

trial on the same statement of claim, all the costs of the first trial having been first paid, and a Judge on the application of the plaintiff may fix a time and place for such trial.

BY DISCHARGE OF JURY.

262. When the action is tried before a Judge and jury, the jury may, by consent of both parties, be discharged from giving a verdict, and judgment given by the Judge presiding at the trial.

263. If the parties agree to the jury being discharged, but do not agree to accept the judgment of the Judge presiding at the trial, each party shall pay his own costs; but the plaintiff may set down the action for trial at any subsequent sittings, and give days' notice thereof to the defendant.

NEW TRIAL.

264. A new trial may be granted on any of the following grounds:

- (1.) That the Judge has misdirected the jury on any material point of law, or, if the action be tried without a jury, has decided any point of law erroneously
- (2.) That the Judge admitted improper evidence, or rejected evidence which ought to have been admitted.
- (3.) When the damages are excessive or too small.
- (4.) That the verdict has been obtained by any unfair or improper practice of the successful party to the prejudice of the opposite party
- (5.) That material evidence has been discovered since the trial, which could not have been foreseen or known before the trial.
- (6.) That the jury or any juror have or has been guilty of misconduct, if such misconduct can be proved by extrinsic evidence, but the verdict cannot be impugned on the evidence of any of the jurymen.
- (7.) That any witness has been guilty of such misconduct as to affect the result of the trial.
- (8.) That a special verdict or other finding of the jury is so defective that the Judge cannot give judgment upon it.
- (9.) That the verdict is against the weight of evidence.

265. A new trial shall not be granted on the ground of misdirection, or erroneous decision on any point of law, or of improper admission, or rejection of evidence, unless, in the opinion of the Court, some substantial wrong or miscarriage of justice has been thereby occasioned in the trial of the action; and if it appears to the Court that such wrong or miscarriage affects part only of the matter in controversy, the Court may give final judgment as to part thereof, and direct a new trial as to the other part only: Provided that no new trial shall be granted as to such last-mentioned part if the amount awarded by the jury can be separately ascertained, and the plaintiff consent to reduce the whole sum awarded to him by that amount.

266. A new trial shall not be granted on the ground of improper admission or rejection of evidence, unless the objection was distinctly taken at the trial.

267. A new trial may be ordered on any question in an action, whatever be the grounds on which a new trial is applied for, without interfering with the decision upon any other question.

268. A new trial may be granted upon terms if necessary, *e.g.*, that the evidence of witnesses infirm or going beyond the sea, or deceased, may be read from the Judge's notes of the first trial, or that certain deeds, books, and papers may be produced at the trial, or that the amount of the verdict be brought into Court, or security given for the same.

269. In every case, if a new trial be granted, the costs of the former trial are in the discretion of the Court.

270. Where the question of costs is reserved by the Court until after the second trial, it will then be entirely in the discretion of the Court whether they will allow the costs of the first trial to the party who succeeds at the second or not.

271. On a motion for a new trial, the Court will not receive any affidavit of any witness to explain or add to evidence given by him at the trial, nor will the Court receive an affidavit of any facts which might have been given in evidence at the trial. But an affidavit may be received from a material witness showing that he made a serious mistake in giving his testimony

272. Notice of motion for a new trial must be given within four days after trial, and in every such notice the grounds upon which it is intended to move shall be shortly stated therein, and a new trial shall not be granted on any ground not so stated.

273. Notice of motion for a new trial shall not operate as a stay of proceedings in the action, unless at or immediately after the trial the Judge presiding at the trial, on the application of the party intending to move, shall so order.

JUDGMENT.

274. Upon the trial of any action, the Judge presiding at the trial, after taking the verdict of the jury, if the action has been tried by a jury, may—

- (1.) Give judgment at once.
- (2.) Adjourn the case for further consideration.
- (3.) Give judgment for either party, and reserve leave for either party to move an arrest of judgment, or to set aside the judgment and to enter any other judgment.
- (4.) Abstain from giving judgment.

275. When leave has been reserved to either party to move in arrest of judgment, or to move to set aside any judgment and enter any other judgment, the party to whom such leave has been reserved may move in pursuance of such leave within such time as may have been fixed by the Judge for that purpose, or, if no time has been fixed, within fourteen days after such leave has been reserved.

276. When the Judge has abstained from giving judgment at the trial, either party may within such time as may have been fixed by the Judge for that purpose, or, if no time has been fixed, within fourteen days after trial, move for such judgment as he may consider himself entitled to.