LAWS OF OHIO.

Published by Authority.

AN ACT

Defining the Jurisdiction and regulating the Practice of Probate Courts.

[CONCLUDED.]

to file exceptions to said account; and the costs of such notice shall be paid, if more than one account be specified in the same notice, in equal proportions by the executors, administrators, or guardians respectively.

Sec. 21. The probate judge shall have full power and authority to examine under oath, all executors, administrators and guardians, touching their accounts; and if he shall think proper to do so, he may reduce such examination to writing, and require such executor, administrator, or guardian, to sign the same, and such examination shall be filed with the papers in the case.

Sec. 22. In case of the refusal to admit a will to probate, any person agrieved thereby may appeal from such decision to the next term of the court of common pleas, by filing notice of his intention to appeal within ten days.

Sec. 23. The person appealing shall procure and file in the court of common pleas a certified copy of the order of said probate court rejecting the will, and thereupon said appeal shall be deemed perfected.

Sec. 24. When a will shall be admitted to probate in the probate court, or court of common pleas on appeal, any person interested shall have a right to contest its validity by petition to the court of common pleas of the proper county, and upon filing such petition the clerk of the court of common pleas shall certify that fact to the probate court in which the will was admitted to probate.

Sec. 25. When a petition to contest the validity of a will is filed, as provided in the last section, the will, testimony and all papers relating thereto, shall be transmitted by the probate judge to the court of common pleas, and the judgment of the court of common pleas shall be certified by the clerk thereof, to the probate court. When the case is finally determined, the will shall be deposited in the probate court.

Sec. 26. All undertakings required or authorized by law to be given in the probate court shall be, on being accepted and approved by the probate judge, filed in his office.

Sec. 27. When notice of any proceedings in a probate court shall be required by law, or be deemed necessary by the probate judge, and the manner of giving the same shall not be directed by any statute, the probate judge shall order notice of such proceedings to be given to all persons interested therein, in such manner and for such length of time as he shall deem reasonable.

Sec. 28. All questions, except those arising in criminal actions and proceedings, unless otherwise provided by law, shall be determined by the probate judge, unless in his discretion he shall order the same to be tried by a jury, or referred, as provided in section two hundred and eighty-five of the Code of Civil Procedure of this State.

CHAPTER IV.

His Powers and duties in Criminal Actions.

Sec. 29. The several probate courts in this State shall not have jurisdiction of any crime, offence or misdemeanor, the punishment whereof is capital, or by imprisonment in the penitentiary, nor in any offence or misdemeanor, the original and exclusive jurisdiction of which is vested in justices of the peace, or in any mayor or magistrate of any town or city, nor of the crimes or offences mentioned in an act entitled "an act to punish certain crimes therein named," passed March 18, 1839, nor of the crimes or offences enumerated in the act entitled "an act to provide for the punishment of certain crimes therein named," passed February 27, 1834, nor for violations of the "act to prevent obstructing navigable streams therein named," passed March 1, 1831; but they shall have exclusive cognizance of all other crimes, offences or misdemeanors, unless otherwise provided by law.

Sec. 30. All recognizances which shall hereafter be taken by justices of the peace and other officers authorized to take the same, and all transcripts in criminal cases, within the jurisdiction of the probate court, shall be returned to the probate judge forthwith after the commitment of a person charged with an offence, or the taking of a recognizance for his appearance before the probate court.

Sec. 31. The second section of the act entitled "an act to punish betting on elections, and for other purposes," passed March 18, 1839, and the fifty second of "an act for the punishment of certain offences therein named," passed March 18, 1831, are repealed.

Sec. 32. All fines imposed by the probate judge for crimes, offences or misdemeanors, shall be paid into the county treasury so soon as the same shall be collected.

Sec. 33. The provisions of this act which relate to the exercise of criminal jurisdiction by the probate courts, shall not extend to any county in and for which a special criminal court is now, or may hereafter be established by law.

Sec. 34. In no prosecution for crimes, offences and misdemeanors, cognizance of which is by this act conferred upon probate courts, shall an indictment by a grand jury be required; but in all criminal cases brought before the probate court by filing a recognizance and transcript, as hereinbefore provided, the probate judge shall immediately give notice to the prosecuting attorney of his county, of the pendency of such cause; and such prosecuting attorney shall immediately file with said probate court an information setting forth briefly but distinctly, in plain and ordinary language, the charge against the accused person, on which charge such person shall be tried.

Sec. 35. Informations may be amended at any time before or during the trial, upon such terms as the court may direct; and in all cases where such amendment is material, the defendant may elect to continue the case.

Sec. 36. In the cases in which the probate court shall have criminal jurisdiction when the defendant is brought before the probate judge, the charge against him shall be distinctly read to him, and he shall be required to plead thereto.

Sec. 37 The defendant may plead,

1. Guilty:
2. Not guilty:
3. A former judgment of conviction or acquittal of the offence charged, which may be pleaded either with or without the plea of not guilty.

Sec. 38. Every plea shall be oral, and shall be entered on the minutes of the court in substantially the following form:

1. If the defendant plead guilty—"the defendant pleads that he is guilty of the offence charged against him:"
2. If he plead not guilty—"the defendant pleads that he is not guilty of the offence charged against him:"
3. If he plead a former conviction or acquittal—"the defendant pleads that he has already been convicted [or acquitted, as the case may be] of the offence charged against him, by the judgment of the court of ——— [naming it] ——— ordered at ——— [naming the place] on the ——— day of ———."

Sec. 39. The court may at any time before judgment, upon a plea of guilty, permit [it] to be withdrawn, and a plea of not guilty substituted.

Sec. 40. The plea of not guilty shall be deemed a denial of every material allegation in the information, and all matters of fact tending to establish a defence, may be given in evidence under the plea of not guilty.

Sec. 41. If the defendant refuse to answer the information, a plea of not guilty shall be entered.

Sec. 42. Upon a plea other than a plea of guilty, if the defendant do not demand a trial by jury, the probate judge shall proceed to try the issue.

Sec. 43. Before the court shall have heard any testimony upon the trial, the defendant may demand a trial by jury.

Sec. 44. When the defendant pleads guilty, or is convicted either by the probate judge or by a jury, the probate judge shall render judgment thereon, of fine or imprisonment, or both, according to law.

Sec. 45. When the defendant is acquitted, either by the probate judge or by a jury, he shall be immediately discharged; and if the probate judge certify in his minutes, that the prosecution was malicious or without probable cause, he may order the prosecutor to pay the costs of the proceedings, and enter up judgment therefor, which may be enforced by execution.

Sec. 46. The prosecuting attorney, if he be satisfied that the State will fail in the action, or if the prosecutor refuse to endorse the information when required so to do, may enter a *nolle prosequi* upon the information.

Sec. 47. The probate judge shall be paid for his services, in criminal cases, such sum as the commissioners of the county may allow, not less than one hundred dollars per annum in any county, nor more than three hundred dollars in any county containing less than fifty thousand inhabitants, which sum shall be payable at the county treasury; and the probate judge shall not receive any compensation by way of fees, for services in criminal business, in addition to the compensation herein provided for: *Provided, however*, the said probate judge shall tax, in all criminal cases, the fees to which he would otherwise be entitled, and all other costs of the proceedings, which shall, when collected, together with all fines, be paid into the county treasury.

Sec. 48. In the exercise of its criminal jurisdiction, the probate court shall be considered as holding monthly terms, each commencing on the first Monday of the month.

Sec. 49. One hundred and eight judicious persons, having the qualifications of electors, shall be annually selected in each county to attend as jurors in the probate court, in the manner prescribed by law for the selection of jurors to attend the court of common pleas; and such separate list shall be delivered to the probate judge by the trustee or judge of election at the same time the list for the court of common pleas is required to be delivered to the clerk of that court; and the persons named in the list delivered to the probate judge shall serve as jurors in the probate court under the provisions of this act: *Provided*, that prior to the selection and return of such jurors for the year 1853, as provided by law, said probate court shall cause to be summoned for each term the proper number of persons having the required qualifications, to serve as jurors for such term.

Sec. 50. The names of the persons selected to serve as jurors in the probate court shall be written on separate pieces of paper and deposited in a box to be provided at the expense of the county; and at least ten days before a term of the probate court, unless by a written entry in his minutes the judge shall dispense with or postpone the attendance of a jury, he shall, in the presence of the sheriff of the county, proceed to shake the box and draw therefrom six ballots, and shall forthwith deliver a list of the jurors drawn to the sheriff, deputy sheriff, or a constable of the county, with an endorsement thereon signed by him, with his name and seal of office to the following effect: "A. B., sheriff [or deputy sheriff, or constable,] of the county of ———, to which this is delivered, is required to summon the persons named in the within list to appear before me at ——— [naming the place] on [naming the day and hour,] to serve as jurors at a probate court to be then and there held. Dated at ———, the day of ———, 18——.

J. W. [SEAL.]
Probate Judge.

Sec. 51. The officer to whom the list is delivered, shall forthwith summon each of the jurors named therein, personally, or by leaving a written notice at his place of residence, with some person of suitable age and discretion. He shall also, at or before the time named therein, return the list to the probate judge, specifying the persons summoned, and the manner of service in respect to each of them.

Sec. 52. Each party shall be entitled to two peremptory challenges, and such other challenges for cause, as the probate judge may allow; and if six jurors do not attend or be not obtained, the judge may direct the sheriff or other officer in attendance to summon any of the bystanders or others, who may be competent, against whom no sufficient cause of challenge shall appear, to act as jurors. When six jurors appear, and are accepted, they shall constitute the jury. The failure to attend by any person when duly summoned, shall be punished as in like cases in the court of common pleas. And the jury, when so sworn or affirmed, shall hear the proofs of the parties, which must be delivered in public and in the presence of the defendant.

Sec. 53. The probate judge shall thereupon administer to the jury the following oath or affirmation: "You do solemnly swear" [or "you do solemnly affirm," as the case may be,] "that you [will] well and truly try the issue between the State of Ohio, and the defendant, and a true verdict give according to law and evidence. So help you God."

Sec. 54. The jury shall not be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless the probate judge, upon their disagreement, shall sooner discharge them; and when they shall have so agreed upon their verdict, they shall deliver it publicly to the probate judge, who shall enter it in his minutes.

Sec. 55. If the jury be discharged, as provided in the last section, the probate judge may proceed again to the trial in the same manner as upon the first trial, and so on until a verdict shall be rendered.

Sec. 56. The fees of the witnesses, officers and jurors, shall be certified to by the probate judge, and paid out of the county treasury, in the same manner as such fees are now paid for like services in the court of common pleas.

CHAPTER V.

General Provisions.

Sec. 57. The fees of witnesses, jurors, sheriffs, coroners and constables for all services rendered in the probate court, or by order of the probate judge, shall be the same as is provided by law for like services in the court of common pleas.

Sec. 58. In the exercise of the jurisdiction conferred by this act, the probate judge shall have the same powers, perform the same duties, and be governed by the same rules and regulations, as are provided by law for the courts of common pleas and the judges thereof, in vacation, so far as the same may be consistent with this and other acts now in force.

Sec. 59. The probate judge shall have power to keep order in his court, and to punish any contempt of his authority, in like manner as such contempt might be punished in the court of common pleas.

Sec. 60. He shall have power to issue all warrants, attachments, and other process, and all notices, commissions, rules, and orders, not contrary to law, that may be necessary and proper to carry into effect the powers granted to him.

Sec. 61. Sheriffs, deputy sheriffs, coroners and constables, shall, when required by the probate judge, attend the probate court, and shall serve and return all process directed to them by the probate judge, except as provided in section 17 of this act.

Sec. 62. The several clerks of the courts of common pleas of this State, are hereby required to transfer to the probate court of their respective counties, all records, files, papers and proceedings, appertaining to the exclusive jurisdiction of said probate courts, so far as the same are capable of being separated from the proper journals and records of the courts of common pleas, and shall also make out and certify full transcripts of any journal entries relating to the probate matters which may be pending in said courts on request of any probate judge, or person interested.

Sec. 63. Actions and proceedings now pending in the courts of common pleas and in the probate courts shall not be affected by the provisions of this act. They shall be conducted throughout, as if it had not been adopted, and no rights acquired shall be affected by it. "An act defining the jurisdiction and regulating the practice of probate courts," passed February 25, 1852, is repealed.

Sec. 64. And this act shall take effect and be in force from and after the first day of July, 1853.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
GEORGE REX,
President of the Senate, Protem.
March 14, 1853.

AN ACT

Of the Jurisdiction and Procedure before Justices of the Peace, and of the Duties of Constables in Civil Cases.

ARTICLE I.

Of the Jurisdiction of Justices of the Peace.

Be it enacted by the General Assembly of the State of Ohio:

Sec. 1. The jurisdiction of justices of the peace in civil cases shall, unless otherwise directed by law, be limited to the township wherein they may have been elected, and where they shall reside.

Sec. 2. Justices of the peace within and co-extensive with their respective counties, shall have jurisdiction and authority:

1. To administer any oath or affirmation authorized or required by law to be administered:
2. To take the acknowledgement of deeds, mortgages, and other instruments of writing:
3. To solemnize marriages:
4. To issue subpœna for witnesses and coerce their attendance in causes or matters pending before them, or other cause or matter whenever they may be required to take depositions:
5. To try the action for the forcible entry and detention, or the detention only, of real property:
6. To proceed against security for costs and bail for the stay of execution on their dockets:
7. To issue attachment and proceed against the goods and effects of debtors in certain cases:
8. To issue executions on judgments rendered by them:
9. To proceed against constables failing to make return, making false return, or failing to pay over money collected on execution issued by such justice:
10. To try the right of the claimant to property taken in execution or on attachment:
11. To act in the absence of the probate judge in the trial of contested elections of justices of the peace:

Sec. 3. No householder or freeholder resident of the county, shall be held to answer any summons issued against him by a justice, in a civil matter, in any township of such county other than the one where he shall reside, except in the cases following:

1. Where there shall be no justice of the peace for the township in which the defendant may reside; or
2. Where the only justice residing therein is interested in the controversy; or
3. Where he shall be related, as father, father-in-law, son, son-in-law, brother, brother-in-law, guardian, ward, uncle, nephew, or cousin, to either of the parties, and there is no justice in the township competent to try the cause. In the foregoing excepted cases, the action may be brought before any justice of an adjoining township of the same county, and the justice shall state on his docket the reason of his taking jurisdiction:
4. Where the summons is accompanied with an order to attach property, the jurisdiction shall be co-extensive with the county:
5. When two or more persons shall be jointly, or jointly and severally bound in any debt or contract, or otherwise jointly liable in the same action, and reside in different townships of the same county, the plaintiff may commence his action before a justice of the township in which any of the persons liable reside, except that in joint actions against the makers and endorsers of notes, due bills, or bills of exchange, the action shall be commenced in the township where one of the orignal makers, drawers, or endorsers reside, and if it be claimed by the plaintiff that an endorser endorsed the note or bill at the time it was made, and the jurisdiction depend thereon, before the justice shall take jurisdiction, the plaintiff, or some person for him, shall file an affidavit setting forth that fact:
6. In cases of trespass, to real or personal property, it shall be lawful to bring the action in the township where the trespass was committed, or in the township where the trespasser, or any one of several trespassers reside.

Sec. 4. Under the restrictions and limitations herein provided, justices of the peace shall have cognizance of any sum not exceeding one hundred dollars.

Sec. 5. When the balance claimed to be due on any open or unsettled account, or on any bill, note, or bond, shall be less than one hundred dollars, the party by whom such balance shall be claimed, may commence his action therefor before a justice of the peace; who shall have power, and he is hereby authorized to hear and determine the matters in controversy without regard to the amount of the original account or contract, and he may render judgment for any balance found due, not exceeding one hundred dollars, and if any plaintiff appeal from a judgment entered in his favor for such balance, and shall recover judgment for a sum greater than one hundred dollars, besides interest and costs, he shall not recover costs on such appeal.

Sec. 6. In actions founded upon an undertaking given in pursuance of law in any civil proceeding pending before a justice, such justice or his successor in office, shall have jurisdiction co extensive with his county, and where the sum due or demanded on such undertaking exceeds one hundred dollars, the jurisdiction shall be concurrent with the court of common pleas of the proper county.

Sec. 7. If any debtor shall appear before a justice of the peace without process, and confess that he is indebted to another, it shall be lawful for such justice, on the application of the creditor, to render judgment on such confession against the debtor for any sum not exceeding two hundred dollars.

Sec. 8. Whenever the office of coroner shall become vacant, in any county, by death, resignation, expiration of the term office, or otherwise, or where the coroner shall be absent from the county, or unable from sickness or other cause to discharge the duties of his office, or shall reside more than ten miles distant from the place where the dead body of any person supposed to have come to his or her death by violence or casuality, may be found, any justice of the peace of the county, shall be vested with all the powers, and shall perform all and singular the duties appertaining to the office of coroner, so far as it respects the power and duty of a coroner to hold inquisition over any dead body found as aforesaid. And when acting in the capacity of a coroner, every such justice shall be entitled to the same fees as are or may be allowed by law to coroners in such cases.

Sec. 9. Justices shall have jurisdiction in actions for trespass on real estate, where the damages demanded for such trespass shall not exceed one hundred dollars, and no claim of title to such real estate set up by the defendant, shall take away, or affect the jurisdiction hereby given.

Sec. 10. Justices shall not have cognizance of any action:

1. To recover damages for an assault, or assault and battery; or
2. In any action for malicious prosecution; or
3. In actions against justices of the peace, or other officers for misconduct in office, except in the cases provided for in this act; or
4. In actions for slander, verbal or written; or
5. In actions on contracts for real estate; or
6. In actions in which the title to real estate is sought to be recovered, or may be drawn in question, except actions of trespass on real estate, which are provided for in this act.

ARTICLE II.

Of the commencement of suits, service and return of process, and proceedings in arrest and attachment.

Sec. 11. Actions before justices of the peace are commenced by summons, or by the appearance and agreement of the parties without summons. In the former, the action is deemed commenced upon delivery of the writ to the constable to be served, and he shall note thereon the time of receiving the same. In the latter case, the action is deemed commenced at the time of docketing the case.

Sec. 12. When a guardian to the suit is necessary, he must be appointed by the justice, as follows:

1. If the infant be plaintiff, the appointment must be made before the summons is issued, upon the application of the infant if he be of the age of fourteen years or upwards; if under that age, upon the application of some friend.

The consent in writing of the guardian, to be appointed, and to be responsible for costs if he fail in the action, must be filed with the justice.

2. If the infant be defendant, the guardian must be appointed before the trial. It is the right of the infant to nominate his own guardian if the infant be over fourteen years of age and the proposed guardian be present and consent in writing to be appointed. Otherwise the justice may appoint any suitable person who gives such consent.

Sec. 13. The style of the summons shall be, "The State of Ohio, ——— county:" it shall be dated the day it is issued, signed by the Justice issuing the same, directed to a constable of the proper township, (except in case a person be deputed to serve it, in which case it shall be directed to such person,) must contain the name or names of the defendant or defendants, if known; if unknown, give a description of him or them, and command the officer or person serving the same to summon the defendant or defendants to appear before such justice at his office in ——— township, at a time specified therein, and must describe the plaintiff's cause of action in such general terms as to apprise the defendant of the nature of the claim against him, and there shall be endorsed on the writ the amount for which the plaintiff will take judgment if defendant fail to appear. If the defendant fail to appear, judgment shall not be rendered for a larger amount and the costs.

Sec 14. The summons must be returnable not more than twelve days from its date, and must, unless accompanied with an order to arrest, be served at least three days before the time of appearance, as follows:

1. By delivering a copy of the summons with the endorsement thereon, (certified by the constable, or person serving the same to be a true copy) to the defendant, or leaving the same at his usual place of residence.
2. An acknowledgment on the back of the summons, or the voluntary appearance of a defendant, is equivalent to service.

Sec. 15. A summons against a corporation may be served upon the president, mayor, chairman of the board of directors or trustees, or other chief officer; or, if its chief officer is not found in the county, upon its cashier, treasurer, secretary, clerk or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office, or usual place of business of such corporation, with the the person having charge thereof.

Sec. 16. Where the defendant is an incorporated insurance company, and the action is brought in a county, in which there is an agency thereof, the service may be upon the chief officer of such agency.

Sec. 17. Where the defendant is a foreign corporation, having a managing agent in this State, the service may be upon such agent.

Sec. 18. When the defendant is a minor under the age of fourteen years, the service must be upon him and upon his guardian, or father; or if neither of these can be found, then upon his mother, or the person having the care or control of the infant, or with whom he lives. If neither of these can be found, or, if the minor be more than fourteen years of age, service on him alone, shall be sufficient. The manner of service may be the same as in the case of adults.

Appearance.

Sec. 19. The parties are entitled to one hour in which to appear after the time mentioned in the summons for appearance, but are not bound to remain longer than that time, unless both parties have appeared, and the justice being present, is engaged in the trial of another cause. In such case, the justice may postpone the time of appearance until the close of such trial.

Arrest before judgment.

Sec. 20. An order for the arrest of the defendant in a civil action, shall be made by the justice of the peace before whom the same is brought, when there is filed in his office an affidavit of the plaintiff, his authorized agent or attorney, made before any person authorized by law to administer oaths, stating the nature of the plaintiff's claim, that it is just, the amount thereof as near as may be, and establishing one or more of the following particulars:

1. That the defendant has removed or begun to remove any of his property out of the county with intent to defraud his creditors:
2. That the defendant has begun to convert his property or any part thereof into money for the purpose of defrauding his creditors:
3. That he has property or rights in action which he fraudulently conceals:
4. That he has assigned, removed or disposed of, or has begun to assign, remove or dispose of his property or any part thereof, with intent to defraud his creditors:
5. That the defendant fraudulently contracted the debt or incurred the obligation for which suit is about to be brought.

The affidavit shall also contain a statement of the facts claimed to justify the belief in the existance of one or more of the above particulars.

Sec. 21. The order of arrest may be made to accompany the summons, or at any time afterwards before judgment.

Sec. 22. The order of arrest shall not be issued by a justice of the peace until there has been executed by the plaintiff, if a resident freeholder of the township where suit is brought, otherwise by one or more sufficient sureties of the plaintiff, a written undertaking to the effect that the plaintiff shall pay the defendant all damages which he may sustain by reason of the arrest, if the order be wrongfully obtained, not exceeding double the amount of the plaintiff's claim, stated in the affidavit.

Sec. 23. The order of arrest shall be addressed and delivered, with a copy of the affidavit, to a constable of the proper township; it shall state the names of the parties, the amount of the plaintiff's claim specified in the affidavit; be signed by the justice of the peace issuing it, and shall require the constable to arrest the defendant and bring him forthwith before said justice.

Sec. 24. The officer receiving said order, shall execute the same by forthwith arresting the defendant and delivering to him a copy thereof, and of the affidavit; and the defendant, so arrested, unless the claim of the plaintiff specified in the affidavit and costs of suit are paid, or unless discharged from custody by order of the plaintiff, shall be taken by such constable forthwith before the justice of the peace by whom said order of arrest was issued, and kept in custody until discharged by law.

Sec. 25. Upon the return of said order of arrest, executed in pursuance of the preceding section, the trial of said cause shall proceed, unless, for good cause shown, upon the application of either party, or at the instance of the justice himself, the same shall be continued as is provided for in other cases, before justices of the peace. And when the trial of said cause is continued for any period, the defendant, upon executing, with one or more sufficient surties, a written undertaking, to the effect that he will pay the amount of the judgment that may be rendered against him upon final determination of the action, or upon depositing in the hands of the justice of the peace the amount of money mentioned in the order of arrest, and the probable amount of costs of suit, shall be forthwith discharged from custody: *Provided, however*, that in no case shall the defendant be detained in the custody of the officer, when said continuance has been for a period of more than forty-eight hours, unless said continuance has been made at the instance, or with the consent of the defendant himself.

Arrest after judgment.

Sec. 26. On the judgment against the defendant in any civil suit before a justice of peace, when the defendant is in the custody of the officer as hereinbefore provided for, or if after judgment against him, there is filed in the office of such justice an affidavit of the plaintiff, his authorized agent or attorney, made before any person competent to administer an oath, stating the amount of said judgment remaining unpaid, and establishing one or more of the particulars mentioned in section twenty, said justice of the peace shall, unless otherwise ordered by the plaintiff, issue an execution and accompany the same with an order for the arrest of the defendant.

Sec. 27. Said order of arrest shall be addressed and delivered, with a copy of the affidavit, to the constable having said execution, and shall state the names of the parties, be signed by the justice issuing it, and state the amount of the judgment and costs unpaid, and shall require the officer, in case the same shall not be paid, or an amount of property of the defendant whereon to levy execution, sufficient to satisfy the same cannot be found in his township, to arrest the defendant, if not already in the custody of the officer, and deliver him to the sheriff of the proper county, to be committed by him to the jail of the county, and kept in custody until discharged by law: *Provided, however*, that no such order of arrest shall be issued until the undertaking required by the twenty-second section of this act shall have been executed.

Attachment.

Sec. 28. The plaintiff shall have an order of attachment against the property of the defendant in a civil action before a justice of the peace for the recovery of money, before or after the commencement thereof, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing the nature of the plaintiff's claim; that it is just; the amount which the affiant believes the plaintiff ought to recover; & the existence of some one or more of the following particulars:

1. That the defendant or one of the several defendants, is a foreign corporation, or is a non-resident of the county; or,
2. Has absconded with intent to defraud his creditors; or
3. Has left the county of his residence to avoid the service of a summons; or,
4. So conceals himself that a summons cannot be served upon him; or,
5. Is about to remove his property or a part thereof out of the county, with the intent to defraud his creditors: or,
6. Is about to convert his property or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or,
7. Has property or rights in action which he conceals; or,
8. Has assigned, removed or disposed of, or is about to dispose of his property or a part thereof, with intent to defraud his creditors; or,
9. Fraudulently contracted the debt or incurred the obligation for which suit is about to be, or has been brought. When the defendant is a foreign corporation or a non-resident of the county, the attachment shall not be granted unless the claim is for a debt or demand arising upon contract, judgment or decree.

Sec. 29. When the ground of attachment, is, that the defendant is a foreign corporation, or a non-resident of the county, the order of attachment may be issued without an undertaking, but in all other cases, the order of attachment shall not be issued by the justice until there has been executed in his office by one or more sufficient sureties of the plaintiff to be approved by the justice, an undertaking not exceeding double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay the defendant all damages which he may sustain by reason of the attachment, if the order be wrongfully obtained.

Sec. 30. The order of attachment may be made to accompany the summons or at any time afterwards, before judgment; it shall be addressed and delivered to any constable of the proper township, and shall require him to attach the goods, chattels, stocks, or interests in stocks, rights, credits, moneys and effects of the defendant in his county not exempt by law from being applied to the payment of the plaintiff's claim or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit, and the probable costs of the action, not exceeding fifty dollars.

Sec. 31. The return day of the order of attachment, when issued at the commencement of the action, shall be the same as that of the summons; when issued afterwards, it shall be executed and returned forthwith.

Sec. 32. When there are several orders of attachment affainst the same defendant, in the hands of the same officer, they shall be executed in the order in which they were received by said officer; he shall go to the place where the defendant's property may be found, and there, in the presence of two credible persons, declare that by virtue of said order, he attaches said property at the suit of such plaintiff; and the officer, with two householders of the county, who shall be first sworn or affirmed by the officer, shall make a true inventory and appraisement of all property attached, which shall be signed by the officer and said householders, and returned with the order. when the property can be come at, he shall take the same into his custody, and hold it subject to the order of the justice.

Sec. 33. The constable shall deliver the property attached to the person in whose possession it was found, upon the execution by such person, in the presence of the constable, an undertaking of the plaintiff, with one or more sufficient sureties resident in the county, to the effect that the parties to the same are bound in double the appraised value thereof, that the property or its appraised value in money shall be forthcoming to answer the judgment of the court in the action; but if it shall appear to the court that any part of said property has been lost or destroyed by unavoidable accident, the value thereof shall be remitted to the person or persons so bound.

Sec. 34. Different attachments of the same property may be made, and one inventory and appraisement shall be sufficient. The lien of the attachments shall be in the order in which they are served, and the subsequent attachments shall be served on the property as in the hands of the officer, and subject to the prior attachments. The justice who issued the attachment having the priority of lien, shall determine all questions as to the priority of liens on the property attached.

Sec. 35. If the order of attachment is made to accompany the summons, a copy thereof and the summons shall be served upon the defendant in the usual manner for the service of a summons, if the same can be done within the county, and when any property of the defendant has been taken under the order of attachment, and it shall appear that the summons issued in the action has not been, and cannot be served on the defendant in the county in the manner prescribed by law, the justice of the peace shall continue the cause for a period not less than forty nor more than sixty days. Whereupon the plaintiff shall proceed for three consecutive weeks to publish in some newspaper printed in the county, or if none be printed therein, then in some newspaper of general circulation in said county, a notice stating the names of the parties, the time when, by what justice of the peace, and for what sum said order was issued, and shall make proof of such publication to the justice, and thereupon said action shall be proceeded with the same as if said summons had been duly served.

Sec. 36. When the cause is continued as provided for in the preceding section, and it shall appear that any of the property taken under the attachment is live stock, or is of a perishable nature, the justice may issue his order directing the officer having custody thereof, to dispose of the same as upon execution, and the moneys realized therefrom shall be paid over to the justice and applied as other money realized from the sale of the property attached is applied.

Sec. 37. When the plaintiff, his agent or attorney, shall make oath in writing, that he has good reason to, and does believe, that any person or corporation, to be named and within the county where the action is brought, has property of the defendant (describing the same) in his possession, if the officer cannot come at such property, he shall leave with such garnishee, a copy of the order of attachment, with a written notice, that he appear before the justice, at the return of the order of attachment, and answer, as provided in section thirty-nine.

Sec. 38. The copy of the order and notice shall be served upon the garnishee, as follows: If he be a person, they shall be served upon him personally, or left at his usual place of residence; if a corporation, they shall be left with the president, or other head of the same, or the secretary, cashier or managing agent thereof.

Sec. 39. The garnishee shall appear before the justice in accordance with the command of the notice, and shall answer, under oath, all questions put to him touching the property of every description and credits of the defendant, in his possession or under his control, and he shall disclose truly, the amount owing by him to the defendant, whether due or not; and in the case of a corporation, any stock therein held by, or for the benefit of, the defendant, at or after the service of the notice.

Sec. 40. A garnishee may pay the money owing to the defendant by him, to the constable having the order of attachment, or into the court. He shall be discharged from liability to the defendant, for any money so paid, not exceeding the plaintiff's claim. He shall not be subjected to costs beyond those caused by his resistance of the claim against him; and if he disclose the property in his hands or the true amount owing by him, and deliver or pay the same according to the order of the court, he shall be allowed his costs.

Sec. 41. If the garnishee do not appear and answer, as required by section thirty-nine, the justice may proceed against him by attachment as for a contempt.

Sec. 42. If the garnishee appear and answer, and it is discovered on his examination, that, at or after the service of the order of attachment & notice upon him, he was possessed of any property of the defendant, or was indebted to him, the justice may order the delivery of such property and the payment of the amount owing by the garnishee, into the court; or may permit the garnishee to retain the property or the amount owing, upon the execution of an undertaking to the plaintiff by one or more sufficient sureties, to the effect, that the amount shall be paid, or the property forthcoming, as the court may direct.

Sec. 43. If the garnishee fail to appear and answer, or if he appear and answer, and his disclosure is not satisfactory to the plaintiff; or if he fail to comply with the order of the justice to deliver the property and pay the money owing, into court, or give the undertaking required in the preceding section, the plaintiff may proceed against him in an action, in his own name, as in other cases, and thereupon such proceedings may be had as in other actions, and judgment may be rendered in favor of the plaintiff, for the amount of the property and credits of every kind of the defendant in the possession of the garnishee, and for what shall appear to be owing by him to the defendant, and for the costs of the proceedings against the garnishee. If the plaintiff proceed against the garnishee by action, for the cause that his disclosure was unsatisfactory, unless it appear in the action that such disclosure was incomplete, the plaintiff shall pay the costs of such action. The judgment in this action may be enforced as judgments in other cases. When the claims of the plaintiffs in attachment are satisfied, the defendant in attachment may, on motion, be substituted as the plaintiff in the judgment.

Sec. 44. Final judgment shall not be rendered against the garnishee, until the action against the defendant in attachment has been determined; and if in such action judgment be rendered for the defendant in attachment, the garnishee shall be discharged and recover costs If the plaintiff shall recover against the defendant in attachment, and the garnishee shall deliver up all property, moneys and credits of the defendant in his possession, and pay all the moneys from him due as the court may order, the garnishee shall be discharged, and the costs of the proceedings against him shall be paid out of the property and moneys so surrendered, or as the court may think right and proper.

Sec. 45. If judgment be rendered in the action for the defendant, the attachment shall be discharged and the property attached or its proceeds, shall be returned to him.

Sec 46. If judgment be rendered for the plaintiff, it shall be satisfied as follows: So much of the property remaining in the hands of the officer, after applying the moneys arising from the sale of perishable property, and so much of the personal property, if any, whether held by legal or equitable title, as may be necessary to satisfy the judgment, shall be sold by order of the justice, under the same restrictions and regulations, as if the same had been levied on by execution; and the money arising therefrom, with the amount which may be recovered from the garnishee, shall be applied to satisfy the judgment and costs. If there be not enough to satisfy the same, the judgment shall stand, and execution may issue thereon, for the residue, in all respects as in other cases. Any surplus of the attached property, or its proceeds, shall be returned to the defendant.

Sec. 47. The justice may order the constable to repossess himself, for the purpose of selling it, of any of the attached property, which may have passed out of his hands without having been sold or converted into money; and the constable shall, under such order, have the same power to take the property, as he would have under an order of attachment.

Sec. 48. If any of the property which has been attached, be claimed by any person other than the defendant, the claimant may have the validity of such claim tried, and such proceedings must be had thereon, with like effect, as in case the property had been seized upon execution issued by the justice and claimed by a third person.

Sec. 49. Where several attachments are executed on the same property, or the same persons are made garnishees, the justice issuing the first order served on the motion of any of the plaintiffs, may determine the amounts and priorities of the several attachments, and the proceeds shall be applied accordingly.

Sec. 50. The officer shall return upon every order of attachment what he has done under it. The return must show the property attached, and the time it was attached. When garnishees are served, their names and the time each was served must be stated. The officer shall also return with the order all undertakings given under it.

Sec. 51. An order of attachment binds the property attached from the time of service, and the garnishee shall stand liable to the plaintiff in attachment for all property, moneys & credits in his hands, or due from him to the defendant from the time he is served with the written notice mentioned in section thirty-seven, but when property is attached in the hands of a consignee or other person having a prior lien, his liens thereon shall not be affected by the attachment.

Sec. 52. If the defendant, or other person in his behalf, at any time before judgment, cause an undertaking to be executed to the plaintiff by one or more sureties resident in the county, to be approved by the justice in double the amount of the plaintiff's claim to be stated in his affidavit, to the effect, that the defendant shall perform the judgment of the justice, the attachment in such action, shall be discharged, and restitution made of any property taken under it, or the proceeds thereof; such undertaking shall also discharge the liability of a garnishee in such action for any property of the defendant in his hands.

Sec. 53. If in any case where an order of attachment has been issued by a justice of the peace, it shall appear from the return of the officer, and from the examination of the garnishee, that no property, moneys, rights, credits or effects of the defendant has been taken under the attachment, but that the defendant is the owner of an interest in real estate in the county, the justice before whom said action is pending, shall, at the request of the plaintiff, forthwith certify his proceedings to the court of common pleas of the proper county, and thereupon the clerk of said court shall docket said cause, and the action shall be proceeded with in said court in all respects as if the same had originated therein.

ARTICLE III.

Bill of Particulars.

Sec. 54. In all cases before a justice, the plaintiff, his agent or attorney, shall file with such justice a bill of the particulars of his demand, and the defendant, if required by the plaintiff, his agent or attorney, shall file a like bill of the particulars he may claim as a set-off, and the evidence on the trial shall be confined to the items set forth in said bills.

Sec. 55. The bills of particulars must state in a plain and direct manner, the facts constituting the cause of action, or the claim to be set-off.

Sec. 56. The bill of particulars may be amended at any time before the trial or during the trial, or upon appeal to supply any deficiency, or omission in the items, when by such amendment, substantial justice will be promoted. If the amendment be made at the time of, or during the trial, and it be made to appear to the satisfaction of the justice by oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment must be granted. The justice may also in his discretion, require as a condition of an amendment, the payment of costs to the adverse party, to be fixed by the justice; but such payment cannot be required, unless an adjournment is made necessary by the amendment.

ARTICLE IV.

Change of the Place of Trial.

Sec. 57. If on the return of process, or at any time before trial shall have commenced, it shall be made satisfactorily to appear to the justice of the peace before whom any cause is instituted or is pending for trial, by the affidavit of either of the parties in the case:

1. That such justice is a material witness for either party; or,
2. If a jury be demanded by the adverse party, then that he cannot as he verily believes have a fair and impartial trial in such township, on account of the bias or prejudice of the citizens thereof.

Sec. 58. If the place of the trial be changed, on account of the justice being a material witness in the cause, such cause shall be transferred for trial before some other justice of the peace of the same township, if there be one there legally competent to try such cause; if there be no such justice within such township, or if such change be granted on account of the bias or prejudice of the citizens of such township against such party, or because the adverse party has an undue advantage over him therein, the case shall be taken to some justice in an adjoining township of the same county.

Sec. 59. The justice granting such change, shall deliver or transmit the papers in the cause, together with a certified transcript of the proceedings before him, to the justice to whom such change may be granted, who shall proceed therein, and have the same jurisdiction, powers, and duties, in all respects whatever, as if such suit had been originally instituted before him.

Sec. 60. Before any such change shall be allowed, the costs as specified in the next following section, shall be paid by the party applying for such change, or he shall have confessed a judgment therefor before the justice granting the change.

Sec. 61. When such change is at the instance of the plaintiff, he shall be taxed with all the costs which have accrued, and which shall accrue in the cause until such transcript and papers shall be delivered to the justice to whom such cause is removed for trial, and when on the application of the defendant, he shall be taxed with the costs which have accrued for issuing subpœnas for witnesses and service thereof, witness fees, and costs of the justice for transferring the cause to the docket of the other justice.

ARTICLE V.

Adjournments.

Sec. 62. Upon the return day, if a jury be required, or if the justice be actually engaged in other official business, he may adjourn the trial without the consent of either party as follows:

1. Where a party is in attendance, who is not resident of the county, or where the defendant is in attendance under arrest, the adjournment not to exceed forty-eight hours; and the defendant, if under arrest, to continue in custody.
2. In other cases, not to exceed eight days, unless by consent of parties. If the trial be not adjourned, it must take place immediately upon the return of the summons.

Sec. 63. The trial may be adjourned upon the application of either party, without the consent of the other, for a period not exceeding thirty days as follows:

The party asking the adjournment must, if required by his adversary, prove by his own oath, or otherwise, that he cannot for want of material testimony which he expects to procure, safely proceed to trial.

Sec. 64. An adjournment may be had either at the return day, or at any subsequent time to which the cause may stand adjourned, on the application of either party, for a period longer than thirty days, but not to exceed ninety days from the time of the return of the summons upon compliance with the provisions of the preceding section, and upon proof by the oath of the party, or otherwise, to the satisfaction of the justice that such party cannot be ready for trial before the time to which he desires an adjournment for the want of material evidence, describing it, that the delay has not been made necessary by any act, or negligence on his part since the action was commenced, and that he expects to procure the evidence at the time stated by him.

ARTICLE VI.

Witness.

Sec. 65. Any justice may issue subpœnas to compel the attendance of witnesses to give evidence on any trial pending before himself, or for the purpose of taking depositions, or to perpetuate testimony.

Sec. 66. A subpoena may be served by a constable or any other person, and shall be served by reading the same or stating the contents thereof to the witness, or by leaving a copy thereof at his usual place of residence.

Sec. 67. When not served by a constable or some person deputed for that purpose by a justice, no fees shall be charged in the suit for serving it

Sec. 68. If any witness having been subpœnaed, attend and be not examined by either party, the costs of such witness shall be paid by the party ordering the subpoena, unless the adverse party, by confessing the matter or otherwise, render unnecessary the examination of such witness.

Sec. 69. Whenever it shall appear to the satisfaction of a justice, by proof made before him, that any person has been duly served with a subpoena to appear and give testimony before him in any matter in which he has authority to require such witness to appear and testify, that his testimony is material and that he refuses or neglects to attend as such witness in conformity with such subpoena, the justice shall issue a warrant to arrest the delinquent for the purpose of compelling his attendance and punishing his disobedience.

Sec. 70. When the person arrested is brought before the justice, or when a person in attendance refuses to testify as a witness, and no valid excuse be shown, the justice may impose a fine on him not exceeding five dollars. An entry of such fine stating the reason therefor, must be made by the justice in his docket, and thereupon shall have the effect of a judgment in favor of the State of Ohio against the delinquent, and may be enforced against his person or property.

Sec. 71 Every person subpœnaed as aforesaid, and neglecting to appear or refusing to testify, shall also be liable to the party in whose behalf he shall have been subpoenaed, for all damages which such party shall sustain by reason of such delinquency.

DEPOSITIONS.

Sec. 72. Depositions may be taken to be read in any cause pending before a justice of the peace, in like manner and subject to the same restrictions and rules of law as in cases pending in the court of common pleas.

ARTICLE VII.

The Trial and its Incidents.

Sec. 73. At the time appointed for trial, if no jury shall have been demanded by either party, the justice shall proceed to try the action, shall hear the proofs & determine the cause according to law and the right.

Sec. 74. Where parties agree to enter without process before a justice, any action of which such justice has cognizance, such justice shall enter the same on his docket and proceed to trial, judgment and execution, in all respects in the same manner as if summons had been issued, served and returned

JURY.

Sec. 75. In all civil actions after an appearance of the defendant, and before the court shall proceed to enquire into the merits of the cause, either party may demand a jury to try the action, which jury shall be composed of six good and lawful men, having the qualifications of electors, unless the parties shall agree on a less number.

Sec. 76. When a jury is demanded the trial of the case must be adjourned until a time fixed for the return of the jury. If neither party desire an adjournment, the time must be determined by the justice, and must be on the same day, or within the next two days; the jury must be immediately selected, as herein provided.

Sec. 77. The justice shall write in a pannel, the names of eighteen persons, citizens of the township, or if the action be one in which the jurisdiction is not limited to the township, then citizens of the county, from which the defendant, his agent or attorney, shall strike one name, the plaintiff, his agent or attorney, one, and so alternately until each shall have stricken names, and the remaining six shall constitute the jury to try such case, and if either party neglect, or refuse to aid in striking the jury as aforesaid, the justice shall strike the same in behalf of such party.

Sec. 78. The justice thereupon shall issue a summons for the jury, in which the following form shall be observed in substance as near as practicable:

The State of Ohio, ——— County:
To ——— Constable of ——— township:
You are hereby commanded to summon ——— to appear before me at ——— in said township, on the ——— day of ———, A. D. ———, at ——— o'clock in the ——— noon, to serve as a Juror in a case pending before me, then and there to be tried. And this they shall in nowise omit.
And have you then there this writ with your doings thereon.
Given under my hand this — day of — A. D. —
———————
Justice of the Peace.

Sec 79. The constable shall serve such summons by a personal service thereof, and return the same endorsed with the names of the persons summoned, at the time appointed for the trial of the cause.

Sec. 80. Jurors for neglecting or refusing to attend when properly summoned, or refusing to serve when in attendance, shall be liable to the like penalty, and be proceeded against in the same manner, as witnesses who fail to attend or refuse to testify.

Sec. 81. The constable shall be in attendance on the court at and during the progress of the trial, and if from challenge or other cause the pannel shall not be full, he may fill the same in the same manner as is done by the sheriff in the Court of Common Pleas.

Sec. 82. When a jury shall be in attendance and the cause shall be continued, the jurors must attend at the time and place appointed for trial without further notice.

Sec. 83. If either party object to the competency of a juror, the question thereon must be tried in a summary manner by the justice, who may examine the juror or other witnesses under oath.

Sec. 84. The Justice shall administer an oath or affirmation to the jury, well and truly to try the matter in difference between the parties and a true verdict give according to the evidence.

Sec. 85. After the jury shall have been sworn they shall sit together and hear proofs and allegations of the parties, and after hearing the same shall be kept together in some convenient place under the charge of a constable until they have agreed upon their verdict, or shall be discharged by the justice.

Sec. 86. When the jurors shall have agreed upon their verdict they shall deliver it to the justice publicly, who shall enter it upon his docket.

Sec. 87. Whenever the justice shall be satisfied that a jury sworn in any cause before him cannot agree in their verdict after having consulted upon it a reasonable time, he may discharge them and continue the cause, and may, if required by either party, proceed to strike another jury as hereinbefore provided; the cause shall be continued to such time as the justice thinks reasonable, unless the parties or their attorneys agree on a longer or shorter time, or unless they may agree that the justice may render judgment on the evidence already heard before him.

Sec. 88. It shall be lawful for the justice before whom a cause has been tried, on motion, and being satisfied that the verdict was obtained by fraud, partiality, or undue means, at any time within four days after the entering of judgment, to grant a new trial and he shall set a time for the new trial, of which the opposite party shall have at least three days notice.

Sec. 89. The opposite party shall also have a reasonable notice of such motion for a new trial, if the same is not made on the day of the former trial, and in the presence of such party, such notice to be given by the applying party. If the new trial shall be granted, or the jury be unable to agree, the proceedings shall be in all respects as upon the return of the summons.

Sec. 90. If either the plaintiff or defendant, in their bill of particulars, claim more than twenty dollars, the case may be appealed to the court of common pleas; but if neither party demand a greater sum than twenty dollars, and the case is tried by jury, there shall be no appeal.

Sec. 91. If on appeal by the plaintiff, he shall not recover a larger sum than twenty dollars, exclusive of interest since the rendition of the judgment before the justice, he shall be adjudged to pay all costs in the court of common pleas, (including a fee of five dollars, to defendant's attorney,) and in case the defendant shall demand a set-off greater than twenty dollars and he appeal, and do not recover twenty dollars, he shall in like manner pay all costs in the appellate court, including a like fee to plaintiff's attorney.

Sec. 92. Upon the verdict being delivered to the justice, and before judgment being rendered thereon, each juror shall be entitled to receive fifty cents at the hands of the successful party, which shall be taxed in the costs against his adversary. When the jury shall be unable to agree upon a verdict, the same compensation shall be paid them by the party calling the jury, and the same shall be taxed in the cost bill against the losing party.

Sec. 93. In all cases which shall be tired by a jury before a justice of the peace, either party shall have the right to except to the opinion of the justice upon any question of law arising during the trial of the cause; and when either party shall allege such exception, it shall be the duty of the justice to sign and seal a bill, containing such exception, if truly alleged, with the point decided, so that the same may be made part of the record in the cause.

ARBITRATIONS.

Sec. 94. At any time before trial and judgment rendered, the plaintiff and defendant, consenting thereto, may have the cause submitted to the arbitrament of three disinterested men who shall be chosen by the parties; and if the abitrators be present, they shall hear and determine the cause on oath or affirmation, to be administered by the justice. But if the persons chosen as arbitrators be not present, the justice shall issue a summons for them to attend at the time and place appointed for the trial, which shall be served by any constable, or the parties, as they may agree. The fees of arbitrators shall be the same as that paid to jurors.

Sec. 95. When the arbitrators shall convene & be qualified, they shall proceed to hear and determine the cause, and make out their award in writing, which shall be vaild when signed by any two of them, and return the same to the justice; who shall thereupon enter such award on his docket, and thereon render judgment and issue execution, as in other cases.

Sec. 96. Every judgment rendered on such award, shall conclude the rights of the parties thereto, unless it shall be made to appear to the justice of the peace who rendered such judgment, and within ten days from the rendition of the same, or to the court of common pleas, on appeal, that such award was obtained by fraud, corruption, or other undue means.

Sec. 97. Whenever satisfactory proof shall be adduced before such justice, within the period aforesaid, that such award was obtained by fraud, corruption, or other undue means, it shall be competent for such justice to set aside such award and his judgment thereon rendered, and thereupon proceed to such final trial and judgment, as if such award had never been made.

Sec. 98. But no appeal shall be allowed to the court of common pleas, from a judgment of a justice of the peace rendered on an award, unless the party praying such appeal shall file with such justice an affidavit, therein stating that he or she does verily believe that such award was obtained by fraud, corruption, or other undue means.

Sec. 99. And if on appeal from the judgment of a justice rendered on any such award, the court of common pleas shall be satisfied that the award was obtained by fraud, corruption, or other undue means, such court shall set aside the award, and proceed to hear and determine the cause on the merits, as in other cases of appeal.

Sec. 100. But if the said court shall be of opinion that the award was not obtained by fraud, corruption, or other undue means, they shall render judgment thereon, and for the costs of suit, and award execution as in other cases.

Trial of the right of property levied on or Attached.

Sec. 101. When a constable shall levy on or attach property, claimed by any person or persons, other than the party against whom the execution or attachment issued, the claimant or claimants shall give three days notice, in writing, to the plaintiff or his agent, or if not found within the county, then such notice shall be served by leaving a copy thereof at his usual place of abode in such county, of the time and place of the trial of the right to such property, which trial shall be had before some justice of the township at least one day prior to the time appointed for the sale of such property.

Sec. 102. If on the trial the justice shall be satisfied from the proof that the property, or any part thereof, belongs to the claimant or claimants, such justice shall render judgment against the party in whose favor such execution or attachment issued for the costs, and issue execution therefor, and shall, moreover, give a written order to the constable who levied on, or who may be charged with the duty of selling such property, directing him to restore the same, or so much thereof as may have been found to belong to such claimant or claimants.

Sec. 103. But if the claimant or claimants fail to establish his or their right to such property or to any part thereof, the justice shall render judgment against such claimant or claimants for the costs that have accrued on account of such trial, and issue execution therefor, and the constable shall not be liable to the claimant or claimants for the property so taken.

ARTICLE VIII.

Judgments.

Sec. 104. Judgment that the action be dismissed without prejudice to a new action may be entered with costs, in the following cases.

1. When the plaintiff voluntarily dismisses the action before it is finally submitted.
2. When he fails to appear at the time specified in the summons, or upon adjournment, or within one hour thereafter.
3. When it is objected at the trial and appears by the evidence that the action is brought in the wrong township.

Sec. 105. If the plaintiff fail to appear at the return day of the summons, and his bill of particulars be not filed and evidence before the justice, the action must be dismissed. If the defendant fail to appear at the return day of the summons, or if either party fail to attend at the time to which a trial has been adjourned, or fail to make the necessary bill of particulars, or fail in the proof on his part, the cause may proceed at the request of the adverse party, and judgment must be given in conformity with the bills of particulars and proofs.

Sec. 106. When judgment shall have been rend-