

the same, or before some other justice to be named therein, on a day to be stated in said summons, not exceeding forty days from the time of issuing the same.

Where there is no summons, justice is without jurisdiction, and his judgment is a nullity. *Fahey v. Mottu*, 67 Md. 253.

An. Code, 1924, sec. 26. 1912, sec. 24. 1904, sec. 22. 1888, sec. 21. 1852, ch. 76, sec. 3.

28. If the summons shall be returned "summoned" and the defendant shall fail to appear on the return day thereof, then the justice shall fix a day of trial, not less than six nor more than fourteen days from the return day, and on such day proceed to try such case *ex parte*; the defendant to have the right to appear at any time before judgment and make any defense he may have as if he had appeared at the return day of the summons.

That a justice had jurisdiction must affirmatively appear on the face of the proceedings. *Fahey v. Mottu*, 67 Md. 254.

Where defendant has been summoned (in a proper case), justice has jurisdiction which cannot be ousted by subsequent failure to comply with law. *Mottu v. Fahey*, 78 Md. 393.

This section contemplates and requires a trial, and though the trial is *ex parte*, the plaintiff must prove his claim. *Wagner v. Shank*, 59 Md. 321.

This section has no application to attachments. *Weed v. Lewis*, 80 Md. 128. (See sec. 47, *et seq.*)

See sec. 37, and (as to replevin), sec. 58.

An. Code, 1924, sec. 27. 1912, sec. 25. 1904, sec. 23. 1888, sec. 22. 1852, ch. 76, sec. 4.

29. Where there are more than one defendant and some shall appear and some who have been summoned shall fail to appear, the justice shall proceed to try the cause as if all had appeared.

An. Code, 1924, sec. 28. 1912, sec. 26. 1904, sec. 24. 1888, sec. 23. 1791, ch. 68, sec. 8.

30. A justice of the peace shall issue summonses for witnesses at the instance of either party and shall compel the attendance of such witnesses by attachment of contempt.

As to compensation of witnesses before justices of peace, see art. 35, sec. 17.

An. Code, 1924, sec. 29. 1912, sec. 27. 1904, sec. 25. 1888, sec. 24. 1801, ch. 42, secs. 1, 2.

31. If the witness shall fail to appear on the return day of the summons the justice shall issue an attachment of contempt made returnable before the justice issuing the same who may, at his discretion, fine such defaulting witness in any sum not exceeding three dollars and shall issue execution for such fine and costs; and the same shall be collected and paid to the justice who shall, on or before the first day of January, annually, pay the same to the clerk of the circuit court for the county, or the clerk of the superior court of Baltimore City.

An. Code, 1924, sec. 30. 1912, sec. 28. 1904, sec. 26. 1888, sec. 25. 1791, ch. 68, sec. 2.

32. If either party on the day of trial shall ask a postponement, the justice shall postpone the trial to another day, not exceeding fourteen days, if the justice shall be satisfied by the oath of the party or otherwise that a postponement is necessary to a fair trial of the case.

A postponement for a longer time than that fixed by this section, cannot be complained of by party at whose instance it was had. *Ewing v. Nickle*, 45 Md. 417.

This section contemplates and requires a trial, and though the trial is *ex parte*, the plaintiff must prove his claim. *Wagner v. Shank*, 59 Md. 321.