

before the justice aforesaid have been paid by the appellant, or that the appellant has given bond, conditioned for the payment of the same, if he does not prosecute his appeal successfully. This section is not to apply to Allegany county, nor to Frederick county; provided, that in Frederick county the appellant shall have given a sufficient bond as provided by section 92 of this article.

This section was passed for the protection of the justice and his officers, and not of the parties to the suit. The payment of costs is a condition precedent to the hearing, and not to the appeal. If the non-payment of the costs is not raised, the judgment is not void on that ground. *B. & O. R. Co. v. Waltemyer*, 47 Md. 332.

No question of the constitutionality of this section has ever been raised. *Knee v. Baltimore, etc., Ry. Co.*, 87 Md. 630.

As to costs, see also, sections 12, 14, 26, 67 and 98.

1904, art. 5, sec. 96. 1888, art. 5, sec. 93. 1870, ch. 56.

**96.** Where any judgment of a justice of the peace, imposing any fine or penalty for the violation of any law or ordinance, shall be affirmed upon appeal, the court to which such appeal is taken shall have the power to commit the defendant or appellant in case of non-payment of such fine or penalty and costs; provided, that no person shall be imprisoned under this section for a longer period than thirty days for any one offence.

See art. 52, sec. 12.

#### **Amendment on Appeal from Justices of the Peace.**

*Ibid.* sec. 97. 1888, art. 5, sec. 94. 1884, ch. 416.

**97.** All civil actions and civil proceedings, including the writ. summons, docket entries and the names of the parties, on appeal from a justice of the peace, before a circuit court, for any county or the Baltimore city court, may be amended so as to bring said action to trial on its merits, in the same manner and to the same extent as now allowed in cases originating in courts of law; and amendments in any of the said courts shall be allowed and made in the discretion of said court, as if said actions, writs and proceedings had originated therein.

As to amendments at law, see art. 75, sec. 35, *et seq.*; in equity, see art. 16, sections 17 and 18.

*Ibid.* sec. 98. 1888, art. 5, sec. 95. 1884, ch. 416.

**98.** In all cases of amendment of actions and proceedings at law, under the preceding section, the allowance of continuances and of costs shall be in the discretion of the court, as the case may be, so as to accomplish the ends of justice.

As to costs, see also, sections 12, 14, 26 and 67. As to the payment of costs in cases before justices of the peace, see sec. 95.