

## BY TRIAL.

240. All actions shall be tried at the place mentioned in the writ of summons, unless it be made to appear by either party that the action cannot be conveniently or fairly tried at the place mentioned in the writ of summons, and the Court or a Judge may at any time order the action to be tried at some other place.

241. The proper officer at the place where the action is to be tried shall set down the action for trial at the sittings mentioned in the writ.

242. Actions set down for trial at the same sittings shall be tried in the order in which the writs of summons in such actions have been issued, without preference or delay; but actions to be tried in different modes may be arranged in separate lists, and each list disposed of before another list is taken.

243. The Court or a Judge thereof may before the trial, or the Judge presiding at the trial may during the trial, if it shall appear expedient in the interests of justice so to do, postpone or adjourn the trial for such time, to such place, and upon such terms (if any) as the Court or such Judge may think fit.

244. Actions shall be tried either before a Judge or Judges of the Court, or before a Judge or Judges of the Court and a jury.

245. An action shall be tried by a Judge without a jury when the relief claimed in the action is—

(1.) Payment of a debt or pecuniary damages not exceeding the sum of £500;

(2.) Delivery of land or of chattels not exceeding £500 in value;

unless a jury is applied for by either party under the next rule, or the Court or a Judge shall otherwise order.

246. If the debt or damages, or the value of the land or of the chattels, claimed in any action exceed £50 but do not exceed £500, either party may have the action tried before a Judge of the Court and a jury of four persons, on delivering to the proper officer of the Court, at least days before the commencement of the sittings at which the action is to be tried, a memorandum in the Form No. in the Schedule hereto. A copy of such memorandum shall be served on the other party at least days before such sittings.

247. If the debt or damages, or the value of the land or of the chattels, claimed in the action exceed the sum of £500, the action shall be tried before a Judge of the Court and a jury of twelve persons, unless both parties shall consent in writing to trial by a jury of four or without a jury.

248. All other actions shall be tried by a Judge of the Court, but if it be made to appear to the Court either before or at the trial, that the action, or any issue therein, can be more conveniently tried before a Judge and jury, the Court may direct that the action or such issue be so tried.

249. If in any action tried before a Judge and jury the existence of a record of the Court is in dispute, the existence of such record shall be determined by the Judge presiding at the trial, and not by the jury.

250. If during any trial before a Judge and jury a jurymen be taken ill, or become incapable of performing his duty, or prove to be beneficially interested in the result of the action, the Judge may discharge the jury, and direct another to be called.

251. The cause being called on, if neither party appear, the Judge shall order it to be struck out, but may order it to be reinstated on good cause shown by either party, and subject to such terms as the Judge may think just.

252. If the plaintiff appear and the defendant do not appear, the plaintiff shall prove his cause of action so far as the burden of proof lies on him.

253. If the defendant appear, but the plaintiff do not appear, the defendant, if he do not admit the claim, shall be entitled to judgment dismissing the action. If the defendant have a counter claim, he may prove such counter claim, so far as the burden of proof lies on him.

254. Any verdict or judgment obtained when one party does not appear at the trial may be set aside or varied by the Court or a Judge upon such terms as may seem fit, upon application within five days after the trial.

255. If both the plaintiff and the defendant appear the plaintiff shall state his case, and adduce his evidence in support thereof. When the plaintiff has closed his case the defendant shall state his case, and adduce his evidence in support thereof.

256. The Judge presiding at the trial may, however, order that the defendant shall state his case and adduce his evidence first, if the burden of proof appear to lie on him.

257. When the action is tried by a jury, after the evidence has been taken, the party who has not the right to begin may address the jury generally on the case, and after him the other party may address the jury in reply; but if the party who has not the right to begin do not adduce evidence in support of his case the opposite party shall address the jury on the case, and after him the party not having the right to begin shall address the jury in reply.

258. The Judge presiding at the trial shall then direct the jury on the evidence given in the case, and on any points of law connected therewith, and may leave the case to the jury generally to find for either party, or may ask the jury to answer such issues as he may think fit, or as the parties may agree upon, and take the verdict of the jury on such issues only.

259. The Court or a Judge thereof shall have power, either before, at, or after the trial of any action, to amend all defects and errors in the proceedings in the action, whether there be anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not.

260. All such amendments shall be made with or without costs, and upon such terms as to the Judge presiding at the trial may seem fit, and all amendments shall be made that may be necessary for the purpose of determining the real controversy between the parties in the action.

## BY NONSUIT.

261. The plaintiff in any action may, at any time before a verdict or judgment has been given, elect to be nonsuited. After a nonsuit the plaintiff shall not be debarred from proceeding again to