such parties in the action; but the Court or a Judge may, at any stage of the proceedings, order any of such parties to be made parties to the action, either in addition to or in lieu of the previously existing parties thereto.

Actions by
married women
and infants.

15. Married women and infants may respectively sue as plaintiffs by their next friends, in the manner practised in the Court of Chancery before the passing of this Act; and infants may, in like manner, defend any action by their guardians appointed for that purpose. Married women may also, by the

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leave of the Court or a Judge, sue or defend without their husbands and without a next friend, on giving such security (if any) for costs as the Court or a Judge may require.

16. 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.

Parties where there are several liabilities on the same contract.
Abatement.

17. An action shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title pendente lite.

In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to an action, the Court or a Judge may, if it be deemed necessary for the complete settlement of all the questions involved in the action, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party to the action, or be served with notice thereof in such manner and form as may be prescribed by Rules of Court, and on such terms as the Court or Judge shall think just, and shall make such order for the disposal of the action as may be just.

In case of an assignment, creation, or devolution of any estate or title pendente lite, the action may be continued by or against the person to or upon whom such estate or title has come or devolved.

Pleadings.

18. The following rules of pleading shall be substituted for those heretofore used in the High Court of Chancery and in the Courts of Common Law, Admiralty, and Probate.

Form of pleadings.

Unless the defendant at the time of his appearance shall state that he does not require the delivery of a statement of complaint, the plaintiff shall within such time and in such manner as shall be prescribed by Rules of Court, file and deliver to the defendant after his appearance a printed statement of his complaint and of the relief or remedy to which he claims to be entitled. The defendant shall within such time and in such manner as aforesaid file and deliver to the plaintiff a printed statement of his defence, set-off, or counter-claim (if any), and the plaintiff shall in like manner file and deliver a printed statement of his reply (if any) to such defence, set-off, or counter-claim. Such statements shall be as brief as the nature of the case will admit, and the Court in adjusting the costs of the action shall inquire at the instance of any party into any unnecessary prolixity and order the costs occasioned by such prolixity to be borne by the party chargeable with the same.

A demurrer to any statement may be filed in such manner and form as may be prescribed by Rules of Court.

The Court or a Judge may, at any stage of the proceedings, allow either party to alter his statement of claim or defence or reply, or may order to be struck out or amended any matter in such statements respectively which may be scandalous, or which may tend to prejudice, embarrass, or delay the fair

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Power to settle issues.

19. Where in any action it appears to a Judge that the statement of claim or defence or reply does not sufficiently disclose the issues of fact in dispute between the parties, he may direct the parties to prepare issues, and such issues shall, if the parties differ, be settled by the Judge.

Counter-claims by defendant.

20. A defendant may set off, or set up, by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a statement of claim in a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the Court or a Judge may, on the application of the plaintiff before trial, if in the opinion of the Court or Judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof.

Power to give judgment for defendant for balance under counter-claim.

21. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

Joinder of several causes of action.

22. Subject to any Rules of Court, the plaintiff may unite in the same action and in the same statement of claim several causes of action, but if it appear to the Court or a Judge that any such causes of action cannot be conveniently tried or disposed of together, the Court or Judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

23. It shall not be necessary that every defendant to any action shall be interested as to all the relief thereby prayed for, or as to every cause of action included therein; but the Court or a Judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in such action in which he may have no interest.

Power for Court to raise preliminary questions of law in an action.

24. If it appear to the Court or a Judge, either from the statement of claim or defence or reply or otherwise, that there is in any action a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a Referee or an Arbitrator, the Court or Judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court or Judge may deem expedient, or as may be prescribed by Rules of Court, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

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Discovery.

25. Subject to any Rules of Court, a plaintiff in any action shall be entitled to exhibit interrogatories to, and obtain Discovery from, any defendant, and any defendant shall be entitled to exhibit interrogatories to, and obtain Discovery from, a plaintiff or any other party. Any party shall be entitled to object to any interrogatory on the ground of irrelevancy, and the Court or a Judge, if not satisfied that such interrogatory is relevant to some issue in the cause, may allow such objection. No exceptions shall be taken to any answer, but the sufficiency or otherwise of any answer objected to as insufficient shall be determined by the Court or a Judge in a summary way.

Right of discovery on interrogatories.

The Court in adjusting the costs of the action shall at the instance of any party inquire or cause inquiry to be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing master or of the Court or Judge that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

26. Every party to an action or other proceeding shall be entitled, at any time before or at the hearing thereof, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such action or proceeding, unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the action, or that he had some other sufficient cause for not complying with such notice.

Production of documents pleaded or proved.

27. It shall be lawful for the Court or a Judge at any time during the pendency therein of any action or proceeding, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit or proceeding, as the Court or Judge shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

Discovery as to documents.

Place of Trial.

28. There shall be no local venue for the trial of any action, but when the plaintiff proposes to have the action tried elsewhere than in Middlesex, he shall in his statement of claim name the county or place in which he proposes that the action shall be tried, and the action shall, unless a Judge otherwise orders, be tried in the county or place so named. Where no place of trial is named in the statement of claim, the place of trial shall, unless a Judge otherwise orders, be the county of Middlesex. Any order of a Judge, as to such place of trial, may be discharged or varied by a Divisional Court of the High Court.

Place of trial.

29. The list or lists of actions for trial at the sittings in London and Middlesex respectively shall be prepared and the actions shall be allotted for trial

List for trials in London and Middlesex.

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Mode of Trial.

Mode of trying actions.

30. Actions shall be tried and heard either before a Judge or Judges, or before a Judge sitting with assessors, or before a Judge and Jury, or before an official or special Referee, with or without assessors.

Notice of mode of trial to be given.

31. The plaintiff may give notice of trial by any of the modes aforesaid, but the defendant may, upon giving notice, within such time as may be fixed by Rules of Court, that he desires to have any issues of fact tried before a Judge and Jury, be entitled to have the same so tried, or he may apply to the Court or a Judge for an order to have the action tried in any other of the said ways, and in such case the mode in which the action is to be tried or heard shall be determined by such Court or Judge.

Different questions arising in same action may be tried in different ways.

32. In any action the Court or a Judge may, at any time or from time to time, order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the place or places for such trial or trials.

Trials by jury.

33. Every trial of any question or issue of fact by a jury shall be held before a single Judge, unless such trial be specially ordered to be held before two or more Judges.

Proceedings before an official Referee.

34. Where an action or matter, or any question in an action or matter, is referred to a Referee, he may, subject to the order of the Court or a Judge, hold the trial at or adjourn it to any place which he may deem most convenient, and have any inspection or view, either by himself or with his assessors (if any), which he may deem expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the Court or a Judge, proceed with the trial in open Court, *de die in diem*, in a similar manner as in actions tried by a jury.

Effect of decision of Referee.

35. The Referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the Court, or state any facts specially, with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the Court may direct; and the Court shall have power to require any explanation or reasons from the Referee, and to remit the action or any part thereof for re-trial or further consideration to the same or any other Referee.

Evidence.

Mode of giving evidence at trials.

36. In the absence of any agreement between the parties, and subject to any Rules of Court applicable to any particular class of cases, the witnesses at the trial of any cause or at any assessment of damages, shall be examined *viva voce* and in open court, but the Court or a Judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or

trial, on such conditions as the Court or Judge may think reasonable, or that any witness whose attendance in court ought for some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a Commissioner or examiner; provided that where it appears to the Court or Judge that the other party bonâ fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

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37. Upon any interlocutory application evidence may be given by affidavit; but the Court or a Judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.

Evidence at
interlocutory
applications.

38. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

Matter of
affidavits.

39. Any party to an action may give notice, by his own statement or otherwise, that he admits the truth of the whole or any part of the case stated or referred to in the statement of claim, defence, or reply of any other party.

Admissions.

Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the action may be, unless at the hearing or trial the Court certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

Interlocutory Orders and Directions.

40. Any party to an action may at any stage thereof apply to the Court or a Judge for such order as he may, upon any admissions of fact in the pleadings, be entitled to, without waiting for the determination of any other question between the parties.

Power for party
to apply for
order before
termination of
action.

41. The Lord Chancellor, with the concurrence of the Lord Chief Justice of England, may order any question of law or of fact which may arise in any action or matter to be transferred from any Judge to any other Judge, or to be tried or heard by any other Judge of the said High Court, and may confer on such Judge power to deal with the whole or any part of the matters in controversy.

Power to trans-
fer questions
arising in
actions.

42. The Court or a Judge may, at any stage of the proceedings in an action or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for or some special matter to be tried, as to which it may be proper that the cause should proceed in the ordinary manner.

Accounts and
inquiries.

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Interim orders
as to subject-
matter of
litigation.

43. 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.

Power to make
orders for sale
of goods.

44. It shall be lawful for the Court or a Judge, on the application of any party to any action, 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 to the Court or Judge may seem desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.

Power for
Court to make
interim orders
as to preser-
vation or exa-
mination of
property, exa-
mination of
witnesses, &c.

45. It shall be lawful for the Court or a Judge, upon the application of any party to an action, and upon such terms as may seem just, to make any order for the detention, preservation, or inspection of any property, being the subject of such action, and for all or any of the purposes aforesaid to authorise any person or persons to enter upon or into any land or building in the possession of any party to such action, and for all or any of the purposes aforesaid to authorise any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence. The Court or a Judge may also, in all cases where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before any officer of the Court, or any other person or persons, and at any place, of any witness or person, and may order any deposition so taken to be filed in the court, and may empower any party to any action or other proceeding to give such deposition in evidence therein on such terms, if any, as the Court or a Judge may direct.

Discontinuance
of action.

46. The plaintiff may, at any time before receipt of the defendant's statement of defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, wholly discontinue his action or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay the defendant's costs of the action, or, if the action be not wholly discontinued, the defendant's costs occasioned by the matter so withdrawn. Such costs shall be taxed in the manner prescribed by Rules of Court, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this Rule otherwise provided, it shall not be competent for the plaintiff to withdraw the Record or discontinue the action without leave of the Court or a Judge, but the Court or a Judge may, before, or at, or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise as may seem fit, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The Court or a Judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counter-claim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave. Any judgment of nonsuit, unless the Court or a Judge otherwise directs, shall have the same effect as a judgment upon the merits for the defendant; but in any case of mistake, surprise, or accident, any

judgment of nonsuit may be set aside on such terms, as to payment of costs and otherwise, as to the Court or a Judge shall seem just. A.D. 1873.

Costs.

47. Subject to the provisions of this Act, the costs of and incident to all proceedings in the High Court shall be in the discretion of the Court; but nothing herein contained shall deprive a trustee, mortgagee, or other person of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in Courts of Equity. Costs.

New Trials and Appeals.

48. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, unless in the opinion of the Court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial of the action; and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy, the Court may give final judgment as to part thereof, and direct a new trial as to the other part only. Restrictions on new trials.

49. Bills of exceptions and proceedings in error shall be abolished. Abolition of bills of exceptions and proceedings in error.

50. All appeals to the Court of Appeal shall be by way of re-hearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part. Mode of appealing.

51. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may seem just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as to the Court of Appeal may seem fit. Notice of appeal.

52. The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court of First Instance, together with 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 an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a decree or judgment upon the merits, at the trial or hearing of any action or matter, such further evidence (save as aforesaid) shall be admitted on special grounds only, and not without special leave of the Court. The Court of Appeal shall have power to give any judgment General power of Appeal Court.

A.D. 1873. and make any decree or order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said Court, notwithstanding that the notice of appeal may be that part only of the decision 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. The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may seem just.

Regulations as to cross appeals.

53. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied or altered, he shall, within such time as may be prescribed by Rules of Court or by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers by this Act conferred upon the Court of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs.

Mode of bringing evidence before Court of Appeal.

54. When any question of fact is involved in an appeal, the evidence taken in the Court below shall be brought before the Court of Appeal in such manner as may be prescribed by Rules of Court or by special order.

Power for Court to refer to notes, &c.

55. If, upon the hearing of an appeal, a question arise as to the ruling or direction of the Judge to a jury or assessors, the Court shall have regard to verified notes or other evidence, and to such other materials as the Court may deem expedient.

Want of appeal from interlocutory order not to limit powers of Court of Appeal.
Limit of time in appeals.

56. No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Court of Appeal from giving such decision upon the appeal as may seem just.

57. No appeal from any interlocutory order shall, except by special leave of the Court of Appeal, be brought after the expiration of twenty-one days, and no other appeal shall, except by such leave, be brought after the expiration of one year. The said respective periods shall be calculated from the time at which the judgment or order is signed, entered, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal, or from such time as may be prescribed by Rules of Court. Such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be prescribed by Rules of Court, or directed under special circumstances by the Court of Appeal.

Appeal not to stay proceedings.

58. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court appealed from, or any Judge thereof, or the Court of Appeal, may so order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct.