

**CIVIL PROCEDURE BEFORE
JUSTICES OF THE PEACE
(OKLAHOMA PRACTICE)**

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Civil Procedure Before Justices of the Peace (Oklahoma Practice) by Robert A. Neff

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ROBERT A. NEFF

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BY

JUDGE ROBERT A. NEFF

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CIVIL PROCEDURE

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CHAPTER I.

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(1.) The jurisdiction of a justice of the peace in civil actions shall be coextensive with the county wherein he may have been elected, and wherein he shall reside: Provided, that in all actions against two or more defendants jointly or jointly and severally liable, and who live in adjoining counties, such actions may be brought before any justice of the peace of the county wherein either of the defendants shall reside or may be summoned; and such justice shall have power and is authorized to issue a summons directed to the sheriff of any other county for service to bring in all co-defendants who may be served in such county; and upon service of such summons the justice before whom the action is pending shall have as full jurisdiction as to all the defendants as he would have in cases where all the defendants resided in the county where the action is brought.

(2.) Justices of the peace have original jurisdictions of civil actions for the recovery of money only, and to try and

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determine the same, where the amount claimed does not exceed one hundred dollars.

Second: To try the action for the forcible entry and detention, or detention only, of real property.

Third: To issue orders of attachment and proceed against the goods and effects of debtors in certain cases.

Fourth: To issue subpoenas for witnesses, and compel their attendance in causes and matters pending before them, or other cause or matter wherein they may be required to take depositions.

Fifth: To issue execution on judgments issued by them.

Sixth: To proceed against security for costs and bail for the stay of execution before the justice in the manner prescribed by law.

Seventh: To proceed against constable failing to make returns, making false return, or failing to pay over money collected on execution issued by such justice.

Eighth: To administer any oath or affirmation authorized or required by law to be administered.

Ninth: To take the acknowledgement of deeds, mortgages, and other instruments in writing.

Tenth: To solemnize marriages.

(3.) When the balance claimed to be due on any open or unsettled account, or on any bill, note or bond, does not exceed one hundred dollars, the justice of the peace has jurisdiction to hear and determine the matters in controversy, without regard to the amount of the original account or he may render judgment for any balance found due, not exceeding one hundred dollars.

(4.) Justices shall have jurisdiction in actions for trespass on real estate, where damages demanded for such trespass do not exceed one hundred dollars.

(5.) If in any action commenced before a justice it appears to the satisfaction of the justice that the title or boundaries of the land is the question in dispute in such action, said action must be stayed before said justice, and said justice must, within ten days thereafter, certify said case, and transmit all papers and process therein to the clerk of the district court of his county, and said case will be docketed and thereafter proceeded with in the district court as if originally commenced therein. The justice before whom said action is commenced shall require of the defendant setting up said title or boundary to set forth in his answer or bill of particulars a full and specific statement of the facts constituting his defense of said title or boundary brought in question; and the defendant shall be required to make affidavit of the truthfulness of the statements in his said answer or bill of particulars contained, and that said defense is bona fide and not made for vexation or delay, but for the promotion of justice.

(6.) Justices shall not have jurisdiction of any action: First to recover damages for an assault or an assault and battery; or, second: in any action for slander or malicious prosecution; or, third, in actions on contracts for real estate; or,

fourth, in actions in which the title to real estate is sought to be recovered, or may be drawn in question.

(7.) Every justice of the peace must keep a book denominated a docket, which shall be furnished by the proper township, in which must be entered by him, the proper title of every action in which the writ is served, or when the parties voluntarily appear; the date of the writ; the time of its return; and if an order to attach property was made, such fact must be stated, together with the affidavit upon which such order was made; the filing of the bill of particulars of either party; which of the parties, if either of them, appear at the trial; every adjournment, stating upon whose application, whether on oath or consent, and to what time. When trial by jury is demanded, the demand must be stated, and by whom made, and by whom the deposit of three dollars as jury fees was made; the names of the jurors selected, and the time appointed for the trial; the names of the jurors who appear, and those sworn; the names of all witnesses sworn and at whose request; the exceptions to the rulings of the justice on questions of law, taken by either party; the verdict of the jury, and when received. If the jury disagree, and are discharged, the fact must be stated. The judgment of the justice, specifying the items of costs included, and the time when rendered; the issue of the execution, and orders to sell, when issued, and to whom the renewals thereof, if any were made; the return and when made; and a statement of any money paid to the justice, and by whom; the giving of a transcript, to be filed in the clerk's office, and when given; if appeal be taken, the undertaking, and the time of entering the same, and by which party taken; the satisfaction of the judgment, and the time of satisfying the same.

(8.) The several particulars in the last section specified, must be entered under the title of the action to which they relate, and at the time when they occurred, except that the bill of exceptions in regard to the ruling and questions of law or evidence need not be entered until after the judgment unless required by the justices, or one of the parties. Such entries in a justice's docket, or a transcript thereof, certified by the justice or his successor in office, shall be evidence to prove the facts stated therein.

(9.) Each justice must keep an alphabetical index to his docket, in which must be entered the names of the parties to each judgment, with reference to the page of entry. The names of the plaintiffs must be entered in the index, in the alphabetical order of the first letter of the family name. He shall number the cases progressively upon his docket, and shall correspondingly number the papers in each case. He shall keep the entire papers in each action together, and in packages of a proper and convenient size, and in the order in which the cases are numbered in his docket.

(10.) It is the duty of every justice, upon the expiration of his term of office, to deposit with his successor his official docket, as well as his own as of his predecessors, which may be in his custody, together with all files and papers, laws and statutes pertaining to his office, there to be kept as public records and property. If there be no successor elected and qualified, or if the office becomes vacant by death, removal from

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the township, or otherwise, before his successor is elected and qualified, the docket and papers in possession of such justice must be deposited with the nearest justice in the township, if there be any; and if there be none, then with the nearest in the county, there to be kept until a successor shall be chosen and qualified, then to be delivered over to such successor, on request.

(11.) A justice receiving by succession or on deposit any such docket, papers and laws, shall, if requested give a receipt therefore to the person from whom he receives the same.

(12.) The justice with whom the docket of another may be deposited, either during a vacancy or as his successor, is authorized, while having such docket legally in his possession, to issue execution on any judgment there entered and unsatisfied, and not docketed in the district court, in the same manner and with the same effect as the justice by whom the judgment was rendered might have done, to take bail in appeal, to issue certified transcripts of judgments on such docket, and proceed in all cases in like manner as if the same had been originally had or instituted before him.

(13.) When two or more justices are equally entitled to be deemed the successor of a justice, the county commissioners shall designate which justice is to be deemed the successor of the justice going out of office, or whose office has become vacant, and shall enter a certificate in the last docket of the justice going out of office, or whose office is vacant, of their determination, before the same is delivered to such successor.

(14.) In case of sickness or other disability, or necessary absence of a justice at the time appointed for trial, another justice of the same township may, at his request, attend in his behalf, and shall thereupon, become vested with the power, for the time being, of the justice before whom the summons was returnable. In that case the proper entry of the proceeding before the attending justice, subscribed by him, must be made in the docket of the justice before whom the writ was returnable. If the case be adjourned, the justice before whom the writ was returnable, must resume jurisdiction.

(15.) The summons, execution, and every other paper made or issued by a justice, must be filled up, without a blank to be filled by another; otherwise it is void.

(16.) A justice, at the request of a party, and on being satisfied that it is expedient, may specially depute any discreet person of suitable age, and not interested in the action, to serve a summons or execution, or attach property. The person so deputed has the authority of constable in relation to the service, execution and return of such process, and is subject to the same obligations; but there can be no fee for his services taxed in the bill of costs.

(17.) The justice may punish, as for a contempt, persons guilty of the following acts: Disorderly, contemptuous or insolent behavior toward the justice, tending to interrupt the due course of a trial or other judicial proceeding; wilful resistance, in the presence of the justice, to the execution of a lawful order or process made or issued by him.

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(18.) A warrant of arrest may be issued by such justice, on which the person so guilty may be arrested and brought before the justice, when an opportunity to be heard in his defense or excuse must be given. The justice may thereupon discharge him, or may convict him of the offense, and adjudge a punishment by fine or imprisonment, or both; such fine not to exceed twenty dollars, and such imprisonment not to exceed ten days.

(19.) The conviction, specifying particularly the offense and the judgment thereon, must be entered on his docket; a warrant of commitment to the jail of the county, until the fine is paid, or for the term of imprisonment, may then be issued. Such warrant of commitment must contain a transcript of the entry in the docket, and the same must be executed by any constable to whom it may be given, and by the jailor of the county.

(20.) Attorneys at law, duly admitted to practice as such, may appear for and represent any party before a justice, to the same extent and with the same effect as in the district court. When an attorney appears for a party, the justice shall note the fact of such appearance on his docket in the case in which the attorney appears, which shall have the same effect as an appearance of record in the district court.

(21.) All processes out of a justice court may be directed to the sheriff of the county, in the discretion of the justice, and be by the sheriff served and returned in the same manner as provided for in cases where the same is issued to the constable.

(22.) It shall be unlawful for any justice of the peace to purchase any judgment upon any docket in his possession; and for so doing, for every such offense, such justice shall forfeit and pay a sum of not more than fifty dollars, nor less than ten dollars, to be recovered by any court having jurisdiction thereof, and when collected, shall be paid into the treasury of the county where such offense was committed.