

## No. 55

## AN ACT

To amend section nine of the act, approved the fifth day of May, one thousand nine hundred and eleven (Pamphlet Laws, one hundred ninety-eight), 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," as amended, by providing that appeals from the judgment of the court in all civil actions shall be taken directly to the Supreme or Superior Court.

Section 1. Be it enacted, &c., That section nine of the act, approved the fifth day of May, one thousand nine hundred and eleven (Pamphlet Laws, one hundred ninety-eight), 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," as last amended by section two of the act, approved the ninth day of April, one thousand nine hundred and fifteen (Pamphlet Laws, forty-eight), entitled "An act amending sections eight and nine 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 changing the practice of the court with regard to trials, and by providing that appeals from the judgment of the court in all civil actions shall be taken by leave of the court of common pleas, and prescribing the practice and the powers of the court of common pleas in such cases, and providing for an appeal to the Superior Court from judgments of the court of common pleas upon writs of certiorari issued to the county court," is hereby further amended to read as follows:

Section 9. *All parties believing themselves to be aggrieved by the decisions of the said court may remove their cases by appeal or writ of error to the Supreme or Superior Court, as the case may be, in accordance with existing law, and in accordance with the practice and procedure in perfecting appeals from the court of common pleas of said county.*

[Either party may, within ten days after the allowance of an appeal to the court of common pleas as herein provided, in any civil action, appeal to the court of common pleas of said county, by taking and perfecting an appeal in the manner following:

The party appealing shall procure from the county court a transcript, duly certified under the seal of the court, showing the proceedings had in said cases, and shall file the same in the office of the prothonotary of said county, and, at the time of filing the same, shall

Allegheny  
County.

County Court.

Section 9, act of  
May 5, 1911 (P.  
L. 198), as last  
amended by act  
of April 9, 1915  
(P. L. 48), fur-  
ther amended.

Appeals to  
Supreme or  
Superior Court.

Procedure.

also make affidavit that the said appeal is not taken for the purpose of delay. The appellant shall give bail absolute, in a sum and with surety or sureties to be approved as hereinafter provided, for his compliance with any judgment that may be finally rendered against him, and for payment of all interest and costs likely to accrue. All costs accrued up to the time of filing the transcript shall be paid by appellant, in the first instance; and if the appellant shall finally recover judgment in the case appealed, he shall be entitled to receive and collect from the adverse party the costs so as aforesaid paid on appeal.

The costs on appeals, accruing at and from the time of filing the transcript, shall abide the event of the suit, and be paid by the unsuccessful party as in other cases: Provided, That if the plaintiff be the appellant, he shall pay all costs which may accrue on the appeal, if, in the event of the suit, he shall not recover a greater sum or a more favorable judgment, exclusive of interest, than was rendered by the county court: And provided also, That if the defendant, either on the trial of the cause before the county court or before an appeal is taken, shall offer to give the plaintiff a judgment for an amount which the defendant shall admit to be due, and if the said plaintiff shall not accept such offer, then, and in that case, if the defendant shall appeal, the plaintiff shall pay all the costs which shall accrue on the appeal, if he shall not, in the event of the suit, recover a greater amount than that for which the defendant offered to give a judgment; and in both cases the defendant's bill shall be taxed, and paid by the plaintiff, in the same manner as if a judgment had been rendered in court for the defendant: But provided further, That in all cases where the judgment of the county court shall be in favor of defendant or a counter-claim, then the terms "plaintiff" and "defendant" in the foregoing provisions relating to costs on appeals shall be taken as inverted. Any appellant shall have the right to appeal, and demand and receive transcripts, without payment of costs, upon his making and filing with the judge approving the appeal bond an affidavit that he is unable, through poverty, to pay said cost; provided said judge shall be satisfied of the truth of the statements in such affidavit. All appeals taken and perfected in the manner above provided shall operate as a supersedeas. The amount of the penalties of and the sureties upon such bonds shall be approved by a judge of the county court; but in allowing the appeal the common pleas court may, for proper cause, order that no bond be required, or may otherwise prescribe the condition of allowance of said appeals, as may be just and proper under the circumstances.

Any party shall be entitled, within ten days from the

date of judgment, or within such further time as the court of common pleas may grant, to a writ of certiorari to remove the record to any court of common pleas of said county, in the manner as now provided by law in regards to writs of certiorari issuing out of said common pleas; but such certiorari shall not operate as a supersedeas unless bail absolute for said judgment, interest, and costs shall be given, and approved by the court of common pleas from which such writ of certiorari issues.

From a final judgment of the said common pleas court, upon a certiorari issued as aforesaid, an appeal may be taken to the Superior Court in the same manner as appeals are taken from other final judgments of the said court of common pleas; and this right of appeal to the Superior Court shall apply to pending cases in which the time for such appeal has not yet expired.

Provided, That no appeal to the common pleas court shall be perfected, as above set forth, until leave to take such appeal has first been obtained by the appellant from the court of common pleas, or a judge thereof. The application for leave to appeal shall be by petition to the common pleas court, setting forth the reasons why a retrial of issues of fact is necessary to prevent an injustice. This petition shall be heard after such notice to the adverse party as the common pleas court shall prescribe; and, if leave to take such appeal be granted, a copy of the order allowing the appeal shall be filed in the office of the clerk of the county court. Where error is alleged in a finding of fact, it shall be the duty of the court of common pleas to examine the testimony; and, if from such examination the said court shall entertain doubt of the correctness of such finding, the said appeal shall be allowed. Said application for leave to appeal shall be made to the common pleas court, within ten days after the entry of judgment by the county court; but where the case has been tried in the county court by a judge without a jury, and a motion to open the judgment has been made within said court within such time as the county court may prescribe, then the ten days for making application to appeal shall run from the date of the judgment of the county court on the motion to open judgment. In disposing of the application for leave to appeal, the court of common pleas may, in its discretion, direct the entry by the county court of such judgment as may be proper on its whole record, and from such order of the common pleas court an appeal shall lie to the Superior Court of Pennsylvania.]

APPROVED—The 30th day of April, A. D. 1931.

GIFFORD PINCHOT