

To make statement, etc.

received on account of fines, and all fees which may have remained unclaimed in his hands for twelve months, for the use of common schools; and he shall, at the same time, deliver to such treasurer a statement, in writing, showing by items the source from which such money was derived, and append thereto an affidavit that he has received no other money for fines not before paid over to such treasurer, and has no other fees unclaimed for twelve months in his hands, and the treasurer's receipt therefor he shall file with the auditor, who shall give him a *quietus*; and if such return is made on the day required as aforesaid, then such justice shall be entitled to receive from such treasurer the sum of twenty-five cents, as a fee therefor, and also five cents for every mile that it may be necessary for such justice to travel in making such return.<sup>1</sup>

*Surety of the peace.*

Affidavit for surety of the peace.

SEC. 22. Upon affidavit by any person, that he has just cause to fear, and does fear, that another will destroy or injure his property, or injure, by violence, himself or some member of his family; and that he makes such affidavit only to secure the protection of the law, and not from anger or malice; any justice, with whom such affidavit is filed, shall issue his warrant and cause the person complained of to be arrested and brought before him for trial.<sup>2</sup>

The warrant and its service.

Trial upon peace warrant.

The issue, finding, etc.

SEC. 23. The issue to be tried in such case, shall be, whether the complaining witness has just cause to entertain the fears expressed in his affidavit; which issue shall be tried by the justice, unless either party shall demand a jury; and changes of venue and continuances shall be granted as in other cases.<sup>3</sup>

1. See sec. 63 of the chapter defining misdemeanors, p. 477.

See 9 Ind. 337; 2 *Id.* 305.

2. Affidavit for surety of the peace, form No. 5, *post*, this chapter.

a. Warrant on complaint for surety of the peace, form No. 6, *post*, this chapter.

b. See sec. 15, p. 9.

c. See sec. 138, p. 408.

d. A complaint for surety of the peace is not necessarily bad from alternativeness, arising from the use of "or" instead of "and." 8 Ind. 458.

e. The complainant may well include all his fears for his person, property and family conjunctively; and the use of a disjunctive is a trivial defect, which should not prejudice his rights on the merits. *Id.* 10 *Id.* 170; 11 *Id.* 312. See 4 *Id.* 561.

f. The constitutional provision that no person shall be twice put in jeopardy for the same offense, does not apply to proceedings for surety of the peace. 27 Ind. 121.

g. As to what will constitute a sufficient affidavit for surety of the peace, see 21 Ind. 225.

3. A prosecution for surety of the peace is a criminal proceeding, and where the act authorizing such prosecution is silent, the criminal practice governs. 16 Ind. 175.

h. In a proceeding for surety of the peace, the issue to be tried is not, under the statute, the guilt or innocence of the defendant, but whether the complaining witness has just cause to entertain the fears expressed in his affidavit. 26 Ind. 141.

i. The statute requiring the court in criminal cases to instruct the jury that the defendant is presumed to be innocent until the contrary is proven, does not apply to a proceeding for surety of the peace. *Id.*

j. In a proceeding for surety of the peace, the question as to just cause of fear relates to the time of the institution of the proceedings, and not to the time of the trial. 35 Ind. 379.

**SEC. 24.** If the justice or jury trying the issue shall find that <sup>Finding.</sup> the complaining witness has just grounds to entertain the fears expressed in his affidavit,<sup>1</sup> the justice shall require of the defendant <sup>Recognizance to keep the peace.</sup> recognizance and freehold surety, in a sum not less than fifty, or more than five hundred dollars, for his appearance on the first day of the next term of the court of common pleas, and to keep the peace meanwhile; which recognizance shall be substantially in the following form:<sup>2</sup>

We, A. B. and C. D., severally acknowledge ourselves bound to <sup>Form.</sup> the state of Indiana, in the penal sum of \_\_\_\_\_ dollars each, if said A. B. shall not appear at the first day of the next term of the court of common pleas of \_\_\_\_\_ county, to answer a complaint of surety of the peace made against him by John Smith, and abide the order of such court therein; and in the meantime keep the peace toward all the inhabitants of this state.

A. B. [SEAL.]  
C. D. [SEAL.]

Attest: RICHARD STILES, *Justice.*

**SEC. 25.** Such recognizance shall be filed and recorded in the <sup>Recognizance and transcript to be filed, etc.</sup> same manner and have the same force and effect of recognizances required to be taken in criminal cases by justices. And such justice shall also file in the clerk's office, a transcript of the proceedings before him and all papers in the cause, unless otherwise directed by both parties.<sup>3</sup>

**SEC. 26.** Such cause shall be docketed and tried in the court of <sup>Docketing and trial of cause.</sup> common pleas under the rules governing such trials before justices; and, if the finding of the court, or the verdict of the jury, be <sup>Finding of court or jury.</sup> against the defendant on the issue, such court shall require of such defendant recognizance and surety that he will keep the peace for such length of time as the court may direct, and shall also give judgment against him for costs, and that he stand committed until <sup>Costs and judgment.</sup> the same be paid or replevied.<sup>4</sup>

**SEC. 27.** If the verdict or finding, either before the justice or <sup>Costs, when against complainant.</sup> in the court of common pleas be in favor of the defendant or the cause be dismissed by the complaining witness, or he fail to prose- <sup>If cause not prosecuted, to be dismissed.</sup>

a. In a proceeding for surety of the peace, the parties agreed in the circuit court that the cause should be dismissed at the cost of the defendant, without any trial of the issue or finding or verdict thereon. *Held*, that the court could not order the defendant to stand committed until the costs should be paid or replevied. 49 Ind. 205.

b. In a proceeding for surety of the peace, a verdict that the defendant is guilty, is insufficient under the statute. 10 Ind. 353.

c. A verdict is not defective for being in the alternative. 11 Ind. 312.

d. See sec. 24, this chapter.

1. See sec. 23, and notes, this chapter.

2. See sec. 25, this chapter.

3. See sections 12, 15 and 24, this chapter.

4. See section 23, this chapter.