District Courts.

I. Jurisdiction.

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

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P. L. 1877, p. 234.

Approved March 9, 1877.

District courts established.

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

2. [Amended by Sec. 187, *post.*]

District courts to be courts of record.

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

4. [Amended by Sec. 221, *post.*]

Ministerial officers.

5. That the ministerial officers of said courts shall be a clerk, and the constables of the city and county wherein said courts may be established; the clerk of each of said courts shall be appointed by the judge thereof, and shall hold his office until the appointment of his successor.

6. [Amended by Sec. 190, *post.*]

7. [Amended by Sec. 191, *post.*]

When recovery shall be a bar to recovery of residue.

8. That where the debt, balance or other matter in dispute, or amount really due or recoverable as aforesaid, exceeds, exclusive of costs, the sum or value of two hundred dollars, the plaintiff may recover in such court a sum not exceeding two hundred dollars and costs, but such recovery shall be a bar to the recovery of the residue of such debt, balance or other matter in dispute in any court whatsoever.

Limiting of jurisdiction.

9. That nothing in sections seven or eight of this act shall be held or construed as conferring jurisdiction upon any district court in any of the cases excepted out of the jurisdiction of a district court by section six.

Suits to the amount of $200 cognizable.

10. That every sum of money or penalty, not exceeding two hundred dollars, to be sued for and recovered by virtue of any law of this state, in any court of record, or in any court having cognizance thereof, shall be and hereby is made cognizable before any judge of any district court in manner aforesaid. (*c*)

(*a*) District courts are inferior courts, which the legislature is empowered to establish, alter or abolish, at its discretion, as the public good may require; and if, in legislative discretion, the court is abolished, the term of service of its officers will thereby be terminated. *Rutgers* v. *New Brunswick*, 13 *Vr.* 51.

(*b*) See *Rhinehart* v. *Lance*, 14 *Vr.* 318. By P. L. 1889, p. 423, no person, except in his own case or in the case of an infant, shall prosecute or defend any action in any court of the state, unless he is a licensed attorney-at-law.

(*c*) The district courts, in virtue of the act by which they are constituted, have jurisdiction of actions for penalties arising under the second section of "An act to regulate the practice of pharmacy." Rev., p. 816. *Campbell* v. *Board of Pharmacy*, 16 *Vr.* 241; affirmed, 18 *Vr.* 347.

11. That parties may agree to enter, without process, any action before a judge of a district court, to the decision of which he is competent if process had been executed, and the court shall proceed thereon to final judgment and execution, in the same manner as if a summons or warrant had been issued and duly served. Parties may agree to waive process.

12. That any body politic or corporate in this state may sue and be sued in any district court in any action or proceeding over which said court has jurisdiction; and all attorneys-at-law shall and may be sued in said court in like manner or form of action as other citizens of this state are liable to be sued in said court. Suits by and against corporations and attorneys.

13. That any judge of any district court whose term of office may hereafter expire, shall proceed to the final determination of any cause or proceeding then undetermined before him, and also make return to all writs to him directed, issuing out of any court in this state, in the same manner as if his term of office had not expired. Judge whose term has expired may conclude case.

14. That the territorial jurisdiction of every judge of any district court under this act shall be co-extensive with the limits of the city for which he is appointed and commissioned; his writs, precepts and process shall run in and through such county, and he may, in causes pending before him, award writs of subpœna for witnesses into other counties of this state. [See Secs. 216 and 269, *post.*] Territorial jurisdiction.

II. Process.

15. That all the precepts, summons, warrants, writs and other process of said district courts shall be tested the day on which they are respectively issued, in the name of the judge and signed by the clerk thereof. Process, how issued.

16. That if any clerk of said district courts shall sign his name to any blank summons or warrant, and allow any constable or other person to fill up the blank or blanks in the said process, without the special direction of the said clerk and in his presence, and shall afterwards issue the said process or suffer the same to be served, such clerk shall be deemed guilty of misbehavior in office, and on conviction thereof shall forfeit and pay the sum of fifty dollars, to be recovered by action of debt by any person who shall prosecute for the same in any court having jurisdiction of the case, one-half for the use of the person prosecuting and the other half for the township in which such clerk shall reside. Penalty for signing blank summons or warrant.

17. That the service of any summons or warrant which shall have been issued by any clerk as aforesaid in blank, and afterwards filled up by the constable or other person, without the special directions of said clerk as aforesaid, shall be taken and considered to be altogether void, and any judgment or other proceeding afterwards had or taken in consequence of such service or founded thereupon, shall be void and of no effect. When service of summons or warrant is to be deemed void.

18. That the first process to compel appearance shall be a summons or warrant in the nature of a capias ad respondendum; *provided*, that no warrant shall issue against the body of any female; the summons may be used in any case whatsoever; the warrant shall only be used in the following cases: Process to compel appearance. Warrant.

I. Where the defendant is not a freeholder and resident of the county in which process shall issue, where the action being founded upon contract, express or implied, due proof is made, on oath or affirmation, to the satisfaction of the judge, of the amount of the debt or damages claimed, and that there is a debt or demand founded upon contract, express or implied, due to the plaintiff from the defendant, specifying the nature and particulars of said debt or demand, and establishing, by the oath or affirmation of the plaintiff, or some other person, to the satisfaction of the judge, one or more of the following particulars: that the defendant is about to remove any of his property out of the jurisdiction of the court in which an action is about to be commenced, with intent to defraud his creditors; or, that the defendant has property or rights in action which he fraudulently conceals; or, that the defendant fraudulently contracted the debt or incurred the obligation respecting which such suit was brought; When warrant shall only be used.

When action is founded on tort.

II. Where the defendant is not a freeholder and resident of the county in which such process shall issue, and where, the action being founded upon tort, due proof is made, on oath or affirmation, to the satisfaction of the judge, of the amount of the damages claimed, and of such other facts and circumstances as would, by the practice of the supreme court, warrant a justice thereof in making an order to hold to bail in a case of tort;

On assignment with intent to defraud, &c.

III. If the defendant be a freeholder and resident of the county in which such process shall issue, and due proof is made, on oath or affirmation, to the satisfaction of such judge, that the defendant has assigned or disposed of, or is about to assign or dispose of all his land lying in said county, with intent to defraud his creditors, then such defendant may be held to bail in like manner and upon the same proof that would warrant his arrest in case he were not a freeholder and resident in the county in which such process shall issue.

When judge to make order that warrant issue.

19. That upon proof made as aforesaid the judge shall make and subscribe an order that a warrant issue against the defendant for such amount as such proof shall justify and require; but before said warrant issue, such order and the affidavit or affidavits upon which the order is founded shall be filed by said judge.

How warrant may be set aside and defendant released.

20. That if the defendant be arrested upon such warrant he may, at any time before the trial of the cause, make application to a justice of the supreme court or to the law judge, if any, of the court of common pleas of the county in which such process issued, or to any supreme court commissioner, to set aside said order, the defendant having first given reasonable notice to the plaintiff of such application, and the giving bond or entering into recognizance in manner hereinafter directed shall be no waiver of the defendant's right to make such application; and if such justice of the supreme court, law judge or commissioner shall deem the proof made insufficient to warrant an arrest, he may order that the order made by the judge of said district court be set aside; such order setting aside the order of the judge of said district court shall thereupon operate as a discontinuance of the suit in which such warrant issued, the bond or recognizance, if any, shall become void, and the plaintiff shall be forever thereafter barred from proceeding against the body of the defendant for the same cause of action, but he may proceed against the defendant by summons, in the same manner as if no other proceeding had been instituted. [See Sec. 197, *post.*]

Proceedings when order is set aside.

Order to set aside warrant must be filed.

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

Summons, when to be made returnable.

22. That the summons shall be made returnable between the hours of nine o'clock in the forenoon and three o'clock in the afternoon, both inclusive, and shall specify a certain place and time, not less than five nor more than fifteen days from the date of such process, and shall be served at least five days before the time of appearance mentioned therein, by reading the same to the defendant and delivering to him a copy thereof, if he or she shall be found, and if not found, by leaving a copy thereof at his or her house or place of abode, in presence of some person of the family, of the age of fourteen years, who shall be informed of the contents thereof, and the constable serving such summons shall, on the oath of his office, indorse thereupon the time and manner he executed the same, and sign his name thereto.

How served.

How served on corporation.

23. That if the defendant be a body politic or corporate, the summons may be served on the president, treasurer, cashier or clerk of said corporation, if found, and if not found, on any of the directors or managers thereof, in the manner hereinabove directed. (*a*)

(*a*) An action will not lie in the district court against a municipal corporation because of the absence of legal power to serve its process on the defendant. *Townsend* v. *Trustees*, 12 *Vr.* 312. This decision was in 1879. The jurisdiction was extended to actions by or against municipal corporations by section 264, *post.* In landlord and tenant cases, where the tenant is a body corporate, the summons should be served in accordance with the provisions of this section. *Facts Publishing Co.* v. *Felton*, 23 *Vr.* 161.

24. That the said clerk shall enter in the body of every summons or warrant the sum demanded (and indorse 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 indorsed, without any further proceedings in the cause, then it shall be lawful for the constable to receive the same, and his receipt shall be a full discharge to such defendant from such debt, damages or demand and costs aforesaid; and if any constable shall not pay the money so by him received for such debt, damages or demand, to the clerk issuing such process, or to the plaintiff in the said process, or his legal representative, within fifteen days after he shall have received the same, then such constable shall be liable to pay to such plaintiff or his legal representative the amount of the said debt, damages or demand, with interest, to be recovered by action of debt with double costs.

Sum demanded to be specified in summons and indorsed.

Constable to pay money received within fifteen days.

25. That the warrant commanding the defendant to be arrested shall be returnable forthwith after service thereof; and the constable serving said warrant shall, according to the tenor thereof, forthwith convey the said defendant before the judge who issued the same, who shall thereupon, at his discretion, either cause the said defendant to enter into recognizance in the manner hereinafter mentioned, or, on neglect or refusal, shall command the said constable to convey the said defendant to the jail of the county, to be there detained in custody until time may be had for the hearing or trial of the cause, not exceeding three days from the time of the return of the said warrant, or such judge may direct the said constable to hold the said defendant in custody until the plaintiff shall be notified and have time to appear and proceed to such hearing or trial; and the constable who served the said warrant as aforesaid shall, on the oath of his office, indorse thereon the execution of the same, and sign his name thereto; *provided, always*, that it shall not be lawful to arrest or imprison the person of any female by virtue of any mesne process or process of execution in any civil action; *and provided, also*, that if any person or persons whatsoever shall hereafter be arrested by virtue of such warrant, it shall be lawful for the constable who served the same to permit the defendant to enter into bond to the plaintiff, with a good and sufficient freeholder, resident in the county, to the amount of the debt or damages and costs indorsed 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:

Warrant to be returnable forthwith.

Defendant may enter into a recognizance.

Duty of constable.

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"We, A. B. and C. D., do hereby acknowledge ourselves indebted to E. F. in the sum of ———, to be paid to said E. F. on the following conditions: that if the said A. B. shall be and appear before ———, the judge of the district court of ———, on the ——— day of ———, at ——— o'clock ——— noon, and answer unto the complaint of the said E. F., then this bond to be void, or else to be and remain in full force and virtue; in witness whereof we have hereunto set our hands and seals the ——— day of ——— in the year of our Lord one thousand eight hundred and ———; sealed and delivered in the presence of G. H., I. K.; signed A. B. and C. D.;" which bond the said constable is hereby ordered and directed, when taken, to deliver to the judge on the return of the warrant, to be by him filed in his office to and for the use of the plaintiff, for which service the constable shall be entitled to thirty-five cents costs, to be paid by the defendant, and not recoverable by him from the plaintiff; and in all cases, the said constable shall attend at the said district court, on the day and hour mentioned in said bond, to be there and then ready to secure and take into his custody the said defendant; and if the said judge shall not be found at his dwelling, or usual place of holding trials, the defendant shall be permitted to renew his bond, with sureties as aforesaid, for his appearance at some future day, not exceeding ten.

Form of bond.

Bond to be filed.

Fee of constable.

When bond may be renewed.

26. That the recognizance directed in the twenty-fifth section of this act shall be entered into by the defendant, with at least one surety, having sufficient freehold and residing in the county, to the plaintiff in the said

Nature of the recognizance.

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:

Form of recognizance.

"City of ———, county of ———, to wit:

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

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

III. Pleading.

27. [Amended by Sec. 222, *post.*]

When demand and plea to be filed.

28. That the plaintiff in such suit shall, on or before the return day of the said summons, or on the return of the warrant, or at the time of appearance specified in the recognizance, deliver or cause to be delivered to the judge before whom the action is to be tried, a copy of his or her account or state of demand against the defendant, and in default thereof the said plaintiff shall be non-suited, with costs; and if the defendant have any account or demand against the plaintiff, he shall be permitted to discount or set off the same against the account, debt or demand of such plaintiff; but such copy of his or her account, or state of his or her demand, so intended to be set off, shall be delivered to the said judge, on or before the return day of the summons, or on or before the day to which the hearing shall be first adjourned; or, if on a warrant, then at the time of hearing of the cause; and in default thereof, the said account or demand shall not be received in evidence on the trial of the said cause; but if the said warrant shall not have been executed three days prior to the day of hearing, then the said defendant, if he or she have any account or demand to set off, and will enter into recognizance, as directed by the twenty-fifth section of this act, shall be allowed further time, not exceeding three days, to deliver to the said judge such copy of his or her account or state of demand as aforesaid.

Set-off.

Copy of account or demand to be set off shall be delivered to the judge.

Further time allowed to file the set-off.

29. [Amended by Sec. 192, *post.*]

Title to lands pleaded.

30. That when, in any action to be brought by virtue of this act, the defendant shall, as a justification, plead title to any real estate in himself or another, under whom he acted or entered, such defendant shall commit the said plea to writing, and, having signed the same, shall deliver such plea to the said judge, who shall countersign and deliver it to the plaintiff; and thereupon it shall and may be lawful to and for such plaintiff to commence and prosecute his action against such defendant in the supreme court, or in the circuit court of the county wherein such action shall have been commenced; and if, in such action, the plaintiff recover any damages, he shall be entitled to and recover therewith all costs of suit.

Effect of plea of title.

31. That on every trial so to be had in such action where title is pleaded, the plea so as aforesaid signed by the said defendant shall be conclusive evidence that such defendant relied on title by way of justification.

32. [Amended by Sec. 193, *post.*]

IV. Trial.

Trial to proceed when defendant does not appear.

33. That if the defendant does not appear at the time and place expressed in the summons or recognizance, and no sufficient reason shall be assigned to the judge why the defendant does not appear, and if, where the process is a summons, it shall further appear by the return indorsed thereon that the summons was duly served, then the said judge may proceed to hear and determine the cause in the absence of such defendant.

Proceedings when parties appear.

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

Adjournment, when may be had

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

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Hour of adjournments.

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

Adjournment in case set-off filed.

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

Trial by jury may be demanded.

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

Number of jurors.

Qualification of jurors.

Return of names of jurors.

(*a*) A wrongful refusal of an adjournment, whereby a party had been prevented from procuring his witnesses and making defense on the merits, is an error remediable on appeal. *Haines v. Roebuck*, 18 *Vr.* 227.

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. (*a*)

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

Form of oath to jurors.

"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."

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

To witness.

"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 clerk shall administer the following oath or affirmation:

To constable.

"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."

Penalty when juror shall refuse to serve or witness to attend.

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

If defendant has filed set-off, plaintiff not to withdraw suit.

41. That if the defendant have filed an offset, 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;

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provided, such defendant have filed an affidavit with the judge at the time of filing his offset, that the offset 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.

Proof by affidavit of book account.

42. That whenever the nature of the plaintiff's demand is such that his book or account of original entries would be competent evidence, and the defendant does not appear at the hearing, or, if appearing, does not require the production of said book or account, a copy of the entries therein, so far as they relate to the plaintiff's demand, together with a statement of the credits or allowances, if any, to which the defendant is entitled, shall be received in evidence, with the same effect as if the plaintiff's books or

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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.

(*a*) See *Clayton* v. *Clark*, 26 *Vr.* 539. *Raphael* v. *Lane*, 27 *Vr.* 108.

43. That where a copy of said entries may be used by the plaintiff, it shall be competent to prove any partnership by affidavit. Proof of partnership.

44. That in actions upon promissory notes, bills of exchange, checks, drafts, or other written contracts, whether simple or under seal, for the payment of money only, if the defendant does not appear at the hearing, or if he appear and consent thereto, the plaintiff may prove his case by affidavit; the affidavit or affidavits shall contain a copy of the writing or writings sued on, and shall set forth and aver such facts and circumstances as would warrant a recovery in case such facts and circumstances were proved by witnesses. Proof by affidavit of notes. What affidavit shall contain.

45. That in all cases in which proof is made by affidavit, it must appear by affidavit that the affiant or affiants have competent knowledge of the fact or facts sworn to, and in actions upon promissory notes, bills of exchange, checks, drafts or other written contracts, simple or under seal, for the payment of money only, such notes, bills, checks, drafts or other contracts must be produced at the hearing or their non-production accounted for by affidavit. Proceedings where proof made by affidavit.

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

V. Judgments.

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

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

49. [Repealed by Sec. 200, *post.*]

50. [Amended by Sec. 194, *post.*]

VI. Execution.

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

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

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

When 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 judge, that the defendant, at the time when execution is applied for, is not a freeholder in the county where the same shall be issued, and judgment has been rendered in an action of tort;

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, expressed or implied, due proof is made to the satisfaction of the judge, by affidavit or affidavits, filed as aforesaid, establishing the particulars specified in the first subdivision of the eighteenth 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.

Order of judge for execution.

53. That if the requirements of the next preceding section have been complied with, the judge shall make and subscribe an order that execution issue against the goods and chattels of the defendant, and, for want of sufficient goods and chattels, against the body, whereupon execution may issue in accordance with such order as directed in section fifty-one of this act.

How defendant may apply to have execution set aside.

54. That except where previous application has been made and passed upon under the twentieth section of this act, the defendant may, at any time after order made under the fifty-third section of this act, apply to any one of the persons to whom he may apply under said twentieth section, to set aside said order so far as it authorizes the taking of the body, the defendant having first given reasonable notice to the plaintiff of such application; and if such person to whom application is made shall deem the proofs made insufficient to warrant the issuing of process against the body, he may make order that the order of the judge, so far as it authorizes the taking of the defendant's body, be set aside. [See Sec. 197, *post.*]

Order to be filed.

55. That such order shall be delivered to the judge, who shall file the same with the other papers in the cause, and who shall furnish certified copies thereof to the defendant or his agent, on request.

Effect of order to set aside.

56. That the order, from the time of the filing thereof with the judge, shall operate to discharge the defendant from arrest or imprisonment, if arrested or imprisoned, or, if not, from liability to arrest or imprisonment in the suit in which the order was made, and shall have no other or further operation.

Liability not to be incurred by officer.

57. That no constable, jailer, warden, or other officer or person taking or detaining the body of the defendant in pursuance of the warrant mentioned in the eighteenth section of this act, or in pursuance of the writ of execution, shall incur any liability whatsoever for any act done or committed pursuant to the commands of the writ, in or about such taking or detention, prior to service upon him of a copy of the order of the justice of the supreme court, law judge or commissioner, certified by the judge of the district court with whom such order is filed.

Service of order, effect.

58. That service of said order upon the person in whose custody the defendant may be shall warrant the immediate discharge of such defendant from arrest or imprisonment under said writ.

Judge shall furnish defendant certified copy of order, &c.

59. That the judge shall furnish to the defendant, or his agent, on request, a certified copy of the order and affidavit or affidavits upon which the warrant or execution against the body issued or may issue; and such copy may be used before the justice of the supreme court, law judge or commissioner, who may make order thereupon in the same manner as if the original order and affidavit or affidavits were produced before him [See Sec. 197, *post.*]

When second application to set aside order may be made.

60. That where a judge of any district court has made an order pursuant to the nineteenth section or to the fifty-second section of this act, and application has been made in the first instance to a justice of the supreme court to set the order aside, if the justice refuse to do so, the defendant shall not be permitted to renew his application; but if such application has been made in the first instance to a law judge or commissioner, who either makes or refuses to make such order, then either party may, on notice to the other party, within six days after such order has been made or refused, apply to a justice of the supreme court, to review the action of the law judge or commissioner; such justice of the supreme court may, in his discretion, modify or set aside the order of the law judge or commissioner, and make such other order in reference to the taking or retaking of the defendant's body, either on the warrant or on an execution issued or that may be issued, as the nature of the case may justify or require, and the order of such justice shall be final. [See Sec. 197, *post.*]

Confession of judgment and stay of execution.

61. That if any defendant shall appear at the return of the summons or warrant, or by consent without process, or on the day that judgment shall be rendered, or before the issuing of execution, whether the suit has been defended or not, and procure a good and sufficient freeholder, resident in the county, to join with such defendant in a confession of judgment, to the adverse party, with costs, then if the judgment shall not be more than fifteen dollars nor less than five dollars, no execution shall issue until after one month from the time of rendering such judgment; and when the judgment shall exceed fifteen and not exceed sixty dollars, no execution shall issue until after three months from the time of rendering such judgment; and when the judgment shall exceed sixty dollars no execution shall issue until after six months from the time of rendering such judgment.

When suit on judgment, stay of execution not allowed. Proviso.

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

Sale under execution.

63. That the constable who, by virtue of such execution, levies on any goods and chattels, shall give notice by advertisements, signed by himself, and put up in three of the most public places in the township where they were taken, of the time and place they will be exposed to sale, at least five days before the time appointed for selling them, and therein describe the goods and chattels so taken; and shall, at the time and place so appointed, expose them to sale by public vendue and strike them off to the highest bidder, and pay the money thence arising to the plaintiff, or, in case of his absence, to the clerk, and within thirty days from the time he shall receive the execution, make return to the clerk who issued the same, of the proceedings had thereon, and the said clerk shall make a record thereof. [See Sec. 201, *post.*]

Manner of sale.

Return of constable.

Proceedings on claim of property.

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

How right of property tried.

considered abandoned, and the constable shall proceed as if it had not been made. [See Sec. 202, *post.*]

Effect of and proceedings after verdict.

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

Costs to be taxed by the clerk.

Proviso.

When body of person may be committed to common jail.

66. That for want of goods and chattels whereon to levy, the said constable shall, when execution is issued against the body, according to the tenor of the said execution, take the body of the person against whom the said execution is issued and convey and deliver him to the keeper of the common jail of the county, who is hereby commanded to keep such 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 jailer a copy of said execution, and shall take said jailer's receipt upon the execution and return the same to the clerk who issued it, who shall make a record thereof in his docket; and if the said keeper shall suffer such person so committed to his custody to go or to be at large out of said jail, except by virtue of some writ of habeas corpus or by virtue of the order mentioned in the fifty-seventh section of this act, before the said debt or damages, with costs, be paid, or he be thence delivered by and in due course of law, then every such going or being out of the said jail shall be an escape, for which the sheriff shall be responsible to the plaintiff to the amount of the debt or damages and costs for which such person shall be committed, to be recovered by the said plaintiff, with costs, by action of debt.

Sheriff to be responsible in case of escape.

Execution may issue without a revival of judgment.

Proviso.

67. That execution may issue without a revival of the judgment by scire facias at any time within twenty years from its recovery, if the clerk, by successive appointments or otherwise, continues so long in office; *provided*, that if more than six years have elapsed since the recovery of the judgment, a special order of the judge shall be necessary before the execution issue, to be made upon ten days' notice to the defendant of the application therefor, and proof to the satisfaction of the judge of the amount remaining due upon the judgment.

Service of notice to issue execution.

68. That the notice required by the last preceding section may be served upon the defendant personally, either within or without this state, or, in case he resides within this state, may be served by leaving a copy at his residence, in the presence of some person of the family of the age of fourteen years, who shall be informed of the contents.

Execution against goods, &c., to be in force for one year from issue.

69. That every execution which shall or may be issued by any clerk of any district court, upon any judgment rendered in pursuance of this act, shall be in full force and operation against the goods and chattels levied on for the term of one year from the time of issuing the same, unless sooner satisfied; and all executions which shall remain unsatisfied for the space of one year thereafter shall be null and void; but the plaintiff may thereupon have a subsequent execution or executions, which shall continue in force and operation and become void in like manner.

Alias and pluries executions.

70. That upon the return of the original execution unsatisfied, the clerk who issued the same shall have power and authority to issue an alias execution, and upon the return of the alias unsatisfied, the said clerk may issue a pluries execution, which said writs may be levied on the goods and chattels of the defendant, and shall be made returnable and be in all things executed in like manner as the original execution. [See Sec. 219, *post.*]

Executions to have priority according to time of levy.

71. That where one or more executions issued by virtue of this act shall have been levied by one or more constables, upon the goods and chattels of any defendant, the said executions shall have and obtain priority according to the time of levying the same; and all surplus moneys arising upon any sale by virtue of any execution shall be paid to the officer or person holding the next oldest execution which shall have been levied as aforesaid, until all executions levied upon the goods and chattels of any defendant at the time of sale upon the first execution be satisfied, or so far satisfied as there shall be proceeds for that purpose, according to their respective seniority as aforesaid; and in case two or more executions, at the suit of different plaintiffs, shall be levied at the same time, such execution or executions shall have preference according to the time when they were received, which shall be noted on each execution by the constable at the time of receiving the same; and if two or more executions shall have been delivered to a constable at the same time, against the same defendant, then the moneys arising from the sale under or by virtue of the said executions or either of them, shall, if not sufficient to satisfy both or all of them, be applied towards the satisfaction of the several executions, in proportion to the sums due on them respectively.

Surplus money arising upon any sale, how applied.

Constable must make inventory of property levied upon.

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

Constable liable to penalty for non-performance of duties.

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

Execution against corporation.

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

VII. Docketing judgments.

Final judgments may be docketed.

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

Clerk of pleas to provide and keep docket.

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

Mode of docketing judgments.

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77. That when a judgment is obtained in any district court, for an amount not less than ten dollars, including costs, and execution shall issue thereon, and be returned by the constable to whom it has been delivered to be executed, indorsed to the effect that he could not find any personal property of the party against whom the execution was issued on which to levy, or that he had levied and sold goods and chattels, and had made thereof part of said judgment, and that the same was not fully satisfied, and stating the balance still unsatisfied, the clerk of the court of common pleas of the county where such judgment was obtained, upon the request of the person or persons obtaining such judgment, and upon filing in his office a transcript of the proceedings from the docket of the district court in which such judgment was obtained, under the seal of said court and signed by the clerk thereof, and a certified copy of the state of demand and set-off filed in said action, with a certified copy of the return of the constable, and also an oath or affirmation of the party, his or their attorney or agent making such request, that at the time of filing such transcript, a certain amount, not less than ten dollars, is still due, stating the amount, and that he believes the debtor is not possessed of goods and chattels sufficient to satisfy the amount due, shall enter, in the docket provided for that purpose, the transcript of such judgment in words at length, containing the name of the judge of the district court before whom the judgment was obtained, the names, at length, of the parties to said judgment, the style of the action, the date of the judgment, the amount recovered with costs, the substance of the return of the constable, and the amount stated to be due in the affidavit. [See Sec. 256, *post.*]

Operation of docketed judgments.

78. That the said judgment shall, from the time of said docketing in the court of common pleas, operate as a judgment obtained in a suit originally commenced in said court, and satisfaction thereof may be entered in the margin of the docket in the same manner and upon the same evidence as is now provided by law in case of judgments rendered in the courts of common pleas; and the execution issued thereon shall be of the same effect as to the property of the debtor, either of a personal or real nature, as if issued on a judgment originally obtained in the courts of common pleas, upon a suit commenced therein.

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Execution not to issue out of district court after docketing.

79. That after such judgment shall be docketed in the court of common pleas, no execution shall issue thereon out of any district court, nor shall any proceedings be had except the due and proper granting of an appeal or certiorari.

Revival of docketed judgments.

80. That every judgment docketed as herein directed may be revived by scire facias in the court of common pleas, in the same manner, in the like cases, and with the like effect, as if said judgment had been obtained in a suit originally commenced in that court.

Clerk to make alphabetical index to docket.

81. That the clerk of the court of common pleas shall make to the docket in which such judgments are to be entered, a complete alphabetical index; and said docket shall be a public record, to which all persons desiring to examine the same shall have access.

Proceedings in case of appeal or by certiorari.

82. That if any judgment recovered in any district court shall be removed by appeal or certiorari, and the necessary bond be perfected, and such judgment shall, either before or after such removal, be docketed as herein provided, execution from the court of common pleas in which said judgment is docketed shall be stayed and suspended until the final determination of such appeal or certiorari.

Clerk to enter in margin of docket substance of determination upon appeal or certiorari.

83. That if any judgment, docketed as hereinbefore provided, shall be reviewed upon certiorari or appeal, and a duly-certified transcript of the judgment of the court wherein such appeal or certiorari may have been determined shall be delivered to the clerk of the court of common pleas of the county where such judgment is docketed, it shall be the duty of the said clerk to file the same in his office, and enter in the margin of the docket opposite the entry of said judgment, in short form, the substance of such determination upon the appeal or certiorari.

84. That judgments of the court of common pleas upon appeals from district courts shall not affect or bind any lands, tenements, hereditaments, or real estate, unless a rule shall be entered in the minutes of the court of common pleas in which such judgment shall be rendered, for recording such judgment, which rule shall be a rule of course, and may be entered at any time without notice. Entry of rule necessary to make judgment lien on land.

85. That it shall be the duty of the clerk of the several courts of common pleas, upon the entry of such rule as aforesaid, to record any such judgment in the book of judgments of said court, and index the same, as now required by law respecting the judgments of such courts in suits originally commenced therein, which record shall be a transcript from the minutes of the said court on said judgment, and for this service the clerk shall be entitled to receive twenty-five cents; and such judgment shall, from the time of entering such rule, affect and bind all lands, tenements, hereditaments, and real estate, within the county where such court of common pleas is held, belonging to the person or persons against whom such judgment may be; and executions against the goods and chattels, lands, tenements, hereditaments, and real estate of such person or persons may be issued out of such court of common pleas thereupon, immediately upon the entry of such rule. Clerk of courts of common pleas on entry of rule to record judgment, &c. Executions may issue upon entry of rule.

VIII. Certiorari.

86. That no judgment, order or proceeding to be had or made by virtue of this act shall be removed by writ of error, but by certiorari only. Judgments to be removed by certiorari only.

87. That where the judge has jurisdiction, no judgment hereafter to be rendered in any district court, from which an appeal is given to the court of common pleas by this act, shall be removed into the supreme court or circuit court by certiorari or otherwise, for the correction of any supposed error therein; but the party thinking himself aggrieved shall have relief upon the appeal only. (*a*) No certiorari allowed when appeal lies. 1229-87 31V-119 30V-355

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

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

90. That if any judgment, to be given by virtue of this act, shall, on removal by certiorari, be affirmed by the supreme court, the plaintiff in certiorari shall pay to the defendant all costs arising on such suit in said supreme court, for which the party entitled to such costs may have execution, to be issued out of the supreme court, against the body or goods and Costs on affirmance, but not on reversal. 1229-90 39v-138

(*a*) A plaintiff filed a demand in debt for $200, made up as follows, viz., for various items specified, amounting to $419.66, on which was allowed a credit of $200, and the plaintiff waived any claim for $19.66. *Held*, that for alleged errors in the trial and judgment, the remedy was by appeal, and the district court having jurisdiction, a *certiorari* would not lie. *Quimby* v. *Hopping*, 23 *Vr.* 117. See *Cohen* v. *Gartner*, 23 *Vr.* 110.

(*b*) When the plaintiff in an action before a district court involving more than $200, applies for a *certiorari* to review a judgment of non-suit rendered therein, it is not necessary for him to tender a bond. *Synear* v. *Wharton*, 19 *Vr.* 97.

chattels of the adverse party; but if such judgment be reversed, then the plaintiff in certiorari shall not be entitled to any costs. (*a*)

Provisions to extend to circuit courts.

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

Judgment not to be reversed for error or mistake.

92. That no judgment of any judge of any district court, removed by certiorari before the supreme court or circuit court, shall be reversed in the whole on account of any error or mistake made by the judge by whom such judgment may have been rendered, in the entering, calculating or awarding 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.

Costs when affirmed in part and reversed in part.

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

Not to be reversed for any irregularity in proceedings of court.

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

Supreme court or circuit court may order a rehearing.

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

IX. Costs.

Fees to clerks.

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

Summons, twenty-five cents;
Each copy thereof, ten cents;
Warrant, twenty-five cents;
Order that warrant issue, fifty cents;
Entering each suit, twenty cents;
Recording return on summons, ten cents;
Recognizance, thirty-five cents;
Entering every non-suit, twenty cents;
Entering discontinuance, twenty cents;
Venire facias, thirty-five cents;
Administering every oath or affirmation, ten cents;
Subpœna for every witness, ten cents;
Swearing the jury, thirty-five cents;
Entry of every verdict, twenty cents;
Entry of every rule of reference, fifty cents;
Every copy thereof, twenty-five cents;
Entry of every judgment, twenty cents;
Every execution, thirty-five cents;
Recording return of execution, fifteen cents;
Drawing, signing and sealing return of certiorari, one dollar;
Copy of docket or of any proceeding or paper, per folio, fifteen cents;
Transcript of judgment, fifty cents;
Entering suit without process, fifty cents;
Filing each paper requiring to be filed, ten cents;
Issuing commission to take deposition, twenty-five cents;
Recording return of commission, one dollar and fifty cents;
Entering particulars of costs, fifteen cents;
Every affidavit, twenty-five cents;

(*a*) On a reversal in the supreme court of a judgment of the district court, the plaintiff in *certiorari* is not entitled to costs—*Seabury* v. *Johnson & Bolles*, 23 *Vt.* 413.

Every adjournment, twenty cents;
Hearing every contested case, seventy-five cents;
Hearing case not contested, twenty-five cents;
Granting appeal and sending up transcript and papers, fifty cents;
Recording description of each paper offered in evidence, seven cents;
Approving bond, fifty cents;
Taking deposition, per folio, fifteen cents;
Scire facias, thirty-five cents;

CONSTABLES.

Fees to constables.

Serving every summons on one defendant, sixty cents;
And for service thereof on every additional defendant in the same summons, thirty cents;
Serving every warrant, against one or more persons, for each person, seventy-five cents;
Serving every scire facias, against one or more persons, for each person, sixty cents;
Serving every subpœna, thirty-five cents;
Summoning every jury of six men, seventy-five cents;
Summoning every jury of twelve men, one dollar;
Attending jury until agreed on their verdict, fifty cents;
Serving every execution, seventy-five cents;
In addition to which, three cents on each dollar secured to the plaintiff;
Advertising property under execution, thirty-five cents;
Selling property under execution, fifty cents;
For ever copy of an execution filed with the jailer, twenty-five cents;
For every mile of travel in serving any summons or warrant issued by a judge of any district court, after the first mile the distance to be computed by counting the number of miles in and out, by the most direct route from the place where such process is issued and returnable, four cents;

JURORS.

Fees to jurors.

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

WITNESSES.

To witnesses.

For their services under sections one hundred and seven and one hundred and eight of this act, fifty cents;
For all other services the same fees as are or shall be allowed in causes before the court of common pleas; *provided*, that no fees shall be allowed for the service of any subpœnas for more than two witnesses, nor shall fees be allowed to more than two witnesses for each party in a cause. [See Sec. 259, *post*.]

Fees on appeal.

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

COURTS.

Courts.

Every appeal heard, fifty cents;

CLERKS.

Clerks.

Entering action and filing bond and transcript, fifty cents;
Every subpœna, ten cents;
Entering judgment, ten cents;

Every witness sworn or affirmed, ten cents;
Every order or rule of court, or of a judge, ten cents;
Every execution, forty cents;
Entering and filing execution, twenty cents;
Calling and swearing a jury, twenty cents;
Taking and entering verdict, ten cents;
Docketing judgment and filing transcript and affidavit, seventy-five cents;

SHERIFF.

Sheriff. Making and returning a list of the jury, twenty cents:

CONSTABLES.

Constables. Serving every subpœna, thirty-five cents;
Attending jury, fifty cents;

CRIERS.

Criers. Every appeal, ten cents;
Calling and swearing each witness, five cents;
Calling jury, ten cents;

TO THE JURORS.

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

JUDGE OR COMMISSIONER.

Judge or commissioner. Supreme court justice, law judge or commissioner, for hearing application to set aside order, one dollar.

Who to pay jury of twelve men. **98.** That 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 cost of the jury.

Of six men. **99.** That 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 cost of the jury.

Officers' fees to be paid before service required. **100.** That no constable or other officer authorized to serve a subpœna, summons or other mesne process issued out of any district court, 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.

Appeal not to be allowed until costs are paid. **101.** That no appeal from the judgment of a judge of any district court shall be allowed until the party applying for the same shall, in addition to the matters now required by law, pay to said judge or clerk all costs incurred by him except such as shall be adjudged to the prevailing party.

Fees in first instance to be paid by appellant. **102.** That 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 to 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.

X. Amendment of defects and errors.

Judge may amend defects and errors in proceedings in civil causes.

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103. That in order to prevent the failure of justice by reason of mistakes and objections of form, it shall be lawful for the judge of any district court or the court of common pleas, on an appeal taken thereto, at all times, to amend all defects and errors in any proceeding in civil causes, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not, and all such amendments may be made with or without cost, and upon such terms as to the court or judge may seem fit; and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made. (*a*)

Amendment not to be made if there are objections.

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

Constable may amend defective return to summons or warrant.

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

XI. References.

Reference may be ordered upon certain conditions.

Affidavit to be entered of record.

Proceedings in case of disobedience to arbitration.

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

(*a*) The common pleas improperly gave judgment on the trial of a case on appeal from the district court "that the judgment of the court below be affirmed," instead of giving judgment for the defendant. The record was remitted to the common pleas for correction and entry of a proper judgment. *Mulcahy* v. *New Jersey Traction Co.*, 28 *Vr.* 345.

When to be deemed void.

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

Report or award of referee, if confirmed, to be final and conclusive.

II. Whenever a cause shall be referred by rule of court to referees, the report or award of such referees, or of the major part of them, if confirmed by the court, shall be final and conclude the parties; and if any sum be thereby found for the plaintiff or plaintiffs, judgment shall be entered and execution issued for the same with costs; and if the referees, or the major part of them, report any sum to be due to the defendant or defendants, and the report be confirmed, then judgment shall be entered, and execution against the plaintiff or plaintiffs for the sum so reported to be due to such defendant or defendants, with costs;

Referee shall take oath or affirmation.

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

Arbitrator to take oath.

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

Referees may examine witnesses under oath.

V. In every cause referred by rule of court, process of subpœna may issue out of said court to convene witnesses before the referees, and the said witnesses shall be examined on oath or affirmation; which oath or affirmation the referees in the said cause are hereby authorized to administer; and

Compensation to referee.

there shall be allowed to every such referee one dollar for every day necessarily spent in the business of the reference, besides a reasonable allowance for his expenses, which in the first instance shall be paid by the prevailing party, and shall afterwards be allowed to such party in the taxation of costs where costs are recoverable.

Subpœnas to witnesses to issue.

VI. In all cases of arbitration, it shall be lawful for any judge of any district court within the city wherein such arbitration may be to issue subpœna for witnesses, to appear before the arbitrator or arbitrators, and for him or such arbitrator or arbitrators to swear or affirm such or any other

Penalty for refusal of witness.

witnesses before the same; and if any such witness does not appear when so subpœnaed, or, if appearing, shall refuse to be sworn or affirmed and give evidence, he shall be liable to the same fines and penalties as he would be by law for such default or refusal, if committed in any court of record of this state.

XII. Depositions.

When and by whom depositions may be taken.

107. That if a material witness in an action, instituted in any district court, be in the state, but is ancient or very infirm, or is sick, or is bound on a voyage, or is about to go out of the state, the deposition of such witness may, at the option of either party, be taken before a clerk of any

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district court or before any master in chancery; *provided*, the person at whose request the deposition is to be taken, shall cause notice to be given to the adverse party of the time and place, and before whom the deposition shall be taken, immediately, or at such short day as the cause in the opinion of the said judge may require, to attend and be present at the taking thereof, and to put questions and cross-examine if he shall think fit; and a deposition so taken and offered in evidence shall be subject to the same rules and exceptions that the witness would be if personally present.

Manner of taking depositions.

108. That every person deposing as last aforesaid shall be carefully examined and cautioned, and sworn or affirmed, to testify the whole truth, and shall subscribe the testimony by him or her given, after the same shall

be reduced to writing, which shall be done only by the clerk of said court, or master in chancery taking the deposition, or by the deponent in his presence, and the deposition so taken shall be retained by such clerk or master in chancery until he deliver the same, with his own hand, into the court for which it was taken, or shall be by him, the said clerk or master in chancery, sealed up, directed and transmitted to such court, and remain under his seal until opened in court, and when so opened the same shall be deposited in the district court in which the action shall be brought, there to remain on record, and that either of the parties in the said action or suit may, at his or her cost and charges, take copies of such deposition as soon as it is deposited in the court as aforesaid:

Judge may award commission to examine witnesses.

I. If a material witness in any action or proceeding in any district court of any city in this state reside out of this state, it shall be lawful for any judge thereof, on proof thereof to the satisfaction of the said judge, and on such terms as said judge may direct, to award and issue, under the seal of the court, a commission to such person or persons as the judge may think fit, authorizing such person or persons, or any two or more of such persons to examine de bene esse the said witness, on oath or affirmation;

Interrogatories to be approved and annexed to the commission.

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

Notice to be given of application for commission.

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

When commission may issue on shorter notice.

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

Commissioners to take oath or affirmation.

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

Examination to be reduced to writing and signed.

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

Examination to be annexed to commission and returned to clerk.

VII. The said commissioner or commissioners shall annex such examination to the said commission, and close the same up under the hand and seal of the said commissioner, or under the hands and seals of the said commissioners, and direct the same to the clerk of the court out of which the same issued at the place of holding the said court, and may place the same in any post-office, certifying thereon the time when and the post-office in which the same may be so placed; and the clerk of the said court

may take the same out of the post-office in which it may be found in this state, and open the same, and indorse thereon when and how he received it, and immediately file the said commission in the said district court, there to remain as a record.

XIII. Clerks—their duties and dockets.

Clerk to enter in docket all the proceedings touching suits.

109. That it shall be the duty of every clerk of every district court wherein any suit shall be instituted, to enter in a book to be kept for that purpose and to remain a record of said court, the names of the plaintiff and defendant, the style and nature of the action, the sum demanded, the time of issuing process and when returnable, the return made thereto by the constable, when the copy of the account or state of the demand or set-off was delivered by the parties or either of them, the time of taking the recognizance, of making or filing any order, the adjournment, the rule of reference and report of referees; the jury, when and by whom demanded; the venire, when issued and how returned; the time of trial, and names of the jurors and witnesses; the admission of evidence objected to and the rejection of evidence offered, a description of each paper offered in evidence, the verdict and judgment, and, when given, the execution or executions, when issued, the indorsement thereon, and how returned by the constable; the appeal, when and by whom demanded, and all the proceedings before said court touching the said suit; and further, it shall be the duty of such clerk to grant to either party, when required, a certified copy of such proceedings.

Bill of costs to be entered in docket.

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

Transcript of docket, where term of office of clerk has expired, may be used in evidence.

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

Docket to be delivered to successor in office in case of removal.

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

Clerk to have free access to the docket after it is delivered to his successor.

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

Penalty for refusal to deliver docket to successor in office.

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

Certified transcript of record to be received in evidence.

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

Judge or constable not to prosecute or defend in any other district court.

Penalty for so prosecuting or defending.

116. That no judge of any district court or constable shall appear and prosecute or defend in any action before any other judge of any district court, unless such judge or constable shall be one of the parties on record in the cause; and any judge or constable who shall offend against the provisions of this section, shall forfeit the sum of fifty dollars, to be recovered

by action of debt, with costs of suit, in any court having cognizance thereof, by and for the use of any person who shall prosecute for the same; and such suit shall be commenced within six months after the offense shall have been committed; *provided*, that nothing herein contained shall prevent a judge from transacting the general concerns of a person who is absent and resident without the state. Proviso.

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

II. The assignment of any sealed instrument by writing not under seal, shall be as valid and effectual at law as if made by writing under seal; Assignment valid without seal.

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

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

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

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

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

XIV. Landlord and tenant proceedings.

122. That if any tenant, holding any lands, tenements or hereditaments, who shall be in arrear for one year's rent, shall desert the demised premises, and leave the same uncultivated or unoccupied, so as no sufficient distress can be had to countervail the arrears of rent, it shall and may be lawful to and for a judge of the district court in the city where said court may be established and in which the demised premises lie, and who has no interest in the same, at the request of the landlord or landlords, lessor or lessors, or his, her or their bailiff or agent, to go upon and view the same, Proceedings when tenant in arrear for rent shall desert the demised premises.

and to affix, or cause to be affixed, on the most notorious part of the premises, notice in writing what day (at the distance of fourteen days at least), he will return to take a second view thereof, and if, upon such second view, the tenant, or some person in his or her behalf, shall not appear and pay the rent in arrear, or there shall not be sufficient distress upon the premises, then the said judge may put the said landlord or landlords, lessor or lessors, into the possession of the said demised premises, and the lease thereof to such tenant, as to any demise therein contained, shall from thenceforth become void; *provided always*, that such proceedings of the said judge shall be examinable in a summary way by the justices of the supreme court, who are hereby empowered to order restitution to be made to such tenants, together with his or her expenses and costs, to be paid by the landlord or landlords, lessor or lessors, if they shall see cause for the same; and in case they shall affirm the act of the said judges, to award costs to be paid by such tenant, and the costs, as well in the instance of restitution as of affirmance aforesaid, shall be levied and recovered against the body or bodies, or goods and chattels, lands and tenements of such landlord or tenant, as the case may be. (*a*)

When lease to become void.

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

123. That any tenant or lessee at will, or at sufferance, or for part of a year, or for one or more years, of any houses, lands or tenements, and the assignees, under-tenants or legal representatives of such tenant or lessees may be removed from such premises by any judge of any district court of any city within the corporate limits of which such premises are situated, in the manner hereinafter prescribed in the following cases:

Possession after expiration of term.

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

In case of default in payment of rent.

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

Landlord or lessor's affidavit.

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

Judge to issue summons on receiving and filing affidavit.

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

Proof of termination of tenancy.

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

(*a*) District courts have jurisdiction in landlord and tenant cases where the tenant is a body corporate. *Facts Publishing Co.* v. *Felton*, 23 *Vr.* 161.

(*b*) In cases where the tenant is a body corporate, the statutory notice to pay rent in arrears or surrender the premises may be served on any officer or agent of a business corporation, whose duty it is, either in his official capacity or by virtue of his employment, to communicate the fact of such service to the governing body of the corporation. *Facts Publishing Co.* v. *Felton*, 23 *Vr.* 161. It will be inferred, in the absence of proof to the contrary, that a person holding the offices of secretary and treasurer in a business corporation is a proper officer to receive such a notice on behalf of his company. *Ib.*

(*c*) An affidavit in a proceeding to eject a tenant in these words, "that deponent leased said premises to S. by the month, to commence on the 1st day of May last, at the monthly rent of $10," is a sufficient statement of a tenancy. *Steffens* v. *Earl*, 11 *Vr.* 128.

127. That the summons shall be served in the manner hereinbefore prescribed by this act; the suit may be adjourned and either party may demand and have a trial by jury of twelve men. (*a*) Manner of service of summons.

128. That if, at the time appointed in the said summons or at the time to which said suit may be adjourned, no sufficient cause be shown to the contrary, and it shall appear to the said judge or jury that the summons has been duly served, the said judge shall issue his warrant to any constable of the county or marshal of the city or town in which the premises are situate, commanding him to remove all persons from the said premises and to put the said claimant into full possession thereof, and to levy and make the costs out of the goods and chattels of such person or persons in possession; *provided*, it shall be necessary for said claimant, if required by the defendant, to prove to the satisfaction of the judge, or of the jury if there be a trial by jury, the facts which, according to the one hundred and twenty-third section of this act, authorize the removal of a tenant. When judge may issue warrant and put claimant in possession. 1239-128 33V-165 Proviso.

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

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

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

132. That at any time after a summons has been issued, according to the one hundred and twenty-fifth section of this act, and before the return thereof, either the landlord or the party in possession may apply to a justice of the supreme court, who, if he shall deem the case of sufficient importance, may issue an order, under his hand, directing the said judge forthwith to file the said oath or complaint of the landlord and the other papers appertaining to the proceedings, in the office of the clerk of the circuit court of the county in which such proceedings were commenced, and thereupon said circuit court shall have full and exclusive cognizance of the case; and said court shall be always open for such purpose. When circuit court may have cognizance of the proceedings.

133. That immediately upon such papers being filed in said clerk's office, the judge of said circuit court shall cause a venire facias for a jury to be issued, returnable into said court in not more than one week from the time of issuing the same; and which said writ shall be served by the sheriff or other officer, according to the practice of said court in like cases; and on the day of the return of the said writ the case shall be tried, unless, for good cause shown, the said trial shall be adjourned; that said adjournment and all other adjournments shall be for the shortest periods practicable, and the one hundred and twenty-sixth section of this act shall not apply to said trial. When judge of the circuit court shall issue a venire for a jury. Trial may be adjourned for cause.

134. That such notice of the trial shall be given as the said judge may direct; the parties, if they agree so to do, may waive a trial by jury, and submit the case to the judge on the law and facts. Notice of trial.

135. That a judgment shall be entered upon the finding of the judge or the jury, and if the same be in favor of the landlord, a writ shall issue to the sheriff of the county, commanding him to put the landlord in full possession of the premises in question, and to levy and make the costs out of the goods, chattels and lands of the person in possession; if judgment be rendered for the defendant he shall have an execution in like manner for his costs. On judgment for landlord, sheriff shall put him in possession.

(*a*) *Facts Publishing Co.* v. *Felton*, 23 *Vr.* 161.

Power and jurisdiction of the circuit court.

136. That the said circuit court shall have the same power with respect to said proceedings, and the same control over the verdict and judgment, as it has in other cases within its jurisdiction, and from the judgment so entered a writ of error shall lie to the supreme court; but such writ shall not stay the execution of such judgment unless upon an order to the effect indorsed on said writ by the said circuit judge, and upon a bond with sufficient surety being given in an amount which he shall designate, conditioned to indemnify the party in whose favor said judgment was rendered, against all losses and damages which he may sustain by reason of final process being stayed.

What is sufficient notice to quit premises.

137. That in all cases where any tenant is or may be entitled by law to notice to quit the premises by him holden, in order to determine his tenancy, three months' notice to quit as aforesaid shall be deemed and taken to be sufficient.

XV. Forcible entry and detainer.

Unlawful entry prohibited.

138. That no person shall enter upon or into any lands, tenements or other possessions, and detain or hold the same, but where entry is given by law, and then only in a peaceable manner.

What constitutes forcible entry and detainer.

139. That if any person shall enter upon or into any lands, tenements or other possessions, and detain or hold the same with force or strong hand, or with weapons, or by breaking open the doors, windows or other part of a house, whether any person be in it or not, or by any kind of violence whatsoever, or by threatening to kill, maim or beat the party in possession, or by such words, circumstances or actions as have a natural tendency to excite fear or apprehension of danger, or by putting out of doors or carrying away the goods of the party in possession, or by entering peaceably and then turning by force or frightening by threats, or other circumstances of terror, the party out of possession; in such case every person so offending shall be guilty of a forcible entry and detainer within the meaning of this act.

What a forcible detainer.

140. That no person who shall lawfully or peaceably enter upon or into any lands, tenements or other possessions, shall hold or keep the same unlawfully and with force, or strong hand, or weapons, or violence, or menaces, or terrifying words, circumstances or actions aforesaid; and it is hereby declared that whatever words or circumstances, conduct or actions will make an entry forcible under this act, shall also make a detainer forcible.

Acts making forcible entry are, also, forcible detainer.

What estates comprehended.

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

Tenant holding over by collusion guilty of unlawful detainer.

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

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

143. That when any complaint to any judge of any district court in any city in this state shall be made in writing and signed by the party grieved, his agent or attorney, specifying the lands, tenements or other possessions so forcibly entered upon and detained, or forcibly or unlawfully detained, by whom and when done, and the estate therein, it shall be the duty of the said judge to issue a precept, under his hand and seal, directed to the sheriff of the county wherein said district court may be established, commanding him to cause to come before the said judge twelve good and lawful men of the said county, qualified to serve as petit jurors

in the court of general quarter sessions of the peace, to inquire into and try such forcible entry and detainer, or forcible or unlawful detainer; which precept shall be in the form or to the effect following, that is to say:

Form of precept.

"City of ———, county of ———, to wit: the state of New Jersey to our sheriff of our county of ———, greeting:

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

144. That the said judge shall issue a summons to the party complained against, in the words or the effect following, that is to say:

Form of summons.

"City of ———, county of ———, to wit: the state of New Jersey to our sheriff of our county of ———, greeting:

"We command you that you summon E. F., of ———, to appear before A. B., judge of the district court in and for our said city, at ———, in the county aforesaid, at the hour of ———, in the ———noon of the ——— day of ———, to answer to and make defense against the complaint of C. D., of a forcible entry and detainer (or if detainer only, then say of a forcible detainer, or of an unlawful detainer), made by the said E. F., into the messuage (or upon the lands) of the said C. D. in the county aforesaid; and have you then and there this precept, with a return of your proceedings therein; given under the hand and seal of the said A. B., the ——— day of ———, in the year of our Lord one thousand———."

Service of summons.

145. That the said summons shall be served upon the party against whom the said complaint is made, or a copy thereof left at his usual place of abode, six entire days before the day of appearance therein mentioned; and that such service of the said summons in any part of the state, as well without the said county as within it, shall be good and effectual in law; and further, that no jury shall, by virtue of this act, be sworn to inquire of and try any forcible entry and detainer, or forcible or unlawful detainer, where such previous notice shall not have been given as aforesaid.

When jury may not be had.

Plea and issue.

146. That the party against whom such complaint is made may, at the time of appearance mentioned in the said summons, and before the said jury is sworn, plead not guilty to the said charge or complaint, or that he hath been three years in quiet possession, and his estate therein not ended or determined, agreeably to a subsequent clause in this act; and thereupon the said parties shall be at issue, and the said judge shall proceed to swear the jury so returned, to inquire of and try the same; and if the said party, against whom the complaint is made as aforesaid, does not appear at the time specified in the said summons, or, appearing, does not plead to the said complaint, then it shall be lawful for the said judge to proceed in the same manner as if he had pleaded not guilty; to the said jurors and each of them, who shall be returned to inquire of and try the said complaint, the clerk of said court shall administer the following oath or affirmation:

Trial to be by jury.

Form of oath to jury.

"You do swear (or affirm) that you will well and truly try this issue joined between C. D. and E. F., and a true verdict give according to the evidence;" when the jury shall be so sworn as aforesaid, the said judge shall cause the said complaint to be read to them, and then call upon the complainant to support the same; if the jury find the party against whom

Verdict of jury and costs.

such complaint is exhibited guilty, or find against his plea of possession, it shall be the duty of the said judge to record the said verdict and to give judgment thereon with treble costs; and also to issue a writ of restitution, directed to the sheriff, to cause the complainant to be reseized or repossessed, to which shall be added a clause commanding the said sheriff to levy the said costs of the goods and chattels of the offender, and for want thereof, to take the body of such offender, and him safely to keep in close custody in the common jail of the county until he shall pay the same, or be thence delivered by due course of law.

When body of offender may be taken.

Writ of restitution, when to be issued.

147. That no writ of restitution shall be issued by the judge of any district court, upon any judgment rendered by him in pursuance of the provisions of the preceding section of this act, until eight entire days, exclusive of Sundays, shall have elapsed after the rendition of such judgment; which writ of restitution, when issued, shall be returned within three months thereafter by the sheriff or other officer to whom the same has been delivered, with his proceedings thereon, to the judge who issued the same; if the jury find against the said complainant, the said judge shall cause the said verdict to be recorded, and give judgment accordingly, with costs, and shall issue execution, directed as aforesaid, for the said costs, against the goods and chattels, and, in want thereof, against the body of the said complainant.

Postponement of trial.

148. That the said judge may, at the request of either party, and on good reasons being assigned, postpone the said trial to any time not exceeding fifteen days; but such postponement to be on the payment of costs.

Clerk to make entry in docket.

149. That it shall be the duty of the said clerk to enter, on his minutes or docket, true copies of the complaint exhibited by virtue of this act, and of the summons and return, also the time of issuing the venire, and how returned, the names of the jurors, their verdict and his judgment thereon; and also the names of the witnesses and the admission of evidence objected to, and the rejection of evidence offered, and all the proceedings before him had touching the said complaint.

Penalty if sheriff neglect to execute writ, &c.

150. That if the sheriff of any county shall neglect or refuse to execute or return any precept, writ or other process to him directed and delivered, by virtue of this act, he shall, for every such offense, forfeit and pay two hundred dollars to the party grieved, to be recovered with costs, by action of debt, in any court of record having cognizance of that sum.

Proceedings removed by certiorari only.

151. That the proceedings had by virtue of this act, on such forcible entry and detainer, or forcible or unlawful detainer, may be removed before the supreme court by writ of certiorari, and in no other way, and then only after judgment. (*a*)

When certiorari will be granted.

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

Applicant to enter into a bond.

Certiorari, how prosecuted and tried.

153. That every certiorari to remove any judgment, order or proceeding, to be had or made by virtue of this act, shall in every other respect

(*a*) By the act of April 23d, 1888 (*post*, Sec. 233), a new trial may now be granted in proceedings on a complaint for forcible entry and detainer. *Krause* v. *Dayton*, 22 *Vr.* 272.

be prosecuted, tried and determined in like manner, and be subject to the like rules and regulations as writs of certiorari to judges of district courts to remove proceedings had by virtue of this act.

Judgment not to bar action for trespass.

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

Merits of title not to be inquired into.

Proviso.

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

Judge may issue subpœna into any county.

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

Fees to clerks.

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

For every summons, thirty cents;

For every venire facias, forty cents;

For entering copies of every complaint, summons and return, one dollar;

For subpœna for every witness, twelve cents;

For swearing the jury, twenty cents;

For administering every oath or affirmation, five cents;

For entering every verdict, twelve cents;

For entering every judgment, twelve cents;

For every trial, two dollars;

For return to every certiorari, one dollar;

TO THE SHERIFF.

To sheriff.

For serving every summons and return, one dollar;

For summoning every jury, returning the precept, and attending the trial, four dollars;

For executing every writ of restitution, two dollars;

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

TO THE JURORS.

To jurors.

Every juror for each cause in which he is sworn or affirmed, twenty-five cents;

For each cause in which he appears but is not sworn or affirmed, twelve cents;

TO THE WITNESSES.

To witnesses.

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

TO THE ATTORNEY.

To attorney.

For the trial of every cause, two dollars.

Penalty if juror or witness refuse to serve or attend.

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

XVI. Proceedings by attachment.

159. [Amended by Sec. 195, *post.*]

After issuing writ plaintiff must advertise.

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

Proceedings against garnishee.

161. That the plaintiff in such attachment, notwithstanding the garnishee's denial of his having any moneys, goods, chattels or effects of the defendant in his custody or possession, or of his being indebted to him, may, if he really believes that the said garnishee hath such moneys, goods, chattels or effects in his custody or possession, or that he is indebted to the defendant and is in fear of the said garnishee's absconding before judgment and execution can be had against such garnishee, and shall make oath or affirmation thereof, and deliver the same to the clerk as aforesaid, institute a suit against the said garnishee, by summons, or, in case of fraud duly proved, by warrant, and if he shall make sufficient proof of the debt due to him, and also of the effects, rights or credits in the hands of the garnishee, the said judge shall give judgment therein for the plaintiff, and award and issue his execution therefor to the constable against the garnishee, as in other cases cognizable by district courts in accordance with this act; and if the plaintiff shall not make sufficient proof of the effects, rights or credits in the hands of the garnishee, he shall pay the garnishee his costs, and, if need be, the judge of said district court shall issue his execution against the plaintiff for the same.

When by summons.

When by warrant.

When plaintiff to pay costs to garnishee.

Defendant may enter appearance by filing bond.

162. That it shall be lawful for the defendant in any attachment issued by any clerk of any district court as aforesaid, on or before the day appointed for the hearing of the said cause, to cause his appearance to be entered, by filing with the said clerk a bond to the plaintiff, executed by one or more sufficient sureties, being freeholders and residents in the county in which such attachment shall issue, in double the value of the property attached, conditioned for the due and safe return of the goods and chattels, rights and credits, moneys and effects seized and taken by virtue of such writ of attachment, in case judgment shall be rendered for the plaintiff; which said bond shall be approved by the said clerk, and filed by him for the use and benefit of the plaintiff; and thereupon the property attached shall be restored to the defendant and released from the lien of the said attachment. [See Sec. 220, *post.*]

Condition of bond.

On approval of bond, property released from lien.

Proceedings after bond filed.

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

Either party may appeal.

Appeal from judgment for or against garnishee.

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

Attachment in district court, when superseded.

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

Proviso.

Motion to quash, without filing bond.

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

Costs, &c., to be paid plaintiff when attachment is superseded.

XVII. Miscellaneous.

Act not to affect suits pending.

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

Oaths may be administered by clerks of court.

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

Defendant may pay into court money in satisfaction of demand of plaintiff.

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

Verdict of jury or decision of judge conclusive as to qu stions of fact.

170. That if the parties to any action or proceeding in said courts fail to demand a trial by jury in cases where such demand is necessary, and so elect to permit questions of fact to be determined by the judge thereof, then such determination of the judge, or, in cases where there is a jury, then the verdict of a jury and any judgment thereupon shall be final and conclusive between the parties upon questions of fact, except as herein provided; but the judge shall have power to non-suit the plaintiff in every

(*a*) See *Charlier* v. *Pratt*, 9 *N. J. L. J.* 169.

case in which satisfactory proof shall not be given to him entitling either plaintiff or defendant to the judgment of said court, and shall also, in every case whatever, have the power, if he think fit, to order a new trial to be had upon such terms as he shall think reasonable, and in the meantime stay proceedings. (*a*)

When appeal may be had on point of law.

171. That if either party in any such action or proceeding shall be dissatisfied with the determination or direction of said court in point of law, or upon the admission or rejection of evidence, such party may appeal from the same to the court of common pleas in and for the county wherein said district court is held; *provided*, that such party shall, within ten days after such determination or direction, give notice of such appeal to the other party or his attorney, and enter into bond to the other party, with at least one sufficient surety, being a freeholder of such county, to be approved by the judge, for the costs of the appeal, whatever be the result thereof, and for double the amount, if any, of the judgment rendered against him, conditioned for the payment thereof, if the appeal be not prosecuted by the appellant, or be dismissed; nevertheless, such security, so far as regards the amount of the judgment, shall not be required in any case where the judge shall permit the party appealing to pay the amount of such judgment into the hands of the clerk, and the same shall have been paid accordingly; but such appeal shall operate as a stay of proceedings only after such security has been given or money paid, and the said court of common pleas may either order a new trial, on such terms as said court may direct, or may order judgment to be entered for either party, as the case may be, and may make such order with respect to the dismissal and costs of the said appeal as said court may think proper. (*b*) [See Sec. 276, *post.*]

Proviso.

When appeal taken, state of case to be agreed on.

172. That such appeal shall be in the form of a case agreed on by both parties or their attorneys, and if they cannot agree, the judge, on being applied to by them or their attorneys, shall, upon such notice as said judge shall prescribe, settle the case and sign it, and such case shall be transmitted by the appellant to the clerk of the said court of common pleas and filed by him in his office. (*c*) (1)

Time allowed to agree upon case.

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

Proviso.

Proviso.

(*a*) See *Best* v. *Smith*, 25 *Vr.* 434.

(*b*) The district courts of the city of Newark, under the act of March 4th, 1873, decide facts and execute judgments in small causes between parties residing in the city of Newark, and the court of common pleas, in its relations to said courts, is purely an appellate court. A final judgment cannot be entered and executed in the common pleas; there must be an order for judgment directed to the district court. *Guerin* v. *Rodwell*, 8 *Vr.* 71. The jurisdiction of the common pleas over the proceedings of district courts by way of appeal is only to review the judgment and decisions of the latter court in matter of law. *Haines* v. *Roebuck*, 18 *Vr.* 227. The statutory provision that the pleas "may either order a new trial on such terms as it thinks fit, or may order judgment to be entered for either party, as the case may be," regulates the procedure of the pleas upon an appealable decision. It does not give the pleas a discretionary control over the proceedings of the district court, to be exercised independent of an erroneous determination or decision of the latter court in point of law. *Ib. Mandamus* will go to a district court, commanding it to open an execution which it withheld because an appeal had been taken when the notice of appeal was given after a period of ten days from the entry of the judgment. *Bauman* v. *Hoboken*, 20 *Vr.* 537.

(*c*) What a state of a case, sent up by a judge of the district court of the city of Newark to the court of common pleas, shall contain will depend on the nature of the legal decision to be reviewed. If the objection is to the rejection or admission of evidence, the state of the case should comprise so much of the case and the prior evidence as will fairly present the legality of the judge's ruling. If the case be tried by a jury, and exception has been taken to the charge, it should contain so much of the evidence as will submit to the court of common pleas the propriety of the instructions given. If it be tried by the judge, and the complaint is of the legal principles on which the issue was decided, it should contain only the facts as found by the judge, his determination in that respect being final. *Benedict* v. *Howell*, 10 *Vr.* 221. If the judge refuse to make and sign a state of the case, he may be compelled to do so by *mandamus*. If the state of the case is defective, the common pleas may require the judge to certify in relation to such matters wherein it is found to be deficient. *Ib.* Neither the supreme court, on *mandamus*, nor the common pleas, on an alleged defect in the case stated, will take affidavits of what occurred in the district court and require the judge to embody in his certificate of the case the facts so ascertained. *Ib.* In actions in the district courts which fall within the provisions of the act of 1877, objections to the rulings of the court need not be taken by formal exceptions, signed and sealed, such as are required in actions in those courts by the provisions of the act of 1882. *Oliphant* v. *Brearley*, 25 *Vr.* 521. To obtain a review of rulings in the first class of cases, the state of the case must show that objection was made thereto and the grounds of the objection substantially presented to the court. *Ib.*

(*d*) Where the party appealing from the judgment of a district court has failed to agree with his adversary on a state of the case, or to apply to the judge to settle the case within fifteen days after the judgment, it is not erroneous in law for the court of common pleas to dismiss the appeal. *Loftus* v. *Freeholders*, 14 *Vr.* 357.

(1) The decisions referred to in the notes to sections 171 and 172 were rendered in cases coming before the supreme court on *certiorari*, bringing up the judgments of the common pleas of Essex county on appeals from the district courts of Newark, established under the act of March 4th, 1873. Sections 171 and 172 are in the same words as the sections in the Newark act.

Decision of common pleas may be removed to supreme court by certiorari.

174. That such order, determination or decision of the court of common pleas may be removed into the supreme court by writ of certiorari; said writ shall remove said order or determination, and the case agreed upon or settled as hereinbefore mentioned; *provided*, the party applying for the same comply with the provisions of this act. (*a*)

District court judges to make rules.

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

Sickness or absence of judge.

Form of oath to be taken by the judges.

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

Form of oath by clerk.

County clerk to administer oath.

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

178. [Amended by Secs. 237 and 246, *post.*]

All fees paid to clerk.

Clerk to render monthly accounts to city treasurer.

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

Fees of constables, jurors and witnesses payable to clerk.

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

Additional fees to clerk, &c.

181. That in addition to the fees allowed by this act, the following fees shall be allowed to the clerk of the court of common pleas, for filing every case agreed upon or settled, the sum of one dollar; fifty cents whereof shall be paid by said clerk to the judges of said court as their fees thereon; to the constable for each day's actual attendance on the sittings of said courts, where such attendance shall be required by the judge, the sum of one

(*a*) On *certiorari* to remove an appeal from the district court of a city, the facts most favorable to the plaintiff's or defendant's case, which are essential to support the judgment, shall be taken as found, and will not be weighed in the supreme court against opposing evidence. *Wallace* v. *Kennelly*, 18 *Vr.* 242. A state of the case must contain only enough of the facts to enable the court, on appeal, to determine the legality of the rulings of the court below. *Ib. Quimby* v. *Hopping*, 23 *Vr.* 117.

(*b*) The common pleas judge, under the statute, is designated to hold the district court for the time being, and not to try any particular cause. His appointment, therefore, is no part of the record in this case, and the presumption will be, in the absence of evidence to the contrary, that he was duly qualified to act. *Craig* v. *Somers*, 26 *Vr.* 525. The relator had the right to challenge in the court below, and upon such challenge being interposed, it should have been sustained, unless the judge could produce his authority to preside in the court. *Ib.*

dollar, to be paid by the mayor and common council of the city where said courts may be established, out of the treasury of said city; to any judge of the court of common pleas the sum of three dollars per day for each day that he shall actually preside in said district court, to be paid as last aforesaid.

182. [Amended by Sec. 205, *post.*]

Suitable rooms and furniture to be provided.

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

Judges to designate constables.

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

Clerks shall give bond.

185. That the clerks of each of said courts shall enter into bond to the state of New Jersey, with at least two good and sufficient sureties, being freeholders in the county where said court or courts may be established, in the sum of three thousand dollars; which bond to be entered into as aforesaid, by the said clerks and their sureties, with the condition thereof, shall be in the form following, that is to say:

Form of bond.

"Know all men by these presents, that we, A. B., C. D. and E. F., of the county of ———, are held and firmly bound unto the state of New Jersey in the sum of three thousand dollars to be paid unto the state of New Jersey, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, dated the ——— day of ———, in the year of our Lord one thousand eight hundred and ———; the condition of this obligation is such that if the above bounden A. B. shall well and truly execute the office of clerk of the district court of the city of ———, in the county of ———, and in all things touching and concerning said office shall well and truly, faithfully and impartially, execute and perform the same according to law, as well with respect to all persons concerned as the state of New Jersey, and at the expiration of his said office shall deliver to his successor in office all the books, papers, records and writings remaining in the same, or appertaining thereto, then this obligation to be void, otherwise to be and remain in full force and virtue;" such bond shall be approved of by two of the judges of the court of common pleas of the county where said courts may be established, and when so executed and approved of, shall, together with the oath or affirmation of office, duly taken and subscribed, be recorded in the secretary's office, and filed in the same, to be by the secretary of state kept among the public papers of his office; and in case any person appointed clerk as aforesaid, before he shall enter into the security aforesaid, shall perform any of the duties required of him by law in said office, he shall, for such offense, forfeit and pay, for the use of this state, one hundred dollars, to be sued for and recovered by any one of the judges of the court of common pleas of the county in which the offense was committed, in an action of debt, with costs of suit, in the name of this state.

Bond to be approved.

Oath and bond to be filed with secretary of state.

Penalty for performing any duty before giving bond.

Words "plaintiff" and "defendant," what to include.

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

(*a*) The judge is authorized to designate a constable to attend the sittings of the court, to preserve order therein, but such constable is entitled only to receive the compensation fixed by the act for attendance upon the court when sitting for the performance of its judicial functions. *Lewis* v. *Hoboken*, 13 *Vr.* 377.

XVIII. Supplements.

Supplement.

Approved March 14, 1878. P. L. 1878, p. 94.

187. SEC. 1. That the second section of said act, and which reads as follows [see P. L. 1877, p. 234], be amended so as to read as follows:

When two district courts may be established.

[That one district court shall be established in accordance with this act in every city of this state of over twenty thousand inhabitants, but cities of one hundred thousand inhabitants or over shall be entitled to two district courts; *provided always*, that no more than two district courts shall at any time be established in any city of this state.] (*a*) (1)

Proviso.

Court abolished in cities having less than 20,000 inhabitants.

188. SEC. 2. That any and every district court heretofore established in accordance with the provisions of the act to which this is a supplement, and now existing in any city of this state, having less than twenty thousand inhabitants, according to the last census, be and the same is hereby abolished. (*b*)

Papers and dockets of such court so abolished to be filed in office of county clerk.

189. SEC. 3. That within thirty days after this act shall take effect the judge of any district court in any city in this state, which is abolished by the second section of this act, shall file in the clerk's office of the county in which said city is located, all papers and dockets relating to said district court, or any suits therein pending or determined, there to remain as records, and that they may be used and certified as other records of said county by said clerk of such county.

Supplement.

Approved March 20, 1878. P. L. 1878, p. 148.

190. SEC. 1. That section six of the act to which this is a supplement, and which reads as follows [see P. L. 1877, p. 234], be amended so as to read as follows:

Jurisdiction in every suit of a civil nature when the matter in dispute does not exceed the sum of $200.

[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 two hundred dollars, shall be and hereby is made cognizable in any district court of this state, in the cities where they may be established, to hear, try and determine the same according to law, although the cause of action did not arise in said city; said district courts shall have jurisdiction, exclusive of all other courts whatsoever, except the circuit court of the county or counties wherein said district may be established, in all cases arising under this act, where the party defendant resides within the corporate limits of the city wherein said court or courts shall be established; *provided always*, that this act shall not extend to any action of replevin, slander, trespass for assault, battery or imprisonment, nor to any action wherein the title to any lands, tenements, hereditaments or other real estate shall or may in any wise come in question.] (*c*) [See Sec. 253, *post.*]

Proviso.

191. SEC. 2. That section seven of the act to which this is a supplement, and which reads as follows [see P. L. 1877, p. 235], be and the same is hereby amended so as to read as follows:

(*a*) The special act of 1873, constituting two district courts in Newark, is not repealed by section 2 of the act of 1877, p. 234. *Field* v. *Silo*, 15 *Vr.* 355.

(*b*) District courts are inferior courts, which the legislature is empowered to establish, alter or abolish, at its discretion, as the public good may require; and if, in legislative discretion, the court is abolished, the term of service of its officers will thereby be terminated. *Rutgers* v. *New Brunswick*, 13 *Vr.* 51. This supplement abolished the court in New Brunswick, and was not a special or local law. Whether it was a law regulating the internal affairs of cities, not decided. *Ib.*

(*c*) The provision for exclusive jurisdiction in all causes arising under the act, is not in contravention of the constitutional prohibition that "every law shall embrace but one object, and that shall be expressed in its title." *Payne* v. *Mahon*, 15 *Vr.* 213, reversing *S. C.*, 12 *Vr.* 292. A summons cannot be served on a non-resident of the city, beyond the limit of such city. *Wellman* v. *Bergmann*, 15 *Vr.* 613. But see Sec. 216, *post.* Upon a judgment rendered by a justice of the peace in attachment proceedings lawfully instituted before him, he has jurisdiction of an action by *scire facias* against a garnishee who resides within the limits of a city in which a district court is established. *N. Y., L. E. and W. R. R. Co.* v. *Cookson*, 16 *Vr.* 302. The exclusive jurisdiction given to district courts, where the party defendant resides within the corporate limits of the city wherein said courts are established, confers merely a personal privilege on such defendant, which may be waived by submitting to the jurisdiction of another court. *Fraley* v. *Feather*, 17 *Vr.* 429. See, also, *Finck* v. *Smith*, 17 *Vr.* 484. The phrase "every writ of a civil nature at law," does not embrace actions for statutory penalties. *Koch* v. *Vanderhoff*, 20 *Vr.* 619. A suit will not lie in the district court of the county of Hudson for a trespass to lands in the county of Essex. *Jenkins* v. *Crevier*, 21 *Vr.* 351. Where, in proceedings to dispossess, the plaintiff cannot show his right to possession without offering his deed—*Held*, that under this section the court would be ousted of its jurisdiction. *Kock* v. *Berry*, 11 *N. J. L. J.* 206.

(1) The second section of the district court act was again amended by P. L. 1892, p. 64 (Secs. 242 and 243, *post*), but this amendment of 1892 was repealed by P. L. 1894, p. 65 (Sec. 249, *post*).

Jurisdiction extended on bonds, &c., to $200, without regard to penalty.

[That whenever the amount really due or recoverable upon any bond, bill, note, or other contract in writing, does not exceed, exclusive of costs, the sum or value of two hundred dollars at the time when the suit is instituted, such amount shall be recoverable in said district courts, without regard to any kind of penalty expressed therein, in the same manner as any other debt or demand of two hundred dollars or under is made recoverable by this act.]

192. SEC. 3. That section twenty-nine of the act to which this is a supplement, and which reads as follows [see P. L. 1877, p. 243], be and the same is hereby amended so as to read as follows:

Neglect in filing set-off a bar to future action.

[That if any defendant neglect or refuse to deliver a copy of his or her account or state of demand against such plaintiff, he or she shall forever thereafter be precluded from having or maintaining any action for such account or demand, or from setting off the same in any future suit; *provided always*, that where the balance found to be due to such defendant exceeds the sum of two hundred dollars, then the said defendant shall not be precluded from recovering his or her account or demand against such plaintiff in any other court of record having cognizance of the same.]

Proviso.

193. SEC. 4. That section thirty-two of the act to which this is a supplement and which reads as follows [see P. L. 1877, p. 243], be and the same is hereby amended so as to read as follows:

Bond required of defendant on filing plea of title.

[That the judge to whom a plea of justification is tendered as aforesaid, shall, before he receives such plea, require and obtain from the defendant a bond, with one good surety, being a freeholder in the said county, in the penalty of two 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 where the said judge holds his court, within three months thereafter, the said defendant will appear thereto, within twenty days after the writ to be thereupon issued against him shall be returned served, and shall pay such costs as may be awarded against him in the said action; and in case such plea is tendered, and the defendant shall not forthwith enter into such bond to the plaintiff, the said judge shall proceed in the same manner as if such plea had not been tendered.]

194. SEC. 5. That section fifty of the act to which this is a supplement and which reads as follows [see P. L. 1877, p. 249], be and the same is hereby amended so as to read as follows:

Judgment on bond, &c., to be given for real debt.

[That when 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 two hundred dollars at the time when suit is instituted, proof shall be made of the amount really due and owing, and the judge shall give judgment therefor with costs, and not for the amount of the penalty expressed, whether such penalty exceed or be less than two hundred dollars.] (*a*)

195. SEC. 6. That section one hundred and fifty-nine of the act to which this is a supplement and which reads as follows [see P. L. 1877, p. 285], be and the same is hereby amended so as to read as follows:

Attachment may issue against absconding or non-resident debtor for sum not exceeding $200.

[That if any creditor shall make oath or affirmation either that he verily believes that his debtor absconds from his creditors, and is not to his knowledge or belief resident in this state at the time, or that the person against whose estate an attachment is about to be issued, is not to the knowledge or belief of said creditor resident in this state at the time, and that he owes to said creditor a certain sum of money, specifying as nearly as he can the amount of the debt or balance, the clerk of any district court in any city of this state shall, and he is hereby required to, issue out of said district court an attachment under his hand and the seal of said court, for any sum not exceeding two hundred dollars, directed to a constable, who shall execute the same in the following manner, that is to say: the officer to whom it is directed shall go to the house or lands of the defendant, or to the person or house of the person in whose custody or possession the defendant's property and estate may be, and then and there declare, in the presence of

Writ, how executed.

(*a*) In an action on an appeal bond, judgment in the district court should not be entered for the penalty, but for the amount really due and recoverable. *Fraley* v. *Feather*, 17 *Vr.* 429.

one credible person at the least, that he attaches the rights and credits, money and effects, goods and chattels of such defendant, at the suit of the plaintiff in the said writ named; and upon the return of such attachment, the said judge of the district court shall appoint a day for the hearing of the said cause, not less than twenty days from the issuing of the said writ; on or before which day so appointed the plaintiff in the said attachment shall file a copy of his account or state of demand; and if the creditor shall make sufficient proof of the debt due to him, the said judge shall give judgment therein for the plaintiff and award his execution thereof to the constable against the effects of the defendant, as in other cases cognizable before said judge, but the effects of the defendant thereon taken shall not be sold in less than three months (unless the same are perishable), to the end that the debtor or his friend may redeem the same, and in the meantime the same shall be inventoried and safely kept in such manner as the judge shall direct.] [See Sec. 220, *post*.]

Hearing of the cause.

State of demand to be filed.

196. SEC. 7. That all acts and parts of acts, inconsistent with the provisions of this act, be and the same are hereby repealed, and that this act shall take effect immediately.

Repealer.

Supplement.

Approved April 5, 1878. P. L. 1878, p. 390.

197. SEC. 1. That no warrant for the arrest of or execution against the body of any defendant, issued out of any district court, or any of the proceedings in relation thereto, shall be reviewed, set aside or vacated, except by a justice of the supreme court, upon application to such justice, after reasonable notice to the plaintiff of an application for that purpose.

Warrant of arrest not to be vacated or set aside, except by a justice of supreme court.

198. SEC. 2. That in all cases in any of the district courts of this state, unless a demand for a trial by jury should be made at least one day before the time fixed for the trial, the demand for trial by jury shall be deemed to be waived, but the judge of any such court may, in his discretion, grant a venire, notwithstanding the failure of demand as hereinbefore specified.

When trial by jury shall be deemed to be waived.

199. SEC. 3. That the clerk of any district court in this state may, in the absence of the judge thereof, adjourn the trial of any cause depending therein, in like manner as the judge of said court might do if present.

When clerk may adjourn trial.

200. SEC. 4. That the forty-ninth section of said act, which is in the words following, to wit:

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

Repealer.

201. SEC. 5. That the constable who, by virtue of an execution issued out of any district court, 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 or ward 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.

Constable shall give notice of sale of goods and chattels.

202. SEC. 6. That in all cases where any constable shall, by virtue of any writ of execution or attachment issuing out of any district court, levy on, attach or take into his possession any goods or chattels which shall be claimed by notice in writing, delivered to said constable by any other person than the defendant, he shall, immediately upon such claim, delay his sale of the same for the space of ten days, that the said claimant may, within the said term, apply to the judge of such court for a venire to summon a jury of six lawful men as jurors, to try the right of such claimant to such property; and it shall be lawful for such judge to issue the same, and direct a return thereof to be to him made, and to proceed therein as in other cases of trial by jury; but the claimant shall, in all cases give notice in writing to the plaintiff of the time and place of the said trial; but if the said claimant shall not, within ten days, apply to said judge and have his right tried, as aforesaid, the said claim shall be considered aban-

Constable to delay sale in case of goods attached being claimed by other person than defendant.

Trial of right of property.

When claim shall be considered abandoned.

doned, and the constable shall proceed as if it had not been made, and shall not be liable in any action for trespass therefor thereafter.

203. SEC. 7. [Amended by Sec. 248, *post.*]

Stay of proceedings for perfecting appeal.

204. SEC. 8. That if the stay of proceedings in cases of appeal, provided for in the one hundred and seventy-first section of said act, shall not exceed the time provided by law for perfecting such appeal, or such further time as the judge of such district court shall grant for perfecting such appeal, and if any appeal shall not be perfected within the time aforesaid, execution may issue in like manner, and be proceeded upon as though no appeal had been taken.

205. SEC. 9. That section one hundred and eighty-two of said act, which is in the words following, to wit:

"That the judges of said courts shall not be allowed to practice in the court of common pleas of the county wherein said courts may be established," be and the same is hereby amended so that the same shall read and be in the words following, to wit:

Judge not prohibited from practicing, except in appeals.

[That no judge of any district court in this state shall be prohibited by reason of his office from practicing in any court of this state, except in the court of common pleas of the county wherein said district court is or may be established, in cases of appeals taken from said district court.]

Clerk not to receive pay for drawing pleadings.

206. SEC. 10. That it shall not be lawful for the clerk of any court created by virtue of the act to which this is a supplement to receive any pay or reward for framing or drawing any state of demand, plea, rule of court, or other pleadings, and which is to be used in the court of which he is the clerk.

Repealer.

207. SEC. 11. That all acts or parts of acts inconsistent with said act and with this act be and the same are hereby repealed, and this act shall take effect immediately.

Supplement.

P. L. 1882, p. 240. Approved March 31, 1882.

Judge may designate person to act as clerk in case of disability of clerk.

208. SEC. 1. That in case of the illness, absence or disability of the clerk of any district court it shall be lawful for the judge of such court to designate and appoint in writing some fit person to sign the name of the clerk to and to issue any writ or other instrument out of said court during the illness, absence or disability of the clerk, and any writ or other instrument so signed and issued shall be as valid in law as if signed and issued personally by such clerk.

Supplement.

P. L. 1884, p. 169. Approved April 14, 1884.

In actions on notes, &c., parties may be designated by initial letters or contraction of name.

209. SEC. 1. That in all actions in any district court in this state upon bills of exchange, promissory notes or other written instruments, any of the parties to which are designated by the initial letter or letters, or some contraction of the Christian or first name or names, it shall be sufficient in every affidavit to hold to bail and in the process to designate such party by the same initial letter or letters, or contraction of the Christian or first name or names, instead of stating the Christian or first name or names in full.

All parties liable on bill of exchange, &c., may be included in one action.

210. SEC. 2. That the holder of any bill of exchange or promissory note instead of bringing separate actions against the parties separately liable thereon, may include all or any of them in one action, and proceed to judgment and execution in the same manner as though all the defendants were joint contractors, subject, however, to the qualifications hereinafter provided.

Plaintiff to annex to state of demand copy of bill or note.

211. SEC. 3. That in every such action the plaintiff shall annex to the state of demand a notice containing a copy of the bill or note with the indorsements, and stating that the action is brought to recover the amount due thereon; but shall not recover judgment against any several drawer, maker, indorser or acceptor not served with process, and any joint drawer, maker, indorser or acceptor may prove in abatement the non-joinder of any other joint drawer, maker, indorser or acceptor; but judgment may be

obtained against joint contractors, some only of whom have been served with process, and such judgment shall have the same effect against the joint contractors as heretofore. Against whom judgment obtained.

212. SEC. 4. That in any such action judgment may be rendered for the plaintiff against some one or more of the defendants, and also in favor of some one or more of the defendants against the plaintiff, according as the rights and liabilities of the respective parties shall appear, either upon confession, default or trial; and any person sued shall be entitled to set off his demands against the plaintiff in the same manner as though such defendant had been sued in the form heretofore used; and when judgment shall be rendered in favor of any defendant, he shall recover his costs against the plaintiff in the same manner as though judgment had been rendered for all the defendants. How judgment may be rendered. Any person sued entitled to set-off.

213. SEC. 5. That if upon the trial of any such action, the whole amount of the set-off allowed shall equal or exceed the amount allowed to the plaintiff, then, in the first case, the verdict or judgment shall be in favor of the defendants generally, and in the last case for the excess; and in all cases the verdict or judgment shall certify the amount allowed to each defendant as a set-off. Judgment in case set-off allowed.

214. SEC. 6. That the rights and responsibilities of the several parties to any such bill or note as between each other, shall remain as heretofore, saving only the rights of the plaintiff, so far as they may have been determined by the judgment; and any one or more of the defendants shall be entitled to the testimony of any co-defendant as a witness in all cases where he or they would be entitled to his testimony had the suit been brought in the form heretofore used; and the plaintiff shall be entitled to the testimony of any defendant as a witness in all cases where he will be entitled to his testimony against the other parties to the bill or note had the suit been brought in the form heretofore used. Rights and responsibilities of parties to bill or note between each other.

215. SEC. 7. That whenever an execution against goods and chattels shall issue in any such suit or action upon a bill or note as is hereinbefore provided, it shall be the duty of the constable, after making a levy upon the property liable to execution, to make the money out of property of the person or persons principally liable as between themselves for its payment, if it can be done before selling the property of the person or persons secondarily liable, and for the information of such officer, it shall be the duty of the clerk of said court, under and by the direction of the judge thereof, to endorse on the execution the order in which the defendants, according to the terms of the bill or note, are liable as between themselves for its payment; and if judgment be paid by a defendant or defendants secondarily liable as between themselves, it shall not be considered satisfied as against the defendant or defendants liable over on the bill or note to the defendant making such payment, but he shall have (on application to the said district court, giving two days' notice thereof to the other parties to the judgment, and subject to such regulations as may be imposed) the full benefit and control of such judgment for the purpose of compelling repayment, and on this application the said court may order an issue to try the question in controversy. Constable to make money out of person principally liable, &c.

216. SEC. 8. That the territorial jurisdiction of every district court established under the act to which this is a supplement, shall be co-extensive with the limits of the county wherein the city or cities are situated in which district courts now are or may hereafter be established; and such jurisdiction shall extend to summary proceedings for the removal of tenants from the premises situate anywhere within such county, in the manner provided for by the act to which this is a supplement; *provided*, that such extended jurisdiction in all cases shall not affect the right of appeal to the common pleas on matters of law or fact in cases where the defendant resides out of the limits where district courts now have exclusive jurisdiction. (*a*) [See Sec. 269, *post.*] Territorial jurisdiction of district court co-extensive with limits of county. Not to affect right of appeal.

(*a*) This section does not apply to the district courts of the city of Newark. *Burns* v. *Yost*, 18 *Vr.* 222; affirmed, 19 *Vr.* 356. This jurisdiction was subsequently given by section 269, *post.*

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In any suit excess over $200 or $300 may be waived.

217. SEC. 9. That in any suit in any district court in this state, whether created by general or special statute, it shall be lawful for the plaintiff or for the defendant in a set-off to waive the excess over two or three hundred dollars, as the case may be. (*b*)

218. SEC. 10. [Amended by Sec. 233, *post.*]

When execution returned unsatisfied, clerk may issue alias or pluries execution.

How executed.

219. SEC. 11. That when, in any case, an execution shall have been returned unsatisfied, it shall be lawful for the clerk of any district court, upon the demand of the plaintiff, to issue an alias or pluries execution, directed to any constable of any county in this state, so designated in the writ, which shall be executed and returned by the constable to whom it shall be delivered, in the same manner as if it had been issued out of a court of competent jurisdiction in his county.

Supplement.

P. L. 1885, p. 113.

Approved March 23, 1885.

Entry of appearance in attachment by defendant before hearing.

220. SEC. 1. That the defendent in any attachment issued out of a district court, instead of entering his appearance by filing with the clerk a bond, may, if he so elect, enter his appearance at any time after the executing of the writ of attachment and before the hearing of the cause by filing with the clerk a statement signed by the defendant or his attorney or agent, that the defendant enters his appearance to the action and intends to defend the same, whereupon the judge, or in his absence the clerk, shall forthwith fix a day for the trial, not less than three nor more than ten days from the filing of such statement, and the clerk shall cause the plaintiff to be notified, either personally or by mail, of the day so fixed; the plaintiff shall file a copy of his account or state of demand on or before the day so fixed, and thereafter the cause may be adjourned and shall be conducted in all things in like manner, and the court shall have like jurisdiction of the parties, as if the action had been commenced by summons; the effects, rights and credits of the defendant shall remain in the custody of the officer who executed the writ, subject to the lien of the attachment during the pendency of the action, but if judgment be given for the defendant, the same shall thereby be released from such lien and restored to the defendant, and the defendant shall have execution for his costs; if judgment be given for the plaintiff, the court shall award execution thereof against the effects of the defendant, which execution may be satisfied by sale of the effects taken in attachment or of any other effects of the defendant, and shall be returned in the same time and manner as other executions are returned; and the provision in the one hundred and fifty-ninth section of the act to which this is a supplement, that the effects shall not be sold in less than three months, shall not apply to cases where the defendant's appearance is entered under this act. [See Sec. 195, *ante.*]

Fixing of day for trial.

Hearing.

Effects, &c., to remain subject to lien during pendency of action.

Supplement.

P. L. 1885, p. 204.

Approved April 4, 1885.

221. SEC. 1. [This section, amending Sec. 4, *ante*, is susperseded by Secs. 234 to 236, *post.*]

Supplement.

P. L. 1886, p. 31.

Approved February 20, 1886.

Actions of debt, &c., to be styled upon contract.

222. SEC. 1. That the twenty-seventh section of the act to which this is amendatory be amended to read as follows:

[That all suits brought or commenced hereafter before any judge of any district court in this state which, under the present practice, would be either actions of debt, covenant, assumpsit or trespass on the case for injuries arising from breaches of contract, or the non-performance of duties arising from contract, shall be in the name and style of actions upon contract, and counts for said causes of actions may be joined in the same suit.]

(*b*) See *Quimby* v. *Hopping*, 23 *Vr.* 117.

223. SEC. 2. That all actions of trespass, trover and trespass on the case cognizable before any district court in this state, shall hereafter be in the name and style of actions in tort, and counts for said causes of action may be joined in the same suit, any law, usage or custom to the contrary notwithstanding.

Actions of trespass, &c., to be styled actions in tort.

Supplement.

Approved January 30, 1888. P. L. 1888, p. 11.

224. SEC. 1. That every district court now established under the act to which this act is a supplement, and under the supplements thereto, or which may hereafter be established, shall be a continuous court of record, and when any judge thereof shall cease holding his office, every suit and proceeding pending in said court, whether originally commenced in or removed to said court, shall be continued and proceeded with by and before the succeeding judge thereof, who shall also, in any suit or proceeding which may have been previously removed from said district court by appeal or on certiorari, take cognizance thereof and proceed therewith when the necessity to do so shall occur; *provided*, that where the trial of any case has been commenced and not concluded, or if concluded the case has not been decided previous to the entry by such successor upon the duties of his office, such trial shall be continued and concluded, and judgment in such case shall be rendered by the judge before whom said trial was commenced or had, and his judgment therein shall be entered as and shall be the judgment of said court, unless said former judge by and before whom the trial of said case was commenced or had shall have died, or become incapacitated, or shall have removed from the city, then in either event, the said case shall be tried by and before such succeeding judge, as if the trial of it had not been previously had or commenced; and the judge of any district court before whom such trial commenced, if he shall close and decide the case after his successor shall enter upon his office, shall, unless he is his own successor, receive from and be paid by the city in which said district court is established, five dollars for each day that he shall be engaged in such case, not exceeding three days' pay in each case.

District courts to be continuous courts of record.

Proviso.

225. SEC. 2. That in any district court mentioned in this act, the judge may adjourn, as in his judgment may be necessary, any suit or proceeding from time to time, and for such periods as he may decide or direct.

Judge may adjourn proceedings.

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226. SEC. 3. That when a judge of any district court mentioned in this act shall cease to be the judge thereof, the then clerk of such court shall continue to be the clerk thereof until the appointment of a clerk of such court is duly made and bond is given and oath of office taken by the clerk so appointed.

When judge ceases to be such, clerk to continue in office until successor is appointed.

227. SEC. 4. That all books, papers, proceedings, files, dockets, records and writings, which have been heretofore or shall be hereafter used in any of the said district courts by any clerk thereof, shall belong to said court, and shall, when a clerk of said court shall cease to act, be delivered to the successor of said clerk.

Books, papers, &c., to be delivered to clerk's successor.

228. SEC. 5. That the clerk of any of said district courts may make out transcripts or copies of any books, papers, proceedings, files, dockets, records or writings of said court, and certify them under his hand and the seal of said court, which shall, when so certified, be used as evidence in all courts of law and equity in this state, with the same force and effect as if the original from which such certified transcript or copy was made were produced.

Transcripts by clerk to be received in evidence.

229. SEC. 6. That the clerk of any district court aforesaid may issue on any judgment heretofore or which may hereafter be recovered in said court, an execution, an alias or pluries execution, or any executions after a pluries execution which may be necessary; *provided*, that after the lapse of six years from the recovery of judgment, he shall not issue either of such executions until an affidavit be filed that the whole, or if part, what part, of the money recovered and costs, remains unpaid.

Clerk may issue executions.

Proviso.

230. SEC. 7. That any execution which within one year heretofore has been, or which shall be hereafter issued out of any of said district courts,

Execution valid after one year from issue, &c.

by virtue of which there has been or shall be a legal levy made upon goods and chattels, shall, after the expiration of one year from the issue of said execution, remain valid and in full force as against the goods and chattels so levied upon, until the said goods and chattels levied upon shall be sold by virtue of said execution or by virtue of any lien or liens upon said goods and chattels prior to the lien acquired by the levy under said execution, or until the amount of the judgment on which said execution was issued and costs and interest be paid in full; and in case of the death or inability to act of an officer by whom a levy has been made by virtue of any execution issued out of said court, upon due proof thereof to the satisfaction of the judge of said court and of the amount which remains due upon said execution, the said judge may appoint a constable to proceed with and execute said execution, and such constable so appointed shall have the same power he would have had, and shall, in all things then yet to be done, proceed after such appointment in the same manner he would have proceeded if the execution had been originally delivered to him, and he had done what up to the time of his appointment was done by the officer to whom said execution was originally delivered, but so that such officer so appointed shall not be liable for any default or error of the officer to whom the execution was originally delivered.

In case of death, &c., of levying officer, judge may appoint constable to proceed with execution.

Proceedings in suits for the dispossession of tenants.

231. SEC. 8. That whenever in any suit for the dispossession of a tenant or tenants, upon the return day of the summons, or any adjourned day, there is no appearance by or on behalf of any tenant named therein, or if any defendant shall appear, but make no defense, the court may, if it appear that said summons has been duly issued and served, hear and determine the cause upon the affidavit or affidavits filed, without the production of witnesses or other proofs.

P. L. 1888, p. 132.

Supplement.

Approved March 6, 1888.

Clerks may receive verdicts in absence of judge.

232. SEC. 1. That hereafter the clerks of said courts may receive, in the absence of the judge of said courts, the verdicts of juries.

A supplement to an act entitled "A supplement to an act entitled 'An act constituting district courts in certain cities in this state,'" which supplement was approved April fourteenth, one thousand eight hundred and eighty-four.

P. L. 1888, p. 470.

Approved April 23, 1888.

1256–233
32V–460

233. SEC. 1. That the tenth section [see Sec. 218, *ante*] of the act to which this is a supplement, be and the same is hereby amended so as to read as follows:

Judge may order new trial, and stay proceedings.

[That in every case which within one year heretofore shall have been, or which shall hereafter be tried in any of said courts, the judge may, if he sees fit, order a new trial to be had upon such terms as he shall think reasonable, and in the meantime stay proceedings, and for the purposes of this act every such court shall be a continuous court of record.] (*a*)

P. L. 1889, p. 156.

Supplement.

Approved April 3, 1889.

Judges, how appointed and term of office.

234. SEC. 1. That the judges of said courts shall be appointed by the governor, with the advice and consent of the senate, and shall continue in office for five years from the date of their several commissions.

Present judges to continue in office.

235. SEC. 2. That the judges of said court now in office shall continue in office until the end of five years from the date of their election by the legislature in joint session. [See Sec. 275, *post.*]

Repealer.

236. SEC. 3. That all acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed, and that this act shall take effect immediately.

(*a*) A new trial may be granted in proceedings on a complaint of forcible entry and detainer. *Krause* v. *Dayton*, 22 *Vr.* 272.

Supplement.

Approved June 19, 1890. P. L. 1890, p. 474.

237. SEC. 1. [This section, amending Sec. 178, *ante*, is amended by Sec. 246, *post.*]

Supplement.

Approved February 16, 1892. P. L. 1892, p. 22.

238. SEC. 1. That the judge of said courts may designate one of the constables of said county, or some other suitable person, to attend the sittings of said court and to preserve order therein; the said officer shall be designated as sergeant-at-arms of said court, and shall receive for his services the sum of one dollar for each day's actual attendance on the sitting of said court when such attendance shall be required by the judge, to be paid by the mayor and common council of the city where said court may be established, out of the treasury of said city; *provided*, however, that nothing herein contained shall be construed to increase any fees or compensation now fixed by law.

Appointment of sergeant-at-arms.

1257-238
32V-5

Salary $1 per day.

Proviso.

239. SEC. 2. That any person not a constable, who may be hereafter appointed as sergeant-at-arms in any of the district courts of this state, when the provisions of this act have been complied with, shall be, during the term for which said appointment is made, invested with all of the rights, privileges, powers and duties now appertaining to the office of constable, and that all papers, warrants and process, either civil or criminal, issued out of any court of record in this state, shall be as binding and effectual and have the same legal effect when served or executed by said sergeant-at-arms as if served or executed by any constable.

Powers of sergeant-at-arms.

240. SEC. 3. That for the services performed by them the said sergeant-at-arms shall be entitled to receive the same fees and compensation as is now or may hereafter be allowed to constables.

Fees and compensation.

241. SEC. 4. That before any sergeant-at-arms shall perform any duty as constable he shall file in the office of the county clerk of the county in which the district court to which he is attached is located, a bond with two freeholders of the county in the penal sum and of the same condition as is now required to be filed by constables, which said bond shall be approved by the judge of the said district court as to form and sureties, before being filed with the said county clerk.

Sergeant-at-arms to give bonds.

Supplement.

Passed March 8, 1892. P. L. 1892, p. 64.

242. SEC. 1. [This section, amending Sec. 2 of original act, is repealed by Sec. 249, *post.*] [See Sec. 187, *ante.*]

243. SEC. 2. [Repealed by Sec. 249, *post.*]

Supplement.

Approved March 28, 1892. P. L. 1892, p. 320.

244. SEC. 1. That hereafter, notwithstanding any provisions to the contrary which may be contained in the act to which this is a supplement, or in any act supplementary thereto or amendatory thereof, the judge of any district court in any city in this state may preside in and conduct the business of any other district court when requested to do so by the judge thereof.

Judge of one district court may hold court for another.

245. SEC. 2. That the salaries of all the judges and clerks of district courts, as provided for in the act to which this is a supplement, shall hereafter be paid in monthly installments.

Salaries to be paid in monthly installments.

Supplement.

Approved April 8, 1892. P. L. 1892, p. 425.

246. SEC. 1. That section one hundred and seventy-eight [see Secs. 178 and 237, *ante*] of the above-mentioned act be and the same is hereby amended so as to read as follows:

Salaries of judges.

[That the judges of each of said courts shall receive an annual salary as follows: the judges of each of said courts in cities of nineteen thousand but not exceeding thirty thousand inhabitants, an annual salary of two thousand dollars; the judges of each of said courts in cities of thirty thousand but not exceeding one hundred thousand inhabitants, an annual salary of two thousand five hundred dollars, and the judges of each of said courts in cities of one hundred thousand inhabitants or over, an annual salary of three thousand dollars; the said annual salaries shall be paid by the mayor and common council of the cities wherein said courts may be established, out of the treasuries of said cities respectively, in monthly installments, which shall be computed from the day of the appointment of said judges; and the clerks of said courts in cities having a population of twenty thousand inhabitants but not exceeding thirty-three thousand inhabitants shall hereafter receive an annual salary of nine hundred dollars; the clerks of said courts in cities of thirty-three thousand inhabitants but not exceeding one hundred thousand inhabitants, shall hereafter receive an annual salary of twelve hundred and fifty dollars, and the clerks of said courts in cities of one hundred thousand inhabitants or over shall hereafter receive an annual salary of fifteen hundred dollars; the salaries of said clerks to be paid in the same manner as the judges are paid.]

Salaries of clerks.

Repealer.

247. SEC. 2. That all acts and parts of acts inconsistent with this act be and the same are hereby repealed.

An act to amend an act entitled "A supplement to an act entitled 'An act constituting "district courts" in certain cities of this state,'" approved March ninth, one thousand eight hundred and seventy-seven, which supplement was approved April fifth, one thousand eight hundred and seventy-eight.

P. L. 1893, p. 250.

Approved March 13, 1893.

248. SEC. 1. That section seven of the said supplement [see Sec. 203, *ante*] be amended so as to read as follows:

What constitutes lawful service of summons in action for removal of tenants.

[That in all actions brought under said act for the removal of tenants, where admission to the dwelling or premises occupied by the tenant is denied to the officer attempting to serve a notice of demand for the payment of rent or surrender of premises or a summons, or where such tenant resides out of the county in which the demised premises are located, and there is no person in actual occupation thereof, it shall be a lawful service of such notice or such summons if the said officer shall post or affix a copy of the same upon the door or other conspicuous part of such dwelling or premises, and the said officer shall make a return of such service accordingly; *provided*, that in case the tenant shall not be a resident of the county in which said demised premises are situated and the same shall be in the occupation of any other person, then said notice of said summons may be served either personally upon such person or by leaving the same with a member of his family above the age of fourteen years.]

Proviso.

An act to repeal an act entitled "A supplement to an act entitled 'An act constituting district courts in certain cities of this state' [Revision], approved March ninth, one thousand eight hundred and seventy seven," which supplemental act was passed March eighth, one thousand eight hundred and ninety-two.

P. L. 1894, p. 65.

Passed April 18, 1894.

Repealer.

249. SEC. 1. That the supplement to the act entitled "An act constituting district courts in certain cities of this state," approved March ninth, one thousand eight hundred and seventy-seven, which supplement was passed March eighth, one thousand eight hundred and ninety-two [see Sec. 242, *ante*], be and the same is hereby repealed, and any district court heretofore established under the provisions of said supplement and now

existing in any city of this state having less than twenty thousand inhabitants according to the last census, is hereby abolished. [See Sec. 187, *ante*.] (1)

Clerk shall file all papers, records, &c., in county clerk's office.

250. SEC. 2. That within thirty days after this act shall take effect, the judge of any district court in any city in this state, which is abolished by the first section of this act, shall file in the clerk's office of the county in which such city is located, all papers, dockets and records relating to said district court or to any suits therein pending or determined, there to remain as records which may be used and certified in like manner as other records of said county contained in said clerk's office.

Supplement.

Approved May 17, 1894. P. L. 1894, p. 416.

When appellee may apply for dismissal of appeal.

251. SEC. 1. That in case of any appeal from any judgment rendered in any district court, the appellee may apply to said court to dismiss said appeal, for the reason that the appeal bond filed on appeal from said judgment is in any respect defective, or because proper evidence of the sufficiency thereof has not been filed in said court, and, thereupon, it shall be the duty of the judge of said court to examine into the question of the form, execution and sufficiency of said bond and of the evidence thereof, and if he shall determine that said bond is defective or insufficient, he shall make an order directing the appellant to file a new appeal bond within five days from the date of said order, and upon failure to file another bond pursuant to said order, the judge may dismiss said appeal; *provided*, that at the time of making said application the transcript of said cause shall not have been sent to the court of common pleas.

Proviso.

New bond may be substituted.

252. SEC. 2. That 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 any district court; *provided*, that no delay in the trial of the said appeal shall be occasioned thereby.

Proviso.

XIX. Extended jurisdiction.

An act relative to the jurisdiction and practice of district courts in this state.

Approved March 27, 1882. P. L. 1882, p. 195.

Jurisdiction of district courts extended to debts, &c., not exceeding $300.

253. SEC. 1. That from and after the passage of this act, the jurisdiction of each and every district court established by law in any city of this state, whether by general or special statute, shall be and the same is hereby extended to every suit of a civil nature at law, in which the debt, balance, damage or other matter in dispute does not exceed, exclusive of costs, the sum or value of three (3) hundred dollars; *provided*, that this act shall not be construed to extend to or embrace any suit or action where the title to lands and real estate shall come in question. (*a*)

1259-253
RWS 98-639
29V-274
32V-460

In suits for over $200, summons, &c., to issue to sheriff.

254. SEC. 2. That in all suits where the debt, balance, damages or other matter in dispute is claimed to be above or exceed the sum or value of two hundred dollars, exclusive of costs, that all writs of summons or attachment, warrant, execution, venire or other process, in any such suit or action shall issue to the sheriff of the county wherein the city is located, in which any such district court is established, and shall be issued out of said courts and returned thereto in like manner as writs out of the courts of common pleas in this state.

255. SEC. 3. [Amended by Secs. 267 and 274, *post*.]

(*a*) In an action brought in the district court, where the matter in dispute is above the sum of $200, a demand for a jury, made by the defendant at the proper time, deprives the court of jurisdiction to try the cause otherwise than by a jury. *Clayton* v. *Clark*, 26 *Vr*. 539. Such a demand gives the defendant the right to a trial by jury without prepayment of costs, or to have the action against him dismissed. *Ib*. In an action brought to recover a claim of over $200, the defendant objected to the judge trying the case without a jury upon the ground that the defendant had not waived a trial by jury. The judge proceeded to try the case without a jury, and gave judgment for the plaintiff. *Held*, that the proceeding was in violation of the constitutional provision that the right of trial by jury shall remain inviolate and judgment reversed. *Raphael* v. *Lane*, 27 *Vr*. 108.

(1) The effect of this repealer was to abolish the district court in the city of Bayonne, which court had been created by P. L. 1892, p. 64.

Statement necessary for docketing of judgments by clerk of court of common pleas.

1260-256
257
18D-22

256. SEC. 4. That at any time hereafter in docketing any judgment from a district court, it shall only be necessary to file with the clerk of the court of common pleas, a statement signed by the clerk of the district court, under the seal of the court, which statement shall only be required to contain the name of the court, the name of the parties, the amount and date of judgment and date of issue and return of execution, if any, which, when filed with the clerk of the common pleas, shall have the same force and effect as a transcript of judgment from a district court now has by law; the fee to the clerk of the court of common pleas for filing said statement shall be two dollars, and to the clerk of the district court for certifying the same fifty cents.

Statement may be made any time after judgment in district court.

Proviso.

257. SEC. 5. That it shall not be necessary before obtaining from the clerk of the district court the statement for docketing, that execution on judgment shall issue out of and be returned unsatisfied into the district court, but that the same may be made and taken at any time after judgment in the district court, and be of the same force and effect as if execution had been issued and returned as now required by law; *provided*, that an affidavit of the plaintiff or his attorney shall be filed with the clerk of the court of common pleas with said statement, setting forth that said judgment about to be docketed is bona fide, and is still due and unpaid in whole or part.

258. SEC. 6. [Amended by Secs. 272 and 273, *post.*]

When parties may recover witness fees.

259. SEC. 7. That upon any judgment for the plaintiff or defendant, or of non-suit in any district court in this state, where the real amount at issue between the parties exceeds in debt, demand or damage fifty dollars, the party in whose favor such judgment may be shall recover his witness fees for all witnesses actually subpœnaed or sworn, not exceeding five in any cause.

Fees of jurors in causes exceeding $200.

260. SEC. 8. That in any case where a jury shall be called by either of the parties to any cause in any district court in this state, in which the debt, damage or other matter in dispute exceeds, exclusive of costs, the sum or value of two hundred dollars, the fee of each juror that serves in said cause shall be fifty cents per day, to be paid as now provided by law in other cases tried by jury in said courts. (*a*)

Jurisdict io attachment extended to $300.

261. SEC. 9. That the jurisdiction of said district courts in all suits or proceedings in said courts commenced by writs of attachment, shall be and the same is hereby extended to all debts or demands due from any non-resident or absconding debtor where the amount of such debt or demand does not exceed, exclusive of costs, the sum of three hundred dollars.

In proceedings for discovery, witnesses may be required to appear and testify.

Refusal to obey subpœna.

262. SEC. 10. That in proceedings taken under this act for discovery in aid of execution, witnesses may be required to appear and testify concerning said matters by either party, by process of subpœna ad testificandum issued out of said district court wherein the judgment shall be recorded, and the judge or commissioner may adjourn the examination from time to time, at the instance of either party, as may be needful; and the refusal to obey any subpœna so issued shall be punished as in case of refusal to obey like subpœna in actions of debt tried in said court; the attorney, court, clerk, commissioner and witnesses shall be entitled to the same fees as for like services in the court of common pleas, which costs shall be recoverable as other costs in said district court, and, when in favor of the plaintiff, shall become a part of the judgment, and when in favor of the defendant execution may issue therefor.

Fees of attorney, clerk, &c., how recovered.

Defendant taken on warrant may, on trial, give testimony as to truth of affidavits upon which order was made.

263. SEC. 11. That when a warrant to take the body of any defendant shall issue out of any district court in this state, it shall be lawful for the defendant, upon the trial of said cause, to give testimony as to the truth of the affidavit or affidavits upon which the order for the warrant was made; and if it shall appear that the defendant was not, in fact, guilty of the fraud alleged, it shall be the duty of the court to so certify upon the record of the court, and to make order in said cause that no execution to take the body shall issue against the defendant if a judgment pass against him,

(*a*) See *Francisco* v. *Andrews*, 6 *N. J. L. J.* 149. *Raphael* v. *Lane*, 27 *Vr.* 113.

and in case of such an order, only an execution against the goods and chattels of the defendant shall issue.

Jurisdiction extended to suits by or against municipal corporations to $300.

264. SEC. 12. That the jurisdiction of said district courts shall be extended to all suits by or against municipal corporations where the debt, balance, damage or other matter in dispute does not, exclusive of costs, exceed the sum or value of three hundred dollars, and that when any suit shall be instituted against any municipal corporation, a copy of the summons, precept or such other legal process as may be issued against the said municipal corporation, shall be left with the mayor or clerk thereof fifteen days at least before the time of appearance mentioned therein.

Service of process.

Where debt, &c., exceeds $200, judgment may be removed to supreme court by certiorari.

265. SEC. 13. That the final decision and determination of any district court in this state upon any suit where the debt, demand or damage in controversy exceeds the sum or value of two hundred dollars, may be removed to the supreme court of this state by certiorari, at the instance of either party thereto, for review by the supreme court in the same manner as causes heard and determined in the inferior courts of common pleas of this state may be heard and reviewed; *provided, however*, that no reversal for error of law shall be made, or a new trial granted for the admission or rejection of evidence, or the refusal of the district judge to grant a new trial, unless exception to the ruling of the court below was taken at the trial and is presented to the court in a bill of exceptions, sealed by the judge; *and provided, further*, that no certiorari shall be allowed until the plaintiff in certiorari shall, if he be the defendant below, enter into bond, to be approved by the justice of the supreme court granting the writ, or a district court judge, in double the amount of the judgment entered against him, to the plaintiff in the action, conditioned for the payment of the judgment and costs, and the costs of appeal in case the judgment of the district court be affirmed in the supreme court. (*a*)

Proviso.

Proviso.

Judge may conduct and preside at any other district court.

266. SEC. 14. That the judge of any district court in any city in this state may preside in and conduct the business of any other district court in any other city when requested so to do by the judge thereof, and the appointment of all district court judges now in office in any city in this state is hereby validated and confirmed, whether appointed under a general or special statute.

Appointments validated.

Amendatory act.

Approved March 11, 1885. P. L. 1885, p. 88.

267. SEC. 1. That section three of said act be and the same is hereby amended to read as follows:

[This section, amending Sec. 255, *ante*, is again amended by Sec. 274, *post.*]

Supplement.

Approved March 25, 1885. P. L. 1885, p. 174.

Proceedings against person refusing to obey subpœna on proceedings for discovery.

268. SEC. 1. That in case any person subpœnaed as a witness and paid or tendered the legal witness fee, or served with an order upon petition for discovery in aid of execution issued out of any district court in any city in this state, shall refuse or neglect to obey such subpœna, or order, or to give testimony, or to answer questions as required, or to produce any books, papers or documents as required, it shall be lawful for the judge of the district court out of which such subpœna or order shall issue, upon affidavit being filed with the clerk of such court proving the facts, to issue

(*a*) When the plaintiff in an action before a district court, involving more than $200, applies for a *certiorari* to review a judgment of non-suit rendered therein, it is not necessary for him to tender a bond. *Synear* v. *Wharton*, 19 *Vr.* 97. Whether the defendant resided in the city or county, the remedy for review of judgment in district courts, where the debt, demand or damages in controversy exceeds the sum or value of $200, is by *certiorari* to the supreme court, and not by appeal to the court of common pleas. *Gartner* v. *Cohen*, 22 *Vr.* 125. A *mandamus* will not be allowed to compel a district judge to accept a bond and settle and sign the case for appeal to the court of common pleas in such cases. *Ib.* On *certiorari* to a district court, by statute, where the amount in controversy exceeds $200, there should be a bill of exceptions sealed by the judge. *Larkin* v. *Hecksher*, 22 *Vr.* 133. The review of a judgment in a suit where the debt or demand in controversy exceeded $200, by *certiorari*, must be pursued according to the general practice of this court upon that writ and the practice required by this section. *Cohen* v. *Gartner*, 23 *Vr.* 110. Such practice will not permit a rule requiring an inferior court, whose adjudication is sought to be reviewed, to return any specific matter, nor a rule compelling a judge to seal an exception. *Ib.* If it appeared that exceptions duly sealed had been filed with the district court and were not returned, a rule requiring that court to certify whether such exceptions were so sealed and filed, and if so, to return them, would be proper. *Ib.* In suits lawfully pending before a district court, where the debt, demand or damage in controversy exceeds $200, a writ of *certiorari* from the supreme court will not lie before final judgment. *Potter* v. *Fritz*, 25 *Vr.* 436. The above cases were decided prior to the passage of the act of March 24th, 1892. P. L. 1892, p. 257. (Sec. 276, *post.*)

May be adjudged guilty of contempt, &c.

an order to show cause why the person subpœnaed or served with such order shall not be adjudged guilty of contempt for his or her refusal or neglect to obey such subpœna or order, which order to show cause shall be made returnable not less than five nor more than fifteen days from the date of service thereof, and if, upon the return of such order, no sufficient cause be shown, the said judge, upon proof of the service of said order being filed with the clerk of such court, may adjudge such person guilty of contempt and may order a warrant to issue directed to any constable of the county wherein such district court is established, commanding him to arrest such person and forthwith convey him before the judge who issued the same, and the said judge shall thereupon have the power to enforce obedience to such subpœna, and the answering of any question or the production of any book, paper or document that may be proper, by imprisonment in the county jail of the county wherein such district court is established, or by imposing a fine not exceeding fifty dollars, to be paid for the use of such city, or by both fine and imprisonment, and such person so adjudged guilty of contempt shall stand committed and remain in close custody until such subpœna or order shall be obeyed and performed, and until the fine so imposed, with the costs of such proceedings, to be taxed by the judge of such district court, be fully paid, unless otherwise ordered by such judge; the attorney, court, clerk and officer shall be entitled to the same fees as for like services in the court of common pleas, and any person who shall willfully and corruptly testify falsely to any material matter upon oath or affirmation administered by such judge upon such proceedings, shall, upon conviction thereof, be subject to the penalties of perjury. (*a*)

Supplement.

P. L. 1886, p. 16.

Passed February 9, 1886.

Territorial jurisdiction extended to limits of county.

269. SEC. 1. That from and after the passage of this act the territorial jurisdiction of each and every district court established by law in any city of this state, whether by general or special statute, shall be and the same is hereby extended to and declared to be co-extensive with the limits of the county in which such city may be, within which any district court or courts is or are now or may hereafter be established by law. (*b*) [See Sec. 216, *ante*.]

Supplement.

P. L. 1886, p. 75.

Approved March 6, 1886.

In actions on contract, defendants may set up defect in or partial failure of consideration.

May recoup damages.

Proviso.

270. SEC. 1. That in actions on contracts, whether under seal or not, hereafter brought in any of the district courts established by law in any city of this state, whether by general or special statute, the defendant may set up as a defense in abatement of damages to be recovered by the plaintiff, a defect in, or partial failure of the consideration of the contract sued on, and may also recoup any damages which he may have sustained by reason of the non-performance or defective performance of any part of the same contract by the plaintiff; *provided*, that in all cases where it shall be necessary to file a plea, a notice of the particulars of such defense be annexed to the plea and filed therewith.

Supplement.

P. L. 1888, p. 24.

Approved February 11, 1888.

When court of common pleas to try cases on appeal de novo.

271. SEC. 1. That whenever in any case in which an appeal shall have been or may hereafter be taken from the judgment of the judge of any district court established in any city of this state, whether by general or special statute, the judge of said court shall have failed for any reason to

(*a*) The only authority and jurisdiction conferred on judges of the district court to punish as for contempt, disobedience of orders in proceedings for discovery, is that contained in this act. The act affords no warrant for proceedings to fine and imprison as a punishment for disobedience of any order except those mentioned in the act. *Adler* v. *Turnbull & Co.*, 28 *Vr.* 62.

(*b*) See *Best* v. *Smith*, 25 *Vr.* 434. *Gartner* v. *Cohen*, 22 *Vr.* 125. *Raphael* v. *Lane*, 27 *Vr.* 108.

settle and sign the case as required by law, within the space of three months from the time of rendering such judgment, the court of common pleas shall, upon such appeal, try the case de novo. (*a*) [See Sec. 276, *post.*]

Amendatory act.

Approved April 16, 1888. P. L. 1888, p. 425.

272. SEC. 1. [This section, amending Sec. 258, *ante*, is again amended by Sec. 273, *post.*]

An act to amend an act entitled "An act to amend an act entitled 'An act relative to the jurisdiction and practice of district courts in this state,' approved March twenty-seventh, one thousand eight hundred and eighty-two," which amendment was approved April sixteenth, one thousand eight hundred and eighty-eight.

Approved March 18, 1889. P. L. 1889, p. 56.

273. SEC. 1. That section six [see Secs. 258 and 272, *ante*] of the above act, as amended, be and the same is hereby amended so as to read as follows:

Powers and jurisdiction of judges upon petition for discovery in aid of executions.

[That each of the judges of the several district courts of this state shall have the same powers, jurisdiction and authority, upon petition for discovery in aid of execution, upon the return of any execution unsatisfied in whole or part into any of said district courts, to order the judgment debtor to appear before the court, or one of the supreme court commissioners of this state, and make discovery, on oath, concerning his property or things in action, before said judge or commissioner, and to make order forbidding the payment of debts, or transfer of moneys or property, due or belonging to said debtor, to said debtor or any third person; and upon the taking of the testimony by said judge, or the certification by the commissioner of the testimony taken by him under the order, to appoint a receiver of the property and things in action belonging, or due to, or held in trust for such debtor at the time of issuing the execution, or at any time afterward, as is now vested in or exercised by any of the judges of the inferior courts of common pleas of this state; and such receiver, when appointed, shall have like power, authorities and duties as receivers appointed under similar proceedings by any of said judges of the inferior courts of common pleas, except that the judge may make such order when the amount due on such judgment, including costs, shall be twenty-five dollars or more; *provided, however*, that no receiver appointed by any of the district court judges shall become vested with the title to or have the power to demand and receive any of the real property of any such judgment debtor.] (*b*)

Proviso.

An act amendatory of an act entitled "An act to amend an act entitled 'An act relative to the jurisdiction and practice of district courts in this state,' approved March twenty-seventh, one thousand eight hundred and eighty-two," which amendment was approved March eleventh, one thousand eight hundred and eighty-five.

Approved March 17, 1893. P. L. 1893, p. 406.

274. SEC. 1. That section three [see Secs. 255 and 267, *ante*] of said act, as amended, be and the same is hereby amended to read as follows:

(*a*) The court of common pleas did not acquire jurisdiction to try *de novo* a case appealed from a district court under this act merely from the absence of a state of the case settled by the district judge. Its jurisdiction to retry the case only arose under this act upon the absence of a state of the case agreed on by the parties, and its being made to appear that the district judge, being duly applied to, had failed to settle a case for the period limited in that act. *Feeney* v. *Rueger*, 28 *Vr.* 356.

(*b*) A declaration setting up the appointment of the plaintiff as receiver of the property of the defendant without showing the recovery of a judgment and the return of an unsatisfied execution, is fatally defective. *Lever* v. *Baley*, 27 *Vr.* 54. Discovery in aid of an execution by a proceeding in a court of law is a special statutory proceeding, not in the courts of the common law. The jurisdiction of the court is the creation of the statute. The powers of the judge in exercising that jurisdiction are such, and such only, as are conferred by the statute, and the procedure must be in conformity with that prescribed by the statute. *Adler* v. *Turnbull & Co.*, 28 *Vr.* 62.

Pleadings where debt exceeds $200 to be filed as in circuit courts, &c.

[That the pleadings to be filed in said district courts in any suit where the debt demanded, or damage claimed, actually exceeds the sum or value of two hundred dollars, shall be the same as those in the circuit courts of the several counties of this state, and the practice of such circuit courts, also, in so far as applicable, shall apply to said district courts in such cases, excepting, however, cases where there may be some express provision of law providing otherwise, and the declaration in any such suit shall be filed within ten days after the return day named in the summons, and the plea or demurrer of the defendant shall be filed within ten days after the time limited for filing the plaintiff's declaration; and each succeeding pleading, until the cause is at issue, shall be filed within ten days after the time limited for pleading by the opposite party; and every cause when at issue shall be noticed for trial within twenty days thereafter, and at least five days' notice of trial shall be given by the plaintiff and served in the same manner as in the circuit courts of the several counties of this state; and if the plaintiff shall neglect to notice his cause for trial within said time, judgment shall be awarded for the defendant as in case of a non-suit, with costs, unless the court allow further time; and the costs to be taxed in any such cause shall be the same to the attorney, court, clerk and sheriff as are taxable in the circuit courts of the several counties in this state;

Proviso.

provided, however, that in case the plaintiff shall upon or within ten days after the return day of the summons file his declaration and serve a copy thereof on the defendant or his attorney, the defendant shall plead or demur thereto within ten days from the date of such service, and in default thereof the plaintiff may have judgment in the same manner that judgment by default is rendered in the circuit courts of the several counties of this state; and judgments by default in other cases for want of or failure to file plea or demurrer within the time above limited therefor, may be had and taken by the plaintiff in said district courts in the same manner as in such circuit courts.] (*a*)

XX. Miscellaneous acts.

An act concerning district courts in this state.

P. L. 1891, p. 64.

Approved March 2, 1891.

End of term of judges now in office.

275. SEC. 1. That the judges of all district courts in cities of this state now in office shall contine in office until the first day of April, one thousand eight hundred and ninety-one, on which day their terms of office shall end; the successors of the judges of said courts now in office shall be appointed by the governor, by and with the advice and consent of the senate, and shall continue in office for five years from the first day of April, one thousand eight hundred and ninety-one; their successors shall be appointed by the governor, by and with the advice and consent of the senate. (*b*) [See Sec. 235, *ante*.]

1264-275
R98-641
30V-327

Successors, how appointed.

An act concerning appeals from districts courts in this state.

P. L. 1892, p. 257.

Approved March 24, 1892.

Judgment may be appealed to court of common pleas.

276. SEC. 1. That from any judgment obtained in any district court established by law in any city of this state, whether by general or special statute, where the debt, demand or matter in dispute, exclusive of costs, be for a sum not less than twenty-five dollars, except judgment given by confession, either party may appeal, both as to matter of law and fact, to the court of common pleas of the county to be holden next after the rendering of such judgment; which appeal the judge of said district court is hereby directed to grant in the same manner as appeals are now had and taken in the court for the trial of small causes; *provided always*, that no appeal shall be granted to remove any judgment entered against the party demanding

1264-276
R98-641
80V-353
29V-508
561
32V-450

Judge of district court to grant appeal.

Proviso.

(*a*) In actions in the district court upon a *bona fide* demand exceeding $200, costs are taxable, although the verdict is for less than $200, provided it exceeds $100. *Francisco* v. *Andrews*, 6 *N. J. L. J.* 149. The various items of costs considered and determined and bill of costs in such a case stated in detail. *Ib.*

(*b*) The 1st day of April, 1891, was within the term of the incumbent of the office at the time of the passage of this statute. *Fulton* v. *Woodward*, 25 *Vr.* 481.

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 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*)

Proceedings and costs.

277. SEC. 2. That the causes thus appealed to the said courts of common pleas shall be tried de novo in said courts, and that the taxed costs in said courts of common pleas upon said appeals shall be the same as those now allowed by law in the trial of appeals from the courts for the trial of small causes in said courts, except that there shall be allowed as the attorney's fee, to the prevailing party, to be taxed therein, the sum of five dollars, in all causes where the judgment appealed from does not exceed one hundred dollars, and ten dollars in causes where the judgment appealed from exceeds the sum of one hundred dollars. (*b*)

Time for taking appeal.

278. SEC. 3. That all appeals under this act shall be taken within five days from the rendering of the judgment, and that they shall be put on the list for trial at the first term of the court of common pleas to which the same shall be appealed; *provided*, *however*, that if said appeal is taken within the five days prior to the beginning of such term, in that case the said appeal shall be put on the list for trial at the next term thereafter. (*c*)

Proviso.

Repealer.

279. SEC. 4. That all acts and parts of acts inconsistent with this act be and the same are hereby repealed, and this act shall take effect immediately.

An act relative to the jurisdiction and powers of district courts in this state.

Approved March 17, 1893. P. L. 1893, p. 432.

Manner of prosecuting suits and actions against foreign corporations.

1265-280 R98-642

280. SEC. 1. That hereafter suits and actions against foreign corporations may be commenced and prosecuted in any district court of this state, in the same manner that other suits and actions are commenced therein, except that service of the writs and process to be employed shall be made by the sheriff of the county in which shall be located the court in which the suit or action is commenced, in the same manner that writs and process are served in suits and actions against foreign corporations commenced in the circuit court of such county.

An act in relation to the organization, powers and jurisdiction of district courts.

Passed February 15, 1895. P. L. 1895, p. 88.

Provisions of former act extended.

1265-281 R98-642

281. SEC. 1. That the provisions of an act entitled "An act to regulate the practice of courts of law," approved March tenth, one thousand eight hundred and ninety-three, and being chapter ninety-seven of the laws of one thousand eight hundred and ninety-three, and any and all supplements thereto, heretofore passed, or hereafter to be passed, be and the same are hereby extended to any and all district courts, whether organized under a general or special law.

(*a*) This act changed the practice which existed under the act of 1873 (Newark district court act), and required the common pleas to enter judgment final on an appeal from the district court. *Joy & Seliger Co.* v. *Blum*, 28 *Vr.* 518. This act authorizes an appeal from a judgment rendered by the first district court in the city of Newark for a sum in excess of $200. *McGowan* v. *Metropolitan Life Ins. Co.*, 28 *Vr.* 390.

(*b*) This act impliedly confers upon the court of common pleas power to try the issues involved in an appeal case from any district court in the same manner as the latter court is empowered to try the same, viz., with a jury, if a jury be demanded, and if no such demand be made, without a jury. *Valentine* v. *Bird*, 28 *Vr.*

(*c*) Appeals from a district court are to be taken within five days after judgment is rendered, and are to be granted in the same manner as appeals are taken from justices' courts. *Held*, that the action of the court of common pleas in permitting an appeal bond to be filed at a term more than five days after judgment was erroneous. *Delaney* v. *Burcklee*, 28 *Vr.* 323.

XXI. Special district courts.

An act concerning the district courts of cities in this state created by special statute.

P. L. 1878, p. 162.

Approved March 20, 1878.

Provisions of general act not to apply.

1266-282
R 98-639
29V-274

282. SEC. 1. That the provisions of an act entitled "An act constituting district courts in certain cities of this state," approved March ninth, eighteen hundred and seventy-seven, shall not be held to apply to cities wherein district courts were in existence prior to the passage of said act.

Jurisdiction extended to $200 in every civil suit.

283. SEC. 2. That from and after the passage of this act the jurisdiction of all district courts created by special statute, shall be and the same is hereby extended to every suit of a civil nature at law, in which the debt, balance or other matter in dispute does not exceed, exclusive of costs, the sum or value of two hundred dollars. (*a*)

Costs in landlord and tenant cases.

284. SEC. 3. That from and after the passage of this act, in all proceedings for the removal of tenants, instituted in any district court in the state established by special statute, the following costs shall be taxed, and no others:

Summons, twenty-five cents;
Copy, five cents;
Recording return, five cents;
Entering action, five cents;
Entering judgment, five cents;
Entering costs, five cents;
Filing affidavit, five cents;
Filing summons, five cents;
Service of summons, sixty cents;
Trial fee in contested cases, fifty cents;
Trial fee in uncontested cases, twenty-five cents;
Order of dispossession, twenty-five cents;
Warrant of dispossession, twenty-five cents;
Recording dispossession, five cents;
Service of warrant, fifty cents;
Swearing each witness, ten cents;
Marking every exhibit, ten cents.

Vacancies, how filled.

285. SEC. 4. That in all cities in this state wherein district courts are now established by special statute, in case any vacancy shall occur by reason of the death, resignation or expiration of the term of office of any judge of such courts, such vacancy shall be filled by appointment by the governor, by and with the advice and consent of the senate, and the person appointed to fill such vacancy shall hold office for five years and until his successor is appointed and qualified. (*b*)

Repealer.

286. SEC. 5. That all acts or parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

(*a*) An action may be instituted in the district court of Newark against a corporation to recover $200. *Joy & Seliger Co.* v. *Blum*, 26 *Vr.* 518. The district courts of the city of Newark have no general jurisdiction over actions for statutory penalties beyond $100. *Koch* v. *Vadnerhoof*, 20 *Vr.* 619. The district court of Newark has jurisdiction in an action on a replevin bond to render judgment for a penal sum of $200, with assessment of the real sum or amount of damages due for breach of the condition of the bond. *Hood* v. *Spaeth*, 22 *Vr.* 129.

(*b*) This section is constitutional. Although special in form, it is general in effect. It removed dissimilarity and created entire harmony in the law on the subject to which it pertained, and thereby subserved the object of the constitutional amendment. *Field* v. *Silo*, 15 *Vr.* 355.