

TITLE IV.
CIVIL REMEDIES.

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CHAPTER 1.

ACCOUNT.

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| 1. Executors may have writ of. | 4. Proceedings in action of. |
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REV. 156.

An Act concerning the action of account.

Passed December 1, 1794,

Executors
may have a
writ of ac-
count.

1. BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That from henceforth, executors shall have a writ of account, and the same action and process in the same writ, as the testator might have had, if he had lived.

Account may
be brought
against the
executors of
guardians.

2. *And be it enacted by the authority aforesaid,* That actions of account shall and may be brought and maintained against the executors or administrators of every guardian, bailiff and receiver.

One joint
tenant or
tenant in
common
may
bring action
of account
against the
other.

3. *And be it enacted by the authority aforesaid,* That actions of account shall and may be brought and maintained by one joint tenant or tenant in common, his or her executors or administrators, against the other, as bailiff, for receiving more than comes to his

or her just share or proportion, and against the executor or administrator of such joint tenant or tenant in common.

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4. *And be it enacted by the authority aforesaid,* That where any person is or shall be bound or liable to account as guardian, bailiff, receiver, or otherwise, to another, and will not give account willingly, and the party, to whom such account ought to be made, shall sue out a writ of account, if the person, against whom such writ is issued, being summoned, do not appear at the return of the writ, or if it be returned, that the defendant hath nothing, then the defendant shall be attached, by his or her body, to come and make his or her account; and when such accountant shall appear in court, and submit or be adjudged to account, auditors shall be assigned by the court to take his or her account, and if such accountant shall be found in arrears, and cannot pay the arrears and the costs of suit forthwith, then a fieri facias de bonis et terris, or a capias ad satisfaciendum shall be awarded. And if such accountant shall neglect or refuse to account before the auditors, he or she shall be committed to jail, there to be kept under safe custody until he or she shall satisfy the plaintiff of his or her demand, with costs. And further, if it shall be found that there is a surplusage due on such account, from the plaintiff to the defendant, then the defendant shall have judgment to recover such surplusage, with costs of suit, against the plaintiff, unless where the suit is brought by executors or administrators, in right of their testator or intestate; in which case, the defendant shall not recover costs against them; and the defendant shall or may have such execution for the same as he or she might have had, if he or she had recovered such surplusage by action of debt. And moreover, if any sheriff or jailer shall suffer any such prisoner to go out of prison, without the assent of the plaintiff, he shall be answerable to the plaintiff for the debt, or damages done to him or her by such accountant, according as it may be found by the country, and the party, at whose suit such prisoner was committed, shall have his or her recovery by action of debt, or by bill or plaint, in any court of record.

Proceedings
in actions of
account.

Sheriff who
shall suffer
prisoner to
escape, to be
answerable
for the debt,
or damages.

5. *And be it enacted by the authority aforesaid,* That the auditors appointed by the court, where any action of account shall be depending, shall be and hereby are empowered to administer an oath, and to examine the parties on oath, touching the matters in question; and for their pains and trouble in auditing and taking such account, shall have such allowance as the court shall adjudge to be reasonable, to be paid by the party in whose favour the balance shall be found, and to be allowed to him or her in the costs to be taxed against the opposite party, where costs are recoverable.

Auditors
may examine
witnesses.

Compensation to auditors.

CHAPTER 2.

ATTACHMENT.

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| <ol style="list-style-type: none"> 1. How attachment obtained. 2. Agent may make oath. 3. Penalty, if issued before. 4. Clerk's entry. 5. How writ executed. 6. Inventory and appraisalment. 7. Writ a lien. 8. Effect and operation thereof. 9. Custody of the property. 10. Power of search for. 11. Notice to be given. 12. Proceedings against garnishee. 13. Oath a prerequisite to. 14. Which suit first tried. 15. When garnishee to have costs. 16. Right of property tried. 17. Claim in writing necessary. 18. Proceedings on such claim. 19. Power to adjourn. 20. Process for witnesses. 21. Jury and verdict. 22. When claimant to pay costs. 23. When plaintiff to pay costs. 24. Fees allowed. 25. Auditors, and their duty. 26. Effect of defendant's appearance. 27. Bond to be given by him. 28. Discontinuance, when permitted. 29. Powers of auditors— 30. To authorize search. | <ol style="list-style-type: none"> 31. To administer oaths. 32. To institute suits. 33. Apply the proceeds. 34. Sci. fa. against garnishee. 35. Sale of defendant's property. 36. Meeting of creditors. 37. Purchaser's title valid. 38. Debts not due admitted. 39. Applying creditors, only, paid. 40. Of non-resident debtors. 41. Publication in such case. 42. Joint debtors and partners. 43. Females and corporations. 44. Heirs and devisees. 45. Legacies, etc. 46. Property in two counties. 47. Creditor's refunding bond. 48. Death, suit not to abate. 49. Proceedings before justice. 50. Advertisement required. 51. Proceedings against garnishee. 52. Defendant's appearance and bond. 53. Plea, trial, and appeal. 54. Appeal in garnishee's case. 55. Justice's attachment superseded. 56. Auditor's fees. 57. Appraiser's fees. 58. Fees in justice's court. 59. Non-resident creditors. 60. Construction. |
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An Act for the relief of creditors against absconding and absent debtors.

REV. 355, 512
733.HAR. 40, 293,
405.1836-7.
PAMPH. 233.1838-9.
PAMPH. 63.How attach-
ment may be
obtained.Agent may
make oath.

Revision....Approved April 16, 1846.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That if any creditor shall make oath or affirmation before any judge of any of the courts of record of this state, or justice of the peace of any county in the same, that he verily believes that his debtor absconds from his creditors, and is not, to his knowledge or belief, resident in this state at the time, then it shall be the duty of the clerk of the supreme court, or of any circuit court or court of common pleas, to issue a writ of attachment, to be directed to the sheriff or coroner, as the case may require, and returnable to the next term, commanding him to attach the rights and credits, moneys and effects, goods and chattels, lands and tenements of such debtor, wheresoever they may be found; which oath or affirmation shall, prior to the sealing of the said writ, be delivered to the said clerk, to be by him filed in his office.

2. *And be it enacted*, That if the said creditor be absent or reside out of this state, then his agent or attorney may make oath

or affirmation to the above effect, and deliver the same to the said clerk to be filed, who shall thereupon issue such writ of attachment. TITLE IV.
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3. *And be it enacted*, That if any clerk shall seal such writ of attachment, before such oath or affirmation shall be delivered to him, he shall forfeit and pay twenty dollars to the party injured, to be recovered, with costs, by action of debt, in any court of record of this state having cognizance of that sum. Penalty, if
issued be-
fore.

4. *And be it enacted*, That it shall be the duty of the clerk who shall issue or seal any writ of attachment under or by virtue of this act, forthwith to enter in a book, to be by him provided and kept for that purpose, the names of the plaintiff and defendant in the said writ, the sum or amount therein specified, and the time of issuing or sealing the same; to which book, every person desiring to inspect the same, shall have access at all proper seasons. Clerk's en-
try.

5. *And be it enacted*, That the said writ of attachment shall be executed in the following manner, that is to say: the officer to whom it is directed, shall go to the house or lands of the defendant, or to the person or house of the person, in whose custody or possession the defendant's property and estate may be, and then and there declare, in the presence of one credible person at the least, that he attaches the rights and credits, moneys and effects, goods and chattels, lands and tenements, of such defendant, at the suit of the plaintiff in the said writ named. How writ
executed.

6. *And be it enacted*, That the said officer shall, with the assistance of one discreet and impartial freeholder, make a just and true inventory and appraisement of all the property and estate of the defendant, so by him attached, and such inventory and appraisement, dated and signed by himself and the said freeholder, shall annex to and return with the said writ; and the said officer shall endorse on the said writ, the true time of executing the same, and sign his name thereto. Inventory
and appraise-
ment.

7. *And be it enacted*, That the said writ shall bind the property and estate of the defendant, so as aforesaid attached, from the time of executing the same. Writ a lien.

8. *And be it enacted*, That it shall not be lawful for any person, against whom any attachment shall issue, after issuing the same, to give, grant, bargain, sell, alien, or in any wise convey any lands, tenements, hereditaments, or real estate, or any interest therein, of which he may be seized, possessed of, or entitled unto, at the time of issuing such writ; which said writ shall, immediately on the issuing thereof, become and remain a lien on the said lands, tenements, hereditaments and real estate, as against the defendant and all persons claiming from or under him, by virtue of any such con- Effect and
operation
thereof.

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veyance, until the plaintiff and such of the creditors of the defendant as shall apply under the attachment, shall be satisfied their just debts, or until judgment shall be rendered against the plaintiff and creditors under the attachment, or the said attachment be discontinued; and all conveyances made by the defendant, pending the said attachment, shall be void against the plaintiff in attachment, and the creditors that shall become parties thereto.

Custody of
the property.

9. *And be it enacted*, That the goods, chattels, and personal estate so attached, shall remain in the safe keeping and care of the said officer, in order to answer and abide the judgment of the court, unless the garnishee, after inventory and appraisal thereof, shall enter into bond to such officer, with two sureties, being freeholders in the county, in double the sum at which they were appraised, with condition that the said goods, chattels and personal estate, or the full value thereof, to be estimated by such appraisal, shall be forthcoming to answer the judgment of the said court.

Powers of
search for
property.

10. *And be it enacted*, That to enable the said officer fully to execute such writ of attachment, he is hereby authorized and required, (having first made demand and being refused,) to break open any house, chamber, room, shop, door, chest, trunk or other place or thing, where he shall be informed or have reason to believe any money, goods, books of account, bonds, bills, notes, papers or writings of the said defendant may be deposited, secreted, had or found.

Notice to be
given.

11. *And be it enacted*, That on the return of the said writ of attachment, it shall be the duty of the clerk of the court to give notice for two months successively, in some public newspaper circulating in this state, convenient to the place where the court is held, of such attachment, and at whose suit, against whose estate, for what sum and from what court the same issued.

Proceedings
against gar-
nishee.

12. *And be it enacted*, That the plaintiff, notwithstanding the garnishee's denial of his having any moneys, goods, chattels or effects of the defendant in his custody or possession, or of his being indebted to him, may, if he really believes that the said garnishee hath such moneys, goods, chattels or effects in his custody or possession, or that he is indebted to the defendant, and is in fear of the said garnishee's absconding before judgment and execution can be had against said garnishee, and shall make oath or affirmation thereof, and deliver the same to the clerk as aforesaid, institute a suit by *capias ad respondendum* against the said garnishee, who shall thereon be held to special bail; in which suit the plaintiff may declare against the said garnishee for the moneys, goods, chattels or effects, so as aforesaid in his custody or possession, in trover and conversion, as of such plaintiff's own proper moneys, goods, chat-

tels and effects, or if the said garnishee be indebted to the defendant in attachment, then the plaintiff may declare for so much money had and received by such garnishee to the use of the plaintiff, and, on the trial, may give the special matter in evidence, and thereupon the jury shall find for the said plaintiff, and assess damages to the full value of the moneys, goods, chattels or effects so proved to be in the custody or possession of such garnishee, or to the full value of the debt so due from such garnishee to the defendant in attachment; on which verdict, judgment shall be given, with costs of suit, and execution issued thereon against the goods and chattels, lands and tenements, and the body of the said garnishee, as is or shall be by law allowed in actions of trespass on the case.

13. *And be it enacted*, That if any clerk shall seal such writ of *capias* Oath a prerequisite. ad respondendum against the garnishee, before such oath or affirmation shall be delivered to him, he shall forfeit and pay twenty dollars to the party injured, to be recovered with costs, by action of debt, in any court of record of this state having cognizance of that sum.

14. *And be it enacted*, That the suit so instituted against the said garnishee, shall be continued by the court, without trial or decision, until the action against the defendant in attachment shall be adjudicated upon and determined; and if in such action, nothing shall be found due from the defendant to the plaintiff, then the garnishee shall recover costs against the plaintiff, notwithstanding he may be indebted to the defendant or have the moneys, goods, chattels, or effects of such defendant in his custody or possession.

15. *And be it enacted*, That if in the suit, so instituted against the garnishee, the plaintiff shall be nonsuited, or shall discontinue, or verdict and judgment shall be given against him, then the said garnishee shall recover costs. When garnishee to have costs.

16. *And be it enacted*, That if the sheriff or other officer shall, by virtue of any writ of attachment, issued in pursuance of this act, attach and take through ignorance or want of proper information, any goods, chattels or effects, which shall be claimed by any person as his property, it shall and may be lawful for such sheriff or officer thereupon to summon and swear a jury to inquire into and try the right and property thereof; and if the jury, on such inquest, shall find the right and property of such goods, chattels or effects to be in the claimant or in any other than the defendant in attachment, such sheriff or officer shall forthwith deliver the said goods, chattels or effects, to the person in whom the property is so found by the inquisition, or to his agent or attorney; and such sheriff or officer shall not be liable to any prosecution for having attached and taken the said goods, chattels or effects, through ignorance or want of proper information. Right and property tried.

17. *And be it enacted*, That the sheriff or other officer serving an

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Claim in writing necessary.

Proviso.

Proceedings on such claim.

Power to adjourn.

Process for witnesses.

Jury and verdict.

attachment, shall not in any case summon a jury, to try the right and property of any goods, chattels or effects seized or taken in attachment, unless the person claiming right and title thereto, shall exhibit and deliver to such sheriff or officer such claim in writing, specifying the articles and property claimed, requesting a jury to be summoned to try the right, and agreeing to be bound by and submit to the finding of such jury in the premises; *provided always*, that the sheriff or other officer may, notwithstanding such claim, if directed so to do and sufficiently indemnified by the plaintiff in attachment for so doing, refuse to summon such jury; but the sheriff or officer in such case may retain the goods, chattels and effects so attached, in his hands, to answer and abide the judgment of the court.

18. *And be it enacted*, That when upon such claim of right and title to the property attached, the sheriff or other officer shall proceed to summon a jury, he shall appoint the time and place of trial, and shall give notice thereof to the plaintiff in attachment and to the claimant of the property, which time shall not be less than ten days from the time such claim shall be put in; and the sheriff or other officer shall have power to administer the usual oath or affirmation to the jurors and witnesses; and it shall be the duty of the sheriff or officer before whom such inquest shall be taken, to keep a correct minute of all the proceedings before him had in the premises and to file the same, together with the inquest found by the jury and the claim, so as aforesaid, put in to the property attached in the office of the clerk of the court out of which the writ of attachment issued, there to remain of record.

19. *And be it enacted*, That the sheriff or other officer upon reasonable cause shown by either party, and upon such terms as he may judge proper, may adjourn such trial and hearing from time to time, as occasion may require.

20. *And be it enacted*, That the sheriff or other officer shall have power to issue subpœnas under his hand and seal for such witnesses as either party may require; which subpœnas may be served as subpœnas for witnesses in other cases are required by law to be served, and the witnesses shall be entitled to the same fees, and be subject to the same penalties as are provided by law in causes depending in the supreme court.

21. *And be it enacted*, That the jury to be summoned in pursuance of the sixteenth section of this act, shall consist of twelve men qualified to be jurors in other cases, all of whom must agree to the verdict, which shall be reduced to writing, and signed by the jurors and the sheriff or officer before whom the same shall be taken.

22. *And be it enacted*, That in case the jury shall find that none of the property claimed by the person putting in a claim thereto,

belongs to such claimant, then such claimant shall pay the costs of such inquiry, which shall be taxed by the sheriff or other officer holding such inquest, and on neglect or refusal of such claimant to pay the same, it shall be lawful for the said sheriff or officer to issue his warrant therefor, to any constable of the county in which such inquest shall have been held, commanding him to make the amount of such costs, and the costs of such warrant, and of executing the same by a levy upon and sale of the goods and chattels of such claimant; *provided*, that if the claimant reside out of the county in which such attachment was served, the sheriff or officer may require him or them to give security for costs before such sheriff or officer shall proceed to hold such inquest as aforesaid.

23. *And be it enacted*, That if the jury shall find the property claimed, or any part thereof, to belong to the claimant, then the costs of such inquiry shall be paid by the plaintiff in attachment; and in case of his or their neglect or refusal to pay such costs, the same may be recovered of him in the same manner as is provided for the recovery of costs from the claimant in the last preceding section; *provided always*, that the plaintiff in attachment in case he has to pay such costs, shall be entitled to be repaid the same out of the estate of the defendant in attachment, before any division or distribution shall be made thereof to or among the creditors.

24. *And be it enacted*, That the following fees shall be allowed and taxed for the services required by this act, on such trial of right and property, and no more, that is to say:

To the sheriff for summoning the jury, one dollar.

For swearing the jury, twenty-five cents.

For swearing each witness, five cents.

For drawing the inquest, one dollar.

For keeping a minute of the proceedings, fifty cents.

For every subpoena issued by him, ten cents.

For a warrant for costs when actually issued, twenty-five cents.

To the constable for executing the warrant, fifty cents.

To the jurors each, twenty-five cents.

To the clerk of the county for filing the claim, sheriff's minutes and inquest, twenty-five cents; and for a copy thereof when required, at the rate of eight cents a folio.

25. *And be it enacted*, That the court on return of such writ of attachment, is hereby empowered and required to appoint three honest, discreet, and fit persons to audit and adjust the demands of the plaintiff, and of so many of the defendant's creditors as shall have applied to the court for that purpose, or to the auditors before they shall have made their report; and it shall be the duty of the said auditors or any two of them, to ascertain the sum due to the

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plaintiff and to each of the creditors aforesaid, and to make their report thereof in writing under their hands, to the first or second term thereafter as the case may require; which report shall be filed by the clerk, and shall, the third term (including the term to which the writ was returned) be made absolute and judgment entered thereon; *provided always*, that such defendant shall have been thrice called in each of the said terms and have made default, and that every such calling and default shall be entered by the clerk in the minutes of the court.

Proviso.

Effect of defendant's appearance.

26. *And be it enacted*, That if the defendant appear in any of the three terms aforesaid, and accept of a declaration at the suit of every or any one of the said creditors, and enter into bond as directed in the next section of this act, then the said writ of attachment, report, and all the proceedings thereon, shall, as to the suit wherein such appearance is entered be set aside; and if such appearance be entered to the suit of the plaintiff in attachment, then the costs which shall have accrued on such attachment, shall abide the event of such suit.

Bond to be given.

27. *And be it enacted*, That if the defendant appear to any attachment, he shall enter into bond with one or more sufficient sureties, being resident in this state in case the attachment shall have been issued out of the supreme court, and in case the attachment shall have been issued out of the circuit court or court of common pleas, then in the county in which such court shall be held; which bond shall be approved of by the court, and shall be given to the sheriff of the county in case the attachment shall issue out of any circuit court or court of common pleas, and to such sheriff as the court shall direct, in case the attachment shall issue out of the supreme court; which bond the sheriff is hereby required to take

Amount and condition.

in his own name in double the amount of the personal property attached, conditioned for the return of the goods and chattels, rights and credits, moneys and effects, seized and taken by virtue of such writ of attachment in case judgment shall be rendered for the plaintiff; and the said sheriff shall, in case of a breach of such condition, on application of the plaintiff or any applying creditor of the said debtor, assign the said bond without fee or reward to such person as the court shall direct, to be prosecuted for the benefit of the plaintiff and such creditors as shall have applied to the court or auditors under such attachment, in conformity to this act.

Assignment of.

Discontinuance, when permitted.

28. *And be it enacted*, That the plaintiff in such attachment shall not be permitted to discontinue the same, without the consent of, or satisfaction made to, each of the said creditors who shall have applied to the court, or auditors as aforesaid.

29. *And* for the better discovery of property and detection of

fraudulent practices, *be it further enacted*, That it shall and may be lawful for the said auditors, or any two of them, to issue their warrant, under their hands and seals, commanding the sheriff of the proper county, or any constable in the same, to bring before them, at a certain time and place therein specified, the wife of such defendant, or any other person, and him or her, by word of mouth or interrogatories in writing, to examine, on oath or affirmation, which the said auditors, or any two of them, are hereby authorized to administer, touching all matters relating to the trade, dealings, moneys, debts, effects, rights, credits, lands, tenements, property, and estate of the said defendant, and his secret grants, or fraudulent transfer or conveyance of the same; and if any person shall refuse to be sworn or examined by or before the said auditors, or any two of them, touching any matter herein directed, then such person, so offending, is hereby declared to be guilty of a contempt of the authority of the court which appointed the said auditors, and shall, by the said court be proceeded against accordingly.

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Powers of
auditors.

To examine
persons.

30. *And be it enacted*, That the said auditors, or any two of them, are hereby empowered to issue their warrant, under their hands and seals, commanding the sheriff of the proper county, or any constable in the same, to break open, (having first made demand and been refused) any house, chamber, room, shop, door, trunk, chest, or other place or thing, where they shall have reason to believe any moneys, goods, chattels, books of account, bonds, bills, notes, papers or writings of the said defendant may be deposited, secreted, had, or found, and to seize and inventory the same, and make report thereof to the court at the then next term; and if any person resist the execution of the said warrant, he shall be guilty of a contempt of the authority of the court which appointed the said auditors, and shall be proceeded against accordingly by the said court.

To authorize
search.

31. *And be it enacted*, That the said auditors, or any one of them, two at least being present, shall have power to administer oaths or affirmations to all witnesses that may be produced before them in support of or in opposition to any claims or demands that may be put in by the plaintiff in attachment or by any other person or persons claiming to be creditors of the defendant in attachment.

To adminis-
ter oaths.

32. *And be it enacted*, That whenever the said auditors or any two of them shall have reason to believe that any person or persons are indebted to the defendant in attachment, in any sum of money, not exceeding one hundred dollars on book account, promissory note or otherwise, it shall and may be lawful for such auditors to institute a suit, by summons, before any justice of the peace, in the name of the defendant in attachment, but for their use as such auditors, against the person or persons so by them believed to be indebted,

To institute
suits.

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Proviso.

Apply the
proceeds.

Judgment by
default, sci.
fa. and pro-
ceedings
thereon, a-
gainst gar-
nishee.

as aforesaid to the defendant in attachment, for the recovery thereof; which suit so commenced, shall not be discontinued or dismissed without the consent of the said auditors, but shall proceed to trial and judgment, in the same manner as if the plaintiff named therein, was personally present conducting the same; *provided always*, that the defendant in such suit shall be entitled to all just set-offs, in the same manner as he would be, if the plaintiff in such suit was prosecuting the same in person, for his own use.

33. *And be it enacted*, That if judgment shall be given in any such suit as aforesaid, for the plaintiff therein, the money thereby recovered, whether collected by execution or otherwise, shall be paid to the said auditors in attachment, to be by them disposed of according to law; and if judgment shall pass against the plaintiff in such suit, the said auditors shall pay the costs of such suit, and shall be allowed to retain the same out of any moneys or effects that may come to their hands as such auditors.

34. *And be it enacted*, That where judgment on the report of the auditors, shall be entered against the defendant by default, a scire facias shall (except only as is herein before mentioned) issue against the garnishee, to appear at the next term after entry of such judgment, and show cause why the plaintiff should not have execution of the money so as aforesaid due by him to the defendant and in his hands, or the value of the goods and chattels of the defendant, which were in the custody or possession of such garnishee at the time of executing the writ of attachment; and if the garnishee shall appear at the return of the said scire facias, and on oath or otherwise, to the satisfaction of the plaintiff, confess the amount of the debt due from him to the defendant or the true value of the defendant's goods and chattels, which were as aforesaid in his custody or possession, and tender the same to the plaintiff, and he accept thereof, then he, the said garnishee, shall by the judgment of the court, be acquitted and discharged from the debt, or goods and chattels aforesaid, with costs; and if the said scire facias having been returned served, or in case no service thereof can be made, having been published as prescribed by law, the garnishee shall not appear, confess and tender as aforesaid, then judgment shall be entered against such garnishee by default, and a writ of inquiry shall be awarded to the sheriff or other officer, to inquire and certify to the court, by the oath or affirmation of twelve good and lawful men of his bailiwick, the amount of the debt due from such garnishee, or the value of the goods and chattels so as aforesaid in his custody or possession, and on the return of such inquiry, judgment shall be entered against the said garnishee for the sum so found and certified with costs; and if the garnishee shall

appear at the return of the said scire facias, and plead thereto, that he had no goods or chattels of the defendant in his custody or possession, either at the time of executing the writ of attachment, or at any time since, or that he was not indebted to the defendant, and the plaintiff, on trial, shall prove that he was indebted, then the jury shall find for the plaintiff, and assess damages to the amount or value of such debt, goods or chattels, with costs, and judgment shall be entered accordingly, and execution awarded against the goods and chattels, lands and tenements, and also the person of the said garnishee; but if the jury find for the garnishee, then he shall recover costs against the plaintiff and have execution for the same.

35. *And be it enacted*, That where judgment, on the report of the said auditors, shall be entered against the said defendant by default, the said auditors, or any two of them, may, by virtue of an order of court for that purpose, make sale and assurance of the goods and chattels, lands and tenements, of the said defendant, which were attached and taken as aforesaid, or such part thereof as shall be necessary to satisfy the debts of the plaintiff, and the creditors who may have applied agreeably to the directions of this act; but notice of the sale of such goods and chattels, shall be set up at five of the most public places in the county, and be advertised in some one of the newspapers circulating in this state, for the space of thirty days prior to such sale; nor shall any sale of such lands or tenements be made in less than twelve months from the time of executing the writ of attachment, nor of any goods or chattels, till judgment be obtained against the defendant as aforesaid, unless they be of a perishable nature, and then the court may, on the return of the said writ, or at any other time before judgment, order the said auditors, or any two of them, to sell such perishable goods or chattels; in which case advertisements set up for the space of five days prior to the time of sale, in four of the most public places in the township, precinct or ward, shall be sufficient.

36. *And be it enacted*, That when the goods and chattels, lands and tenements, of the said defendant shall be sold as aforesaid, then it shall be the duty of the said auditors or any two of them, to cause public notice to be given in one or more of the newspapers circulating in this state, requiring a meeting of the plaintiff and creditors, who may have applied agreeably to the directions of this act, at a certain time and place in the said notice to be specified, which time shall not be less than six nor more than ten weeks after such notice given, for the purpose of making distribution of the moneys arising from such sale; at which meeting or other subsequent meeting, to be continued by adjournment, if necessary, the said auditors or any two of them, shall distribute among the said

- TITLE IV.
CHAP. 2. plaintiff and creditors equally, and in a ratable proportion, according to the quantum or amount of their respective debts, as ascertained by the said report and the judgment thereon, all the moneys arising from the sale of the said goods and chattels, lands and tenements, first deducting legal costs and charges; and if the said moneys be not sufficient to satisfy the said debts, then the said auditors or any two of them, shall assign to the said plaintiff and creditors, the choses in action, rights and credits of the said defendant, in proportion to their respective debts, so as aforesaid ascertained; which assignment shall vest the property and interest of the said defendant in such assignee, so as he may sue for and recover the same in his own name and for his own use; and in the said distribution and assignment, no preference shall be allowed to debts due on specialties; *and further*, that the moneys so distributed, as also the moneys which may be received by virtue of such assignment, shall operate as payment of such debt, in whole or in part, as the case may be; and the said auditors are hereby directed to make report of such distribution, assignment and other proceedings under this section, to the court at the next term, in order that the same may be filed in the clerk's office.
- and choses.
- Report.
- Purchaser's title valid. 37. *And be it enacted*, That every grant, bargain, sale, assignment, transfer, assurance, alienation and conveyance, made by the said auditors or any two of them, under or by virtue of this act, shall be as good and effectual in law as if executed by the said defendant, at and before the time when such attachment became a lien upon the estate, real or personal, so sold, assigned or conveyed.
- Debts not due admitted. 38. *And be it enacted*, That any creditor, whose debt is not due, may apply to the court or auditors in the same manner as if it were due, and thereupon shall be admitted and considered as a creditor under this act, and shall receive a dividend of the defendant's estate in proportion with the other creditors, deducting only a rebate of legal interest for what he shall receive on such debt, to be computed from the actual payment thereof to the time such debt would have become due.
- Applying creditors, only, paid. 39. *And be it enacted*, That if any creditor, whether his debt be due or not, shall neglect or refuse to apply to the court or auditors in the manner prescribed by this act, he shall not be entitled to any dividend or distributive share; but all the moneys arising from the sale of the defendant's goods and chattels, lands and tenements, shall be distributed among, and his choses in action, rights and credits, shall be assigned to such of the creditors as shall have duly applied to the said court or auditors.
40. *And whereas*, debtors, who reside out of this state, may have

property sufficient within the same to pay their debts or some part thereof, *be it therefore enacted*, that the rights and credits, moneys and effects, goods and chattels, lands and tenements of every debtor, who may reside out of this state, shall be liable to be attached, taken, proceeded against, sold, assigned, transferred and conveyed for the payment of his debts, in the like manner, as nearly as may be, as the rights and credits, moneys and effects, goods and chattels, lands and tenements of other debtors are made liable by this act; *provided*, that instead of the oath or affirmation herein before mentioned, the applicant for such writ of attachment shall, before the sealing thereof, make oath or affirmation, (which shall be filed in the office of the clerk of the court out of which the same shall be issued) before any judge or justice aforesaid, that the person against whose estate such attachment is to be issued, is not, to his knowledge or belief, resident at that time in this state, and that he owes to the plaintiff a certain sum of money, specifying, as nearly as he can, the amount of the debt or balance.

TITLE IV.
CHAP. 2.

Of non-resident debtors.

Oath in such case.

41. *And be it enacted*, That it shall be the duty of the court out of which any attachment may issue, against any debtor or debtors who reside out of this state, to order the clerk of such court to cause notice of the issuing such attachment, and at whose suit, against whose estate, for what sum, and when returned, to be published in such one or more of the newspapers in this state as said court shall direct, for the space of three months; and judgment shall not be entered in such cases, until proof to the satisfaction of said court shall be made of such publication.

Publication in such case.

42. *And be it enacted*, That where two or more are jointly bound or indebted, either as joint obligors, partners, or otherwise, the writ of attachment may be issued against the separate or joint estate, or both, of such joint debtors, or any of them, either by his or their proper name or names, or by the name or style of the partnership, or by whatever other name or names such joint debtors shall be generally known and distinguished in this state, or against the heirs, executors or administrators of them or any of them; and the estate so attached, whether it be separate or joint, shall be liable to be sold or assigned for the payment of such joint debt.

Joint-debtors and partners.

43. *And be it enacted*, That the writ of attachment may be issued against any absconding or absent female, or against any corporation or body politic not created or recognized by the laws of this state, in all cases in which such writ may lawfully issue against an absconding or absent male.

Females and corporations.

44. *And be it enacted*, That the writ of attachment may be issued against the heir or devisee of any deceased debtor, in all cases in which the writ might lawfully have been issued against such debtor

Heirs and devisees.

TITLE IV. in his lifetime; and all lands, tenements, hereditaments and real
 CHAP. 2. estate, descended from or devised by such deceased debtor to the
 heir or devisee against whom the attachment is issued, may be
 attached and taken by virtue of the said writ.

Legacies etc. 45. *And be it enacted*, That any legacy or distributive share of
 an estate in the hands of the executor or administrator, may be
 attached and taken by virtue of an attachment issued in pursuance
 of this act against the legatee or next of kin.

Property in 46. *And be it enacted*, That in cases where the lands, tenements,
 two counties. hereditaments or real estate, or the goods and chattels, rights and
 credits, moneys and effects, of any absconding or absent debtor or
 debtors, shall be situate or found in two or more counties in this
 state, it shall be lawful to issue a writ of attachment out of the
 supreme court into each county in which such real or personal
 property shall be situate or found; in which case but one set of
 auditors shall be appointed, who shall have the same power and
 authority over the said real and personal property of such absconding
 or absent debtor or debtors in securing, selling and disposing
 thereof, as though the same should be situate or found in one
 county only, and the said auditors shall be governed as to the same,
 in all respects as is directed in other cases by this act.

Creditor's 47. *And be it enacted*, That no plaintiff or other creditor, shall
 refunding bond. receive any dividend or assignment as aforesaid by virtue of this
 act, until he shall have entered into bond to the defendant with
 one or more sureties, being freeholders and residents in this state,
 to be approved by the court or by the auditors, or any two of
 them, in double the sum so to be received or assigned, with condi-
 tion that he shall appear to any suit that may be brought against
 him by the said defendant within one year next after the date of
 the said bond, and shall pay unto such defendant any sum of money
 which, by the judgment or decree of the court, shall appear to
 have been received by him and not due or owing, with costs of
 suit; which bond shall be filed by the clerk for the benefit of the
 said defendant.

Death, suit 48. *And be it enacted*, That if any defendant shall die after the
 not to abate. return day of the writ of attachment, the said action shall not be
 thereby abated or discontinued, but the same shall be carried on to
 judgment, sale, transfer, distribution and final determination, as if
 such death had not intervened and the defendant had been alive;
 and all proceedings and deeds which shall be had and made in such
 case, are hereby declared to be as valid and effectual in law as if
 they were had and made in the lifetime of such defendant. And
 the bond entered into pursuant to the preceding section may, not-
 withstanding the death of such defendant, be prosecuted in his

name to judgment and effect in the same manner as if he were living.

TITLE IV.
CHAP. 2.

49. *And be it enacted*, That any justice of the peace within this state, on application made and affidavit filed before him to the purpose aforesaid, shall, and he is hereby required to issue out of the court for the trial of small causes, an attachment under his hand and seal, for any sum not exceeding fifty dollars, directed to a constable, who shall execute the same in manner aforesaid, on the effects, rights and credits of the defendant; and upon the return of such attachment, the said justice shall appoint a day for the hearing of the said cause, not less than twenty days from the issuing of the said writ; on or before which day so appointed, the plaintiff in the said attachment shall file a copy of his account or state of demand; and if the creditor shall make sufficient proof of the debt due to him, the said justice shall give judgment therein for the plaintiff, and award his execution thereof to the constable against the effects of the defendant, as in other cases cognizable before a justice, but the effects of the defendant thereon taken shall not be sold in less than three months (unless the same are perishable) to the end that the debtor or his friend may redeem the same; and in the meantime the same shall be inventoried and safely kept in such manner as the justice shall direct.

Proceedings
before jus-
tice.

50. *And be it enacted*, That it shall be the duty of the plaintiff forthwith after the issuing of such attachment, to advertise in three of the most public places in the county, that an attachment has been taken out from such justice against such absconding or absent debtor, in order that any person having a greater demand against such debtor than is cognizable before a justice of the peace, may have an opportunity to take out an attachment for the recovery of the same.

Advertise-
ment requir-
ed.

51. *And be it enacted*, That the plaintiff in such attachment may proceed against the garnishee, as herein before provided; and if he shall make sufficient proof of the debt due to him, and also of the effects, rights or credits in the hands of the garnishee, the said justice shall give judgment therein for the plaintiff, and award and issue his execution thereof to the constable, against the garnishee, as in other cases cognizable before a justice; and if the plaintiff shall not make sufficient proof of the effects, rights or credits in the hands of the garnishee, he shall pay the garnishee his costs, and if need be, the justice shall issue his execution against the plaintiff for the same.

Proceedings
against gar-
nishee.

52. *And be it enacted*, That it shall be lawful for the defendant in any attachment issued by a justice of the peace, on or before the day appointed for the hearing of the said cause, to cause his

Defendant's
appearance
and bond.

TITLE IV.
CHAP. 2.

appearance to be entered, by filing with the said justice, a bond to the plaintiff, executed by one or more sufficient sureties, being freeholders and resident in the county in which such attachment shall issue, in double the value of the property attached, conditioned for the due and safe return of the goods and chattels, rights and credits, moneys and effects seized and taken by virtue of such writ of attachment, in case judgment shall be rendered for the plaintiff; which said bond shall be approved by the said justice, and filed by him for the use and benefit of the plaintiff; and thereupon the property attached shall be restored to the defendant and released from the lien of the said attachment.

Plea, trial,
and appeal.

53. *And be it enacted*, That after filing the said bond, the said defendant shall file his plea, copy of account or set-off, if any he have; and the said cause shall and may be adjourned and conducted in all things in like manner, as if the same had been commenced by summons, under the act entitled "An act constituting courts for the trial of small causes;" and either party may appeal from the said judgment, in like manner, in every respect as if the said suit had been commenced by summons under the said last mentioned act.

See TIT. 7.

Appeal in
garnishee's
case.

54. *And be it enacted*, That from any judgment rendered by a justice of the peace for or against a garnishee in attachment, under and by virtue of the fifty-first section of this act, either party may appeal in like manner in all things as from the judgment of a justice under the act entitled "An act constituting courts for the trial of small causes."

Justice's at-
tachment su-
perseded.

55. *And be it enacted*, That any writ of attachment against any absconding or absent debtor, which may be issued out of the supreme court or any circuit court or court of common pleas, shall be a supersedeas to all attachments issued by a justice of the peace, undetermined at the time of serving the said writ; and it shall and may be lawful for the sheriff or his deputy, to take into his possession all goods and chattels attached by the constable, as fully to all intents and purposes, as if the attachment issued by the justice had not been served, and the plaintiffs in said attachments shall be entitled to their several debts, with the costs that may have accrued, in proportion with the other creditors, as is before in this act mentioned and directed; *provided always*, that no constable shall be obliged to remove any goods taken into his custody by virtue of any attachment, after the same shall have been seized and attached by the sheriff.

Auditor's
fees.

56. *And be it enacted*, That the said auditors shall be allowed a reasonable compensation for their services, to be taxed by one of the judges of the court, and paid out of the defendant's estate.

57. *And be it enacted*, That the freeholder who may be employed by any sheriff to make an inventory and appraisal of the property attached, pursuant to the sixth section of this act, shall be entitled, for such service, to the sum of one dollar; and if employed more than one day in such service, then at the rate of one dollar a day; and the freeholder employed by any constable to perform the like service under an attachment issued by a justice of the peace, shall be entitled to fifty cents therefor and no more; which compensation shall be paid by the said officers to the freeholders employed by them respectively, for the purpose aforesaid; and shall be allowed to the said officers, in addition to their other fees, for serving the said writs.

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CHAP. 3.

Appraiser's
fees.

58. *And be it enacted*, That there shall be allowed to the justice for issuing an attachment and recording the return thereof, thirty-five cents, for a summons against a garnishee, twenty cents, and to the constable for serving a writ of attachment, sixty cents; there shall also be allowed to the justice and constable for all other services performed under this act, the same fees as are allowed by law for the like services in other cases in the court for the trial of small causes.

Fees in justice's court.

59. *And be it enacted*, That any creditor, residing out of this state, shall be entitled to all the privileges and benefits of this act.

Non-resident
creditors.

60. *And be it enacted*, That this act shall be construed in all courts of judicature in the most liberal manner for the detection of fraud, the advancement of justice and the benefit of creditors.

Construction

CHAPTER 3.

DISTRESS.

- | | |
|---|---|
| 1. Distress to be reasonable. | 12. For unlawful act after distress. |
| 2. Not wrongful, or driven out of county. | 13. Plea and evidence in such case. |
| 3. What not liable to distress. | 14. Goods may be followed and seized. |
| 4. Beasts distrained, where impounded. | 15. Forfeit for carrying off goods. |
| 5. Goods, not in different places. | 16. Power to seize goods so taken. |
| 6. Distrained for rent, appraised and sold. | 17. May distrain after term ended. |
| 7. What may be distrained. | 18. Remedy after estate for life ended. |
| 8. Limitation of the right. | 19. After estate in wife's right ended. |
| 9. Impounded and sold on premises. | 20. By executors and administrators. |
| 10. Remedy for pound breach. | 21. Distress for residue. |
| 11. For wrongful distress. | 22. When justice may order sale. |

An Act concerning distresses.

Revision....Approved April 16, 1846.

REV. 199.
1845.
PAMPH. 150.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That all distresses made or taken, or to be

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CHAP. 3.

made or taken for any cause whatsoever, shall be reasonable and not too great; and if any person shall take great and unreasonable distress or distresses, he or she shall answer the damages to the party aggrieved.

Distress to be reasonable.

Not wrongful, or driven out of county.

2. *And be it enacted*, That no person shall take any distress wrongfully, or cause any distress to be driven or conveyed out of the county where it shall be taken; and every person who shall do so of his or her own authority, and without judgment, shall answer the damages to the party aggrieved.

What not liable to distress.

3. *And be it enacted*, That no person shall be distrained for any cause whatsoever, by his or her beasts of the plough, or sheep, or by the implements of his or her trade, while other distress or chattels whereof the debt or demand may be levied, or sufficient for the same may be found; except the distraining and impounding beasts found on the ground of any person damage feasant.

Beasts distrained where impounded.

4. *And be it enacted*, That beasts, when they are distrained for any cause whatsoever, shall be put in open pound in the township or precinct where they shall be taken, and they to whom such beasts belong, may give them their feeding without disturbance, so long as they shall be impounded as aforesaid.

Goods, not in different places.

5. *And be it enacted*, That no goods or chattels, distrained or taken by way of distress for any cause whatsoever, at one time, shall be impounded in several places, whereby the owner or owners of such distress shall be constrained to sue several replevins for the delivery of the said distress so taken at one time, upon pain, that every person offending therein shall, for every such offence, forfeit to the party grieved forty dollars and treble damages, to be recovered by action of debt in any court of record where the same shall be cognizable.

Distrained for rent, appraised and sold.

6. *Whereas*, the most usual and ready way for recovery of arrears of rent is by distress, yet such distresses not being to be sold, but only detained as pledges for enforcing the payment of such rent, the persons distraining have little benefit thereby; for remedy whereof, *be it enacted*, that where any goods or chattels shall be distrained for any rent reserved and due upon any demise, lease or contract whatsoever, and the tenant or owner of the goods so distrained shall not, within ten days next after such distress taken, and notice thereof, with the cause of such taking left at the chief mansion-house, or other most notorious place on the premises charged with the rent distrained for, replevy the same with sufficient security to be given to the sheriff; according to law, that then in such case, after such distress and notice as aforesaid, and expiration of the said ten days, the person distraining shall and may, with the sheriff or under-sheriff of the county, or with the constable of

if not replevied.

the township, precinct or place where such distress shall be taken, (who are hereby required to be aiding and assisting therein,) cause the goods and chattels so distrained, to be appraised by two sworn appraisers, (whom such sheriff, under-sheriff or constable are hereby empowered to summon for that service, and to swear well and truly to appraise the same according to the best of their understanding,) and after such appraisement shall and may lawfully sell, at public vendue, the goods and chattels so distrained, (giving five days' public notice by advertising the articles to be sold, and the time and place of sale, in at least three of the most public places in the township where such distress shall be made,) for the best price that can be gotten for the same, towards satisfaction of the rent for which the said goods and chattels shall be distrained, and of the charges of such distress, appraisement and sale, leaving the overplus, if any, in the hands of such sheriff, under-sheriff or constable for the owner's use.

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CHAP. 3.

Appraisers
sworn.

Notice of
sale.

7. *And be it enacted*, That it shall and may be lawful for any person or persons having rent in arrear and due upon any such demise, lease or contract as aforesaid, to seize and secure any sheaves, cocks, or stacks of wheat, rye, buckwheat, barley, oats, indian corn, or other corn or grain, or wheat, rye, buckwheat barley, oats, indian corn, or other corn or grain loose or in the straw, or flax, hemp or hay lying or being in any barn, crib or granary, or upon any hovel, stack, rick or barrack or elsewhere, upon any part of the land charged with such rent, and to lock up or detain the same in the place where the same shall be found, for and in the nature of a distress, until the same shall be replevied, upon such security to be given as aforesaid; and in default of replevying the same as aforesaid, within the time aforesaid, to sell the same, after the appraisement thereof, in the manner as above directed.

What may
be distrai-
ned.

8. *And be it enacted*, That it shall and may be lawful for all and every lessor or landlord, lessors or landlords, or his, her or their steward, bailiff, receiver or other person or persons empowered by him, her or them to take and seize, as a distress for arrears of rent, any of the goods and chattels of his, her or their tenant or tenants and not of any other person, although in possession of such tenant or tenants, which may be found on the demised premises, except such goods and chattels as are by law privileged from distress; and also, any hogs, horses, cattle or stock of his, her or their respective tenant or tenants, and not of any other person, although in possession of such tenant or tenants, feeding or depasturing on the demised premises, or upon any common appendant or appurtenant, or anyways belonging to all or any part of the premises demised or holden; and also, to take or seize all or any wheat, rye, buckwheat,

Further spe-
cification.

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CHAP. 3.

barley, oats, indian corn, or other corn or grain and grass, hops, roots, pulse, fruits, vegetables or other produce whatsoever, growing or being on the premises, or any part thereof, so demised or holden as a distress for arrears of rent, and the same to cut, dig, pull, gather, make, cure, carry and lay up in some proper and convenient place on the premises, and for want thereof, in some other place to be procured by such lessor or landlord, lessors or landlords, (due notice of such place being given to such tenant or lessee, or left at his or her place of abode,) and to appraise, sell and dispose of the same in the time and manner herein before directed; *provided always*, that it shall not be lawful for any lessor or landlord, at one time, to distrain for more than one year's rent in arrear, and that such distress must be made within six months after the same shall become due; or where the rent is payable by instalments, then within six months after the year's rent shall have become due.

Limitation of the right.

Impounded and sold on premises.

9. *And be it enacted*, That it shall and may be lawful for any person or persons, lawfully taking any distress for any kind of rent, to impound or otherwise secure the distress so made, of what nature or kind soever it may be, in such place or on such part of the premises, as shall be most convenient for the purpose, and to appraise, sell, and dispose of the same upon the premises, in like manner as any person taking a distress for rent may do off the premises, by virtue of this act; and it shall and may be lawful to and for any person or persons whatsoever, to come and go to and from such place or part of the premises, where any distress for rent shall be impounded or secured as aforesaid, in order to view, appraise and buy, and also to carry off or remove the same, on account of the purchaser thereof.

Remedy for pound-breach.

10. *And be it enacted*, That if any pound-breach or rescous shall be made of any goods, chattels or other things distrained for rent, and impounded, or otherwise secured, by virtue of this act, the person or persons aggrieved thereby shall, in a special action upon the case for the wrong thereby sustained, recover his, her or their treble damages and costs of suit against the offender or offenders, or any of them, in any such rescous or pound-breach, or against the owner of the goods distrained, in case the same be afterwards found to have come to his or her use or possession.

For wrongful distress.

11. *Provided always and be it enacted*, That in case any such distress and sale as aforesaid shall be made, by virtue or colour of this present act, for rent pretended to be in arrear and due, where in truth no rent is in arrear or due to the person or persons distraining, or to him or them, in whose name or names, or right, such distress shall be taken as aforesaid, that then the owner of such goods or chattels distrained and sold as aforesaid, his or her execu-

tors or administrators, shall and may, by action of trespass, or upon the case, to be brought against the person or persons so distraining, or any of them, his, her or their executors or administrators, recover double of the value of the goods or chattels so distrained and sold, together with full costs of suit.

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CHAP. 3.

12. *And be it enacted*, That where any distress shall be made for any kind of rent justly due, and any irregularity or unlawful act shall be afterwards done by the party or parties distraining, or by his, her or their agent or agents, the distress itself shall not be therefor deemed to be unlawful, nor the party or parties making it be deemed a trespasser or trespassers ab initio; but the party or parties aggrieved by such unlawful act or irregularity shall and may recover full satisfaction for the special damage which he, she or they shall have sustained thereby and no more, in an action of trespass, or on the case, at the election of the plaintiff or plaintiffs; *provided*, that where the plaintiff or plaintiffs shall recover in such action, he, she or they shall be paid his, her or their full costs of suit, and have the like remedies for the same as in other cases of costs; *and provided also*, that no tenant or tenants, lessee or lessees, shall recover in any action for any such unlawful act or irregularity as aforesaid, if tender of amends hath been made by the party or parties distraining, his, her or their agent or agents, before such action brought.

For unlawful
act after dis-
tress.

Provisoes.

13. *And be it enacted*, That in all actions of trespass or upon the case, to be brought against any person or persons entitled to rents or services of any kind, his, her or their baliff or receiver, or other person or persons relating to any entry by virtue of this act, or otherwise, upon the premises chargeable with such rents, or to any distress or seizure, sale or disposal of any goods or chattels thereupon, it shall and may be lawful to and for the defendant or defendants in such actions to plead the general issue and give the special matter in evidence; and in case the plaintiff or plaintiffs shall become nonsuit, discontinue his, her or their action, or have judgment against him, her or them, the defendant or defendants shall recover double costs of suit.

Plea and evi-
dence in such
case.

Costs.

14. *And be it enacted*, That if any tenant or tenants, lessee or lessees, for life or lives, term of year or years, at will, sufferance, or otherwise of any messuage, lands, tenements or hereditaments, shall convey away or carry off or from such premises, his, her or their goods or chattels, leaving the rent or any part thereof unpaid, it shall and may be lawful to and for every landlord or lessor, landlords or lessors, or any person or persons by him, her or them for that purpose lawfully empowered, within the space of thirty days next after such conveying away or carrying off such goods or chat-

Goods may
be followed
and seized.

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CHAP. 3.

provided not
bona fide
sold.

Forfeit for
carrying off
goods.

Power to
seize goods
so taken.

Upon oath,
may break
and enter.

tels as aforesaid, to take and seize such goods and chattels wherever the same shall be found as a distress for the said arrears of rent, and the same to sell or otherwise dispose of, in such manner as if the said goods and chattels had actually been distrained by such lessor or landlord, lessors or landlords, in and upon such premises for such arrears of rent; *provided always*, that no landlord or lessor or other person entitled to such arrears of rent, shall take or seize any such goods or chattels as a distress for the same, which shall be sold bona fide, or for a valuable consideration, before such seizure made to any person not privy to such fraud as aforesaid.

15. *And* to deter tenants from such conveying away their goods and chattels, leaving the rent unpaid, and others from wilfully aiding or assisting therein, or concealing the same, *be it further enacted*, that if any such tenant or lessee shall remove and convey away his or her goods or chattels as aforesaid, or if any person or persons shall wilfully and knowingly aid or assist any such tenant or lessee in such conveying away or carrying off any part of his or her goods or chattels, or in concealing the same, all and every person or persons so offending, shall forfeit and pay to the landlord or landlords, lessor or lessors, his, her or their heirs or assigns, from whose estate such goods and chattels were so carried off as aforesaid, double the value of the goods or chattels by him, her or them respectively carried off or concealed as aforesaid, to be recovered by action of debt in any court of record.

16. *And be it enacted*, That where any goods or chattels, conveyed or carried away as aforesaid, by any tenant or tenants, lessee or lessees, his, her or their servant or servants, agent or agents, or other person or persons aiding or assisting therein, shall be put, placed or kept in any house, barn, stable, out-house, yard, close, or place locked up, fastened or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent, it shall and may be lawful to and for the landlord or landlords, lessor or lessors, his, her or their heirs or assigns, or his, her or their steward, baliff, receiver or other person or persons empowered to take and seize, as a distress for rent, such goods and chattels, first calling to his, her or their assistance the constable or one of the constables or other peace officer of the township, precinct or place, where the same shall be suspected to be concealed, who are hereby required to aid and assist therein, and in case of a dwelling-house, (oath being also first made before some justice of the peace, of a reasonable ground to suspect that such goods and chattels are therein,) in the day-time, to break open and enter into such house, barn, stable, out-house, yard, close or place, and to take and seize such goods and chattels, for the said arrears of rent,

as he, she or they might have done by virtue of this act, if such goods and chattels had been put in any open field or place. TITLE IV.
CHAP. 3.

17. *And be it enacted*, That it shall and may be lawful to and for any person or persons, having any rent in arrear and due upon a lease for term of life or lives, year or years, or at will, ended or determined, to distrain for such arrears, after the determination of the said respective leases, in the same manner as they might have done if such lease or leases had not been ended or determined; *provided*, that such distress be made within the space of six calendar months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrears became due; or if the landlord's title and interest shall have ceased, or the tenant shall have removed from the leasehold premises, then within thirty days after the end and determination of such term or tenancy. May distrain
after term
ended.

Proviso.

18. *And be it enacted*, That if any person who now hath or hereafter shall have any rents or fee-farms, for term of life or lives, of any other person or persons, and the said rent or fee-farm now be or hereafter shall be due and behind, and unpaid in the life of such person or persons, for whose life or lives the estate of the said rent or fee-farm did depend or continue, and after the said person or persons do die, then he or she, unto whom the said rent or fee-farm was due, his or her executors or administrators, shall and may have an action of debt against the tenant in demesne, who ought to have paid the same when it was first due, his or her executors or administrators; and also may distrain for the same arrearages upon the lands and tenements, out of which the said rents or fee-farms were issuing and payable, in the like manner and form, as he or she ought or might have done, if the person or persons by whose death the aforesaid estate in the said rents and fee-farms was determined and expired, were in full life, and the avowry for the taking of the same distress to make in manner and form aforesaid, and make appraisement and sale of such distress in manner aforesaid. Remedy af-
ter estate for
life ended.

19. *And be it enacted*, That if any man who now hath or hereafter shall have in the right of his wife, any estate in fee-simple, fee-tail or for term of life, of or in any rents or fee-farms, and the same rents or fee-farms now be or hereafter shall be due, behind and unpaid, in the lifetime of the said wife, then the said husband, after the death of his said wife, his executors or administrators, shall have an action of debt for the said arrearages, against the tenant of the demesne, who ought to have paid the same, his or her executors or administrators; and also, that the said husband, after the death of his said wife, may distrain for the said arrearages, in like manner and form, as he might have done if his wife had been After estate
in wife's
right ended.

TITLE IV.
CHAP. 3.

then living, and for the same distress make avowry upon his matter aforesaid, and make appraisement and sale of such distress in the manner aforesaid.

Remedy by
executors,
etc.

20. *And whereas*, by the common law, the executors or administrators of tenants in fee-simple, tenants in fee-tail and tenants for term of life, of rent-service, rent-charge, rent-seck and fee-farms, have no remedy to recover such arrearages of the said rents or fee-farms, as were due unto their testators or intestates in their lives, nor may the heirs of such testator, nor any person having the reversion of his or her estate after his or her decease, distrain or have any lawful action to levy any such arrears of rents or fee-farms; for remedy whereof, *be it enacted*, that the executors or administrators of any such person or persons, unto whom any such rent or fee-farm is or shall be due, and not paid at the time of his, her or their death, shall and may have an action of debt for all such arrearages against the tenant or tenants, who ought to have paid the said rent or fee-farm, so being behind in the life of the testator or intestate, or against the executors or administrators of such tenant or tenants; that it shall be lawful for every such executor or administrator of any such person or persons, unto whom such rent or fee-farm is or shall be due, and not paid at the time of his, her or their death as aforesaid, to distrain for the arrearages of all such rents and fee-farms, upon the lands, tenements and hereditaments which were, are or shall be charged with the payment of such rents or fee-farms, and chargeable to the distress of the testator or intestate, so long as the said lands, tenements or hereditaments continue, remain, and be in the seisin or possession of the said tenant in demesne, who ought immediately to have paid the said rent or fee-farm, so being behind, to the said testator or intestate, in his or her lifetime, or in the seisin or possession of any other person or persons claiming the said lands, tenements and hereditaments only by or from the said tenant, by purchase, gift or descent, in like manner and form as the said testator or intestate might or ought to have done in his or her lifetime; and the said executors or administrators shall, for the same distress, lawfully make avowry upon their matter aforesaid, and make appraisement and sale of such distress in the manner aforesaid.

Distress for
residue.

21. *And be it enacted*, That in all cases where the value of the goods and chattels distrained as aforesaid, shall not be found to be of the full value of the arrears distrained for, the party to whom such arrears are or shall be due, his or her executors, administrators or legal representatives may, from time to time, distrain for the residue of the said arrears; *provided*, that such distress shall be made within the time limited by this act.

22. *And be it enacted*, That in all cases where any justice of the peace is or shall be required or empowered, by any law of this state, to issue a warrant of distress for the levying of any penalty inflicted, or any sum of money directed to be paid by such law, and no mode pointed out for the disposal of such distress, it shall be lawful for the justice granting such warrant, therein to order and direct the goods and chattels, so to be distrained, to be sold and disposed of within a certain time to be limited in such warrant, so as such time be not less than four days, nor more than ten days, unless the penalty or sum of money, for which such distress shall be made, together with the reasonable charges, (to be taxed by such justice,) of taking and keeping such distress, be sooner paid; and the officer making such distress, shall and may deduct the reasonable charges of taking, keeping and selling such distress, (to be taxed as aforesaid,) out of the money arising by such sale, and the overplus, if any, after such charges, and also the said penalty or sum of money shall be satisfied and paid, shall be returned, on demand, to the owner of the goods so distrained; and the officer executing such warrant shall show the same to the person whose goods are distrained, and shall suffer a copy thereof to be taken; *provided always*, that this clause shall not be construed to affect any law wherein the sale of any distress made on account of any penalty, fine, or sum of money directed to be paid, and the manner and time of such sale, are by such law particularly provided for and ascertained.

TITLE IV.
CHAP. 4.

When justice may order sale.

In what time.

Proviso.

CHAPTER 4.

DOWER.

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| <ol style="list-style-type: none"> 1. Widow, of what endowed. 2. Her quarantine. 3. May sue for dower. 4. Writ, when to abate. 5. Land lost by covin or default, no bar. 6. Rule as to widows and heirs. 7. When heir not bound. 8. Plea and default. 9. Jurisdiction of dower. 10. Jointure to bar dower. 11. But not if evicted. 12. When jointure may be waived. | <ol style="list-style-type: none"> 13. Shall not have both. 14. Barred by adultery. 15. By consent to ravisher. 16. Devise of lands a bar. 17. Proceedings in orphans' court. 18. Notice to be given. 19. Commissioners' report. 20. Appeal to surveyor general. 21. When lands in several counties. 22. Fees. 23. Costs taxed, apportioned, and paid. 24. When quarantine to cease. |
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An Act relative to dower.

REV. 397, 677.
1837-8.
PAMPH. 225.

Revision....Approved April 16, 1846.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the widow, whether alien or not, of any

Widow, of what endowed.

TITLE IV.
CHAP. 4.

- person dying intestate or otherwise, shall be endowed, for the term of her natural life, of the one full and equal third part of all the lands, tenements and other real estate, whereof her husband, or any other to his use, was seized of an estate of inheritance, at any time during the coverture, to which she shall not have relinquished or released her right of dower, by deed executed and acknowledged in the manner prescribed by law for that purpose.
- Quarantine. 2. *And be it enacted*, That until such dower be assigned to her, it shall be lawful for the widow to remain in, and to hold and enjoy the mansion-house of her husband and the messuage or plantation thereto belonging, without being liable to pay any rent for the same.
- May sue for dower. 3. *And be it enacted*, That if the widow be deforced of her dower, or cannot have it without suit, or if her dower be unfairly assigned or not assigned, within forty days after the death of her husband, then she may sue for and recover the same, with damages; that is to say, the value of the whole dower to her belonging, from the time of her husband's death, if he died or shall die seized, or from the time of demanding dower, if the husband was or shall be seized, but did not or shall not die so seized, unto the day that she shall recover seisin of her dower by judgment of the court.
- Writ, when to abate. 4. *And be it enacted*, That the writ of dower called unde nihil habet, shall not abate by the exception of the tenant, that the demandant hath received her dower of another person, before her writ was sued out; unless he can show that the dower, so received, was in satisfaction of her right of dower in the lands or tenements whereof she demands dower.
- Land lost by covin or default no bar. 5. *And be it enacted*, That if the husband, being impleaded for land, give up the same unto his adversary by covin, his widow shall recover her dower of the said land; and if the husband lose the land in demand, by default, the widow demanding her dower thereof, shall be heard, and if it be alleged against her, that her husband lost the land whereof dower is demanded, by judgment, whereby she ought not to have dower, and then it be inquired by what judgment, and it be found that it was by default, whereunto the tenant must answer; then the tenant must answer further, and show that he had and hath right in the said land, according to the form of the writ that the tenant before sued out against the husband; and if he show that the husband of such wife had no right in the lands, nor any other but he that holdeth them, the tenant shall go quit, and the widow shall not recover her dower therein; but if he show not the same, the widow shall recover her dower.
- Rule as to widows and heirs. 6. *And be it enacted*, That where a widow having no right to demand dower, sues out a writ of dower against the guardian of

the heir, such heir being within age, and the guardian endows the widow by favour, or makes default, or by collusion defends the plea faintly, whereby she is awarded her dower in prejudice of the heir, in every such case, the heir when he comes to full age, shall have the like action to demand the seisin of his ancestor against such widow, as he should have against any other deforcerc. But the widow shall, in such action, be allowed to show that she had right to her dower, and if she show such right, she shall go quit and retain her dower, and if she show it not, the heir shall recover his demand. *And be it further enacted*, that in like manner the widow shall be aided, if the heir or other person implead her for her dower, or if she lose her dower by default; in which case, the default shall not be so prejudicial to her, but that she shall recover her dower, if she have right thereto, and she shall have a writ in this form:

TITLE IV.
CHAP. 4.

Command A., that justly and without delay, he render to B., who was the wife of C., so much land, (specifying the land) with the appurtenances, in D., which she claims to be her reasonable dower, or of her reasonable dower, of which the aforesaid A. deforceth her, &c. The writ.

And to this writ the tenant shall have his exception, to show that she had no right to be endowed; and if he can verify his exception, he shall go quit, and if not, the widow shall recover the land whereof she was before endowed. Tenant may have exception.

7. *And be it enacted*, That a writ of admeasurement of dower shall be granted to a guardian, and the heir, when he comes of full age, shall not be bound by the suit of such guardian, if it be by collusion; but he may admeasure the dower after, as it ought to be admeasured by law. When heir not bound.

8. *And be it enacted*, That in the writ of admeasurement of dower, as well as in the writ of admeasurement of pasture, if the defendant come at the day contained in the writ, to answer the plaintiff, the plea shall pass between them, and if he come not, admeasurement shall be made upon his default. Plea and default.

9. *And be it enacted*, That no sheriff shall hold a plea of admeasurement of dower or of pasture; *and further*, that every writ of dower and of admeasurement of dower or pasture, shall issue out of, and be returnable to, the supreme court or to the circuit court of the proper county; which courts are hereby declared to have cognizance of the same. Jurisdiction of dower.

10. *And be it enacted*, That where any man hath purchased, or hath an estate made and conveyed of and in any lands, tenements or hereditaments, unto him and his wife, and to the heirs of the husband or wife, or to the husband and to his wife, and to the Jointure to bar dower.

TITLE IV.
CHAP. 4.

heirs of their two bodies begotten, or to the heirs of one of their bodies begotten, or to the husband and to his wife for the term of their lives, or for the term of the life of the said wife, or where any such estate or purchase of any lands, tenements or hereditaments hath been, or hereafter shall be made to any husband and to his wife, in manner and form above expressed, or to any other person or persons, and to their heirs and assigns, to the use and behoof of the said husband and wife, or to the use of the wife as is before mentioned for the jointure of the wife, that then, and in every such case, every married woman having such jointure made, or hereafter to be made, shall not claim or have any dower of the residue of the lands, tenements or hereditaments, which at any time were her said husband's, by whom she hath or shall have any such jointure, nor shall demand or claim her dower of or against them or any of them, who have or shall have the lands, tenements or hereditaments of her said husband.

But not, if
evicted.

11. *Provided always, and be it further enacted,* That if a widow be lawfully expelled or evicted from her said jointure, or from any part thereof, without fraud or covin, by lawful entry or action, or by discontinuance of her husband, she shall be endowed of as much of the residue of her husband's lands, tenements or hereditaments, whereof she was before dowable, as the same lands, tenements or hereditaments, from which she shall be so evicted or expelled, shall amount or extend unto.

When jointure may be
waived.

12. *And be it enacted,* That if any deed, conveyance or assurance of lands, tenements or hereditaments, for jointure as aforesaid, be made before the marriage and during the infancy of the feme, or be made after marriage, in either case the widow may, at her election, forego and waive such jointure, and demand and have her dower.

But shall not
have both.

13. *And be it enacted,* That when any deed, conveyance or assurance of lands, tenements or hereditaments, by way of jointure as aforesaid, and in lieu of dower, shall, through any defect, fail to be a legal bar to dower, and the widow availing herself of such defect, shall demand her dower, then the estate and interest so conveyed or assured to such widow, shall thereupon cease and determine.

Barred by
adultery.

14. *And be it enacted,* That if a wife voluntarily leave her husband, and go away and continue with her adulterer, she shall be disabled and for ever barred from having her jointure or dower, unless her husband be voluntarily reconciled to her and suffer her to dwell with him; in which case she shall be restored to her jointure or dower.

Or by consent to
ravisher.

15. *And be it enacted,* That if a wife, after being ravished, con-

sent to the ravisher, she shall be disabled and for ever barred from having her jointure or dower, unless her husband be voluntarily reconciled to her, and suffer her to dwell with him, and then she shall be restored to her jointure or dower.

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CHAP. 4.

16. *And be it enacted*, That if a husband shall devise to his wife, by a will duly executed to pass real estate, any lands or real estate for her life or otherwise, and without expressing whether such devise to her is intended to be in lieu or bar of dower, or not, and the said wife shall survive her said husband, that then the said wife so surviving, shall not be entitled to dower in any lands or real estate devised by her said husband, unless she shall, in writing, express her dissent to receive the lands or real estate so devised to her in satisfaction and bar of her right of dower in the other lands and real estate devised in and by the said will, and file the same with the surrogate of the county wherein she resides, or in which the lands or real estate devised to her shall be situated within six months after the probate of the said will, and then and in that case she shall be considered as renouncing the benefit of the said devise to her.

Devise of
lands a bar,

unless she
dissent in
writing in
six months.

17. *And be it enacted*, That it shall be lawful for any widow entitled to dower in any lands or real estate, of which her husband died seized, or for any heir or heirs, or guardian of any minor child or children, entitled to any estate in the said lands or real estate, or for any purchaser thereof, to apply by petition to the orphans' court of the county where the said lands or real estate are situated, for the appointment of commissioners to assign to such widow, her dower in the said lands and real estate; whereupon the said court shall appoint three discreet and disinterested freeholders in the said county, commissioners to admeasure and set off, as speedily as conveniently may be, one-third part of the said lands and real estate, as the said widow's dower; which commissioners, before they enter upon the duty assigned them, shall be sworn or affirmed before the surrogate or any other person authorized to administer oaths in the said county, faithfully, honestly and impartially to execute the trust reposed in them respectively.

Proceedings
in orphans'
court.

18. *And be it enacted*, That the party petitioning for the appointment of commissioners to assign and set off dower as aforesaid, shall give twenty days' previous notice, in writing, to the other person or persons interested, and to the guardians (if any) of minor children, of the said intended application, by serving the same personally, or leaving it at his or her usual place of dwelling, or where any person entitled to notice of such intended application, shall not reside in this state, and shall not be served with notice as aforesaid, then notice may be given by advertisement in a newspaper, published in the county where the said lands or real estate

Notice to be
given.

- TITLE IV.
CHAP. 4. are situated, or in the county nearest thereto in which a newspaper shall be published, for at least four weeks successively, once at least in each week.
- Commissioners' report. 19. *And be it enacted*, That it shall be the duty of the said commissioners to make a full report of all their proceedings, with the distances and courses of the lands so assigned and allotted by them to the widow for her dower, and amount of their charges, to the court which appointed them, at the next or subsequent term after their appointment; which report, if approved and confirmed
- Recorded. by the court, shall be entered at large by the surrogate on the records in his office, in some proper book for that purpose; and all persons concerned therein shall be concluded by the judgment or decree of the said court, unless the same shall be set aside or reversed.
- Appeal to surrogate general. 20. *And be it enacted*, That it shall be lawful for any widow, heir or heirs, or guardian of any minor child, or any purchaser who shall conceive himself or herself aggrieved by the proceedings, judgment or decree under this act, of any orphans' court, at any time within twenty days after the final judgment or decree, to give notice in writing, of the causes of complaint, and of his or her intention to apply to the surrogate general, at the next stated term to be holden after such notice for relief, who shall review the proceedings, judgment or decree complained of, and do therein what shall be just.
- Where lands in several counties. 21. *And be it enacted*, That where a husband shall die seized of lands or real estate in two or more counties, it shall be lawful for the ordinary or surrogate general, to appoint commissioners to admeasure and set off dower as aforesaid, and to proceed therein in all respects as the orphans' courts are by this act authorized to proceed for the making admeasurement of dower as aforesaid.
- Fees. 22. *And be it enacted*, That the fees to be allowed, taxed and taken by the surrogates, orphans' courts and surrogate general and other officers, shall be the same as those allowed by law for similar services in other cases.
- Costs taxed, apportioned, and paid. 23. *And be it enacted*, That the charges of the commissioners for their services in making of the said admeasurement of dower, and the costs arising and accruing on any proceeding under this act, commenced in the orphans' court or prerogative court, shall be taxed by the surrogate or clerk of the court in which the proceedings may be had, and paid in the first instance by the petitioner or petitioners; and the said costs and charges shall be divided and apportioned by the court among the persons concerned, according to their respective interests in the lands and real estate, out of which the dower shall be so assigned. And in case any person or

persons concerned shall not, on demand, pay his, her or their proportion of such costs and charges, that then the petitioner or petitioners shall and may recover the same by the judgment and process of the court or by an action of debt, in any court having cognizance thereof; but in all cases of appeal, each party shall pay his, her or their own costs.

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CHAP. 5.

24. *And be it enacted*, That after dower shall be assigned to a widow by virtue of this act, nothing in the second section of this act shall be considered as entitling her to remain in and to hold and enjoy the mansion-house of her husband, and the messuage or plantation thereto belonging, except such part thereof as may be assigned to her for dower, without being liable to pay rent for the same.

When quarantine to cease.

CHAPTER 5.

FORCIBLE ENTRIES AND DETAINERS.

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| <ol style="list-style-type: none"> 1. Unlawful entry prohibited. 2. What a forcible entry and detainer. 3. What a forcible detainer. 4. What estates comprehended. 5. What an unlawful detainer. 6. Cognizable before justice. 7. On complaint, process to issue. 8. Summons to the party. 9. How served. 10. Plea and issue. 11. Juror's oath. 12. Proceeding thereupon. 13. Verdict of guilty, judgment and writ. | <ol style="list-style-type: none"> 14. Writ, when issued and returned. 15. Verdict against complainant. 16. Trial may be postponed. 17. Entry to be made on docket. 18. Penalty on sheriff for neglect. 19. Certiorari allowed. 20. Upon reasons and bond filed. 21. How presented and tried. 22. No bar to other action. 23. Title not inquired into. 24. Subpoena for witnesses. 25. Fees. 26. Default of juror or witness penal. |
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An Act concerning forcible entries and detainers.

REV. 349.
MAR. 308.

Revision....Approved April 16, 1846.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That no person shall enter upon or into any lands, tenements, or other possessions, and detain or hold the same, but where entry is given by law, and then only in a peaceable manner.

Unlawful entry prohibited.

2. *And be it enacted*, That if any person shall enter upon or into any lands, tenements or other possessions, and detain or hold the same with force or strong hand, or with weapons, or by breaking open the doors, windows, or other part of a house, whether any person be in it or not, or by any kind of violence whatsoever, or by threatening to kill, maim, or beat the party in possession, or by such words, circumstances or actions, as have a natural tendency to excite fear or apprehension of danger, or by putting out of doors,

What a forcible entry and detainer.

TITLE IV.
CHAP. 5.

or carrying away the goods of the party in possession, or by entering peaceably and then turning by force, or frightening by threats, or other circumstances of terror, the party out of possession; in such case, every person, so offending, shall be guilty of a forcible entry and detainer within the meaning of this act.

What a forcible detainer.

3. *And be it enacted*, That no person, who shall lawfully or peaceably enter upon or into any lands, tenements or other possessions, shall hold or keep the same unlawfully, and with force, or strong hand, or weapons, or violence, or menaces, or terrifying words, circumstances or actions aforesaid; and it is hereby declared, that whatever words or circumstances, conduct or actions, will make an entry forcible under this act, shall also make a detainer forcible.

What estates comprehended.

4. *And be it enacted*, That the three preceding sections of this act shall extend to and comprehend terms for years, and all estates, whether freehold or less than freehold.

What an unlawful detainer.

5. *And be it enacted*, That if any tenant or tenants for term of life or lives, year or years, or other person or persons, who are or shall be in possession of any lands, tenements or hereditaments, by, from or under, or by collusion with such tenant or tenants, shall wilfully and without force, hold over any lands, tenements or hereditaments, after demand and notice in writing given for the delivery of the possession thereof, by his, her or their landlord or landlords, lessor or lessors, or the person or persons to whom the remainder, or reversion of such lands, tenements or hereditaments shall belong, his, her or their agent or attorney, thereunto lawfully authorized, then such person or persons, so holding over, shall be guilty of an unlawful detainer.

Cognizable before justice.

6. *And be it enacted*, That the aforesaid forcible entries and detainers, forcible detainers, and unlawful detainers, are hereby made cognizable before any justice of the peace of the county in which they are committed.

On complaint, process to issue.

7. *And be it enacted*, That when complaint to any justice of the peace of the proper county shall be made in writing, and signed by the party grieved, his agent or attorney, specifying the lands, tenements or other possessions so forcibly entered upon and detained, or forcibly or unlawfully detained, by whom and when done, and the estate therein, it shall be the duty of the said justice to issue a precept, under his hand and seal, directed to the sheriff of the said county, commanding him to cause to come before the said justice, twelve good and lawful men of the said county, qualified to serve as petit jurors in the court of general quarter sessions of the peace, to inquire into and try such forcible entry and detainer, or forcible or unlawful detainer; which precept shall be in the form or to the effect following, that is to say:

_____ county, to wit: The state of New Jersey to our sheriff
of our county of _____ greeting: Whereas, complaint in writing
is made to the subscriber, A. B., one of our justices of the peace
in and for our said county, of a certain forcible entry and detainer
(or if detainer only, then say of a certain forcible detainer, or of a
certain unlawful detainer,) made by E. F. into the message (or
upon the lands) of C. D., in the county aforesaid; we therefore
command you, that you cause to come before the said A. B., at
_____ in the county aforesaid, at the hour of _____ in the _____
noon of the _____ day of _____ twelve good and lawful men of
the body of your county, being citizens of this state and resident
within the county, above the age of twenty-one and under the age
of sixty-five years, and who have a freehold in lands, messuages or
tenements in the said county, and are in no wise of kin to the said
C. D. or E. F., to make a jury of the country, to inquire of and try
the said forcible entry and detainer (or forcible or unlawful de-
tainer.)—Given under the hand and seal of the said A. B. the _____
day of _____ in the year of our Lord one thousand _____.

TITLE IV.
CHAP. 5.Form of pre-
cept.

8. *And be it enacted*, That the said justice shall issue a sum-
mons to the party complained against, in the words or to the effect
following, that is to say:

Summons to
the party.

_____ county, to wit: The state of New Jersey to our sheriff
of our county of _____ greeting: We command you, that you
summon E. F. of _____ to appear before A. B., one of our justices
of the peace in and for our said county, at _____ in the county afore-
said, at the hour of _____ in the _____noon of the _____ day of _____
to answer to and make defence against the complaint of C. D. of a
forcible entry and detainer (or if detainer only, then say of a forcible
detainer, or of an unlawful detainer,) made by the said E. F.
into the message (or upon the lands) of the said C. D. in the
county aforesaid; and have you then and there this precept, with a
return of your proceedings therein.—Given under the hand and seal
of the said A. B. the _____ day of _____ in the year of our
Lord one thousand _____.

Form.

9. *And be it enacted*, That the said summons shall be served
upon the party against whom the said complaint is made, or a copy
thereof left at his usual place of abode, six entire days before the
day of appearance therein mentioned; and that such service of the
said summons in any part of this state, as well without the said
county as within it, shall be good and effectual in law; *and further*,
that no jury shall, by virtue of this act, be sworn to inquire of and
try any forcible entry and detainer, or forcible or unlawful detainer,
where such previous notice shall not have been given as aforesaid.

How served.

10. *And be it enacted*, That the party against whom such com-

TITLE IV.
CHAP. 5.

Plea and issue.

plaint is made, may, at the time of appearance mentioned in the said summons, and before the said jury is sworn, plead not guilty to the said charge or complaint, or that he hath been three years in quiet possession, and his estate therein not ended or determined, agreeably to a subsequent clause in this act; and thereupon the said parties shall be at issue, and the said justice shall proceed to swear the jury so returned, to inquire of and try the same; and if the said party, against whom the complaint is made, as aforesaid, does not appear at the time specified in the said summons, or appearing, does not plead to the said complaint, then it shall be lawful for the said justice to proceed in the same manner as if he had pleaded not guilty.

Juror's oath.

11. *And be it enacted*, That to the said jurors and each of them, who shall be returned to inquire of and try the said complaint, the said justice shall administer the following oath or affirmation:

You do swear (or affirm) that you will well and truly try this issue joined between C. D. and E. F. and a true verdict give according to evidence.

Proceeding thereupon.

12. *And be it enacted*, That when the jury shall be so sworn as aforesaid, the said justice shall cause the said complaint to be read to them, and then call upon the complainant to support the same.

Verdict of guilty, judgment and writ.

13. *And be it enacted*, That if the jury find the party, against whom such complaint is exhibited, guilty, or find against his plea of possession, it shall be the duty of the said justice to record the said verdict and to give judgment thereon, with treble costs; and also, to issue a writ of restitution, directed to the sheriff, to cause the complainant to be reseized or repossessed, to which shall be added a clause, commanding the said sheriff to levy the said costs of the goods and chattels of the offender, and, for want thereof, to take the body of such offender, and him safely to keep in close custody in the common jail of the county, until he shall pay the same, or be thence delivered by due course of law.

Writ, when issued and returned.

14. *And be it enacted*, That no writ of restitution shall be issued by any justice of the peace, upon any judgment rendered by him in pursuance of the provisions of the preceding section of this act, until eight entire days, exclusive of Sundays, shall have elapsed after the rendition of such judgment; which writ of restitution, when issued, shall be returned within three months thereafter, by the sheriff or other officer to whom the same has been delivered, with his proceedings thereon, to the justice who issued the same.

Verdict against complainant.

15. *And be it enacted*, That if the jury find against the said complainant, the said justice shall record the said verdict and give judgment accordingly, with costs, and shall issue execution, directed as aforesaid, for the said costs, against the goods and chattels, and, in want thereof, against the body of the said complainant.

16. *And be it enacted*, That the said justice may, at the request of either party, and on good reasons being assigned, postpone the said trial to any time not exceeding fifteen days; but such postponement to be on the payment of costs. TITLE IV.
CHAP 5.
May post-
pone trial.

17. *And be it enacted*, That it shall be the duty of the said justice to enter, on his minutes or docket, true copies of the complaint exhibited by virtue of this act, and of the summons and return, also the time of issuing the venire and how returned, the names of the jurors, their verdict and his judgment thereon; and also the names of the witnesses and the admission of evidence objected to, and the rejection of evidence offered, and all the proceedings before him had touching the said complaint. What to be
entered on
docket.

18. *And be it enacted*, That if the sheriff of any county shall neglect or refuse to execute or return any precept, writ or other process to him directed and delivered, by virtue of this act, he shall, for every such offence, forfeit and pay two hundred dollars to the party grieved, to be recovered, with costs, by action of debt, in any court of record having cognizance of that sum. Penalty on
sheriff for
neglect.

19. *And be it enacted*, That the proceedings had by virtue of this act, on such forcible entry and detainer, or forcible or unlawful detainer, may be removed before the supreme court by writ of certiorari, and in no other way, and then only after judgment. Certiorari
allowed.

20. *And be it enacted*, That no justice of the supreme court shall grant or allow any certiorari to remove any judgment, order or proceeding to be had or made by virtue of this act, unless the party applying for such certiorari shall present to the said justice reasons for the allowance thereof, drawn up and subscribed by himself or some attorney at law, to be deemed by the said justice to contain a probable cause of reversal; and unless such applicant shall also enter into bond to the other party, in the sum of two hundred and fifty dollars, with one or more sufficient surety or sureties, being freeholders and residents of this state, conditioned that such applicant shall prosecute the said certiorari in the supreme court, shall pay the yearly value of the premises in dispute, from the time of granting the said certiorari to the determination of the same, together with the costs of the suit before the court below, and such further costs as may be taxed, if the judgment be affirmed; and shall in all things stand to and abide the judgment of the supreme court, respecting the judgment, order or proceeding given or made by the court below; which said bond, together with the reasons, shall be filed by the said justice, with the clerk of the supreme court, for the benefit and use of the obligee. Upon rea-
sons and
bond filed.

21. *And be it enacted*, That every certiorari to remove any judgment, order or proceeding, to be had or made by virtue of this act, How prose-
cuted and
tried.

TITLE IV.
CHAP. 5.

shall in every other respect be prosecuted, tried and determined in like manner, and be subject to the like rules and regulations as writs of certiorari to justices of the peace to remove proceedings had by virtue of the act constituting courts for the trial of small causes.

No bar to
other action.

22. *And be it enacted*, That neither the said judgment nor any thing in this act, shall bar or prevent the party injured from bringing an action of trespass or other action, against the aggressor or party offending.

Title not in-
quired into.

23. *And be it enacted*, That the estate or merits of the title shall in no wise be inquired into on any complaint which shall be exhibited by virtue of this act; *provided always*, that this act shall not extend to any person who hath had the uninterrupted occupation, or been in the quiet possession of any lands or tenements for the space of three whole years together, immediately preceding such complaint so exhibited to the said justice, and whose estate therein is not ended or determined; but every such person may plead the same to the said complaint, which shall be tried in the manner herein before prescribed.

Proviso.

Subpœna for
witnesses.

24. *And be it enacted*, That every justice of the peace before whom any prosecution shall be instituted by virtue of this act, shall be and he is hereby authorized to issue writs of subpœna ad testificandum into any county of this state.

Fees.

25. *And be it enacted*, That in prosecutions under this act, the following fees shall be allowed:

To the Justice.

For every summons, thirty cents.

For every venire facias, forty cents.

For entering copies of every complaint, summons, and return, one dollar.

For subpœna for every witness, twelve cents.

For swearing the jury, twenty cents.

For administering every oath or affirmation, five cents.

For entering every verdict, twelve cents.

For entering every judgment, twelve cents.

For every trial, two dollars.

For return to every certiorari, one dollar.

To the Sheriff.

For serving every summons and return, one dollar.

For summoning every jury, returning the precept, and attending the trial, four dollars.

For executing every writ of restitution, two dollars.

For serving every execution for costs, advertising property for

sale, &c., the same fees as are allowed for the like services in the court of common pleas. TITLE IV.
CHAP. 6.

To the Jurors.

Every juror for each cause in which he is sworn or affirmed, twenty-five cents.

For each cause in which he appears, but is not sworn or affirmed, twelve cents.

To the Witnesses.

The same fees as are or shall be by law allowed to them in civil causes in the court of common pleas, and the like for serving subpoena on every witness.

To the Attorney.

For the trial of every cause, two dollars.

26. *And be it enacted*, That every person summoned as a juror or subpoenaed as a witness, who shall not appear, or appearing, shall refuse to serve or to give evidence in any prosecution instituted by virtue of this act, shall forfeit and pay for every default or refusal, unless some reasonable cause be assigned, such fine not exceeding five dollars nor less than one dollar in the case of a juror, and not exceeding twenty dollars nor less than five in the case of a witness, as the said justice shall think proper to impose; and such justice is hereby authorized and required to issue an execution directed to any constable of the said county, to levy the same of the goods and chattels of the offender; which fine when recovered, shall be applied by the said justice to the use of the said county. Penalty for default of juror or witness.

CHAPTER 6.

HEIRS AND DEVISEES, RELIEF AGAINST.

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| 1. Remedy against heir or devisee.
2. Heir liable for lands descended. | | 3. Pleadings, judgment, execution.
4. Devisees liable in like manner. |
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An Act for the relief of creditors against heirs and devisees.

REV. 291.

Passed March 7, 1797.

1. BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same*, That all and every creditor and creditors, whether by simple contract or specialty, and whether the heirs are mentioned therein or not, shall and may, by virtue of this act, have and maintain his, her and their Creditors may maintain actions on specialties or simple contracts, against heirs and devisees.

TITLE IV.
CHAP. 6.

action and actions, against the heir and heirs at law of any debtor who hath already died, or shall hereafter die intestate, seized of any messuages, lands, tenements or hereditaments, and against the heir and heirs at law, and devisee and devisees of such debtor, in case such debtor made any last will and testament; and such heir and heirs, devisee and devisees, shall be liable and chargeable for a false plea by him, her or them pleaded, in the same manner as any heir should have been for any false plea, by him pleaded, in any action of debt upon specialty, or for not confessing the lands or tenements, to him descended; and, moreover, all such creditors shall be preferred as in actions against executors and administrators.

If the heir alien land descended to him, before action bro't, he shall be liable to the value of such land.

2. *And be it enacted*, That in all cases, where any heir or heirs at law is, are, or shall be liable to pay the debt of his, her or their ancestor, in regard of any lands, tenements or hereditaments, descending to him, her or them, and shall sell, alien, or make over the same, before any action brought, or process sued out against him, her or them, such heir and heirs at law shall be answerable for such debt, to the value of the said lands, tenements or hereditaments, so by him, her or them sold, aliened or made over; in which cases, all creditors shall be preferred, as in actions against executors and administrators; *and further*, such execution shall be taken out upon any judgment, so obtained, against such heir or heirs, to the value of the said lands, tenements or hereditaments, as if the same were his, her, or their own proper debt; but the lands, tenements and hereditaments, which were bona fide aliened before the action brought, shall not be liable to such execution.

Pleadings, judgment, execution.

3. *Provided always, and be it further enacted*, That where any action shall be brought against any heir or heirs, such heir or heirs may plead riens per discent at the time of the original writ brought, or the bill filed against him, her or them; and the plaintiff in such action may reply, that such heir or heirs had lands, tenements or hereditaments from his, her, or their ancestor before the original writ brought, or bill filed; and if, on issue joined thereupon, it be found for the plaintiff, the jury shall inquire of the value of the lands, tenements or hereditaments so descended, upon which judgment shall be given and execution awarded as aforesaid; but if judgment be given against such heir or heirs, by confession of the action, without confessing the assets descended, or upon demurrer, or nihil dicit, it shall be for the debt and damages, without any writ to inquire of the lands, tenements and hereditaments so descended.

Devisees made liable in the same manner.

4. *Provided also, and be it further enacted*, That all and every devisee and devisees, made liable by this act, shall be liable and

chargeable in the same manner as the heir and heirs at law by force of this act, notwithstanding the lands, tenements and hereditaments to him, her, or them devised shall be aliened before the action brought, and shall be liable to the like judgments and executions as the heir and heirs at law.

TITLE IV.
CHAP. 7.

CHAPTER 7.

LANDLORD AND TENANT.

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| <ol style="list-style-type: none"> 1. Action for rent on lease for life. 2. Remedy, if tenant for life die. 3. Action for use and occupation. 4. Landlord's lien for rent. 5. Goods taken, when sold. 6. Removal by day, and notice. 7. Penalty for holding over. 8. Not quitting after giving notice. 9. Ejectment, and proceedings therein. | <ol style="list-style-type: none"> 10. How lessee relieved in equity. 11. Discontinuance on payment or tender. 12. Proceedings when premises deserted. 13. Surrender and renewal of chief lease. 14. Attornment of tenant void. 15. Ejectment, tenant to give notice. 16. Landlord may defend. 17. Notice to quit, three months. |
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An Act concerning landlords and tenants.

REV. 186, 666.

Revision....Approved April 15, 1846.

1834-5.

PAMPH. 160.

1836-7.

PAMPH. 128.

1839-40.

PAMPH. 104.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That it shall and may be lawful for any person or persons, having any rent in arrear or due upon a lease for life or lives, to bring an action or actions of debt for such arrears of rent, in the same manner as he, she or they might have done in case such rent was reserved and due upon a lease for years.

Debt for rent on lease for life.

2. *And be it enacted*, That where any tenant for life shall happen to die before, or on the day on which any rent was reserved or made payable, upon any demise or lease of any lands, tenements or hereditaments, which determined on the death of any tenant for life, that the executors or administrators of such tenant for life shall and may, in an action on the case, recover of and from such under-tenant or under-tenants of such lands, tenements or hereditaments, if such tenant for life die on the day on which the same was made payable, the whole, or if before such day, then a proportion of such rent, according to the time such tenant for life lived of the last year, or quarter of a year, or other time in which the said rent was growing due as aforesaid, making all just allowances, or a proportionable part thereof, respectively.

When tenant for life dies, remedy.

3. *And be it enacted*, That it shall and may be lawful to and for the landlord or landlords, his, her or their heirs or assigns, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements or hereditaments, held or occupied by the

Action for use and occupation.

TITLE IV.
CHAP. 7.

defendant or defendants, in an action on the case, for the use and occupation of what was so held or enjoyed; and if in evidence on the trial of such action, any parol demise, or any agreement, (not being by deed,) whereon a certain rent was reserved, shall appear, the plaintiff in such action shall not therefor be nonsuited, but may make use thereof as an evidence of the quantum of the damages to be recovered.

Landlord's
lien for rent.

4. *And be it enacted*, That no goods or chattels whatsoever, lying or being, or which shall lie or be in or upon any messuage, lands or tenements, which are or shall be leased for term of life or lives, year or years, at will or otherwise, shall be liable to be taken, by virtue of any execution, attachment or other process, unless the party at whose suit the said execution or other process is sued out, shall, before the removal of such goods from off the said premises, by virtue of such process, pay to the landlord of the said premises, or his bailiff, all rent due for the said premises, at the time of the taking such goods or chattels by virtue of such process, or which shall have accrued up to the day of the removal of the goods from off the said premises, whether by the terms of lease, the day of payment shall have come or not, making a rebate of interest on the sum, the time of payment of which, by the terms of the lease, shall not have come; *provided*, the said arrears of rent do not amount to more than one year's rent; and in case the said arrears shall exceed one year's rent, then the said party at whose suit such process is sued out, paying the said landlord or his bailiff one year's rent, may proceed to execute his process, as he might have done before the making of this act; and the sheriff or other officer is hereby empowered and required to levy and pay to the plaintiff, as well the money so paid for rent as the money to be made by virtue of such process.

Proviso.

Goods taken,
when sold.

5. *And be it enacted*, That if any goods and chattels lying or being or which shall lie or be in or upon any messuages, lands or tenements which are or shall be leased for term of life or lives, year or years, at will or otherwise, shall be taken by virtue of any execution, attachment or other process and removed off said premises, the same shall not be sold by the sheriff or other officer so taking and removing the same until ten days after such removal, and then not unless the plaintiff or party at whose suit such goods or chattels are taken as aforesaid, shall, before the sale thereof, pay to the landlord of the said premises, or his or her bailiff, all rent due for the said premises, or which shall have accrued at the time of said sale, whether by the terms of lease the day of payment shall have come or not, making a rebate of interest on the sum the time of payment of which shall not have come; *provided*, the same do not

Rent to be
first paid.

But one
year's rent
payable.

exceed one year's rent; and in case the said arrears shall exceed one year's rent, then the said party at whose suit execution or other process is sued out paying the said landlord or his or her bailiff one year's rent, may proceed to execute his process as he might have done before the passing of this act; *provided*, the landlord or his bailiff shall, before the expiration of the said ten days from the time of said removal, give notice to the sheriff or other officer holding such execution, or other process, of the amount of the rent in arrear and claim the same; which notice may be served by delivering the same to said officer, or leaving a copy thereof at his usual place of abode.

TITLE IV.
CHAP. 7.

Proviso.

Landlord
give notice.

6. *And be it enacted*, That no such goods and chattels shall be removed off said premises by said sheriff or other officer, but openly and in the day time, and then not unless the sheriff or other officer shall, at the time of removing the said goods and chattels, give notice thereof to the defendant, or in his absence, to some person of his family residing on said premises, of the removal of said goods and chattels.

Removal by
day, and no-
tice.

7. *And be it enacted*, That in case any tenant or tenants for any term of life or lives, year or years, or other person or persons who are or shall come into possession of any lands, tenements or hereditaments, by, from or under, or by collusion with such tenant or tenants, shall wilfully hold over any lands, tenements or hereditaments, after the determination of such term or terms, and after demand made and notice in writing given for delivering the possession thereof by his, her or their landlord or landlords, lessor or lessors, or the person or persons to whom the remainder or reversion of such lands, tenements or hereditaments shall belong, his, her or their agent or agents, thereunto lawfully authorized, then and in such case, such person or persons so holding over, shall, for and during the time he, she or they shall so hold over, or keep the person or persons entitled out of possession of the said lands, tenements or hereditaments as aforesaid, pay to the person or persons so kept out of possession, his, her or their executors, administrators or assigns, at the rate of double the yearly value of the lands, tenements or hereditaments so detained, for so long time as the same are detained; to be recovered in any court of record in this state by action of debt, whereunto the defendant or defendants shall be obliged to give special bail, and against the recovering of which said penalty there shall be no relief in equity.

Penalty for
holding over.

Pay double
rent.

Give bail, etc.

8. *And be it enacted*, That in case any tenant or tenants shall give notice of his, her or their intention to quit the premises by him, her or them holden, at a time mentioned in such notice, and shall not accordingly deliver up the possession thereof at the time

Not quitting
after giving
notice.

TITLE IV.
CHAP. 7.Pay double
rent.

in such notice contained, that then the said tenant or tenants, his, her or their executors or administrators, shall from thenceforward, pay to the landlord or landlords, lessor or lessors, his, her or their heirs or assigns, double the rent or sum which he, she or they should otherwise have paid, to be levied, sued for and recovered at the same times and in the same manner, as the single rent or sum before the giving such notice could be levied, sued for and recovered; and such double rent or sum shall continue to be paid during all the time such tenant or tenants shall continue in possession as aforesaid.

Ejectment,
and proceed-
ings therein.

9. *And be it enacted*, That in all cases between landlord and tenant, as often as it shall happen that one half year's rent shall be in arrear, and the landlord or lessor, to whom the same is due, hath right by law, to re-enter for the non-payment thereof, such landlord or lessor shall and may, without any formal demand or re-entry, serve a declaration in ejectment for the recovery of the demised premises, or in case the same cannot be legally served, or no tenant be in actual possession of the premises, then to affix the same upon the door of any demised messuage, or in case such ejectment shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements or hereditaments, comprised in such declaration in ejectment, and such affixing shall be deemed legal service thereof; which service, or affixing such declaration in ejectment, shall stand in the place and stead of a demand and re-entry; and in case of judgment against the casual ejector, or nonsuit for not confessing lease, entry and ouster, it shall be made to appear to the court, where the said suit is depending, by affidavit, or be proved upon the trial, in case the defendant appears, that half a year's rent was due before the declaration was served, and that no sufficient distress was to be found on the demised premises, countervailing the arrears then due, and that the lessor or lessors in ejectment had power to re-enter, then and in every such case, the lessor or lessors in ejectment shall have judgment and execution, in the same manner as if the rent in arrear had been legally demanded and re-entry made; and in case the lessee or lessees, his, her or their assignee or assignees, or other person or persons, claiming or deriving title under the said lease, shall suffer judgment on such ejectment and execution to be executed thereon, without paying the rent and arrears, together with full costs, and without filing any bill or bills for relief in equity, within six calendar months after such execution executed, then and in such case, the said lessee or lessees, his, her or their assignee or assignees, and all other persons claiming and deriving title under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity,

Judgment
and execu-
tion.When lessee
barred.

other than by writ of error for reversal of such judgment, in case the same shall be erroneous, and the said landlord or lessor shall, from thenceforth hold the same demised premises discharged from such lease; and if on such ejectment, verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs shall be nonsuited therein, except for the defendant or defendants not confessing lease, entry and ouster, then and in every such case, the defendant or defendants shall have and recover his, her or their full costs; *provided* always, that nothing herein contained shall extend to bar the right of any mortgagee or mortgagees of such lease or any part thereof, who shall not be in possession, so as such mortgagee or mortgagees shall and do within six calendar months after such judgment obtained and execution executed, pay all rent in arrear and all costs and damages sustained by such lessor, or person or persons entitled to the remainder or reversion as aforesaid, and perform all the covenants and agreements which on the part and behalf of the first lessee or lessees are and ought to be performed.

TITLE IV.
CHAP. 7.

Writ of error.

Proviso.

Mortgagee of lease, may redeem it.

10. *And be it enacted*, That in case the said lessee or lessees, his, her or their assignee or assignees, or other person or persons, claiming any right, title or interest in law or equity, of, in or to the said lease, shall, within the time aforesaid, file one or more bill or bills for relief, in any court of equity, such person or persons shall not have or continue any injunction against the proceedings at law on such ejectment, unless he, she or they do or shall, within twenty days next after a full and perfect answer shall be filed, by the lessor or lessors of the plaintiff in such ejectment, bring into court and lodge with the proper officer, such sum and sums of money as the lessor or lessors of the plaintiff in the said ejectment shall, in his, her or their answer, swear to be due and in arrear, over and above all just allowances, and also the costs taxed in the said suit, there to remain till the hearing of the cause, or to be paid out to the lessor or landlord on good security, subject to the decree of the court; and in case such bill or bills shall be filed within the time aforesaid, and after the execution is executed, the lessor or lessors of the plaintiff shall be accountable only for so much and no more as he, she or they shall really and bona fide, without fraud, deceit, or wilful neglect, make of the demised premises, from the time of his, her or their entering into the actual possession thereof; and if what shall be so made by the lessor or lessors of the plaintiff happen to be less than the rent reserved on the said lease, then the said lessee or lessees, his, her or their assignee or assignees, before he, she or they shall be restored to his, her or their possession or possessions, shall pay such lessor or lessors, landlord or landlords, what the money, so by them respectively made, fell short of the reserved

How lessee relieved in equity.

But must bring money due into court.

and pay deficiency.

TITLE IV.
CHAP. 7.

rent, for the time such lessor or lessors of the plaintiff, or landlord or landlords, held the said lands.

Suit discontinued on payment, or tender,

11. *Provided always, and be it enacted*, That if the tenant or tenants, his, her or their assignee or assignees, do or shall, at any time before the trial in such ejectment, pay or tender to the lessor or landlord, his or her executors or administrators, or his, her or their attorney in that cause, or pay into the court where the same cause is or shall be depending, all the rent and arrears, together with the costs, then and in such case, all further proceedings on the said ejectment shall cease and be discontinued; and if such lessee or lessees, his, her or their executors, administrators or assigns, shall, upon such bill filed as aforesaid, be relieved in equity, he, she or they shall have, hold and enjoy the demised lands, according to the lease thereof made, without any new lease to be thereof made to him, her or them.

new lease not necessary.

Proceedings when premises deserted.

12. *And be it enacted*, That if any tenant, holding any lands, tenements or hereditaments, who shall be in arrear for one year's rent, shall desert the demised premises, and leave the same uncultivated or unoccupied, so as no sufficient distress can be had to countervail the arrears of rent, it shall and may be lawful to and for two or more justices of the peace of the county in which the demised premises lie, and who have no interest in the same, at the request of the landlord or landlords, lessor or lessors, or his, her or their bailiff or agent, to go upon and view the same, and to affix or cause to be affixed, on the most notorious part of the premises, notice in writing what day (at the distance of fourteen days at least), they will return to take a second view thereof, and if, upon such second view, the tenant or some person in his or her behalf, shall not appear and pay the rent in arrear, or there shall not be sufficient distress

Notice.

Landlord put in possession.

upon the premises, then the said justices may put the said landlord or landlords, lessor or lessors, into the possession of the said demised premises, and the lease thereof to such tenant, as to any demise therein contained, shall, from thenceforth become void;

Proviso.

provided always, that such proceedings of the said justices shall be examinable in a summary way by the justices of the supreme court, who are hereby empowered to order restitution to be made to such tenant, together with his or her expenses and costs, to be paid by the landlord or landlords, lessor or lessors, if they shall see cause for the same; and in case they shall affirm the act of the said justices, to award costs to be paid by such tenant, and the costs as well in the instance of restitution as of affirmance aforesaid, shall be levied and recovered against the body or bodies, or goods and chattels, lands and tenements, of such landlord or tenant, as the case may be.

13. *And be it enacted*, That in case any lease shall be duly surrendered in order to be renewed, and a new lease made and executed by the chief landlord or landlords, the same new lease shall, without a surrender of all or any of the under leases, be as good and valid, to all intents and purposes, as if all the under leases, derived thereout, had been likewise surrendered at or before the taking of such new lease, and all and every person or persons, in whom any estate for life or lives, or for years, shall, from time to time, be vested, by virtue of such new lease, and his, her and their executors and administrators, shall be entitled to the rents, covenants and duties, and have like remedy for recovery thereof, and the under lessees shall hold and enjoy the messuages, lands and tenements, in the respective under leases comprised, as if the original leases, out of which the respective under leases are derived, had been still kept on foot and continued; and the chief landlord or landlords shall have and be entitled to such and the same remedy, by distress or entry in and upon the messuages, lands, tenements and hereditaments, comprised in any such under lease, for the rents and duties reserved by such new lease, so far as the same exceed not the rents and duties reserved in the lease out of which such under lease was derived, as he, she or they would have had, in case such former lease had been still continued, or as he, she or they would have had, in case the respective under leases had been renewed under such new principal lease.

TITLE IV.
CHAP. 7.

Surrender
and renewal
of chief lease
not to invali-
date under
leases.

14. *And whereas*, the possession of estates in lands, tenements and hereditaments is rendered very precarious, by the frequent and fraudulent practice of tenants, in attorning to strangers, who claim title to the estates of their respective landlord or landlords, lessor or lessors, who by that means are turned out of possession of their respective estates, and put to the difficulty and expense of recovering the possession thereof by actions or suits at law; for remedy whereof, *be it enacted*, that all and every such attornment or attornments of any tenant or tenants of any messuages, lands, tenements or hereditaments, shall be absolutely null and void, to all intents and purposes whatsoever, and the possession of their respective landlord or landlords, lessor or lessors, shall not be deemed or construed to be in anywise changed, altered or affected, by any such attornment or attornments; *provided always*, that nothing herein contained shall extend to vacate or affect any attornment made pursuant to, or in consequence of some judgment at law, or decree or order of a court of equity, or made with the privity and consent of the landlord or landlords, lessor or lessors, or to any mortgagee, after the mortgage has become forfeited.

Attornment
of tenant
void.

Proviso.

15. *And be it enacted*, That every tenant, to whom any declara-

TITLE IV.
CHAP. 8.

Ejectment,
tenant to
give notice.
Penalty.

tion in ejectment shall be delivered for any lands, tenements or hereditaments, shall forthwith give notice thereof to his or her landlord or landlords, or his, her or their bailiff, receiver, agent or lawful attorney, under the penalty of forfeiting the value of three years' improved or rack rent of the premises so demised or holden in the possession of such tenant, to the person of whom he or she holds, to be recovered by action of debt, to be brought in any court of record within this state.

Landlord
may defend.

16. *And be it enacted*, That it shall and may be lawful for the court where such ejectment shall be brought, to suffer the landlord or landlords, to make himself, herself, or themselves defendant or defendants by joining with the tenant or tenants, to whom such declaration in ejectment shall be delivered, in case he, she or they shall appear; but in case such tenant or tenants shall refuse or neglect to appear, judgment shall be signed against the casual ejector for want of such appearance; but if the landlord or landlords of the whole or any part of the lands, tenements or hereditaments, for which such ejectment was brought, shall desire to appear by himself, herself, or themselves, and consent to enter into the like rule that by the course of the court the tenant in possession, in case he or she had appeared, ought to have done, then the court where such ejectment shall be brought, shall and may permit such landlord or landlords so to do, and order a stay of execution upon such judgment against the casual ejector until they shall make further order therein.

Notice to
quit, three
months.

17. *And be it enacted*, That in all cases where any tenant is, or may be entitled by law to notice to quit the premises by him holden, in order to determine his tenancy, three months' notice to quit as aforesaid, shall be deemed and taken to be sufficient.

CHAPTER 8.

LIMITATION OF ACTIONS.

- | | | |
|-------------------------------------|--|---|
| 1. Actions within six years. | | 9. Extension in case of death. |
| 2. Actions within four years. | | 10. Right of entry, when barred. |
| 3. For words. | | 11. Action for lands. |
| 4. Against whom not to run. | | 12. Equity of redemption. |
| 5. Sheriff's and constable's bonds. | | 13. Judgments reversed or arrested. |
| 6. Sealed instruments. | | 14. Actions by the state. |
| 7. Judgments. | | 15. Creditors of estates, how far barred. |
| 8. Non-residents excepted. | | 16, 17. Actions on penal statutes. |

An Act for the limitation of actions.

REV. 410, 670.

HAR. 249.

1840-1.
PAMPH. 48.

Revision....Approved April 16, 1846.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That all actions of trespass, quare clausum

fregit, all actions of trespass, detinue, trover and replevin for taking away of goods and chattels, all actions of debt, founded upon any lending or contract without specialty, or for arrearages of rent due on a parol demise, and all actions of account and upon the case, except actions for slander, and except also, such actions as concern the trade or merchandise between merchant and merchant, their factors, agents and servants, shall be commenced and sued within six years next after the cause of such actions shall have accrued, and not after.

TITLE IV.
CHAP. 8.

Actions with-
in six years.

2. *And be it enacted*, That all actions of trespass for assault, menace, battery, wounding and imprisonment, or any of them, shall be commenced and sued within four years next after the cause of such action shall have accrued, and not after.

Actions with-
in four years.

3. *And be it enacted*, That every action upon the case for words shall be commenced and sued within two years next after the words spoken, and not after.

For words.

4. *Provided always, and be it enacted*, That if any person or persons who is, are or shall be entitled to any of the actions specified in the three preceding sections of this act, is, are or shall be, at the time of any such cause of action accruing, within the age of twenty-one years, feme covert or insane, that then such person or persons shall be at liberty to bring the said action so as he, she or they institute or take the same within such time as is before limited after, his, her or their coming to or being of full age, discover to or of sane memory, as by other person or persons having no such impediment might be done.

Against
whom not
to run.

5. *And be it enacted*, That any prosecution to be had or commenced upon any bond heretofore given or hereafter to be given, by any sheriff and his securities for the faithful performance of the office of sheriff, shall in no wise operate against or in any manner affect the said securities named and bound in said bond, unless such prosecution shall be commenced within nine years after the date of the said bond and not after; and any prosecution to be had or commenced upon any bond heretofore given or hereafter to be given by any constable and his securities, for the true and faithful performance of all the duties enjoined on him as constable, shall in no wise operate against or in any manner affect the said securities named and bound in said bond, unless such prosecution shall be commenced within four years after the date of the said bond, and not after.

Sheriff's and
constable's
bonds.

6. *And be it enacted*, That every action of debt or covenant for rent or arrearages of rent, founded upon any lease under seal, whether indented or poll, and every action of debt upon any single or penal bill for the payment of money only, or upon any obliga-

Sealed in-
struments.

TITLE IV.
CHAP. 8.

tion with condition for the payment of money only, or upon any award under the hands and seals of arbitrators for the payment of money only, shall be commenced and sued within sixteen years next after the cause of such action shall have accrued and not after; but if any payment shall have been made on any such lease, specialty or award within or after the said period of sixteen years, then an action instituted on such lease, specialty or award, within sixteen years after such payment, shall be good and effectual in law, and not after; *provided always*, that the time during which the person who is or shall be entitled to any of the actions specified in this section, shall have been within the age of twenty-one years, feme covert or insane, shall not be taken or computed as part of the said limited period of sixteen years.

Proviso.

Judgments.

Proviso.

Non-resi-
dents ex-
cepted.

7. *And be it enacted*, That judgments in any court of record of this state may be revived by scire facias, or an action of debt may be brought thereon within twenty years next after the date of such judgment, and not after; *provided*, that the time during which the person who is or shall be entitled to the benefit of such judgment, shall have been under the age of twenty-one years, feme covert or insane, shall not be taken or computed as part of the said limited period of twenty years.

8. *And be it enacted*, That if any person or persons against whom there is or shall be any such cause of action as is specified in the first, second, third, fifth, sixth and seventh sections of this act, shall not be resident in this state when such cause of action accrues, or shall remove from this state after the same shall accrue and before the time of limitation mentioned in said sections is expired, then the time or times during which such person or persons shall not reside in this state, shall not be computed as part of the said limited period within which such action or actions are required to be brought as aforesaid; but the person or persons having, or who may have such cause of action as aforesaid, shall be entitled to all the time mentioned in the said several sections, for bringing their said actions after the cause thereof shall accrue, exclusive of the time or times during which the person or persons liable to such actions shall be not resident in this state as aforesaid.

Extended in
case of death.

9. *And be it enacted*, That if any person, against whom there is or shall be any such cause of action, as is specified in the first, fifth, sixth or seventh sections of this act, shall have died or shall hereafter die before the expiration of the times of limitation therein mentioned, the space or term of six months next succeeding the death of such person, shall not be computed as part of the limited period within which such action or actions is or are required to be brought by the said sections.

10. *And be it enacted*, That no person, who now hath, or here-
 after may have any right or title of entry into any lands, tenements
 or hereditaments, shall make any entry therein, but within twenty
 years next after such right or title shall accrue; and such person
 shall be barred from any entry afterwards; *provided always*, that
 the time, during which the person who hath or shall have such
 right or title of entry, shall have been under the age of twenty-one
 years, feme covert or insane, shall not be taken or computed as
 part of the said limited period of twenty years.

TITLE IV.
 CHAP. 8.

Right of en-
 try, when
 barred.

Proviso.

11. *And be it enacted*, That every real, possessory, ancestral,
 mixed or other action, for any lands, tenements or hereditaments,
 shall be brought or instituted within twenty years next after the
 right or title thereto, or cause of such action shall accrue, and not
 after; *provided always*, that the time, during which the person who
 hath or shall have such right or title, or cause of action, shall have
 been under the age of twenty-one years, feme covert or insane,
 shall not be taken or computed as part of the said limited period
 of twenty years.

Action for
 lands.

Proviso.

12. *And be it enacted*, That if a mortgagee and those under
 him be in possession of the lands, tenements and hereditaments,
 contained in the mortgage, or any part thereof, for twenty years
 after default of payment by the mortgagor, then the right or equity
 of redemption therein shall be for ever barred.

Equity of
 redemption.

13. *Provided nevertheless, and be it enacted*, That if, in any of
 the said actions, specified in any of the preceding sections of this
 act, judgment be given for the plaintiff, and the same be re-
 versed by writ of error, or if a verdict pass for the plaintiff, and
 upon matter alleged in arrest of judgment, the judgment be given
 against the plaintiff, then the said plaintiff, his or her heirs, execu-
 tors or administrators, as the case shall require, may commence a
 new action within one year after such judgment reversed or given
 against the plaintiff, and not after.

Judgment re-
 versed or ar-
 rested.

14. *And be it enacted*, That no person or persons, bodies politic
 or corporate, shall be sued or impleaded by the state of New Jer-
 sey, for any lands, tenements or hereditaments, or for any rents,
 revenues, issues or profits thereof, but within twenty years after
 the right, title or cause of action to the same shall accrue, and not
 after.

Actions by
 the state.

15. *And be it enacted*, That the orphans' court of the proper
 county is hereby empowered to direct executors and administra-
 tors to give public notice to the creditors of the estate of the dece-
 dent, to bring in their debts, demands and claims against the same,
 within such time as the said court shall limit and appoint, not
 exceeding two years, nor less than one year, by setting up such

Creditors of
 estates, when
 barred.

Notice re-
 quired.

TITLE IV.
CHAP. 8.

notice in five of the most public places in the said county, for the space of two months, and also by advertising the same, for the like space, in one or more of the newspapers in this state, and any further notice, in case such court shall judge the same necessary. And if any creditor shall neglect to exhibit his or her debt, demand or claim within the time so limited, after public notice given as aforesaid, such creditor shall be for ever barred of his or her action therefor, against such executors or administrators; *provided always*, that the said executors and administrators, on the payment of any part of the decedent's estate to any legatee or person claiming distribution thereof, shall take bond to refund as heretofore, and within twelve months after the expiration of the time, so as aforesaid limited by the orphans' court for creditors to come in and claim, shall cause the same to be filed in the clerk's office of such orphans' court, for the use and benefit of such creditor or creditors as may not have come in and claimed; which said bond or bonds, on application to the said orphans' court and order thereupon, the said creditor or creditors may put in suit against such legatee, or person claiming distribution and their sureties, at his, her or their own costs and charges, and for his, her or their own use and benefit; but shall recover no costs thereupon.

Proviso.

Refunding bonds required,

and may be sued.

Actions on penal statutes.

Where forfeiture to the state.

To prosecutor.

To state and prosecutor.

To party aggrieved.

Proviso.

16. *And be it enacted*, That all actions or informations which shall be brought or exhibited for any forfeiture upon any penal statute made or to be made, whereby the said forfeiture is or shall be limited to the state of New Jersey only, shall be brought or exhibited within two years next after the offence committed or to be committed against such penal statute and not after. And all actions or informations, which shall be brought or exhibited for any forfeiture upon any penal statute, made or to be made, the benefit and suit whereof is or shall be by the said statute limited or given to any person or persons who shall prosecute for the same, or to the state of New Jersey and to any other who shall prosecute in that behalf, shall be brought or exhibited by any person or persons who may lawfully sue for the same as aforesaid, within one year next after the offence committed or to be committed against the said statute; and in default of such suit, then the same shall be brought or exhibited for the state of New Jersey, at any time within one year after the termination of the aforesaid year and not after. And all actions or informations which shall be brought or exhibited for any forfeiture or cause upon any statute made or to be made the benefit and suit whereof is or shall be limited or given to the party aggrieved, shall be brought or exhibited within the space of two years next after the offence committed or to be committed, or cause of action accrued, and not after; *pro-*

vided always, that where any action or information is or shall be limited by any statute to be brought or exhibited within a shorter time than is limited by this section, then the said action or information shall be brought or exhibited within such shorter time so limited by such statute. TITLE IV.
CHAP. 9.

17. *And be it enacted*, That all actions or informations which shall be brought or exhibited for any forfeiture upon any penal statute, made or to be made, whereby the said forfeiture is or shall be limited to any county, township or town corporate, or to any officer of such county, township or town corporate, or to any person or persons for the use of such county, township or town corporate, either in whole or together with any other person or persons who may lawfully sue for the same, shall be brought or exhibited within one year next after the offence committed or to be committed, and not after; *provided always*, that where any action or information is or shall be limited by any statute to be brought or exhibited within a shorter time than is limited by this section, then the said action or information shall be brought or exhibited within such shorter time so limited by such statute. Where forfeiture is to county, township, etc.
Proviso.

CHAPTER 9.

MORTGAGES, REDEMPTION AND FORECLOSURE OF.

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|--|--|--|
| 1. Reconveyance upon tender or payment.
2. When decree made before hearing. | | 3. Subsequent mortgages not affected.
" Not extended to controverted cases. |
|--|--|--|

An Act for the more easy redemption and foreclosure of mortgaged premises. R. v. 161.

Passed December 3, 1794.

1. BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same*, That from henceforth where any action shall be brought on any bond for payment of the money secured by such mortgage, or performance of the covenants therein contained, or where any action of ejectment shall be brought by any mortgagee or mortgagees, his, her, or their heirs, executors, administrators, or assigns, for the recovery of the possession of any mortgaged lands, tenements or hereditaments, and no suit shall be then depending in the court of equity, for or touching the foreclosing or redeeming of such mortgaged lands, tenements or hereditaments; if the person or persons, having In actions at law on mortgages, and no suit thereon in equity, a tender of the sum due, with costs in court, shall be full satisfaction and discharge; and thereupon the mortgagee shall be compelled to reconvey and surrender the premises.

TITLE IV.
CHAP. 9.

right to redeem such mortgaged lands, tenements or hereditaments, and who shall appear and become defendant or defendants in such action, shall at any time, pending such action, pay unto such mortgagee or mortgagees, or, in case of his, her, or their refusal, shall bring into court, where such action shall be depending, all the principal moneys and interest due on such mortgage, and also all such costs as have been expended in any suit or suits at law or in equity, upon such mortgage, (such money for principal, interest and costs to be ascertained and computed by the court, where such action is or shall be depending, or by the proper officer, by such court to be appointed for that purpose,) the moneys, so paid by such mortgagee or mortgagees, or brought into such court, shall be deemed and taken to be in full satisfaction and discharge of such mortgage; and the court shall and may discharge every such mortgagor or defendant of and from the same accordingly; and shall and may, by rule or rules of the same court, compel such mortgagee or mortgagees, at the costs and charges of such mortgagor or mortgagors, to assign, surrender, or reconvey such mortgaged lands, tenements and hereditaments, and such estate and interest as such mortgagee or mortgagees have or hath therein, and deliver up all deeds, evidences, and writings, in his, her, or their custody, relating to the title of such mortgaged lands, tenements and hereditaments, unto such mortgagor or mortgagors, who shall have paid or brought such moneys into the court, his, her, or their heirs, executors or administrators, or to such other person or persons, as he, she, or they shall for that purpose nominate or appoint.

On bills filed to foreclose the equity of redemption, the court may, at the request of the defendant, proceed to a decree before a regular hearing.

2. *And be it enacted by the authority aforesaid,* That from henceforth where any bill or bills, suit or suits, shall be filed, commenced, or brought in the court of equity of this state by any person or persons having or claiming any estate, right or interest, in any lands, tenements or hereditaments, under or by virtue of any mortgage or mortgages thereof, to compel the defendant or defendants in such suit or suits, (having or claiming a right to redeem the same,) to pay the plaintiff or plaintiffs in such suit or suits, the principal money and interest due on any such mortgage or mortgages, together with any sum or sums of money due on any incumbrance or specialty, charged, or chargeable on the equity of redemption thereof, and in default of payment thereof, to foreclose such defendant or defendants of his, her or their right or equity of redeeming such mortgaged lands, tenements or hereditaments; such court of equity, where such suit or suits shall be depending, upon application made to such court by the defendant or defendants in such suit, having a right to redeem such mortgaged lands, tenements or hereditaments, and upon his, her or their admitting the right and

title of the plaintiff or plaintiffs in such suit, may and shall, at any time or times before such suit or cause shall be brought to hearing, make such order or decree therein as such court might or could have made therein, in case such suit or cause had then been regularly brought to hearing before such court; and all parties to such suit or suits shall be bound by such order or decree so made, to all intents and purposes, as if such order or decree had been made, by such court, at or subsequent to the hearing of such cause or suit.

TITLE IV.
CHAP. 10.

3. *Provided always, and be it further enacted by the authority aforesaid,* That this act, or anything herein contained, shall not extend to any case, where the person or persons, against whom the redemption is or shall be prayed, shall, by writing under his, her, or their hands, or the hand of his, her, or their attorney, agent or solicitor, to be delivered, before the money shall be brought into such court at law, to the attorney or solicitor for the other side, insist, either that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other or different principal sums than what appear on the face of the mortgage, or shall be admitted on the other side; nor to any case where the right of redemption to the mortgaged lands and premises in question in any cause or suit shall be controverted or questioned by or between different defendants in the same cause or suit; nor shall be any prejudice to any subsequent mortgagee, or mortgagees, or subsequent incumbrancer; anything in this act to the contrary thereof in anywise notwithstanding.

This act not to affect a subsequent mortgage, nor to extend to cases where the equity of redemption is controverted, or the money due is not adjusted.

CHAPTER 10.

MORTGAGED PREMISES, MORE EASY SALE OF.

1. Mortgagee may have sci. fa. | 2. Title of purchasers.

An Act for the more easy sale of mortgaged premises.

HAR. 357.

Passed February 16, 1831.

1. BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That where default or defaults have been made or shall be made, of or in payment of the mortgage money of any lands, tenements, or hereditaments, within this state, whereto no other person or persons are necessarily interested, than the mortgagor or mortgagors, and the mortgagee; and where the said lands, tenements and hereditaments

When mortgagee may sue forth a writ of sci. fa.

TITLE IV.
CHAP. 10.

are subject to one mortgage only, it shall and may be lawful to, and for, the mortgagee at any time after the payment of the said mortgage money ought to have been made, to sue forth a writ or writs of scire facias, which the clerk of the supreme court, or the clerk of the court of common pleas of the county where the said mortgaged lands or hereditaments lie, who is hereby empowered and required to grant the same, directed to the proper officer, requiring him to make known to the mortgagor or mortgagors, that he, she, or they, be and appear before the court out of which the said writ shall issue, to show cause, if any there be, why the said mortgaged premises ought not to be seized and taken in execution for payment of the said mortgage money, with interest and costs; and if the defendant or defendants in such scire facias appears, he, she, or they may plead satisfaction or payment of part or all of the mortgage money, or any other lawful plea in avoidance of the deed or debt, as the case may require; but if the defendants in such scire facias, will not appear in person or by attorney, on the day whereon the writ shall be made returnable, then judgment to be given upon such scire facias, shall be entered, and the plaintiff or plaintiffs shall have execution, directed to the proper officer, by virtue whereof, the said mortgaged premises shall be taken in execution, exposed to sale and sold in like manner as under other executions for the sale of real estate, issued out of the said courts, respectively; and, upon sale, conveyed to the buyer or buyers thereof, and the money or price of the same, after satisfying the demands of the mortgagee or creditor, and reasonable costs, if any surplus there be, shall be paid into court by the sheriff or other officer making the sale, and the court shall thereupon order such surplus to be applied towards discharging any judgments or other lawful lien on said mortgaged premises; and in case no such judgment or lien appears, then the court shall order the same to be paid over to the debtor or defendant in such action.

2. *And be it enacted*, That when lands, tenements, or hereditaments, shall be so sold, the person or persons to whom they shall be so sold, shall and may hold and enjoy the same, with their appurtenances, for such estate or estates as they were sold, clearly discharged and freed from all equity and benefit of redemption, and all other incumbrances made or suffered by the mortgagor or mortgagors, their heirs or assigns, and such sales shall be available in law, and the respective vendees, mortgagees, or creditors, their heirs and assigns, shall hold or enjoy the same, freed and discharged as aforesaid, in as good and perfect an estate, as the mortgagor or mortgagors, at the time of executing the said mortgage deed, were invested with.

Defendant may plead.

Proceedings when defendant does not appear.

Mortgaged premises may be sold.

Manner in which proceeds of sale are disposed of.

Title of purchasers.

CHAPTER 11.

PARTITION.

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| <ol style="list-style-type: none"> 1. Application for partition. 2. Appointment of commissioners. 3. Survey and division into lots. 4. Shares numbered and described. 5. Allotment, how made. 6. Witnesses may be examined. 7. Proceedings to be recorded. 8. Justice's fees. 9. Expenses apportioned and paid. 10. Minors, or land in several counties. 11. Notice, to whom given. 12. Costs assessed and paid. 13. Provision in case of waste. 14. Liens, how adjusted. | <ol style="list-style-type: none"> 15. When land to be sold. 16. Report of sale. 17. If approved, deeds made. 18. Commissioners' oath. 19. When vacancy supplied. 20. Survivors may make deed. 21. Proceeds of sale paid over. 22. Guardian to give bond. 23. Of widow's dower. 24. Fees. 25. Commissioners' accounts settled. 26. Chancery may order sale. 27. Rights of other parties saved. |
|---|---|

An Act for the more easy partition of lands held by coparceners, joint tenants, and tenants in common.

REV. 89, 776,
sections 12 to
19, inclusive.

REV. 597.

Revision....Approved April 16, 1846.

HAR. 42.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That any person, being a coparcener, joint tenant, or tenant in common, in any tract or tracts of land within this state, may apply to any justice of the supreme court, or judge of any circuit court or court of common pleas of the county wherein such lands may lie, for a partition of such tract or tracts of land; whereupon the said justice or judge shall ascertain the number of equal shares or parts in which such tract or tracts were, or at the time of such application, are held by the original coparceners, joint tenants, or tenants in common, and shall nominate three persons, not interested in the said land, as commissioners, to make partition of such tract or tracts into as many parts or shares as the same was originally held; and the said justice or judge shall thereupon order an advertisement to be inserted in one of the public newspapers of this state, and in such other public newspapers or places as the said justice or judge shall direct, for four weeks successively, at least once in each week, to the following or like effect, he or they making such alterations or additions as the nature of the case may require:

1835-6.
PAMPH. 395.

1840-1.

PAMPH. 82.

1842-3.

PAMPH. 31.

Application
for partition.

Nomination
of commis-
sioners.

Notice.

By _____ justice of the supreme court of New Jersey, or judge of the circuit court or the court of common pleas of the county of _____

Notice is hereby given, that on application to me, by _____ who claims an undivided _____ part of all that tract of land, (giving a description of the tract or tracts intended to be divided,) I have nominated A. B., C. D. and E. F., commissioners, to divide

TITLE IV.
CHAP. II.

the said tract (or tracts) of land, into ——— equal shares or parts ;
and unless proper objections are stated to me at ——— on the
——— day of ——— next, (which is to be at least thirty days from
the date of the notice,) the said A. B., C. D. and E. F., will then
be appointed commissioners to make partition of the said land,
pursuant to an act entitled, “ An act for the more easy partition of
lands held by coparceners, joint tenants, and tenants in common.”
Given under my hand this ——— day of ———.

Appoint-
ment of com-
missioners.

2. *And be it enacted,* That if no objections are made before the
said justice or judge, on the day appointed by him for that pur-
pose, to the persons nominated as commissioners, then the said
justice or judge shall, in writing, under his hand and seal, appoint
the persons so nominated, to be commissioners to divide the said
land, pursuant to the directions prescribed in this act; and the said
justice or judge shall, in the said writing, describe the tract or
tracts so to be divided, and direct the number of parts or shares
into which the same is to be allotted ; but if objections are made to
the persons nominated as commissioners, or any of them, the said
justice or judge shall then proceed to hear and determine such
objections, and in case he find them well founded, to appoint under
his hand and seal, other fit and disinterested persons in the room of
those he may think proper to remove.

Partition di-
rected.

Objections.

Survey and
division into
lots.

3. *And be it enacted,* That the said commissioners, having taken
the oath or affirmation hereinafter prescribed, shall cause a survey
to be made in their presence of the tract or tracts to be divided,
and shall then proceed to divide the same into the number of parts
or shares directed by the said justice or judge, in the writing con-
taining their appointment, each part or share to contain one or
more lots, as the commissioners may think proper, they having due
regard in the partition to the situation, quantity, quality and advan-
tages of each part or share, so that they may be equal in value, as
nearly as may be ; and if the bounds of any tract or tracts, so to
be divided, shall be controverted, the commissioners are hereby
directed, if such controverted part is valuable, to separate the same
from the uncontroverted part, and to make partition of the tract or
tracts, in such manner, that a proportion of the controverted part
may be allotted to each share, as well as a proportion of the uncon-
troverted part ; and the said commissioners, previous to the said
survey, shall administer an oath or affirmation to the surveyor and
chain-bearers, that they will well and truly perform their respec-
tive duties honestly and impartially ; which oath or affirmation, any
one of the said commissioners is hereby empowered to administer.

When part
is contro-
verted.

Surveyor
and chain-
bearers
sworn.

Shares num-
bered and
described.

4. *And be it enacted,* That the said commissioners shall number
the several parts or shares by them laid off, from number one, pro-

gressively, and shall in the same manner number each lot in the several shares, if the same contain more than one lot, and shall make a true field-book, specifying the bounds and numbers of each lot, and also a map or maps of the tract or tracts, on which the several shares or lots shall be laid down and numbered, and shall keep an exact and particular account of their time expended in the execution of the duties of this act, and of the money due for the same, and also of all expenses accrued for surveying or otherwise, agreeably to the directions of this act; and the said commissioners shall thereupon give notice, by advertisement in manner aforesaid, for three weeks successively, that on a certain day by them named, not less than one month from the date of such notification, attendance will be given at a place therein named, and an allotment, by ballot, take place, of the several parts or shares of the tract or tracts therein described, to the original coparceners, joint tenants or tenants in common, their heirs or assigns.

TITLE IV.
CHAP. 11.

Notice of allotment.

5. *And be it enacted*, That on application made to the said justice or judge, by any one of the parties to the partition intended to be made, the said justice or judge shall attend at the time and place specified in the advertisement of the commissioners, and shall, with the assistance of the said commissioners, proceed to allot the several parts or shares of the tract or tracts intended to be divided in the manner herein after described; but if no application shall be made to the said justice or judge for his attendance, then the said commissioners shall, on the day appointed for that purpose, proceed, in a public manner, to number as many tickets as there are shares of land marked on the map, which shall be put in a box, and the names of the original coparceners, joint tenants or tenants in common shall be put, in separate tickets, into another box, when a person, appointed by the said justice, judge or commissioners, shall proceed to draw a ticket of the names, and then a ticket of the numbers, and so proceed until all the tickets are drawn, and the share on the map bearing the number of the ticket drawn next after drawing the ticket with the name, shall be the separate and divided share of that original coparcener, joint tenant or tenant in common, his or her heirs or assigns, in the land so divided; of which balloting the said justice or judge or commissioners, shall make a full and ample certificate under his or their hands and seals, specifying particularly the time, place and manner of balloting, and the allotment of the shares.

Allotment, how made.

Certificate.

6. *And be it enacted*, That the said justice or judge and the said commissioners, are hereby authorized, as the case may require, to issue his or their precept or precepts, under his or their hands and seals, commanding such person or persons, who are able to give

Witnesses may be examined.

TITLE IV.
CHAP. 11.

any necessary information, to come before him or them, when and where he or they may direct, to testify, by an oath or affirmation, concerning such acts, matters or things, as may be necessary for the said justice or judge or commissioners to investigate in the execution of the trust, duties and services required of them by this act, and to bring with them all such patents, surveys, maps, records, deeds, or other writings, as may be necessary to be examined by the said justice, judge or commissioners.

Proceedings
to be record-
ed.

7. *And be it enacted*, That the said commissioners shall transmit the writing containing their appointment and their oath or affirmation of office, properly certified by the person administering the same, and the map and field-book, together with the said certificate of allotment, and also their accounts, to the justice or judge from whom they received their appointment, or in case of his death, resignation or removal, then to any other justice or judge of the same court, who, after inspecting the same, shall order the said instruments, excepting the account of expenses, to be recorded in the clerk's office of the supreme court, or in the clerk's office of the county in which the lands lie, which shall be good evidence of such partition; and which partition shall be as valid and effectual in law to divide and separate the said lands, as if the same had been made on writs of partition, according to the course of the common law.

Justice's
fees.

8. *And be it enacted*, That the said justice or judge shall be allowed for the services herein before required of him, at the rate of three dollars a day while employed in the said business.

Expenses
apportioned
and paid.

9. *And be it enacted*, That after the said justice or judge shall have ascertained the whole expense of such partition, he shall divide the same among the several parts or shares, which shall be paid by the persons to whom such shares were allotted, their heirs or assigns, within four weeks after the same shall be ascertained, or in default of payment of such expense, the said justice or judge shall direct a sale to be made, by the commissioners, of so much of those parts or shares, deficient in paying the expense, as will be sufficient to pay their respective proportions thereof, together with the expense accruing on such sale, and shall direct the same to be sold by the said commissioners, at public auction, to the highest bidder; and the said commissioners' deed to the purchaser shall pass as good a title for the separate enjoyment of the same, as if all the owners and claimants of shares of the entire tract divided had joined therein.

Sale to pay
expenses.
Deeds.

Case of mi-
nor's, or land
in several
counties,
provided for.

10. *And be it enacted*, That when two or more persons shall hold real estate as coparceners, joint tenants or tenants in common, any one or more of whom are minors under the age of twenty-one

years, it shall and may be lawful for the orphans' court of the county in which such real estate may be, or for the prerogative court, when such real estate is situate in two or more counties, upon application made by one or more of said coparceners, joint tenants or tenants in common, or by any person duly authorized in their behalf, or claiming under them or any of them, to order and direct a division of such real estate to be made between the said owners, in such shares and proportions as they may be entitled to by law; the metes and bounds of each share to be ascertained by three disinterested commissioners, to be appointed by the court, whose report, made in writing under their hands, to the next or any subsequent term of the said court after such division shall be made and approved by the said court, shall be conclusive to all parties concerned; and a copy of the appointment of said commissioners, together with their report, shall be recorded in a book to be kept for that purpose in the office of the clerk of said court, and copies thereof, duly certified under the seal of said court, shall be evidence in all courts of law or equity.

TITLE IV.
CHAP. 11.

Record.

11. *And be it enacted*, That notice of application to the prerogative court or orphans' court for the partition of any real estate, shall be served upon all the joint tenants, coparceners, or tenants in common, interested therein, who shall not have joined in such application, and upon the guardian or guardians (if any there be) of such as are minors, at least four weeks before the time of making such application, or be published for the like space of time in one of the newspapers of this state, circulated in the neighbourhood of the said real estate; and no order for partition shall be made upon such application until satisfactory proof be made to the court, of the service or publication of such notice as aforesaid.

Notice, to whom given.

12. *And be it enacted*, That the necessary costs and expenses which shall arise under an order of the prerogative court or orphans' court in any of the cases aforesaid, shall be assessed by the said court upon each share, in proportion to the value divided to him or her, and may be recovered by a warrant from the said court, directing distress and sale to be made of so much timber, wood or herbage as may be found on the part divided to him or her, or of other property belonging to such owner as will be sufficient to pay the costs and expenses aforesaid, and costs of such distress and sale.

Costs assessed and paid.

Distrained for.

13. *And be it enacted*, That on a partition made by virtue of an order of the prerogative court or orphans' court in any of the cases aforesaid, if any owner or any person claiming under him or her, hath, after the death of the testator or intestate and before the division, cut off or made use of any timber or committed any

Provision in case of waste.

TITLE IV.
CHAP. II.

waste or destruction on the premises, the commissioners appointed to make the division shall estimate the damage done by such owner, or person claiming under him or her, and divide the premises so that such owner shall be charged with said damage, and have a share proportionably less in value than the other owners who have done no waste or damage.

Liens, how
adjusted.

14. *And be it enacted*, That if there be at the time of making any partition by virtue of this act, a lien upon the undivided estate of any owner, by judgment, decree, mortgage, or otherwise, such lien shall thereafter be a lien only on the share assigned or allotted to such owner; and such share shall be first charged with its just proportion of the costs of the partition in preference to any such lien.

When land
to be sold.

15. *And be it enacted*, That if the commissioners appointed by virtue of this act, shall in any case be of opinion that the tract or tracts of land or real estate in question are so circumstanced, that a partition thereof cannot be made without great prejudice to the owners of the same, they shall so report; and if it shall appear by satisfactory proof, that the said tract or tracts of land or real estate cannot be partitioned among the owners and proprietors without great prejudice to their interest, then and in such case, the court or justice or judge to whom the application for the partition of such tract or tracts of land or real estate shall have been made, or in case of the death, resignation, or removal of the said justice or judge, any other justice or judge of the same court may order the said commissioners or persons appointed to make partition as aforesaid, to sell such tract or tracts of land or real estate, at public auction, to the highest bidder.

Report of
sale.

16. *And be it enacted*, That the said commissioners shall, after making such sale or sales, report the same by writing under their hands to the next stated term of the court, by whom, or by a justice or judge whereof such sale was ordered to be made.

If approved,
deeds made.

17. *And be it enacted*, That if the court to which the report of the sale of such land or real estate shall be made as aforesaid, shall approve of such sale, it shall confirm the same as valid and effectual in law, and shall, by rule of said court, direct the said report to be recorded, and the said commissioners to execute good and sufficient conveyances in the law to the purchaser or purchasers, for the tract or tracts of land or real estate so sold; which said conveyances, duly executed as aforesaid, shall operate as an effectual bar, both in law and equity, against the said owners and proprietors and against all and every person or persons claiming by, from or under them or either of them, and a copy of any such report, so recorded as aforesaid, duly certified under the seal of said court, shall be evidence in any court of this state.

18. *And be it enacted*, That every commissioner appointed by virtue of this act, shall, before he enters upon the duties of his appointment, take an oath or affirmation, before some person duly authorized to administer oaths and affirmations in this state, that he will honestly, faithfully and impartially execute the trust and perform the duties and services required of him by this act, to the best of his skill, knowledge and judgment.

TITLE IV.
CHAP. 11.

Commissioners' oath.

19. *And be it enacted*, That in case of the death, resignation, neglect or refusal to serve of any of the commissioners to be appointed by virtue of this act, before the trust, duties and services hereby required of them shall be completed, then the court, justice or judge to whom the application for partition shall have been made, or in case of the death, resignation or removal of such justice or judge, any other justice or judge of the same court, shall, by writing under his hand and seal, appoint another commissioner or commissioners, who, after taking the oath or affirmation prescribed by this act, shall be vested with the like powers and authority as if he or they had been originally appointed.

When vacancy supplied.

20. *And be it enacted*, That in all cases where a sale shall be made by commissioners by virtue of this act, if any of the said commissioners shall die after making such sale, and either before or after the confirmation thereof, it shall and may be lawful for the surviving commissioner or commissioners to make report of such sale, and if the sale be confirmed, to execute a deed or deeds of conveyance to the purchasers of the said real estate pursuant to such sale; which deed or deeds shall have the same force, effect and validity as if made and executed by all the said commissioners.

Survivors may make deed.

21. *And be it enacted*, That the moneys arising from every sale as aforesaid, shall be ordered by the court to be paid by the commissioners to the parties interested in the real estate so sold, their guardians or legal representatives, in proportion to their respective rights in the same, deducting from their respective shares the costs and charges which may be allowed and ordered to be retained out of the same; and if any of the said parties shall be absent from this state without such legal representative, the proportion of the money due to every such party shall be put out at interest on sufficient security of real property, or invested in public stock, by order and under the direction and control of said court, for the benefit of such party.

Proceeds of sale paid over.

When invested.

22. *And be it enacted*, That it shall be the duty of the said courts, respectively, to require of the guardian of any person under the age of twenty-one years, entitled to a proportion of the moneys arising from any sale as aforesaid, such security, by bond, to the ordinary of this state, as the said court shall judge to be sufficient,

Guardian to give bond.

TITLE IV.
CHAP. 11.

for the benefit of such minor, conditioned for the faithful discharge of the trust committed to such guardian.

Of widow's
dower.

23. *And be it enacted*, That whenever any widow may be entitled to dower in any tract or tracts of land or real estate ordered to be sold as aforesaid, and such widow shall, before or at the time of making such sale, by writing under her hand and seal, signify her assent and determination to relinquish her dower in the same, so that the said tract or tracts of land or real estate may be sold free of the incumbrance of her said dower, then and in such case one-third part of the moneys arising from such sale shall be put out at interest on sufficient security of real property, or invested in public stock, by order and under the direction and control of said court, for the benefit of such widow during her natural life, and the interest thereon shall be paid to her as the same may become due, as a compensation for and in lieu of her said dower, and at her decease the said principal sum shall be distributed among the parties interested, in the manner herein before directed.

Fees.

24. *And be it enacted*, That there shall be allowed in proceedings under this act:

To the Justice, Judge or Court.

For order for sale, one dollar.

“ confirmation of sale and ordering conveyance, one dollar.

To the Clerk.

For entering and filing report of sale, fifty cents.

“ recording the same, for each sheet, eight cents.

“ entering order of confirmation and for conveyance, fifty cents.

To the Surrogate.

For drawing petition, reading, filing and recording decree appointing commissioners, and a certified copy of such decree, three dollars and forty cents.

“ recording report of commissioners, for each sheet, eight cents.

Commissioners.

For each commissioner one dollar and fifty cents a day for each day employed in the service, together with all actual expenses for surveying, chain-bearing, assistants and other necessary expenses, and such further reasonable allowance as the court may judge proper, to be taxed by the court.

Commission-
ers' accounts
settled.

25. *And be it enacted*, That in all cases where commissioners appointed by virtue of this act, to make partition of real estate, shall make sale thereof as aforesaid, and shall pay the net proceeds of such sale or sales to the persons entitled by law to receive the same, it shall and may be lawful for the said commissioners to pro-

duce the receipts and discharges therefor to the surrogate of the county in which the said real estate, or the more valuable part thereof, is situate; and the said surrogate shall immediately record the same in the book of receipts and discharges in his office, provided the same be first proved or acknowledged in the manner that deeds of conveyance of land are required to be proved or acknowledged, which proof or acknowledgment shall be recorded with such receipts and discharges; and the said surrogate shall endorse on such receipts and discharges the book and page on which the same are recorded, with the time of recording the same, and sign his name thereto; and the said record, or a certified copy thereof, under the hand and seal of office of the surrogate, shall be received in evidence in any court of record in this state, if it shall be made to appear to the satisfaction of said court that the original receipt and discharge hath been lost, or that it is not in the power of the party offering the copy in evidence to produce the same.

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CHAP. 12.

26. *And be it enacted*, That the court of chancery shall have power upon bill filed in that court for the partition of real estate, to decree the sale thereof.

Chancery may order sale.

27. *And be it enacted*, That nothing in this act contained shall be so construed as to injure, prejudice, defeat or destroy the estate, right or title of any person or persons claiming such tract or tracts of land, or any part thereof, or anything therein, by title under any other person or persons, or by title paramount or superior to the title of such coparcener, joint tenant or tenant in common, among whom partition is to be made; and that nothing in this act contained shall extend to the partitioning of the lands held in common by the general proprietors of the eastern or western divisions of this state.

Rights of other parties saved.

East and West Jersey proprietors.

CHAPTER 12.

PARTITION AMONG JOINT TENANTS, ETC.

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| <ul style="list-style-type: none"> 1. Partition compelled. 2. And so of limited estates. 3. Proceedings to be had. 4. No plea in abatement. | <ul style="list-style-type: none"> 5. Under-sheriff may execute writ, etc. 6. Penalty for neglect of duty. 7. Where writs returnable. 8. Costs apportioned and paid. |
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An Act to compel joint tenants and tenants in common to make partition, and for the more easy obtaining partition of lands in coparcenary, joint tenancy, and tenancy in common.

REV. 299.

Passed March 9, 1797.

1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That all

Joint tenants and tenants in common

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CHAP. 12.

joint tenants and tenants in common, that now be, or hereafter shall be, of any estate or estates of inheritance, in their own right or in right of their wives, of any lands, tenements or hereditaments within this state, shall and may be compelled, by virtue of this act, to make partition between them of all such lands, tenements or hereditaments, as they now hold, or hereafter shall hold, as joint tenants or tenants in common, by writ of partition, in that case to be devised in the court of chancery, in like manner and form as coparceners by the common law have been and are compelled to do, and the same writ to be pursued at the common law; *provided always*, that every of the said joint tenants, or tenants in common, and his, her and their heirs, after such partition made, shall and may have aid of the other, or of his, her or their heirs, to the intent to deraign the warranty paramount, and to recover for the rate as is used between coparceners after partition made, by the order of the common law.

may be compelled to make partition of lands;

and shall have aid of one another.

Joint tenants and tenants in common for life or years compellable to make partition;

2. *And be it enacted*, That all joint tenants, and tenants in common, and every of them, who now hold, or hereafter shall hold, jointly or in common, for term of life or lives, year or years, and joint tenants, or tenants in common, where one or some of them have or shall have estate or estates for term of life or lives, or year or years, with the other or others, that have or shall have estate or estates of inheritance or freehold in any lands, tenements or hereditaments, shall and may be compelled from henceforth, by writ of partition, out of the court of chancery, upon his, her or their case or cases, and to be pursued at the common law, to make severance and partition of all such lands, tenements or hereditaments, which they hold jointly or in common, for term of life or lives, year or years, or where one or some of them hold jointly or in common, for term of life or lives, year or years, with another or others, that have an estate or estates of inheritance or freehold;

but such partition shall affect only the parties and their representatives.

provided always, that no such partition or severance hereafter to be made by force of this clause of this act be, nor shall be prejudicial or hurtful to any person or persons, their heirs or successors, other than such as be parties unto the said partition, their executors or assigns.

If the tenant shall not appear in fifteen days after service of process, the court may examine demandant's title, give judgment, and award a writ to make par-

3. *And be it enacted*, That after process of pone, or attachment, returned upon any writ of partition, between coparceners at the common law or custom, or between joint tenants, or tenants in common, by virtue of this act, affidavit being made by any credible person, of due notice given of the said writ of partition to the tenant or tenants to the action, and a copy thereof left with the occupier, or tenant or tenants, or if they cannot be found, to the wife, son or daughter, being of the age of twenty-one years or

upwards, of the tenant or tenants, or to the tenant in actual possession, by virtue of any estate of freehold, or for term of year or years, or uncertain interest, or at will, of the lands, tenements or hereditaments, whereof the partition is demanded, (unless the said tenant in actual possession be demandant in the action), at least twenty days before the day of the return of the said pone or attachment, if the tenant or tenants to such writ, or any of them, or the true tenant to the messuages, lands, tenements or hereditaments, as aforesaid, shall not in such case, within fifteen days after the return of such writ of pone or attachment, cause an appearance to be entered in such court, where such writ of pone or attachment shall be returnable, then, in default of such appearance, the demandant having entered his declaration, the court may proceed to examine the demandant's title and quantity of his part and purpart, and accordingly as they shall find his right, part and purpart to be, they shall, for so much, give judgment by default, and award a writ to make partition, whereby such proportion, part and purpart may be set out severally; which writ being executed after eight days notice given to the occupier or tenant or tenants of the premises, and returned, and thereupon final judgment entered, the same shall be good and conclude all persons whatsoever, after notice as aforesaid, whatever right or title they have, or may at any time claim to have in any of the messuages, lands, tenements or hereditaments mentioned in the said judgment and writ of partition, although all persons concerned are not named in any of the proceedings, nor the title of the tenants truly set forth; *provided* always, that if such tenant or person concerned, or either of them, against whom, or his, her or their right or title, such judgment, by default, is given, shall, within the space of one year after the first judgment entered, or in case of infancy, coverture, insane memory, or absence out of the state, within one year after his, her or their return, or the determination of such inability, apply to the court, by motion, where such judgment is entered, and show good and probable matter in bar of such partition, or that the demandant hath not title to so much as he hath recovered, then, and in such case, the court may suspend or set aside such judgment, and admit the tenant and tenants to appear and plead, and the cause shall proceed according to due course of law, as if no such judgment had been given; and if the court, upon hearing thereof, shall adjudge for the first demandant, then the said first judgment shall stand confirmed, and be good against all persons whatsoever, except such other persons as shall be absent or disabled as aforesaid; and the person or persons so applying shall be awarded thereupon to pay costs; or if, within such time or times aforesaid,

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tion; upon which, after its return, judgment final shall be entered, and be conclusive;

but if the tenant or any person interested, shall, within one year after judgment, or, in case of infancy, insanity, coverture or absence, within one year after the removal of such disability, show good cause in bar of such partition, the judgment may be set aside, and the party admitted to plead.

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CHAP. 12.

the tenants or persons concerned, admitting the demandant's title, parts and purparts, shall show to the court any inequality in the partition, the court may award a new partition to be made in the presence of all parties concerned, if they will appear, notwithstanding the return and filing upon record of the former; which said second partition returned and filed, shall be good and firm for ever against all persons whatsoever, except as before excepted.

No plea in abatement to be admitted.

4. *And be it enacted*, That no plea in abatement shall be admitted or received in any suit for partition, nor shall the same be abated by reason of the death of any tenant.

In absence of high sheriff in what manner the under-sheriff may execute the writ of partition.

5. *And be it enacted*, That when the high sheriff, by reason of distance, infirmity, or any other hinderance, cannot conveniently be present at the execution of any judgment in partition, in such case, the under-sheriff, in the presence of two justices of the peace of the county, where the lands, tenements or hereditaments to be divided do lie, shall and may proceed to the execution of any writ of partition, by inquisition in due form of law, as if the high sheriff were then personally present; and the high sheriff thereupon shall, and he is hereby enabled and required to make the same return, as if he were personally present at such execution; and in case such partition be made, returned and filed, he, she or they, that was or were tenant or tenants of any of the said messuages, lands, tenements and hereditaments, or of any part or purpart thereof, before they were divided, shall be tenant or tenants for such part set out severally to the respective landlords or owners thereof, by and under the same conditions, rents, covenants and reservations, where they are or shall be so divided; and the landlords and owners of the several parts and purparts, so divided and allotted as aforesaid, shall warrant and make good to the respective tenants the said several parts severally, after such partition, as they are or were bound to do, by any agreement, lease or grant of their respective parts, before any partition made; and in case any demandant be tenant in actual possession to the tenant to the action, for part and proportion, or any part thereof, in the messuages, lands, tenements and hereditaments, to be divided by virtue of a writ of partition as aforesaid, for any term of life or lives, year or years, or uncertain interest, the said tenant, so in actual possession, shall stand and be possessed of the said purparts and proportions, for the like term, and under the same conditions and covenants, when it is set out severally in pursuance of this act.

The tenant shall hold the part allotted to his landlord, who shall warrant the same, as before partition was made.

Penalty on sheriffs and other officers for neglect of duty in executing writs of partition.

6. *And be it enacted*, That the respective sheriffs, their under-sheriffs and deputies, and in case of sickness or disability of the sheriff, all justices of the peace, within their respective counties, shall give due attendance to the executing of such writ of partition,

unless reasonable cause be shown to the court, upon oath or affirmation, and there allowed of, or otherwise be liable, every of them, to pay unto the demandant such costs and damages as shall be awarded by the court, not exceeding thirty dollars; for which the demandant or plaintiff may bring his action in any court having cognizance thereof, and recover the same with costs.

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CHAP. 13.

7. *And be it enacted*, That all writs of partition, which shall be issued by virtue of this act, shall be made returnable before the supreme court of this state, and no other, which court is hereby declared to have jurisdiction of the same.

Writs of partition to be returnable to the supreme court.

8. *And be it enacted*, That in all suits of partition, which shall be instituted by virtue of this act, and wherein the demandant shall recover, the costs thereof shall be divided and apportioned by the court, or any justice of the court, among the demandant, defendant, tenant, and others concerned, according to their respective parts and purparts of the lands, tenements and hereditaments as aforesaid; and if such defendant, tenant, or others concerned, shall not forthwith pay his, her or their proportion of such costs, that then the demandant shall have and recover the same by judgment of the court, and execution against the body or bodies, or the goods and chattels, lands and tenements of such defendant, tenant, or others concerned.

Costs to be apportioned among, and paid by the parties, according to their respective shares.

9. Obsolete.

CHAPTER 13.

REFERENCES AND ARBITRATIONS.

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| <ol style="list-style-type: none"> 1. Submission made rule of court. 2. When and how award set aside. 3. Proceedings upon report made. 4. Referees to be sworn. | | <ol style="list-style-type: none"> 5. Process for witnesses' and referees' fees. 6. Arbitrators to be sworn. 7. Process for witnesses before arbitrators. |
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An Act for regulating references and determining controversies by arbitration.

REV. 158, 654.

Revision....Approved April 15, 1846.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That it shall and may be lawful for all persons who are desirous of ending, by arbitration, any controversy, suit, quarrel or matter in contention, for which there is no other remedy but by personal action, or suit in equity, to agree, that their submission of the suit to the award or umpirage of any person or persons shall be made a rule of any of the courts of record of this state, which the parties shall choose, and to insert such

Submission made rule of court.

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CHAP. 13.

their agreement in their submission, or the condition of the bond, or promise, whereby they oblige themselves respectively to submit to the award or umpirage of any person or persons; which agreement, being so made and inserted in their submission, or promise, or condition of their respective bonds, shall or may, upon producing an affidavit thereof, made by the witnesses thereunto, or any one of them, in the court of which the same is agreed to be made a rule, and reading and filing the said affidavit in court, be entered of record in such court, and a rule shall thereupon be made, by the said court, that the parties shall submit to, and finally be concluded by, the arbitration or umpirage which shall be made concerning them by the arbitrators or umpire pursuant to such submission; and in case of disobedience to such arbitration or umpirage, the party refusing or neglecting to perform and execute the same or any part thereof, shall be subject to all the penalties of contemning a rule of court, when he is a suitor or defendant in such court, and the court, on motion, shall issue process accordingly, which process shall not be stopped or delayed in its execution by any order, rule, command or process of any other court, either of law or equity, unless it shall be made to appear on oath or affirmation to such court, that the arbitrators or umpire misbehaved themselves, and that such award, arbitration or umpirage, was procured by corruption or other undue means.

Proof to be made.

Performance of award enforced.

How process stayed.

How set aside.

Proceedings upon report made.

2. *And be it enacted*, That any arbitration or umpirage, procured by corruption or undue means, shall be judged and esteemed void and of none effect, and accordingly be set aside by any court of law or equity, so as complaint of such corruption or undue practice be made in the court where the rule is made for submission to such arbitration or umpirage, before the last day of the next term after such arbitration or umpirage has been made and published to the parties.

3. *And be it enacted*, That whenever a cause shall be referred by rule of court, to referees, the report or award of such referees, or of the major part of them, if confirmed by the court, shall be final, and conclude the parties; and if any sum be thereby found for the plaintiff or plaintiffs, judgment shall be entered and execution issued for the same, with costs, if, by law, the plaintiff or plaintiffs would have recovered costs had a verdict passed in the same cause for the sum so reported to be due; but if the referees, or the major part of them, report that there is not anything due to the plaintiff or plaintiffs, and the report be confirmed, then judgment shall be entered against the plaintiff or plaintiffs, that he, she or they take nothing by his, her or their writ, bill or plaint, and the defendant or defendants shall, in such case, have judgment for and recover his,

her or their costs against the plaintiff or plaintiffs, if, by law, the defendant or defendants would have been entitled to costs had a verdict passed in the same cause for him, her or them; and if the referees, or the major part of them, report any sum to be due to the defendant or defendants, and the report be confirmed, then judgment shall be entered and execution issued against the plaintiff or plaintiffs for the sum so reported to be due to such defendant or defendants, with costs, if, by law, the defendant or defendants would have been entitled to costs had a verdict in the same cause passed against him, her or them.

TITLE IV
CHAP. 13.

4. *And be it enacted*, That in every cause referred by rule of court, each referee shall, before he proceeds to the business of the reference, take an oath or affirmation faithfully and fairly to hear and examine the cause in question, and make a just and true report according to the best of his skill and understanding; which oath and affirmation any judge of any court of record, or any justice of the peace of this state is hereby authorized and required to administer.

Referees to
be sworn.

5. *And be it enacted*, That in every cause referred by rule of court, process of subpoena may issue out of such court to convene witnesses before the referees, and the said witnesses shall be examined on oath or affirmation; which oath or affirmation the referees in the said cause are hereby authorized to administer; and there shall be allowed to every such referee, one dollar for every day necessarily spent in the business of the reference, besides a reasonable allowance for his expenses which, in the first instance, shall be paid by the prevailing party, and shall afterwards be allowed to such party in the taxation of costs where costs are recoverable.

Process for
witnesses.
Referees'
fees.

6. *And be it enacted*, That in cases of arbitration, every arbitrator shall, before he proceeds to the business submitted to him, take an oath or affirmation of the like nature with that herein before prescribed to be taken by referees, and to be administered in like manner.

Arbitrators
sworn.

7. *And be it enacted*, That in all cases of arbitration, it shall be lawful for any justice of the peace within the county wherein such arbitration may be, to issue subpoenas for witnesses to appear before the arbitrator or arbitrators, and for him or such arbitrator or arbitrators to swear or affirm such or any other witnesses before the same; and if any such witness shall not appear when so subpoenaed, or if appearing, shall refuse to be sworn or affirmed and give evidence, he shall be liable to the same fines and penalties as he would be by law for such default or refusal, if committed in any court of record in this state.

Process for
witnesses
before arbi-
trators.

CHAPTER 14.

REPLEVIN.

- | | | | | | | | | | | | |
|---|---|----------------|----------------------------|----------------------------------|------------------------------------|---|------------------------------------|---|--------------------------------------|-------------------------------|---------------------------------|
| <ol style="list-style-type: none"> 1. When writ to issue. 2. May issue to coroners. 3. Out of what courts. 4. Officer may break open building. 5. Must take security before deliverance. 6. When writ of second deliverance allowed. 7. Goods delivered, unless claimed. 8. Officer's return. 9. Penalty for unlawful delivery. 10. Avowry by landlord. | <table border="0"> <tr><td style="border-left: 1px solid black; padding-left: 5px;">11. Pleadings.</td></tr> <tr><td style="border-left: 1px solid black; padding-left: 5px;">12. Who may lawfully join.</td></tr> <tr><td style="border-left: 1px solid black; padding-left: 5px;">13. Nonsuit and writ of inquiry.</td></tr> <tr><td style="border-left: 1px solid black; padding-left: 5px;">14. Judgment on demurrer and writ.</td></tr> <tr><td style="border-left: 1px solid black; padding-left: 5px;">15. Bond, in replevin of distress for rent.</td></tr> <tr><td style="border-left: 1px solid black; padding-left: 5px;">16. Defendants may avow generally.</td></tr> <tr><td style="border-left: 1px solid black; padding-left: 5px;">17. Plaintiff, discontinue without costs.</td></tr> <tr><td style="border-left: 1px solid black; padding-left: 5px;">18. Costs assessed on replevin bond.</td></tr> <tr><td style="border-left: 1px solid black; padding-left: 5px;">19. Costs determined by jury.</td></tr> <tr><td style="border-left: 1px solid black; padding-left: 5px;">20. When replevin does not lie.</td></tr> </table> | 11. Pleadings. | 12. Who may lawfully join. | 13. Nonsuit and writ of inquiry. | 14. Judgment on demurrer and writ. | 15. Bond, in replevin of distress for rent. | 16. Defendants may avow generally. | 17. Plaintiff, discontinue without costs. | 18. Costs assessed on replevin bond. | 19. Costs determined by jury. | 20. When replevin does not lie. |
| 11. Pleadings. | | | | | | | | | | | |
| 12. Who may lawfully join. | | | | | | | | | | | |
| 13. Nonsuit and writ of inquiry. | | | | | | | | | | | |
| 14. Judgment on demurrer and writ. | | | | | | | | | | | |
| 15. Bond, in replevin of distress for rent. | | | | | | | | | | | |
| 16. Defendants may avow generally. | | | | | | | | | | | |
| 17. Plaintiff, discontinue without costs. | | | | | | | | | | | |
| 18. Costs assessed on replevin bond. | | | | | | | | | | | |
| 19. Costs determined by jury. | | | | | | | | | | | |
| 20. When replevin does not lie. | | | | | | | | | | | |

An Act for the better regulation of actions of replevin.

REV. 219.
1838-9.
PAMPH. 53.
1843-4.
PAMPH. 230,
234.

Revision.....Approved April 15, 1846.

When writ
to issue.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That if the goods or chattels of any person be taken and wrongfully detained, the sheriff by a writ of replevin, shall cause the same goods or chattels to be replevied and delivered, and shall summon the person who took them, to appear at the return of the said writ, and answer the plaintiff of the taking and unjust detention of the same.

May issue to
coroners.

2. *And be it enacted*, That writs of replevin may be directed to and executed by the coroners of any county, in all cases in which by the laws of this state, writs in other actions may be directed to and executed by such coroners; and all such writs of replevin may be executed and returned by any one of such coroners in the same manner in all respects, as sheriffs are by law authorized or directed to execute and return the same; and all bonds required by law to be taken in such cases shall be made to the coroner executing such writs by his name of office.

Out of what
courts.

3. *And be it enacted*, That all writs of replevin shall issue out of the supreme court, or out of the circuit court, or court of common pleas of the county where the distress was made, and the said writs shall be made returnable to the court out of which they issued.

Officer may
break open
building.

4. *And be it enacted*, That if any person shall take the goods and chattels of another, and convey and put them into any stable, building, house, or place of strength, and the person from whom the same goods or chattels shall be taken, sues for a replevin thereof, the sheriff or coroner shall solemnly demand deliverance thereof at the stable, building, house or place where the same are detained; and if neither the taker nor any person on behalf of such taker, shall upon demand, deliver the same, or if no person shall come upon such demand to deliver the same, the sheriff or coroner shall take the power of his county and break open such stable,

building, house or place of strength, and make replevin according to the writ. TITLE IV.
CHAP. 14.

5. *And be it enacted*, That every sheriff or coroner, before he makes deliverance of any goods or chattels, by virtue of any writ of replevin, shall take of the plaintiff sufficient security to prosecute the suit, and to return the same goods or chattels if return thereof shall be adjudged, and if any sheriff or coroner shall take security otherwise, or neglect to take such security, he shall answer for the value of the goods and chattels, and the person who distrains, shall have his recovery by writ, that he shall restore to him such or so many goods or chattels. To take security before deliverance.

Penalty for neglect.

6. *And be it enacted*, That if the plaintiff in any action of replevin shall make default, and a return of the goods or chattels is awarded to the distrainer, the sheriff or coroners shall be commanded by a judicial writ issuing out of the same court, in which the matter was moved, and no other, to make return of the goods or chattels unto the distrainer; in which writ it shall be expressed, that the sheriff or coroners shall not deliver them without writ, making mention of the judgment; and if the plaintiff come unto the said court and desire replevin of the same goods and chattels, he shall have a judicial writ, commanding that the sheriff or coroners, taking security for the suit, and also for the return of the same goods and chattels, or for the value of them if return shall be awarded, shall deliver unto the plaintiff the goods and chattels before returned; and the distrainer shall be attached to come and be at a certain day, at the court in which the plea was moved, to answer the plaintiff for the taking and unjustly detaining the same; and if the plaintiff make default again, or for another cause return of the distress be awarded, being now twice replevied, the distress shall remain irrepleviable; but if a distress be taken anew and for a new cause, the process aforesaid shall be observed in the same new distress. When writ of second deliverance allowed.

After second default, distress irrepleviable.

7. *And be it enacted*, That the sheriff or coroner to whom any writ of replevin shall be delivered, shall take the goods and chattels whereof deliverance is sought, into his own custody and possession, notwithstanding any claim of property therein by the defendant, and shall proceed to make deliverance thereof to the plaintiff in the said writ named, unless the said defendant shall, within twenty-four hours after service of a copy of the said writ of replevin upon him, deliver to such sheriff or coroner a written claim of property, specifying the goods and chattels so claimed, and shall also, within the time aforesaid deliver to such sheriff or coroner a bond, with one or more sufficient sureties, being freeholders and residents in the county, and in double the amount of the value of the goods Goods delivered, unless claimed

in writing.

Bond to be given, which may be assigned.

TITLE IV.
CHAP. 14.

and chattels so claimed, with condition to deliver the said goods and chattels in as good condition as the same were at the time of making such claim, to the plaintiff or his lawful representatives, if the same shall be adjudged to the plaintiff; which bond the said sheriff or coroner is hereby authorized and required, at the request and costs of the said plaintiff or his lawful representatives, to assign to such plaintiff or his lawful representatives, who are hereby authorized, if the said bond shall be forfeited, to bring an action, and recover thereupon, in his own name.

Officer's re-
turn.

8. *And be it enacted*, That the sheriff or coroner to whom any such claim of property and bond shall be delivered, shall make return of the facts to the court out of which the writ of replevin issued, and shall annex the said claim of property to the said writ, and return the same therewith; and thereupon the said suit shall be proceeded in and determined in the same manner, in all respects, as if such claim of property had not been made.

Penalty for
unlawful de-
livery.

9. *And be it enacted*, That if any sheriff or coroner to whom any writ of replevin shall be delivered, either by himself or his deputy or bailiff, shall make deliverance to the plaintiff of the goods and chattels mentioned in such writ, or of any part thereof, before he shall have served a copy of the said writ upon the defendant, or within twenty-four hours after such service, or shall omit or refuse, upon receipt or tender of such claim of property and bond as are herein before mentioned, to restore the goods and chattels so claimed to the defendant, such sheriff or coroner shall, for every such offence, besides being answerable to such defendant for all damages, forfeit two hundred dollars, to be recovered with costs of suit by action of debt, in any court of competent jurisdiction, by any person who will sue for the same, the one half of said sum to be appropriated to the use of the person who shall sue for the same, and the other half to the use of the state.

Avowry by
landlord,
where reple-
vin is bro't
for goods
distrained
for rent.

10. *And be it enacted*, That wheresoever any lands, tenements or hereditaments are or shall be held by any person or persons, by rents, customs or services, if the person of whom any such lands, tenements or hereditaments are or shall be held, shall distrain upon the same lands, tenements or hereditaments for any such rents, customs or services, and replevin thereof be sued, the person of whom the same lands, tenements or hereditaments are or shall be so holden, may avow, or his or her bailiff or servant make cognizance, or justify, for taking the said distress upon the same lands, tenements or hereditaments so holden, as in lands, tenements or hereditaments within his or her fee, alleging, in the said avowry, cognizance and justification, the same lands, tenements or hereditaments to be holden of him or her, without naming any person

certain to be tenant of the same, and without making any avowry, cognizance or justification upon any person certain; and the distrainer or his or her bailiff or servant, may make avowry, cognizance or justification, in like manner and form upon every writ of second deliverance.

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CHAP. 14.

11. *And be it enacted*, That the plaintiffs and defendants in all writs of replevin or of second deliverance, and in every of them, shall and may have like pleas and like aid-prayers in all such avowries, cognizances and justifications, (pleas of disclaimer only excepted,) as they might have had before the making of this act, and as though the said avowry, cognizance or justification had been made after the due order of the common law.

Pleadings.

12. *And be it enacted*, That all such persons as by the common law may lawfully join to the plaintiffs or defendants in the said writs of replevin or of second deliverance, as well without process as by process, shall and may join unto the said plaintiffs or defendants, as well without process as by process, and have like pleas and like advantages in all things (pleas of disclaimer only excepted) as they might have done and had by the order of the common law, before the making of this act.

Who may
lawfully join.

13. *And be it enacted*, That whensoever any plaintiff in replevin shall be nonsuit before issue joined in any suit of replevin, by writ lawfully returned, removed or depending in any court of record, the defendant, if the distress was made for rent, making a suggestion in nature of an avowry or cognizance for such rent, to ascertain the court of the cause of distress, the court, upon his prayer, instead of awarding a return of the distress, shall award a writ to the sheriff or coroners of the county where the distress was taken, to inquire, by the oath or affirmation of twelve good and lawful men of his bailiwick, touching the sum in arrear at the time of such distress taken, or the value of the goods or chattels distrained, and fifteen days notice shall be given to the plaintiff or his attorney of the sitting of such inquiry, and thereupon the sheriff or coroner shall inquire of the truth of the matters contained in such writ, by the oath or affirmation of twelve good and lawful men of his county; and upon the return of such inquisition the defendant shall have judgment to recover against the plaintiff the arrearages of such rent, in case the goods and chattels distrained shall amount to that value; and in case they shall not amount to that value, then so much as the value of the goods and chattels so distrained shall amount unto, together with his full costs of suit, and shall have execution thereupon for the same by *capias ad satisfaciendum*, *feri facias* or otherwise, as the law shall require; and in case such plaintiff shall be nonsuit, after cognizance or avowry

Nonsuit and
writ of inquiry.

Notice to be
given.

Judgment.

Execution.

Nonsuit after
avowry, etc.

TITLE IV.
CHAP. 14.What in-
quest and
judgment.Judgment on
demurrer—
writ of in-
quiry.Bond in re-
plevin of dis-
tress for rent.May be as-
signed,

and sued.

Defendants
may avow
generally.

made and issue joined, or if the verdict shall be given against such plaintiff, then the jurors, empaneled or returned to inquire of such issue, shall, at the prayer of the defendant, inquire concerning the sum of the arrears and the value of the goods and chattels distrained, and thereupon the avowant or the person who makes cognizance shall have judgment for such arrearages or so much thereof as the goods and chattels distrained amount unto, together with his full costs, and shall have like execution for the same as aforesaid.

14. *And be it enacted*, That if judgment be given upon demurrer for the avowant, or the person who makes cognizance for any rent, the court, instead of awarding a return of the distress, shall, at the prayer of the defendant, award a writ to inquire of the value of such distress, and upon the return thereof, judgment shall be given for the avowant or person who makes cognizance as aforesaid, for the arrears alleged to be behind in such avowry or cognizance, if the goods and chattels so distrained shall amount to that value; and in case they shall not amount to that value, then for so much as the said goods and chattels, so distrained, amount unto, together with his full costs of suit, and shall have like execution for the same as aforesaid.

15. *And be it enacted*, That every sheriff shall, in every replevin of a distress for rent, take, in his own name, from the plaintiff and two responsible persons as sureties, a bond in double the value of the goods and chattels distrained, (such value to be ascertained by the oath or affirmation of one or more witness or witnesses not interested in the distress, which oath or affirmation such sheriff is hereby authorized and required to administer), and conditioned for prosecuting the suit with effect and without delay, and for duly returning the goods and chattels distrained, in case a return shall be awarded, before any deliverance be made of the distress; and that the sheriff taking such bond, shall, at the request and costs of the defendant, avowant or person making cognizance, assign such bond to the defendant, avowant or person making cognizance, by endorsing the same, and attesting it under his hand and seal, in the presence of two or more witnesses; and if the bond so taken and assigned be forfeited, the defendant, avowant or person making cognizance, may, in his own name, bring an action and recover thereupon; and the court, where such action shall be brought, may, by a rule or rules of the same court, give such relief to the parties upon such bond, as shall be agreeable to justice; and such rule or rules shall have the nature and effect of a defeasance to such bond.

16. *And be it enacted*, That it shall and may be lawful to and for all defendants in replevin, to avow or make cognizance gene-

rally, that the plaintiff in replevin or other tenant of the lands and tenements, whereon such distress was made, enjoyed the same under a grant or demise at such a certain rent, during the time wherein the rent distrained for accrued, which rent was then and still remains due, without further setting forth the grant, tenure, demise or title of such landlord or landlords, lessor or lessors, owner or owners.

TITLE IV.
CHAP. 14.

17. *And be it enacted*, That in all actions of replevin, where the defendant or defendants do not appear or make defence, but suffer judgment to be entered by default, the property having been redelivered, there shall be no judgment rendered for damages or costs; and the plaintiff in such action may be at liberty to suggest that fact upon the record, and enter a discontinuance of his said action, without costs, except in case of demand being made in writing, prior to the commencement of the action, the defendant shall have refused to make deliverance of the property.

Plaintiff may
discontinue
without
costs.

18. *And be it enacted*, That in all actions upon replevin bonds, it shall be the duty of the court or jury, as the case may be, to include the costs taxed in the original action, as part of the damages to be assessed therein, independent of the amount ascertained to be due to the landlord or other defendant in the original action, upon which judgment may be rendered and execution issued accordingly.

Costs assessed
on replevin
bonds.

19. *And be it enacted*, That in all actions of replevin, for goods and chattels taken in distress, hereafter to be brought in any of the courts of this state, the jury trying the same or to whom the question of damages shall be submitted, shall determine by their verdict whether the plaintiff or defendant shall pay the costs of the suit, or whether each party shall pay his own costs.

Costs, when
determined
by jury.

20. *And be it enacted*, That no replevin shall lie in case of distress for any tax, assessment or fine, to be collected or levied in pursuance of any law of this state; and if any person or persons shall hereafter sue out or prosecute a replevin, in any such case, he or they shall forfeit one hundred and fifty dollars, to be recovered, with costs of suit, by any person, who shall sue for the same, by action of debt, in any court of record having cognizance thereof; the one moiety of the said forfeiture to the person who shall sue for the same and the other moiety to the state.

When replevin
does
not lie.

CHAPTER 15.

WASTE.

- | | |
|---|--|
| 1. Guardian not to make or suffer.
2. Tenant not to make or suffer.
3. Who liable to action of.
4. Proceedings on default. | 5. Between parceners, etc.
6. Heir may have action.
7. Tenant who lets estate, liable.
8. Not lie for damage by fire. |
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REV. 208.

An Act for the prevention of waste.

Passed March 17, 1795.

A guardian
not to suffer
or make
waste of the
inheritance
of his ward.

1. BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That no guardian shall make or suffer any waste, sale or destruction of the inheritance of his ward, or of those things that he hath or may have in his custody; but shall safely keep the same inheritance to the use of the said heir, and keep and sustain the houses, gardens and other things pertaining to the same lands, by and with the issues and profits thereof, and shall deliver the same to his ward, when he comes to his full age, in as good order and condition at least as such guardian received the same, and shall answer to such heir for the residue of such issues and profits of the same inheritance by a lawful account, saving to the guardian his reasonable charges and expenses; and if any guardian shall make or suffer any waste, sale or destruction, of the inheritance of his ward, he shall lose the same custody, and shall recompense the ward thrice as much as the damages shall be assessed at by the jury.

If guardian
suffer or
make waste,
the ward
shall recover
treble dam-
ages.

Tenant shall
not commit
or suffer
waste.

2. *And be it enacted by the authority aforesaid,* That no tenant for life or years, or for any other term, shall, during the term, make or suffer any waste, sale or destruction of houses, gardens, orchards, lands or woods, or anything belonging to the tenements demised, without special license in writing, making mention that he may do it.

Action of
waste given
against ten-
ant by cur-
tesy, in dow-
er, for life or
years.

3. *And be it further enacted by the authority aforesaid,* That any person may have a writ of waste out of chancery against him or her, who holdeth by curtesy, or otherwise, for term of life, or for term of years, or other term, or a woman in dower, as well as against guardians; and whoever shall be convicted of waste shall lose the thing or place wasted, and shall recompense thrice as much as the damages shall be assessed at by the jury.

Proceedings
in waste,
where the
defendant
does not ap-
pear, or
makes de-
fault.

4. *And be it enacted by the authority aforesaid,* That, in all actions of waste, if the defendant come not at the return of the original writ, he shall be attached, and if he come not at the return of the attachment, he shall be distrained, and if he come not after the distress, or if he come, and afterwards make default, the sheriff

shall be commanded that in his proper person, he take with him twelve good and lawful men of his county, and go to the place wasted, and inquire of the waste done, and return an inquest, and after the inquest returned, the plaintiff shall have judgment to recover the place wasted, and treble the damages found by the inquest.

TITLE IV.
CHAP. 15.

5. *And be it enacted by the authority aforesaid,* That when two or more, do or shall hold any lands, tenements, hereditaments, houses, woods, or other such thing, in common, as parceners, tenants in common, or joint tenants, wherein none knows his or her several part, and some or one of them do waste, an action shall lie by a writ of waste; and when it shall come unto judgment, the defendant shall choose either to take his or her part in a place certain, by the sheriff and a jury to be assigned, or else to give such security as the court shall allow and deem sufficient, not to commit any further waste, and to take nothing from thenceforth in the same lands, tenements, hereditaments, houses, woods, or other such thing, but as his or her partners will take; and if he or she choose to take his or her part in a place certain, the same shall be assigned to him or her in the part wasted, as it was before he or she committed the waste; but if the defendant shall not choose to take his or her part in a place certain, or if the waste exceed his or her proportion, the plaintiff shall recover against such defendant such damages as shall be found by the jury or inquest.

Proceedings
in waste be-
tween parce-
ners, tenants
in common
and joint te-
nants.

6. *And be it enacted by the authority aforesaid,* That every heir, in whose ward soever he or she be, and whether he or she be in ward or not, and as well within age as of full age, shall have his or her recovery, by a writ of waste, for waste and destruction made in houses, lands or tenements of his or her inheritance, as well in the time of his or her ancestor or ancestors, as at any other time after the inheritance descended or come to him or her, and shall be answered unto for the same, and shall recover the houses, lands or tenements wasted, and treble damages as aforesaid.

An heir may
bring an ac-
tion for waste
committed
during the
life of his an-
cestor.

7. *And be it enacted by the authority aforesaid,* That where any tenant for term of life, or for another's life, or for term of years, or any other term, hath or shall let or grant his or her estate, in the lands and tenements demised to or held by him or her, to any person or persons, and shall still continue to occupy the same lands and tenements, or to take the profits thereof, and shall commit or suffer waste and destruction in the same lands and tenements, to the disinheritanee of him, her or them, in the reversion, he, she or they, to whom the reversion doth or shall appertain, may, in such case, have and maintain a writ of waste against the said tenant for term of life, or of another's life, or for term of years, or other term, and

A tenant who
lets or grants
his estate to
another shall
if he take the
profits, be li-
able to an
action for
waste.

TITLE IV.
CHAP. 15.

recover against him or her the place wasted, and his, her or their treble damages for the waste done, if the said tenant was punishable of or for waste before he or she leased or granted over his or her estate as aforesaid, but not otherwise.

No action to be brought against a person in whose house a fire shall accidentally begin.

8. *And be it enacted by the authority aforesaid,* That no action, suit or process whatsoever shall be had, maintained or prosecuted against any person, in whose house or chamber any fire shall accidentally begin, or any recompense be made by such person for any damage suffered or occasioned thereby; *provided,* that nothing in this section shall extend to defeat or make void any contract or agreement made or to be made between landlord and tenant.