



Common Law Procedure Act 1852

1852 CHAPTER 76

Questions by Consent without pleading

And for the Determination of Questions raised by Consent of the Parties without pleading, be it enacted as follows :

XLII Questions of Fact may, after Writ issued, by Consent and Leave of a Judge, be raised without Pleadings.

Where the Parties to an Action are agreed as to the Question or Questions of Fact to be decided between them, they may, after Writ issued, and before Judgment, by Consent, and Order of a Judge, (which Order any Judge shall have Power to make, upon being satisfied that the Parties have a *bonâ fide* Interest in the Decision of such Question or Questions, and that the same is or are fit to be tried,) proceed to the Trial of any Question or Questions of Fact without formal Pleadings ; and such Question or Questions may be stated for Trial in an Issue in the Form contained in the Schedule (A.) to this Act annexed, marked No. 6., and such Issue may be entered for Trial and tried accordingly in the same Manner as any Issue joined in an ordinary Action ; and the Proceedings in such Action and Issue shall be under and subject to the ordinary Control and Jurisdiction of the Court, as in other Actions.

XLIII Agreement may be entered into for the Payment of Money and Costs according to the Result of the Issue.

The Parties may, if they think fit, enter into an Agreement in Writing, which shall not be subject to any Stamp Duty, and which shall be embodied in the said or any subsequent Order, that upon the Finding of the Jury in the affirmative or negative of such Issue or Issues, a Sum of Money fixed by the Parties, or to be ascertained by the Jury upon a Question inserted in the Issue for that Purpose, shall be paid by One of such Parties to the other of them, either with or without the Costs of the Action.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

XLIV Judgment to be entered according to the Agreement, and Execution issued forthwith, unless stayed.

Upon the Finding of the Jury in any such Issue, Judgment may be entered for such Sum as shall be so agreed or ascertained as aforesaid, with or without Costs, as the Case may be, and Execution may issue upon such Judgment forthwith, unless otherwise agreed, or unless the Court or a Judge shall otherwise order for the Purpose of giving either Party an Opportunity for moving to set aside the Verdict, or for a new Trial.

XLV Proceedings upon Issue may be recorded.

The Proceedings upon such Issue may be recorded at the Instance of either Party; and the Judgment, whether actually recorded or not, shall have the same Effect as any other Judgment in a contested Action.

XLVI Questions of Law may be raised after Writ issued, by Consent, &c., without Pleading.

The Parties may, after Writ issued, and before Judgment, by Consent, and Order of a Judge, state any Question or Questions of Law in a Special Case for the Opinion of the Court, without any Pleadings.

XLVII Agreement as to Payment of Money and Costs, according to Judgment upon Special Case.

The Parties may, if they think fit, enter into an Agreement in Writing, which shall not be subject to any Stamp Duty, and which shall be embodied in the said or any subsequent Order, that upon the Judgment of the Court being given in the affirmative or negative of the Question or Questions of Law raised by such Special Case, a Sum of Money, fixed by the Parties, or to be ascertained by the Court, or in such Manner as the Court may direct, shall be paid by One of such Parties to the other of them, either with or without Costs of the Action; and the Judgment of the Court may be entered for such Sum as shall be so agreed or ascertained, with or without Costs, as the Case may be, and Execution may issue upon such Judgment forthwith, unless otherwise agreed, or unless stayed by Proceedings in Error.

XLVIII Costs to follow the Event, unless otherwise agreed.

In case no Agreement shall be entered into as to the Costs of such Action, the Costs shall follow the Event, and be recovered by the successful Party.