

[CONTINUED FROM FIRST PAGE.]

Third.—Where the debtor is about to remove his property out of the county, so as to hinder and delay his creditors.

Fourth.—Where there is good reason to believe that the debtor is about, fraudulently, to remove, convey or dispose of his property or effects, so as to hinder or delay his creditors.

§ 144. Any such creditor wishing to sue his debtor by attachment, may apply to any justice of the peace who would have jurisdiction of the debt if the suit was brought in the common form, and if the cause of action be a bond or note, shall file the same with the justice; and if it be any other kind of contract, shall file with the justice a plain intelligible account or statement thereof, together with the affidavit of himself or some other credible person, stating that the defendant is justly indebted to him, after allowing all just offsets and credits, in a sum above five dollars, showing the amount in the affidavit, and also stating the belief of the affiant of the existence of one or more of the facts, which, under the first section of this article, would entitle the plaintiff to sue by attachment, and thereupon the justice shall issue a writ of attachment against the property and effects of the defendant.

§ 145. Writs of attachment shall be issued and returned in like time and manner as ordinary writs of summons, and when the defendant is summoned to answer, the like proceedings shall be had between him and the plaintiff as on ordinary actions on contracts, and a general judgment may be rendered for or against the defendant.

§ 146. The manner of serving writs of attachment shall be as follows:

First.—The writ shall be served upon the defendant as an ordinary summons.

Second.—Garnishees shall be summoned by the sheriff or constable, declaring to them that he does summon them to appear before the justice at the return day of the writ, to answer the interrogatories which may be put to them by the justice, and by reading the writ of attachment to them if required.

Third.—When goods and chattels, money or evidences of debt are to be attached, the sheriff or constable shall seize the same and keep them in his custody, if accessible, and if not accessible, he shall declare to the person in possession thereof, that he attaches the same in his hands and summon such person as garnishee.

Fourth.—When credits are to be attached, the sheriff or constable shall declare to the debtor of the defendant that he attaches in his hands all debts due from him to the defendant, or that shall become due before the rendition of judgment, or so much thereof as may be sufficient to satisfy the debt sued for with interest and costs, and summon the debtor as garnishee.

§ 147. When property of the defendant, found in the hands or possession of any other person than the defendant, shall be attached, such person may retain the possession thereof by giving bond and security to the satisfaction of the officer executing the writ, to the sheriff or constable, his successors or assigns, in double the value of the property so attached—conditioned, that the same shall be forthcoming when and where the justice shall direct, and shall abide the judgment of the justice.

§ 148. When property of the defendant shall be actually seized on attachment, the defendant, or any person for him, may obtain possession thereof without dissolving the attachment, by giving the officer a bond, with good and sufficient security, in double the amount of property—conditioned, that the property shall be forthcoming when and where the justice shall direct, to abide the judgment which may be rendered in the cause.

§ 149. When property shall be seized on attachment which is likely to perish, or depreciate in value before the probable end of the suit, or the keeping of which would be attended with much loss or expense, the justice may order the same to be sold by the sheriff or constable in the same manner and same notice as goods are required to be sold on an execution, and the proceeds of such sale shall remain in the hands of the sheriff or constable, subject to be disposed of as the property would have been if seized upon in money.

§ 150. When the defendant cannot be summoned and his property or effects shall be attached, if he do not appear to the action at the return of the writ, the justice shall enter an order on his docket requiring the plaintiff to give notice to the defendant, by three written or printed advertisements, set up at three of the most public places in the county, that a writ has been issued against him and his property attached, to satisfy the demand of the plaintiff, and that unless he appear before the justice within thirty days, stating the time and place, judgment will be rendered against him, and his property sold to pay the debt.

§ 151. Such notice shall be set up at least thirty days before judgment, and the setting up thereof may be proved either by the return of the constable upon a copy of the notice, or by the affidavit of any person who would be a competent witness in the case.

§ 152. When the defendant shall be notified as aforesaid, and shall not appear and answer to the action, judgment, by default, may be entered, which may be proceeded on to final judgment in like manner as in ordinary actions.

§ 153. Such judgments shall bind only the property and effects attached, and no execution shall issue thereon against any other property of the defendant, nor against his body, nor shall any action be brought thereon.

§ 154. Attachments may be dissolved on motion made in behalf of the defendant, and at any time before final judgment, in the following cases:

First.—When the defendant shall appear and plead to the action and give bond to the plaintiff, with good and sufficient security, to be approved by the justice, in double the amount of the property, effects and credits attached, conditioned, that such property, effects and credits shall be forthcoming, and abide the judgment which shall be rendered in the cause.

Second.—When the defendant shall appear and plead to the action, and give like bond and security, in a sum sufficient to satisfy the debt sworn to in behalf of the plaintiff, with interest and costs of suit—conditioned, that the defendant will pay to the plaintiff the

amount which may be adjudged in favor of the plaintiff, interest and all costs of suit, within thirty days after that at which judgment shall be rendered.

§ 155. When any attachment shall be dissolved, all proceedings touching the property and effects attached, and the garnishee arrested or summoned, shall be vacated, and the suit proceed as if it had been commenced by a summons only.

§ 156. When any garnishee shall appear before the justice to answer, the following interrogatories, and none other, shall be propounded to him to answer on oath:

First.—At the time of the summons being served upon you as garnishee, had you in your possession or under your control any goods, moneys or effects of the defendant? If so, state what property, how much, and of what value, and what money or effects.

Second.—At the time of the commencement of this suit, did you owe the defendant any money, or do you owe him any now? If so, how much, on what account, and when did it become due? and if not yet due, when will it be due?

§ 157. The justice shall write the answer of the garnishee to each interrogatory, separately, and file the answer as a paper in the cause.

§ 158. If any garnishee, being duly summoned, fail to appear at the proper time, or appearing, fail to make full and direct answers upon oath to the interrogatories, the plaintiff may take judgment against him by default—may be proceeded on to final judgment in like cases between plaintiff and defendant, or at the option of the plaintiff, the justice shall attach the body of the garnishee, until he shall make full and direct answers to the interrogatories.

§ 159. No final judgment shall be rendered against the garnishee until final judgment be had against the defendant.

§ 160. The plaintiff may deny the answer of the garnishee, or any part thereof, on the same day on which the answer is made, and the justice shall reduce to writing the denial showing what part is denied, and file it as a paper in the cause.

§ 161. All issues between the plaintiff and garnishee shall be tried as ordinary issues between plaintiff and defendant, and costs may be adjudged for or against either party, as in ordinary cases; and if, upon trial of any such issue, property or effects shall be found in the hands of the garnishee, the justice or jury shall assess the value thereof, and the judgment shall be for the amount in money.

§ 162. Any garnishee having property, money or effects of the defendant, may discharge himself by surrendering and paying the same or so much thereof, as shall be sufficient to cover the debt, interest and cost, to the sheriff or constable, and taking his receipt therefor, at any time before the final judgment against him.

§ 163. When any plaintiff at the time he applies for an attachment, shall, in addition to the affidavit required by the second section of this article, file the affidavit of himself or of some credible person, stating that any particular person in the county other than the defendant has in his hands any property, money or effects of the defendant, or is indebted to the defendant, showing the kind, quantity and value of the property, or the amount of the debts, (being above five dollars,) and stating such circumstances as shall satisfy the justice that the debt of the plaintiff will be endangered, by reason that such person is about to remove or secrete the property, or if a debtor of the defendant, that he is about to abscond or leave the county, not to return, the justice shall issue his warrant, commanding the sheriff or constable to arrest him, and bring such person forthwith before the justice.

§ 164. Such arrest shall be an attachment of the property and effects, money and credits of the defendant in his hands, or due from him, and shall be considered as a garnishee summoned to answer.

§ 165. If it shall appear, either by the answer of the garnishee or by the finding of the justice or a jury, that the garnishee has in his hands property or effects of the defendant, the justice shall require him to give bond and security in favor of the plaintiff, in such sum as the justice shall direct—conditioned, that the property or effects so confessed or found in his hands, and the debts so due from him, of the value thereof, shall abide the final judgment in the cause, and shall be produced and delivered when and where and to whom the justice shall appoint.

§ 166. In default of such bond, the justice shall commit the garnishee to the common prison until discharged by due course of law; nevertheless, the garnishee may be discharged by delivering and paying the property and money, according to the provisions of the 163d section of this article.

§ 167. In cases where judgment is rendered against the defendant, upon publication of notice without service of summons, or his appearance to the action, no execution shall be awarded either against the defendant or garnishee, or property attached, until the plaintiff or some person for him, shall give bond and security in favor of the defendant, to be approved by the justice, in double the amount of the judgment—conditioned, that if the defendant shall, within one year from the date of the bond, appear and disprove or avoid the debt or damages adjudged against him, or any part thereof, the plaintiff will pay and refund to the defendant all such money as shall have been received by and not justly due to him, together with all such damages as shall be assessed.

§ 168. The manner of disproving or avoiding the debt shall be by petition to the justice who gave the judgment or his successor, or to the courts into which the records and papers may have been removed, stating the grounds on which he resists the claim of the plaintiff, giving to the plaintiff ten days' notice of the time and place the petition will be presented.

§ 169. If the petition deny the original cause of action, and be supported by the oath of the petitioner, the plaintiff shall be required to prove his demand, and in default thereof, it shall be adjudged to be disproved and avoided, and the plaintiff shall pay the costs of the petition and of the original suit.

§ 170. If the petition allege a set-off or other collateral avoidance, the petitioner shall be required to prove the same, and in default thereof, shall be adjudged to pay costs, and a general judgment may be rendered against him for any balance remaining unpaid on the original judgment and the costs.

§ 171. Executions may be awarded and issued on

judgments in attachment causes, according to the provisions of this article, as follows:

First.—When there is a general judgment against the defendant, the execution shall be a common *fi fa* facias, which may be levied upon the property of the defendant subject to execution, whether attached in the cause or not.

Second.—When there is a judgment against the property, money or effects attached, the execution shall be a *fi fa* facias against such property, money or effects only, and may be levied upon the same, whether in the hands of the officer or secured by bond, as provided for in this article.

Third.—Where the judgment is against the garnishee, the execution shall be such as is used and allowed on general judgments in common actions on contracts.

§ 172. When the property is seized on attachment, the justice may allow to the officer having charge thereof, such compensation for his trouble and expenses in keeping and maintaining the same, as shall be reasonable and just.

ARTICLE XII.

Proceedings in case of breach of the peace.

§ 173. No assaults, battery or affray shall be indictable, but all such offences shall be prosecuted and punished in a summary manner before justices of the peace, as hereinafter made and provided.

§ 174. The foregoing section shall not extend to the trial or punishment of any case of riot or unlawful assembly, nor to any assault with an intent to maim, nor an assault with intent to commit rape, nor an assault with intent to kill, nor an assault with intent to commit robbery, nor shall it embrace the offences of shooting at or stabbing, but all such offences shall be punishable by indictment.

§ 175. Whenever a complaint shall be made to a justice of the peace, on the oath or affirmation of any person competent to testify against the accused, that an assault, battery, affray, or other breach of the peace has been or is about to be committed, the justice shall forthwith issue his warrant for the arrest of the offender, which warrant shall be executed by the sheriff of the county, or any constable of the county, or by some competent person specially deputed by the justice for that purpose.

§ 176. If any justice of the peace shall have any knowledge that any of the offences mentioned in the last section are about to be committed, he shall issue his warrant, and proceed as is directed in that section, and if any such offences are committed, threatened or attempted, in his presence, he shall immediately arrest the offender, or cause it to be done; and for this purpose no warrant or process shall be necessary. But the justice may summon to his assistance any sheriff or constable, and all other persons then present, whose duty it shall be to aid the justice in preserving the peace, arresting and securing the offenders, and all such as obstruct or prevent the justice or any of his assistants in the performance of their duty.

§ 177. When any person shall be brought before a justice of the peace under the provisions of this act, it shall be the duty of the justice to hear and determine, in a summary mode, the complaint alleged against the defendant.

§ 178. Upon good cause shown, the justice may postpone the trial of the cause to a day certain, in which case he shall require the defendant to enter into a recognizance, with sufficient security, conditioned, that he will appear before the justice at the time and place appointed, then and there to answer the complaint alleged against him.

§ 179. If the defendant shall fail or refuse to enter into recognizance, the justice shall commit him to the common jail, there to remain until the day fixed for the trial of the complaint alleged against him.

§ 180. In case of breach of any recognizance entered into as aforesaid, the same shall be certified and returned to the county court to be proceeded in according to law.

§ 181. If, in the progress of any trial before a justice, under the provisions of this article, it shall appear that the accused ought to be put upon his trial for an offence not cognizable before a justice of the peace, the justice shall immediately stop all further proceedings before him, and proceed as in other criminal cases exclusively cognizable before the county court.

§ 182. In all cases, arising under this article, it shall be the duty of the justice of the peace acting, to summon the injured party, and all others whose testimony may be deemed material as witnesses at the trial, and to enforce their attendance by attachment if necessary.

§ 183. All trials before a justice under this article, shall be by a jury of six competent men, unless the parties agree to leave the

decision to the justice, who, if they find the defendant guilty, shall assess the fine to be paid by him, which shall not be less than five dollars, nor more than fifty dollars, according to the nature of the offence.

§ 184. When proceedings are commenced under the provisions of this article, on the information or complaint of the injured party, his name shall be entered by the justice in his docket, as prosecutor; and if the defendant shall be discharged or acquitted, the prosecutor shall be adjudged to pay costs; in all other cases of discharge or acquittal, the costs shall be paid by the county.

§ 185. In all cases of conviction under the provisions of this article, the justice shall enter judgment for the fine and costs, against the defendant, and may commit him until the judgment is satisfied, or issue execution on the judgment to the use of the county.

§ 186. Any defendant who shall be committed or taken in execution on such judgment, may at any time after ten days actual imprisonment in jail, be discharged; and in that case, the county shall pay the costs of the prosecution and charge of imprisonment, and for the amount thereof shall be a privileged creditor of the defendant, entitled to be first satisfied out of his property and effects.

§ 187. Either the prosecutor or the defendant may appeal to the county court, if he shall, on the day of the rendition of the judgment, file an affidavit, stating that he verily believes that injustice has been done by the verdict and judgment, and also enter into a recognizance with two sufficient securities, which recognizance shall be in the form, and with the same conditions required in appeals from a justice of the peace in civil cases.

§ 188. All appeals taken ten days or more before any term of the county court of the county, shall be returnable to that term, but if taken within ten days next before the commencement of a term, shall be returnable to the second term.

§ 189. When an appeal is taken, it shall be the duty of the justice to cause all material witnesses to enter into recognizance in the sum of fifty dollars each, conditioned, for their appearance to testify in the cause at the term to which the appeal is returnable, and shall, on or before the first day of such term, file in the office of the clerk of the county court a copy of the entries on his docket, with a copy of the process and affidavit of appeal, and the original recognizances of the appellant and witnesses duly certified.

§ 190. The clerk of the county court shall enter the cause on his docket, and if the appeal be regularly taken, the cause shall be heard on the merits at the return term, unless good cause be shown for a continuance, and the costs in both courts shall abide the event of a trial in the county court.

§ 191. If the appeal be not taken and perfected within ten days after rendering judgment by the justice, the judgment shall be affirmed.

§ 192. If the judgment of the justice shall be affirmed, or upon a trial in the county court the defendant shall be convicted, and any fine assessed, judgment shall be rendered for such fine and costs in both courts against the defendant and his securities.

§ 193. If, in an appeal taken taken by the prosecutor, the judgment of the justice shall be affirmed, the prosecutor and his securities shall pay all costs of said appeal, and if the judgment of the justice should have imposed the payment of the costs upon said prosecutor, and said judgment be affirmed, the judgment of the county court shall include the costs of both courts, and be against the prosecutor and his securities.

§ 194. If the judgment of the county court be not satisfied in thirty days after the rendition thereof, execution may issue against the party against whom judgment has been rendered, and his securities, which shall be made out of the property of the said party, if sufficient thereof be found; if not, then out of the property of said securities.

§ 195. In all cases not specially provided for by this article, the process and proceedings before the justice shall be governed by the laws regulating proceedings in justices' courts in civil cases.

[TO BE CONTINUED.]

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