

taken for a hearing before police court. arrested for any violation of the provisions of the act entitled "An act concerning disorderly persons," approved April ninth, eighteen hundred and seventy-five, or for any violation of the provisions of the act entitled "An act to define and suppress tramps," approved April nineteenth, eighteen hundred and seventy-six, shall be taken for a hearing before such police court or police justice, and that in all such cases no justice of the peace residing or holding his court in such city shall have power to hear, try, or determine such cases, any law, custom or usage to the contrary notwithstanding.

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An act constituting district courts in certain cities in this state.

I. Jurisdiction.

Approved March 9, 1877.

P. L. 1877, p. 234.

1. That there shall be constituted in certain cities in this state, in this act hereinafter designated, courts to be designated district courts of the cities respectively wherein said courts may be established.

Courts to be designated "District Courts."

2. That one district court shall be established in accordance with this act, in every city of this state of fifteen thousand inhabitants; but cities of one hundred thousand inhabitants or over shall be entitled to two district courts; *provided always*, that no more than two district courts shall at any time be established in any city of this state.

Where courts are to be established.

Proviso.

3. That said courts shall be courts of record, and have official seals, and all persons shall be amenable to punishment for contempt of said courts in the same manner as in other courts of record of this state having power to punish for contempt of court, and licensed attorneys shall not be necessary in the prosecution or defence of any suit or proceeding in said courts.

Shall be courts of record.

Attorneys not necessary.

Judges, how appointed.	4. That the judges of said courts shall be nominated by the governor and appointed by him by and with the advice and consent of the senate, and shall continue in office for five years from the date of their commission.
Clerk, how appointed.	5. That the ministerial officers of said courts shall be a clerk, and the constables of the city and county wherein said courts may be established; the clerk of each of said courts shall be appointed by the judge thereof, and shall hold his office until the appointment of his successor.
Extent of jurisdiction.	6. That every suit of a civil nature at law, where the debt, balance or other matter in dispute does not exceed, exclusive of costs, the sum or value of one(1) hundred dollars, shall be and hereby is made cognizable in any district court of this state in the cities where they may be established to hear, try and determine the same according to law, although the cause of action did not arise in said city; said district courts shall have jurisdiction, exclusive of all other courts whatsoever, in all cases arising under this act, where the party defendant resides within the corporate limits of the city wherein said court or courts shall be established; <i>provided always</i> , that this act shall not extend to any action of replevin, slander, trespass for assault, battery, or imprisonment, nor to any action wherein the title to any lands, tenements, hereditaments or other real estate shall or may in any wise come in question.
Proviso.	
In case of penalty.	7. That whenever the amount really due or recoverable upon any bond, bill, note or other contract in writing, does not exceed, exclusive of costs, the sum or value of one(1) hundred dollars at the time when the suit is instituted, such amount shall be recoverable in said district courts, without regard to any kind of penalty expressed therein, in the same manner as any other debt or demand of two hundred dollars or under is made recoverable by this act.
When recovery shall be a bar to recovery of residue.	8. That where the debt, balance or other matter in dispute, or amount really due or recoverable as aforesaid, exceeds, exclusive of costs, the sum or value of two hundred dollars, the plaintiff may recover in such court a sum not exceeding two hundred dollars and costs, but such recovery shall be a bar to the recovery of the residue of such debt, balance or other matter in dispute in any court whatsoever.
Limiting jurisdiction.	9. That nothing in sections seven or eight of this act shall be held or construed as conferring jurisdiction upon any district court in any of the cases excepted out of the jurisdiction of a district court by section six.
Suits to the amount of \$200 cognizable.	10. That every sum of money or penalty, not exceeding two hundred dollars, to be sued for and recovered by virtue of any law of this state, in any court of record, or in any court having cognizance thereof, shall be and hereby is made cognizable before any judge of any district court in manner aforesaid.
Parties may agree to waive process.	11. That parties may agree to enter without process any action before a judge of a district court, to the decision of which he is competent, if process had been executed, and the court shall proceed thereon to final judgment and execution, in the same manner as if a summons or warrant had been issued and duly served.
Suits by and against corporations and attorneys.	12. That any body politic or corporate in this state may sue and be sued in any district court, in any action or proceeding over which said court has jurisdiction; and all attorneys-at-law shall and may be sued in said court in like manner, or form of action, as other citizens of this state are liable to be sued in said court.
Judge whose term has expired may conclude case.	13. That any judge of any district court whose term of office may hereafter expire, shall proceed to the final determination of any cause or proceeding then undetermined before him, and also make return to all writs to him directed, issuing out of any court in this state, in the same manner as if his term of office had not expired.
Territorial jurisdiction.	14. That the territorial jurisdiction of every judge of any district court under this act shall be co-extensive with the limits of the city for which he is appointed and commissioned; his writs, precepts and process shall run in and through such county, and he may, in causes pending before him, award writs of subpoena for witnesses into other counties of this state.

(1) So in original.

II. Process.

15. That all the precepts, summons, warrants, writs, and other process of said district courts, shall be tested on the day on which they are respectively issued, in the name of the judge, and signed by the clerk thereof. Process, how issued.
16. That if any clerk of said district courts shall sign his name to any blank summons or warrant, and allow any constable or other person to fill up the blank or blanks in the said process, without the special direction of the said clerk, and in his presence, and shall afterwards issue the said process, or suffer the same to be served, such clerk shall be deemed guilty of misbehavior in office, and, on conviction thereof, shall forfeit and pay the sum of fifty dollars, to be recovered by action of debt, by any person who shall prosecute for the same, in any court having jurisdiction of the case, one-half for the use of the person prosecuting, and the other half for the township in which such clerk shall reside. Penalty for signing blank summons or warrant.
17. That the service of any summons or warrant which shall have been issued by any clerk as aforesaid in blank, and afterwards filled up by the constable or other person, without the special directions of said clerk as aforesaid, shall be taken and considered to be altogether void, and any judgment or other proceeding afterwards had or taken, in consequence of such service, or founded thereupon, shall be void and of no effect. Proceedings to be void if founded on summons or warrant issued by clerk in blank.
18. That the first process to compel appearance shall be a summons or warrant in the nature of a *capias ad respondendum*; provided, that no warrant shall issue against the body of any female; the summons may be used in any case whatsoever; the warrant shall only be used in the following cases: First process. Proviso.
- I. Where the defendant is not a freeholder and resident of the county in which process shall issue, where the action being founded upon contract, express or implied, due proof is made, on oath or affirmation, to the satisfaction of the judge, of the amount of the debt or damages claimed, and that there is a debt or demand founded upon contract, express or implied, due to the plaintiff from the defendant, specifying the nature and particulars of said debt or demand, and establishing by the oath or affirmation of the plaintiff, or some other person, to the satisfaction of the judge, one or more of the following particulars: that the defendant is about to remove any of his property out of the jurisdiction of the court in which an action is about to be commenced, with intent to defraud his creditors; or, that the defendant has property or rights in action which he fraudulently conceals; or, that the defendant fraudulently contracted the debt or incurred the obligation respecting which such suit was brought; Cases where warrant may be used.
- II. Where the defendant is not a freeholder and resident of the county in which such process shall issue, and where, the action being founded upon *tort*, due proof is made, on oath or affirmation, to the satisfaction of the judge, of the amount of the damages claimed, and of such other facts and circumstances as would, by the practice of the supreme court, warrant a justice thereof in making an order to hold to bail in a case of *tort*;
- III. If the defendant be a freeholder and resident of the county in which such process shall issue, and due proof is made, on oath or affirmation, to the satisfaction of such judge, that the defendant has assigned or disposed of, or is about to assign or dispose of, all his land lying in said county, with intent to defraud his creditors, then such defendant may be held to bail in like manner and upon the same proof that would warrant his arrest in case he were not a freeholder and resident in the county in which such process shall issue.
19. That upon proof made as aforesaid the judge shall make and subscribe an order that a warrant issue against the defendant for such amount as such proof shall justify and require; but before said warrant issue, such order, and the affidavit or affidavits upon which the order is founded, shall be filed by said judge. When judges shall order a warrant to issue.
20. That if the defendant be arrested upon such warrant, he may, at any time before the trial of the cause, make application to a justice of the supreme court, or to the law judge, if any, of the court of common pleas of the county in which such process issued, or to any supreme court How warrant may be set aside and defendant released.

DISTRICT COURTS.

commissioner, to set aside said order, the defendant having first given reasonable notice to the plaintiff of such application, and the giving bond or entering into recognizance in manner hereinafter directed shall be no waiver of the defendant's right to make such application; and if such justice of the supreme court, law judge or commissioner shall deem the proof made insufficient to warrant an arrest, he may order that the order made by the judge of said district court be set aside; such order setting aside the order of the judge of said district court, shall thereupon operate as a discontinuance of the suit in which such warrant issued, the bond or recognizance, if any, shall become void, and the plaintiff shall be forever thereafter barred from proceeding against the body of the defendant for the same cause of action, but he may proceed against the defendant by summons, in the same manner as if no other proceeding had been instituted.

- Order to set aside warrant must be filed. 21. That the order made by the justice of the supreme court, law judge or commissioner, shall be filed with the judge who issued the warrant, and such judge shall furnish certified copies thereof to the parties or their agents on request.
- Summons, when returnable. 22. That the summons shall be made returnable between the hours of nine o'clock in the forenoon and three o'clock in the afternoon, both inclusive, and shall specify a certain place and time, not less than five nor more than fifteen days from the date of such process, and shall be served at least five days before the time of appearance mentioned therein, by reading the same to the defendant, and delivering to him a copy thereof, if he or she shall be found, and if not found, by leaving a copy thereof at his or her house or place of abode, in presence of some person of the family, of the age of fourteen years, who shall be informed of the contents thereof, and the constable serving such summons shall, on the oath of his office, endorse thereupon the time and manner he executed the same, and sign his name thereto.
- How served. 23. That if the defendant be a body politic or corporate the summons may be served on the president, treasurer, cashier or clerk of said corporation if found, and if not found, on any of the directors or managers thereof, in the manner hereinabove directed.
- Constable to endorse. 24. That the said clerk shall enter into the body of every summons or warrant the sum demanded (and endorse the same, with costs, on the said summons or warrant,) which he shall issue by virtue of this act; and if the defendant think proper to pay such debt, damages or demand, with costs so entered or endorsed, without any further proceedings in the cause, then it shall be lawful for the constable to receive the same, and his receipt shall be a full discharge to such defendant from such debt, damages or demand, and costs aforesaid; and if any constable shall not pay the money so by him received for such debt, damages or demand, to the clerk issuing such process, or to the plaintiff in the said process, or his legal representative, within fifteen days after he shall have received the same, then such constable shall be liable to pay to such plaintiff or his legal representative, the amount of the said debt, damages or demand with interest, to be recovered by action of debt with double costs.
- Body politic or corporate, how served with summons. 25. That the warrant commanding the defendant to be arrested shall be returnable forthwith after service thereof; and the constable serving said warrant shall, according to the tenor thereof, forthwith convey the said defendant before the judge who issued the same, who shall thereupon, at his discretion, either cause the said defendant to enter into recognizance in the manner hereinafter mentioned, or on neglect or refusal, shall command the said constable to convey the said defendant to the jail of the county, to be there detained in custody until time may be had for the hearing or trial of the cause, not exceeding three days from the time of the return of the said warrant, or such judge may direct the said constable to hold the said defendant in custody until the plaintiff shall be notified and have time to appear and proceed to such hearing or trial; and the constable who served the said warrant as aforesaid, shall, on the oath of his office, endorse thereon the execution of the same, and sign his name thereto; *provided, always,* that it shall not be lawful to arrest or imprison the person of any female by virtue of any *mesne* process.
- Sum demanded to be specified in summons. 26. That the sum demanded shall be specified in the summons or warrant, and shall be paid to the clerk of the court, or to the plaintiff, or to his legal representative, within fifteen days after the return of the said warrant, or such judge may direct the said constable to hold the said defendant in custody until the plaintiff shall be notified and have time to appear and proceed to such hearing or trial; and the constable who served the said warrant as aforesaid, shall, on the oath of his office, endorse thereon the execution of the same, and sign his name thereto; *provided, always,* that it shall not be lawful to arrest or imprison the person of any female by virtue of any *mesne* process.
- Liability of constable for withholding money. 27. That if any constable shall not pay the money so by him received for such debt, damages or demand, to the clerk issuing such process, or to the plaintiff in the said process, or his legal representative, within fifteen days after he shall have received the same, then such constable shall be liable to pay to such plaintiff or his legal representative, the amount of the said debt, damages or demand with interest, to be recovered by action of debt with double costs.
- Warrant returnable forthwith after service. 28. That the warrant commanding the defendant to be arrested shall be returnable forthwith after service thereof; and the constable serving said warrant shall, according to the tenor thereof, forthwith convey the said defendant before the judge who issued the same, who shall thereupon, at his discretion, either cause the said defendant to enter into recognizance in the manner hereinafter mentioned, or on neglect or refusal, shall command the said constable to convey the said defendant to the jail of the county, to be there detained in custody until time may be had for the hearing or trial of the cause, not exceeding three days from the time of the return of the said warrant, or such judge may direct the said constable to hold the said defendant in custody until the plaintiff shall be notified and have time to appear and proceed to such hearing or trial; and the constable who served the said warrant as aforesaid, shall, on the oath of his office, endorse thereon the execution of the same, and sign his name thereto; *provided, always,* that it shall not be lawful to arrest or imprison the person of any female by virtue of any *mesne* process.
- Defendant may enter into a recognizance. 29. That if the defendant be a body politic or corporate the summons may be served on the president, treasurer, cashier or clerk of said corporation if found, and if not found, on any of the directors or managers thereof, in the manner hereinabove directed.
- Duty of constable. 30. That the sum demanded shall be specified in the summons or warrant, and shall be paid to the clerk of the court, or to the plaintiff, or to his legal representative, within fifteen days after the return of the said warrant, or such judge may direct the said constable to hold the said defendant in custody until the plaintiff shall be notified and have time to appear and proceed to such hearing or trial; and the constable who served the said warrant as aforesaid, shall, on the oath of his office, endorse thereon the execution of the same, and sign his name thereto; *provided, always,* that it shall not be lawful to arrest or imprison the person of any female by virtue of any *mesne* process.
- Proviso. 31. That if any constable shall not pay the money so by him received for such debt, damages or demand, to the clerk issuing such process, or to the plaintiff in the said process, or his legal representative, within fifteen days after he shall have received the same, then such constable shall be liable to pay to such plaintiff or his legal representative, the amount of the said debt, damages or demand with interest, to be recovered by action of debt with double costs.

or process of execution in any civil action; and *provided also*, that if any person or persons whatsoever shall hereafter be arrested by virtue of such warrant, it shall be lawful for the constable who served the same, to permit the defendant to enter into bond to the plaintiff, with a good and sufficient freeholder, resident in the county, to the amount of the debt or damages and costs endorsed on the warrant, for his, her or their appearance on the day and hour mentioned in the bond, not more than eight days (excluding Sundays) from the service of the warrant; the bond to be entered into by the defendant shall be in the form and to the effect following, to wit: "We, A. B. and C. D., do hereby acknowledge ourselves indebted to E. F. in the sum of _____, to be paid to said E. F. on the following conditions: that if the said A. B. shall be and appear before _____, the judge of the district court of _____, on the _____ day of _____, at _____ o'clock _____ noon, and answer unto the complaint of the said E. F., then this bond to be void, or else to be and remain in full force and virtue; in witness whereof we have hereunto set our hands and seals, the _____ day of _____, in the year of our Lord one thousand eight hundred and _____; sealed and delivered in the presence of G. H., I. K.; signed A. B. and C. D.;" which bond the said constable is hereby ordered and directed, when taken, to deliver to the judge on the return of the warrant, to be by him filed in his office to and for the use of the plaintiff, for which service the constable shall be entitled to thirty-five cents costs, to be paid by the defendant, and not recoverable by him from the plaintiff; and in all cases, the said constable shall attend at the said district court, on the day and hour mentioned in said bond, to be there and then ready to secure and take into his custody the said defendant; and if the said judge shall not be found at his dwelling, or usual place of holding trials, the defendant shall be permitted to renew his bond, with sureties as aforesaid, for his appearance at some future day, not exceeding ten.

Form of bond.

Bond to be filed.
Fee of constable.

When defendant may renew bond.

26. That the recognizance directed in the twenty-fifth section of this act, shall be entered into by the defendant, with at least one surety, having sufficient freehold, and residing in the county, to the plaintiff in the said action, in the amount of the demand specified in the warrant, according to the effect and meaning of the following form, that is to say:

Nature of the recognizance.

"City of _____, county of _____, to wit:

Form of recognizance.

"Whereas, A. B. hath been arrested and is now in custody, by virtue of a warrant issued by C. D., judge of the district court in and for the said city, at the suit of E. F., in an action of _____ for the sum of _____; now, be it remembered, that on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, the said A. B. and G. H., of the city aforesaid, personally appeared before me, the said C. D., and jointly and severally acknowledged themselves to owe to the said E. F. the sum of _____, to be made and levied of their several goods and chattels, upon condition that if the said A. B. shall not appear on the _____ day of _____ next, before the said judge, or if he does appear, and is condemned in the said action, at the suit of the plaintiff, that he shall pay the costs and condemnation money, or surrender him up to the constable, on the execution to be thereafter issued against him, on the day judgment shall be obtained, and if he fails so to do, that he, the said G. H., will pay the said costs and condemnation money for him, and suffer judgment to be entered up against him for the same.

"Acknowledged the day and year last above said, before me, C. D., the judge of the district court in and for the said city of _____;" and every judge of any district court is hereby empowered and directed to take such recognizance, which will remain with such judge, for the benefit of the plaintiff in the suit.

Judge to take the recognizance.

III. Pleading.

27. That all suits brought or commenced before any judge of any district court in this state, on any bond or other specialty, note of hand, bill of exchange, book account, or any other demand founded on simple contract for the payment of money only, shall be in the name and style of actions of debt, any law, usage, or custom to the contrary notwithstanding.

Name and style of actions.

- When demand and plea to be filed. 28. That the plaintiff in such suit shall, on or before the return day of the said summons, or on the return of the warrant, or at the time of appearance specified in the recognizance, deliver or cause to be delivered, to the judge before whom the action is to be tried, a copy of his or her account or state of demand against the defendant, and in default thereof, the said plaintiff shall be non-suited, with costs; and if the defendant have any account or demand against the plaintiff, he shall be permitted to discount or set off the same against the account, debt, or demand of such plaintiff; but such copy of his or her account, or state of his or her demand, so intended to be set off, shall be delivered to the said judge, on or before the return day of the summons, or on or before the day to which the hearing shall be first adjourned; or, if on a warrant, then at the time of hearing of the cause; and in default thereof, the said account or demand shall not be received in evidence on the trial of the said cause; but if the said warrant shall not have been executed three days prior to the day of hearing, then the said defendant, if he or she have any account or demand to set off, and will enter into recognizance, as directed by the twenty-fifth section of this act, shall be allowed further time, not exceeding three days, to deliver to the said judge such copy of his or her account or state of demand as aforesaid.
- Set-off.
- Copy of account or demand to be set-off shall be delivered to the judge.
- When further time for filing set-off is allowed.
- Neglect in filing set-off a bar to future action. 29. That if any defendant neglect or refuse to deliver a copy of his or her account or state of demand against such plaintiff, he or she shall forever thereafter be precluded from having or maintaining any action for such account or demand, or from setting off the same in any future suit; *provided, always*, that where the balance found to be due to such defendant exceeds the sum of one hundred dollars, then the said defendant shall not be precluded from recovering his or her account or demand against such plaintiff, in any other court of record having cognizance of the same.
- Proviso.
- Title to lands pleaded. 30. That when, in any action to be brought by virtue of this act, the defendant shall, as a justification, plead title to any real estate in himself or another, under whom he acted or entered, such defendant shall commit the said plea to writing, and, having signed the same, shall deliver such plea to the said judge, who shall countersign and deliver it to the plaintiff; and thereupon it shall and may be lawful to and for such plaintiff to commence and prosecute his action against such defendant in the supreme court, or in the circuit court of the county wherein such action shall have been commenced; and if, in such action, the plaintiff recover any damages, he shall be entitled to and recover therewith all costs of suit.
- Effect of plea. 31. That on every trial so to be had in such action where title is pleaded, the plea so as aforesaid signed by the said defendant, shall be conclusive evidence that such defendant relied on title by way of justification.
- Bond required in such case. 32. That the judge to whom a plea of justification is tendered as aforesaid, shall, before he receives such plea, require and obtain from the defendant a bond, with one good surety, being a freeholder in the said county, in the penalty of one hundred dollars, executed to the plaintiff, and conditioned that, if the said plaintiff shall commence such action in the supreme court, or in the circuit court of the county wherein the said judge holds his court, within three months thereafter, the said defendant will appear thereto, within twenty days after the writ to be thereupon issued against him shall be returned served, and shall pay such costs as may be awarded against him in the said action; and in case such plea is tendered, and the defendant shall not forthwith enter into such bond to the plaintiff, the said judge shall proceed in the same manner as if such plea had not been tendered.
- Condition.
- IV. Trial.
- Trial to proceed when defendant does not appear. 33. That if the defendant does not appear at the time and place expressed in the summons or recognizance, and no sufficient reason shall be assigned to the judge why the defendant does not appear, and if, where the process is a summons, it shall further appear by the return endorsed thereon that the summons was duly served, then the said judge may proceed to hear and determine the cause in the absence of such defendant.

34. That when the parties in any suit to be instituted by virtue of this act shall appear at the place and the time expressed in the summons, or at the return of the warrant, or at the time of appearance mentioned in the recognizance, the said judge shall proceed to hear or examine their respective allegations and proofs, unless he shall think it proper to adjourn the trial.

Proceedings when the parties appear.

35. That any judge of any district court before whom a suit is instituted by virtue of this act, may, to prevent fraud or surprise on either side, or on reasonable cause being assigned by or in behalf of either party, adjourn the trial to any time not exceeding thirty days from the return day of the summons, or, if the process be by warrant, from the time when the same was returned, or from the time of appearance mentioned in the recognizance except where the applicant for such adjournment shall make oath or affirmation that he cannot safely go to trial for want of a material witness, whom he shall name, being absent and out of this state, and then such judge may postpone the trial to any time not exceeding three months from the return day of the summons; *provided*, that if the process is by warrant the defendant shall, previous to such adjournment, if required by the judge, enter into recognizance to the plaintiff, as in and by this act is before directed; *provided also*, that if either of the parties to a suit hereafter brought before a judge of any district court, cannot, on the day of the first adjournment, safely go to trial for the want of a material witness in the cause, whom he shall name, and thinks he can produce on a future day, and shall file an affidavit thereof with the judge, then the judge may adjourn the trial to any future day, not more than thirty days from the day of such adjournment, on payment of the costs by the party who makes application for the same.

Adjournment, when may be had.

Proviso.

36. That all adjournments shall be made to some hour between the hours of nine o'clock in the forenoon and three o'clock in the afternoon, both inclusive, unless the respective parties mutually agree that the cause be adjourned to some other hour.

Adjournment shall be made to certain hours.

37. That if the defendant file his set-off on the day to which the hearing shall be first adjourned, he shall then consent to an adjournment of said hearing if the plaintiff request the same, and shall also pay the witness fees of said plaintiff for that day.

When plaintiff may demand adjournment.

38. That in every action it shall and may be lawful for either of the parties, after the defendant has appeared, or put in his plea for such action, and before the said judge has proceeded to inquire into the merits of the cause, to demand a trial by jury, which the said judge is hereby required to grant, and thereupon a *venire* shall be issued to summon a jury of six men, and no more, if the debt, demand or matter in dispute do not exceed the sum of fifty dollars, or a jury of twelve men, if the debt, demand or matter in dispute exceed the sum or value of fifty dollars, being citizens of this state, above the age of twenty-one years, and under the age of sixty-five years, and in no wise akin to the plaintiff or defendant nor interested in the suit, to be and appear before the said judge at such time and place as shall be expressed in the *venire*, to make a jury for the trial of the action between the parties mentioned therein; and the constable shall, at the return of the said *venire*, return, annexed thereto, a panel containing the names of the jurors whom they shall have summoned by virtue thereof; and if, on the return of the *venire*, it shall appear that one or more of the jurors are disqualified to serve, or do not appear, then it shall be lawful for the constable who served the same, by order of the court, immediately to summon others who shall serve in their stead.

Jury demanded, and when.

Number of jurors.

Qualification of jurors.

Remedy for disqualification or non-appearance of jurors.

39. That to the jurors and each of them who shall be returned to try the said cause as aforesaid, the said clerk shall administer the following oath or affirmation:

Juror's oath.

"You do swear, in the presence of Almighty God (or do affirm, as the case may require), that you will well and truly try the matter in difference between _____, plaintiff, and _____, defendant, and a true verdict give, according to evidence."

Form.

That to every witness produced at the said trial, the said clerk shall administer the following oath or affirmation:

Witness shall make oath or affirmation.

"You do swear, in the presence of Almighty God (or do affirm, as the

Form.

- case may require), that the evidence you shall give to the court and jury in this matter in difference between _____, plaintiff, and defendant, shall be the truth, the whole truth, and nothing but the truth.”
- Constable's oath. And that to the constable who shall be appointed to attend the jury, the said clerk shall administer the following oath or affirmation:
- Form. “You do swear, in the presence of Almighty God (or do affirm, as the case may require), that you will, to the utmost of your ability, keep every person sworn (or affirmed) on this jury, together in some private or convenient place, without meat or drink, water excepted; that you will not suffer any person to speak to them, nor speak to them yourself, except by order of the court, unless it be to ask them whether they have agreed on their verdict, until they have agreed on their verdict.”
- When juror or witness may be fined. 40. That every person summoned as a juror, or subpoenaed as a witness, who shall not appear, or, appearing, shall refuse to serve or give evidence in any such action, shall forfeit and pay for every such default or refusal, unless some reasonable cause be assigned, such fine, not exceeding twenty dollars, nor less than one dollar, as the said judge shall think proper to impose; and such judge is hereby authorized and required to issue an execution, directed to any constable of the said county, to levy the same of the goods and chattels of the offender; which fine, when recovered, shall be applied by the said judge to the use of the said city.
- Plaintiff not to withdraw suit after off-set has been filed by defendant. 41. That if the defendant have filed an off-set, the plaintiff shall not be permitted to withdraw his suit, nor shall any judgment of non-suit or discontinuance be entered without the consent of the defendant, but the case shall be heard on motion of the defendant, if the plaintiff neglect or refuse to move the same, and if it shall appear upon evidence produced by the defendant that the plaintiff is actually indebted to the defendant, judgment shall be rendered in favor of the defendant for the amount found due him; *provided*, such defendant have filed an affidavit with the judge at the time of filing his off-set, that the off-set is not filed for the purpose of delay, and that he verily believes he does not owe the plaintiff anything, but that the plaintiff is indebted to him in a certain sum, which shall be stated in the affidavit.
- Proviso. 42. That whenever the nature of the plaintiff's demand is such that his book or account of original entries would be competent evidence, and the defendant does not appear at the hearing, or if appearing, does not require the production of said book or account, a copy of the entries therein, so far as they relate to the plaintiff's demand, together with a statement of the credits or allowances, if any, to which the defendant is entitled, shall be received in evidence, with the same effect as if the plaintiff's books or accounts were produced and proved; *provided*, such copy and statement be accompanied by an affidavit or affidavits, setting forth that the copy is a true copy of said original entries, and that all the credits and allowances to which the defendant is entitled appear on such statement, or in case the defendant is not entitled to any, then setting forth that the defendant is not entitled to any credits or allowances, and that the sum of money or balance claimed by the plaintiff is justly due and owing to him.
- Proof by affidavit of book account. 43. That where a copy of said entries may be used by the plaintiff, it shall be competent to prove any partnership by affidavit.
- Proviso. 44. That in actions upon promissory notes, bills of exchange, checks, drafts, or other written contracts, whether simple or under seal, for the payment of money only, if the defendant does not appear at the hearing, or if he appear and consent thereto, the plaintiff may prove his case by affidavit; the affidavit or affidavits shall contain a copy of the writing or writings sued on, and shall set forth and aver such facts and circumstances as would warrant a recovery in case such facts and circumstances were proved by witnesses.
- Affidavit of partnership. 45. That in all cases in which proof is made by affidavit, it must appear by affidavit that the affiant or affiants have competent knowledge of the fact or facts sworn to, and in actions upon promissory notes, bills of exchange, checks, drafts, or other written contracts, simple or under seal, for the payment of money only, such notes, bills, checks, drafts, or other contracts, must be produced at the hearing, or their non-production accounted for by affidavit.
- Proof by affidavit of notes. What affidavit shall contain. Proceedings where proof made by affidavit.

46. That if the jury disagree, other writs of *venire* may issue in the same cause until a verdict is obtained. Disagreement of the jury.

V. Judgments.

47. That if the plaintiff, other than executors or administrators, in any action shall be non-suited or shall discontinue or withdraw his action, without the consent of the defendant, where he may lawfully do so, then judgment shall be given against such plaintiff for the costs which have accrued, or if such plaintiff shall appear to owe, or be indebted to the defendant, then judgment shall be given against him for the debt, or damages and costs, as the case may require. When judgment shall be given against plaintiff.

48. That if judgment by confession shall be entered against the defendant, unless an affidavit shall first be made by the plaintiff, his attorney or agent, of the true consideration of the bill, bond, deed, note, or other instrument of writing or demand for which the judgment is confessed; which affidavit shall further set forth that the debt or demand for which the judgment is confessed is justly and honestly due and owing to the person or persons to whom the judgment is confessed, and that the said judgment is not confessed to answer any fraudulent intent or purpose, or to protect the property of the defendant from his other creditors, (which affidavit shall be filed and preserved by the said judge), such judgment shall not operate or have any effect against any person or persons not parties in said action, but shall be binding and have its full effect so far as relates to the parties in the suit only. Judgment by confession. Effect against persons not parties.

49. That in cases of trial by jury, there shall be no judgment of non-suit or discontinuance after the merits of the cause on either side are submitted to the jury, unless by the consent of both parties. When case is submitted to jury.

50. That where the amount really due and recoverable upon any bond, bill, note or other contract in writing, does not exceed, exclusive of costs, the sum or value of one hundred dollars, at the time when suit is instituted, proof shall be made of the amount really due and owing, and the judge shall give judgment therefor, with costs, and not for the amount of the penalty expressed, whether such penalty exceed or be less than one hundred dollars. Form of judgment in case of action on bond, &c., with penalty.

VI. Execution.

51. That when judgment shall be given against the plaintiff or defendant, by virtue of this act, the said judge shall grant execution thereupon, commanding the constable to levy and make the debt, or damages and costs, of the goods and chattels of the party; and in the cases hereinafter specified, for want of sufficient goods and chattels whereon to levy and make the same, to take the body of such party and convey him to the jail of the county; *provided*, that no execution shall issue against the body of any female; *and provided, also*, that when judgment shall be obtained against executors or administrators, execution shall issue thereon in the same manner as it is issued against them in the other courts of law of this state. Execution, when granted. Body may be taken if goods and chattels are insufficient to satisfy. Proviso.

52. That an execution against the body shall be granted only in the following cases: When execution against the body.

I. Where a warrant in the nature of a *capias ad respondendum* has issued upon an order made in accordance with the provisions of the nineteenth section of this act, and such order has not been set aside, or, if set aside, has been subsequently approved by a justice of the supreme court. When warrant has issued.

II. Where no warrant in the nature of a *capias ad respondendum* having been issued for the same cause of action, due proof is made on oath or affirmation, to the satisfaction of the judge, that the defendant, at the time when execution is applied for, is not a freeholder in the county where the same shall be issued, and judgment has been rendered in an action of tort. When judgment is rendered in case of tort.

III. Where no warrant in the nature of a *capias ad respondendum* has issued for the same cause of action, and the action being founded upon contract expressed or implied, due proof is made to the satisfaction of the judge, by affidavit or affidavits, filed as aforesaid, establishing the particulars specified in the first sub-division of the eighteenth section of this act, Where no warrant has issued in an action founded on contract.

- or establishing that the defendant has rights or credits, moneys or effects, either in his own possession or in the possession of any other person or persons, to his use, of the value of ten dollars or over, which he unlawfully and fraudulently refuses to apply in payment of such judgment.
- Order of justice. 53. That if the requirements of the next preceding section have been complied with, the judge shall make and subscribe an order that execution issue against the goods and chattels of the defendant, and, for want of sufficient goods and chattels, against the body, whereupon execution may issue in accordance with such order as directed in section fifty-one of this act.
- How defendant may apply to have execution set aside. 54. That, except where previous application has been made and passed upon under the twentieth section of this act, the defendant may, at any time, after order made under the fifty-third section of this act, apply to any one of the persons to whom he may apply under said twentieth section, to set aside said order so far as it authorizes the taking of the body, the defendant having first given reasonable notice to the plaintiff of such application; and if such person to whom application is made shall deem the proofs made sufficient to warrant the issuing of process against the body, he may make order that the order of the judge, so far as it authorizes the taking of the defendant's body, be set aside.
- Judge to file order and furnish copies. 55. That such order shall be delivered to the judge, who shall file the same with the other papers in the cause, and who shall furnish certified copies thereof to the defendant, or his agent, on request.
- Effect of order to set aside. 56. That the order, from the time of the filing thereof with the judge, shall operate to discharge the defendant from arrest or imprisonment, if arrested or imprisoned, or, if not, from liability to arrest or imprisonment in the suit in which the order was made, and shall have no other or further operation.
- When constable, &c., to incur no liability. 57. That no constable, jailer, warden, or other officer or person taking or detaining the body of the defendant in pursuance of the warrant mentioned in the eighteenth section of this act, or in pursuance of the writ of execution, shall incur any liability whatsoever for any act done or committed pursuant to the commands of the writ, in or about such taking or detention, prior to service upon him of a copy of the order of the justice of the supreme court, law judge or commissioner, certified by the judge of the district court with whom such order is filed.
- Service of order. 58. That service of said order upon the person in whose custody the defendant may be, shall warrant the immediate discharge of such defendant from arrest or imprisonment under said writ.
- Judge to furnish copy of order and affidavit on request. 59. That the judge shall furnish to the defendant, or his agent, on request, a certified copy of the order and affidavit or affidavits upon which the warrant or execution against the body issued or may issue; and such copy may be used before the justice of the supreme court, law judge or commissioner, who may make order thereupon in the same manner as if the original order and affidavit or affidavits were produced before him.
- When second application allowable. 60. That where a judge of any district court has made an order pursuant to the nineteenth section or to the fifty-second section of this act, and application has been made in the first instance to a justice of the supreme court to set the order aside, if the justice refuse to do so, the defendant shall not be permitted to renew his application; but if such application has been made in the first instance to a law judge or commissioner, who either makes or refuses to make such order, then either party may, on notice to the other party, within six days after such order has been made or refused, apply to a justice of the supreme court, to review the action of the law judge or commissioner; such justice of the supreme court may, in his discretion, modify or set aside the order of the law judge or commissioner, and make such other order in reference to the taking or retaking of the defendant's body, either on the warrant or on an execution issued or that may be issued, as the nature of the case may justify or require, and the order of such justice shall be final.
- Confession of judgment and stay of execution. 61. That if any defendant shall appear at the return of the summons or warrant, or by consent without process, or on the day that judgment shall be rendered, or before the issuing of execution, whether the suit has been

defended or not, and procure a good and sufficient freeholder, resident in the county, to join with such defendant in a confession of judgment, to the adverse party, with costs, then if the judgment shall not be more than fifteen dollars nor less than five dollars, no execution shall issue until after one month from the time of rendering such judgment; and when the judgment shall exceed fifteen and not exceed sixty dollars, no execution shall issue until after three months from the time of rendering such judgment; and when the judgment shall exceed sixty dollars, no execution shall issue until after six months from the time of rendering such judgment.

62. That where a suit shall be brought upon any judgment recovered before a judge of any district court, and judgment rendered in favor of the plaintiff, no stay of execution shall be allowed thereon; *provided*, the time hereinbefore limited, for stay of execution upon such sum, shall have expired since the date of the first judgment, and if not, such further stay of execution shall be allowed as with the time already passed since the date of the first judgment will make up the time allowed for stay of execution on such sum, as is directed by the preceding section of this act.

Suit on judgment no stay of execution.

Proviso.

63. That the constable who, by virtue of such execution, levies on any goods and chattels, shall give notice by advertisements, signed by himself, and put up in three of the most public places in the township where they were taken, of the time and place they will be exposed to sale, at least five days before the time appointed for selling them, and therein describe the goods and chattels so taken; and shall, at the time and place so appointed, expose them to sale, by public vendue, and strike them off to the highest bidder, and pay the money thence arising to the plaintiff, or, in case of his absence, to the clerk, and within thirty days from the time he shall receive the execution, make return to the clerk who issued the same, of the proceedings had thereon, and the said clerk shall make a record thereof.

Sale under execution.

Manner of sale.

Proceeds, how disposed of.

64. That in all cases where any constable shall, by virtue of any writ of execution or attachment, issuing out of this court, levy on, attach, or take into his possession, any goods or chattels which shall be claimed by notice in writing, delivered to said constable, by any other person than the defendant, he shall, immediately upon such claim, delay his sale of the same for the space of ten days, that the said claimant may, within the said term, apply to the judge of the district court within or near the township where such goods or chattels were so seized, for a *venire* to summon a jury of six lawful men as jurors, to try the right of such claimant to said property; and it shall be lawful for such judge of said district court to issue the same, and direct a return thereof to be to him made, and to proceed therein as in other cases of trial by jury; but the claimant shall, in all cases, give notice in writing to the plaintiff of the time and place of the said trial; but if the said claimant shall not, within ten days, apply to said judge, and have his right tried, as aforesaid, the said claim shall be considered abandoned, and the constable shall proceed as if it had not been made.

Proceedings on claim of property.

How tried.

65. That the verdict of such jury shall protect the said constable from any action for taking and seizing such property, or delivery thereof to the claimant; and if the said property shall be found to belong to said claimant, the said constable shall proceed no further with the same; but if it shall be found to belong to the defendant, he shall proceed to dispose of the same, as is directed in such process; and the costs attending such trial shall be taxed by the clerk of said district court, as in other cases, and shall be paid by the plaintiff at whose suit the said property was taken and seized, if the said claimant obtain a verdict in his favor; and by such claimant if the verdict is found against him; *provided*, that if the plaintiff, upon notice being given to him, as aforesaid, shall indemnify the constable against the demand of the claimant, then he shall suspend any further proceedings therein, and proceed to sell.

Effect of and proceedings after verdict.

Proviso.

Constable shall sell if indemnified.

66. That for want of goods and chattels whereon to levy, the said constable shall, when execution is issued against the body, according to the tenor of the said execution, take the body of the person against whom the said execution is issued, and convey and deliver him to the keeper of the common jail of the county, who is hereby commanded to keep such

Of taking the body on execution.

- person in safe custody, in the common jail aforesaid, until the debt or damages, with costs, be fully paid, or until he be thence delivered by due course of law; and the said constable shall, at the same time, deliver to the said jailor a copy of said execution, and shall take the said jailor's receipt upon the execution, and return the same to the clerk who issued it, who shall make a record thereof in his docket; and if the said keeper shall suffer such person so committed to his custody to go or to be at large out of said jail, except by virtue of some writ of *habeas corpus*, or by virtue of the order mentioned in the fifty-seventh section of this act, before the said debt or damages, with costs, be paid, or he be thence delivered by and in due course of law, then every such going or being out of the said jail shall be an escape, for which the sheriff shall be responsible to the plaintiff to the amount of the debt or damages and costs, for which such person shall be committed, to be recovered by the said plaintiff, with costs, by action of debt.
- Responsibility of sheriff when defendant escapes.
- Execution may issue without revival of judgment. Proviso.
67. That execution may issue without a revival of the judgment by *scire facias* at any time within twenty years from its recovery, if the clerk, by successive appointments, or otherwise, continues so long in office; *provided*, that if more than six years have elapsed since the recovery of the judgment, a special order of the judge shall be necessary before the execution issue, to be made upon ten days' notice to the defendant of the application therefor, and proof to the satisfaction of the judge of the amount remaining due upon the judgment.
- Notice to issue execution.
- How served.
68. That the notice required by the last preceding section may be served upon the defendant personally, either within or without this state, or, in case he resides within this state, may be served by leaving a copy at his residence, in the presence of some person of the family of the age of fourteen years, who shall be informed of the contents.
- Execution in force one year.
69. That every execution which shall or may be issued by any clerk of any district court, upon any judgment rendered in pursuance of this act, shall be in full force and operation against the goods and chattels levied on for the term of one year from the time of issuing the same, unless sooner satisfied; and all executions which shall remain unsatisfied for the space of one year thereafter shall be null and void; but the plaintiff may thereupon have a subsequent execution or executions, which shall continue in force and operation and become void in like manner.
- Alias and pluries executions.
70. That upon the return of the original execution unsatisfied, the clerk who issued the same shall have power and authority to issue an *alias* execution, and upon the return of the *alias* unsatisfied, the said clerk may issue a *pluries* execution, which said writs may be levied on the goods and chattels of the defendant, and shall be made returnable and be in all things executed in like manner as the original execution.
- Priority of executions.
71. That where one or more executions, issued by virtue of this act, shall have been levied by one or more constables upon the goods and chattels of any defendant, the said executions shall have and obtain priority according to the time of levying the same; and all surplus moneys arising upon any sale by virtue of any execution, shall be paid to the officer or person holding the next oldest execution which shall have been levied as aforesaid, until all executions levied upon the goods and chattels of any defendant, at the time of sale upon the first execution, be satisfied, or so far satisfied as there shall be proceeds for that purpose, according to their respective seniority as aforesaid; and in case two or more executions, at the suit of different plaintiffs, shall be levied at the same time, such execution or executions shall have preference according to the time when they were received, which shall be noted on each execution by the constable at the time of receiving the same; and if two or more executions shall have been delivered to a constable at the same time, against the same defendant, then the moneys arising from the sale under or by virtue of the said executions, or either of them, shall, if not sufficient to satisfy both or all of them, be applied towards the satisfaction of the several executions, in proportion to the sums due on them respectively.
- Constable must make inventory
72. That it shall be the duty of the constable to whom shall be delivered any execution issued under the provisions of this act, to take an inventory

in writing, of such and so much of the property of the defendant as he means and intends to levy upon; which inventory and levy and the actual time of making the same, shall be annexed to the said execution and signed by the said constable, under his oath of office, and shall, at all times be received as evidence of the levy and of the time of making the same, as contemplated by this act, and that the property so levied upon shall be bound from the time of such levy, and not before.

73. That if the constable to whom any execution is delivered shall not perform the duties, or any of them, prescribed by this act, respecting such execution, such constable shall be liable to pay to the person in whose favor the said execution is issued, the debt or damages and costs, or any of them mentioned therein, to be recovered by action of debt, with double costs, by the person so as aforesaid injured thereby; and when any constable shall have in his hands one or more executions, and not have performed the duty required of him by law on the same, he shall be liable to be prosecuted on such execution or executions, separately or jointly, by the person or persons in whose favor said execution or executions were issued, who may recover as aforesaid, in an action of debt, with double costs; and if it shall appear that the said constable has received the money, or any part thereof, on any execution for which a suit shall be brought, in that case he shall pay to the plaintiff treble costs; and when any judgment shall be had against any constable for any delinquency in his office, execution may be issued immediately against him for debt and costs.

74. That if judgment shall be given against any body politic or corporate by virtue of this act, the clerk shall grant execution thereupon against the goods and chattels of such body politic or corporate, which may be levied on and sold according to law.

VII. Docketing judgments.

75. That final judgments of district courts in any city of this state, if not less than ten dollars, including costs, remaining due on such judgments, may be docketed in the court of common pleas of that county, in the manner herein directed.

76. That the clerk of every court of common pleas shall provide and keep a docket, in which shall be entered, upon complying with the provisions of this act, all such final judgments, if not less than ten dollars remain due thereon, as aforesaid.

77. That when a judgment is obtained in any district court, for an amount not less than ten dollars, including costs, and execution shall issue thereon, and be returned by the constable to whom it has been delivered to be executed, endorsed to the effect that he could not find any personal property of the party against whom the execution was issued on which to levy, or that he had levied and sold goods and chattels, and had made thereof part of said judgment, and that the same was not fully satisfied, and stating the balance still unsatisfied, the clerk of the court of common pleas of the county where such judgment was obtained, upon the request of the person or persons obtaining such judgment, and upon filing in his office a transcript of the proceedings from the docket of the district court in which such judgment was obtained, under the seal of said court and signed by the clerk thereof, and a certified copy of the state of demand and set-off filed in said action, with a certified copy of the return of the constable, and also an oath or affirmation of the party, his or their attorney or agent making such request, that at the time of filing such transcript, a certain amount, not less than ten dollars, is still due, stating the amount, and that he believes the debtor is not possessed of goods and chattels sufficient to satisfy the amount due, shall enter, in the docket provided for that purpose, the transcript of such judgment in words at length, containing the name of the judge of the district court before whom the judgment was obtained, the names, at length, of the parties to said judgment, the style of the action, the date of the judgment, the amount recovered with costs, the substance of the return of the constable, and the amount stated to be due in the affidavit.

- Operation of docketed judgment. 78. That the said judgment shall, from the time of said docketing in the court of common pleas, operate as a judgment obtained in a suit originally commenced in said court, and satisfaction thereof may be entered in the margin of the docket in the same manner and upon the same evidence as is now provided by law in case of judgments rendered in the courts of common pleas; and the execution issued thereon shall be of the same effect as to the property of the debtor, either of a personal or real nature, as if issued on a judgment originally obtained in the courts of common pleas, upon a suit commenced therein.
- No proceedings in district court thereafter. 79. That after such judgment shall be docketed in the court of common pleas, no execution shall issue thereon out of any district court, nor shall any proceeding be had except the due and proper granting of an appeal or *certiorari*.
- Revival of docketed judgment. 80. That every judgment docketed as herein directed may be revived by *scire facias* in the court of common pleas, in the same manner, in the like cases, and with the like effect, as if said judgment had been obtained in a suit originally commenced in that court.
- Clerk shall make index to docket. 81. That the clerk of the court of common pleas shall make to the docket in which such judgments are to be entered, a complete alphabetical index; and said docket shall be a public record, to which all persons desiring to examine the same shall have access.
- Appeal or certiorari. 82. That if any judgment recovered in any district court shall be removed by appeal or *certiorari*, and the necessary bond be perfected, and such judgment shall, either before or after such removal, be docketed as herein provided, execution from the court of common pleas in which said judgment is docketed shall be stayed and suspended until the final determination of such appeal or *certiorari*.
- Execution stayed until final determination. 83. That if any judgment, docketed as hereinbefore provided, shall be reviewed upon *certiorari* or appeal, and a duly certified transcript of the judgment of the court wherein such appeal or *certiorari* may have been determined, shall be delivered to the clerk of the court of common pleas of the county where such judgment is docketed, it shall be the duty of the said clerk to file the same in his office, and enter in the margin of the docket, opposite the entry of said judgment, in short form, the substance of such determination upon the appeal or *certiorari*.
- Clerk to enter the determination on certiorari or appeal. 84. That judgments of the court of common pleas upon appeals from district courts shall not affect or bind any lands, tenements, hereditaments, or real estate, unless a rule shall be entered in the minutes of the court of common pleas in which such judgment shall be rendered, for recording such judgment, which rule shall be a rule of course, and may be entered at any time without notice.
- Entry of rule necessary to make judgment lien on land. 85. That it shall be the duty of the clerk of the several courts of common pleas, upon the entry of such rule as aforesaid, to record any such judgment in the book of judgments of said court, and index the same, as now required by law respecting the judgments of such courts in suits originally commenced therein, which record shall be a transcript from the minutes of the said court on said judgment, and for this service the clerk shall be entitled to receive twenty-five cents; and such judgment shall, from the time of entering such rule, affect and bind all lands, tenements, hereditaments, and real estate, within the county where such court of common pleas is held, belonging to the person or persons against whom such judgment may be; and executions against the goods and chattels, lands, tenements, hereditaments, and real estate of such person or persons may be issued out of such court of common pleas thereupon, immediately upon the entry of such rule.
- Clerk of common pleas shall record judgment. Fee for clerk.

VIII. Certiorari.

- Judgment, &c., removed by certiorari only. 86. That no judgment, order, or proceeding, to be had or made by virtue of this act, shall be removed by writ of error, but by *certiorari* only.
- No certiorari allowed when appeal lies. 87. That where the judge has jurisdiction, no judgment hereafter to be rendered in any district court, from which an appeal is given to the court of common pleas by this act, shall be removed into the supreme court or circuit court by *certiorari* or otherwise, for the correction of any supposed

error therein; but the party thinking himself aggrieved shall have relief upon the appeal only.

88. That no justice of the supreme court shall grant or allow any *certiorari* to remove any judgment, order, or proceeding, to be had by virtue of this act, unless the party applying for such *certiorari* shall present to the said justice the reasons therefor, drawn up in writing and subscribed by himself, or some attorney-at-law, and the same to be deemed by the said justice to contain a probable cause for allowing such *certiorari*; and also, unless such applicant shall enter into bond to the other party in the sum of one hundred and fifty dollars, with one or more good surety or sureties, conditioned that such applicant shall prosecute the said *certiorari* in the supreme court, shall pay the sum recovered in the court below, with interest and costs, if the judgment be affirmed, and shall, in all things, stand to and abide the judgment of the said supreme court respecting the judgment, order, or proceeding given, or made by the court below; which said bond shall likewise be tendered to the justice granting such *certiorari*, to be by him filed with the clerk of the supreme court, for the benefit of the obligee therein named, and on failure thereof no *certiorari* shall be allowed.

Proceedings to obtain *certiorari*.

Applicant shall enter into bond.

Bond to be filed.

89. That such *certiorari* shall be determined and adjudicated upon by the supreme court, at the first term after due return thereof shall be made, or be dismissed with costs, unless the said court shall think proper to adjourn the same until the next term, for further argument and advisement.

When adjudicated.

90. That if any judgment, to be given by virtue of this act, shall, on removal by *certiorari*, be affirmed by the supreme court, the plaintiff in *certiorari* shall pay to the defendant all costs arising on such suit in said supreme court, for which the party entitled to such costs may have execution, to be issued out of the supreme court, against the body, or goods and chattels of the adverse party; but if such judgment be reversed, then the plaintiff in *certiorari* shall not be entitled to any costs.

Costs on affirmation but not on reversal.

91. That the provisions of the last three preceding sections of this act shall extend to the circuit courts in the several counties of this state.

Jurisdiction of circuit court.

92. That no judgment of any judge of any district court, removed by *certiorari* before the supreme court or circuit court, shall be reversed in the whole on account of any error or mistake made by the judge by whom such judgment may have been rendered, in the entering, calculating or awarding the costs of suit, but such judgment shall only be reversed so far as respects the said error or mistake; which error or mistake the court are hereby empowered to correct.

Error or mistake will not reverse judgment.

Court may make correction.

93. That in case any judgment be so affirmed in part and reversed in part, neither party shall pay costs in *certiorari* to the other.

Costs.

94. That it shall not be lawful for the supreme court or circuit court to reverse any judgment of any district court for any irregularity in the proceedings of such court, unless such irregularity tends to defeat or impair the substantial right or interest of the party in *certiorari* praying such reversal.

Judgments not reversed for error in regularity.

95. That if in any cause or proceeding removed by *certiorari*, it shall appear equitable and just that a rehearing thereof be had before a judge of any district court, the supreme court or circuit court may order that such rehearing be had upon such terms and conditions as are reasonable, and the judge of said district court shall thereupon proceed to rehear said cause or proceeding, and give judgment, as in other cases.

When re-hearing of cause may be ordered.

IX. Costs.

96. That in all actions which may be brought by virtue of this act, the following and no other fees shall be allowed and paid to the clerks of said courts:

Fees.

Summons,	\$ 25
Each copy thereof,	10
Warrant,	25
Order that warrant issue,	50
Entering each suit,	20
Recording return on summons,	10
Recognizance,	35

DISTRICT COURTS.

Entering every non-suit,	\$ 20
Entering discontinuance,	20
Venire facias,	35
Administering every oath or affirmation,	10
Subpœna for every witness,	10
Swearing the jury,	35
Entry of every verdict,	20
Entry of every rule of reference,	50
Every copy thereof,	25
Entry of every judgment,	20
Every execution,	35
Recording return of execution,	15
Drawing, signing and sealing return of certiorari,	1 00
Copy of docket or of any proceeding or paper, per folio,	15
Transcript of judgment,	50
Entering suit without process,	50
Filing each paper requiring to be filed,	10
Issuing commission to take deposition,	25
Recording return of commission,	1 50
Entering particulars of costs,	15
Every affidavit,	25
Every adjournment,	20
Hearing every contested case,	75
Hearing case not contested,	25
Granting appeal and sending up transcript and papers,	50
Recording description of each paper offered in evidence,	7
Approving bond,	50
Taking depositions, per folio,	15
Scire facias,	35

CONSTABLES.

Constables' fees.	Serving every summons on one defendant,	60
	And for service thereof on every additional defendant in the same summons,	30
	Serving every warrant, against one or more persons, for each person,	75
	Serving every scire facias, against one or more persons, for each person,	60
	Serving every subpœna,	35
	Summoning every jury of six men,	75
	Summoning every jury of twelve men,	1 00
	Attending jury until agreed on their verdict,	50
	Serving every execution,	75
	In addition to which, three cents on each dollar secured to the plaintiff.	
	Advertising property under execution,	35
	Selling property under execution,	50
	For every copy of an execution filed with the jailor,	25
	For every mile of travel in serving any summons or warrant issued by a judge of any district court, after the first mile, the distance to be computed by counting the number of miles in and out, by the most direct route from the place where such process is issued and returnable,	04

JURORS.

Jurors' fees.	For all cases tried,	twenty-five cents a man;
	When summoned to attend, and cause not tried,	fifteen cents a man;

WITNESSES.

For their services under sections one hundred and seven and one hundred and eight of this act, \$ 50

For all other services the same fees as are or shall be allowed in causes before the court of common pleas; *provided*, that no fees shall be allowed for the service of any subpœnas for more than two witnesses, nor shall fees be allowed to more than two witnesses for each party in a cause.

97. That on all appeals as aforesaid, heard and determined in the court Fees on appeal of common pleas, the following and no other fees shall be allowed :

COURTS.

Every appeal heard, \$ 50 Courts.

CLERKS.

Entering action and filing bond and transcript, 50 Clerks.
 Every subpoena, 10
 Entering judgment, 10
 Every witness sworn or affirmed, 10
 Every order or rule of court, or of a judge, 10
 Every execution, 40
 Entering and filing execution, 20
 Calling and swearing a jury, 20
 Taking and entering a verdict, 10
 Docketing judgment and filing transcript and affidavit, 75

SHERIFF.

Making and returning a list of the jury, 20 Sheriff.

CONSTABLES.

Serving every subpoena, 35 Constables.
 Attending jury, 50

CRIERS.

Every appeal, 10 Criers.
 Calling and swearing each witness, 5
 Calling jury, 10

TO THE JURORS.

The same fees as are allowed in other cases in the court of common pleas.

JUDGE OR COMMISSIONER.

Supreme court justice, law judge or commissioner, for hearing application to set aside order, \$1 00

98. That when the plaintiff, in any action of debt, shall demand a jury Who to pay jury of twelve men, and such jury shall find a sum in favor of the plaintiff, not exceeding fifty dollars, and not less than ten dollars, then the plaintiff shall pay one-half of the costs of the jury; and if the sum found by such jury in favor of the plaintiff be less than ten dollars, then the plaintiff shall pay the whole cost of the jury.

99. That when the plaintiff, in an action of debt, shall demand a jury of six men, six men, and such jury shall find a sum in favor of the plaintiff, under ten dollars, the plaintiff shall pay the whole cost of the jury.

100. That no constable or other officer, authorized to serve a subpoena, Officers' fees to be summons, or other mesne process issued out of any district court, shall be paid before services required. required to serve such process until his legal fees and mileage for so doing shall have been paid to the officer of whom such service is required.

101. That no appeal from the judgment of a judge of any district court Costs to be paid shall be allowed until the party applying for the same shall, in addition before appeal to the matters now required by law, pay to said judge or clerk all costs shall be allowed. incurred by him except such as shall be adjudged to the prevailing party.

102. That the fee of the court for hearing the appeal, and the fees of Appellant must the clerk for entering the action and filing the bond and transcript, shall pay certain fees. be paid, in the first instance, by the appellant; if he refuse to pay the same before the hearing, the court shall, on application to the clerk, refuse to hear such appellant, and the appellee, if he will pay the same, may Privilege of ap- move the court to make, and the court may thereupon make, such dispo- pellant. sition of the case as if the appellant failed to appear and prosecute his appeal.

X. Amendment.

Defects and errors in proceedings may be amended by judge.

103. That in order to prevent the failure of justice by reason of mistakes and objections of form, it shall be lawful for the judge of any district court or the court of common pleas, on an appeal taken thereto, at all times, to amend all defects and errors in any proceeding in civil causes, 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.

Objections to amending process or pleading, effect of.

104. That if any objections be made before the judge by either party, in any cause, upon the return day or upon the trial or hearing of the same, to any process or pleading in respect to any matter which might be amended by the judge under the provisions of said section of said act, and no such amendment shall be made before the conclusion of the trial or hearing, then it shall not be in the power of the court of common pleas, on the trial of the appeal, to amend or to order amended the said process or pleading in respect of any of the matters to which such objections shall relate or were made.

Constable may amend defective return to summons or warrant.

105. That if the constable's return to any summons or warrant be defective, and such constable has, in point of fact, complied with all the requirements of this act, in serving such writ, whether the defendant appears or does not appear, and whether he objects or does not object, such constable may amend his return in such manner as to make it conform to the fact; *provided*, he do so on or before the return day.

Proviso.

XI. References.

Reference may be ordered upon certain conditions.

106. That in every suit to be instituted before any judge of any district court by virtue of this act, and in every appeal to be made before any court of common pleas, it shall and may be lawful for such judge of any district court or court of common pleas, as the case may be, with the assent and at the request of the parties, to enter rules of reference of the matters in difference, to such person or persons as the parties shall choose, and to insert such their agreement in their submission, or the condition of the bond or promise, whereby they oblige themselves respectively to submit to the award or umpirage of any person or persons; which agreement being so made and inserted in their submission, or promise, or condition of their respective bonds, shall or may, upon producing an affidavit thereof, made by the witnesses thereunto, or any one of them, and reading and filing the said affidavit in court, be entered of record in said court, and a rule shall thereupon be made by said court that the parties shall submit to, and finally be concluded by the arbitration or umpirage which shall be made concerning them by the arbitrators or umpire pursuant to such submission; and in case of disobedience to such arbitration or umpirage, the party refusing or neglecting to perform and execute the same or any part thereof, shall be subject to all the penalties of contemning a rule of court, when he is a suitor or defendant in such court, and the court, on motion, shall issue process accordingly, which process shall not be stopped or delayed in its execution by any order, rule, command or process of any other court, either of law or equity, unless it shall be made to appear, on oath or affirmation to such court, that such arbitrators or umpire misbehaved themselves, and that such award, arbitration or umpirage was procured by corruption or other undue means.

Refusal to abide by the result of arbitration.

When arbitration shall be void.

I. Any arbitration or umpirage procured by corruption or undue means, shall be judged and esteemed void and of none effect, and accordingly be set aside by the court, so as complaint of such corruption or undue practice be made in the court where the rule is made for submission to such arbitration or umpirage.

If report of referee is confirmed by court it shall be final.

II. Whenever a cause shall be referred by rule of court to referees, the report or award of such referees, or of the major part of them, if confirmed by the court, shall be final and conclude the parties; and if any sum be thereby found for the plaintiff or plaintiffs, judgment shall be

entered and execution issued for the same with costs; and if the referees or the major part of them report any sum to be due to the defendant or defendants, and the report be confirmed, then judgment shall be entered, and execution against the plaintiff or plaintiffs for the sum so reported to be due to such defendant or defendants, with costs.

Proceedings.

III. In every cause referred by rule of court, each referee shall, before he proceeds to the business of the reference, take an oath or affirmation faithfully and fairly to hear and examine the cause in question, and make a just and true report according to the best of his skill and understanding; which oath or affirmation any judge of any court of record of this state is hereby authorized and required to administer.

Referee shall make oath or affirmation.

IV. In all cases of arbitration, every arbitrator shall, before he proceeds to the business submitted to him, take an oath or affirmation of the like nature with that hereinbefore prescribed to be taken by referees, and to be administered in like manner.

Arbitrator shall make oath or affirmation.

V. In every cause referred by rule of court, process of subpoena may issue out of said court to convene witnesses before the referees, and the said witnesses shall be examined on oath or affirmation; which oath or affirmation the referees in the said cause are hereby authorized to administer; and there shall be allowed to every such referee one dollar for every day necessarily spent in the business of the reference, besides a reasonable allowance for his expenses, which in the first instance shall be paid by the prevailing party, and shall afterwards be allowed to such party in the taxation of costs where costs are recoverable.

Witnesses, how obtained in cases of reference.

Fee of referee.

VI. In all cases of arbitration, it shall be lawful for any judge of any district court within the city wherein such arbitration may be, to issue subpoenas for witnesses, to appear before the arbitrator or arbitrators, and for him or such arbitrator or arbitrators to swear or affirm such or any other witnesses before the same; and if any such witness does not appear when so subpoenaed, or if appearing shall refuse to be sworn or affirmed and give evidence, he shall be liable to the same fines and penalties as he would be by law for such default or refusal, if committed in any court of record of this state.

Witnesses how obtained for cases of arbitration.

Penalty for witness.

XII. Depositions.

107. That if a material witness in an action instituted in any district court, be in the state, but is ancient or very infirm, or is sick, or is bound on a voyage, or is about to go out of the state, the deposition of such witness may, at the option of either party, be taken before a clerk of any district court or before any master in chancery; *provided*, the person at whose request the deposition is to be taken, shall cause notice to be given to the adverse party of the time and place, and before whom the deposition shall be taken, immediately, or at such short day as the cause in the opinion of the said judge may require, to attend and be present at the taking thereof, and to put questions and cross-examine if he shall think fit; and a deposition so taken and offered in evidence, shall be subject to the same rules and exceptions that the witness would be if personally present.

When and by whom depositions may be taken.

Proviso.

108. That every person deposing as last aforesaid shall be carefully examined and cautioned, and sworn or affirmed, to testify the whole truth, and shall subscribe the testimony by him or her given, after the same shall be reduced to writing, which shall be done only by the clerk of said court, or master in chancery, taking the deposition, or by the deponent in his presence, and the deposition so taken, shall be retained by such clerk or master in chancery until he deliver the same, with his own hand, into the court for which it was taken, or shall be by him, the said clerk or master in chancery, sealed up, directed and transmitted to such court, and remain under his seal until opened in court, and when so opened, the same shall be deposited in the district court in which the action shall be brought, there to remain on record, and that either of the parties in the said action or suit may, at his or her cost and charges, take copies of such deposition as soon as it is deposited in the court as aforesaid.

Manner of taking depositions.

I. If a material witness in any action or proceeding in any district court of any city in this state, reside out of this state, it shall be lawful for any judge thereof, on proof thereof to the satisfaction of the said judge, and on

Judge may award commissions to examine witnesses.

such terms as said judge may direct, to award and issue, under the seal of the court, a commission to such person or persons, as the judge may think fit, authorizing such person or persons, or any two or more of such persons to examine *de bene esse* the said witness, on oath or affirmation.

What the commission shall contain.

II. The name of every witness, to be examined by virtue of such commission, shall be inserted in the said commission; and the interrogatories for the examination of such witness shall be drawn and signed by the parties or their attorneys in the cause in which the testimony is to be used, or such of them as shall request the said commission, and be approved of by the judge and shall be annexed to the commission; and each party shall be at liberty, with the approbation of the said judge, to insert in the said interrogatories such questions as he or she may think proper or necessary.

Notice must be given of application for commission.

III. A party intending to apply for a commission to examine a witness or witnesses in any cause, shall give eight days' notice of such application and of the name or names of the witnesses to be examined, and of the place of his, her or their residence, and also the name or names of the person or persons whom the party applying intends to nominate as commissioner or commissioners; and shall serve therewith a copy of the interrogatories intended to be annexed to the said commission, in order that the adverse party may examine the same and submit cross interrogatories if he think proper; the notice mentioned in this section shall be served on the attorney when the party appears by attorney.

Other requirements.

When commission will be ordered on shorter notice.

IV. The issuing of the commission may be ordered and the interrogatories may be approved upon shorter notice than is directed by the foregoing section, by consent of parties, or upon matter being made to appear to the said judge to excuse the want of full notice, and that shorter notice is necessary to prevent delay.

Commissioners shall make oath or affirmation.

V. The commissioner or commissioners, or such of them as shall act, shall, before they enter upon their duties, take an oath or affirmation faithfully, fairly and impartially to execute the said commission, which oath or affirmation may be taken before any person lawfully authorized to administer an oath or affirmation in the state, territory or kingdom where the said commissioner or commissioners reside or may be at the time.

Examination of witnesses shall be reduced to writing, and signed.

VI. The said commissioner or commissioners shall and may examine every witness named in the said commission, or such as can be met with, upon the interrogatories annexed to the said commission, an oath or affirmation, to be administered to each and every witness by the said commissioner or commissioners, and cause the examination of each witness to be reduced to writing and signed by such witness; and the said commissioner or commissioners shall also sign the same.

Disposition to be made of the examination and commission.

VII. The said commissioner or commissioners shall annex such examination to the said commission, and close the same up under the hand and seal of the said commissioner or under the hands and seals of the said commissioners, and direct the same to the clerk of the court out of which the same issued at the place of holding the said court, and may place the same in any post office, certifying thereon the time when and the post office in which the same may be so placed; and the clerk of the said court may take the same out of the post office in which it may be found in this state, and open the same, and indorse thereon when and how he received it and immediately file the said commission in the said district court, there to remain as a record.

XIII. Clerks—Their duties and dockets.

Duty of clerk.

109. That it shall be the duty of every clerk of every district court wherein any suit shall be instituted, to enter in a book to be kept for that purpose and to remain a record of said court, the names of the plaintiff and defendant, the style and nature of the action, the sum demanded, the time of issuing process and when returnable, the return made thereto by the constable, when the copy of the account or state of the demand or set-off was delivered by the parties, or either of them, the time of taking the recognizance, of making or filing any order, the adjournment, the rule of reference, and report of referees, the jury, when and by whom

demand, the *venire*, when issued and how returned, the time of trial, and names of the jurors and witnesses, the admission of evidence objected to and the rejection of evidence offered, a description of each paper offered in evidence, the verdict and judgment, and when given, the execution or executions, when issued, the endorsement thereon, and how returned by the constable, the appeal, when and by whom demanded, and all the proceedings before said court touching the said suit: and further, it shall be the duty of such clerk to grant to either party, when required, a certified copy of such proceedings.

110. That it shall be the duty of the clerks of the district courts wherein any judgment is rendered, to make out and enter upon his docket a full bill of costs in the case, specifying each item, and the fees for the same, and the amount paid him by each party.

Clerk to enter full bill of costs.

111. That every clerk of any district court whose term of office has expired, or may hereafter expire, or who has resigned, or may hereafter resign, shall and may, when required so to do, make out transcripts from his docket or dockets, under his hand and seal, and certify them as late clerk of said district court; which said transcripts, so certified, shall be used as evidence in all courts of law and equity in this state, and have the same force and effect, and be liable to the like legal objections, as though the said clerk was still in commission.

Clerk may make transcripts of judgments after his term of office has expired.

112. That if any clerk of any district court shall be at any time hereafter removed from his office, the docket or dockets of the said court shall be forthwith delivered to his successor in office.

If clerk is removed, docket shall go to his successor.

113. That every clerk of said court, and his legal representatives, shall and may, at all times after the said docket or dockets are delivered to his successor in office as aforesaid, have free access to the same without payment of any fees to the clerk therefor, to enable him to recover any costs which may be due the said city thereon.

Clerk may have access to docket after delivering to his successor.

114. That if any clerk of said district court shall neglect or refuse to deliver his docket or dockets to his successor in office, and in the manner by this act directed, he shall forfeit and pay the sum of fifty dollars, to be recovered by action of debt, with costs, in any court of competent jurisdiction, and to be paid, when recovered, to the treasurer of the city wherein said court may be, for the use of the city; which suit shall be brought by the city treasurer for the use of the city.

Penalty for refusing to deliver docket to successor.

115. That a transcript of the record of any case entered in any docket as aforesaid, certified to be a true transcript by said clerk, shall be received in evidence in any court of this state, and be as good, effectual, and available in law as if the deposited docket were then and there produced.

Transcript shall be received in evidence.

116. That no judge of any district court or constable shall appear and prosecute or defend in any action before any other judge of any district court, unless such judge or constable shall be one of the parties on record in the cause; and any judge or constable who shall offend against the provisions of this section, shall forfeit the sum of fifty dollars, to be recovered by action of debt, with costs of suit, in any court having cognizance thereof, by and for the use of any person who shall prosecute for the same; and such suit shall be commenced within six months after the offence shall have been committed; *provided*, that nothing herein contained shall prevent a judge from transacting the general concerns of a person who is absent and resident without the state.

Judge may not bring or defend suits.

Penalty.

Proviso.

117. I. That all bills, bonds and other writings, whether sealed or not, containing an agreement for the payment of money, shall be assignable, and the assignee may sue thereon, in his own name; but in such suit there shall be allowed all just set-offs, discounts, and defences, not only against the plaintiff, but also against the assignor, before notice of such assignment shall be given to the defendant.

Bills, bonds, &c., may be assigned and sued upon.

II. The assignment of any sealed instrument by writing not under seal, shall be as valid and effectual at law as if made by writing under seal.

Assignment valid without seal.

III. The assignee for a valuable consideration of any chose in action heretofore or hereafter assigned, if the assignor be dead, may sue for and recover the same in his own name; and the defendant in any such action may set up and avail himself of any defence thereto arising before he shall have received due notice of such assignment, in the same manner,

Death of assignor.

and with the like effect, as if the assignor had been living, and the action had been brought in his name.

Marrage of female no abatement to action.

118. That no action now pending or hereafter to be brought in any district court of any city in this state, wherein a female is or may be a party, shall abate, by reason of the marriage of such female after suit brought; but the action shall proceed to final judgment in the name of such female as plaintiff, or as defendant, as the case may be, notwithstanding such marriage.

Actions against executors or administrators.

119. That in actions against several executors or administrators, all the same executors or administrators shall be considered as one person, representing the testator or intestate, and such of the executors or administrators as the constable shall return summoned shall answer to the plaintiff; and in case judgment shall pass for the plaintiff, he shall have his judgment and execution against such of the executors or administrators as the constable has returned summoned, and against all others named in the writ, of the goods and chattels of the deceased, the same as if they had all been summoned, or had appeared.

When executors may be sued.

120. That in case any executor or executors have refused, or shall refuse, in writing, to prove the last will and testament of any testator, and shall file such refusal in the surrogate's office of the proper county, the executor or executors who have proved, or shall prove, said last will and testament, may maintain a suit at law, without joining in such suit such executor or executors so refusing as aforesaid.

Singular number and masculine gender, how construed.

121. That whenever, in describing or referring to any person, party, matter, or thing, any word importing the singular number or masculine gender is used in this act, the same shall be understood to include, and shall apply to several persons and parties, as well as one person or party, and females as well as males, and bodies corporate as well as individuals, and several matters and things as well as one matter or thing, unless it be otherwise provided, or there be something in the subject or context repugnant to such construction.

XIV. Landlord and tenant proceedings.

Remedy for desertion of premises by tenant.

122. That if any tenant, holding any lands, tenements, or hereditaments, who shall be in arrear for one year's rent, shall desert the demised premises, and leave the same uncultivated or unoccupied, so as no sufficient distress can be had to countervail the arrears of rent, it shall and may be lawful to and for a judge of the district court in the city where said court may be established, and in which the demised premises lie, and who has no interest in the same, at the request of the landlord or landlords, lessor or lessors, or his, her, or their bailiff or agent, to go upon and view the same, and to affix, or cause to be affixed, on the most notorious part of the premises, notice in writing what day (at the distance of fourteen days at least), he will return to take a second view thereof, and if upon such second view the tenant, or some person in his or her behalf, shall not appear and pay the rent in arrear, or there shall not be sufficient distress upon the premises, then the said judge may put the said landlord or landlords, lessor or lessors, into the possession of the said demised premises, and the lease thereof to such tenant, as to any demise therein contained, shall from thenceforth become void; *provided always*, that such proceedings of the said judge shall be examinable in a summary way by the justices of the supreme court, who are hereby empowered to order restitution to be made to such tenants, together with his or her expenses and costs, to be paid by the landlord or landlords, lessor or lessors, if they shall see cause for the same; and in case they shall affirm the act of the said judges, to award costs to be paid by such tenant, and the costs as well in the instance of restitution as of affirmance aforesaid, shall be levied and recovered against the body or bodies, or goods and chattels, lands and tenements, of such landlord or tenant, as the case may be.

How landlord may be put in possession.

Proviso.

When tenants may be removed for rent unpaid or term ended.

123. That any tenant or lessee at will, or at sufferance, or for part of a year, or for one or more years, of any houses, lands, or tenements, and the assignees, undertenants, or legal representatives of such tenant or lessees may be removed from such premises by any judge of any district

court of any city within the corporate limits of which such premises are situated, in the manner hereinafter prescribed, in the following cases :

I. Where such person shall hold over and continue in possession of the demised premises, or any part thereof, after the expiration of his or her term, and after demand made, and notice in writing given for delivering the possession thereof, by the landlord or his agent, for that purpose. After expiration of term.

II. Where such person shall hold over after any default in the payment of the rent, pursuant to the agreement under which such premises are held, and satisfaction for such rent cannot be obtained by distress of any goods, and a demand of such rent shall have been made, by three days' notice, in writing, requiring the payment of such rent, or the possession of the premises, shall have been served by the person entitled to such rent, upon the person owing the same; the notices required in this section shall be served either personally on the tenant by giving him a copy thereof, or by leaving a copy thereof at his usual place of abode, with some member of his family above the age of fourteen. Proceedings.

124. That any landlord or lessor, his legal representatives, agents or assigns, may make oath, in writing, of the facts which, according to the preceding section, authorize the removal of a tenant, describing therein the premises claimed, and may present the same to any judge of any district court of the city within the corporate limits of which the premises are situated. Landlord's affidavit.

125. That on receiving and filing such affidavit, such judge shall issue a summons, describing the premises of which possession is claimed, and requiring any person in possession of said premises, or claiming the possession thereof, forthwith to remove from the same, or to show cause before the said judge, at a certain place and time to be therein specified, not less than five nor more than fifteen days from the date of such summons, why possession of such premises should not be delivered to such claimant. Summons to be issued.

126. That previous to issuing such summons in a case of tenancy at will, or at sufferance, or from year to year, the judge shall be satisfied, by due proof, that such tenancy has been terminated by giving three months' notice to quit, which notice shall be deemed and taken to be sufficient. Tenant must vacate, or show cause.

127. That the summons shall be served in the manner hereinbefore prescribed by this act; the suit may be adjourned, and either party may demand and have a trial by jury of twelve men. Proof that tenancy has ended.

128. That if at the time appointed in the said summons, or at the time to which said suit may be adjourned, no sufficient cause be shown to the contrary, and it shall appear to the said judge or jury that the summons has been duly served, the said judge shall issue his warrant to any constable of the county or marshal of the city or town in which the premises are situate, commanding him to remove all persons from the said premises, and to put the said claimant into full possession thereof, and to levy and make the costs out of the goods and chattels of such person or persons in possession; *provided*, it shall be necessary for said claimant, if required by the defendant, to prove to the satisfaction of the judge, or of the jury if there be a trial by jury, the facts which, according to the one hundred and twenty-third section of this act, authorize the removal of a tenant. Summons, how served.

129. That if, upon the said trial mentioned in the next preceding section of this act, the said plaintiff shall not be able to prove, by lease or other evidence of right of possession, his right to the possession of the said premises claimed by him, without proving title to lands, tenements and hereditaments, that then it shall be the duty of the said judge to dismiss the said action. Writ of possession.

130. That the proceedings had by virtue of the one hundred and twenty-third section of this act shall not be appealed from or removed by *certiorari*; but the landlord shall remain liable in an action of trespass for any unlawful proceedings under this act. Costs. Proviso.

131. That the same fees shall be allowed and paid to the clerks of said courts and to the constables, witnesses and jurors, as are provided for like services by this act, and the constable, for executing the process of possession, shall receive the sum of one dollar. Right of possession without title, to be proved.

132. That the same fees shall be allowed and paid to the clerks of said courts and to the constables, witnesses and jurors, as are provided for like services by this act, and the constable, for executing the process of possession, shall receive the sum of one dollar. Proceedings not appealed or removed by certiorari.

133. That the same fees shall be allowed and paid to the clerks of said courts and to the constables, witnesses and jurors, as are provided for like services by this act, and the constable, for executing the process of possession, shall receive the sum of one dollar. Fees to clerks, &c.

- Proceedings may be removed to circuit court. 132. That at any time after a summons has been issued according to the one hundred and twenty-fifth section of this act, and before the return thereof, either the landlord or the party in possession may apply to a justice of the supreme court, who, if he shall deem the case of sufficient importance, may issue an order, under his hand, directing the said judge, forthwith, to file the said oath or complaint of the landlord, and the other papers appertaining to the proceedings, in the office of the clerk of the circuit court of the county in which such proceedings were commenced, and thereupon said circuit court shall have full and exclusive cognizance of the case; and said court shall be always open for such purpose.
- Proceedings in circuit court. 133. That immediately upon such papers being filed in said clerk's office, the judge of said circuit court shall cause a *venire facias* for a jury to be issued, returnable into said court in not more than one week from the time of issuing the same; and which said writ shall be served by the sheriff or other officer, according to the practice of said court in like cases; and on the day of the return of the said writ the case shall be tried, unless, for good cause shown, the said trial shall be adjourned; that said adjournment and all other adjournments, shall be for the shortest periods practicable, and the one hundred and twenty-sixth section of this act shall not apply to said trial.
- Adjournment. 134. That such notice of the trial shall be given as the said judge may direct; the parties, if they agree so to do, may waive a trial by jury, and submit the case to the judge on the law and facts.
- Notice of trial. 135. That a judgment shall be entered upon the finding of the judge or the jury, and if the same be in favor of the landlord, a writ shall issue to the sheriff of the county, commanding him to put the landlord in full possession of the premises in question, and to levy and make the costs out of the goods, chattels and lands of the person in possession; if judgment be rendered for the defendant he shall have an execution in like manner for his costs.
- On judgment for landlord, sheriff shall put him in possession. 136. That the said circuit court shall have the same power with respect to said proceedings, and the same control over the verdict and judgment as it has in other cases within its jurisdiction, and from the judgment so entered a writ of error shall lie to the supreme court; but such writ shall not stay the execution of such judgment unless upon an order to the effect endorsed on said writ by the said circuit judge, and upon a bond with sufficient surety being given in an amount which he shall designate, conditioned to indemnify the party in whose favor said judgment was rendered, against all losses and damages which he may sustain by reason of final process being stayed.
- Jurisdiction of circuit court. 137. That in all cases where any tenant is or may be entitled by law to notice to quit the premises by him holden, in order to determine his tenancy, three months' notice to quit as aforesaid, shall be deemed and taken to be sufficient.
- Execution, when may be stayed.
- What is sufficient notice to quit premises.

XV. Forcible entry and detainer.

- Unlawful entry prohibited. 138. That no person shall enter upon or into any lands, tenements, or other possessions, and detain or hold the same, but where entry is given by law, and then only in a peaceable manner.
- Forcible entry and detainer, what constitutes. 139. That if any person shall enter upon or into any lands, tenements, or other possession, and detain or hold the same with force or strong hand, or with weapons, or by breaking open the doors, windows or other part of a house, whether any person be in it or not, or by any kind of violence whatsoever, or by threatening to kill, maim, or beat the party in possession, or by such words, circumstances, or actions as have a natural tendency to excite fear or apprehension of danger, or by putting out of doors, or carrying away the goods of the party in possession, or by entering peaceably and then turning by force or frightening by threats, or other circumstances of terror, the party out of possession; in such case every person so offending shall be guilty of a forcible entry and detainer within the meaning of this act.
- What a forcible detainer. 140. That no person, who shall lawfully or peaceably enter upon or into any lands, tenements, or other possessions, shall hold or keep the same unlawfully, and with force, or strong hand, or weapons, or violence, or

menaces, or terrifying words, circumstances, or actions aforesaid; and it is hereby declared, that whatever words or circumstances, conduct or actions, will make an entry forcible under this act, shall also make a detainer forcible.

Acts making forcible entry are, also, forcible detainer.

141. That the three preceding sections of this act shall extend to and comprehend terms for years, and all estates, whether freehold or less than freehold.

What estates comprehended.

142. That if any tenant or tenants for term of life or lives, year or years, or other person or persons who are or shall be in the possession of any lands, tenements or hereditaments, by, from or under, or by collusion with such tenant or tenants, shall, wilfully and without force, hold over any lands, tenements or hereditaments, after demand and notice in writing given for the delivery of the possession thereof, by his, her or their landlord or landlords, lessor or lessors, or the person or persons to whom the remainder or reversion of such lands, tenements or hereditaments shall belong, his, her or their agent or attorney, thereunto lawfully authorized, then such person or persons so holding over shall be guilty of an unlawful detainer.

Tenant holding over by collusion guilty of unlawful detainer.

143. That when any complaint to any judge of any district court in any city in this state shall be made in writing and signed by the party grieved, his agent or attorney, specifying the lands, tenements or other possessions so forcibly entered upon and detained, or forcibly or unlawfully detained, by whom and when done, and the estate therein, it shall be the duty of the said judge to issue a precept, under his hand and seal, directed to the sheriff of the county wherein said district court may be established, commanding him to cause to come before the said judge, twelve good and lawful men of the said county, qualified to serve as petit jurors in the court of general quarter sessions of the peace, to inquire into and try such forcible entry and detainer, or forcible or unlawful detainer; which precept shall be in the form or to the effect following, that is to say: "City of

On complaint of land, &c., being forcibly detained, judge shall issue precept.

Proceedings.

Form of precept.

, county of , to wit: the state of New Jersey to our sheriff of our county of , greeting: whereas, complaint in writing is made to the subscriber, A. B., judge of the district court in and for our said city, of a certain forcible entry and detainer (or if detainer only, then say of a forcible detainer, or of a certain unlawful detainer), made by E. F. into the messuage (or upon the lands) of C. D. in the county aforesaid; we therefore command you that you cause to come before the said A. B., at , in the county aforesaid, at the hour of , in the noon of the day of , twelve good and lawful men of the body of your county, being citizens of this state and resident within the county, above the age of twenty-one, and under the age of sixty-five years, and who have a freehold in lands, messuages or tenements in the said county, and who are in no wise of kin to the said C. D. or E. F., to make a jury of the county, to inquire of and try the said forcible entry and detainer (or forcible or unlawful detainer); given under the hand and seal of the said A. B., the day of , in the year of our Lord one thousand ."

144. That the said judge shall issue a summons to the party complained against, in the words or the effect following, that is to say: "City of , county of , to wit: the state of New Jersey to our sheriff of our county of , greeting: we command you, that you summon E. F., of , to appear before A. B., judge of the district court in and for our said city, at , in the county aforesaid, at the hour of in the noon of the day of , to answer to and make defence against the complaint of C. D., of a forcible entry and detainer (or if detainer only, then say of a forcible detainer, or of an unlawful detainer), made by the said E. F. into the messuage (or upon the lands) of the said C. D. in the county aforesaid; and have you then and there this precept, with a return of your proceedings therein; given under the hand and seal of the said A. B., the day of , in the year of our Lord one thousand ."

Summons. Form.

145 That the said summons shall be served upon the party against whom the said complaint is made, or a copy thereof left at his usual place of abode, six entire days before the day of appearance therein mentioned;

Summons, how served.

When jury may not be had.	and that such service of the said summons in any part of the state, as well without the said county as within it, shall be good and effectual in law; and further, that no jury shall, by virtue of this act, be sworn to inquire of and try any forcible entry and detainer, or forcible or unlawful detainer, where such previous notice shall not have been given as aforesaid.
Plea and issue.	146. That the party against whom such complaint is made, may, at the time of appearance mentioned in the said summons, and before the said jury is sworn, plead not guilty to the said charge or complaint, or that he hath been three years in quiet possession, and his estate therein not ended or determined, agreeably to a subsequent clause in this act; and thereupon the said parties shall be at issue, and the said judge shall proceed to swear the jury so returned, to inquire of and try the same; and if the said party, against whom the complaint is made as aforesaid, does not appear at the time specified in the said summons, or, appearing, does not plead to the said complaint, then it shall be lawful for the said judge to proceed in the same manner as if he had pleaded not guilty; to the said jurors, and each of them, who shall be returned to inquire of and try the said complaint, the clerk of said court shall administer the following oath or affirmation: "You do swear (or affirm) that you will well and truly try this issue joined between C. D. and E. F., and a true verdict give according to the evidence;" when the jury shall be so sworn as aforesaid, the said judge shall cause the said complaint to be read to them, and then call upon the complainant to support the same; if the jury find the party against whom such complaint is exhibited guilty, or find against his plea of possession, it shall be the duty of the said judge to record the said verdict, and to give judgment thereon, with treble costs; and also to issue a writ of restitution, directed to the sheriff, to cause the complainant to be re-seized or re-possessed; to which shall be added a clause commanding the said sheriff to levy the said costs of the goods and chattels of the offender, and for want thereof, to take the body of such offender, and him safely to keep in close custody in the common jail of the county until he shall pay the same, or be thence delivered by due course of law.
Form of oath or affirmation.	
Proceedings.	147. That no writ of restitution shall be issued by the judge of any district court, upon any judgment rendered by him in pursuance of the provisions of the preceding section of this act, until eight entire days, exclusive of Sundays, shall have elapsed after the rendition of such judgment; which writ of restitution, when issued, shall be returned within three months thereafter, by the sheriff or other officer to whom the same has been delivered, with his proceedings thereon, to the judge who issued the same; if the jury find against the said complainant, the said judge shall cause the said verdict to be recorded, and give judgment accordingly, with costs, and shall issue execution directed as aforesaid, for the said costs, against the goods and chattels, and in want thereof, against the body of the said complainant.
Treble costs.	
When body of offender may be taken.	
Time for issuing writ of restitution.	
How issued.	
Verdict of jury, effect of.	
When trial may be postponed.	148. That the said judge may, at the request of either party, and on good reasons being assigned, postpone the said trial to any time not exceeding fifteen days; but such postponement to be on the payment of costs.
Duty of clerk.	149. That it shall be the duty of the said clerk to enter, on his minutes or docket, true copies of the complaint exhibited by virtue of this act, and of the summons and return, also the time of issuing the <i>venire</i> , and how returned, the names of the jurors, their verdict, and his judgment thereon; and also the names of the witnesses and the admission of evidence objected to, and the rejection of evidence offered, and all the proceedings before him had touching the said complaint.
Penalty for neglect or refusal to execute precept, &c.	150. That if the sheriff of any county shall neglect or refuse to execute or return any precept, writ, or other process to him directed and delivered, by virtue of this act, he shall, for every such offence, forfeit and pay two hundred dollars to the party grieved, to be recovered with costs, by action of debt, in any court of record having cognizance of that sum.
Proceedings removed by certiorari only.	151. That the proceedings had by virtue of this act, on such forcible entry and detainer, or forcible or unlawful detainer, may be removed before the supreme court by writ of <i>certiorari</i> , and in no other way, and then only after judgment.

152. That no justice of the supreme court shall grant or allow any *certiorari* to remove any judgment, order or proceeding to be had or made by virtue of this act, unless the party applying for such *certiorari* shall present to the said justice reasons for the allowance thereof, drawn up and subscribed by himself or some attorney at law, to be deemed by the said justice to contain a probable cause of reversal; and unless such applicant shall also enter into bond to the other party, in the sum of two hundred and fifty dollars, with one or more sufficient surety or sureties, being freeholders and residents of this state, conditioned that such applicant shall prosecute the said *certiorari* in the supreme court, shall pay the yearly value of the premises in dispute, from the time of granting the said *certiorari* to the determination of the same, together with the costs of the suit before the court below, and such further costs as may be taxed if the judgment be affirmed; and shall in all things stand to and abide the judgment of the supreme court, respecting the judgment, order, or proceeding given or made by the court below; which said bond, together with the reasons, shall be filed by the said justice, with the clerk of the supreme court, for the benefit and use of the obligee.

When certiorari will be granted.

Applicant must enter into a bond.

153. That every *certiorari* to remove any judgment, order, or proceeding, to be had or made by virtue of this act, shall in every other respect be prosecuted, tried and determined in like manner, and be subject to the like rules and regulations as writs of *certiorari* to judges of district courts to remove proceedings had by virtue of this act.

How prosecuted and tried.

154. That neither the said judgment nor anything in this act shall bar or prevent the party injured from bringing an action of trespass or other action against the aggressor or party offending.

Action of trespass may be brought against aggressor.

155. That the estate or merits of the title shall in no wise be inquired into on any complaint which shall be exhibited by virtue of this act; *provided, always,* that this act shall not extend to any person who hath had the uninterrupted occupation, or been in the quiet possession of any lands or tenements for the space of three whole years together, immediately preceding such complaint so exhibited to the said judge, and whose estate therein is not ended or determined, but every such person may plead the same to the said complaint, which shall be tried in the manner hereinbefore described.

Title not to be inquired into.

Proviso.

156. That every judge of any district court in any city of this state, before whom any prosecution may be instituted by virtue of this act, shall be and is hereby authorized to issue writs of *subpœna ad testificandum* into any county of this state.

Judge may issue writs of subpœna.

157. That in prosecutions under this act, the following fees shall be allowed and paid to the clerks of said courts:

Fees.

For every summons,	\$ 30
For every venire facias,	40
For entering copies of every complaint, summons and return,	1 00
For subpœna for every witness,	12
For swearing the jury,	20
For administering every oath or affirmation,	05
For entering every verdict,	12
For entering every judgment,	12
For every trial,	2 00
For return to every certiorari,	1 00

TO THE SHERIFF.

For serving every summons and return,	1 00	Sheriff.
For summoning every jury, returning the precept, and attending the trial,	4 00	
For executing every writ of restitution,	2 00	

For serving every execution for costs, advertising property for sale, and so forth, the same fees as are allowed for the like services in the court of common pleas.

TO THE JURORS.

Every juror for each cause in which he is sworn or affirmed	25	Jurors.
For each cause in which he appears, but is not sworn or affirmed	12	

TO THE WITNESSES.

Witnesses. The same fees as are allowed to them for like services under this act.

TO THE ATTORNEY.

Attorneys. For the trial of every cause, \$2 00

Penalty for default of juror or witness. 158. That every person summoned as a juror or subpoenaed as a witness, who shall not appear, or, appearing, shall refuse to serve or give evidence in any prosecution instituted by virtue of this act, shall forfeit and pay for every such default or refusal, unless some reasonable cause be assigned, such fine not exceeding five dollars nor less than one dollar in the case of a juror, and not exceeding twenty dollars nor less than five in the case of a witness, as the said judge shall think proper to impose; and such judge is hereby authorized and required to issue an execution directed to any constable of the said county, to levy the same of the goods and chattels of the offender; which fine, when recovered, shall be applied by the said judge to the use of the said city.

Fine to be applied to use of city.

XVI. Proceedings by attachment.

Attachment shall issue against absconding debtor for sum not exceeding \$100. 159. That if any creditor shall make oath or affirmation that he verily believes that his debtor absconds from his creditors, and is not, to his knowledge or belief, resident in this state at the time, the clerk of any district court in any city of this state shall, and he is hereby required to issue out of said district court, an attachment under his hand and the seal of said court, for any sum not exceeding one hundred dollars, directed to a constable, who shall execute the same in the following manner, that is to say: the officer to whom it is directed shall go to the house or lands of the defendant, or to the person or house of the person in whose custody or possession the defendant's property and estate may be, and then and there declare, in the presence of one credible person at the least, that he attaches the rights and credits, moneys and effects, goods and chattels of such defendant, at the suit of the plaintiff in the said writ named; and upon the return of such attachment, the said judge of the district court shall appoint a day for the hearing of the said cause, not less than twenty days from the issuing of the said writ; on or before which day so appointed, the plaintiff in the said attachment shall file a copy of his account or state of demand; and if the creditor shall make sufficient proof of the debt due to him, the said judge shall give judgment therein for the plaintiff and award his execution thereof to the constable against the effects of the defendant, as in other cases cognizable before the said judge, but the effects of the defendant thereon taken shall not be sold in less than three months (unless the same are perishable), to the end that the debtor or his friend may redeem the same; and in the meantime the same shall be inventoried and safely kept in such manner as the judge shall direct.

Plaintiff shall file state of demand.

Effects shall be inventoried.

After issuing writ of attachment, plaintiff must advertise.

Proceedings against garnishee.

When by summons.
When by warrant.

160. That it shall be the duty of the plaintiff forthwith, after the issuing of such attachment, to advertise in three of the most public places in the county, that an attachment has been taken out from such district court, against such absconding or absent debtor, in order that any person having a greater demand against such debtor than is cognizable before said district court, may have an opportunity to take out an attachment for the recovery of the same.

161. That the plaintiff in such attachment, notwithstanding the garnishee's denial of his having any moneys, goods, chattels or effects of the defendant in his custody or possession, or of his being indebted to him, may, if he really believes that the said garnishee hath such moneys, goods, chattels or effects in his custody or possession, or that he is indebted to the defendant, and is in fear of the said garnishee's absconding before judgment and execution can be had against such garnishee, and shall make oath or affirmation thereof, and deliver the same to the clerk as aforesaid, institute a suit against the said garnishee, by summons, or in case of fraud duly proved, by warrant, and if he shall make sufficient proof of the debt due to him, and also of the effects, rights or credits in the hands of the garnishee, the said judge shall give judgment therein for the plaintiff, and award and issue his execution therefor to the constable

against the garnishee, as in other cases cognizable by district courts in accordance with this act; and if the plaintiff shall not make sufficient proof of the effects, rights or credits in the hands of the garnishee, he shall pay the garnishee his costs, and if need be the judge of said district court shall issue his execution against the plaintiff for the same.

If plaintiff makes insufficient proof, he shall pay costs to garnishee.

162. That it shall be lawful for the defendant in any attachment issued by any clerk of any district court as aforesaid, on or before the day appointed for the hearing of the said cause, to cause his appearance to be entered, by filing with the said clerk a bond to the plaintiff, executed by one or more sufficient sureties, being freeholders and residents in the county in which such attachment shall issue, in double the value of the property attached, conditioned for the due and safe return of the goods and chattels, rights and credits, moneys and effects, seized and taken by virtue of such writ of attachment, in case judgment shall be rendered for the plaintiff; which said bond shall be approved by the said clerk, and filed by him for the use and benefit of the plaintiff; and thereupon the property attached shall be restored to the defendant and released from the lien of the said attachment.

Defendant in attachment may cause his appearance to be entered by filing bond.

Conditions of bond.

On approval of bond, clerk shall restore property.

163. That after filing the said bond, the said defendant shall file his plea, copy of account, or set-off, if any he have, and the said cause shall and may be adjourned and conducted in all things in like manner as if the same had been commenced by summons under this act; and either party may appeal from the said judgment in like manner, in every respect, as if the said suit had been commenced by summons under this act.

Proceedings under attachment after bond has been filed.

164. That from any judgment rendered by a judge of any district court for or against a garnishee in attachment, either party may appeal in like manner in all things as from any other judgment of said judge under this act.

Appeal in garnishee's case.

165. That any writ of attachment against any absconding or absent debtor, which may be issued out of the supreme court or any circuit court or court of common pleas, shall be a supersedeas to all attachments issued by any district court of this state, undetermined at the time of serving the said writ; and it shall and may be lawful for the sheriff or his deputy, to take into his possession all goods and chattels attached by the constable, as fully, to all intents and purposes, as if the attachment issued by the said clerk of said district court had not been served, and the plaintiffs in said attachments shall be entitled to their several debts, with the costs that may have accrued, in proportion with the other creditors, as is the practice in the supreme court or circuit court or court of common pleas; *provided always*, that no constable shall be obliged to remove any goods taken into his custody by virtue of any attachment, after the same shall have been seized and attached by the sheriff.

Attachment in district court, when superseded.

Proviso.

166. That in all cases of an attachment hereafter issued by any district court of any city of this state, when an affidavit shall be filed on or in behalf of the defendant, setting forth facts which would render said attachment illegal or void, it shall be the duty of said judge of said district court, upon a motion to quash the writ of attachment, to try said facts, without requiring the defendant to file a bond according to the requisition of this act, and to give judgment on said motion; and when an attachment issued by any district court as aforesaid shall be superseded by an attachment out of a higher court, the plaintiff in the attachment so superseded shall be entitled to be first paid out of the property attached the full amount of the legal costs and expenses which may have accrued on the attachment so superseded.

Motion to quash without filing bond.

XVII. Miscellaneous.

167. That this act shall not affect any suit or proceeding instituted in any court for the trial of small causes, prior to the first day of April next; such suit or proceeding may be prosecuted or continued, any judgment therein may be docketed, and any writ, process, or execution therein may issue as if this act had not been passed.

This act not to affect any suit instituted in small cause court prior to April next.

168. That any oath or affirmation proper to be made or administered in any action or proceeding in said courts, may be administered by the clerks thereof.

Clerks may administer oath or affirmation.

When defendant may pay money into court for benefit of plaintiff.

169. That it may be lawful for any defendant, within such time as shall be directed by the rules made for regulating the practice of the said courts, to pay into court such sum of money as he shall think in full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment, and notice of such payment shall be communicated by the clerk to the plaintiff by the post, or by causing the same to be delivered at his usual place of abode or business; and said sum of money shall be paid to the plaintiff; but if he shall elect to proceed, and if the plaintiff shall recover no further sum in the action than shall have been so paid into court, the plaintiff shall pay to the defendant the costs incurred by him in said action after such payment, which costs may be collected as other costs are collected in said court.

Verdict of jury or decision of judge conclusive as to questions of fact.

170. That if the parties to any action or proceeding in said courts fail to demand a trial by jury, in cases where such demand is necessary, and so elect to permit questions of fact to be determined by the judge thereof, then such determination of the judge, or in cases where there is a jury, then the verdict of a jury, and any judgment thereupon shall be final and conclusive between the parties upon questions of fact, except as herein provided; but the judge shall have power to non-suit the plaintiff in every case in which satisfactory proof shall not be given to him entitling either plaintiff or defendant to the judgment of said court, and shall also, in every case whatever, have the power, if he think fit, to order a new trial to be had upon such terms as he shall think reasonable, and in the meantime stay proceedings.

When appeal may be had on points of law.

171. That if either party in any such action or proceeding shall be dissatisfied with the determination or direction of said court in point of law, or upon the admission or rejection of evidence, such party may appeal from the same to the court of common pleas in and for the county wherein said district court is held; *provided*, that such party shall, within ten days after such determination or direction, give notice of such appeal to the other party, or his attorney, and enter into bond to the other party, with at least one sufficient surety, being a freeholder of such county, to be approved by the judge, for the costs of the appeal, whatever be the result thereof, and for double the amount, if any, of the judgment rendered against him, conditioned for the payment thereof, if the appeal be not prosecuted by the appellant, or be dismissed; *nevertheless*, such security, so far as regards the amount of the judgment, shall not be required in any case where the judge shall permit the party appealing to pay the amount of such judgment into the hands of the clerk, and the same shall have been paid accordingly; but such appeal shall operate as a stay of proceedings only after such security has been given or money paid, and the said court of common pleas may either order a new trial, on such terms as said court may direct, or may order judgment to be entered for either party, as the case may be, and may make such order with respect to the dismissal and costs of the said appeal as said court may think proper. (a)

Proviso.

When appeal is taken form of case shall be agreed on.

172. That such appeal shall be in the form of a case agreed on by both parties, or their attorneys, and if they cannot agree, the judge, on being applied to by them, or their attorneys, shall, upon such notice as said judge shall prescribe, settle the case and sign it, and such case shall be transmitted by the appellant to the clerk of the said court of common pleas, and filed by him in his office. (b)

Time allowed to agree upon case.

Proviso.

173. That such case shall be agreed upon or settled within fifteen days after such determination or direction, unless the judge shall grant further time for that purpose; *provided*, that such case shall be heard by said court of common pleas at the next term after such determination or direction, unless the said court shall, on good cause shown, postpone the hearing thereof to some subsequent term; *and provided further*, that there shall be fifteen days between such determination or direction and said next term.

Decision of common pleas may be removed to

174. That such order, determination or decision of the court of common pleas may be removed into the supreme court by writ of *certiorari*; said writ shall remove said order or determination, and the case agreed upon

(a) After the decision has been rendered on the appeal, the cause must be remitted for execution, *Guerin v. Rodwell*, 8 Vr. 71.

(b) What such state of the case must contain, see *Benedict v. Howell*, 10 Vr. 221. If the judge refuses to sign such state of the case, a *mandamus* may issue to compel him, *Ibid.*

or settled as hereinbefore mentioned; *provided*, the party applying for the same comply with the provisions of this act. supreme court by certiorari.

175. That the judges of said district courts shall make such rules as may be necessary for the orderly conduct and business and proceedings of their said courts respectively; the rules of said courts shall be uniform, and shall be approved by and subject to the revision of such justice of the supreme court as shall hold the circuit in and for the county wherein said courts may be established; and in case of the sickness or unavoidable absence of the judge of any district court, the same may be held by one of the judges of the said court of common pleas, to be designated by the judge so sick or absent, and approved by the aforesaid justice of the supreme court. District court judges shall make rules.
Sickness or absence of district court judge.

176. That the judges of said courts shall, before they enter upon the execution of their respective offices, take and subscribe the following oath, to wit: "I, A. B., do solemnly promise and swear that I will administer justice without respect to persons, and faithfully and impartially perform all the duties incumbent on me as judge of _____ district court of the city of _____, according to the best of my abilities and understanding, agreeably to the constitution and laws of the state of New Jersey, so help me God;" and the clerks of said courts shall, before they enter upon the execution of their respective offices, take and subscribe the following oath, to wit: "I, A. B., being appointed clerk of the district court of the city of _____, do solemnly promise and swear, that I will truly and faithfully enter and record all the orders, judgments, and proceedings of the said court; that I will justly and honestly keep the records, parchments, papers, writings, and books to me committed, and to be committed by virtue of my said office, and that I will faithfully and impartially perform all the duties of the said office, according to the best of my abilities and understanding, so help me God." Oath for judges.
Form.

177. That it shall be the duty of the clerk for the time being, of the inferior court of common pleas of the county in which said courts may be established, and of none other, to administer the oaths required by the preceding section of this act. Clerk of common pleas to administer oath to judge.

178. That the judges of each of said courts shall receive, in lieu of all fees whatever, an annual salary as follows: the judges of each of said courts in cities of fifteen thousand, but not exceeding thirty thousand inhabitants, an annual salary of two thousand dollars; the judges of each of said courts in cities of thirty thousand, but not exceeding one hundred thousand inhabitants, an annual salary of two thousand five hundred dollars; and the judges of each of said courts in cities of one hundred thousand inhabitants or over, an annual salary of three thousand dollars; the said annual salaries shall be paid by the mayor and common council of the cities wherein said courts may be established, out of the treasuries of said cities respectively, in quarterly instalments, which shall be computed from the day of the appointment of said judges; and the clerks of said courts wherein the salary of the judges thereof is two thousand dollars, shall receive an annual salary of seven hundred dollars; the clerks of said courts wherein the salary of the judges thereof is two thousand five hundred dollars, shall receive an annual salary of eight hundred dollars; and the clerks of said courts wherein the salary of the judges thereof is three thousand dollars, shall receive an annual salary of one thousand dollars; the salaries of said clerks to be paid in like manner as the judges are paid, and in addition thereto shall receive five per centum of all fees paid into said courts by the suitors therein; *provided*, that such additional compensation does not exceed the sum of two hundred dollars per annum. Salaries of judges.
Salaries of clerks.
Per centum of fees for clerk.
Proviso.

179. That all fees allowed by virtue of this act shall be paid to the clerks of said courts, at the time and in the manner hereinbefore prescribed; the clerk of each court shall keep an accurate account of all moneys so received by him, and of all moneys paid by him in cases where he is required by this act to pay any moneys, and to whom paid, and he shall render detailed monthly statements to the treasurer of the city where said court may be established, of such receipts and disbursements, and pay over to such treasurer monthly the balance remaining in his hands. All fees to be paid to clerk.
Clerk shall render monthly accounts to city treasurer.

Fees of constables, jurors and witnesses payable to clerk.

180. That the fees of constables, jurors and witnesses shall be those prescribed by this act, and shall be payable at the same time and in the same manner, and all other fees required by this act shall be paid to said clerks, to be by them accounted for in the manner directed in the preceding section of this act.

Additional fees allowed to clerk.

181. That in addition to the fees allowed by this act, the following fees shall be allowed: to the clerk of the court of common pleas, for filing every case agreed upon or settled, the sum of one dollar; fifty cents whereof shall be paid by said clerk to the judges of said court as their fees thereon; to the constable for each day's actual attendance on the sittings of said courts, when such attendance shall be required by the judge, the sum of one dollar, to be paid by the mayor and common council of the city where said courts may be established, out of the treasury of said city; to any judge of the court of common pleas, the sum of three dollars per day for each day that he shall actually preside in said district court, to be paid as last aforesaid.

Paid by mayor and city council of city where courts are located.

Judges not to practice in common pleas.

182. That the judges of said courts shall not be allowed to practice in the courts of common pleas of the county wherein said courts may be established.

Rooms and furniture to be provided.

183. That the mayor and common council of each city where said courts may be established, shall provide suitable rooms for the transaction of the business of said court or courts, and procure suitable furniture therefor, and such books and stationery as may be necessary.

Judges to designate constables.

184. That the judges of said courts may designate constables to attend the sittings of said courts, and to preserve order therein.

Clerks shall give bond.

185. That the clerks of each of said courts shall enter into bond to the state of New Jersey, with at least two good and sufficient sureties, being freeholders in the county where said court or courts may be established, in the sum of three thousand dollars; which bond to be entered into as aforesaid, by the said clerks and their sureties, with the condition thereof, shall be in the form following, that is to say; "Know all men by these presents, that we, A. B., C. D. and E. F., of the county of _____, are held and firmly bound unto the state of New Jersey, in the sum of three thousand dollars, to be paid unto the state of New Jersey, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents; sealed with our seals; dated the _____ day of _____, in the year of our Lord one thousand eight hundred and _____; the condition of this obligation is such that if the above bounden A. B. shall well and truly execute the

Condition of.

Form.

the office of clerk of the district court of the city of _____, in the county of _____, and in all things touching and concerning said office, shall well and truly, faithfully and impartially, execute and perform the same according to law, as well with respect to all persons concerned as the state of New Jersey, and at the expiration of his said office, shall deliver to his successor in office, all the books, papers, records and writings remaining in the same, or appertaining thereto, then this obligation to be void, otherwise to be and remain in full force and virtue;" such bond shall be approved of by two of the judges of the court of common pleas of the county where said courts may be established, and when so executed and approved of, shall, together with the oath or affirmation of office, duly taken and subscribed, be recorded in the secretary's office, and filed in the same, to be by the secretary of state kept among the public papers of his office; and in case any person appointed clerk as aforesaid, before he shall enter into the security aforesaid, shall perform any of the duties required of him by law, in said office, he shall for such offence, forfeit and pay, for the use of this state, one hundred dollars, to be sued for and recovered by any one of the judges of the court of common pleas of the county in which the offence was committed, in an action of debt, with costs of suit, in the name of this state.

Bond to be approved by two judges of court of common pleas and filed with secretary of state.

Penalty for performing duties before filing bond.

Construction.

186. That the word "plaintiff," wherever used in this act, shall be taken to include "plaintiffs," or "person or persons instituting proceedings;" the word "defendant" shall be taken to include "defendants," or "person or persons proceeded against."