
LEGISLATURE OF PENNSYLVANIA.

FILE OF THE HOUSE OF REPRESENTATIVES.

No. **871** Session of
1919.

INTRODUCED BY MR. DITHRICH, MARCH 11, 1919.

REFERRED TO COMMITTEE ON JUDICIARY GENERAL,
MARCH 11, 1919.

AN ACT

To amend sections seven 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 requiring answers to be filed in all civil actions except by municipalities 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*

1 section seven of an act entitled "An act to establish a
2 county court for the county of Allegheny and prescribing
3 its powers and duties regulating the procedure therein and
4 providing for the expenses thereof" approved the fifth day
5 of May one thousand nine hundred and eleven as amended
6 by section one of an act approved the twenty-fifth day
7 of June one thousand nine hundred and thirteen (Pamphlet
8 Laws page five hundred forty-five) which reads as follows

9 "Section 7 The procedure in said court in all civil
10 action shall be substantially as follows

11 (a) The plaintiff may file with a clerk of the court
12 at the county-seat or in the district nearest to the resi-
13 dence or place of business of either plaintiff or defend-
14 ant or any of them if there be more than one plaintiff
15 or defendant a written statement of his demand verified
16 by affidavit or may make to the clerk his complaint
17 orally whereupon the clerk shall reduce the same to writ-
18 ing which shall be signed and sworn to by plaintiff and
19 said clerk shall thereupon issue a writ of summons or
20 replevin under the seal of the court requiring the de-
21 fendant to appear at a time and place designated in
22 said writ to answer the plaintiff's complaint and a copy
23 of the plaintiff's statement however prepared shall be
24 served with the writ The time of said hearing shall
25 not be less than twelve nor more than fifteen days from
26 date of said writ

27 (b) Upon the date fixed in said writ or such other
28 date to which the cause may have been duly adjourned
29 by order of the court and which shall not be less than

1 nine days after service of the writ upon the defendant
2 the parties shall attend with their witnesses and the
3 cause shall be heard by one or more of the judges of
4 said court who shall hear the parties and their witnesses
5 and counsel if any and the decision of the judge or
6 judges hearing the cause shall be rendered at the con-
7 clusion of the trial or at such other time not more
8 than five days thereafter as may then be designated for
9 that purpose and said judgment shall forthwith be entered
10 upon the docket of said court

11 (c) In all actions except actions ex delicto in which
12 actions ex delicto the defendant shall not file nor be
13 required to file any answer or affidavit of defense the
14 defendant shall at least three days exclusive of Sundays
15 before the time fixed for hearing by the writ or within
16 such further time as the court may allow upon cause
17 shown file with the clerk of the court an answer duly
18 sworn to setting forth the nature and character of his
19 defense to the plaintiff's demand or he may make a
20 statement of such defense orally to the clerk which shall
21 be reduced to writing by the clerk and sworn to If
22 no answer be filed the plaintiff may at any time after
23 the time for filing such answer has expired in actions
24 for the recovery of money on contract and in actions
25 of replevin enter judgment in the clerk's office in default
26 of such answer In actions ex delicto the court shall
27 on or after the time for hearing fixed by the summons
28 enter such judgment as may be proper after examination
29 of the plaintiff's statement or after hearing such evidence

1 as may be necessary for the proper disposal of the case
2 If an answer be filed as aforesaid all material aver-
3 ments of the plaintiff's statement which are not denied
4 by the answer shall be deemed and taken to be true
5 Provided however That in all cases the court may for
6 proper cause require either party to file a bill of par-
7 ticulars

8 (d) In the action of replevin the practice shall be
9 as is provided by law except in so far as modified by
10 any of the provisions of this amending and supplementary
11 act Any party interested desiring to intervene may do
12 so as of course prior to the expiration of time to
13 answer and thereafter upon leave of court If no answer
14 or intervention be filed the plaintiff may take judgment
15 by default in the clerk's office as of course If answer
16 or intervention be filed the case shall be heard on the
17 day fixed for hearing in the writ or thereafter as the
18 court may direct and shall be disposed of on the plead-
19 ings or evidence as the court may find necessary The
20 court may require such additional pleadings as may be
21 necessary to define the issue In desertion and non-support
22 cases and appeals from summary convictions and judgments
23 for penalties the practice shall be as is now provided
24 by law

25 (e) Service of the writs of summons and replevin and
26 of copies of plaintiff's statements and execution of the
27 writ of replevin shall be made in the same manner as
28 is now provided by law for the service and execution of
29 such writs in the Courts of Common Pleas of Allegheny

1 County and may be made by the sheriff of the County
2 by a constable of the County or by such persons as
3 may be appointed by the Court for that purpose as shall
4 be determined by the Court" be and the same is hereby
5 amended to read as follows

6 Section 7 The procedure in said Court in all civil
7 actions shall be substantially as follows

8 (a) The plaintiff may file with a clerk of the Court
9 at the county-seat or in the district nearest to the resi-
10 dence or place of business of either plaintiff or defend-
11 ant or any of them if there be more than one plain-
12 tiff or defendant a written statement of his demand
13 verified by affidavit or may make to the clerk his com-
14 plaint orally whereupon the clerk shall reduce the same
15 to writing which shall be signed and sworn to by plain-
16 tiff and said clerk shall thereupon issue a writ of sum-
17 mons or replevin under the seal of the court requiring
18 the defendant to appear at a time and place designated
19 in said writ to answer the plaintiff's complaint and a
20 copy of the plaintiff's statement however prepared shall be
21 served with the writ The time of said hearing shall be
22 not less than twelve nor more than fifteen days from
23 date of said writ

24 (b) Upon the date fixed in said writ or such other
25 date to which the cause may have been duly adjourned
26 by order of the Court and which shall not be less
27 than nine days after service of the writ upon the de-
28 fendant the parties shall attend with their witnesses and

1 the cause shall be heard by one or more of the Judges
2 of said Court who shall hear the parties and their wit-
3 nesses and counsel if any and the decision of the Judge
4 or Judges hearing the cause shall be rendered at the
5 conclusion of the trial or at such other time not more
6 than five days thereafter as may then be designated for
7 that purposes and said judgment shall forthwith be en-
8 tered upon the docket of said Court

9 (c) In all actions the defendant shall at least three
10 days exclusive of Sundays before the time fixed for hear-
11 ing by the writ or within such further time as the
12 Court may allow upon cause shown file with the clerk
13 of the Court an answer duly sworn to setting forth the
14 nature and character of his defense to plaintiff's demand
15 or he may make a statement of such defense orally to
16 the clerk which shall be reduced to writing by the
17 clerk and sworn to If no answer be filed the plaintiff
18 may at any time after the time for filing such answer
19 has expired in actions for the recovery of money on con-
20 tract and in actions of replevin enter judgment in the
21 clerk's office in default of such answer In actions ex
22 delicto the Court shall on or after the time for hear-
23 ing fixed by the summons enter such judgment as may
24 be proper after examination of plaintiff's statement or af-
25 ter hearing such evidence as may be necessary for the
26 proper disposal of the case If an answer be filed as
27 aforesaid all material averments of plaintiff's statement
28 which are not denied by the answer shall be deemed
29 and taken to be true In actions of trespass the aver-

1 ments in the statement of the person by whom the act
2 was committed the agency or employment of such person
3 the ownership or possession of the vehicle machinery prop-
4 erty or instrumentality involved and all similar averments
5 if not denied shall be taken to be admitted the aver-
6 ments of the other facts however on which the plaintiff
7 relies to establish liability and averments relating to
8 damages claimed or their amount need not be answered
9 or denied but shall be deemed to be put in issue in
10 all cases unless expressly admitted Provided however that
11 municipalities shall not be required to file an answer But
12 in all cases the Court may for proper cause require
13 either party to file a bill of particulars

14 (d) In the action of replevin the practice shall be
15 as is provided by law except in so far as modified by
16 any of the provisions of this amending and supplementary
17 act Any party interested desiring to intervene may do so
18 as of course prior to the expiration of time to answer
19 and thereafter upon leave of Court If no answer or in-
20 tervention be filed the plaintiff may take judgment by de-
21 fault in the clerk's office as of course If answer or
22 intervention be filed the case shall be heard on the day
23 fixed for hearing in the writ or thereafter as the Court
24 may direct and shall be disposed of on the pleadings
25 or evidence as the Court may find necessary The Court
26 may require such additional pleadings as may be neces-
27 sary to define the issue In desertion and non-support
28 cases and appeals from summary convictions and judgments

1 for penalties the practice shall be as is now provided
2 by law

3 (e) Service of the writs of summons and replevin and
4 of copies of plaintiff's statements and execution of the
5 writ of replevin shall be made in the same manner as
6 is now provided by law for the services and execution
7 of such writs in the courts of common pleas of Alle-
8 gheny county and may be made by the sheriff of the
9 county by a constable of the county or by such per-
10 sons as may be appointed by the court for that pur-
11 pose as shall be determined by the court

12 Section 2 That section eight of the above mentioned
13 act as amended by section one of an act approved the
14 ninth day of April one thousand nine hundred and fifteen
15 (Pamphlet Laws page forty-eight) which reads as follows

16 "Section 8 At the time of filing the statement of
17 claim and before it shall be received by the clerk there
18 shall be contained on the back thereof an endorsement
19 made by the plaintiff or his counsel as follows "Jury
20 trial demanded" or "It is agreed that this case be tried
21 by a judge without a jury" If the plaintiff demands a
22 jury trial he shall at the time of filing his statement
23 pay to the prothonotary a jury fee of four dollars Every
24 answer where the plaintiff has not demanded a jury trial
25 shall contain on the back thereof a similar endorsement
26 and if the defendant demands a jury trial he shall at
27 the time of filing his answer pay to the clerk a jury
28 fee of four dollars and said jury fee by whomsoever paid
29 shall be taxed as part of the costs of the case If

1 both parties have filed agreements as aforesaid that the
2 case may be tried by a judge without a jury it shall
3 be so tried under such rules of procedure as the court
4 shall prescribe Provided That at the trial in the county
5 court of cases before a judge without a jury either
6 party may present to the trial judge such requests for
7 findings of law or fact as he may desire which requests
8 shall be answered by the trial judge to which answers
9 either party may within the time prescribed by the court
10 except and thereupon such requests for findings and the
11 answers of the court thereto shall become part of the
12 record The testimony shall be taken stenographically at the
13 expense of the county and transcribed at the expense of
14 the party desiring such transcript or at the expense of
15 the county if the court so orders and such testimony
16 when transcribed and certified by the trial judge shall
17 also become part of the record When a jury trial is
18 demanded by either party the court shall direct trial by
19 jury in the manner now provided by law the jurors to
20 be summoned and paid as they are for the courts of
21 common pleas of said county Provided further That when
22 a jury trial is demanded the court shall make a sepa-
23 rate list of such cases from time to time as are put
24 at issue and proceed to the trial and determination of
25 said cases at the County-seat" be and the same is here-
26 by amended to read as follows

27 Section 8 In any case brought in this court in which
28 the parties are entitled by the Constitution and laws of

1 this Commonwealth to a trial by jury the plaintiff if
2 he desires a trial by a jury shall at the time of
3 filing his statement endorse thereon or file separately a
4 written demand for a jury trial in substantially the
5 words "Jury trial demanded" signed by himself or his
6 counsel and if no such demand is made by the plaintiff
7 but a trial by jury is desired by the defendant he
8 shall in like form at the time of filing his answer
9 demand a trial by jury (except a municipality not be-
10 ing required to file an answer shall when defendant
11 make its demand at least three days exclusive of Sun-
12 days before the time fixed for the hearing by the writ)
13 If neither party shall make a demand in writing for
14 a trial by jury he shall be deemed to have waived his
15 right to trial by jury and the court shall proceed to
16 try the case without a jury The party making demand
17 for trial by the jury may withdraw the same with the
18 written consent of the other side filed in the case and
19 the parties shall be deemed to have waived their right
20 to trial by jury and the court or any judge thereof
21 may proceed to try the case without a jury the same
22 as if the demand had never been made Cases tried by
23 the court without a jury shall be tried under such rules
24 of procedure as the court shall prescribe Provided That
25 at the trial in the county court of cases before a judge
26 without a jury either party may present to the trial
27 judge such requests for findings of law or fact as he
28 may desire which requests shall be answered by the trial
29 judge to which answer either party may within the time

1 prescribed by the court except and thereupon such requests
2 for findings and the answers of the court thereto shall
3 become part of the record The testimony shall be taken
4 stenographically at the expense of the county and tran-
5 scribed at the expense of the party desiring such tran-
6 script or at the expense of the county if the court so
7 orders and such testimony when transcribed and certified
8 by the trial judge shall also become part of the record
9 When a jury trial is demanded by either party the court
10 shall direct trial by jury in the manner now provided
11 by law the jurors to be summoned and paid as they
12 are for the courts of common pleas of said county Pro-
13 vided further That when a jury trial is demanded the
14 court shall make a separate list of such cases from
15 time to time as are put at issue and proceed to the
16 trial and determination of said cases at the county-seat

17 Section 3 That section nine, of the above mentioned
18 act as amended by section two of an act approved the
19 ninth day of April one thousand nine hundred and fifteen
20 (Pamphlet Laws page forty-eight) which reads as follows

21 "Section 9 Either party may within ten days after the
22 allowance of an appeal to the Court of Common Pleas
23 as herein provided in any civil action appeal to the
24 Court of Common Pleas of said county by taking and
25 perfecting an appeal in the manner following

26 The party appealing shall procure from the County
27 Court a transcript duly certified under the seal of the
28 Court showing the proceedings had in said cases and
29 shall file the same in the office of the prothonotary of

1 said County and at the time of filing the same shall
2 also make affidavit that the said appeal is not taken
3 for the purpose of delay The appellant shall give bail
4 absolute in a sum and with surety or sureties to be
5 approved as hereinafter provided for his compliance with
6 any judgment that may be finally rendered against him
7 and for payment of all interest and costs likely to
8 accrue All costs accrued up to the time of filing the
9 transcript shall be paid by appellant in the first instance
10 and if the appellant shall finally recover judgment in the
11 case appealed he shall be entitled to receive and collect
12 from the adverse party the costs so as aforesaid paid
13 on appeal

14 The costs on appeals accruing at and from the time
15 of filing the transcript shall abide the event of the suit
16 and be paid by the unsuccessful party as in other cases
17 Provided That if the plaintiff be the appellant he shall
18 pay all costs which may accrue on the appeal if in
19 the event of the suit he shall not recover a greater
20 sum or a more favorable judgment exclusive of interest
21 than was rendered by the County Court And provided
22 also That if the defendant either on the trial of the
23 cause before the County Court or before an appeal is
24 taken shall offer to give the plaintiff a judgment for
25 an amount which the defendant shall admit to be due
26 and if the said plaintiff shall not accept such offer then
27 and in that case if the defendant shall appeal the plain-
28 tiff shall pay all the costs which shall accrue on the
29 appeal if he shall not in the event of the suit re-

1 cover a greater amount than that for which the defend-
2 ant offered to give a judgment and in both cases the
3 defendant's bill shall be taxed and paid by the plaintiff
4 in the same manner as if a judgment had been ren-
5 dered in Court for the defendant But provided further
6 That in all cases where the judgment of the County
7 Court shall be in favor of defendant on a counter-claim
8 then the terms "plaintiff" and "defendant" in the fore-
9 going provisions relating to costs on appeals shall be
10 taken as inverted Any appellant shall have the right to
11 appeal and demand and receive transcripts without pay-
12 ment of costs upon his making and filing with the Judge
13 approving the appeal bond an affidavit that he is unable
14 through poverty to pay said costs provided said Judge
15 shall be satisfied of the truth of the statements in such
16 affidavit All appeals taken and perfected in the manner
17 above provided shall operate as a supersedeas The amount
18 of the penalties of and the sureties upon such bonds
19 shall be approved by a Judge of the County Court but
20 in allowing the appeal the Common Pleas Court may for
21 proper cause order that no bond be required or may
22 otherwise prescribe the condition of allowance of said ap-
23 peals as may be just and proper under the circumstances
24 Any party shall be entitled within ten days from the
25 date of judgment or within such further time as the
26 court of common pleas may grant to a writ of cer-
27 tiorari to remove the record to any court of common
28 pleas of said county in the manner as now provided

1 by law in regards to writs of certiorari issuing out of
2 said common pleas but such certiorari shall not operate
3 as a supersedeas unless bail absolute for said judgment
4 interest and costs shall be given and approved by the
5 court of common pleas from which such writ of cer-
6 tiorari issues

7 From a final judgment of the said common pleas
8 court upon a certiorari issued as aforesaid an appeal
9 may be taken to the Superior court in the same man-
10 ner as appeals are taken from other final judgments of
11 the said court of common pleas and this right of ap-
12 peal to the Superior court shall apply to pending cases
13 in which the time for such appeal has not yet expired

14 Provided That no appeal to the common pleas court
15 shall be perfected as above set forth until leave to take
16 such appeal has first been obtained by the appellant
17 from the court of common pleas or a judge thereof The
18 application for leave to appeal shall be by petition to
19 the common pleas court setting forth the reasons why a
20 retrial of issues of fact is necessary to prevent an in-
21 justice This petition shall be heard after such notice to
22 the adverse party as the common pleas court shall pre-
23 scribe and if leave to take such appeal be granted a
24 copy of the order allowing the appeal shall be filed in
25 the office of the clerk of the county court Where error
26 is alleged in a finding of fact it shall be the duty
27 of the court of common pleas to examine the testimony
28 and if from such examination the said court shall en-
29 tertain doubt of the correctness of such finding the said

1 appeal shall be allowed Said application for leave to ap-
2 peal shall be made to the common pleas court within
3 ten days after the entry of judgment by the county
4 court but where the case has been tried in the county
5 court by a judge without a jury and a motion to open
6 the judgment has been made within said court within
7 such time as the county court may prescribe then the
8 ten days for making application to appeal shall run
9 from the date of the judgment of the county court on
10 the motion to open judgment In disposing of the ap-
11 plication for leave to appeal the court of common pleas
12 may in its discretion direct the entry by the county
13 court of such judgment as may be proper on its whole
14 record and from such order of the common pleas court
15 an appeal shall lie to the Superior court of Pennsyl-
16 vania" be and the same is hereby amended to read as
17 follows

18 Section 9 All parties believing themselves to be ag-
19 grieved by the decisions of the said county court may
20 remove their cases by appeal or writ of error to the
21 Supreme or Superior court as the case may be in ac-
22 cordance with the law now existing or which may here-
23 after be adopted and in accordance with the practice and
24 procedure now existing or which may hereafter be adopted
25 in perfecting appeals from the common pleas and quarter
26 sessions courts in Allegheny county Provided all applica-
27 tions for leave to appeal pending in the court of com-
28 mon pleas of said county at the time of the passage
29 of this act shall be disposed of by that court as if

1 this act had not been passed but all proceedings on
2 appeal or in error begun thereafter shall be governed by
3 the provisions hereof

4 Section 4 That section nineteen of the above men-
5 tioned act as amended by section nine of an act ap-
6 proved the second day of April one thousand nine hun-
7 dred and thirteen (Pamphlet Laws page twenty-one) which
8 reads as follows

9 "Section 19 The fees and costs for all witnesses
10 writs entries and other services charged for shall be the
11 same in amount as the charge for the corresponding fee
12 writ entry or service in the courts of common pleas
13 and quarter sessions of said county and shall follow the
14 judgment in civil cases as in the court of common
15 pleas but regardless of the amount claimed or of the
16 amount of said judgment but in case of tender before
17 suit brought or payment of money into court the court
18 may make such order as to payment of costs as shall
19 be equitable But no costs shall be required to be de-
20 posited or secured in advance except in the case of non-
21 resident plaintiffs upon order of this court" be and the
22 same is hereby amended to read as follows

23 Section 19 The fees and costs for all writs entries
24 and other services charged for shall be fixed by the
25 judges of said court provided however that the same in
26 amount shall not exceed the charge for the corresponding
27 fee writ entry or service in the courts of common pleas
28 and quarter sessions of said county and the same with
29 all witness fees which shall correspond with the witness

1 fees in said courts of common pleas and quarter sessions
2 shall follow the judgment in civil cases as in the court
3 of common pleas but regardless of the amount claimed
4 or of the amount of said judgment but in case of ten-
5 der before suit brought or payment of money into court
6 the court may make such order as to payment of costs
7 as shall be equitable But no costs shall be required to
8 be deposited or secured in advance except in the case
9 of non-resident plaintiffs upon order of this court

10 Section 5 All acts or parts of acts inconsistent here-
11 with are hereby repealed

5—H P 871