

TITLE XXII.

LANDS AND CONVEYANCES.

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CHAPTER 1.

CARTERET GRANTS.

REV. 2. An Act for the explaining of grants and patents for lands made and executed by Philip Carteret and council, in the eastern division of this province, according to the true intent and meaning of grantor and grantee.

Passed April 4, 1709.

Preamble. WHEREAS several of her majesty's subjects in the first settlement of this province, formerly known by the name of East New Jersey, repaired hither with designs of settling land for the support and maintenance of their families; and, applying themselves to the proprietors and their governors for the time being, obtained grants or patents for the same, which, by the intent and good meaning of grantor and grantee, were to assure and settle an estate of inheritance in fee-simple to the several persons, to whom the said grants were made, reserving certain quitrents

therein expressed; and, as the law of this province was then deemed and taken to be, the said grants were worded in pursuance of the said end, and so passed for several years; on which assurance many of her majesty's subjects have spent their whole lives and substance, and undergone extreme hardships and difficulties, in subduing a wilderness, supported only by this encouragement, that their posterity would reap the benefit of their labours; and finding, that through the ignorance of those infant times, the particle *or*, in the habendum of their several deeds, was used in the stead of *and*—wherefore, for the quieting of men's minds, and for the further assurance, that the firm and sure making of the said tenure, according to what was the true and real intent of the said grants, charters, patents, deeds or conveyances,

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BE IT ENACTED *by the Governor, Council and Assembly now met and assembled, and by the authority of the same,* That all grants, charters, or patents for land, within this province, made and executed by Philip Carteret, deceased, formerly governor of this province, and his council, in which the particle *or* is named or used in the habendum of the said deeds, grants, charters, or patents, shall be taken, deemed and esteemed as effectual in law, to all intents, constructions and purposes whatsoever, to the benefit of each and every party and grantee therein named, as if the same had been granted in these words, *to have and to hold to him the said A. B. his heirs and assigns for ever.*

The word *or* in the habendum of patents granted by P. Carteret, to have the same force as the word *AND*.

CHAPTER 2.

COLLUSIVE JUDGMENTS AND WRONGFUL ALIENATIONS.

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| <ol style="list-style-type: none"> 1. Reversioner may defend suit. 2. Not prejudiced by default of tenant. 3. Right of entry after disseizor's death. 4. Widow's right, when not barred. 5. When feme covert may defend alone. 6. Wife not prejudiced by husband's conveyance. | } | <ol style="list-style-type: none"> 7. What alienations, etc., of dower void. 8. What, if made with subsequent husband. 9. Of recovery with assent of heir, etc. 10. Alienation by tenant by the curtesy. 11. When nonage not to delay suit. 12. Writ of error, restitution, etc. |
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An Act granting relief, in certain cases, against collusive judgments and wrongful alienations of lands. REV. 346.

Passed March 2, 1798.

1. BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That if tenant in dower, tenant by the curtesy, or other tenant for term

Reversioner may defend suit brought against the tenant for life or years.

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of life or lives, is or shall be impleaded, the person to whom the reversion or remainder belongs may come into court at any time before judgment, and be admitted to defend his or her right.

Reversioner not to be prejudiced by certain acts of tenant.

2. *And be it enacted*, That if tenant in dower, tenant by the curtesy, or other tenant for term of life or lives, shall, when impleaded, make default or give up the tenements demanded, or if judgment be given on such default, or surrender, then the person to whom the reversion or remainder belongs, after the death of such tenant, shall in no wise be prejudiced or injured by such default, surrender or judgment.

The dying seized of the disseizor shall not take away the right of entry, unless he has had peaceable possession for five years.

3. *And be it enacted*, That the dying seized of any disseizor of or in any lands, tenements, or hereditaments, having no right or title therein, shall not be such descent in law to the heir of the disseizor, as to take away the entry of the person, who, at the time of such descent, had lawful title of entry; except such disseizor hath had peaceable possession for the space of five years next after the disseizin committed, without entry by, or continual claim of, such as have lawful title.

A widow not barred of right of entry into her land lost by default of her husband.

4. *And whereas*, when a husband doth lose the lands of his wife by default, it is unreasonable that the wife, after the death of her husband, should have no recovery but by writ of right—*be it therefore enacted*, that a woman, after the death of her husband, shall not be injured by such default; but shall, notwithstanding, retain her right of entry, and prosecute the same by writ of entry, or any other action, real or mixed, that may be adapted to the case; and if in such action the tenant object to her claim or demand, that he entered into the land by judgment, and it be found that such entry was by judgment upon default of her husband, then, if required, he shall answer thereto, and in such answer show his right to the said land in the same manner as in the writ which he first took out against the husband and wife, and if he verify such right, then she shall gain nothing by her writ, otherwise she shall recover.

Feme covert may defend her right without her husband.

5. *And be it enacted*, That if in any suit against the husband and wife, for lands of the wife, the husband absent himself, or will not defend his wife's right, or against the wife's consent will render the said lands, then the wife may come at any time before judgment, and defend her right, without her husband.

Conveyance by a husband alone, of his wife's lands, not to prejudice her or her heirs.

6. *And be it enacted*, That no feoffment, fine, or other act or acts, which shall be made, suffered, or done by the husband only, of any lands, tenements or hereditaments, being the inheritance or freehold of his wife, during the coverture between them, shall work any discontinuance thereof, or prejudice or affect the said wife or her heirs, or such as shall, by her death, have right, title, or interest to the same; but the said wife, or her heirs, or such other person,

to whom such right shall appertain after her decease, may, after the death of the said husband, lawfully enter into such lands, tenements and hereditaments, and hold and enjoy the same according to his, her, or their rights and titles therein, any such feoffment, fine, or other act or acts to the contrary notwithstanding.

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7. *And be it enacted*, That if any woman, who hath or shall have an estate in dower, or for term of life, jointly with her husband, or only to herself, or to her use, in lands, tenements, or hereditaments, of the inheritance or purchase of her husband, or given to the husband and wife for term of life, by any ancestor of the husband, or by any other person, seized to the use of the husband or of his ancestors, shall, when sole, discontinue, or alien the same, with or without warranty, or shall suffer any recovery thereof by covin against her, them, or any of them, or any other seized to their use, or to the use of any of them as aforesaid, then all such discontinuances, alienations, and recoveries shall be utterly void and of no effect; and it shall be lawful for the person to whom, after the decease of such woman, the interest, title, or inheritance of the said lands, tenements, or hereditaments, do or shall belong, immediately after such discontinuance, alienation, or recovery, to enter upon, possess, and enjoy the said lands, tenements, or hereditaments, according to such title and interest, as the said person should have had in the same, if such woman had been dead, and no discontinuance, alienation, or recovery had been made or suffered.

Alienations by a woman, when sole, of her dower or estate for life in lands of her husband, and recoveries of the same by covin, to be void.

8. *And be it enacted*, That if any woman, who hath or shall have an estate in dower, or for term of life jointly with her husband, or only to herself, or to her use, in lands, tenements, or hereditaments, of the inheritance or purchase of her husband, or given to the husband and wife for life, by any ancestor of the husband, or by any other person, seized to the use of the husband or of his ancestors, shall, with any after taken husband, make or suffer any such discontinuance, alienation, or recovery, as is mentioned in the preceding section, then it shall be lawful for the person to whom, after the decease of the said woman, the said lands, tenements, or hereditaments do or shall belong, to enter immediately after such discontinuance, alienation, or recovery, into the said lands, tenements, or hereditaments, and them to possess and enjoy during the life of such husband, according to such title and interest as the said person should have had in the same, if such woman had been dead, and no discontinuance, alienation, or recovery had been made or suffered; but in such case the said woman may, if she survive such after taken husband, enter into, possess, and enjoy the said lands, tenements, or hereditaments according to her first estate in the same.

If a woman, with any subsequent husband, make such alienation or recovery, then the person to whom the inheritance belongs may immediately enter.

But the woman, if she survive, may re-enter.

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This act not to extend to any recovery with the assent of the heir or reversioner.

Conveyances made by such woman for the term of her life, good.

Alienation by tenant by the curtesy not to bar the issue of the inheritance of their mother.

In such case nonage not to delay suits brought by the woman or her heirs.

The reversioner or remainderman may have writ of error on judgment against tenant for life in dower or by curtesy.

But if the first judgment was by covin, restitution shall be made to the plaintiff in error.

9. *Provided always, and be it further enacted*, That this act shall not extend to any recovery or discontinuance, which shall be suffered or made with the heirs next inheritable to the said woman, or where the person or persons, who next after her death should have an estate of inheritance in the said lands, tenements or hereditaments, shall assent or agree to the said recovery, if such assent or agreement be of record; *and provided also*, that it shall be lawful for every such woman, being sole or married, after the death of her first husband, to give, sell, or make discontinuance of such lands, tenements, or hereditaments, for term of her life only, after the course of the common law.

10. *And be it enacted*, That if a man shall alien any lands or tenements, which he may hold by the curtesy, neither his children nor the issue of his children, shall be barred, by his deed, from recovering the same of the seizin of their mother, although in such deed of their father there be a clause, that he and his heirs are bound to warranty; and in like manner, the heirs of the wife shall not, after the death of their father and mother, be barred, by the deed of their father, from recovering the inheritance of their mother, which he aliened in her lifetime.

11. *And be it enacted*, That the suit of the woman, or his heirs, after the death of her husband, for lands or tenements aliened by the husband, shall not be delayed by the nonage of the heir or heirs, who ought to warrant.

12. *And be it enacted*, That if tenant for term of life, or in dower, or by the curtesy, be impleaded, and judgment given against him or her for the lands or tenements, then the person or persons, to whom the reversion or remainder of the same belongs, at the time of such judgment, his, her or their heirs or successors, may have writ of error, if error be found in the record of such judgment, as well in the lifetime of the said tenant, as after his or her death; and if such judgment be reversed, the tenant, if living, shall be restored to his or her possession of the said lands or tenements, and the party prosecuting such writ of error to the arrearages of rent for the same; and if such tenant be dead at the time of the judgment given on such writ of error, then restitution of the said lands or tenements shall be made to the party prosecuting the said writ, together with the arrearages of rent; *provided always*, that if the party prosecuting the said writ of error allege, that the judgment first obtained against such tenant was by covin or assent, then restitution shall be made to the party prosecuting the said writ, with arrearages, although the said tenant be living; but in such case, the said tenant may have a scire facias against the party plaintiff in error, if he will deny and traverse the covin or assent aforesaid, and not otherwise.

CHAPTER 3.

CONFIRMATION OF TITLES, ETC.

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| <ul style="list-style-type: none"> 1. Execution of wills in time past. 2. What good in future. 3. Foreign wills, certified, evidence. 4. So, if made in colonies. | <ul style="list-style-type: none"> 5. Certain deeds declared good. 6. Exemplification of foreign deeds. 7. Conveyance of use transfers possession. 8. Fraud or forgery, not salved. |
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An Act for confirming of conveyances of lands, made and to be made by wills and powers of attorney, and declaring what exemplifications of records and other things shall be holden and received for good evidence of estates of inheritance, and for transferring of uses into possession. REV. 7.

Passed March 17, 1713-14.

WHEREAS on, and several years after, the first settlement of this Preamble. colony, the great distance of plantations, and scarcity of inhabitants was such, that it was difficult to get more than two witnesses to be present at the signing, sealing, and acknowledging of last wills and testaments, which induced the then legislature of the province of East Jersey, now the eastern division of this province, in the year one thousand six hundred and eighty-two, to make a law declaring, that all wills in writing, attested by two credible witnesses, shall be of the same force to convey lands, as other conveyances; and whereas, pursuant to the said law, many wills have been made, bequeathing and devising lands, signed by the testator, and attested only by two subscribing witnesses,

1. BE IT THEREFORE ENACTED *by the Governor, Council, and General Assembly, and by the authority of the same,* That all last wills and testaments heretofore made in writing, signed by the testator, in presence of two subscribing witnesses, and proved according to the custom heretofore used, in either the eastern or western divisions of this province, by which any lands, tenements, or hereditaments have been given, devised, or bequeathed unto any person or persons whatsoever, every of the said last wills and testaments shall, at all times hereafter, be held, taken, deemed, and esteemed as good, valid, and sufficient title in the law, to all intents, constructions and purposes, as if the testator had conveyed the same away in his lifetime, and shall for ever bar any person or persons claiming or to claim estate under any such testator, contrary to the true intent and meaning of such will or testament; and the said will being proved as aforesaid, and the books of registers of either of the eastern or western divisions of this province in which they were entered, being proved as aforesaid, may be given, and shall

What a sufficient execution of last will, in time past.
 Register books, where recorded; good evidence.—And see Tit. vii. c. 4, § 9.

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be received in evidence, any law or custom to the contrary notwithstanding.

What a good execution of a will in future.

2. *And be it enacted by the authority aforesaid,* That all wills and testaments which hereafter shall be made in writing, signed and published by the testator, in presence of three subscribing witnesses, and regularly proved and entered upon the books of records or registers, in the secretary's office of this province, or any proper office for that purpose, shall and are hereby declared, and for ever hereafter shall be taken, accepted, deemed, and esteemed sufficient to devise, bequeath, and convey any lands, tenements, hereditaments, or other estates whatsoever, within this province, as effectually, to all intents, constructions, and purposes whatsoever, as if the testator had conveyed the same away in his lifetime; and the books, in which they are registered or recorded, may be given in evidence, and shall be accepted of, and be sufficient evidence, at all times and places, where the said wills or testaments may be requisite to be given in evidence, any law or custom to the contrary notwithstanding.

Books in which they are registered good evidence.

Copy of wills made in G. Britain, etc., certified under seal good evidence.

3. *And be it enacted by the authority aforesaid,* That the copies of any last will or testament whatsoever, heretofore made, or hereafter to be made, within any part of the kingdoms of Great Britain or Ireland, by which any lands, tenements, hereditaments, or other estate within this province, are devised or bequeathed, certified under the seal of such office, where such will or testament is proved and lodged, may be given, and shall be received in evidence before any of the courts of judicature within this province, and be esteemed as valid and sufficient as if the original will or testament were then and there produced and proved.

Same in colonies.

4. *And be it enacted by the authority aforesaid,* That the copy of any will or testament, made in any other of her majesty's colonies, by which any lands, tenements, hereditaments, or other estate within this province is given, devised, or bequeathed, being proved according to the custom of such colony, certified under the great seal of such colony, may be given, and shall be received, in evidence in any of the courts of judicature within this province, and be esteemed as valid and sufficient, as if the original will or testament were then and there produced and proved.

Deeds made by letters of attorney good.

5. *And be it enacted by the authority aforesaid,* That all deeds, grants, sales, leases, assurances, or other conveyances whatsoever, heretofore made by virtue of letters of agency, powers of attorney, or other powers or authorities whatsoever, that have been entered on the public books of records of this province, or the public books of records of the eastern or western divisions thereof,

whereby any lands, tenements, or hereditaments, whatsoever, within this province, have been granted, sold, conveyed, assured, released, or transferred, to any person or persons, pursuant to such powers and authorities whatsoever, shall be, and are hereby declared, as good, valid, and sufficient title in the law, to all intents, constructions, and purposes whatsoever, unto the said grantees, and to their heirs and assigns, as if the constituent or constituents had then and there sold and conveyed the land or lands, and had executed deeds, (according to the true intent and meaning of such grants, deeds, or conveyances) which said grants, deeds, or conveyances shall be of force against, conclude and bind all and every the constituents, employers, grantors of such powers and authorities, and their and all and every of their heirs, and all and every other person or persons claiming or to claim estate from or under them, or any of them, severally and respectively; and all lands, tenements, or other hereditaments, that, for the time to come, shall be sold, conveyed, or disposed of, by virtue of such powers or authorities as aforesaid, such powers shall be first proved and entered upon the public records, after which all grants and conveyances made, pursuant to the powers thereby granted, shall be deemed, taken, and esteemed as good, valid, and sufficient titles against all and every the constituents, employers, and grantors of such powers and authorities, against all claiming or to claim estate under them severally and respectively aforesaid, as if the constituent or constituents had then and there sold and conveyed the same land or lands.

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Lands sold
by letters of
attorney, of
such sales
good.

6. *And be it enacted by the authority aforesaid,* That the exemption of any deeds or writings relating to estates, real or personal, within this province, proved and certified under the city seal of London or Edinburgh, in the kingdom of Great Britain, or under the seal of the city of Dublin, in the kingdom of Ireland, or under the great seal of any of her majesty's colonies in America, and any of the public books of records or registers of this province, or of either of the divisions thereof, shall be received in evidence in any court of record within this province, and shall be esteemed as sufficient as if the originals were then and there produced and proved.

Exemplifications
of deeds
from G. Britain,
etc., and
books of record
in this
province
good evidence.

7. *And be it enacted by the authority aforesaid,* That all and every person or persons, to whom the use or uses of any tract or tracts of land within this province have been sold, given, limited, granted, released, or conveyed by deed, grant, or any other legal conveyance whatsoever, or that shall hereafter be granted by any deed or conveyance whatsoever, such grantees, their heirs and assigns, shall be deemed, taken, and esteemed to be in as full and ample possession of such lands, tenements, and hereditaments, to

Conveyance
of the use of
land transfers
possession.

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all intents, constructions, and purposes, as if such grantees, their heirs and assigns, were possessed thereof by solemn livery of seisin and possession, any usage or custom to the contrary notwithstanding.

This act not
to save any
fraud or for-
gery.

8. *Provided always*, That nothing in this act shall be construed to extend to make good, valid, and effectual, any fraud or forgery, made or used in or about any powers of agency, or letter of attorney, or other deeds, writings, or records, last wills and testaments, or any bargain and sale, or other conveyances of any estate of inheritance, grounded upon such fraudulent or forged powers of agency, or letter of attorney, or other deeds, writings, or records, and last wills and testaments.

CHAPTER 4.

CONTRACTS BY TESTATORS AND INTESTATES.

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| 1. How representatives empowered to fulfil. | 2. And order deed made. |
| 2. Court may decree fulfilment. | 3. Fees of court. |

REV. 524. **An Act concerning contracts of real estate, made by testators and intestates in their lifetime.**

Passed November 13, 1804.

Application
for fulfilment
of any con-
tract, to be
made to the
orphans'
court, after
advertis-
ment made.

1. BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same*, That where any testator or intestate hath heretofore or hereafter may, in his or her lifetime, have entered into a written contract, properly attested by two or more witnesses, for the sale or conveyance of any land lying and being within this state, it shall be lawful for the executors or administrators of every such testator or intestate, or for the purchaser or claimant of such land as aforesaid, after advertising the intention of their application, at least two months in five of the most public places in the county where the said lands shall lie, and at least in one of the public newspapers in circulation in said county, to apply to the judges of the orphans' court holden for said county, producing the said contract to the court, and it shall be the duty of the judges of the said court to order proclamation to be made in open court; for two terms successively, of the purport of the application so made, that if any person or persons can show cause why the request of the applicant or applicants should not be granted, such person or persons may appear and support the same, at least within the third term after the application has been so made.

Court to or-
der procla-
mation for
two terms.

2. *And be it enacted*, That the said claimant or claimants, or their legal representatives, or the legal representatives of the deceased, or either of them, may appear before the said court, who shall hear the allegations (or objections, if any,) of said parties, and if the court shall find no sufficient cause to the contrary, they shall decree the fulfilment of the contract, and give judgment accordingly; which decree and judgment, together with the contract, shall be entered of record in the minutes of the court, and the contract shall be filed in the clerk's office of said court, and the court shall thereupon order the executors or administrators, the survivor or survivors of them, or the legal representatives of the deceased, (upon the purchase money being paid or secured to be paid, agreeably to the tenor of such contract) to make as good and sufficient a deed of conveyance to the claimant or claimants, as the testator or intestate, in his or her lifetime, could have done, any act or usage to the contrary notwithstanding.

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Court may decree a fulfilment of the contract, and order a deed to be made for such lands.

3. *And be it enacted*, That the said court, for every such procedure or adjudication, shall be entitled to receive the same fees as are allowed by law for directing the sale of lands by said court, to be paid equally by the parties so concerned.

Fees of court.

CHAPTER 5.

CONVEYANCES.

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| 1. Deeds, acknowledged, evidence. | 12. Penalty for neglect. |
| 2. Acknowledgment, in other counties. | 13. Record or transcript evidence. |
| 3. Not recorded without. | 14. When record not removed. |
| 4. Acknowledgment by feme covert. | 15. Attornment unnecessary. |
| 5. When grantor in other state. | 16. Warranty void against reversioner. |
| 6. When in foreign country. | 17. When void against heir. |
| 7. Femes covert. | 18. When void against subsequent party. |
| 8. Proof in case of death. | 19. Order of recording. |
| 9. Deeds to be recorded. | 20. Mortgage to secure purchase money. |
| 10. Manner of. | 21. Clerks to index old deeds. |
| 11. Clerk's receipt and certificate. | 22. And to continue to index. |

An Act respecting conveyances.

REV. 458, 747,
749.

Revision....Approved April 15, 1846.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That if any deed or conveyance of lands, tenements, or hereditaments, lying and being in this state, heretofore made and executed, and not already acknowledged or proved according to law, or hereafter to be made and executed, shall be acknowledged by the party or parties who shall have executed it, the officer having first made known the contents thereof to the per-

Deed, acknowledged or proved, evidence.

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Who may
take acknow-
ledgment or
proof.
See Tit. xxx.
Ch. 17.

Judges of
pleas may
take, for land
in any coun-
ty.

Deed not re-
corded, un-
less acknow-
ledged or
proved.

Acknow-
ledgment by
feme covert.

son making such acknowledgment, and being also satisfied that such person is the grantor mentioned in said deed, of all which the said officer shall make his certificate; or if it be proved by one or more of the subscribing witnesses to it, that such party or parties signed, sealed, and delivered the same as his, her, or their voluntary act and deed, before the chancellor of this state, or one of the justices of the supreme court of this state, or one of the masters in chancery, or one of the judges of any of the courts of common pleas of this state, and if a certificate of such acknowledgment or proof shall be written upon or under the said deed or conveyance, and be signed by the person before whom it was made, then every such deed or conveyance, so acknowledged or proved and certified, shall be received in evidence in any court of this state, as if the same were then and there produced and proved.

2. *And be it enacted*, That such acknowledgment or proof of any such deed or conveyance made or to be made before a judge of any court of common pleas, in any county of this state, whether the lands, tenements, or hereditaments therein expressed, be situate in the said county or elsewhere in this state, shall have the same construction and effect, and be as good and available in law, as if such acknowledgment or proof had been made before one of the justices of the supreme court of this state, or one of the judges of the court of common pleas of the county in which the said lands, tenements, or hereditaments are situate.

3. *And be it enacted*, That no deed or conveyance of lands, tenements, or hereditaments, lying and being in this state, which has been made and executed, and not already acknowledged or proved according to law, or which shall be made and executed, shall be recorded in the office of the clerk of the court of common pleas of the county in which the said lands, tenements, or hereditaments are situate, unless the execution of the same shall have been first acknowledged, or proved and certified, in the manner herein directed.

4. *And be it enacted*, That no estate of a feme covert, in any lands, tenements, or hereditaments, lying and being in this state, shall hereafter pass by her deed or conveyance, without a previous acknowledgment made by her, on a private examination, apart from her husband, before one of the officers aforesaid, that she signed, sealed, and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her husband, and a certificate thereof written on or under the said deed or conveyance, and signed by the officer before whom it was made: *and further*, that every deed or conveyance, so executed and acknowledged by a feme covert, and certified as aforesaid, shall

release and bar her right of dower, and be good and effectual to convey the lands, tenements, or hereditaments thereby intended to be conveyed; *provided*, that this clause shall not be construed to enable any feme covert, under the age of twenty-one years, to convey lands, tenements, or hereditaments, or any right of dower, interest or estate therein.

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Proviso.

5. *And be it enacted*, That if the party who shall execute any deed or conveyance of lands, tenements, or hereditaments, lying and being in this state, or the witnesses thereto reside not in this state, but in some other state in the union, or territory thereof, or in the District of Columbia, then the said acknowledgment or proof, made before and certified by the chief justice of the United States, or an associate justice of the supreme court of the United States, or a district judge of the same, or any judge or justice of the supreme or superior court of any state in the union, or territory thereof, or in the District of Columbia, or before any mayor or other chief magistrate of any city in such state, district, or territory, duly certified, under the seal of such city, or before a judge of any court of common pleas of the state, district, or territory in which such party or witnesses may be, shall be as good and effectual as if such proof or acknowledgment had been made before and certified by one of the officers mentioned in the first section of this act; *provided*, that where the said acknowledgment or proof is made before a judge of a court of common pleas, in such state, district, or territory, a certificate under the great seal of the state, or under the seal of the county court in which it is made, that he is such officer, shall be deemed sufficient evidence of his authority for that purpose, and be annexed to and recorded with such deed, acknowledgment or proof.

Where grantors reside in other states.

See Tit. xxx.
Ch. 17.

Proviso.

6. *And be it enacted*, That if the party who shall execute any deed or conveyance of lands, tenements, or hereditaments, lying and being in this state, or the witnesses thereto, reside in a foreign kingdom, state, nation, or colony, then the said acknowledgment or proof, made before any court of law, or mayor or other chief magistrate of any city, borough, or corporation of the said foreign kingdom, state, nation, or colony, in which the said party or witnesses reside, certified by the said court, mayor, or chief magistrate, in the manner such acts are usually authenticated by them or him, shall be as good and effectual as if it had been made before and certified by one of the justices of the supreme court of this state.

Where they reside in foreign countries.

7. *And be it enacted*, That the two preceding sections of this act shall be construed to extend to and comprehend acknowledgments of deeds or conveyances, which shall be made by femes

Extends to femes covert.

TIT. XXII.
CHAP. 5

covert, who reside out of this state, and in any other state, district, or territory in the union, or in any foreign kingdom, state, nation, or colony.

Proof, when
grantor and
witnesses
are dead.

8. *And be it enacted*, That if the grantor or witnesses of any such deed or conveyance be dead or cannot be obtained, it shall be lawful for any of the officers herein before mentioned, as the case may require, to take, under oath or affirmation, the examination of any person or persons, to prove the handwriting of such deceased witness or witnesses, or where such proof cannot be had, then to prove the handwriting of the said grantor or grantors, which shall be certified on or under such deed or conveyance, and signed by the officer before whom such proof shall have been made: and such deed or conveyance, so proved and certified, shall be received in evidence, and recorded by the clerk of the court of common pleas of the county in which the said lands, tenements, or hereditaments are situate, in the same manner as other deeds or conveyances are directed by this act.

To be re-
corded.

9. *And be it enacted*, That the clerk of the court of common pleas of the county shall record, in large well bound books of good paper to be provided for that purpose, and carefully preserved, all deeds and conveyances of lands, tenements, and hereditaments, lying and being in the said county acknowledged or proved, and certified to have been acknowledged or proved in manner aforesaid, which shall be delivered to him to be recorded; to which books every person shall have access at proper seasons, and be entitled to transcripts from the same, on paying the fees allowed by law.

How record-
ed.

10. *And be it enacted*, That it shall be the duty of the said clerk to record in the said book without delay, every such deed or conveyance, with the acknowledgments, proofs and certificates, written on or under the same, and the plats, surveys, schedules and other papers therein referred to and thereto annexed, by entering them word for word in a fair hand, noting at the foot of each record, all the interlineations and words visibly written on erasures, omitting however, to enter in the record the erasures and obliterations, and mentioning in the margin or at the foot of such record, the day of the month and the year when the said deed or conveyance was delivered to him or brought to his office to be recorded.

Clerk to give
receipt and
certificate.

11. *And be it enacted*, That the said clerk shall give a receipt to the person who shall bring any such deed or conveyance, mentioning therein the time when it was delivered to him or brought to his office to be recorded, its date, the names of the parties to it, and the place where the lands, tenements or hereditaments therein specified are situate; that the said clerk shall certify on or under

such deed or conveyance the day of the month and year, when he received it, and the name or number of the book, and page or pages in which it is recorded, and shall, when recorded, deliver it to the party entitled to it, or his order.

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CHAP. 5.

12. *And be it enacted*, That if any clerk shall neglect or refuse to perform any service or duty required of him by this act, he shall for every neglect or refusal, forfeit and pay two hundred dollars, to be recovered with costs by action of debt by the county collector, and paid to the treasurer of this state for the use of the state; and shall also be liable for all damages which the party aggrieved may have sustained by reason of the nonperformance of such service or duty.

Penalty for
neglect.

13. *And be it enacted*, That the record aforesaid of such deed or conveyance, and the transcript of such record, certified to be a true transcript by the said clerk in whose office the record is kept, shall be received in evidence in any court of this state, and be as good, effectual and available in law, as if the original deed or conveyance were then and there produced and proved, and the record and transcript of the record of such deeds and conveyances, as have heretofore been recorded in the office of the secretary of state made by him, shall, in like manner be received in evidence, and be as effectual and available as if the original were produced and proved.

Record and
transcript
evidence.

14. *And be it enacted*, That no record shall be removed, by writ of subpoena or otherwise, before any court out of the county in which such record is kept, where a transcript thereof may be given in evidence.

When re-
cord not to
be removed.

15. *And be it enacted*, That every grant or conveyance of messuages, lands, tenements and hereditaments, or of rent, or of the reversion or remainder of messuages, lands, tenements and hereditaments shall be good and effectual without attornment of the tenant; but no tenant, who, before notice of such grant or conveyance shall have paid the rent to the grantor, shall be prejudiced or suffer any damage by such payment.

Grants, etc.,
good without
attornment.

16. *And be it enacted*, That a warranty made by tenant for life of lands, tenements or hereditaments, which shall descend or come to any person in reversion or remainder, shall be inoperative and void.

What war-
ranty void
against re-
versioner,
etc.

17. *And be it enacted*, That a collateral warranty, which shall be made of lands, tenements or hereditaments, by an ancestor, who, at the time of making it, hath no estate of inheritance in possession therein, shall be inoperative and void against his heirs.

What war-
ranty void
against heirs.

18. *And be it enacted*, That every deed or conveyance, of or for any lands, tenements or hereditaments, to any purchaser of the

TIT. XXII.
CHAP. 5.

What deed
void against
subsequent
encum-
brancer or
purchaser.

Proviso.

Order of re-
cording.

Effect of
mortgage to
secure pur-
chase mo-
ney.

Clerks to
make index.

same, which shall have been made and executed since the first day of January, in the year of our Lord one thousand eight hundred and twenty-one, or which shall hereafter be made and executed, shall be void and of no effect against a subsequent judgment creditor or bona fide purchaser or mortgagee for a valuable consideration, not having notice thereof, unless such deed or conveyance shall be acknowledged or proved and recorded, or lodged for that purpose with the clerk of the court of common pleas of the county in which such lands, tenements and hereditaments are situated, within fifteen days after the time of signing, sealing and delivering the same; *provided nevertheless*, that such deed or conveyance shall, as between the parties and their heirs, be valid and operative.

19. *And be it enacted*, That it shall be the duty of the clerks of the courts of common pleas, in this state, to register or record deeds and mortgages, or conveyances in the nature thereof, in the order they shall receive them; but if two or more deeds, mortgages or conveyances, of or for the same lands, tenements or hereditaments, shall be offered to or come to the hands of the clerk, at one and the same time, to be recorded, then it shall be the duty of the said clerk to register or record the same according to the priority of their dates.

20. *And be it enacted*, That whenever lands, tenements or hereditaments, lying and being in this state, are or shall be sold and conveyed, and a mortgage is given by the purchaser or purchasers at the same time, on the land sold to secure the payment of the purchase money or any part thereof, such mortgage shall be preferred to any previous judgment which may have been obtained against such purchaser or purchasers.

21. *And be it enacted*, That in case it is not already done, the clerks of the several counties in this state be hereby authorized and directed to provide, at the expense of their respective counties, a book or books, and to make and therein to enter an index in alphabetical order, to all the books of record of deeds in their respective offices, distinguishing the book in which each deed is recorded, which index shall contain the names of the several grantors and grantees; and in case the deed be made by a sheriff, the name of such sheriff, and the name of the defendant or defendants mentioned in the execution, by virtue of which the sale was made; and if by executors or administrators, the name of each executor or administrator and the testator or intestate; and if by attorney or attorneys, the name of such attorney or attorneys and his or their constituents; and if by commissioners under a law of this state, or appointed by an order of any of the courts of this state, the name of such commissioner and the person or persons whose estate has

been conveyed; for which service such clerk shall be allowed twenty-five cents for every hundred names so indexed, to be paid by the county collector, upon performance of such services to the satisfaction of the board of chosen freeholders, certified by the director of such board.

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CHAP. 6.
Fees.

22. *And be it enacted*, That the clerks of the several counties in this state, shall make an index of all deeds hereafter recorded in their respective offices, in the manner herein before directed.

And continue to index.

CHAPTER 6.

CONVEYANCES BY INFANT TRUSTEES.

An Act to enable infants, who are seized or possessed of estates in trust, or by way of mortgage, to make conveyances of the same.

REV. 157.

Passed December 1, 1794.

WHEREAS many inconveniences do and may arise by reason that persons, under the age of twenty-one years, having estates in lands, tenements and hereditaments, only in trust for others, or by way of mortgage, cannot, though by the direction of the cestui que trust, or mortgagor, convey any sure estate in any such lands, tenements or hereditaments, to any other person or persons—for remedy whereof,

Preamble.

1. BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same*, That it shall and may be lawful to and for any such person or persons, under the age of twenty-one years, by the direction of the court of chancery, signified by an order made upon hearing all parties concerned, on the petition of the person or persons for whom such infant or infants shall be seized or possessed in trust, or of the mortgagor or mortgagors, or guardian or guardians of such infant or infants, or person or persons entitled to the moneys secured by or upon any lands, tenements or hereditaments, whereof any infant or infants are or shall be seized or possessed by way of mortgage, or of the person or persons entitled to the redemption thereof, to convey and assure any such lands, tenements or hereditaments, in such manner as the said court of chancery shall, by such order so to be obtained, direct to any other person or persons; and such conveyance or assurance, so to be had and made as aforesaid, shall be as good and effectual in law, to all intents and purposes whatsoever, as if the said infant or infants were, at the time of making such conveyance or assurance, of the full age of twenty-one years.

Infant trustee may, by direction of the court of chancery, convey lands

TIT. XXII.
CHAP. 7.

Infant trustee may be compelled to make such conveyance.

2. *And be it further enacted by the authority aforesaid,* That all and every such infant or infants, being only trustee or trustees, mortgagee or mortgagees, as aforesaid, shall and may be compelled by such order, so as aforesaid to be obtained, to make such conveyance or conveyances, assurance or assurances, as aforesaid, in like manner as trustees or mortgagees of full age are compellable to convey or assign their trust estates or mortgages.

CHAPTER 7.

FORFEITED ESTATES.

I....Act reviving former act in part, and authorizing appointment of commissioners.
II....Duties, powers, reward, and compensation of commissioners.

HAR. 312.

I....An Act in revival of "An act respecting forfeited estates."

Passed February 26, 1830.

Act, see II,
revived in
part.

1. BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That the second, fourth and fifth sections of an act entitled, "An act respecting forfeited estates," passed the twenty-second day of November, one thousand eight hundred and eight, be, and the same are hereby revived and declared to be in full force and effect, as much as if the same had never been repealed; *provided however,* that nothing in the said act contained, shall be construed to impair the legal and vested rights of any person or persons whatsoever.

Proviso.

Governor
may appoint
commission-
ers.

2. *And be it enacted,* That the governor or person administering the government of this state, be, and he is hereby authorized and empowered to appoint for any of the counties in this state, in which he may deem such appointment expedient, three commissioners, which commissioners, or any two of them, shall possess the same powers as the commissioners appointed in the first section of the act to which this is a supplement, were invested with, by virtue of the provisions of the said act.

BLOOM. 192.

II....An Act respecting forfeited estates.

Passed November 22, 1808.

1. BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That John Outwater (and others) be and they are hereby appointed commissioners for the several counties in which they reside, and for which they are respectively named, and the act or signature of any

two of them shall be as good and valid as if all three had acted together.

TIT. XXII.
CHAP. 7.

2. *And be it enacted*, That all estates real, of what nature or kind soever, forfeited to or vested in this state, in pursuance to an act of Assembly, passed the eleventh December, one thousand seven hundred and seventy-eight, entitled, “An act forfeiting to and vesting in the state of New Jersey, &c.,” which remain unsold by the state, shall be disposed of by virtue of a writ or process issuing out of the court of common pleas in the county in which such estate is situated, directed to the commissioners of the said county, or any two or more of them; which writ or process, the clerk of such court is hereby required to issue, on application to him made for that purpose, by such commissioners, and moreover to record the same in a book kept for the purpose of recording executions issued out of the court of said county, before the delivery thereof; and the said commissioners shall thereupon proceed to sell at public vendue, all such forfeited estates, giving notice of the time and place of sale at least two months before the day prefixed for the same, by advertisement in the newspapers published in this state, and also in three or more of the most public places in the county where any such estate may lie, particularly describing the premises to be sold; and such sale shall take place between the hours of twelve and five in the afternoon of the day of sale, subject to adjournment at the discretion of said commissioners, for any time not less than fourteen days; and after the receipt of the full purchase money for each estate, shall in their own names, make, seal, and deliver to the purchaser or purchasers, by deed poll, a good and sufficient conveyance for the same, therein reciting the writ by which they were directed to sell such estate, and granting and conveying to the said purchaser or purchasers all the right, title, interest, property, claim, or demand whatsoever, either in law or equity, which the person forfeiting had, or ought to have had, of, in, and to the said bargained premises, at the time of committing the offence for which the same became forfeited; by which deed, the purchaser or purchasers shall in every case be, and is, and are hereby declared to be vested in as good and perfect an estate in the said bargained premises, as the person forfeiting was vested in at the time of committing the offence as aforesaid, and shall have, hold, and enjoy the said bargained premises as fully in every respect, as the person forfeiting held, or might or ought to have held the same, at any time before committing the offence for which the same became forfeited as aforesaid; and shall moreover be entitled to all such deeds, conveyances, and other writings respecting the title of such bargained premises, as can be found or obtained.

Their duties, powers, etc.

PAT. 40.

TIT. XXII.
CHAP. 8.Reward for
discovering
forfeited es-
tate.

3. *And be it enacted*, That any person or persons who shall give information of, or discover to the commissioners by this act appointed, any real estate forfeited agreeably to the laws of this state, unsold and heretofore undiscovered, and so situated that the state shall derive an advantage from the discovery so made, the commissioners in such case are hereby authorized to allow to such informant or informants, discoverer or discoverers, at their discretion, a reward, which shall in no case exceed thirty-five per cent on the amount of the benefit accruing to the state, in consequence of such information or discovery.

Compensa-
tion of com-
missioners.

4. *And be it enacted*, That the said commissioners shall pay into the treasury of this state, the moneys arising from any sale made in pursuance of this act, within three months after such sale; that it shall be their duty to exhibit their proceedings before the legislature annually, within the first or second week of their first sitting; and they shall receive such per cent on the amount of moneys by them paid into the treasury, as the legislature, on viewing a statement of their proceedings, may allow.

CHAPTER 8.

GRANTEES OF REVERSIONS AND LESSEES.

1. Of grantees of lands, etc. | 2. Of lessees of lands, etc.
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REV. 314. **An Act enabling grantees of reversions and lessees mutually to avail themselves of covenants and conditions.**

Passed November 10, 1797.

Grantees of
lands or of
reversions to
enjoy the
same bene-
fits as the
original les-
sors.

1. *BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same*, That all persons, and bodies politic and corporate, being grantees or assignees of any lands, tenements or hereditaments, let to lease, or of the reversions thereof from any person or persons, and the heirs, executors, administrators, successors and assigns, of such grantees or assignees, shall have and enjoy the like advantages against the lessees, their executors, administrators and assigns, by entry for nonpayment of rent, or for waste or other forfeitures; and also shall have and enjoy all the covenants, conditions and agreements, contained in the indentures of their said leases, demises or grants, against the said lessees, their executors, administrators and assigns, as the said lessors themselves, or their heirs, ought or might have had or enjoyed at any time or times.

2. *And be it enacted*, That all lessees of any lands, tenements or hereditaments, for a term of years, life or lives, their executors, administrators and assigns, shall have the like action and advantage against all persons, and bodies politic and corporate, their heirs, successors and assigns, who have or shall have any gift or grant of the reversion of the said lands, tenements or hereditaments, so let, or any part thereof, for any condition, covenant or agreement, contained in the indentures of their lease or leases, as the same lessees, or any of them, ought or might have had against the said lessors and their heirs, all benefit and advantage of recoveries in value, by reason of any warranty in deed or in law, only excepted.

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CHAP. 9.

Lessees of lands to have the same advantages against the grantees of reversions, as against the original lessors.

CHAPTER 9.

INDIAN LANDS.

- | | |
|----------------------------------|---------------------------------------|
| 1. Right of purchase restricted. | 3. Purchase, when void. |
| 2. Penalty for violation. | " Unless proprietors' grant obtained. |

An Act for regulating the purchasing of land from the Indians.

Rev. 1.

Passed December 13, 1703.

WHEREAS several ill disposed persons, within this province, have formerly presumed to enter into treaties with the Indians, or natives thereof, and have purchased lands from them, such person or persons deriving no title to any part of the soil thereof under the crown of England, or any person or persons claiming by, from or under the same, endeavouring thereby to subvert her majesty's dominion in this country,

Preamble.

1. BE IT THEREFORE ENACTED by the Governor, Council, and General Assembly, now met and assembled, and by the authority of the same, That no person or persons whatsoever, for ever hereafter, shall presume to buy, take a gift of, purchase in fee, take a mortgage, or lease for life, or number of years, from any of the Indians or natives, for any tract or tracts of lands within this province, after the first day of December, one thousand seven hundred and three, without first obtaining a certificate, under the hand of the proprietors' recorder for the time being, certifying such person hath a right, and stands entitled to a propriety, or share in a propriety, such person or persons shall produce such certificate to the governor, for the time being, in order to obtain a license to purchase such quantities of land or number of acres from the Indians or natives aforesaid as such certificate mentions.

No person to purchase of the Indians, but those who have a right of propriety and obtain a license.

TIT. XXII.
CHAP. 10.

Any person purchasing, to forfeit forty shillings per acre, one half to support government, the other half to the prosecutor, and be disabled to sue for the land.

2. *Be it further enacted by the authority aforesaid,* That if any person or persons shall presume to buy, purchase, take gift, or mortgage, or lease, of any land, contrary to this present act, he or they so offending shall forfeit forty shillings, money of this province, for each acre of land so obtained; to be recovered by any person or persons who shall prosecute the same to effect, by action of debt, in any court of record within this province, one half to the use of her majesty, her heirs and successors, toward the support of the government, and the other to the prosecutor; *provided always,* that such purchasers, their heirs and assigns, shall for ever hereafter be incapable to hold plea for the said land in any court of common law or equity.

Every person having purchased without a right under the crown, such purchase to be void,

3. *And be it further enacted by the authority aforesaid,* That all and every person and persons whatsoever, that have bought, taken gift of, or have purchased land in fee, or taken mortgages, or leases for life, or number of years, of the Indians or natives, who is, and are, not entitled to such tract or tracts of land, by virtue of a right or title to the same, derived from the crown of England, or from any person or persons claiming by, from, or under the same, such gifts, purchase, mortgage, lease or leases, is and are hereby declared, and for ever hereafter shall be taken, deemed and esteemed illegal, null and void; and such person or persons, their heirs and assigns, shall not be capable to hold plea for the same in any court of common law or equity, at any time hereafter, unless such person or persons, claiming under such Indian gift, purchase, mortgage or lease, shall, within the space of six months after the publication of this act, take out a grant or grants from the present proprietors for the several tracts of lands so claimed by them respectively, on such conditions as shall be agreed upon with the said proprietors.

unless such person obtain a grant from the proprietors in six months.

CHAPTER 10.

JOINT TENANTS AND TENANTS IN COMMON.

REV. 556.

An Act respecting joint tenants and tenants in common.

Passed February 4, 1812.

Preamble. WHEREAS estates granted or devised to a plurality of persons, without any restrictive, exclusive, or explanatory words, have heretofore been held in this state to be estates in joint tenancy—therefore,

BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That TIT. XXII. CHAP. 11.
 no estate, after the passing of this act, shall in this state be con- How joint tenancy created.
 sidered and adjudged to be an estate in joint tenancy, except it be expressly set forth in the grant or devise creating such estate, that it is the intention of the parties to create an estate in joint tenancy and not an estate of tenancy in common, any law, usage or decision heretofore made to the contrary notwithstanding.

CHAPTER 11.

LANDS IN RIVER DELAWARE.

1. Deeds to be recorded.

2. Certified copies to be evidence.

An Act to authorize the recording certain deeds for lands lying in the river Delaware, heretofore acknowledged or proved according to the laws of Pennsylvania. REV. 292.

Passed March 7, 1797.

1. BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That What deeds for, to be recorded.
 all deeds, evidences, and conveyances of any island, or part of any island or other real estate, lying in the river Delaware, and, by laws of the commonwealth of Pennsylvania, and of this state, settling the jurisdiction of the said river and islands within the same, annexed to this state, which at any time heretofore have been duly acknowledged or proved according to the laws of Pennsylvania, shall be deemed and taken to be sufficiently acknowledged or proved to authorize the same to be recorded in any book or office, which is or shall be kept for the purpose by any person, who is or hereafter shall be lawfully empowered to record deeds or conveyances of land within this state.

2. *And be it enacted,* That all such deeds, evidences and conveyances, acknowledged or proved as aforesaid, and all copies thereof, taken from any book, where the same is so recorded, and certified as a true copy by any such person lawfully empowered to record deeds and conveyances of land in this state, and proved in court to be a true copy by some person who has compared the same with the record of the said deeds, and the acknowledgment or proofs thereof made as aforesaid, shall be as good and sufficient evidence in any court of record in this state, as if the same had been duly acknowledged according to the laws thereof. To be admitted in evidence.

TIT. XXII.
CHAP. 12.

CHAPTER 12.

LIMITATION OF SUITS.

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|----------------------------------|--|---------------------------------------|
| 1. Sixty years possession a bar. | | 3. Surveys a bar against proprietors. |
| 2. When thirty years shall be. | | 4. How boundaries ascertained. |

SUPPLEMENTAL ACT.

- | | | |
|---|--|-----------------------------------|
| 1. Surveys void without notice. | | 2. Remedy, if preference refused. |
| 2. Prior survey entitled to preference. | | 3. Act limited. |

REV. 80.

An Act for the limitation of suits respecting titles to land.

Passed June 5, 1787.

Preamble. WHEREAS the laws, now in force, for the limitation of suits respecting real estates, are found insufficient to answer the good purposes of quieting claims and securing titles—therefore,

Sixty years possession good title. 1. BE IT ENACTED by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That sixty years actual possession of any lands, tenements, or other real estate, uninterruptedly continued by occupancy, descent, conveyance, or otherwise, in whatever way or manner such possession might have commenced, or have been continued, shall vest a full and complete right and title in every actual possessor or occupier of such lands, tenements, or other real estate, and shall be a good and sufficient bar to all claims that may be made, or actions commenced by any person or persons whatever, for the recovery of any such lands, tenements, or other real estate.

In what cases thirty years a bar. 2. And be it further enacted, That thirty years actual possession of any lands, tenements, or other real estate, uninterruptedly continued as aforesaid, wherever such possession commenced, or is founded upon, a proprietary right duly laid thereon, and recorded in the surveyor general's office of the division in which such location was made, or in the secretary's office, agreeably to law, or wherever such possession was obtained by a fair bona fide purchase of such lands, tenements, or other real estate, of any person or persons whatever, in possession, and supposed to have a legal right and title thereto, or of the agent or agents of such person or persons, shall be a good and sufficient bar to all prior locations, rights, titles, conveyances, or claims whatever, not followed by actual possession as aforesaid, and shall vest an absolute right and title in the actual possessor and occupier of all such lands, tenements,

Provisoos. or other real estate; *provided always*, that if any person or persons, having a right or title to lands, tenements, or other real estate, shall, at the time of the said right or title first descended or accrued, be within the age of twenty-one years, feme covert, non compos, imprisoned, or without the United States of America, then such

person or persons, and his and their heir and heirs, may, notwithstanding the aforesaid times are expired, be entitled to his or their action for the same, so as such person or persons, or his or their heirs, commence or sue forth his or their action within five years after his or their full age, discovery, coming of sound mind, enlargement out of prison, or coming within any of the United States, and at no time after; *and provided also*, that any citizen or citizens of this or any other of the United States, and his or their heirs, having right or title to any lands, tenements, or other real estate within this state, may, notwithstanding the aforesaid times are expired, commence his or their action for such lands, tenements, or other real estate, at any time within five years next after the passing this act, and not afterwards.

3. *And be it further enacted*, That any survey, made of any lands within either the eastern or western division of the proprietors of the state of New Jersey, and inspected and approved of by the general proprietors, or council of proprietors of such division, and by their order or direction entered upon record in the secretary's office of this state, or in the surveyor general's office in such division, shall, from and after such record is made, preclude and for ever bar such proprietors and their successors from any demand thereon, any plea of deficiency of right or otherwise notwithstanding.

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CHAP. 12.

Surveys inspected, etc.,
bar against
proprietors.

4. *And be it further enacted*, That if any person or persons, for the purpose of establishing the boundaries of lands between them, shall, by certificate under their hands and seals, executed in the presence of two or more subscribing witnesses, certify unto the clerk of the county or counties, wherein such line or partition shall lay, any lines, corners, and boundaries, as shall by them be allowed and acknowledged to be the true bounds betwixt their lands; and the said certificate, filed in said clerk's office and recorded by said clerk in a book to be by him provided for that purpose, shall be as fully conclusive and binding to the parties so certifying, and their heirs and successors, as could have been done by deeds of quitclaim or in any other manner whatsoever.

Boundaries
of lands between
persons, how
ascertained.

5. Repealer.

A supplement to an act entitled, "An act for the limitation of suits respecting titles to land."

REV. 104.

Passed November 25, 1789.

WHEREAS there may be divers ancient surveys of land fairly made, which by the neglect of officers, or through some casualty, have not been put on record, and others, the records whereof have

Preamble.

TIT. XXII.
CHAP. 12.

been destroyed by fire or lost; by reason whereof, and the natural decay of marked lines and corners, the ancient metes and bounds cannot be clearly ascertained but by testimony and reputation; and whereas it hath been found, on running the lines of divers such surveys, that they hold more, or extend farther than their strict length of chain, large measure having been formerly allowed, even by the proprietors, as an encouragement to location, of which avaricious persons do, or may take advantage against the owners and possessors of such lands, by confining their surveys to the net length of chain, thereby making vacancies of valuable improved parts, some whereon buildings are erected and made, and on causing surveys to be made of such overplus, have procured and may procure the same to pass the council of proprietors without legal notice, or due preference given to the possessors, who may have innocently supposed their title was indefeasible, or otherwise would have willingly resurveyed, covered, and secured the same—for remedy whereof in future,

What surveys of no avail without previous notice to the possessor.

1. BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That no such newly made partial survey, now lying with the council of proprietors, or which may hereafter be returned to them, or made on any lands improved or unimproved within what has been usually taken and deemed to be the ancient reputed boundary of such lands, shall be recorded or be of any avail to the person so surveying, unless it shall be made appear, by the testimony of at least two good and sufficient witnesses, that the possessor or possessors, holding such lands by survey, deed, or otherwise, had been duly notified, for the space of six months previous to the making such survey, of the intention of doing thereof, and had refused or neglected to resurvey and cover such overplus lands.

Prior surveys to have preference, etc.

2. *And be it further enacted by the authority aforesaid,* That if the council of proprietors shall refuse or neglect to give the preference to any prior survey, legally made, or to the possessor or possessors of any tract of land, enabling such possessor or possessors to cover with rights, and secure such overplus lands, which may be found within their ancient bounds, on such possessor or possessors making a resurvey of his or their lands within six months after such legal notice as aforesaid, that it shall and may be lawful for such possessor or possessors, or any other person legally authorized on his, her, or their behalf, to cause a resurvey to be made, agreeably to the ancient reputed lines and boundaries, either by a deputy surveyor, or some other person understanding the art of surveying, and appropriate so many rights thereon as will be

sufficient to include the overplus, which surveyor or person so surveying, being duly qualified before a justice of the peace of the county wherein the land may lie, that the survey, so by him made, is just, according to the best of his knowledge, the same may be produced to the clerk of the county, who is hereby required, on the receipt thereof, to record the same in the book directed to be kept in the respective counties, by the act entitled, "An act for the limitation of suits respecting titles to land," passed at Burlington the fifth day of June, seventeen hundred and eighty-seven, which survey so made and recorded, shall give such owner and possessor an absolute title in fee.

TIT. XXII.
CHAP. 13.

3. *And be it further enacted*, That nothing in this act contained shall be construed or taken to authorize any person or persons to make any survey within the certain or reputed bounds of any survey or resurvey made and entered on record agreeably to the said recited act, any large or overplus measure therein contained, notice as aforesaid given, deficiency of rights or other plea to the contrary notwithstanding.

To what cases this act shall not extend.

CHAPTER 13.

LOST DEEDS.

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|----------------------------------|--|-------------------------------------|
| 1. Application to supreme court. | | 3. Survey and testimony filed, etc. |
| 2. Proclamation to be made. | | 4. Subpoena, for witnesses. |

An Act for the relief of persons who have lost their deeds and other instruments of writing containing the title of their lands.

REV. 54.

Passed October 3, 1782.

WHEREAS many of the inhabitants of this state have lost, or may hereafter lose, their deeds or other instruments of writing, containing the title of their lands, by the devastation of the enemy, or other unavoidable accident, whereby much injury may arise to the said inhabitants, by reason that the said deeds or instruments of writing have not been duly proved and recorded, and the means of obtaining new deeds or conveyances, for securing their possessions, may be unattainable,

Preamble.

1. **BE IT ENACTED** *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same*, That every person who has lost, or may hereafter lose his deeds, or other instruments of writing, containing the title of his lands, by the devastation of the enemy, or other unavoidable accident, and shall be

Mode of application to the supreme court, where conveyances have been lost

TIT. XXII.
CHAP. 13.

desirous of having the said land assured to him, in manner herein-
after directed in this act, shall make out, or cause to be made out,
an exact survey of the lands or premises, the title deeds or con-
veyances for which may have been lost as aforesaid, containing the
courses, distances and boundaries thereof, or an attested copy of
the original survey and boundaries, extracted out of the public
records, and shall produce the same to the supreme court of this
state, having previously advertised the purport of his application,
for at least three months, in one of the public newspapers of this
state, and also, for the same time, in at least three of the most
public places in the county, where the lands or premises, the title
or conveyance of which may have been lost as aforesaid, are situ-
ated, and shall, by evidence, prove to the satisfaction of the court,
or in case of the death of the witnesses, or their having joined the
enemy, and that no other evidence can be procured, on oath or
affirmation before the said court, declare, that he or his ancestors
were possessed of a legal conveyance therefor duly executed, and
that the same was lost or destroyed by the enemy, or by other un-
avoidable accident, together with the time and manner of the loss
or destruction of the same, and that the evidences or witnesses to
the said deeds or conveyances are dead, or have joined the enemy,
or cannot be procured, to the best of his knowledge and belief;
and shall also prove by the testimony of one or more credible wit-
ness, that he, the said applicant, had peaceable possession of the
said lands and premises, previous to the time when the deeds or
conveyances for the same, are alleged to have been lost or de-
stroyed; *provided always*, that if, through the obstinacy of any
person claiming or possessing lands adjoining to the premises of
the persons claiming the benefit of this act, it shall be found im-
practicable to obtain an exact survey, containing the courses,
boundaries and distances to be presented to the court as aforesaid,
it shall be sufficient to produce the exact boundaries only, attested
by proper evidence, or authenticated on the oath or affirmation of
the applicant.

Proviso.

Proclama-
tion to be
made, for
two terms,
of such ap-
plication.

2. *And be it further enacted*, That the said court shall, thereupon,
cause proclamation to be made in open court, for two terms suc-
cessively, of the purport of the application so made as aforesaid,
that if any person or persons have any objection, or can show any
cause why the said survey and testimony, produced as aforesaid,
should not be recorded, or why the request of the said applicant
should not be granted, such person or persons may appear and
support the same, at least within the third term after application
has been made as aforesaid.

3. *And be it further enacted by the authority aforesaid*, That the

said court shall, and they are hereby authorized and required, if no sufficient objection appear, and if the survey so produced, and the evidence and testimony so given, shall, in the judgment of the said court, be sufficient to entitle the applicant to the relief intended to be given by this act, to give judgment accordingly, and thereupon to order the said survey and testimony to be filed and entered in the minutes of the said court, a copy of which minutes, signed by the clerk of the said court, and under the seal of the same, shall be good and available in law, to assure the lands and premises so surveyed and entered, and to vest the same in the said applicant, as fully, amply and effectually, to all intents and purposes whatsoever, as he was, or would have been vested with the same, in virtue of any conveyance, lost or destroyed in manner aforesaid, which said minutes may, at any time after the same is obtained by the applicant, be entered on the public records of this state.

TIT. XXII.
CHAP. 14.

Survey and testimony to be filed and entered, which shall have the effect of a deed.

4. *And be it further enacted by the authority aforesaid,* That the chief justice, or either of the justices of the supreme court, shall be and hereby is authorized and required, on application to him made for that purpose, to issue a writ of subpœna, to compel the attendance of witnesses, to prove the facts set forth by any person applying for the relief intended by this act, in like manner as in other cases in the usual course of law.

Judges may issue writs of subpœna for witnesses.

CHAPTER 14.

MORTGAGES, REGISTRY OF.

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| <ul style="list-style-type: none"> 1. Registry of mortgages. 2. Certificate of, and receipt. 3. Prerequisites to registry. 4. What deemed a mortgage. | | <ul style="list-style-type: none"> 5. Subsequent conveyances or liens. 6. Cancellation of record. 7. Fees of clerk. 8. Undue preferences prohibited. |
|---|--|--|

An Act to register mortgages.

REV. 463, 747

Revision....Approved April 15, 1846.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey,* That the clerk of the court of common pleas of every county of this state, shall, from time to time, provide fit books, well bound and lettered, for registering all mortgages and defeasible deeds in the nature of mortgages, of lands, tenements and hereditaments, lying and being within his county; in which shall be entered the names of the mortgagor and mortgagee, the date of the mortgage, the mortgage money and when payable, and the description and boundaries of the lands, tenements and here-

Mortgages to be registered.

- TIT. XXII.
CHAP. 14. ditaments mortgaged; that the said clerk shall, immediately on receiving the said mortgage, make the said entry or abstract in the register, and shall note in the margin, or at the foot of such abstract, the day of the month and the year, when the said mortgage was delivered to him or brought to his office to be recorded; to which books every person shall have access at proper seasons, and may search the same, paying the fees allowed by law.
- Certificate and receipt. 2. *And be it enacted*, That the said clerk shall certify, on or under the said mortgage, the time when such mortgage was delivered to him or brought to his office to be registered, and the name or number of the book and page or pages in which it is registered, and shall, if required by the party, give a receipt for the said mortgage, stating therein the time when he received it, and shall, when registered, deliver it to the party entitled to it, or his order.
- Must be first acknowledged, or proved and certified. 3. *And be it enacted*, That no mortgage, defeasible deed or other conveyance in nature of a mortgage, which has been made and not already acknowledged or proved according to law, or which shall be made, shall be entered in such register, unless the execution thereof shall be first acknowledged or proved and certified in the manner prescribed by the act entitled, "An act respecting conveyances."
- Ch. 5. 4. *And be it enacted*, That if any deed or conveyance, which shall be made, of lands, tenements and hereditaments lying and being in this state, be expressed in absolute and unconditional terms, and it shall appear by any other writing, to have been intended by way or in nature of a mortgage, then such deed or conveyance shall be considered as a mortgage, and be liable to be registered by virtue of this act; and that the grantee in the said deed or conveyance shall not be entitled to or enjoy the benefits and advantages hereby given to a mortgagee, unless an abstract of the writing, operating as a defeasance of it, or explanatory of the intention of the parties, that it should have the effect of a mortgage or conditional deed, be also therewith registered, as in case of a mortgage.
- When void against subsequent judgment, etc. 5. *And be it enacted*, That every deed of mortgage, or conveyance in the nature of a mortgage, of or for any lands, tenements or hereditaments, which shall have been made and executed after the first day of January, in the year of our Lord one thousand eight hundred and twenty-one, or shall hereafter be made and executed, shall be void and of no effect against a subsequent judgment creditor, or bona fide purchaser, or mortgagee for a valuable consideration, not having notice thereof, unless such mortgage shall be acknowledged or proved according to law, and recorded or lodged for that

purpose with the clerk of the court of common pleas of the county in which such lands, tenements or hereditaments are situated, at or before the time of entering such judgment, or of recording or lodging with the clerk as aforesaid, the said mortgage or conveyance to such subsequent purchaser or mortgagee; *provided nevertheless*, that such mortgage, as between the parties and their heirs, be valid and operative. TIT. XXII.
CHAP. 14.

6. *And be it enacted*, That when any mortgage, registered as aforesaid, shall be redeemed, paid and discharged, it shall be the duty of the said clerk, on application to him made by the mortgagor or person redeeming, paying and discharging the said mortgage, and producing to him the said mortgage cancelled, or a receipt thereon, signed by the mortgagee or his executors, administrators or assigns, to enter in a margin to be left for that purpose, opposite to the said abstract, a minute of the said redemption, payment and discharge; which minute shall be a full and absolute bar to and discharge of the said entry, registry and mortgage. Cancellation
of.

7. *And be it enacted*, That the said clerk shall be allowed, for services done by virtue of this act, the following, and no other fees:

For registering abstract of a mortgage,	forty cents;
For every receipt for a mortgage,	ten cents;
For every search,	seven cents;
For entering the minute of a discharge,	thirteen cents.

8. *And be it enacted*, That if any clerk shall give an undue preference to a mortgage, or shall register a mortgage last when it ought to be registered first, or shall neglect or refuse to perform any service or duty required of him by this act, he shall, for every such offence, forfeit and pay two hundred dollars, to be recovered, with costs, by action of debt, by the county collector, and paid to the treasurer of this state, for the use of the state; and shall also be liable for all damages which the party aggrieved may have sustained by reason thereof. Penalty for
giving undue
preference.

CHAPTER 15.

SALE, FOR PAYMENT OF DEBTS.

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| <ol style="list-style-type: none"> 1. Lands sold for debt. 2. Judgment to bind from entry. 3. Execution recorded, evidence. 4. Form of the writ. 5. Defendant may have land first sold. 6. Only two adjournments, unless consent. 7. Part of land may be sold. 8. Sheriff's deed for. 9. Sale, clear of what encumbrances. 10. Judgment reversed, purchaser not affected. 11. Sheriff's successor may make deed. 12. Pay over money. 13. Proprietary rights sold. | <ol style="list-style-type: none"> 14. What judgment not to affect land. 15. Proceedings for order for sale. 16. When orphans' court to make order. 17. Report and confirmation of sale. 18. Deed, what to recite. 19. Of omissions and variances. 20. Proceeds of sale assets. 21. Personal estate first applied. 22. Bond, on order for sale. 23. Prosecution of, etc. 24. Removal of executors and administrators. 25. Sales of unlocated lands, etc. 26. How long lands liable. |
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REV. 430, 670,
794.

HAR. 51, 130,
368.

1837-8.
PAMPH. 20.
Lands sold
for debt.

An Act making lands liable to be sold for the payment of debts.

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

1. *BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That all lands, tenements, hereditaments, and real estate, shall be and hereby are made liable to be levied upon and sold by executions to be issued on judgments, which are or shall be obtained in any court of record of this state (except justices' courts constituted for the trial of small causes) for the payment and satisfaction of the debt, damages, sum of money and costs so recovered or to be recovered.*

Judgment
binds from
entry.

2. *And be it enacted, That no judgment shall affect or bind any lands, tenements, hereditaments, or real estate, but from the time of the actual entry of such judgment on the minutes or records of the court.*

Execution to
be recorded,
and record
evidence.

3. *And be it enacted, That every writ of execution which shall be sued forth against lands, tenements, hereditaments, and real estate, shall, before it be delivered to the sheriff or other officer, be recorded in a book by the clerk of the court out of which the same was issued; and the record of such writ, so made, shall be as good evidence as the writ itself.*

Form of the
writ.

4. *And be it enacted, That in every writ of execution, which shall be issued against lands, tenements, hereditaments, and real estate, the sheriff or other officer to whom the said writ may be directed, shall be commanded, that of the goods and chattels in his county, of the party against whom such execution issues, he cause to be made the debt, damages, and costs, or sum of money mentioned in the said execution; and if sufficient goods and chattels of the said party cannot be found in his county, that then he cause the whole or the residue, as the case may require, of the said debt, damages, and costs or sum of money, to be made of the lands,*

tenements, hereditaments, and real estate whereof the said party was seized on the day when the said lands, tenements, hereditaments, and real estate became liable to such debt, damages, and costs or sum of money, specifying the day particularly, or at any time afterwards, in whose hands soever the same may then be; but when such execution shall be issued against terre tenants, or heirs or devisees (unless they shall have made their estate liable by false pleading or otherwise,) it shall only command the sheriff or other officer, that of the lands, tenements, hereditaments, and real estate whereof the ancestor, testator, or person deceased, was seized on the day when the said lands, tenements, hereditaments, and real estate became liable as aforesaid, or at any time afterwards, or at the time of his or her death, as the case may require, he cause to be made the debt, damages, and costs or sum of money in the said writ mentioned.

TIT. XXII.
CHAP. 15.

Form, when
against terre
tenants, heirs
or devisees.

5. *And be it enacted*, That in case a writ of fieri facias shall be issued against the goods and chattels, lands, tenements, hereditaments, and real estate of any person or persons, and such person or persons shall desire that the whole or a part of the said lands, tenements, hereditaments, and real estate, shall be sold before any of the said goods and chattels, and signify the same in writing, under his, her, or their hands, and deliver the same to the sheriff or other officer to whom the said writ of fieri facias shall be directed, within twenty days from the time of notice of said writ, and before the goods shall be sold, and enter into bond to the said sheriff or other officer, with good and sufficient sureties, that the goods and chattels levied on in virtue of the said writ, shall be forthcoming to answer the exigencies of said writ, at a day therein named, not exceeding three months from the date of said bond, then and in that case, it shall be the duty of the said sheriff or other officer to whom the said writ shall be directed, to suspend the sale of the said goods and chattels, and proceed to sell the said lands, tenements, hereditaments, and real estate, or such part thereof as the owner or owners thereof shall have desired to be sold as aforesaid, any thing contained in the fourth section of this act, the said writ of fieri facias, or any law to the contrary notwithstanding.

How defend-
ant may have
lands first
sold.

6. *And be it enacted*, That it shall be lawful for the said sheriff or other officer to make two adjournments, and no more, of the sale of lands, tenements, hereditaments, and real estate by him taken in execution, to any time not exceeding one month for each adjournment; and if the said sheriff or other officer shall adjourn such sale or vendue oftener, or for a longer time, without permission in writing, previously obtained of the party at whose instance the said writ of execution was issued, he shall be and hereby is

Two ad-
journments,
only, allow-
ed, unless
by plaintiff's
consent.

TIT. XXII.
CHAP. 15.

made liable to the amount of the debt, or damages and costs, or sum or sums of money mentioned in the said writ, with interest; and for the recovery thereof may be amerced and proceeded against in the manner as is now or may hereafter be prescribed by law for neglect of duty in other cases on writs of execution; *provided always*, that if the said sheriff or other officer shall, after two adjournments as aforesaid, sell the lands, tenements, hereditaments, and real estate, and bring the whole amount of the product of such sale (after deducting his lawful fees,) into the court from whence such execution issued, at any time before the entry of such amercement against him as aforesaid, the said sheriff or other officer shall be exonerated from all liability to the said amercement.

How sheriff may be relieved from amercement.

Defendant may elect what part to be sold.

7. *And be it enacted*, That the person whose lands, tenements, hereditaments, and real estate are so taken in execution may, if part of them be sufficient to satisfy such execution, elect what part thereof shall be sold; and thereupon it shall be the duty of the said sheriff or other officer to sell the part so elected, and no other, if it be sufficient; *provided always*, that such election shall be made in writing, signed by such person, and delivered to the said sheriff or other officer, at least twenty days previous to the time appointed for the sale.

Proviso.

Sheriff to make deed.

8. *And be it enacted*, That the sheriff or other officer, who, by virtue of such writ or writs of execution, shall sell as aforesaid the lands, tenements, hereditaments, and real estate, or any part or parcel of them so levied upon, shall make to the purchaser thereof as good and sufficient a deed or conveyance for the lands, tenements, hereditaments, and real estate so sold, as the person against whom the said writ or writs of execution were issued, might or could have made for the same at or before the time of rendering

What it shall convey.

judgment against him or her; which deed or conveyance shall transfer to and vest in the said purchaser, as good and perfect an estate to the premises therein mentioned as the person against whom the said writ or writs of execution were issued, was seized of or entitled to at or before the said judgment, and as fully to all intents and purposes as if such person had sold the said lands, tenements, hereditaments, and real estate to such purchaser, and had received the consideration money, and signed, sealed, and delivered a deed for the same: *and further*, that the said deed or conveyance, so to be made by the said sheriff or officer, shall recite the writ or writs of execution, by virtue whereof the said lands, tenements, hereditaments, and real estate therein described, were sold as aforesaid; but the same, whether heretofore made, or hereafter to be made, shall be good and valid, and received in evidence

Form of deed.

Variance not to affect.

as such by the said courts, notwithstanding any variance between the recital in said deed and the execution or executions by virtue of which the sale was made, and notwithstanding any variance between the said execution or executions, and the judgment or judgments upon which the said execution or executions were issued: *and further*, that it shall and may be lawful for any court of this state, in which the record or exemplification of any judgment or execution shall be offered in evidence in support of any deed or conveyance made by a sheriff or other officer who may have sold any lands, tenements, hereditaments, or real estate, by virtue of any writ or writs of execution issued as aforesaid, to consider the said judgment or execution as amended in any particulars in which the same might, by the rules of law and practice, have been at any time amended by the court in which the said judgment was rendered, or out of which the said execution was issued; and the said judgment or execution shall have the same force and effect as if it was amended accordingly.

TIT. XXII.
CHAP. 15.

When judgment or execution considered as amended.

9. *And whereas* other judgments, statutes, and recognizances, besides those, or some of those, by virtue whereof the sale aforesaid was made, might affect the lands, tenements, hereditaments, and real estate so sold, if no provision be made to remedy the same; and whereas the persons who have not taken, or will not take out executions upon their judgments, statutes, or recognizances, ought not to hinder or prevent such as do take out executions from having the proper effect and fruits thereof—*therefore be it enacted*, that the purchaser, his heirs and assigns, shall hold the lands, tenements, hereditaments, and real estate by him or her purchased as aforesaid, free and clear of all other judgments, recognizances, statutes merchant and statutes staple whatsoever, on or by virtue of which no execution has been taken out and executed on the lands, tenements, hereditaments and real estate so purchased.

Lands sold clear of judgments, etc., on which executions have not issued.

10. *And be it enacted*, That if any judgment or execution (the said execution being recorded as aforesaid,) by virtue whereof such sale as aforesaid shall be made of any lands, tenements, hereditaments and real estate, shall be reversed for error, such reversal shall not be given in evidence, or be of any force or avail against any bona fide purchaser under the said judgment or execution; but the said purchaser, his heirs and assigns, shall hold the said lands so bona fide purchased, notwithstanding such reversal, if it be posterior to the said purchase: *and further*, such reversal shall only operate against the defendant in error, his heirs, executors and administrators, to compel compensation to be made to the party aggrieved to the full value of the lands, tenements, hereditaments and real estate so sold as aforesaid.

Reversal of judgment not to affect purchaser.

Defendant in error liable.

TIT. XXII.
CHAP. 15.

When a succeeding sheriff to make deed for lands sold by his predecessor.

11. *And be it enacted*, That if any sheriff who hath made or shall make sale of any lands, tenements, hereditaments and real estate, by virtue of an execution against the same, shall abscond, or depart from the state, or be disqualified by law, or rendered unable by death, or otherwise incapable to make a deed or conveyance for the same, it shall be lawful for any succeeding sheriff of the county, on receiving a certificate from the court of common pleas of such county, signed by the clerk by order of the said court, setting forth that sufficient proof hath been made to the said court, that such sale was fairly and legally made, and on tender of the purchase money, or if the purchase money or any part of it has been paid, then on proof of such payment and on tender of the residue, if any be, to sign, seal and deliver to the said purchaser or his legal representative, a deed or conveyance of the lands, tenements, hereditaments and real estate so sold; which deed shall be as good and valid and shall have the same force and effect as if the sheriff who made such sale, had signed, sealed and delivered a deed of conveyance for the same in due form of law.

And pay over the money.

12. *And be it enacted*, That if such succeeding sheriff receive any money by virtue of the preceding section of this act, he shall pay the same to the person thereunto entitled by law.

How proprietary rights levied on and sold.

13. *And be it enacted*, That all proprieties, rights, share and shares of propriety and rights to unlocated lands, shall be and hereby are made liable to be levied upon and sold by executions to be issued on judgments, for the payment of the debt or damages, and costs or sum of money thereby recovered, in the same manner as lands, tenements, hereditaments and real estate are made liable to be levied upon and sold by virtue of this act, but every such execution shall issue out of the supreme court; and if the said shares or rights be within the western division, shall be directed to the sheriff of the county of Burlington, and if within the eastern division, shall be directed to the sheriff of the county of Middlesex: *and further*, that the said sheriff shall give notice, by advertisements signed by himself, and put up in five or more public places in the said county, and by an advertisement in one of the newspapers published in this state, of the time and place of exposing such shares or rights to sale, at least two months before the time appointed for selling the same.

Judgment against executor or administrator not to affect lands, etc.

14. *And be it enacted*, That no lands, tenements, hereditaments or real estate, of any testator or intestate, shall be sold or in any wise affected by any judgment or execution against executors or administrators.

15. *And be it enacted*, That when any executor or administrator shall discover or believe that the personal estate of his testator

or intestate is insufficient to pay his debts, then it shall be the duty of such executor or administrator, as soon as conveniently may be, to make and exhibit, under oath, a just and true account of the said personal estate and debts, as far as he can discover the same, to the orphans' court of the county where the lands, tenements, hereditaments and real estate, of which the said testator or intestate died or shall die seized, do lie, and request their aid in the premises; and the said court shall thereupon make an order, directing all persons interested in such lands, tenements, hereditaments and real estate, to appear before them at a certain day and place, in the said order to be mentioned, not less than two months after the day of making such order, to show cause why so much of the said lands, tenements, hereditaments and real estate of the said testator or intestate should not be sold as will be sufficient to pay his debts, or the residue thereof, as the case may require; which order, signed by the surrogate or clerk of the said court, shall be immediately thereafter set up at three of the most public places in the said county for six weeks successively, and be published for the same time in one or more of the newspapers printed in this state.

TIT. XXII.
CHAP. 15.

Proceedings
where personal
estate
insufficient
to pay debts.

Order to
show cause.

16. *And be it enacted*, That the said orphans' court shall, at the time and place mentioned in the said order, or at such other time and place as they may then appoint, hear and examine the allegations and proofs of the said executor or administrator, and other persons interested; and if, on full examination, the said court shall find that the personal estate of the said testator or intestate is not sufficient to pay his debts, the said court shall order and direct the executor or administrator to sell the whole, if necessary, of the lands, tenements, hereditaments and real estate of the said testator or intestate, for the payment of his debts, or so much thereof as will be sufficient for that purpose; and when a part only of the said lands, tenements, hereditaments and real estate is sufficient, such order shall specify the part to be sold; *provided always*, that where any houses and lots or lands are so circumstanced, that a part thereof cannot be sold without manifest prejudice to the heirs or devisees, the said court may, at their discretion, order the whole or a greater part than is necessary to pay such debts, to be sold; and the surplus money arising from such sale shall be distributed among the heirs or devisees according to the law of descents in the former, and the will of the testator in the latter case: *and further*, that the heir or devisee, whose lands, tenements, hereditaments and real estate, so descending or devised to him, have been sold as aforesaid, for the payment of the debts of his intestate or testator, may compel all others claiming or holding under such intestate or

When lands
ordered to
be sold.

How to be
sold.

Who to con-
tribute.

TIT. XXII.
CHAP. 15. testator to contribute in proportion to their respective interests, so as to equalize the burthen or loss.

Report of
sale to be
made and
confirmed.

17. *And be it enacted*, That the executor or executors, administrator or administrators, and the survivor or survivors of them, who may be ordered to sell any lands, tenements, hereditaments, or real estate of any testator or intestate, shall, after making such sale, report the same to the next stated term of such orphans' court; and if the said court shall approve of such sale, it shall confirm the same as valid and effectual in law, and shall by rule of court direct the said administrator or administrators, executor or executors, and the survivor or survivors of them, to execute good and sufficient conveyances in the law to the purchaser or purchasers for the tract or tracts of land, or real estate so sold; which said conveyances, duly executed as aforesaid, shall vest in the purchaser or purchasers all the estate that the testator or intestate was seized of at the time of his or her death, if the order be obtained within one year thereafter; and if the said order be not obtained within that time, then the said conveyance shall vest in the purchaser or purchasers all the estate that the heirs or devisees of the testator or intestate were seized of at the time of the making of the said order of the orphans' court; *provided always*, that the said executor or administrator may adjourn the said sale from time to time, not exceeding two months in the whole.

What estate
to vest in
purchaser.

What deed
to recite.

18. *And be it enacted*, That such conveyance or deed shall set forth that the sale of the said lands, tenements, hereditaments, or real estate, was made by the said executor or executors, administrator or administrators, by virtue of an order of the orphans' court of the county in which the sale shall be authorized; and shall set forth further, the term of the orphans' court in which the order was granted, and the date of the said order.

Good, not-
withstand-
ing omission
or variance.

19. *And be it enacted*, That any deed or conveyance heretofore made, or which may hereafter be made by any executor or executors, administrator or administrators for any lands, tenements, hereditaments, or real estate, sold by virtue of any order of the orphans' court of any county in this state by virtue of this act, shall be good and valid and received in evidence as such in any court in this state, notwithstanding an omission of the recital in the said deed of the order of such orphans' court authorizing such sale, and notwithstanding any variance between the recital in said deed of the order of such orphans' court authorizing such sale and the record of such order.

Proceeds of
sale to be
assets.

20. *And be it enacted*, That the moneys arising from such sale of the lands, tenements, hereditaments, and real estate of such testator or intestate, shall be received by the said executor or admin-

istrator, and be considered as assets in his hands for the payment of debts, and the surplus, if any, shall be distributed among the heirs or devisees in the proportion and manner directed by the sixteenth section of this act. TIT. XXII. CHAP. 15.

21. *Provided always, and be it further enacted,* That no part of the lands, tenements, hereditaments, and real estate of any testator or intestate, shall be ordered by the said orphans' court to be sold as aforesaid, until the executor or administrator shall have applied the personal estate, or such part thereof as may have come to his hands, towards payment of the debts of such testator or intestate; and no more of the said lands, tenements, hereditaments, and real estate, except as is excepted in the sixteenth section of this act, shall be sold than may be necessary to pay the residue of the said debts; *provided also,* that nothing herein contained shall prevent or bar any person from bringing and maintaining any action against an executor or administrator, for or in respect of the personal estate of his testator or intestate, or for or in respect of any waste or misapplication thereof by such executor or administrator. Personal estate to be first applied. No more land sold than necessary. Proviso.

22. *And be it enacted,* That when any orphans' court in this state, shall order and direct any executor or administrator to sell any lands, tenements, hereditaments, or real estate of any testator or intestate, it shall be the duty of the said orphans' court to take, of the respective executor or executors, administrator or administrators, applying for such order, sufficient bonds, with two or more able and sufficient sureties, being residents in the county, to the ordinary of the state and his successors, in a penalty double the amount of the estimated value of the lands, tenements, hereditaments, or real estate ordered to be sold, with condition in form and manner following, to wit: The condition of this obligation is such, that if the above bound A. B., executor of the last will and testament of C. D., deceased, (or administrator of all and singular the goods, chattels, and credits of C. D., deceased, as the case may be,) shall well and truly administer the moneys arising from the sale of any lands, tenements, or real estate of the said C. D., directed by the order of the orphans' court of the county of M. to be sold according to law; and further, do make or cause to be made, a just and true account of his administration, within twelve months from the date of the above obligation, and the surplus of money which shall be found remaining upon the account of such sale or sales, (the same being first examined and allowed of by the judges of the orphans' court of the county, or other competent authority,) shall distribute and pay unto such person or persons respectively, as is, are, or shall be by law entitled to receive the same, then the above obligation to be void and of none effect, otherwise to be and remain in full force and virtue. Upon order to sell lands, bond to be given. Condition.

TIT. XXII.
CHAP. 15.

Bonds, how
prosecuted,
etc.

Distribution
of estate.

When exe-
cutor or ad-
ministrator
removed,
and success-
or appoint-
ed;

who may
have action,
etc.

23. *And be it enacted*, That all bonds given by executors or administrators and their sureties, in pursuance of this act, shall be good to all intents and purposes, and pleadable in any court of justice; and in case such bonds shall become forfeited, it shall and may be lawful for the ordinary to cause the same to be prosecuted in any court of record, at the request of any party grieved by such forfeiture; and the moneys recovered upon such bond, shall be applied towards making good the damages sustained by the not performing the said condition, in such manner as the prerogative court shall, by sentence or decree, direct: *and further*, that it shall and may be lawful to and for the orphans' court, after such executors or administrators shall have legally accounted for and touching the sale or sales of the said lands, tenements, hereditaments, and real estate of the person so deceased, to order a just and equal distribution of the surplus, after debts and just expenses of every sort first allowed and deducted, among the heirs or devisees to whom the lands, tenements, hereditaments, and real estate so sold, descended or were devised, according to the law of descents in the former, and the will of the testator in the latter case, and the same distribution to decree and settle; and the persons entitled to such distribution, shall have their remedy at law, in case of nonpayment, for the recovery of the same, against the executor or executors, administrator or administrators so accounting, saving to every one, supposing him, her, or themselves aggrieved, his, her, or their right of appeal.

24. *And be it enacted*, That where the orphans' court of the proper county has made an order for sale, as is mentioned in the sixteenth section of this act, either on the application of the said executor or administrator, or of a creditor or creditors, if the said executor or administrator shall, at the term mentioned in the said order, neglect or refuse to give bonds, with sureties, as aforesaid, then, and in every such case, the said court shall forthwith by sentence, revoke or repeal the letters testamentary or letters of administration of such executor or administrator neglecting or refusing, and thereupon the surrogate shall grant letters of administration or letters testamentary with the will annexed, to such person or persons having right thereto, as will give bonds in manner and form aforesaid, who may have every lawful and proper action against such removed executor or administrator, to recover the amount of all moneys, assets, goods, or chattels received by such removed executor or administrator, and not applied according to law, as well as all damages done or committed by such executor or administrator, in respect of the estate in his hands.

25. *And be it enacted*, That when any testator or intestate shall

die possessed of any share or shares, or part or parts of a share of propriety of undivided rights, or warrant to locate any land, either in the eastern or western division of New Jersey, and shall not leave other estate sufficient to pay all the just debts of such decedent, that then and in such case, the executor or executors, administrator or administrators, shall apply to the orphans' court of the county where such decedent last resided, and the said court shall make an order for the sale of such share or parts of shares, or warrants for unlocated rights, on the like exhibition and proof of the deficiency of the estate of such decedents, to pay the just debts that shall appear against the same, under the same restrictions, notice, and publicity, and with the same forms of proceeding throughout, as is by law directed for the sale of real estates.

TIT. XXII.
CHAP. 16.

Of order to
sell unlocat-
ed lands.

26. *And be it enacted*, That the lands, tenements, hereditaments, and real estate of any person who shall die seized thereof, or entitled to the same, as well as any share or shares, or part or parts of a share of propriety of undivided rights, or warrant to locate lands in this state, shall be and remain liable for the payment of his or her debts, for one year after his or her decease, and may be sold by virtue of an order of the orphans' court of the county where such lands, tenements, hereditaments, and real estate shall lie, or in case of any share or shares, or part or parts of a share of propriety of undivided rights, or warrant to locate lands, by an order of the orphans' court of the county where such decedent last resided, if obtained within the said period of time, any alienation or encumbrance made, or attempted to be made, by his or her heir or heirs, devisee or devisees, to the contrary notwithstanding; *provided always*, that nothing herein contained shall affect any right of dower in the said lands, tenements, and real estate.

Lands to re-
main liable
to pay debts
one year.

Dower not
affected.

CHAPTER 16.

SALES, REGULATIONS RESPECTING.

1. Notice to be given.

2. Of adjournments.

An Act to regulate sales of real estate made under a public statute or the direction of a court. REV. 432.

Revision....Approved April 15, 1846.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That in all cases whatsoever where any sheriff, coroners, master in chancery, executor, administrator,

What notice
shall be giv-
en.

TIT. XXII.
CHAP. 17.

guardian, commissioners, auditors, or other officer or person, is now or hereafter shall be authorized or required by any public statute, or the direction of any court of competent jurisdiction in this state, to make sale of any lands, tenements, hereditaments or real estate, such officer or officers, person or persons, unless otherwise specially directed by law, shall give notice by public advertisements, signed by himself, herself or themselves, and set up at five or more public places in the county, one whereof shall be in the township where such real estate is situate, of the time and place of such sale, at least two months next before the time so appointed, and shall likewise cause the same to be published in one of the newspapers printed and published in this state, and circulated in the neighbourhood of said real estate, at least four weeks successively, once a week, next preceding the time appointed for selling the same; and at the time and place so appointed, between the hours of twelve and five in the afternoon, such officer or officers, person or persons, shall sell the same by public vendue to the highest bidder, and the said officer or officers, person or persons so advertising in one of the newspapers, shall be entitled therefor, in addition to his or their other fees, to the sum of one dollar and fifty cents, unless where it is otherwise specially provided.

Time of sale.

Fee for advertising.

Of adjournments.

2. *And be it enacted*, That all and every such officer or officers, person or persons shall be vested with power to adjourn such sale or sales, from time to time, subject only to such limitation and restriction upon the exercise of such power, as may by law be specially provided.

CHAPTER 17.

SURVEYS, MODE OF PROVING.

- | | | |
|--------------------------------|--|---------------------------|
| 1. Seals to be provided. | | 3. Fees. |
| 2. Copies of surveys evidence. | | 4. When act takes effect. |

1837-8.
PAMPH. 215.

An Act to provide a more easy mode of proving surveys of land in this state, and for other purposes.

Passed February 27, 1838.

Seals to be provided for surveyors general.

1. BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same*, That there shall be a seal for the surveyor general of the western division of this state, and also a seal for the surveyor general of the eastern division of this state, provided by the governor at the expense of the state, to be by him devised; and a description of each seal, in

writing, deposited and recorded in the office of the secretary of this state, shall there remain as public records thereof; and the said seal for the surveyor general of the western division of this state, shall be deposited with him, and the said seal for the surveyor general of the eastern division, shall be deposited with him, and they shall be handed down to their respective successors in office.

TIT. XXII.
CHAP. 18.

Where deposited.

2. *And be it enacted*, That copies of all surveys and other writings of record, in either the office of the surveyor general of the western or eastern division of this state, if certified to be true copies, under the hand and seal of the surveyor general, in whose office the same may be of record, shall be esteemed and taken for true copies thereof, and as such may be read in evidence in any court of law or equity in this state, where the same would be admissible if proved to be true copies, according to the existing laws of evidence, any law, usage or custom to the contrary notwithstanding.

Copies of surveys certified to be evidence.

3. *And be it enacted*, That the aforesaid surveyors general and their successors in office, shall be respectively entitled to demand and receive the following fees for services rendered by either of them in their respective offices, and no more, that is to say: for each certificate under seal, fifty cents; for every search for any record or paper, twelve and a half cents; for copies of any record or other writing, twelve and a half cents for every sheet of one hundred words.

Fees.

4. *And be it enacted*, That this act shall take effect immediately after the passing of the same.

CHAPTER 18.

TENURES.

- | | |
|---|---------------------------------------|
| 1. Alienation of lands. | 4. So of antecedent conveyances, etc. |
| 2. Wardships, liveries, etc., discharged. | 5. Rents, etc., not discharged. |
| 3. Tenures, free and common socage. | 6. Tenure allodial, not feudal. |

An Act concerning tenures.

REV. 166.

Passed February 18, 1795.

1. BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same*, That Freeholders may alien their lands. it shall for ever hereafter be lawful for every freeholder to give, sell, or alien the lands or tenements whereof he or she is, or at any time hereafter shall be seized in fee-simple, or any part thereof, at his or her pleasure, so always that the purchaser shall hold the

TIT. XXII.
CHAP. 18.

If a freeholder alien part only of his lands, the alienee shall hold such part of the chief lord of the fee.

All wardships, liveries, etc., taken away and discharged.

Fines for alienation, seizures, etc., taken away and discharged.

Tenures by knights service abolished.

All tenures of any estate of inheritance, before July 4. 1776, turned into free and common socage.

lands or tenements, so given, sold, or aliened, of the chief lord, if there be any, of the same fee, by the same services and customs, by which the person or persons making such gift, sale, or alienation, before held the same lands or tenements; and if such freeholder give, sell, or alien a part only of such lands or tenements to any, the feoffee or alienee shall immediately hold such part of the chief lord, and shall be forthwith charged with the services for so much as pertains, or ought to pertain, to the said chief lord, for the same parcel, according to the quantity of the land or tenement so given, sold, or aliened; and so, in this case, the same part of the service shall remain to the lord to be taken by the hands of the feoffee or alienee, for which he or she ought to be attendant and answerable to the same chief lord, according to the quantity of the land or tenement given, sold or aliened, for the parcel of the service so due.

2. *And be it enacted by the authority aforesaid,* That all wardships, liveries, primer seisins, and ousterlemains, values, and forfeitures of marriage, by reason of any tenure by knights service, and all mean rates, and all other gifts, grants, and charges incident or arising for or by reason of wardships, liveries, primer seisins, or ousterlemains, shall be, and hereby are declared to be taken away and discharged, from the twelfth day of March, in the year of our Lord one thousand six hundred and sixty-four; and that all fines for alienations, seizures, and pardons for alienations, tenure by homage, and all charges incident or arising for or by reason of wardship, livery, primer seisin, ousterlemain, or tenure by knights service, escuage, and also relief and aid pur file marrier, and pur fair fitz chivalier, and all other charges incident thereunto, shall be, and hereby are likewise declared to be taken away and discharged, from the said twelfth day of March, in the year of our Lord, one thousand, six hundred and sixty-four; and that all tenures by knights service, and by knights service in capite, and by socage in capite, and the fruits and consequents thereof happened, or which shall or may hereafter happen, or arise thereupon or thereby, shall be, and hereby are declared to be taken away, discharged, and forever abolished.

3. *And be it enacted by the authority aforesaid,* That all tenures of any honours, manors, lands, tenements, or hereditaments, or of any estate of inheritance at the common law, held either of the king, or of any other person or persons, bodies politic or corporate, at any time before the fourth day of July, in the year of our Lord one thousand seven hundred and seventy-six, are hereby declared to be turned into free and common socage, to all intents and purposes, and shall be construed, adjudged, and deemed to be

free and common socage from the time of the creation thereof, and for ever thereafter; and that the same honours, manors, lands, tenements, and hereditaments, shall for ever hereafter stand and be discharged of all tenure by homage, escuage, voyages royal, and charges for the same, wardship incident to tenure by knights service, and values and forfeitures of marriage, and all other charges incident to tenure by knights service, and of and from relief, aid pur file marrier and aid pur fair fitz chivalier.

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CHAP. 18.

4. *And be it enacted by the authority aforesaid,* That all conveyances and devises of any manors, lands, tenements, or hereditaments, at any time heretofore made, shall be expounded to be of such effect, as if the same manors, lands, tenements, or hereditaments had been then held, and continued to be holden, in free and common socage only.

Antecedent conveyances and devises of lands to operate in free and common socage.

5. *Provided always, and be it further enacted by the authority aforesaid,* That this act, or any thing herein contained, shall not take away, nor be construed to take away or discharge, any rents certain, or other services incident or belonging to tenure in common socage, due, or to grow due to this state, or any mean lord, or other private person, or the fealty or distresses incident thereunto.

This act not to take away rents certain or incident to common socage.

6. *And be it enacted by the authority aforesaid,* That the tenure upon all gifts, grants, or conveyances, heretofore made or hereafter to be made, of any manors, lands, tenements or hereditaments, of any estate of inheritance, by any letters patent under the great seal of this state, or in any other manner by this state, or the legislature thereof, or by the commissioners or agents of forfeited estates, or other lawful and competent authority under this state, or the legislature thereof, shall be and remain allodial, and not feudal; and shall for ever hereafter be taken and adjudged to be and continue in free and pure allodium only, and shall be for ever discharged of all wardship, value, and forfeiture of marriage, livery, primer seisin, ousterlemain, relief, aid pur file marrier, aid pur fair fitz chivalier, rents, renders, fealty, and all other services whatsoever.

Tenure of lands, which have been, or shall be granted by this state, to be allodial, and not feudal.