

TITLE VII.

COURTS.

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CHAPTER 1.

COURT OF ERRORS AND APPEALS.

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| <ul style="list-style-type: none"> 1. Terms, when and where held. 2. May adjourn. 3. Who to preside. 4. Oath of members. 5. Vacancies filled. 6. Officers, and their compensation. 7. Compensation of court and clerk. 8. How paid. | <ul style="list-style-type: none"> 9. Reasons, how and when submitted. 10. Court to deliver opinion. 11. Process, how signed and tested. 12. Error to circuit courts. 13. Costs on appeal. 14. Papers sent up on appeal. 15. And returned after decision. 16. Causes continued; court to make rules. |
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An Act relative to the court of errors and appeals.

REV. 393,400,
574.

Revision....Approved April 16, 1846.

1845.
PAMPH. 157.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the court of errors and appeals, shall hold annually at Trenton, four stated terms; commencing on the third Tuesday of January, April, July and October respectively, and such special terms, not exceeding two in any one year, as the court may from time to time appoint.

2. *And be it enacted*, That if a sufficient number of members to constitute the court, shall not attend on the first day of the term, it shall be lawful for the members attending to adjourn from day to day until a sufficient number shall attend, or to adjourn till the next term, in which case the writs and process then returnable, and all suits, pleadings, and proceedings depending before the court, shall be continued of course till such subsequent term.

3. *And be it enacted*, That the chancellor when present shall be

Terms, when and where held.
May adjourn.
Who to pre-
side.

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the president of the court; in case of his absence, the chief justice of the supreme court; and in case of his absence, the senior in office of the justices of the supreme court who may be present.

Oaths. 4. *And be it enacted*, That the oath of office and of allegiance, may be administered to the president by any member, and by the president to each of the other members of the court.

Vacancies filled. 5. *And be it enacted*, That when a vacancy happens in the office of any of the six appointed judges of the court, before his term of office as such judge has expired, his successor shall be appointed and hold for the unexpired term only.

Officers, and their compensation. 6. *And be it enacted*, That the court shall have power to appoint from time to time such subordinate officers, as may be necessary for the convenient transaction of business, and to fix their compensation.

Compensation of court and clerk. 7. *And be it enacted*, That the compensation of the members of the court and of the clerk, shall be the sum of three dollars* by the day for every day they shall respectively attend the court; and the sum of one dollar for every ten miles they shall travel in going to and returning from the place of holding the court, on the most usual route.

How paid. 8. *And be it enacted*, That the compensation aforesaid shall be paid by the treasurer of the state, upon a certificate signed by the president of the court.

Reasons, how and when submitted. 9. *And be it enacted*, That the reasons to be assigned by the chancellor for his decree, and by the justices of the supreme court, or by the judges of the circuit court, for their judgment, shall be submitted in writing before the argument of the appeal or writ of error, as the case may be.

Court to deliver opinion. 10. *And be it enacted*, That on pronouncing any judgment, order or decree, either of affirmance or reversal, the opinion of this court, containing the reasons for such affirmance or reversal, shall be delivered in writing.

Process, how signed and tested. 11. *And be it enacted*, That writs and process issued out of this court, shall be signed by the clerk and tested in the name of the president, and may be made returnable at any of the stated terms of the court.

Error to circuit court. 12. *And be it enacted*, That writs of error to remove final judgments in any circuit court directly into this court, may be brought in the same manner and subject to the same rules as are now provided in case of a writ of error to the supreme court.

Costs on appeal. 13. *And be it enacted*, That it shall be in the discretion of this court, in cases of appeal from a decree or order of the chancellor, to award costs or not.

14. *And be it enacted*, That in cases of appeal from a decree

or order of the court of chancery, it shall be the duty of the clerk of the court of chancery to deliver to the clerk of this court all the pleadings, depositions, exhibits and papers which may have been filed in his office, relating to the cause in which the appeal hath been taken, and also the several orders and decree made in said cause, instead of a transcript of the proceedings, giving the said clerk of the court of chancery a receipt for the same; which papers shall be filed by the clerk of this court for the purpose of being used at the hearing of such appeal.

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Papers, etc.,
to be sent
up on appeal
from chan-
cery.

15. *And be it enacted*, That when a cause hath been decided by final decree or order of this court, it shall be the duty of the clerk to return to the clerk of the court of chancery all the papers which have been received by him from the clerk of the court of chancery in such cause, for which he shall take a receipt, together with a copy of the order or decree of the court, which order or decree it shall be the duty of the court of chancery to carry into effect; and it shall be the duty of the said clerks to file the said receipts in their respective offices, for the benefit of the parties interested in said papers.

Papers to be
returned af-
ter decision.

16. *And be it enacted*, That all causes depending in the court of appeals in the last resort, at and immediately before the time when the present constitution went into operation, shall be continued, and further proceedings therein may be had in the court of errors and appeals established by said constitution; and the said court of errors and appeals may, from time to time, make rules and regulations of practice, and alter, amend or revoke any rule of practice, so as to obviate doubts, advance justice and expedite suits; *pro-vided*, the same be not contrary to this act, the constitution of this state or of the United States.

Causes con-
tinued; court
to make
rules.

Proviso.

CHAPTER 2.

SUPREME AND CIRCUIT COURTS.

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| <ol style="list-style-type: none"> 1. How constituted, and when held. 2. By whom, and return days. 3. Common business, where heard. 4. Issues, where tried. 5. In transitory actions, where. 6. Supreme court may order foreign juries. 7. Issues, by whom tried. 8. Circuit record sent down. 9. The venire facias. 10. Duty of justice at circuit. 11. Officers to make return. | <ol style="list-style-type: none"> 12. Marriage and bastardy, how tried. 13. Postea to be returned. 14. Justice's circuit fee. 15. When special circuit authorized, 16. And foreign jury, in criminal cases; 17. But subject to rules prescribed. 18. Justice absent, court how continued. 19. To be adjourned the third day. 20. When to another day in term. 21. Justice leaving, place supplied, 22. Or circuit adjourned for the term. |
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An Act relative to the supreme and circuit courts.

Revision.....Approved April 16, 1846.

REV. 453.
1835-6.
PAMPH. 73.
1836-7.
PAMPH. 356.
1837-8.
PAMPH. 61.
1845.
PAMPH. 153.
Court, how
constituted,
and when
held.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the supreme court shall consist of a chief justice and four associate justices, and shall hold, annually, at Trenton, four stated terms, commencing on the first Tuesday of January, April, July and October, respectively; and such special terms, not exceeding two in any one year, as the court may from time to time appoint.

By whom;
return days.

2. *And be it enacted*, That the said supreme court may be held by the chief justice, or any one of the said justices; and that every day of each stated term, except Sunday, shall be a return day.

Common bu-
siness, where
heard.

3. *And be it enacted*, That it shall be lawful for the justices of the supreme court, at every term thereof, to designate, in such way as to them may seem proper, one or more of their number to sit during term time in a separate apartment from that in which the regular term is held, for the purpose of hearing and deciding all such matters as, by the rules of the said court, are or may be denominated common business; whose decisions and judgments shall be as good and effectual as if they had been rendered at the bar of said court.

Where is-
sues shall be
tried.

4. *And be it enacted*, That every issue which hath been or shall be joined in the supreme court, or any other court, and brought into the supreme court to be tried, and which is or may be triable by the country, shall be tried in the county where the lands, tenements or hereditaments in question are situate, or the cause of action or offence hath arisen or been committed, or shall arise or be

When at bar.

committed; unless the supreme court, upon motion in behalf of this state, if the state be interested, or upon motion of either party in the action, shall think proper to order the trial to be at the bar of the said supreme court, which shall only be done where the matter or property in dispute shall be of the value of three thousand dollars; and if the party who shall obtain a rule for a trial at bar, shall not recover to the amount of the said sum, he shall be entitled to no more costs than if the cause had been tried at the circuit court of the proper county.

Where, in
transitory
actions.

5. *And be it enacted*, That an action merely transitory shall, at the discretion of the court, be tried in the county in which the cause of action arose, or the plaintiff or defendant reside at the time of instituting such action, or, if the defendant be not an inhabitant of this state, in the county in which process shall have been served upon him.

May order
foreign ju-
ries.

6. *And be it enacted*, That the supreme court may order trials

by foreign juries in all cases where it shall be proper or necessary. TITLE VII.
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7. *And be it enacted*, That the chief justice or one of the justices of the supreme court, before whom the circuit court in every county of this state shall be held, shall try all issues which have been or shall be joined in the supreme court, or in any other court and brought into the supreme court to be tried, and which are or may be triable in the said county. By whom issues tried.

8. *And be it enacted*, That when such issue is to be tried at a circuit court, a transcript of the declaration and pleadings in the cause, with a proper placita, and nothing more, shall be made and sent, under the seal of the supreme court, to the said circuit court, which shall be a sufficient warrant or authority for the latter to proceed upon, hear and determine the said cause; and the plaintiff or defendant, or both, may have such transcript of the said proceedings if required. Circuit record sent down.

9. *And be it enacted*, That the process for convening a jury in the circuit court to try an issue joined in the supreme court, or removed into the same for trial, shall be a venire facias, which shall be sued out of the supreme court, directed to the sheriff of the county in which the said circuit court is to be held, and shall be returnable to the same and there filed. The venire facias.

10. *And be it enacted*, That the chief justice and every justice of the supreme court shall be and hereby is authorized and required, at the said circuit court, to try such issues and take such inquests by default or otherwise, as are or ought to be tried or taken in the said court, to record nonsuits and defaults, to take assizes, and to do and execute all other matters and things, which, by law, may or ought to be done respecting the premises. Duty of justice.

11. *And be it enacted*, That the sheriff or other officer of the county in which the said circuit court is to be held, shall make return to the said court of all writs and juries with the panels and other matters relative to the same legally arrayed and executed. Officers to make return.

12. *And be it enacted*, That all issues upon legality of marriage and upon pleas or allegations of general or special bastardy, shall be tried by the country and not otherwise. Marriage and bastardy.

13. *And be it enacted*, That the justice before whom such circuit court shall be held, shall return the said transcript, with the verdict and other proceedings before him had upon it, to the supreme court at the next term, and the said supreme court shall receive and file the same, and give judgment thereon according to law. Postea to be returned.

14. *And be it enacted*, That the chief justice or justice of the supreme court, who shall attend any special term of said court, or Justice's circuit fee.

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who shall hold any circuit court, or court of oyer and terminer and general jail delivery, shall receive by way of compensation thirty dollars, to be paid by the treasurer of this state, on a warrant signed by the governor or person administering the government; *provided always*, that the said chief justice or justice shall not be allowed any compensation for holding the court of oyer and terminer and general jail delivery, unless the same shall be held at a different time from holding the circuit court.

Proviso.

Special circuit courts authorized; in what cases.

Jurors to be summoned.

Foreign jury in criminal cases.

But court may prescribe regulations.

15. *And be it enacted*, That the supreme court in term time, or any two justices thereof in vacation, whenever in their opinion the ends of justice and the public interest require it, may order a special circuit court to be holden in any county in this state, for the trial of any indictment or indictments for murder or manslaughter, which have been or may be removed into the supreme court, and which may require to be tried in the circuit court of such county; but such order shall designate the indictment or indictments to be tried at such special court, and whether to be tried by a jury or juries of the county in which such special court is to be held, or by a foreign jury or juries; and upon the service of a copy of such order upon the sheriff of said county, at least twenty-five days before the time appointed for holding such special circuit, it shall be his duty to cause to be selected and to summon in the manner directed by law, a sufficient number of petit jurors to serve at such court, unless the indictment or indictments to be tried at such special court is or are to be tried by a foreign jury or juries; and all process of venire and subpœna made returnable thereat, shall be as good and effectual as if the same were made returnable to a stated term of said court.

16. *And be it enacted*, That the supreme court, whenever in their opinion a fair and impartial trial cannot be had before a jury of the proper county, may upon motion in behalf of the state, or on the part of any defendant or prisoner, order any indictment, found and presented at any court of oyer and terminer and general jail delivery, or at any court of general quarter sessions of the peace, except such indictments as by law are triable in the court of general quarter sessions of the peace, to be tried by a foreign jury in the court and county in which such indictment was found.

17. *And be it enacted*, That in cases arising under the two last preceding sections, foreign juries shall be obtained and special circuit courts held upon such terms, and subject to such rules and regulations as the supreme court shall from time to time order and direct; *provided*, the same be consistent with this act, the constitution of this state and of the United States.

18. *And be it enacted*, That if the justice of the supreme court,

by whom any circuit court or court of oyer and terminer and general jail delivery is to be held, shall be prevented from attending on the day and at the place, when and where any such court is to be commenced and held, no process returnable to, nor any recognizance entered into for the appearance of any person at such courts respectively, nor any indictment, suit or other proceeding depending therein, shall be thereby abated, discontinued or avoided, but the same shall remain and be in full force, as if such justice had attended and opened such courts; and it shall be the duty of the clerk of the said courts to cause the same to be opened, by proclamation, in the usual form; and in case one of the justices of the supreme court shall not attend during the day, then the clerk shall in like manner adjourn the said courts to the next day, and so from day to day, until one of the said justices shall be present, or until such courts shall be adjourned for the term, as hereinafter is directed; which proceedings shall be regularly entered by the clerk in the minutes of the said courts.

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What, when
justice pre-
vented from
attending.

Clerk to o-
pen and ad-
journ court.

19. *And be it enacted*, That if no justice of the supreme court shall attend before twelve o'clock, on the third day of the term as fixed by law, then the clerk of the said court of oyer and terminer and general jail delivery and circuit court, shall cause the same by proclamation in the usual manner, to be adjourned to meet according to law; and in such case, all suits, actions, indictments, rules and other proceedings pending in the said courts respectively, except such as may be tried in the court of general quarter sessions of the peace, shall be continued and stand over to the next ensuing term of the said courts, without prejudice to any of the parties.

When court
adjourned
for the term

Causes, etc.,
to stand over

20. *And be it enacted*, That the circuit courts or court of oyer and terminer and general jail delivery, when sitting in and for any county in this state, may be adjourned over from any one day in term to any subsequent day in the same term, whenever the public convenience and that of the members of the court may require or justify such adjournment; and in case of such adjournment, all suits, indictments, process, orders, rules, recognizances and other proceedings pending in such courts shall be continued to the time to which said adjournment shall be made, without prejudice to any of the parties therein, and may then be proceeded in according to law, in the same manner as might have been done, if such court or courts had been adjourned from day to day.

May adjourn
from one day
to another in
term.

Suits, etc.,
continued.

21. *And be it enacted*, That in case the justice of the supreme court holding any circuit court or court of oyer and terminer and general jail delivery, shall be prevented from continuing to preside at such court until the business thereof shall be finished, then

Justice pre-
vented from
continuing,
another may
take his
place.

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it shall and may be lawful for any other justice of the supreme court to take his place and to proceed with the business of the said courts, in the same manner as he might have done if he had been present and presiding at the commencement of the term.

Or court may be adjourned for the term.

22. *And be it enacted,* That if, at any time during the session of any circuit court, or court of oyer and terminer and general jail delivery, the justice of the supreme court holding and presiding at such court or courts, shall be prevented from continuing to hold such court or courts, and no other justice of the supreme court shall be at hand, to proceed with the business pending in such court or courts, it shall be the duty of the clerk of such court or courts to enter an adjournment for the term, or to any subsequent

Suits to stand over.

day in the same term; and all suits, indictments and proceedings remaining undisposed of in such court or courts, shall be continued and stand over to be tried and disposed of at the next succeeding term of such court or courts, or at the time to which said adjournment shall be made without prejudice, except such indictments as may be triable in the court of quarter sessions of the peace, and which that court may thereupon proceed to try, if they think proper so to do, in the same manner as they might have done if a rule had been ordered by the court of oyer and terminer and general jail delivery, that the same should be handed down to the court of quarter sessions.

CHAPTER 3.

CIRCUIT COURTS.

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| 1. By whom held. | 7. Suits removable by habeas corpus. |
| 2. Of writs, process and judgments. | 8. Rules, by whom made. |
| 3. Regulated, by what laws. | 9. Costs and fees. |
| 4. Appellate jurisdiction. | 10. Ministerial officers, and their duty. |
| 5. May certify cases to supreme court. | 11. Of the clerks of said courts. |
| 6. Writs of error to circuit courts. | 12. Laws extended to said courts. |

1897-8.
PAMPH. 61.

An Act respecting the circuit courts in the several counties of this state.

Revision.....Approved April 16, 1846.

By whom held.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey,* That the circuit courts in and for the several counties of this state, shall be held by one or more of the justices of the supreme court, at the times and places prescribed by law.

Of writs, process and judgments.

2. *And be it enacted,* That the justices of the supreme court shall be judges of said circuit courts, and all writs and process issuing out of said circuit courts shall be tested in the name of one

of the judges of said court, and be returnable therein; and the judgments entered in such circuit courts shall have the same force and effect, when properly entered and recorded, as the judgments of the courts of common pleas of the respective counties.

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3. *And be it enacted*, That the said circuit courts, in all personal actions and causes originally commenced therein, shall be regulated and governed in their proceedings by the same laws as the courts of common pleas now are; and in all real and mixed actions originally commenced, or personal actions removed therein, shall be regulated and governed in their proceedings, as near as may be, by the same laws as the supreme court now is.

Regulated,
by what laws.

4. *And be it enacted*, That all judgments, orders and proceedings in the courts for the trial of small causes, and in the courts of common pleas upon appeals from said courts for the trial of small causes, may be removed into the circuit courts of the same county by writs of certiorari and supersedeas thereon, first allowed by one of the judges of said circuit court, in like manner and upon similar terms as such writs are now granted to remove similar matters into the supreme court; and the said circuit courts shall proceed to hear and determine said matters so removed according to law and right; and the bond given upon allowing said writs of certiorari, shall be so modified as to conform to the provisions of this act, and be handed by the justice allowing the said writ to the clerk of the court to which said writ shall be returnable, and be filed by him in his office.

Appellate jurisdiction.

Bonds, form of.

5. *And be it enacted*, That the judge or judges holding any such circuit court, shall and may at his or their discretion, and upon such terms as he or they may think reasonable, direct any case of doubt or difficulty to be made and stated, and certified by him or them to be argued at the bar of the supreme court; which court shall hear the same, and after opinion given therein, shall certify the same to the said circuit court, which court shall render judgment therein in conformity to such opinion.

May certify case to supreme court.

6. *And be it enacted*, That writs of error to remove judgments rendered in any circuit court to the court of errors and appeals, shall issue out of the court of chancery, and be prosecuted and proceeded upon in like manner and upon the like terms as writs of error to the supreme court are or may be; and writs of error to remove judgments rendered in any circuit court to the supreme court, shall issue out of the supreme court, and be prosecuted and proceeded upon in like manner and upon the like terms as writs of error from the supreme court to the court of common pleas are or may be.

Writs of error to circuit.

7. *And be it enacted*, That any suit or action originally com-

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CHAP. 3.Suits remov-
able by ha-
beas corpus.

menced in any such circuit court, where the debt, damages, matter or thing in controversy shall exceed two hundred dollars, may be removed into the supreme court at any time before issue joined by writ of habeas corpus, first duly allowed by one of the justices of the said supreme court, provided the defendant or defendants shall, at or before the allowance of said writ, enter into recognizance to the plaintiff or plaintiffs, with two sufficient sureties in double the sum demanded, for the payment of the condemnation money and costs, in case judgment shall pass against him, her or them; which recognizance shall be filed with said writ and returned with the same to the supreme court, and in default thereof, said suit or action shall not be removed, nor said writ returned.

Rules, by
whom made.

8. *And be it enacted*, That the justices of the supreme court shall and may adopt and settle uniform rules of practice in all matters not regulated by law for the government of said circuit courts, and the same from time to time, alter, repeal and modify as occasion may require, provided such rules are not contrary to the provisions of this act, the laws and constitution of this state or of the United States.

Costs and
fees.

9. *And be it enacted*, That the same costs and fees shall be allowed in all personal actions brought originally in said circuit courts, as are by law allowed in the courts of common pleas for like services, and be recoverable in like manner, provided costs would have been recovered in such case, in said courts of common pleas and not otherwise; and in all actions real and mixed, originally commenced in said circuit courts, and all personal actions removed therein, the same costs and fees shall be allowed and recovered as are by law allowed and recovered for like services in the supreme court.

Ministerial
officers, and
their duty.

10. *And be it enacted*, That the sheriffs, coroners, elisors and constables of the several counties in this state, for the time being, shall be the ministerial officers of said circuit courts held within their respective counties, and shall execute all writs, precepts and process issuing out of said courts, and to them directed and delivered, and make true returns thereof, according to the command in the same.

Of the clerks
of saide courts.

11. *And be it enacted*, That the clerks of the several courts of common pleas shall be the clerks of said circuit courts in their respective counties, be entitled to the same fees and subject to the same pains and penalties as are by law prescribed in relation to the clerks of the courts of common pleas, except in real or mixed actions, and personal actions removed into said circuit courts, by certiorari; in which the said clerks shall perform the same duties and be entitled to the same fees as are by law prescribed and allowed to the clerk of the supreme court.

12. *And be it enacted*, That all acts and parts of acts now in force, regulating the practice of the supreme court and courts of common pleas, the commencement, proceedings in trial, adjudication and determination of all suits or actions therein, shall be extended to and be applicable to said circuit courts, so far as the same are applicable to the provisions of this act.

CHAPTER 4.

PREROGATIVE COURT.

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| <ol style="list-style-type: none"> 1. Authority of ordinary. 2. Proof required before probate granted. 3. Court, when to be held. 4. Register's duty. 5. When justices called to advise. | | <ol style="list-style-type: none"> 6. Justice's fees in such case. 7. How payment of costs compelled. 8. Power to issue compulsory process. “ Liability of sheriff. 9. Transcript of will evidence. |
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An Act respecting the prerogative court, and the power and authority of the ordinary.

Revision....Approved April 16, 1846.

REV. 173, 574,
776, 789.
HAR. 297.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the authority of the ordinary shall extend only to the granting of probates of wills, letters of administration, letters of guardianship, and to the hearing and finally determining of all disputes that may arise thereon.

2. *And be it enacted*, That probate of any will shall not be granted by the ordinary, until proof be made to his satisfaction that no caveat against proving such will hath been filed in the office of the surrogate of the county where the testator resided at the time of his death, or that notice hath been given to all persons concerned of the application to the ordinary for such probate.

3. *And be it enacted*, That for the hearing and determination of all causes cognizable before the ordinary, he shall hold a prerogative court at each stated term of the court of chancery, and at such other times and at such place or places as he shall, from time to time appoint, when he shall hear and finally determine all causes that shall come before him, either directly or by appeal, from any surrogate or from the orphans' court of any county.

4. *And be it enacted*, That the register of the prerogative court, shall attend the sitting of the court at the stated terms, to register the decrees and proceedings of the court.

5. *And be it enacted*, That it shall and may be lawful for the ordinary, in any case in which he may be interested, or may have

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been concerned for either party, or may have given an opinion as attorney, solicitor or counsel for either party, or in any other case in which he may deem it expedient, to call to his assistance one or more of the justices of the supreme court, to sit and advise with him on the hearing or argument of such case, or of any motion touching the same, and by and with the advice of such justice or justices to make and pronounce such order, sentence or decree as shall be according to law, and the rules and practice of the prerogative court.

Justice's fees in such case. 6. *And be it enacted*, That the justice or justices so sitting with the ordinary in the prerogative court, shall be entitled to receive the same compensation as is allowed by law for sitting with the chancellor in the court of chancery.

How payment of costs compelled. 7. *And be it enacted*, That the payment of costs when awarded by the prerogative court, may be compelled in the same manner as the court of chancery is authorized to compel payment thereof.

Power to issue compulsory process. 8. *And be it enacted*, That if any person shall neglect or refuse to obey any citation, or to perform any sentence or decree of the ordinary or judge of the prerogative court, it shall and may be lawful to and for such ordinary and such court to cause such person or persons, by process directed to any sheriff of any county of this state, to be taken and imprisoned until he shall obey the said citation, or perform the said sentence or decree; and every sheriff is hereby directed to cause all such process, to him at any time directed, to be duly executed, and to confine the person against whom such process shall be issued, as in execution, until he shall be delivered by due course of law; and if any sheriff shall neglect his duty therein, he shall be answerable to the party aggrieved in such manner as he would be answerable upon process of the like nature issuing out of the supreme court.

Liability of sheriff.

Transcript of will evidence.

9. *And be it enacted*, That the transcript of any will or testament registered or recorded in the prerogative office, duly certified by the register of the said office to be a true transcript, shall be received in evidence in any court of this state, and shall be as good and effectual in law as if the books in which the same are registered or recorded were then and there produced and proved.

CHAPTER 5.

ORPHANS' COURT.

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| <ol style="list-style-type: none"> 1. How constituted. 2. Stated and special terms. 3. Special, when appointed. 4. Surrogate to be clerk. 5. Jurisdiction and powers of court. 6. May compel security or revoke letters. 7. Require trustees to secure minor's estates. 8. Power of removal and appointment. 9. Compel property to be delivered over. 10. Surety's remedy in certain cases. 11. Executor's, against co-executor. 12. Remedy against co-administrator. 13. When place of trustee supplied. 14. Rules respecting investments and interest. 15. When creditors may sell lands. 16. Of wills and administration, etc. 17. Recorded, and transcripts evidence. 18. Forms of letters issued. 19. Of the surrogate's returns. 20. What papers to be filed. | <ol style="list-style-type: none"> 21. Prosecution of guardianship bonds. 22. Appointment of guardians. 23. Rule as to application for guardians. 24. Accounts audited, stated and allowed.
" Exceptions heard, citations directed. 25. Stated account, when to be filed. 26. Accountant may be examined. 27. Effect of decree, how account opened. 28. Compulsory powers of court. 29. Duty of sheriffs and constables. 30. Process served out of county. 31. Term not held, business continued. 32. Costs taxed, payment enforced. 33. List of fees set up. 34. Receipts and discharges recorded. 35. Surrogates, prohibited from what. 36. Examinations, how taken. 37. Filed and read in evidence. 38. Surrogate may take affidavits. 39. Fees of officers. |
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An Act respecting the orphans' court, and the power and authority of surrogates. REV. 776.
HAR. 42, 122,
190.

Revision....Approved April 16, 1846.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the judges of the court of common pleas in the several counties of this state, or any three of them, shall be and they are hereby constituted judges of a court of record to be called "the orphans' court." 1837-8.
PAMPH. 255.
1839-40.
PAMPH. 55.
How consti-
tuted.

2. *And be it enacted*, That the orphans' court shall hold annually Terms. in each county four stated terms, at the times and places prescribed by law for holding the same, and also such special terms as the court may from time to time appoint, or as may be convened pursuant to law.

3. *And be it enacted*, That all special terms, except where Special
terms. otherwise specially authorized by law, shall be appointed by the court at a regular term, and shall be held at the place in the county where the court holds its regular terms.

4. *And be it enacted*, That the surrogate of the county shall be Clerk. clerk or register of the orphans' court.

5. *And be it enacted*, That the orphans' court shall have full Jurisdiction
of what mat-
ters. power and authority to hear and determine all disputes and controversies whatsoever, respecting the existence of wills, the fairness of inventories, the right of administration and guardianship, and the allowance of the accounts of executors, administrators, guardians or trustees, audited and stated by the surrogate, as hereinafter directed; and also all other matters and things hereinafter

TITLE VII.
CHAP. 5.

May award
process.

submitted to their determination, and to award process and cause to come before them, all and every person and persons interested or necessary to give evidence in any such cause, or who as executors, administrators, guardians, trustees or otherwise, are or shall be intrusted with, or in any wise accountable for any lands, tenements, goods, chattels or estate, belonging, or which shall belong to any orphan or person under age; and the ordinary, his register and the surrogates are hereby directed and required, upon application made for that purpose, and payment of reasonable fees, to transmit into the orphans' courts, true copies or duplicates of all bonds, inventories, accounts and proceedings whatsoever, now or hereafter remaining or being in their respective offices or possession, which do or shall relate to the estates of orphans, or any of them.

May require
administra-
tors and
guardians to
give addi-
tional secu-
rity,

6. *And be it enacted,* That the orphans' court shall have full power and authority, where letters of administration or guardianship shall have been granted upon insufficient security, to order and direct all such administrators or guardians, to give such further or other security to the ordinary, by bonds in the usual form, as the said court, after hearing the objection of creditors or persons concerned, shall approve of; and if it appears on examination that any administrator or guardian hath embezzled, wasted or misapplied all or any part of the decedent's estate, or shall neglect or refuse to give bonds, with sureties as aforesaid, or the security taken shall have been insufficient, then and in every such case, the court shall forthwith, by sentence, revoke or repeal the letters of administration or guardianship, and thereupon the surrogate shall grant letters of administration or guardianship to such person or persons having right thereunto, as will give bonds in manner and form aforesaid, who may have actions of trover, detinue, or on the case, for such goods or chattels as came to the possession of the former administrators or guardians, and shall be detained, wasted, embezzled, withheld or misapplied by any of them, and no satisfaction made for the same.

or revoke
letters, and
grant new
ones.

Action for
goods wast-
ed, etc.

When per-
son having
care of mi-
nor's estate,
required to
secure the
same.

7. *And be it enacted,* That when any complaint is made to any one of the judges of the orphans' court, that an executrix having a minor or minors of her own, or being concerned for others, is married, or like to be espoused to another husband, without securing the minors' portions or estates, or that an executor, guardian or other person having the care and trust of minors' estates, is likely to prove insolvent, or shall refuse or neglect to exhibit true and perfect inventories, or give full and just accounts of the said estates come to their hands or knowledge, then and in every such case, the said judge is hereby required, forthwith to call an orphans'

court, which court shall order and direct all and every such executrix, executor, guardian or trustee, to give security to the orphans or minors, by mortgage or bonds, in such sums and with such sureties as the said court shall think reasonable, conditioned for the performance of their respective trusts; and for the true payment or delivery, to and for the use and behoof of such orphan or orphans as they are concerned for, or such as shall legally represent them, of the legacies, portions, shares and dividends of estates, real and personal, belonging to such orphans or minors, so far as they have assets, as also for their maintenance and education, as the said court shall judge fit for the benefit and best advantage of such orphans.

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CHAP. 5.

8. *And be it enacted*, That when any executrix, executor or guardian shall be ordered and directed by the orphans' court, to give security as provided in the preceding section of this act, and shall neglect or refuse to give such security, it shall and may be lawful for the said court, by order or decree, to revoke the letters testamentary or of guardianship of such executrix, executor or guardian, and to appoint some other proper person as administrator with the will annexed, or as guardian, in the room and stead of the person so neglecting or refusing to give security, which person so appointed shall, before he enters upon the duties of his appointment, give bond to the ordinary in such sum and with such security as the said court shall require for the faithful performance of his duties.

On neglect or refusal, may revoke letters, and appoint another person administrator or guardian.

9. *And be it enacted*, That the said executrix, executor or guardian whose duties shall cease by virtue of the decree of said orphans' court as aforesaid, shall, immediately thereafter, deliver over to such newly appointed administrator or guardian, all goods and chattels, moneys and other assets or effects, which he or she may have held as executrix, executor or guardian; and if such executrix, executor or guardian shall neglect or refuse so to do, it shall then be lawful for such newly appointed administrator or guardian to commence a suit, either at law or equity, for the recovery thereof, with costs of suit.

Property to be delivered up, or recovered by suit.

10. *And be it enacted*, That where the surety, in any bond given by an administrator or guardian, for the faithful execution of his office, shall discover or believe that such administrator or guardian is wasting or mismanaging the estate, whereby the said surety may become liable to loss or damage, the said orphans' court, upon application of such surety and upon sufficient reason therefor, may order and direct every such administrator or guardian to render an account of his or her administration or guardianship to such surety, and if it shall appear that such administrator or guardian has em-

Remedy of surety, in case of waste or mismanagement, etc.

TITLE VII.
CHAP. 5.

bezzled, wasted, misapplied or mismanaged the estate, in every such case the said court shall direct the said administrator or guardian to give separate security to his or her surety, for the true payment of the balance remaining in his or her hands, to creditors, representatives, or the ward of such guardian, and on neglect or refusal, it shall be lawful for the said court to revoke the letters of administration or guardianship, and grant the same to such person or persons having right thereto, as will give sufficient bonds, in the usual form to the ordinary, and in such case it shall be the duty of the said newly appointed administrator or guardian immediately to bring an action on the case against such removed administrator or guardian, and hold him or her to bail, and in such action to recover the amount of all moneys, assets, rents, issues and profits received by such removed administrator or guardian, and not applied according to law, as well as all damages done or committed by such administrator or guardian, in respect of the estate in his or her hands.

Executor, etc., may require co-executors, etc., to account,

11. *And be it enacted,* That whenever there are two or more acting executors, guardians or administrators, the orphans' court shall or may, from time to time, on application of any one or more of them, upon sufficient reasons given to the court therefor, order and direct every such executor, guardian or administrator to account with his or her co-executor or co-executors, administrator or administrators, guardian or guardians, for all assets which have severally come to the hand of such executor, guardian or administrator, and whenever the court shall judge it necessary, shall compel each executor, guardian or administrator, to give separate security to his co-executor or co-executors, administrator or administrators, guardian or guardians, for the true payment of the balance remaining in his or her hands, to wards, creditors, legatees or representatives of the testator or intestate, and on neglect or refusal to give such account or security, it shall and may be lawful for the same court to authorize such co-executor or co-executors, administrator or administrators, guardian or guardians, to sue for such assets in the hands of such executor or executors, administrator or administrators, guardian or guardians so neglecting or refusing as aforesaid.

and give security,

or suit bro't.

Remedy where co-administrator refuses to proceed, or is non-resident, etc.

12. *And be it enacted,* That in all cases in which letters of administration shall have been or hereafter shall be granted to two or more administrators, and complaint shall be made to the orphans' court of the county where the same shall be granted, that one or more of the said administrators neglects or refuses to proceed with the administration of the estate, or when one or more of such administrators shall remove or reside out of this state, and shall

neglect or refuse to proceed in the settlement of the estate on which such letters shall be granted, it shall and may be lawful for such orphans' court to cause a citation or notice to be served agreeably to their own order, on such administrator or administrators, and thereupon the said orphans' court may proceed to hear such complaint, and shall have full power and authority, upon satisfactory proof of such neglect or refusal, to revoke and annul the letters of administration of such defaulting administrator or administrators; and the remaining administrator or administrators shall proceed in the same manner, as if he, she or they had been appointed the sole administrator or administrators; and such defaulting administrator or administrators shall be liable to all actions, and to account in the same manner as if this act had not been passed, so far as the administration of the estate has come into his or their hands; and nothing in this act shall be construed to release the securities of such administrator or administrators from their liability for so much of the estate as may have come to the hands of such administrator or administrators.

TITLE VII.
CHAP. 5.

May remove
him,

and liable to
be sued;

but sureties
not released.

13. *And be it enacted*, That when any trustee appointed by last will and testament, shall neglect or refuse to act, or shall die before the execution and completion of the trust so committed to him, the orphans' court of the county where such testator resided at the time of his death, shall have full power and authority to appoint some suitable person or persons to execute such trust; and the said court are hereby authorized and required to demand and take from such trustee or trustees, a bond, with one or more freehold sureties, conditioned for the due performance of the said trust; and the trustee or trustees so appointed shall have and possess all the power of the said trustee or trustees so neglecting, refusing, or dying; *provided always*, that nothing in this section contained, shall be construed to apply to the office of executor.

Trustee re-
fusing to act,
or dying,
place may be
supplied.

Sureties re-
quired.

14. *And be it enacted*, That executors, administrators, trustees or guardians, may, by leave and direction of the orphans' court put out to interest all moneys in their hands which they are or may be lawfully required to retain, whether the same belong to minors, legatees or other person or persons whomsoever, upon such security, and for such length of time as the said court shall allow of, and if such security so taken, bona fide and without fraud, shall happen to prove insufficient, it shall be the loss of the minors or other person entitled thereto, and it shall be the duty of executors, administrators, trustees and guardians, in cases where the estates of minors or other persons in their hands may be materially benefited thereby, to make application to the orphans' court for such leave and direc-

Not extend-
ed to execu-
tors.

Executors,
etc., may put
money at in-
terest, by or-
der of court.

TITLE VII.
CHAP. 5.

Accountable
for neglect.

When ac-
countable for
interest.

Creditor
may have
real estate
of decedent
sold.

See TITLE
XXII.

Of proof of
wills and
granting ad-
ministrations,
etc.

When cita-
tions to issue.

tion, and in case they shall neglect so to do, they shall be accountable for the interest that might have been made thereby; but if no persons who may be willing to take the said money at interest, giving such security, can be found by the said executors, administrators, trustees or guardians, nor by any other friend or friends of such minors or others, then the said executors, administrators, trustees or guardians, shall in such cases be accountable for the principal money only, until it can be put out at interest as aforesaid; *provided nevertheless*, that in any case where executors, administrators, trustees or guardians shall make use of the money of minors or others, which shall come to their hands, they shall be accountable not only for the principal but for the interest thereon.

15. *And be it enacted*, That when any creditor shall have obtained judgment against an executor or administrator, and the execution issued on the same shall remain unsatisfied in whole or part, for defect of personal estate to be levied on and sold, and there is real estate, it shall be lawful for the creditor or his legal representative, if the executor or administrator, being thereto required, shall neglect or refuse to obtain a sale thereof according to law, for the space of six months after being so required, to apply to the orphans' court of the proper county to order such sale to be made; and the said court, upon due notice given to said executor or administrator of such application, shall examine the circumstances of the case; and if it appears that the said debt or any part thereof is unpaid, and the personal estate deficient as aforesaid, and no sufficient cause being shown to the contrary, the said court may make such order to show cause as is mentioned in the fifteenth section of the act entitled, "An act making lands liable to be sold for the payment of debts;" and such further proceedings shall be had as is prescribed in the same act in relation to the sale of real estate, where the personal estate is insufficient to pay debts.

16. *And be it enacted*, That the surrogate of each county shall take the depositions to wills, administrations, inventories and administration bonds, in case of intestacy, and issue thereon letters testamentary and of administration; which several letters shall be in the form hereinafter mentioned; but in all cases whatsoever where doubts arise on the face of a will, or a caveat is put in against proving a will, and wherever disputes happen respecting the existence of a will, the fairness of an inventory, or the right of administration, the surrogate shall issue citations to all persons concerned, to appear at the next orphans' court to be held in and for the county; which citations shall be served at least ten days before the sitting of the court, when the cause shall be heard in a

summary way and determined by the judges of the court, subject to an appeal to the prerogative court, if demanded by any of the parties within thirty days after the sentence or decree of the orphans' court; after which, if no appeal be demanded, the surrogate shall proceed thereon as the sentence of the orphans' court shall direct; and all proceedings of surrogates not brought as aforesaid before the orphans' court, shall, in like manner be subject to an appeal to the prerogative court by any persons interested, or other person legally representing them, provided such appeal be made within six months after any such proceedings; and upon all causes heard in a summary way as aforesaid upon citation by the orphans' court, the evidence and proceedings upon the application of either party shall be reduced to writing by the register of the court, and the court upon just cause, may put off the hearing of the cause to another time, upon the application of either party; *provided*, that no surrogate shall proceed to prove any will until ten days from the death of the testator.

TITLE VII.
CHAP. 5.

Appeal allowed from decree of court.

From proceedings of surrogate.

Proviso.

17. *And be it enacted*, That the surrogate of each county shall record, in books to be provided for that purpose at the expense of the county for which they shall be used, all wills proved before him or the orphans' court, together with the proofs thereof, all letters of guardianship, letters testamentary and letters of administration, by him issued or granted, and all things concerning the same, and also all inventories proved before him; which records shall be of the same force, validity and effect as the like records in the prerogative office, and the transcript of such records, certified under the hand and seal of office of the surrogate, shall be received in evidence in every court of this state, and have the same validity and effect as transcripts certified by the register of the prerogative court.

Wills, letters, etc., to be recorded.

Transcripts evidence.

18. *And be it enacted*, That the said surrogates shall issue letters testamentary in the following form:

Form of letters testamentary.

I, _____ surrogate of the county of _____ do certify the annexed to be a true copy of the last will and testament of _____ late of the county of _____ deceased, and that _____ the executors therein named, proved the same before me, and are duly authorized to take upon themselves the administration of the estate of the testator, agreeably to the said will.—Witness my hand and seal of office, the _____ day of _____ in the year of our Lord one thousand eight hundred _____

And the said surrogates shall issue letters of administration in the following form:

Of letters of administration.

I, _____ surrogate of the county of _____ do certify, that on the _____ day of _____ administration of the goods and chattels,

TITLE VII. rights and credits, which were of ——— late of the county of
 CHAP. 5. ——— who died intestate, was granted by me to ——— of ———
 who are duly authorized to administer the same agreeably to law.
 Witness my hand and seal of office, the ——— day of ——— in
 the year of our Lord, &c.

And the said probate of wills and letters of administration shall have the same validity and effect as probate of wills and letters of administration issued by the register of the prerogative office, in the name of the ordinary, with the seal of office affixed.

Surrogate to
 make re-
 turns.

19. *And be it enacted*, That it shall be the duty of every surrogate, on the first Monday of February, May, August, and November, in each year, to transmit to the register of the prerogative court, all wills and inventories proved by him, and a return of all letters of administration granted during the preceding three months, to be filed in the said register's office.

What to be
 filed.

20. *And be it enacted*, That every surrogate shall carefully file all administration and guardianship bonds by him taken, and all other instruments of writing required by law in conducting the business of his office, or which were heretofore used to be filed in the prerogative office.

Guardian's
 bond prose-
 cuted.

21. *And be it enacted*, That it shall and may be lawful for the ordinary to cause any guardianship bond to be prosecuted in any court of record, at the request and expense of any person aggrieved by the said bond having become forfeited, and the moneys recovered upon such bond shall be applied towards making good the damages sustained by the not performing the condition thereof, in such manner as the ordinary shall by his sentence or decree direct.

Orphans'
 court to ap-
 point guard-
 ians.

22. *And be it enacted*, That the powers and duties formerly exercised and performed by the ordinary, relative to the admission of guardians, for persons under the age of twenty-one years, shall hereafter be exercised and performed by the orphans' court of the county in which the minor applying for a guardian may reside, or shall have real or personal estate, subject, however, to an appeal to the prerogative court, and the letters of guardianship shall be issued under the direction of the orphans' court by the surrogate of the county in which the application shall be made, which letters shall be in the following form:

Appeal.

Form of let-
 ters.

I, ——— surrogate of the county of ——— do certify, that on the ——— day of ——— the orphans' court of the county of ——— admitted ——— of ——— as guardian of the person and property of ——— being a minor under the age of ———. Witness my hand and seal of office, &c.

Power of or-
 dinary re-
 served.

Provided, that nothing in this act shall be construed to prevent the ordinary, in person, from granting probates of wills, letters of

administration and letters of guardianship, from the prerogative office, in cases where a convenience will arise from doing the same. TITLE VII.
CHAP. 5.

23. *And be it enacted*, That where an orphan is of the age of fourteen years or upwards, letters of guardianship shall be granted, on petition to the orphans' court, signed by such orphan in presence of the surrogate, and on the guardian or guardians first entering into a bond to the ordinary with good security, in a sufficient sum, for the faithful execution of his office; but where an orphan is under the age of fourteen years, the mother, or next of kin, of full age, and where there are several relations in equal degree of kindred, any one, giving due notice to the rest, may apply to the orphans' court for the guardianship of such orphan, who, upon inquiry into the circumstances of the case, may admit one or more of them, or a stranger willing to accept the trust, at their discretion, to be guardian or guardians of such orphan, until he or she attains the age of fourteen years or other guardian or guardians be appointed in his stead, such guardian or guardians giving good security by bond as aforesaid, as the said court shall direct, and until the said orphan, after arriving at the age of fourteen, shall choose another guardian or guardians, the person or persons so first appointed shall remain the lawful guardian or guardians of such orphan, under the said first letters of guardianship, and the bond given thereon shall continue in full force; but where the orphan, after arriving to the age of fourteen years, shall choose any other person or persons to be guardian or guardians, letters of guardianship shall be applied for, as before directed, and all proceedings thereon be had accordingly. How letters of guardianship granted.
How, where minor under fourteen.
Orphan, at fourteen, may choose another.

24. *And be it enacted*, That the surrogate shall audit and state the accounts of executors and administrators exhibited to him, and report the same to the orphans' court at the next sitting thereafter, the executor in case of a will, or the administrator in case of intestacy, giving at least two months notice of his intention in five of the most public places in the county, as near as may be to the place of residence of the parties concerned or some of them, where such account is to be allowed; which court, on due proof of notice as aforesaid, and no exception being made to the report of the surrogate, shall decree an allowance of the account as stated; but if any person or persons interested in the settlement of said account, shall, by himself or attorney, appear and make exceptions to the report, the court shall either proceed to hear the proofs and allegations, and correct or amend any mistake or errors that may happen in the account as reported, or refer the same to auditors, who shall examine and restate the account, after hearing parties and witnesses, and make report to the next or some subsequent court Accounts, how audited and stated.
Notice, proof and allowance.
Exceptions made, and account corrected.

TITLE VII.
CHAP. 5. for confirmation and allowance as aforesaid; *provided always*, that in all cases where it shall appear that the executor or administrator hath not had sufficient assets in hand of the testator or intestate, to satisfy all just debts and expenses, the court shall not proceed to decree an allowance of the account until the next sitting after the report is made; and the accounts of guardians or trustees shall be audited and stated by the surrogate, and reported to and finally settled and allowed by the orphans' court in manner aforesaid; but in cases of trustees and guardians, the surrogate shall issue citations to all persons concerned to appear at the said orphans' court; which citations shall be served at least ten days before the sitting of the court; and the said court shall, upon application of an orphan or other person interested, from time to time, order and direct the guardians to account as aforesaid, for all moneys, goods and chattels they shall receive, and for the rents, issues and profits of any real estate in their possession belonging to their wards.

Citations in case of trustees or guardians.

Account stated to be filed twenty days, etc. 25. *And be it enacted*, That when any surrogate shall audit and state any account as directed by the preceding section of this act, he shall audit and state the same, and place the said account on the files of his office subject to the inspection of any person interested therein, at least twenty days previous to the same being presented to the court for settlement and allowance.

Accountant may be examined.

26. *And be it enacted*, That it shall be lawful for the court to whom any account is reported for allowance as aforesaid, or for the auditors to whom an account is referred as aforesaid, at the instance of any party interested in the same, or by their own proper authority, to examine any executor, administrator, guardian or trustee exhibiting such account, on oath or affirmation, touching the truth and fairness of the same or any part or item thereof; and the allowance of commissions to executors, administrators, guardians or trustees, shall be made with reference to their actual pains, trouble, and risk in settling such estate, rather than in respect to the quantum of estate; and where any difference arises between executors, administrators, guardians or trustees, in regard to the proportion of commissions between them, the orphans' court shall determine the same, having regard to their respective services.

Commissions.

Decree final, unless fraud or mistake shown.

27. *And be it enacted*, That the sentence or decree of the orphans' court on the final settlement and allowance of the accounts of executors, administrators, guardians or trustees, shall be conclusive upon all parties, and shall exonerate and for ever discharge every such executor, administrator, guardian or trustee from all demands of creditors, legatees or others, beyond the amount of such settlement, except for assets or moneys which may come to

hand after settlement as aforesaid, excepting, also, in cases where a party applying for a resettlement, shall prove some fraud or mistake therein, to the satisfaction of the said orphans' court. TITLE VII.
CHAP. 5.

28. *And be it enacted*, That every person duly cited or summoned to appear at any of the said orphans' courts, ten days before the time appointed for appearance, who shall make default, shall be liable to attachment for contempt, and the said courts are hereby authorized and empowered to compel obedience to their process, orders and sentences, by imprisonment of body or distress and sale of lands and goods, as fully and amply as any other court of record in this state. Compulsory powers of court.

29. *And be it enacted*, That the sheriff and constables of the county shall be and they hereby are severally declared to be officers of the orphans' court, and shall attend the same as such, and serve all process and orders of the court or judges, directed to them or any of them. Duty of sheriffs and constables.

30. *And be it enacted*, That whenever a citation or process of attachment shall be duly issued out of the orphans' court in any county of this state, against any person or persons who shall reside without said county, and within this state, it shall be the duty of the sheriff or other proper officer of such county, and the said sheriff or other officer is hereby authorized and empowered to serve and execute such citation or process, in the same manner as if the person or persons against whom it may be issued, resided within the county where such citation or process is issued. Process may be served out of the county.

31. *And be it enacted*, That if it shall happen that an orphans' court shall not be held at the regular term or terms of said court, by reason of the non-attendance of a sufficient number of judges, the business and proceedings pending in said court and process returnable thereto, shall be considered continuing from term to term until a regular court shall be held. If term not held, business continued.

32. *And be it enacted*, That the clerk of the orphans' court shall draw and tax bills of costs in all litigated suits in said court, and present the same to the court, who shall adjudge and direct which of the parties shall pay the same; and every bill of costs so taxed, shall be filed by the surrogate, who is hereby authorized, if the same is not paid, to issue an execution against the goods and chattels, lands and tenements of the party adjudged to pay the same; and the costs, when paid or levied, shall be received by the surrogate, who shall pay to the court, sheriff and crier each their fees, as the same shall be taxed, and the residue to the persons entitled thereto; and the execution, before the same is delivered to the sheriff, shall be recorded by the clerk of the court of common pleas of the county, in the book by him kept for recording executions. Costs taxed, and payment enforced.

TITLE VII.
CHAP. 5.Fees, lists to
be set up.Penalty for
taking illegal
fees.Receipts and
discharges
recorded,being first
proved and
acknowledg-
ed.When the
record to be
evidence.Surrogate,
prohibited
from what.Examina-
tions, how
taken.

33. *And be it enacted*, That the surrogate shall cause to be affixed and at all times kept up in his office, in some conspicuous place, a true list of all fees which may be lawfully demanded by him, as well in his capacity of clerk of the orphans' court as of surrogate of the county, and if he shall neglect to put up and keep in view such list of fees, or shall take other or greater fees than by law allowed, or shall take fees for services not performed, he shall, for every such offence, forfeit and pay the sum of thirty dollars, to be recovered in an action of debt, with costs of suit, before any court having cognizance thereof, by the party aggrieved.

34. *And be it enacted*, That it shall be lawful for every executor, administrator or guardian, who hath settled or shall settle his or her account before the orphans' court, and who hath or shall hereafter pay any legacy or legacies, distributive share or shares, or sums of money, to any person or persons entitled by law to receive the same, his, her or their executors or administrators, to produce the receipts and discharges therefor to the surrogate of the county in which letters testamentary or of administration or guardianship have been or shall be granted, and the said surrogate shall immediately record the same in a book to be by him kept for that purpose; *provided*, that the same be first proved and acknowledged in the manner that deeds of conveyance of land are by law required to be proved and acknowledged; which proof or acknowledgment shall be recorded with such receipts or discharges; and the said surrogate shall endorse on such receipts and discharges, the book and page in which the same is recorded, with the time of recording the same, and sign his name thereto; and the said record, or a 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 or discharge hath been lost, or that it is not in the power of the party offering the copy in evidence to produce the same, and the surrogates of the several counties of this state shall procure, at the expense of the county, a good bound book in which they shall record such receipts and discharges.

35. *And be it enacted*, That no surrogate shall be allowed to appear or act as attorney, proctor or counsel, or to sit as a judge in the orphans' court of the county in which he is surrogate.

36. *And be it enacted*, That all examinations to be taken and made use of at the hearing of any cause in the orphans' court of any county, may be taken and reduced to writing by the surrogate of such county, who is hereby authorized to administer the proper oath to the witnesses examined by him, which examinations shall be taken on ten days notice of the time and place of taking the

same, given by the party or his attorney to the opposite party or his attorney, and either of the parties may, in person or by his attorney, be present and examine and cross-examine such witnesses. TITLE VII.
CHAP. 5.

37. *And be it enacted*, That the examinations so taken, shall be of the like force and effect as if taken in the orphans' court, before the judges thereof, and shall be filed with the clerk of the said court, to be read in evidence upon the hearing of the cause, saving all just exceptions. To be filed,
etc.

38. *And be it enacted*, That whenever an oath, affirmation or affidavit is required to be made or taken, to be used for any purpose whatever, in any proceeding to be had before any surrogate or in the orphans' court of any county, the same may be made and taken by and before the surrogate of the county wherein said proceeding may be had; and the said surrogate shall be entitled to receive the sum of twelve cents for every such oath, affirmation or affidavit, when not otherwise specially provided. Affidavits,
before whom
taken.

39. *And be it enacted*, That the judges, surrogates and other officers of the orphans' court, shall be entitled to demand and receive, for the services hereinafter mentioned, the fees thereunto annexed, and no more, and a sheet or folio shall contain one hundred words. Fees.

Fees to be divided among the judges who are present in court when the service is performed. Of judges.

The first motion in every cause (but no case to be deemed a cause in court, unless there be adverse parties in the same,)	50 cents.
Every order in a cause,	20 cents.
The trial and argument of every cause,	50 cents.
Every decree,	80 cents.
Every appointment of auditors, guardians, trustees or commissioners,	80 cents.
Retaxing every bill of costs, when necessary,	50 cents.

Fees to be received by the surrogate, for services directed by law to be performed by the register of the prerogative court, and to be paid over to him. Register.

For recording the name of each testator, the year in which the will was proved, and filing the will,	25 cents.
Recording the name of each intestate, where administration hath been granted, and the year when granted,	12 cents.
Filing every inventory,	12 cents.

TITLE VII.
CHAP. 5.*Fees of surrogate and clerk of the orphans' court.*Surrogate
and clerk.

For drawing and taking depositions on will or inventory,	\$1 33 cents.
Engrossing a will and proof, each sheet,	12 cents.
Recording a will and proof, each sheet,	8 cents.
Granting probate,	1 00
Engrossing probate,	12 cents.
Recording probate,	8 cents.
Drawing and taking depositions to codicils,	62 cents.
Recording and engrossing codicil and proof, each sheet,	8 cents.
Drawing administration bond and taking deposition thereon,	1 33 cents.
Granting letters of administration,	1 00
Engrossing ditto,	12 cents.
Recording ditto,	8 cents.
Filing administration bond,	8 cents.
Recording inventory and proof, each sheet,	8 cents.
Drawing bond and petition for guardianship,	1 33 cents.
Reading do. do.,	10 cents.
Filing do. do.,	8 cents.
Granting letters of guardianship,	1 00
Engrossing do.,	12 cents.
Recording do.,	8 cents.
Recording inventories, made by guardians, each sheet,	8 cents.
Drawing petition, stating a list of debts and credits on application for the sale of real estate, entering rule and making copies,	1 55 cents.
Exhibiting proofs of advertising rule to show cause, entering decree, copies thereof, and receiving, filing and recording report of sales,	4 20 cents.
For advertising the rule of court, when done by the surrogate,	1 00
For services enjoined by the act concerning contracts of real estate, made by testators and intestates, in their lifetime, the same fees as allowed for the sale of land.	
Drawing petition, reading, filing and recording decree appointing commissioners for the division of real estate, and a certified copy of such decree,	3 40 cents.
Recording report of commissioners, each sheet,	8 cents.
Recording drafts, for each and every course,	3 cents.
Drawing petition on application for rule to limit time to creditor's demand, entering the rule, advertising,	

	TITLE VII. CHAP. 6.
entering the decree, making the rule absolute, and a certified copy of the decree,	\$4 20 cents.
Drawing every citation or other process,	30 cents.
Sealing the same,	14 cents.
Entering every action,	8 cents.
Entering the return of a writ,	10 cents.
Entering every rule or order of court,	10 cents.
Copy of such rule or order,	8 cents.
Searching the records,	12 cents.
Swearing each witness,	6 cents.
Reading every petition or other writing given in evidence,	10 cents.
Filing every citation, exception or other paper,	8 cents.
Entering every discontinuance,	10 cents.
Entering every decree,	10 cents.
Taxing every bill of costs,	50 cents.
Issuing execution for costs,	50 cents.
Entering and filing appeal,	20 cents.
Copies of citations, exceptions, records, and other papers, each sheet,	8 cents.
Seal and certificate,	25 cents.
Taking depositions, each sheet,	12 cents.
Recording certified copy of proceedings in cases of lunacy, transmitted to the court, each sheet,	8 cents.
Recording receipts and discharges, each sheet,	8 cents.
For auditing and stating the account of executors, administrators, guardians or trustees, and reporting the same to the court, such fees as the court shall think reasonable.	
<i>Crier's fees.</i>	
	Crier.
Making proclamation on application for the fulfilment of contracts,	8 cents.
Swearing a witness,	6 cents.

CHAPTER 6.

OYER AND TERMINER, ETC.

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|---|--|
| <ol style="list-style-type: none"> 1. How constituted; jurisdiction of. 2. When to be held. 3. Sessions may organize grand jury. 4. Court, how long continued. 5. Cognizance of crimes, etc. 6. Of grand and petit jurors. 7. Of proclamation and notice. 8. Authority to deliver jail. | <ol style="list-style-type: none"> 9. May send indictments to sessions. 10. Any time during session of court. 11. Remand indictments to sessions. 12. Send process into any county. 13. Sheriff to take recognizances of def'ts. 14. And of witnesses. 15. Fees allowed. 16. Of the clerk. |
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TITLE VII.
CHAP. 6.

An Act constituting the court of oyer and terminer and general jail delivery.

REV. 153, 455,
658.

Revision.....Approved April 16, 1846.

1835-6.
PAMPH. 73.

1836-7.
PAMPH. 461.

1837-8.
PAMPH. 137.

1840-1.
PAMPH. 110.

1841-2.
PAMPH. 118.

How consti-
tuted; juris-
diction.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the courts of oyer and terminer and of general jail delivery in and for each of the counties of this state, shall be deemed and taken to be one court, to be called the court of oyer and terminer and general jail delivery, which court shall possess, enjoy and exercise all the jurisdiction, powers and authority heretofore belonging to the said courts respectively; and that the justices for the time being of the supreme court, and the judges for the time being of the respective courts of common pleas in and for the several counties of this state, or any three or more of them, of whom one of the justices of the supreme court shall always be one, shall, by virtue of this act and without any other commission, constitute the court of oyer and terminer and general jail delivery in and for the said counties respectively.

When to be held.

2. *And be it enacted*, That the said court of oyer and terminer and general jail delivery shall be held in the respective counties of this state at the times of holding the circuit courts in the same, and at any other time that the chief justice or one of the justices of the supreme court shall think it necessary to appoint, on application made to him in writing by the board of chosen freeholders of the county.

When the quarter sessions may organize grand jury,

3. *And be it enacted*, That if one of the justices of the supreme court shall not be present at the usual hour of opening the court of oyer and terminer and general jail delivery in any county in this state, on the day appointed by law for holding such court, then the court of general quarter sessions of the peace in and for such county may proceed to organize the grand jury for such county, in the same manner as the court of oyer and terminer and general jail delivery might do if that court were in session; and all process returnable to, and all recognizances for the appearance of persons before the said court of oyer and terminer and general jail delivery, shall be as valid and effectual as if the said court had been

and proceed.

opened and in session, and may be proceeded on according to law in the said court of general quarter sessions of the peace; and all indictments pending in such county, and all indictments that may

Indictments good.

be found and presented by such grand jury, shall be as good and effectual as if the grand jury had been organized and sworn or affirmed before the court of oyer and terminer and general jail

Where tried.

delivery, and shall be tried or otherwise determined, either in the court of general quarter sessions of the peace or the court of oyer

and terminer and general jail delivery, as by law the same ought to be tried and determined. TITLE VII.
CHAP. 6.

4. *And be it enacted*, That the said court of oyer and terminer and general jail delivery may be held and continued for so long time, at each session, as the business of and before such court shall render necessary. Court, how long continued.

5. *And be it enacted*, That the said court of oyer and terminer and general jail delivery shall have cognizance of all crimes and offences whatsoever, which, by law, are or shall be of an indictable or presentable nature, and which have been or shall be committed, done or attempted within the counties respectively for which such court shall be held, and shall have authority to deliver the jails in such counties of the prisoners therein, doing in the premises what to justice doth or shall appertain according to the laws of this state. Shall have cognizance of all crimes.

6. *And be it enacted*, That the respective sheriffs of the several counties of this state shall cause to come before the said court of oyer and terminer and general jail delivery, at the times and places of holding their said respective courts, twenty-four good and lawful men to serve as grand jurors, and so many good and lawful men to serve as petit jurors as shall be necessary, and without any precept being issued for that purpose. Grand and petit jurors.

7. *And be it enacted*, That the said sheriffs shall cause to be publicly proclaimed throughout their respective counties, that all persons who will prosecute against the prisoners, being in the jails of their counties, be then and there before such courts to prosecute against them agreeably to law, and shall also give notice to all justices of the peace, coroners and constables within their respective counties, that they be then and there in their own persons with their rolls, records, indictments and other remembrances, to do those things which to their offices in that behalf, shall appertain to be done; and the said respective sheriffs and their respective under-sheriffs, shall then and there attend, in their proper persons, to do those things which to their offices in that behalf appertain to be done. Proclamation made, and notice given.
Sheriffs, etc., to attend.

8. *And be it enacted*, That the said court of oyer and terminer and general jail delivery in the several counties, shall have authority to deliver the jails of such prisoners as are or shall be indicted before the courts of general quarter sessions of the peace, in and for the same counties respectively. Authority to deliver jails.

9. *And be it enacted*, That when any indictment or presentment which the court of general quarter sessions of the peace of the county is competent to try and determine, shall be found in the court of oyer and terminer and general jail delivery in and for

TITLE VII.
CHAP. 6.

such county, it shall be lawful for such court, if they think proper, to order the said indictment or presentment to be delivered to the clerk of the said court of general quarter sessions, who is hereby directed to file the same, and also to make entry thereof in the minutes at the then or subsequent session; and after such affiling the said court of general quarter sessions shall have authority to issue process and proceed upon, and to hear and determine such indictment or presentment in like manner as if the same had been originally found in the said court of general quarter sessions.

who shall try
the same.

When indict-
ments may
be sent down
to sessions.

10. *And be it enacted*, That the said court of oyer and terminer and general jail delivery may, at any time during the session of said court, transmit in manner aforesaid, to the court of general quarter sessions of the peace, any indictments or presentments which the said court of general quarter sessions shall be competent to try; and thereupon the said court of general quarter sessions shall have authority to issue process and hear and determine such indictments or presentments in like manner as if the said court of oyer and terminer and general jail delivery were not in session at the time.

Indictments
sent from
sessions may
be remand-
ed.

11. *And be it enacted*, That if any indictment or presentment found in the court of general quarter sessions of the peace, to the trial and determination whereof the said court is competent, be transmitted to the court of oyer and terminer and general jail delivery, then such court may, if they think proper, remand such indictment or presentment to the said court of general quarter sessions, there to be proceeded upon in like manner as if the same had not been sent to the said court of oyer and terminer and general jail delivery.

Writs and
process may
be sent into
any county.

12. *And be it enacted*, That the courts of oyer and terminer and general jail delivery and general quarter sessions of the peace in this state, shall have authority to direct their writs and process into any or all the counties of this state, if necessary, to arrest and bring before them any person or persons against whom any indictment may be pending in the said courts respectively.

Sheriff may
take defend-
ant's recog-
nizance.

13. *And be it enacted*, That the sheriff to whom any process is directed to arrest or take any defendant against whom an indictment is presented, shall be and he is hereby authorized to take the recognizance of the said defendant, (and his sureties if required,) for the appearance of said defendant at the court in which the said process is returnable; which recognizance the said sheriff shall return with the said process, and it shall be filed by the clerk and be of the same force and effect, and in case of forfeiture, shall be prosecuted in the same manner as if the same had been taken by a justice of the peace of this state.

14. *And be it enacted*, That in all cases where process shall be served by a sheriff to compel the attendance of any witness in any criminal proceeding in any court of this state, the sheriff so serving said process is hereby authorized to take the recognizance of said witness in like manner as a justice of the peace is now authorized to take such recognizance in all cases where a recognizance is required; which recognizance shall be returned and be of the same force and effect, and in case of forfeiture shall be prosecuted in the same manner as if the same had been taken before a justice of the peace.

TITLE VII.
CHAP. 7.

And recog-
nizance of
witnesses.

15. *And be it enacted*, That the same fees shall be allowed to the court of oyer and terminer and general jail delivery as are by law allowed to the court of general quarter sessions; which fees shall be divided among the judges attending said court, other than the justice of the supreme court who may be present and presiding; but such justice shall be entitled to receive one dollar for the trial or argument of every cause in said court.

Fees to be
allowed.

16. *And be it enacted*, That the clerk of the court of common pleas in each county shall be the clerk of the court of oyer and terminer and general jail delivery.

Clerk.

CHAPTER 7.

GENERAL QUARTER SESSIONS.

- | | |
|---|---|
| 1. Justices conservators of the peace. | 8. Penalty on justice for neglect. |
| 2. Court constituted; its jurisdiction. | 9. Bail, when to be taken. |
| 3. Of grand and petit jurors. | 10. Duties and liabilities of justices. |
| 4. Of writs and process. | 11. Witnesses, examined, and recognized. |
| 5. Recognizances to keep the peace. | 12. Apprehension of non-resident offenders. |
| 6. Indictments, where sent. | " Bailed in another county. |
| 7. Offenders examined; witnesses bound. | 13. Justice endorsing warrant protected. |

An Act concerning justices of the peace and courts of general quarter sessions of the peace.

REV. 142.

HAB. 21.

1845.

PAMPH. 140.

Revision.....Approved April 16, 1846.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the justices of the peace duly appointed or elected and commissioned in and for the several counties of this state, shall, jointly and severally, have full power to keep, and cause to be kept, all laws made or to be made for the conservation of the peace, and for the good government of the citizens and inhabitants of this state, within the said counties respectively, according to the force, form and effect of the said laws; and to apprehend, imprison and punish all persons offending against said laws or any of them

Justices to be
conservators
of the peace;
their duties
and powers.

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CHAP. 7.

in the said respective counties, in such manner as, according to said laws, shall be right and proper; and to cause to come before them or any of them, all persons who shall break the peace, or have used, or shall use threats to any of the citizens or inhabitants of this state, concerning his or her body, or the firing, injuring or destroying of his or her house, barn, building or other property, or who are not of good fame where they are found, to enter into recognizance, with sufficient surety, for the peace, or their good behaviour towards the people and inhabitants of the state; and if they enter not into such recognizance, then to cause them to be safely kept in prison until they do the same; *and further*, to perform and execute all such matters, acts and things as, by law, appertain to their office, and are or shall be enjoined upon them, and committed to their charge and execution, jointly and severally.

Quarter sessions constituted; jurisdiction.

2. *And be it enacted*, That the judges for the time being of the court of common pleas of every county of this state, or any three or more of them, shall constitute a court of general quarter sessions of the peace in and for such county; which court shall be a court of record, and shall have cognizance of all crimes and offences, which, by law, are or shall be of an indictable nature, and which in such county have been done or perpetrated, or shall hereafter be done or attempted; and for that purpose shall have authority to inspect indictments taken or to be taken before them, to make and continue process thereupon, to hear and determine all such crimes and offences as aforesaid and to punish the persons, convicted of the same, according to law; *provided always*, that indictments for treason, murder, manslaughter, sodomy, rape, polygamy, arson, burglary, robbery, forgery, perjury and subornation of perjury, and crimes punishable with death, although the same be found in such court of general quarter sessions of the peace shall be tried in the supreme court or court of oyer and terminer and general jail delivery, and not elsewhere; and for that purpose the said court of general quarter sessions of the peace shall cause all such indictments to be delivered to the next supreme court, or court of oyer and terminer and general jail delivery, to be held in such county.

What offences not triable in sessions.

Grand and petit jurors.

3. *And be it enacted*, That the respective sheriffs of the several counties of this state shall cause to come before the courts of general quarter sessions of the peace at the times and places of holding said courts, twenty-four good and lawful men to serve as grand jurors, and so many good and lawful men to serve as petit jurors as shall be necessary and without any precept being issued for those purposes.

Of writs and process.

4. *And be it enacted*, That all precepts, writs and process, issuing out of the court of general quarter sessions of the peace, shall be

signed by the clerk, and sealed with the seal of the said court, and shall be tested the day on which the said court shall have adjourned, and in the name of the presiding judge of such court.

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CHAP. 7.

5. *And be it enacted*, That every justice of the peace, who hath taken, or shall take any recognizance for the keeping of the peace, or good behaviour, shall certify, send, or bring such recognizance to the next court of general quarter sessions of the peace in and for the county where he is or hath been justice, that the party so bound may be called; and if the party so bound make default, the said default shall be then and there recorded, and the said recognizance prosecuted to effect in the manner directed by law.

Recognizance to be returned, and proceedings thereon.

6. *And be it enacted*, That the courts of general quarter sessions of the peace shall send their indictments to the courts of oyer and terminer and general jail delivery in their respective counties.

Indictments, where sent.

7. *And be it enacted*, That all and every justice and justices of the peace, before whom any person shall be brought for treason, misprison of treason, murder, manslaughter, sodomy, rape, arson, burglary, robbery, larceny, or forgery, or for suspicion thereof, or for any crime punishable with death, or suspicion of such crime, shall, before he or they commit or send such offender to prison, take in writing, the examination of such offender, and information of those who bring him or her, of the facts and circumstances thereof; which said examination and information shall be signed by such informant, and by the justice or justices before whom the same shall be taken; and also by the examinant, if he shall be willing to sign the same; and the said justice or justices shall deliver or transmit the said examination and information to the next court, in which such offender is or ought to be tried for such offence; and the said justices and every of them are hereby authorized and required to bind, by recognizance, all such as declare any thing material to prove the said treason or other offence as aforesaid against such offender, to appear in the supreme court the term following, or or at the next session of the court of oyer and terminer and general jail delivery for the county where the offence was committed, or in such other court where the said offence is cognizable, then and there to give evidence against the said offender; and shall certify the said recognizance and recognizances taken before him or them to the said court, where such witnesses are bound to appear, on the first day of the term or session of the same court.

Examination of offenders taken, and sent up.

Recognizances of witnesses taken.

8. *And be it enacted*, That if any justice of the peace shall refuse or neglect to take such examination or information as aforesaid, or to deliver or transmit the same as aforesaid, or shall refuse or neglect to bind the witnesses to appear as aforesaid, or to certify the recognizance by him taken as aforesaid, then the court, wherein

Penalty on justice for neglect.

TITLE VII.
CHAP. 7.

such witnesses ought to be bound to appear, and to which such examinations, informations and recognizances ought to have been delivered, transmitted or certified, upon due proof thereof upon examination before them, shall, for every such offence or neglect, set such a fine upon the said justice as the said court shall think fit and reasonable.

Bail may be taken, except in what cases.

9. *And be it enacted*, That the court of general quarter sessions of the peace, and the justices of the peace, and each and every of them in and for every county of this state, are hereby authorized, at their discretion, to let to bail or mainprise unto the next court of general quarter sessions of the peace, or court of oyer and terminer and general jail delivery, to be held in the said county, all persons who are or may be arrested or imprisoned in their respective counties, for any crime or offence therein done or attempted, except such as are or shall be charged with treason, murder, manslaughter, sodomy, rape, arson, burglary, robbery, forgery, or suspicion thereof, or with any crime punishable with death, or suspicion of such crime; and no person or persons charged with the offences, or any of them, so excepted as aforesaid, shall be admitted to bail or mainprise by the said court of general quarter sessions of the peace or justices of the peace, or any of them.

Duties and liabilities of justices.

10. *And be it enacted*, That all and every justice and justices of the peace, who shall let any offender to bail, shall certify, send, or bring such recognizance of bail to the next court of general quarter sessions of the peace, or court of oyer and terminer and general jail delivery, to which the said offender shall be bound to appear; and it shall be the duty of all and every justice or justices of the peace to bind, by recognizance, all such persons as can give testimony against any such offender, touching his or her offence, to appear at the next court of general quarter sessions of the peace or of oyer and terminer and general jail delivery, as the case may require, to be held within the county where the trial thereof shall be had, then and there to give evidence against such offender; and also to certify, send, or bring such recognizance to the said court; *and further*, if any justice of the peace shall offend in any thing against the true intent and meaning of this clause or section, then the court of general quarter sessions of the peace, or court of oyer and terminer and general jail delivery, of the county where such offence shall be committed, upon due proof thereof, upon examination before them, shall, for every such offence, set such fine on the said justice of the peace as the said court shall think fit and reasonable.

Witnesses to be examined and bound to appear.

11. *And be it enacted*, That it shall be the duty of every justice of the peace to bind, by recognizance, to the proper court, all persons who can bear testimony touching any offence committed

against this state, whether the offender be arrested, imprisoned, bailed, or not, and to take the examinations of such witnesses respecting the same; and the said recognizances and examinations to certify, send, or bring to such court as aforesaid; and in case such justice of the peace shall offend herein, he shall be proceeded against and fined in the manner directed in the section immediately preceding.

12. *And be it enacted*, That in case any person against whom a warrant shall be issued by any justice or justices of the peace of any county in this state, for any offence there committed or done, shall escape, go into, reside or be in any other county, out of the jurisdiction of the justice or justices granting such warrant as aforesaid, it shall and may be lawful for, and it is hereby declared to be the duty of any justice or justices of the peace of the county where such person shall escape, go into, reside, or be, upon proof being made upon oath or affirmation, of the handwriting of the justice or justices granting such warrant, to endorse his or their name or names on such warrant, which shall be a sufficient authority to the person or persons bringing such warrant, and to all other persons to whom such warrant was originally directed, to execute such warrant in such other county, out of the jurisdiction of the justice or justices granting such warrant as aforesaid, and to apprehend and carry such offender before the justice or justices who endorsed such warrant, or some other justice or justices of such other county, where such warrant was endorsed; and in case the offence for which such offender shall be so apprehended as aforesaid, shall be bailable in law by a justice of the peace, and such offender shall be willing and ready to give bail for his or her appearance at the next court of oyer and terminer and general jail delivery or general quarter sessions of the peace, to be held in and for the county where the offence was committed, such justice or justices of such other county before whom such offender shall be brought, shall and may take bail of such offender for his or her appearance at the next court of oyer and terminer and general jail delivery, or general quarter sessions of the peace to be held in and for the county where such offence was committed, in the same manner as the justices of the peace of the proper county might have done; and the justice or justices of such other county so taking bail as aforesaid, shall deliver the recognizance of bail and all other proceedings relating to the said offender and offence before him had, to the constable or other person or persons so apprehending such offender as aforesaid, who is and are hereby required to receive the same, and to deliver over such recognizance and other proceedings to the clerk of the court of oyer and termi-

TITLE VII.
CHAP. 7.

How offend-
ers, escaping
or non-resi-
dent, to be
apprehend-
ed.

How bailed
in another
county.

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CHAP. 7.

Penalty on
constable for
not deliver-
ing recog-
nizance.

What if of-
fence not
bailable.

Justice who
endorses
warrant pro-
tected.

ner and general jail delivery, or of the court of general quarter sessions of the peace of the county where such offender is required to appear by virtue of such recognizance; and such recognizance and other proceedings shall be as good and effectual in law, to all intents and purposes, and of the same force and validity as if the same had been entered into, taken or acknowledged before a justice or justices of the peace in and for the proper county where the offence was committed, and the same proceedings shall be had thereon; and in case such constable or other person, to whom such recognizance or other proceeding shall be so delivered as aforesaid, shall refuse or neglect to deliver over the same to the clerk of such court as aforesaid, where the offender is required to appear by virtue of such recognizance, such constable or other person shall forfeit thirty dollars, to be recovered against him with costs, by action of debt, bill, plaint, or information in any court of record having cognizance thereof, by any person who will prosecute or sue for the same; and in case the offence for which such offender shall be apprehended in any other county shall not be bailable in law by a justice of the peace, or such offender shall not give bail for his or her appearance at the next court of oyer and terminer and general jail delivery, or of general quarter sessions of the peace to be held in and for the county where the offence was committed, to the satisfaction of the justice or justices before whom such offender shall be brought in such other county, then the constable or other person so apprehending such offender, shall carry and convey such offender before one of the justices of the peace of the proper county where such offence was committed, there to be dealt with according to law.

13. *And be it enacted*, That no action of trespass or false imprisonment, or information or indictment shall be brought, sued, commenced, exhibited or prosecuted by any person against the justice or justices who shall endorse such warrant, for or by reason of his or their endorsing the same; but such person shall be at liberty to bring or prosecute his or her action or suit against the justice or justices who originally granted such warrant, in the same manner as such person might have done in case this clause of this act had not been passed.

CHAPTER 8.

COURT FOR TRIAL OF SMALL CAUSES.

1. Jurisdiction of the court.
2. Limited to the county.
3. Constables the ministerial officers.
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6. Writs so issued void.
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10. When process must be summons.
11. When warrant may issue.
12. Proceedings in case of warrant.
13. Defendant discharged on payment.
14. His recognizance, and its form.
15. Proceedings, if he does not appear.
16. Demand and plea, when filed.
17. Defendant precluded thereafter.
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24. Who, jury of six men.
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30. But not in suit on former judgment.
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85. Who not to prosecute or defend suits.
- 86-7. Fees.

An Act constituting courts for the trial of small causes.

REV. 557, 629,
769, 772.

Revision.....Approved April 16, 1846.

HAR. 5, 458.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That every suit of a civil nature at law, where the debt, balance or other matter in dispute does not exceed, exclusive of costs, the sum or value of one hundred dollars, shall be and hereby is made cognizable before any justice of the peace of any county in this state, who is hereby authorized to hold a court within such county, to hear, try and determine the same according to law, although the cause of action did not arise in said county ; which court shall be a court of record and vested for the purposes

1833-4.

PAMPH. 167.

1836-7.

PAMPH. 399

1845.

PAMPH. 262.

Jurisdiction
of the court.

- TITLE VII.
CHAP. 8.
- What actions
not triable in.
- Limited to
the county.
- Constables to
be the minist-
erial offi-
cers.
- Of writs and
process.
- Justice not to
issue blank
writs.
- Penalty.
- Such process
void.
- First process
- aforesaid, with all such power as is usual in courts of record of this state; *provided always*, that this act shall not extend to any action of replevin, slander, trespass for assault, battery or imprisonment, nor to any action wherein the title to any lands, tenements, hereditaments or other real estate shall or may in any wise come in question.
2. *And be it enacted*, That the territorial jurisdiction of every justice of the peace under this act, shall be co-extensive with the limits of the county for which he is appointed and commissioned; his writs, precepts and process shall run in and through such county, and he may, in causes pending before him, award writs of subpœna for witnesses into other counties of this state.
3. *And be it enacted*, That the constables of the several townships in such county, shall be the ministerial officers of the said court, and it shall be the duty of said constables to execute within the county all precepts, summons, warrants, writs and other process issuing out of the said court, and to them or any of them directed and delivered, and make return thereof, and to perform all matters, acts and things appertaining to their offices aforesaid.
4. *And be it enacted*, That all such precepts, summons, warrants, writs and other process shall be tested the day on which they are respectively issued, and shall be signed and sealed by the justice who issued the same.
5. *And be it enacted*, That if any justice of the peace shall sign his name to any blank summons or warrant, and allow any constable or other person to fill up the blank or blanks in the said process, without the special direction of the said justice, and in his presence, and shall afterwards issue the said process, or suffer the same to be served, such justice shall be deemed guilty of misbehaviour in office, and on conviction thereof, shall forfeit and pay the sum of fifty dollars, to be recovered by action of debt, by any person who shall prosecute for the same, in any court having jurisdiction of the case, one half for the use of the person prosecuting and the other half for the township in which such justice shall reside.
6. *And be it enacted*, That the service of any summons or warrant which shall have been issued by the justice as aforesaid, in blank, and afterwards filled up by the constable or other person, without the special direction of the justice, as aforesaid, shall be taken and considered to be altogether void, and any judgment or other proceeding afterwards had or taken, in consequence of such service, or founded thereupon, shall be void and of no effect.
7. *And be it enacted*, That the first process which shall be issued against any defendant by virtue of this act, shall be a summons, or

a warrant in nature of a *capias ad respondendum*, as the case may require, but the plaintiff may, notwithstanding, in any case make use of the former. TITLE VII.
CHAP. 8.

8. *And be it enacted*, That the summons to cite the defendant to appear before the said justice, shall specify a certain place and time, not less than five, nor more than fifteen days from the date of such process, and shall be served at least five days before the time of appearance mentioned therein, by reading the same to the defendant, and delivering to him a copy thereof, when required, if he or she shall be found, and if not found, by leaving a copy thereof at his or her house or place of abode, in presence of some free person of the family, of the age of fourteen years, who shall be informed of the contents thereof; and the constable serving such summons shall, on the oath of his office, endorse thereupon the time and manner he executed the same, and sign his name thereto. Summons,
and how
served.

Return endorsed.

9. *And be it enacted*, That if the defendant does not appear the time and place expressed in such summons, and it shall appear by the return endorsed thereon, that the summons was duly served, and no sufficient reason be assigned to the justice why the defendant does not appear, then the said justice may proceed to hear and determine the cause, in the absence of such defendant. Defendant
absent, jus-
tice may pro-
ceed.

10. *And be it enacted*, That the process which shall be used by virtue of this act, in cases where the defendants are freeholders, and residents in the county where such process shall be issued, and in cases wherein the defendants cannot be held to bail, shall be a summons. Where pro-
cess must be
summons.

11. *And be it enacted*, That if any plaintiff, his attorney or agent, shall prove, either by his or her own oath or affirmation, or by the oath or affirmation of any indifferent person, to the satisfaction of the justice, that if the process be by summons against such freeholder, the plaintiff will be in danger of losing his or her debt or demand, or doth really believe that such freeholder will abscond or depart, or remove from the county wherein he or she resides, before the return day of such summons, then it shall be the duty of the said justice to issue a warrant against such freeholder; *provided*, that no warrant shall be issued for debt, except in cases of fraud. When war-
rant may is-
sue.

12. *And be it enacted*, That the warrant commanding the defendant to be arrested, may, under this act, be used in all cases where the defendant is not a freeholder, residing in such county, and can by law be held to bail, and shall be returnable forthwith after service thereof; and the constable serving said warrant shall, according to the tenor thereof, forthwith convey the said defendant before the justice who issued the same, who shall thereupon, Proceedings
upon war-
rant.

TITLE VII.
CHAP. 8.

at his discretion, either cause the said defendant to enter into recognizance in the manner hereinafter mentioned, or on neglect or refusal, shall command the said constable to convey the said defendant to the jail of the county, to be there detained in custody until time may be had for the hearing or trial of the cause, not exceeding three days from the time of the return of the said warrant, or such justice may direct the said constable to hold the said defendant in custody, until the plaintiff shall be notified and have time to appear and proceed to such hearing or trial; and the constable who served the said warrant as aforesaid, shall, on the oath of his office, endorse thereon the execution of the same and sign his name thereto; *provided always*, that nothing in this act contained shall be construed to prevent the constable from discharging from arrest any person arrested either on mesne process or process of execution, in pursuance of the act entitled, "An act abolishing imprisonment on civil process in certain cases;" and *provided also*, that if any person or persons whatsoever, shall hereafter be arrested by virtue of such warrant, it shall be lawful for the constable who served the same, to permit the defendant to enter into bond to the plaintiff, with a good and sufficient freeholder, to the amount of the debt or damages and costs endorsed on the warrant, for his, her or their appearance on the day and hour mentioned in the bond, not more than eight days (excluding Sundays) from the service of the warrant; the bond to be entered into by the defendant, shall be in the form and to the effect following, to wit: We, A. B. and C. D. do hereby acknowledge ourselves indebted to E. F. in the sum of _____ to be paid to said E. F. on the following conditions: that if the said A. B. shall be and appear before _____ one of the justices of the peace of _____ on the _____ day of _____ at _____ o'clock _____ noon, and answer unto the complaint of the said E. F. then this bond to be void, or else to be and remain in full force and virtue; in witness whereof we have hereunto set our hands and seals, the _____ day of _____ in the year of our Lord one thousand eight hundred and _____. Sealed and delivered in the presence of G. H., I. K. Signed A. B. and C. D.

Which bond the said constable is hereby ordered and directed, when taken, to deliver to the justice on the return of the warrant, to be by him filed in his office, to and for the use of the plaintiff, for which service the constable shall be entitled to twenty-five cents costs, to be paid by the defendant, and not recoverable by him from the plaintiff. And in all cases, the said constable shall attend at the said justice's court, on the day and hour mentioned in said bond, to be there and then ready to secure and take into his custody the said defendant; and if the said justice shall not be

When trial
to be had.

How defend-
ant may be
discharged.

See TIT. IX.

May give
bond.

Form of.

Duty of con-
stable.

found at his dwelling, or usual place of holding trials, the defendant shall be permitted to renew his bond, with sureties as aforesaid, for his appearance at some future day, not exceeding ten.

TITLE VII.
CHAP. 8.

13. *And be it enacted*, That the said justice shall enter in the body of every summons or warrant, the sum demanded, (and endorse the same, with costs, on the said summons or warrant) which he shall issue by virtue of this act; and if the defendant think proper to pay such debt, damages or demand, with costs, so entered or endorsed, without any further proceedings in the cause, then it shall be lawful for the constable to receive the same, and his receipt shall be a full discharge to such defendant from such debt, damages or demand and costs aforesaid; and if any constable shall not pay the money so by him received for such debt, damages or demand to the justice issuing such process, or to the plaintiff in the said process, or his legal representative, within fifteen days after he shall have received the same, then such constable shall be liable to pay to such plaintiff or his legal representative, the amount of the said debt, damages or demand, with interest, to be recovered by action of debt, with double costs.

Sum endorsed on warrant; if paid, defendant discharged.

Liability of constable.

14. *And be it enacted*, That the recognizance directed in the twelfth section of this act, shall be entered into by the defendant, with at least one surety, having sufficient freehold, and residing in the county, to the plaintiff in the said action, in the amount of the demand specified in the warrant, according to the effect and meaning of the following form, that is to say:

Recognizance, and form of.

_____ county, to wit:

Whereas A. B. hath been arrested and is now in custody, by virtue of a warrant issued by C. D. one of the justices of the peace in and for the said county, at the suit of E. F. in an action of _____ for the sum of _____. Now be it remembered, that on the _____ day of _____ in the year of our Lord, one thousand eight hundred and _____ the said A. B. and G. H., of the county aforesaid, personally appeared before me the said C. D. and jointly and severally acknowledged themselves to owe to the said E. F. the sum of _____ to be made and levied of their several goods and chattels, upon condition, that if the said A. B. shall not appear on the _____ day of _____ next, before the said justice, or if he does appear and is condemned in the said action, at the suit of the plaintiff, that he shall pay the costs and condemnation money, or surrender him up to the constable, on the execution to be thereafter issued against him, on the day judgment shall be obtained, and if he fail so to do, that he the said G. H. will pay the said costs and condemnation money for him, and suffer judgment to be entered up against him for the same.

TITLE VII.
CHAP. 8.

Acknowledged the day and year last above said, before me C. D. one of the justices of the peace in and for the said county of _____ . And every justice of the peace is hereby empowered and directed to take such recognizance, which shall remain with such justice, for the benefit of the plaintiff in the suit.

Proceeding,
if defendant
does not ap-
pear.

15. *And be it enacted*, That if the defendant does not appear at the time and place expressed in such recognizance, and no sufficient reason shall be assigned to the justice why the defendant does not appear, then the said justice may proceed to hear and determine the cause, in the absence of such defendant.

When de-
mand and
plea filed.

16. *And be it enacted*, That the plaintiff in such suit shall, on or before the return day of the said summons, or on the return of the warrant, or at the time of appearance specified in the recognizance, deliver, or cause to be delivered, to the justice before whom the action is to be tried, a copy of his or her account or state of demand against the defendant, and in default thereof, the said plaintiff shall be nonsuited, with costs; and if the defendant have any account or demand against the plaintiff, he shall be permitted to discount or set off the same against the account, debt or demand of such plaintiff; but such copy of his or her account, or state of his or her demand, so intended to be set off, shall be delivered to the said justice, on or before the return day of the summons; or if on a warrant, then at the time of hearing of the cause; and in default thereof the said account or demand shall not be received in evidence on the trial of the said cause; but if the said warrant shall not have been executed three days prior to the day of hearing, then the said defendant, if he or she have any account or demand to set off and will enter into recognizance, as directed by the twelfth section of this act, shall be allowed further time, not exceeding three days, to deliver to the said justice such copy of his or her account or state of demand as aforesaid.

Defendant
precluded
thereafter.

17. *And be it enacted*, That if any defendant neglect or refuse to deliver a copy of his or her account or state of demand, against such plaintiff, he or she shall for ever thereafter be precluded from having or maintaining any action for such account or demand, or from setting off the same in any future suit; *provided always*, that where the balance found to be due to such defendant exceeds the sum of one hundred dollars, then the said defendant shall not be precluded from recovering his or her account or demand against such plaintiff, in any other court of record having cognizance of the same.

When cause
shall be
heard.

18. *And be it enacted*, That when the parties in any suit to be instituted by virtue of this act, shall appear at the place and time expressed in the summons, or at the return of the warrant, or at

the time of appearance mentioned in the recognizance, the said justice shall proceed to hear or examine their respective allegations and proofs, unless he shall think it proper to adjourn the trial. TITLE VII.
CHAP. 8.

19. *And be it enacted*, That in cases of trial by jury, there shall be no judgment of nonsuit or discontinuance after the merits of the cause on either side are submitted to the jury, unless by the consent of both parties. No nonsuit
on trial be-
fore jury.

20. *And be it enacted*, That any justice of the peace, before whom a suit is instituted by virtue of this act, may, to prevent fraud or surprise on either side, or on reasonable cause being assigned by or in behalf of either party, adjourn the trial to any time not exceeding thirty days from the return day of the summons, or, if the process be by warrant, from the time when the same was returned, or from the time of appearance mentioned in the recognizance, except where the applicant for such adjournment shall make oath or affirmation that he cannot safely go to trial for want of a material witness, whom he shall name, being absent and out of this state, and then such justice may postpone the trial to any time not exceeding three months from the return day of the summons; *provided*, that if the process is by warrant, the defendant shall, previous to such adjournment, if required by the justice, enter into recognizance to the plaintiff, as in and by this act is before directed; *provided also*, that if either of the parties to a suit, hereafter brought before a justice of the peace, cannot, on the day of the first adjournment, safely go to trial for the want of a material witness in the cause, whom he shall name, and thinks he can produce on a future day, and shall file an affidavit thereof with the justice, then the justice may adjourn the trial to any future day, not less than five nor more than thirty days from the day of such adjournment, on payment of the cost by the party who makes application for the same. Trial, when
and how ad-
journd.
Witness out
of state.
Witness ab-
sent.

21. *And be it enacted*, That where parties agree to enter, without process, any action before a justice of the peace, to the decision of which he is competent, if process had been executed, such court shall proceed thereon to final judgment and execution, in the same manner as if a summons or warrant had been issued and duly served; but if judgment by confession shall be entered against the defendant, unless an affidavit shall first be made, as directed in the fifth and sixth sections of an act entitled, "An act directing the mode of entering judgments on bonds with warrants of attorney to confess judgments;" (which affidavit shall be filed and preserved by the said justice,) such judgment shall not operate or have any effect against any person or persons not parties in said action, but shall be binding and have its full effect, so far as relates to the parties in the suit only. Action by
consent.
See TITLE
XXXIV.
Judgments
by confes-
sion.

TITLE VII.
CHAP. 8.Jury de-
manded, and
when.Process and
qualifica-
tions.

22. *And be it enacted,* That in every action which shall be brought before any justice of the peace by virtue of this act, it shall and may be lawful for either of the parties, after the defendant has appeared or put in his plea to such action, and before the said justice has proceeded to inquire into the merits of the cause, to demand a trial by jury, which the said justice is hereby required to grant, and thereupon a venire shall be issued to summon a jury of six men, and no more, if the debt, demand or matter in dispute do not exceed the sum of fifty dollars, or a jury of twelve men, if the debt, demand or matter in dispute exceed the sum or value of fifty dollars, being citizens of this state, above the age of twenty-one years, and under the age of sixty-five years, and freeholders in the county where the said cause is to be tried, and in no wise akin to the plaintiff or defendant, nor interested in the suit, to be and appear before the said justice at such time and place as shall be expressed in the venire, to make a jury for the trial of the action between the parties mentioned therein; and the constable shall, at the return of the said venire, return, annexed thereto, a panel containing the names of the jurors whom he shall have summoned by virtue thereof; and, if on the return of the venire it shall appear that one or more of the jurors are disqualified to serve or do not appear, then it shall be lawful for the constable who served the same, by order of the court, immediately to summon others, who shall serve in their stead.

Who to pay
the jury of
twelve men.

23. *And be it enacted,* That when the plaintiff, in an action of debt, shall demand a jury of twelve men, and such jury shall find a sum in favour of the plaintiff, not exceeding fifty dollars, and not less than ten dollars, then the plaintiff shall pay one half of the costs of the jury; and if the sum found by such jury in favour of the plaintiff be less than ten dollars, then the plaintiff shall pay the whole costs of the jury.

Of six men.

24. *And be it enacted,* That when the plaintiff, in an action of debt, shall demand a jury of six men, and such jury shall find a sum in favour of the plaintiff, under ten dollars, the plaintiff shall pay the whole costs of the jury.

Juror's oath.

25. *And be it enacted,* That to the jurors and each of them who shall be returned to try the said cause as aforesaid, the said justice shall administer the following oath or affirmation:

You do swear in the presence of Almighty God, (or do affirm, as the case may require,) that you will well and truly try the matter in difference between ——— plaintiff, and ——— defendant, and a true verdict give, according to evidence.

Witness'
oath.

That to every witness produced at the said trial, the justice shall administer the following oath or affirmation:

You do swear in the presence of Almighty God, (or do affirm, TITLE VII.
CHAP. 8.) as the case may require,) that the evidence you shall give to the court and jury in this matter in difference between ——— plaintiff, and ——— defendant, shall be the truth, the whole truth, and nothing but the truth.

And that to the constable who shall be appointed to attend the jury, the said justice shall administer the following oath or affirmation: Constable's
oath.

You do swear in the presence of Almighty God, (or do affirm, as the case may require,) that you will, to the utmost of your ability, keep every person sworn (or affirmed) on this jury, together in some private or convenient place, without meat or drink, water excepted, that you will not suffer any person to speak to them, nor speak to them yourself, except by order of the court, unless it be to ask them whether they have agreed on their verdict, until they have agreed on their verdict.

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 give evidence in any such action, shall forfeit and pay for every such default or refusal, unless some reasonable cause be assigned, such fine, not exceeding twenty dollars nor less than one dollar, 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. Fines of jurors and witnesses.

27. *And be it enacted*, That if the plaintiff, other than executors or administrators, in any such action, shall be nonsuited, or shall discontinue or withdraw his action, without the consent of the defendant, then judgment shall be given against such plaintiff, for the costs which have accrued, or if such plaintiff shall appear to owe, or be indebted to the defendant, then judgment shall be given against him for the debt or damages, and costs, as the case may require. When judgment against plaintiff.

28. *And be it enacted*, That when judgment shall be given against the plaintiff or defendant, by virtue of this act, the said justice shall grant execution thereupon, commanding the constable to levy and make the debt or damages and costs, of the goods and chattels of the party, and for want of sufficient goods and chattels whereon to levy and make the same, to take the body of such party, and convey him to the jail of the county; *provided always*, that no execution shall issue against the body for debt, in any action, or on any judgment founded upon contract, unless in cases of fraud, nor The execution.
Against whom, and how to be issued.

TITLE VII.
CHAP. 8.

against the body of any female; *and provided also*, that when judgment shall be obtained against executors or administrators, execution shall issue thereon, in the same manner as it is issued against them in the other courts of law of this state.

Stay of execution,

29. *And be it enacted*, That if any defendant shall appear at the return of the summons or warrant, or by consent without process, or on the day that judgment shall be rendered, and procure a good and sufficient freeholder, resident in the county, to join with such defendant in a confession of judgment, to the adverse party, with costs, then if the judgment shall not be more than fifteen dollars, nor less than five dollars, no execution shall issue until after one month from the time of rendering such judgment; and when the judgment shall exceed fifteen, and not exceed sixty dollars, no execution shall issue until after three months from the time of rendering such judgment; and when the judgment shall exceed sixty dollars, no execution shall issue until after six months from the time of rendering such judgment.

one month,

three months

six months,

But not in suit upon former judgment.

30. *And be it enacted*, That where a suit shall be brought upon any judgment recovered before a justice of the peace, and judgment rendered in favour of the plaintiff, no stay of execution shall be allowed thereon; *provided*, the time herein before limited, for stay of execution upon such sum, shall have expired since the date of the first judgment, and if not, such further stay of execution shall be allowed as with the time already passed since the date of the first judgment, will make up the time allowed for stay of execution on such sum, as is directed by the preceding section of this act.

Goods, how advertised and sold.

31. *And be it enacted*, That the constable, who by virtue of such execution, levies on any goods and chattels, shall give notice by advertisements, signed by himself, and put up in three of the most public places in the township where they were taken, of the time and place they will be exposed to sale, at least five days before the time appointed for selling them, and therein describe the goods and chattels so taken; and shall, at the time and place so appointed, expose them to sale by public vendue, and strike them off to the highest bidder, and pay the money thence arising to the plaintiff, or in case of his absence to the justice, and within thirty days from the time he shall receive the execution, make return to the justice who issued the same, of the proceedings had thereon, and the said justice shall make a record thereof.

Money paid over.

Proceedings on claim of property.

32. *And be it enacted*, That in all cases where any constable shall, by virtue of any writ of execution or attachment, issuing out of this court, levy on, attach, or take into his possession, any goods or chattels, which shall be claimed, by notice in writing, delivered

to said constable, by any other person than the defendant, he shall immediately, upon such claim, delay his sale of the same for the space of ten days, that the said claimant may, within the said term, apply to some justice of the peace within or near the township where such goods or chattels were so seized, for a venire to summon a jury of six lawful men as jurors, to try the right of such claimant to said property; and it shall be lawful for such justice of the peace to issue the same, and direct a return thereof to be to him made, and to proceed therein as in other cases of trial by jury, but the claimant shall, in all cases, give notice in writing to the plaintiff of the time and place of the said trial; but if the said claimant shall not, within ten days apply to a justice and have his right tried as aforesaid, the said claim shall be considered abandoned, and the constable shall proceed as if it had not been made.

33. *And be it enacted*, That the verdict of such jury shall protect the said constable from any action for taking and seizing such property, or delivery thereof to the claimant; and if the said property shall be found to belong to the said claimant, the said constable shall proceed no further with the same; but if it shall be found to belong to the defendant, he shall proceed to dispose of the same, as is directed in such process; and the costs attending such trial shall be taxed by the said justice as in other cases, and shall be paid by the plaintiff at whose suit the said property was taken and seized, if the said claimant obtain a verdict in his favour; and by such claimant if the verdict is found against him; *provided*, that if the plaintiff, upon notice being given to him as aforesaid, shall indemnify the constable against the demand of the claimant, then he shall suspend any further proceeding therein, and proceed to sell.

34. *And be it enacted*, That for want of goods and chattels whereon to levy, the said constable shall, when execution is issued against the body, according to the tenor of the said execution, take the body of the person against whom the said execution is issued, and convey and deliver him to the keeper of the common jail of the county, who is hereby commanded to keep such person in safe custody, in the common jail aforesaid, until the debt or damages, with costs, be fully paid, or until he be thence delivered by due course of law; and the said constable shall, at the same time, deliver to the said jailer a copy of said execution, and shall take said jailer's receipt upon the execution, and return the same to the justice who issued it, who shall make a record thereof in his docket; and if the said keeper shall suffer such person so committed to his custody, to go or to be at large out of the said jail, except by virtue of some writ of habeas corpus, before the said debt or da-

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How claim
tried.

Effect of, and
proceedings
after, verdict

Constable to
sell, if indem-
nified.

Of taking the
body on ex-
ecution.

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magés, with costs, be paid, or he be thence delivered by a due course of law, then every such going or being out of the said jail, shall be an escape, for which the sheriff shall be responsible to the plaintiff, to the amount of the debt or damages and costs, for which such person shall be committed, to be recovered by the said plaintiff, with costs, by action of debt.

Execution in
force one
year.

35. *And be it enacted*, That every execution which shall or may be issued by any justice of the peace, upon any judgment rendered in pursuance of this act, shall be in full force and operation against the goods and chattels levied on for the term of one year from the time of issuing the same, unless sooner satisfied; and all executions which shall remain unsatisfied for the space of one year thereafter, shall be null and void; but in case the said execution shall not have been duly paid or satisfied, within one year after the issuing thereof, the plaintiff or plaintiffs shall and may proceed by scire facias, to revive the judgment and obtain execution thereon, with costs, in the same manner as he or they might or could do by law, in case execution had not been issued upon any judgment which had been rendered for more than one year.

Plaintiff may
have sci. fa.

Alias and
pluries ex-
ecution.

36. *And be it enacted*, That upon the return of the original execution unsatisfied, the justice who issued the same shall have power and authority to issue an alias execution, and upon the return of the alias unsatisfied, the said justice may issue a pluries execution, which said writs may be levied on the goods and chattels of the defendant, and shall be made returnable, and be in all things executed in like manner as the original execution.

Priority of
executions.

37. *And be it enacted*, That where one or more executions, issued by virtue of this act, shall have been levied by one or more constables upon the goods and chattels of any defendant, the said executions shall have and obtain priority according to the time of levying the same, and all surplus moneys arising upon any sale by virtue of any execution, shall be paid to the officer or person holding the next oldest execution which shall have been levied as aforesaid, until all executions levied upon the goods and chattels of any defendant, at the time of the sale upon the first execution, be satisfied or so far satisfied as there shall be proceeds for that purpose, according to their respective seniority as aforesaid; and in case two or more executions, at the suit of different plaintiffs, shall be levied at the same time, such execution or executions shall have preference according to the time when they were received, which shall be noted on each execution by the constable at the time of receiving the same; and if two or more executions shall have been delivered to a constable at the same time, against the same defendant, then the moneys arising from the sale under or by virtue of the

said executions, or either of them, shall, if not sufficient to satisfy both or all of them, be applied towards the satisfaction of the several executions in proportion to the sums due on them respectively.

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38. *And be it enacted*, That it shall be the duty of the constable to whom shall be delivered any execution, issued under the provisions of this act, to take an inventory, in writing, of such and so much of the property of the defendant as he means and intends to levy upon; which inventory and levy, and the actual time of making the same, shall be annexed to the said execution, and signed by the said constable, under his oath of office, and shall at all times be received as evidence of the levy, and of the time of making the same, as contemplated by this act, and that the property so levied upon shall be bound from the time of such levy and not before.

Property levied on to be inventoried.

39. *And be it enacted*, That if the constable to whom any execution is delivered shall not perform the duties, or any of them prescribed by this act, respecting such execution, such constable shall be liable to pay to the person in whose favour the said execution is issued, the debt or damages and costs, or any of them, mentioned therein, to be recovered by action of debt with double costs, by the person so as aforesaid injured thereby; and when any constable shall have in his hands one or more executions, and not have performed the duty required of him by law on the same, he shall be liable to be prosecuted on such execution or executions, separately or jointly, by the person or persons in whose favour said execution or executions were issued, who may recover as aforesaid in an action of debt with double costs; and if it shall appear that the said constable has received the money or any part thereof, on any execution for which a suit shall be brought, in that case he shall pay to the plaintiff treble costs; and when any judgment shall be had against any constable for any delinquency in his office, execution may be issued immediately against him for debt and costs.

Constable liable for neglect

40. *And be it enacted*, That when, in any action to be brought by virtue of this act, the defendant shall, as a justification, plead title to any real estate in himself or another, under whom he acted or entered, such defendant shall commit the said plea to writing, and having signed the same shall deliver such plea to the said justice, who shall countersign and deliver it to the plaintiff; and thereupon it shall and may be lawful to and for such plaintiff to commence and prosecute his action against such defendant in the supreme court; and if in such action the plaintiff recover any damages, he shall be entitled to and recover therewith all costs of suit.

Title to lands pleaded.

41. *And be it enacted*, That on every trial so to be had in such action where title is pleaded, the plea, so as aforesaid signed

Effect of plea.

TITLE VII
CHAP. 8. by the said defendant, shall be conclusive evidence that such defendant relied on title by way of justification.

Bond required in such case.

42. *And be it enacted*, That the justice, to whom a plea of justification is tendered as aforesaid, shall, before he receives such plea, require and obtain from the defendant a bond, with one good surety, being a freeholder in the said county, in the penalty of one hundred dollars, executed to the plaintiff, and conditioned, that if the said plaintiff shall commence such action in the supreme court, within three months thereafter, the said defendant will appear thereto, within twenty days after the writ to be thereupon issued against him shall be returned served, and shall pay such costs as may be awarded against him in the said action; and in case such plea is tendered and the defendant shall not forthwith enter into such bond to the plaintiff, the said justice shall proceed in the same manner as if such plea had not been tendered.

Condition.

Appeal allowed, in what cases.

43. *And be it enacted*, That from any judgment which may be obtained before any justice of the peace, except such as shall have been given by default or by confession, or in the absence of the defendant, where the trial did not take place in his presence, or on a debt, balance, demand or other matter in dispute, not exceeding three dollars, either party may appeal to the court of common pleas of the county, to be holden next after the rendering of such judgment; which appeal the said justice is hereby directed to grant, on the following and no other terms, that is to say: the party demanding such appeal shall enter into bond to the other party, with at least one sufficient surety, being a freeholder in the county, and in double the sum for which such judgment was given, conditioned that the appellant shall appear and prosecute the said appeal in the said court of common pleas, shall stand to and abide the judgment of the said court, and pay such further costs as shall be taxed, if

Appeal bond.

When affidavit required.

the judgment be affirmed; *provided always*, that no appeal shall be granted to remove a judgment rendered upon the verdict of a jury, or on the report of referees, unless the party demanding the appeal, shall at the time of filing the appeal bond with the justice, also file with him an affidavit, made by the said party, before any justice of the peace, stating that the said appeal is not intended for the purpose of delay, and that he verily believes that he hath a just and legal ground of appeal upon the merits of the case; which said affidavit the said justice shall cause to be sent up to the court to which the appeal is taken, with the other papers in the cause.

Pleas may order stay of execution.

44. *And be it enacted*, That in all cases of appeal the court of common pleas, to which such appeal shall be taken, upon filing of the appeal bond with the clerk of said court, shall, if they are satisfied

with the legality and sufficiency of the same, have power to order a stay of the execution which may have been issued by the justice, until the said court of common pleas shall make some further order thereon, a rule to which effect shall be entered in the minutes of the said court, and a copy thereof, certified by the clerk, shall be served on the constable in whose hands the execution may be.

45. *And be it enacted*, That the several courts of common pleas in and for the respective counties of this state, shall have cognizance of and hear and determine all such appeals in a summary way, and give judgment and award execution thereon with costs, either on the affirmance or reversal of the judgment so appealed from; but the same and no other documents, proofs and witnesses shall be produced and examined in the said court of common pleas, as had been previously produced and examined in the court below, except where the justice shall have admitted illegal or rejected legal evidence, and then such court of common pleas, on the hearing of the said appeal, shall reject such illegal evidence so admitted, and admit such legal evidence so rejected by the said justice.

46. *Provided always, and be it further enacted*, That if the parties to the said appeal, or either of them, shall, at the term to which said appeal is made, file an affidavit with the clerk of the court to which such appeal shall be made, stating that he hath newly discovered evidence, and setting forth the substance of the same and the names of witnesses to be examined, the said court of common pleas shall, upon the trial of the said appeal, admit the said newly discovered evidence; *provided*, the same shall be otherwise legal and proper.

47. *And be it enacted*, That the court of common pleas may permit the appellant to substitute a new appeal bond, in the place of the appeal bond filed and sent up by the justice; *provided*, that no delay in the trial of the said appeal shall be occasioned thereby.

48. *And be it enacted*, That every appeal from the judgment of any justice of the peace, founded on the verdict of a jury, shall be heard and determined by the court, to whom such appeal is or shall be made, as in other cases; unless either of the parties to the said appeal shall demand a trial by jury, in which case the sheriff shall return a jury, either immediately or at such future time as the said court shall direct, and that by order of the court and without writ.

49. *And be it enacted*, That when judgment shall have been rendered upon the verdict of a jury, the court of common pleas, to which such appeal shall be made, shall, before they proceed to hear and determine the same, amend the process, proceeding, verdict and judgment, in all things which by the act entitled, "An act re-

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How appeal
tried;

on same evi-
dence.

How newly
discovered
evidence ad-
mitted.

New appeal
bond substi-
tuted.

Tried by
court, unless
jury demand-
ed.

Amend-
ments made.

See TITLE
XXXIV.

- TITLE VII.
CHAP. 8. specting amendments and jeofails," are amendable on writs of error, after verdict in other courts; and if it should be inconvenient, actually to make such amendments, then every thing so amendable, shall be taken and considered as amended, and proceeding shall be had thereupon, as if the same had been actually done.
- Judgment on report of referees reviewed. 50. *And be it enacted*, That if such judgment shall have been rendered upon the report of referees the court of common pleas to which such appeal shall be made, shall have power to inquire into such report of referees, and the judgment thereupon, and either to affirm or set aside the same for the same causes and upon the same principles as reports of referees are set aside in such court in other cases, and to award a trial before themselves, if need be, in the same manner as is directed in other cases.
- No nonsuit on trial of appeal. 51. *And be it enacted*, That the provisions of the nineteenth section of this act, shall apply as well to causes on appeal before the court of common pleas as to causes pending before the justice.
- Nor new trial granted. 52. *And be it enacted*, That after the trial of an appeal in the court of common pleas, no new trial shall be granted by the said court.
- Justice who tried case not to sit. 53. *And be it enacted*, That no justice of the peace, who heard and determined the said cause, shall sit as a judge of any of the courts of common pleas, on the hearing and determining of the same cause on appeal, or give any opinion thereon.
- Justice to send up transcript and bond. 54. *And be it enacted*, That the justice who grants an appeal as aforesaid, shall send a transcript of the proceedings and judgment in the said cause, under his hand and seal, together with the bond aforesaid, to the clerk of the court of common pleas to which such appeal is made, on or before the first day of the court next ensuing such appeal.
- Rules of reference to be entered. 55. *And be it enacted*, That in every suit to be instituted before any justice of the peace, by virtue of this act, and in every appeal to be made before any court of common pleas, it shall and may be lawful for such justice of the peace, or court of common pleas, as the case may be, with the assent and at the request of the parties, to enter rules of reference of the matters in difference, to such persons as shall be nominated and agreed upon by and between the parties; and the reference so made, shall and may be conducted in the same manner in all respects, as directed in the case of references by rule of court, in and by the act entitled, "An act for regulating references, and determining controversies by arbitration;" and the report of the said referees, or the major part of them, whether in favour of the plaintiff or defendant, appellant or appellee, shall be final and conclusive to the parties, judgment shall be entered thereon with costs, and execution issued accordingly.
- See TRR. IV.

56. *And be it enacted*, That it shall be the duty of every justice of the peace, before whom any suit shall be instituted, to enter in a book to be kept for the purpose, the names of the plaintiff and defendant, the style and nature of the action, the sum demanded, the time of issuing process, and when returnable, the return made thereto by the constable, when the copy of the account or state of the demand was delivered by the parties, or either of them, the time of taking the recognizance, the adjournment, the rule of reference, and report of referees, the jury, when and by whom demanded, the venire, when issued and how returned, the time of trial, and names of the jurors and witnesses, the admission of evidence objected to, and the rejection of evidence offered, the verdict and judgment and when given, the execution or executions, when issued, the endorsement thereon, and how returned by the constable, the appeal, when and by whom demanded, and all the proceedings before him had, touching the said suit; *and further*, it shall be the duty of such justice to grant to either party, when required, a certified copy of such proceedings.

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Justice's
docket, en-
tries in.

Party enti-
tled to certi-
fied copy.

57. *And be it enacted*, That the book in which such proceedings shall be entered by any justice of the peace, shall, within one year after the death of the said justice, be deposited in the office of the clerk of the county wherein the said justice resided and held his commission, to be there kept as a public record; and if the executors or administrators of such deceased justice shall neglect or refuse to deliver the said book, at the expiration of the said term of one year, to the said clerk as aforesaid, he, she or they, so refusing or neglecting, shall forfeit and pay the sum of sixty dollars, to be recovered by action of debt, with costs, in any court having cognizance of the same, and paid, when recovered, to the collector of the county, for the use of the county, who is hereby authorized and required to prosecute for the same.

Where depo-
sited after
death of jus-
tice.

Penalty for
neglect.

58. *And be it enacted*, That every justice of the peace, whose term of office has expired, or may hereafter expire, or who has resigned, or may hereafter resign, shall and may, when required so to do, make out transcripts from his docket or dockets, under his hand and seal, and certify them as late justice of the peace; which said transcripts so certified, shall be used as evidence in all courts of law and equity in this state, and have the same force and effect, and be liable to the like legal objections, as though the said justice was still in commission.

Justice out
of office may
give trans-
cripts.

59. *And be it enacted*, That if any justice of the peace shall be hereafter removed from his office by impeachment, the docket or dockets of the said justice shall be forthwith deposited in the clerk's

Impeach-
ed, docket
where de-
posited.

TITLE VII.
CHAP. 8. office of the county in which he resides at the time of such impeachment, there to be kept as a public record.

Same, on removal from county. 60. *And be it enacted*, That if any justice of the peace, either before or after the expiration of his term of office, shall be about to remove from the county in which he was commissioned, it shall be his duty to deposit his docket or dockets in the clerk's office of said county, prior to his removal therefrom, there to be kept as a public record.

Justice to have access to docket. 61. *And be it enacted*, That every justice of the peace and his legal representatives shall and may at all times after the said docket or dockets are deposited as aforesaid, have free access to the same without payment of any fees to the clerk therefor, to enable them to recover any costs which may be due the said justice thereon.

Penalty for not so depositing docket. 62. *And be it enacted*, That if any justice of the peace shall neglect or refuse to deposit his docket or dockets in the clerk's office, at the time and in the manner by this act directed, he shall forfeit and pay the sum of fifty dollars, to be recovered by action of debt, with costs, in any court of competent jurisdiction, and to be paid when recovered, to the collector of the county, for the use of the county; which suit shall be brought by the county collector, for the use of the county.

Oath to recover costs in other court. 63. *And be it enacted*, That if any person shall institute a suit for any debt or demand made cognizable before a justice of the peace, in any other court than a court for the trial of small causes, and obtain a judgment thereon for any sum which, without cost, shall not exceed one hundred dollars, then such person shall not recover or have any costs in said suit, unless before the commencement of the suit he shall have taken an oath or affirmation before a justice of the peace, and filed the same in the clerk's office of the court in which such suit was instituted, stating, that he believes that the sum due, or the damages sustained, exceed one hundred dollars, and then if he recover any sum whatever, the defendant shall be liable to pay costs.

Balance due considered the real debt. 64. *And be it enacted*, That whenever any bond, bill, note or other contract in writing, for the payment of any sum of money above one hundred dollars, shall by a bona fide payment of part of the consideration money, the receipt whereof shall be endorsed thereon, or by set off, be reduced to the sum of one hundred dollars or under, then the balance due on such deed or contract shall be considered the real debt, without regard to any kind of penalty expressed therein, and shall be recoverable before a justice of the peace, in the same manner as any other debt or demand of one hundred dollars, or under, is made recoverable by virtue of this act.

65. *And be it enacted*, That every sum of money, or penalty, TITLE VII.
CHAP. 8. not exceeding one hundred dollars, to be sued for and recovered by virtue of any law of this state, in any court of record, or in any court having cognizance thereof, shall be and hereby is made cognizable before any justice of the peace, in manner aforesaid. What penalties cognizable before justice.

66. *And be it enacted*, That no judgment, order or proceeding, Judgment reviewed only by certiorari. to be had or made by virtue of this act, shall be removed by writ of error, but by certiorari only.

67. *And be it enacted*, That no judgment, hereafter to be rendered, in any court for the trial of small causes, from which an appeal is given to the court of common pleas by this act, shall be removed into the supreme court or circuit court by certiorari or otherwise for the correction of any supposed error therein; but the party thinking himself aggrieved, shall have relief upon the appeal only, and that both as to matter of law and matter of fact. No certiorari allowed where appeal lies.

68. *And be it enacted*, That no justice of the supreme court shall grant or allow any certiorari to move any judgment, order or proceeding, to be had by virtue of this act, unless the party applying for such certiorari shall present to the said justice the reasons therefor, drawn up in writing and subscribed by himself or some attorney at law, and the same be deemed by the said justice to contain a probable cause for allowing such certiorari; and also, unless such applicant shall enter into bond to the other party in the sum of one hundred and fifty dollars, with one or more good surety or sureties, conditioned, that such applicant shall prosecute the said certiorari in the supreme court, shall pay the sum recovered in the court below, with interest and costs, if the judgment be affirmed, and shall, in all things, stand to and abide the judgment of the said supreme court respecting the judgment, order or proceeding given or made by the court below; which said bond shall likewise be tendered to the justice granting such certiorari, to be by him filed with the clerk of the supreme court, for the benefit of the obligee therein named, and on failure thereof no certiorari shall be allowed. How certiorari obtained.
Reasons.
Bond.

69. *And be it enacted*, That such certiorari shall be determined and adjudicated upon by the supreme court, at the first term after due return thereof shall be made, or be dismissed with costs, unless the said court shall think proper to adjourn the same till the next term, for further argument and advisement. When adjudicated.

70. *And be it enacted*, That if any judgment, to be given by virtue of this act, shall, on removal by certiorari, be affirmed by the supreme court, the plaintiff in certiorari shall pay to the defendant all costs arising on such suit in the said supreme court, for which the party entitled to such costs, may have execution, to be issued out of the supreme court, against the body or goods and Costs on affirmation, but not on reversal.

TITLE VII. chattels of the adverse party; but if such judgment be reversed,
 CHAP. 8. then the plaintiff in certiorari shall not be entitled to any costs.

Jurisdiction extended to circuit court. 71. *And be it enacted*, That the provisions of the last three preceding sections of this act shall extend to the circuit courts in the several counties of this state.

What errors or mistakes corrected. 72. *And be it enacted*, That no judgment of any justice of the peace, removed by certiorari before the supreme court or circuit court, shall be reversed in the whole on account of any error or mistake made by the justice by whom such judgment may have been rendered, in the entering, calculating or awarding of the costs of suit, but such judgment shall only be reversed so far as respects the said error or mistake; which error or mistake the court are hereby empowered to correct.

Costs in such cases. 73. *And be it enacted*, That in case any judgment be so affirmed in part and reversed in part, neither party shall pay costs in certiorari to the other.

Judgments not reversed for mere irregularity. 74. *And be it enacted*, That it shall not be lawful for the supreme court or circuit court to reverse any judgment of any court for the trial of small causes, for any irregularity in the proceedings of such court, unless such irregularity tends to defeat or impair the substantial right or interest of the party in certiorari praying such reversal.

Attorney may be sued. 75. *And be it enacted*, That all attorneys at law shall, for any debt, demand or damages, be liable to be sued before any justice of the peace by virtue of this act, in like manner or form of action as other citizens of this state not being attorneys are liable to be sued before such justice, any plea of privilege or exemption to the contrary notwithstanding.

Corporations, how sued; 76. *And be it enacted*, That any body politic or corporate in this state, shall and may be liable to be sued in the court for the trial of small causes by summons, which may be served on the president, cashier or clerk of said corporation, if found, and if not found, on any of the directors or managers of the said corporation, in such manner as is by law required for serving a summons.

and execution issued. 77. *And be it enacted*, That if judgment shall be given against any body politic or corporate by virtue of this act, the justice shall grant execution thereupon against the goods and chattels of such body politic or corporate, which may be levied on and sold according to law.

What suits to be in debt. 78. *And be it enacted*, That all suits brought or commenced before any justice of the peace in this state, on any bond or other specialty, note of hand, bill of exchange, book account or any other demand founded on simple contract for the payment of moneys only, shall be in the name and style of actions of debt, any law, usage or custom to the contrary notwithstanding.

79. *And be it enacted*, That if a material witness in an action

instituted in said court be in the state, but is ancient or very infirm, or is sick, or is bound on a voyage, or is about to go out of the state, the deposition of such witness may, at the option of either party, be taken before a justice of the peace; *provided*, the person at whose request the deposition is to be taken, shall cause notice to be given to the adverse party of the time and place, and before whom the deposition shall be taken, immediately, or at such short day as the cause in the opinion of the said justice may require, to attend and be present at the taking thereof, and to put questions and cross-examine, if he shall think fit; and a deposition so taken and offered in evidence, shall be subject to the same rules and exceptions that the witness would be if personally present.

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Deposition of witness, when taken.

Notice required.

80. *And be it enacted*, That every person deposing as last aforesaid, shall be carefully examined and cautioned, and sworn or affirmed to testify the whole truth, and shall subscribe the testimony by him or her given after the same shall be reduced to writing, which shall be done only by the magistrate taking the deposition, or by the deponent in his presence, and the deposition so taken shall be retained by such magistrate until he deliver the same, with his own hand, into the court for which it was taken, or shall be by him, the said magistrate, sealed up, directed and transmitted to such court, and remain under his seal until opened in court, and when so opened the same shall be deposited in the office of the justice before whom the action shall be brought, there to remain of record, and that either of the parties in the said action or suit, may at his or her cost and charges, take copies of such deposition as soon as it is deposited in the office as aforesaid.

Such deposition, how taken,

and transmitted to court.

Copies allowed.

81. *And be it enacted*, That the provisions of the first, second, third and fourth sections of an act entitled, "An act authorizing commissions and the taking of depositions," so far as the same can be applied, be and they are hereby extended to the courts for the trial of small causes.

What provision applicable.

See TITLE XXXIV.

82. *And be it enacted*, That it shall be the duty of the justice by whom any judgment shall have been rendered, and which shall have remained unsatisfied more than one year from its date, on application of the person in whose favour judgment was rendered, his agent or attorney, to grant writs of scire facias to revive said judgment, directed to a constable, commanding the defendant to come before him at the time and place mentioned in the writ, not less than five nor more than fifteen days from the date thereof, which writ shall be served at least five days before the time of appearance mentioned therein, by reading the same to defendant, and delivering to him or her a copy thereof when required, if he or she shall be found, and if not found, by leaving a copy thereof

Of the scire facias to revive judgment.

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CHAP. 8.

at his or her house or place of abode, in presence of some free person of the family, of the age of fourteen years, who shall be informed of the contents thereof.

Remedy not
reach lands,
when neces-
sary.

83. *And whereas*, creditors may, in particular cases, be unable, in consequence of this act, to recover their just demands from persons who have real estates, but are possessed of no goods or chattels, or to a small and inadequate value; for remedy whereof—*be it enacted*, that if any creditor shall, before any justice of the peace, declare on oath or affirmation, to be filed in the clerk's office at the time of sealing the process, that he believes the debtor is not possessed of goods and chattels sufficient to satisfy his demand, then such creditor may prosecute an action for the same in the court of common pleas, and if he obtain judgment thereon, the said court shall adjudge the defendant to pay the costs of such suit.

Suit in com-
mon pleas.

Justice not
to keep ta-
vern.

84. *And be it enacted*, That it shall not be lawful for the court of common pleas or any other court or municipal authority having power to grant license to keep an inn and tavern in any of the counties, cities or towns corporate within this state, to grant a license to any person to keep an inn and tavern, who shall be at the same time a justice of the peace, or in virtue of his office exercising the powers of a justice of the peace; and if any person shall be appointed a justice of the peace, or an officer with the power of a justice of the peace, in any of the counties, cities or towns corporate within this state, during the time that he holds a license to keep an inn and tavern, and accept of the said office, such license shall from thenceforth be absolutely void.

Who not to
prosecute or
defend suits.

85. *And be it enacted*, That no judge, justice of the peace or constable shall appear and prosecute or defend in any action before any justice of the peace, unless such judge, justice or constable shall be one of the parties on record in the cause; and any judge, justice or constable who shall offend against the provisions of this section, shall forfeit the sum of fifty dollars, to be recovered by action of debt with costs of suit, in any court having cognizance thereof, by and for the use of any person who shall prosecute for the same; and such suit shall be commenced within six months after the offence shall have been committed; *provided*, that nothing herein contained shall prevent a judge or justice from transacting the general concerns of a person who is absent and resident without this state.

Fees.

86. *And be it enacted*, That in all actions which may be brought by virtue of this act, the following and no other fees shall be allowed:

		TITLE VII. CHAP. 8.
	<i>Justices.</i>	
Summons,	12½ cents.	Justice.
Warrant,	12½ cents.	
Entering each suit,	10 cents.	
Recognizance,	12½ cents.	
Entering every nonstuit,	10 cents.	
Entering discontinuance,	4 cents.	
Venire facias,	12½ cents.	
Administering every oath or affirmation,	5 cents.	
Subpœna for every witness,	7 cents.	
Swearing the jury,	20 cents.	
Entry of every verdict,	4 cents.	
Entry of every rule of reference,	12½ cents.	
Every copy thereof,	12½ cents.	
Entry of every judgment,	10 cents.	
Every execution,	12½ cents.	
Recording return of execution,	9 cents.	
Drawing, signing and sealing return to certiorari,	20 cents.	
Copy of proceedings when demanded by either party,	25 cents.	
Scire facias,	12½ cents.	
Every adjournment,	10 cents.	
Each deposition taken under the seventy-ninth and eightieth sections of this act,	\$1 00	
Every affidavit,	12½ cents.	
Issuing a commission under the eighty-first section of this act, to be paid by the party applying,	1 00	
Recording return of said commission,	12½ cents.	
	<i>Constables.</i>	Constable.
Serving every summons on one defendant,	40 cents.	
And for service thereof on every additional defend- ant in the same summons,	20 cents.	
Serving every warrant, against one or more persons, for each person,	45 cents.	
Serving every scire facias, against one or more per- sons, for each person,	30 cents.	
Serving every subpœna,	25 cents.	
Summoning every jury of six men,	30 cents.	
Summoning every jury of twelve men,	60 cents.	
Attending jury until agreed on their verdict,	25 cents.	
Serving every execution,	50 cents.	
In addition to which, two cents on each dollar secured to the plaintiff.		
Advertising property under execution,	25 cents.	
Selling property under execution,	25 cents.	

TITLE VII. For every copy of the execution delivered to jailer, 12½ cents.
 CHAP. 8.

Jurors.

Jurors.

For all causes tried, 12½ cents a man.
 When summoned to attend, and cause not tried, 6¼ cents a man.

Witnesses.

Witnesses.

For their services under the seventy-ninth and eightieth sections of this act, 50 cents.

For all other services the same fees as are or shall be allowed in causes before the court of common pleas; *provided*, that no fees shall be allowed for the service of any subpœnas, for more than two witnesses, nor shall fees be allowed to more than two witnesses for each party in a cause.

Fees on appeal.

87. *And be it enacted*, That on all appeals as aforesaid, heard and determined in the court of common pleas, the following and no other fees shall be allowed :

Court.

Courts.

Every appeal heard and determined, 50 cents.

Clerk.

Clerks.

Entering action, 7 cents.
 Filing bond, 7 cents.
 Filing transcript, 7 cents.
 Entering defendant's appearance, 7 cents.
 Every subpœna, 7 cents.
 Entering judgment, 7 cents.
 Every witness sworn or affirmed, 7 cents.
 Every order or rule of court, 7 cents.
 Every execution, 40 cents.
 Entering and filing execution, 12 cents.
 Calling and swearing a jury, 15 cents.
 Taking and entering verdict, 10 cents.

Sheriff.

Sheriffs.

Making out and returning a list of the jury, 20 cents.

Constable.

Constables.

Serving every subpœna, 25 cents.
 Attending jury, 25 cents.

Crier.

Criers.

Every appeal, 9 cents.
 Calling and swearing each witness, 4 cents.
 Calling jury, 6 cents.

Jurors.

To the jurors.

The same fees as are allowed in other cases in the court of common pleas.

CHAPTER 9.

TIMES AND PLACES OF HOLDING COURTS.

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| <p>1. Courts, where and when held.</p> <p>2. In Atlantic.</p> <p>3. In Cape May.</p> <p>4. Writs, how returnable.</p> | <p>5. Courts, how long held.</p> <p>6. Power to adjourn, etc.</p> <p>7. Pleas may appoint special terms.</p> <p>" Try appeals, etc.</p> |
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An Act to ascertain the times and places of holding certain courts.

REV. 364.

1836-7.

Revision.....Approved April 18, 1846.

PAMPH. 96.

1837-8.

PAMPH. 99.

1841-2.

PAMPH. 76.

1845.

PAMPH. 145.

Courts, where and when held.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the circuit courts, the court of oyer and terminer and general jail delivery, the court of common pleas, the court of general quarter sessions of the peace, and the orphans' court in and for the several counties of this state, except the counties of Atlantic and Cape May, shall hold annually four stated terms, at the times and places following, and not otherwise, that is to say:

1. In the county of Bergen, at New Barbadoes, on the first ^{Bergen.} Tuesday of February, May, August and November, respectively.
2. In the county of Hudson, at North Bergen, on the second ^{Hudson.} Tuesday of February, May, August and November, respectively.
3. In the county of Essex, at Newark, on the fourth ^{Essex.} Tuesday of February, May, August and November, respectively.
4. In the county of Monmouth, at Freehold, on the first ^{Monmouth.} Tuesday of February, May, August and November, respectively.
5. In the county of Somerset, at Bridgewater, on the third ^{Somerset.} Tuesday of February, May, August and November, respectively.
6. In the county of Middlesex, at New Brunswick, on the fourth ^{Middlesex.} Tuesday of February, May, August and November, respectively.
7. In the county of Warren, at Belvidere, on the second ^{Warren.} Tuesday of March, June, September and December, respectively.
8. In the county of Sussex, at Newton, on the first ^{Sussex.} Tuesday of February, May, August and November, respectively.
9. In the county of Morris, at Morristown, on the third ^{Morris.} Tuesday of February, May, August and November, respectively.
10. In the county of Passaic, at Paterson, on the first ^{Passaic.} Tuesday of March, June, September and December, respectively.
11. In the county of Hunterdon, at Flemington, on the second ^{Hunterdon.} Tuesday of February, May, August and November, respectively.
12. In the county of Mercer, at Nottingham, on the first ^{Mercer.} Tuesday of March, June, September and December, respectively.
13. In the county of Burlington, at Mount Holly, on the third ^{Burlington.} Tuesday of February, May, August and November, respectively.

- TITLE VII.
CHAP. 9.
- Camden. 14. In the county of Camden, at such place as is or may be designated agreeably to law, on the first Tuesday of February, May, August and November, respectively.
- Cumberland. 15. In the county of Cumberland, at Bridgeton, on the second Tuesday of February, May, August and November, respectively.
- Salem. 16. In the county of Salem, at Salem, on the third Tuesday of February, May, August and November, respectively.
- Gloucester. 17. In the county of Gloucester, at Woodbury, on the fourth Tuesday of February, May, August and November, respectively.
- Atlantic. 2. *And be it enacted*, That the said several courts in and for the county of Atlantic, shall hold annually at May's Landing, three stated terms on the second Tuesday of June, September and December, respectively; and the court of common pleas, the court of general quarter sessions of the peace and the orphans' court in and for said county, shall hold annually at the same place one other stated term on the first Tuesday of March.
- Cape May. 3. *And be it enacted*, That the said several courts in and for the county of Cape May, shall hold annually at the Middle township, two stated terms on the second Tuesday of March and the first Tuesday of August, respectively; and the court of common pleas, the court of general quarter sessions of the peace, and the orphans' court in and for said county, shall hold annually at the same place, two other stated terms on the first Tuesday of June and December, respectively.
- Writs, etc., returnable. 4. *And be it enacted*, That all writs, process, recognizances, and other proceedings of the said several courts, shall be made returnable at and in conformity to the terms and times hereby established.
- Courts, how long held. 5. *And be it enacted*, That the said several courts may respectively, be held and continued for so long time at each session as the business thereof shall render necessary.
- Power to adjourn, etc. 6. *And be it enacted*, That it shall be lawful for the court of common pleas, the court of general quarter sessions of the peace, and the orphans' court in and for the several counties of this state, to adjourn over from any day in term to any subsequent day in the same term, whenever the convenience of the public and of the said courts respectively, shall require such adjournment; and in case of such adjournment, all suits, indictments process, orders, rules, recognizances and other proceedings pending in such court, shall be continued to the time to which such adjournment shall be made, without prejudice to any of the parties therein, and may then be proceeded in according to law, in the same manner as if such court had been adjourned from day to day; *provided*, that no such adjournment shall be made for more than one week at any one time during the same term.

7. *And be it enacted*, That the court of common pleas, in and for the several counties of this state, be and they are hereby authorized, at their stated terms, to order and appoint special terms of the said court, to be holden at such time in the vacation between the stated terms of said court, as they in their discretion shall think fit; and, at such special terms, to hear, try and determine all appeals from the courts for the trial of small causes depending in said court, in which no jury shall be demanded or required; and also, at such special term, to hear and determine all such arguments upon matters of law, arising in causes depending in said court, as shall by the consent of parties, be set down for hearing at such special term; *provided always*, that at such special term, the hearing of appeals shall have preference of argument upon matters of law.

TITLE VII.
CHAP. 10.

Pleas may
appoint special
terms.

Try appeals.

Matters of
law.

Appeals to
have prefer-
ence.

CHAPTER 10.

COURTS OF THE UNITED STATES.

An Act to authorize the United States to hold its courts in the state house. MAR. 56.

Passed November 22, 1824.

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 and after the passing of this act, it shall and may be lawful for the United States, to hold its courts in that part of the state house, which is appropriated to the supreme court; *provided*, that the sessions of the said courts, shall not interfere with the regular terms of the said supreme court, as established by the laws of this state.