

TITLE XXXIV.  
 PRACTICE OF LAW.

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CHAPTER 1.

PRACTICE.

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### An Act to regulate the practice of the courts of law.

REV. 309, 413,  
691.

Revision....Approved April 15, 1846.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That every person of full age and sound memory may appear and prosecute or defend any action in any of the courts of judicature of this state, in person or by his solicitor in chancery or attorney at law.

2. *And be it enacted*, That no person, except in his own case, or in the case of an infant, shall be permitted to appear and prosecute or defend any action in any of the said courts, but such as is a licensed solicitor or attorney at law, who shall be under the direction of the court in which he acts.

3. *And be it enacted*, That if any counsellor, solicitor or attorney at law shall be guilty of malpractice in any of the said

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courts, he shall be put out of the roll, and never after be permitted to act or practice as a counsellor, solicitor or attorney at law, unless he shall obtain a new license and be again enrolled in due form of law.

Remedy  
where solicitor  
or attorney  
ceases  
to act.

4. *And be it enacted*, That when any solicitor or attorney shall die or cease to act, or be put out of the roll, the person for whom he was solicitor or attorney shall be warned to appoint another in his stead, and if he fail to do so, the adverse party may proceed in the action.

Infants, how  
to prosecute  
and defend.

5. *And be it enacted*, That if an infant be entitled to any action, his guardian or next friend shall be admitted to prosecute for him, and if he be sued, a guardian shall be appointed to defend the suit for him; but in no case shall the parol demur or the proceedings be deferred or stayed till the infant arrives at full age.

Solicitors  
and attorneys  
liable  
for neglect,  
etc.

6. *And be it enacted*, That if any solicitor or attorney at law shall neglect or mismanage any cause in which he shall be employed, he shall be liable to make good all damages sustained by his client, to be recovered by action of trespass on the case, with costs.

Taxed costs  
to be filed  
before execution  
issues.

7. *And be it enacted*, That every attorney at law, before he issue execution, shall file the taxed bill of costs, or a copy thereof, in the office of the clerk of the court out of which the same is to issue; and if he fail so to do, he shall forfeit ten dollars to the party aggrieved, to be recovered by action of debt, with costs.

Bill of particulars  
to be  
delivered.

8. *And be it enacted*, That when any solicitor or attorney at law shall receive the costs accruing on any suit, he shall, if required by the party at the time of payment, or at any time within six months afterwards, draw up and deliver the bill of particulars, with a receipt, to the party paying or who shall have paid the same; and if he fail so to do, he shall forfeit ten dollars to the party aggrieved, to be recovered by action of debt, with costs.

Penalty for  
illegal charges.

9. *And be it enacted*, That if any solicitor or attorney at law shall charge in his bill of costs for services not actually done, or for services not allowed by law, or shall take any greater fee or reward for any service by him done, than is or shall be allowed by law, he shall pay to the party aggrieved thirty dollars, to be recovered by action of debt, with costs.

Limitation  
of suits for  
penalties.

10. *And be it enacted*, That the penalties mentioned in the three preceding sections of this act shall be sued for within one year after the offence committed, and not after.

Taxed bill  
of costs furnished  
before suit.

11. *And be it enacted*, That no solicitor or attorney shall commence or maintain any suit for the recovery of any fees, charges or disbursements, in equity or at law, against his client or legal representative, until after such solicitor or attorney shall have

delivered to such client or his representative, or left for him at his dwelling-house or last place of abode, a copy of the taxed bill of such fees, charges and disbursements. TI. XXXIV. CHAP. I.

12. *And be it enacted*, That every warrant of attorney for confessing judgment which shall be included in the body of any bond, bill or other instrument for the payment of money, shall be void and of none effect; and such bond, bill or other instrument shall have the same force, and no other, as if the said warrant of attorney had not been incorporated therein. Warrant of attorney not to be included in bond.

13. *And be it enacted*, That every attorney who shall confess judgment in any case, shall, at the time of making such confession, produce his warrant for making the same, to the court or judge before whom he makes the confession; and a copy of the said warrant shall then be filed with the clerk of the court in which the judgment shall be entered. Warrant and copy to be produced. Copy filed.

14. *And be it enacted*, That if judgment be not entered within ten years after the date of the warrant of attorney, it shall not be done without leave of the court; and a motion to enter such judgment shall be founded on an affidavit that the said warrant was duly executed, that the defendant is living, and that the debt, or part of it, is unsatisfied. Judgment, how obtained after ten years.

15. *And be it enacted*, That no warrant of attorney for confessing a judgment, executed by any person in custody upon mesne process, in a civil action, to a plaintiff at whose suit he is in custody, shall be of any force, unless some attorney, on behalf of such person in custody, and expressly named by him, be present as a witness, and to inform him of the nature of such warrant. Warrants given by persons in custody.

16. *And be it enacted*, That a warrant of attorney to confess judgment shall not be revocable by the party making the same. Not revocable.

17. *And be it enacted*, That the first process to be made use of in personal actions in any of the courts of law of this state, in cases where the plaintiff is not entitled to bail, shall be a summons, a copy whereof shall be served on the defendant in person, at least two entire days before its return, or left at his dwelling-house or usual place of abode at least six entire days before its return; and in cases where the plaintiff is entitled to bail, the first process shall be a *capias ad respondendum*, and shall be executed as hereafter directed. Summons, how served. Capias.

18. *And be it enacted*, That every summons, *capias ad respondendum* and writ of execution shall, before the service or execution thereof, be subscribed or endorsed with the name of the attorney, or party, and clerk by whom such summons, *capias ad respondendum* or execution shall be sued forth and sealed. Process, how endorsed.

19. *And be it enacted*, That it shall be the duty of the sheriff or

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Return made, or sheriff amerced.

officer to whom any summons, *capias ad respondendum* or other process is directed, to return the same at the time and place therein mentioned, which shall be filed by the clerk of the court; and if the said sheriff or officer fail to make such return, he shall be amerced by the court in any sum not exceeding the plaintiff's debt or demand, to and for the use of the said plaintiff.

When defendant considered in court.

20. *And be it enacted*, That when the said sheriff or other officer shall return such summons "served" or "summoned," the party shall be considered as being in court, and may be proceeded against accordingly.

How *capias* executed.

21. *And be it enacted*, That the sheriff or other officer shall execute the said writ of *capias ad respondendum*, by taking the body of the defendant, and in such case shall return thereon, that he hath taken the body, or that he hath taken the body into custody; the first usually abbreviated and expressed thus, C. C., and the second thus, C. C. C.

Names of bail endorsed; copy of bail bond filed.

22. *And be it enacted*, That the sheriff or other officer shall endorse on the *capias ad respondendum* the names of the bail by him taken, and shall deliver a copy of the bail bond to the clerk of the court, at or before the return day of the same writ; which copy shall be safely kept by the said clerk in his office.

Special bail, when filed.

23. *And be it enacted*, That the special bail shall be filed on the return day of the *capias ad respondendum*, or on the day after.

Remedy, if special bail be not perfected in time.

24. *And be it enacted*, That if special bail be not put in and perfected in due time, the plaintiff may proceed on the bail bond, or rule the sheriff to bring in the body of the defendant.

Defective return or unsatisfactory bail, etc.

25. *And be it enacted*, That if on a return that he hath taken the body, or C. C., the sheriff or other officer shall not return bail and a copy of the bail bond, or if the plaintiff be dissatisfied with the bail taken by such sheriff or officer, and the defendant shall fail to appear and give special bail within the time above prescribed, the

Sheriff ruled to bring in the body, or amerced.

court shall rule such sheriff or officer to bring in the body of the defendant within that same term; and if he fail to do so, the said sheriff or officer shall be amerced by the court in any sum not exceeding the plaintiff's debt or demand, with costs; which amercement shall have the force and effect of a judgment, whereupon an execution, in the name and for the use of the said plaintiff, may instantly, on motion in open court, and without any further proceedings, be awarded and issued against the goods and chattels, lands, tenements, hereditaments and real estate of the said sheriff or

Proceedings thereupon.

officer so amerced as aforesaid; *provided nevertheless*, if such sheriff or other officer shall cause special bail to be put in and justified, if justification be required, during the same term, he shall be excused from bringing in the body, and no amercement shall be entered

Provisoes.

against him on the said rule; *and provided further*, that this section shall extend to persons whose office is expired, as well as to sheriffs and officers for the time being. TI. XXXIV.  
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26. *And be it enacted*, That if the sheriff or officer, when ruled to do so, shall, on a cepi corpus, bring in the body of the defendant, such defendant shall be committed, and upon the entry of such committitur, the plaintiff may proceed in the action, and declare against the defendant as a prisoner, or being in custody. Body bro't  
in, committitur, etc.

27. *And be it enacted*, That the sheriff or other officer, in order to save himself, may put in special bail for the defendant, against his consent; and the bail to such sheriff or officer may do the same for their indemnity. Who may  
put in special bail.

28. *And be it enacted*, That if special bail be filed during the first or second day of the term to which process is returnable, exception thereto shall be taken and entered in the clerk's book during the said term, of which the defendant shall take notice at his peril; and in such case the defendant shall procure his bail to justify in eight days, exclusive, after such exception entered as aforesaid, or shall add other bail, who shall justify within the said eight days; and where bail is filed as aforesaid, an exception entered after the expiration of the said time shall be of no validity. Exceptions  
to.  
Justification  
of.

29. *And be it enacted*, That two days notice of justification of bail, or of new or additional bail, and justification thereof, shall be given by the defendant or his attorney, to the plaintiff or his attorney, exclusive of the day it is given, and if Sunday intervene, three days notice shall be given. Notice re-  
quired.

30. *And be it enacted*, That if the bail do not justify at the time appointed, they shall be out of court; and when they do justify, and are allowed, an order of such allowance shall be drawn, and a copy thereof served on the plaintiff or his attorney. When bail  
out of court.  
What, if al-  
lowed.

31. *And be it enacted*, That without the consent of the plaintiff or his attorney, in cases where the sheriff or other officer shall be ruled to bring in the body, justification of bail shall not be permitted after the expiration of the term in which the said rule is entered. When justifi-  
cation not  
permitted  
without con-  
sent.

32. *And be it enacted*, That the recognizance of special bail shall be to the effect following: Form of re-  
cognizance.

A. B. }  
against } In debt or case, or as the action may be.  
C. D. }

New Jersey, ——— county, to wit :

*Be it remembered*, that on the ——— day of ——— in the year of our Lord one thousand ——— C. D., E. F. and G. H., of the said county of ——— personally appeared before me J. K. one of

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the justices of the supreme court of the state of New Jersey (or one of the judges of the circuit court or court of common pleas in and for the said county of \_\_\_\_\_ or one of the commissioners to take bail, as the case may be,) and severally acknowledged themselves to owe unto A. B. the sum of \_\_\_\_\_ (double the sum endorsed on the writ) each to be levied upon their several goods and chattels, lands, tenements, hereditaments and real estate, upon condition that if the defendant C. D. shall be condemned in this action at the suit of A. B. the plaintiff, he shall pay the costs and condemnation of the court, or render himself into the custody of the sheriff of the said county for the same, or if he fail so to do, that the said E. F. and G. H. will pay the costs and condemnation for him.

Taken and acknowledged the day and }  
year above written, before me J. K. }

Bail piece.

And that on acknowledging the aforesaid recognizance, the bail piece shall be to the effect following, to wit:

New Jersey supreme court, (or \_\_\_\_\_ circuit court or court of common pleas.)

Of the term of \_\_\_\_\_ in the year of our Lord one thousand \_\_\_\_\_ C. D. of the county of \_\_\_\_\_ is delivered to bail on a cepi corpus, unto E. F. of the township of \_\_\_\_\_ in the said county, yeoman, and G. H. of the township of \_\_\_\_\_ in the said county, yeoman, at the suit of A. B. in a plea of debt (or of trespass on the case, or as the action may be.)

L. M. Attorney for the defendant.

Justification  
by affidavit  
in supreme  
court.

33. *And be it enacted*, That in actions which are or shall be instituted in the supreme court, special bail may justify by affidavit in the said court, or before one of the judges thereof, either in term time or in vacation, or before one of the commissioners for taking bail; and that such affidavit shall set forth that the bail are freeholders and residents in the state of New Jersey, and that they are respectively worth so much (mentioning the sum they are bail for) after all their debts are paid.

Same in cir-  
cuit court  
and pleas.

34. *And be it enacted*, That in actions which are or shall be instituted in any of the circuit courts or courts of common pleas, special bail may justify by affidavit in the said court, or before one of the judges thereof, either in term time or in vacation; which affidavit shall set forth that the bail are freeholders and residents in the county of (naming the county for which the said court is held) and that they are respectively worth so much (mentioning the sum they are bail for) after all their debts are paid.

Assignment  
of bail bond.

35. *And be it enacted*, That if special bail be not put in and perfected in due time, the plaintiff, if he be satisfied with the bail taken

by the sheriff or officer, may take an assignment of the bail bond in the words or to the effect following: I, the within named A. B. do hereby assign and set over the within bond to the within named C. D. the plaintiff, pursuant to the statute.

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Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand \_\_\_\_\_

Signed, sealed and delivered }  
in the presence of } A. B. [L. S.]  
E. F., G. H. }

And this shall be deemed a good assignment in law to ground an action on such bail bond.

36. *And be it enacted*, That the proceedings on the bail bond may be set aside, if irregular, or stayed, if regular, upon terms, in order that a trial may be had in the original action.

How pro-  
ceedings on,  
set aside or  
stayed.

37. *And be it enacted*, That where the plaintiff has not, in the original action, for the want of special bail being filed in due time, lost a trial, the court or a judge may stay the proceedings on the bail bond, upon putting in and perfecting special bail, paying the costs incurred by the assignment and prosecution of the bail bond, receiving a declaration in the original action, pleading issuably, and taking short notice of trial, so that the cause may be tried the same term, if the plaintiff think fit.

How where  
plaintiff has  
not lost a  
trial.

38. *And be it enacted*, That where the plaintiff has lost a trial in the original action, for the want of special bail being filed in due time, it shall be the duty of the court, before proceedings be stayed on the bail bond, further to require that the bail consent that judgment be entered against them on the bail bond, for the plaintiff's security; and in such case, if the defendant fail in the original action, the bail shall be liable to immediate execution, and shall not discharge themselves by a render of the principal.

How where  
plaintiff has  
lost a trial.

39. *And be it enacted*, That if the plaintiff might have had judgment in the original action, if bail had been filed in due time, then the proceedings shall not be stayed on the bail bond.

When not  
stayed.

40. *And be it enacted*, That whenever the defendant is guilty of a neglect in not putting in special bail in due time, by which the bail bond becomes forfeited, the notice, in case the party means to put in special bail in order to stay proceedings upon the bail bond, shall be, that he will put in and perfect special bail, in open court, on such a day, specifying the day; and in that case the plaintiff may oppose the bail in court, without its being a waiver of the bail bond.

How special  
bail put in,  
etc., after  
laches.

41. *And be it enacted*, That every court and judge shall take the fact as sworn to in the affidavit to hold the party to bail, without going into the merits.

Affidavit ta-  
ken as true.

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Render in discharge of bail. Proviso. 42. *And be it enacted*, That subsequent to the return of the *capias ad respondendum*, the defendant may render himself, or be rendered in discharge of his bail, either before or after judgment; *provided*, that such render be made at or before the appearance day of the *scire facias* against the bail which shall have been served or published in the manner prescribed by law, and not after; but in either case the special bail shall pay the costs of the said *scire facias*, and judgment for the same shall be entered against them accordingly.

When to be made.

43. *And be it enacted*, That if the plaintiff proceed against the bail by action of debt on the recognizance, the render of the principal shall be made during the term to which process against such bail is returnable, and not after; but the bail shall pay the costs of the said action.

Bail to pay costs.

Minute of render and commitment.

44. *And be it enacted*, That the court or judge before whom the render is made, shall make an entry or minute of such render and commitment; and thereupon the defendant shall be committed to the custody of the sheriff or jailer attending the said court or judge.

Exoneretur to be entered.

45. *And be it enacted*, That on such render and commitment duly certified to the clerk of the court, if in vacation, or not done in open court, it shall be the duty of the said clerk to enter an *exoneretur* on the bail piece, and thereupon the bail shall be discharged: *and further*, that the said bail shall give immediate notice of such render to the plaintiff or his attorney.

Effect of return of C. C. C.

46. *And be it enacted*, That where a sheriff or officer returns on a *capias ad respondendum*, that he hath taken the body into custody or C. C. C., such return shall have the same effect as if the sheriff, on a rule for that purpose, had brought the body of the defendant into court, and the court had thereon committed such defendant to the custody of the sheriff; upon which the plaintiff shall declare against the said defendant as a prisoner or in custody.

Amount for which bail liable.

47. *And be it enacted*, That where the plaintiff in any action shall declare for or recover a greater sum than is expressed in the *capias ad respondendum* upon which he declares, the bail shall not be discharged, but be liable for so much as is sworn to, or ordered by the court or a judge, and endorsed on the said process, or for any less sum, which the plaintiff in such action shall recover, together with the costs of the original action.

Limitation of former sheriff's liability.

48. *And be it enacted*, That no sheriff or officer shall be liable to be called upon to produce the body of any defendant on a *capias ad respondendum*, returned *cepi corpus*, unless he be required so to do within six months after the expiration of his office; and if, on such rule, he shall not bring in the body, he may be proceeded against by *amercement*, in the manner herein before mentioned.

49. *And be it enacted*, That the plaintiff shall not, in any action instituted by *capias ad respondendum*, be permitted to declare until special bail be filed and perfected, if required, or the defendant be returned in custody or brought into court, on a rule for that purpose, and a committitur entered, unless the said plaintiff will waive his right, and enter such waiver on the minutes of the court; and then if the sheriff or other officer hath returned on the said *capias ad respondendum*, that he hath taken the body, or that he hath taken the body into custody, the defendant shall be considered as in court, and may be proceeded against accordingly.

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When plaintiff not to declare on *capias* without waiver.

50. *And be it enacted*, That the plaintiff shall file his declaration against the defendant within thirty days after being returned summoned, or after the entering of special bail, and perfecting the same, or his being returned in custody, or the entering of a committitur or waiver as aforesaid, or on failure thereof, shall become nonprossed, unless the court, under special circumstances, shall grant the plaintiff further time; and in such case, the plaintiff shall declare within the time so granted, or become nonprossed.

When declaration to be filed.

51. *And be it enacted*, That the defendant shall file his plea within thirty days after the expiration of the time limited or granted for filing the declaration, or on failure thereof, judgment shall be entered against him, unless the court under special circumstances shall grant the defendant further time; and in such case the defendant shall plead within the time so granted, or judgment be entered against him; and if further pleadings shall be necessary, they shall be filed within thirty days each after the other, or on failure thereof, the like judgment as aforesaid shall be entered against the party so failing, unless the court under special circumstances shall grant further time as aforesaid.

When plea to be filed.

Other pleadings.

52. *And be it enacted*, That the defendant shall plead within the time limited or granted as aforesaid without any imparlance.

No imparlance.

53. *And be it enacted*, That the party, whether plaintiff or defendant, shall take notice of the filing of the declaration or other pleading in the cause at his peril, without service of a copy or notice of the filing of such declaration or other pleading.

Party to take notice of pleadings filed in time.

54. *And be it enacted*, That in case the party, plaintiff or defendant, shall not file his or her declaration, plea or other pleading in the cause, by the time required by law, and shall think proper to file the same after the expiration of such time, the party in such case shall furnish the adverse party with notice in writing of the time of filing such declaration, plea or other pleading, and the said adverse party shall not be bound to take notice of the same, until such notice shall be received.

But entitled to notice if not filed in time.

55. *And be it enacted*, That in cases where any declaration,

TI. XXXIV. CHAP. I. plea, or other pleading shall be filed after the time allowed by law,

And subsequent pleading filed thirty days after notice.

no subsequent pleading shall in any case be required in a shorter time than thirty days from the time notice as aforesaid shall be given of the time of filing such declaration, plea, or other pleading.

Bill of particulars required of plaintiff.

56. *And be it enacted*, That the plaintiff or his attorney, if required before plea be filed, shall deliver to the defendant or his attorney a copy of the account, or a bill of the particulars of the demand, or a copy of the bill, bond, deed, bargain, contract, note, instrument or other writing whereon the declaration is founded.

And also of defendant.

57. *And be it enacted*, That the defendant or his attorney, if required, shall deliver to the plaintiff or his attorney a copy of any deed, instrument or writing, of which in his plea he shall make a profert in court, or a copy of any bill, bond, deed, note, receipt, bargain, contract, instrument, or writing, or a bill of the particulars of any account or demand, which, under the plea of payment, he may by law set off or discount against the plaintiff's action.

Declaration by-the-by not allowed.

58. *And be it enacted*, That neither the plaintiff or any other person shall be permitted to declare by-the-by against the defendant in any action.

Actions consolidated, and counts struck out.

59. *And be it enacted*, That the defendant at any time before issue joined, may move the court to consolidate unnecessary actions, or to strike out superfluous counts in the declaration.

Process against defendant in custody.

60. *And be it enacted*, That if the defendant on a *capias ad respondendum* be returned in custody, or, when produced in court, be committed by order of the court, the plaintiff, if he have other cause of action, or any other person having cause of action against the said defendant, shall issue process against such defendant, in the same manner as if he was at large, and not in custody or in prison; and on such process, when served, the like proceedings shall be had as in other cases.

Amending pleadings.

61. *And be it enacted*, That if the plaintiff amend his declaration, the defendant shall have twenty days to alter his plea or to plead anew; and if the defendant amend his plea, the plaintiff shall have twenty days to alter his replication or to reply anew; and the like time shall be allowed if any of the subsequent pleadings be amended; but all amendments shall be made on such equitable terms as the court shall direct.

Joinder in demurrer.

62. *And be it enacted*, That if the plaintiff or defendant shall not join in demurrer, in thirty days after the filing thereof, such plaintiff shall be nonprossed, and such defendant shall have judgment awarded against him.

Argument of demurrer.

63. *And be it enacted*, That when the issue is upon matter of law, either party may move the court for a day to be appointed for

the argument of the demurrer; but no demurrer books shall be made up. TI. XXXIV. CHAP. 1.

64. *And be it enacted*, That where there are several issues in law and in fact, the issue in law shall be first determined before the issue in fact shall be tried. Issue in law tried first.

65. *And be it enacted*, That every cause shall be tried at the next court after issue joined, or on failure thereof, judgment shall be awarded for the defendant, as in case of a nonsuit, unless the court, upon just cause and reasonable terms, allow further time for the trial of said cause; and if the plaintiff neglect to try such cause within the time so allowed, then the said court shall proceed to give such judgment as aforesaid, which shall be of the like (and no other) force and effect as a judgment upon nonsuit; and the defendant shall, upon such judgment, be awarded his costs in any action where he would upon nonsuit be entitled to the same, and in no other; *provided*, that there be, between the joining of the said issue and the next term, sufficient time to give the requisite notice of trial, and if there be not, then the trial shall be had at the subsequent term. When cause to be tried. Or judgment. Proviso.

66. *And be it enacted*, That notice of trial shall be in writing, and given to the defendant, if he appear in person, or to his attorney, or to the sheriff or keeper of the jail, if the defendant be in custody or in prison, at least twenty days before such intended trial; and it shall be the duty of the said sheriff or jailer to deliver without delay the said notice to the defendant therein named, and in default thereof, the said sheriff or jailer shall be liable to the said defendant for all damages occasioned thereby. Of notice of trial.

67. *And be it enacted*, That every countermand of notice of trial shall be in writing, and given at least seven days before such intended trial; and on failure thereof, costs shall be awarded in like manner as if notice of trial had not been countermanded. Countermand.

68. *And be it enacted*, That short notice of trial, when directed by the court, shall be given five days before such trial. Short notice.

69. *And be it enacted*, That if the plaintiff do not bring on the trial of the cause in due time after issue joined, the defendant, instead of taking judgment as in case of a nonsuit, may move the court for a trial by proviso; and of such trial, the defendant shall give the like notice to the plaintiff as the plaintiff would have been obliged to give to the defendant; and if the defendant do not proceed to trial according to notice, or countermand the same in due time, the plaintiff shall be entitled to costs. Trial by proviso.

70. *And be it enacted*, That all notices of trial shall be filed with the clerk at least two days before the term, whose duty it shall be to furnish list of causes. Clerk to furnish list of causes.

- TI. XXXIV.  
CHAP. I. shall be to furnish the judges, on the first day of every term, with a list of the causes to be tried and argued, in their course and order.
- Assessments 71. *And be it enacted*, That where interlocutory judgment in actions of assumpsit shall be entered by default against the defendant, the court shall assess the damages and give final judgment, unless the plaintiff or defendant shall request a writ of inquiry.
- Notices of writs of inquiry and countermand. 72. *And be it enacted*, That the same notice shall be given of executing writs of inquiry and of countermand as is required for the trial of issues in fact.
- Or costs awarded. 73. *And be it enacted*, That if the plaintiff shall not proceed to execute the writ of inquiry according to notice, or countermand such notice in due time, the defendant shall be entitled to costs.
- Security for costs. 74. *And be it enacted*, That if the plaintiff reside out of this state he shall, if required before issue joined, give bond to the defendant in one hundred dollars, with sufficient sureties, being freeholders and residents in this state, with condition to prosecute his action with effect, and to pay costs if he discontinue, be nonsuited or a judgment pass against him; which bond shall be filed in the clerk's office of the court in which such action is or shall be pending.
- Motions for new trial and in arrest of judgment. 75. *And be it enacted*, That the party against whom a verdict hath been rendered may first move for a new trial; and if it be denied, may then move in arrest of judgment; but he shall not be permitted to move for a new trial after he hath moved in arrest of judgment and failed.
- Pleadings filed. 76. *And be it enacted*, That the declaration, pleadings, and other papers relative to every cause shall be all filed together in the office of the clerk of the court.
- Proceedings recorded. 77. *And be it enacted*, That when any civil cause, of whatever nature it be, shall be finally determined, the clerk of the court shall enter the warrants of attorney, declaration, pleadings, proceedings, and judgment in such cause, so as to make a complete record thereof in a separate book, to be kept for that purpose, with a complete alphabetical index to the same; which record shall be signed by one of the judges of the said court, as of the day on which the judgment was entered; and the clerk for such service, shall be allowed one dollar, and no more.
- Index. Signed. 78. *And be it enacted*, That no judgment roll shall be made up in any action in any of the courts of this state; but the entry in manner aforesaid of the warrants of attorney, declaration, pleadings, proceedings and judgment shall constitute the record.
- Which shall constitute the record. 79. *And be it enacted*, That the inspection of judgment and process shall not be deemed necessary in any case.
- No inspection necessary. 80. *And be it enacted*, That the plaintiff shall endorse on every

capias ad satisfaciendum, before the delivery thereof to the sheriff, the real debt or damages due and claimed by such plaintiff, and the costs of suit, in words at length.

81. *And be it enacted*, That after a capias ad satisfaciendum shall have been returned non est inventus, by the sheriff or officer, the plaintiff may proceed against the special bail upon their recognizance.

82. *And be it enacted*, That on a scire facias or action of debt against the special bail, on their recognizance, when a writ of error is brought by the principal, and allowed, and the said bail apply within the time limited for surrendering the principal, the court may stay the proceedings against such special bail, if they enter into recognizance to the party for whom judgment is given, in double the sum recovered, to pay the condemnation money, or surrender the principal to the custody of the sheriff, within twenty days next after the determination of the said writ of error, if it be in favour of the defendant in error.

83. *And be it enacted*, That the court shall not stay proceedings against the special bail pending the writ of error, by their principal, if they do not make application for that purpose till their time to surrender the principal be expired.

84. *And be it enacted*, That if the defendant bring a writ of error, and the plaintiff bring an action on the judgment, and recover, he shall not sue out execution on the second judgment till the writ of error be determined.

85. *And be it enacted*, That where judgment is arrested, each party shall pay his own costs.

86. *And be it enacted*, That no suit which shall be commenced in any circuit court or court of common pleas shall be removed by writ of habeas corpus into the supreme court, unless the debt, damages, matter or thing in controversy shall exceed two hundred dollars.

87. *And be it enacted*, That no writ of habeas corpus, for the removal of a cause, shall be received by the circuit court or court of common pleas, to which it may be directed, nor shall any cause be removed by such writ, after issue joined upon matter of law or of fact.

88. *And be it enacted*, That if any cause be removed or stayed by writ of habeas corpus, and afterwards be remanded or sent back by writ of procedendo or other writ, the same cause shall never again be removed or stayed by any writ of habeas corpus.

89. *And be it enacted*, That if any writ of habeas corpus, for the removal of a cause, shall be issued out of the supreme court, contrary to the true intent and meaning of this act, then the court

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CHAP. 1.

Endorsement on capias.

Proceedings against bail.

How stayed when writ of error brought.

When application must be made.

When second judgment stayed.

Costs when judgment arrested.

Habeas corpus not allowed, unless sum over \$200.

Nor after issue joined.

Nor after cause once remanded.

When writ may be disregarded.

TI. XXXIV. to which such writ shall be directed or offered shall proceed in the  
 CHAP. 1. said cause as though no such writ had been issued or offered.

Security re-  
 quired.

90. *And be it enacted*, That no cause shall be removed into the supreme court, by writ of habeas corpus or otherwise, unless the defendant shall enter into recognizance to the plaintiff, with two sufficient sureties, in double the sum demanded, for the payment of the condemnation money and costs, in case judgment shall pass against him.

When to be  
 filed.

91. *And be it enacted*, That the special bail, required by the preceding section, shall be filed on the return day of the writ of habeas corpus, or else a procedendo shall be awarded.

Exception to  
 and justifica-  
 tion of bail  
 in such cases

92. *And be it enacted*, That exception to, and justification of, special bail upon a habeas corpus, shall be taken and made within the time and in the manner herein before prescribed in other cases; and if such bail, when excepted to, shall not be perfected in due time, the plaintiff shall have a procedendo.

Proceedings  
 on return of  
 habeas cor-  
 pus.

93. *And be it enacted*, That upon the return of the habeas corpus, the plaintiff shall be deemed to be in court, and the declaration and pleadings of the parties shall be filed within the time allowed or granted in other cases; or else the plaintiff shall be nonprossed, or judgment be awarded against the defendant.

Special ver-  
 dict and de-  
 murrer to  
 evidence.

94. *And be it enacted*, That every special verdict and demurrer to evidence shall be entered on the minutes of the court, after which either party may move the court to assign a day for argument.

Ejectment  
 notice.

95. *And be it enacted*, That no plaintiff shall proceed in ejectment to recover any lands or tenements against a casual ejector, without ten days previous notice being given to the tenant in possession, if any there be, and making him or his landlord, or both, or other proper person, with the tenant, defendant in the action, if such tenant or landlord, or other proper person, choose to be made defendant.

Judgment,  
 unless, etc.

96. *And be it enacted*, That the plaintiff, on affidavit of the delivery of the declaration in ejectment, shall have judgment against the casual ejector, unless the tenant in possession or landlord, or both, or other proper person with such tenant, shall apply to be made defendant, and enter into the common or consent rule within the term to which the said tenant had notice to appear.

Defendant  
 may call for  
 plaintiff's  
 residence.

97. *And be it enacted*, That in ejectment, where the plaintiff or his lessor is unknown to the defendant, the latter may call for an account of his residence or place of abode from the opposite attorney; and if he refuse to give it, or give in a fictitious account of a person who cannot be found, the court, if moved before issue

joined, may stay the proceedings until security be given for the payment of costs. TI. XXXIV. CHAP. 1.

98. *And be it enacted*, That in ejection where the lessor of the plaintiff resides out of this state, or is an infant, or dead, the court, if moved before issue joined, may stay proceedings until a real and substantial person be named, or security be given for the payment of costs. Rule where plaintiff is nonresident, etc.

99. *And be it enacted*, That if an action for the mesne profits shall be brought in the name of the nominal plaintiff in ejection, the court, if moved before issue joined, may stay proceedings until security be given for the payment of costs. Action for mesne profits, costs.

100. *And be it enacted*, That the plaintiff in error shall assign and file errors, and serve a copy thereof on the defendant in error or his attorney, in thirty days after the first day of the term to which the writ is returnable, or be nonprossed, unless the court shall grant further time; and in such case the plaintiff shall assign and file errors, and serve a copy of the same on the defendant or his attorney within the time so granted, or be nonprossed. Assignment of errors.

101. *And be it enacted*, That the defendant shall join in error within thirty days after the expiration of the time limited or granted for assigning, filing, and serving errors, or the errors shall be taken as confessed, and the cause be set down to be heard ex parte. Joinder in error.

102. *And be it enacted*, That after joinder in error, either party may move the court to appoint a day for the argument of the cause; but no paper books shall be necessary. Motion for argument.

103. *And be it enacted*, That the party prosecuting such writ of error, shall procure the same to be returned to the day in term to which it is made returnable, or show good cause why it is not returned, or on failure thereof, the said writ shall be null and void. Who to procure return of writ.

104. *And be it enacted*, That whenever a writ of scire facias shall issue out of any of the courts of record in this state, the sheriff or other officer to whom the writ of scire facias shall be directed, shall serve the same either personally on the defendant, or by leaving a copy of the writ with some white person of the age of fourteen years, at his or her usual place of abode, at least six entire days before its return, or as directed in the next section of this act. Service of sci. fa.

105. *And be it enacted*, That whenever a writ of scire facias shall issue, and the defendant has removed out of the jurisdiction of the court issuing such process, or cannot be found by the sheriff or other officer to whom the writ shall be directed, it shall and may be lawful for the plaintiff to proceed as though the said writ of scire facias had been duly served in the manner prescribed in the next preceding section of this act, provided the said plaintiff first cause the said writ to be published four successive weeks in one of Rule if the defendant nonresident. Publication of service.

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CHAP. 2.

the newspapers printed in this state, as near the last residence of the defendant as can be conveniently ascertained, or cause a copy of the said writ to be served on the defendant, wherever found, either in this state or in any other place, at least twelve days before the return thereof.

Limitation  
of certiorari.

106. *And be it enacted*, That no writ of certiorari shall be allowed or issued on any judgment, order, or proceeding that shall have been entered or obtained in any court of record of this state, or that shall hereafter be entered or obtained, unless the same be issued in eighteen months after the entering or obtaining the same.

Rules of  
court.

107. *And be it enacted*, That the justices of the supreme court, and the judges of the courts of common pleas in every county of this state, shall make such rules and regulations for expediting and conducting suits, and the management of business in their respective courts, as they shall from time to time judge proper; *provided*, the same be not contrary to this act; which rules and regulations shall be fairly printed for the use of the court.

Proviso.

Limitation  
of act.

108. *And be it enacted*, That nothing in this act, nor any matter or thing therein contained, shall be considered as applicable to or in any way affect the court established in this state, by virtue of "An act constituting courts for the trial of small causes."

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## CHAPTER 2.

### JUDGMENTS ON BONDS WITH WARRANTS.

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|---|--|---|
| <ol style="list-style-type: none"> <li>1. How judgment obtained.</li> <li>2. Record and index.</li> <li>3. Not reversed for defect of form.</li> <li>4. Not entered otherwise.</li> </ol> |  | <ol style="list-style-type: none"> <li>5. Affidavit to be made.</li> <li>6. Before whom.</li> <li>7. Fees allowed.</li> <li>8. Penalty for taking greater.</li> </ol> |
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REV. 685. An Act directing the mode of entering judgments on bonds with warrants  
HAR. 248. of attorney to confess judgments.

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

Obligee may  
apply for  
judgment.

1. *BE IT ENACTED by the Senate and General Assembly of the State of New Jersey*, That in all cases where a bond or other obligation is given for the payment of money only, together with a warrant under hand and seal, directed to any attorney at law or other person, to appear in any court of record to an action brought, or to be brought on such bond or obligation, against the person or persons executing the same, and to confess a judgment against him, her, or them, for the sum mentioned in such bond and warrant of attorney, with costs of suit, or to the like effect, it shall and may be

lawful for the obligee or obligees, his, her, or their executors, administrators or assigns, at any time after the day of payment mentioned in said bond or obligation, to apply to any of the justices of the supreme court, or to any one of the judges of the circuit court or court of common pleas, in any of the counties of this state; and on the production of such bond or obligation with the warrant of attorney, it shall be the duty of such justice or judge, at the request of the person applying as aforesaid, at the end of a fair copy of such bond or obligation and warrant of attorney, to enter or cause to be entered an appearance for the obligor or obligors to an action of debt, as of the last precedent term of the court of which the said justice or judge is a member, and a confession and judgment against him, her, or them, for the sum mentioned in the said bond or obligation and warrant of attorney, signed by the said justice or judge in the following form, to wit:

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Bond, warrant, and copy to be produced.

Supreme court, (or circuit court or court of common pleas, as the case may be,) of the term of \_\_\_\_\_

Form of judgment.

A. B. }  
against } In debt on bond and warrant of attorney.  
C. D. }

The defendant's appearance to this action is entered, and judgment confessed to the plaintiff for the sum mentioned in the above obligation, by virtue of the warrant of attorney thereunto annexed, and pursuant to the directions of an act entitled, "An act directing the mode of entering judgments on bonds with warrants of attorney to confess judgments," whereupon it is considered that the said A. B. do recover against the said C. D. the sum of \_\_\_\_\_ debt, and four dollars, costs of suit. Judgment signed this \_\_\_\_\_ day of \_\_\_\_\_

E. F.

2. *And be it enacted*, That the copy of the bond and warrant of attorney to confess judgment, with the entry of the judgment thereon, as before directed, signed by the justice or judge, shall be delivered to the clerk of the court in which such judgment is to be entered; and the clerk shall immediately file the same in his office, mark thereon the time of filing the same, and enter the judgment in the minutes of the court; and shall also enter all the proceedings on which such judgment shall be founded as aforesaid, and the judgment itself, at large in the judgment book of said court, and index the same, as in other cases of judgment.

Judgment entered.

3. *And be it enacted*, That all judgments entered as before directed, shall be as good and effectual in law, to all intents and purposes whatsoever, as judgments entered by confession in the manner heretofore practiced, and no such judgment shall be reversed for error or misprison of the clerk in entering the same, or defect

Not reversed for defect of form.

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CHAP. 2.

Execution to  
issue.

Judgments  
in such cases  
not other-  
wise entered.

Affidavit to  
be made.

Before  
whom.

To be filed.

Fees.

of form in the entry thereof; and execution shall issue thereon as in cases of judgments entered by confession in the manner heretofore practiced.

4. *And be it enacted*, That all judgments on bonds or obligations for the payment of money only, in virtue of a warrant of attorney to confess judgments thereon, shall be entered as in and by the first and second sections of this act is directed, and not otherwise.

5. *And be it enacted*, That no judgment shall be entered in any court of record of this state, on a warrant of attorney to confess such judgment, or by the defendant appearing in person in open court and confessing the same, unless the plaintiff or his attorney shall produce, at the time of confessing such judgment, to the court, judge or justice before whom the judgment shall be confessed, an affidavit of the plaintiff, his attorney or agent, of the true consideration of the bill, bond, deed, note, or other instrument of writing or demand for which the said judgment shall be confessed; which affidavit shall further set forth, that the debt or demand for which the judgment is confessed is justly and honestly due and owing to the person or persons to whom the judgment is confessed, and that the said judgment is not confessed to answer any fraudulent intent or purpose, or to protect the property of the defendant from his other creditors.

6. *And be it enacted*, That the affidavit required by this act, may be made before any justice of the supreme court, judge of any circuit court or court of common pleas, commissioner for taking affidavits, or justice of the peace of this state, or, if the plaintiff be out of this state, before any court of judicature or notary public of the state, kingdom, or nation in which the said plaintiff resides or shall happen to be; which affidavit, together with a copy of the bill, bond, deed, note, contract, instrument of writing, account, or particulars of the demand on or for which the judgment is confessed, shall be filed with the other papers in the cause.

7. *And be it enacted*, That the following, and no other fees shall be allowed, viz: to the plaintiff for the copy of the bond or obligation and warrant of attorney, entering the proceedings thereon, attending before the justice or judge to obtain the judgment, and delivering the same, with the affidavit, to the clerk to be filed, two dollars; to the justice or judge for inspecting the bond and warrant, examining the copies, and entering and signing judgment, fifty cents; to the clerk for marking and filing the proceedings and affidavit, and entering the judgment in the minutes of the court, fifty cents, and for entering the proceedings and judgment at large in the book of judgments, one dollar; and when execution shall issue on any judgment, the following additional fees shall be allowed,

and no other, to wit: to the plaintiff for drawing the execution, TI. XXXIV. CHAP. 3. twenty-five cents; to the clerk for sealing and recording the execution, and entering and filing the execution and return of the sheriff, seventy-five cents; which costs shall be endorsed on the execution without taxation, and collected with the debt, but to be paid by the plaintiff as the duty is performed: *and further*, that the sheriff shall be entitled to execution fees, as in other cases.

8. *And be it enacted*, That in case any clerk shall take other or Penalty for taking greater. greater fees for services done under this act, than are by this act allowed, or shall take such fees without performing the services for which such fees are allowed, he shall, for every such offence, forfeit and pay the sum of thirty dollars, to be sued for and recovered in an action of debt, with costs of suit, in any court having cognizance thereof, by any person who shall be aggrieved by the same.

### CHAPTER 3.

#### PERSONAL ACTIONS AGAINST CORPORATIONS.

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|---|--|---|
| <ul style="list-style-type: none"> <li>1. How process served.</li> <li>2. Return.</li> <li>3. Order for publication.</li> </ul> |  | <ul style="list-style-type: none"> <li>4. Corporation not to alien lands.</li> <li>5. Trustees, on dissolution.</li> <li>6. Their authority.</li> </ul> |
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#### An Act for the relief of creditors against corporations.

REV. 610.

Revision....Approved April 15, 1846.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That when any personal action shall be commenced against a corporation in any of the courts of law of this state, the first process to be made use of may be a summons, a copy whereof shall be served on the president, or other head officer of the said corporation, or left at his dwelling-house or usual place of abode, at least six entire days before its return; and in case the president or other head officer of the said corporation cannot be found in this state, to be served with process as aforesaid, and has no dwelling-house or usual place of abode within this state, then a copy of the said summons shall be served on the clerk or secretary of the said corporation, if any there be, and if no clerk or secretary, then on one of the directors of the corporation, or left at his dwelling-house or usual place of abode, six entire days before its return. How process served.

2. *And be it enacted*, That when the sheriff or other officer shall return such summons "served" or "summoned" the defendants shall be considered as appearing in court, and may be proceeded against accordingly. Return.

TI. XXXIV.  
CHAP. 3.

Order for  
publication.

3. *And be it enacted*, That in case the sheriff or other officer shall return such summons "not served" or "not summoned," and an affidavit shall be made to the satisfaction of the court, that process cannot be served as mentioned in the first section of this act, then the court shall make an order directing the defendants to cause their appearance to be entered to the said action, on or before the first day of the next term of the said court, a copy of which order shall, within twenty days, be inserted in one of the public newspapers printed in this state, for at least six weeks, and a copy of the same order shall also be posted up within the time aforesaid, in three public places in this state, as shall be ordered by the said court, for at least six weeks, and if the defendants shall not appear within the time limited by such order, or within such further time as the court shall appoint, then on proof made of the due publication of such order, the court being satisfied of the truth thereof, shall order the clerk to enter an appearance for the defendants, and thereupon the action shall be further proceeded in, as if the said defendants had caused their appearance to be entered to the said action.

Not to convey lands  
after, etc.

4. *And be it enacted*, That it shall not be lawful for any corporation, against whom any order shall be made for publication, as aforesaid, after the entry of the said order in the minutes of the court, to grant, bargain, sell, alien or convey any lands, tenements or real estate in this state, (in case the said summons issued out of the supreme court,) or in the county in which the said summons shall have been issued, (in case the said summons issued out of one of the inferior courts of common pleas in this state,) of which such corporation shall be seized or entitled to at the time of making such order, until the plaintiff in the action shall be satisfied his legal demand, or until judgment shall be entered for the defendants; and the said action shall be and remain a lien on such lands, tenements and real estate, from the time of entering the said order for publication in the minutes of the court, and the said lands, tenements and real estate shall and may be sold on execution, as if no conveyance had been made by the said corporation.

Dissolution,  
who trustees.

5. *And be it enacted*, That upon the dissolution of any corporation already erected, or which may hereafter be erected by any law of this state, the president and directors, or the managers of the affairs of the said corporation at the time of its dissolution, by whatever name they may be known in law, shall be trustees of such corporation, with full power to settle the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders, after paying the debts due and owing by such

corporation, at the time of its dissolution, as far as such moneys and property shall enable them. TI. XXXIV.  
CHAP. 4.

6. *And be it enacted*, That the persons constituted trustees as aforesaid, shall have authority to sue for and recover the aforesaid debts and property, by the name of the trustees of such corporation, describing it by its corporate name, and shall be suable by the same name, or in their own names and individual capacities, for the debts owing by such corporation, at the time of its dissolution, and shall be jointly and severally responsible for such debts, to the amount of the moneys and property of such corporation, at the time of its dissolution, and which shall come to their hands or possession. Their authority.

## CHAPTER 4.

### SUITS BY COMMON INFORMERS.

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| <ul style="list-style-type: none"> <li>1. Time of bringing action noted.</li> <li>2. Endorsement on process.</li> <li>3. Pleading and evidence.</li> <li>4. Recovery by covin no bar.</li> </ul> |  | <ul style="list-style-type: none"> <li>5. Not compounded without leave.</li> <li>6. When prosecutor to pay costs.</li> <li>7. Limitation of provisions.</li> </ul> |
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### An Act relative to suits instituted by common informers.

REV. 405.

Passed February 2, 1799.

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 upon every action or information, which shall be instituted or exhibited by any informer on a penal statute, a special note shall be made of the very day, month, and year of its institution or exhibition, and that such action or information shall be of record from that time, and not before: *and further*, that no manner of antedating thereof shall be made or allowed. Time of bringing actions noted.

2. *And be it enacted*, That upon every process which may be sued out on such action or information to compel the appearance of the defendant, shall be endorsed the name of the party who prosecutes, and the title of the statute upon which the said action or information is founded. And any clerk, issuing process contrary to this provision, shall forfeit to the party against whom such process is awarded ten dollars for every offence, to be recovered by action of debt, with costs, in any court having cognizance of that sum. Name of prosecutor and title of statute to be endorsed on process.

3. *And be it enacted*, That if any action or information shall be brought or exhibited for an offence against any penal law, made or to be made, it shall be lawful for the defendant in such action or Defendant may plead the general issue, etc.

TI. XXXIV.  
CHAP. 5. information to plead the general issue, that he is not guilty, or that he oweth nothing, and to give in evidence any special matter which, if pleaded, would be a bar to the said action or information, giving notice, with the same plea, of the matter so intended to be given in evidence.

Recovery by  
covin no bar,  
etc. 4. *And be it enacted*, That no recovery, by verdict or otherwise, obtained by covin or collusion in an action popular, shall be a bar to any other action prosecuted with good faith.

In what cases  
prosecutor  
liable for a  
proportion  
of the penal-  
ty. 5. *And be it enacted*, That if any prosecutor of an action or information, for the recovery of any penalty not wholly appropriated to the use of such prosecutor, shall compound with the defendant, or direct such action or information to be discontinued, unless it be by leave of the court in which the said action or information shall be depending, then such prosecutor shall be liable for so much of the penalty to the state of New Jersey, or any other, as the said state or other would have been entitled to, if the defendant had been convicted.

When pro-  
secutor to  
pay costs. 6. *And be it enacted*, That every informer or prosecutor on a penal statute shall pay costs to the defendant, if he discontinue or be nonsuit, or if a verdict or judgment pass against him, for which costs the said defendant shall have execution against the goods, chattels, and person of such informer or prosecutor.

Act not to  
extend to  
certain per-  
sons. 7. *And be it enacted*, That this act shall not extend to any certain person, body politic or corporate, to whom or to whose use any forfeiture, penalty, or suit is or shall be specially limited or granted by any statute; but that every such certain person, body politic or corporate, may in such case sue, prosecute, or inform, as he or they might have done if this act had not been made.

## CHAPTER 5.

### BAIL IN CIVIL ACTIONS.

- |                             |  |                        |
|-----------------------------|--|------------------------|
| 1. Affidavit for bail.      |  | 3. Who shall not be.   |
| 2. Who may be special bail. |  | 4. Judge's order, etc. |

REV. 404.

### An Act respecting bail in civil actions.

Passed February 3, 1799.

Where bail  
required, af-  
fidavit made  
of the cause  
of action. 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 bail shall be required in any civil action, an affidavit shall be made and filed of the cause of such action, which affidavit may be made before any judge or commissioner authorized to take spe-

cial bail or any justice of the peace of this state, or, if the plaintiff be out of this state, before any judge of any court of judicature or notary public of the state, kingdom, or nation in which he resides or happens to be; and the sum specified in such affidavit shall be endorsed on the writ or process, for which sum, so endorsed, the sheriff or other officer to whom such writ or process shall be directed shall take bail, and for no more; and if the party making such affidavit swear to the best of his knowledge or belief, the same shall be deemed to be sufficient.

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CHAP. 6.

Sum endorsed on writ, etc.

2. *And be it enacted*, That no person shall be permitted to be special bail in any such action, unless he be a freeholder and resident in this state, and of sufficient property, if the writ or process issue out of the supreme court, or if it issue out of any of the inferior courts of common pleas, unless he be a freeholder of sufficient property and resident in the county where such court is held.

Who may be special bail.

3. *And be it enacted*, That no attorney at law, under-sheriff, sheriff's deputy, bailiff, or other person concerned in the execution of process, shall be permitted to be special bail in any action.

Who shall not be bail.

4. *Provided always, and be it enacted*, That nothing in this act shall prevent any of the said courts, or any judge thereof, from ordering, as heretofore, the defendant in any action to be held to special bail, in such sum as the said court or judge, under all the circumstances of the case, shall think proper to direct; which sum shall be endorsed on the process, and the sheriff or officer shall take bail for the same, and no more.

Any court or judge may order bail.

## CHAPTER 6.

### FACILITATION OF PLEADINGS.

- |                                |                                    |
|--------------------------------|------------------------------------|
| 1. Several pleas allowed.      | 3. Not extended to court for trial |
| 2. General issue and evidence. | of small causes.                   |

### An Act to facilitate pleadings.

REV. 403.

Passed February 1, 1799.

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 be lawful for the plaintiff in replevin, and for the defendant or tenant in every other action, to plead, in any court of record, with leave of such court, as many several matters as he shall think necessary for his defence; but if on demurrer any such matter be

Defendants authorized to plead several pleas.

TI. XXXIV. adjudged to be insufficient, or if a verdict be found on any issue in  
 CHAP. 7. such action for the plaintiff, costs shall thereupon be awarded by  
 the court.

May plead  
 the general  
 issue, etc.

2. *And be it enacted*, That it shall be lawful for the defendant  
 in any action, except in cases of mutual dealings, to plead the gen-  
 eral issue, and to give any special matter in evidence, which, if  
 pleaded, would be a bar to such action, giving notice, with the  
 same plea, of the matter or matters so intended to be given in evi-  
 dence.

Act not to ex-  
 tend to jus-  
 tice's court.

3. *And be it enacted*, That this act shall not extend to the courts  
 constituted for the trial of small causes.

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## CHAPTER 7.

### REMEDY WHERE PARTIES DIE.

- |  |  |  |
|--|--|--|
| <ul style="list-style-type: none"> <li>1. When death not to abate suit.</li> <li>2. Case of several plaintiffs or defendants.</li> <li>3. When no abatement after issue.</li> <li>4. When not to abate in chancery.</li> <li>5. Death of one of several parties.</li> <li>“ Proceedings to continue suit.</li> </ul> |  | <ul style="list-style-type: none"> <li>6. Death of sole complainant.</li> <li>7. Death of sole defendant.</li> <li>8. When suit to be at an end.</li> <li>9. Bills of revivor.</li> <li>10. Death between verdict and judgment.</li> <li>11. Days between teste and return.</li> </ul> |
|--|--|--|

REV. 163.  
 HAR. 440.

### An Act to prevent, in certain cases, the abatement of suits and reversal of judgments.

Revision....Approved April 15, 1846.

Death of  
 plaintiff.

Of defend-  
 ant.

Scire facias

to show  
 cause.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That in all actions depending or to be commenced in any court of record of this state, if any plaintiff happen to die after an interlocutory judgment, and before a final judgment obtained therein, the said action shall not abate by reason thereof, if such action might be originally prosecuted or maintained by the executors or administrators of such plaintiff; and if the defendant die after such interlocutory judgment, and before final judgment therein obtained, the said action shall not abate, if such action might be originally prosecuted or maintained against the executors or administrators of such defendant; and the plaintiff, or if he or she be dead after such interlocutory judgment, his or her executors or administrators, shall and may have a scire facias against the defendant, if living, after such interlocutory judgment, or if he or she died after, then against his or her executors or administrators, to show cause why damages in such action should not be assessed and recovered by him, her, or them; and if such defendant, his or her executors or administrators, shall appear at the

return of such writ, and not show or allege any matter sufficient to arrest the final judgment, or the said writ having been returned served, or, if no service thereof can be made, having been published as prescribed by law, shall make default, that thereupon an assessment of damages shall be had, or a writ of inquiry of damages shall be awarded, which assessment, being duly made, or writ of inquiry, being duly executed and returned, judgment final shall be given for the said plaintiff, his or her executors or administrators, prosecuting such writ or writs of scire facias against such defendant, his or her executors or administrators, respectively.

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Assessment,  
etc., and  
judgment.

2. *And be it enacted*, That if in any action or suit there be two or more plaintiffs or defendants, and one or more of them shall die, if the cause of such action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the writ or action shall not be thereby abated; but such death being suggested upon the record, the action shall proceed, at the suit of the surviving plaintiff or plaintiffs, against the surviving defendant or defendants.

Where several plaintiffs  
or defendants.

3. *And be it enacted*, That in all actions depending or to be commenced in any court of record of this state, if any plaintiff die after issue joined, and before final judgment, the said action shall not abate by reason thereof, if such action might be originally prosecuted or maintained by the executors or administrators of such plaintiff; and if the defendant die after issue joined, and before final judgment, the said action shall not abate, if such action might be originally prosecuted or maintained against the executors or administrators of such defendant; but the death of such plaintiff or defendant being suggested upon the record, and the names of the executors or administrators of such deceased plaintiff or defendant being entered upon the record, the action shall proceed to final judgment at the suit of the plaintiff, or, if he or she die after issue joined, at the suit of his or her executors or administrators, against the defendant, or if he or she die after issue joined, against his or her executors or administrators, respectively.

Not to abate  
after issue  
joined.

4. *And be it enacted*, That if in any suit or action now depending or hereafter to be brought in the court of chancery, there are or shall be two or more plaintiffs or defendants, and one or more of them die, if the cause of such suit or action survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, such suit or action shall not be thereby abated; but such death being suggested, and shown by affidavit or otherwise, to the satisfaction of the court, such suit or action shall proceed, at the suit of the surviving plaintiff or plaintiffs, against the surviving defendant or defendants.

Suits in chan-  
cery not to  
abate.

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CHAP. 7.

Death of one  
of several  
plaintiffs or  
defendants,

how survi-  
vor may pro-  
ceed,

or make re-  
presenta-  
tives parties.

Order to re-  
vive.

Disclaimer.

Representa-  
tive of plain-  
tiff may a-  
mend.

Defendant to  
answer, etc.

5. *And be it enacted*, That in every suit or action in the court of chancery, in which any bill is or shall be filed, and in which there are or shall be two or more plaintiffs or defendants, and any of them die, and the cause of action doth not survive, but other persons shall become parties in interest, in right or by the death of such deceased party, such suit shall, by reason of such death, be abated only with respect to such deceased party, and the surviving plaintiff or plaintiffs may proceed against the surviving defendant or defendants, without reviving the suit against the representatives of the deceased party, or any other who may become interested by the death of such party; but in such case such representatives, or such person or persons as shall become interested by the death of such party, shall not be bound by any order or decree in such cause to which they are not made parties. And if the plaintiff or plaintiffs choose to make the representatives of the deceased party, or others who may become interested by the death of such decedent, parties to such suit, no bill of revivor or subpœna ad revivendum shall be necessary; but the court shall and may, by rule or order, as often as there shall be occasion for it, direct the suit to stand revived, which rule or order shall be served on such person or persons, and in such manner as the court may direct; and unless the representatives of such deceased party, or others who may become interested by the death of such party, shall, within such time after such service as aforesaid as the court shall limit and appoint, appear and put in their answer or signify their disclaimer of the suit, and the matters in controversy therein, the plaintiff or plaintiffs may cause their appearance to be entered, and in such case the answer of the deceased party, if any there be, shall be deemed and taken as and for the answer of such representatives or other person or persons interested by the death of such party. And if any plaintiff or plaintiffs, in any suit now depending or hereafter to be brought, wherein the cause of action doth not survive as aforesaid, happen to die pending such suit, the lawful representative or representatives of such deceased plaintiff or plaintiffs, or any other person or persons interested by the death of such plaintiff or plaintiffs, shall and may, upon affidavit thereof by him, her, or them, or any other person or persons, and on motion made in court, be, by the rule or order of the court, inserted as a complainant or complainants in the said suit, and be permitted to make such amendment in the bill or bills of complaint, as his, her, or their title or interest therein may require, to which amendment or amendments the defendant or defendants shall be compellable, by rule or order of the said court, to answer, proceed to issue and examination of witnesses and production of proofs, and all other proceedings shall

be had thereon, as in ordinary cases; and in case such person or persons shall not, within such time after the death of such plaintiff or plaintiffs as the court shall limit and appoint, cause himself, herself, or themselves to be entered as plaintiff or plaintiffs, in the room of such deceased plaintiff or plaintiffs, then, and in every such case, the surviving plaintiff or plaintiffs may insert the representative or representatives of such deceased plaintiff or plaintiffs, or other person or persons interested, by his, her, or their death, as defendant or defendants in such suit, and proceed in the manner herein before directed in cases where the lawful representative or representatives of a deceased defendant or defendants may be made party or parties.

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When representatives may be made defendants.

6. *And be it enacted*, That in every suit or action in the court of chancery, in which any bill has been or shall be filed, and the subpoena returned served, and in which there was, is, or shall be but one plaintiff or one defendant, and the said plaintiff hath died or shall die, the lawful representative or representatives of such deceased plaintiff, or any other person or persons interested by the death of such plaintiff, shall and may, upon affidavit thereof by him, her, or them, or any other person or persons, and on motion made in court, be, by rule or order of the court, inserted as a complainant or complainants in the said suit, and be permitted to make such amendment in the bill or bills of complaint, as his, her, or their title or interest therein may require, and upon such terms as the court may direct, to which amendment or amendments the defendant or defendants shall be compellable, by rule or order of the said court, to answer, proceed to issue and examination of witnesses and production of proofs, and all other proceedings shall be had thereon as in ordinary cases.

Death of sole plaintiff, representative substituted.

Who may amend.

7. *And be it enacted*, That if in any such suit in which there was, is, or shall be but one defendant, and the said defendant hath died or shall die, and the plaintiff or plaintiffs choose to make the representative or representatives of the deceased party, or others who have or may become interested by the death of such decedent, parties to such suit, no bill of revivor or subpoena ad revivendum shall be necessary; but the court shall and may, by rule or order, as often as there shall be occasion for it, direct the suit to stand revived, which rule or order shall be served as the court may direct; and unless the representative or representatives of such deceased party, or others who may become interested by the death of such party, shall within such time after service as aforesaid, as the court shall limit and appoint, appear and put in their answer, or signify their disclaimer of the suit, and the matters in controversy therein, the plaintiff or plaintiffs may cause his or their appearance to be

Death of sole defendant, his representative made a party.

Answer or disclaimer.

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entered, and in such case the answer of the deceased party, if any there be, shall be deemed and taken as and for the answer of such representative or representatives, or other person or persons interested by the death of such party; and such further proceedings may and shall be had in the said suit, as are according to equity and the rules and practice of the said court.

Otherwise  
suit at an  
end.

8. *And be it enacted*, That in case of the death of any sole plaintiff, if his lawful representative or representatives, or such other person or persons as shall become interested by his death, shall not, within such time as the court may limit and appoint for that purpose, cause himself, herself, or themselves to be entered as complainant or complainants in the said suit, in the room of such deceased plaintiff, or in case of the death of any sole defendant, if the plaintiff or plaintiffs shall not make the representative or representatives of the deceased defendant, or others who may have become interested by the death of such decedent, party or parties to such suit, and cause the said suit to stand revived within such time as the court shall limit and appoint for that purpose, then and in every such case, the said suit shall be considered as at an end, and shall not be revived in the manner provided for by this act.

Bills of re-  
vivor.

9. *And be it enacted*, That nothing in this act contained shall prevent the reviving of any such suit in the court of chancery, as before mentioned, by bill of revivor, when the plaintiff or his representative or representatives, or others who may become interested by the death of such plaintiff, may prefer that course of practice, or when the court may deem it expedient to direct that course of practice to be pursued.

Death be-  
tween ver-  
dict and  
judgment.

10. *And be it enacted*, That in all actions, real, personal, or mixed, the death of either party between the verdict and the judgment shall not be alleged for error, so as such judgment be entered within two terms after such verdict.

Days be-  
tween teste  
and return.

11. *And be it enacted*, That in all actions of debt, and all other personal actions whatsoever, and in all actions of ejectment for lands and tenements now depending, or which at any time hereafter shall be depending by original writ, in any court of record, after any issue joined therein, to be tried by a jury, and also after any judgment had or obtained, or to be had or obtained in any such court, in any such action as aforesaid, there shall not need to be fifteen days between the teste day and the day of the return of any writ or writs of venire facias, habeas corpora juratorum, or distringas juratores, or writs of fieri facias, or of capias ad satisfaciendum; and the want of fifteen days between the teste day and day of return of any such writ, shall not be, nor shall be assigned, taken, or adjudged to be any matter or cause of error.

CHAPTER 8.

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PUBLICATION OF NOTICES.

- 1. Foreign publication unnecessary.
- |
- 2. Unless specially ordered.

An Act concerning the publication of notices and orders of courts in certain cases. MAR. 309.

Passed February 24, 1830.

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 so much of any and every act of the legislature of this state, as requires that advertisement, publication, or notice of any suit, order, or proceeding in any court of this state, shall be made or given in any newspaper printed or published in any other state, and so much of every act as requires any notice or copy of any order or proceeding in any suit, in this state, to be served on persons residing out of this state, be, and the same is hereby repealed.

Publication and service out of this state unnecessary.

2. *And be it enacted,* That where, by any act of the legislature of this state, now in force or hereafter to be enacted, advertisement, publication, or notice of any suit, order or proceeding, in any court of this state, is required to be made or given in any newspaper printed and published in this state, the court in which such suit may be pending, or by which such order or proceeding may be made or taken, may, whenever the circumstances of the case shall, in the opinion of the court, require a more extensive publication, order and direct such advertisement, publication or notice to be made or given in one of the newspapers printed and published in one of the other states of the United States, or in the District of Columbia, at the discretion of the court, and for such time as the court may deem proper.

Unless special order made.

3. Obsolete.

CHAPTER 9.

WITNESSES.

- 1. Who incompetent.
- 2. Privilege of.
- 3. Penalty for disobeying process.
- |
- 4. Process runs throughout state.
- 5. On suits by officers.
- 6. On indictment for forgery, etc.

An Act concerning witnesses.

REV. 462.

Revision....Approved April 16, 1846.

1838-9.  
PAMPH. 147.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey,* That no person who shall be convicted of blas-

Who shall not be a witness.

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phemy, treason, murder, piracy, arson, rape, sodomy, or the infamous crime against nature, committed with mankind or with beast, polygamy, robbery, conspiracy, forgery, or larceny of above the value of six dollars, shall in any case be admitted as a witness, unless he or she be first pardoned; and no person who shall be convicted of perjury or of subornation of perjury, although pardoned for the same, shall be admitted as a witness in any case.

Witness privileged.

2. *And be it enacted*, That every witness shall be protected and privileged from arrests in all civil actions, and no other, during his necessary attendance at any court or other place where his attendance shall have been required by subpoena previously and duly executed, and in going to and returning from the same, allowing one day for every thirty miles from his place of residence.

Penalty for disobeying process.

3. *And be it enacted*, That if any person on whom lawful process shall have been duly served to testify, depose or give evidence concerning any cause or matter which is or shall be depending in any court of this state, and to whom shall have been paid or tendered, at the time of such service, fifty cents, if he is to attend in the county, and one dollar, if he is to attend out of the county, shall not appear according to the tenor of the said process, having no lawful or reasonable let or impediment to the contrary, he shall, for every offence, forfeit to the party aggrieved any sum not exceeding fifty dollars, to be ascertained and adjudged by the court in which he or she may be subpoenaed to attend, and shall also pay to the said party damages equivalent to the loss sustained by want of his evidence, to be recovered by action of trespass on the case, with costs.

Courts may issue process to any part of the state.

4. *And be it enacted*, That every circuit court, court of oyer and terminer and general jail delivery, court of common pleas, court of general quarter sessions of the peace, and orphans' court, in and for the several counties of this state, is hereby authorized and directed to issue process of subpoena requiring the attendance of a witness, who resides in any part of this state out of the jurisdiction of the said court, to testify, depose or give evidence in any cause or matter which is or shall be depending in the said court; and every person who shall be duly served with such subpoena, shall be and hereby is required to attend at the time and place therein mentioned, under the same penalties, and shall be liable to the same action which he would have incurred or have been liable to in case of nonattendance, if he had been within the jurisdiction of the said court at the time of the service of the said subpoena.

Inhabitants of townships not excluded etc.

5. *And be it enacted*, That in every action which hath been or shall be instituted in any court of this state against the county collector, the township collector, the sheriff, constable or other officer

or person, of or in the said county or township, for taxes, impositions, fines or other public moneys by him received, and not accounted for and paid according to law, the inhabitants of such county or township shall be admitted as competent witnesses, notwithstanding their liability to taxation or being interested.

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6. *And be it enacted*, That upon the trial of any indictment for Person whose name falsely making, altering, forging or counterfeiting, or for uttering or forged competent publishing as true any record, deed or other instrument or writing, witness upon trial of indictment, no person named in such record, deed or other instrument or writing, or whose name, or any part of whose name, is or purports to be written or signed therein or thereto, shall on that account be deemed or taken to be an incompetent witness, any law, usage or custom to the contrary notwithstanding.

## CHAPTER 10.

### COMMISSIONS TO TAKE DEPOSITIONS.

- |  |                                       |
|--|---------------------------------------|
| 1. Commission to issue.                | 8. Oath in such cases.                |
| 2. Interrogatories drawn and approved. | 9. Copies may be taken.               |
| 3. How executed and returned.          | 10. When to be evidence.              |
| 4. Party may receive it.               | 11. When, without filing.             |
| 5. Return of foreign commission.       | 12. Compensation of witnesses.        |
| 6. When cause to proceed without.      | 13. Witness compelled to appear.      |
| 7. Deposition de bene esse.            | 14. When process of subpoena awarded. |
| 8. How taken and filed.                | 15. How served, etc.                  |

### An Act authorizing commissions and the taking of depositions.

REV. 437, 546.

HAR. 11, 106,  
196.

Revision....Approved April 15, 1846.

1839-40.  
PAMPH. 37.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That if a material witness in any action or suit in the court of chancery or in the supreme court, or in any circuit court, court of common pleas or orphans' court, or in any action or suit of a civil nature in any court of general quarter sessions of the peace, reside out of this state, or, if in this state, be ancient or very infirm, or be sick or bound on a voyage, or about to go out of this state, it shall and may be lawful for the court in which such action or suit is depending, on affidavit or proof thereof to the satisfaction of the said court, and upon motion made by or in behalf of either party in open court, and on such terms as the court shall direct, to award and issue, under the seal of the court, a commission to such person or persons as the court may think fit, authorizing such person or persons, or any two or more of such persons, to examine de bene esse the said witness on oath or

Commissions, when and by whom issued.

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Interrogato-  
ries.

Commis-  
sion, how ex-  
ecuted and  
returned.

affirmation, upon the interrogatories annexed to the said commission, and to reduce such examination to writing, and to return the same, annexed to the said writ, unto the said court, with all convenient speed; and the name of every witness to be examined by virtue of such commission shall be inserted in the said commission; and the interrogatories for the examination of such witness shall be drawn and signed by the parties or their counsel in the cause in which the testimony is to be used, or such of them as shall request the said commission, and be approved of by the court, or one of the judges thereof, and shall be annexed to the same commission; and each party shall be at liberty, with the approbation of the said court or judge, to insert in the said interrogatories such questions as he or she may think proper or necessary.

2. *And be it enacted*, That the commissioner or commissioners appointed under and by virtue of this act, or under and by virtue of the general power and authority of the court of chancery, or any two of them, having first taken an oath or affirmation faithfully, fairly and impartially to execute the said commission, which oath or affirmation may be taken before any person lawfully authorized to administer an oath or affirmation in the state, territory or kingdom where the said commissioner or commissioners reside or may be at the time, shall and may examine every witness named in the said commission, or such as can be met with, upon the interrogatories annexed to the said commission, on oath or affirmation, to be administered to each and every witness by the said commissioner or commissioners, and cause the examination of each and every such witness to be reduced to writing, and signed by such witness; and the said commissioner or commissioners shall also sign the same, and annex such examination, and all exhibits produced to the said commissioners and proved by such witness, to the said commission, and close the same up under the hand and seal of the said commissioner, or under the hands and seals of the said commissioners, or any two of them, and direct the same to the chancellor or judges of the court out of which the same issued, at the place of holding the said court; and shall and may place the same in any post office, certifying thereon the time when and the post office in which the same may be so placed; and the chancellor, or any one of the judges of the court out of which the said commission issued, or the clerk of the said court, may take the same out of the post office in which it may be found in this state, and open the same, and endorse thereon when and how he received it; and the said chancellor, judge or clerk shall immediately file the said commission and return in the office of the clerk of the court out of which the said commission issued, there to remain as a record.

3. *And be it enacted*, That if it shall be more convenient for the party in the said commission, his attorney or agent, to receive the said commission and return closed up and directed as aforesaid, from the hands of the said commissioner or commissioners, it shall and may be lawful for him so to do, and he shall thereupon deliver the same to the chancellor, or one of the judges, or the clerk, of the court out of which the same issued, making oath or affirmation that he received the same sealed up from the hands of the said commissioner or commissioners, designating the time and place when and where received, and that the same has not been opened or altered since he so received it; and the said chancellor, judge or clerk shall thereupon endorse and file the said commission and return, and the said affidavit, as directed in the preceding section of this act.

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Party may  
receive, and  
deliver it.

Oath in such  
case.

4. *And be it enacted*, That where a commission issued by virtue of this act, shall be executed in any foreign state, nation or kingdom, such commission, and the return thereto, closed up and directed as aforesaid, may be transmitted to the party on whose application such commission issued, his agent or attorney in the United States; and the person to whom the packet containing the said commission and return shall be transmitted as aforesaid, may deliver the same to the chancellor, or one of the judges, or the clerk, of the court out of which the commission issued, making oath or affirmation when and how he received it, and that the same has not been opened or altered since he received it, and that he verily believes that it has not been opened or altered since it was closed up and sealed as aforesaid; and the said chancellor, judge or clerk, being satisfied that it has not been opened or altered since it was closed up and sealed as aforesaid, shall open the same, and endorse thereon when and how he received it, and shall immediately file the said commission and return, and the said affidavit, in the office of the clerk of the court out of which the said commission issued, there to remain as a record.

Of the return  
of foreign  
commissions

Oath in such  
case.

5. *And be it enacted*, That if the commission be not returned within such reasonable time, as the court shall from time to time allow for that purpose, then the court may proceed in the said action or suit, as if no such commission had been awarded or issued.

What if re-  
turn not  
made.

6. *And be it enacted*, That if a material witness in an action or suit of a civil nature in any of the aforementioned courts, be in this state, but is ancient or very infirm, or is sick, or is bound on a voyage, or is about to go out of this state, then the deposition of such witness may, at the option of either party, and in lieu of the commission aforesaid, be taken de bene esse before any justice of the supreme court, or any judge of the circuit court or court of com-

Deposition  
taken de  
bene esse.

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Notice re-  
quired.

mon pleas, or any master in chancery; *provided*, that the officer before whom the deposition is to be taken, shall cause notice to be given to the adverse party immediately, or at such short day as the case, in the opinion of the said officer, may require, to attend and be present at the taking thereof, and to put questions and to cross-examine, if he shall think fit.

How such  
deposition  
taken and  
filed.

7. *And be it enacted*, That every person deposing as last aforesaid, shall be sworn or affirmed to testify the whole truth, and shall subscribe the testimony by him or her given, after the same shall be reduced to writing, which shall be done only by the officer taking the deposition, or by the deponent in his presence; and the deposition so taken shall be retained by such officer until he deliver the same, together with a certificate of the reasons as aforesaid of its being taken, and of the notice, if any given, to the adverse party, with his own hand, to a judge or the clerk of the court for which it is taken; or the said deposition and certificate shall be by the said officer sealed up, directed and transmitted to such judge or clerk, who shall open and immediately file the same in the office of the said clerk, there to remain as a record.

Oath in such  
case.

8. *And be it enacted*, That the person by whom such deposition shall be transmitted to the judge or clerk, as authorized in the preceding section of this act, shall make oath or affirmation that he received the same sealed up from the hands of the officer by whom it was taken, designating the time and place when and where received, and that the same has not been opened or altered since he so received it.

Copies may  
be taken.

9. *And be it enacted*, That the parties in the action or suit in which any deposition authorized by this act is taken, shall, at their respective costs and charges, be entitled to copies of such deposition, as soon as the same is filed in the clerk's office as aforesaid.

Evidence.

10. *And be it enacted*, That every examination or deposition so taken, returned, and filed, or a duly certified copy thereof, shall be read, used, and deemed as good and competent evidence in the cause in which it shall be taken, as if such witness had been examined in open court on the hearing or trial thereof; *provided*, it appear to the satisfaction of the said court that such witness reside or is gone out of this state, or is dead, or by reason of age, sickness, or bodily infirmity, is unable to travel and attend the said court, but not otherwise.

Proviso.

When evi-  
dence with-  
out filing.

11. *And be it enacted*, That depositions taken in this state by virtue of this act, in any cause pending in the supreme court, not more than five days before the trial of such cause, if transmitted to or taken by the judge holding the circuit, may be read in evi-

dence on such trial, before they are filed in the manner herein before directed. TI. XXXIV.  
CHAP. 10.

12. *And be it enacted*, That every witness who is in this state, and whose examination or deposition is taken as aforesaid, shall be allowed, by way of compensation for his time and attendance therein, after the same rate as if he had personally appeared and given testimony in the cause before the court in which it is depending; and the party requiring such examination or deposition shall be at the sole expense thereof, and shall not have any allowance for the same in the taxation of costs. Compensation of witness.

13. *And be it enacted*, That any material witness of the description aforesaid, being in this state, may be compelled to appear and be examined, and depose before any commissioner or commissioners as aforesaid, in this state, or any of the said officers, in the same manner and under the same penalties as to appear and testify in the court wherein the said action or suit is depending. Witness compelled to appear, etc.

14. *And be it enacted*, That in case a commission issued out of any court of competent jurisdiction of the United States, or of any state or territory in the United States, shall be directed to any person or persons in this state, authorizing such person or persons to examine or take the deposition of any witness named in such commission, and the person to be examined under such commission shall refuse to attend and give his testimony before such commissioner or commissioners, it shall and may be lawful for any justice of the supreme court of this state, upon application made to him by or on behalf of such commissioner or commissioners, and upon proof being made of such refusal, to make an order awarding process of subpœna out of the said court for such witness to appear and testify before such commissioner or commissioners; and, upon filing such order in the clerk's office of the said supreme court, it shall be the duty of the said clerk to issue process of subpœna under the seal of the said court, requiring such witness to appear and testify before such commissioner or commissioners. When process of subpœna awarded.

15. *And be it enacted*, That the process of subpœna authorized in the last preceding section, shall be served in the same manner, and be of the same force and effect as like process in any other case; and any person or persons attending in pursuance of such subpœna, shall be entitled to the same fees, and subject to the same penalties for refusing to attend, as witnesses are by law entitled or subject to in other cases in the supreme court. How served, etc.

TI. XXXIV.  
CHAP. 12.

## CHAPTER 11.

EVIDENCE IN LIBEL CASES.

REV. 475.

### An Act respecting libels.

Passed June 12, 1799.

Truth may  
be given in  
evidence.  
See Consti-  
tution, Art. 1,  
§ 5.

BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That in any prosecution, hereafter to be commenced in any of the courts of this state, for a libel, either against the government of this state, or any of the officers thereof, or against any other person, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence, in his defence, the truth of the matter charged in the indictment, any law, usage, or custom to the contrary notwithstanding.

## CHAPTER 12.

DAMAGES IN REAL ACTIONS.

REV. 183.

### An Act for the recovery of damages in writs of assize and real actions.

Passed March 5, 1795.

Plaintiff to  
recover da-  
mages in as-  
sises, etc.

BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That in all assises, if judgment be given for the plaintiff, he or she shall recover his or her damages; and in all assises of novel disseisin and writs of entry the demandants, if they recover the tenements demanded, shall also recover their damages against the disseisors; and if the disseisors alien the land, and have not whereof the damages may be levied, they to whose hands such tenements shall come shall be charged with the damages, so that every one shall answer for his or her time: *and further,* that in all writs and actions possessory, whereby lands or tenements are demanded, damages shall be recovered as aforesaid.

CHAPTER 13.

TI. XXXIV.  
CHAP. 13.

JURIES AND VERDICTS.

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| <ol style="list-style-type: none"> <li>1. Of the venire facias.</li> <li>2. Qualifications of grand jurors.</li> <li>3. Duty of foreman.</li> <li>4. Vacancies supplied.</li> <li>5. How summoned.</li> <li>6. Fine for nonattendance.</li> <li>7. Qualification of petit jurors.</li> <li>8. How summoned, fines.</li> <li>9. Fines, how collected.</li> <li>10. What words sufficient in writ.</li> <li>11. Excusing service for reward, penal.</li> <li>12. Process for jury of view, etc.</li> <li>13. Expenses of view, trial, etc.</li> <li>14. Sheriff to procure list.</li> <li>15. Struck jury in civil cases.</li> <li>16. Struck jury in criminal cases.</li> <li>17. Proceedings to obtain such jury.</li> <li>18. Fees paid by applicant.</li> <li>19. How general panel selected.</li> <li>20. Judge may act for clerk.</li> </ol> | <ol style="list-style-type: none"> <li>21. List to be laid before court.</li> <li>22. None others to serve.</li> <li>23. How jury of trial selected.</li> <li>24. Right of peremptory challenge.</li> <li>25. Names annexed to venire, etc.</li> <li>26. Names replaced in box.</li> <li>27. Venire to coroners and elisors.</li> <li>28. Unnecessary jurors discharged.</li> <li>29. Excepted cases.</li> <li>30. Fees of jurors.</li> <li>31. Tales, when awarded.</li> <li>32. Not discharged except by order.</li> <li>33. Issuing, service, and return of venire.</li> <li>34. Challenge by the state.</li> <li>35. Of the verdict.</li> <li>36. Evidence of juror.</li> <li>37. Papers in evidence.</li> <li>38. Of bad counts.</li> <li>39. Writ of inquiry in detinue.</li> <li>40. Verdict in detinue.</li> </ol> |
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An Act relative to juries and verdicts.

REV. 310, 455,  
456, 560.

Revision....Approved April 17, 1846. HAR. 159.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That every venire facias for the trial of any issue in any action or suit, civil or criminal, in any court of this state, shall be awarded of the body of the proper county in which such issue is triable, except where a foreign jury shall be deemed necessary, and then the venire facias shall be awarded of the body of the county from which such foreign jury is directed to come.

1835-6.  
PAMPH. 323.  
1836-7.  
PAMPH. 17.  
1840-41.  
PAMPH. 110.  
1843-4.  
PAMPH. 236.  
Venire fa-  
cias.

2. *And be it enacted*, That every person who shall be summoned to serve as a grand juror in any court of this state, shall be a citizen of this state and resident within the county, above the age of twenty-one, and under the age of sixty-five years, and have a freehold in lands, messuages, or tenements in the county for which he shall be returned; and if any person not so qualified shall be summoned to serve as a grand juror, it shall be a good cause of challenge to such juror, who shall be discharged upon such challenge being verified and substantiated according to law, or on his own allegation and oath, or affirmation in support thereof.

Qualifica-  
tions of grand  
jurors.  
Challenge.

3. *And be it enacted*, That every person who shall be appointed foreman of a grand jury, shall, from the time of his appointment until his discharge, be empowered to administer the usual oath or affirmation to such witnesses as shall come to give evidence to the grand jury whereof he is foreman; and it shall be the duty of such foreman, before he be discharged, to certify to the proper court, under his hand, the names of such witnesses as shall have been by him so sworn or affirmed as aforesaid.

Duty of fore-  
man.

TI XXXIV.  
CHAP. 13.

Vacancy sup-  
plied.

How sum-  
moned.

Fine for non-  
attendance.

Qualifica-  
tions of petit  
jurors.

Challenge.

How sum-  
moned.

Fine for non-  
attendance.

Fines, how  
collected.

4. *And be it enacted*, That in case of the sickness, death, or nonattendance of any grand juror or grand jurors, after he or they shall be sworn or affirmed, it shall be lawful for the court, at their discretion, to cause another or others to be sworn or affirmed in his or their stead.

5. *And be it enacted*, That every summons of any grand juror shall be made by the sheriff or his lawful deputy, either personally to, or in writing under his hand, left at the dwelling-house of, such grand juror, at least six days before the first day of the court.

6. *And be it enacted*, That every person summoned to appear on a grand jury as aforesaid, and failing to attend, not having a reasonable excuse, shall be fined by the court in any sum not exceeding twenty dollars, to the use of the county where such offence was committed.

7. *And be it enacted*, That every petit juror who shall be returned upon the trial of any indictment, presentment, or pleas of the state, in any court thereof, and every juror who shall be returned upon trials of issues in the supreme court, or in any court of record of this state, shall be a citizen of this state and resident within the county, above the age of twenty-one and under the age of sixty-five years, and have a freehold in lands, messuages or tenements in the county for which he shall be returned; and if any person who is not so qualified, shall be summoned as a juror on the trial of any indictment, presentment, pleas of the state or issue, in any of the courts in this section specified, it shall be a good cause of challenge to such juror, who shall be discharged upon such challenge being verified and substantiated according to law, or on his own allegation, and oath or affirmation in support thereof; *provided*, that no exception against any such juror on account of his citizenship, estate or age, or any other legal disability, shall be allowed after he is sworn or affirmed.

8. *And be it enacted*, That the summons of every juror described in the section next preceding, shall be made by the sheriff or his lawful deputy, either personally to, or in writing under his hand, left at the dwelling-house of such juror six days, at the least, before the day on which such juror ought to make his appearance at court; and such juror, in case of nonattendance, shall, if he does not assign any reasonable excuse, be fined by the court in any sum not exceeding sixteen dollars, to the use of the county where such offence was committed.

9. *And be it enacted*, That it shall be the duty of the clerk of the court to deliver a certified list of the names of all defaulting jurors, specifying the fine awarded against each of them, to the sheriff of the county, who shall, by himself or his lawful deputy, either per-

sonally or in writing, give notice to each defaulting juror of the fine so awarded against him, at least six days before the next term or session of the said court; which notice, if in writing, shall be signed by the said sheriff or his deputy, and left at the dwelling-house of the said juror; and if such fine shall not be paid to the said sheriff by the second day of the next term or session as aforesaid, or be then remitted by the court, it shall be the duty of the said court to issue process directed to the sheriff, commanding him to levy and make the said fine, with costs, by distress and sale of so much of the goods and chattels of such defaulting juror as shall be sufficient to satisfy the same. And the sheriff for every such notice shall be allowed one dollar, to be paid by the juror so making default, provided he shall have been summoned as such agreeably to law.

TI. XXXIV.  
CHAP. 13.

10. *And be it enacted*, That it shall be sufficient, in the mandatory part of the writ of habeas corpora juratorum or distringas, to insert the following words: "the bodies of the several persons named in the panel to this writ annexed," or words of the like import, and to annex to the said writ a panel containing the same names as were returned in the panel to the venire facias.

What words  
sufficient in  
the writ.

11. *And be it enacted*, That no sheriff, coroner, or other officer, or any deputy of such sheriff, coroner, or other officer, shall directly or indirectly take, accept or receive any money, or other reward or thing, to excuse any person from serving or being summoned or returned to serve on any jury or inquest, or under that colour or pretence, on pain of forfeiting one hundred and fifty dollars for every such offence, the one moiety to the state, and the other moiety to any person who shall prosecute for the same, to be recovered, with costs, by action of debt, in any court of record having cognizance of that sum.

Officer not  
to take re-  
ward for ex-  
cusing juror.

12. *And be it enacted*, That it shall be lawful for the supreme court, or any circuit court or court of common pleas, in which any action is or shall be depending, and where it shall appear to the court to be proper and necessary, that the jurors who are to try the issue in the said action should have a view of the messuages, lands or place in question, in order to their better understanding the evidence that will be given on the trial of such issue, to order a special writ of venire facias, distringas, or habeas corpora juratorum, to issue, by which the sheriff, or other officer to whom the same shall be directed, shall be commanded to have six or more of the first twelve of the jurors, named in the panel to such writ annexed, at the place in question, not less than six days prior to the first day of the court, who then and there shall have the matters in question shown to them by two persons in the said writ named, to be appointed by

Process for  
jury of view.

Premises to  
be shown.

TL. XXXIV.  
CHAP. 13.

the court; and the sheriff or other officer who is to execute the said writ, shall, by a special return on the same, certify under his hand that the view hath been had according to the command of the said writ.

Of the view,  
expenses,  
and trial.

13. *And be it enacted*, That the expenses of taking the said view shall be equally borne by both parties, and that no evidence shall be given on either side at the time of taking thereof; *provided always, and be it enacted*, that in case no view shall be had, or if a view shall be had by any of the said jurors, whether they shall happen to be any of the twelve jurors, who shall be first named in the said writ or not, yet the said trial shall proceed; and no objection shall be made on either side for want of a view, or that a view was not had by any of the twelve jurors first named, or for that it was not had by any particular number of the jurors named in the said writ, or for want of a proper return to the said writ.

Sheriffs to  
procure list.

14. *And be it enacted*, That it shall be the duty of the respective sheriffs of the several counties in this state, at their own expense, to procure yearly and every year, a list of the names of the persons who, in their respective counties, are qualified to serve as jurors on trials.

Of struck ju-  
ry.

15. *And be it enacted*, That it shall and may be lawful for the supreme court, the circuit courts, the courts of common pleas, and the courts of general quarter sessions of the peace, respectively, on motion in behalf of this state, or of any prosecutor or defendant in any indictment or information in nature of a quo warranto, or on motion in behalf of this state, or of any plaintiff, demandant, avowant, tenant, or defendant, in any action or suit, depending or to be depending before them, and triable by a jury of twelve men, to order a jury to be struck for the trial thereof; but this clause shall not extend to any indictment for any offence where the party is entitled to challenge peremptorily, or without cause shown under the act entitled, "An act regulating proceedings and trials in criminal cases."

TITLE VIII.  
CH. 5.

Struck jury  
in criminal  
cases.

16. *And be it enacted*, That it shall and may be lawful for the court of oyer and terminer and general jail delivery, on motion in behalf of the state or of any defendant, in any indictment or presentment depending or to be depending before them and triable by a jury of twelve men, wherein the defendant is not by law entitled to challenge peremptorily or without cause shown, as specified in the preceding section, to order a jury to be struck for the trial thereof; which jury shall be struck before one of the justices of the supreme court, in the same manner and upon the same terms as are or may be prescribed by law in other cases, and shall be

convened by process of venire facias issued out of the said court of oyer and terminer and general jail delivery.

TI. XXXIV.  
CHAP. 13.

17. *And be it enacted*, That it shall be the duty of the sheriff of the proper county, or other officer who ought to empanel the jury in such case, to deliver at a certain day and place, to the judge of the court before whom the jury is to be struck, a book containing the names of the several persons in his county qualified to serve as jurors on such trial, with their places of abode; and the party applying for such struck jury, or his attorney, shall give six days previous notice to the adverse party or his attorney, and to the judge, sheriff, or other officer aforesaid, of the time and place of striking the said jury; at which time and place the said judge shall, in the presence of the parties or their agents or attorneys, or such of them as shall attend for that purpose, select and transcribe from the said books the names of forty-eight such persons, with their places of abode, as he shall think most impartial and indifferent between the parties, and best qualified as to talents, knowledge, integrity, firmness and independence of sentiment, to try the said cause; and thereupon the party applying for such jury, his agent or attorney, shall first strike out one of the said names, and then the adverse party, his agent or attorney, shall strike out another, and so on, alternately, until each shall have stricken out twelve; but if the adverse party shall not attend such striking, nor any person in his behalf, then the said judge shall strike for him; and when each shall have stricken out twelve, as aforesaid, the remaining twenty-four shall be the jury to be returned to try the said cause; and the said judge shall thereupon make a fair copy of the names of the remaining twenty-four persons, with their places of abode, and certify the same under his hand to be the list of jurors struck as aforesaid, for the trial of the said cause; which list shall be delivered to the sheriff or other officer, who ought to summon such jury, together with the venire facias, by the person applying for such struck jury, his agent or attorney, at least ten days previous to the time appointed for the trial of such cause, and such sheriff or other officer shall thereupon annex the same list to the said venire facias, and return the same as the panel of the jury to try the said cause, and summon them according to the command of the said writ; and in case of neglect or refusal to deliver the list and venire as aforesaid, the cause shall be tried by a common jury of the county, (unless the court shall for some good cause determine otherwise) any thing in this act to the contrary notwithstanding.

Proceedings  
to obtain a  
struck jury.

Notice.

Mode of se-  
lecting.

Copy of  
names deli-  
vered with  
venire, ten  
days before  
trial.

18. *And be it enacted*, That the party applying for such struck jury shall pay the fees for striking the same, and shall not have any allowance therefor upon the taxation of costs.

Who to pay  
fees.

TL. XXXIV  
CHAP. 13.

How general  
panel of ju-  
rors select-  
ed.

19. *And be it enacted*, That it shall be the duty of every sheriff in this state, or in case of his death or disability, of the coroners of the respective counties, at least twenty days before the commencement of every circuit court, court of oyer and terminer and general jail delivery, common pleas, and quarter sessions of the peace, to be holden in such county, to repair to the office of the clerk of the said county, and there, in the presence of the said clerk, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, select from among the freeholders of the county qualified to serve as jurors, the names of at least twice as many such freeholders as he or the said coroners shall deem necessary to be summoned as jurors at the then next ensuing term of any of the aforesaid courts; and the names so selected shall be written on separate pieces of paper; which pieces of paper shall then be separately rolled up, concealing the name of each juror, and put into a box, and which, when so rolled up, shall be of the same size, colour and shape, as nearly as may be; after which the said box shall be closed up and shaken in such a manner as to intermingle the pieces of paper so as aforesaid rolled up and put therein; the box shall then be opened, and the said sheriff, coroners, or clerk, or some person appointed by them for that purpose, shall, in an open and public manner, in the presence of the said officers and of such other persons as may happen or choose to be present on the occasion, between the hours aforesaid, draw out of the said box as many pieces of paper as the number of jurors the said sheriff or coroners shall deem necessary to summon as aforesaid; and the several persons whose names shall be found written on the papers so drawn out shall constitute the general panel of jurors, to be summoned and returned by the said sheriff or coroners to the next ensuing term of the said courts; and the said sheriff, coroners, or clerk shall make, or cause to be made, two complete lists of the names so drawn, and certify the same, under their hands, to be the panel of jurors selected to serve at such ensuing court or courts, one whereof shall be filed by the said clerk, and the other shall be delivered to the said sheriff or coroners.

Lists to be  
made, etc.

Judge may  
act instead  
of clerk.

20. *And be it enacted*, That in case of the death, disability, or absence of the clerk of any county, it shall and may be lawful for any judge of the court of common pleas of such county to perform the duties directed to be performed by the clerk in the last preceding section of this act; and one copy of the list of jurors drawn and certified by such judge and sheriff or coroners, shall be filed in the clerk's office of the county.

List to be  
laid before  
court.

21. *And be it enacted*, That the sheriff shall, as soon as may be after the commencement of the term or session of each of the

said courts, deliver a list of the jurors by him summoned for service at such term or session, certified by him to be a true list, to the clerk of such court, who shall thereupon file the said list, and forthwith lay the same before the said court.

TL XXXIV.  
CHAP. 13.

22. *And be it enacted*, That unless when a *tales de circumstantibus* is ordered, no person shall serve as a juror whose name is not contained in the general list to be returned by the sheriff, as provided in the preceding section of this act; but no exception shall be taken or objection made on account of the provision contained in this section, unless the same be taken or made before such person is sworn or affirmed as a juror.

No other person to serve, except, etc.

23. *And be it enacted*, That the name of each and every person who shall be summoned and returned by any sheriff or coroners to serve as petit jurors in any of the aforesaid courts, shall be written or printed on separate pieces of paper, of the same size, colour and shape, as nearly as may be; which pieces of paper shall be severally rolled up by the sheriff, coroners or clerk, or by some person employed by them for that purpose, and put into a box; and whenever the trial of a cause, civil or criminal, shall be ordered on, and a jury for the trial thereof shall be required, the said box shall be shaken so as to intermix the said papers; and thereupon the sheriff or clerk, or some other person, by the direction of the court, publicly and in open court, shall proceed to draw such papers from the said box, one at a time, and continue so to do until twelve persons, whose names are found written thereon, shall appear; and if any of the twelve persons so appearing shall be successfully challenged or be excused from serving on that jury, the said drawing shall be continued until twelve persons not thus challenged or excused shall appear; and such twelve, being severally sworn or affirmed, shall constitute a jury for the trial of the said cause; and in case it shall so happen that all the names in the said box shall be drawn out before twelve persons appear and are sworn or affirmed on the jury, then either party may pray for, and it shall be the duty of the court to award a *tales de circumstantibus*; whereupon the sheriff or other proper officer shall summon from among the bystanders, or others, such number of talesmen as may be necessary to complete the said jury, and make return thereof immediately.

How jury of trial selected.

Tales, when awarded.

24. *And be it enacted*, That upon the trial of any issue in any civil suit or action in any court of this state, except in the courts for the trial of small causes and other cases before justices of the peace, each party shall be entitled to challenge peremptorily, as their names are drawn from the box, three of the general panel of jurors summoned and returned by the sheriff or other officer; and

Right of peremptory challenge.

TI. XXXIV.  
CHAP. 13.

upon the trial of any indictment where peremptory challenges are not now allowed, the defendant or defendants shall be entitled to challenge peremptorily, as their names are drawn from the box, three of the general panel of jurors summoned and returned by the sheriff or other officer.

Venire re-  
turned.

25. *And be it enacted*, That after the jury shall be selected and sworn or affirmed as aforesaid, the sheriff or other proper officer shall annex their names to the venire in the cause, and certify and return the same as the panel of jurors summoned therein; but the trial of the cause may forthwith proceed in the same manner as if such return had already been made.

Names re-  
placed in  
box.

26. *And be it enacted*, That after a jury shall have been empannelled and sworn or affirmed for the trial of any cause, the clerk, sheriff or other proper officer shall forthwith, and before another jury shall be drawn, replace in the said box all the papers which may have been drawn therefrom, except those containing the names of the jurors so empannelled and sworn or affirmed; but as soon as they shall have rendered a verdict, or be discharged therefrom by the court, their names shall also be replaced in the said box.

How venire  
executed by  
coroners and  
elisors.

27. *And be it enacted*, That whenever any writ or writs of venire facias shall be directed to the coroners of any county, or to elisors appointed by any court in this state, such writ or writs shall be executed, and the juries thereby required shall be summoned by such coroners or elisors in the same manner as by law was required to be done in such cases before the ninth day of March, one thousand eight hundred and thirty-six.

When por-  
tion of jurors  
may be dis-  
charged.

28. *And be it enacted*, That if at any time the number of jurors that shall be in attendance at any court shall in the opinion of the court be greater than is necessary for the business of the term, it shall and may be lawful for the court to discharge a specific number of such jurors from further attendance at that term; in which case the clerk or sheriff, or some person under the direction of the court, shall publicly and in open court draw from the said box such number of the papers therein contained as the court shall direct; and the jurors whose names shall be found written thereon shall be discharged from further attendance at that term; *provided however*, that nothing herein contained shall be construed to prevent any court from excusing individual jurors from attending, if upon application to the court to be so excused they assign sufficient reason therefor.

Proviso.

Cases ex-  
cepted.

29. *And be it enacted*, That nothing in the last ten preceding sections of this act contained shall operate on or in any manner interfere with the present mode of empanneling, summoning or return-

ing special or struck juries, foreign juries, juries of view or grand juries, or with the summoning and empannelling of jurors, to serve as such, in the courts of the borough of Elizabeth. TI. XXXIV. CHAP. 13.

30. *And be it enacted*, That every person summoned to serve as a petit juror in the supreme court, the circuit courts, the courts of oyer and terminer and general jail delivery, the courts of common pleas and the courts of general quarter sessions of the peace, shall receive the sum of seventy-five cents for every day's attendance at such courts, to be paid to him at the expiration of each term of service, by the sheriff of the county from which the juror shall be summoned. Fees. Paid by sheriff.

31. *And be it enacted*, That if by reason of challenges, or the default of jurors or otherwise, in either of the courts mentioned in the last preceding section, a sufficient number cannot be had of the jurors on the original panel to try the issue or cause, then the court in which such issue is to be tried, is hereby authorized and required to award a tales de circumstantibus of persons present at the said court, and qualified according to law, to be joined to the other jurors, till the number of twelve jurors be sworn; which talesmen shall be liable to the same challenges as the principal jurors; and thereupon the said court is hereby authorized to proceed to the trial of the said issue or cause with such jury, which shall be as valid and effectual as if the said issue or cause had been tried by twelve of the jurors returned on the original panel; and if any talesman, when present, be called and shall not appear, or if he appear, shall wilfully withdraw from the court, then it shall be lawful for the said court to set a reasonable fine upon him, to be levied and made by distress and sale, in the manner prescribed by this act. Tales, when awarded. Liable, as principal jurors.

32. *And be it enacted*, That no person summoned to serve as a juror, shall be discharged from attendance, except by order of the court in which his attendance may be required. Not discharged, except by order.

33. *And be it enacted*, That the issuing, serving and returning of writs of venire facias shall remain, as by law directed at the time of passing this act. Service and return of venire.

34. *And be it enacted*, That if the attorney general or any other person prosecuting for this state, shall, in behalf of the state, challenge any juror, he shall immediately assign the cause of such challenge, and the truth thereof shall be inquired into and decided upon in the same manner as the challenges of other parties are by law inquired into and decided upon. Challenges by the state.

35. *And be it enacted*, That no jury shall in any case be compelled to give a general verdict, so that they find a special verdict and show the truth of the fact, and require the aid of the court; Of the verdict.

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CHAP. 14. but if of their own will they give a general verdict, the same shall be received at their peril.
- Evidence of juror. 36. *And be it enacted*, That jurors who know any thing relative to the point in issue, shall, during trial, disclose the same in open court.
- Papers in evidence. 37. *And be it enacted*, That papers read in evidence, though not under seal, may be carried from the bar by the jury.
- Of bad counts. 38. *And be it enacted*, That where there are in a declaration several counts, some of which are faulty or bad, and others not, and entire damages are given, the verdict shall be good and effectual in law; but the defendant may apply to the court to instruct the jury to disregard such faulty or bad counts.
- Writ of inquiry in detinue. 39. *And be it enacted*, That if in detinue the verdict shall omit price or value, the court may at any time award a writ of inquiry to ascertain the same.
- Verdict in detinue. 40. *And be it enacted*, That if on an issue concerning several things in one count in detinue, no verdict be found for part of them, it shall not be error; but the plaintiff shall be barred of his title to the things omitted.

## CHAPTER 14.

### DOCKETING JUDGMENTS.

- |                                 |  |
|---------------------------------|--|
| 1. Judgments docketed.          | 7. Supreme court to control execution. |
| 2. Clerk to keep docket.        | 8. Judgment, how revived.              |
| 3. Form of entry.               | 9. Writ of error to stay execution.    |
| 4. Copy transmitted.            | 10. Judgment removed by writ of error. |
| 5. Dockets public records.      | 11. Proceedings, if reversed.          |
| 6. Effect of docketed judgment. | 12. Clerk's fees.                      |

1845.  
PAMPH. 101. An Act to regulate the mode of docketing judgments of the circuit courts in the supreme court.

Approved March 19, 1845.

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

- Judgment docketed in supreme court. SEC. 1. Any final judgment of a circuit court may be docketed in the supreme court.
- Clerk to keep docket. SEC. 2. The clerk of every circuit court shall provide and keep a docket, in which shall be entered, upon the request of any party thereto, all final judgments rendered in such court for the payment of any debt, damages, costs, or other sum of money.
- Form of statement to be entered in docket. SEC. 3. Upon such request being made, and on payment of the fees allowed for docketing such judgment, and for making and

sending transcripts of such docket, as hereinafter directed, the said clerk shall enter in such docket a statement of such judgment, containing: *first*, the title of the court, the names at length of all the parties to such judgment, designating particularly against whom it is rendered, with their places of abode, description, titles, trades, or professions, if any such appear by the record; *second*, the style of action, and the amount of the debt, damages, or other sum of money recovered, with the costs; *third*, the time of signing such judgment, and docketing the same.

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SEC. 4. The clerk docketing such judgment shall immediately transmit a certified transcript thereof, from the docket, to the clerk of the supreme court, who shall forthwith, on the receipt thereof, and of the fees for that purpose hereinafter provided, file the same, and enter such transcripts in a docket, to be by him provided and kept for that purpose, and note therein the time of receiving and of entering the same.

Clerks to transmit copies of judgment to supreme court.

SEC. 5. The clerks of the circuit courts and the clerk of the supreme court shall make to their respective dockets a complete alphabetical index; and said dockets shall be public records, to which all persons desirous of examining the same shall have access.

Dockets to be public records.

SEC. 6. Such judgment shall, from the time of such docketing in the supreme court, operate as a judgment obtained in the supreme court, and satisfaction thereof may be entered in the margin of the docket, upon the same evidence, and in the same manner, as is now provided by law in case of judgments rendered in the supreme court.

Operation of judgments docketed in the supreme court.

SEC. 7. After a judgment shall be docketed in the supreme court, no execution shall be issued upon the same, out of the circuit court in which it was obtained; and if any judgment shall be docketed in the supreme court, after an execution shall have been issued thereon, out of the circuit court, then the supreme court may exercise the same authority and control over such execution as if the same had issued out of the supreme court.

Execution not to issue out of circuit court after docketing in supreme court.

SEC. 8. Every judgment docketed as herein directed, may be revived by scire facias in the supreme court, in the same manner, in the like cases, and with the like effect, as if such judgment had been obtained in that court.

Judgment, how revived.

SEC. 9. If any judgment recovered in any circuit court shall be removed by writ of error to the court of errors, and bail in error shall be duly perfected thereon, and such judgment shall, either before or after such removal, be docketed as herein provided, then execution shall be stayed in the supreme court, in the same manner as in such circuit court.

Execution to be stayed in case of writ of error.

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Judgment  
may be re-  
moved to su-  
preme court.

Proceedings  
in case of re-  
versal.

Fees of  
clerks.

When act to  
take effect.

SEC. 10. A judgment, docketed as herein provided, may be re-  
moved to the supreme court by writ of error, in the same manner  
as if such judgment had not been so docketed.

SEC. 11. If any judgment, docketed as herein provided, shall be  
reversed on writ of error by the court of errors, and a transcript  
of the judgment of reversal, duly certified, shall be delivered to  
the clerk of the supreme court, it shall be his duty to file the same  
in his office, and enter in the margin of the docket, opposite the  
entry of such judgment therein, the word "reversed," and the  
date of such reversal.

SEC. 12. The clerks of the supreme court and circuit courts  
shall be entitled to receive, for docketing any judgment, fifty cents ;  
for certified transcripts of such docket, fifty cents ; and for filing  
certificate of reversal, and entering the same in the docket, twelve  
cents.

SEC. 13. This act shall take effect immediately after it becomes a  
law.

## CHAPTER 15.

### EXECUTIONS.

- |   |  |   |
|---|--|---|
| <ol style="list-style-type: none"> <li>1. Execution to issue.</li> <li>2. Endorsement required.</li> <li>3. Binding from time of delivery.</li> <li>4. Same, when against lands.</li> <li>5. When purchase before levy good.</li> <li>6. Money may be levied on.</li> </ol> |  | <ol style="list-style-type: none"> <li>7. Also notes, stocks, etc.</li> <li>8. Clerk or cashier to give certificate.</li> <li>9. Goods reserved to family.</li> <li>10. Goods to be advertised.</li> <li>11. Proceedings on claim of property.</li> <li>12. Decision to protect sheriff.</li> </ol> |
|---|--|---|

REV. 430. An Act respecting executions, and regulating the sale of personal estate  
HAR. 194. by virtue thereof.

1835-6.  
PAMPH. 387.

Revision....Approved April 16, 1846.

1841-2.  
PAMPH. 130.

Execution,  
against what  
and whom to  
issue.

1. BE IT ENACTED *by the Senate and General Assembly of the  
State of New Jersey*, That upon judgment obtained, or to be ob-  
tained, for debt, damages, and costs, or other sum of money, in the  
supreme court, or in any circuit court or court of common pleas of  
this state, the party obtaining the same may have an execution  
against the body, or against the goods and chattels, or against the  
goods and chattels, lands, tenements, hereditaments, and real estate  
of the party against whom such judgment is or shall be awarded ;  
but no execution shall be issued against the proper goods and chat-  
tels, lands, tenements, hereditaments, and real estate of any execu-  
tor, administrator, heir or devisee, unless he or she shall have made  
his or her estate liable for the money so recovered by false plead-  
ing or otherwise.

2. *And be it enacted*, That the party at whose instance any writ of execution shall issue against the body, or against the goods and chattels, or against the goods and chattels, lands, tenements, hereditaments, and real estate of any person, shall endorse on the said writ, before it be sealed, the debt, damages, and costs, or sum of money really due and to be made.

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-----  
Endorse-  
ment requir-  
ed.

3. *And be it enacted*, That no writ of execution shall bind the property of the goods of the person against whom such writ is sued forth, but from the time that such writ shall be delivered to the sheriff, under-sheriff, coroner, or other officer, his deputy or agent, to be executed; and for the better manifestation of the said time, such sheriff, under-sheriff, coroner, or other officer, his deputy or agent, shall, upon the receipt of any such writ, endorse thereon, without fee for so doing, the day of the month and year when he received the same; and if two or more writs of execution shall be delivered against the goods of the same person on the same day, that which was first delivered shall be first executed and satisfied.

To bind  
from time of  
delivery.  
  
  
  
Note of time  
endorsed.

4. *And be it enacted*, That where sundry writs of execution shall be issued against the goods and chattels, lands, tenements, hereditaments, and real estate of the same person, and sufficient cannot be found to satisfy all the sums commanded to be made, then the like priority and preference shall be given in such cases as is given by the preceding section of this act in writs of execution against the goods only, and all disputes respecting the same shall be adjudged and determined accordingly; and for that purpose the like endorsement, as aforesaid, shall be made on the said writs, by the proper officer, of the time that he shall have respectively received the same.

Same prior-  
ity as to  
lands.

5. *And be it enacted*, That if any person shall purchase, in good faith, of a defendant in execution, any goods or chattels, and pay for the same prior to the actual levy of such execution, and without notice thereof, the title of such purchaser shall not be divested by the fact that such execution had been delivered before such purchase was made.

When pur-  
chase before  
levy good.

6. *And be it enacted*, That money belonging to a defendant in execution may be levied on and returned, by virtue of such execution, as so much money collected, without exposing the same to sale.

Money levi-  
ed on.

7. *And be it enacted*, That bank notes, bills, or other evidences of debt, circulated as money, or any share or interest in any bank, insurance company or other joint stock company, that is or may be incorporated under the authority of this state, belonging to a defendant in execution, may be taken and sold, by virtue of such execution, in the same manner as goods and chattels.

Notes, stock,  
etc., taken in  
execution.

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Clerk or  
cashier of  
company to  
give certifi-  
cate, etc.

8. *And be it enacted*, That the clerk, cashier, or other officer of such company, who has at the time the custody of the books of the company, shall, upon exhibiting to him the writ of execution, be bound to give to the officer having such writ a certificate of the number of shares or amount of the interest held by the defendant in such company; and if he shall neglect or refuse so to do, or if he shall wilfully give a false certificate thereof, he shall be liable to the plaintiff for double the amount of all damages occasioned by such neglect or false certificate, to be recovered in an action on the case against him.

What goods  
reserved to  
debtor hav-  
ing family.

9. *And be it enacted*, That one cow, one bed and bedding, one cradle, one stove, one half cord of fire wood, one half ton of stone coal, one spinning wheel, one table, six chairs, one hog, one hundred weight of flour, one iron cooking pot, one dozen knives and forks, one dozen plates, one dozen spoons, one half dozen bowls, two pails, one barrel, one coffee pot, one tub, one frying pan, the necessary tools of a tradesman, not exceeding in value ten dollars, and all wearing apparel, the property of any debtor having a family, shall be reserved for the use of the family against all creditors, and shall not be liable to be seized or taken by virtue of any execution or civil process whatever, issued out of any court in this state.

Goods to be  
advertised  
for sale.

10. *And be it enacted*, That no sale of any goods or chattels shall be made by virtue of any execution, unless previous notice of the time and place of such intended sale shall have been given by the officer making the levy, by advertisements signed by himself, and put up in three or more of the most public places in the township where they were taken, at least five days before the time appointed for sale.

Proceedings  
on claim of  
property.

11. *And be it enacted*, That in all cases where any sheriff shall, by virtue of any writ of execution issued out of any court in this state, levy on or take into his possession any goods or chattels, which shall be claimed by notice in writing delivered to said sheriff, by any other person than the defendant, he shall, immediately upon such claim, delay his sale of the same for the space of ten days, that the said claimant may, within the said term, apply to one of the judges of the court of common pleas in the county where the goods and chattels were so seized, for a venire to summon a jury of twelve men, to try the right of said claimant to said property; and it shall be lawful for such judge to issue the same, and direct a return thereof to be to him made, and to proceed therein as in other cases of trial by jury; but the claimant shall, in all cases, give at least eight days previous notice in writing to the plaintiff or his attorney, of the time and place of the said trial; and

either party shall be entitled to process of subpoena, out of the court from which such execution issued, to compel the attendance of witnesses; and the judge before whom such inquest may be held shall have power to adjourn, upon the application of either party, for a reasonable time, upon good cause shown for such adjournment.

12. *And be it enacted*, That the verdict of such jury shall be reduced to writing, and signed by the jury and judge before whom the matter shall be tried, and shall be filed in the office of the clerk of the court out of which the said execution issued; and the inquisition so taken shall protect the said sheriff from any action for taking and seizing such property, or delivery thereof to the claimant; and if the said property shall be found to belong to the claimant, the sheriff shall proceed no further with the same, but if it shall be found to belong to the defendant, he shall proceed to dispose thereof, as is directed in such process; and the costs attending such trial shall be taxed by the said judge as in other cases, and shall be paid by the plaintiff at whose suit the said property was taken and seized, if the claimant obtain a verdict in his favour, and by such claimant, if the verdict is found against him; *provided*, that if the plaintiff, upon notice being given to him as aforesaid, shall indemnify the sheriff against the demand of the claimant, then he shall suspend any further proceedings therein, and proceed to sell.

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Verdict of  
jury shall  
protect the  
sheriff.

Costs, by  
whom paid.

Plaintiff may  
indemnify.

## CHAPTER 16.

### EXECUTIONS AGAINST CORPORATIONS.

An Act to facilitate the collection of claims and demands against townships, cities, and boroughs.

1845.  
PAMPH. 161.

Approved March 26, 1845.

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

SEC. 1. Whenever a writ of execution shall be issued against the inhabitants of any township, city, or borough of this state, by any court authorized to issue the same, in case there should be no property belonging to said township, city, or borough, sufficient to satisfy the same, whereon to levy, then the officer authorized to execute said process shall serve a copy of the same on the collector of said township, city, or borough, who is hereby required to pay and satisfy the same out of the first moneys belonging to said township, city, or borough, which shall come into his hands.

Mode of col-  
lecting de-  
mands a-  
gainst town-  
ships, etc.

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## CHAPTER 17.

BILLS OF EXCEPTIONS.

REV. 293.

### An Act directing bills of exceptions to be sealed.

Passed March 7, 1797.

Bills of ex-  
ceptions to  
be sealed.

BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That when any person, who is or shall be impleaded before any court, and in any cause where a writ of error lies to a higher court, shall allege an exception, praying that the justice or justices will allow it, and he or they will not allow it, if he who alleged the exception instantly writes the same, and requires that the said justice or justices will put thereto his or their seal or seals in testimony thereof, such justice or justices, or the greater part of them present, shall so do; and if such higher court, upon the cause being removed before them, do not find the same exception in the record, and the plaintiff show the exception, written and sealed as aforesaid, the said justice or justices shall be commanded to appear at a certain day, either to confess or deny his or their seal or seals; and if such justice or justices cannot deny his or their seal or seals, the said higher court shall proceed to judgment according to the same exception, as it ought to be allowed or disallowed.

The justice  
sealing the  
same, to con-  
fess or deny  
his seal.

## CHAPTER 18.

WRITS OF ERROR.

- |                                     |   |
|-------------------------------------|---|
| 1. Error in supreme court reviewed. | 8. Stayed in dower and ejectment.             |
| 2. Writ sued forth.                 | 9, 10. How recognizances taken.               |
| 3. Writ and transcript returned.    | 11. When writ shall stay execution.           |
| 4. Error in circuit court reviewed. | 12. When it shall not.                        |
| 5. Error in common pleas reviewed.  | 13. Limitation of 6th, 7th, and 8th sections. |
| 6. Execution in debt, etc., stayed. | 14. Not allowed before final judgment.        |
| 7. Recognizance to be acknowledged. | 15. Must be brought within three years.       |

REV. 400, 424,  
692.

### An Act respecting writs of error.

Revision....Approved April 16, 1846.

Error in su-  
preme court.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey,* That errors happening in the supreme court shall be heard, rectified and determined by the court of errors and appeals.

Writ sued  
forth.

2. *And be it enacted,* That it shall and may be lawful for the attorney general, in behalf of this state, or for any party, his legal

representative, or other person who may be damnified or aggrieved by any judgment rendered or to be rendered in the supreme court, to sue forth a writ of error, to be directed to the justices of the said supreme court, commanding them to cause the record of such judgment, and all things concerning the same, to be brought before the court of errors and appeals.

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3. *And be it enacted*, That the party prosecuting such writ of error shall, without delay, cause a transcript of the said record to be made, and the said justices to whom the said writ of error may be directed, or any one of them, shall annex the said transcript to, and endorse a proper return on, the said writ, and return the same under his or their signature and seal.

Writ and  
transcript  
returned.

4. *And be it enacted*, That all errors happening in any circuit court, shall be heard, rectified and determined, either by the supreme court or by the court of errors and appeals, at the option of the party prosecuting such writ of error.

Error in cir-  
cuit court.

5. *And be it enacted*, That all errors happening in any court of common pleas, shall be heard, rectified and determined by the supreme court, which is hereby declared to have jurisdiction of the same, and out of which a writ for that purpose shall be issued at the instance of the state, or of any party, his legal representative, or other person who may be damnified or aggrieved by any judgment rendered or to be rendered in any of the said courts of common pleas.

Error in  
common  
pleas.

6. *And be it enacted*, That no execution shall be stayed or delayed by any writ of error or supersedeas thereon, for the reversal of judgment in any action of debt founded upon a prior judgment, or upon any single or penal bill for the payment of money only, or upon any obligation with condition for the payment of money only, or upon any action of debt or upon the case for rent, or upon any contract sued in the supreme court or any other court of record, unless the plaintiff in such writ of error, or other responsible person in his behalf, with two sufficient sureties, to be approved and allowed, shall first become bound to the party for whom such judgment is given by recognizance, as hereinafter directed, in double the sum adjudged to be recovered by the said judgment, to prosecute the said writ of error with effect, and also to pay and satisfy, if the said judgment be affirmed, all the debt or debts, damages and costs, adjudged on the former judgment, and all costs and damages to be awarded for the delay of execution.

How execu-  
tion stayed  
on error, af-  
ter judgment  
in debt, etc.

Recogniz-  
ance requir-  
ed.

7. *And be it enacted*, That no execution shall be stayed or delayed in any of the courts mentioned in the section next preceding, by any writ of error or supersedeas thereon, after verdict and judgment on such verdict in any personal action whatsoever, unless

Which must  
be acknow-  
ledged, etc.

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How stayed  
on judgment  
in dower or  
ejectment.

Recogniz-  
ance requir-  
ed.

When writ  
of inquiry to  
issue.

How first  
mentioned  
recogniz-  
ance ac-  
knowledged,  
etc.

How second  
acknowledg-  
ed, etc.

Writ of er-  
ror shall  
stay execu-  
tion.

Proviso.

such recognizance, as is prescribed in the preceding section, shall be first acknowledged, as hereinafter directed.

8. *And be it enacted*, That no execution shall be stayed or delayed by writ of error, to be brought upon judgment after verdict in dower or in ejectment, unless the plaintiff in such writ of error, or other responsible person in his behalf, with two sufficient sureties as aforesaid, shall first become bound by recognizance to the plaintiff in the writ of dower or action of ejectment, in such reasonable sum as the court to which the writ of error is directed shall think fit, with condition, that if judgment be affirmed on the said writ of error, or if the said writ of error be discontinued by default of the plaintiff therein, or if the said plaintiff be nonsuit in the said writ of error, that then the said plaintiff shall pay such costs, damages and sum or sums of money as shall be awarded upon or after such judgment affirmed, discontinuance or nonsuit. And to the end that the same damages and sum or sums of money may be ascertained, the court wherein execution ought to be granted shall, upon such affirmation, discontinuance or nonsuit, issue a writ to inquire, as well of the mesne profits as of the damages by any waste committed after the first judgment in dower or in ejectment; and upon return thereof, judgment shall be given and execution awarded for such mesne profits and damages, and also for the costs of suit.

9. *And be it enacted*, That the recognizance mentioned in the sixth and seventh sections of this act may be acknowledged, and the sureties therein may be approved and allowed, either by the court in which judgment is given, in open court, or by any justice or judge thereof; or in case the said judgment be rendered in the supreme court or circuit court, before any one of the commissioners appointed by the supreme court to take recognizances of bail, and the recognizance so taken shall be filed in the court in which judgment is given.

10. *And be it enacted*, That the recognizance mentioned in the eighth section of this act may be acknowledged before any one of the justices or judges of the court to which the writ of error is directed, at his chambers, in such reasonable sum as such justice or judge shall think fit; and such recognizance, when so acknowledged as aforesaid, and filed in the said court, shall be as good and effectual in law as if the same had been acknowledged in open court.

11. *And be it enacted*, That when a writ of error shall be issued, pursuant to the laws of this state, directed to the supreme court or to any circuit court or court of common pleas, and presented to the court, such writ of error shall stay execution; *provided*, the plaintiff in error shall, within fifteen days from the time the said writ of

error shall be so presented, file in the court wherein the judgment shall be rendered such recognizance of bail, duly taken, as by law is or shall be required; but such recognizance shall not stay execution, as aforesaid, unless the same shall be presented in the term in which such judgment shall be rendered, or within fifteen days thereafter, to one of the justices or judges of the court in which the said judgment shall be rendered.

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12. *And be it enacted*, That where it is apparent to the court that a writ of error is brought against good faith or for the mere purpose of delay, or it is returnable of a term previous to the entry of final judgment, or special bail, when requisite, is not put in and perfected in due time, it shall not be a supersedeas or stay of execution.

When writ shall not stay execution.

13. *Provided always, and be it enacted*, That the sixth, seventh and eighth sections of this act shall not extend to any writ of error to be brought by any executor or administrator, nor to any action popular, or action on any penal statute, nor to any indictment, presentment, inquisition or information.

Limitation of 6th, 7th, and 8th sections.

14. *And be it enacted*, That a writ of error shall not be granted or issued in any case, until final judgment be rendered.

Writ not granted until final judgment.

15. *And be it enacted*, That no writ of error shall be brought or allowed on any judgment that shall have been, or hereafter may be entered or obtained, unless the same shall be had and done within three years after the judgment rendered; *provided*, that in cases where the person entitled to such writ of error be an infant, feme covert or insane, he or she shall have three years to bring such writ of error after such disability shall be removed.

Must be bro't within three years.

Proviso.

## CHAPTER 19.

### CERTIORARI.

1. Removal of indictments.
2. How granted in vacation.
3. Recognizance necessary.

4. To justices and sessions.
5. Void, unless signed.
6. To be delivered in open court.

An Act to regulate, in certain cases, the issuing of writs of certiorari to the courts of general quarter sessions and justices of the peace. REV. 406.

Passed February 6, 1793.

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 supreme court of this state, at the instance of the party indicted or presented, may on motion and by rule award a writ of certio- How writs of certiorari for removal of indictments granted by supreme court in term time.

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rari to remove into the said court any indictment or presentment, before trial, from any of the courts of general quarter sessions of the peace, upon the following, and no other terms, that is to say: that the party indicted or presented, and prosecuting such certiorari, shall, before the allowance thereof, with two sufficient sureties, enter into recognizance to the state of New Jersey, in such sum as the said supreme court shall direct, with condition, that the party so indicted or presented, and prosecuting the certiorari, shall at its return appear and plead to the said indictment or presentment in the said supreme court, and, at his, her, or their own costs and charges, cause and procure the issue that shall be joined upon the said indictment or presentment, or any plea relating thereto, to be tried at the next circuit court to be held for the county wherein the said indictment or presentment was found, after such certiorari shall be returnable, if the said supreme court shall not appoint any other time for the trial thereof, and if any other time be so appointed, then at such other time, and shall not depart the said supreme court until discharged by the same, and shall pay costs, if convicted of the offence charged in the said indictment or presentment.

How in vacation.

2. *And be it enacted*, That a writ of certiorari for the removal of an indictment or presentment, before trial, from any of the said courts of general quarter sessions of the peace into the said supreme court, may, in vacation and at the instance of the party so indicted or presented, be granted by any of the justices of the said supreme court, upon the following, and no other terms, that is to say: that the party indicted or presented, and prosecuting such certiorari, shall, before the allowance thereof, with two sufficient sureties, enter into recognizance to the state of New Jersey, before such justice, in such sum as the said justice shall direct, and with such condition as is specified in the preceding section of this act.

If no recognizance accompany the certiorari, quarter sessions to proceed.

3. *And be it enacted*, That every recognizance taken by virtue of either of the preceding sections, shall be delivered to the court to which the certiorari is directed, together with the said writ; and the recognizance so taken, shall be certified into the said supreme court, with the said certiorari and indictment or presentment, and there filed; and if such recognizance be not delivered, together with the certiorari, to the court, as directed, then it shall be the duty of the said court to proceed to the trial of the said indictment or presentment, in the same manner as if no such certiorari had been allowed or presented.

Writs of certiorari to justice of the peace or court of sessions, how granted.

4. *And be it enacted*, That no writ of certiorari shall be allowed to remove into the supreme court of this state any judgment

or order, given or made by any justice or justices of the peace or court of general quarter sessions of the peace, unless the party prosecuting such certiorari, or some responsible person in his behalf, shall, before the allowance thereof, with two sufficient sureties, enter into recognizance to the state of New Jersey, before the supreme court, if in term time, or before one of the justices of the said supreme court, if in vacation, in the sum of one hundred and fifty dollars, with condition that the party obtaining such certiorari shall prosecute the same to effect without delay, and shall perform such judgment or order as the said supreme court shall give or make thereon, with costs, if costs be awarded: *and further*, that every recognizance to be taken by virtue of this section shall be delivered, together with the writ of certiorari, to the justice or justices or court to which such writ shall be directed, and the said recognizance shall be certified into the said supreme court, with the said certiorari, and the judgment or order removed thereby, and there filed; and if such recognizance be not so delivered with the certiorari, then it shall be the duty of the said justice or justices, or court of general quarter sessions of the peace, to proceed on such judgment or order in the same manner as if no certiorari had been allowed or presented; *provided always*, that this section shall not extend to orders or judgments in actions for debts or demands between party and party, made cognizable before any justice of the peace in and by the act entitled, "An act constituting courts for the trial of small causes." TI. XXXIV. CHAP. 19.

5. *And be it enacted*, That no writ of certiorari shall be granted to remove any indictment, presentment, judgment, order, process, or other proceedings, unless it be signed by one of the justices of the supreme court, and for want thereof, such writ shall be absolutely void and of no effect. Proviso.

6. *And be it enacted*, That every writ of certiorari for the removal of any indictment, presentment, judgment, or order from any court of general quarter sessions of the peace, shall be delivered to the same, in open court. VOID, UNLESS SIGNED BY A JUSTICE OF THE SUPREME COURT.

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## CHAPTER 20.

### AMENDMENTS AND JEOPAILS.

- |   |  |
|---|--|
| 1. Mistakes in process, etc., amended.      | 11. Nor for want of pledges, etc.        |
| 2. Judgments not reversed for rasures, etc. | 12. What judgment on demurrer.           |
| 3. Misprisions of clerks amended.           | " Defects in pleading amendable.         |
| 4. And variance between record, etc.        | 13. Not extended to judgments confessed. |
| 5. Misprisions of others amendable.         | 14. Variance in writ of error amended.   |
| 6. No prejudice by ancient terms, etc.      | 15. No reversal for form of writ, etc.   |
| 7. Records not to be altered.               | 16. How far act extended, etc.           |
| 8. No reversal for misleading, etc.         | 17. Proceedings to be in English.        |
| 9. Nor for want of form.                    | 18. Construction of this act.            |
| 10. Nor for certain variances.              | 19. To what act not extended.            |

Rev. 137.

### An Act respecting amendments and jeopails.

Passed November 21, 1794.

Mistakes in  
process and  
records may  
be amended,  
etc.

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, by the misprision of a clerk, no process shall be annulled or discontinued by mistaking in writing a syllable or a letter too much or too little; but as soon as such misprision is perceived, by challenge of the party or in other manner, it shall be instantly amended in due form, without giving advantage to the party challenging the same. And the court before whom such plea or record is made or shall be depending, as well by adjournment as by way of error, shall have full power, both after and before judgment given therein, to amend such record or process, as long as the same is before them.*

Judgments  
not to be re-  
versed for  
rasures, etc.

2. *And be it enacted by the authority aforesaid, That for error assigned or to be assigned in any record, process, warrant of attorney, writ, original or judicial, panel or return, because there are any rasures or interlineations, or any addition, subtraction or diminution of words, letters or titles, or parcel of letters, in any such record, process, warrant of attorney, writ, panel or return, no judgment or record shall be reversed or annulled.*

Court may  
order mis-  
prision of  
clerks to be  
amended.

3. *And be it enacted by the authority aforesaid, That the court in which any record, process, declaration, count, plea, warrant of attorney, writ, panel, or return, is or may be, shall, while the same remains before them, have power to examine such record, process, declaration, count, plea, warrant of attorney, writ, panel, or return, by them and their clerks, and to rectify and amend, in affirmance of the judgment of such record or process, whatever to them in their discretion shall seem to be the misprision of the clerks, in such record, process, declaration, count, plea, warrant of attorney, writ, panel, or return, so that by such misprision of the clerk no judgment shall be reversed or annulled.*

Variance be-  
tween a re-  
cord, and  
certificate  
thereof, a-  
mendable.

4. *And be it enacted by the authority aforesaid, That if any record, process, declaration, count, plea, warrant of attorney, writ,*

panel, or return, be certified defective, otherwise than according to the writing, which thereof remains in the office, court, or place from whence the same is certified, the parties, in affirmance of the judgment of such record or process, may allege that the same writing is variant from the said certificate, and that being found and certified, the said variance shall be by the said court rectified and amended according to the first writing.

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5. *And be it enacted by the authority aforesaid,* That the court before whom any misprision or default is or shall be found in any record or process which now is or hereafter shall be depending before them, as well by way of error as otherwise, or in the returns of the same, made or to be made by sheriffs, coroners, or any other, by misprision of the clerk of such court, or by misprision of the sheriffs, under-sheriffs, coroners, or their clerks, or other officers, clerks, or other ministers whatsoever, in writing a letter or syllable too much or too little, shall have power to amend such defaults and misprisions, according to their discretion, and by examination thereof by the said court, to be taken where they shall think necessary; and that all such amendments may be made, as well after a judgment given upon verdict, confession, nihil dicit, or non sum informatus, as upon matter of law pleaded.

Misprisions  
of clerks  
amendable.

6. *And be it enacted by the authority aforesaid,* That by the ancient terms and forms of pleadings, no person shall be prejudiced, so that the matter of the action be fully showed in the writ, declaration and pleadings.

No person  
to be prejudiced  
by ancient terms  
and forms.

7. *And be it enacted by the authority aforesaid,* That the record of pleas, real, personal or mixed, whereof judgment is or shall be given and enrolled, or things touching such pleas, shall not be amended or impaired by new entering of the clerk, or by the record or matter certified, in any term subsequent to that in which such judgment in any such plea is or shall be given and enrolled.

Records not  
to be altered  
in any term  
after judgment.

8. *And be it enacted by the authority aforesaid,* That if any issue hath been or shall be tried by the oath or affirmation of twelve men, or more, for the party plaintiff or demandant, or for the party tenant or defendant, bailiff in assize, vouchee, prayee in aid, or tenant by receipt, in any action, suit, bill, plaint, or demand, in any court of record, then the court by whom judgment thereof ought to be given shall proceed and give judgment in the same, notwithstanding any mispleading, lack of colour, insufficient pleading, or jeofail, any miscontinuance, discontinuance, or misconceiving of process, misjoining of the issue, lack of warrant of attorney of the party against whom the issue shall be tried, or any other default or negligence of any of the parties, their counsellors or attorneys; and the judgments thereof, so had and given, or to be had and

After verdict, judgment not to be reversed for mispleading, etc.

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given, shall stand in full strength and force, to all intents and purposes, according to the said verdict, without any reversal or undoing of the same by writ of error or otherwise, in like form as though no such default or negligence had ever been had or committed.

After verdict, judgment not to be reversed for want of form, etc.

9. *And be it enacted by the authority aforesaid*, That if any verdict of twelve men, or more, hath been or shall be given in any action, suit, bill, plaint, or demand, in any court of record, the judgment thereupon shall not be stayed or reversed by reason of any default in form, or lack of form, touching false English, or variance from the register, or other defaults in form, in any writ, original or judicial, count, declaration, plaint, bill, suit, or demand, or for want of any writ, original or judicial, or by reason of any imperfect or insufficient return of any sheriff or other officer, or for want of any warrant of attorney, or by reason of any manner of default in process upon or after any aid prayer or voucher; nor shall any such record or judgment, after verdict, be reversed for any of the defects or causes aforesaid.

After verdict, judgment not to be reversed for variance in form between the writ and declaration, or want of averment, etc.

10. *And be it enacted by the authority aforesaid*, That if any verdict of twelve men, or more, hath been or shall be given for the plaintiff or demandant, or for the defendant or tenant, bailiff in assize, vouchee, prayee in aid, or tenant by receipt, in any action, suit, bill, plaint, or demand, in any court of record, the judgment thereupon shall not be stayed or reversed for any variance, in form only, between the original writ or bill and the declaration, plaint, or demand, or for lack of averment of any life or lives of any person or persons, so as upon examination the said person be proved to be in life, or by reason that the venire facias, habeas corpora, or distringas, is or shall be awarded to a wrong officer upon any insufficient suggestion, or by reason that any of the jury which tried the said issue is or shall be misnamed, in the christian name, surname, or addition, in any of the said writs, or in any return upon any of the said writs, so as upon examination it be proved to be the same man who was meant to be returned, or by reason that there is or shall be no return upon any of the said writs, so as a panel of the names of the jurors be returned and annexed to the said writ or writs, or for that the name of the sheriff, or other officer having the return thereof, is not set to the return of any such writ, so as upon examination it be proved that the said writ was returned by the sheriff or under-sheriff, or any such other officer, or by reason that the plaintiff in any action of ejectment, or in any personal action or suit (being an infant under the age of twenty-one years), did or shall appear by attorney therein, and the verdict pass in favour of such plaintiff.

11. *And be it enacted by the authority aforesaid,* That if any verdict of twelve men hath been or shall be given in any action, suit, bill, plaint, or demand in any court of record, the judgment thereupon shall not be stayed or reversed for default in form, or lack of form, or by reason that there are no pledges, or but one pledge, to prosecute, returned upon the original writ, or because the name of the sheriff is not returned upon such original writ, or for default of entering pledges upon any bill or declaration, or for default of alleging the bringing into court any bond, bill, indenture, or other deed whatsoever, mentioned in the declaration or other pleading, or for default of alleging the bringing into court letters testamentary or letters of administration, or by reason of the omission of the words, "with force and arms," or, "against the peace," or for or by reason of the mistaking of the christian name or surname of the plaintiff or defendant, demandant or tenant, sum or sums of money, day, month, or year, by the clerk, in any bill, declaration, or pleading, where the right christian name, surname, sum, day, month, or year, in any writ, plaint, roll, or record preceding, or in the same roll or record where the mistake is committed, is or are truly and rightly alleged, and to which the party might have demurred, and showed the same for cause, nor for want of the averment or words, "and this he is ready to verify," or, "and this he is ready to verify by the record," or for not alleging, "as appears by the record," or for that there is no right venue, so as the cause was tried by a jury of the proper county or place where the action is laid; nor shall any judgment, after verdict, be reversed for want of entering, that the person against whom such judgment is given, "be in mercy," or, "be taken," or by reason that the words, "be taken," are entered for, "be in mercy," or the words, "be in mercy," are entered for, "be taken," nor for that, in the judgment, the words, "it is granted," are entered for, "it is considered," nor for that the increase of costs, after a verdict in any action or upon a nonsuit in replevin, are not entered to be at the request of the party for whom the judgment is given, nor by reason that the costs, in any judgment whatsoever, are not entered to be by consent of the plaintiff; but that all such omissions, variances, defects, and all other matters of like nature, not being against the right of the matter of the suit, nor whereby the issue or trial is altered, shall be amended by the court where such judgments are or shall be given, or to which the record is or shall be removed by writ of error.

12. *And be it enacted by the authority aforesaid,* That where any demurrer hath been or shall be joined and entered in any action or suit in any court of record of this state, the court shall

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After verdict,  
judgment not  
to be reversed  
for want  
of pledges,  
etc.

The court, on  
demurrer, to  
give judgment  
according to the

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right of the cause, without regarding defects not specially shown for cause of demurrer.

proceed and give judgment, according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission, defect, or want of form in any writ, return, plaint, declaration, or other pleading, process, or course of proceeding whatsoever, except those only which the party demurring shall specially and particularly set down and express, together with his demurrer, as causes of the same, notwithstanding that such imperfection, omission, or defect might have heretofore been taken to be matter of substance, so as sufficient matter appear in the pleadings, upon which the court may give judgment according to the very right of the cause; and therefore no advantage or exception shall be taken of or for an immaterial traverse, or of or for the default of entering pledges upon any bill or declaration, or of or for the default of alleging the bringing into court any bond, bill, indenture, or other deed whatsoever, mentioned in the declaration or other pleading, or of or for the default of alleging the bringing into court letters testamentary or letters of administration, or of or for the omission of the words, "with force and arms," or, "against the peace," or either of them, or of or for want of the averment or words, "and this he is ready to verify," or, "and this he is ready to verify by the record," or of or for not alleging, "as appears by the very right of the cause as aforesaid, without regarding any such imperfections, omissions, or defects, or any other matter of like nature, except the same shall be specially and particularly set down and shown for cause of demurrer; and that no judgment shall be reversed by any writ of error for any such imperfection, omission, defect, or want of form as aforesaid, except such only as are before excepted; and every court of record of this state shall and may, by virtue of this act, from time to time amend all and every such imperfections, defects, and wants of form as are before mentioned, other than those only which the party demurring shall specially and particularly express and set down, together with his demurrer, as aforesaid, and may at any time permit either of the parties to amend any defect in the process or pleadings, upon such terms and conditions as the said court shall in their discretion direct and prescribe.

Defects in process and pleadings amendable on terms.

This act to extend to judgments upon confession.

13. *And be it enacted by the authority aforesaid,* That this act shall extend to all judgments which have been or shall be entered upon confession, nihil dicit, or non sum informatus, in any court of record; and no such judgment shall be reversed, nor any judgment upon any assessment or writ of inquiry of damages made or executed thereon, be stayed or reversed for or by reason of any imperfection, omission, defect, matter, or thing whatsoever, which

would have been aided and cured by this act, in case a verdict of twelve men had been given in the said action or suit, so as there be an original writ or bill duly filed according to law. TI XXXIV.  
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14. *And be it enacted by the authority aforesaid,* That all writs of error, wherein there shall be any variance from the original record or other defect, may and shall be amended and made agreeable to such record by the respective courts where such writ or writs of error shall be made returnable. Variance in  
writs of error  
from the  
original re-  
cord to be  
amended.

15. *And be it enacted by the authority aforesaid,* That where any verdict hath been or shall be given in any action, suit, bill, plaint, or demand, in any court of record, the judgment thereupon shall not be stayed or reversed for any defect or fault, either in form or substance, in any bill, writ, original or judicial, or for any variance in such writ from the declaration or other proceedings. Judgment af-  
ter verdict  
not to be re-  
versed for  
want of form  
or substance  
in any writ.

16. *And be it enacted by the authority aforesaid,* That this act shall extend to all suits, in any court of record, for the recovery of any debt due to this state, or for any debt, duty, or revenue belonging to the same and also, to all writs of mandamus, and informations in nature of quo warranto, and proceedings thereon. Act shall ex-  
tend to suits  
for debts due  
to the state,  
etc.

17. *And be it enacted by the authority aforesaid,* That all proceedings whatsoever, in every court of law and equity in this state, shall be in the English tongue and language, and in no other tongue or language, and shall be written or printed in a good, strong, legible hand or character, and in words at length, and not abbreviated, except such abbreviations as are commonly used in the English language; *provided nevertheless,* that it shall and may be lawful to express numbers by figures, in like manner as hath been heretofore, or is now commonly used in the said courts respectively, and to express the proper and known names of writs or other process, or technical words, in such language as hath been commonly used, so as the same be written or printed in a common legible hand or character. All judicial  
proceedings  
to be in the  
English lan-  
guage, ex-  
cept, etc.

18. *And be it enacted by the authority aforesaid,* That this act shall be taken and construed, in all courts of justice, in the most ample, beneficial, and liberal manner, for the ease and benefit of the parties, and to prevent frivolous and vexatious delays. Act to be  
liberally con-  
strued.

19. *Provided always, and be it further enacted by the authority aforesaid,* That no part of this act, except that which directs proceedings to be in the English language, shall extend to any indictment or presentment for any criminal matter, or process upon the same, nor to any writ, bill, action, or information upon any popular or penal statute, nor to any outlawry, or process thereupon, or in order thereunto. Not to ex-  
tend to in-  
dictments,  
etc.

CHAPTER 21.

EXCEPTIONS TO JUDGES.

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|--|--|--|
| <p>1. Who not to try cause.<br/>2. Who not to strike jury.</p> |  | <p>3. Challenges made and tried.<br/>4. Judge of pleas not to be clerk, etc.</p> |
|--|--|--|

REV. 688. **An Act the better to promote the impartial administration of justice.**

Passed February 24, 1820.

Who shall not sit in judgment upon the trial of a cause.

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 justice or judge of any court of record in this state, who shall be related in the third degree to either of the parties in any cause depending in such court, or be interested in the event of any such cause, or shall have been attorney on record or counsel for either party in any such cause, or shall have given his opinion upon the matter in question in any such cause, shall sit in judgment upon the trial or argument of any point in controversy in any such cause; and that the degrees of kindred, in such case, shall be calculated according to the common law manner of computation; provided nevertheless, that any matter or thing herein contained shall not be construed to prevent any justice or judge from sitting on the trial or argument of any point in controversy in such cause, merely because he may have given his opinion in any other cause where the same matter in controversy shall have come in question, nor from his having given his opinion on any question in controversy in the same cause, in the course of the previous proceedings therein.*

Proviso.

What judges excluded from striking a jury.

2. *And be it enacted, That no justice or judge of any court of record in this state, who shall be related in the third degree, as aforesaid, to either of the parties in any cause depending in such court, or shall be interested in the event of any such cause, or shall have given his opinion in either of the said relations upon the matter in question in said cause, shall nominate or strike the jury in any such cause.*

Challenges, when to be made, and how tried.

3. *And be it enacted, That all challenges to a justice or judge, for the causes aforesaid, shall be made previous to the trial or argument, and the court may try such challenges, or appoint three indifferent persons triors for that purpose, at the discretion of the court, and that the finding of a majority of such triors shall be received as the determination of such triors.*

Judge of a court of common pleas not to act in certain offices.

4. *And be it enacted, That no judge of any court of common pleas in this state shall act as clerk of the court of which he is a judge, nor as attorney at law or counsellor in any court in this state, any license to practice law, custom or usage to the contrary notwithstanding.*

5. Repealer.

CHAPTER 22.

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SATISFACTION OF JUDGMENTS.

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|--|-------------------------------------|---|
| <p>1. Space left for entry of record.</p> <p>2. Satisfaction, how entered.</p> <p>3. Warrant to enter.</p> <p>“ Form and acknowledgment.</p> | <p> </p> <p> </p> <p> </p> <p> </p> | <p>4. Court may order satisfaction.</p> <p>5. Fees for services.</p> <p>6. Act extends to representatives.</p> <p>7. Party may proceed as heretofore.</p> |
|--|-------------------------------------|---|

An Act to facilitate entries of satisfaction on the records of judgments. REV. 760.

Passed June 10, 1820.

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 Manner of making entries.

it shall be, and it hereby is made the duty of the clerk of the supreme court, and of every inferior court of common pleas in this state, in recording judgments, to leave at the foot or bottom of the record of each and every judgment, in the book of judgments, a sufficient space for entering satisfaction of said judgment on the record, and that all satisfactions of judgments hereafter entered, whether by the directions of this act or by the order of the court, shall be entered at the foot or bottom of the record of such judgments, or in the margin thereof, in cases where there is not sufficient space left at the foot or bottom of such judgment for entering thereof.

2. *And be it enacted,* That whenever any party, in whose favour a judgment is rendered in the supreme court or any of the inferior courts of common pleas in this state, shall have received satisfaction of such judgment, it shall be, and is hereby made the duty of said party, either by himself or his attorney, forthwith to enter an acknowledgment of satisfaction upon the record of said judgment, or in case the judgment shall not have been made up and recorded, then such acknowledgment shall be entered in the minutes of the court where such judgment shall have been rendered; and it shall thereupon become the duty of the clerk of such court, as soon as the record of such judgment is entered in the judgment book, to make the entry of satisfaction in the manner prescribed in the foregoing section, and in the following form :

Satisfaction of this judgment has been duly acknowledged by A. B. (or his attorney, as the case may be,) in the minutes of this court, of the term of — in the year — agreeably to the act of the legislature in such case made and provided.

3. *And be it enacted,* That whenever any party shall receive full satisfaction as aforesaid, it shall and may be lawful for the said party to sign, seal, and deliver to the party so making satisfaction as aforesaid, or his attorney, a warrant or authority, directed to the clerk of the court wherein such judgment shall be rendered, Warrant to enter satisfaction.

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Form. To the clerk of the supreme court of the state of New Jersey, or to the clerk of the inferior court of common pleas of the county of — in the state of New Jersey, (as the case may be).

Whereas I, A. B. heretofore, to wit, in the term of — obtained final judgment in the supreme court of the state of New Jersey (or in the inferior court of common pleas of the county of — in the state of New Jersey, as the case may be,) against C. D. for — debt, and — costs, (or for damages and costs, or for costs, as the case may be,) as by the record thereof may appear; and whereas I have received satisfaction for the same, these are therefore to desire and authorize you to enter an acknowledgment of satisfaction upon the record of the said judgment, and for your so doing this shall be your sufficient warrant and discharge in that behalf. In witness whereof, I have hereunto set my hand and affixed my seal, the — day of — eighteen hundred and —

Signed, sealed, and delivered }  
in the presence of } A. B. [SEAL.]

To be acknowledged or proved.

Which said warrant or authority, being acknowledged or proved before any judge or other officer having authority to take the acknowledgment or proof of deeds for the conveyance of land in this state, or in case the party shall reside out of this state, the same being acknowledged or proved before any judge or justice of any supreme or superior court, or before any judge of any court of common pleas or master in chancery of the kingdom, state, or territory wherein he shall reside, and, after such proof or acknowledgment, such warrant or authority being delivered to the clerk to whom the same shall be directed, it shall be the duty of the said clerk forthwith to enter satisfaction on the record of said judgment, as herein before directed, in the words following, or as nearly in conformity thereto as can be conveniently done:

Form of entry.

I, E. F. clerk of the supreme court of the state of New Jersey, (or inferior court of common pleas of the county of — in the state of New Jersey, as the case may be,) in virtue of a special warrant of attorney (duly acknowledged or proved, as the case may be,) from A. B. in the foregoing record named, and to me directed, do hereby acknowledge that the said A. B. is satisfied of the debt and costs (or damages and costs, or costs, as the case may be). Dated this — day of — eighteen hundred and —

E. F. Clerk.

Filed.

And it shall be the duty of the said clerk forthwith, after entering said satisfaction, to file the said warrant or authority, with the declaration, pleadings, and other papers in the cause in which said judgment shall have been obtained.

4. *And be it enacted*, That in case any party, having received full satisfaction for any judgment obtained in either of the courts aforesaid, shall refuse or neglect, when requested, to enter satisfaction as aforesaid, or to sign, seal, and deliver a warrant, duly acknowledged as aforesaid, to enter satisfaction as aforesaid, the party so making satisfaction may, on due notice given, apply to the court to have satisfaction entered as aforesaid, and the said court may order the same to be done, and for the party so having received satisfaction to pay the costs of the said application, which costs may be recovered by a writ of fieri facias or capias ad satisfaciendum.

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Party refusing to enter satisfaction, court may order, etc.

5. *And be it enacted*, That the judge or other officer who shall take the acknowledgment or proof of any warrant or authority to enter satisfaction on the record as aforesaid, shall be entitled to receive twenty-five cents, and no more, for each acknowledgment or proof taken or had before him; and that the clerk, for entering satisfaction on the record, and filing the warrant or authority for so doing, shall be entitled to receive the sum of twenty-five cents, and no more.

Fees for services.

6. *And be it enacted*, That when the original parties to the action, or either of them, are dead, before satisfaction is entered on the record, the provisions of this act, and the like remedy, shall apply as between the survivor or survivors or the lawful representatives of any deceased party and a surviving party; and the warrant to the clerk, mentioned in the third section of this act, and other proceedings under the same, shall be in such form, as near as may be, as is required in the case of the original parties to the suit.

Provisions of act to extend to representatives of deceased party.

7. *And be it enacted*, That nothing in this act contained shall be construed to prevent any party, making satisfaction as aforesaid, from proceeding, according to the course of the respective courts, to enforce the entering satisfaction on the record of judgments, as heretofore, nor to deprive any attorney at law from any lien which he may have on any judgment for his costs.

May be entered as heretofore.

## CHAPTER 23.

### HABEAS CORPUS EXTENDED.

An Act extending the relief by habeas corpus to persons in confinement under civil process.

1843-4.  
PAMPH. 126.

Revision....Approved April 16, 1846.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That any person who may be arrested or

Habeas corpus extended to civil cases.

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imprisoned by virtue of any civil process issued out of any court of law or equity in this state, in any action of debt or other action founded upon contract, express or implied, shall be entitled to apply for the writ of habeas corpus, and shall have all the rights and privileges granted to persons confined in prison by the act entitled, "An act for preventing the injury of illegal confinement and better securing the liberty of the people," passed the eleventh of March, one thousand seven hundred and ninety-five, any thing in the eighth section of said act notwithstanding.

CHAPTER 24.

MANDAMUS.

- |                              |  |                              |
|------------------------------|--|------------------------------|
| 1. Return to first writ.     |  | 3. Damages recovered, a bar. |
| 2. Proceedings after return. |  | 4. Court may grant time.     |

REV. 160. An Act for the better regulation of proceedings upon writs of mandamus.

Passed December 2, 1794.

Return to be made to the first writ of mandamus.

The proceedings on a writ of mandamus, when it is returned.

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 writ of mandamus shall issue out of the supreme court, directed and delivered to any person or persons, who by law is or are required to make a return to such writ, such person or persons shall make his or their return to the first writ of mandamus.

2. *And be it enacted by the authority aforesaid,* That from and after the passing of this act, as often as any writ of mandamus shall issue out of the said supreme court, and a return shall be made thereunto, it shall and may be lawful to and for the person or persons suing or prosecuting such writ of mandamus, to plead to or traverse all or any the material facts contained within the said return, to which the person or persons making such return shall reply, take issue, or demur; and such further proceedings, and in such manner, shall be had therein, for the determination thereof, as might have been had if the person or persons suing such writ had brought his or their action on the case for a false return; and if any issue shall be joined on such proceedings, the person or persons suing such writ shall and may try the same in such place as an issue joined in such action on the case should or might have been tried; and in case a verdict shall be found for the person or persons suing such writ, or judgment given for him or them upon a demurrer, or by nil dicit, or for want of a replication or other

pleading, he or they shall recover his or their damages and costs, in such manner as he or they might have done in such action on the case as aforesaid; and such damages and costs shall and may be levied by fieri facias or capias ad satisfaciendum, as in other cases; and a peremptory writ of mandamus shall be granted without delay for him or them for whom judgment shall be given, as might have been if such return had been adjudged insufficient; and in case judgment shall be given for the person or persons making such return to such writ, he or they shall recover his or their costs of suit, to be levied in manner aforesaid.

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3. *Provided always, and be it further enacted by the authority aforesaid,* That if any damages shall be recovered by virtue of this act against any such person or persons making such return to such writ as aforesaid, he or they shall not be liable to be sued in any other action or suit for the making such return.

If damages recovered, etc.

4. *And be it enacted by the authority aforesaid,* That it shall and may be lawful to and for the said supreme court to allow to such person or persons, respectively, to whom any writ of mandamus shall be directed, or to the person or persons who shall sue or prosecute the same, such convenient time, respectively, to make a return, plead, reply, rejoin or demur, as to the said court shall seem just and reasonable.

Court may allow convenient time to make return and plead.

CHAPTER 25.

QUO WARRANTO.

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|-------------------------------------|--|-------------------------------|
| 1. How exhibited against intruder.  |  | 2. Of the judgment and costs. |
| " Several rights may be determined. |  | 3. Time to plead.             |

An Act for rendering the proceedings upon informations in the nature of a quo warranto more speedy and effectual. R.E.V. 206.

Passed March 17, 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 in case any person or persons shall usurp, intrude into or unlawfully hold or execute any office or franchise within this state, it shall and may be lawful to and for the attorney general, with the leave of the supreme court, to exhibit one or more information or informations in the nature of a quo warranto, at the relation of any person or persons desiring to sue or prosecute the same, who shall be mentioned in such information or informations to be the relator or relators against such person or persons, for usurping, intruding

How information in nature of a quo warranto may be exhibited against an intruder into office.

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Several rights of different persons may be determined on one information.

into, or unlawfully holding and executing any such office or franchise, and to proceed therein in such manner as is usual in cases of informations in the nature of a quo warranto; and if it shall appear to the said supreme court that the several rights of divers persons to the same office or franchise may properly be determined on one information, it shall and may be lawful for the said court to give leave to exhibit one such information against several persons, in order to try their respective rights to such office or franchise; and such person or persons against whom such information or informations in nature of a quo warranto shall be sued or prosecuted, shall appear and plead as of the same term in which the said information or informations shall be filed, unless the said court shall give further time to such person or persons against whom such information or informations shall be exhibited to plead, and such person or persons as shall sue or prosecute such information or informations in nature of a quo warranto, shall proceed thereupon with the most convenient speed that may be.

If found guilty, judgment of ouster to be awarded against him, etc.

2. *And be it enacted by the authority aforesaid,* That in case any person or persons against whom any information or informations in the nature of a quo warranto shall in any of the said cases be exhibited in the said supreme court, shall be found or adjudged guilty of an usurpation or intrusion into, or unlawfully holding and executing any such office or franchise, it shall and may be lawful to and for the said court, as well to give judgment of ouster against such person or persons of and from such office or franchise, as to fine such person or persons, respectively, for his or their usurping, intruding into, or unlawfully holding and executing any such office or franchise; and also, it shall and may be lawful to and for the said supreme court to give judgment, that the relator or relators in such information named shall recover his or their costs of such prosecution; and if judgment shall be given for the defendant or defendants in such information, he or they for whom such judgment shall be given shall recover his or their costs therein expended against such relator or relators, such costs to be levied by fieri facias or capias ad satisfaciendum, as in other cases.

If judgment be for him, he shall recover costs against the relator.

Court to allow parties a reasonable time to plead etc.

3. *And be it enacted by the authority aforesaid,* That it shall and may be lawful to and for the said supreme court to allow to such person or persons, respectively, against whom any information in the nature of a quo warranto in any of the cases aforesaid shall be sued or prosecuted, or to the person or persons who shall sue or prosecute the same, such convenient time, respectively, to plead, reply, rejoin, or demur, as to the said court shall seem just and reasonable.

CHAPTER 26.

REMEDIES ABOLISHED.

- I....Of essoins, protections, and wager of law.
- II....Of fines and common recoveries.

**I....An Act for preventing delays by essoins and protections, and for abolishing trials by wager of law.** REV. 183.

Passed March 5, 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 no essoin or protection shall hereafter be allowed in any suit whatsoever. No essoin or protection to be allowed.

2. *And be it enacted by the authority aforesaid,* That trials by wager of law shall be and hereby are abolished in all cases, except in the case of nonsummons, and that no person shall hereafter be permitted to wage his or her law in any case, except that of nonsummons in real actions. Trials by wager of law abolished.

**II....An Act to abolish fines and common recoveries.** REV. 475.

Passed June 12, 1795.

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 fine or common recovery, to be entered, made, had, or suffered in any court of record of this state, shall operate or be construed to be a conveyance or assurance of lands, tenements, or hereditaments, or in any way to bar the issue in tail, or the reversioner or remainderman of their lawful claims and entries, any usage or custom to the contrary in anywise notwithstanding. Fines and common recoveries abolished.

CHAPTER 27.

INDICTMENTS, ETC., AGAINST CORPORATIONS.

- |  |  |                                      |
|--|--|--------------------------------------|
| 1. Township summoned.                    |  | 4. Execution returned not satisfied. |
| 2. Proceedings if returned "served."     |  | 5. To be paid by county collector.   |
| 3. Proceedings if returned "not served." |  | 6. And added to township's next tax. |

**An Act to compel the appearance of corporations to indictments and informations.** 1836-7. PAMPH. 125.

Revision....Approved April 15, 1846.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey,* That when any indictment shall be found, or Summons on indictment, etc., issued and served.

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information filed by the attorney general, against any corporation or township, in any of the courts of law of this state, it shall and may be lawful for the attorney general or prosecuting attorney for the state to cause a summons or notice to be directed to the said corporation or township, in its corporate name, commanding or notifying the said corporation or township to appear at the next term of the said court, to answer to such indictment or information, a copy of which summons or notice shall be served on the president, or other head officer of the said corporation, or clerk of said township, or left at his dwelling-house or usual place of abode, at least six entire days before the commencement of the term to which the said corporation are by said summons or notice required to appear; and in case the president or other head officer of the corporation cannot be found in the county in which such indictment shall have been presented or information filed, to be served with a copy of said summons or notice as aforesaid, and has no dwelling-house or usual place of abode within the said county, then a copy of said summons or notice may be served on the clerk, cashier or secretary of the said corporation or township, if any there be in the said county in which the said indictment shall have been found or information filed, and if there be no clerk, cashier or secretary of said corporation or township found in said county, then on one of the directors of the said corporation, or left at his usual place of abode six entire days before the commencement of the said term to which the said summons or notice shall be returnable.

Proceedings  
after return  
"served,"  
etc.

2. *And be it enacted*, That when the sheriff or other officer shall return such summons or notice "summoned" or "served," the said corporation or township shall be considered as in court, and as appearing to said indictment or information; and the court shall order the clerk to enter an appearance for said corporation or township, and endorse the plea of not guilty on said indictment or information, and further proceedings may then be had thereon, in the same manner as if the said corporation or township had appeared and pleaded not guilty thereto; and if the said corporation or township shall be convicted on said indictment or information, the said court may proceed to pass judgment thereon, and cause process of execution to be issued to the sheriff of the county against the goods and chattels or lands and tenements of the said corporation or township, for the amount of the fine and costs which may be awarded against them, in the same manner as on a judgment in a civil action; and the said sheriff shall proceed to sell the goods and chattels or lands and tenements of the said corporation or township on the said execution, in the same manner as on an execution issuing against a corporation in a civil suit.

3. *And be it enacted*, That in case the sheriff or other officer shall return such summons or notice "not summoned" or "not served," and an affidavit shall be made to the satisfaction of the court, that the same could not be served, as mentioned in the first section of this act, or in case the sheriff or other officer shall make affidavit that he hath made diligent inquiry, and cannot ascertain the name of any president, secretary, or director of said corporation, resident in the county in which the said indictment shall have been found or information filed, then the court shall make an order directing the said corporation to cause their appearance to be entered, and to plead to said indictment or information on or before the first day of the next term of the said court, a copy of which order shall, within twenty days, be inserted in such one of the public newspapers printed in this state, as the court may direct, for at least six weeks; and if the said corporation shall not appear within the time limited by such order, or within such further time as the court shall appoint, then on proof made of the publication of such order, in manner aforesaid, the court being satisfied of the truth thereof, shall order the clerk to enter an appearance for said corporation, and endorse a plea of not guilty on said indictment or information; and thereupon further proceedings may be had on the said indictment or information, in the same manner as if the said corporation had appeared and pleaded not guilty thereto; and in case of conviction, execution may be issued against the said corporation, and proceedings had thereon, as in the preceding section mentioned.

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Process "not  
served."

Order for  
publication.

Proof.

Proceedings.

4. *And be it enacted*, That when any execution, issued against any township for the amount of any fine and costs, as provided by the second section of this act, shall be returned by the sheriff or other proper officer unsatisfied for want of goods and chattels, or for want of lands and tenements of the township against which said execution issued, it shall be the duty of the clerk of the court out of which the same issued, to make a copy thereof, with the endorsements thereon, and the return of the sheriff or other proper officer thereto, having first added to the costs endorsed thereon one dollar, the fee of the said clerk for said copy, and a certificate thereof, and two dollars, the fee of the sheriff for the services hereinafter required of him, and to certify the same under his hand and seal of office, and deliver the same to the sheriff or other proper officer.

Proceedings  
where exe-  
cution re-  
turned not  
satisfied.

5. *And be it enacted*, That it shall be the duty of the sheriff or other proper officer, upon receiving such certified copy of the execution and return, to present the same to the county collector, who shall pay to the sheriff of said county or other proper officer the

County col-  
lector to pay.

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amount of the costs endorsed, together with the interest due thereon, taking the receipt of the sheriff or other proper officer thereupon, which certified copy and receipt shall be a sufficient voucher for the payment thereof, in the settlement of the accounts of the said collector.

And amount  
added to said  
township's  
quota of next  
tax.

6. *And be it enacted*, That the said collector having paid the said costs, shall thereupon charge the same, together with the amount of said fine, to the township against which such execution was issued, adding thereto interest up to the twenty-second day of December next ensuing the next annual meeting of the board of assessors of said county, and shall lay the same before the said board of assessors at their next annual meeting, which sum shall be added to the proportion or quota of the tax next to be levied and collected in such township; and shall be assessed, levied, collected, and paid over, in the same manner and under the same penalties as the said proportion or quota of tax is by law directed to be assessed, levied, collected, and paid over.