



# Common Law Procedure Act 1854

## 1854 CHAPTER 125

An Act for the further Amendment of the Process, Practice, and Mode of Pleading in and enlarging the Jurisdiction of the Superior Courts of Common Law at *Westminster*, and of the Superior Courts of Common Law of the Counties Palatine of *Lancaster* and *Durham*.  
[12th August 1854]

BE it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

### **I Judge may, by Consent, try Questions, of Fact.**

The Parties to any Cause may, by Consent in Writing, signed by them or their Attorneys, as the Case may be, leave the Decision of any Issue of Fact to the Court, provided that the Court, upon a Rule to show Cause, or a Judge on Summons, shall, in their or his Discretion, think fit to allow such Trial; or provided the Judges of the Superior Courts of Law at *Westminster* shall, in pursuance of the Power herein-after given to them, make any General Rule or Order dispensing with such Allowance, either in all Cases or in any particular Class or Classes of Cases to be defined in such Rule or Order; and "such Issue of Fact may thereupon be tried and determined, and Damages assessed where necessary, in open Court, either in Term or Vacation, by any Judge who might otherwise have presided at the Trial thereof by Jury, either with or without the Assistance of any other Judge or Judges of the same Court, or included in the same Commission at the Assizes ; and the Verdict of such Judge or Judges shall be of the same Effect as the Verdict of a Jury, save that it shall not be questioned upon the Ground of being against the Weight of Evidence; and the Proceedings upon and after such Trial, as to the Power of the Court or Judge, the Evidence, and otherwise, shall be the same as in the Case of Trial by Jury.

### **II Two Judges may sit at same Time for Trial of Causes pending in the same Court.**

It shall be lawful for any One of the Judges of any of the Superior Courts at *Westminster*, at the Request of the Lord Chief Justice or Lord Chief Baron, to try

the Causes entered for Trial at Nisi Prius in *Westminster* and *London* in either of the Courts, on the same Days on which the said Lord Chief Justice or Lord Chief Baron, or any other Judge of the same Court, shall be sitting to try Causes at those Places respectively, or at either of them, so that the Trial of Two Causes may be proceeded with at the same Time; and all Jurors, Witnesses, and other Persons who may have been summoned or required to attend at or for the Trial of any Cause before the said Lord Chief Justice or Lord Chief Baron, as the Case may be, shall give their Attendance at and for the Trial thereof before such other Judge as may be sitting to try the same by virtue of this Act; and it shall be lawful for the Associates and other Officers of the Lord Chief Justice or Lord Chief Baron, as the Case may be, to appoint from Time to Time fit and proper Persons, to be approved by the said Lord Chief Justice or Lord Chief Baron, to attend for them and on their Behalf respectively before such Judge; and the Trial of every Cause which shall be so had by virtue of this Act shall, if necessary, be entered of Record, as having been had before the Judge by whom such Cause in fact was tried.

### **III Power to Court or Judge to direct Arbitration before Trial.**

If it be made appear, at any Time after the issuing of the Writ, to the Satisfaction of the Court or a Judge, upon the Application of either Party, that the Matter in dispute consists wholly or in part of Matters of mere Account which cannot conveniently be tried in the ordinary Way, it shall be lawful for such Court or Judge, upon such Application, if they or he think fit, to decide such Matter in a summary Manner, or to order that such Matter, either wholly or in part, be referred to an Arbitrator appointed by the Parties, or to an Officer of the Court, or, in Country Causes, to the Judge of any County Court, upon such Terms as to Costs and otherwise as such Court or Judge shall think reasonable; and the Decision or Order of such Court or Judge, or the Award or Certificate of such Referee, shall be enforceable by the same Process as the Finding of a Jury upon the Matter referred.

### **IV Special Case may be stated, and Question of Fact tried.**

If it shall appear to the Court or a Judge that the Allowance or Disallowance of any particular Item or Items in such Account depends upon a Question of Law fit to be decided by the Court, or upon a Question of Fact fit to be decided by a Jury, or by a Judge upon the Consent of both Parties as herein-before provided, it shall be lawful for such Court or Judge to direct a Case to be stated, or an Issue or Issues to be tried; and the Decision of the Court upon such Case, and the Finding of the Jury or Judge upon such Issue or Issues, shall be taken and acted upon by the Arbitrator as conclusive.

### **V Arbitrator may state Special Case.**

It shall be lawful for the Arbitrator upon any compulsory Reference under this Act, or upon any Reference by Consent of Parties where the Submission is or may be made a Rule or Order of any of the Superior Courts of Law or Equity at *Westminster*, if he shall think fit, and if it is not provided to the contrary, to state his Award, as to the whole or any Part thereof, in the Form of a Special Case for the Opinion of the Court, and when an Action is referred, Judgment, if so ordered, may be entered according to the Opinion of the Court.

**VI Power to Judge to direct Arbitration at Time of Trial, when Issues of Fact left to his Decision.**

If upon the Trial of any Issue of Fact by a Judge under this Act it shall appear to the Judge that the Questions arising thereon involve Matter of Account which cannot conveniently be tried before him, it shall be lawful for him, at his Discretion, to order that such Matter of Account be referred to an Arbitrator appointed by the Parties, or to an Officer of the Court, or, in Country Causes, to a Judge of any County Court, upon such Terms as to Costs, and otherwise, as such Judge shall think reasonable; and the Award or Certificate of such Referee shall have the same Effect as herein-before provided as to the Award or Certificate of a Referee before Trial; and it shall be competent for the Judge to proceed to try and dispose of any other Matters in question, not referred, in like Manner as if no Reference had been made.

**VII Proceedings before and Power of such Arbitrator.**

The Proceedings upon any such Arbitration as aforesaid shall, except otherwise directed hereby or by the Submission or Document authorizing the Reference, be conducted in like Manner, and subject to the same Rules and Enactments, as to the Power of the Arbitrator and of the Court, the Attendance of Witnesses, the Production of Documents, enforcing or setting aside the Award, and otherwise, as upon a Reference made by Consent under a Rule of Court or Judge's Order.

**VIII Power to send back to Arbitrator.**

In any Case where Reference shall be made to Arbitration as aforesaid the Court or a Judge shall have Power at any Time, and from Time to Time, to remit the Matters referred, or any or either of them, to the Re-consideration and Re-determination of the said Arbitrator, upon such Terms, as to Costs and otherwise, as to the said Court or Judge may seem proper.

**IX Application to set aside the Award.**

All Applications to set aside any Award made on a compulsory Reference under this Act shall and may be made within the First Seven Days of the Term next following the Publication of the Award to the Parties, whether made in Vacation or Term; and if no such Application is made, or if no Rule is granted thereon, or if any Rule granted thereon is afterwards discharged, such Award shall be final between the Parties.

**X Enforcing of Awards within Period for setting them aside.**

Any Award made on a compulsory Reference under this Act may, by Authority of a Judge, on such Terms as to him may seem reasonable, be enforced at any Time after Seven Days from the Time of Publication, notwithstanding that the Time for moving to set it aside has not elapsed.

**XI If Action commenced by One Party after all have agreed to Arbitration, Court or Judge may stay Proceedings.**

Whenever the Parties to any Deed or Instrument in Writing to be hereafter made or executed, or any of them, shall agree that any then existing or future Differences between them or any of them shall be referred to Arbitration, and any One or more

of the Parties so agreeing, or any Person or Persons claiming through or under him or them, shall nevertheless commence any Action at Law or Suit in Equity against the other Party or Parties, or any of them, or against any Person or Persons claiming through or under him or them in respect of the Matters so agreed to be referred, or any of them, it shall be lawful for the Court in which Action or Suit is brought, or a Judge thereof, on Application by the Defendant or Defendants, or any of them, after Appearance and before Plea or Answer, upon being satisfied that no sufficient Reason exists why such Matters cannot be or ought not to be referred to Arbitration according to such Agreement as aforesaid, and that the Defendant was at the Time of the bringing of such Action or Suit and still is ready and willing to join and concur in all Acts necessary and proper for causing such Matters so to be decided by Arbitration, to make a Rule or Order staying all Proceedings in such Action or Suit, on such Terms as to Costs and otherwise as to such Court or Judge may seem fit: Provided always, that any such Rule or Order may at any Time afterwards be discharged or varied as Justice may require.

## **XII On Failure of Parties or Arbitrators, Judge may appoint single Arbitrator or Umpire.**

If in any Case of Arbitration the Document authorizing the Reference provide that the Reference shall be to a single Arbitrator, and all the Parties do not, after Differences have arisen, concur in the Appointment of an Arbitrator; or if any appointed Arbitrator refuse to act, or become incapable of acting, or die, and the Terms of such Document do not show that it was intended that such Vacancy should not be supplied, and the Parties do not concur in appointing a new one ; or if, where the Parties or Two Arbitrators are at liberty to appoint an Umpire or Third Arbitrator, such Parties or Arbitrators do not appoint an Umpire or Third Arbitrator; or if any appointed Umpire or Third Arbitrator refuse to act, or become incapable of acting, or die, and the Terms of the Document authorizing the Reference do not show that it was intended that such a Vacancy should not be supplied", and the Parties or Arbitrators respectively do not appoint a new one; then in every such Instance any Party may serve the remaining Parties or the Arbitrators, as the Case may be, with a written Notice to appoint an Arbitrator, Umpire, or Third Arbitrator respectively; and if within Seven clear Days after such Notice shall have been served no Arbitrator, Umpire, or Third Arbitrator be appointed, it shall be lawful for any Judge of any of the Superior Courts of Law or Equity at *Westminster*, upon Summons to be taken out by the Party having served such Notice as aforesaid, to appoint an Arbitrator, Umpire, or Third Arbitrator, as the Case may be, and such Arbitrator, Umpire, and Third Arbitrator respectively shall have the like Power to act in the Reference and make an Award as if he had been appointed by Consent of all Parties.

## **XIII When Reference is to Two Arbitrators and One Party fail to appoint, other Party may appoint Arbitrator to act alone.**

When the Reference is or is intended to be to Two Arbitrators, One appointed by each Party, it shall be lawful for either Party, in the Case of the Death, Refusal to act, or Incapacity of any Arbitrator appointed by him, to substitute a new Arbitrator, unless the Document authorizing the Reference show that it was intended that the Vacancy should not be supplied; and if on such a Reference One Party fail to appoint an Arbitrator, either originally or by way of Substitution as aforesaid, for Seven clear Days after the other Party shall have appointed an Arbitrator, and shall have served the Party so failing to appoint with Notice in Writing to make the Appointment, the Party

who has appointed an Arbitrator may appoint such Arbitrator to act as sole Arbitrator in the Reference, and an Award made by him shall be binding on both Parties as if the Appointment had been by Consent; provided, however, that the Court or a Judge may revoke such Appointment, on such Terms as shall seem just.

**XIV Two Arbitrators may appoint Umpire.**

When the Reference is to Two Arbitrators, and the Terms of the Document authorizing it do not show that it was intended that there should not be an Umpire, or provide otherwise for the Appointment of an Umpire, the Two Arbitrators may appoint an Umpire at any Time within the Period during which they have Power to make an Award, unless they be called upon by Notice as aforesaid to make the Appointment sooner.

**XV Award to be made in Three Months, unless Parties or Court enlarge Time.**

The Arbitrator acting under any such Document or compulsory Order of Reference as aforesaid, or under any Order referring the Award back, shall make his Award under his Hand, and (unless such Document or Order respectively shall contain a different Limit of Time) within Three Months after he shall have been appointed, and shall have entered on the Reference, or shall have been called upon to act by a Notice in Writing from any Party, but the Parties may by Consent in Writing enlarge the Term for making the Award; and it shall be lawful for the Superior Court of which such Submission, Document, or Order is or may be made a Rule or Order, or for any Judge thereof, for good Cause to be stated in the Rule or Order for Enlargement, from Time to Time to enlarge the Term for making the Award; and if no Period be stated for the Enlargement in such Consent or Order for Enlargement, it shall be deemed to be an Enlargement for One Month ; and in any Case where an Umpire shall have been appointed it shall be lawful for him to enter on the Reference in lieu of the Arbitrators, if the latter shall have allowed their Time or their extended Time to expire without making an Award, or shall have delivered to any Party or to the Umpire a Notice in Writing stating that they cannot agree.

**XVI Rule to deliver Possession of Land pursuant to Award to be enforced as a Judgment in Ejectment.**

When any Award made on any such Submission, Document, or Order of Reference as aforesaid directs that Possession of any Lands or Tenements capable of being the Subject of an Action of Ejectment shall be delivered to any Party, either forthwith or at any future Time, or that any such Party is entitled to the Possession of any such Lands or Tenements, it shall be lawful for the Court of which the Document authorizing the Reference is or is made a Rule or Order to order any Party to the Reference who shall be in possession of any such Lands or Tenements, or any Person in possession of the same claiming under or put in possession by him since the making of the Document authorizing the Reference, to deliver Possession of the same to the Party entitled thereto, pursuant to the Award, and such Rule or Order to deliver Possession shall have the Effect of a Judgment in Ejectment against every such Party or Person named in it, and Execution may issue, and Possession shall be delivered by the Sheriff as on a Judgment in Ejectment.

**XVII Agreement or Submission in Writing may be made Rule of Court, unless a contrary Intention appear.**

Every Agreement or Submission to Arbitration by Consent, whether by Deed or Instrument in Writing not under Seal, may be made a Rule of any One of the Superior Courts of Law or Equity at *Westminster*, on the Application of any Party thereto, unless such Agreement or Submission contain Words purporting that the Parties intend that it should not be made a Rule of Court; and if in any such Agreement or Submission it is provided that the same shall or may be made a Rule of One in particular of such Superior Courts, it may be made a Rule of that Court only; and if when there is no such Provision a Case be stated in the Award for the Opinion of One of the Superior Courts, and such Court be specified in the Award, and the Document authorizing the Reference have not, before the Publication of the Award to the Parties, been made a Rule of Court, such Document may be made a Rule only of the Court specified in the Award; and when in any Case the Document authorizing the Reference is or has been made a Rule or Order of any One of such Superior Courts, no other- of such Courts shall have any Jurisdiction to entertain any Motion respecting the Arbitration or Award.

**XVIII Speeches to the Jury.**

Upon the Trial of any Cause the Addresses to the Jury shall be regulated as follows: The Party who begins, or his Counsel, shall be allowed, in the event of his Opponent not announcing at the Close of the Case of the Party who begins his Intention to adduce Evidence, to address the Jury a Second Time at the Close of such Case, for the Purpose of summing up the Evidence ; and the Party on the other Side, or his Counsel, shall be allowed to open the Case, and also to sum up the Evidence (if any) ; and the Right to reply shall be the same as at present.

**XIX Power to adjourn Trial.**

It shall be lawful for the Court or Judge, at the Trial of any Cause, where they or he may deem it right for the Purposes of Justice, to order an Adjournment for such Time, and subject to such Terms and Conditions as to Costs, and otherwise, as they or he may think fit.

**XX Affirmation instead of Oath in certain Cases.**

If any Person called as a Witness, or required or desiring to make an Affidavit or Deposition, shall refuse or be unwilling from alleged conscientious Motives to be sworn, it shall be lawful for the Court or Judge or other presiding Officer, or Person qualified to take Affidavits or Depositions, upon being satisfied of the Sincerity of such Objection, to permit such Person, instead of being sworn, to make his or her solemn Affirmation or Declaration in the Words following; *videlicet*,

“I A.B. do solemnly, sincerely, and truly affirm and declare, That the taking of any Oath is, according to my religious Belief, unlawful; and I do also solemnly, sincerely, and truly affirm and declare, &c”

Which solemn Affirmation and Declaration shall be of the same Force and Effect as if such Person had taken an Oath in the usual Form.

**XXI Persons making a false Affirmation, be subject to the same Punishment as for Perjury.**

If any Person making such solemn Affirmation or Declaration shall wilfully, falsely, and corruptly affirm or declare any Matter or Thing, which, if the same had been sworn in the usual Form, would have amounted to wilful and corrupt Perjury, every such Person so offending shall incur the same Penalties as by the Laws and Statutes of this Kingdom are or may be enacted or provided against Persons convicted of wilful and corrupt Perjury.

**XXII How far a Party may accredit his own Witness.**

A Party producing a Witness shall not be allowed to impeach his Credit by general Evidence of bad Character, but he may, in case the Witness shall in the Opinion of the Judge prove adverse, contradict him by other Evidence, or, by Leave of the Judge, prove that he has made at other Times a Statement inconsistent with his present Testimony; but before such last-mentioned Proof can be given, the Circumstances of the supposed Statement, sufficient to designate the particular Occasion, must be mentioned to the Witness, and he must be asked whether or not he has made such Statement.

**XXIII Proof of contradictory Statements of adverse Witness.**

If a Witness, upon Cross-examination as to a former Statement made by him relative to the Subject Matter of the Cause, and inconsistent with his present Testimony, does not distinctly admit that he has made such Statement, Proof may be given that he did in fact make it; but before such Proof can be given, the Circumstances of the supposed Statement, sufficient to designate the particular Occasion, must be mentioned to the Witness, and he must be asked whether or not he has made such Statement.

**XXIV Cross-examination as to previous Statements in Writing.**

A Witness may be cross-examined as to previous Statements made by him in Writing, or reduced into Writing, relative to the Subject Matter of the Cause without such Writing being shown to him ; but if it is intended to contradict such Witness by the Writing, his Attention must, before such contradictory Proof can be given, be called to those Parts of the Writing which are to be used for the Purpose of so contradicting him: Provided always, that it shall be competent for the Judge, at any Time during the Trial, to require the Production of the Writing for his Inspection, and he may thereupon make such Use of it for the Purposes of the Trial as he shall think fit.

**XXV Proof of previous Conviction of a Witness may fee given.**

A Witness in any Cause may be questioned as to whether he has been convicted of any Felony or Misdemeanor, and, upon being so questioned, if he either denies the Fact, or refuses to answer, it shall be lawful for the opposite Party to prove such Conviction; and a Certificate containing the Substance and Effect only (omitting the formal Part) of the Indictment and Conviction for such Offence, purporting to be signed by the Clerk of the Court, or other Officer having the Custody of the Records of the Court where the Offender was convicted, or by the Deputy of such Clerk or Officer, (for which Certificate a Fee of Five Shillings and no more shall be demanded or taken,) shall, upon Proof of the Identity of the Person, be sufficient Evidence of the said Conviction,

without Proof of the Signature or official Character of the Person appearing to have signed the same.

**XXVI Attesting Witness need not be called, except in certain Cases.**

It shall not be necessary to prove by the attesting Witness any Instrument to the Validity of which Attestation is not requisite ; and such Instrument may be proved by Admission, or otherwise, as if there had been no attesting Witness thereto.

**XXVII Comparison of disputed Writing.**

Comparison of a disputed Writing with any Writing proved to the Satisfaction of the Judge to be genuine shall be permitted to be made by Witnesses ; and such Writings, and the Evidence of Witnesses respecting the same, may be submitted to the Court and Jury as Evidence of the Genuineness, or otherwise, of the Writing in dispute.

**XXVIII Provision for stamping Documents at the Trial.**

Upon the Production of any Document as Evidence at the Trial of any Cause, it shall be the Duty of the Officer of the Court whose Duty it is to read such Document to call the Attention of the Judge to any Omission or Insufficiency of the Stamp; and the Document, if unstamped, or not sufficiently stamped, shall not be received in Evidence until the whole or (as the Case may be) the Deficiency of the Stamp 'Duty, and the Penalty required by Statute, together with the additional Penalty of One Pound, shall have been paid.

**XXIX Officer of the Court to receive the Duty and Penalty.**

Such Officer of the Court shall, upon Payment to him of the whole or (as the Case may be) of the Deficiency of the Stamp Duty payable upon or in respect of such Document, and of the Penalty required by Statute, and of the additional Penalty of One Pound, give a Receipt for the Amount of the Duty or Deficiency which the Judge shall determine to be payable, and also of the Penalty, and thereupon such Document shall be admissible in Evidence, saving all just Exceptions on other Grounds; and an Entry of the Fact of such Payment and of the Amount thereof shall be made in a Book kept by such Officer; and such Officer shall, at the End of each Sittings or Assizes (as the Case may be), duly make a "Return to the Commissioners of the Inland Revenue of the Monies, if any, which he has so received by way of Duty or Penalty, distinguishing between such Monies, and stating the Name of the Cause and of the Parties from whom he received such Monies, and the Date, if any, and Description of the Document for the Purpose of identifying the same; and he shall pay over the said Monies to the Receiver General of the Inland Revenue, or to such Person as the said Commissioners shall appoint or authorize to receive the same; and in case such Officer shall neglect or refuse to furnish such Account, or to pay over any of the Monies so received by him as aforesaid, he shall be liable to be proceeded against in the Manner directed by the Eighth Section of an Act passed in the Session of Parliament holden in the Thirteenth and Fourteenth Years of the Reign of Her present Majesty, intituled *An Act to repeal certain Stamp Duties, and to grant others in lieu thereof, and to amend the Laws relating to the Stamp Duties*; and the said Commissioners shall, upon Request, and Production of the Receipt herein-before mentioned, cause such Documents to be stamped with the proper Stamp or Stamps in respect of the Sums so paid as aforesaid: Provided always,



that the aforesaid Enactment shall not extend to any Document which cannot now be stamped after the Execution thereof on Payment of the Duty and a Penalty.

**XXX No Document under this Act to require a Stamp.**

No Document made or required under the Provisions of this Act shall be liable to any Stamp Duty.

**XXXI No new Trial for ruling as to Stamp.**

No new Trial shall 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.

**XXXII Error may be brought on a Special Case.**

Error may be brought upon a Judgment upon a Special Case in the same Manner as upon a Judgment upon a Special Verdict, unless the Parties agree to the contrary; and the Proceedings for bringing a Special Case before the Court of Error shall, as nearly as may be, be the same as in the Case of a Special Verdict; and the Court of Error shall either affirm the Judgment or give the same Judgment as ought to have been given in the Court in which it was originally decided, the said Court of Error being required to draw any Inferences of Fact from the Facts stated in such Special Case which the Court where it was originally decided ought to have drawn.

**XXXIII Grounds to be stated in Rule Nisi for New Trial.**

In every Rule Nisi for a New Trial or to enter a Verdict or Nonsuit, the Grounds upon which such Rule shall have been granted shall be shortly stated therein.

**XXXIV If Rule Nisi refused, Party may appeal.**

In all Cases of Rules to enter a Verdict or Nonsuit upon a Point reserved at the Trial, if the Rule to show Cause be refused or granted and then discharged or made absolute, the Party decided against may appeal.

**XXXV Appeal upon Rule discharged or absolute.**

In all Cases of Motions for a new Trial upon the Ground that the Judge has not ruled according to Law, if the Rule to show Cause be refused, or if granted be then discharged or made absolute, the Party decided against may appeal, provided any One of the Judges dissent from the Rule being refused, or, when granted, being discharged or made absolute, as the Case may be, or, provided the Court in its Discretion think fit that an Appeal should be allowed; provided, that where the Application for a new Trial is upon Matter of Discretion only, as on the Ground that the Verdict was against the Weight of Evidence or otherwise, no such Appeal shall be allowed.

**XXXVI Courts of Error to be Courts of Appeal.**

The Court of Error, the Exchequer Chamber, and the House of Lords shall be Courts of Appeal for the Purposes of this Act.

**XXXVI Notice of Appeal.**

No Appeal shall be allowed unless Notice thereof be given in Writing to the opposite Party or his Attorney, and to One of the Masters of the Court, within Four Days after the Decision complained of, or such further Time as may be allowed by the Court or a Judge.

**XXXVII Bail.**

Notice of Appeal shall be a Stay of Execution, provided Bail to pay the Sum recovered and Costs, or to pay Costs where the Appellant was Plaintiff below, be given, in like Manner and to the same Amount as Bail in Error, within Eight Days after the Decision complained of, or before Execution delivered to the Sheriff.

**XXXIX Form of Appeal.**

The Appeal herein-before mentioned shall be upon a Case to be stated by the Parties, (and in case of Difference, to be settled by the Court or a Judge of the Court appealed from,) in which Case shall be set forth so much of the Pleadings, Evidence, and the Ruling or Judgment objected to, as may be necessary to raise the Question for the Decision of the Court of Appeal.

**XL Rule Nisi granted on Appeal, how disposed of.**

When the Appeal is from the Refusal of the Court below to grant a Rule to show Cause, and the Court of Appeal grant such Rule, such Rule shall be argued and disposed of in the Court of Appeal.

**XLI The Court of Appeal shall give such Judgment as ought to have been given in the Court below; and all such further Proceedings may be taken thereupon as if the Judgment had been given by the Court in which the Record originated.****XLII Powers of Court of Appeal as to Costs and otherwise.**

The Court of Appeal shall have Power to adjudge Payment of Costs, and to order Restitution; and they shall have the same Powers as the Court of Error in respect of awarding Process and otherwise.

**XLIII Error upon Award of Trial de novo.**

Upon an Award of a Trial *de novo* by any One of the Superior Courts or by the Court of Error, upon Matter appearing upon the Record, Error may at once be brought; and if the Judgment in such or any other Case be affirmed in Error, it shall be lawful for the Court of Error to adjudge Costs to the Defendant in Error.

**XLIV Payment of Costs upon new Trial on Matter of Fact.**

When a new Trial is granted, on the Ground that the Verdict was against Evidence, the Costs of the First Trial shall abide the Event, unless the Court shall otherwise order.

**XLV Affidavits on new Matter.**

Upon Motions founded upon Affidavits it shall be lawful for either Party, with Leave of the Court or a Judge, to make Affidavits in answer to the Affidavits of the opposite Party, upon any new Matter arising out of such Affidavits, subject to all such Rules as shall hereafter be made respecting such Affidavits.

**XLVI Power to Court or Judge to direct oral Examinations of Witnesses.**

Upon the Hearing of any Motion or Summons it shall be lawful for the Court or Judge, at their or his Discretion, and upon such Terms as they or he shall think reasonable, from Time to Time to order such Documents as they or he may think fit to be produced, and such Witnesses as they or he may think necessary to appear, and be examined *vivâ voce*, either before such Court or Judge, or before the Master, and upon hearing such Evidence, or reading the Report of such Master, to make such Rule or Order as may be just.

**XLVII Proceedings before and upon such Examination.**

The Court or Judge may by such Rule or Order, or any subsequent Rule or Order, command the Attendance of the Witnesses named therein, for the Purpose of being examined, or the Production of any Writings or other Documents to be mentioned in such Rule or Order; and such Rule or Order shall be proceeded upon in the same Manner, and shall have the same Force and Effect, as a Rule of the Court under an Act passed in the First Year of the Reign of His late Majesty King *William* the Fourth, intituled *An Act to enable Courts of Law to order the Examination of Witnesses upon Interrogatories or otherwise*; and it shall be lawful for the Court, or Judge, or Master to adjourn the Examination from Time to Time as Occasion may require; and the Proceedings upon such Examination shall be conducted, and the Depositions taken down, as nearly as may be, in the Mode now in use with respect to the *vivâ voce* Examination of Witnesses under the last-mentioned Act.

**XLVIII Examination of Person who refuses to make an Affidavit.**

Any Party to any Civil Action or other Civil Proceeding in any of the Superior Courts, requiring the Affidavit of a Person who refuses to make an Affidavit, may apply by Summons for an Order to such Person to appear and be examined upon Oath before a Judge or Master, to whom it may be most convenient to refer such Examination, as to the Matters concerning which he has refused to make an Affidavit; and a Judge may, if he think fit, make such Order for the Attendance of such Person before the Person therein appointed to take such Examination, for the Purpose of being examined as aforesaid, and for the Production of any Writings or Documents to be mentioned in such Order, and may therein impose such Terms as to such Examination, and the Costs of the Application and Proceedings thereon, as he shall think just.

**XLIX Proceedings upon Order for Examination.**

Such Order shall be proceeded upon in like Manner as an Order made under the herein-before mentioned Act passed in the First Year of the Reign of His late Majesty King *William* the Fourth, and the Examination thereon shall be conducted, and the Depositions taken down and returned, as nearly as may be, in the Mode now used on *vivâ voce* Examinations under the said Act of Parliament.

**L Discovery of Documents.**

Upon the Application of either Party to any Cause or other Civil Proceeding in any of the Superior Courts, upon an Affidavit by such Party of his Belief that any Document, to the Production of which he is entitled for the Purpose of Discovery or otherwise, is in the Possession or Power of the opposite Party, it shall be lawful for the Court or Judge to order that the Party against whom such Application is made, or if such Party is a Body Corporate that some Officer to be named of such Body Corporate, shall answer on Affidavit, stating what Documents he or they has or have in his or their Possession or Power relating to the Matters in dispute, or what he knows as to the Custody they or any of them are in, and whether he or they objects or object (and if so, on what Grounds,) to the Production of such as are in his or their Possession or Power; and upon such Affidavit being made the Court or Judge may make such further Order thereon as shall be just.

**LI Power to deliver written Interrogatories to opposite Party.**

In all Causes in any of the Superior Courts, by Order of the Court or a Judge, the Plaintiff may, with the Declaration, and the Defendant may, with the Plea, or either of them by Leave of the Court or a Judge may, at any other Time, deliver to the opposite Party or his Attorney (provided such Party, if not a Body Corporate, would be liable to be called and examined as a Witness upon such Matter) Interrogatories in Writing upon any Matter as to which Discovery may be sought, and require such Party, or in the Case of a Body Corporate any of the Officers of such Body Corporate, within Ten Days to answer the Questions in Writing by Affidavit, to be sworn and filed in the ordinary Way; and any Party or Officer omitting, without just Cause, sufficiently to answer all Questions as to which a Discovery may be sought within the above Time, or such extended Time as the Court or a Judge shall allow, shall be deemed to have Committed a Contempt of the Court, and shall be liable to be proceeded against accordingly.

**LII Affidavits by Party proposing to interrogate, and his Attorney.**

The Application for such Order shall be made upon an Affidavit of the Party proposing to interrogate, and his Attorney or Agent, or, in the Case of a Body Corporate, of their Attorney or Agent, stating that the Deponents or Deponent believe or believes that the Party proposing to interrogate, whether Plaintiff or Defendant, will derive material Benefit in the Cause from the Discovery which he seeks, that there is a good Cause of Action or Defence upon the Merits, and, if the Application be made on the Part of the Defendant, that the Discovery is not sought for the Purpose of Delay; provided that where it shall happen, from unavoidable Circumstances, that the Plaintiff or Defendant cannot join in such Affidavit, the Court or Judge may, if they or he think fit, upon Affidavit of such Circumstances by which the Party is prevented from so joining therein, allow and order that the Interrogatories may be delivered without such Affidavit.

**LIII Oral Examination of Parties, when to be allowed.**

In case of Omission, without just Cause, to answer sufficiently such written Interrogatories, it shall be lawful for the Court or a Judge, at their or his Discretion, to direct an oral Examination of the interrogated Party, as to such Points as they or he may direct, before a Judge or Master; and the Court or Judge may by such Rule or Order, or any subsequent Rule or Order, command the Attendance of such Party or Parties before the Person appointed to take such Examination, for the Purpose of being

orally examined as aforesaid, or the Production of any Writings or other Documents to be mentioned in such Rule or Order, and may impose therein such Terms as to such Examination, and the Costs of the Application, and of the Proceedings thereon, and otherwise, as to such Court or Judge shall seem just.

**LIV Proceedings upon such Rule or Order.**

Such Rule or Order shall have the same Force and Effect, and may be proceeded upon in like Manner, as an Order made under the said herein-before mentioned Act passed in the First Year of the Reign of His late Majesty King *William* the Fourth.

**LV Depositions upon such Examinations to be returned to Master's Office.**

Whenever, by virtue of this Act, an Examination of any Witness or Witnesses has been taken before a Judge of One of the said Superior Courts, or before a Master, the Depositions taken down by such Examiner shall be returned to and kept in the Master's Office of the Court in which the Proceedings are pending; and Office Copies of such Depositions may be given out, and the Depositions may be otherwise used, in the same Manner as in the Case of Depositions taken under the herein-before mentioned Act passed in the First Year of the Reign of His late Majesty King *William* the Fourth.

**LVI Examiner may make port to the Court.**

It shall be lawful for every Judge or Master named in any such Rule or Order as aforesaid for taking Examinations under this Act, and he is hereby required to make, if need be, a special Report to the Court in which such Proceedings are pending, touching such Examination, and the Conduct or Absence of any Witness or other Person thereon or relating thereto; and the Court is hereby authorized to institute such Proceedings and make such Order and Orders upon such Report as Justice may require, and as may be instituted and made in any Case of Contempt of the Court.

**LVII Costs of Rule and Examination to be in the Discretion of the Court.**

The Costs of every Application for any Rule or Order to be made for the Examination of Witnesses by virtue of this Act, and of the Rule or Order and Proceedings thereon, shall be in the Discretion of the Court or Judge by whom such Rule of Order is made.

**LVIII Inspection by Jury, of Parties, or Witnesses.**

Either Party shall be at liberty to apply to the Court or a Judge for a Rule or Order for the Inspection by the Jury, or by himself, or by his Witnesses, of any Real or Personal Property the Inspection of which may be material to the proper Determination of the Question in dispute; and it shall be lawful for the Court, or a Judge, if they or he think fit, to make such Rule or Order, upon such Terms as to Costs and otherwise as such Court or Judge may direct: Provided always, that nothing herein contained shall affect the Provisions of the " Common Law Procedure Act, 1852," or any previous Act, as to obtaining a View by a Jury: Provided also, that all Rules and Regulations now in force and applicable to the Proceedings by View under the said last-mentioned Act shall be held to apply to Proceedings for Inspection by a Jury under the Provisions of this Act, or as near thereto as may be.

**LIX Rule or Order for summoning Jury.**

The several Courts, or any Judge thereof, may make all such Rules or Orders upon the Sheriff or other Person as may be necessary to procure the Attendance of a Special or Common Jury for the Trial of any Cause or Matter depending in such Courts, at such Time and Place and in such Manner as they or he may think fit.

**LX Examination of Judgment Debtor as to Debts due to him.**

It shall be lawful for any Creditor who has obtained a Judgment in any of the Superior Courts to apply to the Court or a Judge for a Rule or Order that the Judgment Debtor should be orally examined as to any and what Debts are owing to him before a Master of the Court, or such other Person as the Court or Judge shall appoint; and the Court or Judge may make such Rule or Order for the Examination of such Judgment Debtor, and for the Production of any Books or Documents, and the Examination shall be conducted in the same Manner as in the Case of an oral Examination of an opposite Party before a Master under this Act.

**LXI Judge may order an Attachment of Debts.**

It shall be lawful for a Judge, upon the ex-parte Application of such Judgment Creditor, either before or after such oral Examination, and upon Affidavit by himself or his Attorney stating that Judgment has been recovered, and that it is still unsatisfied, and to what Amount, and that any other Person is indebted to the Judgment Debtor, and is within the Jurisdiction, to order that all Debts owing or accruing from such Third Person (herein-after called the Garnishee) to the Judgment Debtor shall be attached to answer the Judgment Debt; and by the same or any subsequent Order it may be ordered that the Garnishee shall appear before the Judge or a Master of the Court, as such Judge shall appoint, to show Cause why he should not pay the Judgment Creditor the Debt due from him to the Judgment Debtor, or so much thereof as may be sufficient to satisfy the Judgment Debt.

**LXII Order for Attachment to bind Debts.**

Service of an Order that Debts due or accruing to the Judgment Debtor shall be attached, or Notice thereof to the Garnishee, in such Manner as the Judge shall direct, shall bind such Debts in his Hands.

**LXIII Proceedings to levy Amount due from Garnishee to Judgment Debtor.**

If the Garnishee does not forthwith pay into Court the Amount due from him to the Judgment Debtor, or an Amount equal to the Judgment Debt, and does not dispute the Debt due or claimed to be due from him to the Judgment Debtor, or if he does not appear upon Summons, then the Judge may order Execution to issue, and it may be sued forth accordingly, without any previous Writ or Process, to levy the Amount due from such Garnishee towards Satisfaction of the Judgment Debt.

**LXIV Judge may allow Judgment Creditor to sue Garnishee.**

If the Garnishee disputes his Liability, the Judge, instead of making an Order that Execution shall issue, may order that the Judgment Creditor shall be at liberty to proceed against the Garnishee by Writ, calling upon him to show Cause why there

should not be Execution against him for the alleged Debt, or for the Amount due to the Judgment Debtor, if less than the Judgment Debt, and for Costs of Suit and the Proceedings upon such Suit shall be the same, as nearly as may be, as upon a Writ of Revivor issued under " The Common Law Procedure Act, 1852."

**LXV Garnishee discharged.**

Payment made by or Execution levied upon the Garnishee under any such Proceeding as aforesaid shall be a valid Discharge to him as against the Judgment Debtor to the Amount paid or levied, although such Proceeding may be set aside or the Judgment reversed.

**LXVI Attachment Book to be kept by the Masters of each Court.**

In each of the Superior Courts there shall be kept at the Master's Office a Debt Attachment Book, and in such Book Entries shall be made of the Attachment and Proceedings thereon, with Names, Dates, and Statements of the Amount recovered, and otherwise; and the Mode of keeping such Books shall be the same in all the Courts ; and Copies of any Entries made therein may be taken by any Person, upon Application to any Master,

**LXVII Costs of Application.**

LXVII. The Costs of any Application for an Attachment of Debt under this Act, and of any Proceedings arising from or incidental to such Application, shall be in the Discretion of the Court or a Judge.

**LXVIII Action for Mandamus to enforce the Performance of Duties.**

The Plaintiff in any Action in any of the Superior Courts, except Replevin and Ejectment, may endorse upon the Writ and Copy to be served a Notice that the Plaintiff intends to claim a Writ of Mandamus, and the Plaintiff may thereupon claim in the Declaration, either together with any other Demand which may now be enforced in such Action, or separately, a Writ of Mandamus commanding the Defendant to fulfil any Duty in the Fulfilment of which the Plaintiff is personally interested.

**LXIX Declaration in Action for Mandamus.**

The Declaration in such Action shall set forth sufficient Grounds upon which such Claim is founded, and shall set forth that the Plaintiff is personally interested therein, and that he sustains or may sustain Damage by the Nonperformance of such Duty, and that Performance thereof has been demanded by him, and refused or neglected.

**LXX Proceedings upon Claim for Mandamus.**

The Pleadings and other Proceedings in any Action in which a Writ of Mandamus is claimed shall be the same in all respects, as nearly as may be, and Costs shall be recoverable by either Party, as in an ordinary Action for the Recovery of Damages.

**LXXI Judgment and Execution.**

In case Judgment shall be given to the Plaintiff that a Mandamus do issue, it shall be lawful for the Court in which such Judgment is given, if it shall see fit, besides issuing Execution in the ordinary Way for the Costs and Damages, also to issue a peremptory Writ of Mandamus to the Defendant, commanding him forthwith to perform the Duty to be enforced.

**LXXII Form of peremptory Writ.**

The Writ need not recite the Declaration or other Proceedings, or the Matter therein stated, but shall simply command the Performance of the Duty, and in other respects shall be in the Form of an ordinary Writ of Execution, except that it shall be directed to the Party and not to the Sheriff, and may be issued in Term or Vacation, and returnable forthwith; and no Return thereto, except that of Compliance, shall be allowed, but Time to return it may, upon sufficient Grounds, be allowed by the Court or a Judge, either with without Terms.

**LXXIIIEffect of Writ of Mandamus, and Proceedings to enforce it.**

The Writ of Mandamus so issued as aforesaid shall have the same Force and Effect as a peremptory Writ of Mandamus issued out of the Court of Queen's Bench, and in case of Disobedience may be enforced by Attachment.

**LXXIVThe Court may order the Act to be done at the Expense of the Defendant.**

The Court may, upon Application by the Plaintiff, besides or instead of proceeding against the disobedient Party by Attachment, direct that the Act required to be done may be done by the Plaintiff, or some other Person appointed by the Court, at the Expense of the Defendant; and upon the Act being done, the Amount of such Expense may be ascertained by the Court, either by Writ of Inquiry or Reference to a Master, as the Court or a Judge may order; and the Court may order Payment of the Amount of such Expenses and Costs, and enforce Payment thereof by Execution.

**LXXV Prerogative Writ of Mandamus preserved.**

Nothing herein contained shall take away the Jurisdiction of the Court of Queen's Bench to grant Writs of Mandamus; nor shall any Writ of Mandamus issued out of that Court be invalid by reason of the Right of the Prosecutor to proceed by Action for Mandamus under this Act.

**LXXVIProceedings for Prerogative Writ of Mandamus accelerated.**

Upon Application by Motion for any Writ of Mandamus in the Court of Queen's Bench, the Rule may in all Cases be absolute in the first instance, if the Court shall think fit; and the Writ may bear Teste on the Day of its issuing, and may be made returnable forthwith, whether in Term or in Vacation, but Time may be allowed to return it, by the Court or a Judge, either with or without Terms.



## **LXXVI Proceedings on Prerogative Writ of Mandamus.**

The Provisions of "The Common Law Procedure Act, 1852," and of this Act, so far as they are applicable, shall apply to the Pleadings and Proceedings upon a Prerogative Writ of Mandamus issued by the Court of Queen's Bench.

## **LXXVIII Specific Delivery of Chattels.**

The Court or a Judge shall have Power, if they or he see fit so to do, upon the Application of the Plaintiff in any Action for the Detention of any Chattel, to order that Execution shall issue for the Return of the Chattel detained, without giving the Defendant the Option of retaining such Chattel upon paying the Value assessed, and that if the said Chattel cannot be found, and unless the Court or a Judge should otherwise order, the Sheriff shall distrain the Defendant by all his Lands and Chattels in the said Sheriff's Bailiwick, till the Defendant render such Chattel, or, at the Option of the Plaintiff, that he cause to be made of the Defendant's Goods the assessed Value of such Chattel; provided that the Plaintiff shall, either by the same or a separate Writ of Execution, be entitled to have made of the Defendant's Goods the Damages, Costs, and Interest in such Action.

## **LXXIX Claim of Writ of Injunction.**

In all Cases of Breach of Contract or other Injury, where the Party injured is entitled to maintain and has brought an Action, he may, in like Case and Manner as herein-before provided with respect to Mandamus, claim a Writ of Injunction against the Repetition or Continuance of such Breach of Contract, or other Injury, or the Committal of any Breach of Contract or Injury of a like kind, arising out of the same Contract, or relating to the same Property or Plight; and he may also in the same Action include a Claim for Damages or other Redress.

## **LXXX Form of Writ of Summons and Endorsement thereon.**

The Writ of Summons in such Action shall be in the same Form as the Writ of Summons in any Personal Action, but on every such Writ and Copy thereof there shall be endorsed a Notice that in default of Appearance the Plaintiff may, besides proceeding to Judgment and Execution for Damages and Costs, apply for and obtain a Writ of Injunction.

## **LXXXI Form of Proceedings and of Judgment.**

The Proceedings in such Action shall be the same, as nearly as may be, and subject to the like Control, as the Proceedings in an Action to obtain a Mandamus under the Provisions herein-before contained; and in such Action Judgment may be given that the Writ of Injunction do or do not issue, as Justice may require; and in case of Disobedience such Writ of Injunction may be enforced by Attachment by the Court, or, when such Courts shall not be sitting, by a Judge.

## **LXXXII Writ of Injunction may be applied for at any Stage of the Cause.**

It shall be lawful for the Plaintiff at any Time after the Commencement of the Action, and whether before or after Judgment, to apply ex parte to the Court or a Judge for a Writ of Injunction to restrain the Defendant in such Action from the Repetition

or Continuance of the wrongful Act or Breach of Contract complained of, or the Committal of any Breach of Contract or Injury of a like kind, arising out of the same Contract, or relating to the same Property or Right; and such Writ may be granted or denied by the Court or Judge upon such Terms as to the Duration of the Writ, keeping an Account, giving Security, or otherwise, as to such Court or Judge shall seem reasonable and just, and in case of Disobedience such Writ may be enforced by Attachment by the Court, or, when such Courts shall not be sitting, by a Judge: Provided always, that any Order for a Writ of Injunction made by a Judge, or any Writ issued by virtue thereof, may be discharged or varied or set aside by the Court, on Application made thereto by any Party dissatisfied with such Order.

#### **LXXXI~~B~~ Equitable Defence may be pleaded.**

It shall be lawful for the Defendant or Plaintiff in replevin in any Cause in any of the Superior Courts in which, if Judgment were obtained, he would be entitled to Relief against such Judgment on equitable Grounds, to plead the Facts which entitle him to such Relief by way of Defence, and the said Courts are hereby empowered to receive such Defence by way of Plea; provided that such Plea shall begin with the Words "For Defence on equitable Grounds," or Words to the like Effect.

#### **LXXXI~~E~~ Equitable Defence after Judgment.**

Any such Matter which, if it arose before or during the Time for pleading, would be an Answer to the Action by way of Plea, may, if it arise after the Lapse of the Period during which it could be pleaded, be set up by way of Auditâ querelâ.

#### **LXXXV~~E~~ Equitable Replication.**

The Plaintiff may reply, in answer to any Plea of the Defendant, Facts which avoid such Plea upon equitable Grounds; provided that such Replication shall begin with the Words "For Replication on equitable Grounds," or Words to the like Effect.

#### **LXXXV~~T~~ Court or Judge may strike out equitable Plea or Replication.**

Provided always, that in case it shall appear to the Court, or any Judge thereof, that any such equitable Plea or equitable Replication cannot be dealt with by a Court of Law so as to do Justice between the Parties, it shall be lawful for such Court or Judge to order the same to be struck out on such Terms as to Costs and otherwise as to such Court or Judge may seem reasonable.

#### **LXXXV~~A~~ Actions on lost Instruments.**

In case of any Action founded upon a Bill of Exchange or other negotiable Instrument, it shall be lawful for the Court or a Judge to order that the Loss of such Instrument shall not be set up, provided an Indemnity is given, to the Satisfaction of the Court or Judge, or a Master, against the Claims of any other Person upon such negotiable Instrument.

#### **LXXXV~~M~~ Jurisdiction under Shipowners Act.**

The Superior Courts or any Judge thereof may, upon summary Application, by Rule or Order, exercise such and the like Jurisdiction as may, under the Provisions of an Act of Parliament made and passed in the Fifty-third Year of the Reign of His Majesty

King George the Third, intituled *An Act to limit the Responsibility of Shipowners in certain Cases*, be exercised by any Court of Equity.

**LXXXIX False Evidence.**

Any Person who shall, upon any Examination upon Oath or Affirmation, or in any Affidavit in Proceedings under this Act, wilfully and corruptly give false Evidence, or wilfully and corruptly swear or affirm anything which shall be false, being convicted thereof, shall be liable to the Penalties of wilful and corrupt Perjury.

**XC Execution to fix Bail.**

Writs of Execution to fix Bail may be tested and returnable in Vacation.

**XCI Scire facias on Judgment of Assets in future**

Proceedings against Executors upon a Judgment of Assets in futuro may be had and taken in the Manner provided by " The Common Law Procedure Act, 1852," as to Writs of Revivor.

**XCII To compel Continuance or Abandonment of Action in case of Death.**

Where an Action would, but for the Provisions of " The Common Law Procedure Act, 1852," have abated by reason of the Death of either Party, and in which the Proceedings may be revived and continued under that Act, the Defendant or Person against whom the Action may be so continued may apply by Summons to compel the Plaintiff, or Person entitled to proceed with the Action in the Room of the Plaintiff, to proceed according to the Provisions of the said Act within such Time, as the Judge shall order; and in default of such Proceeding the Defendant or other Person against whom the Action may be so continued as aforesaid shall be entitled to enter a Suggestion of such Default, and" of the representative Character of the Person by or against whom the Action may be proceeded with, as the Case may be, and to have Judgment for the Costs of the Action and Suggestion against the Plaintiff, or against the Person entitled to proceed in his Room, as the Case may be, and in the latter Case to be levied of the Goods of the Testator or Intestate.

**XCIII Claimant in Second Ejectment for same Premises against same Defendant may be ordered to give Security for Costs.**

If any Person shall bring an Action of Ejectment after a prior Action of Ejectment for the same Premises has been or shall have been unsuccessfully brought by such Person, or by any Person through or under whom he claims against the same Defendant, or against any Person through or under whom he defends, the Court or a Judge may, if they or he think fit, on the Application of the Defendant at any Time after such Defendant has appeared to the Writ, order that the Plaintiff shall give to the Defendant Security for the Payment of the Defendant's Costs, and that all further Proceedings in the Cause shall be stayed until such Security be given, whether the prior Action has been or shall have been disposed of by Discontinuance, or by Nonsuit, or by Judgment for the Defendant.

**XCIV As to Writs of Execution issued before 24th October 1852.**

No Writ of Execution issued before the Twenty-fourth Day of *October* One thousand eight hundred and fifty-two, if unexecuted, shall remain in force for more than Six Calendar Months after the Twenty-fourth Day of *October* One thousand eight hundred and fifty-four, unless the same be renewed as herein-after mentioned, but all such Writs may be renewed from Time to Time in the same Manner as Writs issued after the Twenty-fourth Day of *October* One thousand eight hundred and fifty-two may now be renewed under the " Common Law Procedure Act, 1852," Section CXXIV.

**XCv Courts may appoint Sittings.**

The Superior Courts may appoint and hold Sittings either in Banc, or for the Trial of Issues in Fact by Judge or Jury, at any Time or Times, whether in Term or Vacation, not being between the Tenth of *August* and the Twenty-fourth of *October*.

**XCvi Amendments.**

It shall be lawful for the Superior Courts of Common Law, and every Judge thereof, and any Judge sitting at Nisi Prius, at all Times to amend all Defects and Errors in any Proceedings under the Provisions of this Act, whether there is anything in Writing to amend by or not, and whether the Defect or Error be that of the Party applying to amend or not; and all such Amendments may be made with or without Costs, and upon such Terms as to the Court or Judge may seem fit; and all such Amendments as may be necessary for the Purpose of determining in the existing Suit the real Question in controversy between the Parties shall be so made, if duly applied for.

**XCvii General Rules may be made by the Judges.**

It shall be lawful for the Judges of the said Courts, or any Eight or more of them, of whom the Chiefs of each of the said Courts shall be Three, 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 the Costs to be allowed for and in respect of the Matters herein contained, and the Performance thereof, as in their Judgment shall be necessary or proper, and for that Purpose to meet from Time to Time as Occasion may require: Provided that nothing herein contained shall be construed to restrain the Authority or limit the Jurisdiction of the said Courts or of the Judges thereof to make Rules or Orders, or otherwise to regulate and dispose of the Business therein.

**XCviii New Forms of Writs and other Proceedings.**

Such new or altered Writs and Forms of Proceedings may be issued, entered, and taken, as may be by the Judges of the said Courts, or any Eight or more of them, of whom the Chiefs of each of the said Courts shall be Three, be deemed necessary or expedient for giving Effect to the Provisions herein-before contained, and in such Forms as the Judges of such Courts respectively 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 said Courts 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 as far as the Effect thereof may be varied by this Act.

## **XCIX Interpretation of Terms.**

In the Construction of this Act the Word "Court" shall be understood to mean any One of the Superior Courts of Common Law at *Westminster*; and the Word "Judge" shall be understood to mean a Judge or Baron of any of the said Courts; and the Word "Master" shall be understood to mean a Master of any of the said Courts; and the Word "Action" shall be understood to mean any Personal Action in any of the said Courts.

## **C Provisions relating to Superior Courts to apply to Court of Common Pleas at Lancaster and Court of Pleas at Durham.**

All the Enactments and Provisions of this Act not relating exclusively to the Sittings for Trials of Causes or Issues in Fact at *London* or *Westminster* shall extend and apply to the Court of Common Pleas at *Lancaster* and the Court of Pleas at *Durham*, and Actions and Proceedings therein respectively, subject to the following Modifications: All the Powers given by this Act to the Judges of the said Superior Courts of Common Law at *Westminster* to make General Rules and Orders shall and may be exercised by the respective Judges of the Court of Common Pleas at *Lancaster* and Court of Pleas at *Durham*, being Judges of One of the said Common Law Courts at *Westminster*, or any Two of them respectively, with respect to the said Court of Common Pleas at *Lancaster* and Court of Pleas at *Durham* respectively, and Matters and Proceedings therein within the Jurisdiction of the same Courts respectively; and all Powers under this Act exercisable by any One Judge of the Superior Courts at *Westminster* shall and may be exercisable by One Judge of the said Superior Courts of the said Counties Palatine, being also a Judge of One of the said Courts at *Westminster*, as to Matters and Proceedings in the said Superior Courts of the said Counties Palatine.

## **CI Provisions as to Masters of Superior Courts to apply to Prothonotaries of Palatinate Courts.**

Provided always, That all the Provisions of this Act applicable to Masters of the said Courts at *Westminster* shall apply to the respective Prothonotaries of the Court of Common Pleas at *Lancaster* and Court of Pleas at *Durham* and their respective Deputies acting in the Execution of the Duties of such Offices, which acting Officers respectively may singly exercise with reference to Matters and Proceedings in the last-mentioned Courts respectively the Powers hereby given to the Masters of the Superior Courts at *Westminster*.

## **CII Court of Queen's Bench to be the Court of Appeal from Palatinate Courts.**

Provided also, as to Proceedings in Appeal, That the Court of Queen's Bench, being the Court of Error from the said Court of Common Pleas at *Lancaster* and Court of Pleas at *Durham* respectively, shall also be the Court of Appeal from the said respective Courts for the Purposes of this Act in reference to Motions for New Trials, or to enter Verdicts or Nonsuits previously made to the Judges of the said respective Courts of Common Pleas at *Lancaster* and Court of Pleas at *Durham* respectively.

## **CIII Enactments in ss.19 to 32 to apply to every Civil Court of Judicature in England and Ireland.**

The Enactments contained in Sections Nineteen, Twenty, Twenty-one, Twenty-two, Twenty-three, Twenty-four, Twenty-five, Twenty-six, Twenty-seven, and Twenty-

eight, Twenty-nine, Thirty, Thirty-one, and Thirty-two of this Act shall apply and extend to every Court of Civil Judicature in *England* and *Ireland*.

**CIV Commencement of Act.**

The Provisions of this Act shall come into operation on the Twenty-fourth Day of *October* in the Year of our Lord One thousand eight hundred and fifty-four.

**CV Her Majesty may direct all or Part of this Act to extend to any Court of Record.**

It shall be lawful for Her Majesty from Time to Time, by an Order in Council, to direct that all or any Part of the Provisions of this Act, or of the Rules to be made in pursuance thereof, shall apply to all or any Court or Courts of Record in *England* and *Wales*, and within One Month after such Order shall have been made and published in the *London Gazette* 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 Her Majesty may direct whom any Powers or Duties incident to the Provisions applied under this Act, or the Common Law Procedure Act, 1852, shall and may be exercised with respect to Matters in such Court or Courts, and may make any Orders or Regulations which may be deemed requisite for carrying into operation in such Court or Courts the Provisions so applied.

**CVI Short Title of Act.**

In citing this Act in any Instrument, Document, or Proceeding it shall be sufficient to use the Expression " The Common Law Procedure Act, 1854."

**CVII Act not to extend to Ireland or Scotland.**

Nothing in this Act shall extend to *Ireland* or *Scotland*, save as aforesaid.