

TITLE XXXIII.

PRACTICE IN CHANCERY.

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 “ 2....BILLS OF DISCOVERY.
 “ 3....DIVORCE.

CHAPTER 1.

PRACTICE.

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| <ol style="list-style-type: none"> 1. Terms, when and where held. 2. Suits, etc., continued, if term lost. 3. Court always open for certain purposes. 4. Process endorsed, signed and sealed. 5. What defendants named in one process. 6. When bill filed before process issued. 7. Of security for costs. 8. Who to serve process. 9. How to be served. 10. When accompanied by ticket. 11. Security on injunction after verdict. 12. Same, in mixed actions. 13. Remedy, if security insufficient. 14. Chancellor may refer question. 15. Affidavit for injunction before verdict. 16. Of motion to dissolve after answer. 17. Notice of special motions. 18. Breach of injunction punished. 19. Ne exeat. 20. What equivalent to service of subpoena. 21. Pleadings, when to be filed. 22. Order for publication. 23. Plea or demurrer set down. 24. Replication to plea. 25. Demurrer first disposed of. 26. Answer after plea or demurrer. 27. Costs on plea or demurrer. 28. When complainant must proceed. 29. Exceptions to answer. 30. Costs on exceptions. 31. When second answer required. 32. When third answer required. 33. Consequences if insufficient. 34. Cross bill and answers. 35. Rules entered of course. 36. Amendments. 37. Parties to take notice, of what. 38. When answer taken as true. 39. Cause, when at issue. 40. Interrogatories to complainant. | <ol style="list-style-type: none"> 41. Of examinations. 42. Witnesses' fees. 43. Case for opinion of judges. 44. Issue, when ordered. 45. Rule for hearing. 46. What if complainant do not attend. 47. What if defendant do not attend. 48. Papers to be used at hearing. 49. Fees for attending to advise court. 50. Pleadings, etc., to be enrolled. 51. But not after dismissal. 52. Record to be signed by chancellor. 53. Enrollment after clerk's death. 54. Signing by the statute. 55. Effect of decree. 56. When to operate as conveyance. 57. When filing bill deemed notice. 58. Clerk to file and record notice. 59. Lien of decree. 60. Fees on notice and abstract. 61. Of decrees against absent defendants. 62. Of moneys brought into court. 63. Process after decree. 64. Sales on foreclosure. 65. Deed made, money applied. 66. When execution superseded. 67. Proceedings when money not all due. 68. Fi. fa. to bind from delivery. 69. Amercement of sheriff. 70. His liability for neglect. 71. Redress in such case. 72. Penalty for not returning process. 73. Punishment for contempt. 74. Clerk to account for fines. 75. Of costs, and compelling payment. 76. Certain process omitted. 77. Register's office abolished. 78. What not to be registered. 79. Rules of practice. 80. Appeals, time allowed for. |
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An Act respecting the court of chancery.

Revision....Approved April 16, 1846.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the court of chancery shall hold annu-

REV. 494, 702.
 HAR. 54, 298,
 373.
 1838-9.
 PAMPH. 162
 1839-40.
 PAMPH. 58.
 1845.
 PAMPH. 151,
 157.

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- ally, at Trenton, four stated terms, commencing on the third Tuesday in March, June, September and December, respectively, and such special terms, at the same or any other place, as the chancellor shall from time to time appoint.
- Terms.
- Term lost, suits, etc., continued.
2. *And be it enacted*, That if the said court shall not sit or be opened at any of the said terms, whether stated or special, the writs and process then returnable, and the bills, suits, pleadings, and proceedings depending before the said court, shall be continued of course till the next term, and so from term to term until the court shall sit.
- Always open for certain purposes.
3. *And be it enacted*, That the said court of chancery shall be considered as always open for the granting of injunctions, writs of ne exeat to prevent the departure of defendants from the state, and other writs and process heretofore usually granted in vacation.
- Process, endorsed, signed, sealed.
4. *And be it enacted*, That every subpœna, process of sequestration, writ of execution, or other writ or process, shall be issued by a solicitor, or by the clerk, at the instance of the party, and before the service or execution thereof, shall be subscribed or endorsed with the name of the said solicitor or party, and also signed and sealed by the said clerk.
- Names in one process.
5. *And be it enacted*, That the names of all defendants in any suit who are resident in the same county, shall be inserted in one subpœna or process.
- When bill to be first filed.
6. *And be it enacted*, That no subpœna or other process for appearance shall issue out of the court of chancery, except in cases to stay waste, until after the bill shall have been filed with the clerk of the court.
- When security for costs required,
7. *And be it enacted*, That if the complainant reside out of this state, he shall, before the issuing of process to appear, cause a bond to be executed by at least one sufficient person, being a freeholder and resident within this state, to the defendant, in the penal sum of one hundred and fifty dollars, conditioned to prosecute the suit with effect, and to pay costs to the defendant, if he shall be entitled thereto, and have the same filed with the clerk, or in default thereof, the complainant's solicitor, who shall file the said bill and issue process thereon, shall be responsible to pay the defendant such costs as he may be entitled to by the order of the court; and if the said bill and process be signed by the complainant, and not by any solicitor, then the said suit shall be stayed till such bond be filed, and if it be not filed by the time appointed by the court, the bill shall be dismissed, with costs.
- or solicitor held responsible,
- or suit stayed.
- Who to serve and return process.
8. *And be it enacted*, That it shall be the duty of the sheriff or coroner, as the case may require, of any county in this state, to whom any subpœna, order, attachment, process of sequestration,

writ of execution, or other process issuing out of the court of chan- TI. XXXIII.
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cery, shall be directed or delivered, to serve or execute the same, and to make return thereof at the time and place therein mentioned, which shall be filed by the clerk.

9. *And be it enacted*, That every subpœna or process for appear- How served.
ance shall be served on the person to whom it is directed, or a copy thereof left at his dwelling-house or usual place of abode, at least ten entire days prior to its return.

10. *And be it enacted*, That where a bill shall be filed on any When ticket
to issue.
mortgage, or instrument in the nature thereof, for a foreclosure or sale of the premises contained in the same, or any part thereof, and the complainant shall deem it expedient to make any person a defendant therein, other than the mortgagor, his heirs, executors, administrators, or assigns, such complainant shall, with the subpœna to be issued against such other defendant, cause to be issued a ticket, in writing, shortly making known for what cause he is subpœnaed to answer; which ticket shall be, by the officer serving the subpœna, left with the said defendant at the time of such service, and no charge be made therefor.

11. *And be it enacted*, That no injunction shall issue to stay pro- Injunction
after verdict,
etc.
ceedings at law in any personal action after verdict or judgment, on the application of a defendant in the said proceedings at law, unless a sum of money equal to the amount for which the verdict or judgment is given, with costs, shall be first deposited with the clerk of the court by the applicant for such injunction, or unless said applicant shall give such security, by bond, as the chancellor Security re-
quired.
shall deem good, to the party or parties at law against whom such injunction is prayed, in double the amount of such verdict or judgment and costs at law, with condition to abide such order or decree as the chancellor shall make in the premises.

12. *And be it enacted*, That no injunction shall issue to stay And so in
mixed ac-
tion.
proceedings at law in any mixed action after verdict or judgment, on the application of a defendant in the said proceedings at law, unless the applicant shall first deposit with the clerk of the court such a sum of money as the chancellor shall direct, or give such security, by bond, to the party against whom the injunction is prayed, as the chancellor shall direct.

13. *And be it enacted*, That when any injunction shall be granted Remedy, if
security
deemed in-
sufficient.
upon bond as aforesaid, and the party against whom the same has been granted shall think the said bond not sufficient security, such party may apply to the chancellor to have the security made sufficient; whereupon the chancellor, if he shall deem it expedient to hear such applicant, shall direct notice to be given to the party giving said bond to appear before him at such time and place as he

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shall appoint; and upon proof that the notice directed has been duly served, the chancellor shall hear the matter, if moved so to do, with power to adjourn; and if, upon the hearing of the matter, it shall appear that the said bond is not sufficient security, then the chancellor shall have power to order further security; and if such further security shall not be given, according to the order made for that purpose, then, for that cause, the chancellor shall have power to dissolve the injunction granted on such bond.

Chancellor
may refer
question.

14. *And be it enacted*, That the chancellor shall have power to refer the whole matter of the last preceding section to a master in chancery, who shall hear the parties, after at least six days notice to the party giving the said bond, and make report to the chancellor with all convenient speed.

Injunction
before ver-
dict, etc., af-
fidavit re-
quired.

15. *And be it enacted*, That no injunction shall be granted to stay proceedings in any suit at law, before a verdict or judgment, unless the chancellor be satisfied of the complainant's equity, either by affidavit, certified at the foot or on the back of the bill, that the allegations thereof are true, or by other means.

Motion to
dissolve af-
ter answer.

16. *And be it enacted*, That no motion to dissolve an injunction, which has been regularly obtained, shall be heard until ten days after the answer is filed, if the party rely in any measure on his answer for the dissolution.

Notice of
special mo-
tions.

17. *And be it enacted*, That neither a motion to dissolve an injunction, nor any other special motion, shall be heard, unless eight days notice, exclusive of Sunday and the day of service, shall have been given thereof to the opposite solicitor.

Breach of
injunction to
stay waste
punished.

18. *And be it enacted*, That if the person against whom an injunction shall be issued to stay waste, shall, after the service thereof, do or commit, or consent, direct, or suffer to be done or committed, any waste or destruction of or upon the premises, contrary to the said injunction, and the chancellor, on affidavit or other proof, shall be of opinion that such waste or destruction hath been done or committed, then the said chancellor may, on motion, order an attachment of contempt to be issued against the person so charged with disobedience to, and a breach of the said injunction; and if the person so offending shall be brought before the chancellor, by virtue of the said attachment, and shall not make it appear to his satisfaction that no waste or destruction hath been done or committed as aforesaid, then the said chancellor may, in his discretion, and on motion, order such offender to be committed, and kept in close custody, until he shall give further order therein.

Ne exeat.

19. *And be it enacted*, That no writ of ne exeat shall be granted, unless satisfactory proof be made to the chancellor, that the defendant designs quickly to depart from this state; and if granted,

the chancellor shall direct to be endorsed thereon the sum in which the party shall give bond, with surety or sureties, being freeholders in this state. TI. XXXIII. CHAP. I.

20. *And be it enacted*, That a written appearance in any suit in chancery, or a written acknowledgment of the service of any subpœna to answer, signed by a defendant, or his or her solicitor, shall have the same force and effect as if such defendant had been regularly served with a subpœna to answer by the sheriff or any other proper officer. What equivalent to service of subpœna.

21. *And be it enacted*, That when a subpœna to answer shall have been returned duly served by the proper officer, or the appearance of the defendant shall have been signed, or service of a subpœna acknowledged, as mentioned in the preceding section, the defendant shall file his plea, demurrer, or answer to the bill of complaint, on or before the second day of the stated term next after the day of appearance specified in such subpœna, unless the court shall grant the defendant further time; and if the defendant shall not file his plea, demurrer, or answer within the time hereby limited, or that granted by the court, the bill of complaint shall be taken as confessed against such defendant, and such decree made thereon as by the court shall be deemed equitable and just; or the chancellor may, at his discretion, order the complainant to produce documents and witnesses to substantiate and prove the allegations in the bill of complaint; or the chancellor may examine the complainant on oath or affirmation, to ascertain the truth of the allegations in the said bill; and such decree shall be made in either case as the chancellor shall think equitable and just. Pleadings, when to be filed. Consequence of default.

22. *And be it enacted*, That in case of a bill filed against any defendant against whom a subpœna or other process to appear shall issue, and such defendant shall not cause his appearance to be entered in such suit, as according to the rules of said court the same ought to be entered, in case such process has been duly served, and it shall be made to appear by affidavit or otherwise to the satisfaction of the chancellor that such defendant is out of the state, or cannot upon due inquiry be found therein, or that he conceals himself within this state, every such defendant shall be deemed and taken to be an absent defendant, and thereupon the chancellor may, by order, direct such absent defendant to appear, plead, answer, or demur to the complainant's bill, at a certain day therein to be named, not less than two, nor more than six months from the date of such order; which order shall, within twenty days thereafter, be served personally on such defendant, by a delivery of a copy thereof to him, or be published in one or more of the public newspapers printed in this state, and designated in such order, for six When order of publication required

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weeks successively, at least once in every week; and which said order shall also be published or served in any other manner that the chancellor may see proper in the same to direct; and in case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within some further time to be allowed by the chancellor, if he shall think proper, and on proof of personal service or of the publication of said order or orders as aforesaid, and of the performance of the directions contained in said order or orders to the satisfaction of the chancellor, the chancellor may order and direct that the complainant's bill be taken as confessed against such absent defendant so failing to plead, answer, or demur, or the chancellor may, at his discretion, order the complainant to produce documents, depositions, exhibits, or other evidence to substantiate and prove the allegations in the bill, or the chancellor may examine the complainant on oath or affirmation, touching or concerning the allegations in the bill, and thereupon such decree shall be made, in either case, as the chancellor shall think equitable and just.

Proof of.

Bill taken
pro con. or
proofs re-
quired.

Plea or de-
murrer to be
set down.

23. *And be it enacted*, That when a plea or demurrer shall be filed, it shall be the duty of the party pleading or demurring to set it down for argument at the next term, or in default thereof, the said plea or demurrer shall be overruled of course.

Replication
to plea.

24. *And be it enacted*, That when the complainant conceives the plea to be good, though not true, he may reply to, and take issue upon it, and proceed as in case of an answer.

Demurrer
first disposed
of.

25. *And be it enacted*, That if the defendant file a demurrer and answer, the complainant shall not proceed on the answer till the demurrer has been argued or disposed of.

Answer after
plea or de-
murrer.

26. *And be it enacted*, That if the plea or demurrer be overruled, no other plea or demurrer shall be thereafter received; but in such case the defendant shall file his answer to the complainant's bill in forty days after such overruling; and if he fail to do so, the said bill shall be taken as confessed, and the said court shall thereupon proceed as directed in the twenty-first section of this act.

Costs on plea
or demurrer.

27. *And be it enacted*, That if the plea or demurrer be allowed, the complainant shall pay costs, and if overruled, the defendant shall pay them.

When com-
plainant to
proceed.

28. *And be it enacted*, That the complainant shall file exceptions or a replication, or set down a cause for hearing upon bill and answer within thirty days after the expiration of the time limited or granted for filing the answer, or on failure thereof, his bill shall be dismissed, with costs, unless good cause be shown to the contrary.

29. *And be it enacted*, That when exceptions shall be filed to an

answer, a rule may be entered of course with the clerk, either in term time or in vacation, to refer the same to a master of the court, who shall decide and report upon them within thirty days after they are filed; but an appeal from such report shall be allowed to the chancellor, who shall hear and determine the same at the next term.

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Exceptions
to answer.

30. *And be it enacted*, That the complainant, if his exceptions be overruled, shall pay costs to the defendant; and the defendant, if his answer be adjudged insufficient, shall pay costs to the complainant.

Costs on ex-
ceptions.

31. *And be it enacted*, That when an answer shall be adjudged to be insufficient, the defendant shall file a second or further answer within thirty days after such adjudication, or on failure thereof the said bill shall be taken as confessed, and such proceeding had thereon as if the first or original answer had not been filed within the limited or granted time.

When se-
cond answer
required.

32. *And be it enacted*, That if such second or further answer shall be adjudged to be insufficient, the defendant shall pay double costs, and shall file a third or further answer within twenty days after such adjudication, or on failure thereof the said bill shall be taken as confessed, and such proceedings be had thereon as if the first or original answer had not been filed within the limited or granted time as aforesaid.

When third
answer re-
quired, and
costs.

33. *And be it enacted*, That if such third or further answer shall be adjudged to be insufficient, the defendant shall pay treble costs; and in such case further time to answer shall not be allowed, but the said bill shall be taken as confessed, and such proceedings be had thereon, as if the first or original answer had not been filed in due time.

Consequen-
ces, if insuffi-
cient.

34. *And be it enacted*, That if a cross bill be exhibited, the defendant to the first bill shall answer thereto before the defendant to the cross bill shall be compelled to answer such cross bill.

Cross bill
and answers.

35. *And be it enacted*, That all rules, common or special, by consent of the parties or their solicitors, shall be entered of course with the clerk, whether in term time or in vacation.

Rules enter-
ed of course.

36. *And be it enacted*, That all amendments shall be made with or without costs, and on such equitable terms as the said court shall direct.

Amend-
ments.

37. *And be it enacted*, That parties to suits in chancery shall take notice, at their peril, of the filing of answers, demurrers, pleas, replications and other pleadings, and of the pronouncing and signing of decrees.

Of what, par-
ties to take
notice.

38. *And be it enacted*, That if the complainant proceed to hearing on bill and answer only, the answer shall be taken to be

On bill and
answer, an-
swer taken
as true.

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true in all points; and no evidence shall be received unless it be matter of record, to which the answer refers, and is proveable by the said record.

Cause at issue.

39. *And be it enacted*, That every cause in the court of chancery shall be deemed to be at issue on filing a replication; and it shall not be necessary to issue a subpoena or enter a rule to rejoin in any case.

Interrogatories to complainant.

40. *And be it enacted*, That the defendant in chancery, after he shall have filed his answer, may exhibit interrogatories to the complainant, which shall be answered by him on oath or affirmation; and such answer shall be evidence in the cause in the same manner and to the same effect as the defendant's answer to the complainant's bill is evidence; and if the complainant shall not answer such interrogatories by the time appointed by the court, he shall be in contempt, and his bill dismissed, with costs.

Of examinations.

41. *And be it enacted*, That all examinations of witnesses hereafter to be taken and made use of at the hearing of any cause in the court of chancery, shall be taken and reduced to writing by one of the examiners of said court, or before a commissioner or commissioners appointed by the chancellor according to the course of the court, who are hereby authorized to administer the proper oath or affirmation to the witnesses examined by them, or any of them; and all examinations of witnesses before examiners shall be taken on ten days notice of the time and place of taking such examination, given by the party or his solicitor to the opposite party or his solicitor; and either of the parties in the cause shall and may, in their proper persons, or by their solicitor or counsel, have liberty to be present and examine and cross-examine such witnesses; all which examination of witnesses so taken, shall be filed with the clerk of the court, to be made use of and read in evidence upon the hearing of the cause, saving all legal exceptions.

Witness's fees.

42. *And be it enacted*, That witnesses in the court of chancery shall be allowed the same fees as by law are allowed to witnesses in the supreme court.

Cases for opinion of supreme court.

43. *And be it enacted*, That the court of chancery may send any matter of law to the supreme court, for their opinion to be certified thereon.

When issue ordered.

44. *And be it enacted*, That if any matter of fact shall render the intervention of a jury necessary, then the court of chancery is hereby authorized to direct an issue for the trial of the same in the supreme court.

Rule for hearing.

45. *And be it enacted*, That every cause shall be set down for hearing at the next stated term after the filing of the replication; or on failure thereof, the complainant's bill shall be dismissed, with

costs, unless the court, on just cause and reasonable terms, allow further time for the said hearing; and if the said hearing be not had within the time so limited or allowed, then the court shall dismiss the said bill, with costs; *provided always*, that there be fifteen days between the filing of the replication and the next stated term; and if there be not, then the hearing shall be had at the subsequent stated term or at a special term.

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46. *And be it enacted*, That if the complainant shall not attend at the time appointed for the hearing of the cause, his bill shall be dismissed, with costs.

What if complainant do not attend.

47. *And be it enacted*, That if the defendant shall not attend at the time appointed for the hearing of the cause, the bill, answer, replication, documents, examinations and proofs shall be read, on the part of the complainant, and the court thereupon shall decree in favour of the complainant or dismiss his bill, as the case may require.

What if defendant do not attend.

48. *And be it enacted*, That the bill, answer, pleadings, papers, documents, examinations and proofs filed in the cause, shall be used at the argument or hearing, for which no charge shall be made by the clerk.

Papers used at hearing.

49. *And be it enacted*, That whenever the chancellor shall deem it necessary to call to his assistance the chief justice or any justice or justices of the supreme court, or one or more of the masters in chancery, to advise with upon the hearing of a cause, or an argument, or upon motions of importance, each justice and master shall be allowed after the rate of two dollars a day, by way of compensation for attending the said court, to be paid by the treasurer of the state, on a certificate, signed by the chancellor, of the time of such attendance, allowing one day for every twenty miles from his place of residence.

Fees for attending chancellor to advise.

50. *And be it enacted*, That when any cause shall be finally determined in the court of chancery, except where the suit, bill or proceeding shall be dismissed by consent, the clerk of the court shall enter or enroll together, in order, the bill, answer, pleadings, reports, decretal orders, and decree in such cause, in a book to be kept for that purpose, which shall be signed by the chancellor, as of the day on which such decree was pronounced; but such decree shall not contain any recital of the said bill, answer, or other pleadings.

Pleadings, etc., to be enrolled.

51. *And be it enacted*, That whenever any suit, bill or proceeding shall be dismissed out of the court of chancery, in pursuance of any consent or agreement of the parties for that purpose, no enrollment of the bill, petition, answer, or other proceedings had in such suit, shall be necessary; nor shall any fees be allowed or

But not after dismissal.

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taxed therefor; *provided always*, that either party may, at his or their own expense, require the same to be enrolled.

Signed by
chancellor.

52. *And be it enacted*, That whenever the proceedings and decree in any cause are by law required to be entered or enrolled in manner aforesaid, it shall be the duty of the clerk to enter or enroll the same, so that the record may be ready to be signed by the chancellor within three months after the final decree in such cause shall have been filed with the said clerk; and no clerk shall charge any fee therefor, until such service shall have been actually performed.

Enrolled af-
ter death of
clerk.

53. *And be it enacted*, That whenever any cause shall be finally determined in the court of chancery, and the person then being clerk of the said court, shall cease to be such, by death or otherwise, before he shall have entered or enrolled the proceedings in such cause, in manner aforesaid, if by law they ought to be so entered or enrolled, then it shall be the duty of his successor in office, within three months after his appointment, to make, or cause to be made, such entry or enrollment.

Signed by
the statute.

54. *And be it enacted*, That if any chancellor by whom any cause shall have been finally heard and determined, shall go out of office, and some other person shall be appointed chancellor before the proceedings and final decree in such cause shall have been enrolled and signed in the book kept for that purpose, then it shall be the duty of his successor in office, or the chancellor for the time being, to sign such enrollment with his own name, prefixing to such signature the words "by the statute;" and all proceedings and decrees so signed, shall be as good and effectual in law, to all intents and purposes, as if the same had been duly signed by the chancellor who pronounced such final decree.

Effect of de-
cree.

55. *And be it enacted*, That the decree of the court of chancery shall, from the time of its being signed, have the force, operation, and effect of a judgment at law in the supreme court, from the time of the actual entry of such judgment.

When to
operate as a
conveyance.

56. *And be it enacted*, That where a decree of the court of chancery shall be made for a conveyance, release, or acquittance, and the party against whom the said decree shall pass, shall not comply therewith by the time appointed, then such decree shall be considered and taken, in all courts of law and equity, to have the same operation and effect, and be as available as if the conveyance, release, or acquittance had been executed conformable to such decree.

How bill,
etc., made to
operate as
constructive
notice.

57. *And be it enacted*, That neither the filing of a bill in chancery, nor any proceedings had or to be had thereon, before a final decree, shall be deemed or taken to be constructive notice to any

bona fide purchaser or mortgagee of any lands or real estate to be affected thereby, until the complainant in such bill, or his solicitor, shall have first filed in the office of the clerk of the court of common pleas of the county in which such lands or real estate lie, a written notice of the pendency of such suit, setting forth the title of the cause and the general object thereof, together with a description of the lands or real estate to be affected thereby; *pro-vided*, that nothing in this section contained shall be construed or taken to apply to any bill filed or to be filed for the satisfaction or foreclosure of any duly registered mortgage.

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58. *And be it enacted*, That it shall be the duty of the clerk with whom any such notice shall be filed, forthwith to record the same, together with the time of the filing thereof, in a proper book, to be by him provided and kept in his office for that purpose; which book shall be properly indexed by the said clerk, and be a public record, to which all persons desirous of examining the same shall have access.

Clerk to file
and record
notice.

59. *And be it enacted*, That no decree of the court of chancery, hereafter to be made, shall, as against any person not a party thereto, become a lien upon or bind any lands, tenements, hereditaments, or real estate, other than those specifically mentioned and described in such decree, or in the bill of complaint on which the same is founded, until the parties interested in such decree, or some or one of them, shall have filed in the office of the clerk of the supreme court a statement or abstract of such decree, containing the names of all the parties thereto, designating particularly those against whom it is rendered, with the state and county in which they respectively resided, the time at which the said decree was signed, and the amount of the debt, damages, costs, or other sum of money thereby directed to be paid; which statement or abstract the said clerk shall forthwith record in a proper book, to be by him provided and kept in his office for that purpose; which book shall be properly indexed by the said clerk, and be a public record, to which all persons desirous to examine the same shall have access.

Of the lien
of a decree
in chancery.

60. *And be it enacted*, That the following, and no other fees shall be allowed for the services required by the two last preceding sections of this act, viz: to the county clerk, for filing and recording each notice, ten cents per folio; to the clerk of the supreme court, for filing and recording every statement or abstract, twenty-five cents; which fees shall be included with the other costs in the cause, and taxed therewith, by the clerk of the court of chancery.

Fees on no-
tice and ab-
stract.

61. *And be it enacted*, That in cases where a decree shall be made upon any bill in equity against an absent defendant, the

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Of enforcing
decree a-
gainst absent
defendant. such decree against such absent defendant, may require the com-
Complainant
to give bond, plainant to give bond, with such security and in such sum as he
or sequestra-
tion ordered. may direct, to abide such decree or order touching the restitution
of the estate and effects of such absent defendant, or the repay-
ment of any sum of money which the complainant may receive by
virtue of such decree, but which shall afterwards be made to ap-
pear, as hereinafter provided, not to have been due and owing to
him; and in case no such security shall be given, no process or
execution shall issue to compel the performance of the decree so
made against such absent defendant, but the estate and effects of
such absent defendant may, by order of the chancellor, be seques-
tered, and remain under the direction of the chancellor, to abide
such order as he shall think just and proper respecting the same.
And in case any such absent defendant, against whom any decree
shall be made as aforesaid, his heirs, devisees, executors, adminis-
Time within
which de-
fendant may
have relief. trators, or assigns, as the case may require, shall, within six months
after notice in writing be given to him or them of such decree, or
within three years after such decree, in case no such notice as
aforesaid shall be given, petition the chancellor touching the mat-
ter of such decree, and pay, or secure to be paid, such costs as the
chancellor shall think reasonable to order and direct, then and in
such case the person or persons as aforesaid, so petitioning, may
be permitted to appear and answer the complainant's bill, and
thereupon such proceedings shall be had, as if such absent defend-
ant had appeared in due season and no decree had been made; or
May file bill. such absent defendant may, within the times aforesaid, file his bill
of complaint in the said court, for an account and settlement of
the amount which was really and truly due to the complainant at
the time of the decree, and to compel the said complainant to re-
fund and repay what he may have wrongfully recovered and re-
ceived, together with the interest from the time of the receipt
thereof, with costs of suit, the former decree against such absent
defendant notwithstanding; but in case no petition shall be pre-
sented, or bill filed, as before provided for, within six months from
the time notice as aforesaid shall be given, due proof thereof being
made, or within three years from the date of the decree, the decree
shall be deemed and adjudged to be confirmed; which confirma-
When de-
cree confirm-
ed. tion shall have relation to the time of making said decree. And the
decree shall be executed and performed as in cases where the de-
fendant had duly appeared.

Moneys
brought into
court. 62. *And be it enacted*, That it shall and may be lawful for the
chancellor to cause any moneys brought into court, to be deposited
by the clerk, in his name as clerk of said court, in one of the banks

of this state, to the credit of the cause to which it belongs, or to be invested in any public stock of the United States; and the moneys so deposited, or public stock in which it shall be so invested, shall be, from time to time, accounted for, invested, transferred, or reinvested, or otherwise disposed of, as the court shall deem reasonable and proper; and on the resignation, death, or removal of the clerk of the said court of chancery, all moneys deposited in either of the said banks, by the said clerk, shall be carried to the account of his successor in office, and the said bank shall take notice thereof, and transfer such accounts accordingly; and the chancellor may, from time to time, make such rules and regulations respecting such deposits and investments, as to him shall appear just and right, and for the interest of all persons and parties concerned therein.

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63. *And be it enacted*, That the complainant having obtained a decree, it shall be lawful for the said court to issue process for the immediate sequestration of the real and personal estate of the defendant, or so much thereof as may be sufficient to satisfy the demand of the complainant in the decree specified, with costs, or to issue a writ of fieri facias against the goods and chattels, lands and tenements, hereditaments and real estate, of the defendant, upon which sufficient property shall be taken and sold to satisfy the said demand, with costs, or to issue a *capias ad satisfaciendum* against the defendant, upon which writs of fieri facias and *capias ad satisfaciendum* there shall be the same proceedings as at law; or to cause, by injunction, the possession of the effects and estate demanded by the bill, and whereof the possession or a sale is decreed, to be delivered to the complainant or otherwise, according to such decree and as the nature of the case may require; and in case of sequestration, the court shall order payment and satisfaction to be made out of the estate so sequestered, according to the true intent and meaning of the decree.

Process after
decree.

64. *And be it enacted*, That where a bill shall be filed for the foreclosure or satisfaction of any mortgage, it shall be lawful for the said court to decree a sale of the mortgaged premises, or such part thereof as shall be sufficient to discharge the said mortgage or encumbrances on the said mortgaged premises, besides costs; which sale shall be made, either by one of the masters of the court or by the sheriff of the county where the premises are situated, by virtue of a writ of fieri facias issued for that purpose; which said writ of fieri facias shall, before it is sued forth, be recorded by the clerk of the said court in the book kept by him for recording of executions against real estate.

Sale on fore-
closure.

By master
or sheriff.

65. *And be it enacted*, That the sheriff or other officer to whom

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CHAP. I.

Deed made,
money dis-
posed of.

such writ of fieri facias, as mentioned in the last preceding section, shall be directed and delivered, shall make sale pursuant to the command of said writ, and shall make and execute a deed or deeds for the premises sold, as the case may require; and the moneys arising from the said sale shall be applied to pay off and discharge the moneys decreed to be paid, and the remainder, if any there be, and if the person or persons entitled to receive it shall be absent out of this state, may be invested in stock of the United States, or put at interest on such security as the said court shall think proper to order; and the same shall be delivered or paid to the person or persons entitled to receive it, upon his or her application to the court for the same; *provided always*, that no greater estate in the premises sold, shall at any time be conveyed or granted to such purchaser, than would have vested in the mortgagee had the equity of redemption been duly foreclosed.

Proviso.

Supersedes
on absent
defendant's
appearance
before sale.

66. *And be it enacted*, That in all cases of a decree for sale of mortgaged premises against any absent defendant, if such defendant shall, at any time before the sale made by the sheriff, in pursuance of any writ of execution, issued as aforesaid, cause his appearance to be entered in court, and shall pay such costs to the complainant as the court shall think reasonable, then it shall and may be lawful for the said court, by a writ of supersedeas, directed to the sheriff or other officer, to stay his proceedings on the execution for the sale of such mortgaged premises; and thereupon such proceedings shall and may be had, as if an appearance had been entered, within such time and in such manner as, according to the rules of the court, the same ought to have been entered, in case the first process in the suit had been duly served.

Proceedings
where mo-
ney secured
by mortgage
is not all due.

67. *And be it enacted*, That when a decree of the court of chancery shall be made for the sale of mortgaged premises (in cases where the whole sum secured by the mortgage is not due) either for nonpayment of any portion or instalment of the debt or demand intended to be secured by the mortgage, or the nonpayment of interest due, or both, and it shall appear to the court that a part of the mortgaged premises cannot be sold to satisfy the amount due without material injury to the remaining part of the mortgaged premises, and that it is just and reasonable that the whole of the mortgaged premises should be sold together, it shall and may be lawful for the said court to decree a sale to be made of the whole of the mortgaged premises, and to apply the proceeds of the sale of said premises, or so much thereof as shall be necessary, as well to the payment of the interest, instalments or portions then due, and also the costs then due and payable, as to the payment of the whole or residue of the debt or demand which hath not

become due and payable, and the residue of the proceeds of such sale to be paid to the person or persons entitled to receive the same, or to be brought into court to abide the further order of the court, as the equity and circumstances of the case require; *provided always*, that when the residue of the debt or demand intended to be secured by the said mortgage, is payable at a future day without interest, and the mortgagee is willing to receive the same, the court shall deduct a rebate of legal interest for what the mortgagee shall receive on the said debt or demand, to be computed from the time of the actual payment thereof to the time such residue of the debt or demand would have become due and payable.

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CHAP. 1.

Proviso.

68. *And be it enacted*, That a writ of fieri facias shall bind the property of the goods of the person against whom it is issued, from the time that it was delivered to the sheriff or officer to be executed, as at law.

Fi. fa. to bind
from delive-
ry.

69. *And be it enacted*, That if the sheriff or other officer shall neglect or refuse to execute any process of sequestration to him directed and delivered, or to make payment of the rents, issues and profits of the estate so sequestered, according to the order of the said court, or, where the execution shall be by fieri facias, shall neglect to file a just and true inventory of the goods and chattels, lands, tenements, hereditaments and real estate, so levied on and seized, unless he return that he hath levied to the amount of the demand or sum therein specified, with costs, or shall voluntarily or negligently omit, for the space of two months, to render to the complainant, or his representative or solicitor, the money which he shall have received from the sale of the estate, real and personal, of the defendant or otherwise, then such sheriff or officer shall be amerced by the said court to the amount of the demand of the complainant, with costs, for the use of the said complainant; *provided*, that ten days notice in writing shall be given to such sheriff or officer by the complainant, his representative or solicitor, of the intended application for such amercement; which amercement, so ordered by the court, shall have the force, operation and effect of a decree, whereon execution, in the name and for the use of the said complainant or his representative, may instantly, on motion in term time, and without further proceedings, be awarded and issued against the goods and chattels, lands, tenements, hereditaments and real estate of the said sheriff or officer.

When sheriff
to be amerced.

Proviso.

70. *And be it enacted*, That if the sheriff or other officer shall neglect or refuse to execute any writ of fieri facias to him directed or delivered, for the space of two months, or shall adjourn the sale or vendue of the lands, tenements, hereditaments and real estate by him levied upon by virtue of such writ of fieri facias, more than

When liable
for debt, etc.

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CHAP. I.

twice, and exceeding one month for each adjournment, he shall be and hereby is 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 prescribed in and by the last preceding section of this act; *provided always*, that if the said sheriff or other officer shall, at any time before the entry of such amercement against him as aforesaid, sell the property levied upon and bring the whole amount of the product of such sale (after deducting his lawful fees) into court, the said sheriff or other officer shall be exonerated from all liability on account of said amercement.

and amerced.

Proviso.

Neglect, etc.,
of sheriff.

71. *And be it enacted*, That if any party to a suit in chancery shall be aggrieved by the neglect, default, malpractice or misconduct of the sheriff, then such party, his representative or attorney, may apply and be redressed, to the amount of the sum specified in the order or decree, in the manner prescribed by the eleventh and twelfth sections of the act entitled, "An act concerning sheriffs."

TITLE XXX.
CH. 14.

Penalty for
neglect to
return process.

72. *And be it enacted*, That if any sheriff or other officer, to whom any writ, process or order of the court of chancery shall be directed or delivered, shall not make return thereof at the day of return, and according to the tenor of such writ, process or order, the same not being countermanded, he shall be in contempt, and process of contempt shall, on motion in term time, be issued against him; and before he shall be discharged from such contempt, he shall pay to the clerk, for the use of the state, as a fine for the said contempt, a sum not exceeding fifty dollars, to be imposed by the court, and the costs incurred by means thereof.

Punishment
for contempt.

73. *And be it enacted*, That to enforce obedience to the process, rules and orders of the court of chancery, where any person shall be in contempt according to the law, practice, or course of the said court, he shall, for every such contempt, and before he be released or discharged from the same, pay to the clerk in chancery, for the use of this state, a sum not exceeding fifty dollars, as a fine for the said contempt; and the said person being in court, upon process of contempt or otherwise, shall stand committed and remain in close custody until the said process, rule or order shall be obeyed and performed, and until the fine so imposed for such contempt, with the costs, be fully paid.

Clerk to account for
fines.

74. *And be it enacted*, That the said clerk in chancery shall account for, on oath, and pay annually to the treasurer of this state, the fines which he shall have received by virtue of this act.

Costs discretionary;
payment compelled.

75. *And be it enacted*, That except where it is otherwise directed by this or some other act of the legislature, it shall be in the discretion of the court of chancery to award costs or not; and the

payment of costs, when awarded, may be compelled by writ of ^{TI. XXXIII.} fieri facias or capias ad satisfaciendum, issuing out of the said court, ^{CHAP. 2.} or by subpœna and attachment.

76. *And be it enacted*, That subpœna to hear judgment, at- ^{What pro-} tachment with proclamations, and commission of rebellion, shall, in ^{cess omitted.} all cases in chancery, be deemed unnecessary, and omitted accord-
ingly.

77. *And be it enacted*, That the office of register in the court ^{Register a-} of chancery be, and it is hereby abolished. ^{bolished.}

78. *And be it enacted*, That it shall not be necessary for the clerk ^{What not re-} in chancery to register any rule, order, or decree, or any master's ^{gistered.} report, that may be made in any cause or proceeding depending or hereafter to be brought or prosecuted in the said court of chancery; nor shall any fees be allowed or taxed for registering any such rule, order, decree or report.

79. *And be it enacted*, That it shall be lawful for the court of ^{Rules of} chancery, from time to time, to make, alter, amend, or revoke any ^{practice.} rule of practice, so as to obviate doubts, advance justice, and expedite suits in the said court, so that the same be not contrary to the provisions of this act.

80. *And be it enacted*, That all persons aggrieved by any order ^{Appeal.} or decree of the court of chancery, may appeal from the same, or any part thereof, to the court of errors and appeals; and all appeals, except from final decrees, shall be made within forty days after filing the order or decree appealed from; and all appeals from final decrees in the said court shall be made within three years after making such decree; *provided*, that in cases where the ^{Proviso.} person entitled to such appeal from any final decree be an infant, feme covert or insane, he shall have three years to bring such appeal, after such disability shall be removed.

CHAPTER 2.

BILLS OF DISCOVERY.

1. Bill for, authorized. | 2. Court may compel.

A supplement to "An act respecting the court of chancery."

1845.
PAMPH. 141.

Approved March 20, 1845.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey, as follows:*

Sec. 1. Hereafter whenever an execution against the property of ^{Bill may be} a defendant shall have been issued on a judgment at law, and shall ^{filed in chan-} ^{cery for dis-} ^{covery of} ^{property.}

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CHAP. 3.

have been returned unsatisfied, in whole or in part, leaving an amount or balance remaining due exceeding one hundred dollars, exclusive of costs, the party suing out such execution may file a bill in chancery to compel the discovery of any property or thing in action belonging to the defendant in such judgment, and of any property, money, or thing in action, due to him or held in trust for him, except such property as is now reserved by law, and to prevent the transfer of any such property, money, or thing in action, or the payment or delivery thereof to the defendant, except when such trust has been created by, or the fund so held in trust has proceeded from, some person other than the debtor himself.

The court to have power to compel discovery.

SEC. 2. The court shall have power to compel such discovery, and to prevent such transfer, payment, or delivery, and to decree satisfaction of the sum remaining due on such judgment, out of any personal property, money, or things in action belonging to the defendant, or held in trust for him, with the exception above stated, which shall be discovered by the proceedings in chancery; *provided*, that if the personal property, money, or thing in action, which shall be discovered as aforesaid, does not amount to the sum of one hundred dollars, no costs shall be recovered by the plaintiff against the defendant in such proceeding.

Proviso.

CHAPTER 3.

DIVORCE.

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| 1. Jurisdiction of the court. | 13. Citation, etc., served. |
| 2. Of process and answer. | 14. By whom. |
| 3. Divorce, and issue illegitimate. | 15. How. |
| 4. When issue not illegitimate. | 16. Proceedings after service, etc. |
| 5. Collusion of parties. | 17. Order for proofs. |
| 6. When cohabitation deemed incest. | 18. Absent defendants. |
| 7. When deemed adultery. | 19. Defects of form cured. |
| 8. Divorce for extreme cruelty. | 20. Decree, and how executed. |
| 9. Of alimony and maintenance. | 21. Enrollment. |
| 10. Of provision for wife's maintenance. | 22. Fees. |
| 11. Security for costs. | 23. When issue ordered. |
| 12. Suits by petition. | 24. Suit by poor person. |

An Act concerning divorces.

REV. 667.
MAR. 69.
1842-3.
PAMPH. 84.
Jurisdiction
of the court
of chancery.

Revision....Approved April 15, 1846.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the court of chancery shall have jurisdiction of all causes of divorce and of alimony or maintenance, by this bill directed and allowed, provided the parties, complainant and defendant, or either of them, were or shall be inhabitants of

this state at the time of the injury, desertion or neglect complained of, or where the marriage shall have been solemnized or taken place within this state, and the complainant shall have been an actual resident in this state at the time of the injury, desertion or neglect complained of, and at the time of exhibiting the bill; or where the adultery was committed in this state, and the parties, complainant and defendant, or either of them, reside in this state at the time of exhibiting the bill; or where the complainant or defendant shall be a resident of this state at the time of filing the bill of complaint, and the complainant or defendant shall have been a resident of this state for the term of five years during which such desertion shall have continued; *provided*, such complainant shall make his or her oath or affirmation, to be annexed to the bill of complaint, that his or her complaint is not made by any collusion between him or her and the defendant, for the purpose of dissolving their marriage, but in truth and good faith for the causes set forth in the bill of complaint.

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CHAP. 3.

Bill to be
sworn to.

2. *And be it enacted*, That the like process and course of practice and procedure shall be had and pursued in all such causes as are usually had and pursued in other causes on the equity side of the said court, except that the answer of defendants shall not be under oath.

Process and
answer.

3. *And be it enacted*, That divorces from the bond of matrimony, shall be decreed where either of the parties had another wife or husband living at the time of such second or other marriage; and that all marriages where either of the parties shall have a former husband or wife living at the time of such marriage, shall be invalid from the beginning and absolutely void, and the issue thereof shall be deemed to be illegitimate, and subject to all the legal disabilities of such issue.

Divorce de-
creed.

What mar-
riages void,
and issue il-
legitimate.

4. *And be it enacted*, That divorces from the bond of matrimony may be decreed, in case the parties are within the degrees prohibited by law, and in case of adultery in either of the parties; and also for wilful, continued, and obstinate desertion for the term of five years; but the decree or sentence of divorce in such cases shall not render illegitimate the issue of any marriage so dissolved.

What di-
vorce not to
render issue
illegitimate.

5. *And be it enacted*, That if it appear to the court that the adultery complained of shall have been occasioned by the collusion of the parties, and done with an intention to procure a divorce, or that the complainant was consenting thereto, or that both parties have been guilty of adultery, then no divorce shall be decreed.

Collusion of
parties.

6. *And be it enacted*, That if any persons, who shall be divorced on account of their being within the prohibited degrees, shall, after such divorce, cohabit together, such persons so offending

When coha-
biting after
divorce in-
cest.

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shall be liable to all the pains and penalties provided by the then existing laws against incest.

When punished as adultery.

7. *And be it enacted*, That if any persons shall cohabit or live together in the same house, after a divorce for the cause of adultery or prior marriage, such persons so offending shall be liable to all the pains and penalties provided by the laws against adultery.

Divorce for extreme cruelty.

8. *And be it enacted*, That for extreme cruelty in either of the parties, the court of chancery may decree a divorce from bed and board for ever thereafter, or for a limited time, as shall seem just and reasonable.

Of alimony and maintenance.

9. *And be it enacted*, That when a divorce shall be decreed, it shall and may be lawful for the court of chancery to take such order touching the alimony and maintenance of the wife, and also touching the care and maintenance of the children, or any of them, by the said husband, as from the circumstances of the parties and the nature of the case shall be fit, reasonable and just; and in case the wife is the complainant, to order the defendant to give reasonable security for such alimony and maintenance; and upon his neglect or refusal to give such reasonable security as shall be required of him, or upon default of him and his surety, if any there be, to pay or provide such alimony and maintenance, to award and issue process for the immediate sequestration of the defendant's personal estate, and the rents and profits of his real estate, and to appoint a receiver thereof, and cause such personal estate and the rents and profits of such real estate, or so much thereof as shall be necessary, to be applied towards such maintenance and allowance, or to such maintenance and allowance as to the said court shall, from time to time, seem reasonable and just, or to enforce the performance of the said decree or orders by such other lawful ways and means as is usual, and according to the course and practice of the court of chancery.

Sequestration of estate.

When husband compelled to support wife.

10. *And be it enacted*, That in case a husband, without any justifiable cause, shall abandon his wife or separate himself from her and refuse or neglect to maintain and provide for her, it shall and may be lawful for the court of chancery to decree and order such suitable support and maintenance to be paid and provided by the said husband for the wife and her children, or any of them, by that marriage, or out of his property, and for such time as the nature of the case and the circumstances of the parties render suitable and proper in the opinion of the court, and to compel the defendant to give reasonable security for such maintenance and allowance, and from time to time to make such further orders touching the same as shall be just and equitable, and to enforce such decree and orders in the manner mentioned in the last preceding section of

this act; but during the time such maintenance shall be allowed by the decree or sentence of the court, the husband shall not be chargeable with her debts. TL XXXIII. CHAP. 3.

11. *And be it enacted*, That in any such suit as is mentioned in the last preceding section, it shall and may be lawful for the chancellor, if applied for before answer filed, to order a bond to be given in one hundred dollars, by one or more sufficient freeholders, with condition to pay such costs as shall or may be awarded by the court to be paid to the defendant. Security for costs required.

12. *And be it enacted*, That all suits in the court of chancery for divorces, may be commenced by filing a petition with the clerk of the court; which petition shall plainly and fully state the cause or causes of the application for such divorce and the relief prayed; and the complainant shall make his or her oath or affirmation, to be annexed to the said petition, that his or her complaint is not made by any collusion between him or her and the defendant, for the purpose of dissolving their marriage, but in truth and good faith for the cause or causes set forth in the petition. Suits by petition.

13. *And be it enacted*, That upon filing the said petition, the clerk shall, if required, make out a certified copy thereof to be served on the defendant, and issue a citation under the seal of the court for the defendant to answer the said petition on or before the first day of the next stated term of the court; which citation shall bear date the day of issuing thereof, and be tested in the name of the chancellor. Citation and copy of petition served.

14. *And be it enacted*, That it shall be the duty of the sheriff or coroner, as the case may require, of any county in this state, to whom any such citation and certified copy of the petition shall be directed or delivered, to serve the same, and to make return of the said citation at the time and place therein mentioned, which shall be filed by the clerk. By whom.

15. *And be it enacted*, That every such citation shall be served either by delivering to the defendant a copy thereof, together with a certified copy of the petition, or by leaving the said copies at his or her dwelling-house or usual place of abode, at least twenty entire days before its return. How served.

16. *And be it enacted*, That on a citation being returned "served" or "cited" by the sheriff or coroner, as the case may require, the defendant shall, on the day mentioned therein for him or her to answer the said petition, or within three days thereafter, file his or her answer to the said petition, unless the court shall grant the defendant further time for that purpose; which answer shall plainly and fully set forth the cause or causes of his or her defence, and shall be signed by the defendant, but not sworn to; after which, Proceeding after process returned served. Answer.

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CHAP. 3.

Proofs.

without any replication or further pleadings or rule, the parties shall proceed to take their evidence as in other cases in the court of chancery, so that the cause may be heard at the next stated term thereafter, unless the court, for good cause and upon such terms as shall be considered by the court just and reasonable, shall think proper to put off the hearing thereof to another term.

If no answer,
order for
proofs.

17. *And be it enacted*, That if a defendant, upon the citation being returned "served" or "cited" as aforesaid, shall not file his or her answer to the petition, within the time limited by this act or granted by the court, the court may make an order that the petitioner proceed to take depositions and other evidence to substantiate and prove the allegations in the petition, and to bring on the hearing of the cause *ex parte*.

Order for
publication,
if defendant
absent.

18. *And be it enacted*, That in case a petition as aforesaid shall be filed, and it shall be made to appear, by affidavit or otherwise, to the satisfaction of the chancellor, that such defendant is out of this state, or cannot upon due inquiry be found therein, or that he or she conceals himself or herself within this state, the chancellor may thereupon, by order, direct such defendant to answer the said petition, at a certain day therein named, not less than two nor more than six months from the date of such order, which order shall, within twenty days thereafter, be served on such defendant, by a delivery of a copy thereof to him or her, or by leaving it at his or her dwelling-house or usual place of abode, or be published in one of the newspapers printed in this state, and designated in such order, and continued therein for four weeks successively, at least once in every week, and shall be published in such other manner as the particular circumstances of the case may require, if, in the opinion of the chancellor, any other or further publication shall be necessary; and in case such defendant shall not file his or her answer within the time so limited, or within some further time to be allowed by the chancellor, on proof of due service or publication of the said order, the court may order and direct the petitioner to produce depositions or other evidence to substantiate and prove the allegations in the petition; and the said petitioner may then proceed *ex parte*, and bring on the hearing of the said cause.

Proofs.

Not void for
defect of
form.

19. *And be it enacted*, That no petition, citation, answer, or other proceedings in any suit commenced by petition as aforesaid, shall be set aside, or otherwise annulled or made void for any defect in matter of form, or for any mistake or omission not affecting the real merits of the cause; and the chancellor may permit either party to amend his or her petition, answer, or other proceedings in the cause, either in matters of form or substance, and proceed to give judgment according to the merits of the case.

20. *And be it enacted*, That in all cases where the proceedings shall be commenced by petition as aforesaid, it shall and may be lawful for the chancellor, where not otherwise herein directed, to proceed as directed and allowed by this act in other cases, and to make such decree as authorized in such cases; which decree shall be carried into effect in the manner herein directed and provided for, and the court is hereby invested with all powers necessary to the conducting and finally determining such cases, according to the true intent and meaning of this act.

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CHAP. 3.
Decree, and
how execu-
ted.

21. *And be it enacted*, That when any cause shall be finally determined, which shall be commenced by petition as aforesaid, the clerk of the court of chancery shall enter or enroll together in order, the petition, answer, decretal orders, reports and final decree in such cause, in his book of decrees; which enrollment shall be signed as is authorized and required in other cases.

Enrollment.

22. *And be it enacted*, That there shall be allowed in the taxation of costs, for the petition, the sum of one dollar; for the answer, the sum of one dollar; to the clerk for the citation and certified copy of the petition, seventy-five cents; to the sheriff for serving and returning the citation, one dollar and fifty cents; and to the examiner for taking the examination of every witness, for each sheet, ten cents, and for certifying every exhibit shown to a witness, ten cents; and that no other or greater fees shall be allowed for the said services.

Fees.

23. *And be it enacted*, That if, in the opinion of the chancellor, any matter of fact shall render the intervention of a jury necessary in any suit or proceeding for a divorce, then the court of chancery is hereby authorized to direct an issue for the trial of the same in the supreme court, or in one of the circuit courts.

When issue
ordered.

24. *And be it enacted*, That whenever any poor person shall have cause of suit under this act, and shall make an affidavit or affirmation, that he or she is not worth one hundred dollars clear estate, the chancellor may, at his discretion, assign to such poor person a solicitor and counsel learned in the law, to prosecute the said cause, who, together with all other officers, shall perform their respective duties therein without fee or reward.

Suit in for-
ma pauperis.