

**LAW REFORM (MISCELLANEOUS PROVISIONS)
ACT.**

Act No. 32, 1965.

Elizabeth II, No. 32, 1965, An Act to make provision for and with respect to the mode of trial of certain classes of civil actions; to amend the common law doctrine of contributory negligence; to make further provision for and with respect to the payment or the provision of security for payment of moneys into court in civil actions; to confer on the Supreme Court a special jurisdiction exercisable as an extension of its equitable jurisdiction, to make general declarations of right; to enable the Supreme Court in its Commercial Causes jurisdiction to make declarations of right in addition to or in substitution for verdicts and judgments; to enable the Court of Appeal, in special circumstances, to substitute its assessment for the verdict of a jury; to extend the procedure relating to minor traffic offences; to make amendments of a procedural or administrative nature to various Acts; for these and other purposes to amend the Common Law Procedure Act, 1899–1962, the District Courts Act, 1912–1965, the Equity Act, 1901–1965, the Motor Traffic Act, 1909, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 20th December, 1965.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

Short title and citation. 1. (1) This Act may be cited as the "Law Reform (Miscellaneous Provisions) Act, 1965".

(2)

(2) The Acts, as amended by subsequent Acts and by No. 32, 1965 this Act, specified in the first and second columns of the Schedule to this Act may be cited as respectively specified in the third column of that Schedule.

2. (1) This Part of this Act shall commence on the day upon which the assent of Her Majesty to this Act is signified. Commence-
ment.

(2) Subject to subsection one of this section this Act shall commence upon such date or dates as may be appointed and notified pursuant to subsection three of this section.

(3) The Governor may, from time to time, appoint and notify by proclamation published in the Gazette the date upon which any Part or provision of this Act specified in the proclamation shall commence and may appoint different dates for different Parts or provisions (whether contained in the same Part or section or in different Parts or sections) and the Part or provision so specified shall commence accordingly.

3. This Act is divided into Parts as follows :—

**Division
into Parts.**

PART I.—PRELIMINARY—*ss.* 1-3.

PART II.—HEARING AND DETERMINATION OF CIVIL ACTIONS—*ss.* 4-6.

PART III.—AMENDMENT OF DOCTRINE OF CONTRIBUTORY NEGLIGENCE—*ss.* 7-10.

PART IV.—PAYMENT INTO COURT—*ss.* 11-14.

PART V.—DECLARATORY ORDERS—*ss.* 15, 16.

PART VI.—POWER TO ENTER SUBSTITUTED VERDICT—*s.* 17.

PART VII.—INTEREST ON VERDICT AND ON COSTS—*ss.* 18, 19.

PART VIII.—AMENDMENT OF DISTRICT COURTS ACT, 1912-1965—*s.* 20.

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PART IX.—AMENDMENT OF SMALL DEBTS RECOVERY ACT, 1912-1961—s. 21.

PART X.—APPEALS FROM JUSTICES—s. 22.

PART XI.—AMENDMENT OF VARIOUS ACTS—ss. 23-27.

PART II.

HEARING AND DETERMINATION OF CIVIL ACTIONS.

Application
of Part.

4. (1) This Part shall apply to any action in the Supreme Court instituted after the commencement of this Act in which issues of fact are to be tried or damages or sums of money recoverable are to be assessed where—

(a) the action is for damages—

- (i) in respect of the death of or bodily injury to any person caused by or arising out of the use of a motor vehicle; or
- (ii) in respect of damage to property caused by or arising out of the use of a motor vehicle; or
- (iii) in respect of any other matter in which the liability incurred was caused by or arose out of the use of a motor vehicle;

(b) contribution is claimed under Part III of the Law Reform (Miscellaneous Provisions) Act, 1946, in respect of damages of the nature referred to in paragraph (a) of this subsection.

(2) This Part shall be read and construed with the Motor Vehicles (Third Party Insurance) Act, 1942-1963.

Amendment
of procedure
as to trials
by jury.

5. (1) In any action to which this Part applies any or either party may at any time not later than twenty-one days after the action has been set down for trial, or within such further

further period as the Court may allow, require that the action No. 32, 1965 be tried with a jury and thereupon the action shall be so tried; but save as aforesaid any action to which this Part applies shall, notwithstanding section 29 of the Jury Act, 1912-1965, be tried by a judge without a jury.

(2) A party so requiring a jury shall within the time limited by subsection one of this section file and serve a notice to that effect upon the other party or parties.

(3) Where any action in the Supreme Court is, by force of this section, to be tried by a judge without a jury the following provisions shall have effect :—

- (a) The verdict or finding of the judge shall be of the like force and effect as the verdict or finding of a jury.
- (b) Nothing in this subsection shall authorise judgment to be signed on the verdict or finding, but judgment may be directed to be entered as provided in this section, and the entry shall have the like force and effect in all respects as the signing of judgment.
- (c) The judge may, either at or after the trial, direct that judgment be entered for any or either party.
- (d) The judge may adjourn the case for further consideration or may leave any party to move the Court of Appeal for judgment, or may refer the case to the Court of Appeal for its determination.

The Court of Appeal shall have jurisdiction to direct judgment to be entered for any or either party.

- (e) Any party may appeal to the Court of Appeal against any judgment so directed by the judge to be entered.
- (f) The appeal shall be by way of rehearing and on the appeal the Court of Appeal shall—
 - (i) have all the powers and duties of the judge as to amendment or otherwise, including the power to make findings of fact and to assess damages or compensation;
 - (ii)

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- (ii) have full discretionary power to receive further evidence upon questions of fact, such evidence to be taken either by oral evidence in court, by affidavit, or by deposition taken before a commissioner or examiner, and to be admitted on special grounds only and not without special leave of the Court of Appeal.
- (g) The Court of Appeal may direct the appeal to stand over for further consideration, and direct such issues or questions to be tried or determined or the amount of any damages or compensation to be assessed by a judge either with or without a jury as it may think fit.
- (h) The Court of Appeal may on the appeal give any judgment and make any order which ought to have been given or made in the first instance, and may make such further or other order as the case requires, and in particular may make—
 - (a) any order which it might make under section seven of the Supreme Court Procedure Act, 1900-1965;
 - (b) such order as to the whole or any part of the costs of the appeal or of the cause or matter as may be just.
- (i) The powers conferred by this section may be exercised by the Court of Appeal notwithstanding that the notice of appeal is that part only of the judgment may be reversed or varied, and such powers may be exercised in favour of all or any of the respondents or parties, although such respondents or parties have not appealed from or complained of the judgment.
- (j) Where the judge leaves any party to move the Court of Appeal for judgment, or refers the case to the Court of Appeal for its determination, the powers conferred on the Court of Appeal by paragraphs (f) and (g) of this subsection shall extend to the motion or reference.
- (k)

- (k) Every application for a new trial or to set aside a **No. 32, 1965** verdict finding or judgment, or to have a nonsuit or verdict entered, in any case where any action issue or question has been tried before a judge without a jury, shall be made by appeal to the Court of Appeal and not otherwise.

6. (1) Where, in any action to which this Part applies, a third party notice has been served under the Law Reform (Miscellaneous Provisions) Act, 1946, the provisions of section five of this Act shall extend to the hearing and determination of issues in the third party proceedings. Third party proceedings and contribution.

(2) Where, in any action to which this Part applies, proceedings are instituted for contribution under the Law Reform (Miscellaneous Provisions) Act, 1946, the provisions of section five of this Act shall extend to the hearing and determination of issues in those proceedings.

PART III.

AMENDMENT OF DOCTRINE OF CONTRIBUTORY NEGLIGENCE.

7. Nothing in this Part shall apply to any action for Saving. damages founded upon a breach of statutory duty imposed on a defendant. Nothing in this Part shall affect the provisions and operation of the Statutory Duties (Contributory Negligence) Act, 1945.

8. This Part shall not apply to any case in which the acts Application of Part. or omissions giving rise to the claim occurred before the commencement of this Part.

9.

No. 32, 1965 **9.** In this Part, unless the context or subject matter otherwise indicates or requires—
 Definitions.

“Court” means in relation to any claim the court by or before whom the claim falls to be determined.

“Damage” includes loss of life and personal injury.

“Fault” means negligence, or other act or omission which gives rise to a liability in tort or would, apart from this Part, give rise to the defence of contributory negligence but does not mean or include a breach of statutory duty.

Apportionment of liability in case of contributory negligence.
 8 & 9
 Geo. VI
 c. 28. s. 1.

10. (1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage :

Provided that—

- (a) this subsection shall not operate to defeat any defence arising under a contract;
- (b) where any contract or enactment providing for the limitation of liability is applicable to the claim, the amount of damages recoverable by the claimant by virtue of this subsection shall not exceed the maximum limit so applicable;
- (c) where any payments made to the claimant by way of compensation take effect pursuant to section 63 (5) of the Workers' Compensation Act, 1926-1965, as a satisfaction of the judgment obtained by him against his employer, such payments shall be reduced to the same extent as the damages recoverable by him and shall be a satisfaction of the judgment to such reduced extent only;

(d)

- (d) where the claimant is liable to repay compensation **No. 32, 1965** to his employer pursuant to section 64 (a) of the Workers' Compensation Act, 1926-1965, the amount of compensation so repayable shall be reduced to the same extent as the damages recoverable by him ;
- (e) where the cost of any medical or hospital treatment or ambulance service for which the claimant's employer incurs liability under section 10 of the Workers' Compensation Act, 1926-1965, remains unpaid at the time the claimant recovers damages the claimant's liability in respect of such cost shall as between himself and his employer be reduced to the same extent as his damages and his employer shall notwithstanding the recovery of damages and the provisions of section 64 (a) of the Workers' Compensation Act, 1926-1965, remain liable to pay to him the balance of such cost under section 10 of the said Act.

(2) Where damages are recoverable by any person by virtue of the foregoing subsection subject to such reduction as is therein mentioned, the court shall find and record the total damages which would have been recoverable if the claimant had not been at fault.

(3) Section five of the Law Reform (Miscellaneous Provisions) Act, 1946, shall apply in any case where two or more persons are liable or would, if they had all been sued, be liable by virtue of subsection one of this section in respect of the damage suffered by any person.

(4) No action for damages for the benefit of dependants of a deceased person under the Compensation to Relatives Act, 1897-1953, shall be defeated by the fault or breach of statutory duty of the deceased person nor shall the damages recoverable in such action be reduced by reason of such fault or of such breach of statutory duty.

(5) Where, in any case to which subsection one of this section applies, one of the persons at fault avoids liability to any other such person or his personal representative by pleading

Law Reform (Miscellaneous Provisions) Act.

No. 32, 1965 pleading the Statute of Limitations, or any other enactment limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages or contributions from that other person or representative by virtue of the said subsection.

(6) Where any case to which subsection one of this section applies is tried—

- (a) by a judge sitting without a jury the judge shall make the apportionment under subsection one of this section; or
- (b) by a judge sitting with a jury, the jury shall determine the total damages which would have been recoverable if the claimant had not been at fault and the extent to which those damages are to be reduced.

PART IV.

PAYMENT INTO COURT.

11. The Motor Vehicles (Third Party Insurance) Act, 1942-1963, is amended by omitting section 38A.

Amendment
of Act No.
15, 1942.
Sec. 38A.
(Payment
into court
excluded in
certain
cases.)

12. The Common Law Procedure Act, 1899-1962, is amended—

Amendment
of Act No.
21, 1899.
Sec. 80.
(Payment
into
Court.)

- (a) by inserting in subsection one of section eighty after the words “pay into Court” the words “or deposit in the Court a bond or undertaking in the prescribed form securing payment of”;

Sec. 82.
(No order
to pay
money into
Court.)

- (b) (i) by inserting in subsection one of section eighty-two after the words “order to pay” the words “or to deposit a bond or undertaking securing payment of”;

(ii)

- (ii) by inserting in the same subsection after the words "paid to" the words "or the bond or undertaking deposited with"; No. 32, 1965
- (c) by inserting next after section eighty-two the following new section :— New sec. 82A.
- 82A. (1) Money may be paid into Court or a bond or undertaking securing the payment of money into Court may be deposited, with an appropriate plea at any time before the joinder of issue. Payment into Court at any time before joinder of issue.
- (2) This section applies whether the money is paid in or secured under the provisions of this Act or pursuant to rules of Court, and applies whether or not the payment or deposit is made with or without denial of liability.
- (d) (i) by inserting in section eighty-three after the word "payment" the words "or of deposit of a bond or undertaking securing payment"; Sec. 83. (Proceedings by plaintiff after payment into Court.)
- (ii) by inserting in paragraph (a) of the same section after the words "so paid into Court" the words "or so secured";
- (iii) by inserting in the same paragraph after the words "paid in" the words "or secured";
- (iv) by inserting in paragraph (b) of the same section after the words "sum paid into Court" the words "or secured";
- (e) by inserting next after section eighty-three the following new section :— New sec. 83A.

83A. (1) The bond or undertaking referred to in sections eighty, eighty-two, 82A and eighty-three of this Act shall be a bond or undertaking given by an insurance company which is a licensed insurer under the Workers' Compensation Act, 1926-1965, or an authorised insurer under the Motor Vehicles (Third Party Insurance) Act, 1942-1963. Bond.

Law Reform (Miscellaneous Provisions) Act.

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cf. Rules of
Sup. Court.
(Vict.)
Ord. 22
R. 1 (5).

(2) (a) Where the plaintiff accepts the sum secured by any such bond or undertaking the person giving the bond or undertaking shall, within seven days after notice of acceptance pay the sum secured to the proper officer of the Court.

(b) If he fails to do so he shall not be entitled to any advantage by reason of his deposit in the court of the undertaking, and the plaintiff may either withdraw his acceptance or apply to the court for an order directing payment to him of the amount stated in the bond.

In any case where the deposit was made by one or more defendants in proceedings under Part III of the Law Reform (Miscellaneous Provisions) Act, 1946, the Court may make such order subject to such conditions as it may think just.

(c) Any order for the payment of money made under the authority of paragraph (b) of this subsection shall have the effect of a judgment at law and the plaintiff may have execution thereon for the money payable, and shall be entitled to all the remedies given to judgment creditors by the Judgment Creditors' Remedies Act, 1901-1957.

Amendment
of Act No.
23, 1912.
Sec. 72.
(Payment
into court of
money by
defendant.)

13. The District Courts Act, 1912-1965, is amended—

- (a) (i) by omitting from subsection one of section seventy-two the words "within the prescribed time" and by inserting in lieu thereof the words "at least five clear days before the return day";
- (ii) by inserting in subsection one of the same section after the word "court" the words "or deposit with the court a bond or undertaking in the prescribed form securing payment of";
- (iii) by inserting in subsection two of the same section after the word "payment" the words "or deposit";

(iv)

- (iv) by inserting in subsection three of the same section after the word "payment" the words "or deposit";
 - (v) by inserting in subsection four of the same section after the words "paid in" the words "or secured";
 - (vi) by inserting in subsection five of the same section after the words "paid into court" the words "or secured";
 - (vii) by inserting in the same subsection after the words "payment into court" the words "or, as the case may be, the deposit of such bond or undertaking";
- (b) by inserting next after section seventy-two the following new section :—

72A. (1) The bond or undertaking referred to in section seventy-two of this Act shall be a bond given by an insurance company which is a licensed insurer under the Workers' Compensation Act, 1926-1965, or an authorised insurer under the Motor Vehicles (Third Party Insurance) Act, 1942-1963.

(2) (a) Where the plaintiff elects to accept the sum secured by any such bond or undertaking the person giving the bond or undertaking shall, within seven days after notice of acceptance pay the sum secured to the proper officer of the court.

(b) If he fails to do so he shall not be entitled to any advantage by reason of his deposit in the court of the undertaking, and the plaintiff may either withdraw his acceptance or apply to the court for an order directing payment to him of the amount stated in the bond.

In any case where the deposit was made by one or more defendants in proceedings under Part III of the Law Reform (Miscellaneous Provisions) Act, 1946, the court may make such order subject to such conditions as it may think just.

(c)

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(c) Any order for the payment of money made under the authority of paragraph (b) of this subsection shall have the effect of a judgment at law and the plaintiff may have execution thereon for the money payable, and shall be entitled to all the remedies given to judgment creditors by the Judgment Creditors' Remedies Act, 1901-1957.

Existing rules of court extended.

14. The rules of court of the Supreme Court or of a District Court in force at the commencement of this Part with respect to the payment of moneys into court whether with or without denial of liability, shall extend, mutatis mutandis, to the deposit of a bond or undertaking securing payment into court of moneys, but may be amended or replaced by rules made after the commencement of this Part.

PART V.

DECLARATORY ORDERS.

Amendment of Act No. 24, 1901.

Sec. 3.
(Interpretation.)

Sec. 4.
(Appointment and powers of the Chief Judge in Equity.)

Sec. 8.
(Power to decide legal titles, &c.)

Subst. sec. 10.

Declarations of right.

15. The Equity Act, 1901-1965, is amended—

- (a) by inserting at the end of the last definition in section three the words "and also includes the jurisdiction conferred by section ten of this Act";
- (b) by inserting in subsection one of section four after the word "including" the words "the jurisdiction conferred by section ten of this Act and including also";
- (c) by inserting in section eight after the word "relief" the words "or for purposes relevant to the exercise of the jurisdiction conferred by section ten of this Act";
- (d) by omitting section ten and by inserting in lieu thereof the following new section :—

10. (1) In addition to the jurisdiction which is otherwise vested in it, the Court shall have jurisdiction to make binding declarations of right whether

whether or not any consequential relief is or could be claimed, and whether or not the suit in which the declaration is sought is a suit for equitable relief or a suit which relates to equitable rights or titles.

No suit shall be open to objection on the ground that a merely declaratory decree is sought thereby.

(2) Without limiting the generality of the jurisdiction conferred by subsection one of this section, the Court may by decree or order declare—

- (a) the nature, quality and extent of the estates, interests, powers, rights, liabilities or duties of any persons in respect of any real or personal property or arising under any disposition of any real or personal property including any sale, conveyance, transfer, assignment, mortgage, charge, encumbrance, debenture, pledge, lease, bailment, or hiring or arising under any agreement or option for or relating to any such disposition as aforesaid;
- (b) the interests, powers, rights and liabilities or duties of any persons arising under—
 - (i) any partnership or partnership agreement;
 - (ii) the memorandum or articles of association or other constitution of any company or other corporation;
 - (iii) the rules, by-laws or other constitution of any unincorporated association;
 - (iv) any agreement relating to any patent, trade mark, trade name, copyright or industrial design;
 - (v) any agreement for or relating to any guarantee or indemnity;
 - (vi) generally any contract or agreement whether of the same or a different class;
 - (vii)

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- (vii) any Act or any ordinance, rule, regulation or other instrument having effect under any Act or by reason of any executive, ministerial or administrative act done or purporting to be done in pursuance of any Act or of any such ordinance, rule, regulation or other instrument.

(3) A suit for a declaration of right may be commenced either by statement of claim or in a summary manner by originating summons under the Fourth Schedule to this Act.

Sec. 30.
(Service out
of the juris-
diction.)

- (e) (i) by inserting in paragraph (c) of section thirty after the word "served" the words "or the declaration of right sought";
- (ii) by inserting in the same section next after paragraph (e) the following new paragraphs :—
- (e1) the suit or proceeding is for a declaration of right affecting any person domiciled or any property situated within the jurisdiction; or
- (e2) the suit or proceeding is for a declaration as to the interests, powers, rights and liabilities or duties of any persons or class of persons of whom the person to be served is one, arising under any Act or any ordinance, rule, regulation or other instrument having effect under any Act or by reason of any executive, ministerial or administrative act done or purporting to be done in pursuance of any Act or of any such ordinance, rule, regulation or other instrument; or.

16. The Commercial Causes Act, 1903-1965, is amended by inserting next after section seven the following new sections :—

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Amendment
of Act No.
19, 1903.
New secs. 7A
and 7B.

7A. The Judge by or before whom any commercial cause is tried may in addition to or in substitution for any verdict or judgment for debt or damages or for the return of goods make such binding declaration of right with respect to the subject matter of the cause as to him may seem appropriate.

Power to
make
declaratory
order.

7B. (1) Where a commercial dispute has arisen concerning the construction of a document or its application to any facts, any party to the dispute may apply to a Judge in chambers for the determination of the questions involved in such dispute notwithstanding that no commercial cause has been commenced.

Commercial
disputes.

(2) A commercial dispute is a dispute which would be a commercial cause if made the subject of an action at common law.

(3) An application under this section may be made in a summary manner by summons returnable on two days' notice supported by an affidavit annexing the document and deposing to any relevant facts.

(4) Where it is necessary in the determination of a commercial dispute to decide any question of fact the Judge shall settle the issues for trial and give any consequential directions necessary for the determination of such issues in a convenient and expeditious manner.

(5) A determination of any issue of fact or of any question of law pursuant to this section shall be binding on all parties to the summons in the same manner as if the issue or question had been determined in a commercial cause.

POWER TO ENTER SUBSTITUTED VERDICT.

Amendment
of Act No.
21, 1899.
New sec.
160A.

17. The Common Law Procedure Act, 1899-1962, is further amended by inserting next after section one hundred and sixty the following new section :—

Substituted
verdict.

160A. (1) This section applies to an application to the Court of Appeal for a new trial or to set aside a verdict finding or judgment after trial with a jury.

(2) For the purposes of this section the Court of Appeal shall have full power and jurisdiction to make findings of fact and to assess damages or compensation.

(3) The powers conferred by this section shall be exercisable only where on such application the Court of Appeal would, but for this section, have set aside the verdict finding or judgment and ordered a new trial on the issue of damages.

(4) The Court of Appeal shall not exercise the powers conferred by this section unless the parties consent and it is satisfied that it is fully able to assess the damages on a perusal of the evidence contained in the documents before it, or on admitted facts, without seeing or hearing the plaintiff or defendant or other witnesses.

(5) The powers conferred by this section may also be exercised in appeals from any District Court whether the court giving the decision appealed from was constituted by a judge and jury or a judge sitting alone.

PART VII.

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INTEREST ON VERDICT AND ON COSTS.

18. The Common Law Procedure Act, 1899-1962, is further amended by inserting next after section one hundred and forty-three the following new section :—

Amendment
of Act No.
21, 1899.

New sec.
143A.

143A. Notwithstanding anything in sections one hundred and forty-two and one hundred and forty-three—

Interest on
verdict and
costs.

- (a) interest shall not be payable on the amount of the verdict if such amount is paid to or at the direction of the plaintiff within twenty-one days after the date of verdict ;
- (b) interest shall not be payable on costs payable to the plaintiff if the amount of such costs is paid within twenty-one days after assessment or after taxation.

19. The District Courts Act, 1912-1965, is amended by inserting next after section 101A the following new section :—

Amendment
of Act No.
23, 1912.

New sec.
101B.

101B. Notwithstanding anything in section 101A of this Act—

Interest on
verdict and
costs.

- (a) interest shall not be payable on any judgment debt if the amount of such judgment debt is paid to or at the direction of the plaintiff within twenty-one days after the judgment or verdict was given or, as the case may be, the judgment was entered ;
- (b) interest shall not be payable on costs payable to the plaintiff if the amount of such costs is paid within twenty-one days after assessment or after taxation.

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PART VIII.

AMENDMENT OF DISTRICT COURTS ACT, 1912-1965.

Amendment of Act No. 23, 1912. **20.** The District Courts Act, 1912-1965, is further amended—

- Sec. 82.
(Discovery of documents.) (a) by omitting from subsection one of section eighty-two the words “upon an affidavit by such party, or his attorney, 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”;
- Sec. 86.
(Case struck out.) (b) by omitting from subsection two of section eighty-six the words “The judge at any time during the sitting of the court at which an action has been so struck out may” and by inserting in lieu thereof the words “Where an action has been so struck out the judge may, upon application made in that behalf”;
- Sec. 92.
(Number of jurors.) (c) by inserting at the end of section ninety-two the following new subsection :—
(2) To remove doubts it is hereby declared that section 30A of the Jury Act, 1912-1965, applies to and in respect of any cause or issue for trial by jury in any District Court.
- New sec. 95A. (d) by inserting next after section ninety-five the following new section :—
95A. Where at a trial of any cause or issue in a District Court a verdict is returned for or the total amount which would have been recoverable if the claimant had not been at fault is found at an amount in excess of three thousand pounds but not exceeding five thousand pounds the Court shall find and record the amount of such verdict or, as the case may be, such total amount and the plaintiff shall be entitled to recover the full amount of such verdict, or as the case may be, of such
total
- Amount of verdict exceeding three thousand pounds.

total amount reduced in accordance with section No. 32, 1965
ten of the Law Reform (Miscellaneous Provisions)
Act, 1965, notwithstanding that the amount claimed
does not exceed three thousand pounds.

- (e) by omitting from subsection three of section one hundred and twenty-seven the words "supported by an affidavit showing" and by inserting in lieu thereof the words "shown by affidavit or otherwise".

PART IX.

AMENDMENT OF SMALL DEBTS RECOVERY ACT, 1912-1961.

21. The Small Debts Recovery Act, 1912-1961, is amended—

- (a) by inserting next after section thirty-five the following new section :—

35A. (1) In any action in which a default summons has been issued the defendant may sign a statement confessing the amount of the debt or demand for which the plaint has been issued, conditionally upon the granting of an application accompanying such statement of confession that if and when judgment is entered consequent upon such statement of confession a direction be given that the amount of the judgment be paid at such times and by such instalments as are offered in such application.

(2) Any such statement and application shall be signed in the presence of the registrar of the court in which the plaint was issued or of an attorney or a justice of the peace.

(3) (a) Every such application shall be supported by an affidavit in the prescribed form.

(b) Proof shall be furnished by affidavit of the signature of the person signing such statement of confession.

(4)

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(4) The registrar shall receive such statement of confession and application, and shall, as soon as convenient thereafter send notice of the same to the plaintiff.

(5) (a) If within five days of notice of the statement of confession and of the application having been sent to him by the registrar the plaintiff does not inform the registrar that he opposes the application the registrar shall enter judgment for the amount of the debt or demand for which the plaint was issued and shall give a direction for payment at such times and by such instalments as were offered in the application.

(b) If within five days of such notice having been given the plaintiff informs the registrar that he opposes the application the registrar shall inform the defendant accordingly, and in such event the statement of confession shall not be available in evidence and the time for filing notice of grounds of defence shall commence to run as from the time the defendant is so informed.

(6) Where action is taken under this section the provisions of sections thirty-four and thirty-five of this Act shall not apply.

(7) The giving of a direction under this section shall not affect the right of the judgment debtor to make an application under section forty-two of this Act, and, in the event of any such application being made, that section shall have effect in all respects as if no action had been taken under this section.

Sec. 43.
(Execution
of process.)

(b) by inserting in subsection one of section forty-three after the words "entered up" the words " or of his solicitor or agent shown on the record".

PART

PART X.

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APPEALS FROM JUSTICES.

22. The Justices Act, 1902-1958, is amended—

Amendment of Act No. 27, 1902.

- (a) (i) by inserting in subsection one of section one hundred and four after the words "apply to" the words "a Judge of"; Sec. 104. (When case refused Supreme Court may direct case to be stated.)
- (ii) by omitting from subsection two of the same section the word "Court" and by inserting in lieu thereof the word "Judge";

- (b) by omitting subsection three of section one hundred and six. Sec. 106. (Powers of Court in dealing with cases so stated.)

- (c) by omitting subsection one of section one hundred and seven and by inserting in lieu thereof the following subsection :— Sec. 107. (Powers of Court may be exercised by Judge in Chambers.)
 - (1) The authority and jurisdiction vested in the Supreme Court by section one hundred and six of this Act may be exercised by a Judge of the said Court sitting in Chambers.

- (d) by inserting next after section one hundred and seven the following new section :— New sec. 107A.

107A. (1) Any person aggrieved by any decision or determination of a Judge made pursuant to sections one hundred and six and one hundred and seven of this Act may appeal therefrom to the Court of Appeal by leave of the Court of Appeal.

(2) Any such appeal shall be in accordance with rules of court of the Court of Appeal made under section 21K of the Supreme Court and Circuit Courts Act, 1900-1965.

(e)

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Sec. 108.

(After decision of Court Justices to enforce conviction or order.)

- (e) by inserting in section one hundred and eight after the words "Supreme Court" the words "or by the Court of Appeal on appeal thereto";

Sec. 109.

(Certiorari not requisite when case stated.)

- (f) by omitting from section one hundred and nine the words "said Court" and by inserting in lieu thereof the words "Supreme Court or of the Court of Appeal on appeal thereto";

Sec. 112.

(Any person aggrieved by conviction or order may apply for prohibition.)

- (g) by omitting subsections four and five of section one hundred and twelve and by inserting in lieu thereof the following subsection :—

(4) Any application under this section may be heard and determined by a Judge of the Supreme Court in Chambers.

Subst. sec. 114.

Before whom rule to be returnable.

- (h) by omitting section one hundred and fourteen and by inserting in lieu thereof the following section :—

114. Any rule or order granted or made under section one hundred and twelve of this Act shall be made returnable before a Judge of the Supreme Court in Chambers.

Sec. 115.

(Powers of Court or Judge.)

- (i) by omitting from section one hundred and fifteen the words "Court or" wherever occurring;

Sec. 116.

(Certain rules and writs made by Judge may be reviewed by Court.)

- (j) (i) by omitting subsection one of section one hundred and sixteen and by inserting in lieu thereof the following subsection :—

(1) (a) Any person aggrieved by any decision or determination of a Judge made pursuant to sections one hundred and fourteen and one hundred and fifteen of this Act may appeal therefrom to the Court of Appeal by leave of the Court of Appeal.

(b)

(b) Any such appeal shall be in accordance with rules of court of the Court of Appeal made under section 21K of the Supreme Court and Circuit Courts Act, 1900-1965.

- (ii) by omitting from subsection two of the same section the word "Court" and by inserting in lieu thereof the words "Court of Appeal";
- (k) by omitting from section one hundred and seven- Sec. 117. teen the words "Court or Judge" and by inserting (Costs.) in lieu thereof the words "Judge or of the Court of Appeal in respect of any matter coming before it on appeal or reference".

PART XI.

AMENDMENT OF VARIOUS ACTS.

23. The Supreme Court and Circuit Courts Act, 1900-1965, is amended by omitting section twenty and by inserting in lieu thereof the following section :—

Amendment
of Act No.
35, 1900.
Subst. sec.
20.

20. (1) Applications for a rule or order nisi for prohibition, mandamus or certiorari or for an order for the issue of a writ of habeas corpus may be heard and disposed of by a Judge, whether during term or in vacation.

Exercise of
powers by
single Judge
or Judge
of Appeal
in certain
cases.

(2) Applications to the Court of Appeal to make absolute a rule or order nisi for prohibition, mandamus or certiorari or to make absolute an order for the issue of a writ of habeas corpus may, in vacation, be heard and disposed of by a Judge of Appeal.

(3) Any person aggrieved by any decision of a Judge under subsection one of this section or of a Judge of Appeal under subsection two of this section may appeal therefrom to the Court of Appeal. Any such appeal shall be in accordance with rules of court of the Court of Appeal made under section 21K of this Act.

24.

Law Reform (Miscellaneous Provisions) Act.

No. 32, 1965 **24.** The Common Law Procedure Act, 1899-1962, is further amended by adding at the end of section two hundred and sixty-five the following proviso :—
 Amendment of Act No. 21, 1899.
 Sec. 265.

Provided that where a plaintiff obtains a verdict against one or more defendants in an action but fails to obtain a verdict against another defendant or other defendants in the said action then such plaintiff may be awarded against the unsuccessful defendant or defendants the costs of the successful defendant or defendants which are awarded against the plaintiff.

Amendment of Act No. 49, 1900. **25.** The Supreme Court Procedure Act, 1900-1965, is further amended by omitting subsection five of section five.
 Sec. 5.
 (Finding of judge to be finding of jury.)

Amendment of Act No. 31, 1912. **26.** The Jury Act, 1912-1965, is further amended by omitting from section thirty the words "either the plaintiff or the defendant in any" and by inserting in lieu thereof the words "any party to an".
 Sec. 30.
 (Juries of twelve.)

Amendment of Act No. 5, 1909. **27.** The Motor Traffic Act, 1909, as amended by subsequent Acts, is amended by inserting next after section 18B the following new section :—

Ex parte procedure for offences referred to in section 18B.

18c. (1) Where—

- (a) the matter of an information for an offence referred to in subsection one of section 18B of this Act has been substantiated by the oath of the informant;
- (b) a summons for the appearance of the defendant has been served on him in the manner provided by the Justices Act, 1902, as amended by subsequent Acts; and

(c)

- (c) the defendant does not appear at the time and place fixed for the hearing of the information, No. 32, 1965

the court before which the information comes for hearing may if it is satisfied that—

- (d) the facts as alleged in the summons constitute such an offence and reasonably sufficient particulars thereof are set out in the summons,

make an order imposing on the defendant a penalty to be paid within such time as may be specified in the order, and may, if it thinks fit, make an order under section eighty-one of the Justices Act, 1902, as amended by subsequent Acts, for the payment by the defendant of costs.

(2) The provisions of section 556A of the Crimes Act, 1900, as amended by subsequent Acts, apply to any proceedings under subsection one of this section as if the defendant had been charged before the court with the offence referred to in the information.

(3) A penalty imposed by an order under subsection one of this section shall not exceed the amount of the penalty specified in the Act or regulation creating the offence in respect of which the penalty is so imposed.

(4) In determining the amount of the penalty to be imposed by an order under subsection one of this section, the court may take into account any report made to it by or on behalf of the informant with respect to the penalties or previous convictions under this Act of the defendant and to the circumstances of the offence and any information that the defendant causes to be brought to the notice of the court.

(5) An order under subsection one of this section shall, for the purposes of section eighty-two and Part V of the Justices Act, 1902, as amended by subsequent Acts, be deemed to be an order under that Act, as so amended.

(6)

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(6) Section seventy-five of the Justices Act, 1902, as amended by subsequent Acts, does not apply in any case where an information is dealt with under subsection one of this section.

(7) A reference in subsection one of this section to the time and place fixed for the hearing of an information shall, where the hearing of the information has been adjourned and notice of the time and place to which the hearing has been adjourned has been given to the defendant or sent to him at his last known place of abode or business, include a reference to the time and place specified in that notice.

(8) Section fifteen of the Justices Act, 1902, as amended by subsequent Acts, shall be construed as if this section formed part of that Act, as so amended.

(9) The jurisdiction of a court under this section shall not be exercised except by a stipendiary magistrate.

(10) The provisions of this section are supplemental to and not in derogation of the provisions of any Act in relation to proceedings that may be taken in respect of offences referred to in subsection one of section 18B of this Act.

SCHEDULE.

SCHEDULE.

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Sec. 1.

Reference to Act.	Short title.	Citation.
No. 21, 1899. No. 35, 1900.	Common Law Procedure Act, 1899. Supreme Court and Circuit Courts Act, 1900	Common Law Procedure Act, 1899-1965. Supreme Court and Circuit Courts Act, 1900-1965.
No. 49, 1900. No. 24, 1901.	Supreme Court Procedure Act, 1900. Equity Act, 1901 ..	Supreme Court Procedure Act, 1900-1965. Equity Act, 1901-1965.
No. 27, 1902. No. 19, 1903.	Justices Act, 1902 .. Commercial Causes Act, 1903.	Justices Act, 1902-1965. Commercial Causes Act, 1903-1965.
No. 5, 1909	Motor Traffic Act, 1909..	Motor Traffic Act, 1909-1965.
No. 23, 1912. No. 31, 1912.	District Courts Act, 1912 Jury Act, 1912	District Courts Act, 1912-1965. Jury Act, 1912-1965.
No. 33, 1912. No. 15, 1926.	Small Debts Recovery Act, 1912. Workers' Compensation Act, 1926.	Small Debts Recovery Act, 1912-1965. Workers' Compensation Act, 1926-1965.
No. 15, 1942.	Motor Vehicles (Third Party Insurance) Act, 1942.	Motor Vehicles (Third Party Insurance) Act, 1942-1965.

