

14. Any defendant imprisoned for want of bail on a *capias* issued by a Justice, may be brought before the Justice to attend the trial in said suit by an order (Q), and after the trial may be recommitted to prison, and no Sheriff or gaoler acting in obedience to such order shall be liable to an action for an escape; provided always, that when any person shall be arrested on any *capias* issued by a Justice of the Peace, he may in addition to the foregoing modes of giving bail for his appearance pay into the hands of the constable arresting him, the amount sworn to and costs, endorsed, together with constable's fees, and the constable executing such *capias* shall, on receiving such deposit, forthwith make return to the Justice who issued the *capias*, and shall pay over the said deposit and costs to the Justice who issued the *capias*; and which deposit shall then be dealt with in all respects in the same manner as if such deposit had been made with the Justice by the defendant in the first instance; and if judgment should be recovered by the plaintiff, the amount of such deposit shall be applied to the payment of such judgment, and the surplus, if any, shall be returned to the defendant on demand; but nothing herein contained shall be construed to prevent the defendant from defending such action; and any Justice of the Peace issuing a *capias* shall, before delivering the same to a constable, endorse the amount of the Justice's fees upon the said *capias*.

15. The defendant shall be detained in custody one day only for every forty cents of the sum stated in the warrant, whether he remain in custody thereon or be charged in execution, but no gaoler shall be liable for detaining a defendant beyond the legal time unless he demand his discharge, or the detention be wilful and malicious; any defendant so committed to gaol shall at any time before final judgment be released upon bail being given as aforesaid.

16. The Justice taking bail or a deposit in a case not depending before him, shall forthwith transmit the *capias*, with the deposit, to the Justice who issued the *capias*, that he may proceed thereon.

17. The bail shall be answerable for the debt and costs, or that the defendant be rendered into custody upon execution if it be delivered to a constable within six days after judgment, unless the defendant point out sufficient personal property to satisfy the execution and fees thereon; and a defendant arrested and having given bail, may render himself or be rendered in discharge of his bail to the gaol of the County where he may be, by an order (R) of any Justice of the County, which order shall be delivered to the gaoler, who shall thereupon give a certificate (S); the certificate shall be forthwith filed with the Justice who issued the *capias*, and he shall thereupon make a discharge (T) upon the memorandum of bail, and the bail shall thereupon be discharged from liability, except that if a suit shall have been commenced against the bail before such order of render obtained and certificate filed, the Justice shall discontinue the same on the filing of such certificate and payment of the costs up to that time.

18. If the *capias* be served only six days before the return, the Justice at the request of either party shall appoint a further day for hearing the cause, giving six days notice to the other side, but if the defendant be in actual custody, and unable to find bail, the cause shall not be put off without the defendant's consent, unless the plaintiff release him; and if the day fixed in the *capias* for the trial be later than six days after such arrest, the trial may, if the defendant so request, be appointed to take place on four days notice from the Justice to the plaintiff.

19. Upon any summons or *capias* being returned without been served or executed, the Justice, at the request of the plaintiff, may issue a second summons (B) or *capias* (D) in the same suit, and so on from time to time as may be necessary on like return.

20. Either party may conduct his suit in person, but no attorney shall take any part in a cause if objected to by the opposite party, unless he make oath (F) that his services are entirely gratuitous; and no constable shall act on the trial of a civil cause before a Justice of the Peace as agent or attorney for either party.

21. Debts due from the plaintiff to the defendant before action brought may be set off against the plaintiff's demand; but if a set-off be founded on an instrument having a penalty, then only the real debt

secured by the condition shall be set off. If the set-off established be equal to the debt due the plaintiff, the defendant shall have judgment with costs; or if more, and not exceeding the debt due the plaintiff by more than twenty dollars, then the defendant shall have judgment for the excess, with costs; if less than the plaintiff's debt, then the latter shall have judgment for what is due to him, with costs. If the defendant's demand exceed the debt due the plaintiff by more than twenty dollars, the defendant shall not be entitled to set off any more than to the amount of the plaintiff's demand, but shall have his remedy for the residue in any Court of competent jurisdiction, unless he abandon so much as shall reduce the excess to twenty dollars. If the plaintiff's demand exceed twenty dollars, judgment shall be rendered against him with costs, unless he reduces it to that amount and abandons the overplus. In suits brought by executors or administrators, the defendant may set off demands due him from the testator or intestate; and in like manner in suits by trustees of absconding debtors, the defendant may set off against them debts due from the debtor at the time of his absconding. Whenever a set-off is established in a suit brought by executors, administrators, or trustees, the judgment shall be against them as such, and shall be evidence of the debt, but execution shall not issue thereon.

22. If on the trial the title to land shall come in question, the Justice shall render judgment for the defendant for his costs.

23. The parties, on the trial of a cause, shall be confined to their particulars, unless good cause be shewn, in which case the Justice may allow an amendment to the particulars.

24. In case of an action founded upon a Bill of Exchange or other negotiable instrument, it shall be lawful for the Justice trying the action to order that the loss of such instrument be not set up as a defence, provided an indemnity by way of bond with two sufficient sureties to the satisfaction of such Justice, is given by the plaintiff to the defendant, to protect the defendant against the claim of any other person upon such negotiable instrument.

25. A Justice may adjourn his Court from day to day if necessary to finish the business before the Court; he may also for the absence of material and necessary witness or other good reason when made to appear on affidavit, adjourn the hearing of a cause till a day later than the day succeeding; but no such adjournment shall extend beyond one month, nor shall there be more than one such adjournment at the instance of each of the parties; but a cause so adjourned may afterwards be continued from day to day, which term in this Section shall mean from one day to the next day, not being Sunday or a Public Holiday.

26. When the defendant is in custody and cannot procure bail or make a deposit, the Justice shall not adjourn the cause except from day to day at the instance of the plaintiff, unless the plaintiff consents to release the defendant from custody, but nothing in this or the preceding Section shall prevent an adjournment by consent of parties.

27. A Justice may issue subpoenas (G) into any County for witnesses to give evidence on any trial before him or any other Justice, and the person so subpoenaed, on being tendered the legal fees, shall attend.

28. The subpoena may be served by any person, by shewing it to the witness, and delivering to him a copy or minute (G) thereof, with his fees, if demanded.

29. Every person duly subpoenaed as a witness, neglecting or refusing to appear and testify, shall be liable to the person subpoenaing him for all damages sustained by such neglect or refusal.

30. Every cause shall be tried or determined at the return of the process, if duly served, or on some day to which the Court or the cause is adjourned, before the Justice who issued the process, or in case of his inability to attend, or of his being a witness, then before some other Justice of the same County who shall attend at the request of the Justice who issued the process, to try the cause; every cause shall be tried before the Justice who issued the process, but if he be unable from sickness or other reason to conclude after having begun the trial, another Justice of the County may be called on, who shall take up the proceedings at the point where they were left, and carry on the same to a close.