

BY AUTHORITY.

AN ACT to establish Courts, and prescribe their powers and duties.

(CONTINUED FROM OUR LAST.)

§ 102. If a sheriff or constable levy an execution on any goods or chattels, and any person, other than the defendant in execution, claim such property, the sheriff or constable shall give notice forthwith to some justice of the same county; in which notice he shall set forth the name of the plaintiff and defendant in execution, and the name of the person claiming, and also a schedule of the property claimed.

§ 103. It shall be the duty of such justice, immediately upon the receipt of such notice, to issue a jury summons, directed to any sheriff or constable of the county, commanding him to summon six disinterested persons, having the qualifications of electors, to appear before him at a time therein mentioned, which shall not be more than three days after the date of said summons, to try and determine the right of property between the defendant in the execution and the person so claiming.

§ 104. The justice shall also give notice to the plaintiff in the execution, his agent or attorney, if any, and the said notice shall be directed to the sheriff or constable, and served and returned in the same manner as a summons.

§ 105. The justice shall administer the following oath to the jurors: "You, and each of you, do solemnly swear, (or affirm,) that you will well and truly try and determine the right of property between — claimant, and — defendant in execution, to the goods and chattels in controversy, and a true verdict give according to evidence given before you;" and the jury so sworn shall be the judges of the law and the fact.

§ 106. If the jury find the goods and chattels, or any part of them, to be the property of the defendant in execution, the verdict shall, as against the claimant, justify the officer in selling such goods and chattels, as the jury have so found. If the verdict is for the claimant, the plaintiff in the execution shall pay the costs in the trial; if it is against the claimant, the costs shall be paid by such claimant, and the jurors, sheriff or constable, and witnesses, shall be entitled to like fees as for other services in a justice's court.

§ 107. The sheriff or constable of the county shall receive all money that may be tendered to him in payment of any judgment obtained before any justice of such county, and shall give the person paying the same a receipt therefor, in which shall be specified on what account the same was paid; and the payment shall be valid against the judgment; and upon the production of the receipt to the justice, shall be credited thereto. The person entitled to the money paid, shall have the like remedies against the sheriff or constable and his securities for the recovery thereof, as if such money was collected by the sheriff or constable in execution.

§ 108. In the following cases the justice shall, upon the demand of the party injured, or his agent, issue a warrant against any sheriff or constable to whom any execution has been delivered, or who has received any money upon any judgment of such justice, whether with or without execution:

First.—If the sheriff or constable fail to make return of the execution according to the command thereof.

Second.—If he make a false return.

Third.—If he fail to have any money by him collected on execution before the justice on the return day thereof, ready to be paid over to the persons entitled thereto, or the receipts of such persons therefor.

Fourth.—If he fail to pay over, upon demand, to the person entitled thereto, or his agent, any money by him received in payment of any judgment.

§ 109. Such warrant shall require the sheriff or constable, forthwith, to appear before the justice, and show cause why execution should not issue against him for the amount due upon the execution, or for the amount received by him upon the judgment, according to the nature of the case.

§ 110. If the sheriff or constable fail to appear, or appearing, fail to show good cause to the contrary, the justice shall render judgment against him for the amount due by the execution, or for the amount received by him without execution, according to the nature of the case, together with interest thereon at the rate of 100 per cent. per annum from the time such execution ought to have been returned,

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or from the time such money ought to have been had before the justice, ready to be paid over to the person entitled thereto, or from the time the money received on a judgment without execution was demanded by the party entitled thereto, or his agent, upon such judgment an appeal may be had, as in other cases.

§ 111. The party injured may proceed in the manner above directed, or may institute a suit against the sheriff or constable and his securities on his official bond; and in such suit the plaintiff shall be entitled to like recovery as upon a summons against the sheriff or constable, and suits on such bond may be brought before a justice of the peace, when the amount claimed does not exceed the jurisdiction of a justice of the peace.

ARTICLE IX.

Of appeals and proceedings thereon in the county court.

§ 112. Any person aggrieved by any judgment rendered by a justice of the peace, may in person, or by his agent, make his appeal therefrom to the county court of the same county where the judgment was rendered.

§ 113. But no appeal can be taken, unless within ten days after the rendering of such judgment application shall have been made to the justice by the party aggrieved, to set the same aside, and such application shall have been refused.

§ 114. No appeal shall be allowed in any case unless the following requisites be complied with:

First.—The appeal must be made within seven days after the judgment is rendered; or, when the judgment is by default, within ten days after the refusal of the justice to set aside the default and grant a new trial.

Second.—The applicant, or some person for him, together with one or more securities, to be approved by the justice, must, within the time prescribed in the first clause of this section, enter into a recognizance before the justice, to the adverse party, in a sum sufficient to secure such judgment and the costs of the appeal—conditioned, that the applicant will prosecute his appeal with due diligence to a decision; and that if, on such appeal, the judgment of the justice be affirmed, or if, on trial anew, in the county court, judgment be given against him, he will pay such judgment; and if his appeal be dismissed, he shall pay the judgment of the justice, together with the costs of the appeal.

§ 115. Such recognizance shall be signed by the parties entering into the same, and be attested by the justice, and be in form as follows: "We, the undersigned, — and —, acknowledge ourselves indebted to —, in the sum of — dollars, to be void upon this condition: Whereas — has appealed from the judgment of —, a justice of the peace, in an action between —, plaintiff, and —, defendant; now if, on such appeal, the judgment of the justice be affirmed, or if, on the trial anew in the county court, judgment be given against the appellant, and he shall satisfy such judgment; or if the appeal be dismissed, and he shall pay the judgment of the justice, together with the costs of appeal, the recognizance shall be void.

C. D.

"Attest: G. H., Justice. E. F."

§ 116. Upon an appeal being made according to the foregoing provisions, the justice shall allow the same, and make an entry of such in his docket; and all further proceedings on the judgment before the justice, shall be suspended by the allowance of the appeal, and if, in the meantime, execution shall have been issued, the justice shall give to the appellant a certificate that such appeal has been allowed.

§ 117. On such certificate being presented to the sheriff or constable holding the execution, he shall forthwith release the property of the defendant that may have been taken in execution.

§ 118. On or before the first day of the term of the county court, next after the

appeal shall have been allowed, the justice shall file, in the office of the clerk of said court a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the suit, and filed with the justice.

§ 119. Upon the return of the justice being filed in the clerk's office, the court shall be possessed of the cause, and shall proceed to hear, try, and determine the same anew, without regarding any error, defect or other imperfection in the proceedings of the justice.

§ 120. Upon an appeal being made, the county court may, by rule and attachment, compel a return by the justice of his proceedings in the suit, and of the papers required to be by him returned.

§ 121. If a justice fail to allow an appeal in a cause where the same ought to have been allowed, the county court, on such fact satisfactorily appearing, may, by rule and attachment, compel the justice to allow the same, and to return his proceedings in the suit, together with all papers required to be returned by him.

§ 122. Whenever the court is satisfied that the return of the justice is substantially erroneous or defective, the court may, by rule and attachment, compel him to amend the same.

§ 123. No appeal allowed by a justice shall be dismissed on account that there is no recognizance, or that the recognizance given is defective, if the appellant will, before the motion to dismiss is determined, enter before the county court into such recognizance as he ought to have entered into before the allowance of the appeal, and pay all costs that shall be incurred by reason of such defect or omission.

§ 124. All appeals allowed ten days before the first day of the term of the county court next after the appeal allowed, shall be determined at such term, unless continued for cause.

§ 125. If the appeal be not allowed on the same day on which judgment is rendered, the appellant shall give the appellee at least ten days notice in writing, before the sitting of the court at which the cause is to be determined, stating the fact that an appeal has been taken from the judgment therein specified. The notice may be served in like manner as an original writ of summons, and when the appellee does not reside in the county, and has no agent in the suit therein, the service may be by leaving a copy of such notice with the justice.

§ 126. If the appellant fails to give notice of his appeal in a cause where such notice is required, the cause shall, on the application of the appellee, be continued as a matter of course, until the succeeding term, at the costs of the appellant, but no appeal shall be dismissed for want of such notice.

§ 127. The same cause of action and no other that was tried before the justice, shall be tried in the county court upon the appeal, and no set-off shall be pleaded in the county court that was not pleaded before the justice, if the summons was served on the person of the defendant.

§ 128. In all cases of appeals from a justice's court, if the judgment of the justice be affirmed, or if on a trial anew in the county court, the judgment be against the appellant, such judgment shall be rendered against him and his securities in the recognizance for the appeal.

§ 129. If, upon execution being issued upon such judgment, the principal shall not pay such execution, and the officer cannot find sufficient property of such principal to satisfy the same, such execution shall be enforced against the securities, and the officer shall specify in his return by whom the money was paid and the time thereof.

§ 130. After the return of an execution, satisfied in whole or in part out of the property of the security, such security shall be entitled to a judgment, upon motion, against

the principal for the amount so paid by him, together with interest at 12 per cent. per annum, from the date of payment; such motion must be made one year after the return day of the execution, and the return of the officer shall be evidence, upon hearing such motion of the facts therein stated.

ARTICLE X.

Regulating the action of replevin.

§ 131. Whenever any goods or chattels are wrongfully taken or wrongfully detained, (the value of which shall not exceed \$150,) an action of replevin may be brought by the person having a right to the immediate possession for the recovery thereof, and for the recovery of the damage sustained, by reason of the unjust caption or detention, except as hereinafter specified.

§ 132. No cross replevin or replevin for property in the possession of an officer, by virtue of any legal authority, shall be brought.

§ 133. No writ of replevin shall be issued, unless the plaintiff file with the justice the affidavit of himself, or of some credible person, stating that the plaintiff is lawfully entitled to the property mentioned in the declaration, that the same was wrongfully detained by the defendant, and that the plaintiff's right of action has accrued within one year.

§ 134. The writ of replevin shall command the officer to whom it is directed, to cause (if the plaintiff give the security required by law,) the goods and chattels mentioned in the declaration to be delivered to the plaintiff without delay, and to summon the defendant to appear before the justice on the return day of the writ, and answer the plaintiff in the premises.

§ 135. No writ of replevin shall be executed until the plaintiff enter into a bond to the officer to whom the writ is directed, with sufficient security, in double the value of the property, to be ascertained by the officer—conditioned, that he will prosecute the suit with effect, and without delay make return of the property, if return thereof be adjudged, and keep harmless the officer touching the replevin of the property.

§ 136. Upon the receipt of the writ and the bond required by this article, the officer shall, without delay, execute the writ, by causing the property mentioned in the declaration to be delivered to the plaintiff, and by summoning the defendant according to the tenor of the writ.

§ 137. The defendant may plead that he is not guilty of the charge alleged against him, and this plea shall put in issue not only the right of the plaintiff to the possession of the property mentioned in the declaration, but also the wrongful taking and detention thereof.

§ 138. If a plaintiff in replevin fail to prosecute his suit with effect, and without delay, the justice or jury shall assess the value of the property taken, and the damages for the use of the same, from the time of suing the same, until return thereof shall be made as in other like cases.

§ 139. In such case the judgment shall be against the plaintiff and his securities, that he return the property taken, or pay the value so assessed, and also pay double the damages assessed for the detention of property.

§ 140. If an officer is injured by reason of taking any property by virtue of a writ of replevin, by the direction of the plaintiff, he may maintain an action therefor upon the bond by him taken.

§ 141. If the plaintiff violate the condition of this bond, the defendant may sue thereon in the name of the officer to the use of said defendant.

§ 142. If the officer fail to take a bond of the plaintiff and return the same as is required by this article, or if the bond taken be adjudged insufficient by the justice on the return of the writ, and the plaintiff fail to perfect it, if required, the officer shall be liable to the party injured for all damages by him sustained, to be recovered by action of debt on the officer's official bond, or by action on the case.

ARTICLE XI.

Of attachments.

§ 143. Creditors whose demands amount to not more than one hundred and fifty dollars, and not less than five dollars, may sue their debtors by attachment before a justice of the peace, in the following cases:

First.—Where the debtor is not resident of nor residing within the county.

Second.—Where the debtor has absconded or concealed himself, or so absented himself from his usual place of abode, that the ordinary process of law cannot be served upon him. [CONTINUED TO FOURTH PAGE.]