

LEGISLATURE OF PENNSYLVANIA.

FILE OF THE HOUSE OF REPRESENTATIVES.

No. **748** Session of
1919.

INTRODUCED BY MR. DUTRICH, MARCH 4, 1919.

REFERRED TO COMMITTEE ON JUDICIARY GENERAL,
MARCH 4, 1919.

AN ACT

To amend section eight nine and nineteen of an act entitled "An act to establish a County Court for the County of Allegheny and prescribing its powers and duties regulating the procedure therein and providing for the expenses thereof" approved the fifth day of May one thousand nine hundred and eleven as amended by authorizing a demand for a jury trial and providing for the trial of cases by a Judge without a jury regulating the procedure and practice thereof by providing for an appeal or writ of error from the decisions of said Court to the Supreme or Superior Court and by providing for the fixing of fees and costs"

1 Section 1 *Be it enacted by the Senate and House of Repre-*
2 *sentatives of the Commonwealth of Pennsylvania in General Assembly*
3 *met and it is hereby enacted by the authority of the same That*
4 *section eight of an act entitled "An act to estab-*
5 *lish a County Court for the County of Allegheny and*

1 prescribing its powers and duties regulating the procedure
2 therein and providing for the expenses thereof" approved
3 the fifth day of May one thousand nine hundred and
4 eleven (Pamphlet Laws page one ninety-eight) as amended
5 by section one of an act approved the ninth day of
6 April one thousand nine hundred and fifteen (Pamphlet
7 Laws page forty-eight) which reads as follows
8 "Section 8 At the time of filing the statement of
9 claim and before it shall be received by the clerk there
10 shall be contained on the back thereof an endorsement
11 made by the plaintiff or his counsel as follows "Jury
12 trial demanded" or "It is agreed that this case be tried
13 by a Judge without a jury" If the plaintiff demands
14 a jury trial he shall at the time of filing his state-
15 ment pay to the prothonotary a jury fee of four dollars
16 Every answer where the plaintiff has not demanded a
17 jury trial shall contain on the back thereof a similar
18 endorsement and if the defendant demands a jury trial
19 he shall at the time of filing his answer pay to the
20 clerk a jury fee of four dollars and said jury fee by
21 whomsoever paid shall be taxed as part of the costs of
22 the case If both parties have filed agreements as afore-
23 said that the case may be tried by a Judge without
24 a jury it shall be so tried under such rules of pro-
25 cedure as the Court shall prescribe Provided That at the
26 trial in the County Court of cases before a Judge with-
27 out a jury either party may present to the trial Judge
28 such requests for findings of law or fact as he may
29 desire which requests shall be answered by the trial Judge

1 to which answers either party may within the time pre-
2 scribed by the Court except and thereupon such requests
3 for findings and the answers of the court thereto shall
4 become part of the record The testimony shall be taken
5 stenographically at the expense of the County and tran-
6 scribed at the expense of the party desiring such tran-
7 script or at the expense of the County if the Court
8 so orders and such testimony when transcribed and certi-
9 fied by the trial Judge shall also become part of the
10 record When a jury trial is demanded by either party the
11 Court shall direct trial by jury in the manner now pro-
12 vided by law the jurors to be summoned and paid as
13 they are for the Courts of Common Pleas of said
14 County Provided further That when a jury trial is de-
15 manded the Court shall make a separate list of such
16 cases from time to time as are put at issue and pro-
17 ceed to the trial and determination of said cases at
18 the County-seat" be and the same is hereby amended to
19 read as follows

20 Section 8 In any case brought in this Court in which
21 the parties are entitled by the Constitution and laws of
22 this Commonwealth to a trial by jury the plaintiff if he
23 desires a trial by jury shall at the time of filing his
24 statement endorse thereon or file separately a written de-
25 mand for a jury trial in substantially the words "Jury
26 trial demanded" signed by himself or his counsel and if
27 no such demand is made by the plaintiff but a trial
28 by jury is desired by the defendant he shall in like
29 form at the time of filing his answer demand a trial

1 by jury If neither party shall make a demand in writ-
2 ing for a trial by jury he shall be deemed to have waived
3 his right to trial by jury and the Court shall proceed to
4 try the case without a jury The party making demand
5 for trial by jury may withdraw the same with the written
6 consent of the other side filed in the case and the
7 parties shall be deemed to have waived their right to
8 trial by jury and the Court or any Judge thereof may
9 proceed to try the case without a jury the same as if
10 the demand had never been made Cases tried by the
11 Court without a jury shall be tried under such rules
12 of procedure as the Court shall prescribe Provided That
13 at the trial in the County Court of cases before a
14 Judge without a jury either party may present to the
15 trial Judge such requests for findings of law or fact
16 as he may desire which requests shall be answered by
17 the trial Judge to which answers either party may with-
18 in the time prescribed by the Court except and there-
19 upon such requests for findings and the answers of the
20 Court thereto shall become part of the record The testi-
21 mony shall be taken stenographically at the expense of
22 the County and transcribed at the expense of the party
23 desiring such transcript or at the expense of the County
24 if the Court so orders and such testimony when tran-
25 scribed and certified by the trial Judge shall also become
26 part of the record When a jury trial is demanded by
27 either party the Court shall direct trial by jury in the
28 manner now provided by law the jurors to be summoned
29 and paid as they are for the Courts of Common Pleas

1 of said County Provided further That when a jury trial
2 is demanded the Court shall make a separate list of
3 such cases from time to time as are put at issue and
4 proceed to the trial and determination of said cases at
5 the County-seat

6 Section 2 That section nine of the above mentioned
7 act as amended by section two of an act approved the
8 ninth day of April one thousand nine hundred and fif-
9 teen (Pamphlet Laws page forty-eight) which reads as follows

10 "Section 9 Either party may within ten days after
11 the allowance of an appeal to the Court of Common
12 Pleas as herein provided in any civil action appeal to
13 the Court of Common Pleas of said County by taking
14 and perfecting an appeal in the manner following

15 The party appealing shall procure from the County
16 Court a transcript duly certified under the seal of the
17 Court showing the proceedings had in said cases and
18 shall file the same in the office of the prothonotary of
19 said County and at the time of filing the same shall
20 also make affidavit that the said appeal is not taken
21 for the purpose of delay The appellant shall give bail
22 absolute in a sum and with surety or sureties to be
23 approved as hereinafter provided for his compliance with
24 any judgment that may be finally rendered against him
25 and for payment of all interest and costs likely to ac-
26 crue All costs accrued up to the time of filing the
27 transcript shall be paid by appellant in the first instance
28 and if the appellant shall finally recover judgment in the

1 case appealed he shall be entitled to receive and collect
2 from the adverse party the costs so as aforesaid paid
3 on appeal

4 The costs on appeals accruing at and from the time
5 of filing the transcript shall abide the event of the
6 suit and be paid by the unsuccessful party as in other
7 cases Provided That if the plaintiff be the appellant he
8 shall pay all costs which may accrue on the appeal if
9 in the event of the suit he shall not recover a greater
10 sum or a more favorable judgment exclusive of interest
11 than was rendered by the County Court And provided
12 also That if the defendant either on the trial of the
13 cause before the County Court or before an appeal is
14 taken shall offer to give the plaintiff a judgment for
15 an amount which the defendant shall admit to be due
16 and if the said plaintiff shall not accept such offer then
17 and in that case if the defendant shall appeal the plain-
18 tiff shall pay all the costs which shall accrue on
19 the appeal if he shall not in the event of the suit
20 recover a greater amount than that for which the de-
21 fendant offered to give a judgment and in both cases
22 the defendant's bill shall be taxed and paid by the plain-
23 tiff in the same manner as if a judgment had been
24 rendered in Court for the defendant But provided further
25 That in all cases where the judgment of the County
26 Court shall be in favor of defendant on a counter-claim
27 then the terms "plaintiff" and "defendant" in the fore-
28 going provisions relating to costs on appeals shall be taken
29 as inverted Any appellant shall have the right to appeal

1 and demand and receive transcripts without payment of
2 costs upon his making and filing with the Judge approving
3 the appeal bond an affidavit that he is unable through
4 poverty to pay said costs provided said Judge shall be
5 satisfied of the truth of the statements in such affidavit
6 All appeals taken and perfected in the manner above
7 provided shall operate as a supersedeas The amount of the
8 penalties of and the sureties upon such bonds shall be
9 approved by a Judge of the County Court but in allow-
10 ing the appeal the Common Pleas Court may for proper
11 cause order that no bond be required or may otherwise
12 prescribe the condition of allowance of said appeals as
13 may be just and proper under the circumstances

14 Any party shall be entitled within ten days from the
15 date of judgment or within such further time as the
16 Court of Common Pleas may grant to a writ of cer-
17 tiorari to remove the record to any Court of Common
18 Pleas of said County in the manner as now provided
19 by law in regards to writs of certiorari issuing out of
20 said Common Pleas but such certiorari shall not operate
21 as a supersedeas unless bail absolute for said judgment
22 interest and costs shall be given and approved by the
23 Court of Common Pleas from which such writ of cer-
24 tiorari issues

25 From a final judgment of the said Common Pleas
26 Court upon a certiorari issued as aforesaid an appeal
27 may be taken to the Superior Court in the same man-
28 ner as appeals are taken from other ~~final~~ judgments of
29 the said Court of Common Pleas and this right of ap-

1 peal to the Superior Court shall apply to pending cases
2 in which the time for such appeal has not yet expired
3 Provided That no appeal to the Common Pleas Court
4 shall be perfected as above set forth until leave to take
5 such appeal has first been obtained by the appellant from
6 the Court of Common Pleas or a Judge thereof The
7 application for leave to appeal shall be by petition to
8 the Common Pleas Court setting forth the reasons why
9 a retrial of issues of fact is necessary to prevent an
10 injustice This petition shall be heard after such notice
11 to the adverse party as the Common Pleas Court shall
12 prescribe and if leave to take such appeal be granted
13 a copy of the order allowing the appeal shall be filed
14 in the office of the clerk of the County Court Where
15 error is alleged in a finding of fact it shall be the
16 duty of the Court of Common Pleas to examine the
17 testimony and if from such examination the said Court
18 shall entertain doubt of the correctness of such finding
19 the said appeal shall be allowed Said application for
20 leave to appeal shall be made to the Common Pleas
21 Court within ten days after the entry of judgment by
22 the County Court but where the case has been tried
23 in the County Court by a Judge without a jury and a
24 motion to open the judgment has been made within said
25 Court within such time as the County Court may pre-
26 scribe then the ten days for making application to appeal
27 shall run from the date of the judgment of the County
28 Court on the motion to open judgment In disposing of
29 the application for leave to appeal the Court of Common

1 Pleas may in its discretion direct the entry by the County
2 Court of such judgment as may be proper on its whole
3 record and from such order of the Common Pleas Court
4 an appeal shall lie to the Superior Court of Pennsyl-
5 vania" be and the same is hereby amended to read as
6 follows

7 Section 9 All parties believing themselves to be aggrieved
8 by the decisions of the said County Court may remove
9 their cases by appeal or writ of error to the Supreme
10 or Superior Court as the case may be in accordance
11 with the law now existing or which may hereafter be
12 adopted and in accordance with the practice and procedure
13 now existing or which may hereafter be adopted in per-
14 fecting appeals from the Common Pleas and Quarter Ses-
15 sions Courts in Allegheny County Provided all applications
16 for leave to appeal pending in the Court of Common
17 Pleas of said County at the time of the passage of
18 this act shall be disposed of by that Court as if this
19 act had not been passed but all proceedings on appeal
20 or in error begun thereafter shall be governed by the
21 provisions hereof

22 Section 3 That section nineteen of the above mentioned
23 act as amended by section nine of an act approved the
24 second day of April one thousand nine hundred and thir-
25 teen (Pamphlet Laws page twenty-one) which reads as
26 follows

27 "Section 19 The fees and costs for all witnesses
28 writs entries and other services charged for shall be the

1 same in amount as the charge for the corresponding fee
2 writ entry or service in the Courts of Common Pleas
3 and Quarter Sessions of said County and shall follow
4 the judgment in civil cases as in the Court of Common
5 Pleas but regardless of the amount claimed or of the
6 amount of said judgment but in case of tender before
7 suit brought or payment of money into Court the Court
8 may make such order as to payment of costs as shall
9 be equitable But no costs shall be required to be de-
10 posited or secured in advance except in the case of non-
11 resident plaintiffs upon order of this Court" be and the
12 same is hereby amended to read as follows

13 Section 19 The fees and costs for all writs entries
14 and other services charged for shall be fixed by the
15 Judges of said Court provided however that the same
16 in amount shall not exceed the charge for the corres-
17 ponding fee writ entry or service in the Courts of Com-
18 mon Pleas and Quarter Sessions of said County and the
19 same with all witness fees which shall correspond with
20 the witness fees in said Courts of Common Pleas and
21 Quarter Sessions shall follow the judgment in civil cases
22 as in the Court of Common Pleas but regardless of the
23 amount claimed or of the amount of said judgment but
24 in case of tender before suit brought or payment of
25 money into Court the Court may make such order as
26 to payment of costs as shall be equitable But no costs
27 shall be required to be deposited or secured in advance
28 except in the case of non-resident plaintiffs upon order
29 of this Court

1 Section 4 All acts or parts of acts inconsistent here-
2 with are hereby repealed