

CHAPTER VIII.

OF THE TRANSFER OF CAUSES TO OTHER JUSTICES.

- | | |
|---|---|
| § 150. In suits commenced by warrant. | § 153. In case of vacancy in office of justice. |
| § 151. In suits commenced by other process. | § 154. Further in case of absence or vacancy. |
| § 152. In case of absence of justice on day of trial. | |

§ 150. In suits commenced by warrant.—Provision is made for taking a defendant arrested on a *warrant* before some other justice, in case the justice who issued it shall be absent, or unable to hear or try the case, or if it shall appear by the affidavit of the defendant that such justice is a material witness in his behalf on the trial of the case.¹

§ 151. In suits commenced by other process.—“If, before joining issue in any cause, the defendant, or his agent or attorney, shall make and file with the said justice an affidavit, stating that the justice, before whom the same is pending, is a material witness for such defendant, without whose testimony he cannot safely proceed to the trial thereof, and shall state in said affidavit the facts he expects to prove by said justice, or shall make and file as aforesaid an affidavit that the said justice has advised or counseled with the plaintiff in respect to the subject matter of said cause, the justice shall forthwith make in his docket an entry of the filing of such affidavit, and an order that the suit and all papers relating thereto, be transferred to one of the nearest justices of the peace in the same county, who is not of kin to either party, sick, absent from town, or interested in the event of said suit, either as counsel or otherwise, which justice shall be named in said order, and such transfer shall forthwith be made by such justice, and the justice to whom such transfer shall be

¹—C. L., § 726. See, *ante*, §§ 64, 68.

made, shall thereupon proceed to hear, try and determine the cause in the same manner as if the suit had been originally commenced before him, and with like effect, or the said justice may in the order aforesaid, in his discretion, postpone the hearing of said cause to such time as he shall see fit, not exceeding five days, at which time the justice to whom the cause is transferred, shall attend and proceed to hear, try and determine said cause as aforesaid: Provided, that the defendant shall pay to the justice making such order of transfer, the costs which have so far accrued and as taxed by said justice, together with fifty cents for such transcript, and the sum so paid shall be recovered by the said defendant against the plaintiff in addition to his other costs, if he finally prevail in said cause.'²

The proper time to make this affidavit would be after the plaintiff had declared, and before plea. The justice would have no right to interpose his private knowledge or recollection, as an answer to the affidavit. The facts sworn to, however, must be material to the issue.³

§ 152. In case of absence of justice on the day of trial.—
 "If any justice of the peace shall be absent when there shall be pending before him any matter or suit undetermined, he

2—C. L., § 835. This statute is applicable only to suits at law, not to special proceedings: *People v. Brighton*, 20 Mich., 70. If parties appear before the justice to whom the transfer is made without objection and go to trial, if such justice has jurisdiction of the subject matter the question of the regularity of the transfer is foreclosed: *Smith v. St. Joseph Circuit Judge*, 46 Mich., 338; 9 N. W. 440. As to when a justice will be deemed to be disqualified to act by reason of interest, see *West v. Wheeler*, 40 Mich., 505; 13 N. W., 836; *Moon v. Stevens*, 53 Mich., 144; 18 N. W., 600; *Taggart v. Waters*, 115 Mich., 638; 13 N. W., 885. There can be no removal until all statutory prerequisites have been complied with: *Oakley v. Dunn*, 63 Mich., 494; 30 N. W., 96. Counter affidavits to affidavits for removal, not receivable: *Ibid.*

was necessary for the plaintiff to prove the execution of a paper to which the justice was the only subscribing witness: *Held*, that the disability of the justice to be sworn did not authorize him to admit other proof of the execution of the instrument: *Jones v. Phelps*, 5 Mich., 218.

3—*Hopkins v. Cabrey*, 24 Wend., 260. The justice has a right to judge of the sufficiency of the affidavit; but he cannot refuse to transfer the cause on the ground that he does not recollect the fact which the defendant expects to prove by him: *Young v. Scott*, 3 Hill, 32; see, *Murtha v. Walters*, 2 Sandf., 517. When such an affidavit is drawn and presented to the justice, he is bound to swear the defendant to the truth of it, whether the affidavit is sufficient or not; and his refusal to do so would be a misdemeanor: *People v. Brooks*, 1 Deno, 457.

Where, in a suit before a justice, it

may deliver over all the papers relating to such matter or suit, with a minute of his proceedings therein, to some neighboring justice of the same city or township, who may thereupon proceed to hear, try and determine such matter or suit, in the same manner as if such matter or suit had been commenced before him, and with like effect; but the parties to such matter or suit, their agents or attorneys, shall be notified of such transfer previous to any hearing or trial of such matter or suit.”⁴

§ 153. In case of vacancy in the office of any justice.—
 “Whenever the office of any justice shall become vacant by resignation, removal or otherwise, and there shall be pending before him any matter or suit undetermined, and the books and papers of such justice shall be delivered over to any other justice of the city or township, pursuant to the foregoing provisions, the justice to whom such books and papers shall be so delivered, shall proceed to hear, try, and determine such matter or suit, and to issue execution thereon, in the same manner and with the like effect as he might have done if such matter or suit had been originally commenced before him.”⁵

§ 154. Further, in case of vacancy, absence of justice, etc.—
 Further provisions for the transfer of causes have been enacted as follows:

“In case a vacancy from any cause shall occur in the office of a justice of the peace, all causes and matters pending before him at the time such vacancy shall occur shall stand transferred to the justice of the same township or city whose term of office shall soonest expire: Provided, that the hearing or trial of the same shall not be had within ten days after such vacancy shall occur.”⁶

“In case of the sickness of any justice, or of his absence from the township or city in which he was elected, or his inability from any cause, temporarily or negligently, to perform the duties of his office, any such matter or cause pending before him shall stand continued before him two weeks, at

⁴—C. L., § 964.

will be found in C. L., §§ 967-970

⁵—C. L., § 971. The “foregoing provisions” referred to in this section,

⁶—C. L., § 799.

the end of which time, unless said justice shall be able to attend the same, such cause or matter shall stand transferred to the justice of the same township or city whose term of office shall soonest expire, and be heard or tried before him in the same manner and time as in case of a vacancy: Provided, that this act shall not be construed to prevent the transfer of causes by justices under the existing provisions of law.'"

7—C. L., § 800.