

finer imposed and received by such justice during the preceding month, and shall at the same time pay over all fines so by him imposed, the said fines to be received and held by the county collector for the use of the county; *provided*, that this act shall not apply to fines, the disposition of which is now provided for by law, except such as are now declared to be for the use of the county.

22. SEC. 2. That all fines which may have been heretofore imposed by any justice of the peace, and included within the terms of the preceding section shall be paid over as above provided, within thirty days from the time this act shall take effect. Fines heretofore imposed to be paid in 30 days.

23. SEC. 3. That if any justice shall fail to report and make payment as above directed for thirty days after notice in writing from the county collector so to do, such justice shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or imprisonment not exceeding one year, or both, at the discretion of the court. Penalty for failure to report and make payment.

24. SEC. 4. That all fines which may be authorized under any proceedings before any justice of the peace, and which have not been appropriated to any distinct use by existing legislation, shall be and they are hereby appropriated and made payable to the county collector of the county in which the justice may reside, for the use of the county. Fines not appropriated to any distinct use, payable to county collector.

## Justices Courts.

### I. JURISDICTION.

1. Extent of jurisdiction.
2. In case of penalty.
3. When debt, &c., exceeds one hundred dollars.
4. Limitation of jurisdiction.
5. What penalties cognizable.
6. Entry of action without process.
7. Suits against corporations and attorneys.
8. Justice whose term has expired may conclude a case.
9. Where justices' writs shall run.

### II. PROCESS.

10. Process when tested and signed.
11. Justice not to issue blank writs.
12. When process void.
13. Process to compel appearance. When warrant may issue.
14. Justice to make order.
15. Defendant may apply to set aside order.
16. Justice to furnish a copy of order.
17. Summons when returnable; how served.
18. How served on corporation.
19. Sum endorsed on warrant; if paid, defendant discharged.
20. Proceedings upon warrant.
21. Recognizance and form of.

### III. PLEADING.

22. What suits to be debt.
23. When demand and plea to be filed.
24. Defendant when precluded.
25. Title to lands pleaded.
26. Effect of plea.
27. Bond required in such case.

### IV. TRIAL.

28. Proceedings if defendant does not appear.
29. When cause shall be heard.
30. Trial when and how adjourned.
31. Hour of adjournment.
32. Adjournment in case of set off filed.
33. Jury demanded and when.
34. Jurors' oath. Witness' oath.
35. Fines of jurors and witnesses.

36. If defendant has filed off set, plaintiff shall not withdraw suit.
37. Proof by affidavit of book account.
38. Affidavit of partnership.
39. Proof by affidavit of notes, etc.
40. Competent knowledge in affiant.
41. Disagreement of jury.

### V. JUDGMENT.

42. When judgment against plaintiff.
43. Judgments by confession.
44. Where case is submitted to jury.
45. Form of judgment in case of action on bond, &c., with penalty.

### VI. EXECUTION.

46. The execution.
47. When execution against body may issue.
48. Order of justice.
49. Application to set aside.
50. Justice to file order and give copies.
51. Effect of order to set aside.
52. When constable, &c., to incur no penalty.
53. Service of order.
54. Justice to furnish copies of order.
55. When second application allowable.
56. Stay of execution.
57. But not in suit upon former judgment.
58. Goods how advertised and sold.
59. Claim of property, proceedings.
60. Effect of, and proceedings after verdict.
61. Of taking the body on execution.
62. Scire facias not necessary.
63. Notice how served.
64. Execution in force one year.
65. Alias and pluries execution.
66. Priority of executions.
67. Property levied on to be inventoried.
68. Constable liable for neglect.
69. Execution against corporation.

### VII. DOCKETING JUDGMENTS.

70. Judgment may be docketed, when.
71. Clerk to keep docket.

72. Mode of docketing.
73. How docketed judgment to operate.
74. No proceedings in justices' court thereafter.
75. How revived.
76. Clerk to index.
77. In cases of appeal and certiorari.
78. Clerk to enter the determination on certiorari or appeal.

## VIII. APPEAL.

79. Pleas may order stay of execution.
80. Execution stayed where bond filed with judge or clerk.
81. New appeal bond substituted.
82. Justice to send up transcript and bond.
83. When appeal may be heard.
84. How appeal tried.
85. Admission of evidence on trial of appeal. How new evidence admitted.
86. How jury demanded.
87. Appeal founded on verdict of jury tried by court unless jury demanded.
88. Judgment on report of referees reviewed.
89. No non-suit on trial of appeal.
90. No new trial granted.
91. Justice who tried case not to sit.
  2. Entry of rule necessary to make judgment lien on land.
93. Clerk to record such judgment.

## IX. CERTIORARI.

94. Judgment may be reviewed only by certiorari.
95. No certiorari allowed where appeal lies.
96. How certiorari obtained.
97. When adjudicated.
98. Costs on affirmance, but not on reversal.
99. Jurisdiction extended to circuit courts.
100. What errors or mistakes corrected.
101. Costs in such cases.
102. Judgments not reversed for mere irregularities.
103. When a rehearing before the justice may be ordered.

## X. COSTS.

104. Fees. Items of.
105. Fees on appeal.
106. Who to pay the jury of twelve men.
107. Or six men.
108. When constable not required to serve process.
109. Fees of justice to be paid before appeal.
110. Fees to be paid before hearing of appeal.

R. S. 229.

P. L. 1848, p. 127.

" 1856, p. 142.

" 1857, p. 558.

" 1858, p. 34, 49.

" 1862, p. 27, 477.

" 1870, p. 61, 219, 325.

" 1871, p. 116.

" 1873, p. 119.

" 1875, p. 77, 142.

## An act constituting courts for the trial of small causes.

Revision—Approved March 27, 1874.

## I. Jurisdiction.(1)

1. 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 hundred dollars, (a) shall be and hereby is made cognizable

(a) Where the amount *in dispute*, or the *balance* does not exceed one hundred dollars, the justice has jurisdiction, whatever may be the amount of the accounts involved, *South v. Hall*, *Coxe* 29. *McCawley v. Barnes*, *Coxe* 52. *Johnson v. Coolbaugh*, *Coxe* 55. *Eacrit v. Keen*, 1 *South*. \*203. *Fawley v. McIntire*, 1 *Gr.* 190. *Keep v. Kelly*, 3 *Vr.* 56. *Baker v. Braisted*, *Pen.* \*950. So, if the *interest* on an account added thereto would make the total exceed one hundred dollars, yet the creditor, being at liberty to claim any rate of interest under seven per cent., may sue for one hundred dollars, *Hopper v. Steelman*, *Pen.* \*908. *Saddle River v. Colfax*, 1 *Hal.* 115. *Griffith v. Clute*, 4 *Hal.* 264. *Howell v. Burnett*, *Spen.* 265. In actions of *tort* sounding in damages, where counts are added to meet the evidence, and where *one injury* only is

sought to be redressed, a justice has jurisdiction although the sums added together exceed one hundred dollars, *Sayres v. Ward*, *Pen.* \*1607. The plaintiff cannot by *fictional credits* reduce his claim to an amount within one hundred dollars, *Souders v. Stratton*, *Pen.* \*528. *Cowell v. Farwell*, *Pen.* \*561. *Hewell v. Burnett*, *Spen.* 265. The credits must be *specific*, and set out particularly, *Price v. Emock*, *Pen.* \*266. *La Rue v. Boughaner*, 1 *South*. \*104. *Williams v. Hamilton*, 1 *South*. \*220. *Haggerty v. Van Kirk*, 4 *Hal.* 118. *Pinkney v. Ayres*, 1 *Zab.* 694. *Keep v. Kelly*, 3 *Vr.* 56. A *defendant* cannot by an unverified charge over one hundred dollarsoust the justice of his jurisdiction, *Hoffman v. Reading*, *Pen.* \*161. *Montgomery v. Sincwhill*, *Pen.* \*561.

(1) By act of March 4, 1873, (P. L. 1873, p. 245), an act was passed constituting in the city of Newark, in the county of Essex, two District Courts. The civil jurisdiction theretofore exercised by justices of the peace was vested in and directed to be exercised by these district courts.

## XI. MISCELLANEOUS.

## 1. AMENDMENTS.

111. Amendments made.
112. Provision of Sec. 138 of "Practice Act" extended to justices' courts. Proviso.
113. Defective return of constable may be amended, when.

## 2. REFERENCES.

114. Rules of reference to be entered.

## 3. DEPOSITIONS.

115. Depositions of witnesses, when taken.
116. Such deposition, how taken.
117. What provisions of "Evidence Act" applicable.

## 4. JUSTICES—THEIR DUTIES AND DOCKETS.

118. Justices docket, entries in.
119. Justice to enter full bills of costs.
120. Justices out of office may give transcripts.
121. Where docket deposited, after death of justice.
122. If impeached, docket where deposited.
123. Same, on removal from county.
124. Justice to have access to docket.
125. Penalty for not depositing.
126. Transcript from docket in clerk's office, evidence.
127. Justice not to keep a tavern.
128. Who not to prosecute or defend suits.

## 5. CONSTABLES, THEIR DUTIES.

129. Constables, to be ministerial officers.

## 6. PARTIES.

130. What provisions of the "Practice Act" applicable.

## 7. CONSTRUCTION.

131. Sec. 300 of the "Practice Act" applicable.
132. Act applicable to district courts of Newark.
133. Justice, whose term has expired, may determine any cause undetermined and grant appeal.
134. May issue *scire facias* to revive judgment.
135. Fees of constables for serving criminal warrants.
136. When not necessary to give notice of the production of new evidence on appeal.
137. Terms upon which justice is required to grant an appeal.
138. Preceding section to apply to all actions in which appeals might be taken.
139. Fees of justices and constables in criminal cases.
140. Bill of costs to be sent up to the prosecutor of pleas.
141. Duties of justice in certain cases.
142. Sheriff shall keep account of costs, fines, etc.
143. Fees of judge of oyer and terminer for approving bill of costs.
144. When appeals shall be put on list for trial.

before any justice of the peace of any county in this state, who is hereby authorized to hold a court within such county, to hear, try and determine the same according to law, (a) although the cause of action did not arise in said county; which court shall be a court of record and vested for the purposes aforesaid, with all such power as is usual in courts of record of this state; (b) provided always, that this act shall not extend to any action of replevin, slander, (c) trespass for assault, battery (d) or imprisonment, (e) nor to any action wherein the title (g) to any lands, tenements, hereditaments, or other real estate shall or may in any wise come in question.

Extent of jurisdiction.

R. S. 229, § 1.

2. 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 hundred dollars at the time when the suit is instituted, such amount shall be recoverable before a justice of the peace, without regard to any kind of penalty expressed therein, in the same manner as any other debt or demand of one hundred dollars or under is made recoverable by this act. (h)

In case of penalty.

Ib. § 64.

Amended.

3. 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 one hundred dollars, the plaintiff may recover in such court a sum not exceeding one 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.

When debt, etc., exceeds one hundred dollars.

4. Nothing in sections two or three of this act shall be held or construed as conferring jurisdiction upon any justice in any of the cases excepted out of the justice's jurisdiction by section one.

Limitation of jurisdiction.

5. Every sum of money or penalty, not exceeding one 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 justice of the peace, in manner aforesaid.

What penalties cognizable before justice.

R. S. 229, § 65.

6. Parties may agree to enter without process any action before a justice of the peace 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. (k)

Entry of action without process.

Ib. § 21.

7. Any body politic or corporate in this state may sue and be sued in any court for the trial of small causes, in any action or proceeding over

Suit by and against corpora-

(a) The justice must charge the jury on the law involved in the case, and this duty can in no way be evaded, *Sayres v. Ward*, Pen. \*1007. *Pullen v. Boney*, 1 South. \*125. *Broadwell v. Nixon*, 1 South. \*362. *Todd v. Collins*, 1 Hal. 127. *Linn v. Ross*, 1 Harr. 55. *Allen v. Wanamaker*, 2 Vr. 370. Reading a statute to the jury is no charge, *Broadwell v. Nixon*, 1 South. \*362. *Boylston v. Valentine*, 1 Harr. 348. *Berry v. Williams*, 1 Zab. 423; criticizing *Pullen v. Boney*, 1 South. \*125. But it is not error to refuse to charge if there is no question of law in dispute, *Westcott v. Danzenbaker*, 1 Hal. 132. *Davison v. Schooley*, 5 Hal. 145. Or, if the justice was not requested to charge on that point, *Cole v. Taylor*, 2 Zab. 59. It is improper to ask him to charge the jury in a certain way on a point stated, especially if it be not purely a question of law, *Bellis v. Phillips*, 4 Dutch. 125. Nor is the justice bound to take up several points and express a separate opinion on each one, *Youngs v. Sunderland*, 3 Vr. 32. So, if he should be requested to declare that to be the law, which is not so, and he refuse, the party has no advantage, *Mills v. Steglt*, 2 South. \*565. Or, on a minor matter which would not change the result or prejudice the party excepting, *Ayres v. Van Lieu*, 2 South. \*267. *Campfield v. Ely*, 1 Gr. 150. *Rodenbough v. Rosebury*, 4 Zab. 491. So, if the justice should err in the admission or rejection of evidence, a party can derive no advantage unless he prove how he was injured thereby, *Lyons v. Davis*, 1 Vr. 301. In an action or *scire facias* on a judgment errors in such judgment cannot be inquired into, *Bordine v. Service*, 1 Harr. 87. *Schuyler v. McCrea*, 1 Harr. 248.

(b) The justice's court is a court of record, *Schooley v. Thorne*, Coxe 71. *Hinchman v. Cook*, Spen. 271. A judgment of a justice's court is conclusive between the parties, if the record shows his jurisdiction, *Van Doren v. Horton*, 1 Dutch. 205. *Russel v. Work*, 6 Vr. 316. The presumption is in favor of all his proceedings, *James v. Dickson*, Coxe 257. *Westcott v. Danzenbaker*, 1 Hal. 132. *Van Dyke v. Bastedo*, 3 Gr. 224. *Doughty v. Reed*, Pen. \*902.

(c) *Sparks v. Holston*, Pen. \*844.

(d) *Carman v. Smock*, Pen. \*112. *Bates v. Adams*, Pen. \*984. *Marentille v. Oliver*, Pen. \*380.

(e) *Jeffers v. Brookfield*, Coxe 38.

(g) The justice may try the right of possession, as cutting down trees or grass, *Gregory v. Kanouse*, 6 Hal. 62. *Hill v. Carter*, 1 Harr. 87. But not where there is any dispute as

to the title of the land on which the trees grew, *Harvey v. Drummond*, Coxe 217. In trespass for cutting down a tree in a highway, a deed may be admitted in evidence to show the boundary line of an adjoining farm, *Winter v. Peterson*, 4 Zab. 524. In trespass against an overseer of the roads for trespassing on lands of plaintiff and removing stones, &c., therefrom, *Ward v. Folly*, 2 South. \*482. Or for an injury to a crop of grain by breach of warranty in the sale of cloverseed, *Vanmoy v. Givens*, 3 Zab. 201. He may try trespass *quare clausum fregit*, where the title is not involved, *Ming v. Compton*, Pen. \*345. But not in trespass for fishing where defendant claims title to the fishery, *Bispham v. Inskip*, Coxe 231. Action for overflowing lands lies in justice's court, *Blackwell v. Hagerman*, Pen. \*1032. *Satterthwaite v. Morgan*, Pen. \*962. But not if the freehold be permanently injured, *Vantuyt v. Marsh*, 2 South. \*507. *Dixon v. Scott*, 3 Hal. 430. See *Hunt v. Morris*, 7 Hal. 175. Nor where the defendant claims title to lands, the rents of which plaintiff alleges due to him, *Smith v. Layton*, Coxe 177. Nor, for injury to plaintiff's land by the projection of a building over it, and damage caused by water dripping therefrom, *Blackwell v. Leslie*, 1 South. \*112. He cannot try an action for mesne profits, *Pickle v. Covenhoven*, 1 South. \*319. Nor, a right of way, *Randolph v. Montfort*, 1 Harr. 226. Nor an action for obstructing a private road, *Osborne v. Butcher*, 2 Dutch. 308. Nor for breach of a covenant of warranty, where plaintiff sets up that defendant had not a good title when the deed was made, *Burrough v. Vanderveer*, 2 South. \*809. Nor whether grain passed by a conveyance of the land, *Westbrook v. Eager*, 1 Harr. 81. 84. Nor trespass for pulling down a house, *Vanmater v. Real*, Pen. \*492. His jurisdiction extends only to try the fact of possession, and not the right of possession, *Campfield v. Johnson*, 1 Zab. 83.

(h) This includes jurisdiction of a bond given by a defendant for his appearance, when arrested on a warrant, *Graeen v. Allen*, 2 Gr. 74. The original act was limited to bonds, &c., "for the payment of any sum of money," and a *bastardy bond* given to indemnify a township &c., was held not to be within his jurisdiction, *Roll v. Marvell*, 2 South. \*493.

(k) If the parties "agree to come to trial," it is sufficient, *Vanderveer v. Ingletton*, 2 Hal. 140.

tions and attorneys.  
Ib. § 75, 76.  
Amended.

Justice whose term of office has expired may conclude a cause.

P. L. 1858, p. 34,  
§ 3.

Where justices' writs shall run.

R. S. 229, § 2.

which said court has jurisdiction;(a) 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.

8. Any justice of the peace 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, orders or rules to him directed, issuing out of any court in this state, in the same manner as if his term of office had not expired. (See *Sec.* 133).

9. The territorial jurisdiction of every justice of the peace under this act shall be co-extensive with the limits of the county 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.

## II. Process.

Process when tested and signed.

10. All the precepts, summons, warrants, writs and other process of said court for the trial of small causes, shall be tested the day or which they are respectively issued, and shall be signed(b) and sealed(c) by the justice who issued the same.

Justice not to issue blank writs.

R. S. 229, § 5.

11. If any justice of the peace 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 justice, and in his presence, and shall afterwards issue the said process, or suffer the same to be served, such justice 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 justice shall reside.

Penalty.

When process void.  
Ib. § 6.

12. The service of any summons or warrant which shall have been issued by the justice as aforesaid in blank, and afterwards filled up by the constable or other person, without the special direction of the justice 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.

Process to compel appearance.

13. 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:

When warrant may issue.

I. Where the defendant is not a freeholder and resident of the county in which process shall issue, and where the action being founded upon contract express or implied, due proof is made on oath or affirmation to the satisfaction of the justice, of the amount of the debt or damages claimed, and of such other facts and circumstances as would warrant a justice of the supreme court in making an order to hold to bail in pursuance of the fifty-eighth section of an act entitled "An act to regulate the practice of courts of law."

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 justice, 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 justice, 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

(a) A bank may be sued before a justice, *State Bank v. Van Horn*, 1 South. \*382.

A turnpike company may sue for tolls, *Ayres v. Turnpike Co.*, 4 Hal. 33.

Query. Whether a railroad company, chartered by another state, and owning property here, can be sued before a justice, *Delaware, &c., R. R. Co. v. Ditton*, 7 Vr. 361.

A municipal corporation cannot be so sued, *Princeton v. Mount*, 5 Dutch. 299. See *ante*, p. 54, note (e).

(b) Signing the initials of his christian name and his surname in full, is no error, *Wood v. Fühman*, 4 Zab. 33, 838. So signing J. P. to his name annexed to an affidavit is sufficient, *Scudder v. Coryell*, 5 Hal. 340.

(c) It must be sealed, *Veal v. Brown*, Pen. \*72.

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.(a)

14. Upon proof made as aforesaid the justice 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 justice.

Justice to make order.

15. 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 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 justice be set aside; such order setting aside the justice's order 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.

Defendant may apply to set aside order upon which warrant issued.

16. The order made by the justice of the supreme court, law judge or commissioners, shall be filed with the justice who issued the warrant, and such justice shall furnish certified copies thereof to the parties or their agents on request.

Justice to furnish copy of order.

17. 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(b) and time,(c) not less than five,(d) nor more than fifteen(e) 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,(g) 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,(h) 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.(k)

Summons when returnable and how served.

R. s. 229, § 8. Amended.

Return endorsed.

(a) A freeholder resident in the county is exempt from arrest in cases of fraudulent debt, unless the justice adjudges that he is satisfied the plaintiff will be in danger of losing his debt, *Barcklow v. Hutchinson*, 3 Vr. 195. Query. Whether a justice can issue a warrant in a case of tort, *Neighbour v. Trimmer*, 1 Harr. 58. Any irregularity in issuing it, is waived by an appearance, *Foulkes v. Young*, 1 Zab. 438. And cured by a trial, *Dallas v. Hendry*, Pen. \*973.

(b) The township in which the justice's office is situated may be omitted, *Johnson v. Holmes*, Pen. \*134. The place must be designated in the summons, *Layton v. Cooper*, Pen. \*62.

(c) The return day being in figures, is not error, *Cooper v. Roberts*, 1 Harr. 353. *Maires v. Smith*, 1 Harr. 360. To appear "at 12 o'clock in the afternoon," is bad, *Ross v. Ward*, 1 Harr. 23. To appear at two o'clock — noon, is defective, *Camman v. Perrine*, 4 Hal. 253.

(d) In computing the five days, the day of the service or of the appearance should be excluded and the other included, *Day v. Hall*, 7 Hal. 203. It must be five full days, *Pedrick v. Shaw*, Pen. \*57.

(e) A summons issued June 11th, returnable July 11th, is erroneous, *Ratloon v. Webb*, Pen. \*608.

(g) "Served by delivering a copy to the defendant," is defective, *Rape v. Titus*, 6 Hal. 314. "Served the summons on the defendant by offering to read the same to him, but he would not stay to hear it," is good service, *Slaght v. Robbins*, 1 Gr. 340. "That he read it to the defendant, but omitting to state the delivery of a copy, is bad, *Ross v. Ward*, 1 Harr. 23. "Served on the defendant by his reading it himself," is bad, *Ayres v. Swayze*, 2 South. \*812. "Served this summons June 2, 1837, on G. F.," is defective. It should be by reading it to him, *Moore v. Miller*, 1 Harr. 233.

(h) A copy can only be left when the defendant cannot be found in the county, *Cooper v. Roberts*, 1 Harr. 353. *Gardner v. Small*, 2 Harr. 162. Reading it to the agent of the

defendant, and leaving a copy at his store, is not a legal service, *Penny v. Harrison*, 2 Gr. 24. So, at the place of abode, *Polhemus v. Perkins*, 3 Gr. 435. But if defendant direct the constable where to leave it, he can take no exception if such place is not his actual abode, *Taylor v. Cook*, Coze 54. "Reading it to a person over the age of fourteen," is insufficient, *Polhemus v. Perkins*, 3 Gr. 435. So, "served by reading the contents of the within, to the families of the defendants, at their place of abode," *Balling v. Sherwin* 2 Gr. 144. So, "served the 23d, by copy," *Mulford v. Perrine*, Pen. \*474. If served on defendant's wife, it must be at his residence, *Rogers v. Jannan*, Pen. \*527. If not his wife and living elsewhere, service is defective, *Vigers v. Mooney*, Pen. \*909. Or, the housekeeper of defendant, *Despreaux v. Barber*, Pen. \*1041. So, "by copy left with the wife of defendant," without informing her of the contents, *Cobb v. Decker*, 1 South. \*119. Or, leaving a copy at the defendant's house without stating that the person with whom it was left, was of his family, and informed of the contents, *Murat v. Hutchinson*, 1 Harr. 46. A mistake in the copy of a summons, stating the hour of appearance to be 10 A. M. instead of 2 P. M., is not ground for reversing the judgment, where the defendant did not appear at any time or show that he has been injured by the mistake, *Titus v. Whitney*, 1 Harr. 85.

(k) Return on a summons "lawfully served" is insufficient, *Boylan v. Hopper*, Pen. \*95. So, "served the thirtieth day of January," *Layton v. Cooper*, Pen. \*62. So, "duly served," *Zane v. Pissant*, Pen. \*319. *Budd v. Marvin*, 1 South. \*243. So, "served," *Stedford v. Ferris*, 1 South. \*108. So, "served on one of the defendants," not naming him, *Mattack v. Layman*, Pen. \*993. Where there are two or more defendants and service on some of them only, the justice cannot proceed unless the constable's return shows that none not served could not be found, *Ford v. Munson*, 1 South. \*93. *Stults v. Outcall*, 1 Hal. 130. "The other defend-

How served on corporation.  
Ib. § 76.  
Amended.

18. 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. (a)

Sum endorsed on warrant; if paid. defendant discharged.  
Ib. § 13.

19. The said justice shall enter in 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 justice 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.

Liability of constable.

Proceedings upon warrant.  
Ib. § 12.  
Amended.

20. 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 justice 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 justice 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; (b) 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 nothing in this act contained shall be construed to prevent the constable from discharging from arrest any person arrested either on mesne process or process of execution, in pursuance of the act entitled, "An act abolishing imprisonment on civil process in certain cases;" 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 E. F. on the following conditions: that if the said A. B. shall be and appear before \_\_\_\_\_ one of the justices of the peace 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

When trial to be had.

How defendant may be discharged.

May give bond.

Form of.

Duty of constable.

ant out of the county," bad, because he might have an abode therein; but if not, then return should so state, *Moore v. Miller*, 1 *Harr.* 233. "Served by leaving a copy with the wife of J. T., one of the defendants," good, but not to sustain a judgment against two, *Oliver v. Howell*, 2 *South.* \*581.

An appearance by the defendant without objection, cures any irregularity in the process, *Halsey v. Nutman*, *Pen.* \*329. *Cook v. Hendrickson*, *Pen.* \*343. *Budd v. Marvin*, 1 *South.* \*248. *Ayres v. Swayze*, 2 *South.* \*812. *Murat v. Hutchinson*, 1 *Harr.* 46. *Clifford v. Frankford*, 8 *Vr.* 152.

And, an adjournment at his request, *Doughty v. Jones*, *Pen.* \*658.

And, a trial, — *v. Campbell, Cox* 92. *Dallas v. Hendry*, *Pen.* \*973.

(a) See *Ante*, p. 193, note (a).

(b) If the plaintiff discharges the defendant from arrest on a warrant, on defendant's promise to appear and he does not, the plaintiff cannot take judgment, *Anonymous*, 2 *Hal.* 120. If the defendant enters into bond, and fails to appear at the day, the justice cannot proceed in his absence or render judgment against him, *Cumman v. Randolph*, 2 *Hal.* 136. So, on an adjournment the defendant must give a like recognizance, but the constable will not be liable for an escape, unless the justice order the defendant to do so, *Dunham v. Solomon*, 1 *Harr.* 50.

the justice 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 justice's 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 justice 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.(a)

21. The recognizance directed in the twentieth 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:

Recognizance  
and form of.  
R. S. 229, § 14.

county, to wit:

Whereas A. B. hath been arrested and is now in custody, by virtue of a warrant issued by C. D. one of the justices of the peace in and for the said county, 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 county 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 justice, 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 constables, 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. one of the justices of the peace in and for the said county of \_\_\_\_\_; and every justice of the peace is hereby empowered and directed to take such recognizance, which shall remain with such justice, for the benefit of the plaintiff in the suit.

III. Pleading.

22. All suits brought or commenced before any justice of the peace 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.(b)

What suits to be  
debt.  
Ib. § 76.

23. 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 justice 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;(c) and if the defendant have any

When demand  
and plea filed.  
Ib. § 16.  
Amended.

(a) Such bond is good if taken in the amount of the debt only, and not of the debt and costs, *Day v. Hall*, 7 Hal. 203. If the defendant appears and answers, it is no breach of his bond if he runs away after judgment rendered, *Smalley v. Vanorden*, 2 South. \*811. *Baird v. Cole*, Hal. Dig. 123, § 3. Suit cannot be brought on the recognizance until after judgment obtained by the plaintiff against the defendant in the original suit, *Oliver v. Howell*, 2 South. \*581. In an action on the bond it is necessary for the plaintiff to allege that he filed his state of demand or appeared and prosecuted his action at the time mentioned in the bond, *Condit v. Baldwins*, 4 Harr. 143. Judgment cannot be entered jointly against defendant and his surety, the latter has a right to be heard, *McWhorter v. DeKay*, Pen. \*910. *Sayre v. Voorhees*, Pen. \*1041. The constable cannot take a bond to himself for the defendant's appearance, *Ludlum v. Wood*, Pen. \*56.

(b) Action on a simple contract for the payment of money only, must be in debt, *Witherly v. Morgan*, Pen. \*83. *Chattin v. Payday*, Pen. \*138. *Alderman v. Chard*, Pen. \*458. *Smith v. Finley*, Pen. \*1005. So, on a promissory note, *Seely v. Myers*, Pen. \*386. On a book account, *Longstreet v. Taylor*, Pen. \*267. *Darnel v. Sheldon*, Pen. \*522. On the penalty of

a bond, *Powell v. Clark*, Pen. \*517. For use and occupation, *Lanning v. Howell*, Pen. \*256. On a parol award, *Riker v. Jacobus*, Pen. \*328. For money paid for the benefit of a defendant in execution, *Little v. Gibbs*, 1 South. \*211. See *Van Horn v. Hamilton*, 2 South. \*477. In an action between partners, *Dunham v. Kapplejea*, 1 Harr. 75. *Contra*, *Young v. Brick*, Pen. \*664.

(c) Justice must non suit if no state of demand be filed, *Sandford v. Hoover*, Pen. \*99. *Stoan v. Holland*, Pen. \*141. *Layton v. Carman*, Pen. \*163. *Goble v. Shover*, Pen. \*4070. Or, it is ground of reversal on certiorari, *South v. Toomey*, Pen. \*98. *Gustin v. Whitaker*, Pen. \*610. *Sprague v. Crane*, Pen. \*955. *Addis v. Evans*, Pen. \*142. It cannot be altered or remedied by subsequently filing a bill of particulars, *Van Kirk v. Little*, Pen. \*976. *Blackwell v. Leslie*, 1 South. \*112. It must be filed before an adjournment, *Hunt v. South*, 2 South. \*495. Unless the justice is absent on the return day of the summons, or the defendant adjourns the cause, *Shreeves v. Liveson*, Pen. \*247. The transcript need not show that it was filed, if it appears from the proceedings and papers in the cause, or may fairly be presumed, *English v. Bonham*, 2 Harr. 350. See *Van Dyke v. Bastedo*, 3 Gr. 224, 228.

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 justice, 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; (a) 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 twentieth section of this act, shall be allowed further time, not exceeding three days, to deliver to the said justice such copy of his or her account or state of demand as aforesaid.

Defendant when precluded.  
Ib. § 17.

24. 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. (b)

Title to lands pleaded.  
Ib. § 40.  
Amended.

25. 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 justice, 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. (c)

Effect of plea.  
Ib. § 41.

26. 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.  
Ib. § 42.  
Amended.

27. The justice 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 justice holds his court, within three months thereafter, the said defendant will appear thereto,

Condition.

(a) No written plea is necessary except in a case of set-off, *Bray v. Van Note*, Pen. \*143. *Phillips v. McCullough*, Pen. \*69. *Hewes v. Mungan*, Pen. \*256. *Freeman v. Marsh*, Pen. \*473. *Mintas v. White*, Pen. \*531. *Ivins v. Ellis*, Pen. \*548. *Smith v. Van Houten*, 4 Hal. 381. It must contain the items of the account, *Walton v. Lippincott*, Pen. \*161. *Montgomery v. Snowhill*, Pen. \*361. *Doughty v. Jones*, Pen. \*853. *McCormick v. Brookfield*, 1 South. \*69. *Lacey v. Collins*, 2 South. \*490. And be filed in due time, *Alexander v. McCleanon*, Pen. \*364. *Lacey v. Collins*, 2 South. \*490. *Infra*, § 32. Without a set-off, defendant can recover nothing but costs, *Robbins v. Eakin*, Pen. \*745. Filing a set-off does not preclude the defendant from relying on any other defence, *Price v. Combs*, 7 Hal. 188. A judgment in a justice's court may be set off against a judgment in the supreme court, *Coze ads. State Bank*, 3 Hal. 172. In trespass before a justice if the defendant admits some of the trespasses, he will be entitled to costs on those issues and may set them off against the plaintiff's judgment therein, *Van Pelt v. Phillips*, 4 Zab. 560.

(b) That defendant is barred from a subsequent action, see *Righter v. Van Riper*, Pen. \*715. *Henry v. Milham*, 1 Gr. 266. *Johnson v. Pennington*, 3 Gr. 188. See *Schenck v. Schenck*, 5 Hal. 276. So, if the plaintiff allows a set-off to the defendant, the latter cannot afterwards sue therefor, *Johnson v. Colbaugh*, Coze 55. The plaintiff is not barred, *Smock v. Throckmorton*, 3 Hal. 216.

(c) A plea of title may be filed after the return day, but not after the day to which the cause may be first adjourned, *Shannon v. Flood*, 1 Gr. \*301. It may be filed in an action of trover, *Vanness v. Nafie*, 2 South. \*683. See *Wilson v. Clark*, 1 South. \*379. The bond should be legibly written and free from abbreviations or erasures, *Gracien v. Beam*, 3 Gr. 460. A plea of a private way is a plea of title, *Randolph v. Montford*, 1 Harr. 226. *Hawk v. Seagraves*, 5 Fr. 355. A right of private way by prescription or by grant, if wrong, must be

demurred to, *Brain v. Snyder*, 1 Vr. 56. A plea of a private way is not a plea of title, *Chambers v. Wambough*, 4 Dutch. 530. *Brain v. Snyder*, 1 Vr. 56. *Fauger v. Manning*, 1 Vr. 182. The defendant is confined in the supreme court to his plea of title alone, and cannot plead *not guilty*, or *license*, *Justices of Dover v. McFarlan*, 2 Gr. 471. *Brain v. Snyder*, 1 Vr. 56. *Wastervelt v. Martinus*, Pen. \*693. If the plaintiff demands \$30 damages before the justice and \$100 in the supreme court, or use and occupation for five years below, and use and occupation generally above, defendant is not confined to his plea of title, *Snedicker v. White*, 6 Hal. 87. *Chambers v. Wambough*, 4 Dutch. 530. The declaration in the supreme court should set out the description of the land by metes and bounds, *Ellet v. Pullen*, 7 Hal. 357. The plaintiff may *new assign*, but cannot allege the trespass to have been committed in a different township, *Tindall v. Tindall*, *Spen*, 146. Proof of possession by plaintiff is unnecessary, because admitted by defendant's pleading title, *Appleby v. Overt*, 1 Harr. 336. Under *lib. ten.* the defendant need not show title to any part except that on which the trespass is alleged to have been committed, *Phillips v. Phillips*, 1 Zab. 42. Nor, is defendant limited to proof of freehold title, but he may prove any right to enter and have possession, *Campfield v. Johnson*, 1 Zab. 85. So, he may plead title below in A., and above in B., *Phillips v. Kent*, *Spen*, 686. Or, rely on title by way of justification, *Hawk v. Seagraves*, 5 Fr. 355. Form of pleading, *Ibid.* A replication that the plaintiff was actually in possession, and that the right of possession was out of the defendant, or those under whom he entered, is good, *Phillips v. Kent*, 3 Zab. 155. The supreme court will notice the fact that the suit was begun before a justice, upon the plea being produced countersigned, &c., although not referred to in the pleadings, so as to award costs, *Van Pelt v. Phillips*, 4 Zab. 560.

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 justice shall proceed in the same manner as if such plea had not been tendered.

IV. Trial.

28. If the defendant does not appear at the time and place expressed in the summons or recognizance, and no sufficient reason shall be assigned by the justice 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 justice may proceed to hear and determine the cause in the absence of such defendant.(a)

Proceeding if defendant does not appear.  
R. S. 229 §§ 9, 15. Consolidated.

29. 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 justice shall proceed to hear or examine their respective allegations and proofs, unless he shall think it proper to adjourn the trial.(b)

When cause shall be heard.  
Ib. § 1 8.

30. Any justice of the peace, 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 justice 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 justice, 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 justice of the peace 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 justice, then the justice may adjourn the trial to any future day, not more than thirty days from the day of such adjournment, on payment of the cost by the party who makes application for the same.(c)

Trial when and how adjourned.  
Ib. § 20.

31. 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.

Hour of adjournment.  
P. L. 1858, p. 49, § 1. Amended.

(a) There must be a trial and legal evidence of plaintiff's claim produced—the justice cannot give judgment against the defendant by default. *Snyder v. Hummel*, Pen. \*87. *Zane v. Pissant*, Pen. \*319. *Cooper v. Madara*, Pen. \*530. *White v. Crammer*, Pen. \*549. *Heritage v. Daniels*, Pen. \*551. *Pearson v. Briggs*, Pen. \*621. *Crane v. Crane*, Pen. \*412o. *Gale v. Hill*, Pen. \*414o. *Clarke v. Clarke*, Pen. \*724. *Murphy v. Davis*, Pen. \*843. *James v. Dyer*, Pen. \*999. *Outcall v. Rankin*, 2 Gr. 33. The justice cannot proceed in the absence of the plaintiff, *Holliday v. Large*, Pen. \*653. *Vail v. Wright*, Pen. \*681. *Cavallier v. Doughty*, 1 Hal. 227. See *Steward v. Sears*, 7 Vr. 173. He must be present when the verdict is rendered, *Hunt v. Young*, 2 South. \*813.

(b) The justice cannot dismiss the suit after trial. He should give judgment for one of the parties, *Miller v. Miller*, 1 Gr. 165.

(c) An adjournment is a matter of discretion in the justice, *Doughty v. Jones*, 1 South. \*653. Except where a party is deprived of the attendance of his witnesses, *Gould v. Brown*, 4 Hal. 165. A justice may for his own convenience adjourn a trial, *Pierson v. Millan*, Pen. \*1011. But not beyond thirty days, *Lloyd v. Hance*, 1 Harr. 127. Nor before the return day, by notifying the defendant, *Nicholson v. Wright*, 1 Harr. 232. *Halsey v. Whitlock*, Pen. \*869. *Stelman v. Cox*, Pen. \*953. *Taylor v. Doremus*, 1 Harr. 473, 478. It should be on the return day or day of adjournment, and both parties be notified, *Braunin v. Voorhees*, 2 Gr. 590. See *Neighbour v. Trimmer*, 1 Harr. 58, 61, note. *Query*. Is a defendant regularly summoned entitled to notice of an adjournment, *Slaght v. Robbins*, 1 Gr. 340. See *Camman v. Perrine*, 4 Hal. 238. If the cause is adjourned to such day

as counsel may agree upon, and one of the counsel refuses to agree to a day, the justice cannot fix a day and notify the party, *Woodworth v. Wolverton*, 4 Zab. 419. An adjournment before the return of the summons is good, if made by consent, *McCollister v. Richman*, Pen. \*208. That defendant is out of the state is a proper ground for adjournment, *Combs v. Johnson*, 7 Hal. 244, 246. The adjournment cannot be beyond thirty days, (formerly fifteen), *Pedrick v. Shaw*, Pen. \*57. *Auten v. Bryan*, Pen. \*135. *Bispham v. Tucker*, Pen. \*253. *Montgomery v. Woodruff*, Pen. \*610. *Cozens v. Allen*, Pen. \*851. Nor less than five days, *Midler v. Lazadder*, 2 Gr. 34. Unless by consent of parties, *Walker v. Kearney*, Pen. \*621. *Farrand v. Gray*, Pen. \*920. Consent cannot be inferred from an appearance, *White v. Lippincott*, Pen. \*266. Adjournment cannot be made after hearing evidence, *Andrews v. Wright*, Pen. \*280. *Stretch v. Forsyth*, Pen. \*713. A motion to non-suit does not preclude a motion to adjourn, *Potter v. Carman*, Pen. \*521. A reference cures an illegal adjournment, *Chance v. Chambers*, Pen. \*384. And an appearance and trial, *Hillman v. Hayden*, 2 South. \*575. A justice may grant a second adjournment to any time within thirty days from the return of the process, on reasonable grounds, *Horner v. Hewlings*, 3 Hal. 227. The party applying for a second adjournment on account of the absence of a material witness, must make affidavit, &c., and the justice may then adjourn to any time not less than five nor more than thirty days, *Midler v. Lazadder*, 2 Gr. 34. If plaintiff do not appear on the day adjourned to by his own consent, the defendant is entitled to a non-suit, *Dunham v. Solomon*, 1 Harr. 50.

Adjournment in case of set off filed.  
P.L. 1878, p.119, §8.  
Amended.

Jury demanded and when.

R. S. 229, § 22.  
Amended.

Process and qualifications.

Juror's oath.  
Ib. § 25.

Witness' oath.

Constable's oath.

32. 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.

33. In every action, it shall and may be lawful for either of the parties, after the defendant has appeared or put in his plea to such action, and before the said justice has proceeded to inquire into the merits of the cause, (a) to demand a trial by jury, which the said justice 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, (b) being citizens of this state, above the age of twenty-one years, and under the age of sixty-five years, (c) and in no wise akin to the plaintiff or defendant, (d) nor interested in the suit, (e) to be and appear before the said justice 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 he 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. (g)

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

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. (h)

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

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

And that to the constable who shall be appointed to attend the jury, the said justice shall administer the following oath or affirmation:

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.

(a) *Venire* cannot issue before the appearance of the defendant, *Sutton v. Coleman*, Pen. \*134. *Keen v. Scull*, Pen. \*544. It may issue in defendant's absence after his appearance. *Lummis v. Stratton*, Pen. \*245. If issued before defendant's appearance and he does not afterwards appear, the jury may be dismissed and the cause tried by the justice, *Wills v. McDole*, 2 South. \*501. A jury cannot be called after the cause has been heard in part by the justice, *Tilton v. Brand*, 1 South. \*289. The justice's judgment will be reversed where a trial by jury is refused, *Cary v. Forsyth*, Pen. \*432. But not where such refusal is caused by the misconduct of the party complaining, *Daniels v. Scott*, 7 Hal. 27.

(b) Where the sum in dispute is larger than the law allows to be decided by a jury of six men, they cannot try it, although by consent, *Falkenburgh v. Cramer*, Coxe 31. *Parker v. Munday*, Coxe 70. *Milton v. Smock*, Pen. \*911. A demand for fifty dollars cannot be tried by six men, *Ashcroft v. Clark*, 2 South. \*577. Where the plaintiff demands less than sixteen dollars (now fifty) and the defendant files an offset of more than sixteen, the cause must be tried by twelve men, although the jury be demanded by the plaintiff, *Jones v. Oliver*, 2 Hal. 123. A cause cannot be tried by eleven jurors, *Briant v. Russell*, Pen. \*146. See *Den*, *Denman v. Baldwin*, Pen. \*944.

(c) The words of the act are mandatory, *Sayres v. Scudder*, Pen. \*53, *KIRKPATRICK*, C. J. It seems, "good and lawful

men" for "citizens of this state, &c." is not fatal, *Sharp v. Hendrickson*, Pen. \*685. Such error is cured by verdict and judgment, *Barton v. Murry*, Pen. \*97. *Doughty v. Read*, 1 en. \*902. See *Halsey v. Nutman*, Pen. \*329. A juror although above sixty-five years of age may be sworn by consent, *Sutton v. Petty*, 2 South. \*504.

(d) A juror who had married a niece of a party is disqualified, *Den*, *Hinchman v. Clark*, Coxe 446. The disqualification continues after the death of the relative, if issue survive, *Vannoy v. Givens*, 3 Zab. 201. That the constable who returns the *venire*, is related to a party is good ground for challenge to the array, *Vanauken v. Beemer*, 1 South. \*364.

(e) A challenge for relationship must show how related, *Stevenson v. Stiles*, Pen. \*740. A challenge of a juror for favor "that he is a neighbor" is illegal, *Jones v. Butterworth*, Pen. \*455. A juror cannot challenge himself, *Den*, *Bickham v. Pissant*, Coxe 220. An administrator of the maker of a promissory note, cannot be a juror in a suit on such note against the payee, *Meeker v. Potter*, 2 South. \*586. That a juror has a suit for the like cause against the challenger, is good, *Gardner v. Lanning*, Pen. \*651. That a constable is interested, is good cause, *Cramer v. Crawley*, Coxe 43.

(g) See *Boyles v. McEowen*, Pen. \*677.

(h) The form of oath usually administered in courts of justice is sufficient. It need not follow the exact language of this oath, *Earle v. Vanburen*, 2 Hal. 344.

35. 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 justice shall think proper to impose; and such justice 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 justice to the use of the said county. (a)

Fines of jurors and witnesses. Ib. § 26.

36. 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 justice 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.

If defendant has filed off-set, plaintiff shall not withdraw suit. P. L. 1870, p. 61, § 1.

37. 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. P. L. 1873, p. 119, § 1. Amended.

38. Where a copy of said entries may be used by the plaintiff, it shall be competent to prove any partnership by affidavit.

Affidavit of partnership.

39. 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.

Proof by affidavit of notes, etc. P. L. 1873, p. 119, § 2. Amended.

40. 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.

Competent knowledge in affiant.

41. If the jury disagree, other writs of *venire* may issue in the same cause until a verdict be obtained.

Disagreement of jury.

### V. Judgment.

42. If the plaintiff, other than executors or administrators, in any such 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

When judgment against plaintiff. R. S. 229, § 27.

(a) A justice ought not to impose a fine upon a non-attending juror without first giving him personally or in writing, a reasonable notice to appear before him and show cause if any he have, why he should not be fined, *State v. Hollinshead, 1 Harr. 539.*

defendant, then judgment shall be given against him for the debt, or damages and costs, as the case may require.

Judgments by confession.  
Ib. § 21.

43. If judgment by confession shall be entered against the defendant, unless an affidavit shall first be made, as directed by the act entitled "An act directing the mode of entering judgments on bonds, with warrants of attorney to confess judgments" (which affidavit shall be filed and preserved by the said justice), 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.(a)

Where case is submitted to jury.  
Ib. § 19.

44. 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.

Form of judgment in case of action on bond, &c., with penalty.

45. 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 the suit is instituted, proof shall be made of the amount really due and owing, and the justice 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.

## VI. Execution.

The execution.  
R. S. 229, § 28.  
Amended.

46. When judgment shall be given against the plaintiff or defendant, by virtue of this act, the said justice 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.(b)

Against whom, and how to be issued.

When execution against body may issue.

47. An execution against the body shall be granted only in the following cases:

Where warrant has issued.

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 fourteenth 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.

Where judgment is rendered in case of tort.

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 justice, 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.

Where no warrant has issued in an action founded on contract.

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 express or implied, due proof is made to the satisfaction of the justice by affidavit or affidavits, filed as aforesaid, establishing the particulars specified in the first sub-division of the thirteenth section of this act, 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.(c)

(a) A defendant could formerly take advantage of the fact that no affidavit had been filed, *Parker v. Griggs*, 1 South. \*161. A defendant sued by a constable for goods taken in execution, may show that the judgment was entered without affidavit, *Oliver v. Applegate*, 2 South. \*479. See *ante*, p. 81, note (c). Such a judgment, although valid between the parties, has no operation against third persons and cannot be read in evidence even in mitigation of damages, *Sheppard v. Sheppard*, 5 Hal. 250. The affidavit should conform to the words of the act, *English v. Sharp*, 3 Gr. 457. See *Wright v. Wood*, *Spen*. 309. *Scudder v. Corjell*, 5 Hal. 340. No affidavit is necessary where the defendant has been brought into court by serving process on him, *Budd v. Marvin*, 1 South. \*248. *Lee v. Woodhull*, 7 Hal. 126. *Ferguson v. Earl*, 2 Gr. 124. *Hoguet v. Wallace*, 4 Dutch. 524.

(b) Execution cannot issue until after the judgment is entered, *Crandall v. Denny*, *Pen*. \*137. *Parker v. Frambes*, *Pen*. \*156. *Johnson v. Johnson*, *Pen*. \*317. *Lofton v. Champion*, *Pen*. \*157. *Lee v. Steelman*, *Pen*. \*319. *Conner v. Souder*, *Pen*. \*529. Nor can it issue for costs until after judgment therefor be entered, *Zane v. Pissant*, *Pen*. \*319. The awarding of an execution is no part of the judgment, and hence may be reviewed by *certiorari*, *Krumeick v. Krumeick*, 2 Gr. 39. So, the execution may be set aside and the judgment affirmed, *Hinchman v. Cook*, *Spen*. 271. The justice cannot use another form of execution than that prescribed, *Kipp v. Chamberlin*, *Spen*. 656.

(c) Witnesses in order to establish fraud must swear only to facts, not to conclusions of law, *Kipp v. Chamberlin*, *Spen*. 656.

48. If the requirements of the next preceding section have been complied with, the justice 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 forty-six of this act. Order of justice.  
Rev. 1875, p. 142.

49. Except where previous application has been made and passed upon under the fifteenth section of this act, the defendant may, at any time, after order made under the forty-eighth section of this act, apply to any one of the persons to whom he may apply under said fifteenth 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 insufficient to warrant the issuing of process against the body, he may make order that the justice's order, so far as it authorizes the taking of the defendant's body, be set aside. Application to  
set aside.

50. Such order shall be delivered to the justice 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. Justice to file  
order and give  
copies.

51. The order, from the time of the filing thereof with the justice, 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. Effect of order  
to set aside.

52. No constable, jailor, warden, or other officer or person, taking or detaining the body of the defendant in pursuance of the warrant mentioned in the thirteenth 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 justice of the peace with whom such order is filed. When constable,  
&c., to incur no  
liability.

53. 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. Service of order.

54. The justice 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. Justice to furnish  
copies of order.

55. Where a justice of the peace has made an order pursuant to the fourteenth section or to the forty-seventh 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 any 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. When second  
application  
allowable.

56. 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 Stay of execution.  
R. S. 229, § 29.  
Amended.

- One month. 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.<sup>(a)</sup>
- Three months.
- Six months.
- But not in suit upon former judgment. *Ib.* § 30. 57. Where a suit shall be brought upon any judgment recovered before a justice of the peace, and judgment rendered in favor of the plaintiff, no stay of execution shall be allowed thereon; *provided*, the time herein before 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.
- Goods, how advertised and sold. *Ib.* § 31. 58. 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 justice, and within thirty days from the time he shall receive the execution, make return to the justice who issued the same of the proceedings had thereon, and the said justice shall make a record thereof.<sup>(b)</sup>
- Money when paid over. 59. 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 some justice of the peace 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 justice of the peace 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 a justice 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.<sup>(c)</sup>
- Proceedings on claim of property. *Ib.* § 32. 60. 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 the 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 said justice 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 proceeding therein, and proceed to sell.<sup>(d)</sup>
- How claim tried. 61. 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
- Effect of, and proceedings after verdict. *Ib.* § 33.
- Constable to sell if indemnified.
- Of taking the body on execution. *Ib.* § 34.

(a) If the plaintiff conceives himself in danger of losing his demand after the first confession, he may require another freeholder as security. The defendant cannot object that the judgment is entered against the freeholder alone. *Hunt v. Shivers*, 1 *South*. \*89. The defendant and the freeholder must appear personally before the justice and jointly confess the judgment, *Bilderback v. Hinchman*, 2 *Gr.* 570.

(b) The constable is not estopped by the sale from showing that he never received the money therefrom, *Lomerson v. Huffman*, 1 *Dutch.* 625.

(c) The claim must be filed with the justice. The notice to the constable ought to describe the property sufficiently to identify it. Form of verdict, *Baird v. Johnson*, 2 *Gr.* 120. Applies to goods seized on attachment, *Stryker v. Skillman*, 2 *Gr.* 189.

(d) Constable can recover from plaintiff in execution who indemnified him, the costs and expenses of defending the action brought against him by claimant, as well as the amount of judgment obtained by claimant, *Thompson v. Coleman*, 1 *South.* \*216.

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 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 said jailor's receipt upon the execution, and return the same to the justice 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-second 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.

62. Execution may issue without a revival of the judgment by *scire facias* at any time within twenty years from its recovery, if the justice, by successive elections 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 justice 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 justice of the amount remaining due upon the judgment.

Amended.  
Scire facias not necessary.

P. L. 1862, p. 27, § 1.  
Amended.

Where more than six years have elapsed, order necessary.

63. 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.

Notice, how served.

64. Every execution which shall or may be issued by any justice of the peace, 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.

Execution in force one year.

R. S. 229, § 35.  
Amended.

65. Upon the return of the original execution unsatisfied, the justice who issued the same shall have power and authority to issue an *alias* execution, and upon the return of the *alias* unsatisfied, the said justice 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.

Alias and pluries execution.  
Ib. § 36.

66. 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.

Priority of executions.  
Ib. § 37.

Property levied on to be inventoried.  
Ib. § 38.

67. 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. (a)

Constable liable for neglect.  
Ib. § 39.

68. 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. (b)

Execution against corporation.  
Ib. § 77.

69. If judgment shall be given against any body politic or corporate by virtue of this act, the justice 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.

Judgment may be docketed, when.  
P. L. 1848, p. 127, § 1.  
P. L. 1858, p. 477, § 2.

#### VII. Docketing judgments.

70. Final judgments of courts for the trial of small causes in any county of this state, if not less than ten dollars including costs, remain due on such judgments, may be docketed in the court of common pleas of that county, in the manner herein directed.

Clerk to keep docket.  
P. L. 1848, p. 127, § 2.

71. 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.

Mode of docketing.  
Ib. § 3.

72. When a judgment is obtained in any court for the trial of small causes, 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 justice of the peace before whom such judgment was obtained, under the hand and seal of said justice, 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

(a) A constable cannot maintain trover for goods levied on by him, unless he has inventoried them. *Brinck v. Decker*, Pen. \*902. *Casher v. Peterson*, 1 South. \*317. *Wintermute v. Hankinson*, 1 Hal. 140. They are not evidence without producing the judgments. *Casher v. Peterson*, 1 South. \*318, (a).

(b) Mere delivery of an execution to a constable does not render him liable, some neglect must be shown. *Bennett v. Bozorth*, Pen. \*543. *Leaming v. Denny*, Pen. \*611. *Parker v. Parker*, Pen. \*867. *Merrit v. Downs*, Pen. \*926. Debt is the

proper form of action for not making a proper levy and inventory. *Sandford v. Colfax*, 1 South. \*120. Case, for not returning it. *Ibid.* Constable is liable for the debt, damages, costs and interest. *Hunt v. Boylan*, 1 Hal. 211. *Hunt v. Gullick*, 4 Hal. 265. *Jones v. King*, 4 Hal. 209. The supreme court will not stay proceedings against a constable for neglect on an execution issued on a judgment, which has been removed by *certiorari* into the supreme court. *Combs v. Johnson*, 7 Hal. 178.

chattels sufficient to satisfy said 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 justice of the peace 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.

73. 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.

How docketed judgment to operate.  
Ib. § 4.

74. After such judgment shall be docketed in the court of common pleas, no execution shall issue thereon out of the court for the trial of small causes, nor shall any proceeding be had except the due and proper granting of an appeal or *certiorari*.

No proceeding in justice's court thereafter,  
Ib. § 5.

75. 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.

How revived.  
Ib. § 6.

76. 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.

Clerk to index.  
Ib. § 7.

77. If any judgment recovered in any court for the trial of small causes 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*.

In cases of appeal and certiorari.  
Ib. § 8.

78. 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.  
Ib. § 9.

### VIII. Appeal.

[SEC. 79 amended and supplied by Sec. 137, *post*].

79. SEC. 80. In all cases of appeal the court of common pleas to which such appeal shall be taken, upon filing of the appeal bond with the clerk of said court shall, if they are satisfied with the legality and sufficiency of the same, have power to order a stay of the execution which may have been issued by the justice, until the said court of common pleas shall make some further order thereon, a rule to which effect shall be entered in the minutes of the said court, and a copy thereof certified by the clerk, shall be served on the constable in whose hands the execution may be. (a)

Pleas may order stay of execution.  
Ib. § 44.

80. SEC. 81. If a legal and sufficient appeal bond be filed with any judge of the court of common pleas to which said appeal shall be taken or if satisfactory proof be made to him, that such a bond has been filed with the clerk of said court or with the justice from whose judgment such appeal was taken, such judge, if the other requirements of the law have been complied with, shall have power in vacation to order a stay of the execution which may have been issued by the justice, until the said court of common pleas shall make some further order thereon, a rule to which effect shall be entered in the minutes of the said court, and a copy thereof

Execution stayed where bond filed with judge or clerk.

P. L. 1856, p. 142.

(a) Such order could only be made by the court in session, and not by a single judge under a general rule, *Chadwick v. Reeder*, 4 Harr. 156. See § 81.

- certified by the clerk shall be served on the constable in whose hands the execution may be.
- New appeal bond substituted.**  
R. S. 229, § 47. 81. SEC. 82. The court of common pleas may permit the appellant to substitute a new appeal bond in the place of the appeal bond filed and sent up by the justice; *provided*, that no delay in the trial of the said appeal shall be occasioned thereby.(a)
- Justice to send up transcript and bond.**  
Ib. § 54. 82. SEC. 83. The justice who grants an appeal as aforesaid, shall send a transcript of the proceedings and judgment in the said cause, under his hand and seal, together with the bond aforesaid, to the clerk of the court of common pleas to which such appeal is made, on or before the first day of the court next ensuing such appeal.(b)
- When appeal may be heard.** 83. SEC. 84. Either party to an appeal may bring on the hearing thereof at the term of court to be holden next after the rendering of judgment by the justice, upon giving notice in writing of such hearing to the opposite party, at least fifteen days previous, and filing a copy of such notice and proof or an acknowledgment of service with the clerk of said court at least ten days previous to the first day of said term.(c)
- How appeal tried.**  
Ib. § 45. 84. SEC. 85. The several courts of common pleas in and for the respective counties of this state, shall have cognizance of and hear and determine(d) all such appeals in a summary way, and give judgment(e) and award execution thereon with costs(g) either on the affirmance or reversal of the judgment so appealed.
- Admission of evidence on trial of appeal.**  
P. L. 1875, p. 77. 85. SEC. 86. Upon the trial of an appeal the same and no other documents, proofs, and witnesses, (except as hereinafter provided), shall be produced and examined in the said court of common pleas, as had been previously produced and examined in the court below, except where the justice shall have admitted illegal or rejected legal evidence, or for any cause shall have deemed any witness incompetent to testify, and then such court of common pleas on the hearing of the said appeal shall reject such illegal evidence so admitted, and admit such legal evidence so rejected by the said justice, and shall admit such witness so rejected, if in the judgment of the said court of common pleas such witness shall be competent to testify; and if either party to an appeal shall desire to produce upon the trial thereof any witness or witnesses not produced or sworn in the court below, or any documentary evidence not offered or admitted in the court below, the said party shall be at liberty to do so, and the same shall be admitted by the court, if otherwise legal and competent, the court
- Production of new evidence.**  
P. L. 1862, p. 325. Amended.

(a) The common pleas must receive the new bond—it should be dated on the day when executed, *Kennedy v. Cogle*, 2 Gr. 82. *Perrine v. Cheeseman*, 6 Hal. 195. The "delay" is not to be limited so as to exclude a bond drawn in court, although a short delay necessarily ensues, *Egbert v. Thatcher*, 2 Gr. 77. If an appeal bond without a seal has been accepted by the justice and sent up, another should be substituted before the pleas, *Garrabrant v. McCloud*, 3 Gr. 462. An appellant may tender a sufficient bond and the pleas must accept it, although two defective ones have been offered and rejected, *Watson v. Marple*, 3 Harr. 8. But a *mandamus* will not be awarded to restore an appeal dismissed because there was no subscribing witness to the appeal bond, unless the appellant offered to execute a new and sufficient bond, *Thorpe v. Keeler*, 3 Harr. 251. Nor can the appellant under permission to file a new bond, add the affidavit required by law to be filed with the justice before the appeal is granted, and which he had neglected to file, *Parke v. Hunt*, 7 Hal. 82.

(b) If the appeal be demanded on the first day of the term, and the bond be left at the house of the justice on that day, but is not received by him, on account of his absence, until the next day, it is his duty to send up the appeal papers on the latter day, *Dyer v. Ludlum*, 1 Harr. 531. The act is directory only to the justice, not to the common pleas, who may receive the papers after the first day of the term, *State v. Bergen Common Pleas*, Pen. \*737. But see *Stevens v. Scudder*, 2 South. \*503. If the justice certifies it to be a true transcript from his docket, and annexes his hand and seal, without adding "witness my hand and seal," or similar words, it is sufficient, *Henry v. Campbell*, 4 Zab. 141. See *Miller v. Miller*, 2 South. \*508, (a). If the justice has neglected to certify his transcript the appellant is entitled to a rule on him, *Hockenbury v. Alpaugh*, 5 Vr. 342.

(c) The appellee is entitled to notice of trial, *Woodruff v. Carns*, Pen. \*505. See *Appar v. Degraw*, 4 Dutch. 527. So, where the appellee moves to dismiss the appeal, *Dayton v. Burnet*, 3 Hal. 253. The appellant should move the cause, or it will be dismissed. The appellee is not bound to proceed *ex parte*, *Lum v. Price*, 1 Harr. 195. It may be re-instated on good cause shown, *Howell v. Van Ness*, 2 Vr. 443. *Fifield v. Seeds*, 3 Harr. 166.

(d) The common pleas do not act as a court of errors, but

re-hear and re-try the cause on the merits, *Clarke v. Fulse*, Pen. \*263. *Cheeseman v. Leonard*, Pen. \*549. *Ryerson v. Marsellis*, 1 Harr. 450. *Hendricks v. Craig*, 2 South. \*567, 569, (a). *Strader v. Freeholders*, 3 Gr. 433. *Schuyler v. Mills*, 4 Dutch. 137. The appellant cannot move for a judgment of non-suit on a judgment obtained below by the appellee, *Reed v. Rocap*, 4 Hal. 347. Nor can he, in such case, obtain a non-suit by withdrawing, *Williamson v. Brown*, 5 Hal. 296. *Vanvooy v. Givens*, 3 Zab. 201. If they non-suit wrongfully, their judgment will be reversed, and the cause remitted for trial, *Blair v. Snover*, 5 Hal. 153. A reversal of a judgment of the pleas, which reverses that of the justice, does not restore that of the justice, *Small v. Ward*, 3 Hal. 302. *Smock v. Throckmorton*, 3 Hal. 216.

(e) See form of entering judgment, *Hendricks v. Craig*, 2 South. \*569. The pleas may give judgment for more or less than the justice did, *Woodruff v. Carns*, Pen. \*506. But not for more than one hundred dollars, besides costs, *Glover v. Collins*, 3 Harr. 232. Nor more than the plaintiff claimed in his state of demand, *Hawk v. Anderson*, 4 Hal. 319. *Lake v. Merrill*, 5 Hal. 288. They must specify the amount of debt or damages and costs, *Twins v. Schooley*, 3 Harr. 269. *Doremus v. Howard*, 3 Zab. 390. *Jones v. Pitman*, 7 Hal. 93. *Woodruff v. Badgley*, 7 Hal. 367. *Saxton v. Landis*, 1 Harr. 304. It may be remitted for correction, *Blair v. Snover*, 5 Hal. 154. If on appeal a verdict is rendered for less than the sum before the justice, the pleas should reverse the judgment below, *Cheeseman v. Cade*, 4 Zab. 632. They cannot reverse because the judgment of the justice is not entered in legal form, *Martin v. Thompson*, 5 Hal. 142. A judgment of the pleas that did not state that any evidence was heard, *Held. prima facie good*, *Barcklow v. Hutchinson*, 3 Vr. 195. If the pleas are equally divided, they must re-try cause, *Strader v. Freeholders*, 3 Gr. 433.

(g) The amount of costs must be specified, *Woodruff v. Badgley*, 7 Hal. 367. An entry, "with costs to be taxed," is defective, *Cook v. Brister*, 4 Harr. 73. If the judgment of the justice is reduced in amount, the appellee is not entitled to costs, *Robinson v. Hedges*, Pen. \*688. Where the amount of the damages obtained before the justice is increased, and the appeal was on that ground, the appellee is entitled to costs although the amount of costs awarded by the justice is reduced, *Romaine v. Norris*, 3 Hal. 80.

being satisfied that the said evidence was not withheld on the trial below for any unfair or fraudulent purpose; *provided*, that the party first offering such new evidence shall have given the opposite party, or his attorney, ten days' notice thereof in writing previous to the day of trial, setting forth the substance of such evidence if documentary, and the names of the witnesses intended to be produced at the time of the trial, and upon the production of such evidence, the opposite party may produce new evidence in rebuttal of the same, without notice; and upon the trial of such appeal the transcript from the docket of the justice shall be conclusive evidence of what witnesses were produced, and of what documents, papers and proofs were offered in the trial below. (a)

86. Sec. 87. In all cases of appeal from the judgment of any justice of the peace not rendered on the verdict of a jury, it shall and may be lawful for either party to the appeal, upon giving notice in writing to the clerk of the court of common pleas of the county, at least ten days previous to the first day of the term to which the appeal shall have been sent up, if the trial be had at that term or if not, then at least ten days' previous to the first day of the term next succeeding, to demand a trial of said appeal by jury, and upon receiving such notice, said clerk shall file the same in his office, and said appeal shall be tried by a jury in the same manner as jury appeals are now tried and determined; otherwise, such appeal shall be heard and determined by the court. (b)

87. Sec. 88. Every appeal from the judgment of any justice of the peace, founded on the verdict of a jury, shall be heard and determined by the court, to whom such appeal is or shall be made, unless either of the parties to the said appeal shall demand a trial by jury, in which case the sheriff shall return a jury either immediately, or at such future time as the said court shall direct and that by order of the court and without writ.

88. Sec. 89. If such judgment shall have been rendered upon the report of referees, the court of common pleas to which such appeal shall be made, shall have power to inquire into such report of referees, and the judgment thereupon, and either to affirm or set aside the same for the same causes and upon the same principles as reports of referees are set aside in such court in other cases, and to award a trial before themselves, if need be, in the same manner as is directed in other cases. (c)

89. Sec. 90. The provisions of the forty-fourth section of this act, shall apply as well to causes on appeal before the court of common pleas as to causes pending before the justice. (d)

90. Sec. 91. After the trial of an appeal in the court of common pleas, no new trial shall be granted by the said court. (e)

91. Sec. 92. No justice of the peace who heard and determined the said cause, shall sit as a judge of any of the courts of common pleas, on the hearing and determining of the same cause on appeal, or give any opinion thereon.

(a) The common pleas in the admission of evidence are confined to the same documents and witnesses, as were admitted before the justice, *Sandford v. Hoover*, Pen. \*100. Where a deposition of a witness (who was sick) was offered and overruled by the justice, the witness himself cannot be admitted on the trial of the appeal, *Ward v. Small*, 2 Hal. 40; criticised in *Ramsey v. Dumars*, 4 Harr. 69. Unless the other party has been notified, and the pleas are satisfied, &c., *Ryerson v. Marsellis*, 1 Harr. 450. *Infra*, § 136. Formerly the points and materiality of the new witnesses testimony were set out in the notice, *Hoagland v. Nevius*, 2 Hal. 75. If it appear that the party knew the facts or knew that the witness knew them previous to the trial before the justice, such witness ought to be excluded, *Gullick v. Thompson*, 7 Hal. 149. The evidence must be newly discovered, *Sherron v. Humphreys*, 2 Gr. 217. That it is only cumulative does not exclude it, *Ryerson v. Marsellis*, 1 Harr. 450. The witnesses sworn below may testify to new or additional facts, without notice, &c., *Voorhees v. Hendrickson*, 5 Dutch. 101. *Reed v. Rocap*, 4 Hal. 347. *Ramsden v. Bryden*, 2 Vr. 27. If a competent witness has been examined below, or offered and rejected, his deposition may be read, if he is dead or out of the state, &c., *Ramsey v. Dumars*, 4 Harr. 66. *Query*. Whether what a witness testified below may be proved on the appeal by a person not sworn before the justice, *Johnson v. Pennington*, 3 Gr. 188. *Ramsey v. Dumars*, 4 Harr. 66. See *Sloan v. Summers*, Spen. 66. *Jessup v. Cook*, 1 Hal. 434. *Kutzmeyer v. Ennis*, 3 Dutch. 372. *Camden and Amboy R. R.*

*Co. v. Stewart*, 4 C. E. Gr. 343. *Turner v. Hand*, 3 Wall. Jr. 88. Formerly the transcript of the justice was not conclusive as to what witnesses, documents, &c., were produced below, *Crane v. Ward*, Pen. \*650. Nor was it necessary for the justice to enter on his docket written evidence, *Manning v. Randolph*, 1 South. \*144. *Casher v. Peterson*, 1 South. \*318. *Sulton v. Petty*, 2 South. \*504. And whether the witnesses had been sworn or the evidence offered below was determined by the justice's certificate, or the oath of witnesses, *Ramsey v. Dumars*, 4 Harr. 66.

(b) The pleas had not the power to deprive a party of trial by jury by adopting a rule, or by an implied waiver of such right, *Hinchly v. Machine*, 3 Gr. 476. *Ten Eyck v. Farlee*, 1 Harr. 348. 269. If there was no rule of court to the contrary, a demand when the trial was ordered, was in time, *Field v. Ten Eyck*, 3 Harr. 195. The jury is drawn from the box as in other cases, *Paterson Gas Co. v. Brady*, 3 Dutch. 246. If there is an objection to the sheriff the pleas may order the coroners to return the jury, *De Wit v. Decker*, 4 Hal. 148.

(c) The affidavit must be filed the same as on appeal from a justice's judgment, *Coleman v. Warne*, 4 Hal. 290. The powers of the pleas are the same as in other cases of appeal, *Taylor v. Vanderhoof*, 2 Gr. 214.

(d) *Doremus v. Howard*, 3 Zab. 390. *Bogert v. Chrystie*, 4 Zab. 57.

(e) *Cortelyou v. Ten Eyck*, 2 Zab. 45. *Schwylter v. Mills*, 4 Dutch. 137.

Proviso.

How jury demanded. Where appeal was heard by justice alone.

P. L. 1857, p. 558, § 1. Amended.

Appeal founded on verdict of jury tried by court unless jury demanded.

R. S. 229, § 48.

Judgment on report of referees reviewed. Ib. § 50.

No nonsuit on trial of appeal. Ib. § 51.

No new trial granted. Ib. § 52.

Justice who tried case not to sit. Ib. § 53.

Entry of rule necessary to make judgment lien on land.

P. L. 1862, p. 219, § 1.

Clerk to record such judgment. Ib. § 2.

Judgment reviewed only by certiorari.

R. S., 229, § 66.

No certiorari allowed where appeal lies. Ib. § 67.

Amended.

How certiorari obtained.

Ib. § 68.

Reasons.

Bond.

When adjudicated.

Ib. § 69.

Costs on affirmance, but not on reversal.

Ib. § 70.

92. SEC. 93. Judgments of the court of common pleas upon appeals from the courts for the trial of small causes 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.

93. SEC. 94. 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.

### IX. Certiorari.

94. SEC. 95. 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.

95. SEC. 96. Where the justice has jurisdiction, no judgment hereafter to be rendered in any court for the trial of small causes, 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, and that both as to matter of law and matter of fact.(a)

96. SEC. 97. 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*;(b) 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.(c)

97. SEC. 98. 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 till the next term, for further argument and advisement.(d)

98. SEC. 99. 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 the said supreme court, for which the party entitled to such costs, may have

(a) A refusal of a justice to adjourn a cause cannot be removed by *certiorari*. *Gould v. Brown*, 4 Hal. 165. The issuing of an execution by a justice, being a proceeding distinct from the judgment, may be reviewed by *certiorari*. *Krummeick v. Krumeick*, 2 Gr. 39. See *Hinchman v. Cook*, *Spencer*, 271.

(b) The reasons ought to be filed within thirty days after the return of the writ. *Bell v. Bergen*, 2 Gr. 131. But further time may be allowed for good cause shown. *Ballinger v. Sherron*, 2 Gr. 144. *State v. Kirby*, 2 South. \*835.

(c) It is not necessary that the party enter into the bond. *Grier v. Gould*, Feb. 1836. A bond must be given on a *certiorari* to the pleas to remove a judgment given by them on appeal. *Ballentine v. Weible*, 2 Gr. 285. The condition of the bond is broken if the *certiorari* is dismissed for want of prosecution. *Maryott v. Young*, 4 Vr. 336.

(d) The motion to dismiss for want of prosecution may be made at any term after the default. *Anonymous*, 1 Harr. 394.

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.(a)

99. SEC. 100. The provisions of the last three preceding sections of this act shall extend to the circuit courts in the several counties of this state.(b) Jurisdiction of circuit court. Ib. § 71.

100. SEC. 101. No judgment of any justice of the peace, 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 justice by whom such judgment may have been rendered, in the entering, calculating or awarding of 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.(c) What errors or mistakes corrected. Ib. § 72.

101. SEC. 102. In case any judgment be so affirmed in part and reversed in part, neither party shall pay costs in *certiorari* to the other. Costs. Ib. § 73.

102. SEC. 103. It shall not be lawful for the supreme court or circuit court to reverse any judgment of any court for the trial of small causes, 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.(d) Judgments not reversed for mere irregularity. Ib. § 74.

103. SEC. 104. If in any cause or proceeding removed by *certiorari*, it shall appear equitable and just that a rehearing thereof be had before a justice, the supreme court or circuit court may order that such rehearing be had upon such terms and conditions as are reasonable, and the justice shall thereupon proceed to rehear said cause or proceeding and give judgment as in other cases. When justice of supreme court may order rehearing.

**X. Costs.**

104. SEC. 105. In all actions which may be brought by virtue of this act, the following and no other fees shall be allowed: Fees.

JUSTICES.		
Summons,	25	cents
Each copy thereof,	10	cents
Warrant,	25	cents
Order that warrant issue,	50	cents
Entering each suit,	20	cents
Recording return on summons,	10	cents
Recognizance,	35	cents
Entering every non-suit,	20	cents
Entering discontinuance,	20	cents
Venire facias,	35	cents
Administering every oath or affirmation,	10	cents
Subpœna for every witness,	10	cents
Swearing the jury,	35	cents
Entry of every verdict,	20	cents
Entry of every rule of reference,	50	cents
Every copy thereof,	25	cents
Entry of every judgment,	20	cents
Every execution,	35	cents
Recording return of execution,	15	cents
Drawing, signing and sealing return to <i>certiorari</i> ,	\$1	00
Copy of docket or of any proceeding or paper, per folio,	15	cents
Transcript of judgment,	50	cents
Entering suit without process,	50	cents
Filing each paper requiring to be filed,	10	cents

P. L. 1871, p. 116, § 1.

R. S. 229, § 86. Amended.

(a) No costs awarded on reversal—*secus* on affirmation, *Jewell v. Arvine*, Coxe 38. If quashed for want of jurisdiction the defendant is entitled to costs, *Montgomery v. Bruere*, 6 Hal. 168. If the execution be set aside, although the judgment be affirmed, the plaintiff shall not pay costs, *Hinchman v. Cook*, Spen. 271. On allowance of a motion for restitution, plaintiff is entitled to costs, *Hann v. McCormick*, 1 South. \*109. See *ante*, p. 99, § 8. *Randolph v. Bayles*, Pen. \*52.

(b) The circuits have not jurisdiction in matters of taxation, *State, Dufford v. Decue*, 2 Vr. 302.

(c) *Smith v. Williamson*, 6 Hal. 313. *Gill v. Hackney*, Pen. \*920. *Hill v. Herbert*, Pen. \*924. *Kerr v. Phillips*, 2 South. \*820. *Cheeseman v. Cude*, 4 Zab. 632.

(d) An irregularity in the common pleas is not saved by this section, and the supreme court will reverse therefor, *Nicholson v. Wood*, 3 Gr. 464. A judgment on appeal by the pleas will not be reversed for an error of the justice in the same cause, *Obert v. Whitehead*, 4 Hal. 245. *Rodenbough v. Rosebury*, 4 Zab. 491. *Hendricks v. Craig*, 2 South. \*569, (a). *Yannoy v. Givens*, 3 Zab. 201. See *State, Dunn v. South Amboy*, 3 Vr. 275. It seems in such case the court may inspect the transcript of the justice, *Dancer v. Craven*, 5 Hal. 255. *Contra, Philhower v. Voorhees*, 7 Hal. 69. Where both the judgment of the justice and that of the pleas are wrong, both will be set aside, *Clarke v. Fulse*, Pen. \*263.

## JUSTICES COURTS.

Issuing commission to take deposition, . . . . .	25 cents
Recording return of commission, . . . . .	\$1 50
Entering particulars of costs, . . . . .	15 cents
Every affidavit, . . . . .	25 cents
Every adjournment, . . . . .	20 cents
Hearing every contested case, . . . . .	75 cents
Hearing case not contested, . . . . .	25 cents
Granting appeal and sending up transcript and papers, . . . . .	50 cents
Recording description of each paper offered in evidence, . . . . .	7 cents
Approving bond, . . . . .	50 cents
Taking deposition, per folio, . . . . .	15 cents
Scire facias, . . . . .	35 cents

## CONSTABLES.

Constables.	Serving every summons on one defendant, . . . . .	60 cents
	And for service thereof on every additional defendant in the same summons, . . . . .	30 cents
	Serving every warrant, against one or more persons, for each person, . . . . .	75 cents
	Serving every scire facias, against one or more persons, for each person, . . . . .	60 cents
	Serving every subpoena, . . . . .	35 cents
	Summoning every jury of six men, . . . . .	75 cents
	Summoning every jury of twelve men, . . . . .	\$1 00
	Attending jury until agreed on their verdict, . . . . .	50 cents
	Serving every execution, . . . . .	75 cents
	In addition to which three cents on each dollar secured to the plaintiff, . . . . .	35 cents
	Advertising property under execution, . . . . .	50 cents
	Selling property under execution, . . . . .	25 cents
	For every copy of an execution filed with the jailor, . . . . .	25 cents
	For every mile of travel in serving any summons or warrant, issued by a justice of the peace, 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, . . . . .	4 cents

## JURORS.

Jurors.	For all cases tried, . . . . .	25 cents a man
	When summoned to attend, and cause not tried, . . . . .	15 cents a man

## WITNESSES.

Witnesses.	For their services under sections 116th and 117th of this act, . . . . .	50 cents
Fees on appeal.	For all other services the same fees as are or shall be allowed in causes before the court of common pleas; <i>provided</i> , that no fees shall be allowed for the service of any subpoenas, for more than two witnesses, nor shall fees be allowed to more than two witnesses for each party in a cause. (a)	
R. S. 229, § 87. Amended.	105. SEC. 106. On all appeals as aforesaid, heard and determined in the court of common pleas, the following and no other fees shall be allowed:—	

## COURTS.

Court.	Every appeal heard, . . . . .	50 cents
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## CLERKS.

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

(a) Costs allowed for only two witnesses, *Quimby v. Gilman*, Pen. \*430. *Blackwell v. Leslie*, 1 South. \*112. Where there were two trials, costs for two witnesses at each trial allowed, *Combs v. Murphy*, Pen. \*741.

SHERIFF.

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

CONSTABLES.

Serving every subpoena, . . . . . 35 cents Constable.  
 Attending jury, . . . . . 50 cents

CRIERS.

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

TO THE JURORS.

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

JUDGE OR COMMISSIONER.

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

106. SEC. 107. When the plaintiff, in any action of debt, shall demand a 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 costs of the jury. Who to pay the jury of twelve men. lb. § 23.

107. SEC. 108. When the plaintiff, in an action of debt, shall demand a jury of six men, and such jury shall find a sum in favor of the plaintiff, under ten dollars, the plaintiff shall pay the whole costs of the jury. (a) Of six men. lb. § 24.

108. SEC. 109. No constable or other officer, authorized to serve a subpoena, summons or other mesne process issued out of the court for the trial of small causes, shall be 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. When constable not required to serve process. P. L. 1858, p. 477, § 1.

109. SEC. 110. No appeal from the judgment of a justice shall be allowed until the party applying for the same shall, in addition to the matters now required by law, pay to said justice all costs incurred by him except such as shall be adjudged to the prevailing party. Fees of justice to be paid before appeal.

110. SEC. 111. The fee of the court for hearing the appeal, and the fees of the clerk for entering the action and filing the bond and transcript, shall be paid in the first instance by the appellant; if he refuse to pay the same before the hearing, the court shall, on application of the clerk, refuse to hear such appellant and the appellee, if he will pay the same, may move the court to make, and the court may thereupon make such disposition of the case as if the appellant failed to appear and prosecute his appeal. Fees to be paid before hearing of appeal. P. L. 1857, p. 558, § 2. Acts 1870, p. 109. Amended.

XI. Miscellaneous.

I. AMENDMENT.

111. SEC. 112. When judgment shall have been rendered upon the verdict of the jury, the court of common pleas, to which such appeal shall be made, shall, before they proceed to hear and determine the same, amend the process, proceeding, verdict and judgment in all things which by the act entitled "An act respecting amendment and jeofails," are amendable on writs of error, after verdict in other courts; and if it should be inconvenient, actually to make such amendments, then everything so amendable, shall be taken and considered as amended, and proceeding shall be had thereupon, as if the same had been actually done. Amendments made. R. S. 229, § 49.

112. SEC. 113. The provisions of the one hundred and thirty-eighth section of an act entitled "An act to regulate the practice of the courts of law," are hereby extended to the courts constituted by this act, and to the courts of common pleas on an appeal taken thereto; *provided*, that if any objections be made before the justice by either party, in any cause, Provisions of sec. 138 of "Practice act" extended to justices' court.

(a) Query. Whether *Pat.* p. 317, § 21, providing that when either party to a suit \* \* \* shall demand a jury of twelve men, who find in favor of the applicant above five and not exceeding sixteen dollars, the applicant shall pay one-half of the costs of such jury, and if under five dollars the whole costs, and when either party demand a jury of six who find in favor of the applicant under five dollars, then the applicant to pay all the costs of such jury, is in force as to juries demanded by *defendants*, or by either party in cases of *tort*?

In case of objection. 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 justice 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.(a)

Amendment in common pleas.

Defective return of constable may be amended when. 113. Sec. 114. 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.

## 2. REFERENCES.

Rules of reference to be entered. 114. Sec. 115. In every suit to be instituted before any justice of the peace 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 justice of the peace, 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 shall be nominated and agreed upon by and between the parties; and the reference so made shall and may be conducted in the same manner in all respects, as directed in the case of references by rule of court, in and by the act entitled "An act for regulating references, and determining controversies by arbitration," and the report of the said referee or referees, or the major part of them, whether in favor of the plaintiff or defendant, appellant or appellee, shall be final and conclusive to the parties, judgment shall be entered thereon with costs, and execution issued accordingly.(b)

R. S. 229, § 55. Amended.

## 3. DEPOSITIONS.

Deposition of witness when taken. 115. Sec. 116. If a material witness in an action, instituted in the said court for the trial of small causes, 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 justice of the peace; *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 justice 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.(c)

Notice required.

Such deposition how taken. 116. Sec. 117. 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 magistrate taking the deposition, or by the deponent, in his presence, and the deposition, so taken, shall be retained by such magistrate until he deliver the same, with his own hand, into the court for which it was taken, or shall be by him, the said magistrate, sealed up, directed and transmitted

And transmitted to court.

(a) Where a note was filed as a state of demand, if the appellant had moved the pleas to non-suit on that ground, they might have allowed a state of demand to be then filed, *Steward v. Sears*, 7 Vr. 173, 175.

(b) It must be with the consent of parties, *Schooley v. Thorne*, Coze 71. And there must be an action actually depending. *Burroughs v. Genung*, Pen. \*103. *Prosser v. Richards*, Pen. \*377. *Ogden v. Dildine*, Pen. \*4130. The justice himself cannot be one of them, *Crane v. Hind*, Pen. \*4130. *Little v. Silverthorne*, Pen. \*630. *Rogers v. Woodmense*, Pen. \*94. They must be sworn, *Reeves v. Goff*, Pen. \*143. *Parker v. Crammer*, Pen. \*271. *Crammer v. Malhis*, Pen. \*350. And it should appear on the docket, *Ibid.* But is sufficient if in the report, *Switze v. Riddle*, Pen. \*660. A report of two on a reference to three, is not binding, *Reeves v. Goff*, Pen. \*143. All must act. *Hoff v. Taylor*, 2 South. \*829. A verbal report is void, *Seelem in v. Stewart*, Pen. \*316. And one made after

the time limited, *White v. Kemble*, Pen. \*461. It cannot be altered by two referees after its delivery, *Egbert v. Smith*, Pen. \*923. On a submission by an administrator, his individual accounts must not be investigated, *Montfort v. Vansardalen*, 2 South. \*686. Judgment must be entered thereon by the justice, *Bowen v. Lanning*, Pen. \*139. *Johnson v. Johnson*, Pen. \*317. *Little v. Fleming*, Pen. \*552. *Swayze v. Riddle*, Pen. \*660. And notice is necessary to the losing party, *Fuhrholz v. Forker*, Pen. \*995. *Pierson v. Pierson*, 2 Hal. 125. Demand need not be filed, *Ayres v. Burt*, Pen. \*739. And a defect therein is cured, *Bozorth v. Frickett*, Pen. \*268. And not filing it in time, *Chance v. Chambers*, Pen. \*384. And mistake in the form of action, *Applegate v. Schureman*, Pen. \*868.

(c) It may be taken before the justice before whom the cause is pending, *Burley v. Kitchell*, Spen. 305. Notice must be given to the party, *Wilson v. Cornell*, 1 South. \*117, note (a).

to such court, and remain under his seal until opened in court, and when so opened, the same shall be deposited in the office of the justice before whom 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 office as aforesaid. (a) Copies allowed.

117. SEC. 118. The provisions of the act entitled "An act concerning evidence for taking the testimony of witnesses residing out of this state," so far as the same can be applied, be and they are hereby extended to the courts for the trial of small causes. What provision of "Evidence Act" applicable. Ib. § 81.

4. JUSTICES—THEIR DUTIES AND DOCKETS.

118. SEC. 119. It shall be the duty of every justice of the peace, before whom any suit shall be instituted, to enter in a book, to be kept for that purpose, the names of the plaintiff and defendant, (b) the style and nature of the action, (c) the sum demanded, the time of issuing process, and when returnable, (d) 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, (e) the time of taking the recognizance, of making or filing any order, the adjournment, (g) the rule of reference, and report of referees, (h) the jury, (k) when and by whom demanded, the venire, when issued and how returned, the time of trial, and names of the jurors and witnesses, (m) 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, (n) the appeal, (o) when and by whom demanded, and all the proceedings before him had, touching the said suit; (p) and further, it shall be the duty of such justice to grant to either party, when required, a certified copy of such proceedings. Justice's docket, entries in. Ib. § 56. Amended. Party entitled to certified copy.

119. SEC. 120. It shall be the duty of the justice before whom 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. Justice to enter full bill of costs. P. L. 1858, p. 49, § 3.

120. SEC. 121. Every justice of the peace, 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 justice of the peace; 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 justice was still in commission. (q) Justice out of office may give transcripts. R. S. 229, § 58.

(a) And affidavits of non-residence, &c., of witnesses be presented, *Hendricks v. Craig*, 2 South. \*567. It ought to appear on the deposition that the witness was cautioned, &c., *Stewart v. Bowne*, Pen. \*959. Although not indispensable, *Benley v. Mitchell*, Spen. 305. Ante, pp. 382-4, notes.

(b) Stating the initials only is not sufficient, *Clayton v. Tonkin*, 4 Hal. 252.

(c) *Ludlam v. Wood*, Pen. \*56. *Stokes v. Coonis*, 1 South. \*159. *Ashcroft v. Clark*, 2 South. \*577. *Pierson v. Pierson*, 1 Hal. 168. *Bilderback v. Powner*, 2 Hal. 64. "Summons in debt, thirty-one dollars and twenty-nine cents, issued February 25th, 1830," is sufficient, *Branson v. Eayre*, 7 Hal. 127.

(d) Record should state the day and year when issued, *Marentille v. Oliver*, Pen. \*379. "Issued 13th April, 1811, returnable the 27th" is good, *Potts v. Stoutenburgh*, Pen. \*953. So, under the names of the parties and style of action, "April 3d, 1830," *Day v. Hall*, 7 Hal. 203. See *Folly v. Smith*, 7 Hal. 140. The command of the justice to the constable to detain the defendant, must be entered, *Dunham v. Solomon*, 1 Harr. 50.

(e) The state of demand is no part of the record, *Vandyke v. Bastedo*, 3 Gr. 224. But the docket and transcript ought to show that it was filed, *English v. Bonham*, 2 Harr. 350.

(g) When a justice renders judgment in the absence of the parties, it must appear by the record that the cause was regularly adjourned, or notice given to the parties, *Semple v. Trustees, &c.*, 3 Hal. 60. *Vandoren v. Vandoren*, 5 Hal. 286. *Moreton v. Scroggy*, Pen. \*676. See *Chance v. Chambers*, Pen. \*384.

(h) That they were sworn should be entered, *Anonymous*,

Pen. \*632. *Steward v. Chamberlain*, Pen. \*742. Need not show that the constable was sworn, *Gould v. Magee*, Pen. \*475. *Darnel v. Sheldon*, Pen. \*522.

(k) And the names of the jurors and witnesses, *Lindsay v. Boyle*, Pen. \*207. *Steelman v. Boulton*, Pen. \*321. *Doughly v. Kindle*, Pen. \*660. That the witnesses were sworn will be presumed although not stated on the docket, *Doughly v. Reed*, Pen. \*902.

(m) An entry that "defendants paid (the execution) in full to the constable," is not sufficient after reversal to order a restitution without notice, *McChesney v. Rogers*, 3 Hal. 179. *Arrowsmith v. Vanarsdale*, 1 Zab. 471.

(n) An endorsement on the back of the transcript that an appeal was demanded is not sufficient, *Bennet v. Kite*, 4 Hal. 106.

(o) The name of the county need not be entered, *Gulick v. Vanarsdale*, Pen. \*746. *Case v. Rowland*, 2 Harr. 76. It may be amended by the justice, *Allen v. Joice*, 3 Hal. 135. *Camp v. Martin*, 7 Hal. 181. *Backer v. Van Fleet*, 1 Gr. 195. *Ridgway v. Fairholm*, Pen. \*906. See *Searing v. Lum*, 2 South. \*683. If there are several transcripts, the first one will be taken as true, *Woodward v. Porter*, Pen. \*239. See *Van Vliet v. Jones*, Spen. 340.

(p) The county clerk certifies transcripts of dockets after they are so deposited, *Woodruff v. Woodruff*, 1 South. \*375. Where a justice moved out of the state without depositing his docket, a plaintiff was allowed to take a copy of his docket and annex affidavits thereto, as a return, *Ball v. Van Houten*, 1 South. \*32.

(q) See *Tichenor v. Hewson*, 2 Gr. 26.

- Where docket deposited after death of justice. *Ib.* § 57. 211. SEC. 122. The book in which such proceedings shall be entered by any justice of the peace, shall, within one year after death of the said justice, be deposited in the office of the clerk of the county wherein the said justice resided and held his commission, to be there kept as a public record; and if the executors or administrators of such deceased justice shall neglect or refuse to deliver the said book, at the expiration of the said term of one year, to the said clerk as aforesaid, he, she or they, so refusing or neglecting, shall forfeit and pay the sum of sixty dollars, to be recovered by action of debt, with costs, in any court having cognizance of the same, and paid when recovered, to the collector of the county, for the use of the county, who is hereby authorized and required to prosecute for the same.
- Penalty for neglect. If impeached, docket where deposited. *Ib.* § 59. 212. SEC. 123. If any justice of the peace shall be hereafter removed from his office by impeachment, the docket or dockets of the said justice shall be forthwith deposited in the clerk's office of the county in which he resides at the time of impeachment, there to be kept as a public record.
- Same on removal from county. *Ib.* § 60. 213. SEC. 124. If any justice of the peace, either before or after the expiration of his term of office, shall be about to remove from the county in which he was commissioned, it shall be his duty to deposit his docket or dockets in the clerk's office of said county, prior to his removal therefrom, there to be kept as a public record.
- Justice to have access to docket. *Ib.* § 61. 214. SEC. 125. Every justice of the peace and his legal representatives shall and may at all times, after the said docket or dockets are deposited as aforesaid, have free access to the same without payment of any fees to the clerk therefor, to enable them to recover any costs which may be due the said justice thereon.
- Penalty for not so depositing docket. *Ib.* § 62. 215. SEC. 126. If any justice of the peace shall neglect or refuse to deposit his docket or dockets in the clerk's office, at the time 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 collector of the county, for the use of the county; which suit shall be brought by the county collector, for the use of the county.
- Transcript from docket in clerk's office evidence. 216. SEC. 127. A transcript of the record of any case entered in any docket, deposited in the clerk's office 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.*(a)*
- Justice not to keep tavern. *R. S.* 229, § 84. 217. SEC. 128. It shall not be lawful for the court of common pleas, or any other court or municipal authority having power to grant license to keep an inn and tavern in any of the counties, cities or towns corporate within this state, to grant a license to any person to keep an inn and tavern, who shall be at the same time a justice of the peace, or in virtue of of his office exercising the powers of a justice of the peace; and if any person shall be appointed a justice of the peace, or an officer with the power of a justice of the peace, in any of the counties, cities or towns corporate within this state, during the time that he holds a license to keep an inn and tavern, and accept of the said office, such license shall thenceforth be absolutely void.
- Who not to prosecute or defend suits. *Ib.* § 85. Amended. 218. SEC. 129. No justice of the peace or constable shall appear and prosecute or defend in any action before any justice of the peace, unless such justice or constable shall be one of the parties on record in the cause; and any justice or constable who shall offend against the provision 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 justice from transacting the general concerns of a person who is absent and resident without the state.*(b)*

*(a)* It does not prevent a justice, &c., who is the *bona fide* assignee of a claim from prosecuting it, *Conover v. Solomon*, *Spen.* 295. *(b)* A marshal of a city cannot serve process, *Dunlam v. Solomon*, *1 Harr.* 50.

5. CONSTABLES—THEIR DUTIES.

129. SEC. 130. The constables of the several townships in any county shall be the ministerial officers of the said courts, and it shall be the duty of said constables to execute within the county all precepts, summons, warrants, writs, and other process, issuing out of the said court, and to them or any of them directed and delivered, and make return thereof, and to perform all matters, acts, and things appertaining to their offices aforesaid.

Constables to be ministerial officers.  
Ib. 2 3.

6. PARTIES.

130. SEC. 131. The provisions of sections nineteen, twenty, twenty-one, twenty-three, twenty-five and twenty-six, of an "Act to regulate the practice of courts of law," shall apply to the courts for the trial of small causes, except where they conflict with the provisions of this act.

What provisions of the "Practice Act" applicable

7. CONSTRUCTION.

131. SEC. 132. The provisions of section three hundred, of an "Act to regulate the practice of courts of law," shall be extended to courts for the trial of small causes.

Sec. 300 of the "Practice Act" applicable.

132. SEC. 133. The provisions of this act shall apply to the district courts of the city of Newark, except where the provisions hereof are inconsistent with the provisions of the act constituting said courts and of the supplements thereto.

This act to apply to district courts of Newark.

Supplement.

Approved March 17, 1875. P. L. 1875, p. 31.

133. SEC. 1. That it shall and may be lawful for any justice of the peace whose term of office has expired or may hereafter expire, or who has resigned or may hereafter resign, to proceed to the investigation and determination to judgment of any cause then undetermined before him, and it shall be the duty of every such justice to grant, when demanded, an appeal from any such judgment, and also from the judgment by him rendered in any cause theretofore brought before him, and also to make return to all writs, orders or rules to him directed issuing out of any court in this state, in the same manner and as fully as though his commission had not expired or he had not resigned.

Justices of the peace whose term of office has expired, may determine any cause undetermined before him, and grant appeal.

134. SEC. 2. That every such justice shall and may, when required so to do, issue writs of *scire facias* to revive any judgment then remaining unsatisfied upon his docket or dockets, and to issue all and any final process of execution upon any such judgment so revived, or upon any other judgment then remaining unsatisfied as aforesaid; and such writs and process shall be returnable before such justice, and shall have the same force and effect and be liable to the same legal objections as though the said justice was still in commission; *provided*, that the docket or dockets of such justice then remain lawfully in his possession.

May issue writs of scire facias, to revive unsatisfied judgments.

Supplement.

Approved April 7, 1875. P. L. 1875, p. 57.

135. SEC. 1. That the constables of the several counties of this state shall be entitled to receive from the collector of the said county their lawful fees for serving any criminal warrant, together with all and any expenses by them incurred in conveying any offender to the county jail for commitment to the custody of the sheriff, whether any such offender shall be indicted or not for the offence for which such offender may have been so committed.

Fees of constables for serving criminal warrants.

Supplement.

Approved March 7, 1876. P. L. 1876, p. 25.

136. SEC. 1. That in all cases of appeal from the judgment of any justice of the peace founded on an affidavit or affidavits, as provided for in the thirty-seventh, thirty-eighth and thirty-ninth sections of the act to which this is a supplement, it shall not be necessary for either party to such appeal to give notice of the production of new evidence, but on the trial of such appeal before the court of common pleas to which the same shall be taken, it shall be lawful for either party to produce and offer such

When not necessary to give notice of the production of new evidence on appeal.

witnesses and other evidence, as the said party shall desire, without previous notice to the other party; *provided*, the same shall be lawful and competent in other respects.

An act to amend an act entitled "An act constituting courts for the trial of small causes," (revision), approved March twenty-seventh, one thousand eight hundred and seventy-four.

P. L. 1876, p. 117.

Approved April 12, 1876.

Section to be amended.

137. SEC. 1. That section seventy-nine, of the act entitled "An act constituting courts for the trial of small causes," which now reads as follows, to wit:

"From any judgment which may be obtained before any justice of the peace, except such as shall have been given by confession, either party may appeal to the court of common pleas of the county, to be holden next after the rendering of such judgment; which appeal the said justice is hereby directed to grant on the following, and no other terms, that is to say, the party demanding such appeal shall enter into bond to the other party, with at least one sufficient surety, being a freeholder in the county, and in double the sum for which such judgment was given, conditioned that the appellant shall appear and prosecute the said appeal in the said court of common pleas, shall stand to and abide the judgment of the said court, and pay such further costs as shall be taxed, if the judgment be affirmed; *provided always*, that no appeal shall be granted to remove a judgment rendered upon the verdict of a jury, or on the report of referees, unless the party demanding the appeal shall, at the time of filing the appeal bond with the justice, also file with him an affidavit made by said party, before any justice of the peace, stating that the said appeal is not intended for the purpose of delay, and that he verily believes that he hath a just and legal ground of appeal upon the merits of the case, which said affidavit the said justice shall cause to be sent up to the court to which the appeal is taken, with the other papers in the cause," be and the same is hereby amended so as to read as follows, to wit:

Terms upon which justice is required to grant an appeal.

"79. From any judgment which may be obtained before any justice of the peace, except such as shall have been given by confession, either party (a) may appeal to the court of common pleas of the county to be holden next after the rendering of such judgment; (b) which appeal the said justice is hereby directed to grant, on the following and no other terms, (c) that is to say, if the judgment appealed from be one entered against the party demanding the appeal, or if there be in the action an off-set against his demand, then he shall file with the justice a bond to the other party, with at least one sufficient security, being a freeholder in the county, and in double the amount of such judgment or set-off conditioned that the appellant shall appear and prosecute the said appeal in the said court of common pleas, shall stand to and abide the judgment of the said court, and pay such costs as shall be taxed against him if the judgment be affirmed; (d) if the judgment appealed from be in favor of the party demanding the appeal, and there be no off-set in the action against his demand, then no appeal bond shall be required, but the appeal shall be taken by a notice in writing, signed by or in behalf of the appellant,

(a) Where there are several plaintiffs or defendants, one of them can appeal, *Sheppard v. Fenton*, 4 Hal. 8. *Pharo v. Parker*, 1 Zab. 382. *Van Buskirk v. Hoboken, &c., R. R. Co.*, 2 Vr. 367. See *Wilson v. Moore*, 2 Dutch. 458.

(b) The appeal must be taken to the next term, *Stevens v. Scudder*, 2 South. 508. An appeal demanded on the first day of the term of the pleas, next after rendering the judgment, is in time, *Dyer v. Ludlum*, 1 Harr. 531. But not after the first day, *Miller v. Martin*, 3 Hal. 201. Unless the party intending to appeal has been prevented by the absence of the justice, or other good cause, *Lacy v. Cox*, 3 Gr. 469. See *Schooley v. Ivins*, 6 Hal. 169.

(c) The justice must decide, (1). Whether it is a case in which an appeal lies. (2). Whether the application is made in due time. (3). Whether the bond is in due and legal form. (4). Whether the surety is a freeholder in the county and otherwise sufficient. (5). Whether the bond has been legally executed, *Tichenor v. Hewson*, 2 Gr. 26. Nor ought the pleas to grant a rule on the justice to return an appeal without proof that an appeal has been legally demanded, *Stull v. Abbott*, 3 Gr. 368.

(d) The tendering of a bond executed according to law, is a demand of an appeal, *Thompson v. Wright*, 2 Gr. 38.

Which the justice has no discretion to refuse, *Rodenbough v. Rosebury*, 4 Zab. 491. If the condition of the bond recites so much of the judgment as identifies it, it will be sufficient, *Glenworth v. Hutchinson*, 6 Hal. 90. The amount of the judgment need not be stated, *Griffith v. Scipies*, 5 Hal. 228. It need not be executed by the parties, *Kennedy v. Cogle*, 2 Gr. 83. It may be executed by a minor, against whom a judgment has been rendered, and a freeholder, *Andruss v. Stewart*, 5 Hal. 160. The county in which the obligor resides and the court to which the appeal is made, ought to be designated, *Merserole v. Merserole*, 1 Gr. 239. An interlineation or alteration vitiates it, *Shinn v. Roberts*, 6 Hal. 187. *Bell v. Smith*, 1 Gr. 312. *Thorpe v. Keeler*, 3 Harr. 251. The appellant was allowed to prove that interlineations apparent on the face of the bond were made before its execution, *Rockafellow v. Rea*, 7 Hal. 180. Questioned in *Thorpe v. Keeler*, 3 Harr. 251. If a party obtains the dismissal of an appeal on the ground of the insufficiency of the bond, he cannot afterwards prosecute such bond, *Van Riper v. Scott*, 6 Hal. 315. Nor where the appeal is dismissed for want of jurisdiction in the court, *Gregory v. Obitan*, 1 Gr. 11. Sufficient state of demand against a surety, *Teel v. Tice*, 2 Gr. 444.

briefly describing the judgment and stating that the party appeals therefrom to the next court of common pleas; *provided always*, that no appeal shall be granted to remove any judgment entered against the party demanding the appeal for any amount beyond the costs of suit where such judgment shall have been rendered on the verdict of a jury, or on the report of referees, unless the party shall at the time of taking the same, file with the justice an affidavit made by the party, or in his absence by his agent, stating that the said appeal is not intended for the purpose of delay, and that the affiant verily believes that the appellant hath a just and legal ground of appeal upon the merits of the case; which affidavit shall be sent up to the court to which the appeal is taken, with the other papers in the cause.”(a)

Proviso.

138. SEC. 2. That this act shall take effect immediately, and shall apply to all actions in which appeals might now be taken according to law.

Act to apply where appeals might now be taken.

**A further supplement to an act entitled “An act constituting courts for the trial of small causes.”**

Approved April 6, 1871. P. L. 1871, p. 116.

[SEC. 1 repealed and supplied by *Sec. 105 and 106 ante*. See also “ATTACHMENT,” and LANDLORD and TENANT].

139. SEC. 2. That the following and no other fees shall be allowed to justices of the peace and constables in this state; to justices and constables in criminal cases, and that no fees be demanded from parties applying to justices or constables for their services, but shall be paid out of the funds of the county in which such services were rendered; *provided*, the presiding judge of the court of oyer and terminer shall approve of such payment:

Fees of justices and constables in criminal cases.

JUSTICES’ FEES.

For drawing complaint and taking affidavit when not exceeding one sheet or folio, thirty-five cents; and for all in excess of one folio, at the rate of fifteen cents per folio.	
For issuing every warrant, . . . . .	40 cents
For drawing conviction, . . . . .	40 cents
For commitment, . . . . .	40 cents
For each recognizance, . . . . .	40 cents
For warrant to jailor to discharge prisoners, . . . . .	40 cents
For issuing every subpoena, . . . . .	10 cents
For taking examination in writing when required by law, fifteen cents per folio.	
For examination in a case where not required to be taken in writing, . . . . .	50 cents
For swearing each witness, . . . . .	10 cents
For making and certifying bill of items of costs in each case, . . . . .	15 cents
For drawing, certifying and sending to the judge of the circuit court, a copy of complaint and commitment, in a case where a boy under fourteen years of age is charged with crime, and he is considered a fit subject to be sent to the state reform school, . . . . .	\$1 00
In cases arising under the act for suppressing vice and immorality, justices and constables shall be entitled to the same fees as for like services in other criminal cases.	

Justice’s fees.

(a) A plaintiff appealing from a judgment in his favor was required to make the affidavit, *Miller v. Martin*, 3 Hal. 201. The affidavit should not be endorsed on the bond, *Freas v. Jones*, 3 Gr. 20; 1 Harr. 358. The affidavit is good, but it vitiates the bond, *Robbins v. Bonnell*, 1 Harr. 234. It ought to appear on the transcript that the affidavit was filed at the time of filing the bond, *Anonymous*, 1 Hal. 230. But if endorsed on the bond, and sworn to before the same justice on the day the bond was filed, it is sufficient proof as to the time, *Carman v. Smick*, 2 Gr. 117. It will be presumed that it was filed on the day mentioned in the transcript on which the appeal was demanded, *Miller v. White*, 3 Gr. 466. It must be filed on the same day that the bond is filed, *Coleman v. Warne*, 4 Hal. 290. *Parke v. Hunt*, 7 Hal. 82. A mistake in the date may be shown and corrected. *Freas v. Jones*, 3 Gr. 20. *Lacy v. Cox*, 3 Gr. 469. It should appear on its face to be in the same cause, although it is

not necessary to entitle it, *Dunham v. Rappleyea*, 1 Harr. 7b. *Blair v. Stewart*, 3 Harr. 123. A substantial compliance with the words of the act is sufficient, *Steamboat Co. v. Baldwin*, 2 Gr. 440. *Hitsman ads. Garrard*, 1 Harr. 124. *Tomlin v. Morris*, 1 Harr. 179. *Hamilton v. Peacock*, 3 Harr. 435. *Yard v. Bodine*, 3 Harr. 490. Overruling, *Engle v. Blair*, 6 Hal. 339. *Schenck v. Ayres*, 2 Gr. 311. It need not be signed by the affiant, *Hitsman ads. Garrard*, 1 Harr. 124. *Contra*, where there are two appellants and the affidavit is made by one, *Gaddis v. Durashy*, 1 Gr. 324. It is not requisite that all should join, *Van Campen v. Ribble*, 2 Harr. 433. It may be made by an officer of a corporation, *Steamboat Co. v. Baldwin*, 2 Gr. 440. It must be taken by the justice who tried the cause, *Munn v. Merry*, 2 Gr. 183. On satisfactory proof of loss, a new affidavit may be substituted, *Van Campen v. Ribble*, 2 Harr. 433.

JUSTICES COURTS.

For a trial before two justices under the supplements to the act entitled "An act to describe, apprehend and punish disorderly persons, . . . \$1 50  
 For making every decree or order required under the supplements to said act to be made by two justices, . . . \$1 00

FEEES IN CASES OF TRIAL FOR PETTY LARCENY BEFORE TWO JUSTICES.

Fees in cases before two justices. For issuing warrant to bring the accused before two justices, . . . 40 cents  
 For trial before two justices, . . . \$1 50  
 For drawing and preferring charge to prisoners, . . . 1 00  
 For drawing conviction, . . . 50 cents  
 For commitment, . . . 50 cents  
 For making and certifying each copy of bill of items of costs, . . . 15 cents

CONSTABLES' FEES IN CRIMINAL CASES.

Constables' fees in criminal cases. For serving every warrant against one or more persons—for each person, . . . 80 cents  
 For serving every commitment, . . . \$1 00  
 and the constable shall be entitled to mileage at the rate of three cents per mile (to be computed as hereinbefore provided), for the service of all warrants or commitments.  
 For attending prisoners under trial for petty larceny, or under examination before a justice, . . . 50 cents  
 For serving every subpoena where the distance is over one mile, 35 cents  
 but where the distance is not over one mile, . . . 20 cents  
 For all services not enumerated in this act, justices and constables shall be entitled to receive fees as now fixed or may hereafter be provided by law.

Bills of costs to be sent up to the prosecutor of pleas. 140. Sec. 3. That every justice of the peace shall make a bill of particulars of the costs in each criminal case before him, and certify and send up the same with the papers in the case to the prosecutors of the pleas, and if an indictment be found in the case, said bill of costs shall be handed by the prosecutors to the county clerk, who shall review and correct the same, if necessary, and shall certify the correct amount to the county collector, who thereupon shall pay the amount so certified to the justice, and said justice shall refund to the complainant so much of said costs as shall have been paid by complainant to said justice.  
 County clerk shall review and certify.  
 County collector to pay.

Duties of justices in certain cases. 141. Sec. 4. That in case a person is convicted before a justice or justices of the peace, under the act entitled "An act to describe, apprehend and punish disorderly persons," passed tenth of June, one thousand seven hundred and ninety-nine, or any of the supplements thereto, and sentenced to imprisonment; or in case an offender is convicted of petty larceny before two justices, and sentenced to imprisonment or to pay a fine and costs, and committed till fine and costs are paid, it shall be the duty of the justice or justices before whom any such conviction is had, to make a bill of the particulars of the costs in such case, attached to the commitment, and also certify and send up a copy of said bill of particulars of costs, with the conviction in said case, to the county clerk, who shall review and correct the same, if necessary, and shall certify the correct amount to the county collector, who thereupon shall pay the amount so certified to the said justice or justices, and the county collector shall be allowed for the same in the settlement of his accounts, and the said justice or justices shall refund to the informer or complainant so much of said costs as shall have been paid by the said informer or complainant to said justice or justices.  
 County collector shall pay.  
 Justice shall refund to informer

Sheriff shall keep account of fines, &c., created, and pay to county collector and report to freeholders. 142. Sec. 5. That the sheriff of each county shall keep a suitable book, into which he shall enter or cause to be entered a true account of all costs, fines or forfeitures by him collected from all prisoners committed to his custody in the common jail or workhouse of his county, an annual report of which, verified under oath, he shall furnish to the board of chosen freeholders of the county at least ten days before their annual meeting; and all such costs, fines or forfeitures collected by him shall be paid over monthly by him to the county collector, except in cases where the forfeiture is required by law to be paid to the overseer of the poor, and in

such cases the sheriff shall pay the forfeiture and costs to the justice before whom the conviction was had, said forfeitures to be paid over by the justice as required by law.

**Supplement.**

Approved March 19, 1872. P. L. 1872, p. 38.

143. SEC. 1. That the second section of the act entitled "A further supplement to an act entitled 'An act constituting courts for the trial of small causes,'" approved April sixth, one thousand eight hundred and seventy-one, be amended by adding after the word "payment" the following: "and such judge shall receive such fees for his services as the county clerks receive for like services," but he shall in no case approve such payment before conviction.

Fees of judge of  
oyer and termi-  
ner for approv-  
ing bill of costs.

**An act respecting appeals from justices courts.**

Approved April 21, 1876. P. L. 1876, p. 268.

144. SEC. 1. That all appeals from justices courts to the court of common pleas of any county in this state, shall be put on the list for trial at the first term to which the same shall be appealed, unless the appeal shall have been taken within five days prior to the beginning of such term, and then at the next term thereafter.

When appeals  
shall be put on  
the list for trial.

**Land, Improvement of.**

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| <ol style="list-style-type: none"> <li>1. Real estate improvement companies Formation, filing certificate, etc. Certificate to be proved and recorded.</li> <li>2. Directors and election of.</li> <li>3. Capital stock and its payment.</li> <li>4. Transfer of stock.</li> <li>5. Parents, guardians and trustees may hold shares.</li> <li>6. Power to adopt constitution and by-laws.</li> <li>7. Power to purchase and hold land. General powers.</li> <li>8. Power to receive title to land.</li> <li>9. Authorized to improve lands.</li> </ol> | <ol style="list-style-type: none"> <li>10. Borrow money on mortgage.</li> <li>11. Restrictive clause against nuisances.</li> <li>12. Investment of funds.</li> <li>13. By-Laws.</li> <li>14. Annual statement.</li> <li>15. Corporations organized or specially incorporated for the purposes of this act may file certificate.</li> <li>16. Legislature may repeal or amend act.</li> <li>17. Companies to have powers conferred by Section 1, of corporation act.</li> </ol> |
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**An act to encourage the improvement of real property in this state.**

Revision—Approved March 27, 1874.

P. L. 1865, p. 707.  
" 1867, p. 855.

1. That it shall and may be lawful for any number of persons not less than five, to associate themselves into a company for the purpose of buying, selling, settling, owning and improving real estate, and erecting buildings and other structures thereon, within this state, upon making a certificate in writing under their hands and seals, setting forth,

- I. The corporate name which they propose to assume;
- II. The names of the places in which the said real estate is situated;
- III. The total amount of the capital stock of said company, which shall be divided into shares of fifty dollars each;
- IV. The names and residences of the stockholders, and the number of shares held by each;

Real property  
improvement  
companies.

P. L. 1867, p. 855,  
§ 1.

Formation and  
filing certificate.

Which certificate shall be proved and acknowledged, and recorded in a book to be kept for that purpose in the office of the clerk of the county or counties in which said real estate shall be situated, and after being so recorded shall be deposited and filed in the office of the secretary of state, and a copy thereof, duly certified by such secretary, shall be evidence for or against such company; and upon the making and filing of said certificate, such company shall be deemed and taken to be a corporation in fact and in law, with all the powers conferred in the first section of the act concerning corporations.

Certificate to be  
proved and re-  
corded.

2. The business of such company shall be managed by a board of one president and four directors, a majority of whom shall be residents of this state; as soon as the capital stock shall have been subscribed, the stock-

Directors and  
election of.  
Ib. § 2.